WHITE EARTH RESERVATION TRIBAL COUNCIL
A/K/A WHITE EARTH BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS

Resolution No. 019-17-001

WHEREAS, the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation pursuant to Article IV, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the White Earth Reservation Tribal Council, also known as the White Earth Reservation Business Committee, is the duly authorized governing body of the White Earth Band, and

WHEREAS, the White Earth Reservation Tribal Council has previously determined that a new White Earth Child and Family Protection Code should be drafted, which such Code governing the rules, procedures and practices of child protection, child welfare, and judicial proceedings affecting these areas within the White Earth Tribal system, and

WHEREAS, a working group has developed and drafted a proposed revision of the White Earth Child and Family Protection Code, and such Code has been presented to the general public of the White Earth Band for a thirty (30) day comment period in accordance with Resolution No. 011-16-017A, and

WHEREAS, the comment period has expired and the working group has finalized the White Earth Child and Family Protection Code, and recommends the White Earth Reservation Tribal Council also adopt the same, to be effective March 1, 2017, now

THEREFORE BE IT RESOLVED, that the White Earth Reservation Tribal Council hereby adopts the White Earth Child and Family Protection Code as presented in the attached format, effective March 1, 2017.

We do hereby certify that the foregoing resolution was adopted by a vote of 3 for, 0 against, 0 silent, a quorum being present at a special meeting of the White Earth Reservation Tribal Council held on November 28, 2016 in White Earth, Minnesota.

Steve Clark Vice Chair
Terrence "Terry" Tibbetts, Chairman

Tara Mason
Tara Mason, Secretary/Treasurer

WHITE EARTH BAND OF OJIBWE
TITLE IV
CHILD/FAMILY PROTECTION CODE

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CHAPTER ONE—GENERAL PROVISIONS

§ 1.01 Short Title

This Code shall be entitled "The Child/Family Protection Code."

§ 1.02 Declaration of Policy

1. It is the fundamental belief of the White Earth Band of Ojibwe that its children are the sacred responsibility of the Tribe.

2. The principles that shall guide decisions pursuant to this Code are:

    a. Protection of the child's safety, well-being, and welfare;

    b. Preservation of the child's identity as a tribal member and member of an extended family and clan; and

    c. Preservation of the culture, religion, language, values, clan system, and relationship of the Tribe.

§ 1.03 Purposes of Code

The purposes of this Code are:

1. To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, cultural, and physical development; to ensure secure and safe custody for children; to promote the health and well-being of all children under the Tribe's care; and to prevent the occurrence of child abuse, abandonment, and neglect.

2. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis on prevention, early intervention, and community-based alternatives to encourage parents to act with *zoongide'win*, to acknowledge their personal weaknesses and develop the strength to combat them for the welfare of their children.

3. To exercise the White Earth Band of Ojibwe's sovereign right to govern over its people and the land on which it resides; in particular the Tribe's most vital resource, its children, through:

    a. The efficient collaboration of both tribal and state resources in a manner that provides for the timely and effective handling of those cases involving the Tribe's children;

b. The facilitation of inter-governmental relationships with other jurisdictions aimed at protecting Ojibwe children and families both on and off the Reservation; and

c. Ensuring that off-reservation courts will be willing to return tribal children to the Reservation.

4. To promote the belief that the Tribe's children deserve a sense of *manaaji'idiwin*, respect, *zaagi'idiwin*, love, permanency, and belonging throughout their lives and are entitled to knowledge about their unique cultural heritage, tribal customs, history, language, religion, and values.

5. To provide for the best interests of the Tribe, tribal communities, tribal families, and tribal children.

§ 1.04 Responsibilities of Tribal Departments

1. All Tribal Departments are mandated to aid in the execution of this Code to its fullest by showing *nibwaakaawin*, an abundance of wisdom, regarding the particularities of this Code so it can be effectively communicated to all families involved in proceedings under this Code.

2. Aiding in the execution of this Code shall include providing any requested information or assistance as outlined in this Code to ensure Tribal children are raised in communities showing *manaaji'idiwin*, respect, and *zaagi'idiwin*, love, towards the children.

§ 1.05 Definitions

1. **Abandon, Abandoned, Abandonment**—A situation in which the parent or legal custodian of a child, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child.
    a. A substantial and positive relationship should include frequent and regular contact with the child through frequent and regular visitation or communication and the exercise of parental rights and responsibilities.
    b. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.
    c. The incarceration of a parent, legal custodian, or caregiver may support a finding of abandonment. The service of a parent, legal custodian, or caregiver in the U.S. Armed Forces will not support a finding of abandonment. Custody with extended family members or a voluntary consent to placement does not constitute abandonment.
    d. Failure to maintain a substantial and positive parental relationship with the child, without just cause, for six months shall constitute prima facie evidence of abandonment.

2. **Abuse**—Any willful or threatened act that results in any physical, mental, or sexual injury or harm that is likely to cause the child's physical, mental, or emotional health to be significantly impaired.
    a. Abuse of a child includes acts or omissions and failing to maintain reasonable care and treatment.
    b. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.
    c. Ojibwe customary discipline of a child by a parent or customarily appropriate person does not in itself constitute abuse when it does not result in harm.
3. **Active Efforts of a Tribal Social Services Department**—Active efforts made by any tribal social services department to provide social services or reunification services to any party participating in a case plan with the department.
4. **Adoptee**—The individual, child, or adult who is adopted or who is to be adopted.
5. **Adoption**—The creation of a legal relationship between parent and child where it did not exist biologically. Adoption declares the child to be legally the child of the adoptive parents and allows the child be entitled to all the rights, privileges, and obligations of a biological child.
6. **Adoptive Parent**—The person establishing or seeking to establish a permanent parent-child relationship with a child or adult who is not their biological child.
7. **Adult**—A person eighteen years of age or older or otherwise emancipated by order of a court of competent jurisdiction.
8. **Alleged Juvenile Sexual Offender**—A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse.
9. **Appellate Court**—The Appellate Court shall mean the White Earth Band of Ojibwe Appellate Court.
10. **Arbitration**—A process whereby a neutral third person or panel considers the facts and arguments presented by the parties and renders a decisions that may be binding or nonbinding.
11. **Assessment**—The gathering of information for the evaluation of a child's or adult's physical, psychiatric, psychological, or mental health, education, vocational, and social condition and family environment as it relates to the child's and adult's need for rehabilitation and treatment services.
12. **Authorized Agent, Authorized Designee**—An employee, volunteer, or other person or agency that is assigned or designated by the White Earth Band of Ojibwe to perform duties or exercise powers under this Code.
13. **Band**—The White Earth Band of Ojibwe.
14. **Best Interests of the Child**—A compilation of a variety of factors including, but not limited to:
    a. the ability of the tribe and the reservation community to provide for the care of the child;
    b. the wishes of the parents, parties, or tribe;
    c. the preference of the child, if the child is of sufficient age to express a preference;
    d. the intimacy of the relationship between the child and the parties;
    e. the child's adjustment to home, school, and tribal community;

f. the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
g. the permanence of the existing or proposed adoptive home as a family unit;
h. the mental and physical health of all individuals involved; and
i. the capacity and disposition of the parties to give the child love, affection, guidance, and to continue educating the child in the child's tribal culture and heritage.

15. **Best Interests of the Tribe**—A compilation of a variety of factors including, but not limited to:
    a. the ability of the tribe and its members to provide for the continuation of the tribe's culture, language, history, religion, traditions, and values through its children;
    b. the hindrance of the ability of the tribe to continue as a viable cultural entity after the loss of its children; and
    c. the tribal view that every child is a gift from the Creator and is crucial to the future of the tribe as a whole.
16. **Birth Parent**—The biological parent of a child.
17. **Caregiver**—The parent, legal custodian, permanent guardian, adult household member, or other person responsible for the child's welfare.
18. **Case Plan**—The document, as detailed in Chapter 7, prepared by the Giizhawaaso (Indian Child Welfare) Department. The case plan follows the child from the provision of services through any protection, services, foster care, suspension or termination of parental rights, adoption proceedings, or related activities.
19. **Child**—A person who is less than eighteen years old and has not been emancipated by order of a court of competent jurisdiction.
20. **Child in Need of Protection And/ Or Services**—A child that the court has determined has been abandoned, abused, neglected, harmed, or has not received the needed services, or parenting necessary for the wellbeing and rearing of the child.
21. **CHIPS Petition**—A petition pertaining to a child in need of protection and/ or services, or any proceeding relating to the process of identifying or adjudicating a child in need of protection and/ or services.
22. **Child-on-Child Sexual Abuse**—Any sexual behavior that occurs without consent, without equality, or as a result of coercion, between two children.
23. **Child Protection Team**—A team established to involve and coordinate the child protection services of various agencies as set forth in Chapter 1, Section 1.12 of this Code.
24. **Child Protection Worker**—The child protection worker, social services work, law enforcement personnel, or any other person who performs the duties and responsibilities set forth in Chapter 1, Section 1.11 of this Code.
25. **Child Support**—A court ordered obligation for monetary support for the care, maintenance, training, and education of a child.
26. **Closed Adoption**—An adoption that is intended to sever all ties between the child and his or her biological family.
27. **Coercion**—The exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.
28. **Consent**—An agreement between two parties, including:

a. understanding what is proposed based on age, maturity, developmental level, functioning, and experience;
b. knowledge of societal standards for what is being proposed; awareness of potential consequences and alternatives;
c. assumption that agreement or disagreement will be accepted equally;
d. a voluntary decision; and
e. mental competence.

29. **Court Administrator**—The Office of the Court Administrator, created pursuant to Chapter IV of the White Earth Band of Ojibwe Judicial Code, or any successor judicial administrator created by a future tribal judicial code.
30. **Court, Children's Court**—The Children's Court of the White Earth Band of Ojibwe.
31. **Custodian**—A person, other than a parent or guardian, to whom legal custody of a child has been given.
32. **Customary Adoption**—A traditional tribal practice recognized by the community and the Tribe that gives a child a permanent parent-child relationship with someone other than the child's birth parents.
33. **Customary Adoption Worker**—A staff person of the *Giizhawaaso* (Indian Child Welfare) Department whose job duties include carrying out customary adoptions in accordance with Chapter 11 of this Code.
34. **Danger to Oneself**—As evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 72-hour period the child may attempt to commit suicide or inflict serious bodily harm on himself or herself.
35. **Danger to Others**—As evidenced by violent or threatening activity, it is more likely than not that within a 72-hour period the child may inflict serious and unjustified bodily harm on another person.
36. **Diligent Search**—The efforts of a tribal social services department or other party to locate a parent or prospective parent whose identity or location is unknown, initiated as soon as the existence of the parent is known, with the search progress reported at each Court hearing until the parent is either identified and located or the Court excuses further search.
37. **Domicile**—A person's permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or the location the parent or guardian considers their permanent home.
38. **Egregious harm**—the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care.
39. **Emergency**—A situation when any individual has been injured or who is suffering from an acute illness, disease, or condition and it has been confirmed to a reasonable degree of certainty that a delay in the initiation or provision of emergency medical care or treatment would endanger the health or physical well-being of the individual.
40. **Equality**—Two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.
41. **Extended Family**—A group of individuals that care about a child, defined according to the tribal customs and traditions of the child's tribe.
42. **Facility Investigation**—Situations of known or suspected child abuse, abandonment, or neglect in which the person allegedly perpetrating the child abuse, abandonment, or

neglect is an employee of a public or private school, public or private day care center, residential home, or child care institution, facility, or agency. The facilities must be located within the exterior boundaries of the White Earth Reservation, or licensed by the White Earth Band of Ojibwe.

43. **False Report**—Any report of abuse, abandonment, or neglect of a child that is maliciously made for the purpose of:
    a. harassing, embarrassing, or harming another person;
    b. personal financial gain for the reporter;
    c. acquiring custody of a child; or
    d. personal benefit for the reporting person in any other private dispute involving a child.
44. **Family Member**—A person related by blood or marriage who maintains some form of significant contact with a child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren, cousins, significant others, and any other persons who might be considered a family member under tribal law or custom.
45. **Forensic Interview**—A structured investigative conversation with a child intended to illicit detailed information about possible events the child may have experienced or witnessed. The purpose of a forensic interview is to illicit information from a child that may be help in a criminal or child protection investigation.
46. **Foster Care**—Care provided to a child in a foster family, child care institution, or any combination of similar institutions.
47. **Foster Care Program**—A program approved by the White Earth Reservation Tribal Council or their delegate to inspect and license foster homes under Chapter 5, Section 5.06 of this Code.
48. **Foster Home**—A home that has been licensed under Chapter 5, Section 5.06 of this Code.
49. ***Gezhaanaajig Nejanisug* (Gā zha na zhig Nā zha ni sug)** (Those who guard Children)—A person appointed by the Court to represent the child's best interests before the Court. Known as a "Guardian Ad Litem" in a non-indigenous setting.
50. ***Giizhawaaso* (Indian Child Welfare) Department**—The tribal social services agency of the tribal government charged with ensuring the protection of Indian children in accordance with the Indian Child Welfare Act and this Code.
51. **Guardian**—A person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child.
52. **Guardian Ad Litem**—See 49, Above.
53. **Guardian of Property**—A person appointed by the Court to manage the property of a child or incompetent person.
54. **Harm**—Harm to a child's health or welfare occurs when any person inflicts, or allows to be inflicted, upon the child a physical, mental or emotional injury. Harm may include, but is not limited to:
    a. willful acts of physical, mental, or emotional injury;
    b. leaving a child without appropriate supervision for his or her age and ability;
    c. inappropriate or excessively harsh disciplinary action;
    d. sexual assault, battery, or exploitation;
    e. abandonment;
    f. neglect;

g. exposure to a controlled substance or alcohol, before or after birth;
h. restraint or isolation; or
i. withholding appropriate care, services, or treatments.

55. **Incompetent**—A person who is for any cause mentally incompetent and unable to take care of themselves and manage their property.
56. **Indian**—Any person who is a member of, or who is eligible to become a member of, a federally recognized Indian tribe, band, or community. An Indian may also include any person considered by their community to be Indian.
57. **Indian Custodian**—A person who has raised an Indian child under tribal law or custom.
58. **Indian Tribe**—A federally recognized Indian tribe, band, or community.
59. **Judge**—The Children's Court judge exercising jurisdiction pursuant to this Code.
60. **Juvenile Counselor**—The juvenile counselor or juvenile probation officer or other appropriately titled person who performs the duties and responsibilities set forth in Chapter 1, Section 1.10(2) of this Code.
61. **Juvenile Offender**—A child who commits a juvenile offense prior to his or her eighteenth birthday.
62. **Juvenile Offense**—A criminal violation of the Tribal Code of the White Earth Nation that is committed by a person who is under the age of eighteen at the time the offense was committed.
63. **Juvenile Sexual Abuse**—Any sexual behavior that occurs without consent, without equality, or as a result of coercion, between two children.
64. **Legal Custody**—A legal status created by a court that vests in a custodian of the person or guardian the right to have physical custody of the child, the right and duty to protect, nurture, guide, and discipline the child, and the duty to provide the child with food, shelter, education, and ordinary medical care.
65. **Maltreatment**—Any non-accidental act or series of acts of commission or omission by a parent or other caregiver that results in harm, potential for harm, or threat of harm to a child. Maltreatment of a child includes, but is not limited to, physical, sexual and psychological abuse, and emotional, medical, or educational neglect.
66. **Mental Injury**—An injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.
67. **Necessary Medical Treatment**—Care that is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.
68. **Neglect**—A situation in which a child is deprived, via acts or omissions, of necessary food, clothing, shelter, or medical treatment or the child's living environment causes the child's physical, mental, or emotional health to be significantly impaired. A neglectful situation cause primarily by financial inability will not be considered neglect, unless actual services for relief have been offered and rejected.
69. **Open Adoption**—An adoption that is not intended to permanently deprive the child of connections to his or her biological family.
70. **Out-of-Home**—A placement of a child outside of the child's domicile or the home of either of the child's parents.
71. **Parent**—A biological or adoptive parent of a child, but not an individual whose parental rights have been suspended or terminated.

72. **Participant**—Any person who is not a party to a proceeding under this Code, but who should receive notice of hearings involving the child. Participants may be granted leave by the Court to be heard without the necessity of filing a motion to intervene.
73. **Permanency Goal**—The living arrangement identified for the child as the permanent living arrangement of the child. Permanency goals, in order of preference, are:
    a. reunification;
    b. permanent placement with a relative;
    c. permanent placement with a White Earth Tribal Member;
    d. customary adoption;
    e. placement in another planned and permanent living arrangement; and
    f. adoption.
74. **Permanency Plan**—The plan that establishes the placement intended to serve as the child's permanent home.
75. **Permanent Guardian**—A legal relationship that a court creates between a child and a relative or other adult approved by the court that is intended to be permanent, relating to the protection, education, care, custody, and control of the child, as set forth under Chapter 13, Section 13.03 of this Code. (See definition of Legal Custody and Chapter 13, Section 13.03 of this Code.)
76. **Physical Injury**—Impairment of any body part, temporary or permanent disfigurement of any body part, or physical harm that is contrary to child rearing practices in the community, or death.
77. **Physician**—Any licensed physician, dentist, or optometrist, including any intern or resident.
78. **Post Adoptive Contact Agreement**—An agreement approved by the Court and entered into between the biological parent(s) and the adoptive parent(s) of the adoptee(s) in an open adoption proceeding to establish the parameters and method for continued contact between the biological parent(s) and the adoptee(s). In determining whether to approve a Post Adoptive Contact Agreement, the Court may consider the following factors: the nature of the relationship between the adoptee and his or her biological family; any pre-existing relationship, if applicable, between the adoptee's immediate family and the adoptive parents; maintaining a connection between the adoptee and the adoptee's tribal community; and any other factor the Court finds relevant and persuasive.
79. **Preadoptive Parent**—A person considering taking on the responsibilities of an adoptive parent, as detailed in Chapter 1, Section 1.05(6), for a child involved in a proceeding under this Code.
80. **Preventive Services**—Social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home. Social services and other supportive and rehabilitative services shall promote the child's need for:
    a. physical, mental, and emotional health;
    b. a safe and stable living environment;
    c. family autonomy; and
    d. a strengthened family life.
81. **Prospective Parent**—Any person who claims to be, or has been identified as, a person who may be a mother or a father of a child.

82. **Protective Assessment**—The acceptance of a report alleging child abuse, abandonment, or neglect; the investigation of each report; the determination of whether action by the Court is warranted; the determination of the disposition of each report without Court or public agency action when appropriate; and the referral of a child to another public or private agency when appropriate.
83. **Protective Supervision**—A legal status in a CHIPS case that permits the child to remain safely in his or her own home or other placement while being under the direct supervision of the Giizhawaaso (Indian Child Welfare) Department.
84. **Reservation**—The White Earth Reservation located in northern Minnesota.
85. **Reunification Services**—Social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, non-relative placement, or foster parents of the child for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time.
    a. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services.
    b. The services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life.
86. **Safe Place**— a location for safely surrendering a newborn infant; Safe Places under this Code are as follows: the White Earth Police Department, the Giizhawaaso (Indian Child Welfare) Department, the Tribal fire departments and IHS clinics in the villages of White Earth and Naytahwaush, or any other facility designated as a Safe Place in writing by the Giizhawaaso Department; provided that a Safely Surrendered Newborn Infant is surrendered during the Safe Place's normal hours of operation with staff present to accept the surrendered infant.
87. **Safely Surrendered Newborn Infant**—An infant, not more than seven (7) days old as determined within a reasonable degree of medical certainty, surrendered by a mother, or someone acting with her permission, to surrender the infant to an appropriate safe place. The act of surrendering may be anonymous, but it must be voluntary.
88. **Social Worker**—Any individual who has a bachelor's, master's, or doctoral degree in social work.
89. **State Court**—A court of the state of Minnesota, or of any other state, having civil jurisdiction over the child who is the subject of a proceeding under this Code.
90. **Substance Abuse**—Using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in a manner as to induce physical or mental impairment beyond acceptable social norms.
91. **Substantial Compliance**—The circumstances that have caused an on-going child protection case have been significantly remedied by the parent or legal custodian to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with, or being returned to, the child's parent or legal custodian.
92. **Suspension of Parental Rights**—The permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child.
93. **Temporary Guardianship**—A guardian who has been granted temporary guardianship status as set forth in Chapter 13, Section 13.02 of this Code.

94. **Temporary Legal Custody**—The relationship that a court creates between a child and an adult relative of the child, legal custodian, agency, or other person approved by the court until a more permanent arrangement is ordered.
    a. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child.
    b. The temporary legal custodian is also required to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody relationship.
95. **Transfer of Legal Custody**—A transfer of legal status as custodian for a child (see Legal Custody) from one adult to another.
96. **Treatment Facility**—A secure, acute care facility that provides, at minimum, detoxification and stabilization services; is operated 24 hours per day, seven days per week; and is designated by the Giizhawaaso (Indian Child Welfare) Department to serve individuals found to be substance use impaired.
97. **Tribal Council**—The Tribal Council of the White Earth Band of Ojibwe.
98. **Tribal Court**—The Tribal Court of the White Earth Band of Ojibwe.
99. **Tribe**—The White Earth Band of Ojibwe.
100. **Victim**—Any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, abandonment, or neglect, or child-on-child sexual abuse

§ 1.06 Jurisdiction of the Children's Court

1. There is hereby established for the White Earth Band of Ojibwe a court to be known as the White Earth Children's Court. The jurisdiction of the Children's Court shall be civil in nature and shall include the right to issue all orders necessary to insure the safety of children and incompetents within the boundaries of the Reservation, as well as other children who have been declared wards of the Children's Court.

2. The Children's Court shall have exclusive jurisdiction of all proceedings under this Code or of a child voluntarily placed with a Giizhawaaso (Indian Child Welfare) Department.

3. The Children's Court shall have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement, and other orders as are deemed appropriate.

4. The Children's Court shall have jurisdiction over the following persons:

    a. Members of the Tribe under the age of eighteen years;

    b. Persons under the age of eighteen who are eligible for membership in the Tribe;

    c. Indians who are under the age of eighteen years and who are residing within the exterior boundaries of the Reservation;

d. Children of enrolled members of the Tribe or other Indians, including adopted children, who reside within the exterior boundaries of the Reservation;

e. Children residing within the exterior boundaries of the Reservation within the home of an enrolled member of the Tribe or other Indians as long as the parents, guardians, or custodians have consented to the jurisdiction of the Children's Court. Consent, once given, may be revoked only with the permission of the Children's Court;

f. Incompetent persons residing or domiciled within the exterior boundaries of the Reservation; and

g. Any child whose family may wish to make itself subject to the jurisdiction of the Children's Court.

5. Where the Children's Court asserts jurisdiction over a child under Chapter 1, Section 1.06(4), the Court shall also have jurisdiction over the person's extended family whenever the Court deems it appropriate.

6. Where the Children's Court deems it appropriate, the Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the Reservation.

7. When the Court obtains jurisdiction of any child who has been found to be in need of protection and/ or services, the Court shall retain exclusive jurisdiction, unless relinquished by its order, until the child reaches eighteen years of age.

§ 1.07 Transfer of Jurisdiction

1. The Children's Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §1901-1963, where they do not conflict with the provisions of this Code.

    a. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court unless specifically provided for in this Code.

    b. The Children's Court may choose to apply or decline to apply the policies or individual provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901-1963 for any reason.

2. In any proceeding before the Children's Court, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe have a significant interest in the child and the transfer would be in the best interest of the child.

3. The Children's Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from other federal, state, or tribal courts.

4. Procedures for Transfer from State Court

    a. The tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the tribal social service department.

    b. The Giizhawaaso (Indian Child Welfare) Department shall conduct an investigation and file a written report with the Court when transfer to tribal court is being sought.

    c. The Tribe, through its attorneys, social workers, or child protection workers, may in their discretion, file a written request with the Court to accept a transfer of jurisdiction from any state, tribal, or other Court.

    d. The Court may accept a transfer from state court if:

        i. A parent or Indian custodian's petition to state court for transfer is granted; or

        ii. The tribe's petition to state court for transfer is granted.

    e. Upon receipt of transfer jurisdiction from state court, the juvenile counselor, tribal social worker, or tribal attorney shall file a CHIPS petition, and appropriate hearings shall be held in accordance with this Code.

5. Comity; Conflict of Laws

    a. State child custody orders involving children over whom the Children's Court could take jurisdiction may be recognized by the Children's Court only after a full independent review of the state proceedings has determined:

        i. The state court properly asserted jurisdiction over the child;

        ii. The provisions of the Indian Child Welfare Act, 25 U.S.C. §1901-1963 were properly followed;

        iii. Due process was provided to all interested persons participating in the state proceeding; and

        iv. The state court proceeding does not violate the public policies, customs, or common law of the tribe.

b. Court orders of other tribal courts involving children over whom the Children's Court could take jurisdiction shall be recognized by the Children's Court after the Court has determined;

   i. That the other tribal court properly asserted jurisdiction over the child; and

   ii. Due process was accorded to all interested parties participating in the other tribal court proceeding.

c. The statutes, regulations, public policies, customs, and common law of the White Earth Band of Ojibwe shall control in any proceeding involving a child who is a member of the Tribe, or eligible for membership in the Tribe.

§ 1.08 Immunity From Liability

1. In no case shall employees of the Tribe or the Giizhawaaso (Indian Child Welfare) Department acting in good faith be liable for damages as a result of failing to provide services agreed to under any case plan, unless the failure to provide the services occurs as a result of bad faith or malicious purpose or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

2. The inability or failure of the Tribe or of the Giizhawaaso Department or the employees or agents of the Giizhawaaso Department to provide the services agreed to under any case plan shall not render the Tribe or the Giizhawaaso Department liable for damages, unless the failure to provide services occurs in a manner exhibiting wanton or willful disregard of human rights, safety, or property.

3. Nothing in this Code constitutes a clear and unequivocal waiver of sovereign immunity.

§ 1.09 Procedures and Authorizations

1. The procedures in the Children's Court shall be governed by the White Earth Band of Ojibwe Rules of Civil Procedure that are not in conflict with this Code.

2. The Children's Court shall assist in the development of policies, procedures, and general orders for the efficient and effective management of all programs, services, facilities, and functions necessary for implementing this Code. All policies, procedures, and general orders must conform to accepted standards of care and treatment.

3. In all proceedings, the Court shall take and preserve an accurate stenographic or recording of the proceedings.

4. Orders entered pursuant to this Code that affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a child shall take precedence over other orders entered in civil actions or proceedings. However, if the Court has

terminated jurisdiction, the order may be subsequently modified by a court of competent jurisdiction in any other civil action or proceeding affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child.

5. The Court shall expedite the resolution of the placement issue in cases involving a child who has been removed from the parent and placed in an out-of-home placement.

6. The Court shall expedite the judicial handling of all cases when the child has been removed from the parent and placed in an out-of-home placement.

7. Children removed from their homes by the Court shall be provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.

8. Social Services is authorized to cooperate fully with any federal, state, tribal, public, or private agency in order to participate in any foster care, shelter care, treatment, or training programs, and to receive grants-in-aid to carry out the purposes of this Code. This authority is subject to the approval of the White Earth Band of Ojibwe Tribal Council if it involves an expenditure of tribal funds.

9. The Children's Court shall utilize the social services furnished by any tribal, federal, or state agency, provided the services are economically administered without unnecessary duplication or expense.

10. Social Services may negotiate contracts with tribal, federal, or state agencies or their departments on behalf of the White Earth Band of Ojibwe Tribal Council for the care and placement of the children before the Children's Court, subject to the approval of the White Earth Band of Ojibwe Tribal Council before the expenditure of tribal funds.

§ 1.10 Children's Court Personnel

1. Children's Court Judge

    a. The Chief Judge of the White Earth Tribal Court or his or her designee shall serve as Children's Court Judge.

    b. In carrying out duties and powers specifically enumerated under this Child/Family Protection Code, judges of the Children's Court shall have the same duties and powers as judges of the Tribal Court, including but not limited to, the contempt power, the power to issue arrest or custody warrants, and the power to issue search warrants.

    c. The Children's Court Judge shall ensure that, whenever possible, the Seven Grandfather teachings of *debwewin*, *zoongide'win*, *gwayakwaadiziwin*, *manaaji'idiwin*, *zaagi'idiwin*, *nibwaakaawin*, and *dabasendizowin*, are incorporated into the proceedings and used as a backdrop for the decisions made

under this Code.

d. The rules on disqualification or disability of a Children's Court judge shall be the same as those rules that govern Tribal Court judges in the White Earth Judicial Code and Code of Judicial Conduct.

2. Juvenile Counselors and Juvenile Probation Officers

a. The Children's Court Judge may appoint juvenile counselors or juvenile probation officers to carry out the duties and responsibilities set forth in this Code. The persons carrying out the duties and responsibilities set forth in this Section may be labeled "juvenile counselors" or "juvenile probation officers" or any other title the Court finds appropriate so long as they perform the duties and responsibilities set forth in this Section.

b. The juvenile counselor must have an educational background or prior experience in the field of delivering social services to Indian youth.

c. The juvenile counselor shall identify and develop resources on the Reservation, in conjunction with the Children's Court and the Tribal Council, to enhance each child's potential as a viable member of the tribal community.

d. The juvenile counselor or juvenile probation officer shall:

i. Make investigations as provided in this Code or as directed by the Court;

ii. Make reports to the Court as provided in this Code or as directed by the Children's Court;

iii. Provide counseling services, if appropriate; and

iv. Perform other duties in connection with the care, custody or transportation of children as the Court may require.

3. *Gezhaanaajig Nejanisug* (Those who guard Children)

a. At any stage of the proceedings conducted under this Code, the Children's Court may appoint separate counsel or spokesperson for the child to act as a *gezhaanaajig nejanisug* (those who guard children) representing the child's best interests.

b. The *gezhaanaajig nejanisug* should *dabasendizowin* (humility), demonstrate sensitivity and compassion towards others, while always keeping the child's best interest at the forefront of any action.

c. Appointing the *gezhaanaajig nejanisug* for the child will not affect the right to counsel of the parents, guardians, or other legal custodians.

d. The *gezhaanaanjig nejanisug* shall have the following duties:

i. to represent and advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

ii. monitor the child's best interests throughout the judicial proceedings;

iii. conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the Court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;

iv. present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based; and

v. maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

e. The Court shall adopt rules outlining the process for the appointment, qualification, and procedures to be utilized by the *gezhaanaajig nejanisug*.

f. Any individual appointed as a *gezhaanaajin nejanisug* by the Children's Court shall be subject to the Rules of Judicial Conduct for the White Earth Tribal Court.

4. Additional Court Personnel

The Court may set qualifications and appoint additional juvenile Court personnel such as court appointed special advocates, Children's Court advocates, or referees whenever the Court decides that it is appropriate to do so.

§ 1.11 Child Protection Workers

1. Child protection workers may be employed by the Giizhawaaso (Indian Child Welfare) Department or the tribal law enforcement department.

2. The departments may cooperate with state and community agencies as necessary to achieve the purposes of this Code. The departments may negotiate working agreements

with other jurisdictions. These agreements shall be subject to ratification by the Tribal Council or its designate.

3. The qualifications of a child protection working shall be set by the *Giizhawaaso* Department in rules promulgated by the Department Director. The tribal qualifications for a child protection worker, including a staff member who completes intakes, shall supersede any requirement or qualification set by state or local law.

4. A child protection worker shall:

    a. Recognize that children are the Tribe's most sacred resource, and must be treated with *zaagi'idiwin*, love, and *manaaji'idiwin*, respect, at all times.

    b. Receive reports of abused, abandoned, or neglected children and be prepared to provide temporary emergency foster care for children on a 24 hour basis;

    c. Receive from any source oral or written information regarding a child who may be in need of protective services;

    d. Upon receipt of any report or information that a child is in imminent danger or harm, the Giizhawaaso Department shall immediately:

        i. notify the appropriate law enforcement agency; and

        ii. make a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.

    e. Take a child into temporary custody if there are reasonable grounds to believe that child is suffering from illness or injury or is in immediate danger from his or her surroundings and that his or her removal is necessary. Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his or her parents, guardian, or custodian when necessary;

    f. Evaluate and assess the home environment of the child or children in the same home and the risk to the children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of the children is a child in need of protective services. Every effort shall be made to provide services to the family to ensure the safety of the child while remaining in the home;

    g. Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services; and

h. Submit a written report of his or her investigation and evaluation to the juvenile presenting officer and to a central registry maintained by the departments within ten days after a referral of a juvenile assessed as a child in need of protective services.

5. No child shall remain in temporary custody for a period exceeding 72 hours, excluding Saturdays, Sundays and holidays, unless a CHIPS petition is filed.

6. Before offering protective services to a family, a worker must inform the family that he or she has no legal authority to compel the family to receive services and of his or her authority to initiate a petition in the Children's Court.

7. If the family declines the offered services, the worker may initiate a CHIPS petition in the Children's Court alleging a child in need of protective services if he or she believes it is to be in the child's best interest.

§ 1.12 Child Protection Team

1. The Tribe may establish a child protection team.

    a. Establishment of the child protection team is an attempt to prevent Indian children from being abused, abandoned, or neglected.

    b. In cases where children have been abused, abandoned or neglected, efficient and effective protective services shall be provided to immediately secure the children's health and safety.

    c. Follow-up actions shall then to be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members and community.

2. Prevention of child abuse, abandonment, and neglect is to be emphasized.

    a. The child protection team is intended to facilitate the identification of warning signs which will prompt immediate intervention and preventive actions to be taken.

    b. When a child's well-being is found to be endangered, the child protection team should initiate protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health.

    c. Once attained, to the extent possible, actions are to be taken to correct the problems that caused the abuse, abandonment, or neglect and prevent it from occurring again.

d. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and his or her family members.

3. The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. Members of the child protection team should strive to ensure that all agencies and departments in connection with this Code *gwayakwaadiziwin*, are correct and straight in everything they do, in order to facilitate the best possible outcome for the child and family involved.

    a. It is designed to promote cooperation, communication, and consistency among agencies.

    b. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child in the context of Tribal customs and provide relevant information and advice to decision-making agencies.

    c. The child protection team shall facilitate, not hinder, the decision-making process.

4. The child protection team shall provide oversight by:

    a. Monitoring child abuse, abandonment, and neglect reports to ensure that adequate preventive, protective, and corrective services are provided;

    b. Reviewing and tracking all child abuse, abandonment, and neglect cases that have been referred to the Children's Court;

    c. Investigating cases to determine whether the best interests of the child are being met;

    d. Continually reviewing case plans for their adequacy; and

    e. Maintaining confidentiality of information between all parties involved.

5. The child protection team shall facilitate the provision of services by:

    a. Accepting child abuse, abandonment, and neglect referrals;

    b. Assigning individual case managers to track cases;

    c. Identifying and suggesting available Tribal community resources, programs, and services;

    d. Providing recommendations to various pertinent agencies;

    e. Promoting cooperation, communication, and consistency among agencies;

f. Providing a forum for debating what actions would best promote the well-being of Tribal and Indian children in a culturally sensitive manner; and

g. Responding to informational inquiries from the community, area child protection teams, and other individuals and groups.

6. The child protection team shall provide technical assistance by:

a. Developing procedures to provide efficient preventive, protective, and corrective child abuse, abandonment, and neglect services;

b. Developing standards to determine which cases are to be investigated;

c. Providing information and technical recommendations to decision-making agencies;

d. Educating communities about child abuse, abandonment, and neglect problems and culturally appropriate solutions;

e. Identifying warning signs which prompt intervention or preventive actions;

f. Assisting in the development and implementation of plans to promote the long-term well-being of Tribal children and their families; and

g. Assisting in the development and implementation of strategies by Tribal communities to create environments that provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of all Tribal community members and Tribal children.

§ 1.13 Membership Eligibility Determinations

The Giizhawaaso (Indian Child Welfare) Department shall be the agency responsible for determining whether a child is eligible for membership in the White Earth Nation, to the extent that the determination is necessary for an applicable child custody proceeding in accordance with the Indian Child Welfare Act, 25 U.S.C. § 1901, *et. seq.* (2012).

§ 1.14 Records Concerning Children

1. The case record of every child under the supervision of, or in the custody of, the Children's Court must be maintained in a complete and accurate manner. The case record must, at minimum, contain the child's case plan; the full name and street address of all shelters, foster parents, group homes, treatment facilities, or locations where the child has been placed; and a record of all judicial hearings and orders concerning the case.

2. Children's Court records and files and law enforcement records and files concerning a child shall be kept separate from the records and files of adults.

3. The Court shall make official records, consisting of all petitions and orders filed in a case arising pursuant to this Code and any other pleadings, certificates, proofs of publication, summonses, warrants, and any other writs that may be filed.

4. The Court shall keep records of all cases brought before it pursuant to this Code and shall preserve the records pertaining to a child in need of protection and/ or services until 10 (ten) years after the file was closed.

5. Records of cases where orders were entered permanently depriving a parent of the custody of a juvenile shall be preserved permanently.

6. Notwithstanding any other provision of this Code, out of *manaaji'idiwin*, respect, for the child and his or her family, all records in a child's case record, including law enforcement records, shall be confidential and made available, upon request and at no cost, for inspection only to:

    a. The child who is the subject of the record;

        i. The Children's Court may release the information in a manner and setting that are appropriate to the age and maturity of the child and the nature of the information being released;

        ii. The release of information may need to be released in a therapeutic setting; but

        iii. This Subsection does not deny the child access to his or her own records.

    b. The child's parents, guardian, custodian, or other individuals legally responsible for the child;

    c. The preadoptive parents, who shall only have access to Children's Court records;

    d. The child's counsel;

    e. The child's *gezhaanaajig nejanisug* (those who guard children);

    f. Children's Court or law enforcement personnel directly involved in the handling of the case;

    g. Any other person by order of the Court having a legitimate interest in the particular case; and

    h. The Giizhawaaso (Indian Child Welfare) Department.

7. The Children's Court shall have the options to place certain records under protective seal for purposes of preserving anonymity or preventing unnecessary risk to the health, safety, or welfare of the child.

8. If the Children's Court determines that sharing information in the child's case record is necessary to ensure access to appropriate services for the child, the Court may approve the release of confidential records or information contain within them, provided the party receiving the information may not release it to another entity without explicit Court permission.

§ 1.15 Oaths; Confidential Information

1. The judge, clerks or deputy clerks, bailiffs, or authorized agents of the White Earth Band of Ojibwe Police Department shall have the power to administer oaths and affirmations.

2. All information obtained pursuant to this Code in the discharge of official duty by any judge, court staff, authorized employee of a Giizhawaaso (Indian Child Welfare) Department, or tribal law enforcement agent is confidential and may not be disclosed to anyone other than those named in Chapter 1, Section 1.14(6).

3. All orders of the Court entered pursuant to this Code shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

4. No court record of proceedings under this Code shall be admissible in evidence in any other civil or criminal proceeding, except that:

    a. Records of proceedings under this Code forming a part of the record on appeal shall be used in the White Earth Band of Ojibwe Appellate Court;

    b. Records necessary shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury;

    c. A final order entered pursuant to an adjudicatory hearing is admissible in evidence in any subsequent civil proceeding relating to the placement of, access to, parent time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child; and

    d. Evidence admitted in any proceeding under this Code may be admissible in evidence when offered by any party in a subsequent civil proceeding relating to the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child if:

        i. Notice is given to the opposing party or opposing party's counsel of the intent to offer the evidence and a copy of the evidence is delivered to the

opposing party or the opposing party's counsel; and

ii. The evidence is otherwise admissible in the subsequent civil proceeding.

5. Final orders, records, and evidence in any proceeding under this Code that are subsequently admitted in evidence pursuant to Chapter 1, Section 1.15(4) remain subject to the confidentiality requirements in Chapter 1, Section 1.14(6).

§ 1.16 Permanent Mailing Address Designation

1. Upon the first appearance before the Court, each party shall provide to the Court a permanent mailing address where the party frequently receives mail.

2. The Court shall advise each party that this address will be used by the Court and the petition for notice purposes unless and until the party notifies the Court and the petition in writing of a new mailing address.

§ 1.17 Court and Witness Fees

In all proceedings under this Code, no Court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition or any parent or legal custodian or child named in a summons.

§ 1.18 Right to Counsel

1. At each stage of the proceedings under this Code, the Court shall advise the legal parents of their right to counsel. The Court shall ascertain whether the right to counsel is understood.

2. The Court shall appoint counsel for indigent parents.

3. When right to counsel is waived, the Court shall determine whether the waiver is knowing and intelligent.

    a. The Court shall enter its findings on the record with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by non-indigent parents.

    b. A waiver of counsel may not be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

    c. A waiver of counsel made in Court must be of record.

    d. If a waiver of counsel is accepted at any hearing or proceeding, the offer of assistance of counsel may be renewed by the Court at each subsequent stage of

the proceedings at which the parent appears without counsel.

4. Once counsel has entered an appearance or been appointed by the Court to represent the parent of the child, the attorney shall continue to represent the parent throughout the proceedings. If the attorney-client relationship is discontinued, the Court may advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

5. This Section does not apply to any parent who has voluntarily executed a written surrender of the child and consents to the entry of a court order terminating parental rights.

§ 1.19 Compensation for Appointed Counsel

If counsel is entitled to receive compensation for representation pursuant to a court appointment in a proceeding pursuant to this Code, compensation shall be paid in accordance with court policies.

§ 1.20 Time Limitations; Continuations

1. Time is of the essence for a child in the protective system, and for reunification or establishing another permanency option for the child. In order to show *manaaji'idiwin*, respect, to the child, time limitations are a right that may not be waived, but only extended or continued at the request of a party and approved by the Children's Court.

2. Good cause may include the following:

    a. Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's *gezhaanaajig nejanisug* (those who guard children), or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child;

    b. Periods of delay resulting from a continuance granted at the request of any party if the continuance is granted because of:

        i. An unavailability of evidence that is material to the case, if the requesting party has exercised due diligence to obtain evidence and there are substantial grounds to believe that the evidence will be available within thirty days;

        ii. Allowing the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance including, but not limited to, natural disasters, unexpected death of a party, unexpected death of legal counsel or *gezhaanaajig nejanisug* (those who guard children);

iii. Reasonable periods of delay necessary to accomplish notice of the hearing to any required party to the case; or

iv. Evidence unable to be procured due to its use in an impending criminal investigation;

3. In order to expedite permanency goals for a child (see Permanency Goals in § 1.05(73) of this Chapter), the total time allowed for continuances should be limited by the judge to those that are reasonable and necessary, keeping in mind the requirements of this Section 1.20, Subd.1, above.

4. A continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child.

CHAPTER TWO—REPORTING CHILD ABUSE, ABANDONMENT, OR NEGLECT

§ 2.01 Mandatory Duty to Report

1. Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by any person or that a child is in need of supervision and care and is not receiving appropriate supervision and care shall have *zoongide'win*, a strong heart, and report this knowledge or suspicion to the Giizhawaaso (Indian Child Welfare) Department or tribal law enforcement department.

2. Reporters in the following occupation categories are required to provide their names within the report, although they will be held confidential:

   a. Physician, osteopathic physician, medical examiner, chiropractic physician, dentist, optometrist, nurse, or any other medical or mental health professional or personnel engaged in the admission, examination, care, or treatment of persons;

   b. Practitioner who relies solely on spiritual or traditional cultural means for healing;

   c. School teacher or other school official or personnel;

   d. Social worker, preschool or day care center worker, or other professional child care, foster care, residential, or institutional worker;

   e. Law enforcement officer;

   f. Judge, attorney, court counselor, clerk of the court, or other judicial system official (subject to the Rules of Professional Responsibility;

g. Any other employee or contractor of the White Earth Band of Ojibwe who has direct or indirect contact with children, except domestic abuse advocates; and

h. Employees of the White Earth Housing Authority.

3. A professional who is hired by or enters into a contract or agreement with the Tribe for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report the abuse, abandonment, or neglect that was the subject of the referral for treatment.

4. An officer or employee of the judicial branch is not required to again provide notice of reasonable cause to suspect child abuse, abandonment, or neglect when that child is currently being investigated by the Giizhawaaso Department, there is an existing dependency case, or the matter has previously been reported to the Giizhawaaso Department, provided there is reasonable cause to believe the information is already known to the Giizhawaaso Department. This paragraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

5. Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that the death of a child might have been the result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner or police department investigating that child's death.

   a. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the Giizhawaaso Department, tribal law enforcement agency, and the appropriate tribal attorney.

   b. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in Chapter 1, Section 1.14(6).

6. A mandated reporter must make the verbal report immediately to the *Giizhawaaso* Department during business hours and to Tribal law enforcement after business hours; to be followed by a written report within twenty four (24) hours.

§ 2.02 Penalty for Not Reporting Child Abuse, Abandonment, or Neglect

1. Individuals mandated to report a case of known or suspected abuse, abandonment, or neglect who knowingly fail to report a suspected case, or willfully prevent another from doing so, may be subject to civil contempt and a misdemeanor criminal charge, as well as subject to possible employee disciplinary action.

§ 2.03 False Reports

1. Anyone who knowingly, or with reckless disregard for the truth, files or causes to be filed a false report of child abuse or neglect shall be guilty of a Class 4 criminal offense and subject to civil contempt.

§ 2.04 Contents of Maltreatment Reports

1. Each report of known or suspected child abuse, abandonment, or neglect and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the Giizhawaaso (Indian Child Welfare) Department or tribal law enforcement department.

2. The personnel receiving the reports shall encourage, but not mandate, all reporters to include:

    a. The name, address, and tribal affiliation of the child and his or her parents, guardian, or custodian, if known;

    b. The child's age;

    c. The nature and content of the child's abuse, abandonment, or neglect;

    d. Previous abuse, abandonment, or neglect of the child or his or her siblings, if known;

    e. The name, age, and address of the person allege to be responsible for the child's abuse, abandonment, or neglect, if known; and

    f. The name, address and phone number of the person making the report.
    g. Other information as may be required by applicable policies and procedures of the *Giizhawaaso* Department.

3. Reports involving known or suspected criminal offenses shall be immediately cross-reported to the applicable law enforcement agency.

§ 2.05 Reports Outside Tribal Jurisdiction

1. Any report received of known or suspected child abuse, abandonment, or neglect that occurs outside of the Tribe's jurisdiction and the alleged perpetrator and the child alleged to be a victim reside outside of the tribe's jurisdiction shall be transferred immediately to the appropriate jurisdiction by the mandated reporter. If the mandated reporter does not know about Tribal jurisdiction and makes the report to the *Giizhawaaso* Department or the Tribal law enforcement department, the department that receives the report shall inform the appropriate agency in the appropriate jurisdiction immediately upon receiving the report.

§ 2.06 Immunity From Liability

1. Any person, official, or institution participating in good faith in any act authorized or required by this Chapter, or reporting in good faith any instance of child abuse, abandonment, or neglect to the social services or law enforcement agency, shall be immune from any civil or criminal liability that might otherwise result because of this action.

2. Nothing contained in this Chapter shall be deemed to grant immunity, civil or criminal, to any person suspected of having abused, abandoned, or neglected a child, or committed any illegal act against a child, except as explicitly provided for by this Section.

3. No resident or employee of a facility serving children may be subjected to reprisal or discharge because of his or her actions in reporting abuse, abandonment, or neglect pursuant to the requirements of this Chapter.

4. Any person making a report under this Chapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of a reporting party by reason of his or her making a report. Any detrimental change made in the residency or employment status of a reporting party, including, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations within a prescribed period of time shall establish a rebuttable presumption that the action was retaliatory.

§ 2.07 Safely Surrendered *Aabinoojiiez* (Infants)

1. Reports involving safely surrendered newborn infants shall immediately be transferred to the *Giizhawaaso* Department who shall arrange placement for the child; provided that the newborn is left with an employee on the premises of a safe place during its hours of operation, the newborn was born within seven (7) days of being left at the safe place, as determined within a reasonable degree of medical certainty; and that the newborn is left in an unharmed condition and exhibits no indication of abuse, abandonment, or neglect other than that necessarily entailed in the infant having been left at an appropriate Safe Place.

    a. The *Giizhawaaso* Department, if it can reasonably determine that the newborn infant is of White Earth Aniishinaabe descent, shall arrange placement for the child according to the placement preferences of Chapter 5, Section 5.04 of this Code.

    b. If it cannot be determined that the newborn infant is reasonably of White Earth Band Aniishinaabe descent, the *Giizhawaaso* Department shall notify the state abuse hotline of the surrendered newborn infant, and provide for the transfer of the child to a local county social service agency.

§ 2.08 Release of Confidential Information

1. All records kept in connection with this Code, including records that pertain to investigations of alleged abuse, abandonment, or neglect of a child, shall be presumed confidential, absent a showing of good cause by clear and convincing evidence for why the record should be made public.

2. Any person or organization may petition the Court for an order making public the records that pertain to investigations of alleged abuse, abandonment, or neglect of a child.

    a. The Court shall determine, based on clear and convincing evidence, whether good cause exists for public access to the records sought.

    b. In making this determination, the Court shall balance the best interests of the child who is the focus of the investigation and the interest of that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest.

3. In cases involving serious bodily injury to a child, the tribal law enforcement agency or the Giizhawaaso (Indian Child Welfare) Department may petition the Court for an order for the immediate public release of records that pertain to the protective investigation.

    a. The petition must be personally served upon the child, the child's parent or guardian, and any person named as an alleged perpetrator in the report of abuse, abandonment, or neglect.

    b. The Court shall determine, based on clear and convincing evidence, whether good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and Tribal and legal holidays, after the date the petition is filed with the Court.

    c. In making a determination to release confidential information, the Court shall balance the best interests of the child who is the focus of the investigation and the interests of that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest for access to public records.

    d. Any petition by the tribal law enforcement agency or the Giizhawaaso Department under this Subsection must be directly related to public safety, and must seek to reduce or mollify the imminent or immediate threat of harm to the public.

4. When the Court determines that good cause for public access exists, the Court shall direct that the law enforcement agency or Giizhawaaso Department redact the name and other identifying information of any person identified in any protective investigation report until the Court finds there is probable cause to believe the person identified committed an act of alleged abuse, abandonment, or neglect.

§ 2.09 Confidentiality of Maltreatment Reports Concerning Child Abuse, Abandonment, or Neglect

1. In order to protect and *manaaji'idiwin*, respect, the mandated reporter, no maltreatment reports shall be released by the *Giizhawaaso* Department. Maltreatment reports shall be summarized to the Court as in initiating action for an assessment or investigation. Specific maltreatment reports are considered internal working documents of the Indian Child Welfare Program and are not subject to disclosure.

2. The Community has a right to confidentially report suspected abuse or neglect of children without fear that those who report abuse or neglect will have their identity disclosed.

CHAPTER THREE—PROTECTIVE INVESTIGATIONS

§ 3.01 Investigation Timelines

1. Upon receiving a maltreatment report, the *Giizhawaaso* Department shall review the information to determine what, if any, action is required. If the Tribal law enforcement department receives the report after normal business hours they shall review the information and response or make contact with the *Giizhawasso* Department for assistance.

    a. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee, that the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the *Gizhawaaso* Department or Tribal law enforcement department shall commence an investigation immediately, regardless of the time of day or night.

    b. In determining whether to conduct an assessment or investigation on a maltreatment report, the *Giizhawaaso* Department shall consider the type of harm alleged in the report, including but not limited to the following:

        i. the young age of the parents or legal custodians; the use of illegal drugs; the arrest of the parents or legal custodians on charges of manufacturing, processing, disposing of, or storing, either temporarily or permanently, any illegal substances; or
        domestic violence.

    c. The *Giizhawaaso* Department shall work with law enforcement on criminal investigations involving maltreatment of children.

    d. For reports not requiring an immediate assessment, the *Giizhawaaso* Department shall make contact or make significant attempts to make contact with the child within five (5) days. The Department shall maintain internal policies and

procedures to outline appropriate assessment actions.

§ 3.02 General Investigation Procedures

1. The tribal law enforcement agency and the Indian Child Welfare department staff are given responsibility for conducting a protective investigation. Any Child Protection file opened as a result of an investigation or assessment would be kept in compliance with the Indian Child Welfare Department's records retention policy.

2. Protective investigations shall be performed by the *Giizhawaaso* Department; provided that investigations outside of normal business hours may be conducted by the Tribal law enforcement department.

3. The *Giizhawaaso* Department shall maintain an internal operating procedure that ensures that all required investigatory activities, including a review of the child's complete child welfare history, are completed by the investigator and reviewed by the supervisor in a timely manner.

4. Upon commencing an investigation under this part, the Department staff shall inform any subject of the investigation of the following, unless it is determined that disclosure may result in further acts of abuse or flight:

    a. The names of the investigators from the *Giizahwaaso* Department or the Tribal law enforcement department;

    b. The purpose of the investigation;

    c. The right to obtain his or her own attorney and ways that the information provided by the subject may be used;

    d. The possible outcomes and services of the Giizhawaaso Department's response shall be explained to the parent or legal custodian;

    e. The right of the parent or legal custodian to be involved to the fullest extent possible in determining the nature of the allegation and the nature of any identified problem; and

    f. The duty of the parent or legal custodian to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed.

    g. If the *Giizhawaaso* Department staff decides to record any conversation with the parent or legal custodian, that staff member shall inform the parent or legal custodian prior to recording the conversation.

5. An assessment of risk and the perceived needs for the child and family shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

    a. In any case where the *Giizhawaaso* Department has received a report of maltreatment, in conducting an assessment or investigation of the child subject to the report, the department shall have the authority to access the child wherever he or she is located, and a public or private location shall allow the department's staff access to the child.

    b. This assessment must include significant attempts to complete a face-to-face interview with or observation of the child, other siblings, parents, and other adults in the household.

    c. The assessment may include onsite assessment of the child's residence to determine whether health and safety risks exist within the premises.

    d. If the Department is denied reasonable access to a child by the parents, legal custodians, or caregivers, the department may seek an appropriate court order or assistance from the Tribal law enforcement department.

6. The person responsible for the investigation shall make a preliminary determination as to whether maltreatment occurred or is occurring. .

7. The *Giizhawaaso* Department shall make a final administrative determination as to whether maltreatment occurred or is occurring must be made within forty five (45) days of the initiation of the assessment.

8. If either the preliminary or final assessment determines that the child is in need of further protection or services, the family may be referred for voluntary child welfare services; or the Department may place the child on a seventy two (72) hour health and welfare hold, or the family may be referred to the Tribal Children's Court for protective supervision or custody.

1. When a child is taken into custody pursuant to this Chapter, the *Giizhawaaso* Department shall request that the child's parent, caregiver, or legal custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin, so far as are known.

§ 3.03 Facility Investigations

1. In reports involving facilities licensed by the White Earth Nation, *Giizhawaaso* (Indian Child Welfare) Department is responsible for conducting facility investigations. Indian Child Welfare has the authority to interview children without advance permission in order to complete investigations. A summary report of the investigations will be provided

by the Department to the facility or the facility's governing board. Written notification of interviews will be provided by the Department to the facility or parents.

2. In reports involving foster homes licensed by the White Earth Nation, The *Giizhawaaso* Department shall be responsible for conducting facility investigations. No other entity, unless it is a conflict of interest for the Department, is authorized to conduct facility investigations on a foster home licensed by the White Earth Nation.

3. The *Giizhawaaso* Department has policies and procedures that govern facilities investigations that outline the parameters by which the department will cooperate and share information with law enforcement. These policies and procedures are publicly available upon request to the department.

§ 3.04 Photographs of Abused, Abandoned, or Neglected Children

1. Any person required to investigate cases of suspected child maltreatment may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report.

2. Photographs or duplicates taken of physical abuse injuries shall be provided to the Indian Child Welfare department for inclusion in the investigative file and shall become part of that file. The Indian Child Welfare department has the authority to duplicate photographs for a criminal investigator or the Tribal Court.

3. Any photographs taken under this Section may only be released in accordance with the requirements of Chapter 1, Section 1.15(6) and Chapter 2, Section 2.08, due to the personal nature of the photographs and the need to *manaaji'idiwin*, respect, the child.

§ 3.05 Forensic Interviews of Children

1. Any person required to conduct a forensic interview of a child alleged to be abused may take or cause to be taken audio or visual recordings of the interview.

2. Copies of the interview shall be provided to the *Giizhawaaso* Department for inclusion in the investigative file and shall become a part of that file. The Department shall have the authority to duplicate the interview for a criminal investigator.

CHAPTER FOUR—INDIAN CHILD WELFARE COMMISSION

§ 4.01 ICW Commission Purpose Anishinaabe Neejawnisug (Anishinaabe children)

1. Anishinaabe people hold our children sacred. They are the fundamental responsibility of a Tribe. Our old teachings inform us of the sacredness of a child, being selected by *Gitchi-Manidoo* as a spirit being, to travel through various worlds and experiences on it's

journey to life inside it's mother's womb. The worlds experienced by the little spirit are several, so that the spirit is taught how those other beings are, to respect them, and have a connection with them later as a human being. The little spirit is made then into a human being, given to that mother and father by the Creator, to nurture and care for, protect, teach, and raise. Parents are given this significant responsibility by the Creator, and is why we say human laws cannot sever the ties the Creator has given. However, at times parents are unable to meet the responsibility entrusted to them by *Gitchi-Manidoo*. When this happens then we as Anishinaabe people have the responsibility as a second set of parents to this child, to oversee their welfare and make decisions about that child. Children have a special place in our society. We want to nurture and protect them, while incorporating systems that promote the well-being of the family. Our internal systems need to meet the needs of our families and our *neejawnisug*; they require guidance at times from elders, community members, people invested in their well-being. A local child welfare commission can aid in providing this guidance.

2. Federal and Local Policy

    a. The Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et. Seq.) is a Federal law that governs the jurisdiction over adoption and custody of American Indian children. ICWA was originally enacted by Congress in 1978 due to the high removal rate of Indian children from their traditional homes and essentially from Indian culture as a whole. Before the bill was enacted, as many as 25 percent of all White Earth children were being removed from their Indian homes and placed in non-Indian homes, with presumably the absence of Indian culture.

    b. ICWA gives tribal governments a strong voice concerning child custody proceedings which involve Indian children by allocating tribes sole jurisdiction over the case when the child is domiciled on the reservation; and concurrent, but presumptive, jurisdiction over non-reservation Indian custody proceedings.

    c. The ICWA acknowledges tribal governments' sovereign ability to establish tribal courts to preside over child custody matters; and establishment of child welfare programs. A tribal court does not follow the ICWA because ICWA was established to address state court proceedings. Tribal courts operate under their own code, or laws, that reflect its own culture and beliefs. In White Earth we have a children's code that governs how we handle child welfare matters in our Tribal Court.

    d. In 1999 White Earth Tribal Court began transferring in some cases from district courts. The reason cases were accepted for transfer was to provide our parents and our children a more culturally appropriate alternative through the Tribal Court.

    e. In 2007 White Earth transferred all remaining child welfare cases open in Becker, Mahnomen and Clearwater counties. Our Tribe began exercising sole jurisdiction over child welfare without any county involvement on the Reservation.

f. Cases off the Reservation continue to be the responsibility of the counties, with our Tribe participating as a party to the case. The ICW Department monitors the work of the county to ensure they provide active efforts to our families. The ICW Department also works directly with the Tribe's families to assist them with efforts and services. The ICW Department testifies in court proceedings, providing recommendations and expert witness testimony.

g. Some off-Reservation cases transfer into the Tribal Court in order to avoid a termination of parental rights and pursue culturally appropriate permanency. Some off-Reservation cases remain in district court for permanency when it's appropriate.

h. Guiding principles locally include the policies and procedures of the Giizhawaaso (ICW) Program; the White Earth Tribal Court Children's Code; Foster Care Licensing Standards; and the White Earth Tribal Court Code of Conduct, which incorporates the Seven Grandfather teachings of the Anishinaabe.. All are available to the Commission for reference and inclusion.

3. In determining the need to establish a Child Welfare Commission, the White Earth Tribal Council makes the following findings:

a. A Child Welfare Commission is valuable and necessary to emphasize self-determination and traditional decision making regarding our children. The Commission has insight into their community's prevailing cultural and social standards for child rearing, and may voice a tribal perspective for their people, adults and children. Communities and adults have a responsibility to look out for the welfare of their children and a right to participate in oversight. The family is the basic unit of our society so its well-being should be respected. As Anishinaabe we need to balance family rights with our responsibilities to our children, using the lease invasive method of protecting our children.

b. Our children are our fundamental responsibility as Anishinaabe, looking out for their best interests should be one of our primary considerations. There needs to be an equal focus between honoring the relationship established by *Gitchi-Manidoo* between the child and parents – and ensuring our children are afforded the chance to live in a safe, healthy, nurturing environment where they can be taught their Anishinaabe values. Intervening when children's needs and safety aren't met is usually invasive and not welcome. Protecting kids is complex. The *Giizhawaaso* (Indian Child Welfare) Department is typically faced with criticism and feelings of betrayal when intervening to protect the needs of our Children. This Commission offers the opportunity for communities to have review, insight, input, and provide guidance to the Department. This Commission has the responsibility not only to address wrongful removal – but also to support appropriate decision making.

c. On a systems level, this Commission has the authority to weigh in on Tribal Code and the Department's policies and procedures. The Commission may make systems suggestions to the *Giizhawaaso* Department Director in order to improve the delivery of services to our people.

d. On an individual case level, this Commission has the authority to weigh in on Tribal and District Court cases when a parent, legal guardian or ICW requests review. This Commission may be asked by the parents or legal guardians to review their complaints or concerns. The Commission may be asked by the Department to review cases prior to permanency decision making, or when the Agency faces a tough decision they need to make on a case.

e. While the Tribal Code legally governs cases and the best interests of children, the Commission traditionally advises the Court and the *Giizhawaaso* Department. The intent of the Commission is to support and guide the work of the Department as well as have critical input into programming, services, and case recommendations in their individual capacity and expertise.

§ 4.02 Child Welfare Commission Composition

1. The White Earth Tribal Council hereby establishes a Child Welfare Commission, and empowers the Commission as further described in this Section and this Chapter.

2. The Commission will be comprised of community members and elders. The White Earth Tribal Council has the authority to appoint up to two members each to the Child Welfare Commission. The *Gizhaawaso* Director or Assistant Director, and two additional *Gizhaawaso* employees will be members of the Commission. The *Gizhaawaso* Commission members shall be appointed by the Director. The members should be accessible and able to meet twice per month, with short notice. Members appointed by the Tribal Council may be compensated up to $50 per stipend per meeting.

3. In order for a Quorum there must be at least three Child Welfare Commission members present in person, by virtual presence, or by telephone, with at least three members appointed by the Tribal Council present for the Commission to proceed in hearing information and making recommendations. If employee actions on a case are being discussed then the Commission will decide whether that employee should be present for part, none, or all of the meeting. If the Commission wants the employee present then the employee must make every effort to be there. Confidentiality statements will be signed by each community member appointed to the Commission.

4. Confidentiality will be adhered to by the Commission members. Following the Commission meetings there will be no discussion by any member of what happened during the Commission meeting, with the exception of providing parents, the Court, the Council (when requested), a summary of Commission decisions. *Gizhawaaso* employees will be subject to internal ethics violations and disciplinary action for violation of confidentiality rules. Community appointees will be subject to removal from the

Commission if they've violated confidentiality by discussing things outside of the Commission meetings; posting comments on social media; or similar actions. The Tribal Council shall make a final determination on any alleged violation of confidentiality and shall vote on whether to remove the Commission member and whether a new Commission member shall be appointed. A simple majority vote of the Tribal Council shall be sufficient to remove a Commission Community member. If the community member is also an employee of White Earth Nation, they may be subject to disciplinary action from the Tribe for violating confidentiality.

5. Each meeting shall begin with an Anishinaabe prayer. It will be conducted in circle style, with each person respecting other's values, opinions, and beliefs expressed. There will be a leader identified for each meeting. The meeting will continue until decisions or recommendations are made.

6. The location of the meeting may differ from meeting to meeting and will accommodate the members of the Commission. Deference shall be given to the appointed commission members from the communities. The only requirement is that the location will offer privacy, as the meetings are closed proceedings.

7. The Commission shall vote on matters in front of them. Majority rule shall be the deciding factor. Voting may be handled by silent ballot or handled traditionally in a Circle, with all members discussing their decision and reasons behind it. All votes shall be tallied and recorded. The tally shall be recorded in meeting minutes. The Commission shall not make any decisions by roll call vote.

8. The meeting shall be documented in writing. There shall be a record keeper from the *Gizhaawaso* Department if requested, and the records shall be maintained in the *Gizhaawaso* Department. The summary information in the meeting minutes shall include the individuals present at the meeting, the date of the meeting and outcomes. If appropriate a summary document outlining the date and location of the Commission meeting and outcome may be mailed to the family and the Court.

9. ICW Commissioners must review and be generally familiar with the Tribal Court Code of Judicial Conduct. ICW Commissioners shall be subject to and must comply with all terms and provisions of the Tribal Court Code of Ethics, including those canons governing conflicts of interest. The ICW Commissioners shall also attend and report on training specific to their responsibilities on the ICW Commission.

§ 4.03 Duties of the Commission

1. Improve the delivery of services to Anishinaabe children and their families

    a. Closely examine the provision of services offered to the parents that addresses their behaviors or issues that led to the *Giizhawaaso* Deparment's involvement.
    b. Address areas where services are provided or needed in order to safely have children home.

c. Address concerns or complaints by parents that they aren't being offered Active Efforts. The Commission may recommend additional services if they feel it is necessary.
d. Examine what services could have been provided through Family Preservation that prevent out of home placement.
e. Make recommendations on policy to the *Giizhawaaso* Department Director that impact service provision.
f. Prior to any permanency trial review the services given to a family to recommend to the Court whether or not active efforts were provided by the *Giizhawaaso* Department.

2. Review out of home placements

    a. Closely examine the circumstances summarized by the maltreatment intake report.
    b. Closely examine the screening and assessment made by the Agency.
    c. Closely examine the decision made by the Agency, address any lingering concerns the Commission has, and make recommendations to ICW.

3. Improve the *Giizhawaaso* Department's ability to respond and treat the family

    a. Examine and make recommendations on the Department's Policies and Procedures
    b. Examine the Tribal Court Children's Code and make recommendations
    c. Examine the Foster Care Standards for the White Earth Nation and make recommendations
    d. Make suggestions to improve culture, capacity and expertise
    e. Make suggestions to improve accountability and oversight
    f. Recognize systems strengths

4. Review compliance with Tribal Children's Code Requirements

    a. Examine active efforts provided by the Department
    b. Examine relative placement efforts by the Department
    c. Examine good cause to place outside of the placement preferences
    d. Examine permanency recommendations made by the Department
    e. Examine parental requirements and their actions in cases
    f. Advise on permanency decisions

5. Review Best Interests of Children

    a. Examine best interests of children in emergency removal situations, and at permanency

b. Advise on culture and child rearing
c. Advise on issues involving visitation, custody and placement preferences in light the children's best interests

6. Review Foster Care Licensing Appeals and make Determinations

   a. Accept documents for foster care licensing appeals
   b. Review appeal documents and Agency responses
   c. Review foster care standards
   d. Interview appellant and Agency
   e. Determine whether to uphold decision by Agency or reverse it

7. Review Difficulty of Care (DOC), Minnesota Assessment of Parenting for Children and Youth (MAPCY), or any other tool used to assess the needs of a child

   a. Accept documents to review an assessment determination from foster parents
   b. Review appeal documents from foster parents and the Department
   c. Review the tool used in determining the assessment
   d. Determine whether to uphold the decision by the Department or to reassess the decision

CHAPTER FIVE—REMOVAL AND PLACEMENT

§ 5.01 Emergency Removal

1. No child shall be removed from the home of the child's parent, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Children's Court, except as follows:

   a. When failure to remove the child may result in a substantial risk of death, serious injury or serious emotional harm;

   b. When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for her or his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for the necessities; or

   c. When any person in charge of a hospital or similar institution, or any physician or licensed health care professional treating a child believes that returning the child to the care of the parents, caregiver, or legal custodian presents an imminent danger to the child's life or physical or mental health.

2. Tribal law enforcement or social services workers shall have the power to remove a child pursuant to this Chapter provided that:

    a. Reasonable grounds existed at the time of the removal to believe the removal was necessary; and

    b. The person removing the child ensures the safety and well-being of the child, until the time as the Children's Court assumes control over the matter; and

    c. The person removing the child complies with the notice provisions in Chapter 5, Section 5.02.

§ 5.02 Notice of Removal

1. After a child is removed from his or her home, the person who removed the child shall attempt to contact the Children's Court within six hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. the next working day.

2. When Tribal law enforcement removes a child, the law enforcement officer shall notify the Indian Child Welfare department at the time, or by 12:00 noon the next working day.

3. The *Giizhawaaso* (Indian Child Welfare) Department shall make all reasonable efforts to immediately notify the parents, guardian or custodian that the child was removed.

4. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity.

5. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian, or custodian, or the extended family of the child, including after-hours contact information where Indian Child Welfare staff can be contacted by the parent for further information.

6. Notice to the parents shall include disclosure that they are to contact the Tribal Court regarding the emergency hearing so they are aware of when the emergency hold hearing will occur and that they are required to participate.

§ 5.03 Emergency Order for Custody

1. Pursuant to the provisions of this Section, the Court may, at any time, issue an emergency order for custody to prevent any act of child abuse.

    a. The emergency order may be requested by the Indian Child Welfare department, a law enforcement officer, the *Gezhaanaajig Nejanisug* (those who guard children)

or upon the Court's own motion.

b. Reasonable cause for the issuance of an order exists if there is evidence of child abuse or neglect, or if there is a reasonable likelihood of abuse or neglect occurring based upon a recent overt act or failure to act.

2. Notice shall be provided to the parties as set forth in the White Earth Court Rules of Civil Procedure, unless the child is reported to be in imminent danger, in which case the Court may issue an immediate injunction. If an immediate injunction is issued, the Court must hold a hearing on the next day of judicial business to dissolve the injunction or to continue or modify it in accordance with this Section.

3. If an injunction is issued under this Section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

   a. The injunction shall apply to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the Court and may include ordering the alleged or actual offender to:

      i. Refrain from further abuse or acts of domestic violence;

      ii. Participate in a specialized treatment program;

      iii. Limit contact or communication with the child victim, other children in the home, or any other child:

      iv. Refrain from contacting the child at home, school, work, or wherever the child may be found;

      v. Have limited or supervised visitation with the child;

      vi. Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members; or

      vii. Vacate the home in which the child resides.

   b. If the intent of the injunction is to protect the child from domestic violence, the conditions may also include:

      i. Awarding the exclusive use and possession of the dwelling to the caregiver or excluding the alleged or actual offender from the residence of the caregiver;

ii. Awarding temporary custody of the child to the caregiver; or

iii. Establishing temporary support for the child.

4. The terms of the injunction shall remain in effect until modified or dissolved by the Court.

    a. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction.

    b. The injunction is valid and enforceable as required by applicable tribal, federal, or state law.

5. A copy of an injunction issued pursuant to this Section shall be delivered to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent.

6. Law enforcement officers may exercise their arrest powers to enforce the terms of the injunction.

7. Any person who fails to comply with an injunction issued pursuant to this Section shall show cause to the Court why they should not be held in contempt.

§ 5.04 Placement Preferences

1. If a child is removed from his or her home, the child shall be placed in the least restrictive setting that most approximates a family and in which his or her special physical, mental, spiritual, or cultural needs may be met with an abundance of *zaagi'idiwin*, love.

2. A child alleged to be abused, abandoned, or neglected may be placed by the Indian Child Welfare department in the following placements:

    a. A non-custodial parent who is willing to guarantee that the child will not be returned to the alleged abusive or neglectful parent, guardian, or custodian, without the prior approval of the Court. The non-custodial parent may only be approved by the Indian Child Welfare department after a satisfactory review of the parent's criminal and child welfare history, and after the Indian Child Welfare department is reasonably certain placing the child in the custody of the non-custodial parent will not otherwise impede the child's safety;

    b. A grandparent of the child who is willing to guarantee that the child will not be returned to the alleged abusive or neglectful parent, guardian, or custodian without the prior approval of the Court. The grandparent may only be approved by the Indian Child Welfare department after a satisfactory review the grandparent's criminal and child welfare history, and after the Indian Child Welfare department is reasonably certain placing the child in the custody of the

grandparent will not otherwise impede the child's safety;

c. A member of the Extended Family or an Indian Custodian of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or neglectful parent, guardian, or custodian without the prior approval of the Court. The member of the Extended Family or the Indian Custodian may only be approved by the Indian Child Welfare department after a satisfactory review of the relative's criminal and child welfare history, and after the Indian Child Welfare department is reasonably certain that placing the child in the custody of the relative will not otherwise impede the child's safety;

d. A Tribally-licensed foster home authorized to provide foster care;

e. Any other suitable place that meets the standards for shelter care facilities established by the *Giizhawaaso* (Indian Child Welfare) Department; or

f. A juvenile shelter or mental health facility if reasonably necessary to meet the needs of the child.

3. Whenever appropriate, a child shall be permanently placed in a home with the following characteristics, which shall be given preference in the following order:

a. A non-custodial parent, when it will not be harmful to the child's welfare;

b. A grandparent, if the child bas the most significant and positive contacts with them;

c. An extended family member kin, or Indian Custodian;

d. A tribal member or person eligible for tribal membership in the child's tribe;

e. Other Indian persons, and;

f. A person who is recognized by the Tribe as having a significant relationship with the child and recognized by the Tribe to meet the child's special needs, if any.

4. The White Earth Children's Court has the ability to determine that the child's best interests require deviation from the preferences at any time.

§ 5.05 Restrictions on Placement of Children

1. The *Giizhawaaso* (Indian Child Welfare) Department shall conduct a criminal history records check on all persons being considered by the *Giizhawaaso* Department for temporary or permanent placement of a child. The criminal history records check shall be conducted for all members of the household, including children over the age of twelve

and any identifiable frequent visitors to the household.

2. A person who is seeking placement of a child, but is denied the placement because of the results of a criminal history records check has the burden of setting forth sufficient evidence of rehabilitation to show that the person will not present a danger to the child if the placement of the child is allowed. Evidence of rehabilitation may include, but is not limited to:

    a. the circumstances surrounding the incident providing the basis for denying the application;

    b. the time period that has elapsed since the incident;

    c. the nature of the harm caused to the victim;

    d. whether the victim was a child;

    e. the history of the person since the incident;

    f. whether the person has complied with any requirement to pay restitution; and

    g. any other evidence or circumstances indicating that the person will not present a danger to the child if the placement of the child is allowed.

§ 5.06 Foster Home Licensing Procedures

The Indian Child Welfare department shall be responsible for licensing all tribal foster homes according to the standards approved by the White Earth Tribal Council. The Indian Child Welfare department shall maintain policies and procedures for foster care licensing standards as approved by the White Earth Tribal Council.

§ 5.07 Authorization of Medical Treatment

1. If a child requires medical treatment or a physical exam during the emergency custody phase, the Indian Child Welfare department may bring the child to a licensed physician or an emergency department in a hospital without the consent of the child's parents or legal custodian.

2. Consent for medical treatment shall be obtained in the following manner; provided that the Indian Child Welfare department shall be authorized to consent to routine treatment:

    a. Consent for non-routine medical treatment shall be obtained from a parent or legal custodian of the child; or

    b. A court order for treatment shall be obtained;

3. In the event of a serious medical event requiring treatment, the Indian Child Welfare department shall, with the assistance of Tribal law enforcement, attempt to locate the parents for notification and consent to treatment. If a parent, guardian, or legal custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, the Court may authorize medical or surgical care for a child.

    a. If it is after normal working hours, so that a court order cannot reasonably be obtained, the Indian Child Welfare department shall have the authority to consent to necessary medical treatment for the child.

    b. The authority of the Indian Child Welfare department to consent to medical treatment in this circumstance shall be limited to the time reasonably necessary to obtain court authorization.

    c. The Indian Child Welfare department shall continue to make efforts to notify the parents.

4. If a parent or legal custodian of the child is available but refuses to consent to the necessary treatment, a court order shall be required unless the situation meets the definition of an emergency in Chapter 5, Section 5.01 or Chapter 5, Section 5.07(1) , or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent or legal custodian.

    a. In these cases, the *Giizhawaaso* Department shall have the authority to consent to necessary medical treatment.

    b. This authority is limited to the time reasonably necessary to obtain Court authorization.

5. If a physician informs the Court orally or in writing that in his or her professional opinion, the life of the child would be greatly endangered without certain treatment, the Court may authorize medical or surgical care for a child.

    a. If time allows in a situation of this type, the Court shall make every effort to grant the parents, guardian, or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

    b. Oral authorization by the Court is sufficient for the care or treatment to be given and shall be accepted by any physician or hospital.

    c. No physician or hospital, nor any nurse, technician, or other person under the direction of the physical or hospital shall be subject to criminal or civil liability in Court for the performance of care or treatment in reliance on the Court's authorization, and any functions performed shall be regarded as if they were performed with the child's and the parent's authorization.

6. In no case shall the *Giizhawaaso* Department or the Court consent to sterilization, abortion, or termination of life support.

CHAPTER SIX—CHILD IN NEED OF PROTECTION AND/OR SERVICES PROCEEDINGS

§ 6.01 General Process Provisions

1. Closed Hearings. All hearings shall be closed to the public, unless excepted by special order of the judge, who may open any hearing to the public upon determining that the public interest or welfare of the child is best served by so doing. The court may allow interested extended family to attend any hearing if the court finds the child is best served by including them.

2. Discovery. The parents or legal custodians shall be allowed to obtain discovery pursuant to the White Earth Court Rules of Civil Procedure, provided the discovery does not violate the confidentiality provisions of Chapter 2, Section 2.09.

3. Hearings involving more than one child may be held simultaneously when the children involved are related to each other or were involved in the same case.

4. The child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

§ 6.02 Filing a Child In Need of Protection and/ or Services (CHIPS) Petition

1. The purpose of a CHIPS petition is the protection of the child and not the punishment of the person creating or allowing the adverse situation resulting in the need for protection and/ or services for the child.

2. The CHIPS petition shall set forth the following with specificity:

   a. The name, birth date, sex, residence, and tribal affiliation of the child;

   b. The basis for the Court's jurisdiction;

   c. The names, residences, and tribal affiliation(s) of the child's parents, guardians or custodians, if known;

   d. The names, relationship, and residences of all known household members, members of the child's extended family, and all former care givers, if known;

   e. The specific allegations of abuse, abandonment, or neglect;

f. A plain and concise statement of the facts upon which the allegations of abuse, abandonment, or neglect are based, including the date, time, and location at which the alleged facts occurred; and
g. Whether there has been a determination by the *Giizhawaaso* Department that voluntary services are not appropriate for the child or family in this situation.

3. If a child has been removed from the home, then a CHIPS petition shall be filed with the Court no later than 12:00 p.m. of the third working day following the removal, if the *Giizhawaaso* Department intends to file a CHIPS petition.

4. The Court may not allow a petition to proceed under this Section if it appears that the sole purpose of the petition is to modify custody between the parents.

5. The petition shall be verified by the person having knowledge of the facts and may be on information and belief. Unless otherwise provided by this Section or by rule or order of the Court, the tribal attorney shall draft the petition upon the showing of reasonable grounds to support the petition.

6. After a petition has been filed and unless the parties hereinafter named voluntarily appear, the Court shall set a time for a hearing and shall issue a summons requiring the child's parents or legal guardian and any person who has legal custody of the child to appear before the Court at a time and place stated. The summons shall have a copy of the petition attached, and shall advice the parties of the right to counsel and of the consequences of failure to obey the summons. The Court shall give docket priority to any child in need of protection or services or neglected and in foster care, that contains allegations of child abuse over any other case.

§ 6.03 Notification of Rights, Process, and Service

1. All parties have the right to be treated with *manaaji'idiwin*, respect, throughout all of the proceedings under this Code, but in return are expected to communicate and act with *gwayakwaadiziwin*, honesty and truthfulness.

2. A child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition, including the opportunity to personally attend all hearings.

3. All parties have a right to be represented by an attorney at their own expense in all proceedings under this Code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true.

4. All parties shall be entitled to advance copies of Court documents, including petitions and reports, unless deemed inappropriate by the Court.

5. All parents or legal custodians must be notified of all proceedings or hearings involving their child, unless parental rights have been suspended or terminated.

   a. If the identity or location of a parent or legal custodian is unknown, the Court shall conduct the following inquiry of the parent or legal custodian who is available, or, if no parent or legal custodian is available, of any relative or custodian of the child who is present at the hearing and likely to have the information:

      i. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

      ii. Whether the mother was living with a male at the probable time of conception of the child.

      iii. Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

      iv. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

      v. Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

   b. The information above may be supplied to the Court in the form of a sworn affidavit by a person having personal knowledge of the facts.

   c. If the inquiry identifies any person as a parent or prospective parent, the Court shall require notice of the hearing to be provided to that person.

   d. If the inquiry fails to identify any person as a parent or prospective parent, the Court shall so find and may proceed without further notice.

   e. If the inquiry identifies a parent or prospective parent, and that person's location is unknown, the Court shall direct the petitioner to conduct a diligent search for that person before scheduling a formal trial on the issues regarding the child, unless the Court finds that the best interest of the child requires proceeding without notice to the person whose location is unknown.

   f. The diligent search required by Chapter 65, Section 6.02(4)(e) must include, at minimum:

      i. Inquiries of all relatives of the parent or prospective parent made known to the petitioner;

ii. Inquiries of all tribal departments likely to have information about the parent or prospective parent;

iii. Inquiries of other tribal, state and/or federal agencies likely to have information about the parent or prospective parent;

iv. A thorough search of at least one electronic database specifically designed for locating persons; and

v. Inquiries of appropriate law enforcement agencies.

g. It is not necessary to the validity of a proceeding covered by this Code that the parents be present if their identity or residence is unknown after a diligent search has been made, but in this event the petitioner shall file an affidavit of diligent search prepared by the person who made the search and inquiry, and the Court may appoint a *gezhaanaajig nejanisug* (those who guard children) for the child.

h. When an affidavit of diligent search has been filed, the petitioner shall continue to search for and attempt to serve the person sought until excused from further search by the Court. The petitioner shall report on the results of the search at each Court hearing until the person is identified or located or further search is excused by the Court.

i. If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the Court.

6. Personal appearance of any person in a hearing before the Court obviates the necessity of serving process on that person.

7. Upon the filing of a petition containing allegations of facts that, if true, would establish that a child is in need of protection and/ or services, and upon the request of the petitioner, the clerk of court or deputy clerk shall set an Admit or Deny hearing not more than 30 days after filing of the CHIPS petition.

8. The Court shall issue a summons to all parties.

    a. The summons shall require the person on whom it is served to appear for the CHIPS Admit or Deny hearing at a time and place specified.

    b. The summons shall be directed to, and shall be served upon, all parties.

9. Upon the application of a party or the petitioner, the clerk of court or deputy clerk shall issue, and the Court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, and other tangible objects at any hearing.

10. Subpoenas may be served within the exterior boundaries of the Reservation by any person over eighteen years of age who is not a party to the proceeding. Subpoenas served outside the exterior boundaries of the Reservation must be made pursuant to the rules and procedures of the jurisdiction from which service is sought.

11. As described in the White Earth Rules of Civil Procedure, all process and orders issued by the Court shall be served or executed as civil process and orders of the Court

12. Service of the summons and service of pleadings, papers, subpoenas and notices subsequent to the summons on persons outside the exterior boundaries of the Reservation must be made pursuant to the rules and procedures of the jurisdiction from which service is sought.

13. The parent or legal custodian of the child, the tribal attorney, the *Giizhawaaso* (Indian Child Welfare) Department, the *gezhaanaajig nejanisug* (those who guard children), and all other parties and participants, including relatives who have been identified as interested parties, shall be given reasonable notice of all proceedings and hearings.

14. Notice by Publication. In a child and family protection case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian is a non-resident of the Reservation, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after personal service or service by registered mail has been unable to be effected, the Court shall direct the petitioner to publish legal notice in a newspaper, printed in the county or on the Reservation, qualified to publish summons.

    a. The notice shall be published once prior to the next hearing.

    b. The first publication of the notice must be at least twenty-one days prior to the date fixed for the hearing.

    c. This notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown the phrase "to whom it may concern" may be used, applied to, and be binding upon any person whose names are unknown.

    d. The name of the Court, name of the child, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth.

    e. There shall be filed with the clerk an affidavit showing publication of the notice.

    f. The publication of the notice shall be paid by the tribe.

    g. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this Chapter.

15. The summons issued by the Court shall conspicuously display the words:

> **NOTICE**: VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO CHAPTER VI OF THE WHITE EARTH BAND OF CHIPPEWA JUDICIAL CODE. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.
>
> A PARENT, GUARDIAN OR CUSTODIAN PARTY TO THIS PROCEEDING HAS THE RIGHT TO COUNSEL. IF YOU CANNOT AFFORD TO HIRE YOUR OWN ATTORNEY, THE COURT SHALL APPOINT AN ATTORNEY TO REPRESENT YOU.

16. Notice and appearance may be waived by a parent in writing before the Court in the presence of, and witnessed by, a clerk of the court, provided the parent has been apprised by the Court of the meaning and consequences of the child protection action. The parent who has executed a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the court.

§ 6.04 Answer to Petition

1. No answer to the petition or to any other pleading need be filed by any child, parent, or legal custodian.

2. Any matters that might be set forth in an answer or other pleading may be plead orally before the Court or filed in writing.

3. Notwithstanding the filing of an answer or any pleading, the respondent shall be advised by the Court of the right to counsel and shall be given an opportunity to deny the allegations in the petition or to enter a plea to allegations in the petition before the Court.

§ 6.05 CHIPS Admit-Deny hearing

1. An admit-deny hearing on the allegations contained in the CHIPS petition shall be held no later than thirty (30) days after the filing of the petition.

2. The admit-deny hearing may be informal, and the Court may take testimony from the parents, guardian, or legal custodian of the child subject to the proceedings regarding the allegations contained in the CHIPS petition.

3. The purpose of the hearing is for the Court to determine whether there is a prima facie basis for finding that the allegations contained in the CHIPS petition are sufficiently true to merit a trial on the issues.

§ 6.06 Alternative Dispute Resolution

The Court may authorize the parties and participants in any child in need of protection or services to participate in any appropriate form of alternative dispute resolution including family group conferencing, peacemaking circles,, and mediation when such alternative dispute resolution is in the best interests of the child. The Court may order that the child be included in the alternative dispute resolution process, as appropriate and in the best interests of the child. An alternative dispute resolution process, including family group conferencing, peacemaking circles, and mediation, may be used to resolve part or all of a matter before the Court at any point in the proceedings subject to approval by the Court that the resolution is in the best interests of the child.

§ 6.07 Social Service Report

1. The *Giizhawaaso* (Indian Child Welfare) Department is required to submit a social service report to aid the Court in its decisions.

2. A report must be filed three business days prior to any formal trial on the issues or review hearing and must include:

    a. A summary of the problems;

    b. What steps, if any, the parent, guardian, custodian, or *Giizhawaaso* Department have taken to correct the problems, including the active efforts made by all parties to comply with the case plan;

    c. What services could be of benefit to the parent, guardian, or custodian, but are not available in the community;

    d. A report on how the child is doing in his or her current placement since the last hearing;

    e. Reasons for any change in placement that have occurred since the last hearing;

    f. Number of days the child has been away from his or her home;

    g. Number of times the child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for any change in placement;

    h. Placement of the child's siblings, if any;

i. Dates of contact with the parent, guardian, or custodian, and the child since the first hearing was held, the method of contact, the duration of the contact, and the subjects discussed;

j. If there have been no contact with the parent, guardian, custodian, or social worker, what efforts have been made to contact the parties;

k. An assessment of when the child is expected to return home;

l. If the child has reached sixteen years of age, but is not yet eighteen years of age, the status of the provision of independent living services; and

m. An update on the case plan, as developed under Chapter 7 of this Code.

§ 6.08 Formal Trial on the Issues

1. The formal trial on the issues will be set for no later than sixty days following the admit/deny hearing.

2. The records of the EPC hearing and the admit/deny hearing shall not be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearings that would normally be admissible under the Rules of Evidence.

3. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the Court shall be admitted.

4. During the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights.

5. If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition, closed circuit television, or other appropriate method. If the Court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record.

6. The burden of proof lies with the petitioner.

    a. The petitioner must prove that the allegations raised in the CHIPS petition are true by a preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.

    b. In no instance shall allegations made in an anonymous report of abuse, abandonment, or neglect be sufficient to support an adjudication of a child in need of protection and/ or services in the absence of additional corroborating evidence.

7. The Court has the discretion to continue the formal trial on the issues to a date certain to allow for the presentation of further evidence in support or against the petition, if the Court makes findings consistent with Section 1.20 of this Code.

§ 6.09 Dispositions

1. If the Court finds at the formal trial on the issues that the child named in the petition is not in need of protection and/ or services, it shall enter an order so finding and dismissing the case.

2. If the Court finds that the child named in the petition is in need of protection and/ or services, but finds that no action other than supervision in the child's home is required, it may enter an order briefly stating the facts upon which its finding is based, but withholding an order of adjudication and placing the child's home under the supervision of the *Giizhawaaso* Department.

    a. If the Court later finds that the parents of the child have not complied with the conditions of supervision imposed, the Court may, after a hearing to establish the noncompliance, enter an order of adjudication and shall thereafter have full authority under this Code to provide for the child as in need of protection and/ or services.

    b. If the child is to remain in an out-of-home placement by order of the Court, the Court must find the child in need of protection and/ or services.

3. The Court may find the allegations of the CHIPS petition to be true and order that the child remain out-of-home. The grounds for continuing removal from the home of a parent, guardian or custodian are that:

    a. A child has no parent, guardian or custodian available, willing and capable to care for the child;

    b. The child has suffered, or is likely to suffer, a physical injury inflicted upon him or her by other than accidental means;

    c. The child has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his or her parent, guardian, or custodian, which is necessary for the child's health and well-being;

    d. The child has been sexually abused or sexually exploited;

    e. The child has committed juvenile offenses as a result of parental pressure, guidance, or approval;

f. The child has been emotionally abused or neglected; or

g. The child has suffered, or is likely to suffer, emotional damage that causes or creates a substantial risk of impaired development.

4. The Court shall specify in its order the necessary intervention and appropriate steps, if any, that the parent, guardian or custodian must follow to correct the underlying problem.

5. The Court may find the allegations of the CHIPS petition to be true and out of-home placement necessary, but with the accomplishment of specified actions by the parent, guardian, or custodian, the child may be returned absent good cause to the contrary.

    a. The order of the Court will specify actions and their time frames that parents, guardians or custodians must accomplish before the child is returned.

    b. The order will also specify the responsibilities of any support agency or personnel to be involved.

6. The Court may find the allegations of the CHIPS petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home absent specific order of the Court.

    a. The court order shall specify what steps the parents shall take to demonstrate their abilities to care for their child.

    b. The court order shall specify to the parties what factors the Court will consider at a subsequent hearing to determine whether or not the child should be returned.

7. The Court shall specify in its written order:

    a. The placement or custody of the child;

    b. Special conditions of placement and visitation;

    c. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered;

    d. The persons or entities responsible for supervising or monitoring services to the child and the parent;

    e. Continuation or discharge of the *gezhaanaajig nejanisug* (those who guard children), as appropriate;

    f. The date, time, and location of the next scheduled review hearing;

g. If the child is in an out-of-home placement, child support, if any, to be paid by the parents, or the guardian of the child's estate;

h. If the Court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the Court, the disposition order shall include the reasons for its decision. It shall include a determination as to whether active efforts were made by the *Giizhawaaso* Department to locate a relative or legal custodian; and

i. Any other requirements necessary to protect the health, safety, and well-being of the child.

8. If the Court finds that the prevention or reunification efforts will allow the child to remain safely at home or be safely returned to the home, the Court must make a specific finding of fact that the reasons for removal have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

9. If the Court determines that the allegations of the CHIPS petition to be true and that out-of-home placement continues to be necessary, the order must include a written determination that it is contrary to the welfare of the child to remain at home and that removal of the child is necessary to protect the best interests of the child.

10. If the child was removed before the formal trial on the issues, the order must also include a written determination as to whether, after removal, the *Giizhawaaso* Department has made active efforts to reunify the parent and child.

    a. For the purposes of this Chapter, "active efforts" means the exercise of due diligence and care by the *Giizhawaaso* Department to engage the family in order to provide the services ordered by the Court or delineated in the case plan. Active efforts must be undertaken and documented prior to and until the commencement of the proceedings, and the Department must show that active efforts were unsuccessful.

    b. In support of its determination as to whether active efforts have been made, the Court shall:

        i. Enter written findings as to whether prevention or reunification efforts were indicated;

        ii. Include a brief written description of what appropriate and available prevention and reunification efforts were made; and

        iii. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child.

c. A Court may find that the *Giizhawaaso* Department made an active effort to prevent or eliminate the need for removal if:

i. The first contact of the Department with the family occurs during an emergency;

ii. The appraisal of the home situation by the Department indicated a substantial and immediate danger to the child's safety or physical, mental, or emotional health that could not be mitigated by the provision of preventative services; or

iii. The child cannot safely remain at home because there are no preventative services that can ensure the health and safety of the child.

11. When any child is adjudicated by the Court to be in need of protection and/ or services, the Court has the power, including, but not limited, through a court order to:

a. Require the parent, legal custodian, and the child to participate in any treatment and services identified as necessary;

b. Require the parent, legal custodian, and child to submit to a substance abuse assessment;

c. Issue an order for protection in assistance, or as a condition, of any other order made under this Code;

d. Impose appropriate sanctions for noncompliance of a court order or case plan upon a person who has custody or is requesting custody of the child; and

e. Place the child under the protective supervision of the Department.

§ 6.10 Default Judgment

1. In accordance with Rule XXIV of the White Earth Rules of Civil Procedure, if the parent, guardian, or custodian fails to appear for the pretrial or the formal trial, the Court may find the parent, guardian, or custodian in default, and enter a default order of a child in need of protection and/ or services and order necessary intervention and appropriate steps the parents, guardian, or custodian must follow to correct the underlying problem.

2. Prior to finding a parent, guardian, or custodian in default, the Court must be satisfied actual notice has been given or that all reasonable possible steps have been taken to provide notice of the pretrial or the formal trial to the parent, guardian, or custodian.

3. The Court must also find that the petitioner can prove the elements of the CHIPS petition.

4. If the parent, guardian, or custodian is found in default, the Court shall specify the facts, grounds, and sections of this Code upon which it relied to make the decision.

§ 6.11 Judicial Review

1. The Court shall have continuing jurisdiction in accordance with this Code and shall review the status of any child adjudicated to be in need of protection and/ or services at least every ninety days, or more frequently if the Court deems it necessary or desirable, until the child reaches permanency status.

2. The initial judicial review hearing must be held no later than sixty days after the date the child was found to be in need of protection and/ or services.

3. Notice of a judicial review hearing will be provided to the parties present at the last court hearing and served by tribal social services on any additional parties deemed necessary.

4. At the review hearing, the Court shall determine whether or not the child should be returned home, returned home under supervision, remain in his or her current placement, or be transferred to another out-of-home placement. In making this determination, the Court should consider:

    a. The parent's substantial compliance or non-compliance with the case plan;

    b. The appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible;

    c. The best interests of the child;

    d. The best interests of the Tribe; and

    e. Recommendations of the *Giizhawaaso* Department.

5. If continued Court intervention is determined to be necessary, the Court shall set forth the following in a written order:

    a. What services have been provided or offered to the parent, guardian or custodian, to help correct the underlying problems;

    b. The extent to which the parent, guardian, or custodian has visited or contacted the child, any reason why visitation or contact has been infrequent or not otherwise occurred;

    c. Whether the parent, guardian, or custodian is cooperative with the Court and the Department;

d. Whether additional services should be offered to the parent, guardian, or custodian;

e. Whether the parent, guardian, or custodian should be required to participate in any additional programs to help correct the underlying problems; and

f. When the return of the child to his or her parents can be reasonably expected.

§ 6.12 Grandparent's and Extended Family Rights

1. A grandparent, step-grandparent, or customary grandparent is entitled to reasonable visitation with his or her grandchild who has been adjudicated as a child in need of protection and/ or services or whose parents have had their parental rights suspended or terminated, unless the Court finds that visitation is not in the best interest of the child.

2. Reasonable visitation may be unsupervised, in the home of the grandparent and, where appropriate and feasible, may be frequent and continuing, subject to the approval of the Court. The grandparent shall pay for the cost of the child's transportation.

3. Any attempt by a grandparent to facilitate a meeting between the child and the child's parent or legal custodian after a suspension or termination of parental rights or with any other person in violation of a court order may jeopardize the future visitation rights of the grandparent.

4. When the child has been returned to the physical custody of his or her parent, the visitation rights granted pursuant to this Section shall terminate and the visitation rights shall return to those regularly accorded under the law.

CHAPTER SEVEN—CASE PLANS

§ 7.01 Case Plan Development

1. The *Giizhawaaso* (Indian Child Welfare) Department shall prepare a case plan for each child receiving services under this Code. The Department should file a case plan within 30 days after the child protection petition is filed with the Court.

2. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child.

3. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not consent to a finding of a child in need of protection and/ or services, suspension or termination of parental rights, or transfer of legal custody.

4. The case plan shall be developed subject to the following requirements:

    a. The case plan should be developed, whenever possible, in a face-to-face conference with the parent(s) of the child, any Court-appointed *gezhaanaajig nejanisug* (those who guard children), and, if appropriate, the child;

    b. The parent may receive assistance from any person or *Giizhawaaso* Department in preparing the case plan. The Department and the Court, when applicable, shall inform the parent of the right to receive assistance, including the right to assistance of counsel;

    c. In the event of placement, the parents' responsibility for financial support of the child;

    d. If a parent is unwilling or unable to participate in developing a case plan, the *Giizhawaaso* Department shall document that unwillingness or inability to participate.

        i. The documentation of the parent's inability or unwillingness to participate in the case plan development must be provided in writing to the parent when available for the Court record, and the Department shall prepare a case plan conforming as nearly as possible with the requirements set forth in this Chapter.

        ii. The unwillingness or inability of the parent to participate in developing a case plan does not preclude the filing of a CHIPS petition, or adjudication of CHIPS.

        iii. The parent, if available, must be provided a copy of the case plan and be advised that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child. The Department may require the parent to acknowledge receipt of the case plan.

5. The case plan must be written simply and clearly in English and, if English is not the principal language of the child's parent, to the extent possible in the parent's principal language. Each case plan must contain:

    a. A description of the identified problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the *Giizhawaaso* Department;

    b. The permanency goal;

    c. The date the compliance period expires; and

i. The case plan must be limited to as short a period as possible for accomplishing its provisions.

ii. The plan's compliance period expires no later than six months after the date the child was initially removed from the home or the date the case plan was accepted by the Court, whichever occurs sooner.

d. A written notice to the parent that failure of the parent to substantially comply with the case plan may result in a suspension or termination of parental rights, and that a material breach of the case plan may result in the filing of a permanency petition sooner than the expected duration set forth in the case plan.

6. The case plan must be signed by all parties, except that the signature of a child may be waived if the child is not of an age or capacity to participate in the case-planning process.

   a. Signing the case plan constitutes an acknowledgement that the case plan has been developed by the parties and that they are in agreement as to the terms and conditions contained in the case plan, except where disagreement is noted in the designated section of the case plan.

   b. The refusal of a parent to sign the case plan does not prevent the Court from accepting the case plan if the case plan is otherwise acceptable to the Court.

   c. Before signing the case plan, the Department shall explain the provisions of the plan to all persons involved in its implementation, including, when appropriate, the child.

7. The case plan must describe:

   a. The role of the foster parents or legal custodians when developing the services that are to be provided to the child, parents, or legal custodians;

   b. The minimum number of face-to-face meetings to be held each month between the parents and the Department to review the progress of the plan, to eliminate barriers to progress, and to resolve conflicts or disagreements; and

   c. The parent's requirements under the case plan to remedy the conditions that led to the filing of the CHIPS petition.

8. When the permanency goal for a child is adoption, the case plan must include documentation of the steps the *Giizhawaaso* Department is taking to comply with the adoption requirements.

9. After the case plan has been developed by the necessary parties, a copy of the plan must be given immediately to the parties, including the child if appropriate, and to other persons as directed by the Court.

10. The case plan must be filed with the Court and copies provided to all parties no less than three business days before the formal trial on the issues.

§ 7.02 Case Plan Tasks and Services

1. The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement.

2. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

3. The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem, including:

    a. The type of services or treatment,

    b. The date the *Giizhawaaso* (Indian Child Welfare) Department will provide each service or referral for the service if the service is being provided by an agency approved by the Department,

    c. The frequency of services or treatment provided,

    d. The location of the delivery of the services,

    e. The staff of the *Giizhawaaso* Department or service provider accountable for the services or treatment, and

    f. A description of the measurable objectives, including the timeframes or dates specified for achieving the objectives of the case plan and addressing the identified problem.

4. The case plan must include all available information that is relevant to the child's care including, at a minimum:

    a. A description of the identified needs of the child while in care;

    b. A description of the plan for ensuring that the child receives safe and proper care and that services are provided to the child in order to address the child's needs; and

c. To the extent available and accessible, the following health and education records of the child must be attached to the case plan and regularly updated:

i. The names and addresses of the child's health, mental health, and educational providers;

ii. The child's grade level performance;

iii. The child's school record;

iv. Assurances that the child's placement takes into account proximity to the school in which the child is enrolled at the time of placement;

v. A record of the child's immunizations;

vi. The child's known medical history, including any known problems;

vii. The child's medications, if any; and

viii. Any other relevant health, mental health, and education information concerning the child.

5. In addition to any other requirement, if the child is in an out-of-home placement, the case plan must include:

a. A description of the type of placement in which the child is living;

b. A description of the visitation plan, including sibling visitation if the child has siblings and is separated from them;

c. When appropriate, for a child who is sixteen years of age or older, a written description of the programs and services that will help the child prepare for the transition from foster care to independent living; and

d. A discussion of the safety and the appropriateness of the child's placement, which placement is intended to be safe, and the least restrictive and the most family-like setting available consistent with the best interest and special needs of the child and in as close proximity as possible to the child's home.

§ 7.03 Case Plan Amendments

1. After the case plan has been developed, the tasks and services agreed upon in the plan may not be changed or altered in any way except as provided in this Section.

2. The case plan may be amended at any time in order to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to

substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and education records.

3. The case plan may be amended upon approval of the court if all parties are in agreement regarding the amendments to the plan and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation, or after hearing and order of the court.

4. The need to amend the case plan may be based on information discovered or circumstances arising after the approval of the case plan for:

    a. A previously unaddressed condition that, without services, may prevent the child from safely returning to the home or may prevent the child from safely remaining in the home;

    b. The child's need for permanency, taking into consideration the child's age and developmental needs;

    c. The failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service; or

    d. An error or oversight in the case plan.

5. Amendments must include service interventions that are the least intrusive into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

6. A copy of the amended plan must be immediately given to all relevant parties involved, and filed with the court within seven (7) days after development.

§ 7.04 Case Plans Without Parental Participation

1. In the event the parents will not or cannot participate in preparation of a case plan, the *Giizhawaaso* (Indian Child Welfare) Department shall submit a full explanation of the circumstances and state the nature of its efforts to secure the parents' participation in the preparation of a case plan.

2. In a case in which the physical, emotional, or mental condition or physical location of the parent is the basis for the parent's nonparticipation, it is the burden of the *Giizhawaaso* Department to provide substantial evidence to the Court that the condition or location has rendered the parent unable or unwilling to participate in the preparation of a case plan. The supporting documentation must be submitted to the Court at the time the plan is filed.

3. The plan must still include the specific services to be provided by the Department, the goals and plans for the child, the time for accomplishing the provisions of the plan, and for accomplishing permanency for the child.

4. At least three (3) business days prior to the hearing in which the Court will consider approval of the case plan, all parties must be provided with a copy of the plan developed by the Department.

5. If the location of one or both parents is unknown, this must be documented in writing and included in the plan submitted to the Court. After the filing of the plan, if the location of an absent parent becomes known, that parent must be served with a copy of the plan.

6. Before the filing of the plan, the *Giizhawaaso* Department shall advise each parent, both orally and in writing, that the failure of the parents to substantially comply with a plan may result in other permanent placement for the child, but only after notice and hearing as provided in this Code.

§ 7.05 Court Approval of Case Plans

1. All case plans and amendments to case plans must be approved by the Court. At the hearing on the case plan, which shall occur in conjunction with the CHIPS adjudication unless otherwise directed by the Court, the Court shall determine:

    a. If the plan is consistent with previous orders of the Court placing the child in care;

    b. In involuntary placements, whether each parent was notified of the right to counsel at each stage of the CHIPS proceedings, in accordance with the White Earth Court Rules of Civil Procedure;

    c. Whether each parent whose location was known was notified of the right to participate in the preparation of a case plan and of the right to receive assistance from any other person in the preparation of the case plan; and

    d. Whether the plan is meaningful and designed to address facts and circumstances upon which the Court based the finding of dependency in involuntary placements, or the plan is meaningful and designed to address facts and circumstances upon which the child was placed in out-of-home care voluntarily.

2. When the Court determines that any of the elements considered at the hearing related to the plan have not been met, the Court shall require the parties to make necessary amendments to the plan in accordance with Chapter 7, Section 7.03.

    a. The amended plan must be submitted to the Court for review and approval within thirty days after the hearing.

b. A copy of the completed amended plan must also be provided to each party immediately or as soon as possible, if the location of the party is known.

3. A parent who has not participated in the development of a case plan must be served with a copy of the plan developed by the *Giizhawaaso* Department at least three (3) business days prior to the Court hearing.

4. Any parent is entitled to, and may seek, a court review of the plan prior to the initial judicial review and must be informed of this right by the Department at the time the Department serves the parent with a copy of the plan.

CHAPTER EIGHT—SUSPENSION OF PARENTAL RIGHTS AND TRANSFER OF LEGAL CUSTODY

§ 8.01 Rights During a Suspension of Parental Rights or a Transfer of Legal Custody Proceeding

1. A parent has the right to refuse services provided by any *Giizhawaaso* (Indian Child Welfare) Department; however, a refusal to accept services may have a significant impact on the parent's ability to have contact with their child and may result in the filing of a suspension of parental rights or a transfer of legal custody petition.

2. The parents have all the rights enumerated in Chapter 6, Section 6.03 and Chapter 1, Section 1.18.

3. If applicable in a proceeding under this Chapter 8, the biological parents and the petitioner have the right to move the Court for an independent medical, psychological or psychiatric evaluation of the child. In determining whether to grant a motion for an independent evaluation, the Court may consider the following factors:

    a. The effect of the proposed evaluation on the child;

    b. The necessity for the independent evaluation;

    c. The records from the independent evaluation that will be released to the Court and the Parties;

    d. What the independent evaluation should consist of; and

    e. The cost of the evaluation and whether there is medical coverage for the evaluation.

§ 8.02 Petition to Suspend Parental Rights or Transfer of Legal Custody

1. Any adult or agency possessing custody of a child may file a petition with the Court Administrator seeking an order for the permanent suspension of the parental rights of a parent of a child or a transfer of legal custody away from one or both of the biological parents of the child. The petition shall contain the following information:

    a. The name, birth date, sex, residence, and tribal affiliation of the child;

    b. The name, address, and telephone number of the child's tribe;

    c. The basis for the Court's jurisdiction;

    d. The names, residences, telephone numbers, and tribal affiliations of the child's parent whose parental rights are to be suspended or affected in a transfer of legal custody;

    e. The name, residence, telephone numbers, and tribal affiliation of the petitioner and the petitioner's relationship, if any, to the child;

    f. The names, relationship, telephone numbers, and residences of all known relatives of the child who may have an interest in the care, custody or control of the child;

    g. A statement as to why an order for the suspension of parental rights of the parent or a transfer of legal custody of the child is in the best interests of the child and the child's tribe;

    h. A statement as to the basis for the request for the suspension of parental rights or transfer of legal custody of the child, supported by reports or testimony from medical records, psychiatric records, child protection worker records, family members (including extended family), or psychological records; and

    i. A statement that no similar action is pending in a state or tribal court that has jurisdiction over the child.

2. The petitioner shall sign the petition in the presence of the Court Administrator or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

§ 8.03 Relinquishment of Parental Rights

1. Parental rights may be relinquished (voluntarily suspended) by a parent in writing, if signed by the parent in the presence and with approval of the court.

2. Relinquishment shall not be accepted or acknowledged by the court prior to thirty days after birth of the child.

3. The Court shall ensure that the parent understands the consequences of the voluntary suspension prior to approving it.

4. A parent who wishes to relinquish his or her parental rights shall be provided an interpreter if he or she does not understand English.

§ 8.04 Notice of Hearing on Petition to Suspend Parental Rights or a Transfer of Legal Custody

1. Upon the filing of a petition seeking an order for the suspension of parental rights or the transfer of legal custody of a child, the Court Administrator shall schedule a hearing to be held upon the petition.

2. Written notice of the hearing and a copy of the petition shall be served upon:

    a. The child's tribe;

    b. The *Giizhawaaso* Department;

    c. The foster parent or legal custodian in whose home the child resides;

    d. The parents of the child;

    e. The *gezhaanaajig nejanisug* (those who guard children) for the child, or the representative of the *gezhaanaajig nejanisug* program;

    f. The attorney for the child;

    g. The child, if the child is twelve years of age or older;

    h. Any preadoptive parents; and

    i. Any other person as the Court may find necessary or desirable to be present.

3. Notice shall be served in accordance with the procedures outlined in Chapter 6, Section 6.03 of this Code and in the White Earth Rules of Civil Procedure.

4. If a parent who has been inactive in the proceedings up to those initiated in this Chapter 8 becomes active, the parent shall be provided notice that he or she has the right to request an attorney to represent him or her in the on-going proceedings. Any such request for representation at this stage shall be granted but shall not unreasonably delay the proceedings.

§ 8.05 Hearing on a Petition to Suspend Parental Rights or a Transfer of Legal Custody

1. All parties entitled to receive notice of a hearing on a petition to suspend parental rights or transfer legal custody have the right to attend the hearing.

2. The petitioner must be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

3. The parents named in the petition should be present at the hearing. However, the parents' failure to appear shall not prevent the issuance of an order for suspension of parental rights or transfer of legal custody.

4. During the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in Chapter 6, Section 6.03 and Chapter 1, Section 1.18 of this Code.

5. The Court shall inform all other parties of their rights under this Code and pursuant to the Indian Civil Rights Act, 25 U.S.C. §§ 1301-03 (1968) as amended.

6. The rules of evidence of the White Earth Tribal Court shall apply during the hearing.

7. The burden of proving the allegations of the petition shall be upon the petitioner.

8. The petitioner must prove the allegations of the petition by clear and convincing evidence and that a suspension of parental rights or transfer of legal custody will serve the best interests of the child and a tribe in which the child is eligible for enrollment or membership.

9. There shall be a legal presumption of the parent's ability to parent, until proven otherwise.

10. The Court may continue the hearing at the request of any party to the proceeding, upon a showing of good cause. The Court may then enter any just and reasonable temporary order.

§ 8.06 Default Judgment

1. If the parent fails to appear for the formal trial or pretrial, the Court may find the parent in default, and enter a default order of suspension of parental rights or transfer of legal custody.

2. Due to the finality of a suspension of parental rights or transfer of legal custody, the Court must be satisfied beyond a reasonable doubt that actual notice has been given or that all possible steps have been taken to provide notice of the formal trial to the parent.

3. The Court must also find that the petitioner can prove the elements of the suspension of parental rights or transfer of legal custody petition.

4. If the parent is found in default, the Court shall specify the facts, grounds, and code sections upon which it relied to make the decision.

5. A parent may move the Court to vacate a Default Judgment entered pursuant to this Section 8.06. Any such motion to vacate shall be governed by Rule XXIV, Section 3 of the White Earth Rules of Civil Procedure.

§ 8.07 Final Order for Suspension of Parental Rights

1. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a suspension of parental rights within sixty (60) days of the close of the record. An order for the suspension of parental rights may include, but is not limited, to the following:

    a. A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody and control of the child and allowing the child to be adopted;

    b. A permanent suspension of the right of the parent to have contact with the child including contact in person, by mail, by telephone, or through third parties;

    c. A contact agreement agreed upon by the parties to be ordered by the Court;

    d. Restraining a parent from contacting the child, the child's foster parent, the child's adoptive parent or the *Giizhawaaso* (Indian Child Welfare) Department or agencies possessing information regarding the child;

    e. Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;

        i. Unless expressly ordered otherwise by the Court, any order support obligation existing prior to the effective date of the order suspending parental rights shall not be severed or terminated;

    f. Ordering that any prior court order for custody, visitation or contact with the child is hereby terminated;

    g. The parent shall have no standing to appear at, nor any notice of, any future legal proceedings involving the child;

h. What active efforts were taken by the *Giizhawaaso* Department to reunify the parent and child or allow the child to remain in a permanent home;

i. For the purposes of this Chapter, "active efforts" means the exercise of due diligence and care by the Department to:

1. Engage the family in order to provide the services ordered by the Court or delineated in the case plan;

2. Seek out an appropriate, permanent living situation for the child, either in foster care or adoption; or

3. Ensure the child is in the best possible permanent placement.

ii. In support of its determination as to whether active efforts have been made, the Court shall:

1. Enter written findings as to whether prevention or reunification efforts were indicated;

2. Include a brief written description of what appropriate and available reunification or permanency efforts were made; and

3. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child or placed the child in a more appropriate permanent situation.

i. The suspension of parental rights does not sever or affect in any way a child's relationship to his or her tribe or any rights of inheritance from the biological parents; and

j. Shall contain a statement regarding why it is in the best interests of the child and the child's tribe to enter this order.

2. Copies of any order for suspension of parental rights shall be served upon all parties given notice of the hearing as outlined in Chapter 8, Section 8.04.

3. Final orders for the suspension of parental rights may be modified by the Court at the request of the biological parent or agencies possessing custody of the child only if one of the following occurs:

a. An initial appeal is filed in accordance with Chapter 12 of this Code;

b. The adoption of the child fails;

c. The adoptive parent is deceased; or

d. There is no final permanency placement in effect after a period of one (1) year from the entry of the final order suspending parental rights. In considering a motion to modify a final order under this Section 8.07 Subd.3(d), the petitioner must prove by clear and convincing evidence that:

   i. There has been a substantial change in circumstances that supports a change in custody,

   ii. The parent seeking return of custody has substantially completed the requirements of any child protection or reunification case plan, and

   iii. The Court determines it is in the best interests of the child that custody of the child be returned to the parent(s).

4. Notice of this review shall be provided to all parties who received copies of the order for suspension of parental rights as outlined in Chapter 8, Section 8.04.

5. A parent may voluntarily suspend his or her parental rights upon verbal or written motion to the Court. If a parent voluntarily suspends his or her parental rights, he or she may petition the Court for a review of the final order granting the suspension pursuant to Section 8.07, Subd.3(d) above.

6. Upon petition of one or both of the biological parents whose rights were previously suspended by order of the White Earth Tribal Court, the court may reinstate parental rights under the following conditions:

   a. The parent has not been found to have committed egregious harm to any child while the child was in the care, custody, and control of the parent petitioning for reinstatement;

   b. The parent seeking reinstatement voluntarily agreed to suspend his or her parental rights at or before commencement of the pretrial hearing;

   c. The final adoption order included a provision allowing the parent to petition for reinstatement of his or her parental rights;

   d. The Indian Child Welfare department and the Adoptive Parents agree that the parental rights of one or both of the parents should be reinstated and custody of the child should be returned to one or both of the parents;

   e. The parent seeking reinstatement of rights and return of custody has substantially completed the requirements of any child protection or reunification case plan; and

   f. The court determines it is in the best interests of the child that the parents' rights be reinstated and custody of the child be returned to the parent(s).

§ 8.08 Custody After Final Order for Suspension of Parental Rights

1. If upon entering an order suspending the parental rights of a parent there remains no parent having parental rights, the Court shall commit the child to the custody of a *Giizhawaaso* (Indian Child Welfare) Department for the purpose of placing the child for adoption.

2. In the absence of an adoptive home, the agency may place the child in a licensed foster home for short or long-term foster care, with a relative, or take other suitable measures for the care and welfare of the child.

3. The custodian shall have the authority to consent to:

    a. the adoption of the child;

    b. the marriage of the child;

    c. the enlistment of the child in the armed forces of the United States;

    d. necessary surgical and other medical treatment for the child; and

    e. any matters as might normally be required of the child's parent.

§ 8.09 Future Review Hearings

1. If a child has not been adopted or permanently placed within ninety days of the suspension order, another ninety day review hearing will be held, in accordance with Chapter 6, Section 6.11.

2. The six-month hearings will continue until the child is adopted or permanently placed.

§ 8.10 Final Order for a Transfer of Legal Custody

1. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a transfer of legal custody within sixty (60) days of the close of the record. An order for a transfer of legal custody may include, but is not limited, to the following:

    a. A permanent transfer of legal custody of the child to another parent or legal guardian, who must take responsibility for the care, custody, and control of the child;

    b. Restraining a parent from contacting the child, the child's foster parent, the child's adoptive parent, or the *Giizhawaaso* Department possessing information

regarding the child;

c. Ordering that any prior court order for custody, visitation or contact with the child is hereby terminated;

d. Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;

i. Unless expressly ordered otherwise by the Court, any order support obligation existing prior to the effective date of the order transferring parental rights shall not be severed or terminated;

e. The transfer of legal custody does not sever or affect in any way a child's relationship to his or her tribe or any rights of inheritance from the biological parents; and

f. Shall contain a statement regarding why it is in the best interests of the child and the child's tribe to enter this order.

2. Copies of any order for transfer of legal custody shall be served upon all parties given notice of the hearing as outlined in Chapter 8, Section 8.04.

3. Final orders for a transfer of legal custody may be reviewed by the Court at the request of any party if there has been a substantial change in circumstances, under the following conditions:

a. The custodian wishes to voluntarily relinquish custody of the child to the agency;

b. The agency has filed a child in need of protection and services petition against the custodian; or

c. The parent wishes to have custody of the child returned to them; and

i. The parent has not been found to have committed egregious harm to any child while the child was in the care, custody, and control of the parent petitioning for reinstatement;

ii. The parent seeking reinstatement voluntarily agreed to transfer of legal and physical custody of the child at or before commencement of the pretrial hearing; and

iii. The order transferring legal and physical custody of the child contained a provision that the parent could petition for reinstatement of his or her parental rights; and

iv. The Court finds by clear and convincing evidence that:

1. There has been a substantial change in circumstances that supports a change in custody;

2. The parent seeking return of custody has substantially completed the requirements of any child protection or reunification case plan; and

3. The Court determines it is in the best interests of the child that custody of the child be returned to the parent(s).

CHAPTER NINE—TERMINATION OF PARENTAL RIGHTS

§ 9.01 Purpose

1. The purpose of this Chapter is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process.

2. This Chapter shall be construed in a manner consistent with the philosophy that:

    a. All parties shall be secured their rights as enumerated in the Indian Civil Rights Act of 1968;

    b. The family unit is of most value to the individual family members and the community as a whole when that unit remains united and together;

    c. The parent-child relationship is of such vital importance that it should be terminated only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination; and

    d. The parent-child relationship shall only be terminated when it is in the best interests of the child.

3. Parental rights may not be terminated without the filing of a petition, notice of the hearing, and a full hearing held in accordance with this Chapter.

§ 9.02 Grounds for Termination of Parental Rights

1. Involuntary terminations of parental rights shall be considered only as a matter of last resort in the most egregious situations.

2. Grounds for termination of parental rights shall include clear and convincing evidence of:

    a. Egregious harm;

b. Willful acts of sexual abuse, sexual exploitation, or incest; or

c. Willful failure to maintain a normal parental relationship with the child in a case of total, or near total, abandonment.

i. Custody with extended family members or voluntary consent to placement does not constitute abandonment for the purpose of this Code.

3. The Court must consider the grounds for termination of parental rights in the context of the best interest of the child and the best interest of the tribe.

§ 9.03 Petition to Terminate Parental Rights

1. Any parent, extended family, kin, or the agency possessing custody of a child may file a petition with the Court Administrator seeking an order for termination of parental rights.

2. The petition shall contain the following information:

a. The name, birth date, sex, residence, and tribal affiliation of the child;

b. The name, address, and telephone number of the child's tribe;

c. The basis for the Court's jurisdiction;

d. The names, residences, telephone numbers, and tribal affiliations of the child's parent whose parental rights are to be terminated;

e. Where the child's parent is also a child, the names and addresses of the parent's parents or guardian; and where the parent has no parent or guardian, the members of the parent's extended family;

f. The name, residence, telephone numbers, and tribal affiliation of the petitioner and the petitioner's relationship, if any, to the child;

g. The names, relationship, telephone numbers, and residences of all known relatives of the child who may have an interest in the care, custody, or control of the child;

h. A statement as to why an order for the termination of parental rights is in the best interests of the child and the child's tribe;

i. The grounds on which termination is sought, under Chapter 9, Section 9.02, unless voluntary termination is sought;

j. A statement that:

i. The court has entered an order which states what the parent was required to accomplish to correct their underlying problems;

ii. The *Giizhawaaso* (Indian Child Welfare) Department involved has made a good faith attempt to offer or provide all court ordered or necessary services that are reasonably available in the community and which are capable of helping the parent resolve his or her underlying problems;

iii. There is little likelihood the conditions will be remedied so that the child can be returned to the parents in the future;

iv. Continuation of the parent-child relationship clearly diminishes the child's prospects for successful placement into a permanent and stable home;

v. Not returning the child to the parent is the least detrimental alternative that can be taken; and

vi. Returning the child to either parent will result in serious emotional or physical harm to the child; and

k. A statement that no similar action is pending in a state or tribal court that has jurisdiction over the child.

3. The petitioner shall sign the petition in the presence of the Court Administrator or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

§ 9.04 Notice of Hearing on Petition to Terminate Parental Rights

1. Upon the filing of a petition seeking an order for the termination of parental rights, the Court Administrator shall schedule a hearing to be held upon the petition.

2. Written notice of the hearing and a copy of the petition shall be served upon:

   a. The parents and the legal custodians of the child, unless terminated by court order;

   b. The child's tribe;

   c. The *Giizhawaaso* Department;

   d. Any one else who has been granted party status by the court;

   e. The attorney's for the parents or legal custodians;

f. Where the child's parent is also a child, notice shall also be given to the parent's parents or guardian of the person;

g. The *gezhaanaajig nejanisug* (those who guard children) for the child, or the representative of the *gezhaanaajig nejanisug* program;

h. The attorney for the child;

i. The child, if the child has been granted party status; and

3. Notice shall be served in accordance with the procedures outlined in Chapter 6, Section 6.03 in this Code and in the White Earth Rules of Civil Procedure.

§ 9.05 Hearing Procedures

1. All parties entitled to receive notice of a hearing on a petition to terminate parental rights have the right to attend the hearing.

2. The petitioner must be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

3. The parents named in the petition should be present at the hearing. However, the parents' failure to appear shall not prevent the issuance of an order for suspension of parental rights or transfer of legal custody.

4. During the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in Chapter 6, Section 6.03 and Chapter 1, Section 1.18 of this Code.

5. The Court shall inform all other parties of their rights under this Code and pursuant to the Indian Civil Rights Act, 25 U.S.C. §§ 1301-03 (1968) as amended.

6. The rules of evidence of the White Earth Tribal Court shall apply during the hearing.

7. The burden of proving the allegations of the petition shall be upon the petitioner.

8. The petitioner must prove the allegations of the petition by clear and convincing evidence and that a termination of parental rights will serve the best interests of the child, and a tribe in which the child is eligible for enrollment or membership.

9. There shall be a legal presumption of the parent's ability to parent, until proven otherwise.

10. The court will make formal findings of fact and conclusions of law as a basis for the written order terminating the parent-child relationship.

11. The petitioner must be present at the hearing. The petitioner's failure to appear shall be grounds for dismissing the petition.

12. Any party has the right to contest the basis of a petition. The tribal attorney has the right to contest the basis of a petition filed by an individual who is not a tribal attorney or an agent of the *Giizhawaaso* Department.

§ 9.06 Admit/Deny Hearing

1. The Court shall hold an Admit/Deny hearing on a petition filed under this Chapter not less than ten (10) days after service of the summons and petition is complete upon the parties.

2. At the commencement of the hearing, the Court shall on the record:

    a. verify the child's name, date of birth, gender, and the name of the child's tribe;

    b. determine whether all parties are present and identify those present for the record;

    c. advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation;

    d. determine whether notice requirements have been met, and, if not, whether the affected person waives notice; and

    e. determine whether the child and the child's parent or legal custodian understand the grounds and the factual allegations set forth in the petition and, if not, provide an explanation;

3. After completing the initial inquiries set forth in paragraph 2 above, the court shall determine whether the petition states a prima facie case in support of one or more grounds set forth in the petition to terminate parental rights and a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter.

    a. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

    b. If the Court determines that the petition states a prima facie case in support of termination of parental rights, the Court shall proceed with the case. If the Court determines that the petition fails to state a prima facie case in support of termination of parental rights, the Court shall:

i. return the child to the care of the parent or legal custodian;

ii. give the petitioner ten (10) days to file an amended petition or provide supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights; or

iii. dismiss the petition.

4. Only the parents of the child are required to admit or deny the petition.

a. If the parent subject to the petition enters a denial, the court shall schedule further proceedings pursuant to Section 9.08 below.

b. If the parent subject to the petition enters an admission, the court must ensure the following conditions are met:

i. The admission must be made under oath;

ii. The person entering the admission must acknowledge an understanding of the nature of the grounds set forth in the petition, the right to representation, trial, subpoena, and offer testimony; and

iii. The person entering the admission acknowledges an understanding that the facts being admitted establish the grounds set forth in the petition.

c. The Court shall refuse to accept an admission unless there is a factual basis for the admission.

d. If the Court makes a finding that the admission is accepted and the grounds admitted are proved, the Court shall enter an order with respect to adjudication of the matter and proceed to disposition. If the Court makes a finding that the admission has not been accepted, the Court shall schedule further proceedings pursuant to Section 9.08 below.

§ 9.07 Pretrial Hearing and Trial

i. The Court shall convene a pretrial hearing at least ten (10) days prior to trial.

a. The purpose of the pretrial hearing shall be to:

i. determine whether a settlement of any or all of the issues has occurred or is possible;

ii. determine whether the child shall be present and testify at trial and, if so, under what circumstances;

iii. identify any unresolved discovery matters;

iv. resolve any pending pretrial motions;

v. identify and narrow issues of law and fact for trial, including identifying any factual allegations admitted or denied, any stipulations to foundation and relevance of documents, and any other stipulations, admissions, or denials;

vi. exchange witness lists and a brief summary of each witness' testimony;

vii. exchange exhibit lists;

viii. confirm the trial date and estimate the length of the trial;

ix. determine the need for, and date for submission of, proposed findings; and

x. determine any other relevant issues

b. The Court shall file a pretrial order within then (10) days of the hearing and shall include all relevant information specified in Section 9.09(1)(a) above.

ii. Trial

a. A trial regarding termination of parental rights shall commence within sixty (60) days of the first scheduled admit/deny hearing, and testimony shall be concluded within twenty five (25) days from the date of commencement of the trial and whenever possible should be over consecutive days.

b. At trial, the parties shall have the right to:

i. present evidence;

ii. present witnesses;

iii. cross-examine witnesses;

iv. present arguments in support of or against the grounds set forth in the petition; and

v. ask the court to order that witnesses be sequestered.

c. The trial shall proceed as follows:

i. The party that drafted and filed the petition may make an opening statement confining the statements to the facts expected to be proved;

ii. The other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;

iii. the party that drafted and filed the petition shall offer evidence in support of the petition;

iv. the other parties, in order determined by the court, may offer evidence in rebuttal;

v. when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

vi. at the conclusion of the evidence the parties may make a closing statement in order determined by the court;

vii. if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered complete until the time for written arguments to be submitted as expired.

d. If the Court finds the grounds set forth in the petition are not proved, the Court shall either dismiss the petition or determine that the child is in need of protection or services. If the Court determines that the child is in need of protection or services, the Court shall either enter or withhold adjudication and schedule further proceedings in accordance with Chapter 6 of this Code.

e. If the Court finds that one or more grounds set forth in the petition are proved, the Court may terminate parental rights. In finding that one or more grounds are proved, the Court shall find that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child, and that terminating parental rights is in the best interest of the child and a tribe in which the child is eligible for enrolment or membership. The findings and order shall be filed with the Court Administrator.

§ 9.08 Default Judgment

1. If the parent fails to appear for the formal trial, the Court may find the parent in default, and enter a default order of termination of parental rights.

2. Due to the finality of a termination of parental rights, the Court must be satisfied beyond a reasonable doubt that actual notice has been given or that all possible steps have been taken to provide notice of the formal trial to the parent.

3. The Court must also find that the petitioner can prove the elements of the termination of parental rights petition.

4. If the parent is found in default, the Court shall specify the facts, grounds, and code sections upon which it relied to make the decision.

§ 9.09 Final Order for Termination of Parental Rights

1. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a termination of parental rights. An order for the termination of parental rights may include, but is not limited, to the following:

    a. A permanent termination of the parental rights of the parent including the suspension of the right to the care, custody and control of the child and allowing the child to be adopted;

    b. A permanent termination of the right of the parent to have contact with the child including contact in person, by mail, by telephone, or through third parties;

    c. Restraining a parent from contacting the child, the child's foster parent, the child's adoptive parent,*Giizhawaaso* Department;

        i. Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; unless specifically ordered by the Court.

    d. Ordering that any prior court order for custody, visitation, or contact with the child is hereby terminated;

    e. The parent shall have no standing to appear at, nor any notice of, any future legal proceedings involving the child;

    f. The termination of parental rights does not sever or affect in any way a child's relationship to his or her tribe or any rights of inheritance from the biological parents;

    g. What active efforts were taken by the *Giizhawaaso* Department to reunify the parent and child or allow the child to remain in a permanent home

        ii. In cases filed by the Department, on the basis of egregious harm, the department shall be relieved of active efforts to reunify, but will still continue to seek an appropriate permanent living situation for the child and ensure the child is in the best possible permanent placement. In the event that tribal social department is not the petitioner, the Court shall make findings of all active efforts to provide the services ordered by the Court or contained in the case plan geared toward reunification as well as

those delineated above.

iii. In support of its determination as to whether active efforts have been made, the Court shall:

1. Enter written findings as to whether prevention or reunification efforts were indicated and/or whether the *Giizhawaaso* Department was relieved of active efforts;

h. The termination of parental rights excludes the parent from inheriting from the child; and

i. Shall contain a statement regarding why it is in the best interests of the child and the child's tribe to enter this order.

2. The rights of one parent may be terminated without affecting the parental rights of the other biological parent.

3. Copies of any order for termination of parental rights shall be served upon all parties given notice of the hearing as outlined in Chapter 9, Section 9.04.

4. Final orders for the termination of parental rights may be reviewed by the Court at the request of the biological parent or the agency possessing custody of the child only if one of the following occurs:

a. An initial appeal is filed in accordance with Chapter 12 of this Code;

b. A jurisdictional error occurred, including lack of notice or service.

5. Notice of this review shall be provided to all parties who received copies of the order for termination of parental rights.

§ 9.10 Custody After Termination Order

1. If upon entering an order terminating the parental rights of a parent there remains no parent having parental rights, the Court shall commit the child to the custody of a *Giizhawaaso* Department for the purpose of establishing a permanent placement for the child.

2. If available, the *Giizhawaaso* Department may place the child in an adoptive home. In the absence of an adoptive home, the agency may place the child in a licensed foster home for short or long-term foster care, with a relative, or take other suitable measures for the care and welfare of the child.

3. In paragraphs 1 and 2 above, the Department and the Court shall be guided by what is in the particular child's best interest.

4. The custodian shall have the authority to consent to:

    a. the adoption of the child;

    b. the marriage of the child;

    c. the enlistment of the child in the armed forces of the United States;

    d. necessary surgical and other medical treatment for the child; and

    e. any matters as might normally be required of the child's parent.

§ 9.11 Future Review Hearings

1. If a child has not been adopted or permanently placed within ninety (90) days of the termination order, a review hearing will be held to review the progress of the case, and the tribal social service agency's efforts to finalize the permanent plan for the child and to make a placement in a home that will commit to being the legal permanent family for the child.

2. The six-month hearings will continue until the child is adopted or permanently placed.

CHAPTER TEN— Voluntary Relinquishments of Parental Rights

§ 10.01 Voluntary Relinquishment of Parental Rights

1. Parental rights may be relinquished by a parent in writing, if signed by the parent in the presence and with approval of the Court. In a customary adoption proceeding, the consent may be signed outside the presence of the court, if witnessed and attested to by the customary adoption worker.

2. If the child's tribe(s) have not been previously notified, the Court shall serve the petition for relinquishment and/or customary adoption to the child's tribe(s). The child's tribe(s) shall have thirty (30) days to respond to the notice; if no response is received within thirty (30) days to the Court or the *Giizhawaaso* Department, the child's tribe(s) will have been deemed to consent to the relinquishment and/or customary adoption.

3. Relinquishment shall not be accepted or acknowledged by the Court prior to thirty (30) days after birth of the child.

4. The court shall ensure that the parent understands the consequences of the voluntary relinquishment prior to approving it.

5. Nothing in this chapter applies to petitions for involuntary termination of parental rights filed under chapter 9.

6. A parent who wishes to relinquish his or her parental rights shall be provided an interpreter if he or she does not understand English.

7. Final orders for relinquishment of parental rights may be reviewed by the Court if there is an allegation that the relinquishing parent was under duress, coercion or fraud at the time of the relinquishment, or there is an allegation that a jurisdictional error occurred.

CHAPTER ELEVEN—ADOPTIONS

§ 11.01 Purpose

1. The purpose of adoptions shall be to give the adoptive child a permanent home where he or she can grow up surrounded by *zaagi'idiwin*, love, *manaaji'idiwin*, respect, and an appreciation of his or her cultural heritage.

2. The purpose of adoptions is not to permanently deprive the child of connections to, or knowledge of, the child's natural family, except in the case of Closed Adoptions.

3. To further the purpose of giving an adoptive child a permanent home, the following shall apply and be contained in all adoptive orders and decrees:

    a. The adoptive parents and adoptive child shall be treated under the laws as if the relationship was that of a natural child and parent, except as set forth within this Code.

    b. The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her natural family and his or her tribal heritage.

    c. The adoptive child and members of the child's natural extended family, including biological parents, shall have a right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents, unless it is a Closed Adoption as reflected in a contact agreement.

    d. Adoption shall not serve to prevent an adoptive child from inheriting from a natural parent in the same manner as any other natural child.

    e. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if natural parents and child.

    f. The natural parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit.

§ 11.02 Filing Adoption Petitions

1. Any person twenty one (21) years of age or older may file a petition for adoption.

2. The petition shall be initiated by the person proposing to adopt.

§ 11.03 Contents of Adoption Petition

1. The petition for adoption shall include the following, to the best information and belief of the petitioner:

    a. The full name, address, and tribal affiliation of the petitioner;

    b. The full name, sex, date and place of birth, and tribal affiliation of the proposed adoptee;

    c. The name by which the proposed adoptee shall be known if the petition is granted;

    d. The basis for the Court's jurisdiction;

    e. If the proposed adoptee is a child, a full description and statement of value of all property owned, possessed, or in which the child has an interest;

    f. The relationship of the petitioner to the proposed adoptee;

    g. The names of any person, agency or tribe whose consent to the adoption is necessary;

    h. A statement or copy of the final order suspending the parental rights of the biological parent(s);

    i. A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

2. Where there is more than one proposed adoptee and these proposed adoptees are siblings, only one petition shall be filed containing the name of each sibling proposed to be adopted.

3. All petitions must be signed and dated by the petitioner and must be notarized or witnessed by a clerk of the court.

§ 11.04 Consent to Adopt

1. Written consent from the tribe shall be executed and acknowledged by the Court.

2. Written consent to an adoption is required of the child if he or she is over twelve years of age, unless the child chooses to consent orally either in open Court or in chambers with only the judge and a witness present.

3. Parental consent to an adoption is not required if:

   a. The parent has abandoned his or her child;

   b. The parent's rights have been suspended or terminated;

   c. The parent has relinquished his or her parental rights; or

   d. The parent has been declared incompetent.

§ 11.05 Notice

1. Upon the filing of a petition seeking an order for adoption, the Court Administrator shall schedule a hearing to be held upon the petition.

2. Written notice of the hearing and a copy of the petition shall be served upon:
   a. If the child is eligible for membership or enrollment in another tribe, the designated representative of that tribe;

   b. The Indian Child Welfare Department and, if applicable, a county social services department;

   c. The preadoptive parents;

   d. The *gezhaanaajig nejanisug* (those who guard children) for the child, or the representative of the *gezhaanaajig nejanisug* program;

   e. The attorney for the child;

   f. The child, if the child is twelve years of age or older; and

   g. Any other person as the Court may find necessary or desirable to be present.

3. Notice shall be served in accordance with the procedures outlined in Chapter 6, Section 6.03 in this Code.

4. The Court may determine that it is unnecessary to give notice to specific individuals, including a parent who is not required to consent to adoption under Chapter 11, Section 11.04.

§ 11.06 Home Studies

1. When a petition for the adoption of a child is filed with the Court, the Court shall request that the Indian Child Welfare department or other qualified agency conduct a home study on the petitioner and report on the child.

2. In a private adoption pursuant to Section 11.12, the Court may request a home study under this Section 11.06 at the request of a party to the private adoption or *sua sponte* by the Court.

3. The home study and report to the Court shall:

    a. Relate the circumstances of the proposed adoptive home;

    b. Relate the physical and mental ability of the petitioner to assume the responsibilities of an adoptive parent;

    c. Address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his or her tribal affiliation; and

    d. Contain any other pertinent information that will assist the Court in determining the best placement for the child.

4. The home study or report shall not be required where the proposed adoptee is an adult.

5. A criminal background check shall be completed on the Petitioner(s) and the outcome submitted to the Court.

6. The home study shall be submitted to the Court no later than ten days before the initial hearing on the adoption petition.

7. The Court may order additional studies or reports as it deems necessary.

§ 11.07 Withdrawal of Consent

1. Any consent given under the provisions of this Chapter may be withdrawn by the person or agency that gave the consent up to ten (10) working days after the consent was signed and acknowledged.

2. No reason need be stated and no hearing need be held on the withdrawal of consent.

3. All withdrawals must be in writing and acknowledged before a notary public.

4. The original withdrawal must then be filed with the Court within ten (10) working days after the original consent was signed and acknowledged.

5. Within one year after the entry of a decree of adoption, the decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was

obtained through fraud or duress. The Petitioner must demonstrate to the Court by clear and convincing evidence that their consent was obtained through fraud or duress. Upon the showing, the Court shall vacate the decree and return the adopted person to that status he or she had prior to entry of the adoption decree.

§ 11.08 Adoption Preferences

1. The preference of placement in adoption shall be in the following order:

    a. An extended family member, kin, or Indian custodian;

    b. A tribal member or person eligible for tribal membership in the child's tribe;

    c. Other Indian persons, and;

    d. Any person who has some knowledge of the child's tribal affiliation and his or her special needs, if any.

2. The White Earth Children's Court has the ability to determine that the child's best interests require deviation from the preferences at any time.

§ 11.09 Hearing Procedures

1. An adoption hearing shall be held within ninety days of receipt of an adoption petition from the preadoptive parents.

2. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioner. In determining the best interests of the child, the Court shall examine:

    a. Validity of written consent;

    b. Suspension/Termination of parental rights order;

    c. Length of time, if any, of the child's wardship by the Court;

    d. Special conditions or needs of the child;

    e. Status of contact agreement regarding the child;

    f. Proposed adoptee's consent to adoption, if he or she is over twelve years of age;

    g. Home studies or other reports, and;

    h. Order of preference of placement.

3. The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the Court shall advise the parties of their basic rights as provided in Chapter 6, Section 6.03 of this Code.

4. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this Chapter have been met, enter a final decree of adoption. However, if the requirements are not met, the judge may place the person to be adopted, if a child, in the legal custody of the petitioner for a period of time not to exceed six months prior to entering a final decree of adoption.

5. If the Court is satisfied that the adoption will not be in the proposed adoptee's best interest, or finds that all of the requirements of this Chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this Code.

6. Proceedings for termination of the parent-child relationship and proceedings for adoption may be consolidated and determined at one hearing, provided that all the requirements of this Chapter as well as Chapter 9 of this Code are complied with fully.

§ 11.10 Final Decree of Adoption

1. If the Court finds that the requirements of this Chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered.

2. The Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.

3. A person, when adopted, may take the name of the adoptive parent.

4. Adoption declares the child to be legally the child of the adoptive parents and allows the child be entitled to all the rights, privileges, and obligations of a biological child.

§ 11.11 Closed Adoptions

1. In some situations, at the request of any party, adoption proceedings may be closed if deemed reasonable by the Court.

2. Closed adoption proceedings will proceed as the Open Adoptions indicated in Chapter 11, Sections 11.01-11.10,

3. In closed adoptions, the child shall be entitled to information regarding his or her biological family upon reaching the age of eighteen.

4. The child's biological family shall not be entitled to or have access to any information regarding the child.

§ 11.12 Right of Access to Records

1. In some situations, a private adoption may be appropriate. Private adoptions will be conducted in a manner so to convey binding authenticity to the people of the White Earth Band of Ojibwe. Binding authenticity shall be conveyed upon:

    a. Adoptions conducted in a manner that is long-established, continued, reasonable, and considered by the people of the White Earth Band of Ojibwe to be Customary; or

    b. Adoptions organized as agreed to by all parties involved, with the consent of the Tribal Court.

2. Any parent seeking to sever his or her own parental rights or the parental rights of another biological parent, or an interested adult possessing a legitimate interest in the matter may file a petition with the Court Administrator seeking an Order for the private adoption of a minor child.

3. Private adoption proceedings will be consistent with adoption proceedings in Chapter 10, Sections 10.01-10.10 of this Code, with the following procedural inclusions:

    a. Written consent to a private adoption is required of:

        i. The current biological or adoptive mother;

        ii. The current biological, adoptive, or acknowledged father;

        iii. The current custodian, if empowered to consent; and

        iv. The Court, if the current custodian is not empowered to consent.

    b. An interpreter shall be provided if the person required to consent to the adoption does not understand English.

    c. Required consent shall not be accepted or acknowledged by the Court prior to thirty days after the birth of the child.

    d. Whether voluntary or contested, a statement by an expert witness that the private adoption ceremony was performed in a binding and authentic manner, or as agreed to by the parties involved, shall be filed with the Tribal Court.

4. Voluntary private adoption proceedings will proceed as the adoptions indicated in Chapter 10, Sections 10.01-10.11. The Petition for a private adoption shall be dismissed without prejudice unless the Petition includes:

a. A statement as to why a private adoption is in the best interests of the child, parties involved, and Tribe; and

b. Certification that no similar adoption proceeding is occurring in any other Tribal and/or State Court.

5. When a private adoption is contested, adoption proceedings will follow the adoption proceedings indicated in Chapter 10, Sections 10.01-10.10, while strictly adhering to the hearing procedures in Chapter 10, Section 10.09. The Petition for a private adoption, when contested, shall be dismissed without prejudice unless the Petition includes:

   a. A statement as to why a private adoption is in the best interests of the child, parties involved, and Tribe;

   b. Certification that no similar adoption proceeding is occurring in any other Tribal and/or State Court; and

   c. A Tribal Court Preliminarily Proposed Order recognizing that both parties are adequately represented by council, Elder, or authorized lay advocate.

6. The final certification of a private adoption proceeding is entitled to the same enforcement as any adoption decree issued by this Court.

§ 11.12 Customary Adoptions

1. In some situations, a customary adoption may be appropriate. A customary adoption shall be conducted in a manner that is long-established, continued, and reasonable, and that is considered by the people of the White Earth Band of Ojibwe to be binding and authentic.

2. Any adult may file a petition with the Court Administrator seeking an order for the customary adoption of a minor child. Customary adoption proceedings will proceed as the Open Adoptions indicated in Chapter 11, Sections 11.01-10.11, with the inclusion in the petition of:

   a. A statement as to why a customary adoption is in the best interests of the child and the tribe;

   b. Certification that no similar adoption proceeding is occurring in any other tribal or state court; and

   c. A statement by an expert witness that the customary adoption ceremony was performed in a binding and authentic manner.

3. The final certification of a customary adoption proceeding entitled to the same enforcement as any open or closed adoption decrees issued by this Court.

§ 11.13 Adoptive Parent Relinquishment of Rights

1. After the issuance of a final decree of adoption pursuant to Section 11.10 of this Chapter, a parent may request to voluntarily relinquish his or her parental rights in accordance with Chapter 10 of this Code. Based on the factors leading to the request for relinquishment of parental rights, the *Giizhawaaso* Department shall recommend to the Court whether to grant the petition or not. The Court shall make a ruling consistent with Chapter 10 of this Code.

CHAPTER TWELVE—APPEALS

§ 12.01 Appeals

1. Any party to the proceeding who is affected by an order of the Children's Court may appeal a final order of the Children's Court.

2. A written notice of appeal must be filed with the White Earth Band of Ojibwe Appellate Court within thirty days of the final order, unless otherwise specified by the White Earth Band of Ojibwe Rules of Appellate Court Procedure.

3. The tribal attorney shall represent the Tribe and the Children's Court upon appeal and shall be notified of the appeal by the clerk.

4. The taking of an appeal shall not operate as a *supersedeas* in any case unless pursuant to an order of the Court. The child shall continue in custody under the most recent order until the appeal is decided.

5. The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled with the initials, but not the name, of the child and the court case number.

    a. The papers shall remain sealed in the office of the clerk of court when not in use by the appellate court and shall not be open to public inspection.

    b. The decision of the appellate court shall be likewise entitled and shall refer to the child only by initials and court case number.

6. A record of proceedings shall be made available to the child, his or her parent, guardian, or custodian, the child's counsel, and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

7. All appeals shall be conducted in accordance with the White Earth Band of Ojibwe Rules of Appellate Court Procedure, so long as those provisions are not in conflict with the provisions of this Code. Any conflict between codes should be resolved in the best interest of the child.

8. The original order of the appellate court, with all papers filed in the case on appeal, shall remain in the office of the clerk of court, sealed, and not open to inspection except by order of the appellate court.

9. The clerk of court shall return to the Children's Court all papers transmitted to the appellate court from the Children's Court, together with a certified copy of the order of the appellate court.

CHAPTER THIRTEEN—GUARDIANSHIP

§ 13.01 Types of Guardianship

1. The Children's Court, when it appears necessary or convenient, may appoint a guardian for the person or property of a child under the Court's jurisdiction or an incompetent who has no guardian legally appointed by will or deed.

2. The types of guardianship shall include guardianship of the person or guardianship of property.

3. Guardianship of the person may be either temporary guardianship or permanent guardianship.

§ 13.02 Temporary Guardianship

1. The Court may appoint a temporary guardian under the terms and conditions as the Court sets forth in its written order.

2. A temporary guardianship may be terminated if the Court determines that is in the best interests of the child or incompetent to change custody from the temporary guardian to a new guardian; return the child to the parent, guardian, or custodian; or the child is emancipated under Chapter 14 of this Code.

3. The child's or incompetent's parents and extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

§ 13.03 Permanent Guardianship

1. The Court may appoint a permanent guardian for the child or incompetent under the terms and conditions as the Court sets forth in its written order.

2. Permanent guardianship provides for permanent custody of a child or incompetent to someone other than the parents, although there is no suspension or termination of parental rights.

3. There shall be a presumption of continued permanent guardianship in order to provide stability for the child or incompetent.

4. The child's or incompetent's parents and extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

§ 13.04 Guardianship of Property

1. The Court may appoint a guardian of the property of a child or incompetent person under the terms and conditions as the Court sets forth in its written order.

2. The guardianship may cover all property until the child reaches eighteen years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order.

3. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

§ 13.05 Filing Guardianship Petitions

1. Any person may file a petition for guardianship.

2. The petition shall be initiated either by the proposed guardian or by the proposed ward if she or he is at least fourteen years of age.

§ 13.06 Contents of Guardianship Petition

1. The petition for guardianship shall include the following, to the best information and belief of the petitioner:

    a. The full name, address, and tribal affiliation of the petitioner;

    b. The full name, sex, date and place of birth, residence, and tribal affiliation of the proposed ward;

    c. The basis for the Court's jurisdiction;

    d. The relationship of the proposed guardian to the proposed ward;

    e. The name and address of the person or agency having legal or temporary custody of the proposed ward;

    f. The type of guardianship requested;

    g. In the case of alleged incompetent persons, the grounds for incompetency under Chapter 13, Section 13.10; and

h. If guardianship of property is requested, a full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest.

2. All petitions must be signed and dated by the petitioners and must be notarized or witnessed by a clerk of the court.

§ 13.07 Guardianship Report

1. Upon the filing of a guardianship petition, the Court shall immediately request that the social services department or other qualified agency conduct a report on the proposed guardian and on the proposed ward.

2. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

3. No determination can be made on a petition for guardianship until the report has been completed, submitted, and considered by the Court.

4. The guardianship report shall be submitted to the Court no later than ten days before the initial guardianship hearing.

5. The Court may order additional reports as it deems necessary.

§ 13.08 Guardianship Procedures

1. Before making an appointment, the Court must ensure reasonable notice is given to any person entrusted with the care of the child or incompetent and to any other relatives of the child or incompetent residing on the Reservation as the Court may deem proper.

2. In cases of adult incompetents, the Court may cause notice to be given to the incompetent at least five days before hearing the petition.

3. If a child is under the age of fourteen years, the Court may nominate or appoint his or her guardian. If the child is fourteen years of age or older, he or she may nominate his or her own guardian who, if approved by the Court, must be appointed accordingly.

4. If the guardian nominated by the child is not approved by the Court, or if the child resides outside of the Reservation, or if, after being duly cited by the Court, he or she neglects for ten days to nominate a suitable person, the Court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen years.

5. When a guardian has been appointed by the Court for a child under the age of fourteen years, the child, at any time after he or she attains that age, may nominate his or her own guardian, subject to approval of the Court.

6. The procedures for guardianship hearings shall be held in accordance with Chapter 5, Section 5.02 and Chapter 6, Section 6.03.

§ 13.09 Guardian Duties and Responsibilities

1. A guardian appointed may, as specified by the Court, have the custody and care of the education of the ward and the care and management of his or her property until the ward arrives at the age of eighteen, marries, is emancipated by the Court under Chapter 14 of this Code, or until the guardian is legally discharged.

2. The guardian shall not have the authority, without express written consent of the Court, to dispose of any real or personal property of the ward in any manner, including, but not limited to, the ward's Individual Indian Money Account.

3. The guardian shall have the authority to consent to the medical care and treatment of the ward.

4. The Court may order that the Court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this Code.

    a. The reimbursement payments must be used by the person or agency with custody of the ward for the sole purpose of covering expenses incurred in the care and custody of the ward and shall not be used for any other purpose.

    b. The use of reimbursement payments for any purpose other than that described in this Chapter shall subject the person or agency to contempt of court and to any criminal and civil penalties or remedies provided by the Tribal Code.

5. In the event that any guardian receives any money or funds of any child or incompetent during the term of the guardianship, the Court must require the guardian to complete a bond with sufficient surety to be approved by the Court, conditioned upon the guardian faithfully executing the duties of the guardianship, including:

    a. Making an inventory of all the estate of the ward that comes into the guardian's possession or knowledge and returning the entire estate when ordered by the Court;

    b. Managing and disposing of the ward's estate according to tribal, local, state, and federal laws;

    c. Managing and disposing of the ward's estate in the best interests of the ward, considering the necessary and appropriate care, custody, and education of the ward;

    d. Accounting all property, estate, money, proceeds, an interests of the ward, including the guardian's management and disposition to the Court, on oath, within

three months after the expiration of the guardianship or whenever requested by the Court; and

e. Paying over, delivering, and settling all accounts, estate, monies, and effects of the ward to the Court, judge, ward if he or she has reached age eighteen, or the legal representative of the ward when the guardianship has ended.

6. The funds of any child or incompetent must be used by his or her guardian solely for the support and education of the child or incompetent.

   a. The ward's funds shall only be expended by the guardian in a reasonable manner according to the circumstances and situation in life of the ward.

   b. The guardianship must take into consideration the total income and estate of the ward before expending any of the ward's funds.

7. If determined to be appropriate by the Court, the written order may set forth that the child's property may not be used for the child's care, but must be managed for the child until the child reaches the age of eighteen or is emancipated by the Court.

§ 13.10 Incompetent Persons

1. In case of incompetent persons, the Court may appoint a guardian of the person and estate within the powers and duties of a guardian specified in this Chapter.

2. A guardian may only be appointed for an incompetent person if there has been a full hearing and examination of the petition; at least two qualified physicians have certified that the person is incompetent as defined in Chapter 1, Section 1.05(55); and the Court agrees that the incompetent is not capable of taking care of him or herself or of managing his or her property.

3. Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of the ward and the management of his or her estate until the guardian is legally discharged; the guardian must give bond to an incompetent as described in Chapter 13, Section 13.09.

4. Any person who has been declared incompetent; the guardian of the incompetent; any relative to the third degree of the incompetent; or any close friend of the incompetent may petition the Court to have the incompetent's mental capacity judicially determined. The petition must be signed and dated by the petitioner, notarized or witnessed by a clerk of the court, and include:

   a. The full name, address, and tribal affiliation of the petitioner;

b. The full name, sex, date and place of birth, residence, and tribal affiliation of the incompetent;

c. The basis for the Court's jurisdiction;

d. The relationship of the petitioner to the incompetent;

e. The name and address of the person or agency having legal or temporary custody of the incompetent; and

f. The grounds for the revocation of incompetency and determination of competency.

5. The Court shall require notice to be given to all necessary parties of a hearing upon the competency petition.

6. At the competency hearing, the petition and any relevant witnesses shall be examined and the Court shall make a judicial determination whether the incompetent should or should not be declared sound of mind and capable of taking care of himself or herself and his or her property.

7. If the court ordered the petition granted and the restoration of competency, the guardianship of the incompetent shall cease, unless the incompetent has not yet reached eighteen years of age.

CHAPTER FOURTEEN—EMANCIPATION

§ 14.01 Emancipation

1. A child over the age of sixteen may petition the Court for emancipation.

2. The Court shall grant emancipated status when the child proves to the Court that the child is capable of functioning as an independent and responsible member of the community.

3. The Court must consider the child's best interest in determining whether the child should be emancipated. The child's best interest may include the:

   a. Child's age;

   b. Mental and physical ability of the child;

   c. Ability of the child to manage his or her own wages and assets; and

   d. Ability of the child to provide his or her own basic material support, including food, shelter, clothing, and medical care.