

**WHITE EARTH BAND OF OJIBWE TRIBAL CODE  
TITLE 6 – FAMILY RELATIONS CODE**

**CHAPTER 10A – WHITE EARTH PARENTAGE ACT**

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**§10A.01**      **Title**

Title 6, Chapter 10A, shall be referred to as the White Earth Parentage Act of the White Earth Nation.

**§10A.02**      **Purpose**

The White Earth Parentage Act shall be liberally interpreted and construed to fulfill the following purposes:

1. To establish a confidential process by which the parental heritage of the children of the White Earth Nation may be identified;
2. To ensure that the interests of children are protected to the fullest extent of the law;
3. To assert Tribal jurisdiction over the establishment of parentage of tribal children;
4. To ensure the future of the White Earth Nation by delegating the authority to the White Earth Tribal Court and the White Earth Nation Child Support Program to effectively fulfill the purposes of this Chapter.

**§10A.03**      **Definitions**

1. Terms under this Chapter shall be liberally construed so as not to limit the jurisdiction of the White Earth Tribal Court over tribal children, and to facilitate the authority of the Tribal Court to act to protect the interests of tribal children and their families. When interpreting terms not defined by this Chapter, the Tribal Court shall take into consideration tribal laws and customs. Unless in conflict with applicable tribal law, terms not specifically defined in this Chapter shall be defined according to their normal usage, or as defined in the federal regulations for Tribal Child Support Programs found at 45 CFR § 309 et seq.
2. For purposes of Tribal Parentage Act, the following definitions apply:
  - a. **"Acknowledged father"** means a man who has established a father-child relationship under sections of [Title 6, Chapter 10A](#).
  - b. **"Adjudicated father"** means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
  - c. **"Alleged father"** means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include a presumed father or a man whose parental rights have been terminated or declared not to exist.
  - d. **"Child"** means an individual of any age whose parentage may be determined under the sections of this Chapter.
  - e. **"Determination of parentage"** means the establishment of the parent-child relationship by the signing of an acknowledgment of paternity under the sections of this Chapter or adjudication by the court.
  - f. **"Duress"** means use of physical or psychological force to coerce a person to sign an acknowledgment of paternity.

- g. **"Effective date"** means when the acknowledgment of paternity is fully executed, by the later of the signature dates.
- h. **"Ethnic or racial group"** means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.
- i. **"Former parent"** means an acknowledged father who successfully rescinded or challenged an acknowledgment of paternity under this Chapter, a presumed father whose parentage was successfully rebutted under this Chapter, or an adjudicated father whose parentage was disestablished after an order issued under this Chapter was vacated.
- j. **"Fraud"** means an intentional misrepresentation of a material fact.
- k. **"Genetic testing"** means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
  - (1) Deoxyribonucleic acid, and
  - (2) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
- l. **"Man"** means a male individual of any age.
- m. **"Material mistake of fact"** means a mistake as to the facts that could not have been known at the time a signatory executed an acknowledgment of paternity.
- n. **"Parent"** means an individual who has established a parent-child relationship under the sections of this Chapter.
- o. **"Parent-child relationship"** means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
- p. **"Paternity index"** means the likelihood of paternity calculated by computing the ratio between:
  - (1) The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child, and
  - (2) The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.
- q. **"Presumed father"** means a man who, by operation of law under section 10A.15 of this Chapter, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.
- r. **"Probability of paternity"** means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.
- s. **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

- t. **"Signatory"** means an individual who authenticates a record and is bound by its terms.
- u. **"State"** means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- v. **"Tribal Court"** means the White Earth Tribal Court or Tribal Court of the White Earth Nation.
- w. **"Title IV-A"** refers to title IV-A of the Social Security Act under which the federal government provides funds to Tribes and States to provide temporary financial assistance to families using federal dollars.
- x. **"Title IV-D"** means title IV-D of the Social Security Act, under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
- y. **"Title IV-E"** refers to title IV-E of the Social Security Act under which the federal government provides funds to tribes and states to assist with the costs of operating foster care programs.
- z. **"Title XIX"** refers to title XIX of the Social Security Act under which the federal government provides funds to states to provide medical care assistance through a state-operated and administered program that provides medical benefits for certain indigent or low-income persons in need of health and medical care.
- aa. **"Tribal Court"** means the White Earth Tribal Court.
- bb. **"Tribe"** means the White Earth Nation.
- cc. **"WEN CSEP"** means the White Earth Nation Child Support Program.
- dd. **"White Earth Nation Child Support Program"** means the Tribal Child Support Agency, which provides child support services to children and families and is authorized to seek:
  - (1) Location of obligors or their assets and obligees;
  - (2) Determination of parentage;
  - (3) Establishment or modification of child support; or
  - (4) Enforcement of support orders or laws relating to the duty of support.
- ee. **"White Earth Tribal Court"** means the Tribal Court of the White Earth Nation.

**§10A.04 Jurisdiction of the White Earth Tribal Court and the White Earth Nation Child Support Program**

1. *Subject Matter Jurisdiction.* The White Earth Tribal Court and White Earth Nation Child Support Program shall have jurisdiction over any proceeding arising under this Chapter and actions arising under the customs and traditions of the White Earth Nation affecting the determination of parentage in this Tribe. The Tribal Court and the WEN CSEP shall apply the law and customs of this Tribe to adjudicate parentage. The applicable law does not depend on:
  - a. The place of birth of the child; or
  - b. The past or present residence of the child.

2. *Personal Jurisdiction.* An individual may not be adjudicated to be a parent unless the White Earth Tribal Court has personal jurisdiction over the individual, (refer to personal jurisdiction code). The White Earth Tribal Court may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if:
  - a. The individual is personally served with a summons within the exterior boundaries of the White Earth Nation;
  - b. The individual submits to the jurisdiction of the Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - c. The individual resided with the child or the child's biological mother within the exterior boundaries of the White Earth Reservation;
  - d. The individual resided within the exterior boundaries of the White Earth Reservation and provided prenatal expenses or support for the child;
  - e. The child resides within the exterior boundaries of the White Earth Reservation as a result of the acts or directives of the individual;
  - f. The individual engaged in sexual intercourse within the exterior boundaries of the White Earth Reservation and the child may have been conceived by that act of intercourse; or
  - g. There is any other basis consistent with the constitutions of this Tribe and the United States for the exercise of personal jurisdiction.
  - h. Refer to 10C.05 of the Child Support Act
3. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.
4. This Chapter does not create, enlarge, or diminish parental rights or duties under other laws of this Tribe.
5. The Tribal Court has the authority to punish for contempt, committed in or out of the Court's presence.
6. Whenever state, federal, and other tribal courts have jurisdiction over any of the matters provided for in this Chapter, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.
7. The limitations on jurisdiction contained in this Chapter are not intended to reflect the White Earth Nation's view as to the legally permissible limits of tribal jurisdiction.

**§10A.05 Protection of Participants – Confidentiality of Case Records.**

1. The case records of the Tribal Court and the WEN CSEP concerning the actions taken under this Chapter must be kept confidential except as provided in this Chapter.
2. The Tribal Court and the WEN CSP shall not release information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered.
3. The Tribal Court and the WEN CSP shall not release information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of

the information to that person may result in physical or emotional harm to the party or child.

#### **§10A.06 Authorized Release of Case Records and Other Information**

1. The use or disclosure of personal information received or maintained by the WEN CSP and the White Earth Tribal Court shall be limited to purposes directly connected with the WEN CSP and the White Earth Tribal Court or titles IV-A, XIX, and IV-E of the Social Security Act and for purposes prescribed by the Secretary in federal regulations.
2. Records of the WEN CSP, including case notes and correspondence, may be disclosed to the following persons and entities, unless otherwise protected by this section:
  - a. WEN CSP Staff;
  - b. White Earth Tribal Court Judges;
  - c. White Earth Tribal Court Clerks and Court Manager for filing purposes;
  - d. Tribal Social Services agencies and White Earth Financial Services;
  - e. State of Minnesota IV-D employees directly connected with the administration of Titles IV-D, IV-A, IV-E, and XIX programs, as outlined in the cooperative agreement between Minnesota and the White Earth Nation;
  - f. A court having jurisdiction in parentage, support or abandonment proceedings or actions;
  - g. The legal guardian, attorney, or agent of a child; or
  - h. An agency of the federal government or any other state or tribal child support enforcement IV-D program engaged in the establishment of paternity, a child support obligation, or the enforcement of support for a child in a case.
3. The WEN CSP and White Earth Tribal Court may limit the information disclosed to persons, agencies, and entities named in this section to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this section gives these entities or persons the right to review or copy the complete case record.
4. A final order in a proceeding under sections 10A.39 through 10A.61 is available for public inspection. Other White Earth Tribal Court papers and records are available only with the consent of the parties or on order of the Court for good cause.

#### **§10A.07 Publication of Proceedings**

When providing service by publication, the names of children, social security number, and address in the matter shall not be disclosed. Only the child's initials shall be published.

#### **§10A.08 Penalty for Unauthorized Disclosure**

Any person, including but not limited to any tribal employee, elected officials, tribal court employees, and employees of the WEN CSP, who willfully discloses otherwise confidential information related to an action to determine parentage, other than expressly authorized and provided for under this Chapter, may be subject to a civil fine not to exceed five hundred (\$500.00) dollars in addition to any disciplinary actions authorized under the tribal personnel policies and procedures.

**§10A.09**      **Contempt of Court**

1. Willful and unjustifiable misbehavior by any person which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding under this Chapter conducted by the White Earth Tribal Court, or which obstructs or interferes with the administration of justice by the Tribal Court, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of the Tribal Court shall constitute contempt of court.
2. When contempt of court is committed in the presence of such Court it may be punished summarily by that Court. In such case, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt and prescribing the punishment.
3. When it appears to the Tribal Court that a contempt of court may have been committed out of the presence of the Tribal Court, the Tribal Court may issue a summons to the person so charged directing him to appear at a time and place designated for a hearing on the matter. The Court shall conduct a hearing, and if it finds him guilty of contempt, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment.
4. Any person found in contempt of court as specified in this section may be subject to a civil fine not to exceed five hundred (\$500.00) dollars.

**§10A.10**      **Rights of the Parties**

Except as otherwise expressly provided in this Chapter, all parties, and their counsel, or other persons they have selected to represent them, shall be entitled to the following rights in every proceeding under this Chapter:

1. A statement by the Court to the parties to the action that they have the right under this Chapter to have a lawyer or other persons they have selected to represent them at the proceeding, but that they may have to pay for such representation.
2. If it appears that the party cannot pay for counsel, the Court shall inform him or her of any available legal aid offices which provide representation.
3. The opportunity to introduce, examine and cross-examine witnesses.
4. The opportunity to discover, offer or inspect evidence.
5. The opportunity to present arguments and statements.

**§10A.11**      **Notice**

All parties to a proceeding under this Chapter shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard at such a proceeding.

**§10A.12**      **Establishment of Parent-Child Relationship**

1. The mother-child relationship is established between a woman and a child by:
  - a. The woman's having given birth to the child;



- b. An adjudication of the woman’s maternity;
  - c. Adoption of the child by the woman; or
  - d. As otherwise provided by law.
2. Provisions of this Chapter relating to determination of paternity apply to determinations of maternity.
  3. The father-child relationship is established between a man and a child by:
    - a. An un rebutted presumption of the man’s paternity of the child under section 10A.13 of this Chapter;
    - b. An effective acknowledgment of paternity by the man under sections 10A.17 through 10A.27 of this Chapter, unless the acknowledgment has been timely rescinded or successfully challenged;
    - c. An adjudication of the man’s paternity;
    - d. Adoption of the child by the man; or
    - e. As otherwise provided by law.

**§10A.13**      **No Discrimination Based on Marital Status**

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

**§10A.14**      **Consequences of Establishment of Parentage**

Unless parental rights are suspended (SPR) or terminated, a parent-child relationship established under this Chapter applies for all purposes, except as otherwise provided by the laws of this Tribe.

**§10A.15**      **Presumption of Paternity**

1. A man is presumed to be the father of a child if:
  - a. He and the mother of the child are married to each other and the child is born during the marriage;
  - b. He and the mother of the child were married to each other and the child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;
  - c. Before the birth of the child, he and the mother of the child married each other in apparent compliance with Tribal law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;
  - d. After the birth of the child, he and the mother of the child married each other in apparent compliance with Tribal law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
    - (1) The assertion is in a record filed with the Tribal Court, WEN CSP, tribal enrollment office, or the State Registrar for Vital Statistics.

- (2) He agreed to be and is named as the child's father on the child's birth certificate, or
  - (3) He promised in a record to support the child as his own; or
  - e. He openly held out the child as his own and the community accepted him as the child's father.
2. A presumption of paternity established under this section may be rebutted only by adjudication under sections 10A.39 through 10A.61 of this Chapter.

**§10A.16**      **When not to Pursue Paternity Establishment**

- 1 Cases involving incest,
- 2 Cases involving forcible rape, or
- 3 Cases in which legal proceedings for adoption of the child are pending.

In any of the above situations; establishment of paternity will not be pursued if it is the opinion of WEN CSP, which the pursuit of establishment for the child would not be in the best interests of the child.

**§10A.17**      **Tribal Acknowledgment and Denial of Paternity – Duties of the WEN CSP**

- 1. The WEN CSP and White Earth Tribal Court must provide an alleged father the opportunity to voluntarily acknowledge paternity pursuant to 45 CFR 309.100(a)(2);
- 2. The WEN CSP shall prescribe standard forms that parents may sign to acknowledge or deny paternity and that shall be filed with the WEN CSP and the White Earth Tribal Court.
- 3. A valid acknowledgment of paternity, rescission of acknowledgment of paternity, or denial of paternity is not affected by a later modification of the prescribed form.

**§10A.18**      **Tribal Acknowledgment of Paternity - Execution**

- 1. The mother of a child and a man claiming to be the genetic father of the child may execute a tribal acknowledgement of paternity with intent to establish the man's paternity.
- 2. A tribal acknowledgment of paternity shall:
  - a. Be in a record;
  - b. Be signed and notarized under penalty of perjury by the mother and by the man seeking to establish his paternity;
  - c. State that the child whose paternity is being acknowledged:
    - (1) Does not have a presumed father, or has a presumed father whose full name is stated, and
    - (2) Does not have another acknowledged or adjudicated father;
  - d. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
  - e. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that after the rescission period has

- ended a challenge to the acknowledgment is permitted only on the basis of fraud, duress, or material mistake of fact.
3. The WEN CSP and the White Earth Tribal Court shall instruct the parties to send the notarized Tribal Acknowledgment of Paternity form to the State Registrar of Vital Statistics to request the amendment of the birth record of the child, if appropriate.

**§10A.19**      **Denial of Paternity by a Presumed Father**

A presumed father may sign a denial of his paternity. The denial is valid only if:

1. A tribal acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to section 10A.21 of this Chapter;
2. The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury;
3. The denial states facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
4. The presumed father has not previously:
  - a. Acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to section 10A.23 of this act or successfully challenged pursuant to section 10A.24 of this act, or
  - b. Been adjudicated to be the father of the child.

**§10A.20**      **Rules for Acknowledgment and Denial of Paternity**

1. An acknowledgment of paternity and a denial of paternity may be executed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are executed.
2. An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.
3. Subject to subsection 1 of this section, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the execution of the document, whichever occurs later.
4. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this Chapter.
5. An acknowledgment of paternity or denial of paternity may be completed for a child who was not born within the exterior boundaries of the White Earth Nation.

**§10A.21**      **Effect of Tribal Acknowledgment or Denial of Paternity**

1. Except as otherwise provided in sections 10A.23 and 10A.24 of this Chapter, a valid tribal acknowledgment of paternity filed with the WEN CSP or the White Earth Tribal Court is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent and must be recognized as a basis for a support order in any proceeding to establish, enforce, or modify a support order.
2. Except as otherwise provided in sections 10A.23 and 10A.24 of this Chapter, a valid denial of paternity by a presumed father filed with the WEN CSP or the White Earth Tribal Court when executed in conjunction with a valid tribal acknowledgment of

paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

**§10A.22**      **No Filing Fee**

The WEN CSEP shall not be responsible for filing a tribal acknowledgment of paternity, denial of paternity, rescission of acknowledgment of paternity, or rescission of denial of paternity. The Custodial or the Non-Custodial Parent must handle this on his/her own and will be responsible for any fees.

**§10A.23**      **Proceeding for Rescission**

A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

1. Sixty days after the effective date of the acknowledgment or denial, as provided in section 10A.20; or
2. Within ten days after the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

**§10A.24**      **Challenge After Expiration of Period for Rescission**

1. After the period for rescission under section 10A.23 has expired, a signatory of a tribal acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact.
2. There is no time limitation on when a party may commence a proceeding to challenge the tribal acknowledgment or denial of paternity as provided for in [subsection 1 of this section](#).
3. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

**§10A.25**      **Procedure for Rescission or Challenge**

1. Every signatory to a tribal acknowledgment of paternity and any related denial of paternity shall be made a party to a proceeding to challenge the acknowledgment or denial.
2. For the purpose of challenging a tribal acknowledgment of paternity or a denial of paternity, a signatory submits to personal jurisdiction of this Tribe by signing the tribal acknowledgment or denial of paternity.
3. Except for good cause shown, during the pendency of a proceeding to challenge a tribal acknowledgment of paternity or denial of paternity, the White Earth Tribal Court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.
4. A proceeding to challenge a tribal acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under this Chapter.

5. At the conclusion of a proceeding to rescind a tribal acknowledgment of paternity or denial of paternity, the White Earth Tribal Court shall instruct the parties to send the tribal court order to the state department of health to request the amendment of the birth record of the child, if appropriate.

**§10A.26**      **Full Faith and Credit**

In any proceeding in which paternity or denial of paternity of a child is alleged, the White Earth Tribal Court shall give full faith and credit to a determination of paternity or nonpaternity by another tribe or state, made before a determination of paternity under the laws of this Tribe, whether established through voluntary acknowledgment or through administrative or judicial processes. The paternity or nonpaternity determination made by the other jurisdiction must be in compliance with the law of that jurisdiction and due process satisfied.

**§10A.27**      **Release of Information**

The WEN CSP and the White Earth Tribal Court may release copies of the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to appropriate state and tribal courts or other state or tribal child support programs.

**§10A.28**      **Adoption of Rules – Reserved**

**§10A.29**      **Scope of Genetic Testing**

Sections 10A.29 through 10A.39 govern genetic testing of an individual to determine parentage, whether the individual:

1. Voluntarily submits to testing; or
2. Is tested pursuant to an order of the White Earth Tribal Court.

**§10A.30**      **Order for Genetic Testing**

1. The White Earth Tribal Court may order genetic testing.
2. Except as otherwise provided in sections 10A.29 through 10A.62, the White Earth Tribal Court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:
  - a. Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or
  - b. Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
3. If a request for genetic testing of a child is made before the birth of the child, the White Earth Tribal Court may not order in utero testing.
4. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

### **§10A.31**

#### **Requirements for Genetic Testing**

1. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
  - a. The American association of blood banks, or a successor to its functions;
  - b. The American society for histocompatibility and immunogenetics, or a successor to its functions; or
  - c. An accrediting body designated by the federal secretary of health and human services.
2. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.
3. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the data bases from which to select frequencies for use in calculation of the probability of paternity. If there is a disagreement as to the testing laboratory's choice, the following rules apply:
  - a. The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory. The cost of any retesting shall be the responsibility of the individual who objected.
  - b. The individual objecting to the testing laboratory's initial choice shall:
    - (1) If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
    - (2) Engage another testing laboratory to perform the calculations.
  - c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.
4. If, after recalculation using a different ethnic or racial group, genetic testing does not reputedly identify a man as the father of a child under section 10A.33, an individual who has been tested may be required to submit to additional genetic testing.

### **§10A.32**

#### **Report of Genetic Testing**

1. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of sections 10A.29 through 10A.39 of this Chapter is self-authenticating.
2. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:
  - a. The names and photographs of the individuals whose specimens have been taken;
  - b. The names of the individuals who collected the specimens;
  - c. The places and dates the specimens were collected;
  - d. The names of the individuals who received the specimens in the testing laboratory; and
  - e. The dates the specimens were received.

**§10A.33**      **Genetic Testing Results – Rebuttal**

1. Under this Chapter, a man is reputedly identified as the father of a child if the genetic testing complies with sections 10A.29 through 10A.39 and the results disclose that:
  - a. The man has at least a ninety-nine percent probability of paternity, using a prior probability of five-tenths, as calculated by using the combined paternity index obtained in the testing; and
  - b. A combined paternity index of at least one hundred to one.
2. A man identified under subsection 1 as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of sections 10A.29 through 10A.39 which:
  - a. Excludes the man as a genetic father of the child; or
  - b. Identifies another man as the possible father of the child.
3. Except as otherwise provided in section 10A.38, if more than one man is identified by genetic testing as the possible father of the child, the White Earth Tribal Court shall order them to submit to further genetic testing to identify the genetic father.

**§10A.34**      **Costs of Genetic Testing**

1. Subject to assessment of costs under sections 10A.40 through 10A.62 of this Chapter, the cost of initial genetic testing must be advanced:
  - a. By the WEN CSP in a proceeding in which the WEN CSP is providing services;
  - b. By the individual who made the request;
  - c. As agreed by the parties; or
  - d. As ordered by the White Earth Tribal Court.
2. In cases in which the cost is advanced by the WEN CSP, the WEN CSP may seek reimbursement from a man who is rebuttably identified as the father.

**§10A.35**      **Additional Genetic Testing**

1. The White Earth Tribal Court or the WEN CSP shall order additional genetic testing upon the request of a party who contests the result of the original testing.
2. If the previous genetic testing identified a man as the father of the child under section 10A.33, the Tribal Court or WEN CSP may not order additional testing unless the party provides advance payment for the testing.

**§10A.36**      **Genetic Testing When Specimens Not Available**

1. Subject to subsection 2 of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the White Earth Tribal Court considers to be just, the Court may order the following individuals to submit specimens for genetic testing:
  - a. The parents of the man;
  - b. Brothers and sisters of the man;
  - c. Other children of the man and their mothers; and
  - d. Other relatives of the man necessary to complete genetic testing.
2. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

**§10A.37**      **Deceased Individual**

For good cause shown, the Tribal Court may order genetic testing of a deceased individual.

**§10A.38**      **Identical Brothers**

1. The White Earth Tribal Court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.
2. If each brother satisfies the requirements as the identified father of the child under [section 10A.32](#) without consideration of another identical brother being identified as the father of the child, the Tribal Court may rely on non-genetic evidence to adjudicate which brother is the father of the child.

**§10A.39**      **Confidentiality of genetic testing**

The report of genetic testing for parentage is confidential. An individual who knowingly releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen is deemed to have violated the client's confidentiality and is subject to section 10A.08 of this Chapter.

**§10A.40**      **Proceeding to adjudicate the parentage of a child – Authorization**

A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the [White Earth Rules of Civil Procedure](#).

**§10A.41**      **Standing to maintain proceeding**

Subject to sections 10A.18 through 10A.28 and sections 10A.44 and 10A.46, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The WEN CSP;
5. An authorized adoption agency or licensed child-placing agency; or
6. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

**§10A.42**      **Parties to proceeding**

The following individuals must be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated.

**§10A.43**      **No limitation – Child having no presumed acknowledged, or adjudicated father**

A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding; or



2. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

**§10A.44**      **Limitation – Child having presumed father**

1. Except as otherwise provided in subsection 2 of this section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than three years after the birth of the child.
2. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the White Earth Tribal Court determines that:
  - a. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
  - b. The presumed father never openly held out the child as his own.
3. For purposes of this section and section 10A.44, an action to establish support for a child is a proceeding to adjudicate parentage if the child's presumed father raises nonpaternity as a defense to the action.

**§10A.45**      **Authority to deny motion for genetic testing**

1. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the White Earth Tribal Court may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the Court determines that:
  - a. The conduct of the mother or the presumed or acknowledged father stops that party from denying parentage; and
  - b. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.
2. In determining whether to deny a motion seeking an order for genetic testing under this section, the Court shall consider the best interest of the child, including the following factors:
  - a. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
  - b. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;
  - c. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;
  - d. The nature of the relationship between the child and the presumed or acknowledged father;
  - e. The age of the child;
  - f. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
  - g. The nature of the relationship between the child and any alleged father;
  - h. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and

- i. Other factors that may affect the qualities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.
3. In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.
4. Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.
5. If the Court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

**§10A.46**      **Limitation – Child having acknowledged or adjudicated father**

1. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed under section 10A.23 or 10A.24.
2. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of a paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than three years after the effective date of the acknowledgment or adjudication.
3. A proceeding under this section is subject to the application of the principles of estoppel established in section 10A.45.

**§10A.47**      **Joinder of proceedings**

A proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding.

**§10A.48**      **Proceeding Before Birth**

A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

1. Service of process;
2. Discovery; and
3. Except as prohibited by section 10A.30, collection of specimens for genetic testing.

**§10A.49**      **Child As Party – Representation**

1. A minor child is a permissible party, but is not a necessary party to a proceeding under sections 10A.39 through 10A.62
2. The White Earth Tribal Court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the Court finds that the interests of the child are not adequately represented. The Court may apportion the costs of the guardian ad litem between the parties as appropriate.

#### **§10A.50**

#### **Admissibility of Results of Genetic Testing – Expenses**

1. Except as otherwise provided in [subsection 3 of this section](#), a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:
  - a. Voluntarily or pursuant to an order of the court or a support enforcement agency; or
  - b. Before or after the commencement of the proceeding.
2. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the Tribal Court. Unless otherwise ordered by the Court, the party offering the testimony bears the expense for the expert testifying.
3. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:
  - a. With the consent of both the mother and the presumed, acknowledged, or adjudicated father; or
  - b. Pursuant to an order of the Court under section 10A.30.
4. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:
  - a. The amount of the charges billed; and
  - b. That the charges were reasonable, necessary, and customary.

#### **§10A.51**

#### **Consequences of Declining Genetic Testing**

1. An order for genetic testing is enforceable by contempt.
2. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the White Earth Tribal Court, the Court for that reason may adjudicate parentage contrary to the position of that individual.
3. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the Court may order the testing of the child and every man whose paternity is being adjudicated.

#### **§10A.52**

#### **Admission of Paternity Authorized**

1. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.
2. If the White Earth Tribal Court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the Court shall issue an order adjudicating the child to be the child of the man admitting paternity.

#### **§10A.53**

#### **Temporary Order**

1. In a proceeding under sections 10A.40 through 10A.62, the White Earth Tribal Court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:

- a. A presumed father of the child;
  - b. Petitioning to have his paternity adjudicated;
  - c. Identified as the father through genetic testing under section 10A.33;
  - d. Shown by clear and convincing evidence to be the father of the child; or
  - e. The mother of the child.
2. A temporary order may include provisions for custody and visitation as provided by other law of this Tribe.

**§10A.54**      **Rules for Adjudication of Paternity**

The White Earth Tribal Court shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child.
2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under section 10A.33 must be adjudicated the father of the child.
3. If the Court finds that genetic testing under section 10A.33 neither identifies nor excludes a man as the father of a child, the Court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.
4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

**§10A.55**      **Jury Prohibited**

The White Earth Tribal Court, without a jury, shall adjudicate paternity of a child.

**§10A.56**      **Closed Hearings**

On request of a party and for good cause shown, the White Earth Tribal Court may close a proceeding under sections 10A.40 through 10A.62.

**§10A.57**      **Order On Default**

The White Earth Tribal Court shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and
2. Is found by the Court to be the father of a child.

**§10A.58**      **Dismissal for Want of Prosecution**

The White Earth Tribal Court may issue an order dismissing a proceeding commenced under this Chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

## **§10A.59**      **Order Adjudicating Parentage**

The White Earth Tribal Court shall issue an order, providing however the final order should comply with the confidentiality provisions.

1. The White Earth Tribal Court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.
2. An order adjudicating parentage must identify the child by name and date of birth.
3. The order may not include the social security numbers of the child and the individuals determined to be the child's parents, this is to protect the confidentiality rights of the child and parents in case family violence may be an issue.
4. The order may contain any other provision in the best interest of the child, including payment of support, payment of expenses of the mother's pregnancy and confinement, custody of the child, visitation with the child, and furnishing of bond or other security for payment of support. A support order must be for a monthly payment in an amount consistent with the child support guidelines established under [Title 6, Chapter 10C](#), of the White Earth Band of Ojibwe Tribal Code. All remedies for the enforcement of support, custody, and visitation orders under [Title 6, Chapter 10C](#), apply. The Court has continuing jurisdiction to modify an order for future support of the child, subject to [Title V, Chapter 5](#), and custody of and visitation of the child.
5. Except as otherwise provided in [subsection 6 of this section](#), the Court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under sections 10A.39 10A.61. The Court may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.
6. The Court may not assess fees, costs, or expenses against the WEN CSP, except as provided by other law.
7. On request of a party and for good cause shown, the Court may order that the name of the child be changed.
8. If the order of the Court is at variance with the child's birth certificate, the Court shall instruct the parties of the order to send the order to the state registrar of vital statistics to request an amended birth registration. An order adjudicating parentage must be filed with the State Registrar of Vital Statistics.

## **§10A.60**      **Binding Effect of Determination of Parentage**

1. Except as otherwise provided in [subsection 2 of this section](#), a determination of parentage is binding on:
  - a. All signatories to an acknowledgment or denial of paternity as provided in sections 10A.17 through 10A.28; and
  - b. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 10A.05.
2. A child is not bound by a determination of parentage under this Chapter unless:
  - a. The determination was based on an unrestricted acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

- b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
    - c. The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.
  3. In a proceeding to dissolve a marriage, the Court is deemed to have made an adjudication of the parentage of a child if the Court acts under circumstances that satisfy the jurisdictional requirements of section 10A.05 and other applicable Tribal law, and the final order:
    - a. Expressly identifies a child as a "child of the marriage", "issue of the marriage", or similar words indicating that the husband is the father of the child; or
    - b. Provides for support of the child, custody of the child, or visitation with the child by the husband unless paternity is specifically disclaimed in the order.
  4. Except as otherwise provided in [subsection 2 of this section](#), a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.
  5. A party to an adjudication of paternity may challenge the adjudication only under law of the White Earth Nation relating to appeal, vacation of judgments, or other judicial review.

**§10A.61**      **Liability for Collection of Support**

1. The White Earth Nation is not liable for child support that was collected from or on behalf of a former parent and disbursed to an obligee as under [Title V, Chapter 5, of the White Earth Band of Ojibwe Tribal Code](#).
2. The White Earth Nation is not liable for child support that was collected from or on behalf of a former parent and retained by the Tribe unless ordered by a Court after being presented with genetic test results that would otherwise be admissible under this Chapter showing that the former parent is not the genetic parent of the child.

**§10A.62**      **Application of the White Earth Parentage Act**

A proceeding to acknowledge paternity or adjudicate parentage, which was commenced or executed before the effective date of this Act but not closed, shall be governed by this Act.