

**ORDINANCE NO. 14
TRIBAL ENROLLMENT**

As Amended October 10, 2016

TABLE OF CONTENTS

SECTION 1. Statement of Purpose and Authority... 1

SECTION 2. Definitions... 1

SECTION 3. Enrollment Department... 3

- a. Establishment of the Enrollment Department... 3
- b. Appointment of the Enrollment Director.. 3
- c. Duties and Responsibilities of the Enrollment Director... 3
 - 1. Tribal Roll... 3
 - 2. Enrollment Records-Custody and Confidentiality.. 3
- d. Recusal... 4

SECTION 4. Abolition of Advisory Committee and Interim Membership Commission,
Transfer of Powers, Duties and Functions to Office of Administrative Hearings.. 4

- a. Abolition of the Advisory Committee.. 4
- b. Abolition of Interim Membership Commission.. 4

SECTION 5. Tribal Certifier.. 4

SECTION 6. Determination of Indian Blood... 4

- a. Saginaw Chippewa Indian Blood.. 5
- b. Other Indian Blood.. 5

SECTION 7. Eligibility Standards for Membership... 5

SECTION 8. Standard and Burden of Proof... 7

SECTION 9. Enrollment Application Requirements... 7

SECTION 10. Enrollment Procedure.. 9

- a. Special Procedure Regarding Deceased Applicants... 9
- b. Preparation of Enrollment File.. 9
- c. Deadline for Filing Applications... 9
- d. Notification to Applicant.. 9
- e. Review of Application by Enrollment Director.. 9
- f. Application With Adequate Supporting Evidence.. 10
- g. Application Without Adequate Supporting Evidence... 11
- h. Denial of Applications by the Enrollment Director.. 12
- i. Hearings Office Proceedings and Reports.. 12
- j. Review by the Certifier... 13
- k. Significant Questions Regarding the Report to the Certifier.. 14

l.	Procedures After Approval of Membership Applications..	14
m.	Procedure for Denial of Membership Applications..	15
n.	Maintaining Records of Proceedings..	15
SECTION 11.	Reopening Final Enrollment Decisions; Disenrollment..	15
a.	Policy..	15
b.	Limitations..	15
1.	Members on Base Roll..	15
2.	Rule Against Subsequent Proceedings..	15
3.	Limitations Period..	16
4.	Reopening Certain Hearings Office Dismissals..	16
c.	Grounds for Reopening Enrollment Decisions and Challenging Enrollment...	16
1.	Dual Enrollment..	16
2.	Other Grounds...	16
3.	[Untitled]..	18
d.	Disenrollment Process to be Followed When No CDP Has Previously been Issued to a Lineal Ancestor of the Member (d-1 through h-1)....	18
d-1	Initiation of Membership Eligibility Review..	18
1.	General Procedure...	18
2.	Special Procedures Regarding Deceased Members..	18
e-1	Membership Eligibility Review Decision...	19
f-1	Commencing a Disenrollment Proceeding..	19
g-1	Extension of Time to Submit Evidence..	19
h-1	Referral to Hearings Office...	20
d.	(Alternate) Disenrollment Process to be Followed When a CDP has Previously Been Issued to a Parent or Other Lineal Ancestor of the Member Asserting that no Lineal Ancestor Thereof Traces to a Constitutional Base Roll (d-2 through h-2).....	20
d-2	Commencing a Disenrollment Proceeding by Referral to the Hearings Office.....	20
e-2	Forwarding Notice of CDP, Referral and Statement of Issues..	20
f-2	[Intentionally Blank]..	21
g-2	[Intentionally Blank]..	21
h-2	[Intentionally Blank]..	21
d.	(ALTERNATE) DISENROLLMENT PROCESS TO BE FOLLOWED WHEN AN ORDER OF PATERNITY /DECLARATION OF PATERNITY HAS BEEN ISSUED BY THE TRIBAL COURT PURSUANT TO TITLE III SECTION 3.1718 OF THE TRIBAL CODE. (d-3 through g-3).....	21
d-3	An Order or Declaration of Paternity..	21
e-3	Commencing a Disenrollment Proceeding..	21
f-3	(untitled).....	21

g-3	Discovery in Disenrollment Proceedings Initiated Due to Orders of Paternity.	22
h-3	[Intentionally Blank].	22
i.	Hearings Before the Hearings Office.. . . .	22
j.	Hearing Officer’s Report Regarding Disenrollment.. . . .	22
	1. Hearing Officer Recommends Disenrollment...	22
	2. Hearing Officer Does Not Recommend Disenrollment..	23
	3. [Untitled].	23
k.	Significant Questions Regarding the Report to the Certifier.. . . .	23
l.	Re-Certification of Membership Eligibility.. . . .	24
m.	Certification of Ineligibility for Membership.. . . .	24
n.	Maintaining Records of Proceedings.. . . .	24
SECTION 12.	Relinquishment of Membership.. . . .	24
SECTION 13.	Office of Administrative Hearings.. . . .	25
a	Establishment of Office of Administrative Hearings.. . . .	25
b	Composition and Appointment.	26
c	Removal; Vacancies.. . . .	26
d	Hearings Generally.. . . .	27
e	Staff Support and Expenses for the Hearing Officers.	27
f	General Rules for Hearings and Proceedings.. . . .	27
	1. General Rules.. . . .	27
	2. Initial Procedure After Remand or Hearing Request.. . . .	31
	3. Conduct of Hearing.	32
	4. Decision of the Certifier.. . . .	34
	5. Judicial Review.	34
SECTION 14.	Judicial Review of Final Enrollment or Disenrollment Decisions.. . . .	34
SECTION 15.	Severability.. . . .	36
SECTION 16.	Effective Date.. . . .	36
LEGISLATIVE HISTORY.	36
EXHIBIT A.	Affidavit Acknowledging Relinquishment.	38

ORDINANCE NO. 14
TRIBAL ENROLLMENT

SECTION 1. Statement of Purpose and Authority.

- a. The purpose of this Ordinance is to:
 - 1. create a Tribal Enrollment Department;
 - 2. establish procedures for making, reviewing and acting on tribal membership applications according to the membership standards contained in the Constitution; and
 - 3. Establish policies and procedures for reopening enrollment decisions.
- b. The Tribal Council amends and reenacts this Ordinance No. 14 pursuant to Article III, Article VI, subsections (h), (i), (j) and (m), and Article VIII, Section 5, of the Constitution.

SECTION 2. Definitions.

- a. **Applicant:** the term “Applicant” shall mean a person who has applied for membership in the Tribe pursuant to this Ordinance.
- b. **Base Roll:** the phrase “Base Roll” shall mean any of the following four rolls specified in Article III, Section 1, of the Constitution:
 - 1. November 10, 1883;
 - 2. November 13, 1885;
 - 3. November 7, 1891; and
 - 4. December 10, 1982.
- c. **Born to Any Member:** the phrase “born to any member of the Saginaw Chippewa Indian Tribe of Michigan” in Article III, subsection 1(b), of the Constitution or this Ordinance and the phrase “born to a member” in this Ordinance shall mean the biological child of any person duly enrolled as a Member of the Tribe under the 1986 Constitution and applicable tribal law at the time of the child’s birth, including persons whose names appear on the Base Rolls.
- d. **Constitution:** the term “Constitution” shall mean the Constitution of the Saginaw Chippewa Indian Tribe of Michigan, as amended on November 4, 1986.
- e. **Day:** the term “Day” shall mean a calendar day.
- f. **Federally Recognized Indian Tribe:** the term “Federally Recognized Indian Tribe” shall mean, in addition to the Saginaw Chippewa Tribe, any other Indian Tribe, Band or group which has been officially recognized by the Secretary of the Interior on behalf of the federal government of the United States or by the federal government of Canada, and whose recognition by said government has not been withdrawn.

- g. **Enrollment Director:** the term “Enrollment Director” or “Director” shall mean the Director of the Enrollment Department of the Saginaw Chippewa Indian Tribe of Michigan.
- h. **Dual Enrollment:** the phrase “dual enrollment” as used in this Ordinance, to implement Article III, Section 2 of the Constitution, shall be deemed to exist when a person maintains enrollment in this Tribe while at the same time maintaining enrollment in another Indian Tribe, Band, or group which has been recognized by the Secretary of the Interior on behalf of the federal government of the United States and as to which such recognition has not been withdrawn. For purposes of dual enrollment, a person shall not be deemed to have or maintain “enrollment” in any Indian tribes or groups recognized by the Canadian Government if that person has filed a “affidavit acknowledging relinquishment” in the form required by Section 7.c. of this Ordinance, even if the Canadian tribe refuses to remove that person from that Canadian tribe’s roll.
- i. **Final Enrollment Decision:** the term “Final Enrollment Decision” shall mean a written determination duly made (1) by the Certifier in the manner and according to the legal standards then in effect that a Member or Applicant meets or fails to meet the legal standards for Membership in the Tribe, or (2) or a written determination duly made in the manner and according to the legal standards then in effect by the Enrollment Director pursuant to Section 10.h. of this Ordinance that an Applicant for membership does not meet membership criteria.
- j. **Indian Blood:** the term “Indian Blood” in Article III, subsections 1(b), (c) and (d) of the Constitution as used in this Ordinance shall mean the arithmetic sum of the blood quantum inherited from all Federally Recognized Indian Tribes. For example, a person who has inherited 1/16th degree of blood from the Little River Band of Ottawa Indians, 1/16th degree from some other federally recognized Indian tribe(s) and 2/16th degree from the Saginaw Chippewa Tribe, would have 1/4 degree Indian Blood within the meaning of this Ordinance. The degree of Indian Blood inherited from any Federally Recognized Indian Tribe shall be determined in accordance with Section 6 of this Ordinance.
- k. **Lineal Descendant:** the term “Lineal Descendant” shall mean a person who is a direct blood relative to a claimed ancestor as shown by proof of a direct line of descent from such ancestor, for example, grandfather to father to son.
- l. **Member, Enrolled Member, and Tribal Member:** the terms “Member”, “Enrolled Member”, and “Tribal Member” shall mean an individual, whether living or deceased, who has been enrolled as a member of the Tribe. When used in the context of a membership eligibility review or a disenrollment pursuant to Section 11 of this Ordinance, these terms shall also refer to all Tribal Member descendants of a deceased Member who have intervened in the proceeding as provided in Section 11.
- m. **Saginaw Chippewa Tribe:** the name “Saginaw Chippewa Tribe” or “the Tribe” shall mean the Saginaw Chippewa Indian Tribe of Michigan, the descendants and political successor of the Saginaw, Swan Creek and Black River Bands of Chippewa Indians.
- n. **Tribal Certificate Degrees of Indian Blood:** the phrase “Tribal Certificate Degrees of Indian Blood” or “Tribal CDIBs” shall mean Certificate Degrees of Indian blood issued by the Tribe and signed by the Tribal Certifier.
- o. **Tribal Roll:** the phrase “Tribal Roll” shall mean the current list of Enrolled Members of the Tribe and related information.

SECTION 3. Enrollment Department.

- a. **Establishment of the Enrollment Department.** The Enrollment Department is hereby created as a governmental subdivision of the Tribe. The Enrollment Department shall have the responsibility and authority for administering and overseeing the receipt, maintenance, evaluation and processing of enrollment applications seeking membership in the Tribe, and (per Section 10f) forwarding such applications for review by the Hearings Office when the Enrollment Director determines that all legal requirements for membership are satisfied; and, for determining whether membership eligibility reviews and disenrollment proceedings should be initiated and continued per Section 11 of this Ordinance. In circumstances which require action by the Hearings Office or the Saginaw Chippewa Tribal Courts as regards an application for membership or a membership eligibility review or disenrollment, the Enrollment Department shall work with legal counsel for the Tribe to prepare and present the Tribe's position.

- b. **Appointment of the Enrollment Director.** The Tribal Council shall appoint an Enrollment Director to manage all activities of the Department and to supervise all Department staff. The term of the Enrollment Director shall be three years commencing on the first of October of the year appointed. The Enrollment Director's compensation shall be set by the Tribal Council, but shall not be reduced during the Director's term of office. The Enrollment Director shall be subject to removal by the Council only for misconduct in office, which is defined as substantial nonfeasance, misfeasance, or malfeasance. The Council shall promptly fill any vacancy in the Enrollment Director's position. Vacancies occurring due to death, resignation, or removal shall be filled for the remainder of the un-expired term.

- c. **Duties and Responsibilities of the Enrollment Director.**
 1. **Tribal Roll.** The Enrollment Director shall maintain and regularly update the Tribal Roll.

 2. **Enrollment Records-Custody and Confidentiality.** The Enrollment Department shall be the official custodian of all enrollment records of the Tribe. The files of Tribal Members and Applicants for membership in the custody of the Enrollment Department, shall be maintained as confidential and shall be available only to persons or entities expressly authorized by Tribal law or by a lawful court order to receive copies of such records from the Enrollment Department. The following persons and entities are authorized to receive copies of enrollment records from the Department:
 - (A) the Enrollment Department Director and staff, Hearing Officers and staff and the Tribal Certifier to be used only for official business;
 - (B) the person who is the subject of the file;
 - (C) Legal Counsel for the Tribe, to the extent necessary to represent the Tribe, in processing and resolving applications for membership or membership eligibility reviews or disenrollments within the Department, or before the Hearings Office and in connection with judicial review of final enrollment or disenrollment decisions filed in Tribal Court.
 - (D) the Bureau of Indian Affairs, U.S. Department of the Interior, to the extent necessary to assist the Department in fulfilling its responsibilities or as required by law.

- (E) the Saginaw Chippewa Tribal Court judges and court personnel in cases brought before the Court.
- (F) a deceased Tribal Member's surviving spouse and surviving child(ren), provided that:
 1. the surviving spouse and/or surviving child of a deceased Tribal Member make a written request for a copy of the deceased Tribal Member's file to the Enrollment Department;
 2. the Enrollment Department shall provide only ONE (1) copy of the deceased Tribal Member's enrollment file to persons meeting the requirements of this subsection in any given year;
 3. the surviving spouse and/or surviving child provide the Enrollment Department with a certified marriage or birth record substantiating the requesting party's relationship to the deceased Tribal Member;
 4. the surviving spouse and /or child provide the Enrollment Department with a copy of a valid death certificate for the deceased Tribal Member.

d. **Recusal.** In the event the Enrollment Director has a conflict of interest regarding any application for enrollment or any proposed MER or disenrollment by reason of the Director's relation to the applicant or the affected member by blood or marriage, the Director shall recuse herself from involvement in that matter and designate a member of her staff to perform the functions of the Enrollment Director as to that matter under this Ordinance.

SECTION 4. Abolition of Advisory Committee and Interim Membership Commission, Transfer of Powers, Duties and Functions to Office of Administrative Hearings.

- a. **Abolition of the Advisory Committee.** The Advisory Committee previously established by the Tribal Council under this Ordinance was heretofore abolished. All of the Advisory Committee powers, duties, and functions were previously transferred to the Hearings Office previously established per Section 13.
- b. **Abolition of Interim Membership Commission.** The Interim Membership Commission previously established by the Tribal Council is hereby abolished. All of the Commission's administrative hearing and reporting functions, powers, duties and responsibilities under this Ordinance are hereby transferred to a new Office of Administrative Hearings ("Hearings Office") established per Section 13.a. and b. of this Ordinance.

SECTION 5. Tribal Certifier. Tribal Council shall be the official Certifier of membership for the Saginaw Chippewa Indian Tribe of Michigan. While acting in its capacity as the Certifier, the Tribal Council shall comply with all procedural rules, standards and other requirements or limitations applicable to the Tribal Council under Tribal law. A quorum of the Certifier shall consist of seven Tribal Council members. All Certifier decisions made pursuant to this Ordinance must be made by a majority of the Tribal Council members with a quorum present. Any Tribal Council member who is the mother, father, grandmother, grandfather, uncle, aunt, or first cousin of the subject of a file submitted to the Certifier for a decision shall be recused from any involvement with the file.

SECTION 6. Determination of Indian Blood. Indian Blood will be determined as provided in this Section.

- a. **Saginaw Chippewa Indian Blood.** Indian Blood attributable to the Saginaw Chippewa Tribe shall be determined by the Enrollment Director from the ancestral blood quantum inherited from persons whose names appear on the following documents:
1. The 1857, 1858, 1859, 1861, 1864, 1865, 1866 and 1867 annuity rolls. There is a presumption, which may be rebutted by clear and convincing evidence, that the persons whose names appear on these rolls possess 4/4 degree Saginaw Chippewa Indian Blood.
 2. The March 22, 1939, official tribal roll approved by the Tribe and the Secretary of the Interior pursuant to Article III, Section 2, of the 1937 Constitution. There is a presumption, which may be rebutted by clear and convincing evidence, that a person whose name appears on this roll possesses the blood quantum identified on the roll for such person. In making ancestral blood quantum determinations under this provision, the Enrollment Director shall treat all Indian blood listed on the March 22, 1939 official tribal roll as federally recognized blood for all persons listed on said roll without regard for their original tribe of origin and without regard for whether their original tribe of origin is currently a federally recognized Indian tribe, provided that nothing in this sentence shall be construed to bar the Enrollment Director from recalculating the amount of Indian blood so defined as reflected on the 1939 official tribal roll where clear and convincing evidence shows that the Indian blood quantum there listed is otherwise incorrect.
 3. The 1883, 1885, and 1891 land allotment rolls referenced in Article III, § 1(a) of the Tribe's 1937 and 1986 Constitution. There is a presumption, which may be rebutted by clear and convincing evidence, that the persons whose names appear on these rolls possess 4/4 degree Saginaw Chippewa Indian Blood.
 4. The 1940 Indian Census Roll, approved by the Tribe and the Secretary of the Interior and the 1982 Base Roll referenced in Article III, § 1(a) of the Tribe's 1986 Constitution. There is a presumption, which may be rebutted by clear and convincing evidence, that a person whose name appears on these rolls possesses the blood quantum identified on the roll. If said blood quantum is increased or decreased by the Bureau of Indian Affairs, Washington D.C. Office, the presumption noted above shall apply to the revised blood quantum.
 5. Certifications of Degree of Indian Blood issued by the Saginaw Chippewa Indian Tribe ("Tribal CDIBs"). Said Tribal CDIBs shall be presumed valid absent a showing by a preponderance of the evidence that the blood quantum identified on the Tribal CDIB is otherwise incorrect.
- b. **Other Indian Blood.** Indian Blood attributable to Federally Recognized Indian Tribes other than the Saginaw Chippewa Tribe shall be verified by Certifications of Degree of Indian Blood issued by other Federally Recognized Indian Tribes or by the Bureau of Indian Affairs. Such determinations shall be based upon the application of generally accepted procedures and standards for determining blood quantum. Whether such generally accepted standards have been applied shall be determined by the Enrollment Director; provided that in Director's discretion, the matter may be referred to the Hearings Office for consideration and recommendation.

SECTION 7. Eligibility Standards for Membership.

- a. In order to be eligible for membership in the Saginaw Chippewa Tribe, a person must be one of the following:

1. A person whose name appears on a Base Roll; or
 2. A child of at least one-quarter degree Indian Blood born to any Member of the Saginaw Chippewa Tribe as those phrases are defined in this Ordinance; or
 3. A Lineal Descendant of any person whose name appears on any Base Roll and who:
 - (A) is at least one-quarter degree Indian Blood;
 - (B) was born on or before November 4, 1987; and
 - (C) duly filed a membership application and proof of eligibility with the Tribe on or before May 4, 1988; or
 4. Any person who is duly adopted pursuant to Article III, Section 1(d), of the Constitution.
- b. The following shall not be considered grounds for rejecting or failing to process any application or denying membership to an Applicant who applies for membership pursuant to Article III, subsection 1(b), of the Constitution:
1. the age of the Applicant; or
 2. the date the application is received by the Tribe
- c. Pursuant to Article III, Section 2, of the Constitution, an Applicant who is an Enrolled Member of any other Indian Tribe, Band or group which has been officially recognized by the Secretary of the Interior on behalf of the federal government of the United States at the time their application for membership is filed or acted upon shall not be eligible for membership in the Tribe, except on the following terms and conditions:
1. The SCIT Enrollment Department shall not consider the membership application of any person who is an enrolled member of any other federally recognized Tribe, Nation, or Band, until the Enrollment Department has received evidence that the applicant has initiated Membership Relinquishment proceedings with the other Tribe, Band, or group. Initiation of Relinquishment shall be commenced by forwarding a sworn "Affidavit Acknowledging Relinquishment" to the tribal government of the Tribe in which the applicant is currently enrolled. Said Affidavit and transmittal letter shall be substantially in the form attached hereto as Ex. A. Such Relinquishment shall not be deemed deficient if it is made contingent by the relinquishing Tribe, Band, or group on approval of the applicant's enrollment in SCIT.
 2. The Enrollment Department shall include an explanation of the Relinquishment requirement in the membership application materials provided to all applicants, and shall obtain the signature of every applicant who is a member of another tribe acknowledging their understanding of this requirement.
 3. The application for membership shall not be further processed until the Enrollment Department has received written documentation of formal action by the Tribal Council of the other Tribe verifying that the applicant has been removed from the rolls of that Tribe or that said removal from the rolls of that Tribe has been approved and will be effective upon the applicant's admission to membership in the SCIT.

4. The “Affidavit Acknowledging Relinquishment” shall be kept in the applicant’s file. If granted SCIT membership, the applicant (then member) shall enjoy all rights and privileges associated with SCIT membership. Should it become known to the Enrollment Department that the member maintains dual enrollment or commences or continues to receive benefits from another tribe after being admitted to membership in the SCIT, the member may become subject to disenrollment proceedings under § 11(c) of Ordinance 14; provided, that receipt of such benefits by way of inheritance shall not be grounds for disenrollment under this Ordinance.
- d. An Applicant for membership in the Tribe must be living on the date of any final enrollment decision certifying the Applicant as a Tribal Member. A true copy of the death certificate of an Applicant is conclusive proof that the Applicant is deceased.
- e. Previous applicants for tribal membership whose applications have been denied pursuant to the issuance of a “final enrollment decision” as defined under section 2(j) of this Ordinance, may not reapply for membership for a period of five (5) years from the date of such final enrollment decision unless that applicant can establish (1) a change in the law regarding tribal membership eligibility standards which renders them eligible, or, (2) the existence of newly discovered evidence which tends to support such application; such new evidence must be submitted with an Affidavit, signed under oath, that such evidence is in fact newly discovered and was not available to the Applicant nor presented to the Tribe at the time of the earlier final enrollment decision. If an application is made under the change of law exception provided at e(1) of this paragraph then the enrollment application fee shall be waived pursuant to Section 9(b).

SECTION 8. Standard and Burden of Proof. The burden of proof shall be on the Applicant for tribal membership to prove by a preponderance of the evidence that he or she meets the legal standards for membership in Article III, Section 1, of the Constitution and Section 7 of this Ordinance. In the case of disenrollment proceedings commenced pursuant to Section 11 of this Ordinance, the burden shall be on the Saginaw Chippewa Tribe to prove by clear and convincing evidence that the Member who is the subject of the proceeding does not meet the legal standards for membership in place at the time of his or her admission to membership, and in a disenrollment proceeding based on mistake (but not fraud) does not meet the current legal standards for membership. For disenrollment cases, the Tribe is also required to show that one or more of the grounds which permit subjecting a member to disenrollment as set forth in Section 11.c. are satisfied and that none of the circumstances which prohibit subjecting a member to disenrollment as set forth in Sections 11.a.-11.c. exist.

SECTION 9. Enrollment Application Requirements.

- a. Under the Tribe’s 1986 Constitution the only persons now eligible to be admitted into this Tribe are persons of at least 1/4 degree Indian blood seeking enrollment under Article III, Section 1(b) of said Constitution.
- b. An Applicant for membership in the Saginaw Chippewa Tribe shall submit an application to the Enrollment Department on a form provided by the Enrollment Department. An applicant for membership shall submit a non-refundable enrollment application fee of one hundred dollars (\$100.00) payable by cash, cashier’s check or money order, for each application submitted. The application shall be filled out completely and signed and dated by the Applicant. The Enrollment Department may assist the Applicant in preparing the application form. Incomplete, unsigned or undated applications shall not be accepted by the Enrollment Department for filing. There is no limit to the total number of applications that may be submitted on behalf of any person; provided that an application shall not be accepted for filing on behalf of any person who is the subject of a pending application or

a final enrollment or disenrollment decision as to which judicial proceedings under Section 14 have been initiated and not concluded.

c. An Applicant shall provide evidence that he or she meets the legal standards for membership of Article III, Section 1, of the Constitution and Section 7 of this Ordinance. Documents submitted as evidence of eligibility for membership which do not tend to show that the applicant meets or does not meet the criteria for tribal membership under Article III, Section 1(b) (including evidence which bears upon their parents' eligibility or their parents' membership status) are not relevant and need not be considered by the Department, (although all such documents shall be maintained in the files as submitted). Documents submitted as evidence of eligibility for membership shall be capable of authentication or identification to the satisfaction of the Enrollment Department and the Certifier. In addition to other evidence of eligibility, all applicants for membership under Article III, Section 1(b) of the Constitution whose application is received by the Enrollment Department after November 1, 2011 must submit deoxyribonucleic acid (DNA) test results verifying the applicant's father (paternity) from a laboratory or institution approved by the Enrollment Department. DNA tests shall only be required where the Applicant claims that Federally Recognized Indian Blood is attributable to the Applicant from the father identified by the Applicant's enrollment application or if the Enrollment Department reasonably believes, upon its review, that Federally Recognized Indian blood should be attributed to the Applicant from the father identified by the Applicant's enrollment application.

1. The DNA test must verify the father of the applicant.
2. Unless otherwise provided by this Ordinance, the DNA tests must be completed and presented in the form and manner prescribed by the Enrollment Department. The Enrollment Department Director shall promulgate regulations prescribing the form and manner of DNA tests under this subsection which shall be effective upon formal approval by the Tribal Council.
3. Applicants shall be responsible for all fees and costs associated with DNA testing.
4. There shall be a rebuttable presumption that the results of a proper DNA test accepted by the Enrollment Director are true and accurate. If the probability of paternity determined by the DNA test is 99% or higher then paternity is presumed. If the probability of paternity determined by the DNA test is less than 99% then the test will be considered and weighed by the Enrollment Director in his or her discretion consistent with the provisions of this Ordinance as evidence submitted by the Applicant in support of membership.
5. DNA testing shall not be required when the father of the Applicant to whom the Applicant claims Indian Blood is deceased at the time an application is made or before DNA testing is conducted. An Applicant claiming an exception from the DNA testing requirements under this Sub-Section must timely provide a Certificate of Death to the Enrollment Director for the father at issue. If the Applicant's father is deceased under this provision then the Enrollment Director will review and make a determination of eligibility based on the evidence submitted by the Applicant.
6. A DNA test shall not be required as prescribed in this Section if an Order of Paternity has been issued by the Tribal Court as the result of an action filed in the Tribal Court, and such Order is based upon DNA testing showing a probability of paternity of 99% or higher. There shall be a rebuttable

presumption that such Tribal Court Order of Paternity meeting the requirements of this subsection is true and accurate. The Applicant must present a true copy of the Tribal Court Order and DNA test results presented to the Tribal Court to the Enrollment Director for consideration under this subsection.

SECTION 10. Enrollment Procedure. Except when consolidation of two or more enrollment or disenrollment cases has been ordered under Section 13.g. (3.9.1), applications shall be processed by the Enrollment Department and heard by the Hearings Office in order of the oldest to the newest according to the date filed with the Enrollment Department (or the Hearings Office) and in accordance with the membership standards in effect as of the date filed with the Enrollment Department; provided that no Applicant shall be denied membership if the Applicant would otherwise be eligible under current standards.

a. **Special Procedure Regarding Deceased Applicants.**

1. If the Enrollment Department receives a true copy of the death certificate of an Applicant prior to the date of a final enrollment decision regarding the Applicant, the Enrollment Department shall discontinue processing the application and the Enrollment Director shall send a written notice of such action to the Applicant's address of record. The action of the Enrollment Department to discontinue processing the application of a deceased Applicant upon receipt of a true copy of a death certificate of the Applicant is not subject to judicial review under Section 14 of this Ordinance.
2. If the Enrollment Department does not receive a true copy of the death certificate of an Applicant until after the date the Applicant is certified as a Tribal Member and the death certificate shows the Applicant's date of death to be prior to the date the Applicant was certified as a Tribal Member, the Applicant shall be deemed to be a deceased Member and shall be disenrolled through the procedures provided in Section 11 of this Ordinance concerning deceased Members.

b. **Preparation of Enrollment File.** The Enrollment Department shall prepare a file comprised of the application and any supporting documents, which shall be assigned a unique application number.

c. **Deadline for Filing Applications.** "Open Enrollment" Applications pursuant to Article III, Subsection 1(c), of the Constitution will no longer be accepted by the Enrollment Department. The closing date for filing open enrollment applications under Article III, Section 1(c) was May 4, 1988. There is no deadline for filing enrollment applications under Article III, Section 1(b).

d. **Notification to Applicant.** The Enrollment Director shall promptly provide written notification of the date of receipt of a completed application to each Applicant at the Applicant's address of record.

e. **Review of Application by Enrollment Director.** The Enrollment Director shall commence the review of an application within one year from the date the Enrollment Department receives a complete application. Notwithstanding the review of other applications, the Enrollment Director shall prioritize and expedite the review and processing of applications submitted on the behalf of Minor Applicants. For the purposes of this Ordinance Minor Applicants are defined as an applicant whose application was filed with the Enrollment Department when they were under the age of 18, provided that said application was never the subject of a Final Enrollment Decision issued by the Enrollment Director or the Tribal Certifier. The Enrollment Department shall evaluate the

application and any supporting documents filed by the Applicant to make an initial determination regarding the sufficiency of the application.

f. **Application With Adequate Supporting Evidence.**

1. Except as provided in Section 10(f)(2) or 10(f)(3), if the application is supported by a preponderance of the evidence of the Applicant's eligibility for membership, the Enrollment Director shall forward to the Certifier a written report setting forth findings of fact regarding the blood quantum and ancestry of the Applicant and the legal basis for the conclusion that the Applicant meets the legal standards for membership. Unless subsection k of this Section applies, the Certifier shall certify that the Applicant is eligible for membership, and the procedures set forth in subsection l of this Section regarding enrollment of new members shall be followed.
 - (A) The Tribal Certifier shall expedite its review and issue its Final Enrollment Decision for Minor Applicants notwithstanding other applications for enrollment, provided that the Tribal Certifier meets all deadlines established for Tribal Certifier review provided herein.
 - (B) For Applications forwarded from the Enrollment Department to the Certifier and received as of December 31, 2008, the Certifier shall complete its review and issue its Final Enrollment Decision based on the following schedule:
 - (i) Applications dated between May 5, 1988 and May 31, 2003 by June 30, 2009;
 - (ii) Applications dated between June 1, 2003 and April 30, 2005 by December 31, 2009;
 - (iii) Applications dated between May 1, 2005 and December 31, 2006 by June 30, 2010;
 - (iv) Applications dated between January 1, 2007 and December 31, 2008 by December 31, 2010;
 - (C) For Applications forwarded from the Enrollment Department to the Certifier and received after December 31, 2008, the Certifier shall complete its review and issue its Final Enrollment Decision by December 31, 2010 or within 18 months of its receipt by the Certifier whichever is later.
 - (D) Any enrollment applications stayed at the Office of Administrative Hearings pending resolution of a disenrollment proceeding of an alleged parent of an applicant shall continue to be stayed until a final disposition of the disenrollment proceeding is made pursuant to this Ordinance. Enrollment applications stayed at the Hearings Office that are subsequently referred to the Certifier by the Enrollment Department or by recommendation of the Hearings Office, after final disposition of the pending disenrollment proceeding shall be reviewed by the Certifier in the same order provided by Section 10(f)(1)(A) based upon the date of the enrollment application previously stayed. In the event the time period for review provided in Section 10(f)(1)(A) that would normally apply to a previously stayed application has already expired at the time

the previously stayed application is referred to the Certifier, then the application will be reviewed at the next available time period of Section 10(f)(1)(A).

2. Where an applicant for membership under Article III, Section 1.(b.) of the Constitution would satisfy all the eligibility requirements of that Section if one of the applicant's parents were a lawful member, and one or both of the applicant's parents are (at the time of the application) listed on the tribal roll, but a membership eligibility review ("MER") has been or is subsequently initiated as to the parent or parents relied upon by the applicant as establishing his or her eligibility for membership under Article III, Section 1(b) before an official decision is made by the Certifier as to the applicant's eligibility for membership, the Enrollment Director shall proceed to determine whether a disenrollment proceeding will be commenced as to the Applicant's parent pursuant to Section 11.f-1 of this Ordinance, and then shall proceed as follows:

(A) If a commencement of disenrollment proceedings ("CDP") is issued to the Applicant's parent, the Enrollment Director shall forward the applicant's enrollment application file to the Hearings Office for review and hearing to be carried out at the same time and in the same hearing as any disenrollment proceeding referred to the Hearings Office regarding the said parent, pursuant to such orders of consolidation as the Hearings Office may direct per Section 13. Subsection g.(1)(1.9.1). The Enrollment Director shall give written notice of such referral to the Applicant at the time the file is referred to the Hearings Office. No such order of consolidation shall alter the burdens of proof otherwise applicable to the parties.

(B) If a CDP is not issued to the Applicant's parent, the Enrollment Director shall forward the applicant's enrollment application file to the Certifier, together with a written report showing why the Applicant meets the legal standards for membership as called for in Section 10.f.1. and the Application shall thereafter be processed pursuant to Section 10.f.1.

3. Where an applicant for membership under Article III, Section 1.(b.) of the Constitution would satisfy all the eligibility requirements of that Section if one of the applicant's parents were a lawful member, and one or both of the applicant's parents are (at the time of the application) listed on the tribal roll, but a CDP has already been initiated as to the parent or parents relied upon by the applicant as establishing his or her eligibility for membership under Article III, Section 1(b) before an official decision is made by the Certifier as to the applicant's eligibility for membership, the Enrollment Director shall forward the applicant's enrollment application file to the Hearings Office for review and hearing to be carried out at the same time and in the same hearing as any disenrollment proceeding referred to the Hearings Office regarding the said parent, pursuant to such orders of consolidation as the Hearings Office may direct per Section 13, Subsection g.(1)(1.9.1). The Enrollment Director shall give written notice of such referral to the Applicant at the time the file is referred to the Hearings Office. No such order of consolidation shall alter the burdens of proof otherwise applicable to the parties.

g. **Application Without Adequate Supporting Evidence.** If, in the opinion of the Enrollment Director, the application is not supported by a preponderance of the evidence regarding the Applicant's eligibility for membership, the Enrollment Director shall notify

the Applicant in writing at the Applicant's address of record of the specific deficiencies and advise the Applicant that evidence addressing the deficiencies must be submitted to the Enrollment Department within ninety (90) days from the date of the notice. After the end of the ninety (90) day period the Enrollment Director shall review all additional timely submissions by the Applicant.

- h. **Denial of Applications by the Enrollment Director.** If after the end of the ninety (90) day period and the review of any timely submissions by the Applicant provided for in Section 10.g of this Ordinance, the Enrollment Director determines that the application still is not supported by a preponderance of the evidence regarding the Applicant's eligibility, the Enrollment Director shall notify the Applicant in writing at the Applicant's address of record that their application has been denied, provided that the Enrollment Director shall not have the authority to issue a final denial on an application where the provisions of Section 10(f)(2) or 10(f)(3) apply. The Enrollment Director, prior to issuing such a denial, shall consult with the Tribe's Legal Department or other legal counsel as directed by the Tribe's Legal Department. Such denial by the Enrollment Director shall constitute the Final Enrollment Determination of the Tribe as to that application, provided, any denied applicant may file a request for hearing with the Office of Administrative Hearings within thirty (30) days of the receipt of the Final Enrollment Determination of the Enrollment Director. A non-refundable hearing request filing fee of two hundred dollars (\$200.00), payable by cash, cashier's check or money order, must accompany any request for hearing made pursuant to this subsection. If no such hearing request is timely filed, the Enrollment Director's denial shall be final for the Tribe.

i. **Hearings Office Proceedings and Reports.**

1. After the filing of a timely request for hearing by an Applicant denied pursuant to §10.h, in response to a Final Enrollment Decision of the Enrollment Director denying that application, the Hearings Office shall thereafter be responsible for scheduling, issuing notice of, and conducting all proceedings pursuant to the procedural rules and rulings of the Hearings Office, and for issuing a final (and in some instances, a supplemental) report of the Hearings Office to the Certifier as otherwise set out in this Ordinance;
2. Upon referral by the Certifier to the Hearings Office pursuant to §10(k) of this Ordinance, the Hearings Office shall thereafter be responsible for scheduling, issuing notice of and conducting proceedings pursuant to the procedural rules and rulings of the Hearings Office, and for issuing a final (and in some instances, a supplemental) report of the Hearings Office to the Certifier as otherwise set out in this Ordinance. Applicants who receive notice of §10(k) referrals by the Certifier to the Hearings Office in response to a report from the Enrollment Director issued per §10(f)(1) shall have thirty (30) days from receipt of said notice within which to request a hearing on the "significant question" identified in the §10(k) referral. A non-refundable hearing request filing fee of two hundred dollars (\$200.00) must accompany the request for hearing pursuant to this subsection. If no hearing is timely requested, the Hearings Office shall issue its findings, conclusions, and recommendations respecting that "significant question" based upon the written submissions of the parties;
3. For cases previously referred to the Hearings Office by the Enrollment Director under prior versions of this Ordinance, regardless of whether a hearing was timely requested, the Hearings Office shall remain responsible for scheduling, issuing notice of, and conducting all proceedings pursuant to the procedural rules and rulings of the Hearings Office, and for issuing a final (and in some instances,

a supplemental) report of the Hearings Office to the Certifier as otherwise set out in this Ordinance.

4. Proof of the delivery or attempted delivery by the U.S. Postal Service of a certified letter to Applicant's address of record shall constitute conclusive evidence of "receipt" of notices issued under Section 10 of this Ordinance. The last address provided by the Applicant to the Enrollment Department shall constitute the "address of record."

j. **Review by the Certifier.** The Certifier may certify an Applicant for membership only when the Hearing Officer's report recommends such action. The Certifier shall review the Hearing Officer's report and either adopt or reject the Hearing Officer's findings, conclusions and recommendations in accordance with the following procedures:

1. If the Certifier adopts the Hearing Officer's recommendations, it shall act accordingly and shall either:
 - (a) certify the Applicant as a Member, in which case the procedures set forth in subsection l of this Section shall be followed; or
 - (b) deny the application for membership, in which case the procedures set forth in subsection m of this Section shall be followed.
2. If the Certifier rejects the Hearing Officer's recommendations, the Certifier, in its discretion, may either:
 - (a) deny the application for membership and prepare a report for the file explaining in detail why the Hearing Officer's recommendations were not adopted, in which case the procedures stated in subsection m of this Section shall be followed; or
 - (b) invoke the procedures stated in subsection k of this Section.
3. In circumstances where the sole basis for the Applicant's request for membership is that he or she is a child "born to a member" within the meaning of Article III, Section 1(b) of the Tribe's 1986 Constitution, and a disenrollment proceeding has been initiated as to the Applicant's parent or parents through which the Applicant claims membership under said Section, but the lawful membership status of said parent or parents has not been resolved as of the time of the final enrollment decision for the Applicant, the Certifier may issue a conditional denial of the Applicant's request for membership, subject to a condition subsequent. Under such decision the Applicant shall be denied membership pending a final determination as to the lawful membership status of the Applicant's parent through which membership is claimed and if that parent is finally determined to be a lawful member of the Tribe, the Applicant shall likewise automatically be deemed a member of the Tribe without further action or hearing on the same date as the parent's membership status is upheld, and if the Applicant's parent's lawful membership status is denied, the Applicant's denial of membership shall be deemed finally determined.
4. The Certifier may return a report to the Hearings Office only once for each enrollment proceeding.

5. The Certifier shall complete its review and issue its Final Enrollment Decision under this subsection j. within 18 months of the Certifier's receipt of the Hearing Officer's final report to the Certifier.

k. **Significant Questions Regarding the Report to the Certifier.** When the Certifier determines that the report to the Certifier presents significant unresolved questions of fact or law that must be resolved before the Certifier can render a decision, the Certifier may reject the Hearing Officer's or Enrollment Director's recommendations. If the report was prepared by the Enrollment Director, the Certifier shall forward the report to the Hearings Office for review pursuant to the procedures established in Section 13. The Certifier shall notify the Hearings Office in writing of the specific reasons the Enrollment Director's recommendations were not adopted and provide a detailed statement of the additional issues on which further findings or conclusions are requested by the Certifier to be made by the Hearings Office. The Hearings Office shall afford the Applicant/Member with an additional thirty (30) day period in which to submit supplemental evidence of eligibility. If the report was prepared by the Hearings Office, the Certifier shall return the report to the Hearings Office for further consideration pursuant to the procedure established at Section 13.g (3.9.1). The Certifier shall notify the Hearings Office in writing of the specific reasons the Hearing Officer's recommendations were not adopted and provide a detailed statement of the additional issues on which further findings or conclusions are requested by the Certifier to be made by the Hearings Office. The Hearings Office shall afford the Applicant/Member with an additional thirty (30) day period in which to submit supplemental evidence of eligibility. When the Hearing Officer has addressed the Certifier's questions, the Hearing Officer shall prepare a supplemental report addressing the issues raised by the Certifier and describing any revisions to the findings, conclusions or recommendations in the original report and the basis for the revisions. The Hearing Officer shall then forward the original and the supplemental report to the Certifier for a final enrollment decision. The Certifier shall review the original and supplemental reports and either adopt or reject the Hearing Officer's recommendations in accordance with the following procedures:

1. If the Certifier adopts the Hearing Officer's recommendations, it shall act accordingly and shall either:
 - (a) certify the Applicant as a Member, in which case the procedures set forth in subsection l of this Section shall be followed; or
 - (b) deny the application for membership, in which case the procedures set forth in subsection m of this Section shall be followed.
2. If the Certifier rejects the Hearing Officer's recommendations, the Certifier shall deny the application for membership and the procedures stated in subsection m of this Section shall be followed. The Certifier shall prepare a report for the file explaining in detail why the Hearing Officer's recommendations were rejected.
3. The Certifier may return a report to the Hearings Office only once for each enrollment proceeding.
4. The Certifier shall complete its review and issue its Final Enrollment Decision under this subsection k within 18 months of the Certifier's receipt of the Hearing Officer's final report, or if a supplemental report is requested, within 18 months of the Certifier's receipt of the Hearing Officer's supplemental report.

l. **Procedure After Approval of Membership Applications.** Upon the effective date of certification of membership by the Certifier, the Enrollment Director shall secure from the

Tribal Clerk a membership number for the Applicant, shall request that the Clerk prepare a membership card for the applicant and place the applicant's name on the Tribal Roll. The Enrollment Director shall promptly notify the Applicant in writing of the Certifier's decision to certify the Applicant as a Member and shall include with the notice the new membership card obtained from the Tribal Clerk. Where the final enrollment decision was made subject to a condition subsequent per Paragraph 10.j.3., the effective date of the Applicant's enrollment is the date (if any) when the Applicant's parent's lawful membership is upheld.

- m. **Procedure for Denial of Membership Applications.** Upon the Certifier's decision to deny an application for membership, the Certifier shall forward a request to the Enrollment Director to promptly provide the Applicant with written notification of the decision and of the Applicant's right to seek judicial review of the final enrollment decision pursuant to Section 14 of this Ordinance.
- n. **Maintaining Records of Proceedings.** A copy of all correspondence, reports, recommendations, decisions, certifications and, if applicable, the membership card related to proceedings under this Section shall be permanently maintained in the Applicant's file.

SECTION 11. Reopening Final Enrollment Decisions; Disenrollment.

- a. **Policy.** Members of the Saginaw Tribe should be able to rely on the finality of enrollment decisions. However, the Tribe also must have a fair opportunity to enforce its constitutional membership criteria. To balance these conflicting considerations, the Tribal Council has made the legislative judgment that final enrollment decisions may not be reopened and no Enrolled Member of the Saginaw Tribe, including deceased Members, shall be subject to disenrollment except for the reasons and in the manner expressly provided in this Section.
- b. **Limitations.**
 - 1. **Members on Base Roll.** No Member whose name appears on a Base Roll may be subject to disenrollment, except on the ground of dual enrollment as described in subsection c.1 of this Section.
 - 2. **Subsequent Disenrollment Proceedings.**
 - (A) Motion to Allow a Subsequent Disenrollment Proceeding. The Tribe may only undertake a subsequent disenrollment proceeding with leave of the Hearings Office upon an appropriate motion (which may be filed at the same time as the Notice of Commencement of Disenrollment Proceedings). The motion must meet one or more of the following grounds before a subsequent disenrollment proceeding will be permitted to proceed:
 - (1) the subsequent disenrollment proceeding relies on a different constitutional legal basis than the prior proceeding (for example, the prior proceeding was based upon the member lacking a lineal trace and the subsequent proceeding is based upon lack of sufficient blood quantum or not being a child born to a member);
 - (2) the prior proceeding was substantially based on a Tribal enrollment ordinance, rule, or policy construing the Tribe's substantive, constitutional enrollment requirements, but the

Tribe's highest court later reversed or vacated the ordinance, rule, or policy;

- (3) mistake, inadvertence, surprise, or excusable neglect that likely had a material effect on the outcome of the prior proceeding;
- (4) newly discovered evidence that likely had a material effect on the outcome of the prior proceeding; and/or
- (5) fraud, misrepresentation, or misconduct that likely had a material effect on the outcome of the prior proceeding.

(B) Appeals of Hearings Office Decision on Motion to Allow a Subsequent Disenrollment Proceeding.

- (1) If the Hearings Office denies a Motion hereunder, the denial may be directly appealed as provided in Section 14(b) and (f) of this Ordinance.
- (2) If the Hearings Office grants a Motion, the subsequent disenrollment proceeding shall go forward and the decision to grant the Motion may be appealed only upon issuance of a final disenrollment decision as provided in Section 14. b. and f.
- (3) No appeal from either a decision to grant or deny the Motion shall be brought by any party besides the Tribe or by the parties listed in Section 14. e.

(C) No Proceeding Based Solely on Evidentiary or Procedural Changes. Nothing in this Section or elsewhere in the Ordinance authorizes any disenrollment proceeding due solely to changes in enrollment ordinances, rules, or policies that are only evidentiary or procedural, rather than substantive. For example, where a Member submitted sufficient evidence to show at least one-quarter blood quantum based upon the standards in place at the time of enrollment, but those standards have since changed and the Member's evidence would no longer be sufficient (but the evidence was not fraudulent or erroneous and did actually meet the standards in place at the time of enrollment), no disenrollment proceeding may go forward.

(D) Rule Against Subsequent Proceedings Eliminated. There is no bar on subsequent disenrollment proceedings, regardless of the basis for either the prior or subsequent disenrollment proceeding, and the former bar on certain, subsequent disenrollment proceedings is eliminated. This provision is expressly intended to have both retroactive and prospective application and extends to disenrollment proceedings initiated either before or after adoption of this provision.

3. **No Limitations Period.** There is no statute of limitations on any disenrollment proceeding, regardless of the basis for the proceeding, and the former statute of limitations on such proceedings is eliminated. This provision is expressly intended to have both retroactive and prospective application and extends to disenrollment proceedings initiated either before or after adoption of this provision.

4. **Reopening Certain Hearings Office Dismissals.**

- (A) If the Hearings Office dismissed a disenrollment proceeding and the underlying Notice of Commencement of Disenrollment Proceeding (whether upon a motion or upon the voluntary stipulation of the parties), either with or without prejudice, but the Tribal Court later concludes in a final decision in another case (whether finality is attained at the Community Court or the Tribal Court of Appeals) that the same or similar law or facts either require disenrollment or do not provide a legal basis for enrollment, then upon appropriate motion, the previously-dismissed disenrollment proceeding and underlying Notice of Commencement of Disenrollment Proceeding must be reopened.
- (B) It is expressly recognized that the Hearings Office has jurisdiction to hear motions and issue findings of fact and conclusions of law under Section 11.b.4.(A) and that the Hearings Office must decide a motion under this Section in advance of proceeding to discovery or evidentiary hearings before the Hearings Office.
- (C) The Hearings Office's normal nondispositive motion practice rules govern any motion filed under Section 11.b.4.(A). The Hearings Office's decision on a motion to reopen under Section 11.b.4.(A) is final and directly appealable to the Community Court.
- (D) It is expressly recognized that the Community Court has authority to hear appeals from a Hearings Office decision on a motion to reopen under Section 11.b.4.(A) and under the procedures in Section 14 of this Ordinance.
- (E) Because resolution of an appeal of a motion to reopen under Section 11.b.4.(A) is a threshold issue that determines whether a disenrollment proceeding may go forward at the Hearings Office, if a party timely appeals a Hearings Office decision, the Hearings Office may, upon motion, stay any further proceedings at the Hearings Office pending exhaustion of appeals.
- (F) This provision is expressly intended to have both retroactive and prospective application and extends to disenrollment proceedings initiated either before or after adoption of this provision. Proceedings reopened pursuant to a motion to reopen under Section 11.b.4.(A) do not constitute "subsequent proceedings" as that term is used in Section 11.b.2., nor are these proceedings barred by any statute of limitations.

c. **Grounds for Reopening Enrollment Decisions and Challenging Enrollment.**

- 1. **Dual Enrollment.** Pursuant to Article III, Section 2, of the Constitution, any Enrolled Member of the Tribe who becomes an enrolled member of another Federally Recognized Indian Tribe shall be subject to disenrollment. Members of the Tribe who are deceased shall not be subject to disenrollment based on the grounds stated in this subsection.
- 2. **Other Grounds.** Except as provided in subsection c.1 of this Section, no final enrollment decision made pursuant to this Ordinance shall be reopened and no Enrolled Member of the Tribe shall be subject to disenrollment unless the

enrollment was procured by fraud, or was procured because of a mistake. “Fraud” shall mean the knowing misrepresentation or concealment by any person of a material matter that induced the Tribe to enroll a person. “Mistake” shall mean:

- i. A Final Enrollment Decision where the person who was the subject of the Final Enrollment Decision was deceased at the time the Final Enrollment Decision was made; or
 - ii. An error about a fact essential to the enrollment decision that was the result of gross negligence or an error about the legal effect of the facts known at the time of the enrollment decision that was the result of gross negligence. For purposes of this Ordinance, “Gross Negligence” shall mean willful, wanton or reckless misconduct. It is *per se* gross negligence to enroll anyone who does not trace to a constitutional base roll.
 - iii. A Final Enrollment Decision where the person who was the subject of the Final Enrollment Decision (“Member”) was the child subject to a subsequent Order of the Tribal Court establishing paternity to someone other than the person for whom the Enrollment Department relied in its Final Enrollment Decision. This shall only apply where the Member would not qualify for membership but for the identification and assertion by the Member of his or her paternity to a person other than the person adjudged by the Tribal Court as the Member’s biological father. A Disenrollment proceeding under this subsection 11.c.2.iii shall be conducted pursuant to subsections d-3 through g-3 of this Section.
 - iv. A Final Enrollment Decision where the Member was enrolled, and solely offered proof of the member father’s legal paternity, not proof of biological paternity, but where subsequent to the enrollment, the Member submitted to a DNA test by an AABB accredited, relationship testing facility, and such DNA test showed that the member father was not the Member’s biological father. This provision shall only apply where the Member would not qualify for membership on any other basis but for through the claimed member father.
3. In addition, a final enrollment decision shall not be reopened and a disenrollment proceeding shall not be commenced if:
- (A) the Member would be eligible for membership under current legal standards for membership, unless the Member’s enrollment was procured by fraud. Provided that in applying this provision, a Member whose parent has received a CDP under this Ordinance shall not be deemed to be “eligible for membership under current legal standards for membership” under Article III, Section 1(b) of the 1986 Constitution for purposes of the prohibition on commencement of disenrollment proceedings until and unless there is a final decision upholding the Member’s parent’s lawful enrollment in the Tribe in the parent’s disenrollment proceeding. However, no Member who is the child of a person currently on the rolls shall be finally disenrolled until and unless the parent’s disenrollment has been finalized if such Member would then qualify for enrollment as a child “born to a member” under Article III, Section 1(b) of the 1986 Constitution; or

- (B) the Member was duly enrolled under the legal standards for membership in effect on the date membership was certified but the Member would no longer be eligible under current legal standards for Membership.
- (C) Nothing in Section 11.c.3.(A) or (B) limits or otherwise affects the application of Section 11.b.4.

d. **DISENROLLMENT PROCESS TO BE FOLLOWED WHEN NO CDP HAS PREVIOUSLY BEEN ISSUED TO A LINEAL ANCESTOR OF THE MEMBER**
(d-1 through h-1)

d-1. **Initiation of Membership Eligibility Review.**

1. **General Procedure.** The Certifier, in its discretion, may direct the Enrollment Director to conduct a review of the evidence regarding the enrollment of any Tribal Member or Members for the purpose of determining whether there is a reasonable basis for reopening a final enrollment decision on one or more of the grounds specified in subsection c of this Section. If the Enrollment Director finds that a reasonable basis exists to reopen a final enrollment decision, the Director shall prepare a written Notice of Membership Eligibility Review (“MER Notice”). The MER Notice shall state that the Member’s eligibility for enrollment in the Saginaw Tribe is being reviewed pursuant to this Ordinance. The MER Notice also shall describe with particularity the grounds for the review and state that the Member has the right to challenge those grounds by submitting written arguments and supporting evidence to the Enrollment Department within thirty (30) days of receiving the MER Notice. Copies of the contents of the Member’s enrollment file, this Section, and a plain language explanation of the disenrollment process shall be enclosed with the Notice. The MER Notice shall be sent by Certified U.S. Mail, return receipt requested, to the subject Tribal Member at the Member’s address of record, with copies to the Member’s enrollment file and, without the enclosures, to the Certifier.
2. **Special Procedures Regarding Deceased Members.** If the subject of the MER Notice is a deceased Member of the Tribe, the following procedures shall apply:
 - (A) The MER Notice shall be sent to each Enrolled Member of the Tribe whose eligibility for membership is dependant, either wholly or partially, on the deceased Member’s status as an Enrolled Member of the Tribe; or if there are no such members to all persons who have pending applications whose eligibility for membership is dependent, either wholly or partially, on the deceased Member’s status as an Enrolled Member of the Tribe
 - (B) The MER Notice shall be sent by Certified U.S. Mail, return receipt requested, to the address of record for each Member entitled to receive the MER Notice.
 - (C) Each person entitled to receive the MER Notice may intervene in the proceeding by providing written notice of intervention within thirty (30) days of receipt of the MER Notice. A person that files a notice of intervention after thirty (30) days of receipt of the MER Notice not shall be permitted to intervene in the proceeding, absent good cause shown, e.g., incapacity, incarceration, active duty in the armed services or other circumstances beyond the control of a member. o person who

has not intervened in the proceeding shall be entitled to any of the rights provided in this Section to persons who have intervened in the proceeding nor shall such person or persons have standing to seek judicial review of the final enrollment decision.

(D) A person who has intervened in the proceeding shall be entitled to all the rights provided in this Section to the subject of the MER Notice, except where such rights are expressly limited in this Ordinance. Unless the provisions of this Section provide otherwise, where this Section refers to a Member who is the subject of an MER Notice, such reference shall be deemed to refer to any person who has intervened in the proceeding.

e-1. **Membership Eligibility Review Decision.** After the expiration of the thirty (30) day notice period provided by subsection d of this Section, the Enrollment Director shall consider any timely response submitted by the subject Member along with all of the other evidence in the membership review file and issue a written decision. Copies of the decision shall be sent to the Member by Certified U.S. Mail, return receipt requested, with copies to the Member's enrollment file and the Certifier, a copy to any attorney who has entered an appearance for the applicant, and a copy to legal counsel for the Tribe. A decision by the Enrollment Director that there are no reasonable grounds for reopening a final enrollment decision shall be final and unreviewable. If the Enrollment Director finds that there is a reasonable basis for reopening a final enrollment decision under Section 11.C.1 or 2, the Director shall commence a disenrollment proceeding as provided in subsection f of this Section.

f-1. **Commencing a Disenrollment Proceeding.** If, pursuant to subsection e of this Section, the Enrollment Director determines that there is a reasonable basis for reopening a final enrollment decision the Director shall commence a disenrollment proceeding by serving on the Member a Notice of Commencement of Disenrollment Proceeding ("CDP Notice"). The CDP Notice shall state that a disenrollment proceeding has been commenced against the Member pursuant to this Ordinance and shall describe with particularity the enrollment eligibility issues that will be considered in the proceeding and the evidence that will be required to resolve these issues in favor of the Member. The CDP Notice also shall state that the Member has the right to submit written arguments and supporting evidence on these issues to the Enrollment Department within sixty (60) days of receiving the CDP Notice. The Enrollment Director may combine the CDP Notice and the Membership Eligibility Review Decision in one document. If the Director decides that the CDP Notice and the Membership Eligibility Review Decision should be separate documents, they shall be served together on the Member by Certified U.S. Mail, return receipt requested, at the Member's address of record.

g-1. **Extension of Time to Submit Evidence.** The Notice of Commencement of a Disenrollment Proceeding shall state that the Member may request from the Enrollment Director one extension of thirty (30) calendar days to submit evidence. Requests for extensions are disfavored and may be granted only where, in spite of the Member's due diligence, extraordinary reasons outside the Member's control have prevented the Member from submitting evidence within the period specified by subsection f of this Section. Requests for an extension must be in writing and must be received by the Enrollment Department prior to the deadline for submitting evidence. The Enrollment Director shall provide written notice to the Member of the approval or disapproval of the request for an extension. When a thirty (30) day extension is granted to a Member who has intervened in a Disenrollment Proceeding regarding a deceased Member, the extension shall also apply to all other Members who intervened in the proceeding and the

Enrollment Director shall provide written notice to each intervening Member of the extension of time to submit evidence.

- h-1. **Referral to Hearings Office.** At the conclusion of the time period for submitting evidence, the Enrollment Director shall transfer the file (together with all documents and submissions from the member and from the Enrollment Department bearing on the member's eligibility) to the Hearings Office for review. The file shall be accompanied by a transmittal letter from the Enrollment Director to a Hearing Officer requesting the Hearings Office's review and stating the issues which the Enrollment Director believes require determination by the Hearings Office in order to decide whether the member should be disenrolled, provided, the Hearings Office shall not be limited in its review to the issues so specified by the Enrollment Director. The Enrollment Director shall mail a copy of the transmittal letter to the Member at the Member's address of record, copy to any attorney who has entered an appearance for the applicant, and copy to legal counsel for the Tribe, which shall serve as notice of the Enrollment Director's referral of the matter to the Hearings Office. The transmittal letter shall be accompanied by a notice that the Member has the right to appear before the a Hearing Officer for a hearing and other action of the Hearing Officer pursuant to Section 13. The notice shall state that a written request for an appearance from the Member must be received by the Hearings Office within thirty (30) days from the date the Member receives the notice of referral from the Enrollment Director. The Hearings Office shall thereafter be responsible for scheduling, issuing notice of and conducting all pre-hearing and hearing proceedings pursuant to the procedural rules and rulings of the Hearings Office, and for issuing a final (and in some instances, a supplemental) report of the Hearings Office to the Certifier as otherwise set out in this Ordinance.

- d. **(ALTERNATE) DISENROLLMENT PROCESS TO BE FOLLOWED WHEN A CDP HAS PREVIOUSLY BEEN ISSUED TO A PARENT OR OTHER LINEAL ANCESTOR OF THE MEMBER ASSERTING THAT NO LINEAL ANCESTOR THEREOF TRACES TO A CONSTITUTIONAL BASE ROLL** (d-2 through h-2)

- d-2. **Commencing a Disenrollment Proceeding by Referral to the Hearings Office.** If, based upon the evidence giving rise to the prior CDP issued to a parent or other lineal ancestor of the member, the Enrollment Director determines that there is a reasonable basis for reopening a final enrollment decision respecting a Member who is the child or other lineal descendant of said parent or ancestor the Director shall commence a disenrollment proceeding on the Member by issuing a Notice of Commencement of Disenrollment Proceeding ("CDP Notice") and simultaneously issuing a transmittal letter referring the matter to the Hearings Office for decision. The Enrollment Director shall include with the transmittal letter a copy of the Member's file together with all documents and submissions from the Member and from the Enrollment Department bearing on the Member's eligibility, provided that documentation contained in the file for the Member's parent or grandparent on whom a CDP had been previously issued based on the Enrollment Department's determination that said parent or grandparent does not trace to a constitutional base roll, shall be deemed a part of the record as to the disenrollment proceeding initiated as to the Member. The Member shall be entitled to review and copy any information in the file for his parent or other lineal ancestor (including information in the files of intervening parties in said prior disenrollment proceedings) as well as information in any of the files for disenrollment or enrollment cases pending before the Hearings Office which have been or which are consolidated with the new disenrollment proceeding initiated as to the Member pursuant to Section 13.g.1(1.9.1) of this Ordinance.

- e-2. **Forwarding Notice of CDP, Referral and Statement of Issues.** When forwarded to the Hearings Office, the file shall be accompanied by a transmittal letter from the Enrollment Director to the Hearings Office requesting a Hearing Officer's review and stating the

issues which the Enrollment Director believes require determination by the Hearings Office in order to decide whether the member should be disenrolled, provided, the Hearings Office shall not be limited in its review to the issues so specified by the Enrollment Director. The Enrollment Director shall mail a copy of the transmittal letter to the Member at the Member's address of record, copy to any attorney who has entered an appearance for the applicant, and copy to legal counsel for the Tribe, which shall serve as notice of the Enrollment Director's referral of the matter to the Hearings Office. The transmittal letter shall be accompanied by a notice that the Member has the right to appear before the Hearings Office for a hearing and other action of the Hearings Office pursuant to Section 13. The notice shall state that a written request for a hearing from the Member must be received by the Hearings Office within thirty (30) days from the date the Member receives the notice of referral from the Enrollment Director, and if no such request is received, the Hearings Office shall proceed to rule on the Tribe's request to disenroll the Member based upon the evidence before the Hearing Officer as submitted in connection with the Member's parent and/or other lineal ancestor as regards the question whether said Member (does or does not trace to a constitutional base roll). This will include all proceedings consolidated per 13.g.1(1.9.1). The Hearings Office shall thereafter be responsible for scheduling, issuing notice of and conducting all pre-hearing and hearing proceedings pursuant to the procedural rules and rulings of the Hearings Office, and for issuing a final (and in some instances, a supplemental) report of the Hearing Officer to the Certifier as otherwise set out in this Ordinance, if a hearing is timely requested or will otherwise be scheduled in connection with consolidated proceedings.

- f-2. [INTENTIONALLY LEFT BLANK] In the event that the Member subject to a CDP under this section is deceased, the special procedures set out in Section 11(d-1)(2) of this Ordinance will be followed.
- g-2. [INTENTIONALLY LEFT BLANK]
- h-2. [INTENTIONALLY LEFT BLANK]
- d. **(ALTERNATE) DISENROLLMENT PROCESS TO BE FOLLOWED WHEN AN ORDER OF PATERNITY /DECLARATION OF PATERNITY HAS BEEN ISSUED BY THE TRIBAL COURT PURSUANT TO TITLE III SECTION 3.1718 OF THE TRIBAL CODE.** (d-3 through h-3)
- d-3 **An Order of Declaration of Paternity** issued by the Tribal Court pursuant to section 3.1718 of Title III that results in a change in paternity as described in Section 11.c.2.iii shall be the basis for disenrollment proceedings under this Section.
- e-3 **Commencing a Disenrollment Proceeding.** Upon receipt by the Tribal Certifier of a Tribal Court Order issued pursuant to Title III, Section 3.1718.6 (e) the Tribal Certifier may direct the Enrollment Director to conduct a review of the evidence regarding the enrollment of the Tribal member child who is the subject of the paternity Order for the purpose of determining whether there is a reasonable basis for reopening a final enrollment decision on the grounds specified in subsection 11.c.2.iii . The Director shall complete such review no later than 10 days after his or her receipt of the matter from the Certifier.
- f-3 If, pursuant to subsection 11.c.2.iii of this Section, the Enrollment Director determines that the Tribal Court Order of Declaration of Paternity provides a reasonable basis for reopening a final enrollment decision the Director shall transfer the file (together with all documents from the Enrollment Department bearing on the member's eligibility) to the Hearings Office for review. The file shall be accompanied by a transmittal letter from the Enrollment Director to a Hearing Officer requesting the Hearings Office's review and

stating the issues which the Enrollment Director believes require determination by the Hearings Office in order to decide whether the member should be disenrolled, the Hearings Office shall be limited in its review to the issues so specified by the Enrollment Director. The Enrollment Director shall mail a copy of the transmittal letter to the Member at the Member's address of record, copy to any attorney who has entered an appearance for the applicant, and copy to legal counsel for the Tribe, which shall serve as notice of the Enrollment Director's referral of the matter to the Hearings Office. The transmittal letter shall be accompanied by a notice that the Member has the right to appear before the a Hearing Officer for a hearing and other action of the Hearing Officer pursuant to Section 13. The notice shall state that a written request for a hearing from the Member must be received by the Hearings Office within twenty-one (21) days from the date the Member receives the notice of referral from the Enrollment Director. If the Member does not make a timely request for hearing then the Hearings Office shall make its recommendation or order based on the record. The Hearings Office shall be responsible for scheduling, issuing notice of and conducting all applicable pre-hearing and hearing proceedings pursuant to the applicable procedural rules and rulings of the Hearings Office, and for issuing a final (and in some instances, a supplemental) report of the Hearings Office to the Certifier as otherwise set out in this Ordinance. The Hearings Office must render its recommendation or order to the Tribal Certifier no later than ninety (90) days after the referral of the matter from the Enrollment Director to the Hearings Office.

- g-3. **Discovery in Disenrollment Proceedings Initiated Due to Orders of Paternity.** Parties to disenrollment proceedings before the Office of Administrative Hearings brought pursuant to this Section shall have no right of written or oral discovery, and the Office of Administrative Hearings shall have no authority to compel testimony in or out of court.

- h-3. [INTENTIONALLY LEFT BLANK]

- i. **Hearings Before the Hearings Office.** All hearings or other proceedings before the Hearings Office shall be conducted in accordance with the rules set out at Section 13 of this Ordinance and any subsequent procedural rulings of the Hearings Office in such manner as will afford due process to the affected parties and insure that the proper burden of proof is applied and satisfied under this Ordinance. Those certain "Rules for the Conduct of Hearings in Enrollment and Disenrollment Proceedings" previously adopted by the Advisory Committee pursuant to this Ordinance have been disapproved and shall not be used in any Hearing Office hearings.

- j. **Hearing Officer's Report Regarding Disenrollment.** Following the review hearing, the Hearing Officer shall review the evidence presented at the hearing and contained in the file and shall prepare a written report with recommended findings of fact, the Hearing Officer's conclusions, and the basis for the conclusions regarding the Member's eligibility for membership under the legal standards in effect on the date of the original enrollment decision and (subject to the provisions at Section 11(c)(2)(B) of this Ordinance) the Member's eligibility under the current legal standards for membership and a recommendation for or against disenrollment
 - 1. **Hearing Officer Recommends Disenrollment.** If the Hearing Officer recommends disenrollment, the Hearings Office shall forward the report to the Certifier for a final enrollment decision. The Certifier shall review the report of the Hearings Office and shall decide whether or not to adopt the recommended findings and conclusions set out in that report. If the Certifier rejects the Hearing Officer's recommendations, the Certifier may either:

- (A) invoke the procedures stated in subsection k of this Section; or
- (B) re-certify the eligibility of the Member and follow the procedures stated in subsection l of this Section. The Certifier shall prepare a report for the file explaining in detail why the Hearing Officer's recommendations were not adopted.

If the Certifier adopts the Hearing Officer's recommendations, it shall certify that the Member does not meet the legal standards for membership, and the procedures set forth in subsection m of this Section shall be followed.

- 2. **Hearing Officer Does Not Recommend Disenrollment.** If the Hearing Officer does not recommend disenrollment, the Hearing Officer shall issue an Order to the Certifier which shall include individual findings which support the Hearing Officer's Order. The Certifier may seek judicial review of the Hearing Officer's Order as provided under Section 13.f.5 and Section 14.
- 3. The Certifier shall complete its review and issue its Final Enrollment Decision under this subsection j. within 18 months of the Certifier's receipt of the Hearing Officer's final report.

k. **Significant Questions Regarding the Report to the Certifier.** When the Certifier determines that the Hearing Officer's report presents significant unresolved questions of fact or law that must be resolved before the Certifier can render a decision, the Certifier may reject the Hearing Officer's recommendations and shall return the report to the Hearing Officer for further consideration pursuant to the procedure established at Section 13.g., Subsection (3.9.1). The Certifier shall notify the Hearing Officer, the member, and all legal counsel of record in writing of the specific reasons the Hearing Officer recommended findings and conclusions were not adopted and shall provide a detailed statement of the additional issues on which further findings or conclusions are requested by the Hearing Officer. The Hearing Office shall afford the Member with an additional thirty (30) day period in which to submit supplemental evidence of eligibility. When the Hearing Officer has addressed the Certifier's questions, the Hearing Officer shall prepare a supplemental report addressing the issues raised by the Certifier and describing any revisions to the recommendations in the original report and the basis for the revisions.

- 1. If the supplemental report recommends disenrollment, the Hearing Officer shall forward the original and the supplemental report to the Certifier for a final enrollment decision. The Certifier shall review the Hearing Officer's reports and shall either:
 - (A) adopt the Hearing Officer's recommendations, certify that the Member does not meet the legal standards of eligibility, and the procedures stated in subsection m of this Section shall be followed; or
 - (B) reject the Hearing Officer's recommendations, re-certify the eligibility of the Member, and the procedures stated in subsection l of this Section shall be followed. The Certifier shall prepare a report for the file explaining in detail why the Hearing Officer's recommendations were rejected.
- 2. If the supplemental report does not recommend disenrollment, the procedures stated in subsection l of this Section shall be followed. The Hearing Officer shall

provide the Certifier with a copy of the original report and the supplemental report for the Certifier's file.

3. In circumstances where the Tribe has proven that the Member or the Member's lineal ancestor through which the Member claims membership was erroneously granted membership in the Tribe under Article III, Section 1(b) or 1(c) of the Tribe's 1986 Constitution when the Member did not satisfy either of those constitutional criteria for membership, but the Member's parent has not been finally disenrolled as of the time of the final disenrollment decision on the Member, leaving as the sole barrier to the Member's disenrollment his or her claim to be a child "born to a member" within the meaning of Article III, Section 1(b) of the Tribe's 1986 Constitution, the Certifier may issue a conditional disenrollment of the Member, subject to a (condition subsequent). Under such decision, the Member will retain his or her membership pending a final determination as to the lawful membership status of the Member's parent; and, if the Member's parent is finally disenrolled from the Tribe, the Member's disenrollment shall automatically occur without further action or hearing on the same date as the parent's disenrollment becomes effective; and, if the Member's parent's lawful membership status is upheld, the Member's lawful membership status shall likewise be deemed finally determined.
4. The Certifier may return a report to the Hearings Office only once for each disenrollment proceeding.
5. The Certifier shall complete its review and issue its Final Enrollment Decision issue its final decision under this subsection k within 18 months of the Certifier's receipt of the Hearing Officer's final report, or if a supplemental report is required, within 18 months of the Certifier's receipt of the Hearing Officer's Supplemental Report of the Hearing Officer.

- l. **Re-Certification of Membership Eligibility.** Following a determination that a Member meets the legal standards of eligibility, a request shall be forwarded to the Enrollment Director to provide the Member with written notification that upon review of the evidence concerning eligibility the Member is determined to meet the legal standards for membership in the Tribe and that the disenrollment proceeding is concluded.
- m. **Certification of Ineligibility for Membership.** Upon the effective date of certification by the Certifier that a Member does not meet the legal standards for membership and is disenrolled, the Certifier shall forward a request to the Enrollment Department to promptly provide the Member with written notification of the decision and the Member's right to seek judicial review of the final enrollment decision with the Tribal Court pursuant to Section 14 of this Ordinance. Disenrollment shall be effective as of the date of the written notice of disenrollment whereupon all the rights, benefits and privileges of membership shall cease. Where the disenrollment decision is made subject to a condition subsequent per Paragraph 11.j.3., the effective date of the certification is the date, if any, when the Applicant's parent is finally disenrolled.
- n. **Maintaining Records of Proceedings.** A copy of all correspondence, reports, recommendations, decisions and certifications related to disenrollment proceedings under this Section shall be permanently maintained in the Member's file.

SECTION 12. Relinquishment of Membership. "Relinquishment" means voluntarily and officially giving up the right of tribal membership. Relinquishment may be accomplished only by an individual Member and not by the Tribe.

- a. A Member may relinquish membership by submitting a signed and notarized statement requesting that his or her name be removed from the Tribal membership roll.
- b. The only acceptable proof of relinquishment is the signed statement of relinquishment.
- c. Relinquishment of tribal membership does not prohibit a person from reapplying for tribal membership and being re-admitted to tribal membership if they meet the standards for tribal membership under Article III, Section 1(b) of the Constitution at the time the tribe acts on their new application, provided that said applicant did not enroll with another federally recognized Indian tribe subsequent to their enrollment in the Saginaw Chippewa Indian Tribe. Such person may also seek to be re-enrolled pursuant to Article III, subsection 1(d), of the Constitution if that subsection is ever implemented through enactment of an adoption ordinance thereunder.
- d. Membership of a minor or incompetent may be relinquished by the Member's parents or legal guardian; provided that a minor may re-apply for membership on reaching the age of majority, and an incompetent's relinquishment shall be invalidated by proving competency.
- e. If competent, the Tribe may not refuse a Member the right to relinquish.

SECTION 13. Office of Administrative Hearings.

- a. **Establishment of Office of Administrative Hearings (“Hearings Office”).**
 - 1. An Office of Administrative Hearings (“Hearings Office”) is hereby established by the Tribal Council. The Hearings Office shall be and shall function as an independent administrative hearings agency of the Tribe and its Hearing Officers and staff shall enjoy the same sovereign immunity as accorded other tribal officials and staff pursuant to tribal and federal law.
 - 2.
 - (a) The Hearings Office is authorized to conduct hearings and pre-hearing conferences and report to the Certifier its findings, conclusions, and recommendations or Orders pursuant to Section 11(j)(2) in regard to enrollment and disenrollment proceedings as to which final administrative action adverse to the applicant or member has occurred under any prior version of Ordinance 14, and as to which any order vacating said prior administrative determination and remanding the case for a new administrative hearing is entered by any court of the Tribe. Such new hearing shall be deemed a continuation of the same proceeding which gave rise to the original administrative action under this Ordinance.
 - (b) The Hearings Office is also authorized to conduct hearings and pre-hearing conferences and report to the Certifier its findings, conclusions, and recommendations or Orders pursuant to Section 11(j)(2) in regard to enrollment and disenrollment proceedings which have not previously been decided by the Certifier under this or any prior version of this Ordinance, whether initiated before or after creation of the Hearings Office and the transfer of all Interim Membership or Advisory Committee functions to the Hearings Office.
 - (c) The presiding officer for all such hearings and pre-hearing conferences shall be an independent Hearing Officer who shall be an attorney appointed pursuant to Section 13.(b) 1. Hearings Officers shall be

attorneys in good standing in the state(s) in which they are licensed. Tribal Council may appoint up to three (3) attorneys to the position of Hearings Officer, one of which shall be appointed as the Senior Hearing Officer.

b. **Composition and Appointment.**

1. Cases shall be heard by the Senior Hearing Officer or by the Hearing Officer to whom the Senior Hearing Officer assigns the case.
2.
 - (a) The attorney appointed to the position of Senior Hearing Officer shall serve as the administrator of the Office of Administrative Hearings. In that capacity, the Senior Hearing Officer shall be responsible for day-to-day supervision of Hearings Office staff with regard to ordinary personnel and administrative matters. Cases shall be assigned by the Senior Hearing Officer.
 - (b) The Hearing Officer assigned to a given case shall be responsible for conducting hearings and pre-hearing conferences in such case in a fair and orderly manner in accordance with this Ordinance. No Hearing Officer shall have an attorney/client relationship with the Tribe or any party, but shall instead carry out his or her duties under this Ordinance as an independent Hearing Officer who shall be sworn on his or her oath to perform those duties in a fair and impartial manner.
 - (c) The Hearing Officer presiding over the case shall have authority to issue rulings on all procedural and scheduling issues and on all questions involving the admissibility of evidence or the conduct of any hearing or pre-hearing conference. The Hearing Officer shall have the authority to remand an enrollment matter to the Enrollment Department for further consideration and proceedings. The Hearing Officer shall also have authority to issue rulings on all questions of fact and of substantive law giving rise to the Hearing Officer's findings of fact, conclusions of law as recommendations to the Certifier based upon the documents, evidence, submissions and argument of the parties received by the Hearing Officer on the record at any hearing or otherwise received by the Hearing Officer pursuant to the procedures set out in this Ordinance.
3. Each Hearing Officer shall serve for fixed terms whether as an employee or an independent contractor. There are no limits on the number of terms that a Hearing Officer may serve consecutively, or otherwise.
4. Each Hearing Officer shall be paid reasonable compensation for his or her services in an amount set by the Tribal Council. Such amount shall not be reduced for a Hearing Officer during any term of service for that Hearing Officer. Each Hearing Officer shall be entitled to bill at an agreed rate per hour for his or her services, based upon the submission of itemized billings to Tribal Council; or may be employed on a full or part-time basis at an agreed salary or other compensation, and shall be paid accordingly. Hearing Officers and OAH Staff who are employed by the Tribe shall be subject to the Tribal Operations Personnel Policy.

- c. **Removal; Vacancies.** A Hearing Officer may be removed by the Tribal Council only for misconduct in office, which is defined as substantial nonfeasance, misfeasance or

malfeasance. The Council shall not commence or carry out removal of any Hearing Officer except upon written notice of misconduct and an opportunity for hearing to contest the allegations of misconduct set forth in the notice. The Council shall promptly fill any vacancy in the Hearing Officer's position. Vacancies occurring due to death, resignation or removal shall be filled for the remainder of the un-expired term.

- d. **Hearings Generally.** Hearings shall be scheduled as needed by the Hearings Office in advance and reasonable notice shall be provided to the Hearing Officer and to all parties. The Hearing Officer in each enrollment or disenrollment proceeding shall convene for hearing as often as may be necessary to complete the work assigned to the Hearing Officer based upon the number of cases upon which hearings are required.
- e. **Staff Support and Expenses for the Hearings Office.** Tribal Council shall appropriate such funds as may be necessary to fund staff support and expenses for the Hearings Office and to provide a suitable secure office and storage space for the Hearings Officers and staff, and to pay the agreed compensation and expenses of each Hearing Officer. All meetings, hearings and pre-hearing conferences shall take place on the Isabella Reservation.
- f. **General Rules for Hearings and Proceedings.** Hearings, pre-hearing conferences and disclosures shall otherwise be carried out in accordance with the following rules.

1. GENERAL RULES.

- (1.1) Authority of Hearings Office. The Hearing Officer assigned to any given case shall have sole authority to interpret and apply these rules provided that the rules shall be construed consistently to secure the fair, just and speedy determination of every proceeding.
- (1.2) (a) Parties. For purposes for these rules, the term "Applicant/Member" shall refer to the following persons:
 - (i) applicants for membership in the Tribe;
 - (ii) enrolled members of the Tribe who are the subject of a disenrollment proceeding commenced pursuant to Ordinance No. 14 Section 11; or
 - (iii) enrolled members that have intervened in such disenrollment proceeding pursuant to Ordinance No. 14, Section 11(d)(2) (C), and whose cases have been remanded for a new administrative hearing by order of any court of this Tribe. The singular term "Member" shall also mean the plural form "Members". An Applicant/Member who is a minor or an adjudged incompetent shall be deemed to be represented by the Applicant/Member's custodial parent(s) or legal guardian.
- (b) The Tribe shall be considered the adverse party in all proceedings under this Ordinance and shall have the same right to appear through counsel in proceedings hereunder as any other party.
- (1.3) Scheduling and Notice of Hearing. The Hearings Office shall by written notice, set the purpose, date, time, and place for the hearing. The approximate duration of the hearing shall be set by the Hearing Officer assigned to the case upon consideration of the complexity of the issues to be addressed at the hearing and

the number of participants in the hearing if there are intervening Members. The Hearing Officer may postpone a hearing upon the request of the Applicant/Member for demonstrated good cause.

- (1.4) Record of Hearing and Pre-Hearing Conferences. The Hearings Office shall obtain the services of an independent court recorder to record all hearings and pre-hearing conferences. The Hearings Office shall procure, from the independent court recorder, a printed transcript of all hearings and pre-hearing conferences in an enrollment or disenrollment proceeding and such printed transcripts shall become part of the administrative record of the proceeding. A party to an enrollment or disenrollment proceeding may purchase a printed transcript of the hearing and pre-hearing conferences conducted in his or her proceeding directly from the independent court recorder.
- (1.5) Right to be Represented by Counsel. The Applicant/Member subject to a proceeding in the Hearings Office may be represented by an attorney or lay advocate at all stages of the proceeding. The attorney or lay advocate must file an appearance not later than 7 days prior to the scheduled hearing. The Appearance must state the name, address and telephone number of the attorney or lay advocate and must certify that the attorney or lay advocate is admitted to practice in and in good standing with the Saginaw Chippewa Tribal Courts. The Appearance must be served on all other parties to the proceeding.
- (1.6) Hearing Costs. The Applicant/Member shall be responsible for all of his or her hearing expenses, including travel, filing fees and any other costs.
- (1.7) Service of Process. Service of all papers, notices, or process necessary or proper for the initiation or continuation of a hearing under these rules and any other documents pertinent to the hearing may be accomplished by any reliable method unless Ordinance No. 14 prescribes the method of service.
- (1.8) Pre-Hearing Conference. At the request the Applicant/Member or the Tribe or upon the Hearing Officer's own initiative the Hearing Officer may conduct a preliminary conference with the Applicant/Member, or his or her counsel and counsel for the Tribe, in person or by telephone to address scheduling and evidentiary issues and any other administrative or procedural matters and to attempt a narrowing of the issues or agreement on stipulations as to uncontested facts. If the Tribe and the Applicant/Member are in agreement as to the disposition of the case at the pre-hearing conference, an agreed statement of proposed findings of fact and conclusions of law may be submitted for the Hearing Officer's approval without the need for an evidentiary or other hearing as to the matters covered in the said agreed statement.
- (1.9) Disclosure. To ensure that the Hearing Officer assigned to a case has access to all available evidence in deciding the matters before him or her, all documentary or other evidence (including all rebuttal evidence) known to either party and bearing upon the legal or factual issues to be examined by the Hearing Officer shall be disclosed to the other party not less than thirty (30) days before any scheduled hearing or by such other deadline as may be set by the Hearings Office by notice to the parties or at any pre-hearing conference. Members must disclose all individuals listed on a constitutional base roll whom the member claims are her or his lineal ancestors with supporting documentary evidence. Rule 1.9 imposes a continuing obligation on parties to supplement disclosures during the proceedings. Failure to make such disclosure within the applicable deadline will be subject to such evidentiary, procedural or substantive sanctions

as the Hearing Officer may determine, e.g., award of costs and expenses of the proceeding, award of attorney's fees, and exclusion of, or limitation on the use of, evidence offered by the sanctioned party. Such sanctions shall not include jail time, monetary fines or community service orders. All parties shall have a right of access to examine and obtain a copy of the files or documents provided to the Hearing Officer from any source respecting the pending enrollment or disenrollment proceeding, prior to the date of any hearing. A reasonable per-page fee will be charged for all copies made at the request of a party. Such fee will be determined by the Hearing Officer.

(1.9.1) Consolidation. The Hearing Officer assigned to a case, upon the request of either party, or at his or her own discretion, shall order consolidation in whole or in part of cases, proceedings, or hearings, including pre-hearing conferences, in circumstances where common issues of law or fact predominate as to those cases, and in particular where the membership eligibility of multiple applicants for enrollment (and/or of multiple members who have been subjected to disenrollment proceedings) depends upon claims and proof that a person was either listed upon one of the constitutional base rolls identified in Article III, Section 1(a) of the 1986 Constitution, or is a lineal descendant of such a person, and where the said applicants or members claim to be lineal descendants of said person. The Hearing Officer shall also have authority to set out in such consolidation orders such other and further procedural requirements as the Hearing Officer may determine to be appropriate in the interests of efficiency, economy, and due process, while at all times maintaining the proper placement of burdens of proof otherwise established in this Ordinance. Such orders may require designation of a lead counsel for the parties on each side of the predominant legal or factual issue which gives rise to the consolidation order; and, may limit the role of other counsel (in regard to separate briefing, argument, examination or cross-examination of witnesses, etc.) for parties who seek to advance the same legal or factual position as the party represented by the lead counsel so designated as regards the common issue giving rise to the consolidation order.

(1.9.2) Motions seeking full or partial consolidation of cases under subsection (1.9.1) shall be heard and decided by the first Hearing Officer who was assigned to hear any of the cases for which consolidation is sought. If the motion for consolidation is granted, the Hearing Officer who ruled upon that motion shall then hear and decide the issues presented in that consolidated proceeding and all the consolidated cases shall be transferred to that Hearing Officer to be heard.

(1.10) Discovery in Disenrollment Proceedings. Discovery in disenrollment proceedings is limited to interrogatories and requests for admission. All parties to disenrollment proceedings at the Office of Administrative Hearings may only engage in discovery in accordance with the rules of this section. Discovery in disenrollment proceedings is limited to interrogatories and requests for admission. Parties to disenrollment proceedings at the Office of Administrative Hearings may only engage in discovery in accordance with the rules of this section. A party who has responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosures or response to include information thereafter acquired or discovered.

- (1.10.1) Time to Serve Discovery. Parties may serve interrogatories and requests for admission no later than 7 days after the date for required mutual disclosures described in Section 13(f)(1)(1.9) of this Ordinance.
- (1.10.2) Relevance. Parties may obtain discovery regarding any matter that is not privileged and is relevant to the pending action, whether or not the matter would be admissible at trial, if the matter appears reasonably calculated to lead to the discovery of admissible evidence. Privileged material and the work product of a party's counselor or attorney is not discoverable.
- (1.10.3) Interrogatories. No party may serve more than 10 written interrogatories (including all discrete sub-parts) on any other party. For purposes of this rule, one consolidated member group is a single "party." Each interrogatory must be answered separately and fully in writing under oath or objected to under oath within 21 days.
- (1.10.4) Requests for Admission. No party may serve on any other party more than 10 (including all discrete sub-parts) written requests to admit, for purposes of the pending action only, the truth of any relevant matters. For purposes of this rule, one consolidated member group is a single "party." A matter is admitted unless, within 21 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter, signed by the party or its attorney. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. The grounds for objecting to a request must be stated. A matter admitted under this rule is conclusively established unless OAH, on motion, permits the admission to be withdrawn or amended. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.
- (1.10.5) Protective Orders. A party against whom discovery is sought may move OAH for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and OAH may order that the discovery cease or proceed only upon specified conditions. A motion under this section may not be brought more than 14 days after the date that the moving party's discovery responses are due. Responses to motions under this section may be filed no later than 14 days after the motion is filed.
- (1.10.6) Motions to Compel. If a party fails to respond to discovery as provided in this rule, the opposing party may move for an order to compel the withholding party to perform and OAH may impose such evidentiary, procedural, or substantive sanctions as the Hearing Officer may determine, e.g., award of costs, expenses, and attorney's fees of bringing the motion, and exclusion of, or limitations on the use of evidence offered by the sanctioned party. Sanctions may not include jail time, monetary fines, or community service orders.

(1.10.7) Decision on Discovery Motions. To decide a discovery motion, the Office of Administrative Hearings may schedule a hearing on the motion (including a telephonic hearing), but must issue a written decision regarding the motion no later than 7 days after the response to the motion is filed.

(1.10.8) OAH Authority. After ruling on a discovery motion, the Office of Administrative Hearings may grant parties up to 7 days to comply with its discovery order, but it does not have authority to grant additional time to respond to discovery requests, or leave to serve additional interrogatories or requests for admission. The Office of Administrative does not have authority to compel testimony in or out of court.

(1.11) Discovery in Enrollment Proceedings. Parties to enrollment proceedings before the Office of Administrative Hearings do not have any right of written or oral discovery, and the Office of Administrative Hearings does not have authority to compel testimony in or out of court.

2. INITIAL PROCEDURE AFTER REMAND OR HEARING REQUEST.

Upon remand of any case from the Tribal Court involving denial of an enrollment application based upon a prior Advisory Committee hearing or involving the previous disenrollment of a member, based upon a prior Advisory Committee hearing per any prior version of this Ordinance, or upon the timely request for a hearing pursuant to this Ordinance the Hearing Officer assigned to the case shall commence the pre-hearing process as to said proceeding as follows:

(2.1) The Hearing Officer shall issue notice to the Tribal Enrollment Department and to the applicant or member involved in the proceeding and to all known interested parties that the Hearings Office will be establishing its own administrative file for the proceeding. The Tribal Enrollment Department shall forward a copy of the applicant's or member's administrative file to the Hearing's Office. Recipients of said notice shall have the opportunity to submit to the Hearings Office all documentation and other analysis or argument previously submitted in any such prior administrative proceeding within their possession or control relevant to the membership issue presented; the Hearing Officer's notice shall set a deadline of not less than thirty (30) days for such submission.

(2.2) The Hearings Office shall cause the said submissions to be combined into a single file, segregating therein the submission from the Tribal Enrollment Department and the submissions from the applicant or member and interested parties.

(2.3) Once that file has been compiled, additional notice shall be sent to all parties (including the Tribal Enrollment Department), to the parties' counsel of record, if counsel has entered an appearance for any party in the proceeding, otherwise, directly to the affected applicant or member, informing the recipients of their right to review or reproduce the Hearings' Office file.

(2.4) The Hearing Officer shall thereafter set either a date for a pre-hearing scheduling conference or if, in the sole judgment of the Hearing Officer, no such pre-hearing conference is needed, shall set a date for a hearing regarding the matter.

- (2.5) The Hearing Officer assigned to a matter shall have the authority to lengthen or shorten the time periods applicable to any step in the processes set out for proceedings before that Officer upon the written concurrence of any party adversely affected thereby and shall set forth any such agreements in the form of an agreed order; provided that the Hearing Officer shall have authority to stay any proceedings with the written concurrence of the Tribe and a majority of all other parties to that proceeding, subject to such terms and conditions regarding such stays as are agreed upon by the Tribe and not less than a majority of all other parties to said proceeding.
- (2.6) The Hearing Officer shall not discuss the merits of a case pending before them with a party to the case, the party's attorney or agent or any other individual outside the normal hearing or pre-hearing process established by Ordinance 14, Section 13.

3. CONDUCT OF HEARING.

- (3.1) Participants must be prompt. Every person whose presence is required for the conduct of business at any hearing or pre-hearing conference shall be prompt in attendance.

If a person who was required to appear at a hearing, does not appear and no continuance has been granted, the Hearing Officer may proceed to consider and decide the matter before it based on the evidence of record, including any evidence from the adverse party admitted at that hearing.

Where because of accident, sickness or other good cause, a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time under the circumstances, e.g., incapacity, incarceration, active service in the armed forces, or other circumstances beyond the applicant's control, apply to the Hearing Officer to reopen the proceeding. The Hearing Officer upon finding cause sufficient to justify reopening the proceedings under this provision shall immediately fix a time and place for a hearing and give the person proper notice. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

- (3.2) Hearing Decorum. The Hearing Officer shall have the authority to maintain order. The hearing shall be conducted with dignity and respect at all times. Any person who violates these rules may be subject to sanctions or other disciplinary actions imposed by the Hearing Officer, e.g., award of costs and expenses of the proceeding, award of attorney's fees, and exclusion of, or limitation on the use of, evidence offered by the sanctioned party. Such sanctions shall not include jail time, monetary fines or community service orders.
- (3.3) Fact-finding. The formal hearing process shall be conducted before the Hearing Officer assigned to the case. The purpose of the hearing is to provide an opportunity for the parties to explain how the evidence in the record supports their respective positions and to respond to questions raised by the members of the Hearing Officer concerning the issues under review.

The Hearing Officer shall afford all interested parties a reasonable opportunity to submit data, analysis, or arguments, orally or in writing at the hearing and to address and respond to any document in the Hearings Office's files or otherwise provided to the Hearings Office as part of its administrative record.

Every party may call and examine witnesses, introduce exhibits, cross-examine witnesses who testify and submit rebuttal evidence.

- (3.4) Standards and Burden of Proof.
 - (a) In the case of enrollment proceedings, the applicant for Tribal membership shall have the burden to prove by a preponderance of the evidence that he met the legal standards for membership.
 - (b) In the case of disenrollment proceedings, the burden of proof shall be on the Saginaw Chippewa Tribe to prove by clear and convincing evidence that the member subject to the proceeding does not meet the legal standards for membership. Clear and convincing evidence is such evidence indicating that the thing to be proved is highly probable.
 - (c) All other substantive provisions or standards set out in Ordinance 14 not inconsistent with this Section 13 shall otherwise remain in force.
- (3.5) Admissibility of New Evidence. Except as provided in Section 10(k) and 11(k), no new evidence (except rebuttal evidence) shall be admitted prior to or at the Hearing by the Hearing Officer after the expiration of the final date for submission of evidence except in extraordinary and compelling circumstances involving newly discovered evidence and in the absence of any negligence on the part of the Applicant/Member or the Tribe. The Hearing Officer assigned to the case shall have sole discretion as to the admissibility of such new evidence presented after the expiration of the final date for submission of evidence and prior to or at the hearing. If said newly discovered evidence supports an Applicant's eligibility for tribal membership, the Hearing Officer shall remand the enrollment matter to the Enrollment Department for further review and consideration consistent with Ordinance 14, Section 10. Except as provided in Section 13.g (3.9.1), no new evidence may be submitted to the administrative record after a hearing is closed.
- (3.6) Duty to Object. An Applicant/Member who proceeds with the hearing after knowledge that any of these rules has been violated and who fails to promptly state an objection shall be deemed to have waived the right to object to such violation.
- (3.7) Hearing Closure/Extension. The Hearing Officer shall declare the hearing closed at the conclusion of the time for the Applicant/Member's presentation and any other matters to be addressed in the hearing. The Hearing Officer may, in its sole discretion, extend the hearing time in the interest of fairness.
- (3.8) Hearing Decision and Record. The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of:
 - (a) findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record; and
 - (b) the appropriate rule, order, sanction, relief or denial thereof.
- (3.9) Report of the Hearing Officer or Order under Section 11(j)(2). At the conclusion of each hearing the Hearing Officer who presided at the hearing shall prepare a

report or, if applicable, an Order consistent with Section 11(j)(2) to the Certifier which shall be supported by the findings of fact and the conclusions of law. All such reports shall be submitted to the Certifier within ninety (90) days after receipt by the OAH of the parties proposed findings of fact and conclusions of law.

(3.9.1) Certifier's Remand or Inquiry to the Hearing Officer. Upon review of the Hearing Officer's report or reports regarding any proceeding the Certifier may make further inquiry of the Hearing Officer to seek clarification on any factual or legal issue bearing upon the proceeding or may remand the matter to the Hearing Officer for further hearing as to a particular issue of fact or law. Any such inquiries shall be made in writing with notice to all parties and all parties shall have an opportunity to respond to the Certifier's inquiry by submitting a further response (including additional documentation if relevant) to the Hearing Officer. Either party may request a supplemental hearing before the Hearing Officer as to any new evidentiary matter presented by the other party in response to any such inquiry by the Certifier. In the absence of new evidentiary matter, the parties shall be heard only by way of supplemental written submissions to the Hearing Officer. In the event of such an inquiry or remand to the Hearing Officer, the supplemental report shall likewise be prepared and submitted to the Certifier for final action under this Ordinance within ninety (90) days of the close of evidence as to that supplemental inquiry.

4. DECISION OF THE CERTIFIER.

(4.1) The Certifier shall make the final administrative decision as to any enrollment or disenrollment proceeding based on the record compiled by the Hearing Officer and the findings, conclusions, and recommendations thereof, and shall do so in accordance with the time lines and procedures otherwise set out in this Ordinance, in the same manner as set out in Section 10.j-m (for enrollment decisions) and Section 11.j-n (for disenrollment decisions). Decisions of the Certifier in each case shall be made by majority vote of the Tribal Council members who have not been recused from acting on that case per Section 5 of this Ordinance.

(4.2) The Certifier shall complete its review and issue its Final Enrollment Decision under this subsection g within 18 months of the Certifier's receipt of the Hearing Officer's final report, or if a supplemental report is required pursuant to Rule 3.9.1, within 18 months of the Certifier's receipt of the Hearing Officer's supplemental report. Decisions of the Certifier in each case shall be made by a majority vote of the Tribal Council members who have not been recused from acting on that case per Section 5 of this Ordinance.

5. JUDICIAL REVIEW. Judicial review of decisions of the Certifier following a hearing and report from a Hearing Officer or judicial review of an Order by the Hearings Officer made under Section 11(j)(2) may be made to the Community Court pursuant to the deadlines and procedures set out in Section 14. Judicial Review in the Tribal Court shall be based on the administrative record developed before the Hearing Officer, including the record of hearing, the Hearing Officer's reports, and all submissions of the parties. Judicial review of final enrollment decisions shall also be based on the decision of the Certifier and any comments of the Certifier made in support of the Certifier's decision. Legal counsel for the Tribe shall be responsible for defending actions of the Certifier

or the Hearing Officer as to which judicial review is sought pursuant to this Ordinance or otherwise, or for otherwise responding to all such court proceedings after consultation with the Tribal Council.

SECTION 14. Judicial Review of Final Enrollment or Disenrollment Decisions.

- a. Except as specifically provided in this Section, the Saginaw Chippewa Tribal Courts shall not have jurisdiction to hear appeals from or lawsuits challenging final enrollment or disenrollment decisions made pursuant to this Ordinance.
- b. Judicial review of final enrollment or disenrollment decisions, along with Hearings Office decisions on motions to reopen under Section 11.b.4(A) and decisions on motions to allow a subsequent disenrollment proceeding under Section 11.b.2(B), may be obtained in the Saginaw Chippewa Community Court in the manner provided in this Section. Final enrollment or disenrollment decisions which may be subject to judicial review are limited to decisions of the Certifier to decline to certify an Applicant for membership or to certify that a Member is disenrolled. The Tribal Certifier may seek judicial review of any Order issued by the Hearings Officer pursuant to Section 11.j.2.
- c. All actions seeking judicial review under Section 14.b. shall be brought as lawsuits in the Saginaw Chippewa Community Court and shall be subject to the exclusive jurisdiction of that Court. Lawsuits brought under this Section shall name the Certifier and the Enrollment Department in their official capacities as parties and shall be served upon the Tribal Chief, the Enrollment Director and the General Counsel for the Tribe. The rules of civil procedure stated in Title III of the Tribal Code of Laws shall apply to lawsuits brought under this Section except where specific rules are prescribed in this Ordinance. Lawsuits under Section 14. may not be heard by a jury. The Tribal Council consents to suits seeking judicial review under this Section, in satisfaction of the requirements of Title III, subsection 3.102(c) of the Saginaw Chippewa Tribal Code, and waives the Tribe's common law immunity from suit subject to the limitation that the relief granted in lawsuits seeking judicial review of final enrollment or disenrollment decisions may only include prospective injunctive relief, orders of remand, and declaratory judgments and shall not include any monetary damages.
- d. **Prohibition on Stays of Final Enrollment or Disenrollment Decisions.** No court of this Tribe shall have jurisdiction to issue any stay or other interlocutory order that reinstates some or all of the rights, benefits and privileges of Tribal membership or in any way delays the legal force of and final enrollment or disenrollment decision issued by the Certifier as issued by the Certifier under Section 10.m. or 11.m. of this Ordinance. This prohibition supercedes any and all provisions of tribal law to the contrary, including but not limited to Article I, Section 1.514(b) of the Saginaw Chippewa Tribal Code under which stays of Community Court decisions made under Section 14.g. of this Ordinance might otherwise be available.
- e. Lawsuits seeking judicial review of final enrollment or disenrollment decisions along with Hearings Office decisions on motions to reopen under Section 11b.4.(A), may only be brought by a Member/Applicant who: (i) was the subject of the final enrollment or disenrollment decision being appealed; or (ii) intervened in a proceeding in which a deceased Member was the subject of the final enrollment or disenrollment decision. If the subject of a final enrollment or disenrollment decision is a minor or is legally incompetent at the time a lawsuit seeking judicial review is filed, the parent or legal guardian of such person shall have standing to file said lawsuit on behalf of the minor or incompetent person.

- f. Lawsuits seeking judicial review of final enrollment or disenrollment decisions, a Hearings Office decision to grant a motion to allow a subsequent disenrollment proceeding under Section 11.b.2(B)(2), or an Order issued by the Hearings Office under Section 11.j.2 shall be filed with the Community Court within sixty (60) days from the date of the written notice of the decision; or Order. A party who wishes to appeal either: (1) a Hearings Office decision on a motion to reopen under Section 11.b.4.(A); or (2) a Hearings Office decision to deny a motion to allow a subsequent disenrollment proceeding under Section 11.b.2(B)(1), must do so within thirty (30) days of the written notice of the decision or the party fully and finally waives the right to appeal from the decision.
- g. The Community Court shall review lawsuits seeking judicial review under Section 14.b. on the administrative record that was before the Certifier to determine if the decision was arbitrary, capricious, an abuse of discretion or in clear violation of law.
- h. Lawsuits seeking judicial review under Section 14.b. shall be given priority on the Community Court docket, with the exception of the following types of proceedings: all criminal proceedings; personal protection order proceedings, custody proceedings; child abuse or neglect proceedings; and juvenile delinquency or status offense proceedings. The Community Court shall, to the extent possible within the limits of the law and basic principles of due process, expedite any proceeding regarding a final enrollment or disenrollment decision. No discovery shall be permitted. Judicial review shall be based on the administrative record compiled before the Hearings Office or, for cases subject to judicial review based on decisions of the Certifier following prior action of the Advisory Committee, to the administrative record compiled before the Advisory Committee, and other documents as set forth in Paragraph 13.5. No party shall be compelled to give testimony under oath in these judicial review proceedings, except as to disputes with respect to establishment of the administrative record. These proceedings are not trials de novo, they are, instead, proceedings in which judicial review is conducted on the basis of the administrative record.
- i. The Community Court shall endeavor to render a final decision in such matters within 120 days from the date of service of the summons and complaint; however failure to render judgment within this period shall not affect the Court's jurisdiction to hear and decide the matter.
- j. Except as barred by the prohibition on stays set out at Section 14.d. of this Ordinance, the Saginaw Chippewa Appellate Court shall have ordinary appellate jurisdiction under Chapter 1.5 of the Saginaw Chippewa Tribal Code to review decisions of the Community Court issued under Section 14.g. of this Ordinance.

SECTION 15. Severability. If any Section, subsection or other portion of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate and independent part of the Ordinance and the remaining portion of the Ordinance shall remain valid and in full force and effect.

SECTION 16. Effective Date. This Ordinance shall become effective on the date enacted.

Legislative History

Enacted by Resolution L&O-03-87 approved on February 2, 1987. Amended by Resolution L&O-09-87 approved on March 16, 1987. Amended July 13, 1987. Amended Resolution _____ approved on May 8, 1989. Section 1 amended and subsections 1(a) and (b) adopted by oral motion on July 15, 1996. Subsection 10(a), 10(b), and Section 12 amended by Resolution 96-070 approved on July 22, 1996. Subsection 7.f, subsection 10.b, Section 12, Section 14 and Section 15 amended by Resolution 98-058 approved on June 24, 1998. Section 1, Section 4 and subsection 5(c) amended by Resolution 98-081 approved on August 28, 1998. Subsection 7(d)

amended by oral motion on August 28, 1998. Subsection 7(d) amended by Resolution 99-057 approved on April 22, 1999. Comprehensive amendments enacted by Resolution 01-027 approved on December 19, 2000. Section 2 and subsection 11.b.2 amended by Resolution 01-034 approved on January 9, 2001. Subsection 2.i and Section 13 amended by Resolution 02-036 approved on November 8, 2001. Section 11(i) amended and new Section 13 added by Resolution 02-213 approved on July 2, 2002. Amended by Resolution 03-067 approved on February 7, 2003. Amended by Resolution 03-131 approved on April 9, 2003. Section 11d-1(2)(A), (C) and (D) and f-2 amended by Resolution 03-158 approved on June 5, 2003. Section 6(a)(2) amended by Resolution 04-010 on October 9, 2003. Section 6(a)(2) and Section 13-2.(2.6) amended by Resolution 04-114 approved on July 28, 2004. Section 2 j, 10(h) and 10(i) amended by Resolution No. 05-074 approved on February 8, 2005. Section 7(e) added by Resolution 05-144 approved on May 11, 2005. Section 6.a.1. amended, subsections 6.a.3 and 6.a.4 added by Resolution 05-146 approved on June 16, 2005; Section 13.g (3.5) amended by Resolution No. 06-040 approved on January 27, 2006. Section 3c2(F) added by Resolution 06-112 approved on July 3, 2006. Sections 10, 11, 13, and 14 amended by Resolution 06-143 approved on September 27, 2006. Section 13.g.(3.9) amended by Resolution 08-012 approved on October 10, 2007. Section 11 amended by Resolution 08-035 approved November 21, 2007. Sections 10 f.1, 10 j.5, 10 k.4, 11 j.3, 11 j. 5 and 13g. 4 (4.2) amended by Resolution 09-035 approved on January 7, 2009. Section 8, Section 10(e) and (f), Section 11 (b)(3), Section 11(c)(3)(A) and Section 12 amended by Resolution 10-144 approved on August 20, 2010. Section 9b, 10h and 13g1 amended by Resolution 10-152 approved on August 27, 2010. Section 9.b., Section 10. h. and 10.i.2; Section 13 *et seq* amended by Resolution 11-034 approved on January 19, 2011. Section 2.o., Section 6.a.5 and Section 11.c.2 amended, Section 13.f.1.10 *et seq* added by Resolution 11-059 approved on March 9, 2011. Section 13. a.2.(c), Section 13.b. and Section 13.f.1.(1.10) amended by Resolution 11-067 approved on April 8, 2011. Section 9 c. amended; subsections 9.c.1.; 9.c.2; 9.c.3; 9.c.4. and 9.c.5 added by Resolution 11-131 approved on August 31, 2011. Subsections 11.j.2, 13.a.2(a), 13.f.(3.9), 13.f.5, 14.b., 14.c., 14.f., 14.g., and 14.h. amended by Resolution 11-142 approved on September 14, 2011. Section 2.k amended and Section 6.b. deleted by Resolution 12-011 on October 26, 2011. Section 9.c., 9.c.1., 9.c.4., 9.c.5. amended by Resolution 12-020 on November 16, 2011. Changes made by Resolution 12-011 on October 26, 2011 rescinded by Resolution 12-038 approved on January 11, 2012. Section 9.b. amended by Resolution 12-049 approved on February 10, 2012. Section 5 amended by Resolution 12-052 approved March 5, 2012. Sections 2,5 and 13.f.4 amended by Resolution 12-064 approved March 28, 2012. Section 10.e. and 10.f.1.(A) amended by Resolution 12-098 approved on May 23, 2012. Section 9.c and 14.c amended by Resolution 12-120 approved on July 20, 2012. Sections 11.c.iii and 11.d-3, e-3, f-3, g-3 and h-3 added by Resolution 12-130 approved on August 1, 2012. Section 2.c, 7.a.1, 7.a.2, 7.a.3.(C), 7.b.1 and 7.b.2 amended; Section 7.b.43 deleted by Resolution 14-066 approved on February 19, 2014. Subsection 11.b.2.(D) added, Subsection(s) 11.b.4.(A)-(F) added; Subsection 11.c.3.(C) added; Subsection 11.c.2.ii., Subsection 13.f.1.(1.9), Subsection 13.f.1.(1.10), Subsection 13.f.1.(1.10.6), Subsection 13.f.3.(3.4)(b), Subsection 14.b., Subsection 14.c., Subsection 14.e., Subsection 14.f., Subsection 14.g. and Subsection 14.h. amended by Resolution 14-103 approved on May 14, 2014. Subsection 6.a.4. amended by Resolution 14-140 approved on July 16, 2014. Subsection 7.e. amended by Resolution 15-014 approved on October 29, 2014. Subsection 11.c.2 amended and new Subsection 11.c.2.iv added by Resolution 15-078 approved May 27, 2015. Subsection 11.b.3 and Subsection 11.b.4.(F) amended by Resolution 16-075 approved February 3, 2016. Section 11.2.b.2 *et. seq.*, Section 14.b. and 14.f. amended by Resolution 17-022 approved on October 10, 2016.

EXHIBIT A

AFFIDAVIT ACKNOWLEDGING RELINQUISHMENT

STATE OF _____)

ss.

COUNTY OF _____)

I, _____ swear under oath that I am currently enrolled as a member of the _____ Tribe, Nation, or Band, located in _____.

I have initiated membership relinquishment proceedings with the Tribe in which I am currently enrolled.

After the relinquishment, I will not be eligible for any benefits, including but not limited to voting, per capita payments, associated with membership in that Tribe.

I will undertake any action necessitated by the relinquishing Tribe to encourage and accomplish the Relinquishment.

I understand that the 1986 Amended Constitution of the Saginaw Chippewa Indian Tribe of Michigan does not permit dual tribal enrollment.

If it is found that after membership was granted to me in the Saginaw Chippewa Indian Tribe of Michigan, I remain enrolled in another Tribe, Nation, or Band, I understand I will be subject to disenrollment from the Saginaw Chippewa Indian Tribe of Michigan under §11(c) of Ordinance 14. If disenrolled, I will no longer be eligible for any rights or benefits associated with membership in the Saginaw Chippewa Indian Tribe of Michigan.

Signed By:

Date:

This Instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Notary Public

My Commission Expires:

Date: _____

Tribal Chairman, etc.

Dear Sirs;

_____, an enrolled member of your Tribe/Band/Nation, is seeking to be enrolled in the Saginaw Chippewa Indian Tribe of Michigan (“SCIT”). SCIT regulations prohibit members from being enrolled in more than one Tribe/Band/Nation, thus, in order for _____ to be granted SCIT membership, he/she must relinquish their membership in your Tribe/Band/Nation.

It is SCIT policy to not process any enrollment application without proof that a potential member has relinquished membership in any other Tribe/Band/Nation. Proof comes in the form of relinquishment of all rights and benefits associated with membership, including but not limited to voting and receiving per capita payments in your tribe, evidenced by formal action on the part of your government.

Enclosed please find an Affidavit Acknowledging Relinquishment. This Relinquishment demonstrates _____’s desire to relinquish their enrollment in your Tribe/Band/Nation. The applicant is responsible for contacting your office to determine if any other documentation is needed to accomplish the Relinquishment and to complete the same. We appreciate you returning a signed copy of this letter, demonstrating your receipt of this letter. Further, please send to us proof of Tribal Council or Government action (e.g. Tribal Council Resolution) that evidences the Relinquishment of _____’s membership. We will not further process _____’s application for member in the SCIT until we receive this proof of your tribe’s formal approval of his or her membership Relinquishment from your tribe. Should you have any questions concerning this matter, please do not hesitate to contact our office.

Sincerely,

SCIT Enrollment Director

Date of Receipt: _____
Signed: _____
Print: _____
Title: _____