

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council has been advised that Ordinance No. 141, otherwise known as the Compulsory Education Ordinance, needs to be amended due to the closure of the Youth Service Center; and

WHEREAS, the Tribal Council has been further advised by the Juvenile Court Judge, Kay A. Lewis, that the Juvenile Diversion Officer will assume the duties of the Youth Service Center Counselor and Intake Officer; and

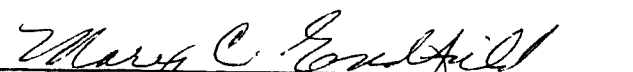
WHEREAS, the Tribal Attorney has presented a proposed Amended Compulsory Education Ordinance which provides for the Juvenile Diversion Office to assume the duties of the Youth Service Center concerning compulsory school attendance; and

WHEREAS, the Tribal Council concludes that the proposed ordinance, which is attached hereto, should be posted for public comment for a period of ten (10) days as required by the Constitution and By-Laws of the White Mountain Apache Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that the proposed Amended Compulsory Education Ordinance be posted by the Tribal Council Secretary for public comment for a period of at least ten (10) days as required by the Constitution and By-Laws.

The foregoing resolution was on January 14, 1986, duly adopted by a vote of 9 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (q,s,t, & u) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984)


Chairman of the Tribal Council


Secretary of the Tribal Council

Ordinance No. ~~141~~ _____

PROPOSED AMENDMENT TO
ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

Repealing Ordinance No. ~~37~~ 141
Enacted ~~December-167-1959~~ December 15, 1983
Hereby Reenacted as Follows:

COMPULSORY EDUCATION

Article I - Definitions

1. "Guardian" as used in this Ordinance shall mean the legal and/or natural parents of a child who is subject to this Ordinance, and any other adult in whose care the child has been permanently or temporarily entrusted pursuant to court order, tribal custom, or informal or formal agreement with the child's natural parents or legal guardian; provided, however, that no person who has been deprived of custody of a child by court order, and who, in fact does not have custody of the child, shall be considered a guardian of the child for the purposes of this ordinance. Parents and their child shall have the primary responsibilities for the child's school attendance under this Ordinance, but all other guardians of the child share in this responsibility and the legal liability imposed by this Ordinance.

2. "Permitted reason" as used in this Ordinance shall mean a legitimate medical reason which requires the child to miss school because of his or her health, or a compelling personal reason which would cause a reasonable parent to conclude that the child must not be in school, such as a death in the immediate family, or a bona fide religious prohibition against school attendance.

3. "School absence" as used in this Ordinance shall mean one unit of absence from school, as defined by the particular school in which the child is enrolled; provided, however, that multiple units of absence occurring on the same school day shall constitute no more than one school absence. For example, if a particular school considers missing one class period an absence, missing five periods on one day is still one "school absence" but missing one period per day for three days is three "school absences".

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Additions are underlined _____

4. "Unemancipated minor" as used in this Ordinance means any child between the ages of 0 and 18 who is subject to the authority and control of his or her parent or guardian and for whose behavior the parent or guardian is responsible. For the purposes of this Ordinance, a minor is emancipated if 19 years of age or older, is married or is one who is cohabitating as husband and wife with a member of the opposite sex.

Article II-Jurisdiction

Section 1. Any guardian of a child who is subject to the provisions of this Ordinance but is not enrolled in school or is absent without permitted reason shall be subject to the jurisdiction of the White Mountain Apache Juvenile Court as the guardian of a child in need of supervision as defined by the White Mountain Apache Juvenile Code, and shall also be subject to the jurisdiction of the Tribal Court as a violator of this Ordinance.

Section 2. Any child subject to the provisions of this Ordinance who is not enrolled in school, or who is absent from school without the permission of his or her guardian and/or without a permitted reason is a child in need of supervision, as defined by the White Mountain Apache Juvenile Code, and is subject to the jurisdiction of the White Mountain Apache Juvenile Court.

Section 3. No section of this Ordinance shall be deemed to confer upon the White Mountain Apache Tribal Court or Juvenile Court criminal jurisdiction over non-Indians. All sections of this Ordinance shall apply to non-Indians, except to the extent that they authorize the imposition of criminal sanctions.

Article III-Compulsory Education Requirements

Section 1. Every Guardian of a unemancipated child between the ages of 5 by September 1 and 18 by July 1 shall enroll the child in school for the entire school session, and shall insure that the child attends all required class sessions unless the child has a permitted reason for absence.

Section 2. Every child between the ages of 5 by September 1 and 18 by July 1 shall attend all required class sessions unless he or she has a permitted reason for absence and, in the case of an unemancipated minor, the permission of his or her guardian to be absent.

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Section 3. A person is excused from the duties prescribed by Sections 1 and 2 when it is shown to the satisfaction of a majority of a Board consisting of a Tribal ~~Youth-Service-Center-Counselor~~, Juvenile Diversion Officer, a Child Guidance Officer of the Tribal Education Department, the Juvenile Court Judge, and a designated official of each reservation school board, that:

- (a) The child is attending a regularly organized private or parochial school; or
- (b) the child has obtained a high school equivalency certificate; or
- (c) the child has been barred from school attendance by a school disciplinary action; or
- (d) the child is in such physical or mental condition that attendance at a regular school is impossible or impractical; or
- (e) the child is a parent and his or her parental duties make attendance at a regular school impossible or a severe hardship.

Article IV-Sanctions

Section 1. Any guardian who violates any provision of this ordinance is guilty of a misdemeanor and is subject to the punishment provided below:

- (a) Any guardian of an unemancipated minor who fails to enroll the child in school shall, if convicted pursuant to the procedures of this Ordinance, be sentenced to jail for a period not to exceed 10 days, or fined an amount not to exceed \$100 dollars, or both.
- (b) Any guardian of an unemancipated minor who knowingly permits the child to be absent from school without a permitted reason shall, if convicted pursuant to the procedures of this Ordinance, be sentenced to jail for a period not to exceed 5 days, or fined an amount not to exceed \$50 dollars, or both.
- (c) Any guardian of an unemancipated minor who has been absent from school without a permitted reason for five or more school absences in any semester, shall, if convicted pursuant to the procedures of this Ordinance, be sentenced to jail for a period not to exceed 5 days or fined an amount not to exceed \$50 dollars or both.

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Section 2. Any child who violates the provisions of this Ordinance is a child in need of supervisions and is subject to any disposition provided for such a child by the White Mountain Apache Juvenile Code.

Section 3. In any case in which a non-Indian parent or other guardian is, after the referral of his or her case by the Juvenile Court to the Tribal Court, bound by the Tribal Court to have violated this Ordinance, such person shall be subject to the Exclusion and Removal provisions of the Tribal Law and Order Code.

Article V-Enforcement Procedures

Section 1. All other provisions of Tribal Law notwithstanding, any designated school official, juvenile probation officer, White Mountain Apache Tribal Police Officer, other White Mountain Apache Tribal Law Enforcement Officer, ~~Youth Services-Center-Intake-Officer~~, Juvenile Diversion Officer, Tribal Education Department Child Guidance Officer, or Federal Law Enforcement Officer, who has a reasonable belief that a child subject to the compulsory education provisions of this Ordinance is absent from school without a permitted reason and is not in the immediate care or supervision of his or her guardian, shall take the child into custody. The officer shall immediately make every reasonable attempt to notify the child's guardian that the child is in custody and to surrender custody of the child to the guardian.

Section 2. In any case in which the officer is unable to locate the child's guardian, the officer shall transport the child to the ~~Youth-Services-Center~~ Juvenile Diversion Office. ~~The--Youth--Services--Center--staff~~ The Juvenile Diversion Officer shall then proceed as in any other child in need of supervision case, pursuant to the White Mountain Apache Juvenile Code, following all applicable procedures of Section 3 below, as soon as the guardian is located.

Section 3. The officer shall prepare a Notice to Appear at a ~~Youth--Services--Center--Conference~~ Juvenile Diversion Conference for the child and his or her guardian. This Notice shall indicate whether this child is currently enrolled in school, and if so, in which school, and whether the child was in the immediate care or supervision of the guardian when the officer first made contact with the child. The Notice shall inform the child and his or her guardian that they are in violation of this Ordinance, that they must appear at the ~~Youth-Services-Center~~ Juvenile Diversion Office on the day and at the time specified or make an alternative appointment, and that failure to appear may result in the

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Additions are underlined _____

filing of a petition in Juvenile Court alleging that the child is in need of supervision and that the guardian is guilty of a misdemeanor. The officer shall explain the Notice to the child and the guardian. The officer shall sign the proof of service, which is a part of the Notice. The Notice shall be prepared in quintuplicate (five copies) and the officer shall serve one copy each upon the guardian and the child and file three copies with the ~~Youth-Services Center~~ Juvenile Diversion Office. ~~The Youth-Services Center~~ The Juvenile Diversion Office shall send one copy of the Notice to the Tribal Education Department, and if the child is enrolled in school, one copy to the designated official at that school. The remaining copy shall be kept on file at the ~~Youth-Services-Center~~ Juvenile Diversion Office.

Section 4. In any case in which a guardian and/or child served with a Notice to Appear for ~~Youth-Services Center-Conference~~ a Juvenile Diversion Conference fails to appear for the conference, the ~~Youth-Services-Center-Intake Officer~~ Juvenile Diversion Officer may recommend that a petition be filed alleging that the child is in need of supervision and that the guardian is guilty of violating this Ordinance, or the ~~Intake-Officer~~ Juvenile Diversion Officer may have a new notice served upon the guardian and child, providing them with one more opportunity for an informal resolution of the matter. A second failure to appear at the ~~Youth-Services-Center-Conference~~ Juvenile Diversion Conference shall result in the filing of a petition in Juvenile Court alleging that the child is in need of supervision, and that the guardian is guilty of violation of this Ordinance.

Section 5. In any case in which an officer has reasonable grounds to believe that a child is in the immediate care or supervision of his or her guardian, but is absent from school without a permitted reason or is not enrolled in school, the officer shall serve a Notice to Appear for ~~Youth Services-Center-conference~~ a Juvenile Diversion Conference upon the child and guardian as in Section 3.

Section 6. Notice of Absence: In any case in which it comes to the attention of the (1) ~~Youth-Services-Center~~ Juvenile Diversion Officer, (2) the Tribal Education Department, or (3) any school that a child who is subject to the provisions of this Ordinance is not enrolled in school, or has been absent without a permitted reason for more than 5 school absences during a semester, a written notice of the relevant facts shall be sent by the recipient of the information to the designated personnel of the other two agencies.

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Upon receipt of such information, the ~~Youth-Services-Center~~ Juvenile Diversion Officer shall prepare a Notice to Appear for ~~Youth-Services-Conference~~ a Juvenile Diversion Conference and shall cause it to be served upon the child and his or her guardian as described in Section 3 of this Article.

Section 7. ~~Youth-Services-Center-Conference~~ Juvenile Diversion Conference: In any case in which the ~~Youth Services-Center~~ Juvenile Diversion Office receives a copy of a served Notice to Appear for ~~Youth-Services-Center-Confer-ence~~ Juvenile Diversion Conference, the ~~Intake-Officer~~ Juvenile Diversion Officer shall open a file for the family under the name of the child for preservation of an official record. At the ~~Youth-Services-Center-Conference~~ Juvenile Diversion Conference, the child and his or her guardian shall be informed of their legal responsibilities regarding school attendance and the penalties for failure to comply with this Ordinance. They shall then be afforded the opportunity to resolve the matter by enrolling the child in school and making a written promise to guarantee attendance, which shall be known as a school attendance agreement. They shall also be informed that a failure to comply with the agreement will result in formal legal action being instituted. If such agreement is deemed impossible or inadvisable by the ~~Intake Officer~~ Juvenile Diversion Officer or is refused by the guardian or child, the ~~Intake-Officer~~ Juvenile Diversion Officer shall recommend that a petition be filed in Juvenile Court alleging violation of the applicable sections of this Ordinance.

Section 8. School Attendance Agreement: In any case in which a child and/or his guardian have signed a school attendance agreement with the ~~Youth-Services-Center~~ Juvenile Diversion Officer and have failed to conform to the terms of that agreement, the ~~Youth-Services-Center~~ Juvenile Diversion Officer shall recommend the filing of a Petition in Juvenile Court alleging that the child is in need of supervision and that the guardian is guilty of repeated violations of this Ordinance.

Section 9. Conference Disposition Report: In every case in which a child and/or his or her guardian are served with a Notice to Appear for ~~Youth-Services-Center-Confer-ence~~ Juvenile Diversion Conference, the ~~Youth-Services-Center~~ Juvenile Diversion Officer shall inform the Tribal Education Department, in writing of:

- (a) The child's and guardian's attendance or non-attendance at the Conference.

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(b) Enrollment of the child in school, if it occurs.

(c) The child's and/or guardian's signing of, or failure to sign, a school attendance agreement.

(d) The child's failure to conform to the terms of the school attendance agreement, in the event of such failure.

(e) Recommendations for the filing of a Juvenile Court Petition.

Upon its receipt of such information, the Tribal Education Department shall forward the information to the school in which the child is enrolled, and, in conjunction with the White Mountain Apache Tribal Guidance Center, shall provide to the child and his or her family such home visits and/or other counselling services as it deems necessary.

Article VI-Juvenile Court Disposition

Section 1. The White Mountain Apache Juvenile Code shall govern any case in which a petition is filed in Juvenile Court alleging violation of this Ordinance. The Juvenile Court Judge may, at his discretion, allow the child and the guardian to make an informal settlement if they enroll the child in school and sign a written agreement guaranteeing school attendance. If the Judge decides that an informal resolution of the case would not be in the best interest of the child, the Judge may transfer the case against the guardian to the Tribal Court for criminal prosecution under this ordinance, and/or proceed with child in need of supervision proceedings, or the Judge may pursue any other alternative for which the Juvenile Code provides.

Section 2. The Juvenile Court Judge may impose upon any child and/or guardian making an informal settlement any reasonable conditions, including counselling or community service, which are necessary to insure the successful resolution of the school attendance problem.

Section 3. In any case in which the child and/or guardian have previously been before the ~~Youth--Services Center~~ Juvenile Diversion Officer or the Juvenile Court for the same or a separate violation of this Ordinance, the ~~Intake-Officer~~ Juvenile Diversion Officer and/or Judge shall consider that fact in determining the disposition of the present case.

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Article VII-Records

Section 1. In any case in which the Juvenile Court Judge finds probable cause to believe that repeated violations of this Ordinance have occurred, and that these violations pose a danger to the health, safety, or well-being of the child, the Judge may order that the school provide the Court with a sealed copy of the child's school discipline and attendance records. These records shall remain sealed and confidential except for disclosure to the Judge, the child, the guardian, and their legal representative. These records shall not be disclosed to other persons for any reason. Upon termination of Juvenile Court jurisdiction, these records shall be returned to the school.

Section 2. Every school shall, within thirty (3) days of the beginning of each semester, provide the Tribal Education Department with all directory information regarding its students including rosters, absentee lists, and withdrawal lists, without requiring the consent of the students or their guardians.

Article VIII-Effective Date

This Ordinance shall be effective and applied prospectively beginning ~~December-15,-1983~~ _____.

Article IX-Construction

This Ordinance shall be liberally construed to effect its object and to promote the well-being of children of the White Mountain Apache Tribe. This Ordinance shall be read in conjunction with all other parts of the White Mountain Apache Tribal Law and Order Code.

Article X-Savings Clause

This Ordinance does not affect any rights and duties that matured, penalties that were incurred, or proceedings that were commenced before its effective date.

Article XI-Sue or Be Sued

Nothing in this provisions of this Ordinance constitutes consent by the White Mountain Apache Tribe or its sub-organizations to be sued in any court. This Ordinance does not represent a waiver of the White Mountain Apache Tribe's sovereign immunity for any purpose. The right to protection under the Tribe's sovereign immunity is in no way waived by members of the Tribal Council, the Tribe's offi-

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cials, sub-organizations or employees, or any agent of the Tribe.

Article XII- Clause

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article XIII-Repeal of Ordinance No. 37 141

Ordinance No. 37 141, of the White Mountain Apache Law and Order Code, enacted ~~December-16,--1959~~ December 15, 1983, is hereby repealed.

ORDINANCE NO. 141

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