

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

**(Approving Ordinance No. 224 to Amend the
White Mountain Apache Education Code)**

WHEREAS, the powers vested in the White Mountain Apache Tribe by virtue of its inherent sovereignty or by existing law, the White Mountain Apache Tribal Council has the authority pursuant to Article IV, Section 1 (a) of the Tribe's Constitution to, *inter alia*, evaluate and assess the educational future of children attending schools on the Fort Apache Indian Reservation, and to exercise such other powers as may be delegated to the Council by members of the Tribe, or which are vested in the Tribe through its inherent sovereignty or by federal law; and

WHEREAS, the Education Code of the White Mountain Apache Tribe is derived from Ordinance No. 152, enacted November 14, 1986; and

WHEREAS, sections of the original code have become obsolete and not longer address the present day concerns regarding the issues of school truancy and drop out rates; and

WHEREAS, student representatives from reservation schools and members of the Children First Coalition approached the Tribal Council on May 4, 2005 with a proposal to amend the White Mountain Apache Education Code; and

WHEREAS, the proposed amendments are an effort to address these issues that affects children attending schools on the Fort Apache Indian Reservation; and


WHEREAS, the Tribal Council has reviewed and discussed the proposed amendments that will affect reductions in school truancy and drop out rates and concludes that the adoption of Ordinance No. 224 in the form and content attached hereto and incorporated by reference herein would greatly assist the Tribe in ensuring educational attainment for its children.

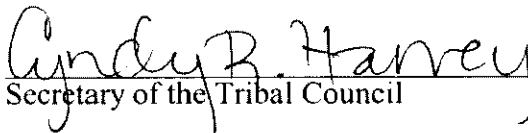
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Secretary of the Tribal Council to post copies of the proposed education ordinance No. 224 in each District for at least ten (10) days for public comment before final action by the Tribal Council as required by Article XV, Section 2 of the Constitution of the White Mountain Apache Tribe.

The foregoing resolution was on JULY 13, 2005 duly adopted by a vote of SIX for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (q), (r), (s), (t), and (u) of the Constitution of the Tribe, ratified by the

Resolution No. 07-2005-189
Ordinance No. 224

Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council


Secretary of the Tribal Council

**WHITE MOUNTAIN APACHE
EDUCATION CODE**

**CHAPTER ONE
GENERAL PROVISIONS**

[Historical Note: The Education Code is derived from Ordinance No. 152, enacted November 14, 1986]

SECTION 1.1 DEFINITIONS

A. School Age Child between the ages of five (5) years and eighteen (18) years, provided, however, for the purpose of this Code, a child shall be deemed five years of age only if the child reaches such age prior to September 1, of the current school year.

B. Guardian means the natural or adoptive parent or parents having legal custody of the child or any other adult person who has been entrusted with the care and supervision of a child and who has legal custody of the child pursuant to court order.

C. Legal Custody means that legal status created by parental rights, court order, or tribal custom, which vests in a parent or guardian the right to have physical custody of the child and the duties and responsibilities to provide the child with food, shelter, protection, discipline, medical care and education.

D. Absence shall mean the child's non-attendance for at least one class period or day at the particular school in which the child is enrolled.

E. Excessive Absences shall mean absences (both excused and unexcused) excess of 10% of the total number of scheduled school attendance days in the school year.

F. Excused Absences shall mean absences from school for the following permitted reasons: a legitimate medical reason, a compelling personal reason such as a death in the immediate family; a bona fide religious reason prohibiting school attendance; or, the child or guardian has presented reasons for non-attendance which are satisfactory to the school officials.

G. Truant shall mean an unexcused absence for at least one class period during the day.

H. Habitually Truant means a truant child who is truant for at least five school days within a school year.

I. Pre-Release Conference shall mean the required informal conference between a child's guardian and a truancy/police officer, to determine the release, further detention, or protective custody proceedings regarding the child.

SECTION 1.2 JURISDICTION

A. Any guardian of a child found in violation of this Code shall be subject to the jurisdiction of the White Mountain Apache Tribal Court.

B. Any child found in violation of this Code shall be subject to the jurisdiction of the White Mountain Apache Juvenile Court.

C. Any adult found in violation of this Code shall be subject to the jurisdiction of the White Mountain Apache Tribal Court.

CHAPTER TWO COMPULSORY EDUCATION REQUIREMENTS

SECTION 2.1 DUTIES OF GUARDIAN TO ENROLL CHILD

Every guardian of a school age child shall enroll the child in school for the entire school year, and shall be responsible for the child's attendance at all required class sessions unless the child has an excused absence.

SECTION 2.2 DUTIES OF CHILD TO ATTEND SCHOOL

Every school age child is required to attend all scheduled class sessions at the school in which the child is enrolled unless the child had an excused absence.

SECTION 2.3 EXCEPTIONS

- A. A person is excluded from the duties prescribed by Sections 2.1 and 2.2 of this Code when it is shown to the satisfaction of the Tribal Education Department, and the Juvenile Court Judge that:
- (1) the child is attending a regularly organized private or parochial school.
 - (2) the child has obtained a high school diploma or equivalency certificate;

- (3) the child has been barred from school attendance by a school disciplinary action; provided the child is at all times in the immediate supervision of the guardian;
- (4) the guardian of the child had presented satisfactory reasons for non-attendance which are satisfactory to the Tribal Education Department, and the Juvenile Judge; or
- (5) the guardian of a five year old child has presented satisfactory evidence that it would not be in the best interest of the child to enroll the child at age 5.

CHAPTER THREE SANCTIONS

SECTION 3.1 ADULT SANCTIONS

Any guardian or other adult who violates any provision of this Code is guilty of a misdemeanor and is subject to the punishment provided below.

- A. Any guardian of a school age child who fails to enroll the child in school and/or who knowingly permits the child to be truant shall, if convicted pursuant to the procedures of this Code, be sentenced to jail for a period not to exceed thirty (30) days, or be ordered to perform not more than one hundred (100) hours of community service, or be fined an amount not to exceed one thousand (1,000) dollars, or any combination of the above.
- B. Any adult who encourages or in any way aids or abets a school age child to be truant from school shall be charged with "contributing to the delinquency of a minor" and, if convicted, shall be subject to the sanctions of the Tribal Law and Order Code.

SECTION 3.2 CHILDREN'S SANCTIONS

Any child who violates the provisions of this Code is a child in need of control and supervision and is subject to any disposition provided for such a child by the White Mountain Apache Juvenile Court.

SECTION 3.3 EXCLUSION AND REMOVAL OF NON-INDIANS

In any case in which a non-Indian parent or guardian is, after referral of his or her cause by the Juvenile Court to the Tribal Court, found by the Tribal Court to have violated this Code, such person shall be sentenced to jail for a period, not to exceed thirty (30) days, or be ordered to perform not more than one hundred (100) hours of

community service, or be fined an amount not to exceed one thousand (1,00) dollars, or any combination of the above, and/or the Exclusion and Removal provisions of the Tribal Law and Order Code.

CHAPTER FOUR ENFORCEMENT PROCEDURES

SECTION 4.1 TRUANCY OFFICER

The White Mountain Apache Tribal Chief of Police shall appoint truancy officer whose primary responsibilities shall be to enforce the provisions of this code.

SECTION 4.2 PUBLIC RESPONSIBILITY TO REPORT

Anyone who had reason to believe a child is truant, shall immediately notify the truancy officer or the White Mountain Apache Tribal Police department of the child's possible truancy, the whereabouts of the child and the child's name and address, if known.

SECTION 4.3 LOCATING AND DETAINING CHILD, NOTIFICATION TO CHILD'S GUARDIAN

When the truancy officer has been notified that a child may be truant, or had other reasons to believe a child may be truant, the officer shall make every reasonable attempt to locate the child. If, after locating the child, the officer had reasonable grounds to believe the child is truant, the officer shall detain the child and make every reasonable attempt to notify the child's guardian and schedule a pre-release conference with the guardian.

SECTION 4.4 JUVENILE COURT PETITION

In any case in which a child is detained for truancy or the Truancy Officer or School Attendance Officer has reasonable grounds to believe that a child is truant, the Truancy Officer School Attendance shall file a petition in the Juvenile Court for further proceedings.

CHAPTER FIVE JUVENILE COURT DISPOSITION

SECTION 5.1 JUVENILE CODE CONTROLLING; INFORMAL SETTLEMENT; TRANSFER OF ADULT ACTION TO TRIBAL COURT

The White Mountain Apache Juvenile Code shall govern any case in which a petition is filed in Juvenile Court alleging violations of this code. The Juvenile Court judge may, in his or her 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 Code, and/or proceed with child in need of control proceedings, or the Judge may pursue any other alternative for which the Juvenile Code provides.

The Juvenile Court Judge may impose upon any child and/or guardian making an informal settlement any reasonable conditions, including counseling and/or community service, and/or confinement, and/or fines, and/or alternative school replacement.

CHAPTER SIX RECORDS

SECTION 6.1 REPEAT VIOLATIONS; ORDER TO SCHOOL TO RELEASE SCHOOL RECORDS

In any case in which the Juvenile Court Judge finds probable cause to believe that repeated violations of this Code 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 to the child's school discipline and attendance records. These records shall remain sealed and confidential except for disclosure to the Judge, the Juvenile Prosecutor, the child, the guardian, and their legal representative. These records shall not be disclosed to other persons for any reasons. Upon termination of Juvenile Court jurisdiction, these records shall be returned to the school.

SECTION 6.2 SCHOOL INFORMATION PROVIDED TO TRIBAL EDUCATION DEPARTMENT

Every school shall, within thirty (30) days of the beginning of each semester, provide the Tribal Education Department and the Tribal Truancy Officer with all directory information regarding its students including rosters, absences lists, and withdrawal lists, without requiring the consent of the guardians.

CHAPTER SEVEN SCOPE AND APPLICATION

SECTION 7.1 CONSTRUCTION

This code shall be liberally construed to affect its object and to promote the well being of children of the White Mountain Apache Tribe and other children within the Fort Apache Indian Reservation. This Code shall be read in conjunction with all other parts of the White Mountain Apache Tribal Law and Other Code.

SECTION 7.2 SAVINGS CLAUSE

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

SECTION 7.3 SOVEREIGN IMMUNITY

Nothing in the provisions of this Code constitutes consent by the White Mountain Apache Tribe or its sub-organizations to be sued in any court. This Code 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 y members of the Tribal Counsel, the Tribal officials, sub-organizations or employees, or any attorney or agent of the Tribe.

SECTION 7.4 SEVERABILITY

If any provision of this Code of the application there to any person or circumstances if held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or applications, and to this end the provisions of this Code are sever able.