



Resolution No. 11-2005-343

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

(Enacting Ordinance No. 224, Amending the Education Code)

WHEREAS, pursuant to Resolution No. 07-2005-189, the Secretary of the Tribal Council did post copies of the proposed amendment to the Education Code, Ordinance No. 224, in each District for at least ten (10) days for public comment as required by Article XV, Section 2 of the Constitution of the White Mountain Apache Tribe; and

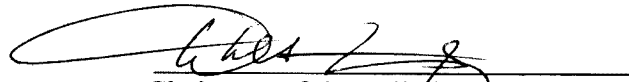
WHEREAS, no comments received; and

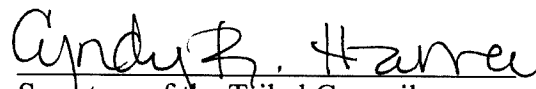
WHEREAS, the Council has reviewed Ordinance No. 224 carefully and considered its recommendations and the implications thereof in great detail; and

WHEREAS, the Council finds the adoption of Ordinance No. 224 would be in the best interests of the White Mountain Apache Tribe to govern truancy and the high student drop out rate among students attending schools within the exterior boundaries of the Fort Apache Indian Reservation.

THEREFORE, BE IT ENACTED by the White Mountain Apache Tribal Council that the proposed amendment to the Education Code in the form of Ordinance No. 224, as attached and incorporated by this reference, is hereby enacted, and directs that Ordinance No. 224 shall be a permanent part of the positive law of the Tribe.

The foregoing resolution was on November 30, 2005, duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (f), (h), (i), (q), (s), (t) and (u) of the Constitution of the Tribe, ratified by the 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 means a 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. For schools funded through the Bureau of Indian Affairs, a child shall be deemed five years of age if the child reaches such age prior to December 31 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 the 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) in excess of 10% of the total number of scheduled school attendance days in the school year.
- F. Excused Absence shall mean absence from school for the following permitted reasons: a legitimate medical reason, a compelling personal reason such as death in the immediate family; a bona fide religious reason prohibiting school attendances; 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 office, 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 has 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 has presented satisfactory reasons for non-attendance which are satisfactory to the Tribal Education Department, and the Juvenile Court 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. In addition, the Court may order parenting classes and/or family counseling.

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 SHILDREN'S SANCIONS

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 Code.

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 case 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 (1,000) 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 a truancy officer whose primary responsibilities shall be to enforce the provisions of this code.

SECTION 4.2 **SCHOOL ATTENDANCE OFFICER**

Any school or school district subject to this Code may appoint an Attendance Officer. The Attendance Officer will have the authority to issue citations for violations of this code

SECTION 4.3 **PUBLIC RESPONSIBILITY TO REPORT**

Anyone who has 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 4.4 **LOCATING AND DETAINING CHILD; NOTIFICATION TO CHILD'S GUARDIAN**

When the truancy officer has been notified that a child may be truant, or has 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 has 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 4.5 **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 or School Attendance Officer shall file a petition in the Juvenile Court or further proceedings.

CHAPTER FIVE
JUVENILE COURT DESPOSITION

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 violation 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.

SECTION 5.2 **CONDITIONS IMPOSED AS PART OF INFORMAL SETTLEMENT**

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

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 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 reason. 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, absentee 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 effect its object and to promote the well-being of children of the White Mountain Apache Tribe and other children residing 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 Order 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 waived by members of the Tribal Council, the Tribe's officials, sub-organizations or employees, or any attorney or agent of the Tribe.

SECTION 7.4 **SEVERABILITY**

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