

cc: Ed

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

11 SEP 1986

WHEREAS, the Tribal Education Code pertaining to truancy of school children has been revised by a committee comprised of personnel from Law Enforcement, Education, Social Services and the legal department; and

WHEREAS, the proposed truancy code is attached hereto and incorporated by reference; and

WHEREAS, the Tribal Council is requested to post the proposed education code for a minimum period of ten days as required by the Tribal Constitution in order to obtain public comments and recommendations regarding the proposed Truancy Code; and

WHEREAS, the Tribal Council concurs with said request.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post the proposed Truancy Code attached hereto and incorporated by reference herein in public places throughout the reservation for a minimum period of ten (10) days as required by the Tribal Constitution.

The foregoing resolution was on August 21, 1986, duly adopted by a vote of 10 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 (i) 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).

RECEIVED

AUG 27 1986

FORT APACHE INDIAN RESERVATION
WHITE MOUNTAIN APACHE TRIBE

Paul Johnson
Chairman of the Tribal Council

Mariddie J. Craig
Secretary of the Tribal Council

86-211

PROPOSED

WHITE MOUNTAIN APACHE
EDUCATION CODE

CHAPTER ONE
GENERAL PROVISIONS

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.

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 of any scheduled school session at the particular school in which the child is enrolled.

E. Excused Absence shall mean absence 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 and the Truancy Officer.

F. Truant shall mean absence from school without an excused absence.

G. 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.

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 school principal and/or the school superintendent, 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 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 child is in such physical or mental condition that attendance at a regular school is impossible or impractical;

(5) the child is a parent and his or her parental duties make attendance at a regular school a severe hardship;

(6) the child will reach the age of 18 years prior to the commencement of the current school year; or

(7) the guardian of the child has presented reasons for non-attendance which are satisfactory to the school superintendent, the school principal, the Tribal Education Department, and the Juvenile Court Judge.

(8) 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 in school at age 5.

CHAPTER THREE SANCTIONS

SECTION 3.1 ADULT SANCTIONS

Any guardian 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 shall, if convicted pursuant to the procedures of this Code, 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 a school age child 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 5 days, or fined an amount not to exceed \$50 dollars, or both.

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 Code.

SECTION 3.3 EXCLUSION AND REMOVAL OF NON-INDIANS

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, found by the Tribal Court to have violated this Code, such person shall be subject to a fine not to exceed \$50.00 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 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 4.3 LOCATING AND DETAINING CHILD; NOTIFICATION TO CHILD'S GUARDIAN

A. 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 4.4 JUVENILE COURT PETITION

In any case in which a child is detained for truancy or the truancy officer has reasonable grounds to believe that a child is truant, the truancy officer 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 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 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.

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 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 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 with all directory information regarding its students including rosters, absentee lists, and withdrawal lists, without requiring the consent of the students or their 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 the 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.

The following is a list of persons who met and discussed the proposed White Mountain Apache Education Code:

Tracy Carrington, Alchesay High School
Gene Nelson, Junior High School
Andrew Kane, Chief; Whiteriver Police Dept.
Judge Kay Lewis, Juvenile Court
Phil Smith, Juvenile Probation Officer
Cindy Potter, Youth Group Home
Vincent Craig, Legal Department
Mary Jo Brown, Legal Department
Ann Willey, Tribal Chairman's Office