

**WHITE MOUNTAIN APACHE**  
**TRUANCY CODE**

*Effective October 2, 2019*

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**CHAPTER ONE  
GENERAL PROVISIONS**

**SECTION 1.1 AUTHORITY AND PURPOSE**

- A. Authority. This Code is authorized under the inherent civil, legislative and regulatory authority of the White Mountain Apache Tribe, and enacted by the White Mountain Apache Tribal Council pursuant to its authority under the Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation.
- B. Purpose. The purpose of this Code is to create a legal mechanism to remedy the problems of truancy on the Fort Apache Indian Reservation through community-wide cooperation and accountability, and in doing so, to secure the future for the White Mountain Apache people.

**SECTION 1.2 CONSTRUCTION; INTERPRETATION**

This Code shall be liberally construed to affect its purposes and to promote the well-being of the School-aged Children of the White Mountain Apache Tribe and of other children residing within the Fort Apache Indian Reservation. This Code shall be interpreted in conjunction with all other parts of the White Mountain Apache Tribal Law and Order Code.

**SECTION 1.3 SEVERABILITY; SAVING CLAUSE; REPEAL AND REPLACEMENT**

- A. Severability. If any provision of this Code or its 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.
- B. Saving 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.
- C. As of its effective date, this Code repeals and replaces previously enacted codes, including the 2005 Education Code, and other ordinances, resolutions or policies to the extent that they contradict the provisions of this Code.

**SECTION 1.4 EFFECTIVE DATE**

This Code shall be deemed in effect as of the date of its passage by the Tribal Council through ordinance and resolution.

**SECTION 1.5 BURDENS OF PERSUASION**

- A. Civil. The burden of persuasion for all civil actions brought hereunder shall be by a preponderance of the evidence.
- B. Criminal. The burden of persuasion for all criminal or juvenile actions brought hereunder shall be beyond a reasonable doubt.

## **SECTION 1.6 DEFINITIONS**

- A. “Absence” means a student’s non-attendance for at least one class period or day at the particular school in which the child is enrolled.
- B. “Code” means the White Mountain Apache Truancy Code.
- C. “Excessive Absences” means absences (both excused and unexcused) in excess of 10% of the total number of scheduled school attendance days in the school year.
- D. “Excused Absence” means absence from school that is excused under the policies of the school in which the child is enrolled.
- E. “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.
- F. “Habitually Truant” means a student who is truant for at least five school days within a school year.
- G. “Juvenile Court” means the Juvenile Court of the White Mountain Apache Tribe.
- H. “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.
- I. “Reservation” means the Fort Apache Indian Reservation.
- J. “School-Aged 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.
- K. “School Resource Officer” means an officer of the White Mountain Apache Police Department assigned with assisting with attendance, truancy, safety, and other school-related matters.
- L. “TANF” means Temporary Assistance for Needy Families.
- M. “Tribe” means the White Mountain Apache Tribe.
- N. “Tribal Council” means the White Mountain Apache Tribal Council.
- O. “Tribal Court” means any court of the White Mountain Apache Tribe.
- P. “Tribal Social Services” means White Mountain Apache Tribal Social Services.
- Q. “Truant” shall mean an unexcused absence for at least one class period during the day.

## **SECTION 1.7 JURISDICTION**

- A. Civil. The Tribe possesses the civil jurisdiction to enforce the provisions of this Code on all School-Aged Children, their parents or Guardians, and community members, who are domiciled or located within the exterior boundaries of the Reservation.
  
- B. Criminal. The Tribe possesses the criminal jurisdiction to enforce the provisions of this Code on all School-Aged Children, their parents or Guardians, and community members, who are domiciled or located within the exterior boundaries of the Reservation and are members of a federally-recognized tribe of Indians or who self-identify as Native American.

**CHAPTER TWO  
COMPULSORY EDUCATION REQUIREMENTS**

**SECTION 2.1 DUTIES OF PARENT OR GUARDIAN TO ENROLL CHILD**

Every parent or Guardian of a School-Aged 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 is excused according to that school's policies.

**SECTION 2.2 DUTY OF CHILD TO ATTEND SCHOOL**

Every School-aged 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 parent or Guardian and School-aged Child are 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 District and the Juvenile Court Judge that:
1. The School-aged Child is attending a regularly organized private or parochial school;
  2. The School-aged Child has obtained a high school diploma or equivalency certificate;
  3. The School-aged Child has been barred from school attendance by a school disciplinary action;
  4. The parent or Guardian of the child has presented reasons for non-attendance which are satisfactory to the Tribal Court;
  5. The parent or 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; or
  6. The parent or Guardian presents to the School Resource Officer or Juvenile Advocate an affidavit of proof of enrollment in a home school program, as provided by the County Department of Education.

**SECTION 2.4 PRESUMPTION OF TRUANCY**

There shall be a legal presumption that School-Aged Children who are out of school are truant if observed in the community while school is in session unaccompanied by an adult.

**SECTION 2.5 MANDATORY REPORTING OF TRUANT CHILDREN**

Anyone who has reason to believe that a school-aged child is truant shall immediately notify the White Mountain Apache Police Department of the child's possible truancy, the whereabouts of the child, and the child's name and address, if known.

**CHAPTER THREE**  
**INITIAL CORRECTIVE ACTIONS**

**SECTION 3.1 NOTIFICATION**

- A. Parent Notification. Upon discovering that a student is truant, the Attendance Clerk or other designee shall, that same day, make reasonable efforts to notify the parents or Guardians that the child is truant.
  
- B. School Resource Officer Notification. If the parent or Guardian does not or cannot promptly transport the student to school, the School shall immediately notify the School Resource Officer, who shall make a home visit or search for the student to compel attendance. When requesting the assistance of the School Resource Officer, the school shall provide the following information:
  - 1. The student's name;
  - 2. The date(s) of prior unexcused absences;
  - 3. The Student's physical address;
  - 4. The names of the Student's parents or Guardians; and
  - 5. Any other information about the student that may be helpful in locating and assisting the family and student.
  
- C. Right to Detain. After locating the student, the School Resource Officer shall detain and return the student to school. The school shall notify the parent that the student was truant and detained and transported to school by the School Resource Officer.

**SECTION 3.2 SCREENING**

- A. Screening Required. After a student's third unexcused absence during a given school year, the Principal or designee shall schedule, within one week, a screening.
  
- B. Screening; Purpose. The purpose of the screening is to determine the cause of the student's unexcused absences, to determine what services may be required or advisable to remedy the situation, and to encourage attendance by addressing the causes.
  
- C. Screening; Participants. Unless otherwise requested by the student, the student and the school counselor or designee shall be the only persons required to participate in the screening.

**SECTION 3.3 INTERVENTION TEAM**

- A. Intervention Required. After a student's fifth unexcused absence during a given school year, the Principal or designated school administrator shall schedule, within ten (10) days, an intervention team meeting.
  
- B. Intervention Team; Participants. The Intervention Team shall be comprised of the following individuals:
  - 1. The parent(s) or Guardian(s) of the student;
  - 2. The student; and
  - 3. The Principal and Attendance Clerk or other designee.

C. Intervention Measures. During the Intervention Team Meeting, the following measures shall be utilized to determine the reasons for the truancy, the most appropriate corrective services, and promote attendance improvement:

1. The student and parents shall schedule and attend an assessment at a behavioral health agency within one week, which assessment shall be focused on identifying and remedying the issues in the family that are inhibiting school attendance and participation and determining if the person(s) primarily responsible for the truancy are the parents or the child. The request for an assessment from the Intervention Team shall state the above- purposes of the assessment so that the behavioral health agency knows what to focus on.
2. The Intervention Team shall create a 30-day Attendance Improvement Plan that will track the progress of the assessment, require compliance with the assessment's recommendations, mandate no additional unexcused absences, and identify any other appropriate additional mandated services for the family.
3. The Intervention Team shall, at the first meeting, schedule a follow-up meeting to occur not sooner than 30-days after the initial meeting to follow up on progress with the Attendance Plan.

D. Intervention; Completion.

1. Compliance. If, at the end of the 30-day Attendance Plan, the student has not accrued any more unexcused absences, and the student and family have achieved substantial compliance with the other requirements of the attendance plan, then the plan shall be considered complete and the Intervention Team dismissed.
2. Non-Compliance. If, at the end of the 30-day Attendance Plan, or sooner than that if the student accrues any additional unexcused absences or it otherwise becomes apparent that the student and family do not intend to comply or refuse to participate, the Intervention Team may be dismissed and the matter referred by the designated school administrator to the School Resource Officer, who shall take the appropriate measures as provided for below.

### **SECTION 3.4 POST-INTERVENTION MEASURES**

A. Parental Cause.

1. Civil Offense; Contributing to the Truancy of a Minor. When the assessment provided for by Section 3.3(C)(1) or the Intervention Team have determined that the cause of the habitual truancy is predominantly the parents or Guardians, or when the legal presumption of parental cause has not been rebutted, then the School Resource Officer and Designated School Administrator shall prepare a Truancy Referral Form and cause the same to be forwarded to the Office of the Prosecutor for filing of a Contributing to the Truancy of a Minor civil offense.
2. Referral to Tribal Social Services. When a Truancy Referral Form and police report are filed by the school and School Resource Officer, the report shall be forwarded by the Police Department to Tribal Social Services within five business days. A Child Protective Services worker shall investigate the circumstances within five business days, and if appropriate, the Office of the Prosecutor will file a Child In Need of Supervision case, as provided for by Section 7.2 of the Tribe's Juvenile Code. Tribal Social Services shall, at the completion of the investigation, inform the school regarding its intention to file a Child in Need of Supervision case or not.

3. Criminal Complaint. Only after the conditions below have been satisfied shall the School Resource Officer file a police report with the Office of the Prosecutor for the criminal prosecution of Failure to Send Children to School, pursuant to Section 2.35 of the Tribe's Criminal Code and as provided for hereunder:

- i. The parent(s) or Guardian(s) has been civilly adjudicated as Contributing to the Truancy of a Minor and has failed to remedy the causes of the habitual truancy within the prescribed time; or
- ii. The parent(s) or Guardian(s) did remedy the truancy but the student continues to be truant and the parent or Guardian is reasonably presumed to be the predominant cause of the continued truancy.

B. Student Cause.

1. When the assessment provided for by Section 3.3(C)(1) or the Intervention Team have determined that the cause of the habitual truancy is predominantly the student, the designated school administrator and the School Resource Officer shall make a referral for a Child in Need of Supervision to Tribal Social Services who shall investigate the circumstances within five business days, and if appropriate, forward to the Office of the Prosecutor to file a Child In Need of Supervision case, as provided for by Section 7.2 of the Tribe's Juvenile Code. Tribal Social Services shall, at the completion of the investigation, inform the school regarding its intention to file a Child in Need of Supervision case or not.
2. If after the disposition of a Child In Need of Supervision Case the student continues to be truant, the school and the School Resource Officer shall submit a Truancy Referral Form to the Office of the Prosecutor for filing of a delinquency petition, pursuant to the Tribe's Juvenile Code and as provided for hereunder.

C. Equal Cause.

1. When the assessment provided for by Section 3.3(C)(1) or the Intervention Team have determined that the cause of the habitual truancy is equally the parent and the child, the school and the School Resource Officer may take any measures provided for in subsections A and B, reasonably calculated to remedy the habitual truancy.

**CHAPTER FOUR  
ADULT ENFORCEMENT PROCEDURES**

**SECTION 4.1 CONTRIBUTING TO THE TRUANCY OF A MINOR; ELEMENTS;  
PRESUMPTION; JURISDICTION**

- A. Elements. It shall be prohibited, and a civil offense, for a parent or Guardian to fail to take reasonable measures to prevent their child from being habitually truant.
- B. Presumption. Once the Tribe has established that a parent or Guardian's child is habitually truant, a legal presumption shall be applied that the parent or Guardian failed to take reasonable efforts to prevent their child from being habitually truant, which may be rebutted by the parent or Guardian showing that they took reasonable efforts to prevent the truancy.
- C. Jurisdiction. The Juvenile Court shall hear Contributing to the Truancy of a Minor cases, unless the Chief Judge of the Tribal Court otherwise assigns a case.

**SECTION 4.2 CONTRIBUTING TO THE TRUANCY OF A MINOR; PENALTIES**

A parent or Guardian found by the Tribal Court to be Contributing to the Truancy of a Minor may be sentenced to any of the following civil penalties:

- A. Mandatory attendance at parenting classes;
- B. Suspension of Tribal benefits for up to one year;
- C. Notification of habitual truancy to TANF, which may affect eligibility for TANF benefits;
- D. Listing the parents or guardians' name in Apache Scout for 2 consecutive issues;
- E. Mandatory drug testing;
- F. Community service; and
- G. An assessment at a behavioral health agency and compliance with the agency's recommendations.

**SECTION 4.3 CONTRIBUTING TO THE TRUANCY OF A MINOR; COMPLIANCE PERIOD**

A parent or Guardian sentenced under Section 4.2 shall have 45 days in which to comply with the civil penalties and in which to remedy the truancy, and shall be contacted weekly by the School Resource Officer or other designee to assist with compliance. If the compliance is achieved, then the matter shall be dismissed.

**SECTION 4.4 FAILURE TO SEND CHILDREN TO SCHOOL**

- A. A person is guilty of an offense who willfully refuses to send a child to school or permits a child to be habitually truant.
- B. A person found guilty under this Section may be sentenced to:

1. Imprisonment not to exceed thirty (30) days for first offense or up to sixty (60) days for second and subsequent offenses;
2. Mandatory completion of a parenting course;
3. Suspension of Tribal benefits for up to one year;
4. Listing name in Apache Scout for 2 consecutive issues;
5. Mandatory drug testing; and
6. Community service.

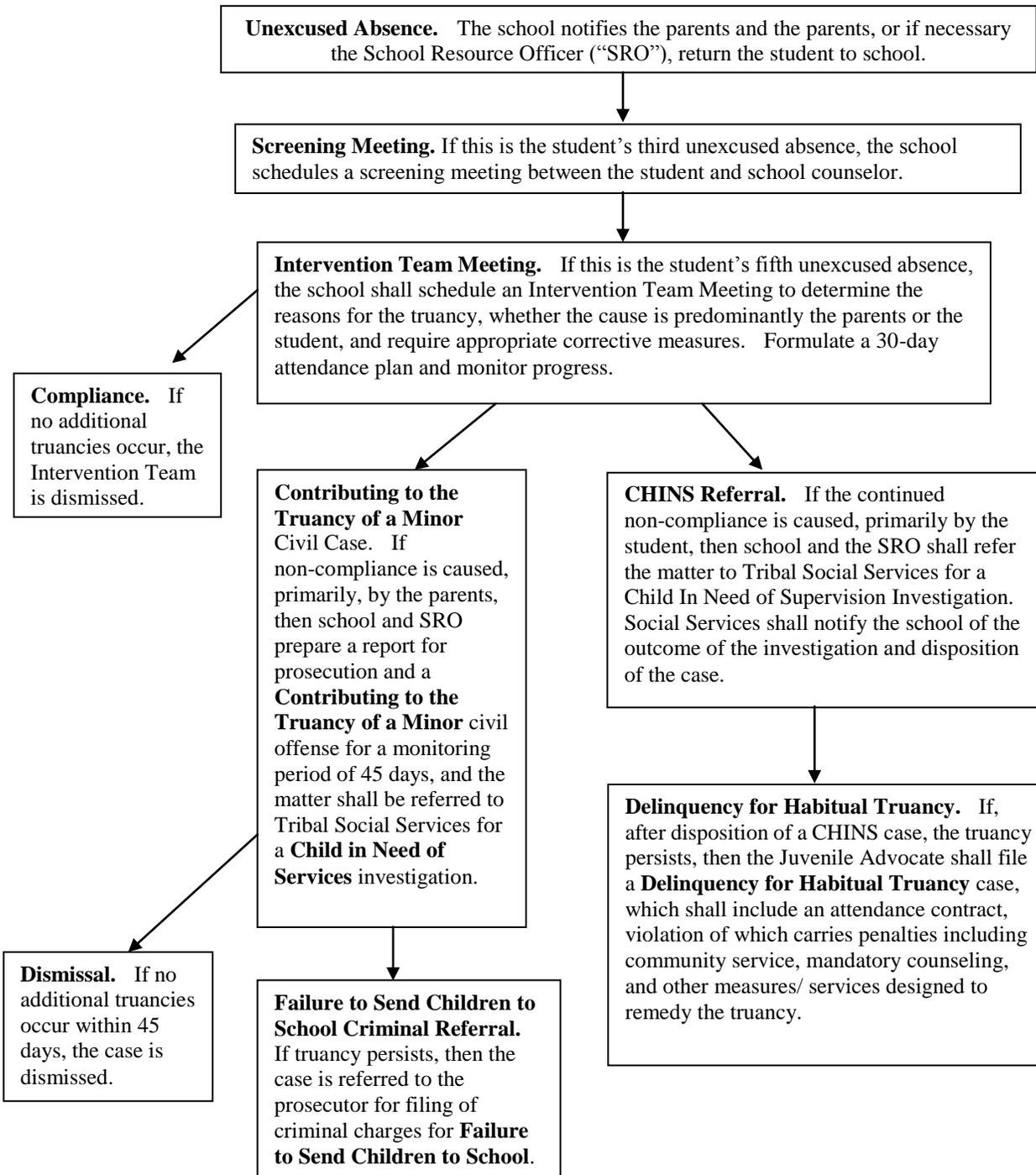
**CHAPTER FIVE  
STUDENT ENFORCEMENT PROCEDURES**

**SECTION 5.1 DELINQUENCY CASES RESULTING FROM TRUANCY**

- A. Attendance Contract Deferment. When a delinquency case is filed because of habitual truancy, the Office of the Prosecutor shall, if a first offense, offer to suspend the prosecution if the student agrees to an Attendance Contract/Deferment Plan, whereby the student agrees to not have any more unexcused absences for the remainder of the school year and to comply with any counseling recommendations made pursuant to actions authorized under this Code.
- B. Dismissal. If the student successfully satisfies the terms of the Attendance Contract/Deferment Plan, then the matter shall be dismissed after the conclusion of the school year.
- C. Violation of Attendance Contract. If the student violates the Attendance Contract/Deferment Plan, or is ineligible for one, then, in addition to those penalties and remedies contained in the Tribe's Juvenile Code, the student may be sentenced to the following:
  - 1. Community Service projects, if possible at the student's school, with compliance to be monitored by the Office of the Prosecutor; and
  - 2. Mandatory continued counseling and, if appropriate, other services recommended or ordered pursuant to this Code.
- D. Criminal Record. A delinquency conviction, brought on account of truancy, shall not appear on the criminal records of persons convicted hereunder.

# APPENDIX 1

## PROCEDURE FLOW CHART



APPENDIX 2

SAMPLE TRUANCY REFERRAL FORM

WHITE MOUNTAIN APACHE TRIBE	
<b>TRUANCY REFERRAL FORM</b>	
Name of Student: _____	Grade Level: _____
Date of Birth: ____/____/____	School of Attendance: _____
Parent/Guardian Name: _____	Relationship to student: _____
Physical Address: _____	City: _____ State: _____ ZIP: _____
Mailing Address: _____	City: _____ State: _____ ZIP: _____
Phone #: (____) _____ - _____	Other Phone #: (____) _____ - _____
Parent/Guardian Name: _____	Relationship to student: _____
Physical Address: _____	City: _____ State: _____ ZIP: _____
Mailing Address: _____	City: _____ State: _____ ZIP: _____
Phone #: (____) _____ - _____	Other Phone #: (____) _____ - _____
Does the student currently reside with the parent/guardian?	Yes <input type="checkbox"/> No <input type="checkbox"/>
<i>If no, please provide the name of the responsible party, relationship to the student and current residence and mailing address or directions:</i>	
_____	
_____	
Does the student have other siblings in your school who are also truant?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have the truant siblings been referred to truancy?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Siblings' names: _____	
3 absences conference	____/____/____ Date
_____	Administrator/Designee Name
5 absences intervention	____/____/____ Date
_____	Administrator/Designee Name
Please include the following documentation:	
<input type="checkbox"/> Detailed attendance records for the whole school year;	
<input type="checkbox"/> Dated logs of any communications/ interventions attempted;	
<input type="checkbox"/> Copies of Attendance Contracts;	
<input type="checkbox"/> Copy of School Intervention Meeting documentation: findings, results, decision and <u>a clear statement of who the intervention team found to be at fault.</u>	
<b>FOR LAW ENFORCEMENT USE ONLY:</b>	
Student's SSN: _____-____-____	
Submitted by: _____	_____
(Please print name)	Signature
Date: ____/____/____	