

TRIBAL CODE

CHAPTER 35

TRUANCY ORDINANCE

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HISTORY NOTE:

Current Ordinance

Adopted and placed for referendum February 1, 1988, Resolution No. 25(88).
Enacted by referendum vote February 16, 1988, effective immediately.

Section 35.303, amended February 28, 1994, Resolution No. 49(94).

Amend definition of "Tribal Child" in Tribal Code, Chapter 35.108(7)(c) to read "*the biological child of an enrolled member of the Tribe.*" Delete language "who is eligible for membership by adoption," November 27, 2000, Resolution No. 680(00), effective upon the date of adoption by this Tribal Resolution.

TRIBAL CODE
CHAPTER 35
TRUANCY ORDINANCE

CHAPTER I: GENERAL PROVISIONS

35.101 Purpose.

The purpose of this ordinance is to require the regular attendance at school of tribal children living on the reservation.

35.102 Authority.

This ordinance is enacted pursuant to Article VI, Sections 1 (a) and of the Tribal Constitution.

35.103 Effective Date.

This ordinance shall take effect on the day following the date of approval of this ordinance by referendum.

35.104 Abrogation and Greater Restrictions.

When this ordinance imposes greater restrictions than those contained in other tribal ordinance, codes, or resolutions, the provisions of this ordinance shall govern.

35.105 Interpretation.

In its interpretation and application the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the tribe and shall not be deemed as a limitation upon or a repeal of any other tribal power or authority. The tribe by the adoption of this ordinance does not waive its sovereign immunity in any respect.

35.106 Severability.

If any section, provision or portion of this ordinance is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

35.107 Applicability.

This ordinance shall apply to tribal children living on the reservation and their parents or other person having tribal children living on the reservation under their control.

35.108 Definitions.

For purposes of this ordinance, the following terms shall have the meanings ascribed below:

- (1) "Child" means any unmarried person who is less than 18 years of age.
- (2) "Member" means a person enrolled in the Tribe.
- (3) "Reservation" means the area within the external boundaries of the Lac du Flambeau Indian Reservation.
- (4) "School" means the Lac du Flambeau Elementary School or the Lakeland Union High School, Minocqua, Wisconsin.
- (5) "School attendance" means physical presence of a child in school attending scheduled class or during such hours and on such days as determine by the school or, for students enrolled in alternative Education Programs, at the place and during hours scheduled by the school for the student, unless excused from such attendance by school policy or state law.
- (6) "School attendance officer" means an employee designated by school board under Wis. Stat. s.118.16 to deal with matters relating to school attendance and truancy.
- (7) "Tribal child" means a child who is either
 - (a) an enrolled member of the Tribe; or
 - (b) eligible for enrollment in the Tribe as of right; or
 - (c) the biological child of an enrolled member of the Tribe.
- (8) "Tribal court" means the Lac du Flambeau Tribal Court.
- (9) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- (10) "Truancy" means any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the person having the absent pupil under his or her control, and also means intermittent attendance carried on for the

purpose of defeating the intent of the state compulsory school attendance law, Wis Stat. s.118.15.

CHAPTER II: COMPULSORY SCHOOL ATTENDANCE

35.201 School Enrollment Required.

Except as excused under the state compulsory attendance law, Wis. Stat. s.118.15, any person having under control a tribal child living on the reservation shall enroll the child in school.

35.202 Requirement to Attend School.

Except as excused under the state compulsory attendance law, Wis. Stat. s.118.15, or under a school policy governing school attendance, any person having under control a tribal child living on the reservation age 6 or older shall cause the child to attend the school in which the child is or should be enrolled.

35.203 Truancy Prohibited.

Truancy by a tribal child living on the reservation is prohibited.

CHAPTER III: ENFORCEMENT AND PENALTIES

35.301 Enforcement Officers.

(1) Any tribal law enforcement officer or school attendance officer may enforce the provisions of this ordinance.

(2) Any person authorized to enforce the provisions of this ordinance may stop and question any person upon reasonable belief that the person has violated this ordinance. Any tribal child or member shall produce identification and give his or her name, address, age and parental information to any person authorized to enforce this ordinance upon request. Any person who does not poses suitable identification may be detained for purposes of verifying age, identification, and school enrollment status.

(3) If, during school hours, a person authorized to enforce this ordinance has probable cause to believe that a tribal child is a truant, the person shall take the child into custody and transport the child to school and deliver the child to school authorities.

35.302 Cooperation With School.

Each school is encouraged and authorized to contact the tribal law enforcement department on a daily basis and provide the names, ages, and custodial information regarding truant tribal children for that day.

35.303 Penalties.

Any adult or tribal child age 14 or older who violates any provision of this ordinance shall be liable for penalty as follows, except, section 7 applies to any adult or any tribal child regardless of age:

- (1) For the first offense, a civil remedial money penalty of \$40.00.
- (2) For each subsequent offense, a civil remedial money penalty of up to \$40.00 plus \$20.00 per offense.
- (3) Court costs of \$20.00.
- (4) Each day of truancy shall constitute a separate offense.
- (5) In addition to a civil remedial money penalty, the driving privileges of a truant tribal child may be suspended for a period not to exceed 90 days.
- (6) Nothing herein shall prohibit the referral of a tribal child to the Child Welfare Office for the filing of a child welfare petition under the Child Welfare Code, Tribal Code Ch. 31. A child welfare petition shall be filed regarding any tribal child who has been truant for five days or more in any three month period.
- (7) The judge in his or her discretion is authorized to order community service for any offense of this ordinance.

35.304 Precondition to Subsequent Citation or Child Welfare Petition.

Prior to the filing of any child welfare petition based upon truancy or a second or subsequent citation being issued during a school year based on the truancy of any tribal child, the school in which the child is enrolled shall have:

- (1) Met with the child's parent or guardian to discuss the child's truancy or have attempted to meet with the child's parent or guardians and been refused.
- (2) Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under Wis. Stat. s.118.15(1)(d).

(3) Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

(4) Conduct an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

35.305 Enforcement Procedure.

The tribal court shall have jurisdiction over cases brought to enforce this ordinance. Proceeding shall be conducted in accordance with Chapter IV of the Tribal Court Code, Tribal Code Ch. 80; provided, that a citation issued hereunder may be served by ordinary mail.