

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.

Resolution No. 369(12) adopted August 27, 2012, amends Chapter 35, by adding sub-sections 35.108(11), 35.203(2), 35.202(2), 35.303(8)(9)(10), increasing Section 35.303 Penalties, sub-sections (1),(2),(3),(6), and (8),(9),(10), and clarifying Section 35.304 Precondition to Subsequent Citation or Child Welfare Petition.

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.

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.
- (11) "Habitual Truancy" means truant for five days within ten school days or ten truanancies within any ninety day period within the school year.

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.

- (1) Truancy by a tribal child living on the reservation is prohibited.
- (2) It shall be unlawful for any person to cause, assist, aid or enable a tribal child to be truant.

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.

- (1) 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.
- (2) Notification. Whenever any tribal child fails to report to school on a regularly scheduled day and no indication has been received by the school personnel of the tribal child's absence, a reasonable effort to notify the parent/guardian/custodian shall be made by school personnel or volunteers organized by the school.

School personnel or volunteers organized pursuant to this section shall be immune from any civil or criminal liability in connection with the notice to parent/guardian/custodian of a tribal child's absence or failure to give notice required by this section.

35.303 Penalties.

Any adult cited for a tribal child 13 years or younger or any 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 \$50.00.
- (2) For each subsequent offense, a civil remedial money penalty of up to \$100.00 plus \$50.00 per offense.
- (3) Court costs of \$20.00 plus \$25.00 into the tribal courts truancy reduction program.
- (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 that is determined to be habitually truant.
- (7) The judge in his or her discretion is authorized to order community service for any offense of this ordinance.
- (8) Any tribal child convicted of aiding a tribal child's truancy shall be subject to time in a detention facility or a civil remedial money penalty of \$100.00.
- (9) Any adult who is convicted of aiding a tribal child's truancy shall be subject to time in an adult detention facility or a civil remedial monetary penalty of \$200.00 up to \$1,000.00.
- (10) In addition to the imposition of civil forfeitures and community service hours for violations of this Chapter, the Tribal Court may impose other remedies, including but not limited to:
 - (a) Confiscation of personal property which may hinder routine school attendance.
 - (b) Limitations on the usage of Tribal facilities within the boundaries of the Tribal Reservation.
 - (c) Placed on home detention.
 - (d) Restriction on the usage of social media including web-based and mobile technologies used to turn communication into interactive dialogue.

35.304 Precondition to Subsequent Citation or Child Welfare Petition.

Prior to the filing of any child welfare petition based upon truancy as defined by ordinance the school in which the child is enrolled shall have and provide the following documentation:

(1) Provide tribal child and parent/guardian/custodian with a verbal and written warning.

(2) Met with the tribal child's parent/guardian/custodian to discuss the tribal child's truancy or have attempted to meet with the tribal child's parent/guardian/custodian and been refused.

The purpose of the meeting shall be to identify and resolve behaviors that are in violation of the provisions of this code and develop an Individual Attendance Plan (IAP) of action, which shall be agreed to and signed by all parties involved.

(3) Provided an opportunity for educational counseling to the tribal child to determine whether a change in the tribal child's curriculum would resolve the tribal child's truancy and have considered curriculum modifications under Wis. Stat. s.118.15(1)(d).

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

(5) Conduct an evaluation to determine whether social problems may be a cause of the tribal 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.