

**SOUTHERN UTE INDIAN TRIBAL CODE**

**TITLE 31**

**TRUANCY CODE**

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**TITLE 31**  
**SOUTHERN UTE INDIAN TRIBAL CODE**  
**TRUANCY CODE**

**ARTICLE 1. GENERAL PROVISIONS**

**31-1-101. Purpose.** This Code shall be construed and interpreted to fulfill the following purposes:

- (1) To ensure the procedures of this Code preempt inconsistent state and local laws so the Tribe will exercise its sovereignty in the education of Native children.
- (2) To ensure all Tribal member children and those eligible for Tribal membership, wherever they live, as well as all Native children residing or attending school within the exterior boundaries of the Southern Ute Indian Reservation have the benefit of an education through high school or until they turn 18, whichever occurs first.
- (3) To ensure there are no impediments to a Native child receiving a fulfilling educational experience.
- (4) To set forth procedures through which the provisions of this Code are to be executed and enforced, while ensuring the rights of the parties are recognized and protected.
- (5) To strive to maintain a calm, secure, and safe court environment for children and their families, witnesses, attorneys, court staff, and others appearing before or coming into contact with the Children's Court.
- (6) To encourage all informal and civil measures are utilized for Native children to attend school.

**31-1-102. Interpretation.**

- (1) **Legislative.** To carry out these purposes, the provisions of this Code shall be liberally construed to serve the best interests of Native children and the interests of the Southern Ute Indian Tribe.
- (2) **Conflict with Other Code Provisions.** To the extent any provision of this Code is construed to conflict with any other provision of the Tribal Code, the provisions of this Code shall supersede and be given effect.

- (3) **No Waiver of Sovereign Immunity.** Nothing in this Code waives the sovereign immunity of the Southern Ute Indian Tribe.

## ARTICLE 2. DEFINITIONS

### 31-2-101. Definitions.

- (1) **Absence.** Lack of attendance at school, for all or part of a day, or, in the case of a school that does not maintain or require attendance, failure to maintain adequate progress as determined in the discretion of the Education Department.
- (2) **Adult.** A person who:
- (a) is eighteen (18) years of age or older; and
  - (b) is not a “child” as defined herein.
- (3) **Adequate Progress.** When a child is attending a school that does not have an attendance policy, the Education Department may, in its discretion, determine the child is truant for failure to perform work in each course of study.
- (4) **Attendance.** A child’s actual presence and participation as required by the child’s school or education system.
- (5) **Attendance Contract.** An agreement between the school and the child, the child’s parent, guardian or custodian, or both, regarding attendance at the child’s school.
- (6) **Attendance Plan.** The objectives and goals of the school and the child and the child’s parent, guardian, or custodian, to show relevant, current and achievable educational progress of the child.
- (7) **Best Interest of a Child.** The standard by which the Children’s Court shall evaluate all school attendance issues. The Court shall consider all relevant factors including, but not limited to, the following:
- (a) The position of the child’s parents, guardian, or custodian as to educational needs.
  - (b) The child’s position as to educational needs.
  - (c) The interaction and interrelationship of the child with parents, siblings, and any other persons who may significantly affect the child’s best interest.
  - (d) The child’s adjustment to home, school, and community.

- (e) The mental and physical health of all children involved;  
and
  - (f) The child's cultural and Tribal affiliation.
- (8) **Child.** Any person who is less than 18 years of age.
  - (9) **Children's Court.** The Tribal Court of the Southern Ute Indian Tribe when exercising jurisdiction under this Code.
  - (10) **Code.** The Truancy Code of the Southern Ute Indian Tribe.
  - (11) **Community Resource Officer.** An employee of the Southern Ute Police Department with the authority to assist Tribal employees and departments and other governmental agencies to enforce the Tribe's laws relating to school attendance.
  - (12) **Custodian.** An adult entrusted with the physical care, custody, and control of a child.
  - (13) **Division of Social Services.** The Division of Social Services of the Southern Ute Indian Tribe.
  - (14) **Education Department.** The Education Department of the Southern Ute Indian Tribe.
  - (15) **Excused Absence.** A reason listed in the student's school attendance policies or procedures for missing school, including but not limited to funerals, illness, injury, legal obligations, medical procedures, religious observations, or suspension.
  - (16) **Excessive Excused Absences.** The child has 10% of the full school calendar days as excused absences and, in the discretion of the Education Department or Truancy Team, those absences interfere with the child's educational progress.
  - (17) **Guardian.** A person appointed by a court and vested with the authority to make major decisions for a child.
  - (18) **Guardian ad Litem.** An individual appointed by the Children's Court to represent the best interests of the child in proceedings conducted pursuant to the provisions of this Code.
  - (19) **Habitual Truant.** A child who has accumulated the equivalent of ten or more unexcused absences for the majority of a school day within a school year.
  - (20) **Homeschooling.**
    - (a) Home instructional, parentally placed, educational activities approved by the Education Department; and
    - (b) such activities that are provided by a parent, guardian, custodian or adult designee who is:

- (i) instructing the child towards adequate progress, monitored by the Education Department; or
  - (ii) deemed sufficiently qualified to provide home-based instruction by the superintendent of the school district in which the child resides, or the Education Department.
- (21) **Insufficient Progress.** In cases where a school does not require attendance, the child fails to demonstrate adequate progress. A child who has insufficient progress at a school that does not require attendance is deemed a habitual truant for purposes of this Code.
- (22) **Law Enforcement Officer.** An officer of the Southern Ute Police Department.
- (23) **Legal Department.** The Southern Ute Indian Tribe Legal Department.
- (24) **Native.** An individual who is:
  - (a) A member of the Southern Ute Indian Tribe;
  - (b) A member of any other federally recognized Tribe or Alaska Native Village;
  - (c) Eligible for membership in any federally recognized Tribe;
  - (d) A first descendant of a member of a federally recognized Tribe or Alaska Native Village; or
  - (e) Has a degree of federally recognized Native American or Alaska Native blood and is recognized as Native American by a Tribe, or receives or has received federal benefits to which only Native Americans and Alaska Natives are entitled.
- (25) **Online School.** A school, approved by the Education Department, that has virtual classes that a student can access anywhere that has an internet connection. The students work remotely and have a structured curriculum they are required to follow.
- (26) **Parent.** The term “parent” as used in this title:
  - (a) shall include, subject to the provisions of subsection (b), all biological or adoptive parents of the child, whether singular or plural; and
  - (b) shall not include a person whose parental rights have been legally terminated, nor an unwed father whose paternity has not been legally acknowledged or established.

- (27) **Presenting Officer.** An attorney with the Legal Department or one designated by the Legal Department.
- (28) **Reservation.** The Southern Ute Indian Reservation.
- (29) **School.** The program of instruction for the education of a child that takes place at a public school, private school, an online or homeschooling program, or other educational system.
- (30) **School Days.** The approved academic school year calendar indicating the days students will attend.
- (31) **Team.** The Southern Ute Indian Tribal Truancy Team.
- (32) **Tribal Code.** The Code of the Southern Ute Indian Tribe.
- (33) **Tribal Court.** The Southern Ute Indian Tribal Court.
- (34) **Tribe.** The Southern Ute Indian Tribe.
- (35) **Truant.** A child who is at least six (6) years of age and under eighteen (18) years of age by August 1st of the school year in question who has an unexcused absence, or who leaves school without permission from the school and the child's parent, guardian or custodian. A child that is truant may also be considered a status offender, as defined in the Children's Code.
- (36) **Unexcused Absence.** The term "unexcused absence" as used in this Code means the absence does not fall within one of the exceptions to compulsory school attendance set forth in § 31-3-101(3) or is not an excused absence as defined by school policy or procedure.

### ARTICLE 3. TRUANCY

#### 31-3-101. Compulsory School Attendance.

- (1) **Child attendance and adequate progress required.** A child who is at least six (6) years of age and under eighteen (18) years of age by August 1st of the school year residing or attending school within the exterior boundaries of the Reservation shall:
  - (a) Attend school in accordance with the attendance policy of the child's school; or
  - (b) Where the school does not require attendance, maintain adequate progress in the educational program of the school.
- (2) **Parent responsible for child's school attendance and adequate progress.** Every parent, guardian, or custodian of a Native child either residing or attending school within the exterior boundaries of the Reservation shall be responsible for the attendance of that child in accordance with the attendance

policy of the child's school or, should there be no requirement for attendance, the adequate progress of the child in the school's educational program.

- (3) **Exceptions to school attendance.** Subsections (1) and (2) do not apply to the following with appropriate documentation:
- (a) A child who meets high school graduation requirements under the rules and regulations established by a state board of education as confirmed by the Education Department, has received a G.E.D. or its equivalency, or has received a work permit approved by the Education Department;
  - (b) A child who is absent for an extended period due to physical, mental, or emotional disability, or is temporarily ill or injured, and whose absence is approved by the school administrator and the Education Department;
  - (c) A child attending a residential school certified by the state or other certifying jurisdiction to meet the needs of the child, as approved by the Education Department;
  - (d) A child detained in a juvenile detention facility or an adult correctional facility;
  - (e) A child who has been temporarily excused upon the request of the parent, guardian, or custodian for purposes agreed upon by the school, which excused absence or absences is deemed appropriate by the Education Department;
  - (f) A child who is pursuing a work study program approved by the child's school and the Education Department; or
  - (g) A child who is participating in a Tribal religious or cultural event if being excused from school does not interfere with the child's academic progress as determined by the Education Department.

**31-3-102. Intervention and Enforcement.**

- (1) When the Education Department and the Community Resource Officer become aware a child is in danger of becoming a habitual truant, they shall, within 8 school days:
- (a) Receive and review the attendance contract or plan with the child's school, if any, or, if there is no requirement for attendance, review the progress of the child with the school;



- (b) Make all reasonable efforts to contact the child and the child's parent, guardian, or custodian, directly or through a Community Resource Officer;
  - (c) Identify causes of truancy and encourage the child's parent, guardian, or custodian to communicate with the child's school; and
  - (d) Make reasonable efforts to notify the child and the child's parent, guardian, or custodian, of the responsibility to follow the attendance contract plan, or if there is no requirement for attendance, the insufficient progress of the child, and consequences for further noncompliance.
- (2) Failure to correct the child's truancy will result in referral to the Tribal Truancy Team.
  - (3) **Avoidance of Community Resource Officer.** If the Community Resource Officer believes a parent, guardian, or custodian is avoiding or hindering the Community Resource Officer's efforts to contact them and the Community Resource Officer is therefore unable to contact the parent, guardian, or custodian within a reasonable period of time, then the Community Resource Officer shall contact a law enforcement officer with jurisdiction over the Reservation. The law enforcement officer shall assist the Community Resource Officer in contacting the parent, guardian, or custodian.

**31-3-103. Tribal Truancy Team.**

- (1) **Truancy Team.** There is hereby created a Tribal Truancy Team responsible for providing resources to the child and the child's parent, guardian, or custodian, so they may create an individualized attainable plan to prevent truancy, or if there is no requirement for attendance, to prevent insufficient progress. The Truancy Team may initiate civil proceedings as described below. Upon referral to the Truancy Team, the team and the child and the child's parent, guardian, or custodian, may create and monitor and amend their individualized Truancy Team plan to keep it current with the need for attaining regular school attendance, or where there is no requirement for attendance, create a plan to ensure adequate progress.
- (2) **Truancy Team members.** The core team consists of the following individuals or representatives from the following Tribal departments or offices:
  - (a) Education Department.
  - (b) Family Court Support Office.
  - (c) Probation.

- (d) Department of Social Services.
  - (e) a Community Resource Officer.
- (3) **Optional team members.** Based on the needs of the child and the parent, guardian, or custodian, the team may invite representatives from the following, as determined in the Team's discretion:
- (f) the school at which the child is enrolled.
  - (g) a Tribal elder identified by the parent, guardian, or custodian and the Team.
  - (h) other community representatives as determined after considering the educational, medical, cultural and other needs of the child, and the child's parent, guardian or custodian.

**31-3-104. Truancy Team Intervention.**

- (1) **Truancy Team referral.** Should a child's attendance not improve after intervention provided under §31-3-102, should a child exceed four (4) full day unexcused absences within 30 consecutive calendar days or eight (8) full day unexcused absences within a school year, or, where a school does not require attendance, should a child continue to show insufficient progress in an educational program:
- (a) The Community Resource Officer will make reasonable efforts to contact the parent, guardian or custodian to offer Truancy Team as a voluntary resource and provide contact information for the team.
  - (b) The parent, guardian, or custodian shall, within 5 workdays, speak with a Truancy Team representative to set up a meeting and, within 15 work days thereafter, attend a meeting with the team for intervention, support, and ideas, including creation of an individualized Truancy Team plan under §31-3-104(2) to resolve the child's truancy issues or failure to maintain adequate progress.
- (2) **Truancy Team plan.** The child and the child's parent, guardian, or custodian shall meet with the team and:
- (a) Create a written individualized Truancy Team plan that will support regular school attendance or adopt an existing attendance contract developed by the child's school. Where a school does not require attendance, the individualized Truancy Team plan shall identify how the child shall maintain adequate progress. When developing an individualized Truancy Team plan, the plan shall include the following:

- (i) A statement of the school attendance requirements in this Code, or where there is no requirement for attendance, the criteria necessary to maintain adequate progress;
  - (ii) The anticipated course of action to be taken if the child fails to comply with the individualized Truancy Team plan;
  - (iii) The causes of the child's unexcused absences or insufficient progress and any perceived barriers to regular school attendance, or where there is no requirement for attendance, adequate progress;
  - (iv) The services, resources and interventions available to help ensure regular school attendance or adequate progress by the child, including but not limited to referrals to Behavioral Health services;
  - (v) The specific actions to be taken by the child and the child's parent, guardian, or custodian in accordance with the individualized Truancy Team plan, including the frequency and location of appointments for services and contact with a team designee; and
  - (vi) A statement that it will expire only when, in the discretion of the Truancy Team, the child has demonstrated consistent adherence to the plan for a minimum of six (6) academic months, regardless of termination of an academic year.
- (b) Monitor and amend the plan, as necessary, to keep it current with the child's needs in attaining regular school attendance;
  - (c) Identify and discuss the particular needs of the child and the child's parent, guardian, or custodian, with the goal of ensuring the child's regular school attendance, or where there is no requirement for attendance, adequate progress;
  - (d) Assist the child and the child's parent, guardian, or custodian in getting services and resources to eliminate or remediate the causes for the child's unexcused absences or insufficient progress; and
  - (e) Consider, where appropriate, recommending to the parent, guardian, or custodian that the child enroll in another school, an alternative education program including a GED program, or other public or private educational program.
- (3) **Resources.** The resources of the Education Department are to prioritize enrolled Southern Ute Tribal members wherever they live. Other Native American children may be included based on available resources as determined in the discretion of the Education Department or the Truancy Team.

### **31-3-105. Advisement and Enforcement.**

- (1) If the individualized Truancy Team plan has failed to be effective, or if the child, parent, guardian, or custodian refuses to participate, cooperate, or comply with the Truancy Team or the individualized Truancy Team plan, the presenting officer may file a civil truancy petition in Tribal Court as set forth herein, naming the child and the child's parent, or other persons having legal custody, legal guardianship, or legal care of the child.
- (2) The presenting officer shall certify to the Court that all provisions of the preceding sections have been reasonably exhausted prior to the filing of the truancy petition.
- (3) The summons, together with a copy of the truancy petition, shall be served in accordance with the Civil Procedure Code of the Tribe or otherwise as the Court may order.
- (4) Should the Tribe or any department or division thereof, including the Division of Social Services, be serving as the guardian or custodian of the child, it will not be named as a party but will be served with all pleadings and be entitled to participate in all legal proceedings in its representative capacity.

### **31-3-106. Access to Tribal Records.**

- (1) Upon a request from the Education Department, a Community Resource Officer, or the Truancy Team, and without requiring the consent of the child or the parent, guardian, or custodian of the child, all Tribal departments, divisions, and entities must provide information necessary to assist them in carrying out their duties under this Code, provided however, information may be withheld if its release will compromise an ongoing investigation. The recipients shall maintain the confidentiality of this information.
- (2) Each school may, without requiring consent of the child or the child's parent, guardian, or custodian, or when other laws permit such actions, and within 45 days of the beginning of each semester, provide the Education Department, Community Resource Officer, and Truancy Team with all directory information regarding its Native students including, but not limited to, rosters, absentee lists, and withdrawal lists. The recipients shall maintain the confidentiality of this information.
- (3) The parent, guardian, and custodian of each child subject to this Code must, at the request of the Education Department, sign a release of information form for a child's school to provide the Education Department, Community Resource Officer, and Truancy Team with a copy of any child's discipline, attendance, progress, and performance records. The recipient shall maintain the confidentiality of this information.

- (4) Any person or non-Tribal entity subject to this Code must provide whatever information is reasonably requested by the Education Department, Community Resource Officer, and Truancy Team as to the circumstances, activities, and whereabouts of any child or other information relating to a child's discipline, attendance, progress, and performance at school. The recipient shall maintain the confidentiality of this information.
- (5) Nothing herein prevents the use of confidential information for court proceedings under §31-3-105.

#### **ARTICLE 4. ROLE OF LAW ENFORCEMENT**

##### **31-4-101. Protective Care.**

- (1) **Taking a child into protective care.** A law enforcement officer or Community Resource Officer may take a child into protective care if:
  - (a) The child is truant during school hours;
  - (b) The absence does not fall within one of the exceptions set forth in §31-3-101(3), and is not an excused absence as defined by school district policy; and
  - (c) The law enforcement officer or Community Resource Officer has made reasonable efforts to verify the absence, including contacting the parent, guardian or custodian.
- (2) **Release or delivery from protective care.**
  - (a) A Community Resource Officer or law enforcement officer taking a child into protective care under §31-4-101(1) shall, without unreasonable delay:
    - (i) Transport the child to the child's school and sign the child into school; or
    - (ii) Release the child to the child's parent, guardian, or custodian, or an adult at their direction, or, if that cannot be determined or if conditions are unsafe for the child's return to the parent, guardian, or custodian, to the Division of Social Services.
  - (b) If the Community Resource Officer or law enforcement officer has reason to believe the child is in need of emergency medical attention, the law enforcement officer shall deliver the child to a medical facility, or otherwise obtain such medical attention for the child in accordance with the Tribe's Protective Custody Code before proceeding in accordance with the other provisions of this section.

- (c) Upon releasing the child to the child's parent, guardian, or custodian, the Community Resource Officer or law enforcement officer shall refer that person(s) to any social, community, or Tribal services or resources that may be appropriate for addressing the needs of the child and the child's parent, guardian, or custodian.

**31-4-102. No limitation on the authority of law enforcement.**

- (1) **Supplemental Authority.** The authority of a Community Resource Officer or law enforcement officer as set forth herein is in addition to the authority that officer may have under Tribal or other applicable law.
- (2) **Community Resource Officer.** A Community Resource Officer shall have the authority to assist other officers or agencies to enforce the Tribe's laws relating to attendance, or where there is no requirement for attendance, adequate progress in an educational program.

**ARTICLE 5. THE CHILDREN'S COURT**

**31-5-101. Children's Court – Jurisdiction.** The jurisdiction of the Children's Court shall extend to all proceedings under the Truancy Code. The Children's Court shall have personal, subject matter, and territorial jurisdiction, to the extent permitted under the Tribe's Constitution and Laws, in all matters in which:

- (1) Any Native child residing within the exterior boundaries of the Reservation is alleged to be Truant or, where a school does not require attendance, a Native child is alleged to have maintained insufficient progress;
- (2) Any Native child attending school within the exterior boundaries of the Reservation is alleged to be Truant or, where a school does not require attendance, a Native child is alleged to have maintained insufficient progress;
- (3) Any Native child under the guardianship or custody of a Tribal member is alleged to be Truant within the exterior boundaries of the Reservation or, where a school does not require attendance, the child is alleged to have maintained insufficient progress; and
- (4) Any Native child who is a Tribal member or eligible for Tribal membership, or is the child of a Tribal member and is located outside the exterior boundaries of the Reservation, is alleged to be a Truant or, where a school does not require attendance, the child is alleged to have maintained insufficient progress.
- (5) Nothing herein prevents the parties from consenting in writing to the jurisdiction of the Children's Court.

**31-5-102. Jurisdiction Over Child and Parent, Guardian or Custodian.** In any matter brought over which the Children's Court has jurisdiction as set forth in §31-5-101, the

Court shall have personal jurisdiction over the child who is alleged to be truant or who is alleged to have made insufficient progress, and the child's parent, guardian, or custodian.

**31-5-103. Continuing Jurisdiction.** The Children's Court shall retain continuing jurisdiction over a child and the child's parent, guardian or custodian, regardless of whether they leave the exterior boundaries of the Reservation.

**31-5-104. Rules – Generally.** Proceedings before the Children's Court are guided by the rules of evidence and procedure which govern proceedings before the Tribal Court, to the extent such rules are not in conflict with the provisions of this Code, in which event the provisions of this Code control.

**31-5-105. Non-Criminal Proceedings.** Adjudication of a truancy petition coming within the Children's Court jurisdiction will not be deemed a criminal conviction.

**31-5-106. Personnel.**

- (1) **Presenting Officer.** The Tribe's Legal Department shall act as presenting officer and represent the interests of the Tribe in all truancy proceedings under this Code.
- (2) **Petitioner.** Petitioner shall be the Education Department or the Community Resource Officer.

**31-5-107. Authority.** In carrying out the provisions of this Code, the Children's Court shall have the authority to issue all orders necessary to ensure the school attendance of children, as well as orders necessary to ensure the adequate progress of children over which it has jurisdiction.

**31-5-108. Rights of Parties.** All parties to proceedings brought under this Code shall have those rights guaranteed under the Tribe's Constitution, the Tribal Codes, and the Indian Civil Rights Act, as applicable to a proceeding of this nature, including the following:

- (1) To have adequate notice of the proceedings and to have the opportunity to be heard before an unbiased fact finder.
- (2) To be advised of the nature of the proceedings, the allegations of the truancy petition, and the possible consequences, if the allegations of the truancy petition are proven.
- (3) To reasonable discovery as provided for in the Civil Procedure Code.
- (4) To be represented by counsel at their own expense.

- (5) To introduce evidence, to testify, and to call and cross-examine witnesses at all evidentiary hearings, subject to the rules of procedure and evidence in the Tribal Court.
- (6) To have subpoenas issued by the Court for the attendance of witnesses and production of documents.
- (7) To findings which are based solely upon evidence properly admitted in hearings before the Children's Court.
- (8) To appeal any final order of the Children's Court.

**31-5-109. Right to Counsel.**

- (1) The child, and the child's parent, guardian, or custodian, shall have the right to be represented by counsel at their own expense at all stages of any proceedings conducted pursuant to the filing of a truancy petition in accordance with the provisions of §31-3-105. If it is determined to be in the best interests of the child, the Court may appoint counsel, which may include the Tribe's public defender, to represent the child.
- (2) Neither a child nor the child's parent, guardian or custodian may waive the child's right to be represented by counsel under the provisions of this Code.
- (3) Upon presentation by counsel for the child of an order of appointment or a court order specifically allowing such access, any Tribal agency, department, authority, institution, or any school or health care provider shall permit counsel for the child to inspect and copy, without the consent of the child or the child's parent, guardian, or custodian, records reasonably related to the truancy petition. Upon request of such agency or other entity, the court may limit access to records based on confidentiality or other concern.

**31-5-110. Parental Responsibilities.** The parent, guardian, or custodian of any child coming within the jurisdiction of the Children's Court must do the following:

- (1) Attend all Children's Court hearings involving the child, or show cause to the Children's Court why they should be excused from any hearing they are unable to attend;
- (2) Bring the child before the Children's Court when so ordered; and
- (3) Monitor the child's compliance with all orders entered or conditions imposed by the Children's Court, and to make all reasonable efforts to ensure the child complies with such orders or conditions.

**31-5-111. Excuse from Parental Responsibilities.**



- (1) A Child's parent will be excused from the responsibilities imposed by §31-5-110 if:
  - (a) The child is under the care and control of a guardian or custodian;
  - (b) The parent is a non-custodial parent and, in the opinion of the Court, it is not in the best interest of the child that the parent participate in the truancy proceeding; or
  - (c) It appears to the Children's Court there is a conflict of interest between the child and the child's parent, guardian, or custodian.
- (2) A showing that the child's parent, guardian, or custodian has voluntarily transferred physical custody of the child to another person shall not excuse the child's parent, guardian, or custodian from the responsibilities imposed by § 31-5-110.

**31-5-112. Non-Compliance.** Any parent, guardian, or custodian who fails to comply with the requirements of § 31-5-110 may be ordered to appear before the Children's Court to show cause why they should not be held in contempt.

**31-5-113. Appointment of Guardian Ad Litem.**

- (1) In all cases under this Code, the Children's Court may appoint a guardian ad litem to represent the child's interests.
- (2) No person or entity may prohibit or impede access to the child by the guardian ad litem. The child's attorney may attend any meeting or conversation with the guardian ad litem.
- (3) Subject to limitations imposed by the Court, the guardian ad litem shall be provided with all reports relevant to the truancy case, including but not limited to:
  - (a) reports relevant to the truancy petition;
  - (b) medical records;
  - (c) behavioral health evaluations;
  - (d) school records; and
  - (e) home studies.

**31-5-114. Settlement.**

- (1) At all stages, parties brought before the Court according to this Code are encouraged to enter into a settlement agreement with the petitioner. Settlements made after the filing of a truancy petition may be presented to the Court, and, subject to the approval of the Court, may be made an order of the Court.
- (2) Failure to comply with the terms of the settlement agreement, as set forth in the court order, shall subject the violating party or parties to contempt, and the Court will continue with the original court proceedings.

### **31-5-115. Hearing Procedure.**

- (1) **Closed Hearings.** All Children's Court hearings shall be closed to the public, unless authorized by the Court, and to the extent possible, shall be scheduled outside of school hours.
- (2) **Record of the Proceedings.** A verbatim record shall be made of all proceedings, except for interviews of the child conducted by the judge in chambers.
- (3) **Interview of the Child.** The Court may interview the child in chambers, off the record, if appropriate.
- (4) **Evidentiary Standards.** In all proceedings under this Code, the burden of proof shall be on the petitioner and by a preponderance of the evidence.
- (5) **Use of Disposition and Evidence in Other Proceedings.** Neither the adjudication nor disposition of any child in accordance with the provisions of this Code, nor any evidence admitted in a hearing before the Children's Court, shall be admissible as evidence against the child in any proceeding in any other court, including the Tribal Court.
- (6) **Behavioral Health Assessment.** The Court may order the child to obtain a behavioral health evaluation to determine whether any physical or psychological condition may be affecting the child's school attendance.
- (7) **Continuance.** If, during the course of the hearing, the Court feels more time is needed to adequately assess the issues that may be hindering the child from attending school, the Court may continue the hearing at which time the parties may present additional evidence in the form of acceptable documentation or testimony. A final order may be deferred until such hearing.
- (8) **Findings and Order.** At the close of the hearing, the Court shall make specific findings regarding the truth of the allegations contained in the truancy petition. If the Court finds the truancy petition has been proven by a preponderance of the evidence, then the Court shall maintain the petition, enter judgment against

the child and the parent, guardian, or custodian of the child, rule the child a truant, and enter orders necessary to address the truancy as provided herein.

- (9) **Dismissal.** If the Court is unable to find the child is truant, the petition shall be dismissed without prejudice.

### **31-5-116. Confidentiality of Children's Court Records.**

- (1) **Automatic Access.** The Children's Court records on truancy proceedings are confidential and shall not be open to inspection to anyone but the following: the child; the child's parent(s), guardian(s), custodian(s), or guardian ad litem; the child's counsel; law enforcement, the Division of Social Services, Legal Department, Education Department, and court personnel directly involved in the handling of the case.
- (2) **Access by Court Order.** The Children's Court may, on a case-by-case basis, permit inspection by any other person, by order of the Court, found to have a legitimate interest in the particular case or the work of the Court.
- (3) All records and files pertaining to any child who is subject to the provisions of this Code shall be kept separate from records and files pertaining to adults.
- (4) The name, picture, place of residence, or any other identifying information concerning any child, parent, guardian, or custodian, or any person appearing as a witness in any proceedings held pursuant to the provisions of this Code, shall not be published in any newspaper, newsletter, electronic publication, or internet site, and shall not be publicized in any other manner.

### **31-5-117. Records – Expungement.**

- (1) All records and files pertaining to any truancy proceedings conducted under this Code shall be expunged when the child graduates from high school, obtains a high school equivalency, or reaches 21 years of age, whichever occurs first, except that no expungement shall occur while there exists one or more outstanding or unsatisfied orders of the Children's Court in the truancy proceeding or an outstanding request for records.
- (2) No further inspection or use of any record or file that is expunged in accordance with the provisions of this section shall be permitted.

### **31-5-118. Supervisory Conditions.**

- (1) **Least Restrictive Alternatives.**

- (a) When a child is subject to supervisory conditions under the provisions of this Code, the Children's Court shall order only the least restrictive conditions consistent with the best interests of the child.
- (b) Whenever the Children's Court enters an order imposing supervisory conditions under this Code, the order shall include a statement of the Children's Court's reasons for rejecting less restrictive alternatives.

**(2) Supervisory Conditions.**

- (a) Upon the filing of a truancy petition or pending an adjudication that the child is truant, or if the child fails to appear before the Court after being so ordered, the Children's Court may impose the following supervisory conditions:
  - (i) an order requiring compliance with a plan recommended by the Truancy Team;
  - (ii) a court-imposed curfew;
  - (iii) a requirement that the child or the child's parent, guardian, or custodian, report to Court hearings in person at specified intervals;
  - (iv) an order requiring the child to remain at home at all times when the child is not:
    - (A) in the presence of the child's parent, guardian or custodian;
    - (B) attending school or participating in other activities approved by the Children's Court; or
    - (C) legally required to be elsewhere;
  - (v) providing attendance reports, or other information as requested, to the Court from the child or the child's parent, guardian, or custodian;
  - (vi) community service; or
  - (vii) other reasonable conditions calculated to ensure the child's regular school attendance and appearance at future hearings.
- (b) The Court may set periodic review hearings to review the child's progress and the parties' compliance with the order.

- (c) Upon an adjudication of truancy, the supervisory conditions may continue, in the Court's discretion, past the child turning 18, in order to ensure the child receives a high school education or its equivalent.
  - (d) Supervisory conditions imposed by the Children's Court in accordance with the provisions of this section shall not include any out-of-home placement of the child.
  - (e) Upon motion of a party, or upon the Court's own motion, based on evidence of consistent adherence to the Court's orders and the Truancy Team plan, after considering the recommendation of the Truancy Team, the matter may be closed by the Court.
- (3) **Supervisory Conditions – Violations.** If it appears from a filed affidavit or sworn testimony before the Children's Court the child has violated supervisory conditions imposed in accordance with the provisions of this section, the Children's Court may, following a hearing on the matter, impose additional or modified supervisory conditions in accordance with §31-5-118.
- (4) In addition to the remedies in §31-5-118(2), upon adjudication of truancy, the Court may order:
- (a) detention of no more than one year; or
  - (b) electronic home GPS monitoring.

**31-5-119. Penalties.**

- (1) Prior to assessing penalties to a parent, guardian, or custodian when a child has violated supervisory or other conditions ordered by the Court, the Court shall consider the parent, guardian, or custodian's efforts to participate in the individualized Truancy Plan and to ensure that the child attends school and complies with the Plan or any Court Orders.
- (2) Any parent, guardian or custodian of a child who refuses, neglects, or fails to comply with Court Orders may be subject to a minimum penalty of \$25 and up to and not to exceed \$1000 per absence for each child following the child's initial court appearance. Any fines or costs imposed against a Southern Ute Tribal member pursuant to this Code may be deducted from any Tribal distributions payable to the Tribal member. In addition, the Court may order that the parent, guardian or custodian participate in up to one hour of community service for each hour that each child was absent from school, with the nature of the community service being determined by the Community Resource Officers.

- (3) Following the child's initial court appearance, any child in violation of this Code may be subject to a minimum penalty of \$25 not to exceed \$1000 per absence. In addition, the child may be required to provide community service (the nature of which shall be determined by the Community Resource Officers), and to receive or provide tutoring of up to one hour for each hour that the child was absent from school. Any fines imposed against a child pursuant to this Code may be deducted from any Southern Ute Tribal distributions payable to the child, the child's parent, guardian, or custodian, or each of them.
- (4) Fines paid pursuant to this Code shall be deposited in the Tribe's General Fund as a separate line item to be used to fund programs to reduce truancy.
- (5) In exercising its authority under any section of this Code to issue a fine or suspension of distribution payments, the Children's Court:
  - (a) Shall consider the present ability of the child's parent, guardian, or custodian to pay any fine to be imposed or to experience a suspension of Tribal member distributions;
  - (b) Shall not impose a fine or suspension that would cause undue financial hardship for the child or the child's parent, guardian, or custodian; and
  - (c) Shall exclude from any deduction or suspension of distributions, funds that are not eligible for deduction or suspension such as subsistence payments.
- (6) In addition to the assessment of the penalties set forth in paragraphs (1) and (2), the Court may enter an order against the child, the child's parent, guardian, or custodian, or each of them, compelling the child to attend school and to take reasonable steps to assure the school attendance of the child. The Court may also enter other appropriate orders, including but not limited to, requiring the child or the child's parent, guardian, or custodian to:
  - (a) participate in counseling; or
  - (b) relinquish electronic devices.
- (7) Failure to comply with any Tribal Court order may result in the Court issuing a citation for contempt. Upon the finding of contempt, the child's parent, guardian, or custodian may be fined, be sentenced to jail, or both, until in compliance with the Court order, as set forth in SUITC §1-3-118.
- (8) Should the penalties set forth herein not be sufficient to ensure that the child is no longer truant the Court may, after notice and an opportunity to be heard, enter an order determining whether any portion of the Tribal member

distributions for the child, or, the parent, guardian or custodian of the child, as appropriate, should be suspended due to the failure of the child to attend school.

- (a) Should the Tribal Court enter an order suspending any portion of a Tribal member's distributions, that decision will be provided to the Finance Department which will act in accordance with that decision. Any distributions suspended shall be placed by the Finance Department in a separate interest-bearing account for the benefit of the Tribal member.
- (b) The Tribal member distributions shall remain in suspension and shall not be distributed until whichever of the following events occurs first:
  - (i) The Tribal Court makes a finding that the child is no longer truant or otherwise modifies its order releasing all or part of the suspended payments.
  - (ii) In the case of a parent, guardian, or custodian of a child, the child turns 18 years of age.
  - (iii) In the case of a child, the child turns 18 at which time the suspended funds belonging to the child will be placed in the minor's account held by the Tribe and distributed in accordance with Tribal policy, as it may be amended from time to time.

**31-5-120. Failure to Appear.**

- (1) In all truancy proceedings conducted under this Code:
  - (a) If a child 16 years of age or older fails to appear before the Children's Court after being so ordered:
    - (i) Upon a first or subsequent failure to appear, the Children's Court may:
      - (A) Issue a new summons in accordance with the provisions of the Civil Procedure Code; and
      - (B) Issue a warning to the child regarding the potential consequences of a subsequent failure to appear.
    - (ii) Upon a second or subsequent failure to appear, the Children's Court may:
      - (A) When appropriate, issue an order directing a Community Resource Officer to bring the child before the Children's Court; and

- (B) Issue a default and enter a judgment finding the child Truant, order payment of penalties, if any, establish a Truancy plan and other supervisory conditions in accordance with the provisions of § 35-5-118, enter an order of contempt, and order such other remedies pursuant to this Code.
- (b) If a child under 16 years of age fails to appear before the Children’s Court after being so ordered:
  - (i) If the Children’s Court finds, based on the sworn testimony of the child’s parent, guardian, or custodian, that the child has willfully refused to appear, the Children’s Court may proceed in accordance with the provisions of subsection (1)(a); or
  - (ii) In the absence of such a finding, the Children’s Court may proceed in accordance with the provisions of subsection (1)(c).
- (c) If the child’s parent, guardian, or custodian fails to appear before the Children’s Court after being so ordered, or fails to bring the child before the Children’s Court after being so ordered:
  - (i) Upon a first or subsequent failure to appear, the Children’s Court may:
    - (A) Issue a new summons in accordance with the provisions of the Civil Procedure Code; and
    - (B) Issue an order to show cause to the child’s parent, guardian, or custodian regarding the failure to appear.
  - (ii) Upon a second or subsequent failure to appear, the Children’s Court may issue a default and enter a judgment finding the child Truant, order payment of penalties, if any, establish a Truancy plan and other supervisory conditions in accordance with the provisions of §35-5-118, enter an order of contempt, and order such other remedies pursuant to this Code.

**31-5-121. Other Remedies.**

- (1) Despite other provisions of the Tribal Code, no sanctions other than those authorized by this section shall be sought or imposed for a failure to appear before the Children’s Court in any proceedings conducted under this Code.
- (2) The provisions of this Code do not supersede any other remedies the Tribe may have to deter truancy and ensure children attend school, including those remedies that may exist under the Criminal Code and the Children’s Code.