

**TITLE 12
EDUCATION**

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TITLE 12 EDUCATION

12.01 GENERAL PROVISIONS

12.01.01 Purpose

The purpose of this Title is to provide a vehicle whereby the Tribe may directly intervene to provide assistance to any child covered by this Title and to create a mechanism whereby the Tribe works cooperatively with schools and school districts that are located in whole or part on the Nisqually Indian Reservation or who educate students covered by this Title in order to improve the attendance of children in the Nisqually Tribal Community and to ensure that they are educated to their full potential.

HISTORICAL AND STATUTORY NOTES

This Title enacted July 15, 1999.

12.01.02 Coverage

This Title, and its provisions shall apply to all children enrolled or eligible for enrollment in the Nisqually Tribe and their parents. Coverage may be extended to other Indian children who reside on the Nisqually Indian Reservation or otherwise have social ties to the Nisqually Community and their parents, provided that tribal resources are available after the needs of Nisqually children have been met, and provided further, that said children and their parents agree to be bound by this Title.

12.01.03 Sovereign Immunity

The sovereign immunity of the Nisqually Indian Tribe shall in no manner be waived by this Title. The employees, appointees, and volunteers of the Nisqually Indian Child Welfare Department and all other Nisqually social and governmental services are cloaked with the sovereign immunity of the Nisqually Indian Tribe and are not liable for the inability or failure to provide services to any person.

12.01.04 Severability

If any provision or application of this Title is determined by review to be invalid, such determination does not render such provision inapplicable to other persons or other circumstances nor invalidate any other provisions of this code.

12.01.05 Repealer

This code is to be interpreted to supersede and replace all conflicting laws, rules or regulations of the Nisqually Indian Tribe.

12.01.06 Definitions

For the purposes of this code unless otherwise expressly provided, the following definitions shall apply:

- (a) Court - The Nisqually Tribal Court.
- (b) Minor - Any child under eighteen years of age, excluding emancipated minors.
- (c) Parent - A parent, guardian, or other person having legal custody of a child.
- (d) School - As used in this Title “school” shall include the following:
 - (i) The state supported public school district within which the child resides;
or
 - (ii) A private school or extension program approved either under tribal or state law; or
 - (iii) Chief Leschi School; or
 - (iv) Wa-He-Lut School; or
 - (v) A home-based instructional program as authorized pursuant to state law, or approved under tribal law designed to allow the child and parent to administer to the unique needs of the child.
- (e) Tribal Council - The Nisqually Tribal Council.
- (f) Tribe - The Nisqually Indian Tribe.
- (g) Child - Any person between the ages of 6 and 18 years, excluding emancipated minors
- (h) Truancy - Having three or more unexcused absences per quarter of school.
- (i) Behavior Problems - Having repeated disciplinary actions taken by a school for reasons including but not limited to failure to follow directions, using profanity, fighting, etc.
- (j) Excused Absence - Any absence that is excused according to school policy. Four or more excused absences in any one month period shall be deemed “Excessive Excused Absences.”
- (k) Unexcused Absence - Any absence that is the result of the parent/child not following school policy for excusing an absence.
- (l) Not Achieving Academically - Any student who has failing grades in multiple classes.

- (m) Attendance Officer - Employee of the tribe shall be under the direct supervision of the Tribal Court Probation Department.

HISTORICAL AND STATUTORY NOTES

- 1. Subsections (g) through (m) added by Resolution 83-2012, dated August 7, 2012.

12.02 SCHOOL ATTENDANCE REQUIREMENTS

12.02.01 Mandatory Attendance

All parents of any minor child who has been enrolled in a school and is covered by this Title shall cause such child to attend school and such child shall have the responsibility to and therefore shall attend for the full time when such school may be in session.

12.02.02 Exception to Attendance Provided

A child and his or her parents shall be excused from the requirements of this Title and shall not be subject to the penalties set out herein if:

- (a) The school attended by the child has excused such child from attendance because the child is physically or mentally unable to attend school and the school is providing all legally required services in a home-based or other approved program;
- (b) The child is attending a residential school operated by the Tribe, other Indian education agency, or the department of social and health services;
- (c) The child has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and the parent, provided that such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress; or,
- (d) The child is temporarily absent from school with the consent of his or her parents in order to attend cultural events or for other cultural purposes; or,
- (e) The child is sixteen years of age or older and:
 - (i) The child is regularly and lawfully employed and the parents agree that the child should not be required to attend school; or,
 - (ii) The child is emancipated according to state or tribal law; or,
 - (iii) The child has already met graduation requirements in accordance with the State Board of Education rules and regulations; or,
 - (iv) The child has received a certificate of educational competence (GED) under rules and regulations established by the State Board of Education.

(v) The child has already met graduation requirements, if any, that are lawfully imposed by the Nisqually Tribe and that preempt state requirements.

12.03 COOPERATIVE AGREEMENTS

12.03.01 Cooperative Agreement with School

(a) The Nisqually Tribe may enter into cooperative agreements with any school or school district which educates students covered by the Title for purposes of increasing and improving the attendance of children covered by this Title or addressing behavioral problems that could lead to a student covered by an agreement being removed from school.

(b) All agreements authorized under this part shall be in writing and shall be approved by the Nisqually Tribal Council. No such agreement shall waive the sovereign immunity of the Tribe, its agencies, employees or agents.

(c) Every agreement entered into under the authority of this section shall contain the following provisions:

(i) The cooperating school shall refer to the Attendance Officer all enrolled students who have three (3) days or more Unexcused absences per quarter; and,

(ii) The cooperating school may refer to the attendance officer children who are alleged to have discipline problems and/or not achieving academically; and,

(iii) The cooperating school shall agree not to suspend, expel, or take away the credits of a student referred under a cooperative agreement as allowed under this Title after the referral to the appropriate Tribal agency provided under the agreement, unless suspension or expulsion is required because the child creates a danger to himself and/or others, or the school; and,

(iv) The Tribe shall agree to enforce the provisions of this Title with respect to each child referred by a school to the Tribe. In acting under this provision, the Tribe, and its designated attendance officer and appropriate agency shall work with and in cooperation with the school in order to develop the best program and plan to correct the attendance or discipline problems of the referred child; and,

(v) The Tribe shall in each cooperative agreement designate a tribal employee to act as attendance officer; and,

(vi) Referrals of students who are not enrolled or eligible for enrollment in the Nisqually Tribe shall be accepted only when tribal resources are available after the needs of Nisqually children have been met and when the student and the

student's parent or guardian consents to the referral and agrees to participate with the Tribe pursuant to the referral and be bound by this Title.

HISTORICAL AND STATUTORY NOTES

1. Subsection (c)(i) amended by Resolution 83-2012, dated August 7, 2012.

12.04 TRIBAL ATTENDANCE OFFICER

12.04.01 Tribal Attendance Officer - Appointment

To aid in the enforcement of this Title, tribal attendance officers shall be appointed by and under the direct supervision of the Tribal Court Probation Department. Appointment may be from existing staff or new staff authorized by the Tribal Administrator. The Administrator shall approve attendance officers for each cooperative agreement entered into under this Title, and may also appoint attendance officers to act in other circumstances.

HISTORICAL AND STATUTORY NOTES

1. Amended by Resolution 83-2012, dated August 7, 2012.

12.04.02 Tribal Attendance Officer – Duties

Whenever a child is referred to a tribal attendance officer pursuant to this Title, the attendance officer shall take some or all of the following actions:

- (a) Inform the child's custodial parent(s) by a notice in writing and by other means reasonably necessarily to achieve notice of the fact that the child has failed to attend school recurrently or for an extended period of time; and,
- (b) Schedule a conference or conferences with the custodial parent(s) and the child at a time and place reasonably convenient for all persons included for the purpose of discussing the causes of the child's absences; and,
- (c) Take steps to eliminate or reduce the child's absences. These steps may include, where appropriate, adjusting the child's school program or school course assignment, providing more individualized or remedial instruction, preparing the child for employment with specific vocational courses or work experience, or both, and assisting the parent or student to obtain supplementary services that might eliminate or alleviate the cause or causes for the absence from school; and,
- (d) Provide additional or continuing counseling for the parent(s), the child, or both, and provide assistance in obtaining access to testing, assessments or any other program that is reasonably designed to correct the attendance problems of the child, insuring that the school or school district is meeting its legal requirements to meet the child's learning needs; and,

- (e) In those situations where a school refers a child for discipline problems to the tribal attendance officer, the attendance officer in cooperation with the school shall work with qualified persons to determine the cause of the problem and develop a culturally sensitive program that is designed to provide the child with a positive and culturally appropriate learning environment, which program can include the child and the parent(s); and,
- (f) If the above actions are not successful in substantially reducing a student's absences from school or if the parent or child refuse to comply voluntarily, the attendance officer through the Tribal prosecutor may petition the court to assume jurisdiction under this Title.
- (g) Notify the Nisqually Indian Child Welfare Department of the referral and the actions being taken pursuant to this Title.
- (h) Make recommendations to the Tribe regarding services which are available.
- (i) Develop plans and strategies for prevention of attendance problems.

HISTORICAL AND STATUTORY NOTES

1. Subsection (e) amended by Resolution 83-2012, dated August 7, 2012.

12.04.03 Reports by Tribal Attendance Officers

- (a) The attendance officer shall report biannually to the ICW Committee, on petitions filed alleging a violation by a child under this Title. The report shall at a minimum contain:
 - (i) The number of petitions filed by the attendance officer;
 - (ii) The frequency of each action taken under this Title prior to the filing of such petition;
 - (iii) Disposition of cases filed with the Tribal Court, including the frequency of orders issued to enforce a court's order.
- (b) The attendance officer shall make such other reports as are requested by the Tribal Council or the ICW Committee.

Chapter 5 Tribal Court Action

12.05.01 Petition to Tribal Court

- (a) If action taken pursuant to section 12.04.02(a)-(e) is not successful in substantially reducing a student's absences from school or if the parent or child refuse to comply voluntarily, the attendance officer through the Tribe's Presenting Officer may petition the court to assume jurisdiction under this Title.

(b) A petition requesting court action may be filed with the court by the parent of such child or by the attendance officer through the Tribe's Presenting Officer at the request of the parent.

12.05.02 Petition Contents

A petition for a court action under this Title shall contain the following:

- (a) A statement that the child has unexcused absences during the current school year and that actions taken by the attendance officer have not been successful in substantially reducing the child's absences from school;
- (b) A statement that court intervention and supervision are necessary to assist the Tribe or parent to reduce the child's absences from school;
- (c) The name, age, school, and residence of the child and the names and residences of the child's parents; and
- (d) Facts that support the allegations set forth in the petition and a general request for relief available under this Title.

12.05.03 Notice of Hearing

(a) When a petition is filed under section 5.01, the court shall schedule a hearing at which the court shall consider the petition. Notice of the hearing shall be provided to the following persons:

- (i) The child;
 - (ii) The child's parent(s);
 - (iii) The tribal attendance officer;
 - (iv) The tribal prosecutor; and,
 - (v) Any other person whose presence is required by the court.
- (b) Service of notice shall be made either:
- (i) By delivering a copy to the person named; or
 - (ii) By leaving a copy at his or her residence with any competent person sixteen (16) years of age or older who resides there; or
 - (iii) By sending a copy to the persons last known address by certified mail, return receipt requested and by regular mail. Service shall be considered complete three (3) days after the date of mailing.

12.05.04 Rights of Parties at Hearing

(a) All parties to a court proceeding under this Title shall have the following rights:

- (i) The right to have a legal representative advise and represent them at their own expense;
 - (ii) The right to subpoena witnesses;
 - (iii) The right to introduce, examine and cross-examine witnesses;
 - (iv) The right to discover, offer and inspect evidence;
 - (v) The right to present arguments and statements;
 - (vi) A party need not be a witness against himself or herself.
- (b) There is no right to a jury trial under this Title.
- (c) The Court shall advise the parties of the availability of public defenders and/or low cost legal services.

12.05.05 Court Orders

If the Court finds that the allegations in the petition have been established by a preponderance of the evidence, the court shall grant the petition and may order the child and/or the parents to take such action as the court determines will most likely cause the child to return to and remain in school.

12.05.06 Penalties for Failure to Comply

- (a) Any parent or child who fails to comply with the Tribal Court's truancy orders within the specified time shall be subject to any of the following penalties:
- (i) Participation in a drop-out prevention program;
 - (ii) Participation with counseling as recommended by any professional working with the family;
 - (iii) Participation in mental health and/or physical health examinations;
 - (iv) Day reporting with the Tribal Court Probation Department;
 - (v) Participation in a substance abuse evaluation;
 - (vi) Urinalysis testing;
 - (vii) Education-related community service;
 - (viii) Electronic home monitoring;
 - (ix) A fine of not less than twenty-five dollars for each day of unexcused absence from school;
 - (x) Detention or shelter care.
- (b) Upon a showing of financial hardship, the court may order community service hours in lieu of payment of a fine imposed. Each hour of community service shall reduce the fine by the amount of federal minimum wage at the time of sentencing. Adequate supervision must be available before community service hours are imposed.
- (c) It shall be a defense for a parent charged with violating this Title to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody

to attend school or that the child's school did not perform its duties as required under the law.

(d) Any fine imposed on a parent may be suspended upon condition that the parent participate with the Tribe, the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or counseling scheduled by the tribal attendance officer for the purpose of analyzing the causes of a child's absence, or on condition that the parent comply with any other plan determined to be appropriate to assist the child to attend school.

(e) The Court may suspend any fine imposed on a child if the child agrees to comply with a plan developed by the tribal attendance officer, as it may be modified by the Court.

HISTORICAL AND STATUTORY NOTES

1. Subsection (a) amended by Resolution 83-2012, dated August 7, 2012.

12.06 ENFORCEMENT PROVISIONS

12.06.01 Collection of Fines

Whenever the Tribal Court orders the payment of a fine to enforce the provisions of this Title, that fine shall be entered as a judgment of the Court.

12.06.02 Child in Need of Care Proceeding

The failure of a parent to comply with an order entered pursuant to this Title may be grounds for court action in any action brought pursuant to the Nisqually Child Welfare Code.

12.06.03 Tribal Law Enforcement Authority

Tribal law enforcement is authorized to take into custody any child under the jurisdiction of the Nisqually Tribe, when the attendance officer has reasonable grounds to believe that the child may be a truant from school, and thereafter to return such child to his/her parents, for investigation and explanation, or to the school which he/she should properly attend.