

LOWER BRULE SIOUX TRIBAL COURT
LAW AND ORDER CODE

TRUANCY CODE



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LOWER BRULE SIOUX TRIBE TRUANCY CODE

Section 1: GENERAL PROVISIONS

1.1. PURPOSE

The purpose of this code is to require the regular attendance at school of all school-age children living on or within the Lower Brule Sioux Reservation, whether they are attending an on-reservation or off-reservation school, and to all tribal children living off the reservation attending school within the Lower Brule Sioux School District.

1.2. AUTHORITY

This code is enacted pursuant to Article V, Section 1(5) and Section 2-3-302 of the Lower Brule Sioux Tribe Juvenile/Gang Reduction Code authorizing the jurisdiction of the youth court.

1.3. EFFECTIVE DATE

This code shall take effect on the day following the date of approval of this code by the Lower Brule Tribal Council.

1.4. INTERPRETATION

In its interpretation and application, the provisions of this code 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 Code does not waive its sovereign immunity in any respect.

1.5. ABROGATION AND GREATER RESTRICTIONS

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

1.6. SEVERABILITY

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

1.7. APPLICABILITY

This code shall apply to all children and their parent/guardian/custodian living on or within the Lower Brule Sioux Tribal Reservation, whether they are attending an on-reservation or off-reservation school, and to all tribal children living off the reservation attending school within the Lower Brule Sioux School District and their parent/guardian/custodian or other persons having said children in their care or custody or under their control.

Section 2: DEFINITIONS

2.1. Rules of Construction

For the purposes of this code, the following terms shall have the meaning ascribed below and shall be used in concurrence with those definitions specified in Title 2, Section 1 of the Lower Brule Sioux Tribe Juvenile/Gang Reduction Code. Consistent with the principles of construction and definitions set forth elsewhere in the laws of the Lower Brule Sioux Tribe, including but not limited to that part of the tribal Code entitled Lower Brule Sioux Tribe Law and Order Code, masculine words shall include the feminine and neuter, and singular words shall include the plural, and vice versa, unless a different construction is obviously intended.

2.2. Adult

Adult means any person eighteen (18) years of age or older.

2.3. Child

Child means any person who is less than eighteen (18) years of age.

2.4. Member

Member means a person enrolled in the Lower Brule Sioux Tribe.

2.5. Reservation

Reservation means the area within the external boundaries of the Lower Brule Sioux Reservation.

2.6. School

School means the Lower Brule Sioux Tribal Schools. For child(ren) living on the Lower Brule Reservation but attending an off-reservation school, the provisions of this Code apply to the extent possible and are supplemented with the provisions for school attendance implemented by the school the child attends.

2.7. School Attendance

School Attendance means physical presence of a child(ren) in school, and includes attending scheduled classes during such hours and on days as determined by the school or, for students enrolled in Alternative Education Programs, attendance at the place and during hours scheduled by the school for the student, unless excused from such attendance by this Code.

2.8. School Attendance Officer (Truant Officer or School Resource Officer)

School Attendance Officer (Truant Officer or School Resource Officer) means an employee designated by the school board/college board to deal with matters relating to school attendance and truancy.

2.9. School Attendance Policy

School Attendance Policy means the current policy for school attendance duly adopted by the appropriate school board.

2.10. Tribal Child

Tribal Child means a child who is either (a) an enrolled member of the Lower Brule Sioux Tribe; (b) eligible for enrollment in the Lower Brule Sioux Tribe; (c) an enrolled member of any federally recognized Tribe; or (d) eligible for enrollment in any federally recognized Tribe.

2.11. Truancy

Truancy means any absence unexcused by the school. An absence that is excused by a parent but not by school officials is still a truancy.

2.12. Habitual Truancy

Habitual Truancy means five (5) unexcused absences from school.

2.13. Student

Student means one who attends school in the Lower Brule Tribe School District. The term “student” also applies to any child who resides on the Lower Brule Reservation but attends an off-reservation school, to the extent the Lower Brule School District’s policies are consistent with those of the off-reservation school.

2.14. Tribe

Tribe means the Lower Brule Sioux Tribe.

Section 3: COMPULSORY SCHOOL ATTENDANCE

3.1. SCHOOL ENROLLMENT REQUIRED

Except as excused under this Code, pursuant to the tribal compulsory attendance law, any parent/guardian/custodian/or other person having under their control a school aged child(ren) shall enroll the child(ren) in school.

3.2. ATTENDANCE REQUIRED

Any parent/guardian/custodian/or other person having control of a child, who is six years old by the first day of September and who has not exceeded the age of eighteen, shall cause the child to regularly and annually attend school for the entire term during which the school is in session, until the child reaches the age of eighteen years, unless the child has graduated or is excused as provided in this chapter. Failure to comply with this compulsory attendance law is a Class D offense. Each subsequent offense shall be a Class C offense.

It shall be unlawful for any child subject to Section 3.2 to fail to attend school.

3.3. EXCEPTION TO COMPULSORY SCHOOL ATTENDANCE

Any parent/guardian/custodian or other person having control of a child whose school attendance is required by Section 3.2 must seek prior approval of the Lower Brule Sioux School District Board for the parent/guardian/custodian/or other person having control of a child to provide a course of at-home instruction approved by the Lower Brule School District, because the physical or mental condition of the child(ren) is such as to render his or her attendance at school impracticable. Upon receiving written

approval from the Lower Brule School District Board, the child's school attendance pursuant to Section 3.2 shall be excused.

3.3. TRUANCY PROHIBITED

- a) Truancy is prohibited by any parent/guardian/custodian/or other person having control over a child or by the child subject to Section 3.2.

- b) It is a Class D offense for any person to harbor, cause, assist, or enable a child(ren) to be truant.

3.4. NOTIFICATION

Whenever any child(ren) fail to report to school on a regularly scheduled school day and the parent/guardian/custodian or other person having control of the child has not contacted the school to report that the child will be absent, a reasonable effort to notify, by telephone, the parent/guardian/custodian shall be made by school personnel. School personnel shall be immune from any civil or criminal liability in connection with the notice or failure to give the notice required by this section.

SECTION 4: ENFORCEMENT AND PENALTIES

4.1. PARTIES

The truancy officer shall make and file truancy complaints. The prosecutor, any teacher, school administrator, or any citizen may make and file a truancy complaint against any parent/guardian/custodian or other person having control of a child of compulsory school age who is not attending school or whose attendance is irregular. The complaint shall state the name of the parent/guardian/custodian or person responsible for the control of the child.

The School Attendance Officer (Truant Officer or School Resource Officer) has the powers of a law enforcement officer in the exercise of his or her duties, and shall apprehend without warrant children of compulsory school age who absent themselves from the place where the children are required to attend without an excuse, and place the children in the custody of the person having charge of the place where the children are by law required to attend.

The School Attendance Officer may also contact a law enforcement officer to assist in the enforcement of the provisions of this code. Law Enforcement shall arrest any parent/guardian/custodian/or other person having control of a child who fails to attend school in accordance with this Code. Law Enforcement shall arrest any person that harbors, causes, assists, or enables a child(ren) to be truant. Law Enforcement may enter any private home during school hours without a warrant but upon probable cause that a child subject to the provisions of this Code is within the home in violation of the compulsory school attendance law.

4.2. DOCUMENTATION

The school must document the following steps before the Tribal Court hears a truancy petition:

- a) First Incident. The School Attendance Officer (Truant Officer or School Resource Officer) shall give verbal warning and send a letter to the parent(s)/legal guardian(s)/legal custodian(s) at 3rd unexcused day of absence and/or twenty-one (21) classes or may set up and document a meeting with the child(ren) and parent(s)/legal guardian(s)/legal custodian(s). The purpose of the meeting shall be to identify and resolve behaviors that are in violation of the provisions of this code through an appropriate plan of action, which shall be agreed to and signed by all parties involved. The following steps shall be required in developing the action plan:
- 1) Provide an opportunity for education counseling to the child(ren) to determine whether a change in the child(ren)'s curriculum would resolve the child(ren)'s truancy and consider curriculum modifications.
 - 2) Evaluate the child(ren)'s curriculum to determine whether learning problems may be the cause of the child(ren)'s truancy and, if so, take appropriate action or make appropriate referrals.
 - 3) Conduct an evaluation to determine whether social problems may be the cause of the child(ren)'s truancy and, if so, take appropriate action or make appropriate referrals.
 - 4) A copy of the plan of action shall be given to the parent/guardian/custodian and the principal of the child(ren). Included in the action plan shall be a schedule for consistent, timely review to evaluate and monitor the effectiveness of said plan.
- b) Second Incident. After the 5th unexcused day of absence and/or thirty-five (35) classes, the School Attendance Officer (Truant Officer or School Resource Officer) may contact Social Services, Behavioral Health Department or other appropriate party or may refer to Tribal Court.
- c) Third Incident. Anything exceeding the 5th unexcused day of absence and/or thirty-five (35) classes will be referred to Tribal Court. A checklist documenting evaluation of the steps required in Section 4.2 must be submitted to the court upon referral. Once referred to Tribal Court, the child(ren)'s parent(s)/legal guardian(s)/legal custodian(s) shall be summoned in accordance with Lower Brule Sioux Tribal Law. If summoned to Tribal Court, appearance is mandatory by both the child(ren) and the parent(s)/legal guardian(s)/legal custodian(s).
- d) Failure of the school to comply with the requirements of Section 4.2 is not a defense to a truancy petition or criminal complaint filed pursuant to this Code.

4.3. CITATIONS ISSUED

The Court may issue a summons or arrest warrant for any child(ren) or any parent/guardian/custodian or other person having control of a child or any other person who violates this Code.

4.4. INCIDENT

Each incident of truancy may constitute a separate offense.

4.5. NO DEFENSE

A parent/guardian/custodian/or other person having control of a child may not use as a legal defense the following:

- a) That the child is acting without the knowledge or authority of the parent/guardian/custodian/or other person having control of the child;
- b) That the parent/guardian/custodian/or other person having control of the child is unaware or claims to be unaware of the truancy; or
- c) That the parent/guardian/custodian/or other person having control of the child is unable to control the child.
- d) If the child was seen or found to be outside of his or her residence and apart from the company of the parent/guardian/custodian/or other person having control of the child during regular school hours, illness of the child will not be accepted as a defense.

4.6. PENALTIES

- a) First offense failure to send child(ren) to school in violation of Section 3.2 is a Class D Offense.
- b) A subsequent offense for failure to send child(ren) to school in violation of Section 3.2 is a Class C Offense.
- c) Harboring, causing, assisting, or enabling a child(ren) to be truant is a Class D Offense.
- d) A child adjudicated as a truant may be subject to disposition alternatives in the Lower Brule Sioux Tribe Juvenile/Gang Reduction Code.
- e) The court may also impose upon any adult convicted or juvenile adjudicated under this Code additional requirements, including but not limited to the following: substance abuse evaluation and treatment, behavioral health evaluation and counseling, parenting classes, community service, curfew, house arrest, drug/alcohol testing and such other terms the court deems appropriate.

4.7. FURTHER INVESTIGATION

The Tribal court may order the Department of Social Services to conduct an investigation of the child and parent/guardian/custodian or other person having control over a child subject to this Code to determine if a youth-in-need-of-care petition should be filed. A youth-in-need-of-care petition may be filed in addition to any criminal complaint or youth-in-need-of-supervision petition filed under this Code.

4.8. JURISDICTION

The Tribal Court shall have jurisdiction over cases brought to enforce this code. Proceedings shall be conducted in accordance with applicable provisions of the Lower Brule Sioux Tribal Laws.

4.9. COURT ORDER TO SCHOOL.

A copy of juvenile court orders directing a child to attend school shall be provided to the school superintendent.