

Title 8 – Juveniles
Chapter 14 –School Attendance

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Legislative History

Enacted:

Ordinance 360 Amending STC Title 8, Chapter 14 (6/7/16); BIA (6/15/16).

Ordinance 279 Enacting School Attendance Ordinance (8/30/10); BIA (9/2/10).

8-14.010 Title.

This Chapter shall be known and may be cited as the “Swinomish School Attendance Code.”

[History] Ord. 279 (8/30/10).

8-14.020 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section 1(a), (h), (k), (l), (o), (r) and (s) of the Swinomish Constitution.

[History] Ord. 279 (8/30/10).

8-14.030 Purpose and Scope.

The education of Swinomish Indian Tribal Community youth is a high priority of the Swinomish Senate. The Senate encourages and supports school attendance by all Community children from preschool through high school graduation.

This Chapter shall be interpreted and applied to accomplish this goal and to achieve the following objectives:

- (A) To provide for the mental, physical, social and cultural development and education of the Indian youth of the Swinomish Indian Tribal Community;
- (B) To protect and to preserve the identity and pride of the Indian youth of the Swinomish Indian Tribal Community as Native Americans;
- (C) To provide a procedure to encourage and ensure that Indian youth attend school, beginning with preschool and continuing through high school graduation;
- (D) To coordinate Tribal action with the Washington state and School District policies and practices concerning school attendance and, to that end, the provisions of this Chapter shall, where appropriate and where consistent with Tribal policy, be interpreted and applied in a manner that is harmonious with the applicable provisions of Washington law in RCW 28A.225.

[History] Ord. 360 (6/7/16); Ord. 279 (8/30/10).

8-14.040 Definitions.

For purposes of Chapter 14 of this Title, unless otherwise expressly provided, the following definitions shall apply:

- (A) **“Attendance Officer”** means the Tribal employee whose responsibilities include assuring attendance of Indian youth at a preschool program and school.
- (B) **“Court”** means the Swinomish Tribal Youth Court when exercising jurisdiction under Title 8 of the Swinomish Tribal Code.
- (C) **“Custodian”** means a person, other than a parent or guardian, who has been given temporary physical care, custody and control of a youth, including the duty to provide food, clothing, shelter, medical care, education and supervision to the youth.
- (D) **“Domicile/Residence”** means the determination of domicile and residence shall be in accordance with Tribal law and custom. In the absence of other factors clearly demonstrating an intent to establish a permanent home off of the Reservation or outside of housing owned or operated by the Tribe, the domicile and/or residence of a custodian, parent or guardian who is physically present within the Reservation or in Tribally owned or operated housing shall be deemed to be within the Reservation or such Tribal property.
- (E) **“Excused school absence”** means an “excused absence” as determined by the school in accordance with RCW 28A.225.020.

- (F) **“Excused preschool program absence”** means an “excused absence” as determined by the preschool in accordance with the attendance policy of the preschool.
- (G) **“Guardian”** means a person other than the youth’s parent who is responsible, by law, for that youth.
- (H) **“Indian tribe”** means any Indian tribe, band, nation or other organizational group or community of Indians traditionally recognized as an Indian tribe by the Swinomish Indian Senate or recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village.
- (I) **“Indian Youth”** means a youth who is:
- (1) Either:
 - (a) enrolled in an Indian tribe; or
 - (b) both:
 - (i) eligible for enrollment in an Indian tribe, and
 - (ii) a biological child of a person who is enrolled or is eligible for enrollment in an Indian tribe; and
 - (2) Residing with an enrolled member of the Swinomish Indian Tribal Community within the exterior boundaries of the Reservation, or in housing that is owned or operated by the Tribe outside of the boundaries of the Reservation.
 - (3) For purposes of 8-14.040(I), the terms “enrolled” and “enrollment” include provisional members of the Swinomish Indian Tribal Community.
- (J) **“Parent”** means a biological or adoptive parent but neither includes persons whose parental rights have been terminated nor includes a purported father who was not married to a youth’s mother on the date of the youth’s birth and whose paternity has not been acknowledged or established.
- (K) **“Preschool Program”** means an early childhood education program for children who are not less than 3 years of age prior to September 1 of that school year and continuing through to the commencement of education at a primary school. A Preschool Program may be operated in partnership with the Tribe or may be privately operated.
- (L) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.

- (M) **“School”** means a primary or secondary school for students in classes Kindergarten through Grade 12.
- (N) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (O) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Indian Tribal Community, a federally recognized Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikiallus and Lower Skagit bands of Indians.
- (P) **“Unexcused school absence”** means an “unexcused absence” as determined by the school in accordance with RCW 28A.225.020.
- (Q) **“Unexcused preschool program absence”** means an “unexcused absence” as determined by the school in accordance with the attendance policy of the preschool.
- (R) **“Youth (minor)”** means:
- (1) A person under the age of eighteen (18) years;
 - (2) A person eighteen (18) years of age or older who is the subject of proceedings commenced in Youth Court prior to his or her eighteenth (18th) birthday; or
 - (3) A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Youth Court.

[History] Ord. 360 (6/7/16); Ord. 279 (8/30/10).

8-14.050 Preschool Program and School Attendance.

- (A) Each custodian, parent or guardian of any Indian youth who is eligible by age for enrollment in a preschool program shall cause that youth to attend a preschool program. Each such Indian youth shall have the duty and the responsibility to attend such preschool program for the full time when that preschool is in session unless the youth is excused from attending pursuant to and in accordance with the attendance policy of the preschool. Preschool program attendance requirements may be satisfied if the Indian youth is homeschooled under a program that is determined by the Tribal Education Director, Education subcommittee and Preschool Administrator to be functionally equivalent to the program operated at the Susan Wilbur Early Education Center.

- (B) Each custodian, parent or guardian of any Indian youth who is eligible by age for enrollment in a public school shall cause that youth to attend a public school of a Washington state school district. Each such Indian youth shall have the duty and the responsibility to attend such school for the full time when that school is in session unless the youth is excused from attending school pursuant to and in accordance with RCW 28A.225.010, as it is then in effect.

[History] Ord. 360 (6/7/16); Ord. 279 (8/30/10).

8-14.060 Tools to Improve Indian Youth Attendance of Preschool Programs and School.

- (A) If an Indian youth required to attend a preschool program or school under 8-14.050 fails to attend without valid justification, the Attendance Officer shall, after one unexcused absence during the current school year:
- (1) Contact the youth's custodian, parents, or guardian by telephone, in person or if that is not successful then by a notice in writing;
 - (2) Schedule a conference or conferences with the custodian, parents, or guardian and, if deemed appropriate, the youth, at a time reasonably convenient for all persons included for the purpose of identifying and attempting to resolve the causes of the youth's absences; and
 - (3) Take steps to assist and support the youth and the youth's custodian, parents, or guardian in order to eliminate or reduce the youth's absences, and to support the efforts of the preschool program or school, as applicable, to eliminate or reduce the youth's absences, consistent with RCW 28A.225.020. These steps may include providing direct guidance or assistance or making appropriate referrals in order to address the underlying causes of the youth's absence.
- (B) If an Indian youth is required to attend a preschool program or school under 8-14.050 and if the actions taken by the Attendance Officer under 8-14.060(A) are not successful in reducing that Indian youth's absences, then after the third unexcused absence during the current school year the Attendance Officer shall:
- (1) Attempt to enter into an agreement with the custodian, parent or guardian of that youth and, if deemed appropriate, the youth, that establishes preschool program or school attendance requirements; or
 - (2) If no such agreement can be reached within seven calendar days, or if the youth has another unexcused absence after such an agreement is signed, file a petition for a civil action with the Court in accordance with 8-14.070.

- (C) If an Indian youth required to attend school under 8-14.050 has two excused absences during one calendar month, the Attendance Officer shall:
- (1) Contact the youth's custodian, parents, or guardian by telephone, in person or if that is not successful then by a notice in writing;
 - (2) Schedule a conference or conferences with the custodian, parents, or guardian and, if deemed appropriate, the youth, at a time reasonably convenient for all persons included for the purpose of identifying and attempting to resolve the causes of the youth's absences; and
 - (3) Take steps to assist and support the youth and the youth's custodian, parents, or guardian in order to eliminate or reduce the youth's absences, and to support the efforts of the preschool program or school, as applicable, to eliminate or reduce the youth's absences. These steps may include providing direct guidance or assistance or making appropriate referrals in order to address the underlying causes of the youth's absence.

[History] Ord. 360 (6/7/16); Ord. 279 (8/30/10).

8-14.070 Petition to Court and Court Proceedings

- (A) A petition for civil action under 8-14.060 shall consist of a written notification to the Court alleging a violation of 8-14.050 by:
- (1) the custodian, parent or guardian; or
 - (2) If the Indian youth is a middle school or high school student, the custodian, parent or guardian as well as the Indian youth.
- (B) The petition shall inform the Court that:
- (1) The Indian youth has unexcused absences during the current school year;
 - (2) Actions taken by the Tribe have not been successful in substantially reducing the Indian youth's absences; and
 - (3) Court intervention and supervision are necessary to assist the Indian youth, Attendance Officer and/or custodian, parent or guardian to reduce the youth's absences.
- (C) The petition shall set forth the name, date of birth, current grade level or age, address, gender, tribal enrollment or eligibility for enrollment and preschool program or school of the Indian youth and the names and addresses of the youth's custodian, parents or guardian.

- (D) The petition shall generally set forth facts that support the allegations, shall generally request relief available under this chapter and shall provide information about what specific relief the Court might order to improve the Indian youth's attendance.
- (E) The petition may be signed and filed by the Attendance Officer, and the Attendance Officer may participate in the Court's proceedings on the petition, regardless of whether s/he is admitted to practice in the Court.
- (F) If the Attendance Officer does not file a petition under this section, the custodian, parent or guardian of an Indian youth may file a petition with the Court alleging a violation of 8-14.050.
- (G) Petitions filed under this section may be served by certified mail, return receipt requested. If such service is unsuccessful, or the return receipt is not signed by the addressee, service shall be made in accordance with Swinomish Tribal Code 3-02.090.
- (H) When a petition is filed and has been served, the Court shall schedule a hearing at which the Court shall consider the petition.
- (I) Proceedings on a petition may be modified by the Court to be appropriate for the age, educational level and circumstances of the Indian youth who is the subject of the petition so as to achieve the purposes of this Chapter.
- (J) Prior to holding a hearing on the merits of the petition, or directing other available relief, the Court shall determine whether the Attendance Officer entered into an agreement with the custodian, parent or guardian of the Indian youth, and, if deemed appropriate, with the youth, pursuant to 8-14.060(B)(1). If no such agreement has been entered into, then the Court shall attempt to facilitate agreement between the Attendance Officer, the custodian, parent or guardian and, if deemed appropriate, the youth, that establishes attendance requirements, expectations and actions necessary to address the youth's absences. Any such agreement that is reached shall be reviewed and, if acceptable, approved by the Court. The Court shall then retain continuing supervision over the petition and Indian youth until such time as the Court determines that Court supervision is no longer necessary or appropriate. The Attendance Officer shall report on compliance with the agreement as directed by the Court.
- (K) If the Court does not receive and approve any agreement pursuant to the previous subsection within a period of time deemed reasonable by the Court under the circumstances, then the Court shall hold a hearing on the merits of the petition and may fashion other appropriate relief in accordance with 8-14.080 to substantially reduce the youth's unexcused absences.

- (L) When a Court hearing is held, the Court shall:
 - (1) Separately notify the custodian, parent or guardian of the youth, and the Attendance Officer of the hearing; and
 - (2) Notify the custodian, parents and guardian of their right to present evidence at the hearing.
- (M) When a Court hearing is held concerning an Indian youth who is in middle or high school who is alleged to have violated 8-14.050, the Court shall:
 - (1) Notify the Indian youth of the hearing and require that the youth attend the hearing; and
 - (2) Notify the youth of his or her right to present evidence at the hearing.
- (N) If the allegations in the petition are established by a preponderance of the evidence, the Court shall grant the petition and enter an order assuming jurisdiction to intervene for the period of time determined by the Court, after considering the facts alleged in the petition and the circumstances of the Indian youth, to most likely cause the youth to return to and remain in a preschool program or school, as applicable, while the youth is subject to this chapter. In no case may the order expire before the end of the school year in which it is entered.
- (O) If the Court assumes jurisdiction, the Attendance Officer shall regularly report to the Court, as directed in the Court's order, on any additional unexcused absences by the Indian youth.
- (P) The Court shall coordinate, to the extent possible, proceedings and actions pertaining to Indian youth who are subject to a petition under this chapter with any other proceedings pending in the Court concerning the youth, and with any other proceedings that may be pending in a court of the State of Washington.

[History] Ord. 360 (6/7/16); Ord. 279 (8/30/10).

8-14.080 Relief on Petition to Court.

- (A) The Court may order that the custodian, parents or guardian of an Indian youth, and the Indian youth if the youth is in middle school or high school, who are subject to the Court's jurisdiction under 8-14.060 shall ensure that the youth attends the youth's preschool program or school, consistent with the provisions of RCW 28A.225.090 as appropriate, and set forth minimum attendance requirements and, if appropriate, specific steps that will help ensure such attendance.

- (B) If the youth, custodian, parents or guardian fail to comply with the Court's order, the Court may conduct such further proceedings and issue further orders in accordance with Tribal law as is necessary to secure the youth's attendance and to enforce the Court's order.
- (C) Any custodian, parent or guardian violating a Court order enforcing 8-14.050 may in the discretion of the Court be fined in an amount determined by the Court to be fair, reasonable and appropriate under the circumstances to result in improved preschool program or school attendance by the youth, provided, however, that no fine shall be greater than twenty-five dollars for each violation of such an order.
- (1) It shall be a defense for a custodian, parent or guardian alleged to have violated an order enforcing 8-14.050 to show that he or she exercised reasonable diligence in attempting to cause the youth to attend school.
 - (2) The Court may order the custodian, parent or guardian to provide community restitution instead of imposing a fine.
 - (3) Any fine imposed pursuant to this section may be suspended upon the condition that the custodian, parent or guardian shall participate with the Attendance Officer and the youth in a supervised plan for the youth's attendance at school or upon condition that the custodian, parent or guardian attend conferences scheduled by the Attendance Officer for the purpose of resolving the causes of a youth's absences.

[History] Ord. 360 (6/7/16); Ord. 279 (8/30/10).

8-14.090 Custody and Disposition of Youth Absent from School Without Excuse.

Any Swinomish Police Department officer may take into custody without a warrant an Indian youth who is required by the provisions of 8-14.050 to attend school and who is absent from school without an approved excuse, and shall deliver the youth to: (1) the youth's custodian, parent or guardian or (2) the school from which the youth is absent.

[History] Ord. 279 (8/30/10).

8-14.100 Severability.

The provisions of this Chapter are severable. If a court of competent jurisdiction should hold any provision of this Chapter invalid, such ruling shall not affect the validity of any other provision, such that the remaining provisions shall have full force and effect.

[History] Ord. 279 (8/30/10).

8-14.110 Effective Date.

The provisions of this Chapter shall become effective immediately upon approval by the United States Secretary of the Interior or his or her designee, *provided*, however, that the provisions requiring and concerning preschool program attendance shall take effect on August 31, 2016.

[History] Ord. 360 (6/7/16); Ord. 279 (8/30/10).