

CHAPTER 4

TRUANCY

4.01 COMPULSORY SCHOOL ATTENDANCE

§4.01.110

See the comments on § 1.03.130(b).

4.01.110 Compulsory School Attendance

- (a) Every Indian child under eighteen (18) years of age residing or domiciled on the [Reservation] shall attend a public or tribal school full-time when school is in session, unless:
 - (1) the child is attending a private school certified by [the state or other certifying jurisdiction];
 - (2) the child is receiving home-based instruction as defined in subsection (c); or
 - (3) the superintendent of the school district in which the child resides has excused the child from attendance because the child:
 - (A) is physically or mentally unable to attend school;
 - (B) is attending a residential school certified by [the state or other certifying jurisdiction] to meet the needs of the child;
 - (C) is detained in a secure juvenile detention facility or other correctional facility;
 - (D) has been temporarily excused upon the request of his or her parent, guardian or custodian for purposes agreed upon by the school authorities and the parent; or
 - (E) is sixteen (16) years of age or older and:
 - (i) is regularly and lawfully employed, and either the parent agrees that the child should not be required to attend school or the child is emancipated in accordance with applicable law; or
 - (ii) has already met graduation requirements in accordance with state board of education rules and regulations.
- (b) The parent, guardian or custodian of any Indian child under eighteen (18) years of age residing or domiciled on the [Reservation] shall ensure that the child complies with the requirements set forth in subsection (a).
- (c) For the purposes of this chapter, instruction shall be home-based if:
 - (1) the instruction consists of planned and supervised instructional and related educational activities established by [the state or other certifying jurisdiction]; and

- (2) such instruction is provided by a parent who is:
 - (A) instructing only his or her child, under the supervision of a person certified for such instruction by [the state or other certifying jurisdiction]; or
 - (B) deemed sufficiently qualified to provide home-based instruction by the superintendent of the school district in which the child resides.

§ 4.01.130

See the comments on § 1.03.130(b).

4.01.130 Compulsory School Attendance – Notice

- (a) The Tribe shall provide annual notice of the compulsory education requirements set forth in § 4.01.110 to:
 - (1) every Indian child under eighteen (18) years of age residing or domiciled on the [Reservation]; and
 - (2) the parent, guardian or custodian of every such child.
- (b) The notice requirement set forth in subsection (a) may be satisfied:
 - (1) by posting the required notice on the Tribe's web site;
 - (2) by publishing the required notice in a tribal newsletter or newspaper which is freely available to families residing on the [Reservation];
 - (3) by similar measures reasonably calculated to provide actual notice of the compulsory attendance requirements set forth in § 4.01.110.

4.02 RIGHTS, RULES AND PROCEDURES

4.02.110 Right to Counsel

- (a) The child shall be represented by counsel at all stages of any proceedings conducted pursuant to the filing of a truancy petition in accordance with the provisions of § 4.06.130.
- (b) The child's parent, guardian or custodian shall have the right to be represented by counsel at disposition, and in any proceedings for contempt brought against the child's parent, guardian or custodian pursuant to the provisions of this chapter.

4.02.130 Failure to Appear

- (a) In all truancy proceedings conducted pursuant to the provisions of this chapter:
 - (1) if a child sixteen (16) years of age or older fails to appear before the Juvenile Court after being so ordered:
 - (A) upon a first or subsequent failure to appear, the Juvenile Court may:
 - (i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and
 - (ii) issue a warning to the child regarding the potential consequences of a subsequent failure to appear;
 - (B) upon a second or subsequent failure to appear, the Juvenile Court may:
 - (i) when feasible, issue an order directing a law enforcement officer to apprehend the child and bring the child immediately before the Juvenile Court; and
 - (ii) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of §§ 4.04.110, *et seq.*;
 - (2) if a child under sixteen (16) years of age fails to appear before the Juvenile Court after being so ordered:
 - (A) if the Juvenile Court finds, based on the sworn testimony of the child's parent, guardian or custodian, that the child has willfully refused to appear, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(1); or
 - (B) in the absence of such a finding, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(3);

§ 4.02.110(b)

See the comments on § 2.01.110(b).

§ 4.02.130

See § 1.08.210 and the comments thereon, and the comments on § 1.09.170(a).

The Model Code does not provide for placement outside the home in truancy cases and, unlike the Juvenile Justice and Delinquency Prevention Act, does not include a "valid court order" exception to the prohibition against the secure detention of status offenders; the options set forth in this section are limited accordingly.

- (3) if the child's parent, guardian or custodian fails to appear before the Juvenile Court after being so ordered, or fails to bring the child before the Juvenile Court after being so ordered:
 - (A) upon a first or subsequent failure to appear, the Juvenile Court may:
 - (i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and
 - (ii) issue a warning to the child's parent, guardian or custodian regarding the potential consequences of a subsequent failure to appear;
 - (B) upon a second or subsequent failure to appear, the Juvenile Court may:
 - (i) issue a bench warrant, in accordance with [the provisions of the tribal code], directing that the child's parent, guardian or custodian be brought before the Juvenile Court to show cause why they should not be subject to sanctions in accordance with the provisions of this section; and
 - (ii) absent a showing of good cause for the failure to appear, impose upon the child's parent, guardian or custodian a fine of up to \$100 (one hundred dollars);
 - (C) upon a third or subsequent failure to appear, the Juvenile Court may initiate proceedings for contempt against the child's parent, guardian or custodian in accordance with the provisions of [the tribal code].
- (b) In exercising its authority pursuant to subsection (a)(3)(B)(ii), the Juvenile Court:
 - (1) shall consider the ability of the child's parent, guardian or custodian to pay any fine to be imposed; and
 - (2) shall not impose a fine that would cause undue hardship for the child's parent, guardian, custodian or family.
- (c) The other provisions of this section notwithstanding, whenever it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has failed to appear as the result of circumstances posing a substantial risk to the health, welfare, person or property of the child or others, the Juvenile Court may:
 - (1) issue a temporary custody order in accordance with the provisions of § 3.02.110 of this title; and

- (2) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of §§ 4.04.110, *et seq.*
- (d) Other provisions of [the tribal code] notwithstanding, no sanctions other than those authorized by this section shall be sought or imposed for a failure to appear before the Juvenile Court in any proceedings conducted pursuant to the provisions of this chapter.

4.03 TEMPORARY CUSTODY

§ 4.03.130(c)

See the comments on § 3.02.150(c).

4.03.110 Taking a Child into Temporary Custody

A law enforcement officer may take a child into temporary custody if:

- (a) the child is absent from school during school hours;
- (b) the absence does not fall within one of the exceptions set forth in § 4.1.110(a); and
- (c) the absence is not an excused absence as defined by school or school district policy.

4.03.130 Release or Delivery from Temporary Custody

- (a) A law enforcement officer taking a child into temporary custody pursuant to the provisions of § 4.03.110 shall, without unreasonable delay:
 - (1) release the child to the child's parent, guardian or custodian; or
 - (2) transport the child to the child's school, or to an appropriate educational center or agency.
- (b) If the law enforcement officer has reason to believe the child is in need of medical attention, the law enforcement officer shall deliver the child to a medical facility or otherwise obtain such medical attention for the child 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 law enforcement officer shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.

4.04 SUPERVISORY CONDITIONS

4.04.110 Least Restrictive Alternatives

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

4.04.130 Supervisory Conditions

- (a) The Juvenile Court may impose supervisory conditions in accordance with the provisions of this section if:
 - (1) a truancy petition has been filed in accordance with the provisions of § 4.06.130;
 - (2) there are reasonable grounds to believe the child is a truant; and
 - (3) the child:
 - (A) continues to accumulate unexcused absences; or
 - (B) fails to appear before the Juvenile Court after being so ordered:
 - (i) repeatedly; or
 - (ii) as the result of circumstances posing a substantial risk to the health, welfare, person or property of the child or others.
- (b) Supervisory conditions imposed by the Juvenile Court in accordance with the provisions of this section may include:
 - (1) a court-imposed curfew;
 - (2) a requirement that the child or the child's parent, guardian or custodian report to the Juvenile Case Coordinator at specified intervals;
 - (3) 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 Juvenile Court; or
 - (C) legally required to be elsewhere;
 - (4) community supervision; and

§ 4.04.110(a)

The safety of the community should not be an issue in truancy cases, and is therefore not included as a consideration in this section, as it is in § 2.04.110 and § 3.03.110.

- (5) other reasonable conditions calculated to ensure the child's regular school attendance and appearance at future hearings.
- (c) Supervisory conditions imposed by the Juvenile Court in accordance with the provisions of this section shall not include:
 - (1) bail;
 - (2) electronic home monitoring or similarly intrusive measures; or
 - (3) any out-of-home placement of the child.

4.04.150 Supervisory Conditions – Violations

If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated supervisory conditions imposed in accordance with the provisions of § 4.04.130, the Juvenile Court may, following a hearing on the matter, impose additional or modified supervisory conditions in accordance with the provisions of § 4.04.130.

§ 4.04.130(b)(5)

Conditions imposed under this subsection should be appropriately limited in scope, duration, and purpose, and should not include requirements (such as compulsory treatment) that are only appropriate following adjudication.

See also the comments on § 2.04.170(b)(2) and § 2.04.170(b)(5).

§ 4.04.130(c)(1)

Note that the Model Code consistently prohibits the imposition of bail in juvenile proceedings.

See § 2.04.170(b) and the comments thereon, as well as § 3.03.170(b).

4.05 INFORMAL TRUANCY PROCEEDINGS

4.05.110 Initial Action Upon Child's Failure To Attend School

Upon determining that a child has had three (3) unexcused absences within any single month, or six (6) unexcused absences in the current school year, the Juvenile Case Coordinator:

- (a) shall immediately notify the child's parent, guardian or custodian, in writing or by telephone;
- (b) shall inform the child's parent, guardian or custodian of the potential consequences of additional unexcused absences; and
- (c) shall, within five (5) business days, and subject to the provisions of § 4.05.150, conduct an attendance review conference with the child and the child's parent, guardian or custodian.

4.05.130 Attendance Review Conference – Purpose and Conduct

- (a) The purpose of the attendance review conference shall be:
 - (1) to review the causes for the child's unexcused absences; and
 - (2) to discuss steps to improve the child's school attendance, which may include:
 - (A) obtaining more individualized or remedial instruction;
 - (B) adjusting the child's educational program or school or course assignment;
 - (C) enrolling in appropriate vocational courses or seeking appropriate work experience;
 - (D) enrolling the child in an alternative school or educational program;
 - (E) assisting the child and the child's parent, guardian or custodian to obtain services or resources that might eliminate or ameliorate the causes for the child's unexcused absences; or
 - (F) referring the child to a tribal truancy board.
- (b) At the conclusion of the attendance review conference, the Juvenile Case Coordinator shall:
 - (1) together with the child and the child's parent, guardian or custodian, develop an informal attendance plan in accordance with the provisions of § 4.05.170; or
 - (2) within ten (10) business days of the attendance review conference, and subject to the provisions of § 4.05.230, convene a tribal truancy board in accordance with the provisions of § 4.05.190.

§ 4.05.130(b)(1)

Under § 4.05.150, either the child or the child's parents may decline to participate in the attendance review conference and, by extension, the development of the informal attendance plan.

If the child continues to accumulate unexcused absences, however, the Juvenile Case Coordinator may be required to convene a tribal truancy board in accordance with the provisions of § 4.05.190.

4.05.150 Attendance Review Conference – Participation Voluntary

- (a) Prior to convening the attendance review conference, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:
 - (1) of their rights under the provisions of this title;
 - (2) of the nature and purpose of the attendance review conference; and
 - (3) that participation in the attendance review conference is voluntary.
- (b) If the child declines to attend or participate in the attendance review conference, the Juvenile Case Coordinator shall, subject to the other provisions of this section, conduct the attendance review conference without the participation of the child.
- (c) If the child's parent, guardian or custodian declines to attend or participate in the attendance review conference, the Juvenile Case Coordinator may:
 - (1) within ten (10) business days, and subject to the provisions of § 4.05.230, convene a tribal truancy board in accordance with the provisions of § 4.05.190; or
 - (2) conduct the attendance review conference without the participation of the child's parent, guardian or custodian, if:
 - (A) the Juvenile Case Coordinator determines that the factors contributing to the child's truancy may be addressed without the participation of the child's parent, guardian or custodian; and
 - (B) the child's parent, guardian or custodian consents to the child's participation.

4.05.170 Informal Attendance Plan

An informal attendance plan developed pursuant to the provisions of this chapter shall set forth, in writing:

- (a) a plain statement of the compulsory education requirements set forth in § 4.01.110;
- (b) the rights of the child and the child's parent, guardian or custodian under the provisions of this title;
- (c) an acknowledgment that participation in the informal attendance plan is otherwise voluntary, and neither the child nor the child's parent, guardian or custodian is obligated to comply with the informal attendance plan;
- (d) the anticipated course of action to be taken if the child continues to accumulate unexcused absences;

§ 4.05.150(c)

Contrast this subsection with § 3.04.210(c) of the child-in-need-of-services provisions.

If the factors contributing to the child's truancy are relatively simple or easily addressed, the participation of the child's parents may not be essential at this stage.

In more difficult cases, however, the Juvenile Case Coordinator may find it necessary to convene a tribal truancy board, at which point the provisions of this chapter treat the participation of the child's parents as a corresponding necessity.

- (e) the causes of the child's unexcused absences, and any perceived barriers to regular school attendance by the child;
- (f) the specific services and resources available to assist the child and the child's parent, guardian or custodian to ensure regular school attendance by the child;
- (g) a comprehensive plan for ensuring that the child and the child's parent, guardian or custodian obtain the services and resources needed; and
- (h) the specific actions to be taken by the child and the child's parent, guardian or custodian in accordance with the plan, including the frequency and location of appointments for services and contact with the Juvenile Case Coordinator.

4.05.190 Tribal Truancy Board – Requirement

- (a) Subject to the provisions of § 4.05.230, the Juvenile Case Coordinator shall convene a tribal truancy board:
 - (1) if the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian cannot agree on an informal attendance plan;
 - (2) if the Juvenile Case Coordinator determines that an informal attendance plan will be inadequate to ensure regular school attendance by the child; or
 - (3) if the child accumulates more than one (1) unexcused absence following the attendance review conference and the implementation of an informal attendance plan.
- (b) Where counsel has not already been appointed or retained to represent the child, the Juvenile Case Coordinator shall notify the Juvenile Advocate prior to convening the tribal community truancy board.

4.05.210 Tribal Truancy Board – Composition and Purpose

- (a) The composition of the tribal truancy board shall be based on the particular needs of the child and the child's parent, guardian or custodian, and may include:
 - (1) an official from the tribe's education department or the child's school;
 - (2) a juvenile mental health professional;
 - (3) a substance abuse treatment professional;
 - (4) tribal elders or community leaders;
 - (5) service providers;
 - (6) a family counselor or mediator;
 - (7) trained and responsible peer or youth representatives;

§ 4.05.190(b)

While § 4.02.110 requires that the child be represented by counsel only upon the filing of a truancy petition (see §§ 4.06.110, *et seq.*), this subsection is intended to ensure that counsel is notified well in advance of any adjudicative proceedings.

See also the comments on § 3.04.130(a)(1).

- (8) other professionals or community members requested or recommended by:
 - (A) the child;
 - (B) the child's parent guardian or custodian;
 - (C) the Juvenile Case Coordinator; or
 - (D) other members of the tribal truancy board.
- (b) The tribal community truancy board shall meet with the child and the child's parent, guardian or custodian:
 - (1) to identify and discuss the particular needs of the child and the child's parent, guardian or custodian, with the goal of ensuring regular school attendance by the child;
 - (2) to assist the child and the child's parent, guardian or custodian in obtaining services and resources that might eliminate or ameliorate the causes for the child's unexcused absences; and
 - (3) to consider, where appropriate, recommending to the school district that the child enroll in another school, an alternative education program, an education center, a skill center, a dropout prevention program, or other public or private educational program.
- (c) At the conclusion of the child's first meeting with the tribal truancy board, the tribal truancy board shall, together with the child and the child's parent, guardian or custodian, develop a truancy remediation plan in accordance with the provisions of § 4.05.250.

4.05.230 Tribal Truancy Board – Participation Voluntary

- (a) Prior to convening the tribal truancy board, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:
 - (1) of their rights under the provisions of this title;
 - (2) of the nature and purpose of the tribal truancy board; and
 - (3) that meeting with the tribal truancy board is voluntary.
- (b) If the child declines to meet with the tribal truancy board, the tribal truancy board shall proceed, subject to the other provisions of this section, without the participation of the child.
- (c) If the child's parent, guardian or custodian declines to meet with the tribal truancy board, the Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a truancy petition in accordance with the provisions of § 4.06.130.

§ 4.05.210(c)

Under § 4.05.230, the child may decline to meet with the tribal truancy board and, by extension, to participate in the development of the truancy remediation plan.

If the child continues to accumulate unexcused absences, however, the Juvenile Case Coordinator may be required to recommend the filing of a truancy petition in accordance with the provisions of § 4.06.110.

§ 4.05.230(c)

See comments on § 4.05.150(c).

4.05.250 Truancy Remediation Plan

A truancy remediation plan developed pursuant to the provisions of this chapter shall set forth, in writing:

- (a) each of the items required for inclusion in an informal attendance plan under § 4.05.170; and
- (b) a schedule for reviewing the effectiveness of the plan.

4.05.270 Truancy Remediation Plan – Monitoring and Review

- (a) The Juvenile Case Coordinator shall periodically review the effectiveness of the truancy remediation plan.
- (b) The periodic review required under subsection (a):
 - (1) shall include regular, scheduled contact between the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian; and
 - (2) where appropriate given the circumstances and needs of the child and the child's parent, guardian or custodian, may include:
 - (A) school visits at any time;
 - (B) home visits at times and intervals set forth in the truancy remediation plan and agreed to by the child's parent, guardian or custodian; and
 - (C) subject to written consent by the child and the child's parent, guardian or custodian, as may be required by law, communication between the Juvenile Case Coordinator and:
 - (i) any person or agency providing services to the child or the child's parent, guardian or custodian in accordance with the truancy remediation plan; and
 - (ii) school officials or support staff responsible for meeting the child's educational needs and monitoring the child's educational progress.

4.05.290 Review Meetings

- (a) Subject to the provisions of subsection (c), the Juvenile Case Coordinator shall convene a review meeting of the tribal truancy board:
 - (1) within ten (10) business days of a request by the child, the child's parent, guardian or custodian, or any member of the tribal truancy board; or
 - (2) upon determining:
 - (A) that adjustments or modifications to the truancy remediation plan are necessary; or

(B) that the truancy remediation plan is likely to be ineffective or unsuccessful.

(b) The purpose of the review meeting shall be:

- (1) to review the child's school attendance;
- (2) to address any issues or concerns raised by the child, the child's parent, guardian or custodian, the Juvenile Case Coordinator, or members of the tribal truancy board; and
- (3) where necessary, to consider and effect adjustments or modifications to the truancy remediation plan.

(c) Where the child has accumulated at least sixty (60) days of regular school attendance without an unexcused absence, the Juvenile Case Coordinator shall not convene a review meeting of the tribal truancy board except:

- (1) upon the request of the child or the child's parent, guardian or custodian; or
- (2) where the Juvenile Case Coordinator, a member of the tribal truancy board, a school official or a service provider has recommended that services or resources being provided to the child or the child's parent, guardian or custodian be reduced or discontinued.

4.05.310 Meetings – Time and Location

The time and location selected for any meeting of the tribal truancy board shall be convenient for the child and the child's parent, guardian or custodian, and no such meeting shall be scheduled during school hours.

4.06 TRUANCY PETITION

4.06.110 Recommendation for Truancy Petition

- (a) The Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a truancy petition in accordance with the provisions of § 4.06.130:
 - (1) if the child's parent, guardian or custodian declines to meet with a tribal truancy board;
 - (2) if the tribal truancy board, the child, and the child's parent, guardian or custodian cannot agree on a truancy remediation plan;
 - (3) if the child accumulates more than two (2) unexcused absences following the implementation of a truancy remediation plan developed in accordance with the provisions of § 4.05.250; or
 - (4) if the child is in imminent danger of losing credit or being required to repeat a grade level as the result of the child's unexcused absences.
- (b) The Juvenile Case Coordinator and the tribal truancy board shall diligently attempt to prevent the filing of a truancy petition.
- (c) The Juvenile Presenting Officer shall not file a truancy petition except upon the recommendation of the Juvenile Case Coordinator.

4.06.130 Truancy Petition – Contents

- (a) Adjudicative proceedings under this chapter shall be initiated by a petition:
 - (1) signed and filed by the Juvenile Presenting Officer on behalf of the Tribe;
 - (2) certifying that, to the best of the Juvenile Presenting Officer's knowledge, information and belief, there are sufficient grounds to believe that the child is a truant;
 - (3) setting forth with specificity:
 - (A) the name, birth date, residence, and tribal affiliation of the child;
 - (B) the name and residence of the child's parent, guardian or custodian;
 - (C) a citation to the specific section(s) of this code which give the Juvenile Court jurisdiction over the proceedings;
 - (D) a plain and concise statement of the facts upon which the petition is based.

§ 4.06.130(a)

Regarding the phrase "adjudicative proceedings," see the comments on § 2.07.110(a).

- (b) The truancy petition shall be accompanied by a statement signed by the Juvenile Case Coordinator and:
 - (1) affirming that the Juvenile Case Coordinator has recommended the filing of the petition;
 - (2) certifying that the requirements of §§ 4.05.110, *et seq.*, were satisfied prior to the filing of the petition; and
 - (3) briefly setting forth:
 - (A) all efforts taken by the Juvenile Case Coordinator, the tribal truancy board, the child, and the child's parent guardian or custodian, to resolve the matter prior to the filing of the petition; and
 - (B) facts showing that one or more of the conditions set forth in § 4.06.110(a) has been satisfied.

4.06.150 Truancy Petition – Time for Filing

The truancy petition shall be filed within five (5) days after the recommendation by the Juvenile Case Coordinator.

4.06.170 Truancy Petition – Dismissal and Refiling

- (a) Prior to adjudication, the Juvenile Court shall enter a written order dismissing the truancy petition, without prejudice, upon a showing by the child that, following the child's most recent unexcused absence, the child has accumulated sixty (60) days of regular school attendance without another unexcused absence.
- (b) Following the dismissal of a truancy petition in accordance with the provisions of subsection (a):
 - (1) the Juvenile Presenting Officer may refile the petition if the child accumulates one (1) or more unexcused absences during the school year in which the order was entered; and
 - (2) the Juvenile Court shall otherwise amend the written order entered in accordance with the provisions of subsection (a) to dismiss the petition with prejudice at the end of the school year in which the order was entered.

§§ 4.06.150-170

The time limits in this chapter are intended to expedite proceedings following the filing of a truancy petition, not only to ensure the timely identification and delivery of necessary services, but to minimize the risk that continued truancy will result in the escalation of problematic behaviors, the loss of academic credit, or other negative consequences for the child.

Those time limits also make it unlikely that the provisions of § 4.06.170 will ever come into play; that section is nonetheless included to ensure that children and their parents are not subject to prolonged or unnecessary judicial proceedings in the absence of continued truancy.

See also § 4.10.230(c)(1), which provides for the termination of disposition orders at the end of any school year in which the child has accumulated sixty (60) days of regular attendance without another unexcused absence.

4.07 INITIAL HEARING

4.07.110 Initial Hearing – Time Limit

The initial hearing shall be held within seven (7) days of the filing of the truancy petition.

4.07.130 Initial Hearing – Conduct

At the initial hearing, the Juvenile Court shall advise the child, in language the child will easily understand, of the following:

- (a) the nature and purpose of the proceedings;
- (b) the contents of the truancy petition;
- (c) the possible consequences if the child is found to be a truant;
- (d) the right to counsel;
- (e) the privilege against self-incrimination;
- (f) the right to an adjudication in accordance with the provisions of this chapter;
- (g) the right to cross-examine witnesses;
- (h) the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the child's own behalf;
- (i) the right to appeal any final order of the Juvenile Court.

4.07.150 Initial Hearing – Determination of Reasonable Grounds

At the initial hearing, the Juvenile Court shall enter a written order dismissing the truancy petition unless the Juvenile Court finds that the truancy petition sets forth reasonable grounds to believe the child is a truant.

4.08 ADJUDICATION

4.08.110 Adjudication Hearing – Time Limit

The adjudication hearing shall be held within seven (7) days of the initial hearing.

4.08.130 Adjudication Hearing – Purpose

The Juvenile Court shall conduct the adjudication hearing for the purpose of determining whether the child is a truant.

4.08.150 Adjudication Hearing – Burden of Proof

The Tribe shall bear the burden of showing, by clear and convincing evidence, that the child is a truant.

4.08.170 Adjudication Hearing – Conduct

- (a) The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.
- (b) At the adjudication hearing, the Juvenile Court may consider any evidence, including hearsay, which the Juvenile Court finds to be:
 - (1) relevant to the determination of whether the child is a truant; and
 - (2) sufficiently reliable to satisfy the requirements of due process.

4.08.190 Finding on Adjudication

- (a) If, upon hearing all evidence properly admitted at the adjudication hearing, the Juvenile Court finds that the child is a truant, the Juvenile Court shall enter its finding in writing and:
 - (1) proceed immediately to a disposition hearing, to be conducted in accordance with the provisions of §§ 4.10.130, *et seq.*; or
 - (2) if the Juvenile Court finds good cause to continue the disposition hearing, set the matter for disposition in accordance with the time limits set forth in § 4.10.110.
- (b) If the Juvenile Court does not find that the child is a truant, it shall enter a written order dismissing the petition and releasing the child from any obligations or conditions previously imposed in connection with the truancy proceedings.

4.09 PREDISPOSITION REPORTS AND EXAMINATIONS

4.09.110 Predisposition Report – Requirement

Prior to the disposition hearing, the Juvenile Case Coordinator shall prepare a written predisposition report setting forth recommendations concerning the disposition of the case, including a specific plan for services to meet the needs of the child and the child's parent, guardian or custodian.

4.09.130 Predisposition Report – Contents

- (a) The predisposition report shall address, in a concise, factual, and unbiased manner, only those matters relevant to the disposition of the case, which may include but shall not be limited to:
 - (1) a description of the child's home environment, family relationships, and background;
 - (2) information regarding the child's maturity, cognitive and emotional development, and emotional and mental health;
 - (3) the results and recommendations of any relevant medical, psychological, psychiatric, or other examinations or evaluations conducted by a qualified professional;
 - (4) a discussion of the child's educational status, including, but not limited to, the child's strengths, abilities, and special educational needs;
 - (5) the identification of appropriate educational and vocational goals for the child, examples of which may include:
 - (A) regular school attendance and completion of the child's current grade;
 - (B) attainment of a high school diploma or its equivalent;
 - (C) successful completion of literacy or vocational courses; or
 - (D) enrollment in an apprenticeship, internship or similar program;
 - (6) a summary of any factual findings entered by the Juvenile Court; and
 - (7) a summary of the child's prior contacts with the juvenile justice system.
- (b) The predisposition report shall include a detailed explanation of:
 - (1) the sources of all information included;

- (2) the necessity of the proposed disposition and plan for services, taking into account the particular needs of the child and the child's parent, guardian or custodian; and
- (3) the anticipated benefits to the child and the child's parent, guardian or custodian of the proposed disposition and plan for services.

4.09.150 Alternative Predisposition Reports or Recommendations

The child and the child's parent, guardian or custodian may prepare alternative predisposition reports or recommendations to be submitted for consideration by the Juvenile Court in accordance with the provisions of § 4.09.210.

4.09.170 Predisposition Examinations and Investigations

- (a) Following an adjudication hearing at which the child is found to be a truant, and prior to the entry of any disposition orders, the Juvenile Court may enter a written orders:
 - (1) requiring the child undergo educational, medical, psychological, or psychiatric examination; or
 - (2) directing the Juvenile Case Coordinator:
 - (A) to investigate any matter relevant to the disposition of the case, including but not limited to any matter described in § 4.09.130(a); and
 - (B) to address the results of that investigation in the predisposition report or, where the predisposition report has already been submitted, in a supplemental report.
- (b) Where the results of any examination or investigation ordered by the Juvenile Court pursuant to the provisions of this section are not available at the disposition hearing:
 - (1) the Juvenile Court may enter such orders on disposition as the Juvenile Court finds appropriate, considering the evidence before it at the disposition hearing; and
 - (2) upon receiving the results of any such examination or investigation, the Juvenile Court:
 - (A) may, upon the Juvenile Court's own motion, conduct a hearing to review its disposition orders in accordance with the provisions of § 4.10.210; and
 - (B) shall, upon the motion of any party, conduct a hearing to review its disposition orders in accordance with the provisions of § 4.10.210.

4.09.190 Predisposition Reports and Examinations – Confidentiality

Any reports prepared and the results of any examinations ordered in accordance with the provisions of this chapter shall be subject to the provisions of § 1.04.210 of this title.

4.09.210 Predisposition Reports and Examinations – Filing and Service

- (a) Any reports or examination results to be considered by the Juvenile Court at any hearing conducted pursuant to the provisions of this chapter shall be filed in the Juvenile Court and served upon the Juvenile Presenting Officer, the Juvenile Case Coordinator, counsel for the child, and the child's parent, guardian or custodian, at least three (3) days prior to the hearing, in accordance with the provisions of § 1.08.150 of this title.
- (b) The time limit imposed by subsection (a) may be waived upon the agreement of the parties and the Juvenile Court.

4.10 DISPOSITION

4.10.110 Disposition Hearing – Time Limit

- (a) The disposition hearing shall be held immediately following the adjudication hearing, unless the Juvenile Court finds good cause to continue the disposition hearing.
- (b) If the Juvenile Court finds good cause to continue the disposition hearing, the disposition hearing shall be held within ten (10) days of the adjudication hearing.

4.10.130 Disposition Hearing – Purpose

The Juvenile Court shall conduct the disposition hearing for the purpose of determining:

- (a) what services and resources are most likely to ensure regular school attendance by the child; and
- (b) the appropriate disposition of the matter.

4.10.150 Disposition Hearing – Conduct

At the disposition hearing, the Juvenile Court:

- (a) shall afford the parties the opportunity:
 - (1) to present documentary or testimonial evidence concerning the appropriate disposition of the matter; and
 - (2) to controvert, and to cross-examine the sources of, the contents and conclusions of any reports, testimony, or other evidence to be considered by the Juvenile Court pursuant to the provisions of this section;
- (b) shall consider the predisposition report and recommendations prepared by the Juvenile Case Coordinator, as well as any alternative predisposition report or recommendations prepared by the child or the child's parent, guardian or custodian; and
- (c) may consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making the determinations required under § 4.10.130.

4.10.170 Orders on Disposition

- (a) Upon the conclusion of the disposition hearing, the Juvenile Court may enter any written disposition orders authorized under § 4.10.190.
- (b) In exercising its discretion under subsection (a), the Juvenile Court shall enter the least restrictive orders appropriate considering the needs of the child and the child's parent, guardian or custodian.

- (c) All orders entered by the Juvenile Court pursuant to the provisions of this section shall be:
 - (1) explained to the child in language the child will easily understand; and
 - (2) accompanied by a written statement of:
 - (A) the facts relied upon by the Juvenile Court in entering those orders; and
 - (B) the reasons for rejecting less restrictive alternatives.

4.10.190 Disposition Options

- (a) Pursuant to the provisions of § 4.10.170, the Juvenile Court may enter written orders including any of the following, as best suited to the needs of the child and the child's parent, guardian or custodian:
 - (1) an order requiring the child to maintain regular attendance at the child's current school;
 - (2) an order requiring the child to attend another public school, an alternative education program, a skill center, a dropout prevention program, or other public program which can provide appropriate educational services for the child;
 - (3) an order referring the child or the child's parent, guardian or custodian to educational, social, community, or tribal services or resources appropriate for addressing needs or issues which contributed to the child's adjudication;
 - (4) an order referring the child or the child's parent, guardian or custodian to a tribal elders panel or other body capable of addressing needs or issues which contributed to the child's adjudication;
 - (5) an order requiring the child and the child's parent, guardian or custodian to meet with a tribal truancy board and participate in the development of a truancy remediation plan; or
 - (6) an order requiring the child's parent, guardian or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;
 - (7) an order requiring the child to undergo a medical, psychological, or psychiatric evaluation, in accordance with the provisions of § 4.09.170;

§ 4.10.190(a)(3)-(6)

Regarding orders directed to the child's parents, see the comments on § 2.11.170(a)(2).

Note that the truancy provisions of the Model Code do not provide for orders requiring parents to undergo examination or treatment.

- (8) an order requiring the child to undergo medical, psychological, or psychiatric treatment, where such treatment is:
 - (A) recommended by a qualified medical, psychological, or psychiatric professional; and
 - (B) necessary to address conditions which contributed to the child's adjudication.
- (b) Disposition orders entered by the Juvenile Court under subsection (a) shall not include any out-of-home placement of the child.

4.10.210 Disposition Orders – Review

- (a) At least once per month, the Juvenile Court shall conduct a hearing for the purpose of reviewing any disposition orders entered pursuant to the provisions of § 4.10.170, and determining:
 - (1) whether the child and the child's parent, guardian or custodian are in compliance with those disposition orders;
 - (2) the extent to which those disposition orders have accomplished their intended purposes;
 - (3) whether those disposition orders should:
 - (A) continue in effect without modification or extension;
 - (B) be terminated in accordance with the provisions of § 4.10.230(b); or
 - (C) be modified or extended in accordance with the provisions of § 4.10.270.
- (b) At any review hearing conducted pursuant to the provisions of this section:
 - (1) the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the disposition orders entered by the Juvenile Court; and
 - (2) the Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the disposition orders entered by the Juvenile Court.

4.10.230 Disposition Orders – Duration and Termination

- (a) Disposition orders entered by the Juvenile Court shall continue in force for not more than six (6) months, unless they are extended in accordance with the provisions of § 4.10.250.

- (b) The Juvenile Court may terminate a disposition order prior to its expiration if it appears to the Juvenile Court, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.
- (c) The Juvenile Court shall enter an order terminating all disposition orders affecting the child, and discharging the child from any further obligations in connection with the truancy proceedings, upon a showing by the child that:
 - (1) at the end of the most recent school year, and following the child's most recent unexcused absence, the child has accumulated sixty (60) days of regular school attendance without another unexcused absence;
 - (2) the child has graduated from high school; or
 - (3) the child has completed an alternative course of study resulting in the achievement of a high school diploma or the equivalent.
- (d) All disposition orders affecting the child shall automatically terminate, and the child shall be discharged from any further obligations in connection with the truancy proceedings, when the child reaches eighteen (18) years of age.

4.10.250 Disposition Orders – Modification or Extension

- (a) Following a modification hearing conducted upon its own motion or the motion of any party, the Juvenile Court may modify or extend its disposition orders if the Juvenile Court finds by clear and convincing evidence that such modification or extension is necessary to accomplish the purposes of the orders to be modified.
- (b) The modification hearing shall be held within ten (10) days of the filing of the motion for modification.
- (c) Where the modification hearing is to be held upon the motion of the Juvenile Court, notice of the modification hearing shall be accompanied by a statement of the specific facts upon which the motion for modification is based.
- (d) In making the determination required by subsection (a), the Juvenile Court may consider:
 - (1) the extent to which the child and the child's parent, guardian or custodian have complied with any disposition orders previously entered by the Juvenile Court;
 - (2) evidence that the child has either maintained regular school attendance or continued to accumulate unexcused absences;

§ 4.10.230(c)(1)

Like § 4.06.170, this subsection is included to ensure that children and their parents are not subject to prolonged judicial proceedings or supervision in the absence of continued truancy.

- (3) changes in services or other recommendations relied upon by the Juvenile Court in entering the orders to be modified; and
 - (4) any other material changes in the circumstances of the child or the child's family, parent, guardian or custodian.
- (e) All modified disposition orders shall be subject to the requirements of § 4.10.170(b) and § 4.10.170(c).
- (f) An extension ordered in accordance with the provisions of this section shall not exceed three (3) months from the expiration of the prior order, not including summer vacation, and in no event shall the duration of a disposition order be extended:
- (1) for longer than reasonably necessary to accomplish the purpose of the order; or
 - (2) past the date on which the child shall reach eighteen (18) years of age.

4.10.270 Disposition Orders – Violations

The violation of a disposition order entered pursuant to the provisions of § 4.10.170 may be reported to the Juvenile Case Coordinator, who may file a motion for modification pursuant to the provisions of § 4.10.250.

§ 4.10.250(f)

Unlike the corresponding delinquency and child-in-need-of-services provisions – § 2.12.310(f) and § 3.12.270(f), respectively – this section does not impose an absolute time limit on disposition orders because, under § 4.01.110, the requirement that the child attend school remains in effect until the child reaches eighteen (18) years of age.