

**Yurok Tribal Code, Family**

**YUROK TRIBE STAY IN SCHOOL ORDINANCE**

*Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance establishing procedures and identifying resources for truant Yurok Students:*

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## **GENERAL PROVISIONS**

### **SECTION 2001. Short Title**

This ordinance shall be referred to as the “Yurok Tribe Stay in School Ordinance” or “Stay in School Ordinance.”

### **SECTION 2002. Purpose**

The purpose of the Yurok Tribe Stay in School Ordinance is to confirm the Tribe’s strong belief in Yurok families and the youth they nurture. Yurok youth stand for the future of Yurok people and are expected to assume the stewardship responsibilities of the Yurok people for the land we have been placed on by the Creator. The following outlines the intent of the Yurok Tribe in enacting the Yurok Tribe Stay in School Ordinance.

First, the Yurok Tribe intends to support Yurok Students and their families as they pursue their education. It is the responsibility of the Yurok community to ensure that Yurok Students receive the benefits of an education and the requisite support to be successful in their educational endeavors. This Ordinance will support the engagement our students and their families in educational efforts that are consistent with Yurok Students’ abilities and responsibilities.

Second, it is the intent of the Yurok Tribe to ensure that Yurok Students are not improperly labeled as criminals or delinquents. By enacting this Ordinance, the Tribe will ensure that no proceeding or hearing heard by Yurok Tribal Court shall be deemed a criminal conviction or adjudication of any crime or disqualify a Yurok Student from any tribal personnel system or military service application, election or appointment, or from holding any political office.

Third, it is the intent of the Yurok Tribe to substitute state sponsored statute-based interventions in favor of support services, supervision, care, and rehabilitation consistent with Yurok cultural values. The Yurok Tribe intends to provide a continuum of services for Yurok Students and their families ranging from prevention to residential treatment, with emphasis, whenever possible, on prevention, early intervention and community-based alternatives. The Tribe shall provide a forum, whenever possible, where parents charged with truancy-related offenses and Yurok Students alleged to be “truant” and/or "delinquent" and/or a "status offender" in other jurisdictions may be referred for supportive services in Yurok Tribal Court and/or with a Yurok service provider and/or other service providers.

### **SECTION 2003. Authority**

The Yurok Tribal Council is the duly elected and authorized Governing body of the Yurok Tribe, a federally recognized Indian Tribe which is eligible for all rights and privileges afforded to a federally recognized Indian Tribe and, as such, enacts this Ordinance by the power and authority granted under the Yurok Tribal Constitution. Article IV, Section 5(a) states that the Tribal Council may "enact legislation, rules and regulations not inconsistent with this constitution to further the objectives of the Yurok Tribe..."

The Preamble to the Yurok Constitution states that “Our social and ecological balance, thousands and thousands of years old, was shattered by the invasion of the non-Indians. We lost three-fourths or more of our people through unprovoked massacres by vigilantes and the intrusion of fatal European diseases. The introduction of alcohol weakened our social structure, as did the forced removal of our children to government boarding schools, where many were beaten, punished for speaking their language, and denied the right to practice their cultural heritage.

The Yurok Constitution was adopted to: “Preserve forever the survival of our tribe and protect it from forces which may threaten its existence... Uphold and protect our tribal sovereignty which has existed from time immemorial and which remains undiminished... Preserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on, forever... Provide for the health, education, economy, and social well-being of our members and future members....”

**SECTION 2004. Scope**

The jurisdiction of the Yurok Tribe and the effective scope of this Ordinance shall minimally include, but not necessarily be limited to: all Yurok Tribal members, both present and future, any children of a Yurok Tribal member, all territory within Yurok Ancestral Territory, as defined by Article 1 of the Yurok Tribal Constitution, including but not necessarily limited to, all real property including fee patents, allotments, assignments; all roads, waters, and bridges used or maintained for Tribal purposes, and existing and future lands outside the boundaries of the currently federally recognized Reservation owned or controlled by the Yurok Tribe for the benefit of its members.

The Yurok Tribal Court shall have jurisdiction over all cases arising under the provisions of this Ordinance which shall arise involving any Yurok Student who is or may be eligible for enrollment in the Yurok Tribe, regardless of residence location. Further, this jurisdiction will extend to any child of an enrolled Yurok Tribal member even if that child may not necessarily be a candidate for enrollment with the Tribe at the time of the proceedings, if that child resides within Yurok Ancestral Territory.

**SECTION 2005. Sovereign Immunity Preserved**

Except as judicial review is authorized in this Ordinance, and in accordance with the Yurok Tribe’s Supreme Ordinance, nothing in this Ordinance shall be interpreted as a waiver of the Tribe’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

**SECTION 2006. Severability**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

**SECTION 2007. Effective Date**

This Ordinance shall take effect immediately after its adoption by Council.

**SECTION 2008. Repeal of Conflicting Ordinance Provisions**

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this ordinance are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control.

**SECTION 2009. Definitions**

- (a) *Concurrent Jurisdiction* means that the Yurok Tribal Court may assume concurrent jurisdiction with any non-Yurok court upon a specific request by the Yurok Family Education Advocate or his/her designee pursuant to this Ordinance or any Cooperative Agreement as described in this Ordinance. Information sharing to carry out the objectives of concurrent jurisdiction are anticipated and hereby allowed.
- (b) *Cooperative School* means a school or school district that enters into a cooperative agreement with this Tribe to implement the provisions of this Ordinance.
- (c) *Education Records* mean the type of records covered under the definition of “education records” in 34 CFR 99, including records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.
- (d) *Extended family or relative* means the Yurok Student’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, or is recognized by traditional village custom and/or practice as an extended family member.
- (e) *Family Education Advocate* means the person designated by the Chief Judge of the Yurok Tribe to work with and in cooperation with the school, the Yurok Student, and the family in order to develop the best program and plan to correct the attendance or discipline problems of the referred student.
- (f) *Federally recognized Indian tribe* means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe and is included on the list of recognized tribes published by the Secretary of Interior pursuant to 25 USC § 479.
- (g) *FERPA* means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and implementing regulations.
- (h) *IEP or Individualized Education Program* means a written statement describing the education program, including special services or accommodations that a Student with Disabilities shall receive. Pursuant to federal law, the IEP is a legal document entitling the student to receive the services and accommodations it describes.
- (i) *Parent* means the parent, guardian, Indian custodian, caregiver, or other person(s) having legal custody of a Yurok Student.
- (j) *Referring Agency* means a State Court, School District, Student Attendance Review

Board, District Attorney, Mental Health specialist, Police Departments, Superintendent and/or Principal of a School or a designee of the Superintendent and/or Principal, and/or County Probation, and/or State or Tribal Social Services.

- (k) *School* means:
  - (1) A state supported public school operated by the district within which the student resides or has other approval to attend; or
  - (2) A private school, charter school or extension program approved under either tribal or state law; or
  - (3) A home-based instructional program as authorized pursuant to any state law with jurisdiction or approved under tribal law designed to allow the student and parent to administer to the unique needs of the student; or
  - (4) A county office sponsored school, community school, or special day class.
- (l) *School representative* means a school district superintendent, school principal or their designee.
- (m) *State* means a State Government, State Superior Court, School District, State or County agency such as District Attorney, School District Student Attendance Review Board, County Probation, and/or State or County Social Services, unless otherwise specified.
- (n) *Student* means a pupil subject to compulsory full-time education or to compulsory continuation education under applicable state law or code.
- (o) *Tribe* means the Yurok Tribe, a federally recognized Indian tribe.
- (p) *Truant* means a student subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof.
- (q) *Yurok Ancestral Territory* means that area described in Article I, Section I of the Constitution of the Yurok Tribe.
- (r) *Yurok Student* means a Student defined by Section 2101 of the Yurok Stay in School Ordinance, herein.

## **CHAPTER 1. ATTENDANCE**

### **SECTION 2101. Yurok Student**

This Ordinance and its provisions shall apply to “Yurok Students,” which shall include a student who is:

- (a) An enrolled member of the Yurok Tribe regardless of residence location; or
- (b) Eligible for membership in the Yurok Tribe regardless of residence location if a

parent consents in writing to Yurok Tribe jurisdiction; or

- (c) A student in the care of a parent who is an enrolled member of the Yurok Tribe, regardless of whether the student is eligible for membership in the Yurok Tribe, if the student resides within Yurok Ancestral Territory and parent consents in writing to Yurok Tribe jurisdiction.

### **SECTION 2102. Mandatory Attendance**

- (d) All Yurok Students between the ages of 6 and 18 must attend school full-time when school is in session.
- (e) All parents of Yurok Students must ensure that his/her student attend school full-time when school is in session.

### **SECTION 2103. Valid Excuses to Mandatory Attendance**

A Yurok Student and his or her parent shall be excused from the requirements of this Ordinance and shall not be subject to the penalties set out herein if there is a showing of a valid excuse. A valid excuse shall include the following instances:

- (a) For the purposes of having medical, dental, optometric, or chiropractic services rendered.
- (b) For the purpose of attending the funeral services of a member of his or her extended family.
- (c) For justifiable personal reasons, including, but not limited to, an appearance in court, attendance at a funeral service, observance of a holiday or ceremony of his or her religion, attendance at religious retreats, attendance at employment conferences, or attendance at an education conference on the legislative or judicial process offered by a nonprofit organization when the pupil's absence is requested in writing by the parent and approved by the principal or a designated representative pursuant to uniform standards established by the governing board.
- (d) For the purpose of spending time with a member of the pupil's extended family, who is an active duty member of the uniformed serves, and has been called to duty for, is on leave from, or has immediately returned from, deployment to a combat zone or combat support position.
- (e) When a student sees a medicine person or participates in a ceremony or prepares for a ceremony.
- (f) All other reasons that are within the discretion of school administrators and, based on the facts of the student's circumstances, are deemed to constitute a valid excuse.

## **SECTION 2104. Exceptions to Mandatory Attendance**

A Yurok Student and his or her parent shall be exempted from the requirements of this Ordinance and shall not be subject to the penalties set out herein if:

- (a) The Yurok Student is at least sixteen years of age and:
  - (1) The school attended by the student determines that such student has already attained a reasonable proficiency in the branches required by law to be taught in the first 12 grades of schooling; or
  - (2) The student is regularly and lawfully engaged in a useful or remunerative occupation; or
  - (3) The student has met the graduation requirements in accordance with the State Board of Education or satisfies the graduation requirements of a subsequently approved Yurok Tribe graduation requirement policy; or
  - (4) The student has received a certificate of educational competence or GED under rules and regulations established by the Yurok Tribe at a subsequent time or State Board of Education; or
  - (5) The student has already met graduation requirements, if any, that are lawfully imposed by the Yurok Tribe, at a subsequent time, and that preempt state requirements.

## **SECTION 2105. School Makeup Work**

A student absent from school pursuant to a valid excuse shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable period of time, shall be given full credit therefor. The teacher of the class from which a student is absent shall determine which tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence.

A Yurok Student may also be referred to the Yurok Education Department during the school year for make-up work and tutoring assistance.

## **CHAPTER 2. COOPERATIVE AGREEMENTS**

### **SECTION 2201. Cooperative Agreements with Schools**

- (a) The Yurok Tribe pursuant to its inherent sovereign authority may enter into cooperative agreements with schools and school districts for purposes of improving the attendance of students covered by this Ordinance or for addressing behavioral problems that could lead to a student covered by this Ordinance being removed

from school.

- (b) Any cooperative agreement implementing this Ordinance shall be in writing and shall be approved by the Yurok Tribal Council. No agreement shall authorize the expenditures of any funds by the Tribe, unless approved by the Yurok Tribal Council.
- (c) Any cooperative agreement implementing this Ordinance may contain the following provisions:
  - (1) The cooperating school shall immediately refer to the Family Education Advocate or the Yurok Education Department all Yurok Students who have failed, without valid excuse, to attend school for three days, or are tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof.
  - (2) The cooperating school may refer to the Family Education Advocate or the Yurok Education Department Yurok Students considered discipline problems and/or students not achieving academically, as determined by the cooperating school; and
  - (3) The cooperating school shall agree not to suspend or expel a Yurok Student referred to the Family Education Advocate without seeking in good faith to remediate the issues presented, unless suspension or expulsion is required because the Yurok Student creates a danger to himself and/or others, or the school is compelled to initiate said action by existing state law; and
  - (4) The Yurok Tribe shall agree to enforce the provisions of this Ordinance with respect to each Yurok Student referred by a cooperating school to the Family Education Advocate. In acting under this provision, the Tribe and its designated Family Education Advocate 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 Yurok Student; and
  - (5) The Yurok Tribe shall in each cooperative agreement designate at least one Tribal employee as Family Education Advocate.

### **CHAPTER 3. FAMILY EDUCATION ADVOCATE**

#### **SECTION 2301. Description**

- (a) To aid in the enforcement of this Ordinance, the Family Education Advocate(s) shall be appointed by the Yurok Tribal Council, or its designee.
- (b) The Family Education Advocate(s) may work with Tribal Law Enforcement and/or Tribal Probation and/or Yurok Department of Social Services and/or Yurok Public Safety and/or Yurok Education Department to serve all legal processes contemplated under this Ordinance.
- (c) The Family Education Advocate is authorized to conduct an intervention with any Yurok Student, if the Family Education Advocate has been informed, pursuant to a

Cooperative Agreement, that a Yurok Student is considered truant from school.

- (d) The Family Education Advocate shall keep records, case files, documentation, etc. for the inspection and information of any school or school district with a cooperative agreement with the Yurok Tribe and shall make a detailed report to the Yurok Tribal Court Chief Judge or her designee once per month or as often as the same may be required by agreement.

## **SECTION 2302. Duties**

Whenever a Yurok Student is referred to a Family Education Advocate pursuant to a cooperative agreement entered into as provided under this Ordinance, the Family Education Advocate shall, where appropriate, take some or all of the following actions:

- (a) Inform the Yurok Student's parent(s) by a notice in writing, or by other means reasonably necessary to achieve notice, of the fact that the Yurok Student has failed to attend school without valid justification habitually or for an extended period of time.
- (b) Schedule a conference or conferences with the parent(s) and Yurok Student at a time and place reasonably convenient for all persons included for the purpose of analyzing and solving the causes of the student's absences.
- (c) Schedule and attend a conference or conferences with cooperating school personnel to determine causes and seek solutions to school and/or home based issues.
- (d) The Family Education Advocate may be involved in the formation of the Individual Education Plan (IEP).
- (e) Inform the cooperating school by a notice in writing, or by other means reasonably necessary to achieve notice, of any and all hearings in Yurok Tribal Court involving a Yurok Student. The cooperating school may have a representative present at any and all hearings in Yurok Tribal Court.
- (f) Take steps in coordination with the cooperating school that the student is required to attend to eliminate or reduce the Yurok Student's absences. These steps may include, where appropriate, adjusting the student's school program or school or course assignment, providing more individualized or remedial instruction, preparing the student for employment with specific vocational courses or work experience, or both, and assisting the parent or Yurok Student to obtain supplementary services that might eliminate or alleviate the cause or causes for the absence from the cooperating school.
- (g) Provide additional or continuing counseling for the parent, the Yurok Student, or both, and provide any other program that is reasonably designed to correct the attendance problems of the student such as a more effective intervention is to address the source of truant behavior with a multiagency response targeting the underlying unmet student and family needs (e.g., academic difficulty, family stress, and substance abuse). These interventions would include parent/guardian involvement, a continuum of supports and services, collaboration with community

resources (including alcohol and other drug treatment services, Family Group Decision Making, law enforcement, mental health services, mentoring, and social services), school administrative support, a commitment to keeping youth in the mainstream classroom, and ongoing evaluation.

- (h) In those situations where a school refers a Yurok Student with discipline problems to the Family Education Advocate, the Family Education Advocate, in cooperation with the cooperating school, shall develop a program that is designed to correct the behavior of the student, which program can include the student, parent, guardian or custodian of the student.

## **CHAPTER 4. PETITIONS TO YUROK TRIBAL COURT**

### **SECTION 2401. Violations By a Parent or Student**

If action taken pursuant to Section 2302 is not successful in substantially reducing a Yurok Student's absences from school or if the parent or Yurok Student fails to comply voluntarily, any of the following actions may be taken:

- (a) The Family Education Advocate, Yurok Social Services, Yurok Public Safety, Yurok Education Department, and/or the Office of Tribal Attorney may petition the Tribal Court to assume jurisdiction under this Ordinance for the purpose of alleging a violation of Section 2102 of this Ordinance by the parent or Yurok Student.
- (b) A parent of a Yurok Student may file a petition with Tribal Court alleging a violation of Section 2102 of this Ordinance. If the Court assumes jurisdiction in such an instance, the provisions of this Ordinance, except where otherwise stated, shall apply.
- (c) The Principal, the Superintendent and/or their designee of the cooperating school may join in signing or initiate the Petition with the Family Education Advocate, after all efforts and supports have been exhausted.
- (d) Tribal Court may refer the case back to the State Court when the Tribal Court Judge believes it is appropriate or upon motion of the student, parent, and/or Family Education Advocate and/or school representative.

## **CHAPTER 5. REMEDIES**

### **SECTION 2501. Remedies**

Any Yurok Student or parent found by the Yurok Tribal Court to have violated or to be violating any of the provisions of this Ordinance shall be subject to diversionary action. The Tribal Court may order that the parent or the Yurok Student or both comply with the program set out by the Tribal Family Education Advocate, or as modified by the Yurok Tribal Council, or its designee.

**SECTION 2502. Penalties**

- (a) The Tribal Court may make any orders deemed appropriate for failure to comply with this Ordinance, including but not limited to the following:
  - (1) A fine not exceeding \$1,000.00, payable to the Court;

**DRAFTER’S COMMENT: We seek membership input on whether the \$1,000.00 fine should be a part of this Ordinance. Do you think that the penalty should exclude any monetary payment and be limited to community service, ineligible commercial fisher status, treatment, and/or referral? Do you think a maximum fine of \$1,000 is too high? Too low?**

- (2) Community service;
  - (3) Parent and/or Yurok Student may be declared ineligible for Yurok commercial fishing;
  - (4) Specified evaluation and treatment, upon a finding that it is appropriate;
  - (5) Referral to Yurok Social Services to File a Petition for Child In Need of Care, pursuant to the Yurok Children’s Ordinance.
  - (6) Where the court proceeding involves a Yurok Student referred for discipline reasons, the Court may revise the diversionary action if the student agrees to comply with a plan developed by the Family Education Advocate, as it may be modified by the Court.
- (b) It shall be a defense for a parent charged with violating this Ordinance to show that he or she exercised reasonable diligence in attempting to cause a student in his or her custody to attend school or that the student's school did not perform its duties as required under the law. A parent charged with violating this Ordinance shall participate with the Tribe, the school or school district, and the Yurok Student in a supervised plan for the Yurok Student’s attendance at school, and shall attend a conference or counseling scheduled by the Tribal Family Education Advocate for the purpose of analyzing and solving the causes of the Yurok Student’s absence, and shall comply with any other plan determined by the Court to be appropriate to assist the student to attend school.

**SECTION 2503. Prosecuting Attorney to Act for Complainant**

The Office of Tribal Attorney (OTA) or OTA designee may act as attorney for the complainant in all court proceedings relating to the compulsory attendance of students as required by this Ordinance, except for those petitions filed against any Yurok Student by the parent without the assistance of the Family Education Advocate.

**SECTION 2504. Reports by Family Education Advocate**

The Family Education Advocate shall report monthly to the Tribe on the petitions filed alleging a violation by a student under this Ordinance. The report shall, at a minimum, contain:

- (a) The number of petitions filed by a Family Education Advocate or by a parent;
- (b) The frequency of each action taken under this Ordinance prior to the filing of such petition; and
- (c) Disposition of cases filed with the Tribal Court, including the frequency of orders issued to enforce a court's order.

**SECTION 2505. Child in Need of Care Aid Proceeding**

The failure to comply with an Order of the Tribal Court entered pursuant to this Ordinance may be grounds for the Yurok Tribal Court to request the Yurok Social Services to conduct an investigation into whether it would be appropriate to file a Petition of a Child In Need of Care proceeding pursuant to the Yurok Children’s Ordinance.

**CHAPTER 6. FERPA PROVISIONS**

**SECTION 2601. Record Release Provisions**

The Yurok Tribe adopts the record release provisions of FERPA, defined at 20 U.S.C. §1232(b)(1)(L), which permits educational agencies and institutions to disclose a student’s education records, without parental consent, to a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access to student’s case plan “when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student.”

**SECTION 2602. Authorized Yurok Representatives**

The Yurok Tribe’s child welfare workers, case workers, ICWA workers, Family Education Advocates, Education Department staff and any other staff members subsequently designated by the Yurok Tribe to receive the education records of all Yurok Students are hereby authorized representatives of the Yurok Tribe to receive records pursuant under FERPA’s record release provisions

**SECTION 2603. Confidentiality Provisions for Records Received**

- (a) The Yurok Tribe, and all of the Yurok Departments and/or entities shall keep all student records in a confidential location (such as in locked file cabinets) and such records shall not be released without the oral and/or written consent of the parent(s).
- (b) Failure to maintain the confidentiality provisions for student records received may lead to employee discipline up to and including termination of employment.

**SECTION 2604. Minimum Requested Records**

- (a) Cooperating schools shall provide requesting Authorized Yurok Representative with

all information and academic records regarding its students including rosters, absentee lists, withdrawal lists, school attendance records, test scores, grades, GPA's, behavior records, IEP information, and academic performance measures.

- (b) Cooperating schools shall notify the Family Education Advocate or the Yurok Education Department when any Yurok Student has missed 2 consecutive days of school or has been tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year.
- (c) Cooperating schools shall notify the Family Education Advocate of any scheduled School District meetings and/or State Court Hearings for any Yurok Student.