



**NORTHWEST
PORTLAND
AREA
INDIAN
HEALTH
BOARD**

- Burns-Paiute Tribe
- Chehalis Tribe
- Coeur d' Alene Tribe
- Confederated Tribes of Colville
- Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
- Confederated Tribes of Grand Ronde
- Confederated Tribes of Siletz Indians
- Confederated Tribes of Umatilla
- Confederated Tribes of Warm Springs
- Coquille Tribe
- Cow Creek Band of Umpqua
- Cowlitz Indian Tribe
- Hoh Tribe
- Jamestown S'Klallam Tribe
- Kalispel Tribe
- Klamath Tribe
- Kootenai Tribe
- Lower Elwha Klallam Tribe
- Lummi Nation
- Makah Tribe
- Muckleshoot Tribe
- Nez Perce Tribe
- Nisqually Tribe
- Nooksack Tribe
- NW Band of Shoshone Nation
- Port Gamble S'Klallam Tribe
- Puyallup Tribe
- Quileute Tribe
- Quinault Indian Nation
- Samish Indian Nation
- Sauk-Suiattle Tribe
- Shoalwater Bay Tribe
- Shoshone-Bannock Tribes
- Skokomish Tribe
- Snoqualmie Tribe
- Spokane Tribe
- Squaxin Island Tribe
- Stillaguamish Tribe
- Squamish Tribe
- Swinomish Tribe
- Tulalip Tribe
- Upper Skagit Tribe
- Yakama Indian Nation

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Resolution # 17-02-04

Approval of Background Check Policy

WHEREAS, the Northwest Portland Area Indian Health Board (hereinafter "NPAIHB" or the "Board") was established in 1972 to assist Tribal governments to improve the health status and quality of life of Indian people; and

WHEREAS, the Northwest Portland Area Indian Health Board is a "tribal organization" as defined by the Indian Self-Determination and Education Assistance Act (P.L. 93-638 seq. et al) that represents forty-three federally recognized tribes in the states of Idaho, Oregon, and Washington; and

WHEREAS, in accordance with the definitions of the Indian Self-Determination and Education Assistance Act at 25 USCS § 450b, a tribal organization is recognized as a governing body of any Indian tribe and includes any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; and

WHEREAS, the Northwest Portland Area Indian Health Board is dedicated to assisting and promoting the health needs and concerns of Indian people; and

WHEREAS, the primary goal of the NPAIHB is to improve the health and quality of life of its member Tribes; and

WHEREAS, the Northwest Portland Area Indian Health Board's policies and procedures are subject to the requirements of the Indian Child Protection and Family Violence Prevention Act (ICPA), 25 U.S.C. §§ 3201 - 3210; and

WHEREAS, ICPA requires that a criminal background check be conducted for all potential hires, existing employees, assignees, interns, contractors and volunteers who have regular contact with children; and

WHEREAS, the Northwest Portland Area Indian Health Board seeks to comply with ICPA and provide protection and safety for children.

NOW THEREFORE BE IT RESOLVED that the Northwest Portland Area Indian Health Board approves the Background Check Policy and it is incorporated into the Program Operations Manual of the Northwest Portland Area Indian Health Board.

WHEREAS the Northwest Portland Area Indian Health Board...

act (ICPA), 25 U.S.C. §§ 3201 - 3210, 2017

CERTIFICATION

NO. 17-02-04

The foregoing resolution was duly adopted at the regular session of the Northwest Portland Area Indian Health Board. A quorum being established; 29 for, 0 against, 0 abstain on January 19, 2017.

Andrew C. Joseph Jr.

Chairman

January 19, 2017
Date

Gregory J. Abrahamson

Secretary

SECTION J: BACKGROUND CHECK POLICY

Policy

Once an individual has (A) received a conditional offer of employment from NPAIHB and (B) passed the background check requirement set forth in Section K, *Child Background and Character Investigation Policy*, which requires background checks for certain criminal history pursuant to Federal law, NPAIHB may thereafter make a good faith determination about whether there is any other criminal history in the individual's criminal record that may disqualify the individual from performing in the job position for which the individual received the conditional offer of employment.

As one example, but not limited hereto, NPAIHB may in its discretion determine not to place an individual in a job position involving access to or responsibility for NPAIHB financial resources or signatory authority for the NPAIHB when the individual has a criminal history of fraud, theft or other financial crimes.

Consideration of Background Check Findings

NPAIHB will consider the following:

- A. The nature and seriousness of the crime;
- B. The relationship of the crime to the work to be performed in the position;
- C. The extent to which the position might offer an opportunity to engage in further criminal activity;
- D. The nature and extent of the individual's past criminal activity;
- E. The individual's age at the time of the crime;
- F. The amount of time that has elapsed since the crime; and
- G. Any evidence of the person's rehabilitation.

In making these post-offer considerations, NPAIHB will not:

- A. Consider any "arrest history" that did not lead to conviction or juvenile adjudication, unless the related crime or act that would be a crime if committed by an adult is unresolved, or related criminal charges or juvenile adjudication are still pending against the applicant (NPAIHB may consider arrest records less than 1 year old that have not resulted in acquittal or have not been dismissed); and
- B. Consider any "conviction history" that was judicially voided or expunged, or that was resolved through the completion of a diversion or deferral-of-judgment program for offenses not involving physical harm or attempted physical harm to a person.

Determination and Rescission of Conditional Offers

NPAIHB may choose to rescind a conditional offer of employment based on the considerations above if NPAIHB determines in good faith that doing so is warranted as being job-related and consistent with business necessity.

Before rescinding the offer, NPAIHB will provide the individual with an opportunity to explain why the conditional offer of employment should not be rescinded. The individual will receive a written summary of all derogatory information and be informed of the process for explaining, denying or refuting the unfavorable information. The actual background investigative report shall not be released to

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the individual who is the subject to the background investigation, but such individual may, to the extent permissible by law, obtain a copy of the reports from the originating agency (Federal, State or Tribal) and challenge the accuracy and completeness of the information maintained by that agency.

Should NPAIHB decide to proceed with rescinding the conditional offer of employment, NPAIHB will promptly notify the individual in writing. The written notification will at a minimum state that the conditional offer of employment has been withdrawn and identify the specific item of criminal history on which the rescission is based and the source of that criminal history.

Confidentiality

NPAIHB will maintain and keep confidential any criminal history that it obtains, consistent with the requirements set forth in Section K, *Child Background and Character Investigation Policy*, unless disclosure is required or permitted by law.

SECTION K: CHILD PROTECTION BACKGROUND CHECK POLICY

Policy

NPAIHB will not hire or employ persons, nor allow persons to volunteer, that are subject to this policy who do not meet the minimum standards of character set forth below, except as otherwise provided in this policy or by applicable law. The procedures set forth in this policy for conducting background investigations and adjudications will be used to determine suitability for employment.

1.1 Definitions

The following definitions apply to this policy:

- 1.1.1 **Child** means a person who is not married and has not attained 18 years of age.
- 1.1.2 **Crimes Against Persons** means a crime that has as an element the use, attempted use, or threatened use of physical force or other abuse of a person and includes, but is not limited to, homicide; assault; kidnapping; false imprisonment; reckless endangerment; robbery; rape; sexual assault, molestation, exploitation, contact, or prostitution; and other sexual assaults. In determining whether a crime falls within this category, the applicable federal, state, or Tribal law under which the individual was convicted or pleaded guilty or nolo contendere (i.e. "no contest") shall be controlling.
- 1.1.3 **Crimes of Violence** means a crime that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other crime that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing a crime. In determining whether a crime falls within this category, reference may be made to the applicable federal, state, or Tribal law under which the individual was convicted or pleaded guilty or nolo contendere (i.e., "no contest").
- 1.1.4 **Employ / Employed / Employment** mean the hiring or holding of a position covered by this policy under Section 1.2 by an individual, as defined in Section 1.1.5, provided, however, that the use of one of these terms in this policy does not imply or indicate that a person is or is not an "employee" of NPAIHB.

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1.1.5 **Individual** means a person who applies for or holds a position with NPAIHB and includes, but is not limited to, the following:

- (a) Employees of NPAIHB regardless of classification, including but not limited to regular, part-time, temporary and probationary employees.
- (b) Persons who perform services for or under the supervision of NPAIHB.
- (c) Persons who contract with NPAIHB to perform services in NPAIHB offices or in a location that includes regular contact with or control over a child as defined under Section 1.1.7.
- (d) Persons who volunteer to perform services for NPAIHB in NPAIHB offices or in a location that includes regular contact with or control over a child as defined under Section 1.1.7.

1.1.6 **Offenses Against Children** means any felonious or misdemeanor crime under federal, state, or Tribal law committed against a victim who has not attained 18 years of age. In determining whether a crime falls within this category, the applicable federal, state, or Tribal law under which the individual was convicted or pleaded guilty or nolo contendere (i.e., “no contest”) shall be controlling.

1.1.7 **Regular Contact With or Control Over a Child** means either responsibility for a child within the scope of the individual’s duties and responsibilities or contact with a child on a recurring and foreseeable basis.

1.2 Applicability

1.2.1 Covered Individuals/Positions.

This policy and its procedures apply to all individuals as defined under Section 1.1.5 who apply for or hold the following positions:

- (a) Positions that require, as determined by the applicable NPAIHB job description or as otherwise classified by NPAIHB, regular contact with or control over children as defined under Section 1.1.7.

1.3 Recruitment

1.3.1 Vacancy Announcements

All job vacancy announcements for positions covered by this policy shall contain an express statement that individuals must meet minimum standards of character and that a background investigation will be conducted.

1.3.2 Applications

- (a) All individuals who apply for positions covered by this policy must fill out an application form.
- (b) The job application will state that the performance of a background investigation and determination that the individual meets the eligibility criteria of this policy are conditions of employment.
- (d) The job application form must state that the application is being signed under penalty of perjury and acknowledge that knowingly falsifying or concealing a

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material fact is a felony that may result in fines up to \$10,000 or five years imprisonment, or both.

1.4 Minimum Standards of Character

The minimum standards of character are a benchmark of moral, ethical, and emotional strengths established by character traits and past conduct to ensure that the individual is competent to complete his or her job without harm to children.

1.4.1 Required Standards

No individual will be placed in or will be allowed to continue to hold a position covered by this policy if he or she has been found guilty of, or entered a plea of nolo contendere (i.e., “no contest”) or guilty to, any felonious offense or any two or more misdemeanor offenses under federal, state or Tribal law involving –

- (a) crimes of violence;
- (b) sexual assault, molestation, exploitation, contact or prostitution;
- (c) crimes against persons; or
- (d) offenses committed against children;

Provided, however, that all such convictions or pleas of nolo contendere or guilty will be considered in making a determination about suitability for employment unless a pardon, expungement, set aside or other court order reaches the plea of guilty, plea of nolo contendere, or the finding of guilt.

1.4.2 Meeting the Minimum Standards of Character

The minimum standards of character will be considered met only after the individual has been the subject of a satisfactory background investigation under Section 1.5 and adjudged suitable for employment under Sections 1.6 and 1.7.

1.4.3 Other Standards

An individual may be denied or dismissed from employment or from volunteering for any position involving Child Care Services if the individual has been convicted of a sex crime, an offense involving a child victim, a drug felony, or any other crime that bears on the fitness to have responsibility for safety and well-being of children, as provided in Section 1.4.1 (requiring denial of or dismissal from employment).

1.5 Background Investigations

1.5.1 Background Investigation Required

Every individual who applies for or holds a position with NPAIHB must submit to a background investigation as a condition of employment with NPAIHB.

1.5.2 Responsible Entity

NPAIHB may conduct its own background investigation or may request that a Federal or State agency conduct the background investigation on NPAIHB’s behalf and provide NPAIHB with the results of the investigation.

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1.5.3 Notification and Acknowledgement

Before a background check is conducted, NPAIHB will obtain the individual's signature on a statement that the individual was notified of NPAIHB's requirement for a background investigation as a condition of employment under Section 1.5.1, the individual's right to receive a copy of the criminal history report and to challenge the accuracy of the information contained in the report, as provided in Section 1.6.3(c). Such a statement may be part of the application form under Section 1.3.2.

1.5.4 Steps for Conducting Background Investigations

The background check shall include the following steps and information:

- (a) Inquiries to State and Tribal law enforcement agencies for the previous five years for all places that an individual lists as current and former residences on the individual's application;
- (b) Consideration of the individual's fitness for employment and trustworthiness through inquiries with the individual's references and places of employment and education as listed on the individual's application for at least the previous five years; and
- (c) A determination of whether the individual meets the minimum standards of character set forth in Sections 1.4.1 and 1.4.2.

1.6 Adjudication

Adjudication is the process NPAIHB uses to determine suitability for employment (to assess the degree of risk the individual brings to the position and certify that the individual's past conduct does not interfere with performance of duties or pose an immediate or long-term risk for any child) and efficiency of service (to verify that the individual is able to perform the duties and responsibilities of the position and will not inhibit other employees from performing their functions).

1.6.1 General Requirements

- (a) Adjudication requires consistency in evaluation to ensure fair judgments are reached.
- (b) Each case will be judged on its own merits.
- (c) All available information, favorable and unfavorable, will be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

1.6.2 Adjudicating Official

NPAIHB will appoint an Adjudicating Official to conduct the adjudications under this policy. The Adjudicating Official must first have been the subject of a favorable background investigation, must be well-qualified and trained, and must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for eligibility.

1.6.3 Adjudication Process

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- (a) Review Background Investigation. The Adjudicating Official will review the background investigation conducted under Section 1.5 to determine character, reputation, and trustworthiness of the individual. At minimum, the review will include:
 - (1) Each security investigation form and employment application and a comparison of the information provided.
 - (2) The results of written record searches requested of local law enforcement agencies, former employers, former supervisors, employment references, and schools.
 - (3) Any other information obtained through the background investigation. This includes character and personal reference checks of the individual.

- (b) Consider Circumstances. The Adjudicating Official must consider the information under Section 1.6.3(a) in light of the following:
 - (1) The nature and seriousness of the conduct in question;
 - (2) The recentness and circumstances surrounding the conduct in question;
 - (3) The age of the individual at the time of the incident;
 - (4) Societal conditions that may have contributed to the nature of the conduct;
 - (5) The probability that the individual will continue the type of behavior in question; and
 - (6) The individual's commitment to rehabilitation and a change in the behavior in question.

- (c) Opportunity for review. Before the adjudication is final, the individual will be given an opportunity to explain, deny or refute unfavorable or incorrect information gathered in an investigation.
 - (1) The individual will receive a written summary of all derogatory information and be informed of the process for explaining, denying or refuting unfavorable information.
 - (2) The actual background investigative report shall not be released to the individual who is the subject to the background investigation, but such individual may, to the extent permissible by law, obtain a copy of the reports from the originating agency (Federal, State or Tribal) and challenge the accuracy and completeness of the information maintained by that agency.

- (d) Final Determination. The Adjudicating Official will make a final determination regarding whether the individual meets the minimum standards of character set forth in Section 1.4. The Adjudicating Official's decision is final, and is not subject to the grievance procedures set out in NPAIHB's Program Operations Manual.

1.6.4 Investigation Information

- (a) The results of an investigation cannot be used for any purpose other than to determine suitability for holding a position that is subject to this policy.
- (b) Investigative reports will be maintained confidentially and in securely locked files.
- (c) Investigative reports shall be seen only by those officials who, in performing their official duties, need to know the information contained in the report.

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- (d) NPAIHB will comply with the applicable privacy requirements of any Federal, State or Tribal agency providing background investigations.

1.7 Outcome

Once the background investigation has been conducted under Section 1.5 and the adjudication process is complete under Section 1.6, the Adjudicating Officer's final determination under Section 1.6.3(d) will be applied as follows:

- (a) **Suitable for Employment.** The individual will be deemed suitable for employment when it has been adjudicated under Section 1.6 that the individual meets the minimum standards of character set forth in Section 1.4. Suitability for employment will not necessarily result in the individual being hired or retained.
- (b) **Employment Must be Denied.** NPAIHB must deny employment to or dismiss the individual when it has been adjudicated under Section 1.6 that the individual fails to meet the minimum standards of character set forth in Section 1.4.1.

1.8 Pending or Unresolved Charges

If an individual who is applying for or holds a position with NPAIHB is charged with an offense covered by this policy under Section 1.4.1, but the charge is pending or no disposition has been made by a court, NPAIHB may, in its discretion, do any of the following:

- (a) Deny employment until the charge is resolved;
- (b) Deny the individual any on-the-job contact with children until the charge is resolved;
- (c) Reassign the individual to other duties that do not involve regular contact with children;
- (d) Suspend the individual until the charge is resolved.