

**RESOLUTION OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA**

RESOLUTION NO: 13-09 Amendment #1

DATE APPROVED: April 10, 2013

SUBJECT: APPROVAL OF TITLE 30A, EMPLOYMENT BACKGROUND CHECK POLICY FOLLOWING COMPLETION OF LPA ROUTING.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972 and ratified by Act of Congress on October 31, 1988, and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council; and

WHEREAS: The Hoopa Valley Tribe recognizes that no resource is more vital to the Tribe's continued existence and integrity than its children and the Tribe has a direct interest in protecting children; and

WHEREAS: As recipient of compact funds from the Bureau of Indian Affairs and Indian Health Services The Hoopa Valley Tribe will fully comply with the Indian Child Protection and Family Violence Prevention Act, as amended, which requires that tribes and tribal organizations receiving federal funds under the Indian Self-Determination and Education Assistance Act conduct national criminal background investigations of prospective employees who will occupy positions having regular contact or control over Indian children; and

WHEREAS: Title 6 of the Hoopa Tribal Code, the Legislative Procedures Act ("LPA") sets forth a comprehensive and systematic process for the Tribal Council, its programs, and its entities chartered or established under the authority of the Tribal Council, to establish, amend, or modify policies, ordinances and acts, or to take other governmental actions on behalf of the Hoopa Valley Tribe; and

WHEREAS: In response to a federal agency site visit of a tribal program which identified as an issue requiring immediate attention and resolution compliance with the background check requirements of the Indian Child Protection and Family Violence Prevention Act; and

WHEREAS: On March 7, 2013 the Tribal Council adopted Title 30A on an emergency basis and directed it be routed through the LPA process; and

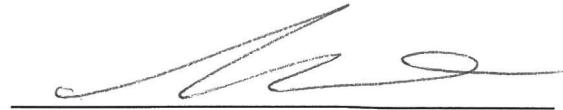
WHEREAS: In the course of implementation tribal staff identified recommended technical modifications to Title 30A which recommendations were submitted as part of the public hearing process of the Legislative Procedures Act,

NOW, THEREFORE, BE IT RESOLVED, that, in accordance with the Legislative Procedures Act and applicable federal law, the Tribal Council adopts the attached Title 30A, *Employment Background Check Policy*, which incorporates into its provisions technical modifications to the document adopted March 7, 2013 on an emergency basis.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which seven (7) were present, constituting a quorum, at a Regular meeting thereof, duly and regularly called, noticed, convened and held this 10th day of April, 2013; and that this Resolution was adopted by a vote of six (6) FOR and zero (0) AGAINST, and that said Resolution has not been rescinded or amended in any way.

Dated this 10th day of April, 2013.



Leonard E. Masten, Jr., Chairman
Hoopa Valley Tribal Council

ATTEST:



Darcy Miller, Executive Secretary
Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE
Hoopa Valley Tribal Code, Title 30A-
Employment Background Check Policy

**DIVISION 1. BACKGROUND CHECKS - REGULAR CONTACT WITH OR
CONTROL OVER CHILDREN**

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DIVISION 1. BACKGROUND CHECKS - REGULAR CONTACT WITH OR CONTROL OVER CHILDREN

1.1 - General

1.1.1 Purpose – Pursuant to the Hoopa Valley Tribal Constitution, Article IX, Section 1, the Tribal Council has legislative authority to establish Tribal codes. This ordinance is established to promote a safe and secure work environment as well as provide for the safety of children and community members and to ensure individuals hired by the Hoopa Valley Tribe are well qualified and have undergone a verification of personal character and suitability. The purpose of performing these checks is to determine and/or confirm the qualifications and suitability of applicants and employees for the particular position for which they are being considered and to meet the requirements established for individuals having regular contact with or control over Indian children.

It is not the purpose of this ordinance to provide detailed information or descriptions of searches and/or suitability criteria for each background check that can be performed. Nor is it the purpose of this ordinance to provide detailed information on how to make a final decision regarding results of background checks. Every case must be decided on its own merits subject to the Hoopa Valley Tribe's requirement that all individuals be treated equally and consistently.

This ordinance does not limit the Hoopa Valley Tribe's right to hire, re-assign, discipline or terminate, nor does it create a contract of employment. All employment is at will unless contract or law applies to the contrary.

1.1.2 Background and Intent – The Hoopa Valley Tribe recognizes that no resource is more vital to the Tribe's continued existence and integrity than its children and the Tribe has a direct interest in protecting children. This Ordinance is adopted to protect the health and welfare of the Hoopa Valley Tribe and its residents, Tribal members and visitors.

The Hoopa Valley Tribe will fully comply with the Indian Child Protection and Family Violence Prevention Act, as amended, which requires that tribes and tribal organizations receiving federal funds under the Indian Self-Determination and Education Assistance Act conduct national criminal background investigations of prospective employees who will occupy positions having regular contact or control over Indian children.¹

¹ Public Law 101-647 mandates:

1. All existing and newly-hired employees undergo a criminal history background check within prescribed time limits;
2. Employment applications shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description and disposition of the arrest or charge;

It is the policy of the Hoopa Valley Tribe to perform pre-employment background checks. The Hoopa Valley Tribe reserves the right to check the employment references of all applicants. The process is intended to help the organization to evaluate the candidate's suitability for hire. All offers of employment are contingent upon successful completion of the background checks. Any misrepresentations, falsifications, or omissions in any employment information may result in no further consideration for employment. Candidates who fail to disclose accurate and complete information regarding any substantial negative history of criminal convictions may not be considered suitable for hire. The organization will also comply with all applicable tribal, state and federal laws to ensure candidates are not discriminated against because of negative history of convictions. The Hoopa Valley Tribe does not automatically disqualify any person from hiring or promotion due to a criminal record.

The Hoopa Valley Tribe will perform pre-employment background checks on all applicants for employment in any position that works with or has regular contact with children. In addition, if an employee changes positions or if required due to Federal regulatory requirements, any additional required background checks for that position which have not previously been performed will be performed.

The results of pre-employment background checks are confidential and are to be shared on a strict "need to know" basis.

1.1.3 Definitions

- (a) *Adjudication* means the process used to determine suitability for employment.
- (b) *Adjudicating official* is a person appointed by Tribal Council to conduct an adjudication.
- (c) *Child* means an unemancipated individual who is not married and has not attained 18 years of age.
- (d) *Covered Position* means any employee, service contractor or volunteer with any Tribal entity that has Regular Contact with or Control Over Children. In the case of a service contract with a corporation, limited liability entity or similar non-individual entity having Regular Contact with or Control Over Children, "covered position" includes all employees of such entity working under such a contract who meet the test set forth in section (e), below. Depending on the subject matter

3. Obtain signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing organization and the right to challenge the accuracy and completeness of any information contained in the report;

4. The results of the background check shall be communicated to the employing organization; and,
5. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee involved in the provision to children under the age of 18 of child care services. Conviction of a crime other than a sex crime may also be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.

of the contract, covered positions may include such an entity's primary managers. Because of their ultimate placement in the chain of command over persons described herein, the Tribal Chairperson and members of the Tribal Council also constitute covered positions. Following the 2013 general election, the Chairman and Vice-Chairman must successfully complete a background investigation to remain in office. Beginning with the 2014 tribal general election, the Election Board shall integrate the background check process set forth in this ordinance into its candidate eligibility screening process for all Tribal Council candidates.

- (e) *Regular Contact with or Control Over Children* means that a person's written or unwritten duties include or are reasonably expected to involve at least:
 - (1) Personal interaction with children at least once per week;
 - (2) The authority to direct, supervise, mentor, care for, detain, or control children, in any manner; or
 - (3) Serving within the chain of command over a person described in section 2.1.3(d) of this Title.
- (f) *Crimes against persons* are defined by local law. Adjudicating officers must contact local law enforcement agencies to determine if the particular conviction is defined as a crime against persons.
- (g) *Tribal entity* includes, but is not limited to, a department or work unit of Tribal government and Tribally-chartered entities.
- (h) *Must* is used in place of shall and indicates a mandatory or imperative act or requirement.
- (i) *Tribe* means the Hoopa Valley Tribe.
- (j) *Manager* means a person employed by a Tribal entity with responsibility and authority to determine whether a background investigation is necessary under this Title. A Manager of a Tribal government program and a Manager working within a Tribal entity may delegate this responsibility to an employee who has successfully completed a background investigation under this Ordinance. Managers must ultimately ensure that all program activities comply with this Ordinance.

2.1 - Jurisdiction

2.1.1 Except as otherwise provided in this Chapter, this Ordinance applies to all tribal departments and entities and all their respective Covered Positions, regardless of the location of execution or performance.

- (a) A list shall be compiled of each position the duties and responsibilities of which involve regular contact with, or control over, Indian children shall be developed, maintained and updated from time to time by the Hoopa Valley Tribe, Human Resource Department.
- (b) All positions, whether or not listed on an updated list, that involve regular contact with, or control over, Indian children are subject to the background check requirement.

2.1.2 Section 231 of Public Law 101-647 of the Crime Control Act of 1990 requires background investigations of "individuals involved with the provision to children under

the age of 18 of child care services.” Child care services is defined in the Crime Control Act as “child protective services (include the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional or treatment services.”²

3.1 - Implementation thru Non-regulatory Action. Notwithstanding Title 6, Hoopa Valley Tribal Code, the Human Resource department shall have the authority to implement this Ordinance through department bulletins, or similar instructions, without taking regulatory action. Such bulletins or instructions, provided they are not inconsistent with the provisions of this Ordinance, do not constitute major action within the meaning of Title 6, section 6.1.

4.1 – Exemption for certain employees

Even if federal, state or Tribal law otherwise requires a person in a covered position to satisfy a licensing or background investigation requirement such a person will not be exempt from the requirements of this ordinance unless:

- 4.1.1** The licensing or background investigation requirements are at least as stringent as those required under this ordinance;
- 4.1.2** The person in such position has had such a background investigation within the previous twelve months and consents to a background investigation covering the period of time that passed since the prior successful background investigation;
- 4.1.3** The person successfully maintains any such license and successfully completes such background investigation;

² 1. All existing and newly-hired employees undergo a criminal history background check within prescribed time limits;

2. Employment applications shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description and disposition of the arrest or charge;

3. Obtain signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing organization and the right to challenge the accuracy and completeness of any information contained in the report;

4. The results of the background check shall be communicated to the employing organization; and,

5. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee involved in the provision to children under the age of 18 of child care services. Conviction of a crime other than a sex crime may also be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.

4.1.4 The results of such background investigation is maintained by Human Resources as part of its confidential background investigation records system in a segregated, locked filing cabinet;

4.1.5 The person signs a release permitting designated Tribal officials to view the results of their background investigation; and

4.1.6 The person authorizes a criminal background investigation for the period of time that passed since the date of their previous background investigation and complies with any adjudication related to that investigation.

5.1 – Additional Criteria Warranting a Background Investigation

5.1.1 Not every employee, volunteer or service contractor position will meet the definition of Covered Position. However, for specific events and trips involving children under the care of a Tribal Entity, a Manager of that Tribal Entity may use the following factors as guidance to determine whether a current or prospective employee, volunteer or service contractor requires a background investigation:

- (a) Whether the event is paid for by the Tribe;
- (b) Whether the child's parent or legal guardian has signed a waiver expressly waiving Tribal liability and accepting responsibility for the child;
- (c) The degree to which the Tribal entity controls the environment where the event/trip will occur;
- (d) The degree of supervision over children by persons who have previously passed a background check under this Ordinance, or are otherwise exempt from a background check; and
- (e) The degree of threat of physical or emotional harm reasonably expected to be posed to children during the trip.

5.1.2 Managers will make their determinations in writing, based on all of the factors listed above. Managers will forward their determinations to the director of their entity for review. If a Manager determines that a background investigation is necessary under this section, he/she will be responsible to ensure that the proper investigation is performed.

- (a) All paperwork required to request a background investigation must be completed and submitted to the Tribal Human Resources Department;
- (b) The employee, applicant, volunteer or service contractor must be notified of the decision.

5.1.3 Nothing in this Ordinance alters the supervisory relationship of any employees of any Tribal Entity. If a supervisor of a Manager has the authority to overrule any Manager's decision made under this section, this Ordinance does not alter that authority.

6.1 – Background investigations

All Tribal entities must conduct an investigation of the character of each person that holds, or is being considered for, a covered position, to determine their suitability for employment. Only those individuals who meet minimum standards of character will be placed in a covered position. Each applicant, employee, volunteer or contractor must sign a release authorizing this background investigation. A failure to sign such a release will be grounds for termination of employment or for determining a candidate to be unqualified for a covered position. A background investigation conducted under this Ordinance must be no less extensive than that required by the federal Indian Child Protection and Family Violence Prevention Act, 25 USC §3201 et seq.

7.1 – Determination of suitability

Determinations of suitability measuring the fitness or eligibility of an applicant, volunteer, employee or contractor in a covered position does not evaluate a person's education, skills, knowledge, experience, etc. Rather, it requires that the employer conduct a background investigation to:

7.1.1 Determine the degree of risk the applicant, volunteer, contractor or employee brings to the position; and

7.1.2 Certify that the applicant's, volunteer's, contractor's or employee's past conduct would not interfere with his or her performance of duties or create an immediate or long-term risk for any child.

8.1 – Minimum standards of character

Minimum standards of character refer to identifiable character traits and past conduct. The minimum standards of character ensure that none of the individuals appointed to positions covered by the list described in section 2.1.1(a) above, have been found guilty of or entered a plea of nolo contendere (no contest) or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

9.1 – Employment applications

All employment applications for covered positions must:

- 9.1.1** Ask whether the applicant, volunteer, or contractor has been cited, arrested or convicted of a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons;
- 9.1.2** Ask the disposition of the arrest or charge;
- 9.1.3** Require that an applicant, volunteer, or contractor sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and
- 9.1.4** Inform the applicant, volunteer, or contractor that a criminal history record check is a condition of employment and require the applicant, volunteer contractor or employee to consent, in writing, to a record check.

10.1 – Procedures

- 10.1.1** The components of each individual's background check will include identity and address related searches; various types of criminal (including FBI Name and Fingerprint criminal history search and sexual offender searches) background checks; driving record verification; education verification; prior employment and professional license verification, etc.
- 10.1.2** All applicants and/or employees are required to sign appropriate authorizations and consents prior to the performing of any background checks.
- 10.1.3** Individuals are expected to provide accurate and complete information and not to omit material information needed to make a decision. The organization relies on the accuracy of information on the employment application and other data developed through the hiring processing and subsequent employment. The results of a background check will only be used for the purpose of determining an individual's suitability for employment while maintaining strict confidentiality. Individuals that provide false or misleading information in their application and/or authorization may be eliminated from any further consideration.
- 10.1.4** All job offers are conditioned upon satisfactory completion of the pre-employment background checks.
- 10.1.5** Prior to taking any adverse action, appropriate pre-adverse and adverse action notices will be sent to the individual together with a summary of the background check results considered adverse.
- 10.1.6** All individuals shall be reviewed on a case-by-case basis and decisions made with respect to employment/placement upon the whole person to include the results of the employment background checks.

10.1.7 For conduct identified in the Indian Child Protection and Family Violence Prevention Act, as amended, the Hoopa Valley Tribe will deny employment or dismiss an employee who does not meet the suitability criteria established for positions having regular contact or control over Indian children. For all other circumstances, the relevance of a particular employment background check to an individual's eligibility for employment will be assessed in the adjudication process set forth in section 11.1.

10.1.8 Having adverse information, including a criminal history or conviction does not automatically preclude a candidate's eligibility for employment. Adverse information will be assessed in accordance with the Ranking Chart and the Basic Suitability Adjudication Guidelines developed by the U.S. Office of Personnel Management and utilized by the Bureau of Indian Affairs, attached to this policy as Attachment A and B, respectively.

11.1 – Process for adjudicating suitability

11.1.1 *Adjudication* is the process used to determine suitability for employment. The adjudication process protects the interests of the employer and the rights of applicants and employees.

11.1.2 Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

11.1.3 An *adjudicating official* conducts the adjudication. The Tribal Council may appoint more than one adjudicating official. Adjudicating officials must first have been the subject of a favorable background investigation of at least the same level or higher and must be:

- (a) Well-qualified and trained to perform the adjudicating official tasks.
- (b) If the adjudicating official is not trained in these types of investigations, he or she initially must be supervised by someone that is experienced.
- (c) Thoroughly familiar with all laws, regulations and criteria involved in making a determination for suitability.

11.1.4 The adjudicating official must review the background investigation to determine the character, reputation and trustworthiness of the individual. At a minimum, the adjudicating official must:

- (a) Review each security investigation form and employment application and compare the information provided;
- (b) Review the results of written record searches requested from the Tribal Police and local law enforcement agencies, former employers, former supervisors, employment references, and schools; and

- (c) Review the results of any finger-print charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies.

11.1.5 Relevancy is a key objective in evaluating investigative data. The adjudicating official must consider prior conduct in light of:

- (a) The nature and seriousness of the conduct in question;
- (b) The recency and circumstances surrounding the conduct in question;
- (c) The age of the individual at the time of the incident;
- (d) Societal conditions that may have contributed to the nature of the conduct;
- (e) The probability that the individual will continue the type of behavior in question; and
- (f) The individual's commitment to rehabilitation and a change in the behavior in question.

11.1.6 All persons in any covered position(s) must be reinvestigated every five years.

11.1.7 All covered positions must report any violation of Title 21 of the Hoopa Tribal Code (The Drug and Alcohol Policy) and any criminal misdemeanor or felony citations, arrests or convictions to their supervisor. Upon receiving a report from the covered position or otherwise learning of any violation of Title 21 or any criminal arrest or conviction, the supervisor may take action defined in section 12.1.2 below, and shall refer the matter for adjudication.

11.1.8 Adjudicators must place the applicant, employee or contractor and all witnesses under oath before they testify at an adjudication.

11.1.9 Upon completion of an adjudication, the adjudicator shall issue a Certification of Investigation and Adjudication, which shall specify that a background investigation has been completed meeting minimum standards of the Bureau of Indian Affairs and tribal law and that the past conduct of the subject of the investigation would or would not interfere with his/her performance of duties or create an immediate or long-term risk for Indian children. All documents and information shall be sealed in an envelope with a copy of the Certification affixed to the outside. The sealed envelope shall be forwarded to the Human Resources Department to be housed in its segregated, locked confidential file system. A copy of the Certification shall be placed in the personnel file of each covered employee.

12.1 – Denial or dismissal of employment

12.1.1 A Tribal entity must deny employment, terminate a contract or terminate employment of a person in a covered position if an adjudication under this ordinance finds that the person has been found guilty of or entered a plea of guilty or nolo contendere to any Tribal, federal or state offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution or crimes against persons.

12.1.2 A Tribal entity may deny employment, terminate a contract or terminate employment of a person in a covered position if an adjudication under this ordinance finds that the person has violated Title 21 of the Hoopa Tribal Code or been convicted of an offense involving a child victim, a sex crime or a drug felony.

12.1.3 If an applicant for, or contractor or employee in a covered position has been charged with an offense described under subsections (1) or (2) of this section, but the charge is pending or no disposition has been made by a court:

- (a) The Tribal entity may deny consideration of the applicant until the charge has been resolved.
- (b) The Tribal entity may deny the employee or contractor any on-the-job contact with children until the charge is resolved.
- (c) The Tribal entity may detail or reassign the employee or contractor to other duties that do not involve contact with children.
- (d) The Tribal entity may place the employee on administrative leave until the court has disposed of the charge.

13.1 – Other factors warranting denial or dismissal of employment

An applicant, volunteer, contractor or employee may be disqualified from consideration or continuing employment in a covered position if an adjudication under this ordinance finds that:

13.1.1 The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities;

13.1.2 The individual's criminal or dishonest conduct affected the individual's performance or the performance of others;

13.1.3 The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment;

13.1.4 The individual has refused to cooperate with an investigation;

13.1.5 The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others;

13.1.6 The individual has illegally used narcotics, drugs or other controlled substances without evidence of substantial rehabilitation; or

13.1.7 The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

14.1 – Rights of applicant, volunteer, contractor or employee

14.1.1 Before an adjudication is final the applicant, volunteer, contractor or employee must be provided an opportunity to explain, deny or refute unfavorable and incorrect information gathered in an investigation. The applicant, volunteer, contractor or employee should receive a written summary of all derogatory information and be informed of the process for explaining, denying or refuting unfavorable information.

14.1.2 Because of the specialized training required for adjudicators, a final adjudication is not subject to appeal on the merits, nor is it subject to grievance procedures set forth in Title 30, Chapter 9. However, the applicant, volunteer, contractor or employee may appeal to the Tribal Employment Rights Office solely as to issues of whether the process set forth in this Ordinance was complied with.

14.1.3 Tribal entities and adjudicating officials must not release the actual background investigative report to an applicant, volunteer, contractor or employee. However, they may issue a written summary of the derogatory information.

14.1.4 The applicant, volunteer, contractor or employee who is the subject of a background investigation may obtain a copy of the reports from originating (Tribal, federal or state) agency and challenge the accuracy and completeness of any information maintained by that agency.

14.1.5 The results of an investigation cannot be used for any purpose other than to determine the suitability for employment in a covered position, and may be shared only with the applicant, volunteer, contractor or employee and the appropriate Tribal entity official needing such information to make a hiring determination.

14.1.6 Investigative reports contain information of a highly personal nature and shall be maintained by the Human Resource Department confidentially in segregated, secured locked files. Investigative reports should be seen only by those officials who in performing their official duties need to know the information contained in the report. All background investigation files and information shall be maintained by the Human Resource Department. When funding agencies require maintenance of background investigation information at a program site, a certified copy of such information may be so maintained in a confidential, locked file.

14.1.7 Privacy requirements of any Tribal, federal or state agency providing background investigations will be complied with, including Tribal personnel policies safeguarding information derived from background investigations.

15.1– Emergency Exemption

The Tribal Council may suspend the requirements of this Ordinance during any emergency that the Tribal Council determines may threaten the health or welfare of the

Tribe or of its residents or members. The Tribal Council may delegate this authority by motion on the record.

16.1 – Neglectful Supervision

No person in a covered position, as part of their employment, will leave a child under the direct supervision, custody, care, or control of a person in a non-covered position, unless the person receiving direct supervision, custody, care or control has first successfully passed a background investigation required by this Ordinance, including any related adjudication. Violation of this section may be grounds for disciplinary action, up to and including termination.

17.1 – Sovereign immunity intact

Nothing in this ordinance is to be construed to create a cause of action for violation of its provisions or to be construed as a waiver of the sovereign immunity of the Hoopa Valley Tribe or of any Tribal Entity, or any officers, employees, representatives or agents of the Tribe or of any Tribal Entity. The waiver of sovereign immunity set forth in Title 30 section 9.3 shall not apply to termination of employment due to an adjudicated background investigation.

18.1 – Severability

If any provision of this Ordinance is held invalid by the Hoopa Valley Tribal Court or other court of competent jurisdiction, the invalid portion will be severed and the remaining provisions shall continue in full force and effect.

REFERENCES

This ordinance contains references to the following:

Indian Child Protection and Family Violence Prevention Act, as amended (Public Law 101-630; codified in 25 United States Code 3207) and Sec. 814. Technical Amendment to the Indian Child Protection And Family Violence Prevention Act.

25 Code of Federal Regulations Part 63, Implementation of the Indian Child Protection and Family Violence Prevention Act.

Crime Control Act Of 1990 - Subchapter V – Child Care Worker Employee Background Checks (Public Law 101-647; codified in 42 United States Code 13041)

Basic Suitability Adjudication Guidelines



Basic Suitability

Ranking Derogatory Issues

The initial task of the Adjudicator is to determine whether the conduct or issues in a case are potentially disqualifying. The following chart ranks issues according to seriousness and its potential as a basis for disqualification. This system was developed by the U.S. Office of Personnel Management and is the system used by the Bureau of Indian Affairs. In the system, each issue is assigned one of the following four rankings based on its seriousness and potential as a basis for disqualification:

RANK	SERIOUSNESS	POTENTIAL AS A BASIS FOR DISQUALIFICATION
A	Minor	Issue, standing alone, WOULD NOT be disqualifying.
B	Moderate	Issue, standing alone, WOULD PROBABLY NOT be disqualifying.
C	Substantial	Issue, standing alone, may ALMOST CERTAINLY be disqualifying.
D	Major	Issue, standing alone, WOULD be disqualifying.

Determining a Control Date

The recency of an issue is the period of time elapsed between the date the conduct occurred and the control date. The control date is used to determine the recency of issues for issue upgrade or downgrade. Use the control date appropriate for the case type, as shown in this chart:

TYPE OF CASE	CONTROL DATE
Applicant	Date of application and/or resume acceptance.
Investigated Applicant or Appointee	Date of investigative form(s).
Employee	Date conduct was first identified as an issue.

- When new issues arise after the original control date, the control date becomes the date of occurrence of the most recent actionable conduct.
- The control date for cases involving an applicant whose previous application was canceled because of pending charges is the date of the most recent application.
- If two or more applications for the same person are received for suitability determination, the control date is the earliest date.

Determining Recency

Issues can be downgraded (converted) due to recency. Downgraded is based on the premise that the less recent the issue, the less serious the concern. Downgrading, hence, reduces the potential for disqualification because of presumed rehabilitation over time. Once an issue has been characterized and its recency established, it then may be downgraded to take into account its age (unless suitability upgrade occurred).

DETERMINING RECENCY			
Ranking	PERIOD IN WHICH ISSUE OCCURRED		
	0-36 months	37-72 months	73-108 months
A	A, no conversion	Downgrades to Non-Issue	Downgrades to Non-Issue
B	B, no conversion	Downgrades to A	Downgrades to Non-Issue
C	C, no conversion	Downgrades to B	Downgrades to A
D	D, no conversion	Downgrades to C	Downgrades to B

NOTE:

Any issue over 108 months becomes a **NON-ISSUE**.

Upgrading Due to Frequency

Issues can be upgraded due to frequency. Upgrading is based on the premise that multiple issues in the same case raise a more serious question of suitability than would a single issue. Thus, the upgrade action is applied when there is more than one recent suitability issue in a given case. When an upgrade occurs due to multiple issues, issues characterized at the lower end of the ranking scale may be elevated to a higher level if they are repeated issues or occur in conjunction with another issue.

FREQUENCY UPGRADE	
FREQUENCY	UPGRADE ACTION
Two Issues in 0 – 36 months	RAISE BOTH ISSUES ONCE (Example A to B)
Three or More Issues in 0 – 36 months	RAISE ALL ISSUES TWICE (Example A to C)

When an individual is charged with multiple crimes based on the same incident, there is no upgrade. Rather, characterize the issue according to the most serious conduct.

Upgrading Due to Risk Designation

Conduct not disqualifying for suitability at the Basic Suitability Adjudication level may be disqualifying when adjudicated in terms of the public trust risk level of the position. The higher the level of public trust, the more serious an issue becomes. Position risk adjudication is only done when the person is being considered for employment or retention in a specific position. This process involves upgrading the seriousness of issues to reflect the greater potential for damage at a higher risk level. The degree of damage that could be caused at a particular level may override previous favorable determinations on basic suitability. For the purposes of position risk adjudication, the most serious issue is the issue to be considered.

POSITION RISK UPGRADE		
Ranking	RISK LEVELS	
	MODERATE	HIGH
A	Remains A	Upgrades to B
B	Remains B	Upgrades to C
C	Remains C	Upgrades to D
D	Remains D	Remains D

ISSUES CHARACTERIZED AT THE D LEVEL UNDER BASIC SUITABILITY ARE NOT SUBJECT TO SUITABILITY RISK UPGRADE SINCE THEY NORMALLY REQUIRE REMOVAL.

Potential for Not Hiring/Removal

Use the following table for a potential employment or retention decision.

POTENTIAL FOR NOT HIRING OR REMOVAL		
	POSITION RISK LEVEL:	
	MODERATE	HIGH
A	Minimal	Minimal/Possible
B	Minimal/Possible	Possible
C	Possible/Probable*	Probable*
D	Required	Required

*It is probable that removal action could occur without some type of assurance in place that the individual will not engage in similar activity.

The decision rests with the Adjudicator who must determine whether the issue warrants disqualification when considered in terms of the damage that could be effected through improper, inadequate, or reduced performance, or violation of trust, in the position.

NEXUS

POSITION PERFORMANCE ADJUDICATION

Evaluating nexus involves an assessment of the present or potential impact of the conduct or issues on the person's efficient service in the position (ability to occupy the position) and the effective performance of others (employees, employing agency, or other agencies). The Adjudicator must determine whether employment or continued employment would protect the integrity and promote the efficiency of the service. The Adjudicator needs to answer the following questions:

Does the conduct or issue result in, or indicate a potential for, improper or inadequate performance or reduced efficiency by the person or others in specific duties and responsibilities?

Does the conduct or issue indicate any immediate or long-term risk to the integrity or efficiency of the service?

Is the person's conduct directly opposed to the agency's mission? (Such as an employee who recently smoked marijuana working for an agency responsible for enforcing drug laws.)

If the answer is **YES** to any of these questions, the person's employment or continued employment may reasonably not be expected to protect the integrity and promote the efficiency of the federal service; the issues must be treated as potentially disqualifying for the position in question.

Examples of Position Performance

POSITION	CONDUCT	DISCUSSION
Bus Driver	Repeated traffic violations	Conduct indicates clear question concerning the proper performance of driving duties.
Mid-Level Position involving advancement potential to management level	1) Discharged from prior employment for cause; and 2) Evidence of alcohol abuse which has prevented the successful performance of job responsibility.	Both issues indicate lack of affirmative qualities of reliability and trustworthiness necessary for employment in a job with management potential.
Correctional Officer at a Detention Center	Negligence or misconduct in prior employment (disruptive behavior and disregard for established rules in the workplace).	Conduct indicates a lack of reliability, good judgment, tact, and respect for authority required for the position.
Law Enforcement Officer with responsibility for protecting lives and enforcing the law	1) Use of a controlled substance; and 2) Denial of prior employment involving discharge for cause.	Conduct indicates clear disregard for law and a lack of honesty and reliability. Person's suitability clearly questionable.
Nursing Assistant at a hospital with access to narcotics and involvement in the treatment of addicts	Conviction for possession and/or sale of controlled substances.	Conviction indicates question concerning proper performance of duties and potential for abuse of the high degree of trust associated with position.

Information contained in this questionnaire is for Official Use Only.
Investigative Questionnaire for a Child Contact Position (Revised 040113)

Notice to Applicant: Section 231 of the Crime Control Act of 1990, Public Law 101-647 (codified in 42 United States Code § 13041), and Section 408 of the Miscellaneous Indian Legislation, Public Law 101-630 (codified in 25 United States Code § 3207) requires a criminal history records check as a condition of employment for positions that involve regular contact with or control over Indian children. This statement is notice that a criminal record check will be conducted as a condition of employment.

1. Full Name				2. Date of Birth		
Last Name	First Name	Middle Name	Jr., II, etc.	Month 00	Day 00	Year 0000
3. Other Names Used – Maiden name, from a former marriage, alias(s), or nickname(s).				4. Social Security Number		
Name						
5. Your Telephone No.		6. Alternate Telephone No.		7. Your Email Address		
()		()				
8. Place of Birth						9. Gender
City		County		State		<input type="radio"/> Male <input type="radio"/> Female
10. Residence – List where you have lived, beginning with the most recent and working back 5 years. All periods in the last 5 years must be accounted for in your list. Include the month and the year in the dates for each residence listed.						
Month/Year	Month/Year	Street Address		City	State	Zip code
1) To PRESENT						
Month/Year	Month/Year	Street Address		City	State	Zip code
2) To						
Month/Year	Month/Year	Street Address		City	State	Zip code
3) To						
Month/Year	Month/Year	Street Address		City	State	Zip code
4) To						
Month/Year	Month/Year	Street Address		City	State	Zip code
5) To						
Month/Year	Month/Year	Street Address		City	State	Zip code
6) To						
11. Residence/Employment in an Indian Community – List any Indian Reservation, Village, Pueblo, Rancheria, and/or Indian community in which you have lived or worked in the last 5 years.						
12. Education – List the schools you have attended, beginning with the most recent and working back 5 years. Use item 25, if more space is needed.						
Month/Year	Month/Year	Name of School			Major	Degree/Diploma/Other
1) To						
Month/Year	Awarded	Street Address and City of School			State	Zip Code
Month/Year	Month/Year	Name of School			Major	Degree/Diploma/Other
2) To						
Month/Year	Awarded	Street Address and City of School			State	Zip Code

Questionnaire continuation				
Last Name	First Name	Middle Initial	Jr., II, etc.	Social Security Number
13. Employment - List your employment activities, beginning with the present and working back 5 years. The 5 year period must be accounted for without breaks. For periods of unemployment, list dates and "unemployed" or "attending school." Include the month and the year in the dates for each employment activity listed.				
Month/Year Month/Year	Employer Name and Phone Number			Position Title
1) To PRESENT				
Employer Street Address		City		State Zip Code
Supervisor's Name	Telephone number ()	Other Employer Reference		Telephone Number ()
Reason you left				

Month/Year Month/Year	Employer Name and Phone Number			Position Title
2) To				
Employer Street Address		City		State Zip Code
Supervisor's Name	Telephone number ()	Other Employer Reference		Telephone Number ()
Reason you left				

Month/Year Month/Year	Employer Name and Phone Number			Position Title
3) To				
Employer Street Address		City		State Zip Code
Supervisor's Name	Telephone number ()	Other Employer Reference		Telephone Number ()
Reason you left				

Month/Year Month/Year	Employer Name and Phone Number			Position Title
4) To				
Employer Street Address		City		State Zip Code
Supervisor's Name	Telephone number ()	Other Employer Reference		Telephone Number ()
Reason you left				

Questionnaire continuation				
Last Name	First Name	Middle Initial	Jr., II, etc.	Social Security Number
14. Personal References – List 5 people who know you well. They should be good friends, peers, roommates, etc., and who have known you for at least the last 5 years. Do not list relatives or anyone who is listed elsewhere else on this application.				
1) Name		Dates Known Month/Year Month/Year To	Telephone Number <input type="radio"/> Work () <input type="radio"/> Cell () <input type="radio"/> Home ()	
Home or Work Address		City	State	Zip Code
2) Name		Dates Known Month/Year Month/Year To	Telephone Number <input type="radio"/> Work () <input type="radio"/> Cell () <input type="radio"/> Home ()	
Home or Work Address		City	State	Zip Code
3) Name		Dates Known Month/Year Month/Year To	Telephone Number <input type="radio"/> Work () <input type="radio"/> Cell () <input type="radio"/> Home ()	
Home or Work Address		City	State	Zip Code
4) Name		Dates Known Month/Year Month/Year To	Telephone Number <input type="radio"/> Work () <input type="radio"/> Cell () <input type="radio"/> Home ()	
Home or Work Address		City	State	Zip Code
5) Name		Dates Known Month/Year Month/Year To	Telephone Number <input type="radio"/> Work () <input type="radio"/> Cell () <input type="radio"/> Home ()	
Home or Work Address		City	State	Zip Code

Military History

15. Have you served in the United States military? If "YES," please provide a copy of your DD214.			YES <input type="checkbox"/>	NO <input type="checkbox"/>
16. Have you <u>ever</u> received other than an honorable discharge from the military? If "YES," provide the circumstances, date of discharge and type of discharge below.			YES <input type="checkbox"/>	NO <input type="checkbox"/>
Month/Year	Type of Discharge	Circumstances		

Questionnaire continuation

Last Name	First Name	Middle Initial	Jr., II, etc	Social Security Number
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Background Information – For all questions, provide all additional required information in the space provided or on a separate sheet. Ensure full name and social security number is on any attachments to this application.

Section 231 of the Crime Control Act of 1990, Public Law 101-647 (codified in 42 United States Code § 13041), and Section 408 of the Miscellaneous Indian Legislation, Public Law 101-630 (codified in 25 United States Code § 3207) requires a criminal history records check as a condition of employment for positions that involve regular contact with or control over Indian children. The following includes questions required by the above referenced citations:

17. In the last 5 years, have you been cited, arrested for, charged with, or convicted of, been imprisoned, been on probation, or been on parole for any offense(s)? Include all offenses where you have been found guilty, pled guilty or nolo contendere (no contest). (Leave out traffic fines of less than \$150.00.)	YES <input type="checkbox"/>	NO <input type="checkbox"/>			
If "YES", use item 22 to provide the date, explanation of violation, place of occurrence, and the name and address of the police department or court involved.					
18. Have you been convicted by a military court-martial in the past 5 years?	YES <input type="checkbox"/>	NO <input type="checkbox"/>			
If "YES," use item 22 to provide the date, explanation of the violation, place of occurrence, and the name and address of the military authority or court involved.					
19. Are you now under charges for any violation of law?	YES <input type="checkbox"/>	NO <input type="checkbox"/>			
If "YES," use item 22 to provide the date, explanation of violation, place of occurrence, and the name and address of the police department or court involved.					
20. Have you <u>ever</u> been cited, arrested for or charged with a crime involving a child?	YES <input type="checkbox"/>	NO <input type="checkbox"/>			
If "YES," use item 22 to provide the date, explanation of the violation, disposition of the arrest(s) or charge(s), place of occurrence, and the name and address of the police department or court involved.					
21. Have you <u>ever</u> been found guilty of, or entered a plea of nolo contendere (no contest) or guilty to, any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children?	YES <input type="checkbox"/>	NO <input type="checkbox"/>			
If "YES," use item 22 to provide the date, explanation of the violation, disposition of the arrest(s) or charge(s), place of occurrence, and the name and address of the police department or court involved.					
22. If you have answered "YES" for any of the above questions in this section, explain your answer(s) below and provide court documentation for the information submitted.					
Month/Year	Offense	Action Taken	Arresting Law Enforcement /Military Agency	State	Zip Code

Questionnaire continuation				
Last Name	First Name	Middle Initial	Jr., II, etc	Social Security Number
23. During the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, or did you leave any job by mutual agreement because of specific problems?				
<p>If "YES," use item 25 to provide the date, an explanation of the problem, reason for leaving, and the employer's name and address.</p>				
24. In the last 5 years have you <u>illegally</u> used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or <u>illegally</u> used prescription drugs?				
<p>If "YES," use item 25 below to provide the date(s) of use, identify the controlled substance(s) and/or prescription drugs used, and the number of times each was used. Include any treatment or counseling received.</p>				
25. Use this space to provide explanations to any of the above questions you have answered "YES" on this questionnaire or for which you need more space.				

Questionnaire continuation				
Last Name	First Name	Middle Initial	Jr., II, etc	Social Security Number
Certification that My Answers are True				
My statements on this application, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that willful omission or a fraudulent answer to any question or item on any part of this application or its attachments may be grounds for not hiring me, or firing me after I begin work, and may be punishable by fine or imprisonment. _____				
Applicant's/Consumer's initials		Date		
I certify that my responses to the above questions are made under penalty of perjury, which is punishable by fine or imprisonment, and that I have received notice that a criminal history records check will be conducted and is a condition of employment. I understand my right to obtain a copy of any criminal history report made available to the Hoopa Valley Tribe , and my rights to challenge the accuracy and completeness of any information contained in the report.				
Applicant's/Consumer's Signature		Printed Name		Date

Authorization for Release of Information

I authorize any investigator, or other duly accredited representative of the agency conducting my background investigation, to obtain any information relating to my activities from individuals, schools, residential management agents, employers, criminal justice agencies, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, and criminal history record information.

I further authorize any investigator, or other duly accredited representative of the **Hoopa Valley Tribe**, who is conducting my background investigation, to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for assignment to, or retention in a position working with children. I understand that I may request a copy of such records as may be available to me under the law.

I authorize custodians of records and other sources of information pertaining to me to release such information upon request of the investigator, or other duly accredited representative authorized above regardless of any previous agreement to the contrary.

I understand that the information released by records custodians and sources of information is for official use by the **Hoopa Valley Tribe** only for the purposes of determining my suitability for employment with the **Hoopa Valley Tribe**.

I forever release, fully discharge, and agree to indemnify, defend and hold harmless the **Hoopa Valley Tribe** and their officers, employees, board members, volunteers, representatives and agents from any and all claims, causes of action, responsibility, liability, damages, losses, costs and expenses of any nature related directly or indirectly to performing such investigations and criminal history checks and using and relying on any information obtained therefrom. Additionally, I forever release, fully discharge, and agree to indemnify, defend and hold harmless any current or former employer or educational institution, and any officer, employee, volunteer, representative or agent thereof, that furnishes written or verbal information about me from any and all claims, causes of action, responsibility, liability, damages, losses, costs and expenses of any nature related directly or indirectly to furnishing such information.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for five (5) years from the date signed or upon the termination of my affiliation with the **Hoopa Valley Tribe**, whichever is sooner.

Signature (sign in black ink)	Printed Name		Date Signed
Position for Which you are being Investigated			Primary Contact Number
Current Address	State	Zip Code	Secondary Contact Number ()