

HANNAHVILLE INDIAN COMMUNITY
BACKGROUND INVESTIGATIONS POLICY

Adopted August 20, 2008
Amended April 6, 2009
Amended July 1, 2013
Amended October 8, 2018

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BACKGROUND INVESTIGATIONS POLICY

History. In accordance with federal law, the Hannahville Indian Community (the “Tribe”) has conducted background investigations in regard to employees of its tribally controlled school (“Hannahville Indian School” and “Nah Tah Wahsh Public School Academy”) and its health center (“Hannahville Department of Health and Human Services”) since 1997. Determinations as to suitability for employment in the school and the health center have applied a minimum federal standard of finding persons employed at those locations as “not suitable for employment” if, under tribal, state or federal law, they had any felony conviction, or two or more misdemeanor convictions that were crimes of: violence; sexual assault; sexual molestation; sexual exploitation; sexual contact; prostitution; crimes against persons; or offenses committed against children. Additionally, since 1994, in compliance with federal law, a more comprehensive background check has been conducted in respect to its law enforcement program (“Hannahville Indian Community Tribal Police Department”).

Review. The Tribal Council has conducted a review of its policies and practices and now decides, as a matter of policy, that, in addition to the federal child care and law enforcement standards that have been applied to its school, health center, and police department, the scope of its background investigations should be enlarged to include positions that are in the nature of public trust.

Intent and Purpose. The intent and purpose of this policy is to further ensure and preserve the continued emotional, physical and financial safety of children, parents, employees, citizens, and guests of the Hannahville Indian Community who reside, are educated, are employed, or are present on Hannahville Indian Community lands, by providing a standardized document so that background investigations and adjudications proceed consistently, fairly, and effectively. This policy will provide that assurance by providing a standardized method of procedure that will be in full compliance with tribal, federal and applicable state law.

Citation of Authorities. In accordance with tribal, federal and applicable state law, and certain contractual relations between the Hannahville Indian Community and its contractors, one or more of the following laws, regulations or executive orders may be applicable to employment and contracting by the Hannahville Indian Community, the Intertribal Council, the State of Michigan, the Nah Tah Wahsh Public School Academy, the Hannahville Indian School, or any other employer whose employees or contractors operate programs or provide services upon Hannahville Indian Community tribal lands: 25 USCA § 3201, *et seq.*, the Indian Child Protection and Family Violence Prevention Act, as amended; 25 USCA § 5301, *et seq.*, the Indian Self-Determination and Education Assistance Act; 25 USCA § 2501, *et seq.*, the Tribally Controlled Schools Grant Act; 34 USCA § 20351, *et seq.*, the Crime Control Act Child Care Worker Employee

Background Checks; 25 CFR § 12 *et seq.*; 25 CFR § 63 *et seq.*, and 45 CFR §1302.90, *et seq.*, additional requirements for Headstart/Early Headstart; regulations developed under authority of 5 USCA § 301; 25 USCA §§ 2, 9, 13, 200, 3201; 34 USCA § 20351; Executive Order 12968, Adjudication Standards as set forth in federal Guidelines A-M relating to Adjudication Standards and Access to Confidential Information for U. S. government agencies and its contractors; 18 USC § 922, Unlawful Acts under the Gun Control Act (a/k/a the Brady Bill); DM-441; MCLA §§ 380.1230; 380.1230a through 380.1230h; and statutes cited within these laws, being MCLA §§ 257.617a; 436.1701; 750.81; 750.81a; 750.81c; 750.81d; 750.90b; 750.90c; 750.136b; 750.141a; 750.145, 750.145d, 750.145n; 750.233; 750.335a; 750.411h; 752.796; 34 USCA §20901 *et seq.*, the Sex Offender Registration and Notification Act (“SORNA”), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (PL 109-248).

Adoption of Authorities. The Hannahville Indian Community Tribal Council specifically adopts the minimum standards imposed by the fore-cited authorities, and as amended from time-to-time, as policy, and incorporates them by reference in this policy as if fully set forth herein. Each authority shall only be applied within the scope of its enactment or as specifically indicated in this policy.

Background Investigation and Adjudication Requirements. Pursuant to the above-cited authorities, and its inherent authority to enact policies and guidelines governing employment on tribal lands, the Tribal Council of the Hannahville Indian Community establishes investigative and adjudication requirements and protocols as set forth in Table-1, entitled “Background Investigation Requirements,” attached. In the event that any conflict should hereafter be shown to exist between Table-1 and applicable statutory, regulatory or administrative law, the authorities cited above shall control.

Investigation Categories. The Tribal Council establishes background investigation requirements in the following categories: child care/vulnerable adult for all employees, board members, and regular volunteers and contractors at the Nah Tah Wahsh/Hannahville Indian School; child care/vulnerable adult for all employees, board members, and regular volunteers and contractors at the Hannahville Health/Behavioral Health Centers; public trust; public trust/fiduciary; public trust/high risk; law enforcement; and foster care parent/guardianship.

Regular Contact or Control Over Indian Children. The Tribal Council specifically finds that all employees, regular contractors and volunteers, public officials serving on boards at the NahTah Wahsh/Hannahville Indian School, and the Hannahville Health/Behavioral Health Centers and foster care parents, occupy positions that permit regular contact or control over Indian children. The level of investigation and adjudication indicated in the adopted authorities and Tables 1 and 2 shall be applied to those positions.

Positions Subject to Background Investigation. As designated in Table-2, attached, entitled “Position Categories,” and as a condition of employment, regularly contracting or volunteering, or service as public officials on boards subject to this policy, all persons

who occupy the indicated positions are subject to the level of background investigation and adjudication shown.

Multiple Categories. Where a position is categorized as being subject to more than one category, or is subject to investigation by more than one statute or regulation, or by the statutes and regulations of more than one jurisdiction, the more restrictive standard shall be applied.

Effect of Funding, Supervision, and Location. All persons who are paid, regularly perform work for, regularly contract or volunteer with, or provide public or professional services in, or from, or at the direction of, or under the supervision of a location that is subject to a particular category of background check, shall be subject to the level of investigation and adjudication required of employees and public officials of that department, location, or position.

Authorization for Forms Development. The Human Resources Department of the Hannahville Indian Community and any Adjudicators appointed by the Tribal Council shall develop forms consistent with the requirements of this policy in order to assure that background investigations and adjudications may proceed fairly, efficiently, and within lawful times and guidelines.

Initiation of Investigation. The Human Resources Department will be responsible for initial investigative procedures, providing notice of the need to submit to fingerprinting and the need to fill out information on applicable forms to those persons who are subject to background investigation. Initially, it is contemplated that verification of current employment with the Hannahville Indian Community, current residence on tribal lands, residences of current employees, and verification of educational credentials will be done by the Human Resources Department. A notice of completion of these parts of the investigative procedure will be supplied to the appropriate adjudicator with the completed file. A professional investigative company may be used to complete aspects of the investigative process.

Adjudication. The adjudicator will only begin the suitability determination when the file is complete unless a statutory bar prohibits further consideration for employment.

Provisional Employment. In some cases, provided that there are no statutory bars to employment, a person may be hired pending a full background investigation and adjudication. The time period during which a person may be employed, contract or volunteer, or provide public service on a subject board varies with the requirements of the laws and regulations applicable to the position. The adopted authorities and the time periods mandated by applicable law will be applied, as required.

After hire or election to a board, and as a matter of federal, tribal, or applicable state law, the time by which an investigation and adjudication must have occurred could be as short as 30 days. At the end of 30 days, or any other required shorter or longer time period, if information is missing, unable to be acquired, or has not been supplied despite timely

request, it may be mandatory that the person being investigated be removed either temporarily or permanently from their position. If so, notice will be provided to the person affected and to his or her supervisor of the need not to return to the facility in which the person has been working.

Employee Cooperation. Persons whose positions are subject to the requirements of this policy must comply within reasonable times established by current law and the Human Resources Department or the Adjudicator. Failure to respond with information within appropriate time periods may result in a delay to the investigation and adjudication; and lay-off or termination, with no further review, may be necessary. Notice will be provided to persons who are subject to this policy as to the time(s) by which information must be supplied.

Continuing Duty to Report. Within 72 hours of its occurrence, and as a condition of continued employment, regularly contracting or volunteering, or public service, all persons whose positions are subject to a background investigation shall be under a continuing duty to truthfully report to their supervisors and to the Adjudicator, any arrests, charges, pleas of no contest or nolo contendere, or conviction, of any criminal offense.

Annual Certification. Annually, all persons occupying positions that are subject to background investigation are required to truthfully affirm on an Affidavit Regarding Criminal History appropriate to the level(s) of background investigation associated with their position, that they have not been arrested, charged, pled no contest or nolo contendere, nor have they been convicted of any crime since the time that their last affidavit so affirmed, or the time that their last background check was completed, whichever is more recent. If the person is not able to so certify, the person shall submit to further investigation and the adjudicator will re-evaluate the person's suitability for continued employment or service.

Public Officials Affidavit. In order for the election process to proceed fairly and efficiently, persons running for boards that are subject to this policy will be required to sign an affidavit affirming that they do not have convictions that would prohibit or disqualify them from service if elected. If a person is running for more than one board and there are different standards for each board, the person shall sign the affidavits that are appropriate to each board. Prior to running for election, a candidate for public office must timely submit an Adjudication Certificate indicating his/her suitability for the public office(s) for which he/she is running.

Re-investigation, Continuous Employment: Nah Tah Wahsh/Hannahville Indian School; Health/Behavioral Health Centers; Law Enforcement. Provided that a person has been continuously employed by the Hannahville Indian Community, re-investigations shall be done every 5 years for all persons who are paid, regularly perform work for, regularly volunteer, or provide public or professional services in, or from, or at the direction of the above-named locations. Re-fingerprinting will only be done if necessary to obtain information not otherwise available from public records.

Investigation: New Hires and Transfers to Nah Tah Wahsh/Hannahville Indian School; Health/Behavioral Health Centers; Law Enforcement. All new hires and transfers to the above facilities, who have not been continuously employed by the Hannahville Indian Community, whether or not they have had a break in service as defined by applicable Michigan law, (MCLA §§ 380.1230(11)(a), 380.1230(12)), shall submit to a full background check consistent with the level of risk assigned to their position. If fingerprinting is necessary to obtain information not otherwise available from public records, and previous fingerprinting has not been done more recently than 4 ½ years, new fingerprinting may be done in regard to these new hires or transfers even though they have been fingerprinted within 5 years.

Head Start and Early Head Start. : In accordance with 42 USC §9843a(g)(3)(A) “Before a Head Start agency employs an individual, such agency shall...obtain...a State, tribal, or Federal criminal record check covering all jurisdictions where the grantee provides Head Start services to children” or (B) “as required by the law of the jurisdiction where the grantee provides Head Start services;” or (C) “a criminal record check as otherwise required by Federal law.” (Sec. 648A of Head Start Act, effective date December 12, 2007.

Therefore, where the Tribe operates its Head Start and Early Head Start programs pursuant to a sub-contract with Inter-Tribal Council of Michigan, Inc., (“ITC”), as the federal grantee funding Agency, it will not allow a prospective employee to start work until notified by ITC that the person has been cleared according to ITC standards, which include a search of the Michigan State Police Internet Criminal History Access Tool (ICHAT), and central and sex offender registry clearances.

Also, before beginning work, and provided that the prospective employee has not been initially found by ITC to have prohibitive arrests or convictions, the prospective Head Start or Early Head Start employee will be required to be fingerprinted and will fill out the Hannahville Indian Community Background Investigation Questionnaire. Continued employment will be conditioned upon a final adjudication finding of suitability for employment pursuant to applicable law and regulation under this Policy. Substitute employees and volunteers will also be cleared according to ITC and tribal standards or will not be permitted to work.

Re-investigation, Continuous Employment, Head Start and Early Head Start: Head Start and Early Head Start and Child Care employees will be required to comply with all other aspects of this Policy and will annually sign the Affidavit regarding Criminal History. However, in accordance with current applicable law, all Child Care and Head Start, Early Head Start employees will re-investigated every 5 years, unless required sooner, as a matter of federal or other applicable law.

Re-investigation: Public Trust Positions. There will be no automatic re-investigation provided that a person has been continuously employed by the Hannahville Indian Community, has truthfully signed the annual affidavit regarding criminal activity, and has not been arrested, charged, pled no contest or nolo contendere, nor has been convicted of

any crime since the time his or her last affidavit so affirmed. Re-investigation will, however, be done to the extent that it is necessary because of a change between levels of public trust.

“Continuously employed.” for purposes of this policy means that the person has continuously worked within the Hannahville Indian Community without a break in service of 6 months or more, in a position that is subject to this policy and has had an investigation and adjudication done that is appropriate to his or her position.

Misrepresentation. Misrepresentations may be cause for withdrawal of an offer of employment, termination after hire, censure, removal from a board, or other discipline, depending on the nature and seriousness of the misrepresentation. Misrepresentation shall be treated as derogatory evidence, and if it is likely to result in a finding of unsuitability for employment, the individual will be contacted and will be given a reasonable opportunity to explain, or refute the misrepresentation.

Appointment of Trained Adjudicator(s). From time to time, the Tribal Council of the Hannahville Indian Community, in accordance with federal, tribal and applicable state law, will appoint appropriately trained individuals to act as adjudicators. Appropriately trained individuals will include persons who can demonstrate significant knowledge and familiarity with court systems and the laws of various jurisdictions, including, but not limited to, the laws of the Hannahville Indian Community, laws of the State of Michigan, other tribal laws, federal laws, regulations and Executive Orders, and who have completed training approved by the United States Department of the Interior, Bureau of Indian Affairs.

Adjudication Duties; Finality of Adjudication. The adjudicator shall timely perform adjudications of completed files according to mandated federal, tribal and applicable state standards. Provided that the adjudicator has performed all of the evaluations required, his or her decision as to suitability shall be final. The only review that shall be permitted is to review the record to see that all information necessary and requested was supplied and that appropriate notices and timelines were adhered to.

Suitability, Unsuitability for Employment. In accordance with federal, tribal and applicable state law, a finding of suitability or unsuitability for employment will be issued by the adjudicator. Certain statutes and this policy require that a person cannot be employed in certain positions or at certain locations if a person has certain convictions, no matter how old the conviction.

Statutory Bar. If a statutory bar prohibits employment because of convictions in certain categories, a reasonable opportunity will be given for the person being investigated to correct or refute any incorrect information before adjudication is final. Examples of such correction could include, but shall not be limited to, the presentation of written or other official documentary evidence that the person is not the person who was convicted; the person has been pardoned by the jurisdiction in which he or she was convicted; the record

should have been expunged by the convicting jurisdiction; the conviction was improperly entered or retained in the public record.

Unfavorable or Other Incorrect Information. If it appears that the adjudication will likely result in a finding of unsuitability for employment due to other arrests or convictions, or conduct or character considerations or patterns, in spite of there being no statutory bar, the person being investigated will be provided a reasonable opportunity to explain, deny, or refute unfavorable and incorrect information gathered in the investigation.

Costs of Investigation/Adjudication. Costs of investigation and adjudication will be reviewed by the Tribal Council from time-to-time, and some portion of the cost may be required to be passed on to those who are subject to the policy. The Council will consult with appropriate committees and staff in regard to the methods by which the cost of the required investigation and adjudication may best be handled by the Tribe.

Definitions. These definitions shall serve as guidelines to the implementation of this policy, and for general information purposes, but shall not be construed so as to limit the ability of an investigation and adjudication to proceed. If in conflict, these definitions shall be superceded by applicable law and shall have the meanings required by such law.

Adjudication. An examination of a person’s conduct over time, resulting in a favorable or unfavorable determination of their employment suitability, including, but not limited to, their eligibility to have access to classified, sensitive, or confidential information, materials, or areas, or for their retention in employment.

Adjudicator. The person authorized to make an official decision of employee suitability.

Adjudicative Guidelines. The adjudicative guidelines established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees.

Child Care Standard. Child care standard refers to the level of background investigation and adjudication as required by applicable law and this policy.

Control Date. The date used to determine the recency of issues for issue upgrade or downgrade.

Conviction. A finding of guilt by judge, magistrate, hearing officer or jury. Pleas of no contest and nolo contendere under the laws of any jurisdiction shall be considered to be a conviction.

<u>Days.</u>	Calendar days.
<u>Derogatory Information.</u>	Information which potentially justifies an unfavorable suitability adjudication; such information may prompt a request for additional investigation or clarification for resolution of an issue.
<u>Downgrade.</u>	Change from a higher to a lower level of risk.
<u>Efficiency, Integrity & Efficiency Of Service.</u>	A standard that considers aspects of a person's character or conduct which impacts, prevents, jeopardizes, or interferes with (1) the person's completing their position's duties and responsibilities, or (2) the employing agency's completing its mission or program.
<u>Embezzlement.</u>	As defined by the laws of a charging jurisdiction, but generally understood to mean the unlawful conversion of entrusted funds or property to a person's own use, contrary to the owner's interest.
<u>Employee.</u>	Employee shall include, but not be limited to, regular contractors and volunteers, and public officials.
<u>Employment.</u>	Employment shall include, but not be limited to, full and part-time employment, regularly contracting or volunteering, and service by public officials on tribal boards.
<u>Factor.</u>	An issue involving a person's character, conduct or habits.
<u>Fiduciary.</u>	One who must exercise a high standard of care, trust and good faith in respect to the affairs of another, or when acting as the agent in regard to the affairs of another.
<u>Frequency.</u>	At least 3 instances of similar conduct within 3 years.
<u>High Court Misdemeanor.</u>	A conviction of a high court misdemeanor may be considered a felony or a misdemeanor as a matter of State law. High court misdemeanors are offenses that in the State of Michigan carry a potential penalty of up to two years of incarceration and are tried before the circuit courts of the state. Categorization of a conviction as either a felony or a misdemeanor is based on the categorization of the underlying offense charged as a matter of State law.
<u>High Risk.</u>	A final position designation assessment reflecting the potential for exceptionally serious impact, critical to an agency program or mission or the integrity and efficiency of the service being offered.
<u>Inquiry.</u>	An investigative coverage method in which a written letter or questionnaire is sent by mail. The recipient is not necessarily required to

complete and return the query, but any indicated action will be indicated on the inquiry.

- Judgment. Ability to determine the proper course of action.
- Jurisdiction. The limits within which an authority can be exercised or asserted.
- Material, Intentional False Statement. A deliberate and untrue statement capable of influencing, or having a natural tendency to have an effect on, an official decision.
- Major Risk. Issue, standing alone, WOULD be disqualifying and will likely result in an unfavorable adjudication.
- Minor Risk. An issue, standing alone, WOULD NOT be disqualifying.
- Misrepresentation. A material untrue statement that may or may not be intentional, and is capable of influencing, or having a natural tendency to have an effect on, an official decision.
- Mitigating Information. Additional information that lessens/resolves the security concern.
- Moderate Risk. An issue, standing alone, or a final position designation assessment reflecting the potential for moderate to serious impact on an agency program or mission or the integrity and efficiency of the service, but may not result in an unfavorable adjudication.
- Nexus. A direct or logical connection between a person's behavior and a position's duties and responsibilities or authorities.
- Pattern. At least 3 instances of similar conduct.
- Performance. The ability to perform specific duties efficiently and effectively,
- Personnel Investigation. A background investigation through written, electronic, telephone, or personal contact to determine the suitability, eligibility, or qualifications of a person for employment, work on contracts, or national security matters.
- Public Trust. The category of positions, at minor or low, moderate, or high risk levels, meeting suitability and computer ADP position designation criteria, involving a significant degree of public trust. Such positions may include handling small amounts of money to positions that include policy making, and/or that require handling, or having access to, or authorizing expenditures of significant sums of money, originating from

federal, state, or tribal sources, and that have substantial impact on the mission of one or more tribal agencies or the whole Tribe.

- Recent. Conduct within the last 3 years.
- Referral. The submission of an employment application to an adjudicative authority for initial suitability adjudication; the Human Resource Department's submission of a suitability case to the adjudicating official.
- Responsibility. The duties, powers, decisions or actions making an agency or individual accountable, answerable, or liable.
- Risk Designation. An assessment (minor, moderate, or high) of a position to determine its potential for adverse impact on the integrity and efficiency of the agency, department, or the Tribe.
- Security Concern. Presence of derogatory information not yet resolved by an adjudicator.
- Substantial Risk. Issue, standing alone, may ALMOST CERTAINLY be disqualifying.
- Statutory Bar. A law that prohibits employment or placement regardless of circumstances.
- Suitability. A person's identifiable character traits and past conduct, leading to a determination of fitness and eligibility to work in, or conduct the responsibilities of a position in an effective and efficient manner.
- Unfavorable Adjudication. The final determination that results in adverse action relative to a person's employment suitability, retention in a sensitive or public trust position, access to national security information, materials, confidential information or areas, or incumbency in a sensitive position.
- Upgrade. Change from a lower to a higher level of risk.
- Vulnerable Adult. Vulnerable adult shall be as defined by the Vulnerable Adult Protection Code of the Hannahville Indian Community, Title IV, chapter 5.

Adopted by the Tribal Council of the Hannahville Indian Community on August 20, 2008, in Special Session.

**Amended and Updated on April 6, 2009.
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