

FOND DU LAC ORDINANCE #13/94, AS AMENDED

Non-Gaming Character Investigations and Employment Prohibitions

Adopted by Resolution #1199/94 of the Fond du Lac Reservation Business Committee, dated May 26, 1994.

Amended by Resolution #1000/99 of the Fond du Lac Reservation Business Committee, dated January 5, 1999.

Amended by Resolution #1370/99 of the Fond du Lac Reservation Business Committee, dated October 7, 1999.

Amended by Resolution #1349/02 of the Fond du Lac Reservation Business Committee, dated December 3, 2002.

Amended by Resolution #1366/07 of the Fond du Lac Reservation Business Committee, dated August 28, 2007.

Amended by Resolution #1018/09 of the Fond du Lac Reservation Business Committee, dated January 13, 2009.

Amended by Resolution #1088/09 of the Fond du Lac Reservation Business Committee, dated March 5, 2009.

Amended by Resolution #1364/17 of the Fond du Lac Reservation Business Committee, dated October 10, 2017.

Amended by Resolution #1195/18 of the Fond du Lac Reservation Business Committee, dated July 17, 2018.

Amended by Resolution #1058/21 of the Fond du Lac Reservation Business Committee, dated February 10, 2021.

Amended by Resolution #1128/21 of the Fond du Lac Reservation Business Committee, dated March 24, 2021

Amended by Resolution #1230/21 of the Fond du Lac Reservation Business Committee, dated June 2, 2021.

Amended by Resolution #1031/22 of the Fond du Lac Reservation Business Committee, dated January 26, 2022.

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Section 101 Authority

This Ordinance is enacted pursuant to the authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as such authority is granted by Article VI of the Revised Minnesota Chippewa Tribe Constitution and is recognized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and in accordance with its responsibilities under the Indian Child Protection and Family Violence Prevention Act of 1990, Public Law 101-630, as codified at 25 U.S.C. § 3201 et seq.

Section 102 Purpose

The purpose of this Ordinance is to assure that the programs and enterprises of the Fond du Lac Band are administered and managed in a manner which is consistent with, and conducive to, the Reservation Business Committee's commitment to the prevention of child abuse on the Fond du Lac Reservation, through the establishment of standards for the character investigation of any individual who is employed by the Reservation Business Committee or one of its corporate subdivisions in a position which involves contact with or control over children, and according to standards which are at least as stringent as those required by the United States under the Indian Child Protection and Family Violence Prevention Act of 1990, 25 U.S.C. § 3201 et seq.

Section 103 Definitions

1. **"Child"** shall mean any individual who (a) is not married and (b) has not attained eighteen (18) years of age.
2. **"Child abuse"** shall include, but is not limited to --
 - a. Any case in which --
 - (1) A child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and
 - (2) Such condition is not justifiably explained or may not be the product of an accidental occurrence; and
 - b. Any case in which a child has been subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.
3. **"Child neglect"** shall include, but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under

circumstances which indicate that the child's health or welfare has been harmed or threatened thereby.

4. **"Crimes against persons"** shall include, but is not limited to, manslaughter, murder, kidnapping, robbery, burglary, assault, exploitation, or threats of violence.
5. **"Family violence"** shall mean any act, or threatened act, of violence, including any forceful detention of an individual, which --
 - a. Results, or threatens to result, in physical or mental injury, and
 - b. Is committed by an individual against another individual --
 - (1) To whom such person is, or was, legally related by blood or by marriage; or
 - (2) With whom such person is, or was, residing.
6. **"Fond du Lac Reservation"** shall include all land within the boundaries of the Fond du Lac Reservation and all land over which the Reservation Business Committee has regulatory control or which is validly set apart by the United States for the use and/or benefit of the Fond du Lac Band.
7. **"Local child protective services agency"** shall mean an agency of the United States, the Fond du Lac Band, or the State of Minnesota that has responsibility for child protection within the Fond du Lac Reservation or within the programs of the Reservation Business Committee.
8. **"Local law enforcement agency"** shall mean an agency of the United States, the Fond du Lac Band, or the State of Minnesota which has responsibility for the investigation of an instance of alleged child abuse within the Fond du Lac Reservation.
9. **"Prostitution"** shall mean engaging or offering to engage for hire in sexual contact or sexual intercourse.
10. **"Reservation Business Committee"** shall mean the government of the Fond du Lac Band of Lake Superior Chippewa.
11. **"Sexual assault"** shall include any act of nonconsensual sexual conduct against another person, including rape, incest, molestation or sodomy.
12. **"Sexual contact"** shall include any act of intentional nonconsensual touching of another person's intimate bodily parts, including the primary genital areas, groin, inner thigh, buttocks, or breast.

Section 104 Affected Positions and Categorization of Positions

The Reservation Business Committee shall compile and maintain a list of all employment and volunteer positions within the programs of the Reservation Business Committee or within the enterprises that are wholly owned and controlled by the Fond du Lac Band whose duties and responsibilities involve children. Each position whose duties and responsibilities involve children shall be categorized as child-related class A or “CA,” child-related class B or “CB”, or child-related class C or “CC” based on the frequency of contact and the level of responsibility.

Child-related class A or “CA” positions involve the highest frequency of contact and the highest level of responsibility and are positions that either involve regular contact with or control over children or require supervision of positions that involve regular contact with or control over children. The Fond du Lac Reservation Business Committee does hereby designate a position as “CA” if and only if it is in one of the following categories: all Fond du Lac Ojibwe School positions, including school board positions; all Head Start positions; all service provider and administrator positions at the Human Services Division with the exception of adult treatment program employees; and the executive director for tribal programs

Child-related class B or “CB” positions are positions that do not involve regular contact with or control over children but still involve a relatively high frequency of contact with or responsibility over children.

Child-related class C or CC positions are positions whose duties involve children but the frequency of contact with children or responsibility over children is minimal.

The Reservation Business Committee shall compile and maintain a list of all employment and volunteer positions within the programs of the Reservation Business Committee or within the enterprises that are wholly owned and controlled by the Fond du Lac Band which do not require a gaming license and which are not classified as child-related positions. Each of these non-child related positions shall be categorized as NA, NB, or NC based on the degree of public trust placed in the position and on the level of responsibility for the position, with NA involving the most trust or responsibility and NC involving the least.

The Reservation Business Committee shall update the list of affected child-related and non-child related positions as necessary to achieve the purposes of this Ordinance.

Section 105 Background Investigations

1. **Conduct of Investigation.** For any affected position in the list to be compiled and maintained under Section 104 of this Ordinance, the Employee Compliance Department shall conduct a background character investigation of any current employee who is employed in such a position and of any finalist applicant or volunteer for any such affected position whose offer of employment shall be contingent upon satisfaction of such background check.

2. **Scope of Investigation.**

- a. For CA, applicants shall be subject to a pre-employment criminal history investigation, fingerprinting, and a national sex offender registry (NSOR) check. In addition, applicants for CA positions shall be subject to the additional adjudication procedures described in Section 111.
- b. For NA positions, applicants shall be fingerprinted and shall be subject to a criminal history investigation.
- c. For all other positions, applicants shall be subject to a criminal history investigation.
- d. Written documentation of those contacts shall be made and maintained in accordance with Section 106 of this Ordinance.

Section 106 Data Management

All data gathered in the performance of investigations under this Ordinance shall be regarded as private and shall be maintained by the Employee Compliance Department in a strictly confidential manner consistent with the data privacy policies of the Reservation Business Committee, and shall be retained for a period of ten (10) years.

Section 107 Employment Prohibitions

- 1. **Prohibitory Crimes.** No employee in, or applicant or volunteer for a CA or NA position as defined under Section 104 of this Ordinance shall be employed or be permitted to retain employment if the background investigation for that applicant, employee or volunteer has revealed that the applicant, employee or volunteer has been found guilty of, or has entered a plea of nolo contendere or guilty to, any offense under federal, state or tribal law involving crimes of the following nature:
 - a. Family violence;
 - b. Child abuse;
 - c. Child neglect;
 - d. Sexual assault;
 - e. Sexual contact;
 - f. Prostitution;
 - g. Crimes against persons, including all forms of assault, murder, manslaughter, robbery, kidnapping, false imprisonment or abduction;
 - h. Any gross misdemeanor or felony involving theft, fraud or misrepresentation, including refusal to submit to an implied consent chemical test, within the preceding 5 years; or
 - i. Any drug related offense within the preceding 5 years.

Omissions or misrepresentations in the employment application process concealing any of the above crimes shall similarly be treated as prohibitory under this section.

2. In addition to the categorical prohibitions listed under subsection 1, the Employee Compliance Department shall report to the Reservation Business Committee in executive session any information relating to an applicant, employee or volunteer which may indicate whether that person's criminal record, reputation, habits or associations present a threat to the welfare of children or the Band or otherwise make that person unsuitable for a child-related position or other employment with the Band. For positions other than CA and NA positions, the Employee Compliance Department shall include reports of any information that would be prohibitory for a CA or NA position under subsection 1. Upon the receipt of such information, the Reservation Business Committee shall decide upon the suitability of that applicant, employee or volunteer for employment or continued employment with the Fond du Lac Band.

3. **Current Employees.**

a. Any current employee whose continued employment is prohibited under this Section shall be immediately discharged, unless the Reservation Business Committee has by motion extended that employee's employment for a period not to exceed sixty (60) days, during which time the employee shall complete a petition for recognition of suitability in accordance with Section 110 of this Ordinance. In exceptional circumstances, the Reservation Business Committee may grant an additional extension of time, not to exceed sixty (60) days, where the employee has demonstrated an ongoing good faith effort to complete the petition requirements under Section 110. This Section does not apply to an employee who failed to disclose the prohibitory crime on his or her application.

b. Any current employee who is charged with a crime that, if convicted, will render the employee ineligible for employment under Section 107(1) shall be suspended from employment without pay. If the employee is cleared of the charges within ninety (90) days, the employee shall be reinstated to his or her position if that position is still open. If the employee remains suspended for a period longer than ninety (90) days, the employee shall be discharged.

c. If after commencement of employment, the Employee Compliance Department receives information that a current employee's background raises concerns about the employee's continued suitability under Section 107(2), the Employee Compliance Department shall place the matter on the executive session agenda of the Reservation Business Committee for a determination of the individual's continued employment.

d. Any current employee who is discovered to have an outstanding arrest warrant, for reasons not already covered by subsection 3(b), shall be immediately suspended. The employee shall be notified of such suspension in writing, and such notice shall inform the employee that he or she has thirty (30) days to remove the warrant and that if, after thirty (30) days the warrant is still outstanding, his or her employment with the Fond

du Lac Band shall be terminated. The employee shall not receive regular pay during the suspension, but may use accrued annual leave or paid time off. If, after thirty (30) days from the date of notice, the warrant is still outstanding, the employee's employment shall be terminated.

4. **Applicants.**

- a. Applicants for a position whose employment is prohibited under subsection 107(1) shall be ineligible for such employment, unless the applicant submits a Petition for Recognition of Suitability under Section 110 and the petition is granted.
- b. Applicants for a position whose employment is prohibited under subsection 107(2) shall be ineligible for such employment.
- c. An applicant for a position who is charged with a crime that, if convicted, will render the employee ineligible for employment under Section 107(1) is ineligible for such employment while the charge is open. For purposes of this Ordinance, a charge is no longer deemed "open" if it is subject to a non-prosecution agreement, a deferred prosecution agreement, a deferred sentencing agreement, or a similar resolution of the charge.
- d. An applicant for a position who has an outstanding arrest warrant shall be ineligible for employment while the arrest warrant is outstanding.

5. **Inadvertent Omission of a Prohibitive Crime Over 10 Years Old.** When the Reservation Business Committee has determined that an applicant or current employee has inadvertently and unintentionally neglected to disclose a prohibitory conviction that is more than 10 years old, the RBC may grant a temporary exemption from the disqualification for employment under this section, provided that such applicant or employee must submit a petition for recognition of suitability pursuant to Section 110 of this Ordinance within 60 days of the temporary exemption.

Section 108 Notice to Applicant, Employee or Volunteer of Adverse Determination

Upon an adverse determination respecting an applicant or employee under this Ordinance, such applicant or employee shall immediately be notified in writing that an investigation has been conducted pursuant to this Ordinance, of the general findings of that investigation, and of the adverse consequences of the investigation for the applicant or employee's employment in the affected position. Particular investigative findings or the identification of sources shall not be disseminated to the applicant or employee at any time, nor at any time shall an applicant or employee be permitted to obtain or to copy any of the data gathered by an investigation undertaken under this Ordinance. Notice which is sent to an applicant or employee pursuant to this Section shall inform the applicant or employee of the right to appeal the determination made regarding their employment in accordance with the provisions of Section 109.

Section 109 Right of Appeal

Upon receiving notification pursuant to Section 108 of this Ordinance, an applicant, employee or volunteer shall be given the opportunity to appeal an adverse decision made in their respect as follows:

1. **Current Employees.** A current employee shall have the right to grieve the adverse employment decision in the manner prescribed under the applicable personnel policies governing the affected position.

2. **Applicants or volunteers.** An applicant or volunteer for an affected position who is denied employment or the opportunity of service due to a determination made pursuant to this Ordinance may appeal such determination in a closed hearing before the Fond du Lac Executive Director. The applicant or volunteer may be represented in that hearing by an attorney or a lay representative. The Executive Director may be assisted by any person who is deemed to be necessary to the hearing. During the hearing, the applicant or volunteer shall be informed of the results of the background investigation conducted under Section 105 of this Ordinance. The applicant or volunteer may at this time be permitted to review such documentation of the findings of the investigation, and may be notified of their source, but shall not be allowed to photocopy or otherwise be availed of such documentation. The applicant or volunteer shall then be given an opportunity to dispute the findings of the investigation or the relevance of the findings to the position held or applied for, but must demonstrate that the employment decision made in their respect has been arbitrary or clearly erroneous. Following the hearing, the Executive Director shall inform the applicant or volunteer of his or her conclusions, and whether the applicant or volunteer shall be reconsidered. The decision of the Executive Director shall be final, except that the applicant or volunteer may submit a Petition for Recognition of Suitability in accordance with Section 110 of this Ordinance.

Section 110 Rehabilitation of Individuals

1. **Petition for Recognition of Suitability.** Any individual applicant, employee or volunteer who is otherwise prohibited from employment under Section 107(1) of this Ordinance shall have the right to submit a "Petition for Recognition of Suitability for Employment in Child-Related Positions," the form for which is attached to this Ordinance as Appendix A.

2. **Review of Petition.** Upon completion of the Petition, the applicant, employee or volunteer shall submit the Petition to the Employee Compliance Department, who shall evaluate the Petition in accordance with the criteria set forth under subsection (4) of this section and shall make the appropriate recommendation to the Reservation Business Committee in Executive Session.

3. **Barred Petitions.**
 - a. No Petition for Recognition of Suitability under this Ordinance may be granted for a child-related class A or "CA" position if the applicant, employee or volunteer has been

found guilty of, or entered a plea of nolo contendere 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, unless a pardon, expungement, set aside, or other court order reaches the plea of guilty, plea of nolo contendere, or the finding of guilt .

- b. No Petition for Recognition of Suitability under this Ordinance may be granted if the applicant, employee, or volunteer is prohibited from employment or is suspended based on an open charge or a warrant. For purposes of this Ordinance, a charge is no longer deemed “open” if it is subject to a non-prosecution agreement, a deferred prosecution agreement, a deferred sentencing agreement, or a similar resolution of the charge.
- c. If a Petition is submitted that would be barred under this subsection, the Petition will be summarily denied and will not be presented to the Reservation Business Committee for consideration.

4. **Evaluative Standards in Reviewing Petition.** In reviewing a Petition for Recognition of Suitability under this Ordinance, the following evaluative criteria shall be applied:

- a. The prior conduct of the applicant, employee or volunteer must be considered in light of the following criteria:
 - (1) The nature and seriousness of the conduct in question;
 - (2) The recency and circumstances surrounding the conduct;
 - (3) The age of the individual at the time of the conduct;
 - (4) Societal conditions that may have contributed to the conduct;
 - (5) The probability of continued conduct of this type; and
 - (6) The individual’s commitment to rehabilitation and a change in this type of behavior.
- b. Each case must be evaluated 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.
- c. The suitability evaluation must be undertaken in a manner which ensures that placement of the applicant or employee in the affected position will not create a risk to others and will not inhibit other employees from performing their functions.

5. **Presentation and Recommendation to the Reservation Business Committee.** Upon the completion and initial review of the Petition for Recognition of Suitability, the Employee Compliance Department shall present the Petition to the Reservation Business Committee in duly-convened executive session, and shall be prepared to provide a recommendation as to the suitability of the individual applicant, employee or volunteer if requested by the Reservation Business Committee. The Reservation Business Committee shall by vote

determine whether to grant the individual's Petition, and its decision on the matter shall be final and unappealable.

6. **Future Employment.** A petition or employment approval granted by the Reservation Business Committee shall extend to future employment of the individual in child-related positions with the Fond du Lac Band, but shall be immediately invalidated if the applicant has failed to disclose prohibitive convictions which existed prior to submitting the Petition, or if the applicant is subject to subsequent prohibitive convictions. If the petition or employment approval is granted only for specified positions, then the grant shall only extend to future employment in those specified positions. If the petition or employment approval is granted to a category of positions (CA, CB, CC, NA, NB, or NC), then the grant shall extend to future employment in any position within the category.

Section 111 Adjudication for CA Positions

1. **Provisional Hiring.** If an employee is hired for a CA position before the adjudication process described in this section is completed, the employee will be required to enter into a provisional hiring agreement. The agreement will require the provisionally-hired employee to be supervised by an adjudicated employee whenever the provisionally-hired employee is around children. A provisionally-hired employee must fully cooperate with the adjudication process described in this section. If a provisionally-hired employee fails to meet deadlines set by the Employee Compliance Department for providing information necessary for the adjudication, the Employee Compliance Department is authorized to suspend or discharge the employee.
2. **Supplemental Questionnaire.** The Employee Compliance Department shall provide each subject being adjudicated for a CA position with the "Fond du Lac Band of Lake Superior Chippewa Supplemental Questionnaire for CA Positions." The subject is required to completely fill out the form, even though some of the information may have been included on an employment application.
3. **Supervisory Reference Checks.** Based on the employment information provided in the Supplemental Questionnaire for CA Positions, the Employee Compliance Department shall conduct supervisory reference checks covering the subject's past year of employment. If the subject has been unemployed, personal reference checks may be substituted to ensure the entire period is accounted for. If derogatory employment information exists, checks should be expanded to include additional checks as needed to adequately evaluate the subject's past performance.
4. **Employment Checks.** Based on the employment information provided in the Supplemental Questionnaire for CA Positions, the Employee Compliance Department shall conduct employment verification for the past 5 years of employment. The employment verification shall confirm dates of employment, inquire about any employment misconduct, and confirm the reason for separation. If an individual has been unemployed, personal reference checks may be substituted to ensure the entire period is accounted for.

If derogatory employment information exists, checks should be expanded to include additional checks as needed to adequately evaluate a subject's past performance.

5. **Criminal History Records Checks.** Based on the fingerprints taken, the Employee Compliance Department shall obtain a criminal history records check through the National Crime Information Center database. Based on the employment information provided in the Supplemental Questionnaire for CA Positions, the Employee Compliance Department shall conduct tribal local law enforcement inquiries and state law enforcement inquiries based on the individual's five-year residence history. If any new convictions are discovered, the information shall be handled in accordance with Sections 107 to 109.
6. **Omissions and Dishonest Answers.** The Employee Compliance Department must review each employment application and each supplemental questionnaire and compare the information provided with the results of written searches, criminal history checks and other completed inquiries. If the subject has omitted information, has made a false statement, or has committed fraud in obtaining employment, this shall be treated as derogatory information and may be the basis for disqualifying the subject.
7. **Due Process Rights.** Whenever derogatory information is found, the Employee Compliance Department must provide the subject with a summary of the derogatory information and afford the subject an opportunity to explain, deny, or refute unfavorable and incorrect information before the adjudication is final. Adjudicating officials may not release the actual background investigation report, but they may issue a written summary of the information. All information received must be reviewed and considered prior to making a determination.
8. **Case Summary.** Based on the investigation, the Employee Compliance Department must determine if the subject's background will present a risk to the school and children based on the following considerations:
 - 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 to the behavior in question.

In order to document this determination, the Employee Compliance Department must prepare a case summary worksheet showing how/what issues were evaluated, how additional considerations were applied, and how it was determined if the subject's background will present a risk to the school and children.


9. **Adjudication.** If the Employee Compliance Department determines that the subject's background will not present a risk to the school and children, then the Employee Compliance Department shall issue a certificate of adjudication. The certificate shall be valid for five years from the date of issuance and current employees must be recertified every five years.

Section 112 Construction

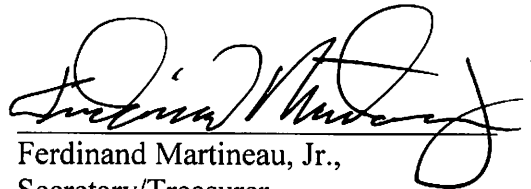
The provisions of this Ordinance shall be construed in a manner which gives effect to its purposes as defined under Section 102, and shall be given priority wherever there are inconsistencies between this Ordinance and any other law, regulation or policy of the Reservation Business Committee or its corporate subdivisions.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #13/94, was duly presented and adopted by Resolution #1199/94 by a vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on May 26, 1994, on the Fond du Lac Reservation, and subsequently amended by Resolution #1000/99 on January 5, 1999; by Resolution #1370/99 on October 7, 1999; by Resolution #1349/02 on December 3, 2002; by Resolution #1366/07 on August 28, 2007; by Resolution #1018/09 on January 13, 2009; by Resolution #1088/09 on March 5, 2009; by Resolution #1364/17 on October 10, 2017; by Resolution #1195/18 on July 17, 2018; by Resolution #1058/21 on February 10, 2021; by Resolution #1128/21 on March 24, 2021; by Resolution #1230/21 on June 2, 2021; and by Resolution #1031/22 on January 26, 2022.



Kevin R. Dupuis, Sr.,
Chairman



Ferdinand Martineau, Jr.,
Secretary/Treasurer