

FOND DU LAC ORDINANCE #13/94, AS AMENDED

CHARACTER INVESTIGATIONS AND EMPLOYMENT PROHIBITIONS FOR
EMPLOYEES OF THE FOND DU LAC RESERVATION BUSINESS COMMITTEE
WHOSE POSITIONS INVOLVE CONTACT WITH OR CONTROL OVER CHILDREN

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.

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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

The Reservation Business Committee shall compile and maintain a list of all employment 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 regular contact with or control over children. The Reservation Business Committee shall update the list of affected 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 Division Director or Enterprise Manager for the affected position 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.** Investigations shall involve, at minimum, inquiries to every relevant local child protective services agency and local law enforcement agency within the geographical region where the applicant or employee has resided within the past ten (10) years. Written documentation of those contacts shall be made and maintained in accordance with Section 106 of this Ordinance.

Section 106 Data Management

Upon the completion of each investigation conducted pursuant to Section 105, the Division Director, Enterprise Manager or designee shall inform the Fond du Lac Executive Director of the results of the investigation and shall make the appropriate employment recommendation. All data gathered in the performance of investigations under this Ordinance shall be regarded as private and shall be maintained by the relevant Division Director, Enterprise Manager or designee 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, an affected 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 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 Human Resources Department, Division Director or Band investigative office 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 otherwise make that person unsuitable for a child-related position. 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 in a child-related position with the Fond du Lac Band.

3. **Current Employees.** 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.
4. **Applicants.** Applicants for employment whose employment is prohibited under this Section shall be immediately withdrawn from consideration for such employment.
5. **Volunteers.** Volunteers who are prohibited under this Section shall not be utilized for functions involving contact with or control over children.
6. **Inadvertent Omission of a Prohibitive Crime Over 10 Years Old.** When the Reservation Business Committee has determined that an applicant for, or current employee in, a child-related position 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 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 Division Director or the Human Resources Director, who shall evaluate the Petition in accordance with the criteria set forth under subsection (c) of this section and shall make the appropriate recommendation to the Reservation Business Committee in Executive Session.

3. **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.