

BACKGROUND AND CHARACTER INVESTIGATION

Klamath Tribes **STANDARD OPERATING POLICY AND PROCEDURE**

(Tribes who receive Federal funds are required to adopt such a policy under two Federal Laws: the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3207; and the Crime Control Act, Public Law 101-647)

1.0 General Policy

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

1.1 Definitions

The following definitions apply to this policy:

1.1.1 Child means a person who is not married and has not attained 18 years of age.

1.1.2 Child Care Services includes child protective services (including 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.

1.1.3 Crimes Against Persons means a crime that has as an element involving the use, attempted use, or threatened use of physical force or other abuse of a person and includes, but is not limited to, homicide; assault; kidnapping; false imprisonment; reckless endangerment; robbery; rape; sexual assault, molestation, exploitation, contact, or prostitution; and other sexual assaults. In determining whether a crime falls within this category, the applicable federal, state, or Tribal law under which the individual was convicted or pleaded guilty or *nolo contendere* shall be controlling.

1.1.4 Crimes of Violence means a crime that has an element involving the use, attempted use, or threatened use of physical force against the person or property of another, or any other crime that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing a crime. In determining whether a crime falls within this category, reference may be made to the applicable federal, state, or Tribal law under which the individual was convicted or pleaded guilty of *nolo contendere*.

1.1.5 Employ / Employed / Employment mean the hiring or holding of a position covered by this policy under Section 1.2 by an individual, as defined in Section 1.1.6, provided, however, that the use of one of these terms in this policy does not imply or indicate that a person is or is not an "employee" of the Klamath Tribes.

1.1.6 Individual means a person who applies for or holds a position covered by this policy under Section 1.2 and includes, but is not limited to, the following:

- a. Employees of the Klamath Tribes regardless of classification, including but not limited to temporary duty personnel, regular, contract, call-in, and other temporary personnel.
- b. Persons who perform services for or under the supervision of the Klamath Tribes.

- c. Persons who contract with the Klamath Tribes to perform services in Klamath Tribes facilities.
- d. Persons who volunteer to perform services for the Klamath Tribes.

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

1.1.8 Regular Contact With or Control Over a Child means responsibility for a child within the scope of the individual's duties and responsibilities or contact with a child on a recurring and foreseeable basis who --

- (a) Treats, cares for, or works with children in the course of performing their job duties or responsibilities;
- (b) Supervises employees in child contact positions; or
- (c) Directly exercises control over or oversight of children as part of their job duties or responsibilities.

1.2 Applicability

1.2.1 Covered Individuals/Positions

This policy and its procedures apply to all individuals who apply for, are being transferred or promoted to, or hold the following positions:

- (a) Positions that require, as determined by the applicable Klamath Tribes' job description, regular contact with or control over children; and
- (b) Positions classified by the Klamath Tribes as involving child care services.

1.2.2 List of Covered Positions

The Klamath Tribes Human Resources Department will maintain a current list of all positions to which this policy applies. The list of positions will be periodically updated at the Klamath Tribes discretion.

1.3 Recruitment

1.3.1 Vacancy Announcements

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

1.3.2 Applications

- (a) All individuals who apply for positions covered by this policy must fill

out an application form.

- (b) The job application will state that the performance of a background investigation and determination that the individual meets the eligibility criteria of this policy are conditions of employment.
- (c) The job application form must include an inquiry as to whether the individual was ever arrested or charged with a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons, and require a description of the disposition of the arrest or charge.
- (d) The job application form must state that the application is being signed under penalty of perjury and acknowledge that knowingly falsifying or concealing a material fact is a felony that may result in fines up to \$10,000 or five years imprisonment, or both.

1.4 Minimum Standards of Character

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

1.4.1 Required Standards

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

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

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

1.4.2 Other Standards

An individual may be denied or dismissed from employment from any position with the Klamath Tribes if-

- (a) The individual's misconduct or negligence interfered with or affected a current or prior employee's performance of duties and responsibilities;
- (b) The individual's criminal or dishonest conduct affected the individual's performance or the performance of others;
- (c) The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment;
- (d) The individual has refused to furnish testimony or cooperate with an

- investigation;
- (e) 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;
 - (f) The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation;
 - (g) The individual was dismissed or resigned from previous employment with a history of misconduct demonstrating a pattern of violence, intimidation, or harassment (sexual or otherwise) that bears on the fitness to have responsibility for safety and well-being of children;
 - (h) The individual knowingly and willfully engaged in an act or activities designed to disrupt Klamath Tribes programs; or
 - (i) The individual has been convicted of a sex crime, an offense involving a child victim, a drug felony, or any other crime that bears on the fitness to have responsibility for safety and well-being of children, except as provided in Section 1.4.1 (requiring denial of or dismissal from employment).

1.4.3 Meeting the Minimum Standards of Character

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

1.5 Background Investigations

1.5.1 Background Investigation Required

Every individual who applies for or holds a position covered by this policy must submit to a background investigation as a condition of employment with the Klamath Tribes.

1.5.2 Responsible Entity

The Klamath Tribes may conduct its own background investigation or may request that a Federal or State agency conduct the background investigation on the Klamath Tribes behalf and provide the Klamath Tribes with the results of the investigation.

1.5.3 Notification and Acknowledgement

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

1.5.4 Steps for Conducting Background Investigations

The background check shall include the following steps and information:

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

1.6 Adjudication

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

1.6.1 General Requirements

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

1.6.2 Adjudicating Official

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

1.6.3 Adjudication Process

- (a) Review Background Investigation. The Adjudicating Official will review the background investigation conducted under Section 1.5 to determine character, reputation, and trustworthiness of the individual. At minimum, the review will include:
 - (i) Each security investigation form and employment application and a comparison of the information provided,
 - (ii) The results of written record searches requested of local law enforcement agencies, former employers, former supervisors, employment references, and schools,

- (iii) The results of the fingerprint charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies,
 - (iv) Any other information obtained through the background investigation. This includes character and personal reference checks of the individual.
- (b) Consider Circumstances. The Adjudicating Official must consider the information under Section 1.6.3(a) in light of the following:
- (i) The nature and seriousness of the conduct in question;
 - (ii) The recency and circumstances surrounding the conduct in question;
 - (iii) The age of the individual at the time of the incident;
 - (iv) Societal conditions that may have contributed to the nature of the conduct;
 - (v) The probability that the individual will continue the type of behavior in question; and
 - (vi) The individual's commitment to rehabilitation and a change in the behavior in question.
- (c) Opportunity for review. Before the adjudication is final, the individual will be given an opportunity to explain, deny or refute unfavorable or incorrect information gathered in an investigation.
- (i) The individual will receive a written summary of all derogatory information and be informed of the process for explaining, denying or refuting unfavorable information.
 - (ii) The actual background investigative report shall not be released to the individual who is the subject to the background investigation, but such individual may, to the extent permissible by law, obtain a copy of the reports from the originating agency (Federal, State or Tribal) and challenge the accuracy and completeness of the information maintained by that agency.
- (d) Final Determination. The Adjudicating Official will make a final determination regarding whether the individual meets the minimum standards of character set forth in Section 1.4. The Adjudicating Official's decision is final, and is not subject to the grievance procedures set out in the Klamath Tribes Personnel Policy Manual.

1.6.4 Investigation Information

- (a) The results of an investigation cannot be used for any purpose other than to determine suitability for holding a position that is subject to this policy.
- (b) Investigative reports will be maintained confidentially and in securely locked files.
- (c) Investigative reports shall be seen only by those officials who, in performing their official duties, need to know the information contained in the report.
- (d) The Klamath Tribes will comply with the privacy requirements of any Federal, State or Tribal agency providing background investigations.

1.7 Outcome

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

- (a) Suitable for Employment in a Covered Position. The individual will be deemed suitable for employment in a position covered by this policy when it has been adjudicated under Section 1.6 that the individual meets the minimum standards of character set forth in Section 1.4. Suitability for employment will not necessarily result in the individual being hired or retained for the covered position.
- (b) Employment in a Covered Position *Must* be Denied. The Klamath Tribes must deny employment to or dismiss the individual when the individual's position is subject to this policy and it has been adjudicated under Section 1.6 that the individual fails to meet the minimum standards of character set forth in Section 1.4.1.
- (c) Employment in a Covered Position *May* be Denied. The Klamath Tribes may, in its discretion, deny employment to or dismiss the individual when the individual's position is subject to this policy and it has been adjudicated under Section 1.6 that the individual fails to meet the minimum standards of character set forth in Section 1.4.2, *or is otherwise found unsuitable for employment.*
- (d) Discretion to Place in Another Position. The Klamath Tribes has discretion to place an individual denied employment under subparts (b) or (c) of this Section in an available position that does not require regular contact with or control over children, if a determination has been made through the adjudication process under Section 1.6 that such placement would not put children at risk and the individual would be able to perform the duties and responsibilities of the position.

1.8 Conditional Hiring

The Klamath Tribes may offer conditional employment prior to completion of the background investigation if, at all times when children are in the care of the individual, the individual is within the sight and under the supervision of an employee with respect to whom a background check has been completed. Continued employment is contingent on the outcome of the background investigation and adjudication, as provided in Section 1.7.

1.9 Pending or Unresolved Charges

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

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

1.10 Individuals Posing Unacceptable Risk of Harm

The Klamath Tribes reserves the right to terminate, refuse to hire, transfer or place conditions on the employment or activities of -

- (a) Any individual listed in Section 1.1.6; or
- (b) Any other person -

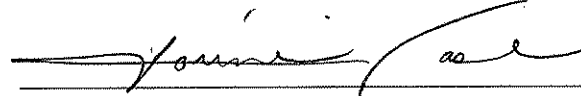
who the Klamath Tribes General Manager determines poses an unacceptable risk of harm to any person with whom the individual may have contact in the workplace or while carrying out duties or responsibilities on behalf of the Klamath Tribes. Such a determination will be based on the individual's prior misconduct, including but not limited to criminal misconduct that is reported by the individual, discovered through investigation, or otherwise known by the General Manager.

CERTIFICATION

We, the undersigned Chairman and Secretary of the Klamath Tribes do hereby certify that at a Regularly scheduled Tribal Council meeting held on the 16th day of December, 2013, where a quorum was present, the Tribal Council duly adopted this Policy by a vote of 6 for, 0 opposed, and 1 abstention/s.



 Donald C. Gentry, Chairman
 The Klamath Tribes



 Torina Case, Secretary
 The Klamath Tribes

