

(c) The individual who is the subject of a background investigation may request, to the extent permissible by law, a copy of the reports from the originating (Federal, State, or other Tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine eligibility for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and must be maintained confidentially and secured in locked files. Investigative reports must be seen only by those officials who, in performing their official duties, need to know the information contained in the report.

§ 136.416 When should the IHS deny employment or dismiss an employee?

The IHS must deny employment to an individual or dismiss an employee, when the duties and responsibilities of the position the individual person would hold or holds involve regular contact with or control over Indian children, and it has been adjudicated, pursuant to § 136.414 and § 136.415, that the individual has been found guilty of, or entered a plea of guilty or nolo contendere to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State or Tribal law involving a crime of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children. The IHS has the discretion to place such an individual in a position, if available, that does not involve regular contact with or control over Indian children, if a determination has been made that such placement would not put Indian children at risk and the individual would be able to perform the duties and responsibilities of this position.

§ 136.417 May the IHS hire individuals pending completion of a background investigation?

Pursuant to section 231 of the Crime Control Act of 1990, Pub. L. 101-647, 42

U.S.C. 13041, as amended by Pub. L. 102-190, the IHS may hire provisionally individuals as defined in these regulations, prior to the completion of a background investigation if, at all times prior to receipt of the background investigation during which children are in the care of the individual, the individual is within the sight and under the supervision of a staff person and a satisfactory background investigation has been completed on that staff person.

§ 136.418 What should the IHS do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The IHS may deny the applicant employment until the charge has been resolved.

(b) The IHS may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The IHS may detail or reassign the employee to other duties that do not involve regular contact with children.

(d) The IHS may place the employee on indefinite suspension, in accordance with statutory and regulatory requirements, until the court has disposed of the charge.

PART 136a—INDIAN HEALTH

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