

§ 63.11

(b) *Minimum standards of character* to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness.

§ 63.11 What is a determination of suitability for employment and efficiency of service?

(a) *Determinations of suitability measure the fitness or eligibility* of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc. Rather, it requires that the employer investigate the background of each applicant, volunteer, and employee to:

(1) Determine the degree of risk the applicant, volunteer, or employee brings to the position; and

(2) Certify that the applicant's, volunteer's, or employee's past conduct would not interfere with his/her performance of duties, nor would it create an immediate or long-term risk for any Indian child.

(b) *Efficiency of service* is the employer's verification that the applicant or employee is able to perform the duties and responsibilities of the position, and his/her presence on the job will not inhibit other employees or the agency from performing their functions.

§ 63.12 What are minimum standards of character?

Minimum standards of character are established by an employer and refer to identifiable character traits and past conduct. An employer may use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character ensure that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if he/she has been found guilty of or entered a plea of *nolo contendere* or guilty to any offense under Federal, state, or tribal law involving crimes of violence, sexual as-

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sault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons.

§ 63.13 What does the Indian Child Protection and Family Violence Prevention Act require of the Bureau of Indian Affairs and Indian tribes or tribal organizations receiving funds under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act?

(a) The *Bureau of Indian Affairs* must compile a list of all authorized positions which involve regular contact with or control over Indian children; investigate the character of each individual who is employed, or is being considered for employment; and, prescribe minimum standards of character which each individual must meet to be appointed to such positions.

(b) All *Indian tribes or tribal organizations* receiving funds under the authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 must conduct a background investigation for individuals whose duties and responsibilities would allow them regular contact with or control over Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed for the Bureau of Indian Affairs.

§ 63.14 What positions require a background investigation and determination of suitability for employment or retention?

All positions that allow an applicant, employee, or volunteer regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment.

§ 63.15 What questions should an employer ask?

Employment applications must:

(a) Ask whether the applicant, volunteer, or employee has been arrested or convicted of a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons;