

## § 136.402

Act (the “Act”), Public Law (Pub. L.) 101-630, 104 Stat. 4544, 25 U.S.C. 3201-3211, as amended by section 814 of the Native American Laws Technical Corrections Act of 2000. In order to implement these minimum standards of character, these regulations also address:

(1) The efficiency standards to ensure that individuals are qualified for the positions they hold or seek, as mandated by Section 408 of the Act.

(2) Fitness standards to ensure child care service employees are fit to have responsibility for the safety and well-being of children, as mandated by Section 231 of the Crime Control Act of 1990, Pub. L. 101-647, 42 U.S.C. 13041.

(3) Suitability standards to ensure that individuals have not acted in a manner that places others at risk or raised questions about their trustworthiness, as mandated by 5 CFR part 731.

(b) The Act requires that Tribes or Tribal organizations who receive funds under the Indian Self-Determination and Education Assistance Act (ISDEA), Pub. L. 93-638, employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under these regulations. Thus, the minimum standards of character as defined in these regulations will become the basis for Tribes or Tribal organizations to use when developing their own minimum standards of character that cannot be less stringent than as prescribed herein.

## § 136.402 Policy.

In enacting the Indian Child Protection and Family Violence Prevention Act, (the “Act”) the Congress recognized there is no resource more vital to the continued existence and integrity of Indian Tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian Tribe. The minimum standards of character as prescribed by the regulations in this subpart are intended to ensure that Indian children are protected.

## 42 CFR Ch. I (10-1-10 Edition)

### § 136.403 Definitions.

*Crimes against Persons* means a crime that has as an element 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 offenses. 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.

*Crimes of violence* means a crime that has as an element 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 the 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 or nolo contendere.

*Indian* means any individual who is a member of an Indian Tribe, as defined below.

*Indian child* means any unmarried person under the age of eighteen who is either a member of an Indian Tribe or eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Individuals* means persons with duties and responsibilities that involve regular contact with or control over Indian children and includes but is not limited to the following:

(a) Persons in the competitive or expected service (including temporary employment), the Commissioned Corps, or the Senior Executive Service in the IHS;

(b) Persons who perform service for or under the supervision of the IHS while being permanently assigned to another IHS office or to another organization, such as a Federal agency, State, or Tribe;

(c) Persons who volunteer to perform services in IHS facilities;

(d) Persons who contract with the IHS to perform services in IHS facilities.

*Must or shall* indicates a mandatory or imperative act or requirement.

*Offenses against children* means any felonious or misdemeanor crime under Federal, State, or Tribal law committed against a victim that has not attained the age of eighteen years. 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.

*Regular contact with or control over an Indian child* means responsibility for an Indian child(ren) within the scope of the individual's duties and responsibilities or contact with an Indian child(ren) on a recurring and foreseeable basis.

*Tribal Organization* as defined in the ISDEA, means the recognized governing body of any Indian Tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

**§ 136.404 What does the Indian Child Protection and Family Violence Prevention Act require of the IHS and Indian Tribes or Tribal organizations receiving funds under the ISDEA?**

(a) The IHS must compile a list of all authorized positions with duties and responsibilities that involve regular contact with or control over Indian children; investigate the character of

each individual who is employed or is being considered for employment in such a position; and prescribe minimum standards of character that each individual must meet to be appointed or employed in such positions.

(b) All Indian Tribes or Tribal organizations receiving funds under the authority of the ISDEA must identify those positions that permit regular contact with or control over Indian children; conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves 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 by regulations in this subpart.

**§ 136.405 What are the minimum standards of character for individuals placed in, or applying for, a position that involves regular contact with or control over Indian children?**

The minimum standards of character shall mean 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/her job without harm to Indian children. In order to protect Indian children, the IHS has established minimum standards of character requiring completion of a satisfactory background investigation that ensures that no individuals who have 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, are placed in positions involving regular contact with or control over Indian children.

**§ 136.406 Under what circumstances will the minimum standards of character be considered to be met?**

The minimum standards of character shall be considered met only after the individual has been the subject of a satisfactory background investigation.