

RESOLUTION OF THE  
HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE  
24th NAVAJO NATION COUNCIL - Fourth Year, 2022

AN ACTION  
RELATING TO HEALTH EDUCATION AND HUMAN SERVICES COMMITTEE;  
APPROVING AND ADOPTING THE NAVAJO NATION'S POLICY FOR MANDATORY  
CRIMINAL BACKGROUND CHECKS FOR LOCAL SCHOOL BOARD MEMBERS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council and has legislative oversight over the Navajo Nation Board of Education, Department of Diné Education, and over the implementation of education legislation, including Plans of Operation. 2 N.N.C. §§ 400(A), 401(C)(1), 10 N.N.C. § 1(B).
- B. The Health, Education and Human Services Committee is authorized to establish Navajo Nation policy and promulgate rules and regulations governing human services and general government services of the Navajo Nation. 2 N.N.C. § 401(B)(1).

SECTION TWO. FINDINGS

- A. The Navajo Nation Election Code, 11 N.N.C. § 8 (D)(4), sets the qualifications for School Board candidates. These mandatory qualification state in part that School Board candidates:
  - g. Must not have been convicted of a felony;
  - h. Must not have been convicted of the following misdemeanor crimes:
    - (1) Any crimes involving elements of deceit, untruthfulness and dishonesty, including but not limited to extortion, bribery, forgery, fraud, theft, embezzlement, perjury, misrepresentation, false pretense, conversion, or misuse of public funds or property;
    - (2) Any crimes involving the welfare of children, child abuse, or child neglect;
    - (3) Aggravated assault or aggravated battery;

- (4) Any crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances.
- B. The United States Bureau of Indian Affairs, has described minimum standards of conduct for applicants, volunteers, or employees who are in regular contact with or control over Indian children. See 23 C.F.R. § 63.12. The Navajo Nation Code for qualifying School Board candidates expand these federal minimum standards of conduct in 11 N.N.C. § 8 (D)(4).
- C. The Department of Diné Education requests the Health, Education and Human Services Committee approve the "Mandatory Criminal Background Checks and Investigations for Local School Board Members" attached as **Exhibit A**.
- D. The Navajo Nation Department of Justice has reviewed the proposed policy and deemed the policy legally sufficient. Section 164 Review Form is attached as **Exhibit B**.

### SECTION THREE. APPROVAL

- A. The Health, Education, and Human Services Committee of the Navajo Nation Council hereby approves and adopts the Navajo Nation Department of Diné Education's Mandatory Criminal Background Checks and Investigations for Local School Board Members policy attached as **Exhibit A**.

### SECTION FOUR. EFFECTIVE DATE

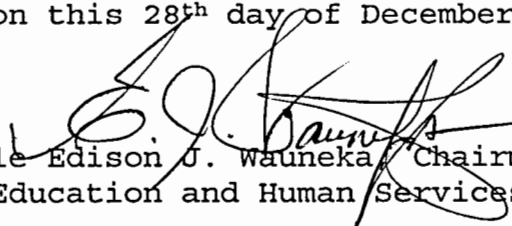
The Navajo Nation Department of Diné Education's Mandatory Criminal Background Checks and Investigations for Local School Board Members policy shall become effective on the first day of the first month following the approval of the Health, Education, and Human Services Committee.

### SECTION FIVE. SAVING CLAUSE

If any provision of this Plan of Operation is determined invalid by the Supreme Court of the Navajo Nation, or by any Navajo Nation District Court without appeal to the Navajo Nation Supreme Court, the remainder of this policy shall be the law of the Navajo Nation.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Health, Education and Human Services Committee at a duly called meeting in Window Rock, Arizona (Navajo Nation), at which a quorum was present and that the same was passed by a vote of 04 in Favor, and 00 Opposed, on this 28<sup>th</sup> day of December 2022.

  
Honorable Edison J. Wauneka, Chairman Pro Tem  
Health, Education and Human Services Committee

Motion: Honorable Paul Begay, Jr.  
Second: Honorable Pernell Halona



## **Mandatory Criminal Background Checks and Investigations for Local School Board Members**

### **A. Policy**

1. It is the policy of the Navajo Nation that all school board members are required to have a criminal background check and investigation that meets the requirements of Public Law 101- 630, C.F.R. Part 63, and applicable Navajo Nation laws and policies. 11 N.N.C. § 8 (D)(4) Qualification for Candidates for School Board.

### **B. Scope**

1. This policy applies to any school board member elected or appointed, under the Navajo Election Code (11 N.N.C. § 8 (D)(4)), to perform school board functions for any Navajo school, including Bureau of Indian Education operated schools and tribally controlled schools (Public Law 93-638 contract or Public Law 100-297 grant).

### **C. Purpose**

1. The purpose of this policy is to require that all school board members provide a complete criminal background check and investigation before engaging in any school board activities, and to ensure school board members complete a renewed criminal background check and investigation at least every four (4) years. It is also to ensure school board members have not engaged in certain criminal activity, and to ensure the safety of Indian children, staff, and the integrity to carry out the school board functions in a manner that protects the interest of the schools for which they serve. All criminal background checks and investigations shall provide a uniform and consistent process for completing all background checks for school board members in a timely manner.

### **D. Mandatory Requirements and Provisions**

1. All local school board members (Bureau of Indian Education-operated and tribally controlled schools) shall be subjected to and required to provide a Navajo Nation, state, and federal criminal history check and/or background investigation to the Department of Diné Education. Such investigations shall be performed before or upon taking the oath of office, and at such other times as the Department of Diné Education may determine appropriate. No person shall be convicted of the following:
  - a. a felony;
  - b. any misdemeanor crimes involving the following:
    - i. any crimes involving elements of deceit, untruthfulness and dishonesty, including, but not limited to extortion, bribery, forgery, fraud, theft, embezzlement, perjury, misrepresentation, false pretense,

- conversion or misuse of public funds or property;
  - ii. welfare of children, child abuse, or child neglect;
  - iii. aggravated assault or aggravated battery;
- 2. crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances (11 N.N.C. § 8 (D)(4)); child-related crimes or disqualifying criminal conviction(s) may serve on the school board. The Department of Diné Education is specifically charged with ensuring that all local schools, including school board members, comply with all federal and Navajo Nation laws.
- 3. School Board Members shall maintain the qualifications stated throughout their terms of office. 11 N.N.C. § 8 (D)(4)(j).
- 4. Elected and/or appointed School Board Members shall obtain and submit their federal/state and tribal background checks to the Department of Diné Education three months of being elected.
- 5. The Department of Diné Education shall maintain such files for no less than five years.
- 6. Local school board members who fail to submit to and pass a Navajo Nation, state, and federal criminal history background check and/or investigation shall be immediately prohibited from conducting or participating in board meetings, work sessions, traveling, receiving stipends, or allowed to come on to campus and/or participate in school-related activities or events.
- 7. The cost of performing the criminal background investigations on a local school board member shall be at the expense of the local school board member and/or at the cost of the local school or Bureau of Indian Education.

**E. Maintenance of Records and Compliance Notices**

- 1. The Department of Diné Education shall maintain updated and accurate records of all local school board members containing the results of any criminal background checks and/or investigations. Such files shall be retained for no less than five (5) years and kept in a secure location, accessible to only those with a need-to-know access as a part of their job duties.
- 2. The Department shall provide clearance notices to respective agencies and organizations to ensure that a school board member complied (or not complied) with all applicable Navajo Nation and federal laws and policies.

#### **F. Retaliation against school employees prohibited**

1. Local school boards and/or individual school board members are expressly prohibited from retaliating against or taking adverse action against employee(s) who are ensuring compliance with this policy. Employees who have been adversely affected by ensuring compliance with this policy shall be entitled to damages, reinstatement, back pay, and/or attorney fees.

#### **G. Compliance, Enforcement, and Sanctions**

1. All provisions of the "Mandatory Criminal Background Checks and Investigations for Local School Board Members" policy shall be investigated and enforced by the Department of Diné Education.
2. Local community school board members who fail to submit to and pass a Navajo Nation, state, and federal criminal history background check and/or investigation shall be immediately prohibited from conducting or participating in board meetings, work sessions, traveling, receiving stipends, or allowed to come on to campus and/or allowed to participate in school-related activities or events.
3. Repeated non-compliance with the provisions of this section shall provide immediate justification for the Department of Diné Education to take necessary steps to remove the cause(s) for non-compliance, including, but not limited to immediate assumption of control of the non-compliant school pursuant to Navajo Nation law.
4. Non-compliance with this requirement may also be grounds for revocation or cancellation of the school's reauthorization/authorization agreement with the Navajo Nation.

#### **H. Duration of criminal background checks and requirements**

1. All school board member tribal, state, and federal criminal background checks shall comply with provisions of the Navajo Nation and federal law and applicable regulations.
2. A criminal background check shall be:
  - (i) based on a set of the school board member's fingerprints and other identifying information;
  - (ii) conducted through the Identification Division of the Federal Bureau of

Investigation and through the State criminal history repositories of all States that a school board member list as current and former residences;

(iii) conducted through the Information Management Section of the Navajo Nation Department of Public Safety;

(iv) commence with the person's 18th birthday.

3. Criminal background checks shall be valid for a minimum of four (4) years and/or to coincide with a person's term of office. Criminal background checks of appointed board members shall also coincide with the duration of their term of office.

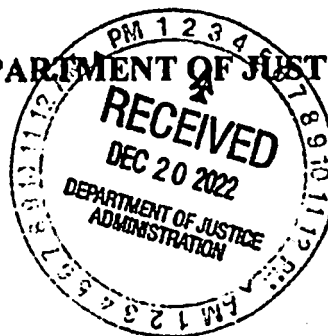
EXHIBIT

B

## NAVAJO NATION DEPARTMENT OF JUSTICE



**REQUEST  
FOR  
SERVICES**



DOJ  
12/20/22 @ 3:18 PM  
DATE / TIME  
RFS #: 22-2457#2  
UNIT: H594

☒ RESUBMITTAL  
(Nov. 2022)

\*\*\* FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

## CLIENT TO COMPLETE

DATE OF REQUEST: 12/20/2022 ENTITY/DIVISION: Department of Diné Education  
CONTACT NAME: Olivia Nelson/Matthew D. Tso DEPARTMENT: Administration/ODAC  
PHONE NUMBER: 928-871-7475 E-MAIL: olivianelson@nndode.org or matthewtso@nndode.org

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):  
Please review for legal sufficiency regarding the proposed "Mandatory Criminal Background Checks and Investigations for Local School Board Members" policy. The HEHSC Committee is seeking to take immediate action and requested DOJ review. The suggested changes were incorporated.

DEADLINE: 12/21/2022 REASON: Dec. 21, 2022 NNBOE Meeting and HEHSC

## DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 12/20/22 @ 4:00 PM REVIEWING ATTORNEY/ADVOCATE: DW/OK

DATE TIME OUT OF UNIT: 12/20/22 4:30 PM PREPARED BY (initial):

## DOJ ATTORNEY / ADVOCATE COMMENTS

12/20/22 Reviewed by Dwight Witherspoon - Sufficient  
- See attached documents

REVIEWED BY: (PRINT) D. Witherspoon / OK DATE / TIME: 12/20/22 1:31 PM  
DOJ Secretary Called: olivianelson and Matthew Tso for Document Pick Up on 12/20/22 at 4:25 By: OK

PICKED UP BY: (PRINT)

DATE / TIME:





**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

DOREEN N. MCPAUL  
Attorney General

KIMBERLY A. DUTCHER  
Deputy Attorney General

**MEMORANDUM**

**TO:** Dr. Harold Begay, Superintendent  
Navajo Nation Department of Dine Education

**FROM:** \_\_\_\_\_/S/\_\_\_\_\_  
Dwight Witherspoon, Attorney  
Human Services Government Unit  
Navajo Nation Department Of Justice

**DATE:** December 20, 2022

**SUBJECT:** RFS Document No. 22-2457 ODAC Criminal Background and Investigations  
Policy Regarding School Board Members:

This memorandum is a follow-up to the notation that I provided on the aforementioned RFS. The proposed policy involves reference to the Indian Child Protection and Family Violence Prevention Act (Act) and to Navajo Nation Law in regards to requiring background checks of school board members by the Department of Dine Education (DODE). DODE inquired about the following proposed policy 'Mandatory Criminal Background Checks and Investigations for Local School Board Members' for legal sufficiency in regards to obtaining background checks from schools located on the Navajo Nation, including Bureau of Indian Education (BIE) operated schools and tribally controlled schools.

The Navajo Election Code in Title 11 outlines the qualification for candidates for school board members and it states as follows.

11 N.N.C. § 8 (D)( 4.)

4. Qualifications for candidates for School Board:
- a. Must not be a member of the Navajo Nation Council;
  - b. Must be an enrolled member of the Navajo Nation and be on the Agency census roll of the Navajo Nation Office of Vital Records;
  - c. Must be a registered voter of the Chapter or Agency he or she will represent, and certify that he or she will remain so registered for the duration of his or her term of office;

- d. Must be at least twenty-one (21) years of age at the time of the election;
- e. Must not be an employee or the spouse of an employee of the School on whose Board he or she would serve;
- f. Must not have a conflict of interest arising from any tribal, state or federal laws regarding his or her employment;
- g. Must not have been convicted of a felony;
- h. Must not have been convicted of the following misdemeanor crimes:
  - (1) Any crimes involving elements of deceit, untruthfulness and dishonesty, including but not limited to extortion, bribery, forgery, fraud, theft, embezzlement, perjury, misrepresentation, false pretense, conversion, or misuse of public funds or property;
  - (2) Any crimes involving the welfare of children, child abuse, or child neglect;
  - (3) Aggravated assault or aggravated battery;
  - (4) Any crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances.
- i. Must have fully complied with all orders or sanctions imposed by the Ethics and Rules Committee of the Navajo Nation Council or Courts of the Navajo Nation for any violations of the Navajo Nation Ethics in Government Law.
- j. School Board members shall maintain the qualifications stated herein throughout their terms of office.
- k. If elected or appointed, the candidate shall serve on no more than one (1) local community School Board.

Pursuant to 11 N.N.C. § 8 (D).(4).(j.), it requires that all school board members must maintain all qualifications throughout their term of office. In addition, *Sandoval v. Navajo Election Administration*, “[t]his *Sandoval* case concerns an appeal of the Office of Hearings and Appeals’ (OHA) dismissal of a post-election challenge to the qualifications of the winning candidate in a school board election matter.” SC-CV-62-12, (page 1). The candidate was employed at the same school at the time of filing for the school board position of which the candidate was filing, but had resigned before the general election. SC-CV-62-12, (page 1-2). “It is our finding that the RPI, Leo Johnson, Jr., was not eligible to run as a candidate pursuant to 11 N.N.C. § 8(D)(4)(e) upon the filing of his sworn statement on May 30, 2012.” SC-CV-62-12, (page 12). Additionally, “in 2012, the Council banned anyone who has been a school board employee within the past five years from running in order “to prevent conflict of [sic]

retaliation.” 11 N.N.C. § 6(E)(as amended).” SC-CV-62-12, (page 9). Since the election had not occurred, but was four months ahead, retroactivity was not applicable to the filing, but rather a valid new requirement for the upcoming election. SC-CV-62-12, (page 12).

The Navajo Nation Supreme Court in *Sandoval* held that the candidate “was not eligible to run as of July 6, 2012, the effective date of amended 11 N.N.C. § 6(E)[,] ... because Section 6(E) bans an employee from serving on a school board for five years following his school board employment, we find that the RPI has continued to be ineligible following his election, and would remain ineligible to serve on a SASI school board for five years following his resignation.” SC-CV-62-12, (page 12-13). The Navajo Nation Supreme Court per Section 8(D)(5)(j), clarified that school board members may “be challenged on their qualifications under the Election Code after an election.” SC-CV-62-12, (page 14). The timing of a challenge does not affect the mandatory nature of the requirement and a candidate may be disqualified when qualifications are not maintained. SC-CV-62-12, (page 14). Therefore, pursuant to this provision, a “post-election challenge is timely and the remedy is disqualification.” SC-CV-62-12, (page 14). The Navajo Nation Supreme Court, in *Sandoval*, ruled that each section noted in Title 11 with respect to School Board members, “expressly sets forth this expectation with regards to school board members and makes the requirement mandatory.” SC-CV-62-12, (page 14). In other words, compliance with the qualification provided in 11 N.N.C. § 8 (D)(4) is mandatory, not discretionary.

In a letter dated March 8, 2022, BIE Director Tony Dearman noted the Act may not apply to school board members unless the position creates ‘regular contact with or control over Indian children.’ The letter also provides a list of factors to consider to make such a determination. Even if the Act is not applicable, Navajo Nation Law is applicable. Given the aforementioned qualification requirements and the holding of the *Sandoval* case, it is imperative to include the background check as a requirement. The following underlined language is provided for the proposed policy for “Mandatory Criminal Background Checks and Investigations for Local School Board Members.”

#### A. Policy

1. It is the policy of the Navajo Nation that all school board members are required to have a criminal background check and investigation that meets the requirements of Public Law 101- 630, C.F.R. Part 63, and applicable Navajo Nation laws and policies 11 N.N.C. § 8 (D.)(4.) Qualification for Candidates for School Board.

**D. Mandatory Requirements and Provisions**

1. All local school board members (Bureau of Indian Education-operated and tribally controlled schools) shall be subjected to and required to provide a Navajo Nation, state, and federal criminal history check and/or background investigation to the Department of Dine Education. Such investigations shall be performed before or upon taking the oath of office, and at such other times as the Department of Dine Education may determine appropriate. No person shall be convicted of the following:
  - a. a felony;
  - b. any misdemeanor crimes involving the following:
    - i. any crimes involving elements of deceit, untruthfulness and dishonesty, including, but not limited to extortion, bribery, forgery, fraud, theft, embezzlement, perjury, misrepresentation, false pretense, conversion or misuse of public funds or property;
    - ii. welfare of children, child abuse, or child neglect;
    - iii. aggravated assault or aggravated battery;
    - iv. crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances (11 N.N.C. § 8 (D.)(4.); child-related crimes or disqualifying criminal conviction(s) may serve on the school board. The Department of Dine Education is specifically charged with ensuring that all local schools, including school board members, comply with all federal and Navajo Nation laws.
2. School Board Members shall maintain the qualifications stated throughout their terms of office, 11 N.N.C. § 8 (D.)(4.)(j.).
3. Elected School Board Members shall obtain and submit their federal/state and tribal background checks to the Department of Dine Education within three months of being elected.

**Memo to Dr. Harold Begay, Superintendent**  
**RE: Document 22-2457 ODAC Criminal Background and Investigations Policy Regarding**  
**School Board Members:**  
**December 20, 2022**  
**Page 5**

Based on the aforementioned, it is imperative that the qualification is maintained, such as not being convicted of: a felony; any crimes involving the welfare of children, child abuse, or child neglect; aggravated assault or aggravated battery; crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances and others as listed per 11 N.N.C. § 8 (D)(4.); the Department of Dine' Education proposed policy requirement of School Board Members to have a background check meets the requirement to ascertain whether qualifications are being maintained.

Because Navajo Law, 11 N.N.C. § 8 (D)(4)(j.) requires one to qualify and maintain School Board Requirements, a background check must be completed to be in compliance. In other words, even if the federal law may not require a background check for School Board Members, who may not have contact or control of children, Navajo Nation law still governs. As such, the only logical way to verify the aforementioned requirements is to obtain background checks.

See attachment A, B, and C for additional information on the Navajo law, the federal law and application to this matter. If you have any questions regarding this memorandum, please contact me via email at [dwitherspoon@nndoj.org](mailto:dwitherspoon@nndoj.org). Thank you.

Cc:  
Matthew Tso,

DW/lk.68.23

## **Mandatory Criminal Background Checks and Investigations for Local School Board Members**

### **A. Policy**

1. It is the policy of the Navajo Nation that all school board members are required to have a criminal background check and investigation that meets the requirements of Public Law 101- 630, C.F.R. Part 63, and applicable Navajo Nation laws and policies 11 N.N.C. § 8 (D.)(4.) Qualification for Candidates for School Board.

### **B. Scope**

1. This policy applies to any school board member elected or appointed, under the Navajo Election Code 11 N.N.C. § 8 (D.)(4.), to perform school board functions for any Navajo school, including Bureau of Indian Education operated schools and tribally controlled schools (Public Law 93-638 contract or Public Law 100-297 grant).

### **C. Purpose**

1. The purpose of this policy is to require that all school board members provide a complete criminal background check and investigation before engaging in any school board activities, and to ensure school board members complete a renewed criminal background check and investigation at least every four (4) years. It is also to ensure school board members have not engaged in certain criminal activity, and to ensure the safety of Indian children, staff, and the integrity to carry out the school board functions in a manner that protects the interest of the schools for which they serve. All criminal background checks and investigations shall provide a uniform and consistent process for completing all background checks for school board members in a timely manner.

### **D. Mandatory Requirements and Provisions**

1. All local school board members (Bureau of Indian Education-operated and tribally controlled schools) shall be subjected to and required to provide a Navajo Nation, state, and federal criminal history check and/or background investigation to the Department of Diné Education. Such investigations shall be performed before or upon taking the oath of office, and at such other times as the Department of Diné Education may determine appropriate. No person shall be convicted of the following:
  - a. a felony;
  - b. any misdemeanor crimes involving the following:
    - i. any crimes involving elements of deceit, untruthfulness and dishonesty, including, but not limited to extortion, bribery, forgery, fraud, theft, embezzlement, perjury, misrepresentation, false pretense,

- conversion or misuse of public funds or property;
  - ii. welfare of children, child abuse, or child neglect;
  - iii. aggravated assault or aggravated battery.
- 2. crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances (11 N.N.C. § 8 (D.)(4); child-related crimes or disqualifying criminal conviction(s) may serve on the school board. The Department of Diné Education is specifically charged with ensuring that all local schools, including school board members, comply with all federal and Navajo Nation laws.
- 3. School Board Members shall maintain the qualifications stated throughout their terms of office, 11 N.N.C. § 8 (D.)(4.)(j.).
- 4. Elected and/or appointed School Board Members shall obtain and submit their federal/state and tribal background checks to the Department of Diné Education and the Navajo Election Administration within three months of being elected.
- 5. The Department of Diné Education shall maintain such files ~~Such files shall be~~ retained for no less than five years.
- 6. Local school board members who fail to submit to and pass a Navajo Nation, state, and federal criminal history background check and/or investigation shall be immediately prohibited from conducting or participating in board meetings, work sessions, traveling, receiving stipends, or allowed to come on to campus and/or participate in school-related activities or events.
- 7. The cost of performing the criminal background investigations on a local school board member shall be at the expense of the local school board member and/or at the cost of the local school or Bureau of Indian Education.

#### **E. Maintenance of Records and Compliance Notices**

1. The Department of Diné Education shall maintain updated and accurate records of all local school board members containing the results of any criminal background checks and/or investigations. Such files shall be retained for no less than five (5) years and kept in a secure location, accessible to only those with a need-to-know access as a part of their job duties.
2. The Department shall provide clearance notices to respective agencies and organizations to ensure that a school board member complied (or not complied) with all applicable Navajo Nation and federal laws and policies.

#### **F. Retaliation against school employees prohibited**

1. Local school boards and/or individual school board members are expressly prohibited from retaliating against or taking adverse action against employee(s) who are ensuring compliance with this policy. Employees who have been adversely affected by ensuring compliance with this policy shall be entitled to damages, reinstatement, back pay, and/or attorney fees.

#### **G. Compliance, Enforcement, and Sanctions**

1. All provisions of the "Mandatory Criminal Background Checks and Investigations for Local School Board Members" policy shall be investigated and enforced by the Department of Diné Education.
2. Local community school board members who fail to submit to and pass a Navajo Nation, state, and federal criminal history background check and/or investigation shall be immediately prohibited from conducting or participating in board meetings, work sessions, traveling, receiving stipends, or allowed to come on to campus and/or allowed to participate in school-related activities or events.
3. Repeated non-compliance with the provisions of this section shall provide immediate justification for the Department of Diné Education to take necessary steps to remove the cause(s) for non-compliance, including, but not limited to immediate assumption of control of the non-compliant school pursuant to Navajo Nation law.
4. Non-compliance with this requirement may also be grounds for revocation or cancellation of the school's reauthorization/authorization agreement with the Navajo Nation.

#### **H. Duration of criminal background checks and requirements**

1. All school board member tribal, state, and federal criminal background checks shall comply with provisions of the Navajo Nation and federal law and applicable regulations.
2. A criminal background check shall be:
  - (i) based on a set of the school board member's fingerprints and other identifying information;
  - (ii) conducted through the Identification Division of the Federal Bureau of



Investigation and through the State criminal history repositories of all States that a school board member list as current and former residences;

(iii) conducted through the Information Management Section of the Navajo Nation Department of Public Safety;

(iv) commence with the person's 18th birthday.

3. Criminal background checks shall be valid for a minimum of four (4) years and/or to coincide with a person's term of office. Criminal background checks of appointed board members shall also coincide with the duration of their term of office.

**Exhibit A**

**11 N.N.C. § 8 (D.) (4.)**

**4. Qualifications for candidates for School Board:**

- a. Must not be a member of the Navajo Nation Council;**
- b. Must be an enrolled member of the Navajo Nation and be on the Agency census roll of the Navajo Nation Office of Vital Records;**
- c. Must be a registered voter of the Chapter or Agency he or she will represent, and certify that he or she will remain so registered for the duration of his or her term of office;**
- d. Must be at least twenty-one (21) years of age at the time of the election;**
- e. Must not be an employee or the spouse of an employee of the School on whose Board he or she would serve;**
- f. Must not have a conflict of interest arising from any tribal, state or federal laws regarding his or her employment;**
- g. Must not have been convicted of a felony;**
- h. Must not have been convicted of the following misdemeanor crimes:**
  - (1) Any crimes involving elements of deceit, untruthfulness and dishonesty, including but not limited to extortion, bribery, forgery, fraud, theft, embezzlement, perjury, misrepresentation, false pretense, conversion, or misuse of public funds or property;**
  - (2) Any crimes involving the welfare of children, child abuse, or child neglect;**
  - (3) Aggravated assault or aggravated battery;**
  - (4) Any crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances.**
- i. Must have fully complied with all orders or sanctions imposed by the Ethics and Rules Committee of the Navajo Nation Council or Courts of the Navajo Nation for any violations of the Navajo Nation Ethics in Government Law.**
- j. School Board members shall maintain the qualifications stated herein throughout their terms of office.**
- k. If elected or appointed, the candidate shall serve on no more than one (1) local community School Board.**

**§ 8. Qualifications for office, 11 NAVAJO CODE § 8 (D.) (4.)**

## **Attachment B**

The Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3201 *et seq.*, requires the Secretary of the Interior to prescribe minimum standards of character for positions that involve duties and responsibilities involving regular contact with, or control over, Indian children. The Department of the Interior (Interior) prescribed the minimum standards of character in its regulations at 25 CFR 63.12 and 63.19. As a result, no applicant, volunteer, or employee of Interior may be placed in a position with regular contact with or control over Indian children if that person has been found guilty of, or entered a plea of nolo contendere or guilty to, certain offenses. Before 2000, the offenses listed in the regulation matched the offenses listed in the Act: Any offense under Federal, State, or Tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons.

In 2000, Congress updated the Act to clarify which types of offenses are disqualifying. *See* Public Law 106-568, revising 25 U.S.C. 3207(b). Specifically, the 2000 Act updated "any offense" with "any felonious offense, or any of two or more misdemeanor offenses," and added "offenses committed against children." This interim final rule would update Interior's regulations, at sections 63.12 and 63.19, to reflect the updated language of the Act and add a definition to define the phrase "offenses committed against children."

### **25 C.F.R. § 63.12**

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 felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution; crimes against persons; or offenses committed against children.

**Exhibit C**

*Sandoval v. Navajo Election Administration*, Navajo Supreme Court opinion, SC-CV-62-12,

(page 14).

“However, in 2003 the Council expressly provided pursuant to 11 N.N.C. § 8(D)(4)(j)(as amended) that each naat’ánii on a school board must maintain all qualifications throughout their term of office. Although it is implied that all elected officials should maintain their qualifications during their terms of office, Section 8(D)(4)(j) expressly sets forth this expectation with regards to school board members and makes the requirement mandatory. Section 8(D)(4)(j), as amended in 2003, uniquely allows school board members to be challenged on their qualifications under the Election Code after an election. In short, timing of the challenge does not affect the mandatory nature of the requirement, and disqualification followed by declaration of vacancy (and not invalidation of an election) is an option when qualifications are not maintained. Therefore, Section 8(D)(4)(j) supplants the Haskie rule with respect only to school board members. Pursuant to this provision, Appellant’s post-election challenge is timely and the remedy is disqualification.”

**HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE**  
**Special Meeting**  
**December 28, 2022**

**Legislation #0273-22:** An Action Relating to Health Education and Human Services Committee; Approving and Adopting the Navajo Nation's Policy for Mandatory Criminal Background Checks for Local School Board Members

**Sponsor:** Delegate Daniel E. Tso

**Co-Sponsors:** Delegate Edison J. Wauneka

**VOTE TALLY SHEET:**

**Main Motion:**

**Motion:** Honorable Paul Begay, Jr.

**Second:** Honorable Pernell Halona

**Yea:** Paul Begay, Jr.; Pernell Halona; Carl R. Slater; Daniel E. Tso

**Nay:**

**Not Voting:** Edison J. Wauneka (Presiding Chair Pro Tempore); Charlaine Tso

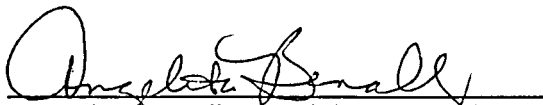
**Excused:**

**Absent:**

**Vote:** 4-0-2



Edison J. Wauneka, Chairman Pro Tempore  
Health, Education and Human Services Committee  
24<sup>th</sup> Navajo Nation Council



Angelita Benally, Legislative Advisor  
Health, Education and Human Services Committee  
Office of Legislative Services