

RESOLUTION OF THE
HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE
of the 25th NAVAJO NATION COUNCIL - Third Year, 2025

AN ACTION
RELATING TO THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE;
AMENDING HEHSCD-11-22 BY REVISING THE MANDATORY CRIMINAL
BACKGROUND CHECKS FOR LOCAL SCHOOL BOARD MEMBERS POLICY

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 Dine 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, education, 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 qualifications 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. On December 28, 2022, the Health, Education and Human Services Committee passed resolution HEHSCD-11-22 which approved and adopted the "Mandatory Criminal Background Checks and Investigations for Local School Board Members."
- D. In an effort to clarify the various responsibilities of local schools, school board members, and Navajo Nation agencies, a workgroup comprised of Office of Legislative Counsel, Navajo Nation Department of Justice, Department of Diné Education, Diné Bi Olta School Board Association, Office of Background Investigations, and Navajo Elections Office promulgated proposed amendments to the "Mandatory Criminal Background Checks and Investigations for Local School Board Members." A version demonstrating the new language denoted by underscoring and deletions denoted by overstrikes is attached as Exhibit A. A clean version of the revisions is attached as Exhibit B.

SECTION THREE. APPROVAL

- A. The Health, Education, and Human Services Committee of the Navajo Nation Council hereby amends HEHSCD-11-22 by approving and adopting the revisions to the Mandatory Criminal Background Checks and Investigations for Local School Board Members policy attached as Exhibit A.

SECTION FOUR. EFFECTIVE DATE

The Navajo Nation Mandatory Criminal Background Checks and Investigations for Local School Board Members policy shall become effective on June 9, 2025, following the approval by the Health, Education, and Human Services Committee.

SECTION FIVE. SAVING CLAUSE

If any provision of this policy 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 following resolution was duly considered by the Health, Education and Human Services Committee of the 25th Navajo Nation Council at a duly called meeting at Window Rock, (Navajo Nation), Arizona at which a quorum was present and that the same was passed by a vote of 04 in favor, 0 opposed, on this 10th day of April 2024.



Vince R. James, Chairperson
Health, Education and Human Services Committee
Of the 25th Navajo Nation Council

Motion: Honorable Helena Nez Begay
Second: Honorable Andy Nez

Mandatory Criminal Background Checks and Investigations for Local 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 and Federal laws and regulations. 11 N.N.C. § 8 (D).(4.) Qualification for Candidates for School Board.

B. Scope

1. This policy applies to any and all school board member(s) 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 activities¹, and to ensure school board members complete a criminal background check and investigation after each instance in which the school board member is elected or appointed. 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 and investigations for school board members.

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 Federal, State, and Tribal² criminal background check and investigation to the Navajo Nation Office of Background Investigation (NOBI) for adjudication. Such background checks and investigations shall be completed within ninety (90) calendar days of the school board member's certification of election or appointment. No person shall be convicted of the following:

¹ A school board activity includes but is not limited to the following: school board meetings, special meetings, work sessions, traveling, and receiving stipends.

² "Tribal" includes the Navajo Nation and any other tribal jurisdiction in which the school board member has resided or was employed.

- 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; welfare of children, child abuse, or child neglect; aggravated assault or aggravated battery;
 - ii. 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

2. NOBI shall provide a clearance notice indicating whether the school board member's background check and investigation results are favorable³ or unfavorable⁴. The school board member's background check and investigation and clearance notice must be completed within ninety (90) calendar days of the school board member's certification of election or appointment. NOBI shall forward only the clearance notice indicating whether the school board member's background check and investigation results are favorable or unfavorable to the Department of Diné Education.

3. School board members shall maintain the qualifications stated throughout their terms of office. 11 N.N.C. § 8 (D.)(4.)(j.).

4. The cost of performing the criminal background check and investigations on a local school board member shall be at the expense of the local school board member.

E. Maintenance of Records and Clearance Notices

1. The Department of Diné Education shall maintain updated and accurate records of all local school board members' clearance notices. Such clearance notices shall be retained for no less than seven (7) years and kept in a secure location, with access restricted to individuals who have a legitimate need to know and are authorized by the Department of Diné Education Superintendent.

2. NOBI shall provide clearance notices to the appropriate agencies and organizations to ensure that a school board member complied (or did not comply) with all applicable Federal, State and Tribal laws and policies.

³ A "favorable" determination indicates the individual's background check revealed no significant concerns or disqualifications, and they are cleared to perform the duties of a school board member.

⁴ An "unfavorable" determination indicates the individual's background check revealed significant concerns or disqualifications, and they are not cleared to perform the duties of a school board member.

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.

G. Compliance, Enforcement, and Sanctions

1. All suspected or alleged violations 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 with the assistance of other entities as needed under the circumstances.
2. Local community school board members who fail to submit to and pass a Federal, State, and Tribal criminal background check and investigation shall be immediately prohibited from conducting or participating in all school board activities and removed.

H. Duration of criminal background checks and requirements

1. All school board members' Federal, State, and Tribal criminal background checks and investigations shall comply with provisions of applicable Navajo Nation and Federal laws and regulations.
2. A criminal background check and investigation 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 (IMS) of the Navajo Nation Department of Public Safety;
 - (iv) commence with the person's 18th birthday.
3. A criminal background check and investigation shall be valid for the school board member's respective term of office.