

Pokagon Band of Potawatomi Indians
Education Committee Code

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CHAPTER 1

PURPOSE AND DEFINITIONS

Section 1.01 Short Title

This Code shall be known and may be cited as the "Education Committee Code."

Section 1.02 Authority

The Tribal Council enacts this Code pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsection 2 (a), (b), (c) and (i) of the Constitution; and the duties of the Tribal Council stated in Article IX, subsections 1(a), (c), (d) and (h) of the Constitution.

Section 1.03 Purpose

The purpose of this Code is to:

(a) establish a Committee to:

- (1) assist the Department of Education in the fulfillment of the mission of the Department by engaging in the evaluation of the Department's programs and services;
- (2) report to the Tribal Council regarding the results of the Committee's evaluation of the Department's programs and services, including any recommendations as a result of the evaluation;
- (3) make recommendations to the Director regarding existing or proposed programs and services of the Department;
- (4) assist, as may be requested by the Director, with the implementation of the programs and services of the Department of Education;
- (5) hear complaints from Citizens regarding the denial of scholarships by the Department of Education; and
- (6) hear complaints alleging violations of the requirements of the WIA, including but not limited to the denial of WIA services; provided, however, that the Committee shall not hear any Non-Covered WIA Complaints.

(b) vest the Committee with the authority and obligations provided in this Code.

(c) establish a process for persons to file and the Committee to hear the complaints authorized under this Code.

Section 1.04 Construction

(a) This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution; provided in the event of any inconsistency, the Constitution shall control.

(b) To the extent this Code conflicts with any provision of Pokagon Band law, the provisions of this Code shall govern.

(c) This Code shall be liberally construed in order to accomplish its purpose as set forth in Section 1.03 of this Code.

Section 1.05 Severability

If any provision of this Code, or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

Section 1.06 Effective Date

This Code shall become effective upon enactment by the Tribal Council.

Section 1.07 Definitions

As used in this Code:

(a) "Alternate Member" means a person appointed to the Education Committee to fulfill the duties of a Committee member(s) in the absence of a Committee member(s) only after being recognized and seated by the Chairperson of the Committee.

(b) "Band" or "Pokagon Band" means the Pokagon Band of Potawatomi Indians, a sovereign federally-recognized Indian tribe.

(c) "Citizen" means a duly enrolled member of the Pokagon Band.

(d) "Code" means this Education Committee Code.

(e) "Committee Procedures Handbook" means the Band's Committee Procedures Handbook.

(f) “Committee” or “Education Committee” means the Pokagon Band Education Committee.

(g) “Screening Policy and Procedure” means the Band’s Employment, Volunteer, and Contractor Screening Policy and Procedure.

(h) “Constitution” means the Constitution of the Pokagon Band.

(i) “Department” or “Department of Education” means the Band's Department of Education.

(j) “Director” means the Director of the Department of Education.

(k) “Immediate Family” means the term as defined in Chapter 3 of the Band’s Ethics Code.

(l) “Individual Educational Program” or “IEP” means a specifically tailored individualized educational program mandated by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) designed to meet the unique educational needs of a specific child who may have a disability and is intended to help a child reach his or her educational goals.

(m) “Non-Covered WIA Complaint” means any grievance or complaint regarding: (i) discrimination under the WIA or (ii) criminal violations of the WIA.

(n) “Tribal Council” means the governing body of the Pokagon Band established pursuant to Article X of the Constitution.

(o) “Tribal Council Procedures Act” means the Band’s Tribal Council Procedures Act.

(p) “Tribal Court” means the Pokagon Band Tribal Court.

(q) “Workforce Investment Act” or “WIA” means the Workforce Investment Act (29 U.S.C. § 2801, et seq.)

CHAPTER 2

ESTABLISHMENT AND ADMINISTRATION OF COMMITTEE

Section 2.01 Establishment of Committee

(a) The Tribal Council hereby establishes the Education Committee which shall be composed of five (5) persons.

(b) In addition to the five (5) members of the Education Committee, consistent with Article X, subsection 5(c)(iv) of the Constitution, the Tribal Council Chairperson, or a Tribal Council member designated by the Tribal Council Chairperson, shall serve as an ex-officio, non-voting

member of the Committee, and the Chairperson's presence shall not be counted in determining whether a quorum exists.

(c) The Tribal Council shall appoint two (2) Alternate Members to the Education Committee.

Section 2.02 Eligibility to Serve on Committee

(a) In order to be eligible to serve on the Committee pursuant to subsection 2.01(a) or subsection 2.01(c) of this Code, a person shall:

- (1) Not be a member of Tribal Council, except as otherwise permitted under subsection 2.01(b) of this Code;
- (2) Not be an employee or spouse of an employee of the Department of Education;
- (3) Be at least twenty-one (21) years of age;
- (4) Not have an Immediate Family Member serving on the Committee; and
- (5) Be one of the following:
 - (i) a Citizen and possess a bachelor's degree, or
 - (ii) a Citizen and have knowledge and experience demonstrated through a minimum of two (2) years of educational, occupational, or volunteer activities in any of the following areas: teaching, counseling, job training, job coaching, educational support services, vocational services, or the development of implementation of an Individual Educational Program, or
 - (iii) the natural, adoptive parent, or guardian of a Citizen child who is currently attending grades kindergarten through twelve.

(b) To the fullest extent possible, the Council shall endeavor to ensure that the Committee shall have at least two (2) Committee members who are parents with a Citizen child in grades kindergarten through twelve as provided in subsection 2.02(a)(5)(iii), at least one (1) Committee member with a bachelor's degree, as provided in subsection 2.02(a)(5)(i) and at least one (1) Committee member with the knowledge and experience required in subsection 2.02(a)(5)(ii).

(c) Non-Citizens who otherwise meet the requirements provided in subsection 2.02(a) of this Code may serve on the Committee, provided however, that no more than one non-Citizen may simultaneously serve on the Committee, whether as an Committee member or as an Alternate Member.

Section 2.03 Requirements to Serve on Committee

Prior to appointment or re-appointment to the Committee, whether as a Committee member or an Alternate Member, all appointees shall submit to and pass a background check in accordance with the Band's Screening Policy and Procedure.

Section 2.04 Continued Service on the Committee

(a) No member of the Committee or Alternate Member shall, during his or her term of office on the Committee, commit, as determined by a conviction, guilty plea, or the plea of nolo contendere under federal, state, or tribal law:

(1) a felony, or

(2) a misdemeanor that is an ICPA Crime, as such crime is defined in the Band's Screening Policy and Procedure.

(b) Any Committee member or Alternate Member who violates Section 2.04(a) of this Code, shall report such violation to the Tribal Council Secretary and the Committee Chairperson within two (2) business days of such violation.

Section 2.05 Alternate Members

(a) Once recognized and seated by the Chairperson of the Education Committee at any Committee meeting, the votes and actions of an Alternate Member shall have the same authority as if such votes and actions had been made by a Committee member.

(b) Where a Committee member arrives at any meeting after an Alternate Member has been recognized and seated, the Committee member shall not replace the Alternate Member for that meeting.

(c) All actions regarding recognition and seating or replacement of Alternate Members shall be noted in the minutes of the Education Committee meeting.

(d) Alternate Members shall have the right to attend all Committee meetings and to receive information to the same extent as Committee members, and shall be bound by all requirements applicable to Committee members.

Section 2.06 Officers

(a) The Committee shall elect a Chairperson, Vice Chairperson, and a Secretary-Treasurer from among the Committee members; provided that no Committee member shall hold more than one officer position simultaneously.

(b) The term of each officer position shall coincide with such officer's term of appointment to the Committee.

Section 2.07 Duties of Officers

(a) Chairperson. The Committee Chairperson shall:

- (1) preside at all Committee meetings;
- (2) submit for review matters needing to come before the Committee;
- (3) facilitate the formulation of recommendations of the Committee;
- (4) in the absence of the Committee Secretary-Treasurer, the Committee Chairperson or presiding officer shall assign the duties of the Secretary-Treasurer to another Committee member until the Secretary-Treasurer resumes such duties; and
- (5) perform all other duties as may be required by this Code, the Committee, or other Pokagon Band law.

(b) Vice-Chairperson. The Committee Vice-Chairperson shall:

- (1) preside at all meetings in the absence of the Committee Chairperson and perform all other duties of the Committee Chairperson during the Chairperson's absence; and
- (2) perform all other duties as may be required by this Code, the Committee, or other Pokagon law.

(c) Secretary-Treasurer. The Committee Secretary-Treasurer shall:

- (1) properly record all acts and votes of the Committee;
- (2) be responsible for the preparation and maintenance of Committee minutes;
- (3) provide timely notice of meetings;
- (4) be custodian of and properly keep all the records of the Committee; and
- (5) perform such other duties as may be prescribed by this Code or by the Committee.

Section 2.08 Governmental Immunity

The Committee is an instrumentality of the Pokagon Band government and shall be vested with all the rights, privileges, and immunities of the Band, including but not limited to the sovereign immunity of the Band from suit absent express consent from the Tribal Council. Committee members and Alternate Members shall be deemed officers of the Band government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law with respect to officers of the Band.

Section 2.09 Term of Appointment

(a) The term of the Committee members identified in subsection 2.01(a) of this Code and of Alternate Members identified in Subsection 2.01(c) of this Code shall be three (3) years. In order to stagger the terms of the Committee members to promote the continuity of the Committee, when the initial Committee members are first appointed, two (2) Committee members shall be appointed to terms of three (3) years, two (2) of the Committee members shall be appointed to terms of two (2) years, one (1) Committee member shall be appointed to a term of one (1) year, one (1) Alternate Member shall be appointed to a term of one (1) year, and one (1) Alternate Member shall be appointed to a term of three (3) years.

(b) The term of the Committee member identified in subsection 2.01(b) shall be coterminous with his or her term of office on the Tribal Council.

(c) There are no limits on the number of terms that may be served, consecutively or otherwise.

Section 2.10 Hold Over

Any Committee member or Alternate Member may, at the discretion of the Tribal Council, continue to serve in his or her position, with full authority, after the completion of his or her term until such time as a replacement is appointed.

Section 2.11 Resignation

(a) Committee members serving on the Committee pursuant to subsection 2.01(a) of this Code and Alternate Members serving on the Committee may resign from the Committee by submitting a signed and dated letter of resignation to the Committee Chairperson or Committee Secretary-Treasurer. The resignation shall be effective as of the date tendered unless provided otherwise in the resignation letter. The Committee shall forward a copy of the resignation letter to the Tribal Council Chairperson.

(b) The Tribal Council Chairperson or the Chairperson's designee serving on the Committee, may resign by submitting a signed and dated letter of resignation to the Tribal Council Chairman or the Tribal Council Secretary, which resignation shall be effective as the date tendered unless provided otherwise in the resignation letter. A copy of the resignation letter shall be provided to the Committee Secretary-Treasurer.

Section 2.12 Removal

Notwithstanding any other provision of Pokagon Band law and the Committee Procedures Handbook, all Committee members and Alternate Members shall serve at the pleasure of the Tribal Council.

Section 2.13 Vacancy on Committee

(a) Upon a vacancy in a Committee position identified in subsection 2.01(a) or 2.01(c) of this Code, the Tribal Council shall fill any such vacancy pursuant to the Tribal Council Procedures Act and any other applicable Pokagon Band law.

(b) Upon a vacancy in the Committee position identified in subsection 2.01(b) of this Code, the Tribal Council Chairperson shall endeavor to fill the vacancy as soon as practicable.

Section 2.14 Duration of Committee

The establishment of the Committee shall commence upon enactment of this Code by the Council and shall continue until abolished by the Tribal Council.

Section 2.15 Compensation

Committee members and Alternate Members may be compensated for service to the Committee at rates established by the Tribal Council; provided, however, that no Committee member or Alternate Member shall be entitled to any employment benefit as the result of appointment to or service on the Committee, and such appointment shall not create or confer any rights enforceable in contract or otherwise.

CHAPTER 3

DUTIES AND AUTHORITY OF THE COMMITTEE

Section 3.01 Duties of Committee

The Committee shall

(a) assist, the Department in the fulfillment of the Department's mission by engaging in the evaluation of the Department of Education's programs and services;

(b) report to the Tribal Council regarding the results of the Committee's evaluation of the Department's programs and services, including any recommendations as a result of the evaluation;

(c) make recommendations to the Director regarding existing or proposed programs and services of the Department;

(d) assist, as may be requested by the Director, with the implementation of programs and services of the Department of Education;

(e) develop and define, in coordination with the Director, criteria for the evaluation of the programs and services; and

(f) serve as a hearing body for denials of scholarships to Citizens by the Department of Education;

(g) serve as a hearing body for complaints alleging violations of the requirements of the WIA, including but not limited to the denial of WIA services; provided, however, that the Committee shall not hear Non-Covered WIA Complaints; and

(h) develop such forms, documents, and processes as reasonably necessary for the efficient administration of this Code.

Section 3.02 Authority of Committee

(a) The authority of the Committee shall be limited to taking action reasonably necessary to carry out the duties stated in Section 3.01 of this Code, including, as necessary to:

(1) establish rules and procedures consistent with this Code, Pokagon Band law, and the Constitution in order to further the purposes of this Code;

(2) make determinations and render decisions regarding matters subject to the authority of the Committee; and

(3) obtain assistance from employees within the Department of Education, provided:

(i) The Committee first directs its request for assistance to the Director of the Department of Education;

(ii) The request from the Committee reasonably describes the specific assistance sought and the specific reason(s) for requesting the assistance;

(iii) The Committee needs the assistance for a matter currently pending before it;

(iv) The request can be fulfilled with minimal interference with current priorities and responsibilities of the Department of Education; and

(v) The request doesn't conflict with Pokagon Band law, regulation, policy, or procedure.

(b) Notwithstanding any other provision of this Code, the Committee, however, shall have no authority to:

- (1) enter into any contract, or any other binding agreement;
- (2) supervise or discipline any Pokagon Band employee;
- (3) expend funds or commit any funds with respect to any matter, except in accordance with an approved budget and Pokagon Band law;
- (4) hear or address any Citizen complaints, disputes, or disagreements regarding the provision of services by the Department of Education, except for the hearings provided in subsections 3.01(d) and 3.01(e) of this Code; or
- (5) award damages.

(c) All rights, powers, or privileges not expressly delegated to the Committee pursuant to this Code shall be reserved to and held by the Tribal Council.

Section 3.03 Committee Procedures

All Committee meetings shall be open, unless permitted to be closed in accordance with this Code or the Band's Open Meetings Act.

Section 3.04 Committee Presentation to Council

At least once per calendar year and as may be requested by the Tribal Council, the Committee shall present to the Tribal Council, the results of the Committee's evaluation of the programs and services of the Department. The evaluation shall contain any proposed recommendations of the Committee regarding the Department's programs and services as a result of the evaluation and shall contain information sufficient to properly explain and support such recommendations.

CHAPTER 4 COMPLAINTS FILED WITH THE COMMITTEE

Section 4.01 Authorization

Provided such matters are filed in accordance with the requirements of this Chapter, the Committee is authorized to:

(a) hear complaints by Citizens, or on behalf of Citizen children, alleging a denial of a scholarship, in violation of the Department of Education's scholarship policy.

(b) hear complaints alleging violations of the requirements of the WIA, including but not limited to the denial of WIA services ; provided, however, that the Committee shall not hear any Non-Covered WIA Complaints.

Section 4.02 Scope of the Committee's Authority Regarding Complaints

(a) The scope of the Committee's authority regarding complaints is limited to:

- (1) the review of the decision(s) of the Department of Education regarding the denial of scholarships to Citizens, and
- (2) deciding complaints alleging violations of the requirements of the WIA, including but not limited to the denial of WIA services; provided, however, that the Committee shall not hear Non-Covered WIA Complaints.

(b) Except as provided in subsection 4.02(a), the scope of the Committee's authority shall not extend to any other decisions of the Pokagon Band or the Department of Education.

(c) The Committee shall be limited to granting declaratory and injunctive relief.

(d) The Committee shall reverse or revise the Department of Education's decision regarding the scholarship policy only if it was arbitrary or capricious, as set forth in Section 4.06 of this Code. In matters before the Committee alleging a violation of the WIA, the burden of proof to establish a violation of the WIA shall be by clear and convincing evidence, which burden shall be upon the complainant.

Section 4.03 Who May File a Complaint

(a) before any complaint may be filed with the Committee, the petitioner must first attempt to resolve the complaint informally, by filing a written complaint with the Band's Government Manager that contains:

- (1) a clear, concise statement of the facts and dates describing the alleged violation(s) of the Department of Education's scholarship policy or the alleged violation(s) of the requirements of the WIA, and
- (2) the remedy sought.

(b) The Government Manager shall have seven (7) calendar days from the date of receipt of the written complaint to attempt to resolve the matter informally. If, the matter has not been resolved satisfactorily within such time, the petitioner may file a complaint with the Committee.

(c) A parent, legal guardian, or custodian of a Citizen child, or adult Citizen whose application for a scholarship was denied, in whole or in part, by the Department of Education, may file a complaint with the Committee seeking declaratory or injunctive relief authorized in subsection 4.02(c) of this Code.

(d) A participant in the WIA administered by the Department of Education, and other interested parties, including a person whose application for WIA services was denied, in whole or in part, by the Department of Education, or a person who is currently receiving WIA services from the Band may file an complaint with the Committee seeking declaratory or injunctive relief authorized in subsection 4.02(c) of this Code.

Section 4.04 Time for Filing a Complaint

(a) For complaints alleging a denial of a scholarship by the Department of Education, in violation of the Department of Education's scholarship policy, the complaint must be filed within thirty-seven (37) calendar days after the service of the Department of Education's decision upon the parent, legal guardian, or custodian of a Citizen Child, or the adult Citizen.

(b) For complaints alleging violations of the requirements of the WIA, the complaint must be filed within thirty-seven (37) calendar days of the occurrence of the alleged violation.

Section 4.05 Rules of Procedure

(a) The Committee's review of the Department of Education's decision regarding scholarships shall be limited to the record before the Department of Education at the time the Department of Education rendered a decision. Upon receipt of a notice from the Committee that a complaint was filed, the Department of Education shall promptly provide a true copy of such record to the Committee.

(b) No special forms or pleadings for filing a complaint shall be required, provided that a complaint shall not be considered to have been filed with the Committee unless the Committee receives an original document requesting a hearing before the Committee that includes, at a minimum:

- (1) the complaint's name, mailing address, and contact information;
- (2) a clear and concise statement of the facts describing the alleged violation;
- (3) the provisions of the Department of Education's scholarship policy or the WIA alleged to have been violated;
- (4) the remedy sought by the petitioner; and

(5) the signature of the petitioner.

(c) Within ten (10) calendar days after the complaint is received by the Committee, the Committee Chairperson shall have a copy of the complaint served on the respondent by personal service or by certified mail, return receipt requested, along with written notice that the complaint was properly filed with the Committee. The notice shall inform the respondent that the respondent may file a written response to the allegations in the complaint. The notice shall state that each party has the right to the assistance of legal counsel, at his or her own expense.

(d) The Committee Chairperson shall provide on the complainant and the respondent a notice of a hearing, which shall indicate the date, time, and place of the hearing and shall include a statement informing the parties that each party has the right to representation at the hearing by legal counsel, at such party's own expense.

(e) The Committee may establish written rules of procedure for hearings conducted under this Code. No formal rules of evidence shall apply in any hearing before the Committee, provided that the Committee shall retain authority to determine the admissibility of evidence and testimony based on considerations of relevance, authenticity and reliability.

(f) The Committee may permit the respondent and the petitioner to participate in a hearing by telephone.

(g) The Committee's decision shall be in writing, shall be signed by a majority of the members of the Committee, and shall include findings of fact based on the record and conclusions of law.

(h) For complaints regarding scholarship decisions, the Committee shall endeavor to conduct the hearing and issue its decision not later than sixty (60) calendar days from the date of the filing of the complaint. The Committee shall include with its decision a statement that the Committee's decision is a "final decision subject to appeal" to the Tribal Court.

(i) For complaints regarding violations of the WIA, the Committee shall conduct the hearing and issue its decision not later than sixty (60) calendar days from the date of the filing of the complaint. The Committee shall include with its decision a statement that the Committee's decision is a "final decision subject to appeal" to the Secretary of the United States Department of Labor, subject to applicable law and regulations, and that such appeal must be made in writing and within sixty (60) calendar days of the receipt of the Committee's decision.

(j) The Committee shall provide its decision to the petitioner and the respondent by certified mail, return receipt requested.

Section 4.06 Standard of Review

(a) The Committee shall review the Department of Education's decision under the arbitrary or capricious standard of review, and may deem such a decision to be arbitrary or capricious only if:

- (1) the evidence in the record is clearly not adequate to support the necessary facts for the Department of Education's decision;
- (2) the Department of Education applied the applicable law or other legal standards incorrectly; or
- (3) the Department of Education applied incorrect laws or legal standards.

(b) The Committee shall give deference to any reasonable interpretation of applicable law or other legal standards by the Department of Education.

(c) In matters before the Committee alleging a violation of the WIA, the burden of proof to establish a violation of the WIA shall be by clear and convincing evidence, which burden shall be upon the complainant.

CHAPTER 5

APPEALS TO TRIBAL COURT

Section 5.01 Right to Appeal to the Tribal Court

(a) Any person who has received a final adverse decision from the Committee in accordance with subsection 4.05(h) of this Code shall have the right to appeal such adverse decision to the Tribal Court.

(b) There shall be no right of appeal to the Tribal Court for any final adverse decision from the Committee under subsection 4.05(i) of this Code.

(c) An appeal to the Tribal Court authorized by this Section must be filed within thirty (30) calendar days from the date that the person entitled to bring the appeal receives notice of the final decision from the Committee.

(d) The Tribal Court shall review the Committee's decision under the arbitrary or capricious standard of review, and shall limit its review to the administrative record.

(e) The relief against the Committee in any such Tribal Court action shall be limited to awarding injunctive or declaratory relief and shall not include any money damages.

Section 5.02 Limited Waiver of Sovereign Immunity

The Pokagon Band hereby waives the sovereign immunity of the Committee for the limited purpose of permitting an action to be brought against the Committee in the Tribal Court as authorized by Section 5.01 of this Code and for awarding relief stated in subsection 5.01(e) of this Code.

LEGISLATIVE HISTORY

The Education Committee Code was enacted on March 11, 2013 by Tribal Council Resolution No. 13-03-11-01.