



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

THE BUREAU OF INDIAN EDUCATION IS NOT ENSURING THAT BACKGROUND CHECKS AT INDIAN EDUCATION FACILITIES ARE COMPLETE



**OFFICE OF
INSPECTOR GENERAL**
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

FEB 08 2018

To: Tony L. Dearman
Director, Bureau of Indian Education

From: Mary L. Kendall
Deputy Inspector General

Subject: Final Evaluation Report – The Bureau of Indian Education Is Not Ensuring That
Background Checks at Indian Education Facilities Are Complete
Report No. 2017-WR-024

This memorandum transmits our final evaluation report on whether required background checks are being completed and updated for Bureau of Indian Education (BIE) employees, contractors, and volunteers who have regular contact with children at Indian education facilities. We determined that they are not.

We make 11 recommendations to address the deficiencies in BIE policy and practices that, if implemented, will help the BIE improve its background check process for both BIE-operated and tribally controlled schools. The BIE responded to our draft report on December 26, 2017, concurring with our recommendations. Based on its response, we consider Recommendations 1 – 10 resolved but not implemented and Recommendation 11 unresolved and not implemented. We are referring Recommendation 11 to the Assistant Secretary for Policy, Management and Budget for resolution.

If you have any questions regarding this memorandum or the subject report, please contact me at 202-208-5745.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

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Results in Brief

In this evaluation, we found that the Bureau of Indian Education (BIE) is not ensuring that required background checks for individuals who work with children at Indian education facilities are complete and being reinvestigated on schedule, leaving children vulnerable to contact with persons who would be determined to be unfit based on a completed background check.

BIE leadership has not provided the necessary guidance and tools to ensure background checks are complete. First, the BIE requires initiation of local law enforcement checks, but not their completion. Because the results of these checks are often not received and adjudicated, the BIE is unable to ensure that all individuals with criminal records are identified and excluded from working with Indian children. Individuals with local criminal records can only be identified with certainty through a local law enforcement check because local law enforcement agencies are not required to report their crime statistics to the U.S. Department of Justice.

Second, BIE's backlog of background reinvestigations is growing. Reinvestigations are required every 5 years, but the BIE follows an out-of-date process that cannot meet this requirement. Therefore, any crimes committed by an employee after being hired may go unidentified.

Third, the BIE Budget and Finance office, whose grants specialists review background checks at tribally controlled schools, does not have clear guidelines regarding oversight roles and responsibilities. BIE leadership has not created long-term guidance, and, as a result, the BIE risks reverting to the previous inconsistent oversight process for ensuring the schools have complete background checks.

Finally, the BIE Personnel Security office is unable to effectively conduct, track, and monitor background checks due to its outdated guidance and an inadequate information system. As a result, the BIE is not training schools on current background check processes, schools may not be complying with background check requirements, and BIE's background check data are unreliable.

We make 11 recommendations to help the BIE improve its background check processes for both BIE-operated and tribally controlled schools. The BIE responded to our draft report on December 26, 2017, concurring with all recommendations. Based on its response, we consider Recommendations 1 – 10 resolved but not implemented and Recommendation 11 unresolved and not implemented.

Introduction

Objective

Our objective was to identify whether Bureau of Indian Education (BIE) employees, contractors, and volunteers who have regular contact with children at Indian education facilities have met the requirements for background checks and regular reinvestigations.

Background

Indian education facilities include both BIE-operated schools and tribally controlled schools. BIE School Operations Division (School Operations) oversees the background check process for both types of schools: its Human Resources office (HR) facilitates background checks for BIE-operated schools, while its Finance office (Budget and Finance) oversees background checks for tribally controlled schools.

Within BIE's HR, its Personnel Security office (Security Office) conducts background checks for BIE-operated schools and has done so since it took over the function from the Bureau of Indian Affairs (BIA) in January 2017. Over 3,500 employees, contractors, and volunteers at the 51 BIE-operated schools are subject to background checks, which include a Federal Bureau of Investigation (FBI) fingerprint check and an Office of Personnel Management (OPM) background investigation. The Security Office adjudicates results from both the FBI fingerprint check and the OPM background investigation as favorable or unfavorable. The Employee and Labor Relations office (also housed within BIE's HR along with the Security Office) is responsible for terminating and removing employees, contractors, and volunteers as necessary.

Budget and Finance provides oversight for the 130 tribally controlled schools that operate through a grant or contract.¹ While Budget and Finance provides oversight for these schools through an annual review of their background check status, tribally controlled schools are legislatively allowed to follow their own unique background check process so long as the process is "no less stringent" than that required for the BIE.²

Figure 1 illustrates the background check process for BIE-operated and tribally controlled schools.

¹ One hundred and twenty-seven tribally controlled schools operate using grants awarded under the Tribally Controlled Schools Act of 1988, 25 U.S.C. §§ 2501-2511. Three tribally controlled schools operate using contracts awarded under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5321.

² 25 U.S.C. § 3207(c)(2).

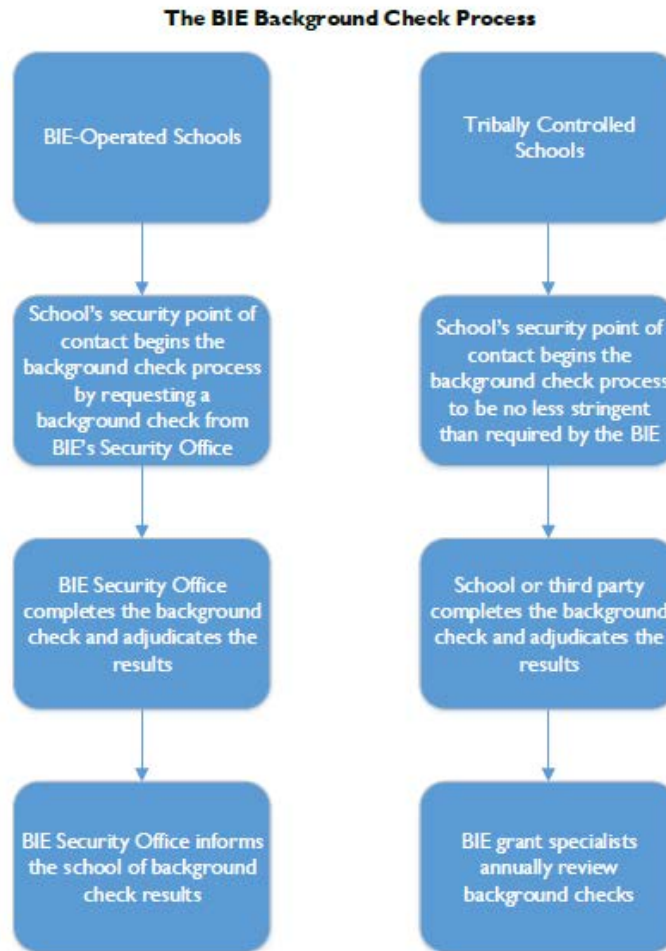


Figure 1: This flowchart shows the BIE background check process for BIE-operated and tribally controlled schools, as of the 2017 BIE reorganization. Information provided by BIE's HR.

Both State education departments and the Federal Government recognize that background checks are a critical tool to help schools prevent or mitigate contact between children in their care and unfit individuals. For example, public schools in New Mexico and Arizona are required to complete State and Federal fingerprint checks prior to an employee receiving a State teaching license or working in a classroom.

The Federal Government's background check process for individuals who have contact with children at Indian education facilities, the majority of which are located in New Mexico and Arizona, is even more stringent: individuals who work with Indian children at BIE-operated schools must undergo a background check that includes an FBI fingerprint check, OPM investigation, and adjudication by the Security Office to determine suitability.

Multiple Federal laws and regulations pertain specifically to background checks for individuals who have contact with children. The Victims of Child Abuse Act of 1990, 42 U.S.C. § 13041, requires Federal agencies and facilities under contract to complete a criminal history background check for all individuals who are involved in the provision of child care services—including education, even if not directly involved in teaching. The Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. § 3207, also requires that individuals who work and volunteer with Indian children undergo an investigation of their character. BIA’s criteria and procedures for making determinations of suitability based on an individual’s character or conduct are found in 25 C.F.R. part 63 and in the *Bureau of Indian Affairs Manual (BIAM)* at part 62.³ OPM’s role for Federal employees is set forth at 5 C.F.R. part 731.

To ensure the safety of Indian children, the BIE revised protocol in 2009 for school personnel to report any knowledge or suspicion of neglect or abuse including physical, emotional, and sexual. This protocol lays out step-by-step procedures and is the required reporting mechanism for BIE-operated schools. Eighty-five employee-related incidents were reported using this protocol during the 2015 – 2016 school year. And while tribally operated schools are not required to use this protocol, those opting to do so reported 71 employee-related incidents during that same school year.

The Office of Inspector General issued reports on background checks specific to Indian education facilities in 2004 and 2008 identifying issues of failure to initiate background checks, not performing local law enforcement checks, and not conducting reinvestigations every 5 years as required by Federal regulations. A verification review we conducted in 2011 looked at the resolution and implementation of the 2008 report’s open recommendations.⁴ (See Appendix 3 for more detail on prior audit coverage.) We found that the background check and oversight function for Indian education facilities moved within and between either the BIA or the BIE since our 2004 report, resulting in inconsistent practices across our reviews.

³ 62 *BIAM* 11, Appendix C (Apr. 6, 1990).

⁴ *Improvements Needed in the Bureau of Indian Affairs Process for Conducting Background Investigations*, Report No. C-IN-BIA-0014-2004 (March 5, 2004); *Bureau of Indian Education Background Investigations*, Report No. Q-IN-BIA-0005-2007 (April 25, 2008); and *Review of Three Recommendations from Our April 2008 Audit*, Report No. Q-IN-BIA-0005-2007 Titled “*Bureau of Indian Education Background Investigations of Indian Education Employees*,” Report C-VS-BIE-0006-2011 (September 26, 2011).

Findings

BIE leadership has not ensured that background checks are complete for BIE employees and other individuals who have regular contact with children at Indian education facilities. Background checks are not complete because:

1. The BIE does not require completion of local law enforcement checks.
2. Reinvestigations are not up to date and the backlog is increasing.
3. Oversight responsibility for background checks at tribally controlled schools is unclear.
4. The background check guidance and information system are outdated and inadequate.

These issues leave children vulnerable to contact with persons who would be determined unfit if background checks were completed before hiring and then reinvestigated every 5 years as required.

No Assurance That Local Law Enforcement Checks Are Completed

Executive Order No. 10450 states that individuals who are appointed to U.S. Government employment must be subject to an investigation that includes written inquiries to local law enforcement agencies. In addition, individuals who work with Indian children must meet minimum character standards that take into consideration offenses under Federal, State, or tribal law.⁵ Under the procedures inherited from the BIA, the BIE requires schools to initiate a local law enforcement check through a written inquiry as part of the overall background check process, but there is no required follow-up to ensure the local law enforcement check is received. Thus, the BIE has no assurance that the local law enforcement check has been completed.

Without ensuring that local law enforcement checks are completed, the current background check process does not ensure that all individuals with criminal records are identified and excluded from working with Indian children. Local law enforcement agencies (State, local, and tribal law enforcement agencies) are not required to report any of their crime statistics to the FBI; therefore, the required FBI fingerprint check that is completed during the Federal background check process may not produce local criminal records.

Local criminal records can only be identified with certainty through a local law enforcement check. For example, in 2002 a BIA employee who was on probation

⁵ 25 U.S.C. § 3207.

for eight previous driving while intoxicated violations caused four fatalities in a head-on collision while driving drunk. The employee's probation status and prior record—which would have prevented him from being hired at the BIA—had not surfaced in the OPM background check process because it was handled by tribal law enforcement.

Following this incident, the BIA instituted a requirement for schools to make a written local law enforcement inquiry as a part of standard operating procedures (SOPs) for background checks. Unfortunately, the requirement specifies only that a written inquiry be sent to local law enforcement, and not that any follow up is done to ensure that the local background check is completed and that results are included in the overall background check process. The Security Office and school officials told us that, while local law enforcement checks are initiated, they do not make efforts to follow up or ensure the checks are completed. To help prevent hiring disqualified people, local law enforcement checks must not only be initiated, but completed and adjudicated.

In addition to there being no requirement in BIA's SOPs to complete the local law enforcement check, some schools are not completing the check because of administrative issues. Since 2015, local law enforcement checks involving the Navajo Police Department have not been completed as they require that a nominal fee be provided by money order. Officials at one BIE-operated school we spoke with said that the BIE told them not to complete Navajo Police Department checks because of this problem with payment logistics, while officials at another school claimed they had reported the issue to the BIE but did not receive a response with direction on how to proceed. According to the BIA security specialist who formerly led BIE background checks, the Navajo Police Department was willing to waive the fee given a formal request from the BIE Director. This request has been in draft since October 2015. When we spoke with BIE leadership, they were unaware of the Navajo payment issue or the draft formal request awaiting signature.

Support from BIE leadership is needed to help ensure that local law enforcement checks are completed so individuals with local criminal records are not hired for positions with access to children.

Recommendations

We recommend that the BIE:

1. Develop and implement policy requiring that local law enforcement checks, including tribal law enforcement, be completed prior to final adjudication of the OPM background check.
2. Follow up with the Navajo Police Department to identify and implement the steps needed to complete the local law enforcement checks.

Reinvestigations Are Not Up To Date and Backlog Is Increasing

Reinvestigations are not up to date, as BIE's process for conducting them is insufficient. As of December 2016, an estimated 1,083 employees had not undergone a reinvestigation after having been employed for over 5 years. The BIE estimates this backlog will increase to 1,563 by December 2017. Per 25 C.F.R. § 63.18(b), employee reinvestigations must be completed every 5 years after a person's placement.

Without regular reinvestigations, employees who have committed a crime since they were first employed may not be identified. Some schools we spoke with stated that it had been 4 to 5 years since they had received a list of individuals due for reinvestigation. Officials at another school stated that they were given a reinvestigation list but were informed not to do anything because the January 2017 reorganization transitioned the background check function from the BIA to the BIE.

While the BIA previously conducted background checks for both BIA and BIE employees, contractors, and volunteers, the January 2017 transition gave the new BIE Security Office sole responsibility for background checks of BIE employees, contractors, and volunteers working at BIE-operated schools. The Security Office is composed of two security specialists and one assistant. At the time of our fieldwork, there was one vacancy to be filled for an additional security specialist.

The Security Office attributes limited staffing to the reinvestigation backlog. In addition, it follows an ineffective process that existed prior to the January 2017 reorganization. This process holds security specialists responsible for initiating, tracking, and adjudicating reinvestigations from start to finish, in addition to maintaining the workload of adjudicating background checks on new hires. The assistant is responsible for initiating background checks for new hires, but is not involved in the reinvestigation process. Given the current and estimated future backlogs, this process was not and is not meeting the criteria to complete reinvestigations every 5 years.

The current and future estimated backlogs, in combination with the backlog we identified in our 2008 report,⁶ demonstrate that a sustainable, long-term solution for completing reinvestigations must be identified, set in policy or procedure, and implemented. An evaluation of workload should be considered when identifying a sustainable, long-term solution. BIE leadership is aware of the backlog and is in the process of identifying a short-term solution that includes temporarily reassigning available BIA security personnel to assist the BIE in eliminating the current backlog. Without a long-term plan set in policy or procedure for BIE personnel to complete reinvestigations, however, the short-term solution may not address future needs.

Recommendation

We recommend that the BIE:

3. Develop and implement a plan to complete reinvestigations that addresses both the backlog and reinvestigations coming due.

Oversight for Tribally Controlled School Background Checks Is Unclear

BIE Budget and Finance, whose grant specialists conduct reviews of tribally controlled schools, does not have clear guidelines regarding oversight roles and responsibilities because BIE leadership has not created long-term guidance. Schools are held accountable for background checks on new hires and reinvestigations through BIE grant assurance reviews and single audits governed by the Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.⁷ The background checks that tribally controlled schools complete must be "no less stringent" than those required of the BIE.⁸ Without long-term guidance from BIE leadership on oversight roles and responsibilities, the BIE is at risk of reverting to the previous inconsistent oversight process conducted prior to the January 2017 transition.

Under the current process, BIE grant specialists use a new standardized checklist to conduct annual grant checks that includes prompts to ask whether the schools are current on their background checks and reinvestigations and have initiated local law enforcement checks. The BIE reported that as of July 2017 its grant specialists had completed reviews for 114 of 130 schools (88 percent) for the 2016 – 2017 school year.

⁶ Bureau of Indian Education Background Investigations of Indian Education Employees, Report No. Q-IN-BIA-0005-2007 (April 25, 2008).

⁷ 2 C.F.R. part 200

⁸ 25 U.S.C. § 3207(c)(2).

Prior to the January 2017 reorganization, BIE grant assurance checks were inconsistent as they did not have a standardized approach as to what was reviewed and to what extent. One school we spoke with had not yet undergone a review by a grant specialist using the new checklist and did not know of the required local law enforcement check. When we told the school of the missing local law enforcement check, it was eager to follow up with the BIE to ensure it was aware of and meeting the full requirements.

Grant specialists report directly to Budget and Finance but have not received guidance from BIE leadership regarding long-term organization and reporting structure. Due to timing of the reorganization and a Governmentwide hiring freeze, grant specialists are conducting their work on a temporary detailed basis rather than permanent. Without guidance from BIE leadership, it is unknown who will ultimately have oversight for and responsibilities to perform BIE's grant assurance process, opening the BIE to the risk of reverting to the previous, inconsistent process. As such, children at these schools are at risk of contact with individuals who have not undergone background checks.

In addition to BIE's grant assurance reviews, many tribally controlled schools also undergo an annual single audit performed by an independent certified public accountant to ensure they are in compliance with their background check requirements. A school's noncompliance would be flagged and considered a finding for the single audit and possibly initiate a sanction process to limit or slow funding by the BIE. In speaking with Budget and Finance, the single audits are collected separate from the grant assurance process and are not holistically tracked for currency or repeated findings. In addition, completion of these single audits and any findings related to background checks are not disclosed to grant specialists. Fifty-eight tribal schools filed single audits for fiscal year 2015. Of those 58 schools, 12 had findings for character investigations due to untimely performance, missing documentation, or outdated documentation. Of those 12 schools, almost half experienced this finding on a reoccurring basis.

Recommendations

We recommend that the BIE:

4. Develop and implement a plan outlining the roles and responsibilities for BIE oversight of background checks for tribally controlled schools that identifies who will conduct the grant assurance review and ensures that all grant assurance reviews are conducted in a consistent manner nationwide using a standardized tool.
5. Identify the responsible party and develop a plan to track tribally controlled schools' currency and findings as a result of their single audit for consideration in the grant assurance review.

Background Check Guidance and Information System Are Outdated

The Security Office's use of outdated SOPs and an inadequate information system leaves it unable to meet background check criteria as it cannot effectively conduct, track, and monitor background checks. As a result, schools have out-of-date processes for background checks, schools are not being trained by BIE on the current background check process and therefore may not be complying with background check requirements, and the BIE has unreliable background check data.

Despite multiple reorganizations of the background check function between and within the BIA and the BIE and the most recent January 2017 reorganization, the Security Office continues to use SOPs from 2002. While an attempt was made to update the SOPs in 2008, the draft version was never finalized by past BIE leadership and is no longer current. Along with outdated SOPs, the BIE shares an information system with the BIA that is inadequate as it does not provide background check data that can be fully relied upon.

Without current and readily available SOPs for the schools, security specialists must reach out to the BIE-operated schools on a case-by-case basis if there is a new requirement or turnover of the school security point of contact (SPOC). Despite efforts by the security specialists to keep schools informed, a school's SPOC may be unaware of process changes because the BIE has not provided schools with the Security Office's SOPs or regular training on updated processes. The SPOCs we spoke with indicated that it had been 5 or 6 years since they last received training from the BIE on the background check process. The SPOCs also indicated that it would be helpful to have access to a process manual as there are new staff unfamiliar with the process, as well as existing staff who could use an update and refresher on the process. One school's SPOC emphasized that security specialists have communicated conflicting requirements regarding the parts of the background check process she was responsible for completing.

Without updated guidance and training on the guidance, schools are at risk of failing to comply with background check requirements. For example, 42 U.S.C. § 13041 allows an individual to be hired prior to the completion of a background check under the condition that he or she is—at all times—within sight and under supervision of a staff person with a completed, favorable background check. Security specialists, however, acknowledged that they were unsure as to how schools supervised individuals who were hired pending the outcome of the full OPM investigation and Security Office adjudication. Two of the four SPOCs for BIE-operated schools that we interviewed stated that individuals pending complete background checks are hired without line-of-sight supervision.

Further, because the Security Office uses an inadequate information system, its background check data are unreliable. We consider the information system inadequate because it does not contain complete background check information, and the BIE could not tell us what the information system specifically tracks. In response to an inquiry of this review, in March 2017, the Security Office made a data call outside of its information system and found that nearly 20 percent of contractors and volunteers (77 of 415) working at the schools had no background check on file. When we learned this, we asked that the Security Office identify the BIE employees who had passed the FBI fingerprint check, and the BIE employees who were hired pending a completed OPM background investigation and later adjudicated by the Security Office to be unfavorable hires. We also requested that the office identify whether and when those persons' employment was terminated. The Security Office collaborated with the Employee and Labor Relations Office and, despite multiple attempts by both offices, they were unable to provide us with reliable data using their information system. In speaking with security specialists from both the BIA and the BIE, it is clear that the information system is unable to track and monitor background check data to measure completeness.

BIE leadership was unaware of the outdated procedures and inadequate information system. Without support from BIE leadership to update background check procedures and the information system and without regular training on updated processes for BIE schools, the Security Office and schools cannot fulfill background check requirements or track and monitor the status of background checks for individuals who work with children.

Recommendations

We recommend that the BIE:

6. Develop and implement up-to-date procedures for the background check process.
7. Ensure that schools are provided with consistent access to current procedures, as well as other tools and forms applicable to the background check process.
8. Develop and implement standardized background check training for the schools to be received on a periodic basis.
9. Ensure that all individuals, including employees, contractors, and volunteers, with regular access to children at Indian education facilities have completed background checks.
10. Ensure that individuals pending a full background check have line-of-sight supervision when in contact with children.
11. Develop and implement an information system that BIE's HR units can use to track background check data and the employment status of employees.

Conclusion and Recommendations

Conclusion

Background checks for new hires and reinvestigations for current staff are a critical control mechanism to prevent or mitigate abuse or misconduct at BIE-operated and tribally controlled schools. Child safety at Indian education facilities continues to be at risk from employees, contractors, and volunteers who have not undergone full background checks.

In 2009, the BIE revised protocol for reporting incidents of suspected child abuse and neglect in which employees are identified as alleged offenders. While not required, many tribally controlled schools file reports to the BIE using this protocol. During the 2015 – 2016 school year, BIE-operated schools reported 85 employee-related incidents. For that same school year, tribally operated schools reported 71 employee-related incidents.

Although our review did not directly link incomplete background checks with reported employee-related incidents, we believe that completing background checks and reinvestigations in a timely manner may provide an added control to help limit future employee related incidents at Indian education facilities.

BIE's recurrent nature of reorganization continues to negatively affect its ability to ensure completion of background checks in BIE-operated and tribally controlled schools. With the January 2017 reorganization, current BIE leadership has an opportunity to address process weaknesses in a manner that will be sustainable across the Bureau by providing clear guidance and training to ensure that local law enforcement checks are complete, reinvestigations are up to date, oversight for tribally controlled school background checks is clarified, and the Security Office's outdated procedures and information system are updated.

Recommendations

On December 26, 2017, the BIE responded to our draft report, concurring with all recommendations. The BIE also stated that addressing the recommendations will work to improve oversight and protect the safety of students and school personnel. See Appendix 4 for BIE's full response and Appendix 5 for the status of recommendations.

We recommend that the BIE:

1. Develop and implement policy requiring that local law enforcement checks, including tribal law enforcement, be completed prior to final adjudication of the OPM background check.

BIE response: The BIE concurred with this recommendation, stating that it would develop and formally publish a policy amending BIA's SOPs to

require that local law enforcement checks, including tribal law enforcement, be completed prior to final adjudication of the OPM background check.

OIG reply: We agree that actions described in BIE's response are sufficient to address Recommendation 1, so long as the BIE uses the amended SOPs in its background check process. We consider Recommendation 1 resolved but not implemented.

2. Follow up with the Navajo Police Department to identify and implement the steps needed to complete the local law enforcement checks.

BIE response: The BIE concurred with this recommendation. It stated that BIE leadership has been made aware of the issue and will determine the status of the October 2015 draft waiver, take steps to authorize or amend accordingly, and then authorize to address administrative issues obstructing school-level completion of background checks.

OIG reply: We agree that actions described in BIE's response are sufficient to address Recommendation 2 and consider it resolved but not implemented.

3. Develop and implement a plan to complete reinvestigations that addresses both the backlog and reinvestigations coming due.

BIE response: The BIE concurred with this recommendation, stating that it would direct its staff to develop a sustainable, long-term solution for completing reinvestigations and develop and implement the necessary policy or procedure to guide implementation. The BIE is already aware of its limited workforce capacity even when fully staffed, so any solution will ensure coordination and collaboration with the BIA. In the interim, the BIE is in the process of identifying a short-term solution that includes temporarily reassigning available BIA security personnel to assist the BIE in addressing the current backlog.

OIG reply: We agree that actions described in BIE's response are sufficient to address Recommendation 3 and consider it resolved but not implemented.

4. Develop and implement a plan outlining the roles and responsibilities for BIE oversight of background checks for tribally controlled schools that identifies who will conduct the grant assurance review and ensures that all grant assurance reviews are conducted in a consistent manner nationwide using a standardized tool.

BIE response: The BIE concurred with this recommendation, stating that it would provide specific guidance and develop policies and procedures regarding the long-term organizational structure for oversight and reporting of annual grant checks. The BIE has also directed grant specialists to use a new standardized checklist to conduct annual grant checks.

OIG reply: We agree that actions described in BIE's response are sufficient to address Recommendation 4 and consider it resolved but not implemented.

5. Identify the responsible party and develop a plan to track tribally controlled schools' currency and findings as a result of their single audit for consideration in the grant assurance review.

BIE response: The BIE concurred with this recommendation, stating that it would hire the oversight and auditor positions under the chief performance officer specifically to address this issue.

OIG reply: We agree that actions described in BIE's response are sufficient to address Recommendation 5 and consider it resolved but not implemented.

6. Develop and implement up-to-date procedures for the background check process.

BIE response: The BIE concurred with this recommendation, stating that it would review existing and prior SOPs to develop and publish a uniform policy that updates and amends BIA background check processes and procedures.

OIG reply: We agree that actions described in BIE's response are sufficient to address Recommendation 6, so long as the BIE uses these updated processes and procedures in its background check process. We consider Recommendation 6 resolved but not implemented.

7. Ensure that schools are provided with consistent access to current procedures, as well as other tools and forms applicable to the background check process.

BIE response: The BIE concurred with this recommendation, stating that it would review its current background check information system and ensure current procedures, forms, and other tools are readily accessible and updated. The BIE will also work with its partners across Indian Affairs to ensure the information system is available to schools, contingent with current law.

OIG reply: We agree that actions described in BIE’s response are sufficient to address Recommendation 7 and consider it resolved but not implemented. To consider the recommendation implemented, we request that the BIE be able to demonstrate that specific protocols, procedures (including current and updated SOPs), forms, and other tools are made accessible to schools.

8. Develop and implement standardized background check training for the schools to be received on a periodic basis.

BIE response: The BIE concurred with this recommendation, stating that it has recently “revamped” its professional development efforts for BIE employees. The BIE is also planning training at the school-level to address security issues and is determining long-term training schedules, so schools are provided up-to-date information on a regular basis.

OIG reply: We agree that actions described in BIE’s response are sufficient to address Recommendation 8 and consider it resolved but not implemented.

9. Ensure that all individuals, including employees, contractors, and volunteers, with regular access to children at Indian education facilities have completed background checks.

BIE response: The BIE concurred with the merits of this recommendation and will address the prior recommendations as detailed above to ensure individuals with regular access to children at Indian education facilities will have the necessary background checks. The BIE also stated that it can diminish risk by ensuring safeguards are implemented to address the recommendation and by increasing training opportunities and improving communication with the school.

OIG reply: Prior recommendations deal with ensuring that local law enforcement checks are completed, reinvestigations are brought up-to-date, oversight of tribally controlled schools is identified and consistent, and schools are provided with access to information and training. We believe that if these recommendations are implemented, all individuals with regular access to children at Indian education facilities have completed background checks. As such, we agree that actions described in BIE’s response are sufficient to address Recommendation 9 and consider it resolved but not implemented.

10. Ensure that individuals pending a full background check have line-of-sight supervision when in contact with children.

BIE response: The BIE concurred with the merits of this recommendation and will address the prior recommendations as detailed above to ensure individuals who have pending background checks and have regular access to children at Indian education facilities are also under the necessary supervision. The BIE also stated that it can diminish risk by ensuring safeguards are implemented to address the recommendations and by increasing training opportunities and improving communication with the school.

OIG reply: Recommendations 7 and 8 deal with ensuring that schools are provided with consistent access to current procedures applicable to the background check process and that the BIE implements standardized background check training for the schools. We believe that if these recommendations are implemented, individuals pending a full background check will have line-of-sight supervision when in contact with children. As such, we agree that actions described in BIE's response are sufficient to address Recommendation 10 and consider it resolved but not implemented.

11. Develop and implement an information system that BIE's HR units can use to track background check data and the employment status of employees.

BIE response: The BIE concurred with this recommendation, stating that it would review current background check information systems and ensure current procedures, forms, and other tools are readily accessible and updated. The BIE stated that it will work with its partners across Indian Affairs to ensure the information system is available to schools, contingent with current law.

OIG reply: Although the BIE concurs, its response does not address this recommendation. In our report, we state in detail why we consider the information system inadequate as it does not contain complete background check information, and the BIE could not tell us what the information system specifically tracks. We do not agree that actions described in BIE's response are sufficient to address and implement Recommendation 11 and consider it unresolved and not implemented.

Appendix I: Scope and Methodology

Scope

Our objective was to identify whether Bureau of Indian Education (BIE) employees and other individuals with regular contact with children at Indian education facilities have met the requirements for background checks and regular reinvestigations. To address this objective, we reviewed relevant criteria and program information from BIE-operated and tribally controlled schools.

We conducted our review from February 2017 through April 2017. Due to a recent agency reorganization, we focused on current hiring practices and recent data. Our review was affected by the January 2017 – April 2017 Governmentwide hiring freeze. The Personnel Security office (Security Office) was on hold for conducting new background investigations as the BIE was not able to hire; this hold limited our ability to review new procedures.

We conducted our evaluation in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

We did not include a review of BIE's information system controls as our review was to identify whether individuals with regular contact with children at Indian education facilities have met the requirements for background checks and regular reinvestigations. We relied on computer data provided by the BIE, but our scope did not include verifying the data.

Methodology

To accomplish the evaluation's objective, we:

- Gathered background information on BIE background checks through prior reports.
- Identified and reviewed Federal, departmental, and bureau policies related to background checks.
- Interviewed officials at BIE-operated and tribally controlled schools about their procedures and experiences with the background check process.
- Interviewed BIE Security Office officials about background check process and procedures for BIE-operated schools.

- Interviewed BIE School Operations Division officials and grant specialists about background check process and procedures for tribally controlled schools.
- Obtained and reviewed data from the BIE Security Office and school operations related to background check status.
- Interviewed the BIE suspected child abuse and neglect (SCAN) official about SCAN protocol.
- Obtained and reviewed data from the BIE SCAN official related to reported staff-related incidents.
- Spoke with BIE leadership to discuss recent BIE transition and reorganization.
- Researched industry practices for standards of educational facility background checks, looking specifically at the States of New Mexico and Arizona's requirements for teacher certification and working in the classroom.

Appendix 2: Sites and Offices Visited or Contacted

Bureau of Indian Education (BIE)

School Operations Division
Personnel Security Office
Employee and Labor Relations
Academics
Regional Budget and Finance
Headquarters Budget and Finance

Location

Washington, DC
Albuquerque, NM
Albuquerque, NM
Albuquerque, NM
Albuquerque, NM
Washington, DC

BIE Operated Schools

Crownpoint Community School
Tuba City Boarding School
Pine Ridge School
Albuquerque, New Mexico Education
Resource Center
Phoenix, Arizona Education Resource
Center*
Jones Ranch*

Location

Crownpoint, NM
Tuba City, AZ
Pine Ridge, SD
Albuquerque, NM

Phoenix, AZ

Vanderwagen, NM

Tribally Controlled Schools

Casa Blanca Community School
Gila Crossing Community School
Santa Fe Indian School
Albuquerque, New Mexico Education
Resource Center

Location

Bapchule, AZ
Laveen Village, AZ
Santa Fe, NM
Albuquerque, NM

* Contacted, but they did not agree to speak with us.

Appendix 3: Prior Audit Coverage

Previous to this report, the U.S. Department of the Interior (DOI) Office of Inspector General (OIG) reported significant findings regarding the Bureau of Indian Affairs' (BIA's) and the Bureau of Indian Education's (BIE's) background check process required for individuals who have regular contact with children at Indian education facilities. We identified common findings with regard to the BIA and the BIE not initiating background checks, not contacting local law enforcement, not reinvestigating and adjudicating existing employees, and not completing preliminary screenings and background checks before hiring employees.

Improvement Needed in the Bureau of Indian Affairs Process for Conducting Background Investigations of Indian Education Employees
Report No. C-IN-BIA-0014-2004

In 2004, we found that BIA's background check process did not prevent unsuitable individuals from having contact with Indian children at BIA schools. We made five recommendations to help initiate timely law enforcement checks, ensure the hire of applicants after completion of the Federal Bureau of Investigation (FBI) checks, and encourage appropriate oversight and accountability throughout the process.

Bureau of Indian Education Background Investigations
Report No. Q-IN-BIA-0005-2007

In 2008, we found that FBI checks, character checks, and reinvestigations were not conducted for BIE employees. We made five recommendations to help identify and initiate the appropriate background checks for individuals without suitable checks or proper adjudication, ensure safeguards were in place for individuals working without a complete background check, and develop plans and procedures to ensure BIE schools are compliant with the background check process.

Review of Three Recommendations From Our April 2008 Audit Report No. Q-IN-BIA-0005-2007 Titled "Bureau of Indian Education Background Investigations"
Report No. C-VS-BIE-0006-2011

In 2011, we performed a verification review of our 2008 audit to determine whether the BIE appropriately handled expediting screenings and whether the BIE implemented a process to ensure that background investigations were completed and adhered to Federal requirements. We found that the BIE implemented the appropriate actions that required BIE leadership approval for expedited screenings and a checklist to ensure compliance to Federal requirements. The review was applied to the organization structure of that time and limited to whether the BIE took action to implement the recommendations.

Appendix 4: Bureau Response

The Bureau of Indian Education's response to our draft report follows on page 23.



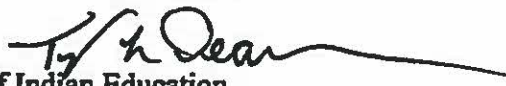
United States Department of the Interior

BUREAU OF INDIAN EDUCATION
Washington, D.C. 20240

DEC 26 2017

Memorandum

To: Mary L. Kendall
Deputy Inspector General, Office of Inspector General

From: Tony L. Dearman 
Director, Bureau of Indian Education

Subject: Draft Evaluation Report – Bureau of Indian Education Is Not Ensuring That Background Checks at Indian Education Facilities Are Complete
Report No. 2017-WR-024

The Bureau of Indian Education (BIE) appreciates the opportunity to comment on the Office of Inspector General's (OIG) evaluation of issues related to BIE's oversight and execution of background checks pertaining to BIE facilities.

Addressing the draft report recommendations will improve oversight and work to protect the safety of students and school personnel. Below is a summary of actions already taken as well as plans to implement the OIG recommendations.

Recommendation 1

Develop and implement policy requiring that local law enforcement checks, including tribal law enforcement, be completed prior to final adjudication of the OPM background check.

Response: Concur.

BIE will develop and formally publish a policy amending BIA standard operating procedures (SOPs) requiring that local law enforcement checks, including tribal law enforcement, be completed prior to final adjudication of the OPM background check.

Responsible Official: Director, BIE.
Target Date: December 31, 2018.

Recommendation 2

Follow up with the Navajo Police Department to identify and implement the steps needed to complete the local law enforcement checks.

Response: Concur.

BIE leadership has been made aware of the issue and will determine the status of the October 2015 draft waiver and take steps to authorize or amend accordingly and subsequently authorize to address administrative issues obstructing school-level completion of background checks.

Responsible Official: Director, BIE.

Target Date: July 31, 2018.

Recommendation 3

Develop and implement a plan to complete reinvestigations that addresses both the backlog and reinvestigations coming due.

Response: Concur.

BIE will direct its staff to work to develop a sustainable, long-term solution for completing reinvestigations as well as develop and implement the necessary policy or procedure guiding implementation. BIE is already aware of its limited workforce capacity even after fully staffed, so any solution will ensure coordination and collaboration with BIA to ensure adequate capacity. In the interim, the BIE is in the process of identifying a short-term solution that includes temporarily reassigning available BIA security personnel to assist the BIE in addressing the current backlog.

Responsible Official: Human Resource Officer, BIE.

Target Date: December 31, 2020.

Recommendation 4

Develop and implement a plan outlining the roles and responsibilities for BIE oversight of background checks for tribally controlled schools that identifies who will conduct the grant assurance review and ensures that all grant assurance reviews are conducted in a consistent manner nationwide using a standardized tool.

Response: Concur.

While the BIE has directed grant specialists to utilize a new standardized checklist to conduct annual grant checks, inconsistency remains. BIE will work to provide specific guidance and develop policies and procedures regarding the long-term organizational and reporting structure for such oversight and reporting.

Responsible Official: Respective Associate Deputy Director, BIE.

Target Date: July 31, 2018.

Recommendation 5

Identify the responsible party and develop a plan to track tribally controlled schools' currency and findings as a result of their single audit for consideration in the grant assurance review.

Response: Concur.

BIE is working to address this outstanding issue by hiring oversight and auditor positions under the Chief Performance Officer specifically needed to provide such technical assistance, oversight and accountability in regards to such audits.

Responsible Official: Chief Performance Officer, BIE.

Target Date: December 31, 2020.

Recommendation 6

Develop and implement up-to-date procedures for the background check process.

Response: Concur.

BIE will review existing SOPs as well as prior SOP drafts to develop and formally publish a uniform policy updating and amending BIA processes and procedures in regards to background checks.

Responsible Official: Director, BIE.

Target Date: December 31, 2018.

Recommendation 7

Ensure that schools are provided with consistent access to current procedures, as well as other tools and forms applicable to the background check process.

Response: Concur.

BIE will review current information systems in regards to background information and ensure current protocols and procedures as well as forms and other tools are readily accessible and updated. Further, BIE will work with its partners across Indian Affairs to ensure the system is optimal in providing such information to schools, contingent with current law.

Responsible Official: Deputy Bureau Director, School Operations, BIE.

Target Date: December 31, 2020.

Recommendation 8

Develop and implement standardized background check training for the schools to be received on a periodic basis.

Response: Concur.

The BIE has recently revamped its professional development efforts for BIE employees. Much work remains, so the BIE is planning trainings at the school level to address such security issues. The BIE is also determining long-term training schedules, so schools are provided up-to-date information on a regular and consistent basis.

Responsible Official: Human Resource Officer, BIE.

Target Date: July 31, 2019.

Recommendation 9

Ensure that all individuals, including employees, contractors, and volunteers, with regular access to children at Indian education facilities have completed background checks.

Response: Concurs.

BIE concurs with the merits of this recommendation and will address the prior recommendations as detailed above, to the extent practical, to ensure individuals with regular access to children at Indian education facilities have the necessary background checks. The BIE can diminish risk by reviewing grant agreements to ensure safeguards are implemented to address the recommendation as well as increasing training opportunities and improving communication with the school level.

Responsible Official: Director, BIE.

Target Date: December 31, 2020.

Recommendation 10

Ensure that individuals pending a full background check have line-of-sight supervision when in contact with children.

Response: Concurs.

BIE concurs with the merits of this recommendation and will address the prior recommendations as detailed above, to the extent practical, to ensure individuals pending background check with regular access to children at Indian education facilities have the necessary supervision in place. The BIE can diminish risk by reviewing grant agreements to ensure safeguards are implemented to address the recommendation as well as increasing training opportunities and improving communication with the school level.

Responsible Official: Director, BIE.

Target Date: December 31, 2020.

Recommendation 11

Develop and implement an information system that BIE Human Resources units can use to track background check data and the employment status of employees.

Response: Concurs.

BIE will review current information systems in regard to background information and ensure current protocols and procedures as well as forms and other tools are readily accessible and updated. BIE will work with its partners across Indian Affairs to ensure the system is optimal in providing such information to schools, contingent with current law.

Responsible Official: Deputy Bureau Director, School Operations, BIE.

Target Date: December 31, 2020

Appendix 5: Status of Recommendations

Recommendation	Status	Action Required
I – 10	Resolved but not implemented	Refer recommendation to the Assistant Secretary for Policy, Management and Budget to track implementation.
11	Unresolved and not implemented	Refer recommendation to the Assistant Secretary for Policy, Management and Budget for resolution.

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