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

AUDIT REPORT

IMPROVEMENTS NEEDED IN THE BUREAU OF INDIAN AFFAIRS PROCESS FOR CONDUCTING BACKGROUND INVESTIGATIONS OF INDIAN EDUCATION EMPLOYEES

REPORT NO. C-IN-BIA-0014-2004

MARCH 2004

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Central Region
134 Union Blvd., Suite 510
Lakewood, Colorado 80228

March 5, 2004

Memorandum

To: Assistant Secretary for Indian Affairs

From: Anne L. Richards
Regional Audit Manager

Subject: Final Audit Report on Improvements Needed in the Bureau of Indian Affairs Process for Conducting Background Investigations of Indian Education Employees (No. C-IN-BIA-0014-2004)

This report presents the results of our audit of the Bureau of Indian Affairs (BIA) process for conducting background investigations of Indian education employees. The objective of our audit was to determine whether BIA's process prevents the hiring and retaining of individuals with unsuitable backgrounds for positions having regular contact with or control over Indian children.

We determined that, although BIA has improved the background investigation process, its system of pre-screening applicants still allows potentially unsuitable persons to be hired. Further, it does not ensure that the employment of unsuitable individuals is terminated in a timely manner. Therefore, we concluded that BIA's redesigned background investigation process is not sufficient to prevent Indian children from potentially being in danger. This report contains five recommendations which, if implemented, should improve the process and better protect Indian children.

In the December 31, 2003, response to the draft audit report, the Principal Deputy Assistant Secretary for Indian Affairs agreed with the audit findings in the report. The response, however, offered an alternative to Recommendation 1 but concurred with Recommendations 2, 3, 4, and 5. We do not agree with the alternative solution for Recommendation 1 and are requesting that BIA reconsider our recommendation. Overall, we consider Recommendations 2 and 4 resolved but not implemented and Recommendations 3 and 5 implemented. We are requesting that BIA provide us with the information indicated in Appendix 5. We would appreciate receiving the response to this report by April 9, 2004.

The legislation, as amended, creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, actions take to implement

our audit recommendations, and recommendations that have not been implemented.

We appreciate the cooperation provided by the BIA staff during our audit. If you have any questions regarding this report, please call me at (303) 236-9243.

EXECUTIVE SUMMARY

Introduction

We audited the Bureau of Indian Affairs (BIA) education employee background investigation process. Our objective was to determine whether BIA's process prevents the hiring and retaining of individuals with unsuitable backgrounds for positions having regular contact with or control over Indian children.

Prior to our audit, BIA had moved the background investigation process into a newly created Office of Indian Education Security Services (Security Office) within the BIA's Office of Indian Education Programs (OIEP). To improve the background investigation process, the new Security Office has:

- Provided training to local school officials regarding preparing preliminary security packages.
- Dramatically reduced the backlog of personnel security files awaiting final determination.
- Worked with the Office of Personnel Management (OPM) to obtain the results of Federal Bureau of Investigations (FBI) fingerprint and name checks (FBI checks) in much less time than it previously took.
- Begun a process to identify employees without required background investigations.

Results in Brief

We found, however, that the pre-screening process still allows potentially unsuitable persons to be hired. Further, the process does not ensure that the employment of unsuitable individuals is terminated in a timely manner. We concluded that BIA's background investigation process is not sufficient to prevent Indian children from potentially being in danger. For example:

- One year and five months after a home living assistant at a school dormitory in New Mexico was hired a local law enforcement inquiry was completed. It identified 26 offenses for this individual including battery and endangering the welfare of a minor. This individual was

subsequently removed from this position. The new process still relies on local school officials to initiate the local law enforcement inquiries.

- Seven months after an education aide in New Mexico was hired, the FBI check for this aide was completed. The FBI check revealed a battery and child endangerment conviction. The education aide's employment at the school was subsequently terminated. The new process still allows applicants to be hired before completion of the FBI check.

- A school secretary in New Mexico convicted of voluntary manslaughter and aggravated assault had a final unsuitable determination in November 2001 but remained employed for about nine months until a final resolution in August 2002.

Recommendations

We are recommending that BIA take steps to strengthen its pre-screening process and improve accountability over the complete process. In all, we made five recommendations.

BIA Actions

Based on our audit, the Office of Indian Education Security Services is taking steps to improve the background screening process. These steps include:

- Amending its procedures and submitting fingerprint charts to the Office of Personnel Management as soon as the security package is received, rather than waiting until the security package has been reviewed and is properly complete.

- Entering into a Memorandum of Understanding with the Office of Personnel Management to conduct child-care investigations which include checks of all relevant state criminal history repositories.

- Monitoring completion of pre-employment screening.

- Eliminating a large backlog of incomplete background investigations.

- Reconciling Federal Personnel Payroll System records of current employees to the background investigations log on a monthly basis.

- Developing and delivering needed training to various personnel.

- Meeting with the Deputy Director, OIEP, on a weekly basis to keep him informed of security issues.

- Receiving and reconciling monthly reports of new appointments and terminations for all OIEP schools and the OIEP Central Office.

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INTRODUCTION

This report presents the results of our audit of the Bureau of Indian Affairs' (BIA) Office of Indian Education Programs' (OIEP) employee background investigation process. Our objective was to determine whether BIA's process prevents the hiring and retaining of individuals with unsuitable backgrounds for positions having regular contact with or control over Indian children.

While a recent reorganization has yielded some improvements in BIA's process, we ultimately concluded that BIA's education employee background investigation process is still not ensuring that unsuitable individuals are prevented from having contact with Indian children.

Background

Individuals who have been convicted of certain offenses, such as sexual assault or molestation, are precluded by law from holding positions that have regular contact with or control over Indian children. Therefore, each individual who is employed or is being considered for employment in a position having duties or responsibilities including regular contact with or control over Indian children is required to undergo a background investigation. Exact numbers are unavailable, but it is clear that only a few applicants are ever shown to be unsuitable by the background investigation process. At the time of our audit, the BIA records showed that out of 7,664 background investigations initiated, only 165 identified issues for further investigation, and only 50 (or less than one percent of the total) were ultimately found to be unsuitable.

BIA's current procedures require the pre-screening of applicants by the school hiring officials and pre-approval of hiring by the OIEP Office of Indian Education Security Services (Security Office). Pre-screening includes verifying applicants' information regarding previous employment, contacting references, and obtaining information from local law enforcement agencies. The hiring officials complete and forward to the Security Office the information they obtain through

the pre-screening process on an affidavit. The Security Office reviews the pre-screening information and then sends the school hiring officials back written recommendations on whether to tentatively hire applicants. Each new employee then completes a more detailed security package. This security package contains information about the new employee's history including his or her education and previous employment, former residences, aliases, substance abuse, and legal convictions, if any. The completed security package is sent to the Security Office which reviews the package and, if it is complete, forwards it to the Office of Personnel Management (OPM). OPM performs the actual background investigation, which includes obtaining a Federal Bureau of Investigation (FBI) fingerprint and name check (FBI check) of the new employee.

RESULTS OF AUDIT

The Current Process Does Not Prevent Unsuitable Individuals From Having Contact with Indian Children at BIA Schools

Most applicants successfully pass a background investigation; only a few individuals are found to be unsuitable. However, the BIA's background investigation process allows those few unsuitable individuals to be hired and possibly have contact with Indian children. We found that Indian children could be in danger because:

- Applicants were hired without timely initiation of local law enforcement checks.
- Applicants were hired before the FBI checks were completed.
- There is insufficient accountability in the process to ensure background investigations are completed promptly or employees who are determined to be unsuitable by background checks are removed from their positions promptly.

Local Law Enforcement Checks

Applicants were hired without timely initiation of local law enforcement checks. Local law enforcement checks generally involve contacting police departments for records checks at locations where applicants previously lived or worked. Depending on the applicant, this may mean contacting multiple local police agencies throughout the nation.

Although it has long been BIA policy that local law enforcement reviews be completed during the pre-screening process, these reviews are seldom completed before an individual is hired. The current process requires the local hiring official to conduct the local law enforcement check. In actuality, the hiring officials rarely even start this check. Frequently, OPM is the initiator of the local law enforcement check during the full background investigation. Thus the local law enforcement check, which requires a long time to complete, is not started until after the applicant is tentatively hired. Also, OPM is only required to request information, it is not required to get a response before completing its investigation. To complete the local law

enforcement check, BIA security personnel have generally needed to make additional inquires after OPM completes its investigation. We reviewed the files of 57 new employees. Only 4 files (seven percent) had documentation showing that local hiring officials started the local law enforcement checks. We were able to obtain complete information regarding the hire dates and the initiation of the local law enforcement checks for 31 new hires. For those 31 new employees, the average length of time between the hire date and initiation of the local law enforcement check was 243 days, or about eight months.

Some of these applicants were found by the local law enforcement reviews to be potentially unsuitable for employment in positions having contact with or control over Indian children. For example:

- A home living assistant at a school dormitory in New Mexico was hired in October 1998 and did not receive the required local law enforcement check during the employee pre-screening. The FBI check revealed no offenses, but a local law enforcement inquiry in March 2000 identified 26 offenses including battery and endangering the welfare of a minor. This unsuitable individual remained a school employee for approximately 17 months before the local law enforcement inquiry was made. Also, after the local law enforcement review identified the offenses, this individual remained employed for approximately six months before a final determination to remove the employee was made.

The current local law enforcement check process is time consuming and convoluted. It may result in three separate inquiries to a local law enforcement agency (one from the hiring official, one from OPM, and one from the Security Office.) The Security Office has the ultimate responsibility to complete the local law enforcement check. To do that, the Security Office first must determine what steps the hiring official and OPM may have completed and then complete the remaining steps. In our opinion, shifting the responsibility to

initiate the local law enforcement check from the local hiring officials to the Security Office will help streamline and hasten the process. The Security Office should initiate the local law enforcement check and make follow-up inquiries while OPM is conducting its background investigation. The local law enforcement agencies would then be able to have a single point of contact for all Indian education background inquiries and the Security Office would be able to ensure that the checks are initiated and completed in a timely manner, without repeating steps that may have been started by others.

FBI Fingerprint and Name Checks

Applicants were hired before completion of the FBI fingerprint and name checks. Some of these applicants were subsequently found by the FBI check to have a criminal record that caused the individual to be potentially unsuitable for employment in a position that may have contact with Indian children. For example:

- An education aide in New Mexico was hired in August 1999 and had a background investigation completed around March 2000. The FBI check revealed a battery and child endangerment conviction. A final determination was issued in September and employment was terminated in October 2000.

The Security Office has worked with OPM to have the FBI check completed earlier in the process. The new procedures include having OPM report the results of the FBI fingerprint check within about 15 days after the fingerprints and the security package are submitted. However, this could be months after the employee is hired. The Security Office currently cannot submit the security packages to OPM until all the forms are complete. From the 57 new hire files we reviewed, we were able to identify 49 files that had both the employees' hire date and the date the security package was properly completed. We identified 23 individuals (47 percent) who were hired prior to the security package being completed. The average elapsed time between the date these individuals were hired and the date the security package was completed was 107 days or about three and a half months.

We understand that there needs to be a balance between the timing for hiring critical employees, such as teachers, and completing the prescreening of applicants. However, we believe that changing the process to allow completion of the FBI check after an offer of employment has been made, but before the employee is hired, is a necessary safeguard that causes only a minor delay in getting the new employee on board. We contacted OPM and asked if the FBI check could be completed prior to submission of the full security package for the complete background investigation process. OPM indicated that it could accept the fingerprint form separately from the rest of the investigation process and provide the results of the FBI check to the Security Office.

Accountability

The current process does not provide sufficient accountability to ensure that background investigations are completed in a timely manner or that unsuitable employees are removed from their positions promptly. We found that local school officials were not always:

- Completing required pre-screening steps.
- Waiting for the Security Office's pre-approval before hiring applicants.
- Ensuring that applicants prepare a complete security package for submission to OPM for the background investigation.
- Promptly removing employees determined to be unsuitable.

Also, the Security Office needs to improve its tracking of the background investigation workload.

Performing Pre-screening Steps

Hiring officials were not completing the required pre-screening affidavits properly. We reviewed 57 pre-screening affidavits for new employees and found only one completed properly, including verification of all required background information. The pre-screening process includes verifying prior employment and checking references. The Security Office then evaluates the pre-screening information before pre-approving the

applicant to be tentatively hired. However, the Security Office does not currently collect, analyze, or report information on the completion of the pre-screening affidavits by the hiring officials.

Obtaining Security Office Approval

Schools hired applicants without the required pre-approval by the Security Office. For example:

- A counselor technician in Oklahoma was hired three months before the school was sent the notice of tentative hire by the Security Office.

- A teacher in Arizona was hired two and a half months prior to the school receiving the notice of tentative hire from the Security Office.

The Security Office reviews the pre-screening package to identify any obvious problems before providing a recommendation on the tentative hiring of the applicant. If the schools do not wait for the Security Office's preliminary review, the schools are increasing the risk that an unsuitable person will be hired.

Additionally, the Security Office uses the pre-screening and pre-approval process to identify new hires that will need a background investigation. If schools are hiring without the pre-approval, it may mean that the Security Office is unaware of the need to conduct a background investigation for that new employee. This increases the chance that an employee will never have a background investigation and that unsuitable individuals will not be identified or prevented from having contact with Indian children.

To identify OIEP employees who may not have had background investigations, we compared the background investigation log for OIEP employees to the information in the Federal Personnel/Payroll System (FPPS) for OIEP. We identified 146 OIEP employees that were not listed on the log and may never have had a background investigation completed. We provided this information to the Security Office immediately. As a result, the Security Office took action to reconcile the background investigation log. Since February 2003 the

Security Office has performed this reconciliation monthly.

Completing Security Packages

Hiring officials were not ensuring that new employees properly completed the security forms needed to initiate a background investigation. When the Security Office receives incomplete forms it must return the forms to be completed. This lengthens the time it takes to complete background investigations. The Security Office has developed and delivered training about the security package to local school officials to help them ensure that the packages are complete prior to submission. The Security Office maintains information about when a security package is received, when it is completed, and when it is forwarded to OPM to start an investigation. However, the Security Office does not analyze or report information on the length of time it takes to get a completed package or the number of times it needs to return a package to the employee before it is completed properly.

Removing Unsuitable Employees

School officials were not always promptly removing employees who have been determined to be unsuitable. For 26 security files reviewed, we found that removal of an unsuitable employee from his or her position could be as quick as six days or as long as one year from the date the unsuitability was determined. For instance:

- A school secretary in New Mexico convicted of voluntary manslaughter and aggravated assault had a final unsuitable determination in November 2001 but remained employed for about nine months until a final resolution in August 2002.

The Security Office does not currently collect, analyze, or report information on the length of time unsuitable employees are retained after the final suitability determination.

Tracking Security Office Workload

The Security Office maintains a database or log of the background investigation workload. The log includes information on an applicant's name, dates actions are taken or documents are submitted, and the outcome of the investigation when completed. The Security Office

does not track the number of investigations needed, in process, or completed. Nor does it track its timeliness in completing its portion of the process. When the current Security Office took over the process in August 2002 there was a large backlog of incomplete investigations. Some of these incomplete investigations had been unresolved for a long period. This backlog has been generally resolved; however, the Security Office should track and report workload statistics to help prevent a reoccurrence and to help measure its own performance.

The Security Office needs to develop procedures to collect statistics on hiring officials' performance in completing the pre-screening steps and obtaining pre-approval from the Security Office before hiring individuals. It should also collect statistics on the completeness and timeliness of security packages being sent to OPM for the background investigations. In addition, data should be collected on the numbers of persons who have been determined unsuitable but not removed from their positions. This information should be reported to OIEP management to help monitor and improve program performance.

BIA Actions

Based on our audit, the Office of Indian Education Security Services (Security Office) is taking steps to improve the background screening process. These steps include:

- Amending its procedures and submitting fingerprint charts to the Office of Personnel Management as soon as the security package is received, rather than waiting until the security package has been reviewed and is properly complete.

- Entering into a Memorandum of Understanding with the Office of Personnel Management to conduct child-care investigations which include checks of all relevant state criminal history repositories.

- Monitoring completion of pre-employment screening.

- Eliminating a large backlog of incomplete

background investigations.

- Reconciling Federal Personnel Payroll System records of current employees to the background investigations log on a monthly basis.

- Developing and delivering needed training to various personnel.

- Meeting with the Deputy Director, OIEP, on a weekly basis to keep him informed of security issues.

- Receiving and reconciling monthly reports of new appointments and terminations for all OIEP schools and the OIEP Central Office.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Indian Affairs:

1. Transfer responsibility for initiating local law enforcement checks from the schools to the Office of Indian Education Security Services (Security Office).

BIA Response

In its December 31, 2003, response to the draft report (Appendix 4), BIA concurred with the audit finding, but did not concur with the recommendation. Instead BIA offered an alternative action to have the OIEP Security Office work with individual schools to establish local points of contact with local law enforcement agencies and negotiate agreements with these agencies where circumstances warrant. If schools are unable to obtain these checks timely, then the matter would be referred to the local law enforcement district office official for resolution.

OIG Conclusion

OIG considers this recommendation unresolved. As the BIA points out in its response:

> … obtaining records from local law enforcement agencies is a complex issue that has just about as many procedural scenarios as there are law enforcement agencies. Some law enforcement agencies require payment, some require written agreements, some require additional releases, and others will not release (information) to non-law enforcement agencies such as BIA schools.

We agree this is often a complex and difficult requirement to meet. In addition, the term local law enforcement agency can be misleading because it does not refer to being geographically local to a school's location. Rather it refers to the level of the law enforcement agency's jurisdiction, local as opposed to state or national. Because of an applicant's work experience, a rural school in one state will often be required to make local law enforcement inquiries in

multiple jurisdictions in other states. As pointed out in the report, using local school officials from multiple schools for these checks is a time-consuming and convoluted process. Because of these complexities and necessity to perform these checks in a timely manner, we believe a single group of well trained individuals at the OIEP Security Office would be much more effective in performing these inquiries. We are requesting the BIA reconsider the recommendation and provide the information requested in Appendix 5.

2. Prohibit employment of new education personnel until after the FBI check is completed.

BIA Response

BIA concurs with this recommendation. OIEP is amending its standard operating procedures to require that new hires have an OIEP security services approved advanced fingerprint check from the FBI before appointment to the position within OIEP. The new standard operating procedures are to be implemented by January 2004.

OIG Conclusion

OIG considers this recommendation resolved but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

3. Strengthen the accountability of the background investigation process by establishing the following requirements:

a. Provide the OIEP Deputy Directors a monthly list of any persons determined unsuitable whose employment has not yet been terminated.

b. Provide the OIEP Education Line Officers a quarterly report identifying deficiencies, such as not completing reference checks or submitting incomplete security packages, in schools' performance in the background investigation process.

c. Provide the OIEP Director a quarterly report indicating average time for investigations, number of cases pending, average age of

pending cases, and number of cases decided during the quarter.

d. Reconcile a listing of new employees from the Federal Personnel Payroll System (FPPS) records to the Security Office records at least monthly.

BIA Response

BIA concurs with this recommendation. The BIA has instituted weekly meetings with the OIEP Deputy Director and quarterly presentations to the OIEP Director, the OIEP Deputy Director, the Law Enforcement Services Deputy Director, and the Education Line Officers. These meetings and presentations address the issues raised in this recommendation. To establish a documented history, OIEP has begun providing written reports to these officials.

OIG Conclusion

OIG considers this recommendation resolved and implemented. No further action is required.

4. Ensure that the appropriate officials act on the information provided in the oversight reports as necessary.

BIA Response

BIA concurs with this recommendation. The BIA has already amended its standard operating procedures to identify appropriate responsible officials and required actions related to security actions. In addition, BIA has developed language and will amend critical elements for both performance standards and performance appraisals to reflect responsibilities for security related positions.

OIG Conclusion

OIG considers this recommendation resolved but not implemented. This recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

5. Ensure that the Security Office addresses the differences identified by our audit between the log of background investigations and the personnel records, including completing any necessary background investigations.

BIA Response

BIA concurs with this recommendation. BIA has

already and will continue to identify and resolve differences between the log of background investigations and the personnel records.

OIG Conclusion

OIG considers this recommendation resolved and implemented. No further action is required.

BACKGROUND

The BIA Office of Indian Education Programs (OIEP) is responsible for the support of 187 schools with an enrollment of about 48,000 students. These 187 schools include 119 day schools, 54 boarding schools, and 14 dormitories that house Indian children who attend public schools. BIA's schools are operated by either BIA or tribal organizations under grants or contracts from BIA. During the 2001-2002 school year, BIA operated 68 schools and 1 dormitory and tribes or tribal organizations operated the rest.

In accordance with Executive Order 10450, Security Requirements for Government Employment, dated April 27, 1953, each individual who has been tentatively selected for employment with OIEP must undergo a minimum investigation to determine the individual's suitability for the position. In accordance with 441 Department of the Interior Manual, Personnel Security and Suitability Requirements, OIEP contractors and consultants are subject to the same requirements as Federal employees. Because OIEP employees are in contact with Indian children, they are also subject to Public Law 101-647 (codified in 42 U. S. Code 10341), Crime Control Act of 1990, Subchapter V-Child Care Worker Employee Background Checks, which requires Federal agencies involved with the provision of services to children under age 18 to assure that all existing and newly hired employees undergo a criminal background check. In addition, OIEP is also subject to Public Law 101-630, The Indian Child Protection and Family Violence Protection Act (25 U.S.C. § 3207), which requires background investigations of individuals who are employed or being considered for employment when the position has regular contact with or control over Indian children. Individuals are not eligible for appointment if they have been found guilty of, or entered a plea of no contest or guilty to, any felony offense or any two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

In August 2002 responsibility for background investigations of education personnel at BIA-operated schools was transferred from the BIA Personnel and Physical Security Office to a newly created Office of Indian Education Security Services within the Human Resources Office of the OIEP (Security Office). The Department of the Interior provided the Security Office authority to perform background investigations in December 2002. The Security Office hired six employees to run its program.

The Security Office is responsible for ensuring compliance with Federal law governing access and suitability, and special statutory requirements for employees assigned duties and responsibilities involving regular contact with or control over Indian children, possession of a firearm, access to and management of information technology resources, and access to individual Indian and tribal trust resources. This includes ensuring all BIA positions, including those in OIEP, are appropriately designated and the appropriate screening is conducted and/or background investigations performed for all BIA

personnel, as well as contractor and Public Law 93-638 tribal employees, seeking access to information technology and individual Indian and tribal trust resources.

The OIEP employs approximately 5,000 individuals. BIA has determined that all OIEP positions require at least a Child Care National Agency Check with Inquiries. Since January 1998, the BIA's security offices have been involved in the various stages of background investigations for approximately 6,700 individuals. The background investigation process includes prescreening of applicants and obtaining completed security forms from the applicants selected for positions. It also includes the investigation and the adjudication (final determination of suitability) of current or potential employees as well as volunteers and contractors whose work brings them into contact with Indian children. The Office of Personnel Management, Investigative Service, conducts all background investigations for OIEP employees, contractors, consultants, and volunteers.

SCOPE AND METHODOLOGY

Our audit was conducted at the BIA Personnel and Physical Security Office and the Office of Indian Education Security Services (Security Office) in Albuquerque, New Mexico, and included interviews with BIA management, security staff, and employee relations staff. We also contacted individuals with the Office of Personnel Management (OPM) to clarify background investigation requirements. We reviewed documentation available from BIA and OPM for background investigations, and we reviewed selected background investigation files. Our scope included background investigations conducted from January 1998 to January 2003.

Our scope included background investigations for all Office of Indian Education Programs (OIEP) positions, volunteers, and contractors at BIA-operated schools and all individuals in the OIEP Human Resources Office. We did not review the background investigation process for employees at contract and grant schools. In addition, the audit did not include the background investigation process for positions outside OIEP, which remained with the BIA Personnel and Physical Security Office.

We obtained the BIA Personnel and Physical Security Office's background investigation log as of November 2002. Using this log we selected 74 security files for our audit. Four of the selected files could not be located leaving 70 files included in our audit. These individuals were selected because they were determined to be unsuitable or were noted as having a Public Law 101-630 issue. In addition, we obtained the same background investigation log as of January 15, 2003, with updates made by the new Security Office. Using this updated log we selected and reviewed 26 additional security files where the background investigation was started by the BIA Personnel and Physical Security Office and completed with a favorable determination by the new Security Office.

We conducted our audit in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as we considered necessary under the circumstances.

PRIOR AUDIT COVERAGE

During the past 5 years, the General Accounting Office has not issued any audit reports regarding BIA's education employee background investigations. The Office of Inspector General (OIG) issued three reports in December 1998 related to issues of BIA education employee background investigations:

- *Background Investigations for Navajo Area Education Employees, Bureau of Indian Affairs*
- *Background Investigations for Phoenix Area Education Employees, Bureau of Indian Affairs*
- *Background Investigations for Albuquerque Area Education Employees, Bureau of Indian Affairs*

These reports stated that the Area Security Offices did not timely initiate and properly complete all background investigations for new and existing education employees. The reports further stated that the BIA did not have effective processes, including written procedures, to identity all employees needing background investigations and to obtain the information necessary for the proper and timely completion of background investigations and security clearances.

In all three reports, the OIG recommended that (1) the Central Office Security Officer establish policies and procedures to ensure that education employees who have not received completed background investigations are identified and that all background investigation forms are obtained, properly completed, and submitted to the Office of Personnel Management; (2) the Central Office Security Officer establish polices and procedures to ensure that the Area Personnel Officers are notified of all relevant personnel actions; and (3) the Personnel Officer of the Office of Indian Education Programs (OIEP) establish a process to ensure that suitability determinations are adequately reviewed and implemented.

The OIG made an additional recommendation in the Navajo Area report that the Director, OIEP, review the three adverse suitability determinations cited in the report.

The BIA centralized the security process and established new policies and procedures as a result of these audits. However, as this current report indicates, the changes made did not resolve the issues identified in the prior reports.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

Received
JAN 09 2004
Central Region

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Memorandum

To: Regional Audit Manager, Central Region
Office of Inspector General

From: ACTING Principal Deputy Assistant Secretary-Indian Affairs

Subject: Draft Audit Report on the Bureau of Indian Affairs Process for Conducting Background Investigations of Indian Education Employees (C-IN-BIA-0023-2002-A)

Thank-you for the opportunity to comment on the Office of Inspector General (OIG) draft audit report, *Bureau of Indian Affairs Process for Conducting Background Investigations of Indian Education Employees,* dated October 20, 2003. The Office of Indian Education Programs (OIEP) generally concurs with the five recommendations. Before responding to the recommendations, we would like to again reiterate that the examples used to support the conclusions in draft audit report transpired *before* the OIEP security office came into existence. When the OIG audit began in April 2002, the responsibility of the personnel security and suitability process was with the Bureau of Indian Affairs Personnel and Physical Security Office (OIP Security Office). In August of 2002, the Office of the Assistant Secretary- Indian Affairs established the Personnel Security and Suitability Program within the OIEP. There was a transition period from August 2002 through December 2002 while OIEP staff awaited the required security briefings and adjudication authority. A Security Officer and three alternate Security Officers now form the OIEP Security Services. Effective with the reorganization of the Bureau of Indian Affairs (BIA), approved by the Secretary on April 21, 2003, the Office of the Deputy Director – Law Enforcement Services is responsible for the administration of the personnel security and suitability process for all Indian Affairs organizations. The OIEP Security Services is realigned with OIP Security Office under Law Enforcement Services. This change will ensure more effective communication with other law enforcement agencies such as the FBI, tribal law enforcement agencies, and other public law enforcement agencies.

OIG Recommendations and OIEP Responses

Recommendation 1: Transfer responsibility for initiating local law enforcement checks from the schools to the Office of Indian Education Programs Security Services.

OIEP Response: The OIEP concurs with the audit finding but offers alternative actions to correct the condition. The overall responsibility for ensuring that local law enforcement checks have been completed is with and will remain with OIEP Security Services. However, obtaining records from local law enforcement agencies is a complex issue that has just about as many

procedural scenarios as there are law enforcement agencies. Some law enforcement agencies require payment, some require written agreements, some require additional releases, and others will not release to non-law enforcement agencies such as BIA schools. OIEP Security Services is currently working with schools to establish points of contact with their local law enforcement agencies to ensure the timely completion of the local law enforcement check for new hires. OIEP Security Services has already entered into agreements with two law enforcement agencies and is working on ensuring that all of the OIEP schools, which need such agreements, have them in place. OIEP Security Services intends to continue to allow schools that have no problems conducting law enforcement checks to process their own local law enforcements checks. If a school official is unable to complete a local law enforcement check in a timely manner, the matter will be referred to the local Law Enforcement District Office official, who will obtain the information for the local law enforcement check. The OIEP considers the corrective actions for this recommendation completed.

Recommendation 2: Prohibit employment of new education personnel until after the FBI check is completed.

OIEP Response: The OIEP concurs with Recommendation 2. The corrective actions proposed by the OIEP Security Services takes the recommendation a step further and further strengthens the new-hire screening process. As part of the Federal government, the OIEP cannot initiate an investigation without, at a minimum, making a tentative offer of employment. As such, OIEP Security Services cannot initiate and complete an advanced fingerprint check on applicants. OIEP Security Services is amending its Standard Operating Procedures to require new hires to have a completed local law enforcement check, a completed and OIEP Security Services-approved security package, and a completed and OIEP Security Services-approved advanced fingerprint check from the FBI before appointment to a position within OIEP. The standard operating procedures will be completed by January 2004. Ms. Kaye Hayes, Security Officer, is responsible for completion of this corrective action.

Recommendation 3: Strengthen the accountability of the background investigation process by establishing the following requirements:

a. Provide the OIEP Deputy Directors a monthly list of any persons determined unsuitable whose employment has not been terminated.

b. Provide the OIEP Education Line Officers a quarterly report identifying deficiencies, such as not completing reference checks or submitting incomplete security packages, in schools' performance in the background investigations process.

c. Provide the OIEP Director a quarterly report indicating average time for investigations, number of cases pending, average age of pending cases, and number of cases adjudicated during the quarter.

d. Reconcile a listing of new employees from the Federal Personnel Payroll System (FPPS) records to the Security Office records at least monthly.

OIEP Response: The OIEP concurs with Recommendation 3. The OIEP Security Officer meets on a weekly basis with the Deputy Director, OIEP, to keep him informed of security issues. In addition, OIEP Security Services began quarterly presentations to the OIEP Director, Deputy Director and the Education Line Officers in December 2002. The presentations address the issues identified in your recommendation. To establish a written history, OIEP Security Services began providing written reports to the OIEP Director and Deputy Director with copies to the Education Line Officers in June 2003. The Office of the Deputy Director, Law Enforcement Services will be included in these briefings and will receive copies of the written reports.

Since February 2003, OIEP Security Services has received monthly reports of new appointments and terminations for all OIEP schools and OIEP Central Office. These reports are reconciled on a monthly basis, and any discrepancies have been acted on accordingly.

The OIEP considers the corrective action completed.

Recommendation 4: Ensure that the appropriate officials act on the information provided in the oversight reports as necessary.

OIEP Response: The OIEP concurs with Recommendation 4. Chapter 1, Section 2, *Responsibilities,* of the Personnel Security and Suitability Standard Operating Procedures, which were effective January 2003, states which officials are responsible for acting on security related issues and what action they are expected to take. Additionally, OIEP Security Services has identified those positions that have security related responsibilities and has developed language to be incorporated into the critical elements of their performance standards. The OIEP will amend where possible the current performance appraisals to include the new critical elements. However it may be necessary in some instances to wait until the next school year. The OIEP considers the corrective actions completed.

Recommendation 5: Ensure that the Security Office addresses the differences identified by our audit between the log of background investigations and the personnel records, including completing any necessary background investigations.

OIEP Response: The OIEP concurs with Recommendation 5. In January 2003, when the OIG auditors notified the OIEP Security Services that the background investigation log for OIEP employees did not coincide with the Federal Personnel/Payroll System (FPPS), the security staff took action to reconcile the log. There were no employees found to have not had a background investigation initiated. As stated above, OIEP Security Services receives monthly reports of new appointments and terminations for all OIEP schools and OIEP Central Office and has reconciled the information with the background investigation log on a monthly basis since February 2003. The OIEP considers the corrective actions completed.

Improvements to the OIEP Background Investigation Process

As stated in the Introduction of our response, in August 2002 the responsibility for background investigations of all OIEP personnel, including education personnel at BIA-operated schools, was transferred from the BIA Personnel and Physical Security Office within the Deputy

Commissioner's Office to a newly created Security Services office within the OIEP. The Department of the Interior provided the Security Services office authority to adjudicate background investigations in December 2002. The newly established OIEP Security Services staff not only redesigned the background investigation process, but during the first six months of their existence they had the OIG auditors working with them while they conducted their audit. This working arrangement helped define the program and in many cases led to successful completion and implementation of numerous improvements to the OIEP background investigation process. Some of the more noteworthy accomplishments are noted below:

- Entered into a Memorandum of Understanding and Special Agreements with the Office of Personnel Management to conduct child-care investigations. These child-care investigations, brought OIEP into compliance with Public Law 101-647, (Codified in 42 United States Code 13041), *Crime Control Act of 1990, Subchapter V - Child Care Worker Employee Background Checks*. Public Law 101-647 requires that background checks include State criminal history repositories of all states that an employee lists as current and former residences in an employment application. The OIEP also entered into a special agreement with the Office of Personnel Management to provide fingerprint searches of the Federal Bureau of Investigation Criminal Justice Information Services Division and criminal history records to OIEP for select individuals on an on-demand basis. This agreement allows OIEP to obtain fingerprint checks within two weeks as opposed to the previous 75-day turn-around period.

- In November 2002, new Standard Operating Procedures were developed and included appointing local school-level Security Points of Contact (SPOC). The SPOC's responsibilities are to assist in improving the preparation and completion of security packages for selected applicants. All the OIEP SPOCs were required to certify their acknowledgement of their responsibility to the overall OIEP Security Services office.

- In the last year the OIEP Security Services staff has developed a Security Reference Guide to be used as an on-the-job training tool and delivered 14 training sessions to school hiring officials, Education Line Officers, and SPOCs.

- Eliminated the backlog of personnel security files awaiting final adjudication. The backlog was reduced from over 800 files in November 2002 to none in October 2003.

- Reconciling payroll system (FPPS) records of current employees to the background investigation log on a monthly basis.

OIEP is committed to ensuring the safety and well-being of the children we service as evidenced by the significant efforts it has collectively accomplished in the last year. We appreciate the interest of the OIG auditors and the assistance and ideas they provided while we were establishing the OIEP Personnel Security and Suitability Program. We believe that the recommendations contained in the Notice of Tentative Findings and Recommendations and the recommendations provided in the draft audit report will further assist in improving our program.

STATUS OF AUDIT RECOMMENDATIONS

Recommendations	Status	Action Required
1	Management concurs with finding. Recommendation unresolved.	Reconsider the recommendation, and provide estimated target date and titles of officials responsible for implementation.
2 and 4	Resolved; not implemented.	No further response to the Office of Inspector General is required. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.
3 and 5	Resolved and implemented.	No further action is required.

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