



**TRIBALLY CONTROLLED SCHOOL (TCS)
BACKGROUND INVESTIGATION
PROGRAM REVIEW GUIDE**



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Section 1 – Introduction

The purpose of this guide is to provide guidance to Tribally Controlled Schools (TCS) in preparation for the Background Investigation portion of the TCS Grant Assurance Review.

References

The following references outline the character investigation requirements that each Indian tribe or tribal organization who receives funds under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] or the TCS Act of 1988 [25 U.S.C. 2501 et seq.] must adhere to:

1. Public Law 101-630, Code of Federal Regulations 25 Part 63 – Indian Child Protection and Family Violence Protection, codified at 25 U.S.C. 3207. Technical amendment-December 27, 2000, Public Law 106-568, Section 814
2. Public Law 101-647, codified at 34 United States Code § 20351 (formerly codified at 42 U.S.C. § 13041)

Section 2 - Background

In enacting the Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101-630, the Congress recognized there is no resource more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

In November 2019, the Bureau of Indian Education (BIE), Personnel Security Office (PERSEC), was delegated responsibility for conducting reviews of the TCS personnel security programs and background investigation processes to ensure that tribal organizations who receive funds under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] or the TCS Act of 1988 [25 U.S.C. 2501 et seq.] are complying with these regulations.

As outlined in 25 USC 3207 and 34 USC 20351, TCS must:

1. Compile a list of all positions with duties and responsibilities which involve regular contact with, or control over, Indian children;
2. Conduct an investigation of character for each individual who is employed, or being considered for employment, in a position pursuant to paragraph (1);
3. Employ individuals in those positions who meet standards of character, no less stringent than those prescribed by the Secretary of the Interior and the Secretary of

Health and Human Services, as the Indian tribe or tribal organization shall establish.

4. Establish and apply minimum standards of character as prescribed under P.L. 101-630 which states that the TCS shall ensure that no individual is appointed to a position involving regular contact with or control over Indian children, who have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense or any of two or more misdemeanor offenses, under Federal, state, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

Section 3 – Program Review Notification and Required Documentation

1. The BIE Personnel Security Officer (PSO) will notify the TCS Point of Contact (POC) via email, announcing the start of the reviews for the school year.
2. The assigned BIE Personnel Security Specialist (PSS) will follow up with an email to the TCS POC with the following items and request that the school complete and submit the required documentation within seven (7) calendar days.
 - a. Program Review Presentation Recording – to be viewed by the TCS POC.
 - b. Staffing Workbook – a listing of all employees, contractors, volunteers, and adjudicator information. Refer to Instruction Sheet included in the Workbook.
 - c. File Maintenance Certification – this certifies that the TCS is properly safeguarding all background checks results and individual case files.
 - d. State Criminal History Repository Certification Form – to be completed if the TCS uses a third-party vendor. Certifying that the TCS has received verification from their vendor that they actively conduct the required state checks through the appropriate state repositories.
3. A majority of the reviews will be conducted virtually. On-site reviews may be conducted as travel and budget permits.
4. The BIE PSS will review the staffing workbook and will send an email to the TCS POC with a list of selected files to be reviewed. The TCS POC will be provided with the due date when the files should be provided to the BIE PSS, along with the Case File Review Structure form.
 - a. Selected files can be sent via an encrypted thumb drive, hard copy files sent via Federal Express (FedEx), encrypted e-mail, or other secure method. BIE PerSec will provide an encrypted thumb drive and/or FedEx label, if required of chosen

method.

- b. If the TCS does not return the selected files within the timeframe provided, a report of non-compliance may be issued.
5. The Case File Review Structure Form – to assist the BIE PSS in reviewing the selected files, BIE PerSec requests that the selected files are organized in the following order:
 - a. Security Questionnaire, or employment application – a basic application capturing personal information, residence, education, employment, military history, information regarding illegal drug use, criminal history, and including the required regulatory questions and subject certification.
 - b. Authorization for Release of Information – subjects of investigation must provide authorization for background checks to be conducted.
 - c. Supervisory Reference Check Form – used to assess prior job performance, and to gauge reliability. Supervisory reference checks should be attempted for each listed supervisor within the scope of the investigation.
 - d. Employment Verification Form – used to verify the listed employer, employment dates, position title, reason for leaving, and captures any derogatory information. Should be attempted for each employer within the scope of the investigation.
 - e. Education Verification – required if a degree is required for the position, verification of the claimed degree/education must be conducted. The TCS should also verify that the college or university is accredited. Verification can be obtained using the following link: <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/college-accreditation>
 - f. National Sex Offender Registry Check – can be obtained using the following link [Home | Dru Sjodin National Sex Offender Public Website](#). Print a copy of the results. If there is a record, the TCS must review and notate the results of their review.
 - g. Federal Bureau of Investigation (FBI) Fingerprint results – required for all subjects of investigation.
 - h. State Criminal History (SCHR) Check Result(s) – required for all states that the individual has resided in for the last five (5) years. If the TCS utilizes a third-party vendor, the TCS must complete SCHR Certification form.
 - i. DD 214 – should be obtained if subject’s military service is considered as a part of the school’s hiring process and/or background check history. The TCS should

look at the conduct/circumstances (e.g. any Other Than Honorable discharge) to determine if additional information or supporting documentation is needed and include this as an issue in the adjudication case summary.

- j. Adjudication Due Process Notice – i.e., Letter of Interrogatory (LOI), any written or email correspondence with the individual to obtain additional information, etc.
 - k. Written Response(s) and/or Supporting Documentation – any written responses and/or supporting documentation received from the individual in response to the LOI and/or request for additional information
 - l. Adjudication Case Summary – includes completed background investigation checks, completion date, and results. Identifies all derogatory issues, date of conduct, and mitigating circumstances.
 - m. Signed/dated Certification of Investigation and Adjudication – the TCS Adjudicator will certify that all required background checks were completed, the results were reviewed and adjudicated using the established suitability criteria and additional considerations.
 - n. Provisional Hiring Documentation (if applicable) – such as the Line-of-Sight Supervision (LOSS) Rules of Behavior Form, or similar. If the TCS provisionally hires an individual, the case file must be documented with the LOSS form or similar.
6. The TCS will also be required to provide a copy of:
- a. Adjudication Training Certification for each adjudicator
 - b. TCS Background Investigation Policy and/or Standard Operating Procedures
 - c. Two (2) Individual Vacancy Announcements

Section 4 – BIE PSS Program Review

- 1. The BIE PSS will conduct the program review once all requested documentation and selected files have been received. The BIE PSS will review the TCS background investigation policies and procedures, required forms, and selected files.
- 2. Upon completion of the review, the BIE PSS may contact the TCS to obtain additional information on any items that require clarification and/or discuss the initial results prior to completing and routing the initial report to the BIE PSO for approval.

Section 5 – BIE Reports

1. The BIE PSS will prepare the initial report and route through the BIE PSO for review and approval. The initial report will include the timeline of materials provided, number of employee/contractor/volunteer files requested for review, number of findings, a summary of findings and recommendations, and TCS response due date. Subject files will be referenced utilizing the subject's initials throughout the report.
2. The BIE PSS will issue the initial report to the TCS. The TCS will have 30 calendar days to respond. Any requests for an extension must be requested in writing for approval by the BIE PSS. The TCS response should include their resolution of findings and supporting documentation. If the TCS fails to respond within the required timeframe, the BIE PSS will draft the final report which may result in a notice of non-compliance.
3. The BIE PSS will prepare the final report and route through the BIE PSO for review and approval. Types of final reports include:
 - a. No Findings, Report of Compliance – the report will notify the TCS that they were found to be in compliance with the applicable laws and regulations.
 - b. Report of Compliance (Response received resolved Findings) – the final report will notify the TCS that their response and supporting documentation were reviewed and resolved the initial findings, and that they were found to be in compliance with the applicable laws and regulations.
 - c. Report of Non-Compliance (Response received did not resolve Findings) – the final report will notify the TCS that their response to the initial report did not resolve all findings contained within the initial report.
 - d. Report of Non-Compliance (No response to initial report) – the final report will notify the TCS that they were found to be non-compliant with the applicable laws and regulations due to the TCS failure to respond to the initial report.
 - e. Report of Non-Compliance (no response to request for required documentation and/or the TCS did not provide the selected files) - the final report will notify the TCS that they were found to be non-compliant with the applicable laws and regulations due to the TCS failure to respond to the BIE PSS initial request for background investigation documentation and selected files.