Department of Education
Background Checks - School Districts

January 1, 2007 to October 31, 2007

Richard L. Fair
State Auditor
The Honorable Jon S. Corzine
Governor of New Jersey

The Honorable Richard J. Codey
President of the Senate

The Honorable Joseph J. Roberts, Jr.
Speaker of the General Assembly

Mr. Albert Porroni
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the Department of Education, Background Checks - School Districts for the period of January 1, 2007 to October 31, 2007. If you would like a personal briefing, please call me at (609) 292-3700.

Richard L. Fair
State Auditor
December 28, 2007
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Scope

We have completed an audit of the Department of Education’s (DOE) monitoring of criminal history background checks for the period January 1, 2007 to October 31, 2007. Since 1986 school district applicants have been subject to background checks. The Office of Fiscal Accountability and Compliance (OFAC) is responsible for monitoring compliance with N.J.S.A. 18A:6-7.1 et. seq. This statute requires a school district under the supervision of DOE and the individual boards of education to not hire employees or have employees of contracted services in positions which involve regular contact with pupils unless the school district has first determined that no criminal history record information exists that would disqualify an individual. N.J.S.A. 18A: 6-4.13 allows non-public schools to determine if criminal background reviews are required for candidates for employment and employees of contracted services. P.L. 2007, Chapter 82 allows an individual board of education of public schools to determine if criminal background reviews are required for volunteers who have regular contact with pupils. OFAC maintains records of all qualified individuals under its jurisdiction having criminal background reviews. These records are flagged for current criminal activity for anyone receiving a criminal background review after February 2003 when electronic fingerprints started to be stored. Our report titled Department of Education School District Background Checks - Disqualified Individuals issued August 30, 2007 reported upon disqualified individuals working at various school districts. Our current report takes a broader review of the issue.

Objectives

An objective of our audit was to determine whether all candidates for employment and employees of contracted services having regular contact with pupils had a criminal history review and are on the qualified individual records
maintained by OFAC as required by N.J.S.A. 18A:6-7.1. Another objective was to determine if non-public schools are requiring criminal background checks for candidates for employment and employees of contracted services and if not, does a risk exist that requires specific legislation. The final objective was to determine if both public and non-public schools are requiring criminal background reviews of volunteers, and if not, does a risk exist that requires specific legislation.

This audit was conducted pursuant to the State Auditor’s responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

**Methodology**

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation and the administrative code. We interviewed Department of Education personnel and district employees to obtain an understanding of the criminal history review process and to determine whether individuals employed by school districts, or providing contracted or voluntary services to the school districts, have been approved by OFAC. In addition, we interviewed Motor Vehicle Commission personnel to obtain an understanding of the commercial driver’s licensing process for school bus operators.

A nonstatistical sampling approach was used. Our sample of districts was designed to provide a conclusion about whether all individuals having regular contact with pupils at a school district had a criminal background review. We judgmentally selected three school districts for field visits. Our audit included a comparison between the Department of Labor and Workforce Development’s wage reporting data files of sampled school districts for the first quarter of calendar year 2007 against OFAC’s qualified individual database.
Conclusions

We found that the methods and procedures currently being used by OFAC need to be revised to provide assurance that those school districts under the supervision of DOE are requiring criminal background reviews of all candidates for employment and employees of contracted services having regular contact with pupils. We are aware of pending legislation requiring all public school employees, regardless of employment date, and those non-public schools participating in the background review program to have a criminal background check and be susceptible to a current criminal activity review.

In addition, due to the lack of legislation that mandates criminal background reviews for non-public schools, we found a significant number of these schools that are not requiring criminal history reviews for candidates for employment, and employees of contracted services that have regular contact with pupils. Hence, legislation requiring background checks at non-public schools for candidates for employment and employees of contracted services is needed. This legislation should also address an oversight authority to periodically review for compliance.

For those schools under the supervision of DOE, there exists the authority but not the requirement to have background checks for volunteers. Our tests disclosed that not all public schools are having background checks for volunteers. Our review of non-public schools noted that they have no authority to require background checks for volunteers. Hence, legislation requiring background checks at all schools for volunteers is needed. This legislation should also address an oversight authority to periodically review schools for compliance using certified lists of volunteers from each school district.

We also found that Motor Vehicle Commission (MVC) school bus driver suspension information needs to be forwarded to OFAC so that they can inform school districts and bus companies of MVC disqualified bus drivers.
Oversight Responsibility

N.J.S.A. 18A:6-7.1 requires that all prospective employees of a school district under the supervision of DOE must submit to a criminal history background check as a condition of their employment. Using a fingerprint screening process, a determination is made whether the individual has a criminal history for specific crimes on the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification database at the Division of State Police. The Office of Fiscal Accountability and Compliance (OFAC) has oversight responsibility to ensure the state’s 644 school districts and charter schools are having prospective employees obtain a background check.

The methods and procedures used by OFAC to determine compliance with the statute consists of manually conducting reviews at the school districts by comparing master employee listings from the district’s human resources unit and payroll registers to an approved applicants report created by the DOE’s Criminal History Review Unit. Their current method is very time consuming and is being performed by a staff of one full-time auditor and two part-time auditors. The auditors determine when the employees are hired and when the last approval date was on the criminal history database to determine compliance with the applicable law at that time. In addition, the auditors perform compliance reviews of employees of contracted services and bus drivers. For the period May 2002 through June 2007 only 93 of the 644 school districts and charter schools have been audited.

Our review merged the computerized files of the Department of Labor and Workforce Development’s wage reporting with OFAC’s qualified individual’s database resulting in employees at the sampled school districts who had not gone through the required fingerprint process. This computer match was completed in less than an hour.
Our review also entailed obtaining lists of the employees of contracted services such as doctors, food service employees, bus drivers, and construction workers and comparing those lists to OFAC’s qualified list. Our review noted that not all of the contracted service employees are having background checks, especially construction workers.

**Recommendation**

To meet its oversight responsibility in an efficient manner, we recommend OFAC utilize existing computer systems and certified lists of employees of contracted services to identify possible unqualified individuals and to follow up with additional input and corrective actions from the school district.

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**Optional Background Checks for Non-Public Schools**

Candidates for employment and employees of contracted services at over 1,300 non-public schools are not required to submit to a criminal history background check under New Jersey statutes. Approximately fifty percent of the non-public schools have chosen to voluntarily go through the Department of Education criminal history background check. Hence, individuals who may have been or would be “disqualified” from working in school districts under the supervision of DOE could be on campus at non-public schools, therefore putting the students at risk.

**Recommendation**

To ensure the safety of all the students in the state, we recommend that the Department of Education pursue legislation to mandate background checks for all candidates for employment and employees of contracted services at non-public schools using the system already in place within the department.
Volunteers on Campus

Volunteers on all school campuses need to have background checks.

Recommendation

To ensure the safety of all the students in the state, we recommend that the Department of Education pursue legislation to mandate background checks for all volunteers at all schools using the system already in place within the department.

Motor Vehicle Suspension Information

Suspension information needs to be obtained from the Motor Vehicle Commission.

School Bus drivers in New Jersey must have both a Student “S” and Passenger “P” commercial license endorsement from the Motor Vehicle Commission (MVC) in order to transport children to school. To obtain a commercial driver license with a school bus endorsement, an applicant must already possess a passenger endorsement and be fingerprinted and processed through a DOE criminal history background check. The licenses are generally valid for four years but the driver must have a physical every two years. The Commissioner of Education has the oversight responsibility for qualified school bus drivers. The Office of Fiscal Accountability and Compliance (OFAC) maintains the database for all individuals qualified to drive a school bus.

The MVC may suspend all commercial endorse-
ments due to a review of the driver’s history or a disqualifying medical/physical condition. However, MVC does not provide this information to OFAC. Thus proper notification of suspension to a school district or transportation employer can not be made and DOE’s database is not updated.

**Recommendation**

We recommend the department obtain the suspension information from the Motor Vehicle Commission. In addition, suspensions should be reflected on the DOE database to ensure proper notification when a driver is disqualified.
December 26, 2007

Mr. Richard L. Fair, State Auditor
Office of Legislative Services
Office of the State Auditor
125 South Warren Street
P.O. Box 067
Trenton, NJ 08625-0067

Dear Mr. Fair:

SUBJECT: Response to OLS Audit Report of the Department of Education, Background Checks – School Districts

The New Jersey Department of Education (DOE) has received and reviewed the findings and recommendations contained in the Office of Legislative Services (OLS) Audit Report of the Department of Education, Background Checks – School Districts for the period January 1, 2007 to October 31, 2007. The findings and recommendations along with our responses are as follows:

**Finding Number 1, Page 4**

Oversight Responsibility – Methods and procedures used by the DOE to determine school district compliance with N.J.S.A. 18A:6-7.1 (criminal history background checks as a condition of employment for all school district employees) are time consuming and need to be updated.

**Recommendation Number 1**

To meet its oversight responsibility in an efficient manner, we recommend OFAC utilize existing computer systems and certified lists of employees of contracted services to identify possible unqualified individuals and to follow up with additional input and corrective actions from the school district.
Department Response to Finding Number 1

The DOE is working with the Department of Labor and Workforce (DOL) to obtain its total database for wage reporting. Once this is accomplished, DOE’s Office of Fiscal Accountability and Compliance (OFAC) will develop a program to compare the DOL data with OFAC data. DOE has already selected two districts to test this method of electronically comparing criminal history background data.

Finding Number 2, Page 5

Optional Background Checks for Non-Public Schools – Candidates for employment and employees of contracted services at over 1,300 non-public schools are not required to submit a criminal history background check under New Jersey statutes. Approximately fifty percent of the non-public schools have chosen to go through the DOE criminal history background check.

Recommendation Number 2

To ensure the safety of all the students in the state, we recommend that the Department of Education pursue legislation to mandate background checks for all candidates for employment and employees of contracted services at non-public schools using the system already in place within the department.

Department Response to Finding Number 2

DOE will review the feasibility of legislation that would mandate background checks for all candidates for employment and employees of contracted services at non-public schools using the system already in place within the department.

Finding Number 3, Page 6

Volunteers on Campus – Not all public schools are requiring background checks of volunteers and non-public schools do not have the authority to require background checks of volunteers.

Recommendation Number 3

To ensure the safety of all the students in the state, we recommend that the Department of Education pursue legislation to mandate background checks for all volunteers at all schools using the system already in place within the department.

Department Response to Finding Number 3

DOE has proposed legislation that allows non public schools to submit volunteers for background checks. The department will review the feasibility of legislation that would mandate background checks for all volunteers.
Finding Number 4, Page 6

Motor Vehicle Suspension Information – Suspension information for school bus drivers is not provided to the DOE by the Motor Vehicle Commission (MVC). Thus proper notification of suspension to a school district or transportation employer cannot be made and the DOE’s database is not updated.

Recommendation Number 4

We recommend the department obtain the suspension information from the MVC. In addition, suspensions should be reflected on the DOE database to ensure proper notification when a driver is disqualified.

Department Response to Finding Number 4

The MVC is developing a program that will transmit this information to DOE. The department anticipates that a schedule will be set up whereby this information is sent to the department through OFAC on a weekly basis. When OFAC receives this data, the suspensions will be reflected on the OFAC database.

We trust that our response satisfies the concerns raised in the audit report. If you have any questions or need further information, please contact Robert J. Cicchino at 984-5593.

Sincerely,

Lucille E. Davy
Commissioner

LED/JH/RJC/response to OLS audit of background checks-school districts

c:  John Hart
    Robert Cicchino
    Carl Carabelli
    Charles Peffall