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June 22, 2010

Dr. David Steiner
Commissioner
New York State Education Department
State Education Building - Room 111
89 Washington Avenue
Albany, New York 12234

Re: Report 2010-F-16

Dear Dr. Steiner:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the State Education Department (Department) to implement the recommendations contained in our audit report, *Criminal History Background Checks for School Employees* (Report 2007-S-119).

Background, Scope and Objectives

In accordance with legislation enacted in 2000, applicants for teaching and most other positions in New York's public schools must be checked for criminal histories by the Division of Criminal Justice Services (DCJS) and the FBI. Outside New York City, these criminal history background checks are coordinated and overseen by the Department. The Department receives the initial applications for background checks, forwards the applications for processing, receives the results of the background checks from DCJS and the FBI, determines whether the applicants can be given clearance to work in schools (a criminal history does not necessarily disqualify an applicant), and notifies the schools of its determinations. The Department receives more than 50,000 applications a year for such background checks.

The applications are processed and administered by the Department's Office of School Personnel Review and Accountability (OSPRA). The applications may be submitted manually (i.e., on paper) or online through the Department's automated TEACH system (the applicant's fingerprints are scanned optically for on-line applications). TEACH is an online application and database system that is used for background checks, teacher certifications, and other educational certifications.

The Safe Schools Against Violence in Education (SAVE) Act does not require that a background check be completed within any specified timeframe. The SAVE Act does state that the check should be completed "promptly." Schools are allowed to hire individuals conditionally,

before their background checks are completed. However, if a determination of conditional clearance is not made within 15 business days of the submission of a background check application (i.e., if DCJS does not complete its background check and the Department does not either grant the applicant conditional clearance or deny clearance within that timeframe), the SAVE Act requires the Department to notify the school district and the applicant and provide a good faith estimate of the amount of additional time that will be needed for such a determination.

Our initial audit report, which was issued on February 12, 2009, determined if the Department was effectively overseeing the completion of criminal history background checks on applicants for school employment. We found that background checks were sometimes subject to long delays. Since the Department was not monitoring the status of its ongoing background checks, it did not know that the checks were still in process and that many could not be completed because of data transmission failures or blurred fingerprint images. A group of background checks were only completed because we intervened and asked the Department to follow up with the FBI and DCJS. Results from this group of background checks showed that about one third of these applicants (157) had been hired by public schools before their background checks were completed, 30 of those hired had some kind of criminal history and one of the 30 would not have been cleared to work in schools if the background check had been completed before the applicant was hired. The objective of our follow-up was to assess the extent of implementation as of May 20, 2010, of the four recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made progress in correcting most of the problems we identified. However, additional improvements are needed. Of the four prior audit recommendations, three recommendations have been implemented and one recommendation has been partially implemented.

Follow-up Observations

Recommendation 1

Modify the TEACH system so that it captures all pertinent information for each background check application and routinely produces management reports that (a) track the status of each outstanding application and (b) highlight applications that have been outstanding for long periods of time. Use these management reports to determine whether all requested background checks are being completed in a timely manner, and when they are not, follow up with DCJS and/or the FBI and notify the affected school districts about the delays. Develop written procedures and/or guidelines for this monitoring process.

Status - Partially Implemented

Agency Action - The Department has not modified the TEACH system to capture the date fingerprints are scanned into the system. Instead, the Department utilizes a separate software system, Intelliscreen, which communicates to TEACH when fingerprints are scanned. However, this system does not provide TEACH with the date the scanning was completed.

Since our original audit, OSPRA has developed two new monthly management reports. The first report lists the names of applicants who have not supplied one or more of the three components required (completed application, processing fee and fingerprints) for further processing. OSPRA staff review these reports and, using status codes, create letters to advise applicants of the rejection of their application due to a missing component(s). These rejection letters are sent to applicants every 45 to 60 days. The second monthly report lists names of applicants where OSPRA is missing a response from either DCJS or the FBI. OSPRA staff review TEACH records for each application to determine whether the delay is with DCJS or the FBI. An OSPRA official then follows up with DCJS to resolve their own and any FBI delays. School district personnel and applicants can monitor the progress of background checks on the TEACH system, eliminating the need for the Department to notify them about processing delays.

Although improvements have been made with the TEACH system, Department officials still have not developed written procedures that describe its monitoring process.

Recommendation 2

Monitor whether DCJS background checks are being completed within 15 days, and if not, provide applicants and school districts with the 15-day notification required by law.

Status - Implemented

Agency Action - OSPRA's new monthly management report provides information about the status of background check processing. The report identifies those applicants where OSPRA is missing a response from either DCJS or the FBI. OSPRA staff review TEACH records for each application to determine whether the delay is with DCJS or the FBI, and follow up accordingly. Through the TEACH system, school district personnel and applicants can now monitor the progress of background checks, thereby eliminating the need for the Department to notify them of any processing delays.

Recommendation 3

Modify the TEACH system so that it can record the dates applicants are hired and terminated, and instruct the school districts to begin entering this information in as timely a manner as possible.

Status - Implemented

Agency Action - In March 2009, the TEACH system was modified to allow school districts to enter hire and termination dates of employees. In May 2009, school districts were instructed to begin entering this information in the fingerprint portion of the TEACH system.

Recommendation 4

Regularly remind school districts of their obligation to comply with the hiring and reporting requirements in the SAVE Act.

Status - Implemented

Agency Action - Since our original audit, the Department issued two new field memos reminding districts of the need to comply with the requirements of the SAVE Act. Both memos have been posted to the Department's website. The March 2009 memo addressed important updates on several SAVE Act program initiatives and the October 2009 memo addressed conditional clearances. As of April 2010, Department officials were in the midst of preparing another memo on this matter.

Major contributors to this report were Karen Bogucki and Donald Collins.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Edward J. Durocher, CIA
Audit Manager

cc. Mr. James Conway, State Education Department
Mr. Thomas Lukacs, Division of the Budget