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January 24, 2013

Dr. Barry A. Weinstein, Supervisor  
Members of the Town Board  
Town of Amherst  
5583 Main Street  
Williamsville, New York 14221

Report Number: S9-12-7

Dear Dr. Weinstein and Members of the Town Board:

A top priority of the Office of the State Comptroller is to help officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of eight units that included four cities and four towns throughout New York State. The objective of our audit was to determine if these units have conducted background checks for individuals involved in the municipalities' youth programs. We included the Town of Amherst (Town) in this audit. Within the scope of this audit, we examined the policies and procedures of the Town. We also examined various records including employment records, youth program documentation and third-party contracts for the period January 1, 2010 to February 3, 2012.

This report of examination letter contains our findings and recommendations specific to the Town of Amherst. We discussed the findings and recommendations with Town officials and considered their comments, which appear in Appendix A, in preparing this report. Town officials agreed with our findings and recommendations and indicated they planned to initiate corrective action. Appendix B includes our comment on an issue raised in the Town's response. At the completion of our audit of the eight units, we prepared a global report that summarizes the significant issues we identified at all the units audited.

## **Summary of Findings**

The Town has not adopted a policy or written procedure for background screening of individuals providing services to Town youth programs, however, the Town does have an unwritten procedure used for Town full- and part-time (excluding seasonal) Youth and Recreation Department (Department) employees. In accordance with Public Health Law Article 13-B and Social Services Law Sections 390-b, 424-a and 414, the Town submits names to the Division of Criminal Justice Services (DCJS) or Office of Children and Family Services (OCFS), respectively. Depending on the program, matches against the New York State Sex Offender Registry, Criminal History Background Check or match against the Abuse and Maltreatment Registry are conducted, with the results communicated back to the Town.

However, the Town does not otherwise have an entity-wide background check process or monitoring system to ensure that the checks are completed for individuals involved in all Town youth programs. We tested seven full- and part-time employees (non-seasonal) hired by the Department during 2010, 2011 and 2012; all had background check documentation on file. Additionally, we found that the Town did not have documentation proving checks against the New York State Sex Offender Registry for the 2011 children's camp and the Town was unable to provide complete paperwork for three employees out of 65 names reviewed in the afterschool childcare program. We also tested 396 names of individuals providing services to programs to determine if there was a public record documenting either a sexual offense or criminal history. The service providers included employees, contractor and volunteers. Our tests of the names disclosed no significant findings.

Even though the law does not mandate that municipalities perform background checks on all individuals who provide services for youth programs, such screening – whether for sex offenses, criminal history or both – are essential to safeguard the participants in those programs, and can help reduce the municipality's potential liability in the event of legal action.

## **Background and Methodology**

The Town of Amherst is located in the suburbs of the City of Buffalo, in Erie County, with a population of approximately 122,000 people. The Town provides youth program services to its residents. The Town's 2010 actual expenditures for youth programs were approximately \$4 million. Budgeted youth program expenditures for 2011 and 2012 were approximately \$3.8 million per year.

The Town is governed by the Town Board (Board) which is comprised of six elected members: the Town Supervisor (Supervisor) and five council members. The Board is responsible for the general management and oversight of the Town's financial and operational affairs. These responsibilities include setting policies and establishing effective controls over operations. The Supervisor is the Town's chief executive officer. The Board charters a Youth Board, a policy-making board of 23 citizen volunteers, who participate in decisions affecting programming, policies, funding and public relations for youth programs and services. The Town offers a multitude of youth programs through the Department.

The Town merged the Youth Bureau and the Recreation Department in June 2010; prior to that each department operated independently of each other. The Director of the Department is responsible for organizing the programs offered to the community, which includes the screening

of prospective staff, volunteers and contract individuals needed for specialty services. There were approximately 50,000 participants enrolled in approximately 118 Town youth programs during our scope period.

Youth programs, which are often offered as a response to community interest, encompass a wide variety of activities. These include classes in pre-school and afterschool activities, arts and crafts, exercise and fitness, summer camps, seasonal or holiday special events, and sports. With these youth programs, parents are entrusting their children's learning experience and safety to the adults (full- and part-time employees, contractors, or volunteers) that the Town engages to administer the programs. A municipality can help create a safe environment for community youth through background checks in the hiring and screening of all individuals associated with the municipality's youth programs. During the employee hiring process, two types of background checks can be conducted and documented: a criminal history background check, which is done with the consent of the individual, and a search of the New York State Sex Offender Registry, which is public information.

New federal legislation that has been introduced but not yet enacted, the Child Protection Improvements Act of 2011,<sup>1</sup> focuses on several aspects of criminal history investigations for child service organizations. However, while on the State level the Education Department has requirements<sup>2</sup> for school districts for background checks on individuals dealing with students, there is no one law or regulation that provides overall guidance for youth programs found in municipalities. Instead, depending on the type of program offered, specific legislation guides the level of background check screening required. For instance, Article 13-B of Public Health Law requires children's camp<sup>3</sup> operators to determine whether an employee or volunteer is listed on the New York State Sex Offender Registry. This check, which DCJS conducts on names submitted by the Town, must be completed prior to the day the individual starts work at the camp and annually thereafter. Social Services Law, Sections 390-b, 424-a and 414, requires that criminal histories are reviewed for childcare providers and inquiry made as to whether individuals who have the potential for regular or substantial contact with children in care of the program are the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment. Additionally, national youth sports groups recognize the need to provide general guidance for youth program administration, including a criminal history background check for all volunteers.

To complete our objective, we interviewed Town officials and staff, and reviewed policies and procedures to identify the controls established. We reviewed supporting documentation of the hiring process to determine if background checks were completed prior to hiring. We also tested

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<sup>1</sup> The Child Protection Improvements Act of 2011 would amend the National Child Protection Act of 1993 to direct the Attorney General to: (1) establish policies and procedures for a program for national criminal history background checks for child-serving organizations, (2) assist such organizations in obtaining access to nationwide background checks, (3) establish procedures for ensuring the accuracy of criminal history records, (4) identify individuals convicted of serious misdemeanors or felonies involving children, and (5) collect demographic data relating to individuals and organizations covered by this Act and make reports to Congress on such data. The 2011 proposed legislation limits the liability of a child-serving organization for failure to conduct criminal background checks or to take adverse action against employees with a criminal history. Imposes limitations on the disclosure or use of criminal history records; and amends the PROTECT Act (of 2004) to extend the Child Safety Pilot Program.

<sup>2</sup> Part 87 of the Regulations of the Commissioner of Education and the Safe Schools Against Violence in Education (SAVE) legislation (Chapter 180 of the Laws of 2001)

<sup>3</sup> The law applies to all children's camps (day, traveling day and overnight) and to all prospective employees and volunteers at the camp regardless of their job title/responsibility or employment status.

individual names against public records to determine if the safety of the youth participating in programs was jeopardized.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

## **Audit Results**

The Town has not adopted a policy or developed written procedures to provide guidance for background screening processes for youth programs, but does have unwritten procedures for full-time or competitive part-time positions working in the Department. For all full-time and competitive part-time employees of the Town, employment applications are used that contain a consent statement that allows background checks to be conducted. The Personnel Department is responsible for verifying the applicant's employment history and the Hiring Department is responsible for the interview and the verification of personnel references. After verification, the Personnel Department sends the names of perspective employees to the Town's Police Department, and the Police Department conducts a background check against the Erie County criminal history database, the motor vehicle database, and the Police Department's own historical records. Each department maintains a log of the information, identifying incoming and outgoing requests. The decision to hire is the responsibility of the Department.

The Department also hires seasonal help after completion of an application, interview and reference check. However, Town background checks for individuals working as summer/seasonal, and volunteers involved in the youth programs are not completed as a requirement for employment or participation in the programs. This was due to the large number of summer worker names that come in all at once, are subject to frequent change, and could be regulated by specific program requirements. The Town bases its hiring, in part, on being familiar with individuals whom the Town employs from year to year, referrals from known community residents, and knowledge of individuals with school district affiliations.

Contractors and volunteers provide services to the youth programs listed in the Department's brochure, on a limited basis. The Town does not have a background check process for these types of providers; rather the process used is based on the programs where services are provided. The only youth program identified as using contractors was the golf lesson program. The contract for services requires the individual to be a golf association professional.<sup>4</sup> However, an improvement to this process can be made that documents the Town's knowledge of the professional status. During our audit period, only four volunteers were identified by the Department as being used in youth programs. The four worked in the afterschool program and all had a background check performed as required by Social Services Law.

Additionally, the Department offers specific youth programs that require screening for individuals, by law. After undergoing an interview process, the names, addresses and social security numbers of individuals hired to work in the Town's afterschool childcare programs were sent to the New York State Office of Children and Family Services (OCFS), where an applicant

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<sup>4</sup> A member of the golf association who has completed the management program is required to have had a background check conducted. Services performed include U.S. County Criminal Check based on Former Residence Trace, National Offenders Watch, National Sex Offender Registry, Pre-Employment Social Security Trace and Education Verification.

is compared to the Child Abuse and Maltreatment Registry and a criminal background check is conducted. OCFS provides documentation of the results. We reviewed documents available for individuals providing services to the Town's afterschool program. Of the 65 names reviewed, the Town was unable to provide complete paperwork for three employees.

The Department does not have a monitoring process to ensure that the names of the individuals hired to work at the children's camps are submitted by the Town to DCJS per Public Health Law Article 13-B for checking against the New York State Sex Offender Registry prior to the individual's first day of work at the camp and annually thereafter. We requested and the Town provided a letter for the 2010 camp from DCJS stating that no matches were found on the New York State Sex Offender Registry. However, the Town, as required, could not provide a DCJS letter and list of summer camp workers for the summer of 2011 camps. Because the Department did not have a copy of the list of names on file that detailed the results of the 2010 letter and no documentation was available for 2011, we were unable to test to determine if all service provider names were submitted to DCJS for matching.

At the beginning of our fieldwork, the management of the Department stated they thought that the Town was conducting background checks on the seasonal staff, which was later discovered to be incorrect. We tested all names of Department full- and part-time employees (excluding seasonal) hired during our audit period. We found that all seven names had corresponding background check documentation on file at the Town Police Department.

We also tested 396 names of individuals providing service to the youth programs to determine if there was public record<sup>5</sup> documenting either a sexual offense or criminal history. These individuals included employees, contractor and volunteers. Our tests of the names disclosed no findings. Nonetheless, background checks of all individuals who provide services to the Town's youth programs are not only in the Town's best interest in protecting its children against unsafe individuals, but can also help protect the Town against liability from possible legal action.

## **Recommendations**

1. The Board and Town officials should establish written policies for a background check process to be completed for all individuals providing services for Youth Programs.
2. Town officials should consider implementing a background check process for all individuals providing services for youth programs.
3. Town officials should monitor compliance with written policies and procedures for background checks for all individuals providing services for youth programs.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Clerk's office.

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<sup>5</sup> Public information available for New York State includes the Sex Offender Registry from the DCJS and state prison records from the Department of Corrections.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief Statewide Audits, at (607) 721-8306.

Sincerely,

Steven J. Hancox  
Deputy Comptroller  
Office of the State Comptroller  
Division of Local Government  
and School Accountability

## **APPENDIX A**

### **RESPONSE FROM TOWN OFFICIALS**

The Town officials' response to this audit can be found on the following page.



**TOWN OF AMHERST**

**BARRY A. WEINSTEIN, M.D.**  
SUPERVISOR

9 July 2012

Ms. Ann Singer, Chief of Regional and Statewide Projects  
Binghamton Regional Office  
Office of the State Comptroller  
State Office Building, Room 1702  
44 Hawley Street  
Binghamton, New York 13901-4417

Dear Ms. Singer,

This letter is in response to the preliminary draft report of the audit conducted by the State Comptroller's Office of the Town of Amherst regarding background checks for individuals involved in youth programs.

The Town finds no discrepancies between what was reported in the preliminary draft and what was discussed between the auditors and staff. The only item of note is that the auditors also conducted interviews with members of the Amherst Police Department regarding youth programs run by that agency. There is no reference in the report as to the outcome of those conversations.

See  
Note 1  
Page 8

The Youth & Recreation Department has already taken steps to address the recommendations contained in the draft report, which will be outlined fully in the CAP.

Sincerely,

Barry A. Weinstein, MD  
Supervisor



## **APPENDIX B**

### **OSC COMMENT ON THE TOWN'S RESPONSE**

Note 1

The programs administered by the Police Department were not included in the scope of our audit.

## **APPENDIX C**

### **AUDIT METHODOLOGY AND STANDARDS**

We reviewed the Town's policies and procedures to gain an understanding of the controls in place for the screening process of individuals involved in youth programs and to determine if the background checks are part of the process in place. Youth program records, background investigation reports and employee records were reviewed to identify names for testing.

We reviewed available records that identified youth programs offered, the types of individuals providing services for each program, reviewed available background check documentation and reviewed personnel documents for Town employees, looking for background check documentation. We listed all individuals by youth program, if the individuals could be identified. The individual names were then compiled to create a list of names that did not have a completed background check documented. All identified names were then tested using a software<sup>6</sup> that accesses public records to determine if the individual has either a criminal history or a registered sex offense.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>6</sup> The software accesses public records only if the records are reported in electronic format.