



THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

STEVEN J. HANCOX
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

January 24, 2013

Mr. Don Earle, Supervisor
Members of the Town Board
Town of Seneca Falls
81 West Bayard Street
Seneca Falls, New York 13148

Report Number: S9-12-8

Dear Supervisor Earle 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 Town Board 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 comprising 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 Seneca Falls (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 March 1, 2012.

This report of examination letter contains our findings and recommendations specific to the Town of Seneca Falls. We discussed the findings and recommendations with Town officials and considered their comments, which appear in Appendix A, in preparing this report. Town officials generally agreed with our findings and recommendations and indicated they planned to initiate corrective action. Appendix B includes our comments on issues 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 adopted a policy for background screening of employees that would apply to employees who provide services to Town youth programs. In accordance with Public Health Law Article 13-B, the Town is to submit the names of the individuals hired to work at the summer playground camps to the Division of Criminal Justice Services (DCJS) for checking against the New York State Sex Offender Registry prior to the individual's first day of work and annually thereafter.

However, the Town has not implemented the adopted background check policy or established an entity-wide monitoring system to ensure that the checks were completed for individuals involved in any Town youth programs. Further, the Town had no documentation available to show the results of checks of names against the New York State Sex Offender Registry. We tested 180 names of individuals providing service to the programs to determine if there were any public records documenting either a sex offense or criminal history. The service providers included full- and part-time Town employees, contractors, and volunteers. Our tests of the names disclosed no findings.

Even though the law does not mandate that municipalities perform background checks on all individuals who provide services for youth programs, such screenings – 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 Seneca Falls is located in Seneca County, with a population of approximately 9,000 people. The Town provides youth program services to its residents. The Town's 2010 actual expenditures for youth programs were approximately \$600,000. Budgeted youth program expenditures for 2011 and 2012 were approximately \$900,000 and \$800,000, respectively.

The Town is governed by the Town Board (Board), which comprises five elected members: the Town Supervisor (Supervisor) and four Board 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 fiscal officer and chief executive officer. The Town offers a multitude of youth programs through the Parks and Recreation Department. The Commissioner of the Parks and Recreation Department is responsible for organizing the programs offered to the community, which includes screening prospective staff and contracted individuals needed for specialty services. There were approximately 3,300 participants enrolled in approximately 52 Town youth programs over our scope period.

Youth programs, which are often offered as a response to community interest, encompass a wide variety of activities. These include pre-school, cooking, 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- or 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 2011,¹ focuses on several aspects of criminal history investigations for child service organizations. However, while on the State level the Education Department has requirements² 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 camp³ 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. 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 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 adopted a policy to provide guidance for background screening processes for employees, including those providing services to youth programs, but had not implemented it. This policy does not cover youth program volunteers or contractors. The Town uses the County employment application, which contains a statement about conducting investigations and includes a consent statement from the individual to allow it. However, Town officials told us that the background checks and investigations for individuals in the youth programs (full- or part-time employees) are not required for employment, with the exception of the summer playground camp personnel, for whom the checks against the New York State Sex Offender Registry are

¹ 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.

² 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)

³ 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.

required by law. The Town explained that they submit the names of these individuals to the County, who then submits the names to DCJS for checking prior to the individual's first day of work at the camp and annually thereafter. When contacted, County personnel indicated that the Town's Camp Director is responsible for submitting the names directly to DCJS and that the results letter would be returned to the Town. The Town was unable to provide documentation showing results from DCJS.

The Parks and Recreation Department hires part-time year-round and seasonal help after the completion of an application, interview, and reference checks. 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. However, this information is not consistently documented. In addition, the Town typically uses volunteers as coaches for their various athletic programs, these coaches often coach multiple sports or they coach year after year. Because of the small size of the Town, the service providers are known in the community. Town officials indicated that if a volunteer or employee was unknown then the Town Police would have been contacted to provide any information they might have on the person's background to aid in making a hiring decision. There is nothing in writing to this effect. Per discussion with the Town Police, the Parks and Recreation Department had not recently contacted them for background checks, as confirmed with the Parks and Recreation Department.

Contractors⁴ generally administer the youth programs listed in the Parks and Recreation Department's brochure. The Town does not use a background check process on these contractors, and therefore has no process to monitor these checks. The Town typically will use these instructors for more specific programming, such as Zumba exercise classes. If required, the Town will ask for certification of the instructor, but this certification only indicates the person is able to instruct the course and does not certify the character of the individual.

Additionally, the Parks and Recreation Department does not have a monitoring process to ensure that all summer playground camp staff names are sent to the DCJS to have the names checked against the New York State Sex Offender Registry prior to the first day of employment and annually thereafter, as required by law. As a result, we were unable to test that names were submitted to DCJS or if any were matched against the New York State Sex Offender Registry.

We also tested 180 names of individuals providing service to the youth programs to determine if there was a public record⁵ documenting either a sex offense or a criminal history. These individuals included full-and part-time Town employees, contractors, 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.

⁴ These contractors provide program services to the community that are advertised in the Parks and Recreation Department brochure. The contractors use a student registration form that the Town provides and the registration is sent to Town. The Town pays the contractor for the services provided.

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

Recommendations

1. The Board and Town officials should develop and implement written policies and procedures for a background check of all individuals who are providing, or are expected to provide, services for youth programs.
2. Town officials should institute a monitoring process to ensure that background checks are performed for all individuals that provide services for youth programs. As part of this process, Town officials should ensure all summer playground camp staff names are sent to the DCJS to have the names checked against the New York State Sex Offender Registry prior to the first day of employment and annually thereafter.

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.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief of 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 pages.

TOWN OF SENECA FALLS

**PATRICK J. MORRELL
ATTORNEY FOR THE TOWN**

102 Fall Street, 2nd Floor
Seneca Falls, New York 13148

Telephone: (315) 568-5221

Fax: (315)568-2265
(Service of papers by fax not accepted)

July 10, 2012

Office of the State Comptroller
Attn: Ms. Ann Singer
State Office Building, Room 1702
44 Hawley Street
Binghamton, New York 13901-4417

Re: Report Number: S9-12-8

Dear Ms. Singer:

Please accept the following as the response to the above noted report from the Town of Seneca Falls.

The Town of Seneca Falls is committed to the safety and protection of its residents, and especially its children. The Town takes great pride in its Recreation Department, which oversees the Town's parks and recreation facilities. The Department also facilitates numerous recreation programs for Town residents. The majority of the recreation programs are designed and promoted for use and participation by the children of the Town. Providing a safe environment for youth recreation and athletic programs is of the highest priority, and the Town of Seneca Falls applauds the efforts being made at the State level to support this goal.

The report notes that the Town is required by Public Health Law Article 13-B to submit the names of all individuals hired to work at the Summer Play Program to the Division of Criminal Justice Services (DCJS). The audit results section of the report notes that Town employees submitted the names to the Seneca County Personnel Department, but that the names were not submitted to DCJS. The report also notes that the Town's employee's believed that the County would submit the names to DCJS. The report does not note that the Director of the Seneca County Personnel Department is the Civil Service Officer for this County and that the Personnel Department reviews most of the Town's hires. This is done to ensure that the Town complies with Civil Service Law. The Town's employees were acting in good faith in their belief that the County would also ensure compliance with the Public Health Law. The deficiency noted in the report was the result of simple miscommunication between the Town and County and has been addressed by the Recreation Department.

Also not mentioned in the report is the fact that the Town adopted a local law in 2007 that prohibits sex offenders designated as Level II or Level III from entering or remaining on upon any

See
Note 1
Page 9

See
Note 2
Page 9

Town park or Town recreation facility. While the report notes that of 180 names of individuals providing service to the youth programs checked by the Comptroller's Office, there was not one sex offender among them. Under the Town's local law it would have been an offense for any Level II or III sex offender to work at a Town recreation facility or even to go to a Town recreation facility submit an application for employment.

The report notes that the Recreation Department works closely with our Town Police Department. As a part of this of working relationship, the Recreation Department posts information about sex offenders that are required to register with the Town Police Department. This helps the Recreation Department personnel ensure that the Town's local law is complied with and that the Town's recreation facilities are a safe place for the youth of our community.

While the Town is in support of the State's efforts in this area, we believe that requiring background checks alone is not enough. There must also be some standards and guidance from the state directing municipalities on what to do with such information after it is received. While Correction Law Article 23-A does address this area, it is very general and by its terms does not apply to an individual seeking to volunteer to at a municipal youth program. The lack of State standards in this area leaves each municipality to act on its own and also leaves each municipality exposed to potential liability. The State, through DCJS, has gone out of its way to protect the privacy of its citizens by regulating access to criminal history records. Municipal decisions on hiring or allowing an individual to volunteer are ultimately public information. In a small community such as ours, these decisions can become very controversial. Guidance from the State, beyond that found in Article 23-A of the Correction Law, would be helpful to educate municipal officials and also lessen exposure to potential liability.

See Note 3 Page 9

Thank you for the opportunity to respond to this report.

Respectfully submitted,

Patrick J. Morrell

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

Note 1

While this may serve as some level of control to ensure compliance with Civil Service Law, this function does not supplant the necessity of background checks for individuals working with children in youth programs and is outside the scope of the audit.

Note 2

The local law is a good preventative measure to protect children when they are using Town facilities. However, this local law is not a control that is applicable to the scope of the audit and was, therefore, not included in the audit report.

Note 3

In the absence of State legislation or regulation, local government officials should consider the available options for conducting background checks, such as those contained in our audit report, and develop their own procedures to limit liability and ensure the safety of participating children.

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. 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, and personnel file documents for Town employees, looking for background check documentation. We listed all individuals by youth program, if the individuals could be identified. We then compiled the individual names into a list of those that did not have a completed background check documented. We then tested all identified names using software⁶ 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.

⁶ The software accesses public records only if the records are reported in electronic format.