



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

DEPUTY COMMISSIONER FOR OPERATIONS
AND MANAGEMENT SERVICES
Tel. (518) 474-2547
Fax (518) 473-2827
E-mail: tsavo@mail.nysed.gov

November 24, 2008

Mr. Brian E. Mason
Audit Supervisor
Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236

Dear Mr. Mason:

I am responding to your letter of October 16, 2008 addressed to Commissioner Mills regarding the Office of the State Comptroller's (OSC) draft audit report (2007-S-119) entitled "Criminal History Background Checks for School Employees." I offer some overall comments on the contents of the report and then specifically address each of the four recommendations.

While the Department recognizes that the audit identified areas where improvements to process were warranted, we note that the audit period (March 14, 2006-March 13, 2008) covered a critical transition time when the fingerprint work flow process was undergoing dramatic change from a largely paper (manual) based process to a completely electronic process. This transition has been completed, and many of the problems have been corrected.

During this transition the Office of School Personnel Review and Accountability (OSPRA) experienced significant work backlogs and faced certain limitations regarding the production of system generated reports. Further, many of the incomplete records referred to in the audit were incomplete due to transmission problems experienced by other agencies involved in the processing of criminal histories, namely, the FBI and the Division of Criminal Justice Services ("DCJS"). Despite these limitations, the audit revealed that the Department successfully processed more than *99 percent of the 105,932 records analyzed by the auditors.*

Since this time, the Department has created regular management reports to identify all records in an incomplete status, created a daily work queue to identify incomplete records, and undertaken measures to address and resolve all incomplete records.

The audit also noted that there were many failures at the school employer level with respect to employment of individuals prior to the receipt of a full clearance. These ranged from employment

of individuals prior to the submission of fingerprints for a criminal history background check,¹ to extended employment of individuals with a conditional clearance.² The Department has attempted in many ways to make school employers aware of their responsibilities under The Safe Schools Against Violence in Education Act (SAVE) through:

- An online data management system (TEACH) where all school employers can electronically submit and monitor fingerprint applications;
- A website to disseminate information and forms;
- Customer telephone service 5-days a week and 24/7 email access where customers can usually receive a response to their inquiry within a day; and
- Workshops and technical forums to assist school staff and administrators in understanding and complying with SAVE's requirements.

In December, the Department will issue an annual memo to schools advising them of their obligations under SAVE and has made a modification to TEACH to allow schools to more readily identify any employee working under a conditional clearance.

Additionally, the Department received additional State funding for OSPRA and plans to hire eight more professionals. This influx of additional resources will enable OSPRA to provide more technical support to schools in the form of targeted workshops and presentations on fingerprinting.

The Department's specific response to the draft audit is organized to correspond to the specific recommendations.

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.

We partially agree with this recommendation. The Department believes that it already captures all of the pertinent information for processing fingerprint applications and notes that the vast majority of applications are processed in less than one week. With respect to the remainder of the recommendation, the Department has developed a three pronged approach -- internal processing changes, increased notification to school districts, and increased notification to individual applicants.

¹ The one individual with the very serious criminal history fell into this category.

² While many of the identified individuals fell into this category, at the time a conditional clearance was issued, OSPRA's business process was to send a letter to both the school employer and the individual advising them of the steps that they must take to obtain a full clearance, namely, the submission of an additional set of fingerprints.

The Department has also made modifications to TEACH to identify all records that are in an incomplete status irrespective of the reason (e.g., transmission failures among the three entities responsible for fingerprint processing – SED, DCJS and the FBI, or human process errors). We are developing procedures to incorporate the reconciliation of these records into the daily work routine of the fingerprint processing staff.

The Department has also modified TEACH to allow school districts to more precisely identify the processing status of both the fingerprint application and their request for clearance. There are approximately 30 different status messages that are updated instantly as soon as the status changes. School districts now have the ability to more readily single out which of their employees are working under a conditional clearance (and thus in an incomplete status) so they can take the appropriate follow up measures.

Finally TEACH has been modified to allow an individual to more precisely monitor the processing status of his or her application through a series of approximately 18 fingerprint application processing status messages. Additionally, the Department has implemented a letter notification to individuals who have filed their fingerprint application online, paid online and then who seem to have inadvertently failed to complete the process by neglecting to submit fingerprints.

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.

We agree with this recommendation. Given the current technology, the vast majority of fingerprints are processed within 15 days. Further, given the modifications to TEACH identified in the response to Recommendation 1, school districts will have a clear indication of the small minority of individuals whose fingerprints cannot be processed within 15 days. The majority of this remaining group is individuals whose history has been referred for investigative and/or legal review. The Department is working to provide the appropriate status message in TEACH without compromising the due process rights of the individual whose criminal history is under review. This process will take a longer time due to the complexity of the technical solution involved.

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.

We partially agree with this recommendation. The Department is currently working to update the TEACH system to capture this data. We would like to note, however, that this data does not trigger a processing action within the Department. The only date that can initiate a processing action is the date that the data is actually entered by the school district, not the date that is recorded as the hiring or termination date. In other words, the actual hiring and termination takes place entirely outside the control of the Department. The date that the Department is notified by the

school district of the hiring or termination of an employee is the only date that can drive Department actions.

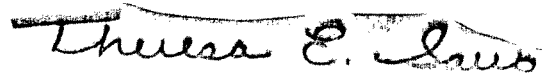
Recommendation 4:

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

We agree with this recommendation. In December, the Department will issue an annual memo to school districts reminding them of their obligations under the SAVE Act. Additionally, OSPRA plans to use new funding to provide technical support to school employers on the fingerprinting requirements through the use of workshops and presentations.

If you have any questions regarding this response, please contact Deborah Marriott (518) 408-1521.

Sincerely,

A handwritten signature in black ink that reads "Theresa E. Savo". The signature is written in a cursive style with a horizontal line above the name.

Theresa E. Savo

c: Deborah Marriott