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January 24, 2013

Mr. Edmond J. Theobald, Supervisor  
Members of the Town Board  
Town of Manlius  
301 Brooklea Drive  
Fayetteville, New York 13066

Report Number: S9-12-6

Dear Supervisor Theobald 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 Manlius (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 January 6, 2012.

This report of examination letter contains our findings and recommendations specific to the Town of Manlius. 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. 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 developed written procedures for background screening of individuals providing services to Town youth programs, except for those hired for summer playground camps. In accordance with Public Health Law Article 13-B, the Town submits 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 does not otherwise have a background check process or an entity-wide monitoring system to ensure that the checks are completed for individuals involved in any Town youth programs other than the summer playground camps. We found that two names of individuals hired for summer playground camps were omitted from a list of 82 names that the Town submitted to DCJS for checking against the New York State Sex Offender Registry. We also tested 152 names of individuals providing services to programs to determine if there was any public record documenting either a sex offense or criminal history. The service providers included full- and part-time Town employees, contractors, and independent instructors. 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 Manlius is a suburb of the City of Syracuse, in Onondaga County, with a population of approximately 32,000 people. The Town provides youth program services to its residents. The Town's 2010 actual expenditures for youth programs were approximately \$344,000. Budgeted youth program expenditures for 2011 and 2012 were approximately \$300,000 per year.

The Town is governed by the Town Board (Board), which comprises seven elected members: the Town Supervisor (Supervisor) and six 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 fiscal officer and chief executive officer. A Town Manager has been appointed to assist the Supervisor in the daily administration and operation of the Town. The Town offers a multitude of youth programs through the Recreation Department. The Director of the 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 4,200 participants enrolled in approximately 119 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 classes in pre-school activities, arts and crafts, baking, 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,<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. 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 B 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. The Town's employment applications contain a statement that the Town conducts background checks and includes a consent statement to allow the Town to do so. However, Town officials told us

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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.

that the background checks for individuals in the youth programs (full- or part-time employees, volunteers, or contractual providers/independent instructors, whether year-round or seasonal) are not required for employment or participation, with the exception of the summer playground camp personnel, for whom the checks are required by law. The Town submits the names of these individuals to the DCJS 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.

The Recreation Department hires part-time, year-round and seasonal help after completion of an application, interview, and reference checks, and the Board approves the hiring of the individual. 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.

Independent instructors<sup>4</sup> generally administer the youth programs listed in the Recreation Department's brochure. The Town does not use a background check process on these independent instructors, and therefore has no process to monitor these checks. Additionally, the 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. We tested a list of 82 names submitted to the DCJS and found that it omitted two names. Town officials told us that this omission occurred because two individuals decided against taking the job just before camp started. However, Town officials had already sent the list of names (including the names of these two people) to DCJS. While the Town hired two new individuals for the summer playground camp, it did not send their names to DCJS for background checks.

We also tested 152 names of individuals providing service to the youth programs to determine if there was a public record<sup>5</sup> documenting either a sex offense or a criminal history. These individuals included full- and part-time Town employees, contractors and independent instructors. 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 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 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

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<sup>4</sup> Independent instructors who provide program services to the community advertise in the Recreation Department brochure and use a student registration form that the Town provides, but are paid directly by the participant (that is, an enrollee's parent or guardian) rather than the Town. The independent instructor may have help in providing the program, but the Town does not document information about the instructor or any additional help used.

<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.

to the DCJS to have the names checked against the 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 page.

# Town of Manlius

Edmond J. Theobald

COPY



July 5, 2012

Steven J. Hancox  
Deputy Comptroller  
State of New York  
Office of the State Comptroller  
110 State Street  
Albany, New York 12236

Dear Deputy Comptroller Hancox,

In response to Report Number S9-12-6, we at the Town of Manlius feel, as you do, that background checks on all staff that work with youth is an important action to take. At this time, this is not a mandated requirement. For the Town of Manlius, the biggest obstacle is the cost associated with doing a complete and thorough background check on over 70 part time staff that is hired each summer. All of the Town's sports camps are directed by teachers who are mandated by the State to have a background check done as a condition of their employment. An additional expense would be funding background checks for all of the staff at each of the 20+ sports camps that operate through the Town's recreation department.

This year the Town of Manlius has implemented a mandatory local background check on all staff that work with youth through the Town's various recreation programs. These checks are being conducted by the Town of Manlius Police Department. The Town is also pursuing a requirement that background checks be completed for all Town employees, not just recreation staff.

The Town of Manlius is proud of the process that we follow to hire staff, which includes interviewing each candidate and checking references. However, we understand that a thorough background check would insure that we are keeping the youth in our programs as safe as possible. Should background checks become a mandate, the Town is hopeful that New York State will offer a cost effective way (i.e. grants) for all municipalities to have the background checks completed. Currently, the Onondaga County Health Department mandates that all municipalities who operate playground programs within its jurisdiction have their staff checked against the New York State Sex Offender Registry. The County covers 100% of the cost associated with this mandated check.

Thank you for caring about the safety of the youth within the Town of Manlius, as well as New York State. We look forward to working with you to continue to provide a safe, healthy and fun environment for our youth.

Sincerely,

Edmond J. Theobald, Supervisor  
Town of Manlius

Edmond J. Theobald, Supervisor

Town Board – John R. Loeffler, David M. Marnell, Sr., Nicholas J. Marzola, Sandra A. Schepp, Vincent Giordano, Karen Green

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## **APPENDIX B**

### **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 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.