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January 24, 2013

Mayor Joseph M. DeStefano
Members of the Common Council
City of Middletown
16 James Street
Middletown, New York 10940

Report Number: S9-12-10

Dear Mayor DeStefano and Members of the Common Council:

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 Common Council 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 City of Middletown (City) in this audit. Within the scope of this audit, we examined the policies and procedures of the City. We also examined various records including employment records and youth program documentation for the period January 1, 2010 to April 4, 2012.

This report of examination letter contains our findings and recommendations specific to the City of Middletown. We discussed the findings and recommendations with City officials and considered their comments, which appear in Appendix A, in preparing this report. City 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 City'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 City has recently adopted a policy¹ for background screening of employees² providing services to City youth programs. In accordance with Public Health Law Article 13-B, the City is to submit the names of the individuals hired to work at the summer 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. City officials stated that the names were not submitted for matching, therefore the City was unable to provide a listing of the names submitted.

The City does not have a monitoring system to ensure that the checks are completed for individuals involved in City youth programs. We tested City Recreation and Parks Department employees hired after September 2010 to determine if the background screening process described was implemented. Additionally, we also tested 215 names of individuals providing services to programs to determine if there was any public record documenting either a sex offense or criminal history. These service providers included full- and part-time and seasonal City employees. Included in the 215 names were approximately 40 that we identified as working in the summer camp during our scope period. Our tests of all 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 City of Middletown is located in Orange County, with a population of approximately 25,000 people. The City provides youth program services to its residents. The City's 2010 actual expenditures for youth programs were approximately \$1.3 million. Budgeted youth program expenditures for 2011 and 2012 were approximately \$1.3 million and 1.4 million, respectively.

The City is governed by the City Common Council (Council), which is comprised of nine members. The Council is responsible for the general management and oversight of the City's financial and operational affairs. These responsibilities include setting policies and establishing effective controls over operations. The Mayor is the City's chief executive officer.

The City offers a multitude of youth programs through the Recreation and Parks Department. The Superintendent of the Recreation and Parks Department (Superintendent) is responsible for organizing the programs offered to the community, which includes screening prospective staff. There were approximately 2,400 participants enrolled in about 48 City youth programs over our scope period. The Recreation and Parks Department also provides consulting services to the Enlarged City School District of Middletown (School District) for various school programs – after school programs at the elementary and middle schools and the summer lunch program, which are not included in the count of programs.

¹ On March 6, 2012, through resolution 69-12, the City Council approved the "Child/Youth Protection Policy."

² Only newly hired adult employees (at least 18 years old and no longer in high school) who work with the youth are screened. The process unofficially started in September 2010 and the policy was formally approved by the Common Council in March 2012.

Youth programs, which are often offered as a response to community interest, encompass a wide variety of activities. These include pre-school, 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) that the City 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 State's Sex Offender Registry, which is public information.

New Federal legislation that has been introduced but not yet enacted, the Child Protection Improvements Act of 2011,³ focuses on several aspects of criminal history investigations for child service organizations. However, while on the State level the Education Department has requirements⁴ 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 camp⁵ operators to determine whether an employee or volunteer is listed on the NYS Sex Offender Registry. This check, which DCJS conducts on names submitted by the City, 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 City 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.

³ 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.

⁴ 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)

⁵ 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.

Audit Results

The City recently adopted a policy⁶ in March 2012 to provide guidance for background screening processes for youth programs. City officials told us that the background checks conducted were only for newly hired adult employees, who are at least 18 and finished with high school, and work with the youth. The background screening process includes a check against the New York State Sex Offender Registry, a search of terrorist databases,⁷ a social security number verification and a criminal history multiple state search. The Superintendent does the background check using a third-party vendor's service and evaluates the results. From September 2010 to March 2012, the unwritten procedure was to conduct background checks only on adult hires, as per the approved policy. Prior to September 2010, no background checks were conducted. The City only uses employees to staff the various youth programs.

Children's camp personnel are required to undergo checks to the New York State Sex Offender Registry prior to the start of camp. The City is to submit 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 City was unable to furnish a listing of names submitted nor documentation of the results of the registry check as required by law. Per discussion with City officials, no names were submitted to DCJS to be checked against the New York State Sex Offender Registry.

The Recreation and Parks Department hires part-time, year-round and seasonal help after the completion of an application, interview, background checks,⁸ and reference checks. The City bases its hiring, in part, on being familiar with individuals whom the City 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.⁹ According to City officials, various employees tend to either return each year or provide different services to the City's youth, such as working after school programs and working at a children's camp. The new policy also states that the background check will be valid for three years after which time a re-screening will be necessary.

We tested the 45 names of employees identified as hired after September 2010 to determine if background checks were conducted according to the unwritten procedure in place. Two of the three exceptions found were employees who were current teaching assistants with the School District and would have undergone background checks through the school. However, there was no documentation on file concerning these individuals' employment with the School District. Recreation and Parks Department staff explained that at the time of hire, there was discussion with the Corporation Counsel and the insurance company that there was no need to conduct background checks on School District employees who were subject to background checks through the School District. There was no explanation documented for the third exception, but officials thought that the individual was finishing high school at the time. A monitoring system in place would help to identify noncompliance with the City policy.

⁶ On March 6, 2012, through resolution 69-12, the City Council approved the "Child/Youth Protection Policy."

⁷ Data is advertised as pulling from Directorate of Defense Trade controls, Office of Foreign assets control, and Bureau of Industry and Security.

⁸ Only new hires that are 18 years of age or older and finished high school are checked. The policy was formally adopted as of March 6, 2012, and prior to that, the unwritten procedure was to conduct background checks on all new adult hires from September 2010 to current. Prior to September 2010, no background checks were done.

⁹ Per the newly adopted policy, reference checks are to be documented.

Additionally, the Recreation and Parks Department stated that they were unaware of the requirement to submit children's camp staff names to DCJS to check against the New York State Sex Offender Registry. Therefore, the City does not have a monitoring process to ensure that this requirement had been completed.

Finally, we also tested 215 names of individuals providing service to the youth programs to determine if there was a public record¹⁰ documenting either a sex offense or a criminal history. These individuals included full- and part-time City employees. Of these employees, approximately 40 were staff at the summer camps, which are required to go through a sex offender registry check, which they did not. Approximately 100 City employees worked for programs that were School District programs. Per discussion with City officials, the Recreation and Parks Department provides the staff for the School District programs. The contract between the City and the School District contains a clause that requires the City employees to submit to background checks required by the program. Our tests of the 215 names disclosed no findings.

Nonetheless, background checks of all individuals who provide services to the City's youth programs are not only in the City's best interest in protecting its children against unsafe individuals, but can also help protect the City against liability from possible legal action.

Recommendations

1. City officials should develop entity-wide monitoring to ensure that background checks are performed as per policy.
2. City officials should institute a monitoring process to ensure that all children's 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 Council 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 Council to make this plan available for public review in the Clerk's office.

¹⁰ 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 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 CITY OFFICIALS

The City officials' response to this audit can be found on the following pages.

The City's response refers to page numbers in the draft letter report. The page numbers changed in the final formatting process.

Joseph M. DeStefano
Mayor



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City of Middletown

16 James Street, Middletown, New York 10940
Established 1888

Wednesday, July 11, 2012

Steven J. Hancox, Deputy Comptroller
New York State Office of the State Comptroller
Division of Local Government and School
Accountability
110 State Street
Albany, New York 12236

COPY

Report Number: S9-12-10

Dear Deputy Comptroller Hancox:

The City of Middletown and the City of Middletown Recreation & Parks Department both have received, read and discussed the draft report findings in regards to the Middletown Recreation & Parks Department's policies and procedures for background checks. In doing so and discussing it with the State Comptroller's Office at the exit meeting on June 13, 2012 there were two (2) key issues we seem not to agree upon and those issues are: (1) background checks against the New York State Sexual Offender Registry through the NY State Department of Criminal Justice Services (DCJS), page 4 – 3rd paragraph & (2) no documentation on background check for third exemption, page 5 – 1st paragraph. I would also like to recognize that on page 2, 1st paragraph that "playgrounds" need to be deleted between "summer" & "camps" since we do not have "summer playground camps," we have camps which utilize both City and School District buildings.

See
Note 1
Page 10

As per our discussion and research it has been determined that the requirement for background checks against the New York State Sexual Offender Registry for Children's Camps was enacted in April, 2009. The City of Middletown and the Middletown Recreation & Parks Department both have and continue to promote youth safety. This is done by attending any and all meetings pertinent to camp operations for updated information, which are provided by the County of Orange Department of Health. It is the recollection of the department that during those meetings prior to and after the April, 2009 issuance of the requirement, this was never a topic of discussion by the local monitoring agency. Since inception of this requirement during each of those years, the camps were inspected prior to operation and during operation and never once was there a #2 (#2 signifies all or parts of the items are in violation) placed in the box under "Administration/Supervision – Personal Records, Resumes on File, Communicable

Disease Carrier, Criminal Justice Service Check.” In the pre-camp inspection reports for the period in question, the inspector, and during actual camp inspections the inspectors logged that there were no violations in each instance. This included checking of boxes related to city compliance with the state regulations regarding back ground checks. The City understands that it is the duty of the Recreation & Parks Department to be in compliance but feels it should not solely be the responsibility of the Department. As mayor, I am receiving a report from the county that clearly states that back ground checks were done. If this box was not checked, I would then have the knowledge to move and requesting documentation. Based upon the county inspection and checking the box regarding back ground checks, it is a fair assumption for the city leaders to make that we were in compliance with these regulations. There is a monitoring agency that monitors and makes sure agencies are operating properly for the safety of its participants. As stated before, the monitoring agency should identify the violation and notify the Camp Operator of this violation via the inspection process. The City does not have any way of knowing that this is an issue and that the Middletown Recreation & Parks Department is not in compliance since the inspection report is not identifying any violation. Again, the City of Middletown and the City of Middletown Recreation & Parks Department is going to do everything and anything to make sure all program participants are safe, as seen in the Child/Youth Protection Policy and did comply immediately in 2012 after being notified by submitting names to the New York State Sexual Offender Registry for Children’s Camps with DCJS.

See
Note 2
Page 10

As per our discussion of the findings for the “third exemption” it has been stated that this person was not provided a background check since that person did not meet the criteria. The criterion for a background check is in the Child and Youth Protection Policy, page 3, # 2 under “Child and Youth and Adult.” It clearly states that an “Adult is anyone 18 years of age or older AND has finished high school.” The individual in question, also known as “third exception,” was 19 years of age but still in high school thus exempting the individual from the screening. Documentation was not needed for the specific fact that the individual did not meet the criteria and this is the same process for all other individuals that are not the age of 18 and still in High School.

See
Note 3
Page 10

The City of Middletown and the Middletown Recreation & Parks Department strive to implement programs that are both beneficial and safe for all participants. The Superintendent of Recreation & Parks will be devising a corrective action plan in the next week or so and should provide that to the Office of the State Comptroller’s within the two weeks or so.

Sincerely,

**Joseph M. DeStefano, Mayor
City of Middletown**

APPENDIX B

OSC COMMENTS ON THE CITY'S RESPONSE

Note 1

The report was updated to reflect this change.

Note 2

We acknowledge the camp inspection process is a valuable tool to identify violations; however, the camp operator has responsibility for compliance with regulations.

Responsibility for compliance with regulations begins with the camp operator, who should have complete knowledge of the requirements to run a camp. This responsibility carries on to the City department which oversees the camp operator and camp facility, to the City officials, then to any external oversight agencies, such as the County Department of Health.

Note 3

As conveyed to City officials, we believe the policy is deficient. The City should conduct background checks on all employees, volunteers and contractors (if any) that are 18 years of age or older.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

We reviewed the City'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 City 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 software¹¹ that accesses public records to determine if the individual has either a criminal history or a registered sex offense.

Based on hire dates of City Recreation and Parks Department employees, all employees hired after September 2010 were listed and compared to background check documents on file to verify that the policy was implemented.

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.

¹¹ The software accesses public records only if the records are reported in electronic format.