

# Homer Central School District

## Criminal History Background Checks

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JUNE 2019

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OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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# Report Highlights

## Homer Central School District

### Audit Objective

Determine whether District officials effectively used District resources to ensure the safety of their students by performing proper criminal history background checks.

### Key Finding

- Officials did not perform fingerprint-supported criminal history background checks on nine out of 157 employees tested.

### Key Recommendations

- Discontinue allowing new employees to provide services to students prior to obtaining or confirming fingerprint clearances.
- Conduct periodic checks of employee files to ensure that they have gone through proper criminal history background checks.

District officials agreed with our recommendations and indicated they planned to take corrective action.

### Background

The Homer Central School District (District) serves two towns in Cayuga County, seven towns in Cortland County, one town in Onondaga County and one town in Tompkins County. The District is governed by a Board of Education (Board), which comprises nine elected members. The Board is responsible for managing and controlling the District's financial and educational affairs. The Superintendent of Schools (Superintendent) is responsible, along with other administrators, for the District's day-to-day management.

#### Quick Facts

2018-19 Budgeted Appropriations	\$42.1 million
2018-19 Enrollment	1,856
Number of Employees	538
Number of Volunteers	357

### Audit Period

July 1, 2017 – November 28, 2018

We extended our scope back to July 1, 2001 for employee fingerprint testing and to January 8, 2013 for volunteer testing.

# Criminal History Background Checks

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## How Do District Officials Ensure the Safety of Their Students Through Proper Criminal History Background Checks?

To protect the safety and well-being of students, the New York State Education Law (Education Law)<sup>1</sup> requires that all prospective employees whom the school reasonably expects to provide services that involve direct contact (i.e., meeting in person, face-to-face communication or interaction) with students under the age of 21 must undergo a fingerprint-supported criminal history background check.<sup>2</sup> Education Law requires the fingerprint-supported criminal history background checks to be submitted to the New York State Education Department (SED), which then provides the school with certification clearing the individual for employment. SED provides guidance on criminal history background checks for various classes of employee hired after July 1, 2001.<sup>3</sup> If an employee leaves a district's employment for a period of 12 months or longer, the district is required to perform a fingerprint-supported criminal history background check if it rehires that employee.

If an individual is arrested subsequent to providing fingerprints to SED, the New York State Division of Criminal Justice Services will provide notice of the arrest to SED. SED notifies the school of the individual's name, the date of arrest and the court of jurisdiction. Individuals previously fingerprinted may not need to be fingerprinted again when seeking employment at another school. However, officials must request the clearance for employment for the prospective employee to ensure that SED's records are current and the prospective employee is cleared to work at a new or additional location. If a school fails to file the appropriate employee background checks and updated clearance requests with SED, the school may not be notified of an arrest, either prior or subsequent to the employee's hire, which may compromise students' safety.

Although school districts are prohibited from fingerprinting volunteers, it is a best practice to design and implement an alternative background check process for volunteers, such as interviews and board approval.

## District Officials Could Improve Student Safety Through Proper Criminal History Background Checks

The District did not consistently comply with Education Law for employee criminal history background checks.

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1 New York State Education Law (Education Law) Section 1804

2 The term "prospective employee" generally includes individuals seeking a compensated position with the school district and not currently employed by the district or an employee of a provider of contracted services to the district who is to be placed within a covered school, and who will reasonably be expected by the school to provide services which involve direct contact, meeting in person, face-to-face communications or interaction with students under the age of 21 (8 NYCRR Section 87.2[k]).

3 Guidance for which employees should be fingerprinted can be found here: <http://www.highered.nysed.gov/tsei/ospra/fingerprintingcharts.html>

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Since 2011, the District required all prospective employees, regardless of their direct contact with students, to undergo a fingerprint-supported criminal history background check.<sup>4</sup> The District's policy states that, unless otherwise authorized, the District will not employ or utilize a prospective school employee unless they have been granted full employment clearance by SED.

Prior to 2015, all volunteers needed Board approval. Under the volunteer background check procedures in place since 2015, prospective volunteers are interviewed by a building principal or the athletic director, who ask questions about past employment, criminal and legal history. The interviewer then contacts their non-family references. All volunteers are then required to be approved by the Board. The District also uses software to check all visitors against a Sex Offender Registry.

Although District officials properly performed fingerprint-supported criminal history background checks on most District employees, some employees were not checked or not checked until after they had begun to work at the District. We tested 157 employees, six of whom had a 12-month gap or longer in District employment, and found that nine employees had not been properly fingerprinted. More specifically:

- Two employees were fingerprinted three to seven years after they began working at the District.
- Officials did not perform fingerprint-supported background checks on one coach and one teacher.
- Officials did not perform fingerprint-supported background checks on two food service employees. District officials told us that they did not fingerprint the employees because they did not consider the employees, who were hired before 2011, as having direct contact with students. However, officials did not re-evaluate the employees once the District's policy was updated.
- Two volunteer coaches went through the volunteer background check process. However, they were not fingerprinted as a part of the employee process once they became paid coaches.
- One nurse left District employment for longer than 12 months but was not fingerprinted upon returning to the District. District officials properly checked the other five employees with a 12-month gap in District employment.

We tested all nine employees who were not fingerprinted at the time of hire against the State Sex Offender Registry web portal and found no exceptions.

We also tested 38 volunteers and verified that all 20 volunteers prior to 2015 were properly Board-approved. We verified that a building principal or the

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<sup>4</sup> Prior to 2011, the District required only those employees with direct contact with students to undergo fingerprint-supported criminal history background checks.

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athletic director interviewed and checked the references of 17 of the remaining 18 volunteers. One volunteer coach hired in early 2016 was not interviewed and did not have references checked. We also verified they were all properly Board-approved. We input our sample of volunteers into the District's software and a State Sex Offender Registry web portal and verified they were not listed on State or federal registries.

Because District officials did not obtain the required background checks or notify SED that these employees were providing services at the District, there is an increased risk that an employee's status on the list changed and potentially could jeopardize students' welfare. As a result of our audit, District officials took immediate corrective action and properly performed fingerprint-supported criminal history background checks on all nine of the employees we noted as exceptions.

### **What Do We Recommend?**

The Board and District officials should:

1. Discontinue allowing new employees to provide services to students prior to obtaining or confirming fingerprint clearances.
2. Conduct periodic checks of employee files to ensure that they have gone through proper criminal history background checks.

# Appendix A: Response From District Officials

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May 10, 2019

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Binghamton, New York 13901-4417

Unit Name: Homer Central School District  
Audit Report Title: Criminal History Background Checks  
Audit Report Number: 2019M-76

Dear ██████████

This letter is in response to the NYS Office of the State Comptroller's report for the audit period beginning July 1, 2017 through November 28, 2018. As noted in the report, the testing scope extended back to July 1, 2001 for employee fingerprint testing and to January 8, 2013 for volunteer testing. Please consider this letter as both the Homer Central School District's response and corrective action plan to the audit.

The Homer Central School District continues to monitor its strengths, opportunities for improvement and potential threats that are related to its overall financial position, educational program, facilities and most importantly, the safety and well-being of our students, staff and the school community as a whole. We accept this audit report as a means to improve upon our current procedures as they relate to school safety, hiring protocols and records review.

The District would like to acknowledge and thank your staff for the professional and considerate manner in which the audit was conducted. We are also appreciative that the following was noted in the report by your office, "As a result of our audit, District officials took immediate corrective action and properly performed fingerprint-supported criminal history background checks on all nine of the employees we noted as exceptions."

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***The following is the District's Corrective Action Plan:***

**Key Recommendation #1**

Discontinue allowing new employees to provide services to students prior to obtaining or confirming fingerprint clearances.

**Plan of Action and Implementation Date**

The District agrees with this recommendation. The District will not allow any new staff members to begin working in the district until they have received proper fingerprint clearance from the New York State Clearinghouse. The District clerk will notify each appropriate Building Principal and Area Director when the new employee has been cleared to begin working in the district. This will be implemented immediately.

**Person Responsible for Implementation:**

School Superintendent, District Clerk, Building Principals, Area Directors

**Key Recommendation #2**

Conduct periodic checks of employee files to ensure that they have gone through proper criminal history background checks.

**Plan of Action and Implementation Date**

The District agrees with this recommendation. The District will design and implement a procedure for the review of employee personnel records as they relate to hiring dates and proper criminal history background checks. The District will then compile a database containing information that can be readily accessed and reviewed by District staff. This will be implemented immediately and the reviews will be conducted on an annual basis.

**Person Responsible for Implementation:**

School Superintendent, District Clerk, District Confidential Office Staff

Respectfully Submitted,

Sonia Apker  
Homer Board of Education President

Thomas M. Turck  
Superintendent of Schools

Excellence of Instruction and opportunity"  
Chartered in 1819

## Appendix B: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We gained an understanding of the District's fingerprinting and criminal history background check procedures by interviewing District officials and reviewing the District's fingerprinting policy and SED regulations and memoranda.
- Of the District's 538 employees who were active as of November 28, 2018, we randomly selected five from each department (except teachers and substitutes, where we selected 20 each). For departments with five or fewer employees, we tested the entire department. We also included in our sample all employees not assigned to a specific department, all employees who retired during our scope period, and all non-instructional coaches. We had a total sample of 157 employees. For these 157 employees, we determined whether they were hired or rehired after July 1, 2001 and determined whether they had fingerprint-supported criminal history background checks on file. For employees who did not have a form on file, we requested that a District official enter the employees' information into the background check software to determine the last date the check was performed.
- We reviewed employment records for all 157 sampled employees and calculated whether they had a gap of 12 months or longer in their District employment. We found six employees with such a gap, and reviewed their personnel files for evidence of a fingerprint-supported criminal history background check on rehire.
- We searched the State Sex Offender Registry for the names of the nine employees that did not have fingerprint-supported criminal history background checks on file.
- We judgmentally selected a sample of 38 volunteers from a total of 357 volunteers approved by the Board as of January 24, 2019. We used proportions of volunteers approved for all open school buildings and departments. We verified that these 38 volunteers were Board-approved, and that their references were checked after the most recent volunteer policy was implemented in 2015. We processed the names of all 38 volunteers through the District's software program that checks against State and federal Sex Offender Registries, and then compared all volunteers not found in the software to names in the State Sex Offender Registry web search, which shows Level 2 or 3 sex offenders.
- We interviewed District officials to determine the cause of any discrepancies between the results of our testing and District policies and SED requirements.

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We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-1(3) (c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the fiscal year. 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 the CAP available for public review in the Clerk's office.

## Appendix C: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

### **Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

### **Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg)

### **Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

### **Protecting Sensitive Data and Other Local Government Assets** – A non-technical cybersecurity guide for local government leaders

[www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf](http://www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf)

### **Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.state.ny.us/localgov/finreporting/index.htm](http://www.osc.state.ny.us/localgov/finreporting/index.htm)

### **Research Reports/Publications** – Reports on major policy issues facing local governments and State policy-makers

[www.osc.state.ny.us/localgov/researchpubs/index.htm](http://www.osc.state.ny.us/localgov/researchpubs/index.htm)

### **Training** – Resources for local government officials on in-person and online training opportunities on a wide range of topics

[www.osc.state.ny.us/localgov/academy/index.htm](http://www.osc.state.ny.us/localgov/academy/index.htm)

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