



Criminal Background Check Performance Audit



Delaware Department of Education

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Department of Education Criminal Background Checks

Performance Audit

For 2014 thru 2019

What Was Performed? A performance audit of the Department of Education's (DOE's) compliance with conducting criminal background checks for covered employees for calendar years January 1, 2014, through December 31, 2019.

Why This Engagement? This engagement was conducted in accordance with 29 *Del. C.* § 2906 and evaluated DOE's compliance with state laws and regulations regarding criminal background checks required for all employees.

Our performance audit had two objectives:

- (1) Determine if DOE complied with state laws and regulations for criminal background checks on all required employees, and
- (2) Assess the DOE's internal controls and determine if the controls have been properly employed.

This report is intended to assist DOE's management with recommendations to improve procedures, processes and internal controls as necessary.

What Was Found? We found the DOE could strengthen its internal controls in several ways, including by improving documentation to ensure the following:

- (1) employees are cleared, certified and suitable for their positions in accordance with state laws and regulations, and
- (2) employee files contain the requisite documentation to provide evidence of DOE's compliance with relevant state laws, regulations and policies.

The report contains several recommendations for improvement, which we encourage DOE's management to consider implementing. These recommendations were developed based on evaluation of audit evidence obtained for DOE, and they are designed to help keep schoolchildren safer by improving internal controls related to certifying the criminal background check processes.

The Department of Education Criminal Background Checks Performance Audit for 2014 through 2019 can be found on our [website](#).

Please do not reply to this email. For any questions regarding the attached report, please contact State Auditor Kathleen K. McGuinness at Kathleen.Mcguinness@delaware.gov.



State of Delaware
Office of Auditor of Accounts
Kathleen K. McGuinness, RPh, CFE
State Auditor

To the Department of Education:

The attached report provides the results of our performance audit on compliance with criminal background checks for the Department of Education Human Resources employees, in accordance with the criteria set forth in the Delaware Code. The scope of this audit was January 1, 2014, through December 31, 2019.

My office is authorized, under 29 Del. C., Ch. 29, §2906 to perform postaudits of all state agencies. The Department of Education's management is responsible for criminal background checks, internal controls, and compliance with the applicable Delaware Code.

We conducted this performance audit in accordance with the standards applicable to performance audits contained in Government Auditing Standards issued by the Comptroller General of the United States. 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.

This report can be accessed online through the State Auditor's website at <http://auditor.delaware.gov>.

Sincerely,

A handwritten signature in blue ink that reads "Kathy McGuinness".

Kathleen K. McGuinness, RPh, CFE
State Auditor

January 10, 2022

Table of Contents

Audit Authority..... 1
Background 1
Audit Objectives..... 3
Audit Scope..... 3
Audit Methodology..... 4
Audit Results 5
Schedule of Findings, Recommendations, and Responses 6
Conclusion..... 10

Abbreviations:

CBC	Criminal Background Check
DELJIS	Delaware Criminal Justice Information System
DHR	Department of Human Resources
DELDOT	Delaware Department of Transportation
DOE	Department of Education
DSCYF	Department of Services for Children, Youth and Their Families
FBI	Federal Bureau of Investigation
FSF	First State Financials
OAOA	Office of Auditor of Accounts
PHRST	Payroll Human Resources Statewide Technology
SBI	State Bureau of Identification
SD	School District

The mission of the Delaware Office of Auditor of Accounts

The Delaware State Auditor serves Delawareans by providing independent objective oversight of the state government’s use of taxpayer dollars with the goal of deterring fraud, waste and abuse through unbiased assessments, including the use of various audits, special reports, and investigations of financial operations designed to ensure statutory compliance while enhancing governmental economy, efficiency and effectiveness.

For further information on this release please contact:

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Audit Authority

OAOA is authorized, under 29 Del. C., Ch. 29, §2906 to perform postaudits of all state agencies. Therefore, OAOA is authorized to conduct postaudits of the Department of Education and its School Districts including financial expenses, internal controls, and compliance associated with obtaining and reviewing criminal background checks for employment purposes.

Background

Overview

Criminal Background Checks (CBCs) and reference checks are an employer's principal means of securing information about potential hires from sources other than applicants themselves. A CBC involves determining whether an applicant may be unqualified for a position due to a record of criminal conviction or other misrepresentation. The top reasons to conduct CBCs include mandates by law/regulations, to protect children from harm, to improve the quality of hires, and to protect the employer's reputation. Public schools must follow certain protocols in obtaining CBCs in the hiring process. The protocols incorporate legal issues and protections due to the State's commitment to nondiscriminatory employment practices.

Laws and Regulations

The State of Delaware and the Delaware Department of Education have addressed laws and regulations that require fingerprinted CBCs for prospective employees, contractors, volunteers, and student teachers during the employment (hiring) process to help ensure the safety of children.

Title 31 §309 of the Delaware Code governs the requirement for CBCs for child-serving entities such as public schools and employees of the Department of Education. Title 31 §309 also addresses criminal activity preventing employment in child-serving entities, including felony convictions involving physical or sexual assault crimes, other violent felonies, misdemeanor convictions against children, and the prohibition requirements.

Delaware Title 14 of the Delaware Administrative Code §745 Public School Related Employment and §746 Student Teacher Placement detail CBC regulations, including purpose, definitions, procedures, and length of a valid CBC, as well as exemptions for continuous employment, appeals, confidentiality, penalties, and subsequent criminal history. Delaware law prevents individuals who have been convicted of crimes related to children – including child abuse (sexual and otherwise), neglect, kidnapping, and other violent crimes – from working in a Delaware school district.

Department of Education Characteristics (Quick Facts) and Management

The Department of Education (DOE), headquartered in Kent County, employs approximately 310 individuals. The management of DOE is responsible for exercising general control and supervision over the public schools of the State.

Department of Education Criminal Background Check Practices

As part of the application for DOE related employment, candidates must sign a Release for Criminal Background Check Information form approved by the DOE. Before beginning work, all prospective employees are required to obtain a fingerprinted Criminal Background Check (CBC) completed by the Delaware State Police State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI).

DOE may place a candidate in a position provisionally in accordance with Delaware Code; however, the candidate must comply with the provisions defined in the regulation. Final candidates for employment, or those who enter a contract for services, may have a CBC from other states accepted if certain conditions defined in the regulation are met. The Delaware SBI CBC report shows criminal activity that occurred in Delaware, and the FBI report shows criminal activity nationwide. Delaware Code allows that if there is prohibited criminal activity history, the employment offer may be rescinded prior to employment, or employment may be terminated.

SBI provides the state with a central repository for the collections and accurate organization of criminal arrest records, crime report(s), and missing persons reports for Delawareans using the DELJIS system. The Delaware State Police front desk operations provide fingerprinting services for individuals requiring a criminal background history check for employment. The potential employee is required to provide photo identification, such as a valid driver's license or state ID (from any state) but is not required to provide a Social Security number or birth certificate. The Delaware SBI Criminal History Section is responsible for the research and completion of criminal history background checks, which are titled "State of Delaware Certification of Criminal Background Check." The Delaware SBI Criminal History Section also electronically submits a request for a federal CBC to the FBI, which provides the "FBI Criminal Background Check Civil Applicant Response."

SBI mails the CBCs directly to the designee DOE has appointed to receive the hard copy of the CBC documentation. The SBI and FBI CBCs are submitted to the DOE Human Resources department for review. DOE Human Resources reviews the CBCs for any prohibitions (offenses) that may endanger its students and makes the required determination of suitability for employment based on the laws and regulations and any other criteria the public school or DOE may establish. The Human Resource Director reviews the CBC record to make the determination of suitability and sign offs on the CBC records with criminal activity listed. If the CBC record has no criminal history listed, the CBC record is filed in the employee's personnel file. In cases of denial, the candidate will receive a verbal or written notification. In more complex criminal history background check cases, DOE will contact its attorney for legal guidance. DOE is responsible for confidentiality, proper security precautions and record retention of the CBCs as part of the Human Resources employee personnel file. DOE does not use the CBC complete date field in Payroll Human Resources Statewide Technology (PHRST) system. The Human Resource Director maintains pending CBCs in a separate area awaiting receipt of CBC results or other items required prior to hire. A checklist is also utilized to document that each step of process is completed. All applicants return the CBC receipt to the DOE, where it is placed in the employee file with the CBC once received.

The State of Delaware and Delaware DOE do not require that periodic CBC reports be obtained throughout employment/service with a school district. However, the DELJIS system has an automated process to notify DOE regarding persons who have new activity on their criminal record after they have passed the CBC process. The automated process helps ensure that persons serving vulnerable populations, such as children in schools, remain fit to serve.

Audit Objectives

In accordance with the provisions of the Delaware Code and Generally Accepted Government Auditing Standards, we have conducted a performance audit of certain aspects of the CBC process to confirm that DOE has effectively used resources to ensure the safety of children. The audit focused on the functions of DOE, the SBI, and the FBI. DOE is the entity primarily responsible for management of the CBC process for its employees. SBI serves as the state’s repository for CBC information. The FBI is the national repository for CBC information.

The objectives established for the performance audit include:

- Determine if DOE is compliant with performing CBCs on covered personnel and updating the background checks with subsequent criminal history as required under Delaware Administrative Code [14 Del. Admin C. §745 and §746]. This also includes the completion of the final determination of suitability for DOE.

- Assess the DOE’s internal control structure to determine if it is designed to provide reasonable assurance for CBC objectives and make recommendations, as considered necessary. For example, this includes determining if the DOE’s policy and procedures to implement laws and regulations are clear, complete, and actionable.

Audit Scope

The scope of the engagement covered personnel data during the period January 1, 2014, through December 31, 2019.

Audit Methodology

The audit relied on various sources and methods to obtain an understanding of and assess Delaware's CBC process for the DOE. As such, we performed the following:

- A. reviewed the applicable sections of Delaware Code and the Delaware Administrative Code to learn about the legal requirements pertaining to CBCs;
- B. examined the adequacy of the 1) current regulatory requirements related to current covered personnel; 2) types of background checks; and 3) types of criminal convictions that preclude applicants from employments;
- C. conducted interviews and discussion with DOE personnel to ascertain and document background check processes, practices, internal controls, limitations, and performance;
- D. reviewed the DOE policy and procedures to determine the existence and adequacy of the policy on CBCs' information and requirements;
- E. reviewed information recorded in PHRST for employees, including but not limited to information such as the hire/start date and history of employment;
- F. conducted testing of covered personnel to verify compliance, using sampling to support our audit work. Testing including the following:
 - a. Examining and scrutinizing SBI and FBI CBCs for the following:
 - i. existence: obtaining CBC to confirm complete and compliant fingerprinted CBC from the Delaware SBI CBC and FBI CBC was received;
 - ii. fraud indicators: reviewing for any fraud indicators, including matching to actual sampled person and inquiry/verification of any name changes.
 - iii. timeliness: requesting CBC prior to hire to confirm the timeliness of receipt of CBC documentation by DOE.
 - iv. record retention: retaining CBC to confirm adequate record retention of the SBI and FBI CBC information; and
 - v. suitability determination: to determine that evidence of suitability form or other alternative documentation was completed to document the approval of the applicant for hire by the DOE.
 - b. Examining the SBI and FBI CBCs in detail when criminal activity was reported and comparing the criminal activity to what was prohibited under Delaware Code, to ensure disqualified candidates have not been hired by the DOE.

Audit Results

The OAOA noted internal control and compliance deficiencies related to the following:

- The DOE was not fully compliant with all the requirements of the CBC State laws and regulations and did not have adequate processes and internal controls to address CBCs.

Refer to the Findings in the *Schedule of Findings, Recommendations and Responses* for details of the deficiencies identified and related recommendations.

Schedule of Findings, Recommendations, and Responses

Finding Number: 2019.01

Finding Name: Criminal Background Checks

Condition/Context: Although DOE had established processes and internal controls for CBCs, it was not fully compliant with all the requirements of the CBC State laws and regulations. Further, it did not always have adequate processes and internal controls to address areas where the laws and regulations were vague or not fully defined.

- **Suitability Determination Key Control Evidence Documentation:** From a random sampling of 36 persons for which CBC records were received for testing during the audit fieldwork, 35 did not have the documented evidence of the completion of the determination of suitability, indicating a key internal control weakness and only partial compliance with Delaware Code. The suitability determination includes: the name of the authorized person performing the review, the date of the suitability determination review, the decision, and when there is a denial, the documentation of the reason for the denial. DOE Human Resources indicated that it only documents the determination of suitability on CBC records which list any criminal activity. However, we only identified one CBC record with the determination of suitability documented and documentation of suitability was not fully addressed in policy and procedures.

Person Type	Number Sampled	Suitability Documentation	Exceptions
Employees	36	1 Suitability Documented on CBC	35 No Documentation

- **CBC Record Retention/Existence:** Five (5) employees did not have documented evidence that a compliant CBC, consisting of the fingerprint DE SBI and FBI screenings, had been completed.
 - Two of these employees are employed by Department of Justice (DOJ) as District Attorney Generals. We were provided with a letter from the Chief of Staff stating that there was no criminal history on these employees, and they are consistently monitored by the Executive Director of DELJIS who reports any criminal arrests immediately to DOJ Chief of Staff. However, the CBC records were not provided for testing.

Criteria

- Title 31 §309 of the Delaware Code
- Title 14 Delaware Administrative Code, Section 745 & 746
- Budget and Accounting Manual Chapter 2 – Internal Controls
- Standards for Internal Control in the Federal Government (Green Book), U.S. Government Accountability Office September 2014.

Cause

- Where the Delaware Code and Delaware Administrative Code are silent regarding certain aspects of the CBC requirements, standardized policies, procedures have not been developed.
- The DOE did not consistently follow processes to ensure that compliant CBCs were requested, received, reviewed, documented, and filed, indicating weaknesses in internal controls.
- Supervisory reviews failed to detect the compliance exceptions and there was a lack of management review and oversight controls to meet the intent of state laws and regulations on CBCs.

Effect

- DOE was not in full compliance with state laws and regulations for CBCs. The inability to verify all CBCs risks exposing children to potential harms from which they should be protected. Additional risks include the legal risk that results from potentially employing an unscreened individual (a negligent hiring claim), and reputation risk for DOE.

Recommendation

We recommend the DOE Human Resources take the following actions to help strengthen internal controls and compliance:

- Review and update the design of internal controls to achieve the compliance objectives, relating to CBCs. Note: The general practice in reviewing and testing internal controls is that if it is not documented, it did not occur.
 - DOE may want to develop a working risk and control matrix to document DOE's updated control process on CBCs.
 - DOE may want to use the matrix to review and monitor the design and operational effectiveness of controls on an ongoing basis and adjust the internal control design as needed as the environment changes.
- Develop a monitoring process to ensure CBCs are being obtained and reviewed, and that all suitability determinations are being fully documented.
- Address the compliance findings in this report as follows:
 - Review and address the compliance exceptions noted by OAOA and take actions as deemed appropriate to meet the requirements in the state law and regulation. This should include, at a minimum, addressing any missing CBC records and reviewing the requirements for managing CBC records and suitability determinations.
 - Consider whether other persons not sampled by OAOA, should be reviewed for complete and compliant criminal background records.
 - Update the DOE CBC Policy & Procedure to address documenting the suitability determination.
- Work with the school districts to determine the feasibility of implementing one information system that DOE and school districts can use to fully track and manage background check data and employment/services status for all persons employed, as follows:
 - Explore the use of the PHRST system to track all persons (employees, contractors, volunteers, and student teachers) requiring CBCs as a cost-beneficial solution and;
 - determine if a person (other than a State employee), that requires a CBC, can be set up in PHRST as a non-payroll individual,
 - follow up with monthly automated reports from the PHRST system for the school district to track the status of CBCs;
 - determine if alternative systems exist which could be used for managing CBCs. For example, there are volunteer management systems which could assist with managing volunteers.

Management Response



DEPARTMENT OF EDUCATION

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Finding Number: 2019.01

Finding Name: Criminal Background Checks

Condition/Context: Although the Department of Education established processes and internal controls for Criminal Background Checks (CBCs), it was not fully compliant with all the requirements of the CBC State laws and regulations. Further, it did not always have adequate processes and internal control to address areas which were vague or not fully defined.

A. Suitability Determination Key Control Evidence Documentation:

1. **Current Process/Findings:** The Department of Education (DOE) does not currently have a policy to identify determination of suitability as required by regulation. The procedure that is followed by the DOE is to review all background checks and those that have concerns are reviewed with our legal team.
 - i. It was determined that 35 out of 36 random selections, from the audit, did not have a determination of suitability letter on file.
2. **Proposed Action Plan:** The Department of Education (DOE) will develop a policy and process to record determination of suitability for every employee, contractor, or volunteer. Beginning January 10, 2022, DOE will ensure that all employees, contractors, or volunteers, that DOE initiates a background check for, will have a determination of suitability letter on file upon receipt of the background check results.
 - i. DOE will implement this procedure effective January 10, 2022 but will not be able to add the determination of suitability letter to the files of those who we have initiated background checks for prior to this date.

B. CBC Record Retention/Existence:

1. **Current Process/Finding:** Five (5) employees did not have documented evidence that a compliant CBC, consisting of the fingerprint DE SBI and FBI Screenings, had been completed.
 - i. It was determined that two (2) of those employees are employed by Department of Justice (DOJ) as District Attorney Generals. A letter was provided that there was no criminal history for these employees but the actual CBC was not received.
 - ii. There was no record of a compliant CBC for the three (3) remaining employees.
2. **Proposed Action Plan:** The Department of Education (DOE) will conduct an audit to ensure that it has CBCs for all employees, contractors, or volunteers that are currently active with DOE. Anyone who is not in compliance will be sent to the State Bureau of Identification, Delaware State Police, Federal Bureau of

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Investigation, of Department of Services for Children, Youth and Their Families as appropriate to comply. Additionally, DOE human resources will do quarterly audits to ensure the department’s compliance with Background Checks.

- i. DOE will obtain the criminal history report for the two (2) employees, that are employed by Department of Justice as District Attorney Generals, to get those files in compliance.
- ii. The three (3) employees that were identified in the audit as having no CBC on file:
 - 1. [REDACTED] – This employee is retiring effective 2/1/2022. We will not require this employee to be fingerprinted since he will no longer be employed after 1/31/2022.
 - 2. [REDACTED] – This employee is no longer employed by the Department of Education. No fingerprinting required.
 - 3. [REDACTED] – This employee will be required to be fingerprinted no later than January 31, 2022 or provide proof of fingerprinting receipt and results to become compliant.

Conclusion: The Department of Education acknowledges the areas of deficiency that were identified by the Office of Auditors of Accounts. DOE Human Resources will adhere to the procedures outlined above in an effort to eliminate any additional findings in the future. DOE Human Resources will develop and implement additional monitoring and auditing practices to help identify areas of non-compliance moving forward.

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Conclusion

CBCs are a critical control mechanism to prevent abuse or misconduct involving children within schools. Based on the results of the audit procedures performed, DOE has established internal controls over the CBC process. However, we found weaknesses in the control design and in the operating effectiveness of the controls, as documented in this report. This report makes recommendations that are intended to strengthen the internal controls and accountability for the CBC compliance process.