



# Criminal Background Check Performance Audit



**Milford School District**

Kathleen K. McGuinness, RPh, CFE  
Delaware State Auditor



KATHLEEN  
**McGUINNESS**  
DELAWARE  
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## ***Milford School District Criminal Background Checks***

***Performance Audit***

***For 2014 thru 2019***

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**What Was Performed?** A performance audit of the Milford School District's compliance with conducting criminal background checks for covered employees, contractors, volunteers and student teachers for calendar years January 1, 2014, through December 31, 2019.

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

Our performance audit had two objectives:

- (1) Determine if the district complied with state laws and regulations for criminal background checks on all required employees, contractors, volunteers and student teachers, and
- (2) Assess the district's internal controls and determine if the controls have been properly employed to reduce the risk of harm to district students.

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

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

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

The report contains several recommendations for improvement, which we encourage district management to consider implementing. These recommendations were developed based on evaluation of audit evidence obtained for not only this school district but also all districts across the state, and they are designed to help keep schoolchildren safer by improving internal controls related to certifying the criminal background check processes.

The Milford School District Criminal Background Checks Performance Audit for 2014 through 2019 can be found on our website: [click here](#).

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](mailto:Kathleen.Mcguinness@delaware.gov).

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

To the Milford School District:

The attached report provides the results of our performance audit on compliance with criminal background checks for the Milford School District, including employees, volunteers, contractors, and student teachers, 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 district's management is responsible for criminal background checks, internal controls, and compliance with 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

November 12, 2021

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### **Abbreviations:**

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

**Kathleen K. McGuiness, RPh, CFE**  
kathleen.mcguiness@delaware.gov

## ***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/regulation, 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 many 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.

### **Milford School District Board of Directors and Management**

The main goal of public schools is to provide students with a challenging and safe learning environment. Meeting this goal requires the public school to hire qualified staff who ensure the safety and protection of the children. The Milford School Board has a Board of Directors that acts as the governing body of the school district, with oversight of educational affairs such as employment practices, compliance with laws and regulations, and approval of policies. The board consists of seven elected officials who each serve five-year terms. The board approves the school district's new hires. District management is responsible for establishing and maintaining an effective internal control structure.

**Milford School District Characteristics (Quick Facts)**

Milford School District, located in Kent County, operates K-12<sup>th</sup> grade schools with 4,267 students in 6 buildings/schools as of FY2021. Milford School District employs 542 employees to educate and support their students as of FY2021. Other groups supporting the school district include student teachers, volunteers, and contractors. The employees responsible for the CBC process in the school district are the Human Resource Director, the Director of Finance, and two administrative assistants.

**Milford School District Criminal Background Check Practices**

As part of the application for public-school-related employment, the contract for services, or the volunteer agreement, candidates sign a Release for Criminal Background Check Information form approved by the Department of Education. Before beginning work, all prospective employees, student teachers, volunteers, and contractors are required to obtain a fingerprinted CBC completed by the Delaware State Police State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI). A public school 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 into a contract for services, may have a CBC from other states accepted if certain conditions defined in the regulation are met. The SBI CBC report shows any criminal activity that occurred in Delaware, and the FBI report shows any criminal activity nationwide. 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 collection 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 that the school district has appointed to receive the hard copy of the CBC documentation. The SBI and FBI criminal background checks are submitted to the school district Human Resources department for review. The school district 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 may establish. The Human Resource Director reviews the CBC documents and makes the determination of suitability and will sign off and mark either "OK" or "denied" on the background check form. If the CBC is "clean," it is placed 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, the school district will contact its attorney and/or refer to the Superintendent for decisions, and a letter may be attached to the CBC.

If the applicant is a student teacher, SBI mails the CBCs directly to the applicant's higher education institution, and the institution's Human Resources/Administrator of Educator Preparation Program makes the initial determination for suitability for placement in the school district. Once suitability is determined

by the higher education institution, background checks are sent to the school district, where the final determination of suitability occurs.

The school district is responsible for confidentiality, proper security precautions (including locked, fireproof cabinets), and record retention of the CBCs as part of the Human Resources employee personnel files. The Milford School District does not use the CBC complete date field in the Payroll Human Resources Statewide Technology (PHRST) system. The Human Resource Director maintains an Excel document to track receipt of the CBCs for employees but not for volunteers, contractors, or student teachers. All applicants return a CBC submission fee receipt to the school district, which is placed in the employee file with the CBC when it is received.

The CBC is valid for twelve (12) months; however, if the employee becomes continuously employed by a Delaware public school, the background check is required to be kept on file for a minimum of five (5) years by the Delaware public school. Each person who has been continuously employed in a Delaware public school is exempt from obtaining a new CBC. Higher education entities dispose of the student teacher CBC no earlier than six (6) months after students graduate from the entity.

The State of Delaware and Delaware Department of Education do not require that periodic CBC reports be obtained throughout employment/service with the school district. However, the DELJIS system has an automated process to notify the school district/DOE regarding persons who have new activity on their criminal record after completion of the initial 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 the district has effectively used resources to ensure the safety of district children. The audit focused on the functions of the Milford School District, the SBI, and the FBI. The Milford School District is the entity primarily responsible for management of the CBC process for its employees, student teachers, volunteers, and contractors. 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 the school district is compliant with performing CBCs on covered personnel (Employees, Volunteers, Contractors, Student Teachers) 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 the Public School.
  
- Assess the school district’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 Board Policy and school district procedures that 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 Milford School District. 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 employment.
- C. conducted interviews and discussion with school district personnel to ascertain and document background check processes, practices, internal controls, limitations, and performance;
- D. reviewed the Milford School District Board policy 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 including employees, volunteers, student teachers, and contractors to verify compliance, using sampling to support our audit work. Testing included 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 the school district;
    - 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 school district.
  - 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 school district.

***Audit Results***

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

- The school district 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.
- The school district has incomplete policies and lacks written procedures on 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 the school district had established processes and internal controls for CBCs, they were not fully compliant with all the requirements of the CBC State laws and regulations. Further, they 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 54 individuals, 36 did not have documented evidence of the completion of the determination of suitability, indicating a key internal control weakness and only partial compliance with Delaware Code and Delaware Administrative Code. This included two contractors, four volunteers, and 30 employees.

Person Type	Number Sampled	Suitability Documentation or Other	Exceptions
Student Teachers	1	1 Adequate Documentation	None
Employees	40	10 Adequate Documentation	30 Inadequate Documentation
Volunteers	11	7 Adequate Documentation	4 Inadequate Documentation
Contractors	2	None	2 Inadequate Documentation
<b>Total</b>	<b>54</b>	<b>18</b>	<b>36</b>

Explicitly:

- The requirement states “The Public School, in accordance with 31 Del. C. §309(e), shall make a determination of suitability as an Employee, Contractor or Volunteer on each person it requested to initiate the CBC process.”
- **CBC Record Retention/Existence:** One employee and one contractor did not have documented evidence that a compliant CBC, consisting of the fingerprint SBI and FBI screenings, had been completed. Although the employee had completed the fingerprint SBI check, the district did not have documented evidence of the completed FBI screening.
- **Aged Receipt of CBC Records:** Three provisional employees had a compliant CBC received but the CBCs were received more than 30 days after the hire date (57, 186, and 569 days). Although Delaware Code is not specific about the length of time that a person may serve in a provisional status, the school district neglected to develop any additional control policies or procedures to address this area.
- **Real-Time Start and End Date Tracking:** OAOA was unable to determine the timeliness of the receipt of CBC of one student teacher, 3 volunteer teacher employees, and 8 volunteers due to the lack of real-time tracking of the start and end dates (including employees on volunteer lists provided to OAOA). The school district does not record start and end dates for volunteers, but school district management indicated that it starts with a new slate of volunteers each year. Without an established, documented real-time tracking process, there is no assurance that the appropriate persons have the required CBCs and that the school district has a complete list of contractors and volunteers.

- **Contractor Oversight and Non-Compliance:** There is no written requirement at either the State or district level (either in the Delaware Code or as part of school district internal controls) for oversight of outside contractors. The school district does not monitor contractors to ensure they are conducting compliant background checks.

**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.

**Causes**

- Where the Delaware Code and Delaware Administrative Code are silent regarding certain aspects of the CBC requirements, standardized policies, procedures, and processes were not developed by the school district.
- The school district did not employ adequate information system software to track and manage CBCs for employees, volunteers, student teachers, and contractors.
- The school district did not consistently follow processes to ensure that compliant CBCs were requested, received, reviewed, and filed, indicating a weakness in internal controls.
- Supervisory reviews failed to detect noncompliance with state laws and regulations regarding CBCs.
- The school district functions as an independent entity, and DOE is not responsible for coordinated oversight. This may have caused or contributed to different approaches, used across school districts, for managing the CBC processes and inconsistency in the implementation of state laws and regulations across all school districts.

**Effect**

The school district was not in full compliance with state law 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 in the school district (a negligent hiring claim), and reputation risk for the Milford School District and the Department of Education as a whole.

**Recommendation**

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

- Work with other school districts and the Department of Education to determine the feasibility of implementing one information system that 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 state employees) who 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.

- Consider migrating from the current spreadsheet approach, used as a tracking mechanism, to an automated database solution with reporting functionality for tracking employees, contractors, volunteers and student teachers.
- Review and update the design of internal controls to achieve the compliance objectives, relating to CBCs. This should include the consideration of the use of information systems to help with tracking and monitoring CBCs and the documentation of internal controls over CBCs. Note: The general practice in reviewing and testing internal controls is that if it is not documented, it did not occur.
  - Develop a working risk and control matrix to document the school district's updated control process on CBCs. 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 suitability determinations are being documented, following proper record retention and security policies.
  - Communicate to DOE any areas of the regulations which should be updated, clarified, or changed. Where the Delaware Code or Delaware Administrative Code lack definitive guidance on a situational basis, the school district should request that DOE provide guidance by a written policy update that complies with the principles of the law to assist with the formation of district procedures.
- Address the compliance findings in this report as follows:
  - Take action to maintain a complete and accurate list or report of all persons who require an SBI/FBI fingerprinted CBC going forward.
  - Review and address the compliance exceptions noted by OAOA and take actions as deemed appropriate to meet the requirements in the state laws and regulations. This should include, at a minimum, addressing any missing CBC records and reviewing the requirements for managing student teachers' CBC records and suitability determinations.
  - Consider whether other persons not sampled by OAOA should be reviewed for complete and compliant criminal background records.
  - Evaluate whether the school district should audit its contractors' compliance with the SBI/FBI fingerprinted CBC requirements for all their employees who work in the school district or if alternative contractor oversight of these contractors should occur.

**Finding Number:** 2019.02

**Finding Name:** Policies and Procedures

### **Condition/Context**

The school district has incomplete policies and nonexistent written procedures on CBCs. The district board policy lacks details and contains limited policy elements. The policy fails to detail essential processes covered under elements of Delaware law, including the requirement for FBI background checks under Delaware Title 14 of the Delaware Administrative Code §746 Student Teacher Placement, or any coverage for student teachers.

The district also did not have written supporting procedures, which resulted in the misunderstanding of certain aspects of the CBC process. For example, the school district policy makes no mention of the FBI background check requirement on volunteers and contractors. The policy does not cover Section 746 requirements for student teachers.

The board policy coverage of CBCs reads as follows:

- “Criminal Background Checks must be done in accordance with Section 745 Criminal Background Check for Public School Related Employment, Title 14 Delaware Administrative Code and completed through the Delaware State Bureau of Investigation. It is the employee’s responsibility to pay for the Criminal Background Check.” **Adopted 10/28/13**
- “All employment approvals are conditioned upon submitting necessary hiring paperwork, verification of credentials and receipt of a satisfactory criminal background check.” **Amended 1/28/19**
- “Final approval contingent upon employment verification, education and other credential verifications, the receipt of satisfactory criminal background and child protection registry checks, and adherence to Milford School District policies.” **Amended 1/28/19**

### **Criteria**

- **Control Environment - A Vital Part of Internal Controls:** The oversight body should oversee the entity’s internal controls system, including the design, implementation, and operation of an internal controls system.
- **Internal Controls Guidance:** Internal controls – actions taken by the board to mitigate oncoming and anticipated risks – must be commensurate with risks mitigated. Management objectives include the effectiveness and efficiency of operations; reliability of reporting for external or internal use; and compliance with applicable laws and regulations. Specifically, control activities are the policies and procedures that mitigate risks that hinder the completion of objectives. Control activities are an integral part of an entity’s planning, implementation and achievement of effective results, as well as its stewardship of government resources.
- **Internal Controls Documentation:** Documentation is required for the effective design, implementation, and operational effectiveness of an entity’s internal control system.

### **Causes**

- The school district is responsible for establishing strong internal controls over the CBC process, using guidance such as the “Standards for Internal Control in the Federal Government” (Green Book / COSO) as defined in the State of Delaware’s Budget and Accounting Manual (BAM). However, the school district has not designed internal controls to include comprehensive written

policies and procedures addressing the CBCs, nor has it conducted a review of the current internal controls design and operational effectiveness.

- There is a lack of detailed direction within the Delaware Code on how the CBC process should be conducted. This lack of direction makes it difficult to fully develop comprehensive policy and procedures. DOE has not provided specific guidance to school boards with respect to governance and internal controls. Guidance from the DOE could be helpful in providing detailed direction where the Delaware Code is silent or insufficient.

**Effect**

The school district has not designed internal controls based on Green Book guidance to fully meet the objectives of CBC state law and regulation. Because the regulations are vague and open to interpretation, we were unable to verify if the district's background check process satisfies Delaware law and the Delaware Department of Education's regulations as intended. This increases the risk of abuse to the children who are students of the district.

**Recommendation**

We recommend the Milford School District Board of Directors take the following actions to improve governance:

- Update and expand the board policy to add elements specific to the CBCs and internal control responsibilities.
- Schedule an annual review of board policies.

We recommend the Milford School District Human Resources Director take the following actions to improve internal controls and consider collaborating with other school districts with similar issues as part of a taskforce to leverage resources within the 19 school districts to address these issues:

- Develop and document clear, consistent, and detailed procedures for the CBC process for employees, student teachers, volunteers and contractors. Policies and procedures should be reviewed and updated periodically or as needed. In addition, the district should develop and use a standardized form for documenting suitability determination.

Management Response



HOME of the BUCCANEERS

906 Lakeview Avenue Milford, DE 19963  
Phone: (302) 422-1600

**MEMORANDUM**

**TO:** Kathleen K. McGuiness, RPh, CFE  
Auditor of Accounts

**FROM:** Kevin A. Dickerson, Ed. D.  
Superintendent

**DATE:** November 12, 2021

**SUBJECT:** Management Response to Criminal Background Check Performance Audit

Milford School District considers Title 31 §309 of Delaware Code and Title 14 §745 and §746 of the Delaware Administrative Code to be the bare minimum by which a school district would protect students. Milford School District exceeds those requirements as any good steward of children would do by, among other things, performing documented reference checks, interviewing witnesses, following up on oddities, and speaking with prior supervisors, none of which are required by law. This is not just policy; it is best practice. The cursory audit during a pandemic conducted by a myriad of auditors due to extraordinary auditor turnover who clearly did not understand the process does not change the fact that Milford School District, like its sister districts throughout Delaware, frequently exceeds the procedural requirements of Delaware law.

We disagree that there are two findings. Specifically, Milford School District contends that the two findings are the same and should be defined in one finding. Among other mistakes in the report, we point out the following:

- 1) The report claims we lack a suitability determination and documentation for 37 individuals. However:
  - a. All district employees are provided contracts, subsequent to Board of Education approval, and prior to work beginning. Each fully executed contract mandates that successful fingerprinted, criminal background checks are required for employees. Volunteers are required to have a criminal background check before they begin to volunteer if they have regular and direct contact with students.
  - b. Milford School District reviewed and has evidence of criminal background checks for each of the employees and volunteers mentioned. The district has a copy of the criminal background check filed for each individual, and these documents were produced.
  - c. For the student teachers mentioned, the district works collaboratively with the higher education institution to ensure that successful background checks are completed prior to placement and engagement of each student teacher.
  - d. For the contractors mentioned, a successful fingerprinted, criminal background check is required within the formal contract between the district and the contractor prior to an individual providing service.

Milford School District does not discriminate on the basis of race, color, gender, religion, age, disability, national status, national origin, genetic information, or other legally protected categories in its programs and activities. The following person has been designated to handle inquiries regarding non-discrimination policies: Director of Personnel, 906 Lakeview Avenue, Milford, DE 19963, telephone 302-422-1600.





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- e. We provided the auditors with a spreadsheet showing receipt and review of background checks for each person we determined was suitable for hire. This was ignored.
- 2) CBC Record Retention/Existence:
    - a. For the employee, we provided a letter from the Delaware State Police verifying that no record had been found as it is their policy to perform a name check after an individual's fingerprints are rejected twice for technical issues.
    - b. The contractor at issue was required by contract not to have any criminal convictions, which surpassed Delaware's CBC requirement.
  - 3) Aged Receipt of CBC Records:
    - a. As permitted by statute, we hired people in advance of receiving their criminal background check because they provided a payment receipt for having been fingerprinted at SBL.
  - 4) Real-Time Start and End Date Tracking:
    - a. Volunteers are not allowed to begin until a successful fingerprinted, criminal background check is received and reviewed by the district. Thus, the data on start and end dates is irrelevant.
  - 5) Contractor Oversight and Non-Compliance:
    - a. For contractors, Milford requires a clean criminal background check prior to an individual providing service. Thus, this finding is unsupported.

Sincerely,

Kevin A. Dickerson, Ed.D.  
Superintendent

Milford School District does not discriminate on the basis of race, color, gender, religion, age, disability, national status, national origin, genetic information, or other legally protected categories in its programs and activities. The following person has been designated to handle inquiries regarding non-discrimination policies: Director of Personnel, 906 Lakewood Avenue, Milford, DE 19963, telephone 302-422-1600.

**Auditor Response**

OAOA thanks the school district for its ongoing cooperation and the thoughtful response to the performance audit. OAOA has considered each issue presented in management's response and has made corrections to the final report where appropriate.

This office acknowledges that conducting a fully remote audit has its challenges. Auditors all over the world are conducting work remotely, and audit professional organizations have provided guidance in this specific area to ensure compliance with all professional standards. OAOA also partnered with a certified public accounting firm throughout the entire audit. The State also provided technology – Zoom, Teams, etc. – to allow for communications and exchange of information electronically. The pandemic extended the timeframe of this audit, as it has extended other state business activities.

OAOA's objectives were limited to assessing the school district's compliance with the Delaware Code, as well as evaluation of the control environment surrounding the Criminal Background Check (CBC) process. Our objectives did not include an audit of the entire hiring process or focus on finding any individuals who should have been disqualified. Adequate internal controls and written policies and procedures should ensure compliance and reduce the avenues through which an unacceptable hire might occur. Since 2015, the state adopted and follows the *Standards for Internal Control in the Federal Government* (the Green Book), which is used across the United States to ensure strong internal control processes. OAOA used the Green Book as the criteria to evaluate the district's internal controls.

This audit is based on samples taken from the populations of persons requiring CBCs in the school district. The employee population was extracted through the State of Delaware's Payroll Human Resource Statewide Technology system and sampled. The populations of contractors, volunteers, and student teachers were provided by the school district and sampled by the Auditors from the populations provided by the district. The population of contractors, volunteers, and student teachers provided by the district have no single source system from which to extract them. The Auditors requested the documentary evidence relating to the CBCs for the samples, during the audit fieldwork and gave the district ample time to provide all pertinent information to the auditors. The OAOA then conducted an exit meeting, where all potential findings were identified and discussed with district management. The school district was then given additional ample time to provide further information. Auditors evaluated all documents and claims provided by the district, including claims of purged records, to finalize the report.

Although each district is subject to the same Delaware Code, each approached compliance using different methods, processes, internal controls and documentation. Further, the Delaware Code does not address every unique aspect of the CBC process or circumstance that may occur. For the key internal control – which is the suitability determination – districts employed different policies, procedures and internal controls. We considered each district's approach and the evidence obtained across the 20 entities and found weaknesses in the internal control design and/or operational effectiveness, which puts students and others at risk of harm.

Compliance for contractors hired by the districts is an area that poses potentially serious risks. Because the school districts function as quasi-independent entities, but still under control of the state, and because the DOE is not responsible for coordinated oversight, some districts place the responsibility for ensuring a compliant CBC on contractors without employing additional risk mitigation measures for the district's students. The Delaware Code requires districts to mitigate risk by completing suitability determinations on contractors following the completion of a compliant fingerprint SBI and FBI screening. A signed and approved suitability determination establishes the ultimate responsibility for the CBC process. The signing of a contract or MOU with the contractor is not a substitute for the suitability determination and does not alleviate the district's responsibility for compliance and oversight.

Across the 20 entities, there were various interpretations of State law and regulations. There were two notable examples, one involving the Delaware Code and one involving the Delaware Administrative Code. Regarding the issue of aged or late receipt of CBC records, although Delaware Code is not specific about the length of time that a person may serve in a provisional status, legislators did not intend for districts to have a person in provisional status for an unlimited amount of time. It is the district's responsibility to develop written processes and procedures to ensure that employees are not employed indefinitely without a CBC. As part of a strong internal control environment, the school district should be instituting appropriate follow-up processes for late CBCs. Also, regarding the overall CBC process, the Delaware Administrative Code Title 14 Section 745 provides only minimum guidelines for persons employed, who may have personal contact with students receiving care or education during the course of their assigned duties. The Delaware Administrative Code then leaves the establishment of specific procedures to the school districts. The school districts had varying levels of understanding of the requirement to supplement the minimum guidelines established in the Administrative Code.

In the auditor's professional judgment, the exceptions referenced in this final report remain valid. We encourage the districts to evaluate shared technology systems which could help automate the management of the CBC process in one system for all employees and non-employees. We continue to encourage district management to consider all recommendations to improve internal controls to help ensure the safety of all district children.

## ***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, Milford School District 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 to ultimately help protect the district and the children it educates from being victims of bad actors.