



Criminal Background Check Performance Audit



Red Clay Consolidated School District

**Kathleen K. McGuinness, RPh, CFE
Delaware State Auditor**



**KATHLEEN
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DELAWARE
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Red Clay Consolidated School District Criminal Background Checks

***Performance Audit
For 2014 thru 2019***

What Was Performed? A performance audit of the Red Clay Consolidated 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.

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 Red Clay Consolidated 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.



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

To the Red Clay Consolidated School District:

The attached report provides the results of our performance audit on compliance with criminal background checks for the Red Clay Consolidated 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 16, 2021

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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:

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/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.

Red Clay Consolidated School District Board of Education 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 Red Clay Consolidated School District has a Board of Education 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 Board policies. The board consists of seven elected officials who each serve five-year terms and meet monthly. The board approves the school district's full-time hires, reported time hires, coaches, and vendor contracts. The board does not approve student teachers, contractors, or volunteers. District management is responsible for establishing and maintaining an effective internal control structure.

Red Clay Consolidated School District Characteristics (Quick Facts)

Red Clay Consolidated School District, located in New Castle County, operates K-12th grade schools with 16,601 students in 30 buildings/schools as of FY2021. Red Clay Consolidated School District employs 2,634 employees to educate and support its 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 Director of Human Resources, Education Associate, and Administrative Assistant. If an appeal occurs, the Superintendent is involved.

Red Clay Consolidated 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 regulations are met. The SBI CBC report shows any criminal activity that occurred in Delaware, and the FBI report shows any 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 that the school district has appointed to receive the hard copy of the CBC documentation. The SBI and FBI CBCs are submitted to the school district Human Resources department and superintendent 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 Director of Human Resources reviews and makes the final determination of suitability and the Education Associate records the results of the determination on the CBC document. The Administrative Assistant files the "clean" CBC in the personnel file. In cases where suitability is denied, the candidate will receive a verbal or written notification of the denial. 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 to document the action. Volunteers are tracked through the Volunteer Packets and the Administrative Assistant tracks the CBC using Excel.

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 not sent to the school district. The school district relies on the higher education institution for determining suitability for placement.

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, which are stored in the Director of Human Resources' office. The Red Clay Consolidated School District uses the CBC complete date field in the Payroll Human Resources Statewide Technology (PHRST) system. All applicants return the background check 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 children. The audit focused on the functions of the Red Clay Consolidated School District, the SBI, and the FBI. The Red Clay Consolidated 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 criminal background checks 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 criminal background check 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 Red Clay Consolidated 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, limitation, and performance;
- D. reviewed the Red Clay Consolidated 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 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, it was not fully compliant with all the requirements of the CBC State laws and regulations. Further, the district 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 131 persons (employees, student teachers, and volunteers) for which CBC records were received for testing during the audit fieldwork, 94 (72%) 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. The school district indicated its practice is to sign off (initials and OK) on the suitability determination if there is a criminal history on the CBC record only. However, there is no documentation evidence of the due diligence review and date of the other CBC records. 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.

OAOA identified eight student teachers without documented determination of suitability. During the exit meeting, the school district indicated that it relies upon the higher education institution to make the suitability determination for student teachers and to maintain their personnel files; however, Delaware Code requires each public school to "...make the final determination of suitability for placement of a candidate in a Student Teaching Placement in its school" and to forward the determination back to the higher education institution.

Person Type	Number Sampled	Suitability Documentation or Other	Exceptions
Student Teachers	14	6 Adequate Documentation	8 Inadequate Documentation
Employees	38	7 Adequate Documentation	31 Inadequate Documentation
Volunteers	40	2 Adequate Documentation	38 Inadequate Documentation
Contractors	39	22 Adequate Documentation	17 Inadequate Documentation
Total	131	37	94

Explicitly:

- The requirements state "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." This determination is not always documented by the school district, on the CBC or in another manner.
- OAOA identified eight student teachers without documented determination of suitability. During interviews, the school district indicated that it relies upon the higher education institution to make the suitability determination for student teachers and to maintain their personnel files; however, Delaware Code requires each public school to "...make the

final determination of suitability for placement of a candidate in a Student Teaching Placement in its school” and to forward the determination back to the higher education institution.

- **CBC Record Retention/Existence:** A total of 59 persons including 2 employees, 11 student teachers, 15 contractors, and 31 volunteers did not have documented evidence that a compliant CBC, consisting of the fingerprint DE SBI and FBI screenings, had been completed. For the student teachers, OAOA requested CBCs from both the school district and the higher education institution.
 - Three (3) of the (11) eleven student teachers were missing FBI checks, and eight(8) of the eleven (11) were missing both the FBI and SBI checks.
 - One (1) of two (2) employees was a transportation employee for which the school district indicated it never received the CBC documents.
 - Fifteen (15) sampled contractor persons had missing/non-compliant CBC records:
 - Four (4) had completed SBI screening but were missing the FBI CBC records
 - Seven (7) were missing both DE SBI/FBI CBC records.
 - The school district had four (4) contractor persons who had a CBC performed by a third-party vendor. This is not in compliance with state law and regulations.
- **Aged Receipt of CBC Records:** Four contractors had CBCs that were received greater than 30 days after the hire date (168, 211, 387 and 883 days). Of these four contractors, three were compliant and one was non-compliant due to a CBC performed by a 3rd party vendor. Although the Delaware Code is not specific about the length of time that a contractor person may serve without a CBC, the school district neglected to develop any additional control policy or procedures in this area.
- **Real-Time Start and End Date Tracking:** OAOA was unable to determine timeliness of the receipt of CBCs of student teachers, volunteers, or contractors due to the lack of real-time tracking of the individuals’ start and end dates. Without an established, documented real-time tracking process, there is no assurance that the appropriate persons have the required CBCs. The school district did provide some dates but not full start and end dates for all persons sampled.
- **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 relies solely on contractors to obtain a compliant CBC for contracted employees; however, contractors have sometimes outsourced CBC services to 3rd party contractors instead of acquiring CBC services from SBI. The school district does not monitor contractors to ensure they are conducting compliant background checks. Therefore, non-compliance was only discovered when CBC records were requested as part of this audit.

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 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 review failed to detect noncompliance with state laws and regulations regarding CBCs.
- The school districts function as independent entities, 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 Red Clay Consolidated School District and the Department of Education as a whole.

Recommendation

We recommend the 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 a state employee) 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 a 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 vendor oversight of these contractors should occur.

Finding Number: 2019.02

Finding Name: Policies and Procedures

Condition/Context

The school district has a Board Policy which has not been subject to recent update (adopted 12/8/2008) and did not address CBCs and has no written supporting procedures. The policy fails to incorporate essential elements of state laws and regulations and consider internal control responsibilities. The district also did not have supporting procedures, which resulted in the unanswered questions about certain aspects of the CBC process.

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 are 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 Red Clay Consolidated School District Board of Education 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 Red Clay Consolidated 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 the suitability determination.

Management Response:



RED CLAY CONSOLIDATED
SCHOOL DISTRICT

Dorrell Green
Superintendent

Administrative Offices
Baltz Elementary School
1502 Spruce Avenue
Wilmington, Delaware 19805

Office of
Human Resources

Phone (302) 552-3783
Fax (302) 692-7832

Christine Smith
Director of
Human Resources

November 10, 2021

To: Kathleen McGuiness, State Auditor

From: Christine Smith *Christine Smith*

Re: Red Clay Consolidated School District
Criminal Background Check Audit Response

The Red Clay School District is committed to providing a safe, secure and inviting environment for its students and staff. Inherent in that commitment is an obligation to follow all federal, state and local rules and regulations. Red Clay has been processing, evaluating and acting on criminal background check reports since the inception of the law.

- Suitability

The district agrees there is not in place currently a process to issue a specific letters of suitability. In the sample, the district was able to provide evidence that the criminal background check was complete for all but one employee. While the district notifies all newly hired employees in writing of their employment after board action, the district will include a section in the letter explicitly confirming suitability. The district has in place a process to notify final candidates of non-suitability via an adverse action letter. While the random sample did not pull an example of a non-suitable candidate, attached is an example of one.

To formalize the existing process, the district agrees a confirmation of review of each background check will include date, reviewer signature and action needed (suitable or non-suitable). This process will also be extended to student teachers.

- CBC Records Retention
 - Student Teachers:

Regulation 746 regarding criminal background checks for student teachers contains the following information:

5.0 Procedures for Maintaining Criminal Background Check Information

5.2 The Higher Education Institution may dispose of the criminal background check in a secure manner no earlier than six (6) months after the student graduates from the Higher Education Institution.

All of the Delaware State University student teachers served from 2014 – 2018. The regulation allowance above is why the records were not produced. The report is not clear that this is the reason for the lack of records. The situation is similar for the University of Delaware random samples.

○ Transportation:

During this time period, the DMV was handling the background checks for bus drivers. Red Clay provided the suitability letters to the auditors for the employees noted as missing records.

7.8 Criminal Background Checks

7.8.1 The drivers shall present themselves to SBI for fingerprinting for state and Federal Bureau of Investigation criminal background checks; which is coordinated through DDMV. The individual must provide the District with the "S" eligible clearance letter.

7.8.2 Applicants are required to follow the procedures outlined by DDMV.

7.8.3 The driver shall cooperate in all respects with the criminal background check process.

7.8.4 Upon completion of the procedure, the driver will be sent a clearance letter or denial of Clearance letter by DDMV, and the driver shall provide a copy of the letter to the District where the driver is seeking employment or contracted services.

- The audit included samples of employees going back to 2014. The district is not required to retain records beyond 5 years.

The District is committed to improving internal controls for processing criminal background checks and related procedures for all of the tested categories to include the suggested activities of electronic tracking and random audits. Similarly, we will work with the IHEs and the contractors to develop a more uniform approach to compliance with the regulation.

The District disagrees with the audit finding concerning volunteers. On February 25, 2021, Human Resources notified the Auditor's Office that the volunteer names we sent are not subject to criminal history documentation requirements. Title 31 Section 309b (7) of the Delaware Code defines direct access:

(7) "Direct access" means the opportunity to have personal, unsupervised contact with persons receiving care or education during the course of one's assigned duties.



Adverse Action Letter

March 11, 2020

RED CLAY CONSOLIDATED SCHOOL DISTRICT

Dorrell Green Superintendent

Administrative Offices Baltz Elementary School 1502 Spruce Avenue Wilmington, Delaware 19805

Office of Human Resources

Phone (302) 552-3754 Fax (302) 992-7821

Debra Davenport Associate Human Resources

1
Wilmington, DE 19802

Dear

This letter is provided to you in compliance with the federal Fair Credit Reporting Act.

As part of our employment selection process for the position for which you applied, we require that offers of employment be contingent upon the successful completion of a background check. You previously should have received a copy of your background check report and summary of your rights under the federal Fair Credit Reporting Act.

This is to advise you that our previously extended offer of employment is being revoked. In evaluating your application, the background check reporting agency listed below provided us with the information which, in whole or in part, influenced our employment decision. This background check reporting agency played no part in our decision other than providing the information about you, and the agency will not be able to provide you with specific reasons for our denial.

Under the Fair Credit Reporting Act, you are entitled to disclosure of the information contained in your background check report by contacting the background check reporting agency directly, within 60 days of this letter. You also have the right to dispute the completeness or the accuracy of the report to the background check reporting agency.

Sincerely,

Debra Davenport
Human Resources

Background Check Reporting Agency:
State of Delaware
Department of Public Safety and Homeland Security
Division of State Police
State Bureau of Identification
P.O. Box 40
Dover, DE 19903

Red Clay Consolidated School District does not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in programs, activities or employment practices as required by Title VI, Title IX and Section 504. The district coordinator of compliance is Administrator of Human Resources Development, RCCSD, 1502 Spruce Ave., Wilmington, DE 19805 (302) 552-1700.

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 to extract from. 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

CBC are a critical control mechanism to prevent abuse or misconduct involving children within schools. Based on the results of the audit procedures performed, Red Clay Consolidated 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.