

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF MANAGEMENT AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Department of Youth And Community Development's Monitoring of Criminal History and Child Abuse and Maltreatment Checks by Out-of-School Time Programs**

*MH09-075A*

**June 30, 2009**



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the Department of Youth and Community Development's (DYCD's) monitoring of criminal history and child abuse and maltreatment checks by Out-of-School Time (OST) programs.

DYCD is responsible for monitoring the OST programs and is responsible for ensuring that child abuse and maltreatment clearances along with criminal background checks are obtained and completed for all employees working at these programs who require them. Audits of City-funded programs such as this provide a means of ensuring that the programs and City agencies that oversee them properly follow regulations that govern their operations.

The results of our audit, which are presented in this report, have been discussed with DYCD officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written over a horizontal line.

William C. Thompson, Jr.

WCT/cc

**Report:** MH09-075A  
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*The City of New York  
Office of the Comptroller  
Bureau of Management Audit*

**Audit Report on the Department of Youth  
And Community Development's Monitoring of  
Criminal History and Child Abuse and Maltreatment  
Checks by Out-of-School Time Programs**

**MH09-075A**

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**AUDIT REPORT IN BRIEF**

The Department of Youth and Community Development (DYCD) provides numerous youth and family programs across the City by entering into contracts with community-based organizations that provide these programs. One such program is the Out-of-School Time Program (OST), which offers academic skills and cultural enrichment programs, sports, recreation, community engagement, and leadership development to children and young people throughout the City.

OST offers three types of programs, each with different background check requirements: the OST School-Age Child Care (SACC) programs serving groups of seven or more children under the age of 13, the OST school-based programs operating at a Department of Education (DOE) site serving high school students (over the age of 13), and the OST high-school-oriented programs not operating at DOE sites as well as those operated by religious organizations that receive "No Permit Required" (NPR status) from New York State (NYS). This audit focused on DYCD's monitoring of criminal history checks and child abuse and maltreatment clearances for employees hired at OST programs. The period covered by this audit was July 1, 2007 through June 30, 2008 (Fiscal Year 2008).

**Audit Findings and Conclusions**

DYCD is not adequately monitoring the OST programs to ensure that State Central Register for Child Abuse and Maltreatment (SCR) clearances are obtained and criminal background checks are conducted. While DYCD and the OST Program Directors are not primarily responsible for the entire clearance process—they are not the approving authorities for the clearances—we believe that they must do more to improve the monitoring of criminal history and child abuse and maltreatment checks. DYCD claims that its Program Managers only periodically review a sample of employee files and check for SCR and criminal history clearances. In addition, DYCD's contracts with OST providers do not include a requirement that

programs follow up with DOHMH, or OCFS, on the status of SCR and criminal history clearances, and OST Program Directors who oversee the daily operation of the programs generally have no tracking system in place to do so.

During our site visits at the 15 sampled OST programs, we found that SCR clearance was not obtained, nor was an SCR application even completed, for one of the 98 sampled employees requiring them at the time of our site visit. There was no evidence that SCR clearances were obtained for another 10 (10 percent) employees as well, although there were SCR applications on file. Also, fingerprinting was not conducted, nor were criminal history checks completed, for 8 (7 percent) of the sampled 112 employees requiring them at the time of our visit. There was no evidence that criminal history clearances were obtained for another 3 (4 percent) employees as well, although they were fingerprinted. In addition, no criminal history clearances were obtained for 59 (62 percent) of the 95 employees working at school-based DOE sites prior to their starting employment, contrary to requirements of the Memorandum of Understanding between DYCD and DOE. In addition to the above, we are concerned that 122 of the 639 OST providers monitored by DYCD do not require that employees undergo any type of child abuse and criminal history clearances.

### **Audit Recommendation**

We make ten recommendations, including that DYCD:

- Ensure that the OST providers that employ the individuals cited in this report for not being fingerprinted make certain that these persons are fingerprinted promptly and that the results are forwarded to DOHMH (for the SACC program) and DOE (for the programs operating at DOE sites) so that criminal history checks can be conducted.
- Ensure that OST providers immediately follow up on all individuals cited in this report for lacking either SCR or criminal history clearances to ensure that clearances are obtained in a timely manner.
- Require that Program Managers review all employee files and check for SCR and criminal history clearances during their site visits and when monitoring and reviewing OST contracts.
- Consult its legal department and explore the feasibility of requiring that NPR and community-based center facilities obtain the same level of SCR and criminal history clearances for its personnel as do the other OST programs.

### **DYCD Response**

In their response, DYCD officials agreed with the audit's ten recommendations.

## INTRODUCTION

### **Background**

The Department of Youth and Community Development (DYCD) provides numerous youth and family programs by entering into contracts with community-based organizations across the City that provide these programs. One such program is the Out-of-School Time Program (OST), which offers academic skills and cultural enrichment programs, sports, recreation, community engagement, and leadership development to children and young people throughout the City. OST programs take place after school, on school holidays, and during the summer. They are operated by more than 200 community-based organizations in schools, community centers, settlement houses, religious centers, cultural organizations, libraries, public housing, and Department of Parks and Recreation facilities. This audit focused on DYCD's monitoring of criminal history checks and child abuse and maltreatment clearances for employees hired at OST programs.

OST programs can be categorized into three types of programs, each with different background check requirements:

- OST School-Age Child Care (SACC) programs serving groups of seven or more children under the age of 13.
- OST school-based programs operating at a Department of Education (DOE) site serving older youths (over the age of 13).
- OST programs for older youths not operating at DOE sites as well as those after-school programs operated by private or public schools that receive "No Permit Required" (NPR status) from New York State (NYS).

OST programs serving a group of seven or more children under the age of 13 must have a SACC license that is visibly displayed in the program office and renewed every two years. Programs requiring SACC licenses are regulated by the New York State Office of Children and Family Services (OCFS), which operates the State Central Register for Child Abuse and Maltreatment (SCR). The SCR maintains records of individuals who are currently the subject of a child abuse and maltreatment accusation report.

To obtain a SACC license, an OST Program Director must submit a 33-page application to the New York City Department of Health and Mental Hygiene (DOHMH). The application requires information regarding the Director's possible criminal history background, qualifications, a list of all current program employees, and other relevant program information. Once reviewed, the license application is forwarded by DOHMH to OCFS. In addition, SCR clearance applications are required to be completed and submitted for all personnel, including employees, volunteers, and consultants working at the SACC programs, which DOHMH also forwards to OCFS. OCFS checks its database to see whether the applicant is currently the subject of child abuse and maltreatment reports. Once OCFS has completed its review of the application, OCFS sends a SCR clearance letter to the OST program and DOHMH.

All owners, directors, employees, and volunteers at the SACC program who are 18 years or older must be fingerprinted to ensure that there is no history of prior criminal conviction. The fingerprint is sent to the New York State Division of Criminal Justice Services (DCJS) and is checked against the State's criminal database. Once the fingerprint review has been completed by DCJS, a criminal history clearance letter is sent to DOHMH and the OST program.

If either the SCR or criminal history review indicates that an individual is the subject of a child abuse and maltreatment report or has a criminal background, OCFS notifies DOHMH. DOHMH is responsible for making further inquiries concerning the circumstances of the incident. Based on additional information provided by the individual and through other inquiries, DOHMH determines whether the individual poses a credible threat to the children served by the OST program and forwards its recommendation to OCFS. OCFS makes the final decision as to whether to continue or terminate the individual's involvement with the program.

Under New York State laws and regulations, employees who have not received their SCR and criminal history clearance letters are nonetheless permitted to work with the children at the SACC programs as long as they are in the physical presence of a staff member who has been previously cleared by OCFS. All SCR and criminal history clearance letters are maintained by the OST programs in their personnel files.

The second category of OST programs includes school-based programs offering services to high school students (over the age of 13) and at a DOE site. These programs are not required to have a SACC license, nor do the employees and workers have to have SCR clearance letters. However, all personnel, except for youth 17 or younger and still attending school, must be fingerprinted by DOE at DOE's expense. The fingerprints are sent electronically to DCJS and are checked against the State and Federal criminal databases. Once the criminal history review has been completed by DCJS, a clearance letter is sent to the OST Program.

If DOE's criminal history review indicates that the individual has a criminal background, DOE contacts the individual and requests that the individual appear at DOE's Office of Personnel Investigation for a safety assessment interview. DOE makes further inquiries concerning the circumstances of the incident and reviews the information provided by the individual. DOE makes a determination as to whether the individual poses a credible threat to the children served by the OST program. The final decision to continue or terminate the person's employment with the program is made by DOE.

The third category of OST programs includes programs that are largely for older youths not operating in DOE facilities, and programs operated by private or public schools that receive NPR status from the State. OST programs in this third category are exempt from the requirement that they obtain SACC licenses and SCR and criminal history clearances for their personnel.

DYCD's Program Managers conduct at least one site visit per year to every OST facility. The Program Managers complete an OST Site Visit Monitoring Tool, which is a checklist that records the results of their visit. According to DYCD officials, the Program Managers are

required to review a sample of files to determine whether the program maintains evidence of meeting certain requirements (such as obtaining health certificates, security clearances, and insurance).

During Fiscal Year 2008, DYCD oversaw a total of 639 OST contracts valued at approximately \$107 million and employed 16 Program Managers who performed visits to the OST sites.

### **Objective**

The objective of the audit was to determine the adequacy of DYCD monitoring of OST programs to ensure that SCR clearances are obtained and criminal background checks are conducted.

### **Scope and Methodology**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope period was July 1, 2007, through January 22, 2009.

To obtain an understanding of DYCD's responsibilities and regulations governing the monitoring of criminal history checks and child abuse and maltreatment clearances of OST program personnel, we reviewed and used as criteria:

- New York State Social Service Law, Article 6, Title 6, §424(a),
- New York State Social Service Law, Article 6, Title 1, §390(b),
- Title 18 of the New York Codes, Rules and Regulations §413.2 (k),
- New York Education Law §2590-h (20),
- Regulation of the Chancellor C-105, §2,
- Regulation of the Chancellor C-205, §3,
- New York Labor Law §201-a,
- A Memorandum of Understanding (MOU) between DYCD and DOE,
- General Contracts between DYCD and its individual OST providers,
- The School-Aged Child Care (SACC) License Application,
- DOE's Fingerprint Referral Form and Questionnaire,
- DYCD's OST Site Visit Monitoring Tool.

We interviewed DYCD officials responsible for overseeing the OST program, including the Assistant Commissioner and Director who are directly responsible for monitoring the OST programs. We also interviewed one of the OST Program Managers who accompanied us during a



visit to one of the OST programs. In addition, interviews were conducted with the Program Director for each of the 15 sampled contract providers, DOHMH's Assistant Commissioner for the Bureau of Day Care, and DOE's Director of Employee Relations for Human Resources.

DYCD provided us a list of 639 OST programs that were operating during Fiscal Year 2008, of which 436 required a SACC license and had personnel subject to SCR clearances and fingerprinting, 81 were DOE school-based programs and had personnel subject to fingerprinting, and 122 were categorized as Not Applicable and not subject to the personnel background check or fingerprinting requirements.

To determine whether we obtained a complete listing of all OST programs for Fiscal Year 2008, we compared the list of 639 OST contracts we received from DYCD to a City Financial Management System list of OST contracts registered with the New York City Comptroller's Office in Fiscal Year 2008. We randomly selected 15 OST programs to perform various audit tests. These 15 programs included 7 SACC programs, 3 high-school-based programs operating at DOE sites, and 5 programs from the Not Applicable category (since this category was not always separately categorized by DYCD, we needed to determine whether these programs were in fact placed in the correct category). Table I, following, summarizes the OST programs' clearance requirements and the population of sampled programs.

**Table I**

OST Programs' Clearance Requirements and  
Population of Sampled Programs

Program Type	FY 2008 Population	Programs Sampled	Number of Employees in Sampled Programs	Criminal History Clearance Requirement	SCR Clearance Requirement
SACC Program	436	7*	98*	Yes	Yes
High school program in DOE site	81	3	18	Yes	No
Program in Non-DOE site	122	5	50	No	No
<b>Total</b>	<b>639</b>	<b>15</b>	<b>166</b>		

\* Five SACC Programs, employing 77 individuals, operated at DOE sites.

To determine whether these 15 programs were operating at their designated sites, we conducted surprise site visits at least once to each facility from October 28, 2008, through January 22, 2009. We met with each Program Director, obtained their current rosters of employees, and obtained the personnel folders for a total of 166 employees working under these contracts. We performed the following tests at each facility:

- We determined whether the seven sampled SACC programs had current SACC licenses and whether the 98 workers at these sites had applied for and obtained an SCR clearance letter from OCFS. While employees at SACC programs are permitted to work prior to receiving an SCR clearance, we tested the length of time they were working at these facilities under the OST contracts before they applied and received an SCR clearance. We calculated this time from the date the individual began working to the date on the SCR application date and the date on the SCR clearance letter.
- We reviewed 112 employees who required criminal history clearances (at the seven sampled SACC programs and the three sampled DOE programs) to determine whether they had obtained criminal history clearance letters. We calculated the length of time the individuals were working at these facilities before they received criminal history clearances. We calculated this interval from the date they were hired to the date on the criminal history clearance letter.

To determine whether DYCD was monitoring the OST programs and reviewing the employee files, we obtained and reviewed the OST Site Visit Monitoring Tools completed by the Program Managers in Fiscal Year 2008 for each of the 15 program sites in our sample.

From January 16, 2009, through January 22, 2009, we reviewed the Family Watchdog Web site, which is a national sex offender registry, to determine whether any of the 166 employees in our sample were listed on the site.

The results of our samples, while not projectable to the entire population of OST programs, provided a reasonable basis for us to determine whether DYCD was adequately monitoring its OST programs to ensure that SCR clearances were obtained and background checks conducted.

### **Discussion of Audit Results**

The matters covered in this report were discussed with DYCD officials during and at the conclusion of this audit. A preliminary draft report was sent to DYCD officials on April 21, 2009, and was discussed at an exit conference held on May 22, 2009. On June 8, 2009, we submitted a draft report to DYCD officials with a request for comments. We received a written response from DYCD officials on June 22, 2009. In their response, DYCD officials agreed with the audit's ten recommendations.

The full text of DYCD's response is included as an addendum to this report.

## FINDINGS AND RECOMMENDATIONS

DYCD is not adequately monitoring the OST programs to ensure that SCR clearances are obtained and criminal background checks are conducted. While DYCD and the Program Directors are not primarily responsible for the entire clearance process—they are not the approving authorities for the clearances—we believe that they must do more to improve the monitoring of criminal history and child abuse and maltreatment checks. DYCD claims that its Program Managers only periodically review a sample of employee files and check for SCR and criminal history clearances. In addition, DYCD's contracts with OST providers do not include a requirement that programs follow up with DOHMH or OCFS on the status of SCR and criminal history clearances, and OST Program Directors who oversee the daily operation of the programs generally have no tracking system in place to do so. As a result, we found problems with 64 (39 percent) of the 166 employee files that we reviewed during our site visits at the 15 OST programs:

- SCR clearance was not obtained, nor was an application even completed, for one of the 98 sampled employees requiring them at the time of our site visit. There was no evidence that SCR clearances were obtained for another 10 (10 percent) employees as well, although there were SCR applications on file.
- Fingerprinting was not conducted, nor were criminal history checks completed, for 8 (7 percent) of the sampled 112 employees requiring them at the time of our visit. There was no evidence that criminal history clearances were obtained for another 3 (3 percent) employees as well, although they were fingerprinted.
- Criminal history clearances were not obtained for 59 (62 percent) of the 95 employees working at school-based DOE sites prior to their starting employment, contrary to requirements of the MOU between DYCD and DOE.

In addition to the above, we are concerned that under current New York State law and regulations 122 of the 639 OST providers monitored by DYCD do not require that employees undergo any type of child abuse and criminal history clearances.

The following sections of this report discuss our findings in more detail.

### **Results of the SCR Clearance Reviews**

#### **No Follow-up to Ensure That SCR Applications Are Completed and Clearances Are Obtained for Personnel at OST Program Sites**

DYCD does not ensure that OST programs submit SCR applications for all personnel, nor does it ensure that programs follow up with OCFS for those individuals for whom clearances are not received within a reasonable amount of time.

Our review of employee files at the seven SACC programs sites in our sample showed that at the time of our visit on December 2, 2008, the file for one of the 98 sampled individuals requiring SCR clearances had no documentation indicating that a SCR application had ever been completed although the individual had been employed by the program for almost two years.

In addition, files for another 10 employees at one site indicated that although applications were filed, SCR clearances had not been received by the site. For these 10 individuals, the applications on file had been completed an average of 266 days after they started working for the OST programs.

We brought the lacking SCR clearances to the attention of DYCD officials. For the employee without an SCR application on file, we received evidence from DYCD that an application was completed on December 18, 2008, 16 days after our site visit, and has since been cleared by OCFS. For the remaining 10 individuals without SCR clearances on file, DYCD responded that as of May 22, 2009, the clearances were still pending from OCFS.

**Employees Working at OST Programs for Lengthy Periods of Time without SCR Clearance**

While there is no mandated timeframe within which SCR clearances should be processed for any employee working at an OST program, the Assistant Commissioner of the Bureau of Day Care at DOHMH stated that, in general, it takes approximately four months to obtain a SCR clearance from OCFS. Our review of the employee files disclosed that 88 of the 98 employees received SCR clearances. Allowing six months to obtain clearances (two months beyond the four-month timeframe mentioned by the DOHMH official), we found that 26 (30 percent) of the 88 employees worked six months or longer at the OST programs before they received SCR clearances.<sup>1</sup> Table II, following, shows a breakdown of the 26 employees who worked at least six months at an OST program site without a clearance.

**Table II**

Lengths of Time Employees Worked without SCR Clearance\*

Range of Time	Number of Employees
6 to 12 months	14
1 to 2 years	3
More than 2 years	9
<b>Total</b>	<b>26</b>

\* Lengths of time were calculated from hire date to SCR clearance letter date.

DYCD officials stated that employees are allowed to work without SCR clearances as long as they work alongside someone who has already been cleared. However, there is no

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<sup>1</sup>We could not determine how long nine employees worked without clearance because their files lacked the relevant dates.

provision in the contract requiring providers to follow up on the status of SCR applications once they have been submitted to DOHMH. Therefore, an employee can work at these programs indefinitely without being cleared.

### **Results of Fingerprint Review**

#### **No Follow-up to Ensure That Fingerprinting Is Performed and Criminal History Clearances Are Obtained for Personnel**

As was the case with SCR clearances, DYCD does not ensure that OST programs make certain that their employees are fingerprinted for criminal background checks, nor does it ensure that programs follow up with OCFS or DOE for those employees for whom criminal history clearances are not received within a reasonable amount of time.

According to Article IV, “Scope of Services,” in the DYCD contract with OST program providers, fingerprinting of staff is required if the program serves seven or more children under the age of 13. (This requirement is specific to SACC-regulated programs.) Additionally, if the program operates at a DOE site, all staff over the age of 17 must be fingerprinted by DOE.

There were 10 OST program sites in our sample—seven SACC and three DOE—for which criminal history checks were required. We reviewed the personnel files for 112<sup>2</sup> sampled employees and found that eight contained no evidence that the employees were fingerprinted as of the dates of our site visits. For these eight employees, six worked at one community-based program from four months to more than three years without being fingerprinted for criminal history clearances, and two employees worked at two different DOE sites from two months to more than one year without being fingerprinted. Table III, following, shows the length of time the eight employees were employed without being fingerprinted as of our site visits.

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<sup>2</sup> The total of 112 employees requiring fingerprinting was arrived at based on their working in OST programs requiring a SACC license and in high-school programs operating in a DOE facility.

**Table III**

Length of Time Employees Worked  
Without Being Fingerprinted

<b>Employee</b>	<b>Date Hired</b>	<b>Length of Time Employed w/o Being Fingerprinted</b>
#1	10/2/08	2 months
#2	11/1/08	4 months
#3	9/1/08	6 months
#4	7/1/08	8 months
#5	7/1/08	8 months
#6	1/7/08	1.1 years
#7	10/1/07	1.4 years
#8	10/1/05	3.4 years

Files for another three employees contained evidence that they had been fingerprinted, however, there were no clearance letters indicating that the criminal history checks were completed. Of the three individuals, only one was fingerprinted prior to the start of employment. The remaining two individuals were fingerprinted an average of 176 days after they started working for the OST programs.

We brought the lacking criminal history clearances to the attention of DYCD officials on February 9, 2009. With respect to the eight employees who were not fingerprinted, officials have since reported that all the employees were fingerprinted as a result of our information. (These persons were fingerprinted during the period December 10, 2008, through March 3, 2009.) As of May 15, 2009, all eight employees had received clearances. The clearances for the three individuals cited above who had been fingerprinted were still pending as of May 22, 2009.

**Programs at School-Based DOE Sites Fail to Obtain  
Criminal History Clearances for Employees Prior  
To Start of Work**

According to the MOU between DYCD and DOE, “all staff providing services in DOE facilities . . . must be fingerprinted and cleared by the DOE Office of Personnel Investigations prior to commencing service.” Based on our review of employee files at eight DOE sites, we determined that 95 employees required criminal history clearances prior to commencing service. (Of the 95 employees, 18 employees worked at three OST programs operating at a DOE site serving high school students, and 77 employees worked at five SACC programs operating at DOE sites serving children under the age of 13.) We found that clearances had not been obtained for 59 (62%) of the 95 employees before their starting employment.

The finding was brought to the attention of DYCD officials on April 14, 2009, who provided us with a one paragraph memorandum dated September 7, 2005, which was intended

to refute the contention that employees working at DOE facilities were required to be fingerprinted and obtain clearances prior to commencing service. The memorandum stated:

Community Board Organizations (CBO) operating after school OST or OST affiliated programs with DOH issued School Age Child Care (SACC) licenses or pending licenses may submit to DOE certification that they have satisfied the fingerprint requirements for a SACC license (all employees must be fingerprinted) in lieu of obtaining DOE fingerprint clearance for their staff. Principals should be aware that upon request, CBOs must provide them with proof of DOH fingerprint clearance for all CBO after school program staff. Employees of CBOs that are not required to obtain a SACC license must obtain DOE fingerprint clearance.

According to DYCD’s interpretation of this memorandum, OST program employees have the latitude to work in DOE facilities prior to receiving clearance as long as they work alongside a staff member who has previously received clearance by OCFS. We asked DOE officials whether they agreed with this interpretation as it contradicts the DOE requirement that all staff providing services in DOE facilities must be fingerprinted and obtain clearance prior to commencing service. DOE officials stated that DYCD’s interpretation is incorrect and reiterated that under no circumstances do DOE policies allow employees to work with children in DOE facilities unless they have being fingerprinted prior to the start of employment. Moreover, they state that the 2005 memorandum serves as a clarification that employees do not have to be fingerprinted by two separate agencies.

Based on our tests, we found that of the 95 employees working at DOE facilities, clearances were obtained for 34 employees prior to the start of employment, a hire date was unavailable for one employee, and no clearance was received for one employee. Table IV, following, shows the range of time the remaining 59 employees worked at a DOE facility before being fingerprinted.

**Table IV**

Lengths of Time Employees Worked Prior to Being Fingerprinted for Criminal History Checks

Range of Time Worked before Being Fingerprinted	Number of Employees
1 to 30 days	24
31 to 60 days	11
2 to 6 months	7
7 to 12 months	5
1 to 2 years	8
More than 2 years	4
<b>Total</b>	<b>59</b>

DYCD officials stated that they rely on DOHMH and DOE (when applicable) for monitoring those requiring SCR and criminal history clearances. Officials contend that DOHMH is the governing agency responsible for ensuring that SACC licenses and, subsequent, SCR and criminal history clearances are obtained by the respective SACC programs, and DOE is responsible for ensuring that criminal history clearances are obtained for programs operating at its sites. DYCD does not consider itself primarily responsible for overseeing and duplicating these agencies' efforts. We disagree with DYCD's position. As the contracting agency, DYCD is responsible for monitoring its contracts. DYCD's contracts with the OST providers state that the contractors are required to obtain SCR and criminal history clearances for personnel with these programs. Accordingly, DYCD must ensure that contractors comply with these requirements.

We acknowledge that DYCD and OST providers do not have complete control over the clearance process since they are not the approving authorities. Nevertheless, there are steps that DYCD and providers must take to track this process. For instance, while DYCD Program Managers review a sample of the employee files when they conduct their site visits, we found no evidence in the OST Site Visit Monitoring Tools for 2008 that indicated that the Managers attempted to determine whether SCR and criminal history clearances were in employees' files. According to DYCD officials, the program sites are notified by DYCD in advance of the upcoming site visits. Therefore, the Program Directors have sufficient time to prepare a list of all current employees along with their corresponding clearances.

Additionally, DYCD must ensure that OST programs follow up on pending SCR and criminal history clearances after a certain period of time has elapsed. We contacted OCFS and inquired whether they have a system whereby organizations are able to check on the status of submitted SCR applications and criminal history clearances. An OCFS representative informed us that a contact number is available to organizations to check on the status of SCR applications and criminal history checks. For employees in the OST program, Program Directors (or their designees) must provide to OCFS the applicant's first and last name and date of birth, along with the name of the agency the program is affiliated with in order to obtain information on the application status. The lack of SCR and criminal history clearances is of great concern to us since allowing anyone to work with children without these clearances increases the risk of endangering the welfare of the children.

OST providers must assume responsibility for failing to comply with contractual requirements with regard to these clearances. Once they hire the employees or permit volunteers to serve, they are responsible for obtaining and maintaining all required documents, including SCR and criminal background clearances, in the personnel files. OST providers must also be held responsible for failing to follow up with either DOHMH or OCFS after a period of time has elapsed without a response to the applications that were sent out. At only one of the OST providers that we visited did we find a tracking system in place to ensure that all required documents are obtained and kept on file.

DYCD has to be more vigilant in ensuring that everyone working at OST programs who require clearances obtain them in a timely manner. Although we did not find any of the 166 employees we sampled posted on the Family Watchdog Web site (a national sex offender



registry), the potential effect of this lack of vigilance is clear. Only recently, a failure to monitor these clearances resulted in a disastrous occurrence in an after-school program in New Jersey. On February 2, 2009, a New Jersey newspaper reported on a case in which a seven-year-old child attending an after-school program was sexually assaulted by a basketball coach who had been working at the program for two years. According to the article, no one conducted a background check of this employee although he apparently had a criminal history. Had the program conducted a criminal background check as required, it would have revealed his previous criminal history and he might not have been hired. This incident underscores the need for DYCD to ensure that OST providers comply with their contracts and request and obtain SCR and criminal background clearances for their employees.

### **Recommendations**

DYCD should:

1. Ensure that the OST providers that employ the individuals cited in this report for not being fingerprinted make certain that these persons are fingerprinted promptly and that the results are forwarded to DOHMH (for the SACC program) and DOE (for the programs operating at DOE sites) so that criminal history checks can be conducted.
2. Ensure that OST providers immediately follow up on all individuals cited in this report for lacking either SCR or criminal history clearances to ensure that clearances are obtained in a timely manner.

***DYCD Response:*** “DYCD agrees that these clearances need to be obtained. Moreover, all persons who were the subject of the report who had not been fingerprinted as of the dates indicated have since been fingerprinted and cleared, with the exception of one individual who have since left the employ of the OST programs.

“With respect to the State Central Registry (SCR) clearances, applications were re-submitted for the persons for whom clearances were previously requested but which had not been issued soon after the auditor’s visits to the programs. Of those, seven have since been cleared, and we are awaiting clearances on the remainder. OST providers will be instructed to continue follow up communications with the New York State Office of Children and Family Services (OCFS) until all these clearances are obtained in full.”

3. Require that Program Managers review all employee files and check for SCR and criminal history clearances during their site visits and when monitoring and reviewing OST contracts.
4. Require that Program Managers note in the OST Site Visit Monitoring Tool any employee files that lack required documents and follow up with the Program Director on the status of those documents.

***DYCD Response:*** “The Department agrees that it should strengthen its systems to address SCR and criminal history clearances: specifically, a revised protocol and a site visit

report has been constructed which ensures that all DYCD contract managers review on a periodic basis OST provider employee files for SCR and criminal history clearances and note findings and corrective actions in reports forwarded to the OST providers.”

5. Include in the terms of future OST contracts a timeframe within which Program Directors must complete SCR applications and conduct fingerprinting of its employees, where applicable.

**DYCD Response:** “The Department agrees that it should strengthen its systems to address SCR and criminal history clearances, and when the OST Request-for-Proposal is re-let and new contracts are awarded thereunder, providers of OST services will be required to ensure that applications for SCR clearances and fingerprints are submitted prior to a staff member’s commencement of work in the OST program. Thereafter, contractors will be required to check on a monthly basis with appropriate oversights until clearances are obtained.”

6. Require that OST Program Directors maintain a tracking system of all documents required for their employees to ensure that lacking documents can be identified and obtained.

**DYCD Response:** “The Department agrees that it should strengthen its systems to address SCR and criminal history clearances. As previously discussed during the course of the audit DYCD is further enhancing its OST-Online Tracking System, which is a database used to administer the OST program, to supplement enforcement efforts by the Department of Health and Mental Hygiene (DOHMH) mandated under State law. Providers will be able and required to list the names of staff and the dates of their fingerprint and SCR applications and clearances. Periodically thereafter, the database will automatically create ready-made reports that can be forwarded electronically to contractors to inquire about the status of staff fingerprint and SCR clearances, until clearances are obtained and entered by the contractors into the database. In their periodic site visits DYCD program managers will be able to verify the accuracy of the representations made by the contractors in the database, as described below. This system upgrade will allow DYCD to more efficiently share information with oversight agencies responsible for fingerprint and SCR clearance.”

7. Inquire and obtain the name of a contact person at OCFS and provide the contact name to all OST programs so that the OST Program Directors can regularly communicate and obtain the status of pending SCR and criminal history clearances.

**DYCD Response:** “The Department agrees that it should strengthen its systems to address SCR and criminal history clearances and will facilitate communications among OST providers, OCFS and DOHMH so that the providers might follow up with state and local officials to ensure that SCR and fingerprint clearance applications are acted upon in an expeditious manner. We have and will continue to inform contractors through email communications and training of contacts both in Albany and locally as to specific officials in State and City governmental agencies who can help secure clearances. DYCD

will also convene a working group of these agencies to discuss ways of facilitating the clearance process.”

8. Consult DOE’s Office of Youth Development & School Community Services to obtain a clear understanding of DOE requirements regarding fingerprinting of OST staff working at DOE facilities.

***DYCD Response:*** “DYCD agrees that it should strengthen its systems to address SCR and criminal history clearances and will consult with appropriate Department of Education (DOE) offices concerning reconciling DOE policy and State law and regulation concerning School Age Child Care (SACC) fingerprinting clearance requirements.”

## **Other Matters**

### **Incorrect Categorizing of OST Programs**

Of the 15 programs that we sampled and visited, 4 programs (27 percent) were not listed in the correct category. For example, one of the programs was categorized as requiring a DOHMH SACC license. If in this category, the program should have had a SACC license as well as SCR and criminal history clearances for its personnel. When we visited the program, we found that the program should have been designated as a NPR program because it was operated by a religious organization and was, therefore, exempt from the above-mentioned requirements.

In another example, a program was listed as a non-school-based program in a community center serving elementary, middle school, and high school children. If in that DYCD category, the program does not require a SACC license, or SCR and criminal history clearances. When we visited the program, we found that the program required and indeed had a SACC license as well as SCR and criminal history clearances.

The incorrect categorizing of OST programs increases the risk that DYCD’s Program Managers will not correctly ascertain the employee SCR and criminal history clearance requirements for these programs and whether the programs comply with those requirements.

### **Recommendation**

9. DYCD should review the files of its OST programs to ensure that the requirements for each program are understood and the programs properly categorized so that Program Managers have accurate information when they conduct their site visits.

***DYCD Response:*** “DYCD agrees that it should strengthen its systems to address SCR and criminal history clearances and will continue to follow established procedures and practices wherein office files distinguish between OST programs requiring SACC licensure and those that do not. DYCD contract managers are informed of this status when they are required to make site visits of OST programs. When a site visit is made in which the contract manager will seek to review the fingerprint and SCR clearance status

of contractor staff, DYCD contract managers will be able to print out a ready-made list of contractor staff and the dates of fingerprint and SCR applications and clearances. These lists of database entries can be compared with the individuals the DYCD contract managers see at the program sites and will be able thereafter to be compared with the personnel files of the staff members to ensure that clearances have been obtained and supporting documentation is included in the personnel files.”

### **OST Programs Not Requiring SCR and Criminal History Clearances**

Of the 15 programs in our sample, three of the programs were categorized as Not Applicable. One of the programs was designated as a NPR and was operated by a religious organization. Twenty-seven employees worked at this program and served children under the age of 13. The other two programs operated out of community-based centers with a total of eleven employees serving children over the age of 13. Under New York State law and regulations, these types of programs do not require SCR and criminal history clearances.

While New York State laws exempt the above-mentioned programs from obtaining SCR and criminal history clearances, DYCD’s main concern should be the safety of the children and that they should never be around workers—even for only one day—who may have a history of child abuse or have committed serious crimes. Since these programs are being funded with City dollars, we believe that DYCD should require that the employees at these OST programs be subjected to the same level of SCR and criminal history clearances as the other OST programs with which it contracts.

### **Recommendation**

10. DYCD should consult its legal department and explore the feasibility of requiring that NPR and community-based center facilities obtain the same level of SCR and criminal history clearances for its personnel as do the other OST programs.

***DYCD Response:*** “The Department agrees that it should strengthen its systems to address SCR and criminal history clearances; however, since a number of the contracts to which this situation applies will expire at the end of Fiscal [Year] 2009 and will be replaced by more programs based in public schools, the number of programs to which this apply will be reduced from the 122 cited in the audit to approximately 10. Consequently, as previously discussed during the course of the audit, permission has recently been secured by DYCD from the New York State Department of Criminal Justice Services (DCJS) to utilize a federal law administered by this State agency to require OST contractor staff to provide fingerprints for criminal history checks. These checks would be utilized for those OST programs not otherwise covered under the background checks afforded under SACC licensure or DOE procedures. DYCD will continue to monitor NPR and community-based facility providers to ensure timely and proper clearances.”



**NEW YORK CITY  
DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT  
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**JEANNE B. MULLGRAV**  
Commissioner

June 22, 2009

John Graham  
Deputy Comptroller  
Office of the Comptroller of the City of New York  
1 Center Street  
New York, New York 10007

**Re: Draft Audit Report on the Department of Youth and Community  
Development's Monitoring of Criminal History and Child Abuse and  
Maltreatment Checks by Out-of-School Time Programs MH09-075A**

Dear Mr. Graham:

Commissioner Jeanne Mullgrav asked that I forward to you the attached DYCD Comment on the referenced report, which we request be incorporated into the Final Audit report as our agency's response to the Findings and Recommendations.

As discussed with audit staff, DYCD has upgraded the OST on-line database, which will permit and further enhance our ability to track contract agency staff with respect to required clearances. The system's enhancements will be deployed shortly in Fiscal 2010. DYCD welcomes suggestions in its ongoing effort to provide appropriate and safe services in its after school programs to New York City's youth.

Thank you in advance for your consideration of the enclosed points.

Very truly yours,

Everett N. Hughes  
General Counsel

Attachment

**COMMENTS**  
**OF THE DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT**  
**ON THE DRAFT AUDIT REPORT ON THE DEPARTMENT OF YOUTH AND**  
**COMMUNITY DEVELOPMENT'S MONITORING OF CRIMINAL HISTORY AND**  
**CHILD ABUSE AND MALTREATMENT CHECKS BY OUT-OF SCHOOL TIME**  
**(OST) PROGRAMS MH09-075A (DRAFT REPORT)**

The Department of Youth and Community Development (DYCD) acknowledges receipt of the City Comptroller's Draft Report on the OST Program. Comments in response to the enumerated Recommendations in the Draft Report are set forth below.

Recommendations 1 and 2:

**DYCD should:**

1. Ensure that the OST providers that employ the individuals cited in this report for not being fingerprinted make certain that these persons are fingerprinted promptly and that the results are forwarded to DOHMH (for the SACC program) and DOF (for the programs operating at DOF sites) so that criminal history checks can be conducted.
2. Ensure that OST providers immediately follow up on all individuals cited in this report for lacking either SCR or criminal history clearances to ensure that clearances are obtained in a timely manner.

**DYCD Comment:**

DYCD agrees that these clearances need to be obtained. Moreover, all persons who were the subject of the report who had not been fingerprinted as of the dates indicated have since been fingerprinted and cleared, with the exception of one individual who has since left the employ of the OST program.

With respect to the State Central Registry (SCR) clearances, applications were re-submitted for the persons for whom clearances were previously requested but which had not been issued soon after the auditor's visits to the programs. Of those, seven have since been cleared, and we are awaiting clearances on the remainder. OST providers will be instructed to continue follow up communications with the New York State Office of Children and Family Services (OCFS) until all of these clearances are obtained in full.

**Recommendations 3 and 4:**

**DYCD should:**

3. Require that Program Managers review all employee files and check for SCR and criminal history clearances during their site visits and when monitoring and reviewing OST contracts.
4. Require that Program Managers note in the OST Site Visit Monitoring Tool any employee files that lack required documents and follow up with the Program Director on the status of these documents.

**DYCD Comment:**

The Department agrees that it should strengthen its systems to address SCR and criminal history clearances; specifically, a revised protocol and a site visit report has been constructed which ensures that all DYCD contract managers review on a periodic basis OST provider employee files for SCR and criminal history clearances and note findings and corrective actions in reports forwarded to the OST providers.

**Recommendation 5:**

**DYCD should:**

5. Include in the terms of future OST contracts a timeframe within which Program Directors must complete SCR applications and conduct fingerprinting of its employees, where applicable.

**DYCD Comment:**

The Department agrees that it should strengthen its systems to address SCR and criminal history clearances, and when the OST Request-for-Proposals is re-let and new contracts are awarded thereunder, providers of OST services will be required to ensure that applications for SCR clearances and fingerprints are submitted prior to a staff member's commencement of work in the OST program. Thereafter, contractors will be required to check on a monthly basis with appropriate oversights until clearances are obtained.

**Recommendation 6:**

**DYCD should:**

6. Require that OSI Program Directors maintain a tracking system of all documents required for their employees to ensure that lacking documents can be identified and obtained.

**DYCD Comment:**

The Department agrees that it should strengthen its systems to address SCR and criminal history clearances. As previously discussed during the course of the audit DYCD is further enhancing its OST-Online Tracking System, which is a database used to administer the OST program, to supplement enforcement efforts by the Department of Health and Mental Hygiene (DOHMH) mandated under State law. Providers will be able and required to list the names of staff and the dates of their fingerprint and SCR applications and clearances. Periodically thereafter, the database will automatically create ready-made reports that can be forwarded electronically to contractors to inquire about the status of staff fingerprint and SCR clearances, until clearances are obtained and entered by the contractors into the database. In their periodic site visits DYCD program managers will be able to verify the accuracy of the representations made by the contractors in the database, as described below. This system upgrade also will allow DYCD to more efficiently share information with oversight agencies responsible for fingerprint and SCR clearance.

**Recommendation 7:**

**DYCD should:**

7. Inquire and obtain the name of a contact person at OCFS and provide the contact name to all OST programs so that the OST Program Directors can regularly communicate and obtain the status of pending SCR and criminal history clearances.

**DYCD Comment:**

DYCD agrees that it should strengthen its systems to address SCR and criminal history clearances and will facilitate communications among OST providers, OCFS and DOHMH so that the providers might follow up with state and local officials to ensure



that SCR and fingerprint clearance applications are acted upon in an expeditious manner. We have and will continue to inform contractors through email communications and training of contacts both in Albany and locally as to specific officials in State and City governmental agencies who can help secure clearances. DYCD will also convene a working group of these agencies to discuss ways of facilitating the clearance process.

**Recommendation 8:**

DYCD should:

8. Consult DOE's Office of Youth Development & School Community Services to obtain a clear understanding of DOE requirements regarding fingerprinting of OST staff working at DOE facilities.

**DYCD Comment:**

DYCD agrees that it should strengthen its systems to address SCR and criminal history clearances and will consult with appropriate Department of Education (DOE) offices concerning reconciling DOE policy and State law and regulation concerning School Age Child Care (SACC) fingerprinting clearance requirements.

**Recommendation 9:**

DYCD should:

9. DYCD should review the files of its OST programs to ensure that the requirements for each program are understood and the programs properly categorized so that Program Managers have accurate information when they conduct their site visits.

**DYCD Comment:**

DYCD agrees that it should strengthen its systems to address SCR and criminal history clearances and will continue to follow established procedures and practices wherein office files distinguish between OST programs requiring SACC licensure and those that do not. DYCD contract managers are informed of this status when they are required to make site visits of OST programs. When a site visit is made in which the contract

manager will seek to review the fingerprint and SCR clearance status of contractor staff, DYCD contract managers will be able to print out a ready-made list of contractor staff and the dates of fingerprint and SCR applications and clearances. These lists of database entries can be compared with the individuals the DYCD contract managers see at the program sites and will be able thereafter to be compared with the personnel files of the staff members to ensure that clearances have been obtained and supporting documentation is included in personnel files.

**Recommendation 10:**

**DYCD should:**

10. DYCD should consult its legal department and explore the feasibility of requiring that NPR and community-based center facilities obtain the same level of SCR and criminal history clearances for its personnel as do the other OST programs.

**DYCD Comment:**

The Department agrees that it should strengthen its systems to address SCR and criminal history clearances; however, since a number of the contracts to which this situation applies will expire at the end of Fiscal 2009 and will be replaced by more programs based in public schools, the number of programs to which this will apply will be reduced from the 122 cited in the audit to approximately 10. Consequently, as previously discussed during the course of the audit, permission has recently been secured by DYCD from the New York State Department of Criminal Justice Services (DCJS) to utilize a federal law administered by this State agency to require OST contractor staff to provide fingerprints for criminal history checks. These checks would be utilized for those OST programs not otherwise covered under the background checks afforded under SACC licensure or DOE procedures. DYCD will continue to monitor NPR and community-based facility providers to ensure timely and proper clearances.