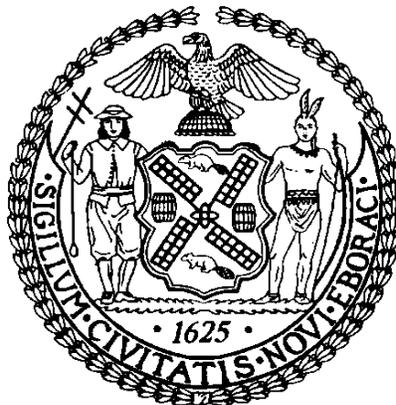


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

BUREAU OF MANAGEMENT AUDIT

**H. Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Monitoring by
The Department of Health and Mental Hygiene
Of the Background Checks of
School-Age Child Care Program Employees**

MH10-070A

June 30, 2010



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

John C. Liu
COMPTROLLER

June 30, 2010

To the Residents of the City of New York

My office has audited the monitoring by the Department of Health and Mental Hygiene (DOHMH) of criminal history background checks and child abuse and maltreatment clearances for employees working at School-Age Child Care programs. We conduct these audits of City-funded programs to ensure that the programs and City agencies that oversee them properly follow regulations that govern their operations.

The audit found that DOHMH's Bureau of Child Care conducted the required compliance inspections and maintained evidence that compliance inspections were performed. In addition, follow-up inspections were performed to make certain that the violations were corrected, and face-to-face safety assessment interviews were conducted for employees whose criminal history background checks had an indication of an arrest or conviction.

However, the audit found that a State Central Register of Child Abuse and Maltreatment (SCR) clearance was not obtained, nor was an application even completed, for two of the sampled workers. There was no evidence that SCR clearances were obtained for 24 workers. Also, fingerprinting was not conducted, nor were criminal history checks completed, for 24 of the sampled workers requiring them at the time of the auditors' visit. In addition DOHMH Inspectors are inconsistent in maintaining evidence to verify the review of each worker's personnel file during the compliance inspection.

The audit made five recommendations, including that DOHMH should: ensure that SACC Program Directors immediately follow up on individuals lacking SCR clearances; advise SACC Programs Directors to maintain a tracking system of all clearance documents required; inform Program Directors that volunteers over the age of 16 require fingerprint clearances; and require its inspectors to document the review of personnel files.

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

If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink that reads "J. Liu".

John C. Liu

Table of Contents

AUDIT REPORT IN BRIEF 1
 Audit Findings and Conclusions..... 1
 Audit Recommendations..... 2

INTRODUCTION..... 3
 Background..... 3
 Objective..... 4
 Scope and Methodology 5
 Discussion of Audit Results..... 7

FINDINGS AND RECOMMENDATIONS 8
 SCR Clearances Not Always Obtained 8
 Recommendations..... 10
 Fingerprint Clearances Not Always Obtained 10
 Recommendation 11
 Inconsistencies in Verifying the Review of All Personnel Files 12
 Recommendation 12
 Face-to-Face Safety Assessments Were Conducted..... 13
 Recommendation 13

ADDENDUM Department of Health and Mental Hygiene Response

*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on the Monitoring by the
Department of Health and Mental Hygiene of the
Background Checks of School-Age Child Care Program
Employees**

MH10-070A

AUDIT REPORT IN BRIEF

The Department of Health and Mental Hygiene's (DOHMH) mission is to protect and promote the health and mental well-being of all New Yorkers. The New York State Office of Children and Family Services (OCFS) entered into a contract with DOHMH to monitor programs that provide child care services requiring licensing and registration for group family child care, family child care, and school-age child care facilities. This audit focused on the monitoring by the DOHMH Bureau of Child Care (Bureau) of criminal history background checks and child abuse and maltreatment clearances for employees working at School-Age Child Care (SACC) programs.

The SACC programs are required to be registered with OCFS before they can provide afterschool services to children. To register, the programs must submit a State Central Register of Child Abuse and Maltreatment (SCR) application listing all program workers so that OCFS can ascertain whether any individual is the subject of child abuse and maltreatment reports. In addition, all workers who are age 16 years or older must be fingerprinted and cleared through the New York State Division of Criminal Justice Services (DCJS).

Audit Findings and Conclusions

DOHMH's Bureau of Child Care conducts the required compliance inspections of registered SACC programs in accordance with its State contract. We found that the Bureau exceeded the 50-percent inspection requirement and performed compliance inspections of more than 90 percent of the programs during calendar years 2008 and 2009. We further found that the Bureau maintained documentation as evidence that compliance inspections were performed for the 30 sampled SACC programs and when violations were found, Corrective Action Plans were provided to the Program Directors detailing the violations found and the length of time the program was given to correct the problem. Follow-up inspections were conducted to make certain that the violations were corrected. In addition, face-to-face safety assessment interviews

were conducted for the four employees in our sample whose criminal history background checks had an indication of an arrest or conviction.

However, based on our site visits and review of personnel files, we found SCR clearance was not obtained, nor was an application even completed, for two of the 162 sampled workers requiring them at the time of our site visit. There was no evidence that SCR clearances were obtained for 24 (15 percent) workers as well, although there were SCR applications on file. Also, fingerprinting was not conducted, nor were criminal history checks completed, for 24 (12 percent) of the sampled 198 workers requiring them at the time of our visit. In addition to the above, we found that DOHMH Inspectors are inconsistent in maintaining evidence to verify the review of each worker's personnel file during the compliance inspection.

Audit Recommendations

We make five recommendations, including that DOHMH:

- Ensure that SACC Program Directors immediately follow up on individuals cited in this report for lacking SCR clearances.
- Advise SACC Programs Directors to maintain a tracking system of all documents required for their workers to ensure that lacking documents can be identified and obtained.
- Ensure that DOHMH inspectors and Program Directors are informed that volunteers over the age of 16 years require fingerprint clearances.
- Require its inspectors to complete the Staff Information Chart along with the SACC Inspection Checklist.

INTRODUCTION

Background

The mission of the Department of Health and Mental Hygiene (DOHMH) is to protect and promote the health and mental well-being of all New Yorkers. DOHMH's Bureau of Child Care (the Bureau) is the local regulatory agency that oversees both public and private agencies that provide child care services throughout New York City. In Calendar Year 2009, the New York State Office of Children and Family Services (OCFS) entered into a contract with DOHMH to monitor programs that provide child care services requiring licensing and registration for group family child care, family child care, and school-age child care facilities. This audit focused on the Bureau's monitoring of criminal history background checks and child abuse and maltreatment clearances for employees working at School-Age Child Care (SACC) programs. As of September 2009, there were 1,273 SACC programs that were licensed through the Bureau.

To obtain a SACC registration, the director of a child care program must first submit a State Central Register of Child Abuse and Maltreatment (SCR) application to DOHMH. In addition, if there are new workers hired by the Director prior to the program receiving its initial registration to operate, the director is required to provide a list of all program workers (including employees, consultants, and volunteers) 18 years of age and older, and information regarding their criminal history background, qualifications, and other relevant information. The Bureau reviews the application and then forwards it to OCFS. OCFS checks its database to see whether any of the individuals are currently the subject of child abuse and maltreatment reports. Once OCFS has completed its review of the SCR application, OCFS sends a SCR clearance letter for the director to the Bureau reporting the result of its inquiry. For the workers, OCFS sends the results of the inquiry directly to the director of the child care program. OCFS then issues the SACC license, which must be visibly displayed in the program office and renewed every two years.

In addition to obtaining SCR clearances, all the workers at a SACC program who are 16 years or older must be fingerprinted by a State approved agency. The fingerprint image is sent electronically to the New York State Division of Criminal Justice Services (DCJS) to check against the State's criminal database for any histories of prior criminal conviction. If an individual's criminal history background check indicates that there are prior criminal convictions, the Bureau schedules a face-to-face safety assessment interview to be conducted at the Bureau's main office to ascertain the circumstances of the incident. Based on additional information provided by the individual and through other inquiries, the Bureau determines whether the individual poses a credible threat to the children served by the SACC 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 SACC programs in the personnel files.

All SACC programs are required to maintain an on-site record of the fingerprints and SCR clearance letters of their employees and should have the records readily available upon request for the Bureau inspectors. According to the SACC contract, under §390(4)(a) of the Social Services Law, at least 50 percent of all registered school-age child care programs are to be inspected annually to ensure that they are operating in compliance with applicable State statutes and regulations.

To assist the inspectors during their inspections of the SACC programs, the Bureau developed a detailed SACC Inspection Checklist that inspectors must complete during each inspection to record the results of their visit. According to the Bureau, inspectors are required to review all employee files during the inspections of the programs in the 50-percent sample to determine whether the program maintains evidence of meeting certain requirements (such as SCR and fingerprint clearances and medical records). In addition, each employee is required to sign a criminal conviction statement of prior criminal history which must be maintained on file at the programs. The inspector discusses the results of the inspection with the Program Director, who is then required to sign the inspection report to indicate receipt of a copy of the report and an understanding of the results of the inspection.

In addition, the Bureau sends a Corrective Action Plan to the program that identifies the violation(s) found, if any, and any violations from a previous inspection that have not yet been corrected. The Required Action section of the form specifies the action that must be taken by the program for it to be considered in compliance with State statutes and regulations. The Corrective Action Plan also specifies a date by which the program is expected to correct all violations. According to the Bureau, all cited serious violations must be corrected within 14 days of the inspection, and less serious violations must be corrected within 30 days. If corrections are not made to resolve serious violations, the program faces possible disciplinary action, including the closing of the program services.

According to data for calendar year 2009 maintained by the Bureau on the State's Child Care Facility System (CCFS), the Bureau conducted 2,559 inspections for the 1,273 SACC programs registered by OCFS. These inspections included those of the 50-percent sample, initial inspections of newly opened SACC programs, complaint-driven inspections, and re-inspections. These inspections were primarily conducted within a nine- to ten-month timeframe since a large number of the programs are generally closed during the summer months.

Objective

To determine whether DOHMH's Bureau of Child Care is conducting the required inspections for registered SACC programs in accordance with its State contract and to determine whether individuals working at the facilities have obtained SCR clearances and criminal background checks.

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, 2008, through February 17, 2010.

To obtain an understanding of DOHMH Bureau of Child Care's responsibilities and regulations governing compliance inspections and the monitoring of criminal history checks, and child abuse and maltreatment clearances of SACC 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,
- Article 47 of the New York City Health Code,
- Title 18 of the New York State Codes, Rules and Regulations §413.4(a) (b) (d) (2) (d) (3), §414.10 (b)(1), and §414.13,
- Contract between OCFS and DOHMH,
- DOHMH Bureau of Child Care Coming Due Call Script and Record,
- SACC Service Inspection Checklist,
- Bureau of Child Care Corrective Action Plan form.

We interviewed DOHMH officials responsible for overseeing the SACC programs, including the Associate and Assistant Commissioner for the Bureau, the Borough Managers who oversee the day-to-day operations of all registered SACC programs throughout New York City, various Program Directors at the SACC program sites, the DOHMH Director of State Child Care Programs, the Director of Quality Assurance, and the New York City Regional Office Manager for OCFS. In addition, we accompanied a Bureau inspector during a visit to one of the SACC programs.

DOHMH provided us a list of 1,273 SACC programs that were operating as of September 2009. To determine whether we obtained a complete listing of all SACC programs as of October 2009, we compared this list to a list of SACC programs on OCFS's Web site. We then randomly selected 16 SACC programs to perform various audit tests: five SACC programs in Manhattan, six in Brooklyn, two in Queens, one in Staten Island, and two in the Bronx.

On-Site Case and Management Review

We conducted site visits at least once to each of the 16 facilities from October 26, 2009, through January 14, 2010. We met with either the Program Director or Site Supervisor and

obtained the personnel folders for a total of 207 individuals working at these facilities. We performed the following tests at each facility:

- We observed whether the 16 sampled SACC programs had current SACC licenses and whether the licenses were displayed in the program office.
- We determined that 162 of the 207 individuals required SCR clearances and 45 individuals did not since they were under the age of 18. For the 162 individuals, we determined whether SCR clearances were obtained and copies were in the file.
- For the 26 individuals whose files lacked SCR clearances and whose hire dates were available, we calculated the length of time from the date the individual began working to the date the SCR application was submitted to OCFS.
- We determined that 198 of the 207 individuals required fingerprint clearances and 9 did not since they were under the age of 16. For the 198 individuals, we reviewed the files to see whether they were fingerprinted and obtained fingerprint clearance letters.
- For the 24 individuals whose files lacked fingerprint clearances and whose hire dates were available, we calculated the length of time they were working at the SACC programs without clearances.

Compliance with Inspections of 50-Percent Program Sample

To determine whether the Bureau conducted the required inspections of the 50-percent sample of all registered SACC programs, we reviewed an Excel file from the Bureau, which listed every inspection that was completed for each program during calendar years 2008 and 2009. The file contained a record of each inspection type, the date of inspection, the status of the inspection, and the name of the Bureau employee who conducted the inspection.

We then isolated those SACC programs that were part of the 50-percent inspection sample for the calendar years being reviewed. From this population of 1,273 SACC programs, we randomly selected 30 SACC programs representing 30 sites, including the 16 sites mentioned above and an additional 14 sites, and obtained all the associated inspection reports completed during 2008 and 2009 maintained at the DOHMH Borough Offices. We reviewed the records to determine whether the inspectors had recorded their review of the criminal history background checks and SCR clearances. Specifically, we looked at the SACC Inspection Checklists and the Bureau of Child Care Corrective Action Plans to see if the inspectors had completed the forms and included all relevant information pertaining to the correction of violations.

Face-to-Face Safety Assessments

To determine whether the Bureau conducted face-to-face assessments for those individuals whose DCJS background check revealed an indication of criminal history (four of the 198 employees who required fingerprint clearances), we reviewed the program files in the Borough Office to identify the actions taken.

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

Discussion of Audit Results

The matters covered in this report were discussed with DOHMH officials during and at the conclusion of this audit. A preliminary draft report was sent to DOHMH officials on May 7, 2010, and was discussed at an exit conference held on May 21, 2010. On June 7, 2010, we submitted a draft report to DOHMH officials with a request for comments. We received a written response from DOHMH dated June 21, 2010. In its response, DOHMH stated that “DOHMH has already implemented two of the recommendations and is in discussion with OCFS concerning the other three recommendations.”

DOHMH’s response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOHMH's Bureau of Child Care conducts the required compliance inspections of registered SACC programs in accordance with its State contract. We found that the Bureau exceeded the 50-percent inspection requirement and performed compliance inspections of more than 90 percent of the programs during calendar years 2008 and 2009. We further found that the Bureau maintained documentation as evidence that compliance inspections were performed for the 30 sampled SACC programs, and when violations were found, Corrective Action Plans were provided to the Program Directors detailing the violations found and the length of time the program was given to correct the problem. Follow-up inspections were conducted to make certain that the violations were corrected. In addition, face-to-face safety assessment interviews were conducted for the four employees in our sample whose criminal history background checks had an indication of an arrest or conviction.

However, based on our site visits and review of personnel files, we found that some improvements are needed to ensure that children enrolled in SACC programs are not exposed to workers who have a criminal history background and should not be permitted to work with them. Specifically, we found that:

- SCR clearance was not obtained, nor was an application even completed, for 2 of the 162 sampled workers requiring them at the time of our site visit.
- There was no evidence that SCR clearances were obtained for 24 (15%) workers as well, although there were SCR applications on file at the time of our visit.
- Fingerprinting was not conducted, nor were criminal history checks completed, for 24 (12%) of the sampled 198 workers requiring them at the time of our visit.
- DOHMH Inspectors are inconsistent in maintaining evidence to verify the review of each worker's personnel file during the compliance inspection.

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

SCR Clearances Not Always Obtained

Our review of files for 162 workers 18 years of age and older at the 16 SACC program sites revealed that 26 of them (16 percent) requiring SCR clearances were not cleared as of April 16, 2010. For 2 of these 26 workers, we found that the programs did not submit completed applications to OCFS for SCR clearances. These two workers were hired in November 2009, and we visited the sites in December 2009. While there is no mandated timeframe within which SCR applications are to be submitted to OCFS for clearances by the SACC Program Directors, there should have at least been an application in the files to show that an attempt was made to obtain clearances since they were already working with the children.

We brought the lacking SCR clearances to the attention of DOHMH officials. For the two employees without an SCR application on file, we received evidence from DOHMH on May 28, 2010, that both employees have since been cleared by OCFS.

According to State regulations, individuals age 18 and over who have had their SCR applications submitted to OCFS but have not yet been cleared may work at the SACC program as long as they are not left alone with children and are directly supervised by a staff member who was previously cleared. This policy does not cover individuals who have not had applications submitted and therefore the two individuals should not have been working at these programs.

For the remaining 24 workers working at seven SACC programs, there were indications in the files that their applications had been forwarded to OCFS; however, there was no follow-up by the Program Directors as to what happened to the applications or why the SCR clearance were not received. For 19 of these workers, the personnel records show that they were hired by the programs between calendar years 2004 and 2009 (7 workers were hired in October 2009, and 12 workers were hired prior to calendar year 2009). For the remaining five workers, we were unable to obtain their hire dates.

As of May 24, 2010, DOHMH provided evidence showing that SCR clearances were completed by OCFS for 19 of those 24 workers. (There were hire dates for 17 workers, but we were unable to obtain hire dates for 2 workers.) Table I, following, shows a breakdown of the 17 workers who worked more than four months at a SACC program without a SCR clearance.

Table I

Range of Time Individuals Worked without SCR Clearances

Range of Time	Number of Individuals
4 to 6 months	7
7 to 9 months	0
10 to 12 months	0
1 to 2 years	4
More than 2 years	6
Total	17

According to DOHMH, as of May 24, 2010, three workers' SCR clearances are still pending from OCFS, while two workers are no longer working at one SACC program.

As mentioned above, while these individuals did not have SCR clearances, they were permitted to work at these programs as long as they worked alongside someone that had been previously cleared.

We brought this matter to the attention of the Program Directors, who offered no explanation for the lacking SCR clearances other than saying that OCFS takes a long time to respond. We also brought this matter to the attention of the Bureau officials, who stated that the Program Directors at each SACC program are responsible for tracking their workers' SCR

clearances. It is only when inspectors discover the lack of SCR clearances on site inspections and note it in the SACC Inspection Checklist that the Bureau becomes aware of the problem. The Bureau has no authority to ensure that programs obtain SCR clearances. Furthermore, while the Bureau may suggest that SACC programs inform the Bureau when they hire a new staff member or even when a staff member is found to have a history of child abuse and maltreatment, it does not require them to do so since there are no State regulations governing this issue.

Recommendations

DOHMH should:

1. Ensure that SACC Program Directors immediately follow up on individuals cited in this report for lacking SCR clearances.

DOHMH Response: DOHMH stated that “Of the 24 workers cited in the report the auditors were advised that only 3 SCR clearances are still pending, while two workers are no longer working at one SACC program. DOHMH will continue its inspection process and will cite programs for non-compliance when workers applications for SCR clearance have not been submitted to OCFS. DOHMH has implemented this finding.”

2. Advise SACC Programs Directors to maintain a tracking system of all documents required for their workers to ensure that lacking documents can be identified and obtained.

DOHMH Response: DOHMH stated that “The recommendation that SACC program directors maintain a staffing log for all documents required by their staff will be discussed with State OCFS administrators to determine if this can be presented to program directors as a requirement as opposed to a recommendation.... [T]he State Central Register for Child Abuse and Maltreatment has implemented an electronic system for the submission of SCR clearances. The system is now available to Bureau staff and will soon be made available to SACC program directors.”

Fingerprint Clearances Not Always Obtained

Our review of the files of 198 workers 16 years of age and older found that 174 (88%) of them obtained fingerprint clearances, while another 24 (12%) had not. We brought the lack of fingerprint clearances to the attention of the programs.

Of the 24 workers whose files lacked fingerprint clearances, 20 were volunteers at two SACC programs. According to the director at one program, it was her understanding that volunteers did not require criminal background checks since they worked at all times alongside an employee who had been previously cleared. Therefore, the 15 volunteers at her program were not fingerprinted. The director of the other program stated that the five volunteers were not fingerprinted because she believed that their parents would not give them permission to be fingerprinted.

For the remaining four workers without fingerprint clearances, we were unable to obtain a plausible reason for the fingerprints never being obtained, although the individuals were working at the program sites from February to September 2009.

It should be noted that the Bureau performed an inspection of the site with the 15 volunteers, as mentioned above, prior to our site visit on November 18, 2009. While personnel files were reviewed at that time, the inspector failed to review and cite this program for lacking fingerprint clearances for the volunteers working at this program.

In addition, after our site visits on November 9, 2009, and December 3, 2009, we brought the matter of the lacking fingerprint clearances to the attention of the Program Directors. All 24 workers were subsequently fingerprinted. Although 22 were cleared immediately, 2 showed evidence of a criminal history. We were provided with proof showing that DOHMH scheduled face-to-face safety assessments with the individuals on December 28, 2009, when it was determined that both did not pose any potential harm to the children at the SACC programs.

While the 24 workers did not have fingerprint clearances, according to OCFS policies they are permitted to work at these programs as long as they worked alongside someone that had been previously cleared. We conducted an analysis of the length of time they worked at the SACC programs prior to being cleared. We were unable to perform calculations for one person since a hire date was not on file for her. Table II, following, shows the length of time the remaining 23 individuals worked at a SACC program without receiving fingerprint clearances.

Table II

Range of Time Individuals Worked Prior to
Being Fingerprinted and Cleared

Range of Time	Number of Individuals
4 to 6 months	21
7 to 9 months	1
10 to 12 months	1
Total	23

We acknowledge that the SACC programs do not have complete control over the clearance process since they are not the approving authorities. Nevertheless, there are steps that the programs can take to track this process, such as a list of current workers with a listing of documents needed to continue working at the program. This would help the programs to red-flag those individuals whose personnel files are lacking the required clearances.

Recommendation

3. DOHMH should ensure that DOHMH inspectors and Program Directors are informed that volunteers over the age of 16 years require fingerprint clearances.

DOHMH Response: DOHMH agreed stating that “The Bureau has already reinforced with all staff and SACC programs the need to clear all volunteers, and will continue to reinforce the requirement to ensure compliance. DOHMH has implemented this finding.”

Inconsistencies in Verifying the Review of All Personnel Files

According to the contract between OCFS and the Bureau, the Bureau is required to conduct annual inspections for at least 50 percent of the total number of registered SACC programs it monitors. The 50-percent inspection entails a complete inspection of the program, including the review for fingerprint and SCR clearances. According to the data received from DOHMH for inspections performed in calendar years 2008 and 2009, the Bureau exceeded the 50-percent requirement and performed inspections for more than 90 percent of the programs during those periods.

We further reviewed the inspection checklists for the 30 randomly selected programs to determine whether the inspection checklist indicated a review of the personnel files and specifically to see whether SCR and fingerprint clearances were obtained. We found that all the inspections noted the names of those individuals whose personnel file lacked the required clearances. However, we were unable to determine whether all the personnel files were reviewed since the Bureau inspectors are not required to list the names of all individuals whose files they reviewed during the annual inspection. For the 30 SACC programs representing 110 inspections that we reviewed, there was no evidence to provide assurance that all the workers’ files were reviewed. This documentation is important because when inspectors conduct an inspection, they and the Bureau rely on the Program Directors to provide the names of all current workers. In the event that there are questions regarding a specific worker, the Bureau needs to have evidence that the individual’s file was reviewed and so noted in an inspection. Although not a requirement, the Bureau has a Staff Information Chart that can be used to list the current workers at each SACC program and then can be attached to the Inspection Checklist, we found that only 49 (45 percent) checklists included this attachment.

In addition, we should note that on November 6, 2009, the Bureau performed a compliance inspection of the program site that we found lacked fingerprint clearances for 15 volunteers (see page 10 of this report). The inspector did not cite the program for the lack of clearances on the Inspection Checklist. We were accompanied by this inspector to the same site on November 18, 2009; once again, the inspector failed to cite the program for lacking fingerprint clearances for these volunteers. It appears that both the Program Director and the inspector were unaware that volunteers over the age of 16 are required to be fingerprinted and cleared.

Recommendation

4. DOHMH should require its inspectors to complete the Staff Information Chart along with the SACC Inspection Checklist.

DOHMH Response: DOHMH agreed to discuss this matter with OCFS stating that “The use of the Staff Information Chart is not a required procedure under DOHMH and/or OCFS guidelines/policies. DOHMH will discuss with OCFS the potential for using this methodology in the future as a standard procedure.”

Face-to-Face Safety Assessments Were Conducted

For the 198 personnel files reviewed, files for four workers had an indication of an arrest or conviction on the criminal history background check. For these four individuals, we obtained the necessary documents on record that show that the Bureau completed a face-to-face safety assessment with them. In addition, the problems for the four workers were deemed non-violent and not related to children. Therefore, they were able to continue working at the SACC programs.

Although there are face-to-face assessment interviews for workers with an indication of criminal history background check, under the current agreement between the Bureau and OCFS, there is no similar procedure for individuals who have problems with their SCR results. According to Bureau officials, they are currently in discussions with the State to determine whether it is feasible for the Bureau to conduct these safety assessments. However, no formal agreement has been established detailing the specifics of such assessments or whether the State will continue to require the assessments to be done by the SACC Program Directors. This procedure would help the Bureau to better assist the SACC programs to expedite the process of clearing workers whose SCR results have an indication of child abuse and maltreatment.

Recommendation

5. DOHMH should continue discussions with OCFS to formalize procedures regarding face-to-face assessment interviews for individuals whose SCR results show indications of child abuse and maltreatment.

DOHMH Response: DOHMH stated that “The Bureau will continue its discussions with State OCFS administrators regarding the assessment of SACC staff found to have a history with the SCR. The State’s current position is that SACC program directors are required by regulation to assess the SCR indication in relation to a potential or current employee’s access to children who attend their program. If the program director decides to retain or hire the individual, documentation must be maintained that establishes how the assessment was conducted, the decision made by the director, and steps taken to ensure the safety of children in care.... The State has recently issued guidelines to SACC program directors to assist with the assessment of such cases and Bureau staff is available to assist.”



June 21, 2010

Tina Kim
Deputy Comptroller for Audits
NYC Office of the Comptroller
1 Centre Street Room 1100
New York, NY 10007-2341

Re: Audit Report on the Monitoring
by the Department of Health and
Mental Hygiene of the Background
Checks of School-Aged Child Care
Program Employees - MH10-070A

Dear Ms. Kim:

We have reviewed your draft audit report "Monitoring by the Department of Health and Mental Hygiene of the Background Checks of School-Aged Child Care (SACC) Program Employees." The Department of Health and Mental Hygiene (DOHMH) appreciates that the audit recognizes that the Bureau of Child Care:

- Exceeded the 50 percent inspection requirement and performed inspections of more than 90 percent of the programs during calendar years 2008 and 2009.
- Maintained documentation as evidence that compliance inspections were performed for the 30 sampled SACC programs.
- Provided corrective action plans to Program Directors detailing the violations found and the length of time in which the program needed to correct the problems when violations were found.
- Conducted follow-up inspections to determine that the violations were corrected.

The auditors raised the following issues indicated below.

- a) For 2 of the 162 workers sampled, "the programs did not submit completed applications to the Office of Child and Family Services (OCFS) for SCR clearances." DOHMH agrees that the applications should have been submitted by the program directors. OCFS guidelines require SACC program directors to be responsible for submitting the applications for SCR clearances to OCFS. However, the auditors also acknowledged that "there is no mandated timeframe within which SCR applications are to be submitted to OCFS for clearances." With regards to the two workers, DOHMH took action

and provided the auditors with documentation that the applications were submitted for SCR clearances.

It also should be noted that the State Central Register for Child Abuse and Maltreatment has implemented an electronic system for the submission of SCR clearances. The system is now available to Bureau staff and will soon be made available to SACC program directors so that they may clear their staff electronically from their site location. The new system will enhance DOHMH's monitoring of SCR clearances for SACC programs.

- b) The auditors found that fingerprinting clearances were not obtained from OCFS for 24 of the 198 sampled employees who required fingerprint clearances. The auditors acknowledged that under OCFS policies they are permitted to work at these programs as long as they worked alongside someone who had been previously cleared. It is important to note that fingerprinting of SACC workers is not performed by DOHMH and the Department has no control of the timeliness of the fingerprinting process.

The auditors examined a sample of 30 randomly selected programs' inspection checklists and found that "all the inspections noted the names of those individuals whose personnel file lacked the required clearances." However, the auditors noted that not all inspectors attached the Staff Information Chart to the Inspection Checklist. The Staff Information Chart lists the current workers at each SACC program and we note that its use is not a required procedure under DOHMH and/or OCFS guidelines/policies. The Inspection Checklist was designed as a guide for what needed to be reviewed and not as a form that must be completed although some inspectors choose to use it that way. DOHMH will discuss with OCFS the potential for using this methodology in the future.

It should be noted that DOHMH has already implemented two of the recommendations and is in discussion with OCFS concerning the other three recommendations. Please refer to the in-depth response attached.

We appreciate the courtesy and professionalism of your staff in the performance of this audit. If you have any questions or need further information, please contact Sara Packman, Assistant Commissioner, Audit Services, at (212) 219-5273.

Sincerely,



Patsy Yang, Dr. PH
Executive Deputy Commissioner

SP/mc

cc: Thomas A. Farley, MD
Daniel Kass
Alan Goldberg
Elliot Marcus
Frank Cresciullo
Vera Lavin
Sara Packman

**DOHMH Response to the Draft Report
on the Monitoring by the Department of Health and Mental Hygiene of
the Background Checks of School Age Child Care Program Employees
MH10-070A
June 21, 2010**

The following is submitted in response to the draft audit findings of the Department of Health and Mental Hygiene's (DOHMH) monitoring of criminal history background checks and child abuse and maltreatment clearances for employees of, New York State regulated, School Age Child Care Programs (SACC).

We appreciate that the audit recognizes that the Bureau of Child Care:

- Exceeded the 50 percent inspection requirement and performed inspections of more than 90 percent of the programs during calendar years 2008 and 2009.
- Maintained documentation as evidence that compliance inspections were performed for the 30 sampled SACC programs.
- Provided corrective action plans to Program Directors detailing the violations found and the length of time in which the program needed to correct the problems when violations were found.
- Conducted follow-up inspections to determine that the violations were corrected.

The auditors raised the following issues indicated below.

- a) For 2 of the 162 workers sampled, "the programs did not submit completed applications to the Office of Child and Family Services (OCFS) for SCR clearances." DOHMH agrees that the applications should have been submitted by the program directors. OCFS guidelines require SACC program directors to be responsible for submitting the applications for SCR clearances to OCFS. However, the auditors also acknowledged that "there is no mandated timeframe within which SCR applications are to be submitted to OCFS for clearances." With regards to the two workers, DOHMH took action and provided the auditors with documentation that the applications were submitted for SCR clearances.

It also should be noted that the State Central Register for Child Abuse and Maltreatment has implemented an electronic system for the submission of SCR clearances. The system is now available to Bureau staff and will soon be made available to SACC program directors so that they may clear their staff electronically from their site location. The new system will enhance DOHMH's monitoring of SCR clearances for SACC programs.

- b) The auditors found that fingerprinting clearances were not obtained from OCFS for 24 of the 198 sampled employees who required fingerprint clearances. The auditors acknowledged that under OCFS policies they are permitted to work at these programs as long as they worked

alongside someone who had been previously cleared. It is important to note that fingerprinting of SACC workers is not performed by DOHMH and the Department has no control of the timeliness of the fingerprinting process.

The auditors examined a sample of 30 randomly selected programs' inspection checklists and found that "all the inspections noted the names of those individuals whose personnel file lacked the required clearances." However, the auditors noted that not all inspectors attached the Staff Information Chart to the Inspection Checklist. The Staff Information Chart lists the current workers at each SACC program and we note that its use is not a required procedure under DOHMH and/or OCFS guidelines/policies. The Inspection Checklist was designed as a guide for what needed to be reviewed and not as a form that must be completed although some inspectors choose to use it that way. DOHMH will discuss with OCFS the potential for using this methodology in the future.

It should be noted that DOHMH has already implemented two of the recommendations and is in discussion with OCFS concerning the other three recommendations. Please refer to the in-depth response attached.

The following provides additional comments and clarifications.

Page 2, Second Paragraph:

The auditors state that fingerprints were not conducted, nor were criminal history checks completed, for 24 of the sampled 198 workers. This finding is repeated again on page #10, second paragraph. We would like the report to clarify that the staff with incomplete criminal clearances are permitted, by OCFS policy, to work with children as long as their criminal clearance is in process and they are working under the supervision of fully cleared staff.

Page 10, First Paragraph:

The auditors state "the Bureau has no authority to ensure that programs obtain SCR clearances." We are requesting a revision be made to accurately reflect the authority of the Bureau. The Bureau does have the authority to direct SACC programs to obtain SCR clearances for their staff when we discover that a clearance has not been submitted. However, the Bureau does not have the authority to require SACC program directors to inform us when they hire a new staff member or provide proof of clearance of new hires until we are onsite conducting an inspection.

Page 11, Third Paragraph:

We would like to provide clarification regarding Bureau policy concerning the review of personnel files. It is Bureau policy that staff review the personnel files for all staff employed by a SACC program, as identified by the program director. Upon review, Bureau staff are required to identify any SACC staff lacking the required clearances, both criminal and SCR, and record the identity of the staff on their field inspection checklist and/or the Staff Information Chart. The Staff

Information Chart was developed by the Bureau to assist staff in the field with their review of personnel files. The chart is not a required document, but was implemented as a “best practice” measure to standardize the process for personnel file reviews.

Page 11, Last Paragraph:

The Bureau performed a compliance inspection of the program site and at this site the auditors found that 15 volunteers lacked fingerprint clearances when they visited the program on November 18, 2009. The inspector did not cite the program for the lack of clearances on the Inspection Checklist. Bureau administrators conducted a detailed review, including a discussion with the inspector who did not cite the program for not clearing volunteer staff. The Bureau has not been able to determine that the program director identified the volunteers for the inspector or that the inspector observed the volunteers during her visit on 11/06/09. Nevertheless, we reinforced the requirement that all SACC staffing, including volunteers, need to obtain SCR clearance.

Response to recommendations

1. *DOHMH should ensure that SACC Program Directors immediately follow up on individuals cited in this report for lacking SCR clearances.*

Of the 24 workers cited in the report the auditors were advised that only 3 SCR clearances are still pending, while two workers are no longer working at one SACC program. DOHMH will continue its inspection process and will cite programs for non-compliance when workers applications for SCR clearance have not been submitted to OCFS. DOHMH has implemented this finding.

2. *DOHMH should advise SACC Program Directors to maintain a tracking system of all documents required for their workers to ensure that lacking documents can be identified and obtained.*

The recommendation that SACC program directors maintain a staffing log for all documents required by their staff will be discussed with State OCFS administrators to determine if this can be presented to program directors as a requirement as opposed to a recommendation. As noted clearly in the cover letter, the State Central Register for Child Abuse and Maltreatment has implemented an electronic system for the submission of SCR clearances. The system is now available to Bureau staff and will soon be made available to SACC program directors so that they may clear their staff electronically from their site location. . The new system will enhance DOHMH's monitoring of SCR clearances for SACC programs.

3. *DOHMH should ensure that DOHMH inspectors and Program Directors are informed that volunteers over the age of 16 years require fingerprint clearances.*

The Bureau has already reinforced with all staff and SACC programs the need to clear all volunteers, and will continue to reinforce the requirement to ensure compliance. DOHMH has implemented this finding.

4. *DOHMH should require DOHMH inspectors to complete the Staff Information Chart along with the SACC Inspection Checklist.*

The use of the Staff Information Chart is not a required procedure under DOHMH and/or OCFS guidelines/policies. DOHMH will discuss with OCFS the potential for using this methodology in the future as a standard procedure.

5. *DOHMH should continue discussions with OCFS to formalize procedures regarding face-to-face assessment interviews for individuals whose SCR results show indications of child abuse and maltreatment.*

The Bureau will continue its discussions with State OCFS administrators regarding the assessment of SACC staff found to have a history with the SCR. The State's current position is that SACC program directors are required by regulation to assess the SCR indication in relation to a potential or current employee's access to children who attend their program. If the program director decides to retain or hire the individual, documentation must be maintained that establishes how the assessment was conducted, the decision made by the director, and steps taken to ensure the safety of children in care. The documentation must also be made available to Bureau staff upon request. The State has recently issued guidelines to SACC program directors to assist with the assessment of such cases and Bureau staff is available to assist. DOHMH is discussing this issue with OCFS.