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January 24, 2013

Mr. Philip Barrett, Town Supervisor  
Members of the Town Board  
Town of Clifton Park  
One Town Hall Plaza  
Clifton Park, New York 12065

Report Number: S9-12-9

Dear Supervisor Barrett and Members of the Town Board:

A top priority of the Office of the State Comptroller is to help officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of eight units comprising four cities and four towns throughout New York State. The objective of our audit was to determine if these units have conducted background checks for individuals involved in the municipalities' youth programs. We included the Town of Clifton Park (Town) in this audit. Within the scope of this audit, we examined the policies and procedures of the Town. We also examined various records including employment records, youth program documentation, and third-party contracts for the period January 1, 2010 to March 9, 2012.

This report of examination letter contains our findings and recommendations specific to the Town of Clifton Park. We discussed the findings and recommendations with Town officials and considered their comments, which appear in Appendix A, in preparing this report. Town officials generally agreed with our findings and recommendations and indicated they planned to initiate corrective action. At the completion of our audit of the eight units, we prepared a global report that summarizes the significant issues we identified at all the units audited.

## **Summary of Findings**

The Town has not adopted a formal policy, but the Department of Parks, Recreation and Community Affairs (Department) has developed written procedures for background screening of individuals providing services to Town youth programs. The procedures include the “Summer Recreation Staff Background Check Protocol” which details instructions on how to complete the checks on employee names<sup>1</sup> against the New York State Sex Offender Registry. In accordance with Public Health Law Article 13-B, the Town submits the names of the individuals hired to work at the summer playground camps to the Division of Criminal Justice Services (DCJS) for checking against the New York State Sex Offender Registry prior to the individual's first day of work and annually thereafter.

The Town does have a process through which they attempt to match employees that interact with youth program participants to the New York State Sex Offender Registry. However, there was no monitoring system to ensure that the checks were completed for all individuals involved in Town youth programs, until one was established during our fieldwork. We found that three of 193 names were mistakenly omitted from the lists of names that the Town submitted to DCJS for checking against the New York State Sex Offender Registry, as required by Public Health Law Article 13-B. When testing compliance with the Department’s own procedure, we found that there was one of 172 employees in 2010 that was not checked, and 10 of 185 employees in 2011 that did not have checks conducted. We also tested 260 names of individuals providing service to the programs to determine if there was any public record documenting either a sex offense or criminal history. The service providers included full- and part-time Town employees and contractors. Our tests of the names disclosed no findings.

In addition, the Town has a stipulation written into each of the contracts with the subcontractors providing services to youth participants, which states that the subcontractor must provide proof that their employees have had checks against the New York State Sex Offender Registry. This stipulation was part of these contracts in 2010 and 2011; however, the Town explained that strict enforcement would take place in 2012.

Even though the law does not mandate that municipalities perform background checks on all individuals who provide services for all youth programs, such screenings – whether for sex offenses, criminal history, or both – are essential to safeguard the participants in those programs, and can help reduce the municipality’s potential liability in the event of legal action.

## **Background and Methodology**

The Town of Clifton Park is located in Saratoga County, with a population of approximately 36,500 people. The Town provides youth program services to its residents. The Town’s 2010 actual expenditures for youth programs were approximately \$965,000. Budgeted youth program expenditures for 2011 and 2012 were approximately \$1 million each year.

The Town is governed by the Town Board (Board), which comprises five elected members: the Town Supervisor (Supervisor) and four Board Members. The Board is responsible for the general management and oversight of the Town’s financial and operational affairs. These

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<sup>1</sup> “All individuals over the age of 18 employed through the Office of Parks, Recreation & Community Affairs will have their names submitted to a search on the NYS Sex Offender Registry. Employees include main contacts for sub-contractors.”

responsibilities include setting policies and establishing effective controls over operations. The Supervisor is the Town's chief fiscal officer and chief executive officer. The Town offers a multitude of youth programs through the Department. The Director of the Department is responsible for organizing the programs offered to the community, which includes screening prospective staff and contracted individuals needed for specialty services. There were approximately 7,000 participants enrolled in approximately 92 Town youth programs during our scope period.

Youth programs, which are often offered as a response to community interest, encompass a wide variety of activities. These include classes in pre-school activities, arts and crafts, exercise and fitness, summer camps, seasonal or holiday special events, and sports. With these youth programs, parents are entrusting their children's learning experience and safety to the adults (full or part-time employees and contractors) that the Town engages to administer the programs. A municipality can help create a safe environment for community youth through background checks in the hiring and screening of all individuals associated with the municipality's youth programs. During the employee hiring process, two types of background checks can be conducted and documented: a criminal history background check, which is done with the consent of the individual, and a search of the New York State Sex Offender Registry, which is public information.

New Federal legislation that has been introduced but not yet enacted, the Child Protection Improvements Act of 2011,<sup>2</sup> focuses on several aspects of criminal history investigations for child service organizations. However, while on the State level the Education Department has requirements<sup>3</sup> for school districts for background checks on individuals dealing with students, there is no one law or regulation that provides overall guidance for youth programs found in municipalities. Instead, depending on the type of program offered, specific legislation guides the level of background check screening required. For instance, Article 13-B of Public Health Law requires children's camp<sup>4</sup> operators to determine whether an employee or volunteer is listed on the New York State Sex Offender Registry. This check, which DCJS conducts on names submitted by the Town, must be completed prior to the day the individual starts work at the camp and annually thereafter. Additionally, national youth sports groups recognize the need to provide general guidance for youth program administration, including a criminal history background check for all volunteers.

To complete our objective, we interviewed Town officials and staff, and reviewed policies and procedures to identify the controls established. We reviewed supporting documentation of the hiring process to determine if there were background checks completed prior to hiring. We also

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<sup>2</sup> The Child Protection Improvements Act of 2011 would amend the National Child Protection Act of 1993 to direct the Attorney General to: (1) establish policies and procedures for a program for national criminal history background checks for child-serving organizations, (2) assist such organizations in obtaining access to nationwide background checks, (3) establish procedures for ensuring the accuracy of criminal history records, (4) identify individuals convicted of serious misdemeanors or felonies involving children, and (5) collect demographic data relating to individuals and organizations covered by this Act and make reports to Congress on such data. The 2011 proposed legislation limits the liability of a child-serving organization for failure to conduct criminal background checks or to take adverse action against employees with a criminal history; imposes limitations on the disclosure or use of criminal history records; and amends the PROTECT Act [of 2004] to extend the Child Safety Pilot Program.

<sup>3</sup> Part 87 of the Regulations of the Commissioner of Education and the Safe Schools Against Violence in Education (SAVE) legislation (Chapter 180 of the Laws of 2001)

<sup>4</sup> The law applies to all children's camps (day, traveling day, and overnight) and to all prospective employees and volunteers at the camp regardless of their job title/responsibility or employment status.

tested individual names against public records to determine if the safety of the youth participating in programs was jeopardized.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

## **Audit Results**

The Town has not adopted a formal policy, although the Department developed written procedures<sup>5</sup> to provide guidance for running a background-screening process for youth programs. These procedures are instructions for how to run the employees names<sup>6</sup> against the New York State Sex Offender Registry and understanding the results. In addition, the Town included a requirement in the youth program service contracts that proof must be submitted showing that the subcontractor and employees have also had checks against the New York State Sex Offender Registry. However, only as of 2012 has the proof been required for submission. The Town sent letters to all subcontractors at the end of 2011 reminding them to submit this proof, and the Town is offering instructions or assistance to the subcontractors in running these checks if necessary. To ensure the subcontractors are providing this proof, the Department has implemented a checklist system where once the proof is received, the name of the subcontractor will be checked off.

The Department hires part-time, year-round and seasonal help after completion of an application, interview, and reference checks, and the Board approves the hiring of the individual. The Town bases its hiring, in part, on being familiar with individuals whom the Town employs from year to year, although these employees must still fill out an application. Before starting work, the employees must also sign a form that asks questions about their criminal background history. The form contains a statement that the Town may conduct background checks and includes a consent statement to allow the Town to do so.

We tested compliance with the Department's background check process<sup>7</sup> and found that one of the 172 total youth program service providers did not have a check conducted in 2010. In 2011, we found 10 of the 185 total did not have checks conducted. The Town has checked almost all of the employees, yet some were missed for various reasons. The main reason given why employees did not have annual background checks was because of late hires. Late hires would be the seasonal summer employees hired after the initial hiring phase. Department staff explained that they were unaware that the names of the late hires needed to have checks performed and a few were simply missed. In addition, for the children's camps, we tested and found there were three of 193 individuals who should have had their names submitted for checking against the New York State Sex Offender Registry as required by Public Health Law Article 13-B. There was one missed in 2010, and two in 2011.

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<sup>5</sup> "Summer Recreation Staff Background Check Protocol"

<sup>6</sup> "All individuals over the age of 18 employed through the Office of Parks, Recreation & Community Affairs will have their names submitted to a search on the NYS Sex Offender Registry. Employees include main contacts for sub-contractors."

<sup>7</sup> The Department submits names (per "Summer Recreation Staff Background Check Protocol") to DCJS to match against the New York State Sex Offender Registry on an annual basis.

During fieldwork, the Town took the list of employees that did not have checks conducted in 2010 and 2011 and submitted the names to DCJS. There were no matches found when compared to the registry. Additionally, during the audit, the Department proactively implemented a checklist or monitoring system where the employees' names would be checked off once the results come in from the New York State Sex Offender Registry to ensure all names are checked in the future.

We also tested 260 names of individuals providing service to the youth programs to determine if there was a public record<sup>8</sup> documenting either a sex offense or a criminal history. These individuals included full-and part-time Town employees and subcontractors. Our tests of the names disclosed no findings. Nonetheless, background checks of all individuals who provide services to the Town's youth programs are not only in the Town's best interest in protecting its children against unsafe individuals, but can also help protect the Town against liability from possible legal action.

### **Recommendations**

1. The Town should continue to use the monitoring system put in place during the audit to ensure that the background screening process is complied with and to ensure that all summer playground camp staff names are sent to the DCJS to have the names checked against the New York State Sex Offender Registry prior to the first day of employment and annually thereafter.
2. The Town should continue to enforce the background check requirement for proof as documented in the contracts for youth programs.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Clerk's office.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief of Statewide Audits, at (607) 721-8306.

Sincerely,

Steven J. Hancox  
Deputy Comptroller  
Office of the State Comptroller  
Division of Local Government and School  
Accountability

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<sup>8</sup> Public information available for New York State includes the Sex Offender Registry from the DCJS and State prison records from the Department of Corrections.

## **APPENDIX A**

### **RESPONSE FROM TOWN OFFICIALS**

The Town officials' response to this audit can be found on the following page.



# Town of Clifton Park

One Town Hall Plaza • Clifton Park, New York 12065 • (518) 371-6651 • FAX: (518) 371-1136

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July 6, 2012

Ms. Ann Singer, Chief Examiner  
Office of the State Comptroller  
State Office Building, Room 1702  
44 Hawley Street  
Binghamton, New York 13901

RE: Report Number: S9-12-9  
Response from Town Officials

Dear Ms. Singer,

The Town of Clifton Park operates one of the most popular and successful municipal summer recreation programs in the Capital Region. In 2011, 5,504 people secured a membership to the town's pools and 2,751 children participated in summer recreation programs, including 1,095 at Clifton Park's Half Day Camp alone. The Town of Clifton Park employs hundreds of summer recreation staff each year who are personally dedicated to ensuring a safe and fun learning environment for children participating in our programs.

As your auditors discovered, 260 out of 260 individuals who provided service to youth programs in Clifton Park during your audit period had no public record of a sex offense or criminal history of any kind. The Town of Clifton Park also requires contractors to provide proof that any employees or volunteers they use while working with Clifton Park residents have been screened against the sex offender registry. Auditors commented in one of our meetings that this procedure would be considered a best practice to be shared with other municipalities.

Regarding the three of 193 names that were mistakenly omitted from the lists that the town annually submits to the Division of Criminal Justice Services, it is important to note that all three individuals were checked in either prior or subsequent years independent of your audit. The camp counselor who was missed in 2011 had been checked in 2010. The athletic specialist who was missed in 2010 was checked in 2011. The art specialist who was missed in 2011 was checked in 2012 and was employed as a substitute art teacher by the Shenendehowa Central School District.

The other results included in your audit relate to internal standards and procedures that the Town of Clifton Park has established which exceed New York State regulations. We have implemented an additional layer of safeguards to strengthen this monitoring program in 2012. The Town of Clifton Park is committed to a 100% check rate for employees hired to work at the summer camps as required by Public Health Law Article 13-B and will continue to put policies and procedures in place that go above and beyond state requirements. Our intensive and thorough interviewing process of candidates each year ensures a careful selection of all town personnel. Upon being hired and while on the job, all seasonal town employees are provided continued guidance and monitoring by senior staff and full-time Parks and Recreation staff.

Sincerely,

Phil Barrett  
Clifton Park Town Supervisor

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PHILIP C. BARRETT  
Supervisor

LYNDAM. WALOWIT  
Councilwoman

JAMES M. WHALEN  
Councilman

SCOTT HUGHES  
Councilman

JAMES J. ROMANO  
Councilman

## **APPENDIX B**

### **AUDIT METHODOLOGY AND STANDARDS**

We reviewed the Town's policies and procedures to gain an understanding of the controls in place for the screening process of individuals involved in youth programs and to determine if the background checks are part of the process. Youth program records, background investigation reports, and employee records were reviewed to identify names for testing.

We reviewed available records that identified youth programs offered, the types of individuals providing services for each program, and personnel file documents for Town employees, looking for background check documentation. We listed all individuals by youth program, if the individuals could be identified. We then compiled the individual names into a list of those that did not have a completed background check documented. We then tested all identified names using software<sup>9</sup> that accesses public records to determine if the individual has either a criminal history or a registered sex offense.

Based on employment list and contracts a comparison was completed of the names submitted for matching against the New York State Sex Offender Registry to verify compliance with Department process.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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.

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<sup>9</sup> The software accesses public records only if the records are reported in electronic format.