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BUREAU OF AUDIT

June 28, 2019

By Electronic Delivery

Chancellor Richard A. Carranza
New York City Department of Education
52 Chambers Street
New York, NY 10007

Re: Letter Audit Report on the Department of Education's Controls over the Background Investigations of Contracted Vendors' Employees and Consultants (Audit Number MJ18-057AL)

Dear Chancellor Carranza:

This Letter Report concerns the New York City (City) Comptroller's audit of the Department of Education's (DOE's) controls over the background investigations of contracted vendors' employees and consultants (collectively referred to as vendor employees). Our audit objective was to determine whether DOE had adequate controls over these background investigations. However, restrictions on the level of access we were granted to review documentation maintained in the background investigation files due to federal regulations limited the audit objective. This letter report outlines the findings that we were able to identify before concluding this audit.

Background

DOE provides primary and secondary education to over one million students, from pre-kindergarten through grade 12, in 32 school districts with more than 1,800 schools and employs approximately 79,000 teachers. DOE is responsible for preparing students to meet grade-level standards in reading, writing, and math, and preparing high school students to graduate so that they are ready for college and careers. In conjunction with this responsibility, DOE has contracts with vendors to purchase the goods and services necessary to ensure that students receive the quality education they deserve.

According to Chancellor's Regulation C-105, no one may be licensed, certified, employed by or work in the City Public School System without a background investigation and clearance from either DOE's Office of Personnel Investigation (OPI), which is a unit within the Office of Employee Relations (OER), or the Chief Executive of the Division of Human Resources. This restriction also applies to consultants who will serve more than 20 days during the fiscal year. To comply with this regulation, all individuals employed by a vendor and who will have direct contact with DOE students or with confidential student data are subject to a fingerprint-supported background clearance check before their employment. DOE uses its Personnel Eligibility

Tracking System (PETS), a web-based application, to assist in its background clearance process. This system allows vendors to record their employees in order to initiate DOE's background clearance process, and it is used by DOE to track whether vendors' employees are eligible to work for DOE and to notify vendors of their employees' eligibility status.

For a background clearance check, each vendor employee must go through three steps: (1) completion of a background questionnaire (BQ); (2) a fingerprint-supported criminal history clearance processed by the New York State Division of Criminal Justice Services (DCJS); and (3) a review of DOE employment history, if any. Unless adverse information—any information that unfavorably reflects on the integrity, character or employment history of an applicant—is identified during any of these steps, the clearance process is fully automated without any human intervention, and the vendor-employee eligibility status field within PETS will automatically indicate that the individual is “eligible” to work for DOE.

According to DOE, PETS eligibility is dynamic and can change at any point based on new information related to the individual. For example, DOE asserted that each time an individual is added to the roster of individuals employed by any DOE vendor, including an individual who has already undergone the PETS background clearance as an employee of another established DOE vendor, steps 1 through 3 of the background clearance check process mentioned above are repeated. However, DOE stated that the individual will not need new fingerprint results, as DOE maintains a “search and retain” agreement with DCJS. This agreement dictates that DCJS immediately notify DOE if an individual whose fingerprints DOE maintains has become the subject of an arrest reported to DCJS. DOE stated that its receipt of an arrest notification from DCJS will also cause the arrested individual's PETS eligibility status to change, making the individual “ineligible” pending further information.

Further, according to DOE, if adverse information is identified in any of the three above-mentioned steps, one of DOE's four managers (either the OER's Executive Director or Deputy Director, or one of the two OPI managers) conducts an initial review to determine whether an investigation is required, and if so, assigns the case to one of the OPI investigators. During an investigation, additional documentation may be requested from an applicant. According to DOE officials, if it is determined that a formal investigation is needed, the following two documents are generally used and maintained in the applicant's investigation file:¹

(1) *OPI Case Assignment Sheet (Assignment Sheet)*, which is used to document the assignment of a case to an OPI investigator, who then uses the sheet to record notes of the investigation. This sheet includes spaces to record the applicant's name, the last four digits of his or her social security number, the reason the investigation was triggered, whether the applicant is a DOE or vendor employee, the vendor's name (if applicable), and the applicant's job title. This document is also signed by a peer reviewer—a step that, according to DOE officials, is required only when an investigator recommends that an applicant be denied clearance. Officials also stated that the peer reviewer's signature represents an attestation that s/he has reviewed the documents in the applicant's

¹ An investigation file is created to house all the documents gathered during the investigation process. Every file created by OPI is assigned a unique sequential identifier, PRP (Personnel Review Panel) number, and a list of these numbers is maintained in an Excel spreadsheet.

investigation file and agrees with the investigator's recommendation and the contents of the denial letter to be sent to the applicant.

(2) *OPI Investigations Checklist (Checklist)*, which lists a number of documents that may be collected and a number of steps that may be performed during an investigation. This document is to be completed by the assigned investigator to record the documents collected and steps taken when a formal investigation has been completed and the investigator has made an eligibility recommendation. Either OER's Executive Director or its Deputy Director will review the investigation at its completion and will put her initials on the checklist—an action that, according to DOE officials, is an attestation that she reviewed the entire investigation file and approved the investigation recommendation. This document also includes a space for the applicant's name and last four digits of his or her social security number.

If a formal investigation is *not* initiated or if an investigator determines at any point that no further investigation is needed and the OPI manager agrees, an Assignment Sheet will generally not be used or completed, and in both circumstances, a Checklist would also not be used, according to DOE. However, DOE informed us that any such determination is recorded in the New York City Automated Personnel System (NYCAPS) record for the individual. When an applicant does not respond to DOE requests or withdraws his/her application, the case is "administratively closed," meaning that DOE has suspended the clearance procedure and will not make an eligibility decision.

The OPI investigator conducting the investigation is not required to sign off on either the Assignment Sheet or the Checklist affirming the work performed during the investigation. However, DOE officials informed us that key steps taken during the investigation process, from the case assignment to the final decision, will be recorded in the OPI Functions section of the applicant's NYCAPS record. For those applicants deemed eligible to provide services to DOE, OER's Executive Director or Deputy Director will change their eligibility status to "eligible" in NYCAPS. This status is also reflected in PETS.

Findings

During the initial survey phase of the audit, we identified several significant control weaknesses in DOE's background investigation process for vendor employees. The findings are detailed below.

DOE Does Not Have Adequate Written Procedures

DOE does not have written procedures in place that outline the entire background investigation process, including, but not limited to: (1) the different types and levels of reviews that must be performed when adverse information is identified; (2) steps that should be taken during an investigation; (3) the documents or notes that should be maintained in an investigation file, including the circumstances when an Assignment Sheet and Checklist are required; and (4) the information that is to be recorded in NYCAPS with regard to the steps taken and information gathered during an investigation.

According to Comptroller's Directive #1, *Principles of Internal Control*, "Internal Control must be an integral part of agency management in satisfying the agency's overall responsibility for successfully achieving its assigned mission and assuring full accountability for resources." Internal controls provide reasonable assurance that management's objectives are being achieved, and serve as the first line of defense in helping to prevent or detect errors and fraud. Controls are the policies, procedures, techniques and mechanisms used to enforce management's directions. They must be an integral part of an agency's planning, implementation, review and accountability, and are vital to it achieving the desired results.

In the case of DOE's background investigations of vendor employees, however, DOE has provided its OPI personnel with no written guidance specifying the procedures they are supposed to follow in opening, conducting and closing an investigation. For example, DOE has no written policy and procedure prescribing the steps that should be considered and performed in its background investigations of vendor employees, the documentation (if any) that should be maintained, and the supervisory and managerial reviews that are required. In absence of written procedures and established criteria, the ability of DOE management or an independent reviewer to determine whether DOE investigators took all appropriate steps during the investigation process and to hold them accountable for steps not performed is greatly diminished.

DOE Did Not Require or Maintain Documentation of OPI Decisions to Forgo or Discontinue Investigations of Applicants with Adverse Information

During the audit scope period, DOE did not require that OPI document in its investigation files its administrative decisions, or its reasons for its decisions, to forgo investigations of adverse information it received concerning applicants' backgrounds or to discontinue and close certain background investigations early in the process. When adverse information is identified during any of the three automated clearance steps described in the Background section of this report—BQ, criminal history clearance check, or DOE employment-history review—an initial review is performed by one of four DOE managers (either the OER Executive Director or Deputy Director, or one of two OPI managers) to determine whether an investigation is required. If it is, the case is assigned to an investigator. Alternatively, if the reviewing manager decides no further investigation is needed, the applicant will receive a clearance in PETS. However, no record of that decision by the reviewer, its basis, and the identity of the decision-maker was maintained in the investigation files. In addition, after a formal investigation is initiated, a case can be closed early in the process by OPI personnel at the recommendation of the assigned investigator, if it is determined, and agreed upon by one of the four DOE managers, that no further actions are deemed necessary. These discretionary decisions and the basis for them were not consistently documented in the investigation files.

During our audit, subsequent to our discussions with DOE about these concerns, DOE officials introduced a new form (the OPI DCJS Sheet Review) that they said will be used to document their initial review of adverse criminal background information concerning an applicant that was identified through the PETS clearance check as requiring review and possibly requiring investigation. This new form denotes the initial review steps that are to be taken if an applicant has a criminal history and requires a final determination of how to proceed with the clearance process (e.g., clear the applicant, refer to investigation, etc.) to be documented. In addition, at the

exit conference, DOE officials informed us that they will be revising the Case Assignment Sheet, adding a signature space for either the Executive or Deputy Director to sign representing that the case can be approved without further investigation, and a space for the signatory to write the reason why the case is being closed early in the process. The addition of the OPI DCJS Sheet Review and DOE's modification to the Case Assignment Sheet, while an improvement as they have been presented to us, have not been tested to ensure they are being followed.

*Decisions Not to Investigate and Key Elements of Investigations
Are Not Independently Reviewed*

DOE did not perform or obtain periodic independent reviews of its investigators' and managers' administrative decisions not to investigate an applicant, of the investigation process, of the documents maintained in its files and associated NYCAPS records, or of its investigation decisions to ensure that the handling and disposition of these cases conform with DOE's regulations. According to Comptroller's Directive #1,

[a] sound internal control system must be supported by ongoing activity monitoring occurring at various organizational levels and in the course of normal operations. Such monitoring should be performed continually and be ingrained throughout an agency's operations Agency management must perform continual monitoring of activities and programs. Independent monitoring may be conducted by an agency's internal audit department.

However, in the absence of detailed written procedures outlining the required steps that should be followed in every background investigation, including the circumstances that require OPI's internal forms (i.e., Case Assignment Sheet, Checklist and the new DCJS Review Sheet form) to be completed, as well as the required documentation and notes that should be maintained in every investigation, it would be nearly impossible for DOE to complete an effective and meaningful review of the overall background investigation process to assess whether OPI took all appropriate steps before determining a vendor employee's eligibility to work with DOE students. Had DOE conducted an independent review of this investigation process, the lack of written procedures and established criterion, in all likelihood, would have been identified.

*Payments Authorized for Services Provided by a Vendor Who Had Not Been Cleared
at the Time of the Service Delivery*

The compensating control DOE identified to ensure that vendor employees undergo a background clearance is certain programming of the agency's electronic billing system (Vendor Portal) that allows the system to process payments for cleared individuals only. DOE's payment process for related services provided by vendor employees requires vendors to submit their invoices through the Vendor Portal. In those submissions, vendors must identify the individual(s) who provided the services from the list of eligible persons as recorded in PETS. If an individual is not listed in PETS as one of the persons eligible to provide services, a vendor will not be able to submit invoices for that individual's services electronically and must manually submit an invoice to DOE for review. According to DOE,

when a provider is not cleared at the time they provide services, a PETS payment exception may be granted, in a case-by-case basis. Some of the reasons for this includes:

1. Ignorance on the part of newly-contracted agency regarding the DOE clearance process and policy.
2. Ignorance on the part of an independent provider with a P4 [an authorization for Special Education Teacher Support Services (SETSS)] or RSA [Related Services Agreement] of the DOE clearance process and policy.
3. Nomination of a provider by another agency.
4. Technical glitches.

Our review of a random sample of 55 exception payments processed manually by DOE from April through June 2018 found that 5 individuals were ineligible in PETS on the dates they provided services to students. For one individual, DOE authorized the payment for the services provided although the provider had not been cleared and deemed eligible to provide services to DOE students at the time the services were delivered. This individual provided services to a student in 10 sessions from October 2, 2017 through October 31, 2017, prior to receiving clearance.

DOE stated that it approved this exception payment because this provider was not an employee of one of DOE's approved related services providers but was hired by the student's caregiver and was unaware that clearance must be obtained prior to rendering service. According to DOE officials, "the DOE determined that there was a reasonable explanation for the [provider's] failure to obtain clearance before beginning work . . . [and] paying for work that was in fact completed, by a provider who was in fact cleared by the time of payment, is fair, responsible and appropriate. Doing so does not in any way undermine the effectiveness of the control, which is a deterrent against providers beginning work without clearance."

However, DOE's argument overlooks one of the intended purposes of this control. As stated above, denying payment to providers is the control intended to ensure that providers paid by DOE have undergone a background clearance. Nonetheless, this control is reactive in nature. This incident demonstrates that the control—which only comes into effect when a provider is seeking payment from DOE for services *already rendered*—does not prevent a provider who lacks a required background clearance from working with students. Consequently, DOE incurs an increased risk that persons with disqualifying events in their backgrounds may be providing services to students before DOE considers a request for payment for their services.

For the other four exception payments, DOE explained that the providers had been previously cleared while working for other DOE vendors and that their eligibility had been temporarily removed when—and solely because—they began working for other employers (other vendors that were contracted with DOE to provide services). In those circumstances, DOE processed the payments for the services the individuals provided while they were temporarily ineligible. According to DOE, when an individual on a vendor's employee list is deemed eligible to provide services to DOE, and the same individual is added to another vendor's employee list, PETS will temporarily make that person ineligible in all vendor employee listings until the system

reconciles the records and identifies the clearance information. Therefore, during those days that an individual is marked ineligible in PETS, the vendor cannot submit bills for services that individual provided. For one of the providers, the individual's ineligibility as reflected in PETS was corrected in one day. For the remaining three, however, their ineligibility lasted for more than three weeks. On February 11, 2019, we asked DOE officials to supply documentation supporting their assertion that these three individuals were ineligible in PETS solely because of nominations by other vendors. However, no evidence or further explanations were provided as of April 17, 2019, the date the preliminary letter report was issued to DOE.

DOE officials later informed us that the PET's eligibility status for these three individuals was changed to "ineligible" due to a system data issue that was identified the week of April 1, 2019, and was not the result of a vendor nomination as previously thought. DOE "confirmed that the system data issue was isolated to former DOE employees only," and stated that the issue has since been corrected. We did not test or independently confirm DOE's assertion that the ineligibility of the above three-cited individuals was caused by a system data issue.

Recommendations

1. DOE should establish written policies and procedures that outline the required reviews and investigation steps, including, but not limited to, the documents, notes, decisions, and approvals required to be maintained in the investigation files, as well as the required entries and comments that should be recorded in NYCAPS.

DOE Response: "The DOE agrees with this recommendation as our policies and procedures are outlined in writing in Chancellor's Regulation C-105. We continue to improve existing procedures by more clearly outlining the steps, and required documentation for each investigation. The DOE is updating its training packet for all investigative staff to include standardized documents as well as clearer guidelines for the investigatory process. The DOE has already made improvements to the operational checklist as well as to the supporting documentation to ensure consistency and clarity for each investigation and case file. Further, DOE is in the process of updating the online tracking system to align each step more closely to the physical files."

2. DOE should ensure that it documents and maintains on file the reasons for actions taken in a case, including its discretionary decisions and the basis of those decisions.

DOE Response: "The DOE agrees with this recommendation as we currently have existing protocols for documenting actions taken on a case, which we have enhanced during this audit by implementing additional documentation for the initial review process that occurs. This documentation has already been addressed in the report, and it will ensure all cases receive consistent evaluation and outline how these cases were closed."

3. DOE should institute a periodic independent review of the investigation process to evaluate whether all decisions, documents, and steps taken during the initial review and investigation were appropriate.

DOE Response: "[T]he DOE agrees with the recommendation, inasmuch as the DOE will implement an internal peer review process that requires qualified DOE managers to

inspect a random selection of OPI case files for consistency and accuracy, then compare results to confirm that case records are maintained uniformly. This will provide a level of review by managers independent of the investigative process, which will be documented.”

4. DOE should monitor PETS data to ensure that the system data issue it identified that caused individuals to lose their eligibility status has been resolved.

DOE Response: “The DOE agrees with this recommendation as we currently monitor for any issues that may impact eligibility in PETS. We are committed to ensuring that issues related to eligibility in PETS continue to be monitored and are promptly addressed.”

5. DOE should review its applications and letters to students’ parents/guardians to ensure that they regularly remind vendors about the clearance requirement in an effort to minimize individuals gaining access to DOE students before obtaining clearance from DOE.

DOE Response: “The DOE agrees with this recommendation as we already include and update such information in our forms and letters on a regular basis, and frequently remind providers and agencies of the requirement through trainings, orientation sessions and email correspondence. In addition, the DOE maintains and regularly updates its website with listings of independent providers who passes their security clearances.”

Audit Comment: DOE appears to argue that it does not need to do anything differently to address the deficiency identified in this report. However, DOE acknowledges that ignorance of its clearance policy is a prime reason that individuals provide service to students before obtaining clearance from DOE, resulting in DOE’s issuance of exception payments. As noted in our report, by the time DOE becomes aware of the vendor employee’s request for an exception payment, that individual will have already provided services involving direct contact with a student or confidential student data without having undergone the background clearance procedure required by regulation. Accordingly, we encourage DOE, if it has not done so already, to enhance its efforts in this area to minimize this risk.

6. DOE should ensure that it clearly and consistently informs students’ parents/guardians that if they select service providers other than those offered by DOE to provide services to their children, such providers must register with DOE and obtain authorization before beginning service and that failure to do so may result in the parents/guardians being responsible for the cost of such services.

DOE Response: “The DOE disagrees with this recommendation.

As noted, the DOE clearly and consistently informs contracted agencies and those providers who wish to work for the DOE independently of the necessary procedures they must follow to obtain security clearance and authorization to begin work. Forms provided to parents to engage such providers clearly inform both the parent and the provider that these requirements must be met before work may begin. Additionally,

under Federal Regulation the DOE is prohibited from making parents financially liable for services provided to their children. Further, the burden of any violation of clearance or authorization procedures is on the provider. In addition to Federal Regulations, the DOE has no intention of shifting to the parent financial responsibility for a provider's failure to comply with the required procedures. To do so would be financially inappropriate, and would weaken the deterrent against providers working without clearance or authorization."

Auditor Comment: DOE does not identify the specific federal regulation to which it is referring, so we are unable to fully assess the merits of its argument. However, our recommendation should not be misconstrued to suggest that we recommend that DOE shift its financial obligations for services to the parents/guardians of students entitled to receive such services from or through DOE. We note, however, that the authorization form that DOE references in its response informs parents/guardians that (1) their children may receive services "from an *eligible* independent provider at no cost" and (2) "service must be provided by the provider named on this form," and that such providers agree to accept no payments from parents/guardians "for services provided *pursuant to this authorization.*" [Emphasis added.] These excerpts indicate that DOE's responsibility for paying providers for services is conditional and that DOE will pay for services so long as they are provided by parties that DOE has deemed eligible and authorized to provide such services. Accordingly, we continue to urge DOE to clearly inform parents/guardians of this prerequisite.

If DOE believes that its current communication with independent providers is sufficient and that the independent providers are fully aware of the procedures they must follow to obtain security clearance and authorization, DOE should enforce its policy and refrain from paying any provider that does not obtain the required security clearance and authorization to begin work before providing services. Paying providers who do not receive the necessary clearances before the services are provided weakens the deterrent against providers working without clearance or authorization, which is what DOE appears to be trying to avoid.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards, except for a review of confidential criminal-history information concerning the vendor employees, which was restricted by federal regulations. 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 objective. 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.

We believe that the restrictions on the level of access we were granted to review evidence maintained in the investigation files limited us from performing detailed testing to assess the pervasiveness of the weaknesses we cite in this report and to identify other potential weaknesses that may exist in DOE's background investigation process. We received clearance from DCJS to view criminal data from New York State (NYS) only; we did not receive clearance to view federal

criminal information. However, according to DOE, the agency's investigation files include documents containing federal information commingled among other documents. For the purposes of our review, DOE implemented a process whereby a DOE official reviewed the files in the audit team's presence, keeping the contents of the files shielded from the team's view. The official then provided the documentation that the official believed was relevant and that we were authorized to review for our audit purposes. We were unable to independently verify that all relevant information was provided.

Consequently, we were prevented from assessing the accuracy of the official's determinations and confirming that the files did not contain any additional information that was relevant for our purposes. In fact, DOE provided inconsistent information during this process. In seven instances, certain documents that were withheld because they purportedly contained federal information were subsequently shared with the audit team after the DOE official later determined that the documents contained no such information. In addition, DOE initially told us that it withheld information in three instances because the applicants were DOE employees. However, it was later determined that these three individuals were actually vendor employees. In part as a result of these inconsistencies, there was a significant risk that DOE might mistakenly deny us access to important documents that could have resulted in our making an erroneous assessment regarding the adequacy of DOE's controls over its background investigations.

Further, although DOE maintains a list of all investigation files created, this list commingles investigation files of vendors' employees, DOE employees, and volunteers who work with other City agencies, without any distinction made between them, and therefore, it could not be used to determine the population of investigations of vendors' employees for the purpose of testing the controls of DOE's investigation process for that population.² Consequently, our ability to conduct detailed testing relative to the audit objective was limited. *We, therefore, limited our audit analyses to preliminary testing of investigation files and exception payments for the purpose of identifying and disclosing potential weaknesses in the investigation process.*

The audit scope covered Fiscal Year 2017 (July 1, 2016 through June 30, 2017).

To obtain a general understanding of the policies, procedures and regulations governing DOE's background investigation of the employees of its contracted vendors, we reviewed numerous criteria, including the following: Chancellor's Regulation C-190 on the use of individuals as consultants; Chancellor's Regulation C-105 on Background Investigations of Pedagogical and Administrative Applicants and Procedures in Cases of the Arrest of Employees; Chancellor's Regulation C-115 on Required Background Investigation; New York State Correction Law Article 23-A; NYS Education Department, *Who Must Be Fingerprinted Charts*, and Comptroller's Directive #1, *Principles of Internal Control*.

To obtain an understanding of DOE's responsibilities and activities related to the background investigation process of contracted vendors and consultants, we conducted walkthroughs and interviewed key DOE officials, including the Executive Director of OER; the Executive Director and the Chief Administrator of Division of Contracts and Purchasing (DCP);

² Other City agencies, such as the City Department of Parks and Recreation, partner with DOE to vet their volunteers, under the City's Go Pass program, leveraging DOE services. This is done in conjunction with NYC Services of the Mayor's Office to help promote volunteerism and help New Yorkers connect to service opportunities.

the Director of the Office of Non-Public School Payables (NPSP); and the Administrators of the Division of School Facilities (DSF).

To obtain an understanding of DOE's PETS system, we interviewed the Manager of the PETS Team and officials from the Division of Instructional and Information Technology (DIIT). We also received an overview demonstration of PETS.

To obtain an understanding of the documents maintained in the background investigation files and the investigation process, we reviewed three investigation files under the Executive Director of OER's guidance, which consisted of the following three scenarios: (1) an applicant that responded "Yes" to one or more of the BQ questions; (2) an applicant that got a "hit" from fingerprint results processed by DCJS; and (3) an applicant with an adverse report in DOE's system (a current or former DOE employee).

To ensure that investigation files were maintained in a secure location, only accessible to authorized personnel, we conducted an observation of the location where the files were maintained.

We requested a list of the investigation files created (and associated PRP number) for vendor employees during Fiscal Year 2017. In total, DOE provided us with a list of 4,085 PRP numbers.³ As part of our data reliability to evaluate the completeness and accuracy of the list, we selected a random sample of 50 PRP numbers and requested the associated investigation files, and reviewed the information contained in the files in the presence of the OER Executive Director, and only the information that she allowed us to review. In course of our review, we identified 16 PRP numbers that were associated with files that were not for vendor employees.

We also reviewed gaps in the PRP number sequence from the provided PRP list to identify whether they related to DOE employees. We randomly selected and reviewed 13 missing PRP numbers and found that 6 were vendor employees and should have been part of the PRP list provided. Based on the results of the above-mentioned tests of the PRP list, we concluded that the list of PRP numbers associated with investigation files of vendor employees was neither complete nor accurate for our audit purposes.

To determine the adequacy and consistency of DOE's investigation process and the documents maintained in the investigation files, we used the same random sample of 50 PRP numbers selected for the data reliability tests and reviewed the files associated with vendor employees; in total, we reviewed 32 of the 50 files that related to vendor employees. (The remaining 18 were DOE employees' files or contained federal or sealed court information to which we were not privy to.) Of the 32 files, 24 were true investigation files that contained some information that DOE allowed us to review. (The remaining eight files were created to house updated NYS arrest information relating to vendor employees who had been previously cleared.) As part of our review, we confirmed whether the Assignment Sheets and Checklists were present and included the required peer review signatures and supervisor initials, respectively. In addition, we verified whether a final determination was recorded in the investigation notes on the Assignment Sheets. To understand the process for documenting the investigation information in

³ The PRP list did not exclusively include investigation files of vendor employees, but was co-mingled with files of: (1) DOE employees; and (2) volunteers of other City agencies cleared by DOE through the City's Go Pass program. In order to provide the list, DOE reconciled the list and provided us with what it believed to be vendor employees only.

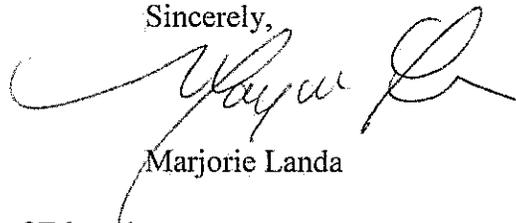
NYCAPS, as DOE informed us at the exit conference, and to validate the NYCAPS screenshots DOE provided us, we met with OPI's Deputy Director and reviewed information in NYCAPS for several of the sampled investigations.

To determine (1) the reasons behind exception payments, and (2) whether the vendor employees associated with these payments received the background clearance prior to providing the services, we requested from DOE a list of all exception payments processed during the period April through June 2018. In total, DOE processed 642 exception payments during this period. We randomly selected 55 exception payments and reviewed the supporting documents for each to determine the reasons for the exception payments. We also reviewed the PETS information on the providers of services associated with the 55 payments to determine the status of the providers' background clearances on the dates the services were provided.

The matters covered in this letter report were discussed with DOE officials during and at the conclusion of this audit. A preliminary letter report was sent to DOE officials and was discussed at an exit conference on May 13, 2019. At the exit conference, DOE officials informed us for the first time that a considerable portion of the investigation information was also recorded in NYCAPS and provided us with NYCAPS screenshots. This information was considered when preparing the draft letter report. On June 11, 2019, we submitted a draft letter report to DOE officials with a request for comments. We received a written response from DOE officials on June 25, 2019. In its response, DOE generally agreed with five of the audit's six recommendations and disagreed with the recommendation that it clearly inform students' parents/guardians that the selection of service providers that have not been authorized by DOE to provide services may result in the parents/guardians being responsible for the cost of such services.

The full text of DOE's comments is included as an addendum to this letter report.

Sincerely,

A handwritten signature in black ink, appearing to read "Marjorie Landa", written over a horizontal line.

Marjorie Landa

c: Danya Labban, Auditor General, Department of Education
Jeff Thamkittikasem, Director, Mayor's Office of Operations
George Davis, III, Deputy Director, Mayor's Office of Operations

June 25, 2019

Ms. Marjorie Landa
Deputy Comptroller for Audits
New York City Office of the Comptroller
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New York, NY 10007-2341

**Re: Report on the Department of Education's
Controls over the Background Investigations of
Contracted Vendor Employees and Consultants
(MJ18-057AL)**

Dear Ms. Landa:

This letter will serve as the New York City Department of Education's (DOE) formal response to the New York City Office of the Comptroller's (Comptroller) draft letter report of the *Department of Education's Controls over the Background Investigations of Contracted Vendor Employees and Consultants* (Report).

The DOE has rigorous background check policies in place to ensure that we have the best-qualified staff, and that we are fostering safe and supportive environments for all students and staff members. The DOE's Chancellor's Regulation C-105 outlines the authority and procedures under which the DOE completes pre-employment background investigations for individuals seeking to work, in any capacity, with the DOE or a DOE contracted vendor. From this outline, the DOE has implemented a structured yet dynamic process for background investigations that ensures that each individual is fairly and reasonably scrutinized under local, state and federal laws before they receive access to any school or DOE location. The DOE is particularly focused on maintaining clear, concise and accurate investigative information in both paper and electronic form and routinely reviews its process to promote best practices that adhere to the DOE's dedication to confidentiality while advancing the best individual to work with the DOE's students.

Throughout the audit, the DOE provided access to data and information sought by the auditors in line with what was permitted by law. As to the Comptroller's request to access records with federal information, the DOE advised the Comptroller in the early stages of the audit that federal regulations prohibited the DOE from providing access to such records without written consent. Ultimately, the auditors did not seek such consent or receive it.

Our response to the recommendations made in the Report are below.

Recommendation 1. *DOE should establish written policies and procedures that outline the required reviews and investigation steps, including, but not limited to, the documents, notes, decisions, and approvals required to be maintained in the investigation files, as well as the required entries and comments that should be recorded in NYCAPS.*

Response. The DOE agrees with this recommendation as our policies and procedures are outlined in writing in Chancellor's Regulation C-105. We continue to improve existing procedures by more clearly outlining the steps, and required documentation for each investigation. The DOE is updating its training packet for all investigative staff to include standardized documents as well as clearer guidelines for the investigatory process. The DOE has already made improvements to the operational checklist as well as to the supporting documentation to ensure consistency and clarity for each investigation and case file. Further, DOE is in the process of updating the online tracking system to align each step more closely to the physical files.

Recommendation 2. *DOE should ensure that it documents and maintains on file the reasons for actions taken in a case, including its discretionary decisions and the basis of those decisions.*

Response. The DOE agrees with this recommendation as we currently have existing protocols for documenting actions taken on a case, which we have enhanced during this audit by implementing additional documentation for the initial review process that occurs. This documentation has already been addressed in the report, and it will ensure all cases receive consistent evaluation and outline how these cases were closed.

Recommendation 3. *DOE should institute a periodic independent review of the investigation process to evaluate whether all decisions, documents, and steps taken during the initial review and investigation were appropriate.*

Response. Given the highly confidential nature of these investigations, it is not practical to outsource an independent review through an external party.

However, the DOE agrees with the recommendation, inasmuch as the DOE will implement an internal peer review process that requires qualified DOE managers to inspect a random selection of OPI case files for consistency and accuracy, then compare results to confirm that case records are maintained uniformly. This will provide a level of review by managers independent of the investigative process, which will be documented.

Recommendation 4. *DOE should monitor PETS data to ensure that the system data issue it identified that caused individual to lose their eligibility status has been resolved.*

Response. The DOE agrees with this recommendation as we currently monitor for any issues that may impact eligibility in PETS. We are committed to ensuring that issues related to eligibility in PETS continue to be monitored and are promptly addressed.

Recommendation 5. *DOE should review its applications and letters to students' parents/guardians to ensure that they regularly remind vendors about the clearance requirement in an effort to minimize individuals gaining access to DOE students before obtaining clearance from DOE.*

Response. The DOE agrees with this recommendation as we already include and update such information in our forms and letters on a regular basis, and frequently remind providers and

agencies of the requirements through trainings, orientation sessions and email correspondence. In addition, the DOE maintains and regularly updates its website with listings of independent providers who passed their security clearances.

Recommendation 6. *DOE should ensure that it clearly and consistently informs students' parents/guardians that if they select service providers other than those offered by DOE to provide services to their children, such providers must register with DOE and obtain authorization before beginning service and that failure to do so may result in the parents/guardians being responsible for the cost of such services.*

Response. The DOE disagrees with this recommendation.

As noted, the DOE clearly and consistently informs contracted agencies and those providers who wish to work for the DOE independently of the necessary procedures they must follow to obtain security clearance and authorization to begin work. Forms provided to parents to engage such providers clearly inform both the parent and the provider that these requirements must be met before work may begin. Additionally, under Federal Regulation the DOE is prohibited from making parents financially liable for services provided to their children. Further, the burden of any violation of clearance or authorization procedures is on the provider. In addition to Federal Regulations, the DOE has no intention of shifting to the parent financial responsibility for a provider's failure to comply with required procedures. To do so would be fundamentally inappropriate, and would weaken the deterrent against providers working without clearance or authorization.

We thank the Comptroller for the opportunity to review our procedures and are confident that the changes implemented while the audit was in progress address the Report findings.

Sincerely,



Ursulina Ramirez
Chief Operating Officer