



# Evergreen Charter School

## Employee and Independent Contractor Fingerprinting

### Report of Examination

Period Covered:

July 1, 2014 — March 31, 2016

2016M-225



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

September 2016

Dear School Officials:

A top priority of the Office of the State Comptroller is to help charter school officials manage operations efficiently and effectively and, by so doing, provide accountability for moneys spent to support school operations. The Comptroller audits the financial operations of charter schools outside of New York City to promote compliance with relevant statutes and observance of good business practices. This oversight identifies opportunities for improving school financial operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard school assets.

Following is a report of our audit of the Evergreen Charter School, entitled Employee and Independent Contractor Fingerprinting. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Section 2854 of the New York State Education Law, as amended by Chapter 56 of the Laws of 2014.

This audit's results and recommendations are resources for school officials to use in effectively managing operations and in meeting the expectations of the taxpayers, students and their parents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*

# Introduction

## Background

A charter school is a public school financed by local, State and federal resources that is not under the control of the local school board. Charter schools generally have fewer legal operational requirements than traditional public schools. Most of the regulations for a charter school are contained in Education Law Article 56 and the school's bylaws, charter agreement and fiscal/financial management plans as well as the *Financial Oversight Handbook*.<sup>1</sup> Charter schools are required to set both financial and academic goals, and a school's renewal of its charter is dependent on meeting these goals.

The Evergreen Charter School (School) is located in the Town of Hempstead, Nassau County. The oversight for School operations is provided by the Board of Trustees (Board), which is composed of eight members. The Board is responsible for the general management and control of the School's financial and educational affairs. The Board appoints the chief executive officer who is responsible, along with other administrative staff, for the School's day-to-day management under the Board's direction. The Director of Finance and Operations oversees the School's financial activities and is responsible for obtaining fingerprint clearance for employees.

The School's 2014-15 fiscal year operating expenses totaled \$5.5 million. These expenses were funded primarily with revenues derived from billing school districts for resident pupils (95.0 percent) and from certain State and federal aid attributable to these pupils. The School's 2015-16 budgeted expenses were \$5.7 million.

## Objective

The objective of our audit was to review the School's fingerprinting practices. Our audit addressed the following related question:

- Did the Board and School officials obtain fingerprint clearance for employees and independent contractors as required by Education Law?

## Scope and Methodology

We examined the School's personnel and vendor files for the period July 1, 2014 through March 31, 2016.

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<sup>1</sup> The Charter Schools Institute of the State University of New York (SUNY) publishes the *Financial Oversight Handbook* to provide SUNY-authorized charter schools assistance with navigating financial accountability. The Charter Schools Institute was created by the SUNY Trustees to assist them in carrying out their responsibilities of granting public school charters under the New York State Charter Schools Act of 1998.

**Comments of  
School Officials and  
Corrective Action**

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

The results of our audit and recommendations have been discussed with School officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as indicated in Appendix A, School officials generally agreed with our recommendations and indicated they have begun to initiate corrective action. Appendix B includes comments on issues School officials brought up in their response.

The Board has the responsibility to initiate corrective action. We encourage the Board to prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days. For more information on preparing and filing your corrective action plan, 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 School business office.

## Employee and Independent Contractor Fingerprinting

To protect the safety and well-being of students, Education Law requires that all employees and independent contractors who have direct contact with, or whom the charter school reasonably expects to provide services to, students must undergo a fingerprint-supported criminal history background check. Education Law requires the fingerprint-supported criminal background checks to be filed with the New York State Education Department's Office of School Personnel Review and Accountability (OSPRA). OSPRA then provides certification clearing the individual for employment.

Individuals previously fingerprinted may not need to be fingerprinted again when seeking employment at another school. However, officials must request an updated clearance for the prospective employee/individual to ensure that OSPRA's records are current and the employee/individual is cleared to work at a new or additional location. To ensure compliance with fingerprinting laws, the Board should establish a fingerprint policy that contains procedures for new employees, conditional or emergency hires and independent contractors.

In certain situations, contractors who are not paid by the School provide services to School students. If those contractors were cleared through another charter school, district school or employer, the School must confirm their clearance status prior to receiving services and keep a copy of such clearance status on file. On a periodic basis, the School must either receive an updated clearance to put on file or have on file a record showing that it contacted the clearing entity<sup>2</sup> and that the clearing entity confirmed the person's status. Such record should include the name and title of the clearing entity's contact that supplied the clearance information.

The Board has not established a fingerprinting policy. As a result, School officials allowed employees to be hired and have contact with students prior to receiving fingerprint clearances and allowed independent contractors to have contact with students without first verifying they held a valid clearance. These practices increase the risk to student safety.

Employees – School officials hired 52 new employees during the audit period. Officials did not obtain fingerprint clearance prior to employment for 39 of these employees. Of these 39 employees,

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<sup>2</sup> Clearing entities may include another charter school, district school or an employer that has conducted a background check pursuant to Education Law.

officials never obtained fingerprint clearance for two employees: a nurse and a substitute teacher. The nurse and substitute teacher worked with students for approximately five months and eight months, respectively, without a fingerprint clearance to confirm that neither had a prior criminal history. For the remaining 37 employees, the number of days between the date the employee started working at the School and the date School officials obtained fingerprint clearance ranged from one to 127 days and averaged approximately 46 days.

School officials explained that they started the fingerprint process at the time the employees were hired and allowed them to begin working at the School while waiting for the clearance results. Officials told us they were unaware that Education Law required them to obtain fingerprint clearance prior to employment.

Independent Contractors – During the audit period, students received services from 14 independent contractors<sup>3</sup> employed by the students' home districts. Each time an independent contractor provides services to a student, contractors are required to sign in at the School building and record the date, student name, time in and time out on a log maintained by the Special Education Coordinator. However, School officials did not obtain fingerprint clearances or confirm the clearance status for any of the 14 contractors prior to allowing services. Rather, School officials told us they relied on the home districts to obtain the necessary fingerprint clearances and were unaware that Education Law required them to confirm that the clearances were obtained prior to allowing services.

The Board and School officials did not comply with Education Law and guidance regarding fingerprint-supported criminal background checks for employees and independent contractors. Because the Board approved hiring employees before School officials obtained fingerprint clearances, the School would not have been notified of any criminal history prior to an employee's start date. In addition, because officials allowed students to receive services prior to obtaining fingerprint clearances or confirming the clearance status, officials had no assurance that independent contractors providing the services had no prior criminal history. These practices increased the risk to student safety.

## Recommendations

The Board and School officials should:

1. Discontinue the practice of allowing new employees or independent contractors to provide services to students prior to obtaining or confirming fingerprint clearances.

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<sup>3</sup> Independent contractors included five speech therapists, four resource room instructors, two physical therapists, two counselors and one occupational therapist.

2. Establish a fingerprinting policy including procedures for new employees, emergency and conditional hires and independent contractors.
3. Consult with legal counsel to ensure the School's fingerprinting policy is in compliance with legal requirements.

## **APPENDIX A**

### **RESPONSE FROM SCHOOL OFFICIALS**

The School officials' response to this audit can be found on the following pages.



**Evergreen Charter School**  
605 Peninsula Boulevard  
Hempstead, NY 11550  
Phone: (516) 292-2060 Fax: (516) 292-0575

August 26, 2016

Mr. Ira McCracken  
Chief Examiner  
Division of Local Government and  
School Accountability  
State of New York  
Office of the State Comptroller  
110 State Street  
Albany, New York 12236

Re: Division of Local Government and School Accountability  
Employee and Independent Contractor Fingerprinting  
2016M-225

Dear Mr. McCracken:

We thank your team for their review of our Charter School. We are following their recommendations and have already implemented them.

Please note that our response to your draft letter also includes our Corrective Action Plan, CAP.

Overall we agree with your findings. We do not have a fingerprint policy but we have created a policy since your findings and this will be ratified at our next meeting of the Board of Trustees on September 21, 2016.

Evergreen Charter School has taken action to ensure that all employees and independent contractors in contact with students are cleared and have the necessary documents to confirm clearance.

Although you identified a number of cases where we did not obtain clearance prior to employment, clearance was obtained for all employees except two individuals. In both these cases, we took necessary measures to ensure that our students were safe at all times including providing another staff person to be present. One of those two findings was pertaining to a substitute physical education teacher who was always accompanied by another staff member and was never alone

See Note 1 Page 12
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with the students while he worked in our school. The second finding included a school nurse (hired through an agency). The agency that processed our payment for the clearance did so with the incorrect paperwork for this employee.

With respect to your findings regarding fingerprinting clearance for providers, these individuals are employees of the student's home district. We understood that they were cleared by the home school districts as they contracted by these districts. There have not been any incidents between providers and students. Going forward we will ensure that we have all clearance for independent contractors and providers in contact with students.

See  
Note 2  
Page 12

Finally, to meet all of the State requirements for employees and staff, Evergreen has created a finger printing policy that is compliant with the New York State Education Department requirements.

We reiterate that in spite of these findings, we are proud of our efforts to ensure the safety of our students. We will continue to do so and will ensure that we meet all state requirements and have all fingerprint clearance information on file for employees, including independent contractors and providers in contact with students.

Our Corrective Action Plan includes a response to your audit recommendations.

***Audit Recommendation 1:***

- 1. Discontinue the practice of allowing new employees and/or independent contractors to provide services to students prior to obtaining or confirming fingerprint clearance.*

**Evergreen Plan of Action:**

Evergreen Charter School has met with Key School Administrators including the Principal, Assistant Principal and Business Office Staff to ensure that all are aware that new employees and independent contractors must have fingerprint clearance prior to providing services to students and that this must be followed at all times to ensure legal compliance.

**Date of Implementation:**

Evergreen Charter School has already followed this recommendation by the auditors. The Board will formally ratify the attached policy at its September 21, 2016 Board meeting as the Board is not in session in August.

**Person Responsible for Implementation:**

The Board of Trustees has created the policy. This will be enforced by the Business Office under the supervision of the Director of Finance and Operations.

***Audit Recommendation 2:***

- 2. Establish a fingerprinting policy including procedures for new employees, emergency and conditional hires and independent contractors.*

**Evergreen Plan of Action:**

Evergreen Charter School has developed a policy in consultation with legal counsel. The policy is attached.

**Date of Implementation:**

Evergreen Charter School has already followed the recommendation by the auditors. The Board will formally ratify the attached policy at its September 21, 2016 Board meeting as the Board is not in session in August.

**Person Responsible for Implementation:**

The Board of Trustees has created the policy in consultation with legal counsel. This will be enforced by the Business Office under the supervision of the Director of Finance and Operations.

**Audit Recommendation 3:**

3. *Consult with legal counsel to ensure the School's fingerprinting policy is in compliance with legal requirements.*

**Evergreen Plan of Action:**

Evergreen Charter School has followed this recommendation and has consulted with Ingerman Smith LLP to ensure that its fingerprinting policy is in compliance with legal requirements.

**Date of Implementation:**

Evergreen Charter School has already followed this recommendation by the auditors. The Board of Trustees consulted with its legal counsel in August 2016 and will formally ratify the attached policy at its September 21, 2016 Board meeting as the Board is not in session in August.

**Person Responsible for Implementation:**

The Board of Trustees has consulted with legal counsel to ensure the policy is in compliance with legal requirements. The Business Office under the supervision of the Director of Finance and Operations and with consultation of legal counsel will ensure compliance.

Again, thank you for your recommendations and report.

Our plan and your report will be available for public review in the Business Office of the School.

Should you need any additional information, please do not hesitate to contact me.

Sincerely,

Gil Bernardino

President of the Board of Trustees

August 26, 2016

## **APPENDIX B**

### **OSC COMMENTS ON THE SCHOOL'S RESPONSE**

#### Note 1

Education Law does not permit a procedure allowing supervised employment for an employee whom the School has not first obtained a conditional clearance. Allowing an employee who has not met minimum clearance standards direct access to students, even supervised access, increases the risk to student safety.

#### Note 2

School officials must confirm the clearance status for service providers cleared through home school districts prior to students receiving services. They also must keep a copy of such clearance status on file.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We reviewed Education Law and interviewed the Director of Finance and Operations and the Board President to gain an understanding of the School's fingerprinting procedures and to assess compliance with Education Law.
- We reviewed 52 employees' personnel files to determine if fingerprint clearance was obtained prior to the employees' hire date. The 52 employees represent 100 percent of the employees hired during the audit period.
- We reviewed 14 independent contractors' vendor files to determine if fingerprint clearance was obtained or if clearance status was confirmed prior to students receiving services. The 14 independent contractors represent 100 percent of the vendors that provided services to students during the audit period.

We conducted this performance audit in accordance with 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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