

CITY OF NEW YORK
THE SPECIAL COMMISSIONER OF INVESTIGATION
FOR THE NEW YORK CITY SCHOOL DISTRICT

BLIND FAITH:
*An Investigation into the Hiring Practices
for Non-Board of Education Personnel Working in Schools*

EDWARD F. STANCIK
SPECIAL COMMISSIONER

ROBERT M. BRENNER
FIRST DEPUTY COMMISSIONER

BY: **LAURA A. ZUCKERMAN**, SPECIAL COUNSEL
REGINA A. LOUGHRAN, DEPUTY COMMISSIONER
THOMAS COMISKEY, DEPUTY CHIEF INVESTIGATOR

AUGUST 1999

ACKNOWLEDGEMENTS

This inquiry was conducted under the supervision of First Deputy Commissioner Robert M. Brenner, Deputy Commissioner Regina A. Loughran, and Deputy Chief Investigator Thomas Comiskey. Senior Investigator Ronald Connors, Senior Investigator Andre Jenkins, Senior Investigator Edward Miller, and Senior Investigator Marie Zolfo, gathered the evidence in this case. They were assisted in their efforts by Supervising Investigator Richard Iannozzi and Supervising Investigator Thomas Hyland. Deputy Commissioner Karen I. Lupuloff also contributed to the investigation. Special Commissioner Edward F. Stancik recused himself from any participation in this investigation.

BLIND FAITH:
*An Investigation Into the Hiring Practices
for Non-Board of Education Personnel Working in Schools*

Introduction	1
The Beacon School Program	3
ASPIRA	3
Young Mens Hebrew Association.....	6
Community Counseling Mediation Program	7
The School Volunteer Program	9
Private Custodians.....	12
Temporary Workers	14
Non-Board Instructors.....	16
The Multi-Use Agreement	19
The Boys Choir of Harlem.....	19
The Listing Application.....	21
Bronx Dance Theater.....	21
The Actors Institute	25
Conclusion and Recommendations	27

Introduction

On any given day, hundreds of individuals who are not employed by the Board of Education (“Board”) come into classrooms in New York City. They may be volunteers, after school aides, arts instructors, or temporary workers. All play a vital role in the educational process – often filling the gap in times of need. However, their entry into school facilities is not without risk. Because these individuals are employed by or volunteer with private corporations, service vendors, or non-profit organizations, they are not subject to the fingerprint checks and other scrutiny given to prospective Board employees.¹

In the course of investigating separate allegations of wrongdoing by non-Board personnel, we discovered that procedures to check their backgrounds either do not exist, are inadequate, or are not properly followed. In fact, our investigation uncovered several potentially dangerous individuals who were able to work in the school system because of lax security clearance procedures:

- One man volunteered with students even though he had two felony convictions. His service had disastrous consequences when he harmed a young girl in his care.
- Another volunteer was able to help out in a school while awaiting trial on charges of sexually abusing a young girl.
- Yet another, while on parole for possessing a weapon, worked as a custodian in a building that housed a public school. This man had served four and one-half years in prison as a result of two *violent* felony convictions.
- A fourth individual, with a history of criminal convictions that spanned thirty years, traveled to Board facilities as a driver while on parole for a robbery charge. Moreover, because this man was not subject to a comprehensive background check, no one knew that he did not possess a driver’s license – even though his primary responsibility involved driving a van to various school locations.

¹ Under Chancellor’s Regulation C-115, all Board employees must be fingerprinted prior to beginning work. Then the Board uses the fingerprints to conduct a criminal history check with the Federal Bureau of Investigation and the New York State Division of Criminal Justice Services.

While illustrating the most frightening consequences of inadequate security clearance procedures, we found that these cases were not isolated incidents. The ability of these individuals to come in close contact with schoolchildren revealed the deficiencies in the Board's approach, and made clear the danger in allowing people the Board knows little about to work with students.

What follows are the results of our investigation, which focused on several different types of organizations, and recommendations to tighten the practices used to hire non-Board personnel who work inside public schools.

The Beacon School Program

The Beacon School Program (“BSP”), run by the New York City Department of Youth and Community Development (“DYCD”), contracts with numerous community-based organizations to send individuals into Board facilities to provide services after school. While the DYCD requires those organizations to obtain an applicant’s “credentials” and conduct a reference check, it does not require fingerprinting of their employees or volunteers, and does not specify a means for evaluating the appropriateness of a given hire.²

During the course of our investigation, we found several agencies that do not even meet the DYCD’s minimal requirements. One organization sent individuals into schools through the BSP without requiring the applicants to provide any background information at all. Others used applications that failed to ask the proper questions, and never verified the information provided. Moreover, we discovered that the DYCD has no mechanism in place to ensure fulfillment of the contract terms.

1. ASPIRA

ASPIRA, a Puerto Rican and Latino youth development organization, assigned Kevin Bunter to its BSP at PS 86 in District 10 in the Bronx.³ He was not fingerprinted prior to starting work. As a result, the organization did not know that Bunter was a twice-convicted felon and allowed him to have unsupervised contact with children. It did so despite the fact

² Investigators obtained a copy of the standard BSP contract from Catherine Stadtmauer, general counsel for the DYCD, who stated that organizations are not given guidance on the method to check and verify qualifications.

³ Bunter worked for AMERICORP, a national service organization that coordinates the participation of individuals in a variety of non-profit organizations. ASPIRA employs individuals from AMERICORP.

that Bunter disclosed on his application that he had a criminal conviction. Unfortunately, the organization did not inquire further about his criminal history and failed to conduct a full background check. ASPIRA's inaction had disastrous consequences when Bunter inappropriately touched a twelve-year-old female student while he was working at the school.

All that the agency knew about Bunter's past was what he revealed on his ASPIRA application. Notably, on the paperwork he completed, Bunter acknowledged, but downplayed, his prior criminal record. Bunter wrote: "I was convicted of bail jumping in 1993 for a case that happened in 1989 (Possession of stolen property)." He failed to disclose the fact that he had also been convicted of Robbery in the Second Degree and had served two and one-half years in prison. Even in light of Bunter's partial disclosure, he was not fingerprinted, and ASPIRA asked no further questions. Instead, without any further scrutiny, Bunter was hired and assigned to the after school program at PS 86 working with schoolchildren. Moreover, ASPIRA never notified Board officials that it was sending a convicted felon into one of their facilities.

Had Bunter been fingerprinted, the organization would have learned that he had a serious criminal background. In September 1983, Bunter was convicted of Robbery in the Second Degree. He served one and one-half years in prison and was paroled in April 1985. Then, in September 1987, Bunter was arrested for Grand Larceny in the Fourth Degree and Criminal Possession of Stolen Property. When he failed to appear in court in January 1988, a

warrant was issued for his arrest. Bunter was finally returned to court in October 1989 when, using the name Kevin Hernandez, he was arrested for a robbery charge that was ultimately dismissed. In June 1990, he pled guilty to Bail Jumping in the Second Degree. In exchange for the plea, the Grand Larceny and Possession of Stolen Property charges were dismissed. Nevertheless, pending sentence, in September 1990, another bench warrant was issued. Ultimately, Bunter returned to court and, in December 1993, was sentenced as a repeat felon to a minimum of eighteen months and a maximum of three years in prison. He then served a little over one year in prison.

Within his first month on the job, Bunter demonstrated why he should not have been allowed in the school. According to a twelve-year-old girl, Bunter took her into an empty classroom, put his arm around her waist, pulled her toward him, and asked her why she did not greet him with a kiss. The girl pushed Bunter away and left the classroom.⁴

According to Anthony Lopez, who was the director of the New York office of ASPIRA until March 1999, his agency does not conduct fingerprint checks because the cost is prohibitive and the organization lacks the funding to pay the fee for its workers.⁵ Instead, Lopez noted that ASPIRA checks the backgrounds of prospective volunteers by requiring them to complete an application.⁶ However, without conducting fingerprint checks, the agency cannot verify information provided.

⁴ As a result of our findings in the above case which we referred to the Chancellor and the Board on May 14, 1998, the Office of Appeals and Review placed Bunter on the ineligible inquiry list. While this should ensure that the Board will not hire him to work in any of its facilities, it is possible that Bunter and the other individuals named in this report could still work in the school system through an outside organization, which has no obligation to check the list.

⁵ The processing fee for a New York State and a Federal fingerprint check is currently \$80.00.

⁶ The application requires information about criminal convictions as well as pending cases.

Thus, even though Bunter committed a violent crime and spent two and one-half years in prison after two felony convictions, he was able to work with children in an after school program and was in a position to victimize a twelve-year-old girl.

2. Young Mens Hebrew Association

The Young Mens Hebrew Association (“YMHA”), a non-profit organization serving the social, educational, and recreational needs of the community, hired twenty-one-year-old Christopher Combs to work with children at IS 216 in Queens, without subjecting him to any screening procedures. The agency, which receives BSP funding to operate at the school, did not ask Combs to submit a job application or undergo a fingerprint check despite the fact that he was going to interact directly with students. We learned this after Combs was arrested in May 1999, for hugging and kissing a fourteen-year-old girl whom he met in the YMHA after school program.⁷ He was charged with Sexual Abuse in the Third Degree.⁸

In December 1998, Combs was hired by the YMHA as a gymnasium aide and security guard. Several months later, he formed an improper relationship with a female student who participated in the agency’s after school services. On numerous occasions during the program, Combs paged the girl, who would leave the organized YMHA activities to meet him in a secluded area of the building. According to the student, Combs would hug and tongue-kiss her.

⁷ By her age, the girl was not legally capable of consenting to sexual contact with Combs.

⁸ As a result of this arrest, Combs was fired from the YMHA. The Board’s Office of Appeals and Review has since placed him on its ineligible inquiry list. In July 1999, he pled guilty to Harassment and was sentenced to a conditional discharge.

Alan Stark, the coordinator of Beacon Services at the YMHA, admitted that he hired Combs without fingerprinting him, obtaining his credentials, or checking his references. According to him, he did not feel it was necessary to screen prospective workers because he was acquainted with most of them. In fact, Stark said he has known the gymnasium aide for five years, since the time that Combs attended a YMHA program funded by the BSP.⁹

As a result of this investigation, however, the YMHA has tightened its security clearance procedures. Stark provided copies of the new employment forms that all prospective employees and volunteers now must complete before working for YMHA programs funded by the BSP. These materials include a job application, which requests information on all criminal convictions and seeks three references, and a background check release form.¹⁰

3. Community Counseling Mediation Program

In February 1999, the Community Counseling Mediation Program (“CCMP”), an organization that provides therapeutic services to high risk populations, assigned eighteen-year-old Rudolph Shepherd to work with children in a BSP at PS 138 in Brooklyn. Although CCMP applicants, including Shepherd, are employed with the expectation that they will have direct and unsupervised contact with schoolchildren, they are not fingerprinted, and their fitness to work with students is not properly evaluated. Shepherd illustrated the danger of that policy when, just a few months after he was hired, in April 1999, he was arrested for Rape in

⁹ Combs had a sealed criminal record when he went to work for the YMHA. Therefore, it is possible that he would have been hired even if he had been fingerprinted.

¹⁰ Stark said that current BSP workers must complete these forms as well.

the Third Degree after allegedly having sexual intercourse with a thirteen-year-old female student while he was working at the school.¹¹

Remarkably, Shepherd ignored the section on the application that asks prospective employees to provide three references, yet the agency cleared him to work at the school. CCMP Director Marie Louis was surprised to learn from our investigator that Shepherd did not complete his paperwork. Although she was “pretty sure” that she checked his three references, Louis had only a vague recollection of calling Shepherd’s “uncle,” and no memory at all of the other two. Moreover, the director was unable to produce any documentation verifying her claim that she did, in fact, obtain and check Shepherd’s references.

Even if completed properly, the CCMP application is deficient and fails to adequately address the background of a prospective worker. Shepherd was asked to disclose whether he was “convicted of a felony within the last seven years” and was not required to reveal any other felonies, misdemeanors, or pending criminal actions.¹² Moreover, there are no procedures in place to verify that the information provided is accurate. According to Director Louis, fingerprint checks are not conducted because the CCMP does not have the funds to pay for them.

¹¹ As a result of this arrest, Shepherd was fired from the CCMP. The Board’s Office of Appeals and Review has since placed him on its ineligible inquiry list. His case is currently pending.

¹² Prior to the April 1999 incident, Shepherd did not have a criminal record.

The School Volunteer Program

Sylvester Cobb was hired as a volunteer with the New York City School Volunteer Program (“SVP”) and sent to work with students at PS 174 in District 19 in Brooklyn, only a few months after he was arrested for sexually abusing an eight-year-old girl.

SVP, a non-profit organization founded in 1956, places over 9,000 volunteers in 700 schools located in the five boroughs.¹³ Anyone in the community can volunteer, even if he or she does not have a child in the school system. In fact, over 30% of the participants are not parents of students.

A prospective school volunteer does not have to be fingerprinted. Instead, SVP requires the individual to provide three references, take a tuberculosis test, and fill out an application. Although the applicant is asked about prior convictions, there are no questions regarding pending criminal actions. Moreover, no checking is done to verify the information provided.

Cobb has a past that, if reviewed, should have prevented him from becoming a school volunteer. In May 1993, he was arrested for Assault in the First Degree, a felony, and pled guilty to a misdemeanor assault charge. He was placed on probation for three years. Only two and one-half years later, in December 1995, Cobb violated the conditions of his probation when he was arrested for, and pled guilty to, the misdemeanor charge of Criminal Possession of a Controlled Substance in the Seventh Degree. In January 1996, he was sentenced to serve

¹³ The Board contributes approximately \$150,000 annually to SVP, constituting less than 10% of its budget. In addition to that money, the Board also donates the services of two full-time teachers.

four months in jail. On August 12, 1997, Cobb was arrested for Sexual Abuse and Endangering the Welfare of a Child. The victim was an eight-year-old girl who was the daughter of Cobb's friend. On May 18, 1998, Cobb pled guilty to Sexual Abuse in the First Degree, a felony, and was registered as a sex offender and sentenced to intensified supervision probation.¹⁴

Shortly after this last arrest, but prior to his conviction, Cobb applied to work as a school volunteer with SVP. On September 30, 1997, Cobb completed the application and appeared to be a perfect candidate because he did not reveal any of his criminal history. He did not mention that there was a pending action against him for sexually abusing a child because the application did not require it. When asked to disclose his prior convictions, he lied and indicated that he had none.

In October 1997, Cobb was cleared to work at PS 174 even though he failed to satisfy even the minimal requirements in place at that time; he never supplied a single reference and did not take a tuberculosis test. Although Donald Ruff, a training specialist at SVP, claimed that Cobb never received clearance to volunteer because he had not turned in all of the required paperwork, that assertion was refuted by Kathryn Warren, the principal at PS 174. She said that Cobb worked at her school from October 1997 to May 1998 after being cleared by Ruff.¹⁵

¹⁴ This type of probation requires Cobb to see his probation officer at least twice a week, and receive two home visits a month from him. Cobb is also subject to visits in the workplace, psychiatric evaluations, and random drug testing.

¹⁵ SVP ordered Cobb to stop volunteering in May 1998. The Board's Office of Appeals and Review has since placed him on the ineligible inquiry list.

In fact, Warren produced a letter from Ruff which indicated that Cobb, along with numerous other applicants, had completed the screening and orientation process and was “ready to be placed” in her school.¹⁶ Warren also gave investigators an “SVP badge” issued to Cobb, indicating that he was approved to volunteer during the 1997-1998 school year.¹⁷ Because of Ruff’s errors, Cobb was able to work inside PS 174 for approximately eight months until he was convicted of Sexual Abuse and registered as a sex offender.

As a result of this incident, Carol Kellermann, the executive director of SVP, has tightened the organization’s hiring procedures.¹⁸ First, she instructed the staff never to inform a principal that a volunteer has been cleared to work at the school until that individual has provided all required documentation and has indeed been approved. Moreover, Kellermann now requires SVP staff members to sign off on every application that they review, and encourages them to contact a supervisor when there is any uncertainty regarding an applicant’s fitness to serve as a school volunteer. She also formally reminded staff members that they must personally issue SVP badges and only to those who have completed the entire screening process. Finally, she created new SVP badges that contain a bar code, making it impossible for anyone to fraudulently duplicate them. However, Kellermann declined to institute a mandatory fingerprinting policy.¹⁹ Therefore, SVP remains unable to verify information supplied by potential volunteers.

¹⁶ She provided investigators with a copy of an undated letter from Ruff, which is on SVP letterhead.

¹⁷ Ruff told his supervisor that he did not personally give Cobb his badge. Instead, he said that he gave some badges, including Cobb’s, to the lead volunteer, who distributed them before she was supposed to. Ruff did not explain why Cobb’s name was included in his letter to Warren.

¹⁸ In addition, Kellermann reprimanded Ruff by placing a letter in his personnel file.

¹⁹ Although she recognizes the merits of fingerprinting, Kellermann advocates against doing so because it may have the effect of dissuading many people from volunteering.

Some may think that SVP need not screen parents of students as carefully as members of the general public, yet this case proves otherwise; Sylvester Cobb was a parent of a student at PS 174. While parental involvement is an important educational resource that should be encouraged and accepted, it is clear that even family members can have dangerous criminal backgrounds and be an unsuitable presence in the school.

Private Custodians

Unlike their counterparts who are hired by the Board, custodians employed by private landlords are not required to be fingerprinted before working inside a school building. As a result, it is possible for a violent felon working in a building leased by the Board to come in contact with unsuspecting students and staff. This is exactly what happened when Marlin Mickens, convicted of two violent felonies, was not fingerprinted before working as a custodian at the Ida B. Wells School, a facility located in Queens designed exclusively for pregnant girls.²⁰

Mickens was employed by Grand Equi Inc., the owner of the building that houses the Ida B. Wells School.²¹ Under the terms of its lease with the Board, Grand Equi Inc. was required to supply “at its own cost and expense ... custodial services,” but did not have to check the credentials of its staff. Absent a contractual obligation, Grand Equi Inc. did little to verify the backgrounds of its custodians. Thus, Mickens was not subjected to fingerprinting or

²⁰ Mickens worked as a custodian from April 1996 to November 1997. As a result of this case, the Board’s Office of Appeals and Review has placed him on the ineligible inquiry list.

²¹ Grand Equi Inc. leases three floors of its building to the Board.

a comprehensive background inquiry. Robert Falcone, a representative of Grand Equi Inc., said that the custodian had provided a favorable recommendation from his previous employer.

If Mickens had been fingerprinted, Grand Equi Inc. would have learned that he had an extensive criminal history and, in fact, had spent a total of four and one-half years in prison. In February 1989, Mickens was arrested for Attempted Murder in the Second Degree, Assault in the First Degree, and Criminal Possession of a Weapon. He pled guilty to the assault charge and was sentenced to a minimum of two years and a maximum of six years in prison. He served two years and was paroled in February 1991. In October 1992, Mickens was arrested for Criminal Possession of a Controlled Substance, Criminal Possession of a Weapon, and Criminal Possession of Stolen Property. He pled guilty to the weapon possession charge and was sentenced to a minimum of thirty months and a maximum of five years in prison. He served two and one-half years of his prison term and was placed on parole in April 1995. Mickens was on parole when he was hired by Grand Equi Inc. and sent to work in the Ida B. Wells School as a custodian.

Even though Mickens's duties enabled him to enter most areas of the building, Grand Equi Inc. failed to adequately review his background. Thus, a violent felon was able to have extensive access to a place where numerous public schoolgirls spent a large portion of their day. Indeed, he was fired after demonstrating his violent tendencies during an argument with a teacher at the school.

Temporary Workers

Julius Tate, working for GoodTemps, a non-profit temporary employment agency, was assigned to drive a van for the Board's Bureau of Administrative Services ("BAS") in January 1998.²² Because no background check was required and none was conducted, both the Board and GoodTemps did not know that Tate had an extensive criminal record and, in fact, was on parole for robbery at the time he began work. Moreover, even though Tate's main responsibility involved driving to various Board locations to deliver mail, no one was aware that he did not possess a driver's license until our investigation uncovered that fact.

GoodTemps, a division of Good Will Industries, places temporary employees in various school facilities. In order to do so, GoodTemps and the Board entered into a contract which does not require the agency to conduct fingerprint checks or to investigate the credentials of prospective employees. Without such a contractual obligation, the agency does little to scrutinize the backgrounds of the individuals it hires to work in the schools. Although it requires them to complete an application, GoodTemps does not conduct a fingerprint check to verify the information provided. Thus, when Tate indicated on his GoodTemps application that he had no criminal record, the agency had no way to know whether this was correct.

We know now that Tate lied on his job application. He has a history of criminal behavior that spans thirty years, and he has served almost three years in prison. The following is a summary of Tate's extensive criminal history:

²² Tate drove a van for the Board until July 1998 when he was arrested on a robbery charge, which was later dismissed. His employment at BAS was then terminated. The Board's Office of Appeals and Review has since placed him on the ineligible inquiry list.

- In July 1977, Tate was arrested for Grand Larceny and Criminal Possession of Stolen Property. He pled guilty to Disorderly Conduct and paid a fine.
- In July 1979, Tate was arrested for Reckless Endangerment, Resisting Arrest, and Obstructing Governmental Administration. Again, he pled guilty to Disorderly Conduct and paid a fine.
- In April 1984, Tate was arrested for Burglary, Sexual Abuse in the Second Degree, and Criminal Possession of a Weapon. He pled guilty to Sexual Abuse in the Third Degree and received a conditional discharge.
- In February 1994, Tate was arrested for Rape in the First Degree, Unlawful Imprisonment, and Unauthorized Use of a Vehicle. He pled guilty to Assault in the Third Degree and served sixty days in prison.
- In April 1994, Tate was arrested for Criminal Sale of a Narcotic Drug and Possession of a Narcotic Drug with the Intent to Sell. He pled guilty to Attempted Criminal Sale of a Narcotic Drug in the Third Degree and was sentenced to sixty days incarceration and five years probation.
- In August 1994, while he was on probation, Tate was arrested for Robbery in the Second Degree and Assault in the Second Degree. He pled guilty to Robbery in the Third Degree and was re-arrested while awaiting sentence.
- In September 1994, Tate was arrested for Menacing, Criminal Trespass, and Criminal Contempt. In November 1994, Tate pled guilty to Menacing and was sentenced to sixty days in prison.
- In February 1995, Tate was sentenced to two-to-four years incarceration for the Robbery charge. He entered prison in March 1995, and served a little over two years.
- In July 1997, Tate was placed on parole until November 1998. During this time, he was hired by GoodTemps and sent to work in the Board.

Although not required to fingerprint its employees, GoodTemps certifies in the contract with the Board that all of its temporary employees will be “fully qualified in accordance to the job title and duties and responsibilities.” The agency failed to meet even this minimum

obligation. Though Tate was placed as a driver, GoodTemps never verified that he possessed a valid driver's license which, in fact, he did not. During our investigation, we discovered that Tate merely had a learner's permit, which allowed him to drive only if accompanied by a licensed individual. Thus, Tate drove a Board van for six months in violation of State law.

Donald Goldberg and Lawrence Gelsomino, supervisors at BAS, explained how Tate was placed as a driver in their office despite having an extensive criminal background and no valid license. The two supervisors said that when the Board decided to hire a driver, GoodTemps sent several prospective temporary employees, including Tate, to BAS to be interviewed. Goldberg and Gelsomino both claimed that they relied on GoodTemps to provide them with candidates without criminal records. Nevertheless, the two asked Tate if he had ever been arrested and the prospective employee said no. However, no attempts were made to verify that statement.

Moreover, Goldberg and Gelsomino assumed GoodTemps would not send Tate to apply for the job without a valid driver's license, but admitted that they erred in failing to discover that he did not possess one. Although they asked Tate to produce his license, they did not realize that he showed them a learner's permit, even though those words were written in large bolded letters.

Non-Board Instructors

The Board pays organizations to provide instructors in certain subject areas including dance, music, and drama. Often, these individuals work full-time and have regular and direct

interaction with students. Yet, current Board practices do not ensure that adequate screening of these individuals occurs. We discovered that numerous arts instructors were not fingerprinted prior to working in public schools and, in fact, their employers and the Board knew little about their backgrounds.

There are at least two means by which the Board contracts with outside groups to provide instructors with special training to schools: the Multi-Use Agreement (“the Agreement”) and the Listing Application. While both contracts bring outside individuals into the public school system, they are used in different circumstances and are administered differently as well.

An organization is required to sign the Agreement if it operates a program out of a Board facility during school hours. In such cases, the Board has the discretion to fingerprint employees whom it determines will “hav[e] access to public school students outside of the presence of a Board of Education employee.” In practice, the Board does not make case-by-case decisions regarding which employees will have unsupervised contact with children and, instead, where an Agreement is in effect, assumes that everyone working inside a school building during school hours has the potential to be alone with students.²³

In light of this assumption, the Board informs an organization which is a party to the Agreement that it must fingerprint all employees having access to the school during the day. After fingerprinting is conducted, the organization is told which of its employees has been

²³ Investigators were told this by Geraldine Prshivalko, the section chief of Site Planning and Administration in the Facilities and Acquisitions Office, part of the Division of School Facilities, which oversees Agreements.

given security clearance. Moreover, the principal at a school where the program will operate is responsible for ensuring that others do not enter the building.²⁴

A majority of the organizations operating under the Agreement conduct Headstart and other day care programs.²⁵ However, in at least one instance, an organization under the Agreement conducts the music program at a public school, and many of its members are full-time instructors.

The Board enters into contracts to provide other arts education programs by establishing Listing Applications with organizations that do not operate out of school facilities. Most of the time, the services contracted for are short-term, such as artistic performances and cultural workshops, or involve off-site tours where Board employees will always be present. Since it is often the case that the staff of an organization providing services under a Listing Application will spend minimal time in a school or have only supervised contact with students, there is no mandatory fingerprinting requirement. Nevertheless, on some occasions, the Board uses the contract to purchase long-term arts instructors, who are not necessarily required to submit to background checks.

Two unusual programs, the Boys Choir of Harlem, Inc., which operates under the Agreement, and the Bronx Dance Theater, which established a Listing Application, illustrate the shortcomings of each of these contracts in relation to background and fingerprint checks.

²⁴ The Board makes clear that it will consider the Agreement breached if employees who have not received clearance are allowed to work at the schools.

²⁵ This is according to Rose Diamond, Senior Director for Planning and Capital Development at the Division of School Facilities, who provided investigators with a list of these organizations.

The Multi-Use Agreement

The Boys Choir of Harlem

The Boys Choir of Harlem, Inc. (“Boys Choir”) entered into a Multi-Use Agreement with the Board in order to run the music program at the Choir Academy of Harlem (“Choir Academy”), an alternative school located in District 5. Under current Board policy, an organization under the Agreement must fingerprint all employees working in the building during school hours. However, Duane Whitley, a Boys Choir employee, was not fingerprinted before working as a substitute dance teacher from January 1997 to June 1997 because his employer violated the contract, and the Board did not demand compliance.²⁶ Our discovery that Whitley had not been fingerprinted came after he was arrested in June 1997 for Sexual Abuse in the First Degree after he allegedly inappropriately touched a fifteen-year-old male student he met at the Choir Academy.²⁷

In explaining the failure to check the teacher’s background in accordance with the Agreement, Horace Turnbull, Executive Vice President of Operations and Programs at the Boys Choir, claimed that only full-time employees had to be fingerprinted, and that Whitley, a substitute teacher, was considered part-time. However, Turnbull’s distinction between fingerprinting full-time and part-time employees is not permitted under the Agreement, which requires fingerprinting of all such personnel. This protection exists because, regardless of the

²⁶ Whitley had no criminal record when he went to work for the Boys Choir. Therefore, even if Whitley were subjected to fingerprinting, he would have been hired.

²⁷ As a result of this arrest, the Board terminated Whitley’s employment, and the Board’s Office of Appeals and Review has placed him on the ineligible inquiry list. In August 1999, Whitley pled guilty to the misdemeanor of Endangering the Welfare of a Child. He is currently awaiting sentencing.

number of hours worked, the teachers may have close contact with students, as well as a significant impact on their welfare.

In fact, the organization did not even adhere to its own understanding of the contract's provisions. At the time of Whitley's arrest, Turnbull provided our office with a list of twenty-three full-time employees who had not been fingerprinted. The same list revealed that eighteen part-time employees had not been fingerprinted.²⁸ Thus, out of the approximately seventy Boys Choir employees working in the school, forty-one had never received security clearance. Clearly, the Boys Choir violated the Agreement.

Individuals at the central Board and at the school level disagreed about which unit was responsible for ensuring that the Boys Choir comply with the contract terms. According to Geraldine Prishivalko, the section chief of Site Planning and Administration in the Facilities and Acquisitions Office, it was ultimately the principal's responsibility to make sure that all non-Board individuals working in the school received security clearance, a process which began when the organization sent the Board a list of its employees. After background checks were administered, the Board's Division of Human Resources forwarded the names of the employees who were granted clearance to the principal and the organization. In that same letter, the principal was instructed to provide this information to school safety personnel within the facility in order to prevent persons without authorization from entering the building.

However, John Treadwell, the principal of the Choir Academy, denied having any responsibility in the security clearance process. Treadwell admitted that he received letters

²⁸ This list was generated in July 1997 shortly after this office was informed of Whitley's arrest for sexual abuse.

informing him which Boys Choir employees have been granted clearance, but he did not check whether the Boys Choir employees working in his school were on the lists. Instead, Treadwell simply put the letters in his files, because he was “not told to do anything with them.” As a result of Treadwell’s lack of concern, the Boys Choir was able to grossly violate the Agreement; at the time this investigation began, more than 50% of its employees who were working in the school had not received security clearance.²⁹

The Listing Application

1. Bronx Dance Theater

In order for its members to teach at the Board’s Bronx Dance Academy (“the Academy”), the Bronx Dance Theater (“the Theater”), a private, non-profit organization, signed a Listing Application which, unlike the Multi-Use Agreement, does not mandate fingerprinting in all cases.³⁰ Indeed, our investigation revealed that a dance teacher (“Teacher A”) employed by the Theater and working at the Academy, who came to our attention as a result of an allegation of serious impropriety, was not fingerprinted before being sent to work with children on a regular basis.³¹ While it turned out that Teacher A neither had a criminal

²⁹ According to Dorothy Mayhew, the director of personnel at the Boys Choir, all employees who currently work at the Choir Academy during school hours, including full-time, part-time, and substitute teachers, have been fingerprinted.

³⁰ Pursuant to a license agreement, the Academy, an annex of IS 80 in District 10, conducts dance classes and academic instruction out of the Theater.

³¹ Our investigation, which began with an allegation of inappropriate touching against Teacher A, was not substantiated, and we therefore do not name him.

record nor committed any wrongdoing at the school, our investigation shed light on the loopholes in this contract.

Under the terms of the Listing Application, the need to fingerprint hinges on a page in the contract called the “security review form.” On that form, the organization, called a “vendor,” must adopt one of two certifications sections: “Section A” which states that staff members will always work in the presence of Board employees, or “Section B” which requires fingerprinting of staff members because they are going to be alone with students.

In theory, an opt-out provision is necessary because the 250-plus organizations that provide employees under Listing Applications have varying degrees of student contact. For example, some organizations are cultural institutions that furnish tour guides for students on class trips; others send entertainers for individual school performances; many groups conduct class workshops for a limited number of hours or days. In such cases, unsupervised contact with children is minimal. However, some, like the Theater, supply full-time class instructors who have regular, substantial, and often unsupervised interaction with schoolchildren.

According to Donna Maffei, a support administrator at the Board’s Office of Purchasing Management (“OPM”), which administers the Listing Application, the decision to fingerprint is left up to the organization, which will have to pay the fee if the check is conducted. Because many of the vendors are non-profit groups that want to avoid paying the costly fees, there is great incentive to opt out. Not surprisingly, Maffei said that about ninety-nine percent of these groups choose not to fingerprint.

Under current Board policy, almost every organization is allowed to opt out. Maffei said that if staff members from such groups are working inside the school, OPM assumes that

Board employees will be present and therefore fingerprinting is not required.³² At the same time, groups who perform services off school property do not need to fingerprint staff members as long as a Board employee accompanies the students. Thus, the vast majority of organizations can avoid the fingerprinting option, even when staff members, like Teacher A, are going to provide long-term teaching instruction to students.

The executive director of the Theater, Neil Goldstein, chose Section A and, as a result, no fingerprint check of Teacher A was required. In fact, Goldstein did not even ask the teacher to fill out a job application. According to the director, the only document he reviewed concerning Teacher A's background was the resume that the teacher provided. The Theater knew nothing else about Teacher A's past, despite the fact that he was hired to work in an area where he was going to come into physical contact with schoolchildren.

Section A should not be an option for groups that send instructors to work in schools on a regular basis since the idea that teachers will never be alone with students in that situation defies common sense. In fact, the Board acknowledges this concept in its treatment of organizations under the Agreement. Even if Board employees act as chaperones during classes, teachers will be unsupervised in the hallway, the cafeteria, and other common areas. Moreover, we learned from Teacher A that he was not constantly supervised by Board employees, even during class. According to the teacher, he was often left alone with students.

³² The Division of School Facilities comes to the opposite conclusion regarding the Agreement because it assumes that all employees working in the building will have unsupervised contact with students.

Teacher A was able to have unsupervised contact with students because no one informed the principal that he had not been checked and needed supervision. Juan Flores, the director of the Academy,³³ who worked at the school from December 1997 to June 1998, when the Theater's Listing Application was already established, said that OPM never told him that the Theater's staff members were not fingerprinted, and he was never given a copy of their security review form. Indeed, according to OPM Support Administrator Maffei, the Board has no mechanism in place to notify principals or other school personnel that staff members must be supervised when a vendor under a Listing Application opts out of fingerprinting by signing Section A on the security review form. Maffei claimed that it was the responsibility of the vendor to inform the principal that staff members must be chaperoned, but Flores stated that no one from the Theater did so. He said that he was told by his predecessor to supervise the Theater members, but was not advised that oversight should be constant. As a result, Flores was under the impression that he was to periodically observe the dance teachers in order to complete their staff evaluations.

Moreover, the Board never told the Theater to inform the Academy that its employees were not fingerprinted and should be chaperoned, and the responsibility is not spelled out in the contract.³⁴ Nevertheless, according to Maffei, the Board considers it the vendors' responsibility to communicate with the principals about the need for supervision.

³³ Flores, a Board employee, was the equivalent of a principal. Lisa Paolo is the current director.

³⁴ This is according to Lisbeth Arce, the Manager of the Theater, who has handled the Listing Application for the past two years.

2. The Actors Institute

The opt-out provision in the Listing Application also enabled Randy Hooks, employed by the Actors Institute, to work as an acting instructor at the Professional Performing Arts High School in Manhattan, without being fingerprinted. During an investigation which substantiated that Hooks made inappropriate sexual remarks to, and socialized with, underage students whom he allowed to drink alcohol, we learned that Hooks was not fingerprinted prior to teaching in that school.³⁵

The Actors Institute, which offers drama and musical theater instruction, established a Listing Application with the Board so that its members could teach schoolchildren. Twila Thompson, co-director of the Actors Institute, completed the security review form, at first certifying under Section B that her staff members would be alone with students and agreeing to fingerprint them.

However, at the suggestion of Violet Young, a purchasing agent at OPM, Thompson later changed the certification to Section A. According to Thompson, Young told her that fingerprinting would be too costly and ultimately unnecessary because her staff would never be alone with students. Investigators spoke to Young, who confirmed that under current OPM policy, fingerprinting is not necessary for staff of an organization working in a school building because of the assumption that Board employees will always be present. Clearly, however, there is no rational basis for this belief since Young and others at OPM have admitted that they

³⁵ On March 4, 1998, as a result of his behavior, Hooks was fired from the Actor's Institute and therefore no longer works in the school. The Board's Office of Appeals and Review has placed him on the ineligible inquiry list.

do not notify Board employees that staff members have not been fingerprinted and need supervision. Furthermore, once again, contrary to the information provided by Support Administrator Donna Maffei, no one from OPM asked Thompson to inform the school that the Actors Institute staff had not been fingerprinted.

Conclusion and Recommendations

Schools should be safe havens for children, equipped with the most comprehensive security procedures possible. However, while the Board screens its own employees as a protective measure, the presence of non-Board personnel, who have not been subject to background checks, threatens school safety and places students at risk. We therefore recommend that the Board improve its security clearance procedures for individuals who enter the schools through outside organizations.

The Beacon School Program

Individuals who work or volunteer in BSP activities run by agencies that are funded by the DYCD often have direct and unsupervised interaction with children. It is therefore necessary that their employers verify the information provided about backgrounds and thoroughly analyze all data to determine whether it is appropriate to allow them to work with students. Although the DYCD requires agencies to obtain an applicant's "credentials" and to check references, in practice, we found several instances where those requirements were not enforced. Therefore, we recommend that the Board work with the DYCD to ensure that all participating agencies meet their current obligations.

In addition, those requirements should be enhanced. All individuals who have direct and unsupervised contact with children on a regular basis should be fingerprinted. Others must complete a comprehensive job application and provide references which the agencies should verify and scrutinize.

We also recommend that the Board ensure that organizations which provide services inside its buildings report all incidents or allegations of abuse to program administrators. Agencies should also be required to inform BSP officials whenever they learn that one of their workers has been arrested. Those groups that fail to comply with any of these requirements should not be allowed to operate in school facilities.

School Volunteers

Because volunteers often have one-on-one contact with students, it is vital that they are fit to work with children and otherwise serve in the schools. Ideally, the Board would be in a position to require volunteer organizations to fingerprint and conduct thorough background checks on all individuals sent to work in the public school system. Nevertheless, we acknowledge that a blanket fingerprint requirement for all school volunteers may discourage some individuals from donating their time. In order to balance the need for security with the goal to encourage participation, we recommend that the Board consider fingerprinting all those volunteers who may have unsupervised contact with students and take other steps to ensure that all individuals are carefully screened and supervised.

Beyond fingerprinting, the Board must work with the sponsoring organizations to tighten their screening and hiring procedures. At a minimum, the Board must require such groups to include on applications questions that adequately address background and criminal history. It must then make sure that these applications are reviewed by trained individuals, who also conduct comprehensive hiring interviews and reference checks. The Board must

require the organizations to notify principals when volunteers will be in the school buildings so that Board employees can supervise them. Finally, Board employees must be made aware of the fact that these individuals require greater scrutiny. Organizations that fail to demonstrate a commitment to such procedures must not be permitted to operate in the schools.

Private Custodians

It is our recommendation that the Board insist that private landlords, who are currently supplying school facilities with their own custodial staff, use adequate screening procedures to hire them. Where maintenance staff have not been fingerprinted, the Board must require that criminal background checks be done immediately.

Furthermore, as the number of students enrolled in public schools continues to grow, it is likely that the Board will lease more space from landlords who hire private custodians. We therefore recommend that, when negotiating future leases, the Board direct landlords to fingerprint their maintenance people and to implement tight screening and hiring procedures that adequately review an applicant's background.

Temporary Employees

When temporary workers employed by outside agencies are placed in the school system, the Board must be confident that such individuals do not possess criminal backgrounds and are qualified to perform the tasks for which they have been hired. Therefore, it is our recommendation that the Board insist that temporary agencies fingerprint all employees who

may be sent to work in the schools. This is especially true for those who are hired for long-term temporary service, like Julius Tate. Moreover, the Board must, on its own, conduct thorough interviews of the temporary employees sent to work in the school system and require that they be supervised at all times.

The Multi-Use Agreement

The Multi-Use Agreement grants the Board discretion to determine which non-Board employees must receive security clearance before working with children. However, the Division of School Facilities made an across-the-board policy decision that all individuals with access to the school site during school hours are required to be fingerprinted, and it notifies organizations accordingly.

The Board has set up procedures to ensure that only those employees who have been cleared can enter the building. In addition to administering background checks, the Board informs the principal and organization about non-Board employees who have been cleared, and warns them that no one without clearance can enter the building. However, our investigation demonstrates the need for the Board to enforce its policy and procedures. The most effective way to do so is for the failure to comply with the requirements to result in disciplinary action.

In particular, we ask that the Board formally advise **John Treadwell**, the principal of the Choir Academy, of his obligation to ensure that non-Board employees in his school undergo security clearance procedures before they begin service, and that failure to do so will result in disciplinary action. At the time this investigation began, Treadwell ignored the

numerous letters sent from the Board regarding those who had been cleared to enter his school building, stating that he did not concern himself with this information, and he therefore allowed unscreened individuals to work there. Currently, as a result of this investigation, all Choir Academy employees who work during school hours have been fingerprinted and cleared by the Board. However, in the future, should Treadwell permit unscreened employees to work at the school, the Board must take appropriate disciplinary action against him.

By ignoring the contractual security clearance requirement, the Executive Vice President of Operations and Programs at the Boys Choir of Harlem, **Horace Turnbull**, violated the provisions of the Multi-Use Agreement and placed numerous schoolchildren at risk. Until we intervened, more than half of all Boys Choir employees had not been fingerprinted. Now, they all have been cleared. We recommend, however, that the Board closely scrutinize the Boys Choir to ensure continued compliance with all contract terms and, if they are not met, the Board must consider canceling the Agreement. Given that Turnbull ignored several letters from the Board in 1996 and 1997, which informed him that employees without clearance are not allowed to enter the school's premise, and that he was warned in the past that "the Board will consider the organization to have breached the agreement and will consider the organization in default," such an approach is long overdue.

The Listing Application

While individuals sent into schools by organizations operating under Listing Applications with the Board have varying degrees of contact with students, it is clear that those performing long-term duties should not be allowed to opt out of fingerprint checks. Currently,

far too much discretion is conferred upon OPM and the vendor to decide whether fingerprinting is necessary. Not surprisingly, this has resulted in too many situations where the vendor has simply and inappropriately opted out. Moreover, when that occurs, the school is often unaware of the need for closer supervision. We therefore recommend that the Board create formal guidelines that determine which vendors must fingerprint which employees. The Board must then take all necessary steps to ensure that all Board and non-Board personnel understand their obligations, must make certain that these procedures are followed, and must implement disciplinary action against those who fail to comply.

In some cases, the Board may determine that a vendor can opt out of fingerprinting because staff members will not have contact with students or will be fully supervised. When this occurs, it is our recommendation that the Board work with the vendors to make sure that they adequately screen and interview their staff. In addition, we recommend that the Board change the current procedure and require OPM – rather than the vendor – to notify school administrators that an organization has opted out of fingerprinting and that these employees must be supervised at all times.

Finally, we note that the Board's arrangements with the Bronx Dance Theater and the Boys Choir of Harlem, Inc. are similar, yet different contracts are used to employ their services. As a result, although both organizations are physically located within school facilities and have members teaching children, they are subject to different requirements regarding background checks.

In large part, this disparity exists because the Division of School Facilities, which administers the Agreement, and OPM, which handles the Listing Application, disagree on the

manner in which non-Board employees working in school buildings are supervised. While the Division of School Facilities assumes that these individuals are sometimes alone with students, OPM assumes that they are always chaperoned. Therefore, the Boys Choir, which operates under the Agreement, is required to fingerprint all of its employees who work in the building, whereas, under the Listing Application, the Theater is allowed to completely avoid fingerprinting. There is no rational basis for this disparate treatment. Moreover, the assumption that individuals will at times be alone with students is a safer approach. Thus, the Board should insist that the Theater and all similarly situated organizations fingerprint all employees working in Board facilities during school hours. The Board should then inform the principal which staff members have received clearance, and prevent others from entering the facility while school is in session.

Individuals

We note that the individuals named in this report who committed wrongdoing are no longer working within the Board's facilities and have been placed on the ineligible inquiry list. It is our recommendation that **Kevin Bunter, Christopher Combs, Rudolph Shepherd, Sylvester Cobb, Marlin Mickens, Julius Tate, Duane Whitley, and Randy Hooks** continue to be barred from any type of employment or volunteer work with the Board or in one of its facilities.