

Office of the Auditor General
Performance Audit Report

**Fingerprinting and
Criminal Conviction Monitoring of
Public School Contracted Staff**
Michigan Department of Education

June 2023

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The auditor general may make investigations pertinent to the conduct of audits.

Article IV, Section 53 of the Michigan Constitution



OAG

Office of the Auditor General

Report Summary

Performance Audit

Fingerprinting and Criminal Conviction

Monitoring of Public School Contracted Staff

Michigan Department of Education (MDE)

Report Number:

313-0640-21

Released:

June 2023

All individuals who regularly and continuously work under contract in a Michigan school district must be fingerprinted prior to employment. Thereafter, monitoring occurs through the State Rap Back process for criminal convictions which occur *during* school employment. School districts, the Michigan Department of State Police (MSP), and MDE are all required by State law to carry out separate and distinct actions related to fingerprinting and criminal conviction monitoring intended to protect Michigan's school children from contact with individuals with unsuitable criminal convictions. MDE's mandated responsibilities include both oversight of school districts' compliance with criminal history records check laws and notification to employing school districts of Rap Back criminal convictions for contracted staff.

In our Statewide survey of school districts, 91% indicated their district utilized contracted staff in areas such as substitute teaching, custodial and maintenance services, and food service; however, the total number of contracted staff working in Michigan's public schools is unknown because of a lack of available Statewide data.

Audit Objective			Conclusion
Objective: To assess the effectiveness of MDE's efforts to ensure that public school contracted staff are fingerprinted and monitored for criminal convictions.			Not effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
We estimated 4% of contracted staff reviewed were never fingerprinted for school employment. We also determined 7% of contracted staff reviewed were not fingerprinted timely. In addition, we noted MDE had no monitoring procedures to verify school districts' compliance with State law prohibiting them from employing individuals with listed offenses convictions and requiring specific written approval from school officials to employ individuals convicted of felonies (Finding 1).	X		Disagrees

Findings Related to This Audit Objective (Continued)	Material Condition	Reportable Condition	Agency Preliminary Response
MDE routinely utilized outdated and incomplete school employment data in its Rap Back notification process, which hindered its ability to determine whether convicted individuals were <i>currently</i> employed in a Michigan public school (Finding 2).	X		Partially agrees
MDE did not send Rap Back criminal conviction notifications to: <ul style="list-style-type: none"> Employing school districts for 13% of sampled contracted staff who were convicted of a crime(s) <i>during</i> their school employment. School district boards or governing bodies, as required by State law (Finding 3). 	X		Agrees
Because of the use of frequently unreliable information, an increased risk exists that MDE inappropriately removed some contracted staff from Rap Back criminal conviction monitoring (Finding 4).	X		Partially agrees
Observations Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
Although this audit focused on <i>contracted</i> staff working in public schools, the deficiencies noted within this report would extend to <i>all individuals</i> regularly working in schools, regardless of their employment arrangement (Observation 1).	Not applicable for observations.		
An evaluation of current statutory language is likely needed to help ensure the State's fingerprinting and criminal conviction monitoring laws' overall intent is being met and statutes provide for the best protection of Michigan's school children, including the potential need for: <ul style="list-style-type: none"> Clarification of key definitions. Consideration of the mandated frequency of school districts' submission of school employment information. Revisions to address the laws' silence on fingerprinting requirements for student teachers, required time frames for MDE's Rap Back notifications to school districts, and removal of individuals from Rap Back conviction monitoring (Observation 2). 			
The conviction information used in MDE's Rap Back monitoring process is limited to State-held criminal history information and does not include federal, out-of-state, and tribal conviction information from the Federal Bureau of Investigation (FBI) (Observation 3).			

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Office of the Auditor General
201 N. Washington Square, Sixth Floor
Lansing, Michigan 48913

Doug A. Ringler, CPA, CIA
Auditor General

Laura J. Hirst, CPA
Deputy Auditor General



OAG

Office of the Auditor General

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Doug A. Ringler, CPA, CIA
Auditor General

June 27, 2023

Dr. Michael F. Rice
Chair, ex officio, State Board of Education
Superintendent of Public Instruction
Michigan Department of Education
John A. Hannah Building
Lansing, Michigan

Dear Dr. Rice:

This is our performance audit report on Fingerprinting and Criminal Conviction Monitoring of Public School Contracted Staff, Michigan Department of Education.

Your agency provided the preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

Doug Ringler
Auditor General

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AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

EFFORTS TO ENSURE FINGERPRINTING AND MONITORING OF CRIMINAL CONVICTIONS

BACKGROUND

Michigan's school employment fingerprinting and criminal conviction monitoring laws are intended to protect Michigan's school children from contact with individuals with unsuitable criminal records (see Exhibit 6, Section 2). These requirements apply to all applicants and individuals working in school districts, including individuals who regularly and continuously work under contract in a school district* (hereafter referred to as contracted staff).

State law mandates the Michigan Department of Education (MDE), by authority of the State Board of Education, require each local school board, public school academy board, and intermediate school district (ISD) board and the officers of those boards to observe the laws related to public schools* (see Exhibit 6, Section 1), including those applicable to criminal history records checks.

Our performance audit* focused solely on MDE's roles and responsibilities related to fingerprinting and criminal conviction monitoring of contract staff working in Michigan public schools; however, it is important to note that State law requires school districts, Michigan Department of State Police (MSP), *and* MDE (see Exhibit 1) to carry out separate and distinct actions to help ensure the protection of school children as follows:

- School districts must require all contracted staff to have a Federal Bureau of Investigation (FBI) fingerprint-based criminal records check through MSP. State law specifically prohibits school employment for individuals with any conviction listed in the Sex Offenders Registration Act (hereafter referred to as listed offenses*) and requires written approval from the school board for all other felonies.
- MSP must retain school employment fingerprints on file for use in the State Record of Arrest and Prosecution Background* (Rap Back) criminal conviction monitoring process. The Rap Back process generates a conviction notification from MSP to MDE when an individual is convicted of a crime *after* fingerprinting.
- MDE, in turn, must notify the individual's employing school district of the criminal conviction indicated in the notification from MSP through the Rap Back process.

In 2019, MDE revised its procedures for processing Rap Back conviction notifications received from MSP and transitioned from a largely manual process to a process utilizing automated queries to

* See glossary at end of report for definition.

gather necessary employment information from the Registry of Educational Personnel* (REP) and school district contact information. MDE also has an established process for removing certain individuals from Rap Back criminal conviction monitoring to help manage the volume of unnecessary Rap Back conviction notifications received from MSP.

MDE works collaboratively with the Center for Educational Performance and Information* (CEPI) for the collection of various school district data required to meet federal and State laws, including the school district employment information and contact information used in MDE's Rap Back notification process. MDE is responsible for setting forth guidance and policy for data reporting requirements, and CEPI is responsible for electronically collecting, securely managing, and reporting education data for Michigan.

The number of contracted staff working in Michigan's public schools is undeterminable because of the lack of available Statewide data; however, our Statewide survey showed 91% of responding school districts utilized contracted staff. In addition, the 41 school districts we sampled for our testing reported to us that just over 5,000 contracted individuals were employed in their districts during the audit period in areas such as substitute teachers, custodial and maintenance services, and food service (see Exhibit 3).

AUDIT OBJECTIVE

To assess the effectiveness* of MDE's efforts to ensure that public school contracted staff are fingerprinted and monitored for criminal convictions.

CONCLUSION

Not effective.

FACTORS IMPACTING CONCLUSION

- Four material conditions* related to deficiencies in:
 - Monitoring school districts' compliance with statutory fingerprinting and employment action requirements (Finding 1).
 - Utilizing reliable school employment information to determine whether a convicted individual is currently employed in a Michigan school district (Finding 2).
 - Notifying employing school districts of contracted staff criminal convictions (Finding 3).
 - Removing contracted staff from the Rap Back criminal conviction monitoring process (Finding 4).
- The deficiencies reported in the four material conditions all have a direct impact on Michigan school districts' receipt of

* See glossary at end of report for definition.

criminal history information needed for school districts' employment decisions, including convictions occurring prior to and/or during an individual's school employment (see Exhibit 4).

- MDE implemented revised procedures in 2019 for processing Rap Back convictions notifications received from MSP. Specifically, MDE:
 - Ensured arrest, arraignment*, and conviction notifications received from MSP prior to and during development of its revised Rap Back procedures were processed for the selected notifications we reviewed.
 - Moved from a largely manual process to a process utilizing automated queries to sort notifications received from MSP and identify current school employment and school district contact information for all Rap Back conviction notifications.
 - Began notifying employing school districts of conviction information electronically via e-mail.
 - Processed Rap Back conviction notification batches, on average, within its established 21-day batch processing cycle for the period reviewed (see Observation 2 and Exhibit 5, Item 4).

* See glossary at end of report for definition.

FINDING 1

Monitoring of school districts' compliance with statutory fingerprinting requirements needed.

MDE had not implemented procedures to monitor school districts to ensure contracted staff were fingerprinted and employment actions were taken for identified criminal convictions, as required. State-level monitoring would help ensure all school districts comply with fingerprint-based criminal records check and employment requirements designed to protect Michigan's school children from contact with contracted staff who have serious criminal convictions.

State law mandates:

- MDE require each school district "to observe the laws relating to schools."
- Prior to employment with a school district, an individual must have an FBI fingerprint-based criminal records check through MSP.
- After hire, MDE must notify an individual's employing school district of criminal convictions it receives from MSP through the Rap Back process.
- Certain criminal convictions prohibit school employment; others require specific approval from school officials for an individual to be contractually employed in a school.

To execute the legal requirements above, fingerprint-based criminal records check requirements compel school districts, MSP, and MDE to carry out separate and distinct actions. School districts must require staff working regularly and continuously under contract to be fingerprinted and receive the criminal records check results from MSP to guide decisions regarding the individual's suitability to work in the school environment. MSP retains the fingerprints on file, and when an individual is convicted of a crime subsequent to fingerprinting, it generates a notification of the conviction to MDE. In turn, MDE notifies the individual's employing school district of the conviction for employment considerations and any necessary actions.

We performed an aggregate match of the 5,010 staff reported to us as working regularly and continuously under contract for 41 sampled school districts to MSP's fingerprint data. We also sampled contracted staff and requested additional supporting documentation from MSP and school districts for review. In addition, we interviewed MDE staff regarding its monitoring procedures. We noted:

We estimated approximately 4% of contracted staff reviewed were not fingerprinted for school employment.

- a. MDE did not monitor school districts for required fingerprinting actions prior to contracted individuals' school employment. Based on our review:
 - We estimated approximately 220 (4%) of the 5,010 contracted staff reviewed were never fingerprinted prior to school employment.

This deficiency in obtaining individuals' fingerprints is particularly concerning because the school districts would neither have FBI fingerprint-based criminal history information at the time of hire, nor be notified of criminal convictions after hire because the individuals would not be included in the Rap Back notification process.

- Fingerprinting was not timely completed at hire for 3 (7%) of 45 sampled contracted staff.

These three contracted staff were fingerprinted 23 days, 16 months, and 10 years, respectively, after they began working within the school districts. Two of the three staff had convictions. Although the convictions would not have automatically precluded school employment, the school districts would have been required to consider the convictions when making their employment decisions.

MDE did not monitor school districts' employment actions for contracted staff with serious criminal convictions identified through the fingerprinting process.

- b. MDE did not monitor school districts' employment actions for contracted staff with serious criminal convictions identified through the fingerprinting process. Monitoring would help ensure school districts do not hire or continue to employ individuals convicted of listed offenses, such as child sexually abusive activity or materials, and obtain approval from school officials for other felony convictions.

MDE informed us it expected school districts to comply with the legal requirements to have all staff fingerprinted prior to working in a school. MDE also informed us it relied on periodic compliance audits of noncriminal justice agencies performed by MSP to identify school staff who were not fingerprinted. However, our inquiries to MSP clarified these audits are not intended to evaluate whether all staff had been fingerprinted prior to working in public schools; rather, MSP's reviews are for the purpose of evaluating whether school districts are utilizing requested fingerprint results only for authorized purposes and complying with security protocols surrounding confidential FBI fingerprint information.

MDE should implement monitoring procedures that could include reviews of school district fingerprint request records and required self-disclosure and conviction action reports to help determine school districts' compliance with State law requirements. In addition, MDE should explore the feasibility of conducting matches with MSP fingerprint information to help identify contracted staff who were not fingerprinted for school employment.

We consider this finding to be a material condition because of:

- School districts making hiring decisions without FBI fingerprint-based criminal records check results that are potentially in noncompliance with State law.

- The absence of Rap Back criminal conviction monitoring for contracted staff who are not fingerprinted and the corresponding risk that criminal convictions *during* employment will go undetected by MDE and school districts.
- The resulting significant threat to child safety that could exist if individuals with unsuitable criminal convictions are provided direct and/or continued access to children through school employment.

RECOMMENDATION

We recommend that MDE implement procedures to monitor school districts to help ensure contracted staff are fingerprinted and employment actions are taken for identified criminal convictions, as required.

AGENCY PRELIMINARY RESPONSE

MDE provided us with the following response:

MDE disagrees with this recommendation.

The statutory provisions regarding fingerprinting do not confer on MDE the responsibility to oversee or monitor the fingerprinting process. The fingerprinting process requires coordination among the applicant, the district's school board, and the department of state police, without any involvement from MDE. For example:

- *The school board or board of directors must require the applicant to submit their fingerprints to the state police for the purpose of requesting a criminal records check. (MCL 380.1230a(1)).*
- *The applicant must give written consent to the criminal records division of the state police to conduct the criminal records check. (MCL 380.1230a(6)).*
- *The school district must request the criminal records check from the state police. (MCL 380.1230a(7)).*
- *The state police must provide the records to the school district within 30 days of the request. (MCL 380.1230a(9)).*
- *Under certain circumstances and with written consent, school districts can share the results of an applicant's or individual's criminal background check. (MCL 380.1230a(4) and (5)).*
- *The records shall only be used by the school district and only for the purpose of evaluating the*

individual's qualifications for employment. (MCL 380.1230a(8)).

A school district is required to utilize criminal history from initial fingerprinting when determining whether an individual is eligible for hire. MSP then provides MDE with data on those fingerprinted by school districts only when criminal history has been updated with an arrest and/or conviction.

Following hire, a school district must utilize this updated information provided by MDE through the Rap Back process when determining whether an employee may be retained. If the criminal record reveals a listed offense, the individual is not qualified for employment (MCL 380.1230c). Ultimately, the fingerprinting process and the resulting criminal records provided by MSP are used to give the school district information to make final employment decisions.

Further, MDE does not have the authority to view fingerprint records for all fingerprinted employees and would therefore not be able to implement the OAG's recommendation. Finally, MDE is unable to implement a consequence when districts fail to provide requested or required information.

Under statute, MDE's involvement in the process begins after the fingerprinting occurs and records are received. For example, if a school district decides to employ an applicant or individual whose criminal record contains an enumerated offense, the school district must disclose this employment decision to MDE. (MCL 380.1230a(10)).

In the interest of ensuring the safety of students, MDE will work with MSP to enhance monitoring processes.

**AUDITOR'S
COMMENTS TO
AGENCY
PRELIMINARY
RESPONSE***

MDE disagrees with our recommendation while simultaneously indicating it will enhance monitoring procedures in the interest of ensuring student safety. Also, MDE's response correctly delineates the requirements contained in *Michigan Compiled Laws (MCL)* Section 380.1230a related to applicants, school districts, and MSP. However, the response is silent regarding *MCL* Sections 380.1281(1)(a) and 380.1281(2) mandating *MDE require each school district to observe the laws relating to schools* and are the key statutory provisions underlying our recommendation. MDE informed us it expected school districts to comply with the fingerprinting requirements contained in law, yet MDE had not implemented procedures to verify compliance.

MDE also indicates it is not able to implement our recommendation because it is unable to view fingerprint records; however, as noted in the finding, MDE could implement corrective action that does not require MDE to view fingerprint records, such as reviewing school district fingerprint **request** records and

* See glossary at end of report for definition.

required self-disclosure and conviction action reports. In addition, MDE could explore other monitoring mechanisms that would not require MDE to review an individual's fingerprint records.

MDE's response provides no additional information to warrant a change in our recommendation.

FINDING 2

Reliable school employment information needed for criminal conviction monitoring.

MDE did not always utilize reliable school employment information when processing Rap Back conviction notifications.

When an individual is fingerprinted for school employment, State law requires MSP to keep the fingerprints on file for use in the Rap Back criminal conviction monitoring process. When an individual is convicted of a crime after fingerprinting, the Rap Back process generates a conviction notification from MSP to MDE. In turn, it is MDE's responsibility under State law to notify the individual's employing school district of the conviction.

MDE informed us it exclusively uses school employment information from REP to determine whether a convicted individual is currently employed and to identify the employing school district that must receive notification of the conviction from MDE. School districts are instructed to report all school personnel in REP for criminal conviction monitoring, including all directly employed and contracted staff.

Our review of MDE's Rap Back notification process determined REP was not a reliable source for up-to-date and complete school employment information because:

- State law only requires school districts to submit employment information in REP two times per year, in December and June.

State law only requires school districts to submit employment information in REP two times per year, which significantly hinders MDE's ability to reliably identify the *current* school employment status of convicted individuals.

This mandated semiannual submission frequency inherently causes lags of up to six months in the REP employment information for newly hired contracted staff, including contracted staff who shift their employment from one school district to another (see Exhibit 6, Section 3). Accordingly, MDE's capability to identify current school employment status for these individuals is significantly hindered. The following illustration helps demonstrate the impact of the REP employment information lag on MDE's capability to identify newly hired staff working in school districts:

REP Employment Information Lag Illustration

Employment information provided to us by 41 sampled school districts showed, on average, each school year approximately 1,200 contracted staff began employment, and just over 360 (30%) of these individuals were hired in July, August, and September. Because of the required semiannual reporting frequency, the contracted staff newly hired between July and September would not be reported by school districts in REP until December. Consequently, the current employment status of these individuals is undetectable by MDE from their time of hire at the beginning of the school year until they are first reported in REP in December.

MDE informed us it considers REP as the only readily available source of Statewide school employment information.

- REP information often did not include all contracted staff working in public schools.

To assess the completeness of REP employment information, we independently requested and obtained employment information from 41 sampled school districts and compared it, in the aggregate and on a sample basis, with the employment information reported in REP by the school districts. We noted:

- 4% of the 5,010 contracted staff reported to us as working in a school were never reported in REP by the sampled school districts. Therefore, MDE could never identify these contracted staff as employed in the school districts and make the required notification.
- 26% of the time, the sampled staff reported to us as working in a school were not reported in REP by the sampled school districts for all required semiannual submission periods. This means school employment is sporadically reported for a number of contracted staff, thereby diminishing MDE's ability to consistently determine whether an individual is currently employed.

School employment was only sporadically reported for over 25% of the contracted staff reviewed.

MDE did not monitor the completeness of REP employment information reported by school districts; instead, MDE stated it relied on school districts to comply with State law surrounding required REP submissions. MDE also informed us it relied on CEPI to perform checks on the accuracy and completeness of submitted REP data. Although CEPI performed electronic edit and quality checks to identify REP data anomalies, MDE possesses the statutory authority to access and review the supporting school district records to validate REP data accuracy and completeness.

We consider this finding to be a material condition because of:

- MDE's inability to meet its mandate under State law to notify employing school districts of contracted staff who have been convicted of crimes.
- School districts' inability to take necessary employment actions in compliance with State law because of the absence of Rap Back criminal conviction information for contracted staff.
- The known inherent lag that persists in REP employment information coupled with the significant number of contracted staff who are newly hired throughout each school year within Michigan's nearly 890 school districts.

- The significant exception rates related to individuals not included in REP, as required by State law.
- The potential risk MDE will inappropriately remove active contracted staff from the Rap Back criminal conviction monitoring process based on incomplete REP employment information (see Finding 4).
- The resulting significant threat to child safety that could exist if contracted staff with unsuitable criminal convictions have direct and/or continued access to children through school employment.

RECOMMENDATIONS

We recommend MDE monitor the school employment information used in its Rap Back criminal conviction notification process to ensure the reliability of the information.

We also recommend MDE pursue more timely reporting of employment information for newly hired contracted staff.

AGENCY PRELIMINARY RESPONSE

MDE provided us with the following response:

MDE disagrees with the first recommendation and agrees with the second recommendation.

MDE agrees that with increased capacity, monitoring could be enhanced. However, MDE disagrees with the OAG's position that MDE uses incomplete employment information. MDE uses employment information that is provided from and certified by school districts (through the Registry of Educational Personnel (REP)) to identify whether individuals are employed within a Michigan school district and determine the current employing school district for each convicted individual, if employed. When districts establish an account for REP data entry, the school district representative must agree on the security form to comply with all state laws regarding REP data entry. Thus, through this process, districts certify that the information submitted in REP is accurate.

Additionally, the OAG determined the inaccuracy of REP data through an information request process similar to that used by REP. The OAG did not use official documentation from the districts to confirm whether information they obtained was accurate and/or information within REP was not. MDE acknowledges that data inconsistencies exist between REP and OAG reporting. However, given the information reporting processes used, MDE posits that it is not possible to tell which information is more or less reliable.

MDE agrees school districts should be required by law to report employment information more frequently within REP to ensure information is submitted in a timely manner. However, per MCL

380.1281b, MDE and the Center for Educational Performance and Information (CEPI) cannot require more frequent reporting. To address this, CEPI and MDE jointly have sought legislative updates to require the reporting of employment changes in a more timely manner.

It should be noted that REP allows districts to voluntarily update personnel data throughout the year. MDE and CEPI have been working on targeted communications and trainings to emphasize the importance of more routinely updating employment records and the tie to school safety.

MDE is not opposed to additional monitoring of the information that districts input into REP; however, the State would need additional resources to carry out this function. Additionally, CEPI and MDE have received a grant to redesign and merge current employment and credentialing data systems into a single data system that will optimize data processes while reducing the reporting burden on all entities, such as the Rap Back processes.

**AUDITOR'S
COMMENTS TO
AGENCY
PRELIMINARY
RESPONSE**

MDE agrees monitoring of school employment information could be enhanced and more timely reporting of employment information for newly hired contracted staff is needed; however, MDE disagrees it uses incomplete employment information. MDE maintains REP information is accurate because it is certified by a school district representative. However, our review determined REP was not a reliable source for up-to-date and complete school employment information.

MDE incorrectly asserts "the OAG did not use official documentation from the districts to confirm whether information they obtained was accurate and/or information within REP was not." We conducted the following procedures:

- Obtained contracted staff employment date information from sampled school districts.
- Reviewed additional supporting information from the school districts to corroborate employment dates, such as employment date records gathered from external third-party vendor systems.
- Compared the employment date information to REP employment information.

Auditing standards affirm the reliability of audit evidence is increased when it is obtained from independent sources outside of the entity, such as the information we obtained from the school districts that included external third-party vendor records.

Also, MDE notes in its response districts are allowed to voluntarily update REP personnel data throughout the year; however, MDE did not utilize any updated personnel data for its Rap Back

process and solely relied on information provided by the school districts in the semiannual REP submissions.

MDE's response provides no additional information to warrant a change in our recommendations.

FINDING 3

Improvements needed to ensure employing school districts are consistently notified of Rap Back criminal convictions.

MDE did not notify the employing school districts of Rap Back criminal convictions for 13% of contracted staff reviewed.

MDE did not include school districts' boards or governing bodies in its Rap Back notification process.

MDE did not always notify the employing school districts when it received notice a contracted individual had been convicted of a crime, as required.

State law requires MDE to notify the superintendent or chief administrator and the board or governing body of the public school where an individual is employed if it receives notice from MSP the individual has been convicted of a crime.

We noted:

- a. MDE did not notify the employing school district for 2 (13%) of the 16 sampled contracted staff for whom MDE received a Rap Back conviction notification from MSP while the individual was employed.

In one instance, the lack of notification to the employing school district was particularly significant because the individual's conviction was for a non-listed felony offense. For this type of offense, State law requires employing school district officials to evaluate conviction notification information received from MDE and determine whether the contracted individual will be approved to continue working in the school district. In both cases, these contracted staff were reported in REP as employed by the sampled school district or the district's related ISD; however, MDE did not notify the employing district or the ISD of the conviction notifications received from MSP.

MDE informed us its Rap Back procedures do not include a supervisory review of the analysts' processing of conviction notifications from MSP to ensure it notifies all applicable employing school districts.

- b. MDE only notified school district superintendents or chief administrators of conviction information received from MSP and did not inform the boards or governing bodies. Instead, MDE indicated it relied on the district superintendent to notify the respective board or governing body. MDE further indicated it did not maintain contact information for school district boards or governing bodies to allow for such notifications.

We consider this finding to be a material condition because of the:

- Significant error rate.
- MDE's noncompliance with State law requirements for notifying employing school districts of contracted staff with criminal convictions.
- School districts' inability to take necessary employment actions in compliance with State law when known Rap Back criminal conviction information is not sent to the school district by MDE.

- The resulting threat to child safety that could exist if individuals with unsuitable criminal convictions are provided direct and/or continued access to children through school employment.

RECOMMENDATIONS

We recommend MDE notify the employing school district when it receives notice a contracted individual working in the district has been convicted of a crime, as required.

We also recommend MDE seek legislative clarification to determine whether its practice of placing reliance on school district superintendents to notify their respective board or governing body met and/or meets the intent of, and/or is supported by, MCL Section 380.1230d(7) and if remedial actions may be necessary.

AGENCY PRELIMINARY RESPONSE

MDE provided us with the following response:

MDE agrees with the recommendations.

It should be noted that steps have already been taken to address the initial recommendation. MDE examined the instances brought up by OAG and noted the cases are from the prior RAP Back process. The previous process relied on a manual examination of records and physical mailing of RAP Back letters to districts. MDE did not have a process for saving copies of the letters. This lack of maintaining records has been corrected in the new process that MDE developed with MSP. The current process was implemented mid-2019 that automated much of the checking against data systems to ensure school districts are appropriately notified.

MDE is seeking legislative changes to improve the procedures for ensuring that the appropriate parties are notified. Further, in the interest of school safety, MDE will work with MSP and CEPI to improve processes.

FINDING 4

Improvement needed in MDE's Rap Back removal process.

Many fingerprinted individuals who were never hired by a school district or have left school employment continue to be subject to Rap Back criminal conviction monitoring.

State law is silent on requirements and/or responsibilities related to removing individuals from the Rap Back process.

MDE needs to strengthen controls to ensure its removal of contracted staff from the Rap Back criminal conviction monitoring process is appropriate.

When an individual is fingerprinted for school employment, State law requires MSP to keep the fingerprints on file for use in the Rap Back criminal conviction monitoring process. When an individual is convicted of a crime after fingerprinting, the Rap Back process generates a conviction notification from MSP to MDE. In turn, it is MDE's responsibility under State law to notify the individual's employing school district of the conviction for employment consideration and any necessary actions.

State law is silent on requirements and/or responsibilities for removing individuals from the school employment Rap Back criminal conviction monitoring process and, therefore, many fingerprinted individuals remain subject to the process even though they were never hired by a school district or have left school employment. Consequently, MDE regularly receives conviction notifications for individuals who are not working in a Michigan school district. To help manage the volume of unnecessary Rap Back conviction notifications received from MSP, MDE implemented a process in which it requests MSP to remove individuals from Rap Back monitoring based on MDE's review of REP employment information.

We noted MDE's Rap Back removal process could lead to inappropriate removal of contracted staff with criminal convictions who are working in Michigan school districts because of MDE's reliance on REP employment information, which we determined to be frequently unreliable (see Finding 2). To evaluate whether MDE's reliance on REP employment information resulted in the incorrect removal from the Rap Back process of convicted contracted staff who were working in public schools, we compared 5 sampled contracted staff MDE removed from the Rap Back process with employment information we independently obtained from the applicable sampled school district. Our review determined 1 (20%) of the sampled contracted staff was working in a school and MDE should not have removed the individual from the Rap Back monitoring process as described below:

MDE Rap Back Removal Illustration

MDE received notification from MSP through the Rap Back process in December 2017 that the contracted individual was convicted that same month. Upon receipt of the conviction notification from MSP, MDE followed its practice of reviewing the two most recent semiannual REP employment information submissions to determine whether the individual was working in a Michigan public school. Based on its review, MDE concluded the individual was no longer working in a Michigan public school because the employing school district had not reported the individual in its REP submissions (see Finding 2). Consequently, MDE requested MSP to remove the individual from the Rap Back process. However, the information we obtained from the school district indicated the contracted individual was hired in September 2017 and still working at the time of the conviction.

A sound removal process is critical because inappropriate removal of an active contracted staff from Rap Back criminal conviction monitoring can lead to immediate *and* future risk to child safety.

There is both an immediate impact and future risk associated with MDE's inappropriate removal of active contracted staff from the Rap Back process as follows:

- At the time of removal, MDE would not inform the school district of the contracted individual's known conviction. In the illustration, MDE did not inform the school district of the contracted individual's December 2017 conviction. Note that because this conviction was not a listed offense, it would not have precluded continued school employment per State law.
- Going forward, a removed contracted individual would no longer be monitored for future criminal convictions through the Rap Back process. In the illustration, the contracted individual was employed beyond December 2017, but was no longer monitored for future criminal convictions because of MDE's Rap Back removal.

MDE retained separate records for each removal request batch sent to MSP; however, it did not maintain a combined listing and could not readily determine the total number of individuals for which it had requested removal from the Rap Back criminal conviction monitoring process. Consequently, in the absence of such a listing and using available records, we estimated MDE requested removal for approximately 100 of the contracted individuals reported to us as working during the audit period by 41 sampled school districts; however, the total number of individuals MDE had removed Statewide since implementation of its Rap Back removal process in January 2006 was undeterminable.

MDE stated it relied on the State's established reporting mechanism in REP to determine whether individuals were currently employed in a school district and could be removed from Rap Back.

We consider this finding to be a material condition because of:

- School districts' inability to take necessary employment actions on criminal convictions that occur during employment in compliance with State law when MDE does not send known Rap Back criminal conviction information to the school district.
- The lack of continued criminal conviction monitoring for active contracted staff who are inappropriately removed from the Rap Back process, thus allowing for criminal convictions that occur during employment to go undetected by MDE and school districts.
- The resulting threat to child safety that could exist if individuals with unsuitable criminal convictions are provided access to children through direct and/or continued school employment.

RECOMMENDATION

We recommend MDE strengthen controls to ensure its removal of contracted staff from the Rap Back criminal conviction monitoring process is appropriate.

**AGENCY
PRELIMINARY
RESPONSE**

MDE provided us with the following response:

MDE partially agrees with the recommendation.

As stated within Finding #2, MDE agrees that with increased capacity and adjustments to legislation that dictate collection periods, monitoring could be enhanced. However, MDE disagrees with OAG's position that MDE removal of staff has been inappropriate as it utilizes employment information that is provided from, and certified by, school districts (through the Registry of Educational Personnel (REP)). REP is the legislated state collection system for school district employment data. Therefore, MDE's reliance on it is appropriate and ensures undue burden is not placed on districts to report the same data in multiple collection systems.

As noted in the response to Finding #2, MDE disagrees with the finding that REP data is "frequently unreliable." When districts establish an account for REP data entry, the school district representative must agree on the security form to comply with all state laws regarding REP data entry. Thus, through this process, districts certify that the information submitted in REP is accurate.

MDE and CEPI jointly are working on proactive approaches to further improve REP reporting along with the system. MDE is not opposed to additional monitoring of the information that districts input into REP; however, the State would need additional resources to carry out this function. Additionally, CEPI and MDE have received a grant to redesign and merge current employment and credentialing data systems into a single data system that will optimize data processes while reducing the reporting burden on all entities, such as the Rap Back processes.

**AUDITOR'S
COMMENTS TO
AGENCY
PRELIMINARY
RESPONSE**

MDE disagrees it inappropriately removed staff from the Rap Back criminal conviction monitoring and that REP data is frequently unreliable. However, MDE removed a contracted staff working in a school from the Rap Back monitoring process based on incomplete REP information. In addition, while MDE asserts that REP information is accurate because it is certified by a school district representative, our review determined REP was not a reliable source for up-to-date and complete school employment information (see Finding 2).

MDE's response provides no additional information to warrant a change in our recommendation.

OBSERVATION 1

Deficiencies noted in this audit report likely extend to *all* individuals regularly working in schools, regardless of employment arrangement.

Although this audit focused on contracted staff working in public schools, State law fingerprinting and criminal conviction monitoring requirements and MDE's related processes are the same for all individuals working in schools.

Therefore, the deficiencies noted in Findings 1 through 4 of this report would likely extend to *all* individuals regularly working in schools, including noncontract staff who are directly employed by school districts.

OBSERVATION 2

Evaluation of current statutory language likely needed to ensure the laws' overall intent is being met.

An evaluation of current statutory language related to fingerprinting and criminal conviction monitoring of individuals working in public schools is likely needed to help ensure the laws' overall intent is being met and statutes provide for the best protection of Michigan's school children.

We reviewed applicable State laws in our performance of this audit and noted areas where clarifications and/or changes may be needed, as noted in the table at the end of this observation and in Exhibit 5 on page 35. MDE also informed us it had established a workgroup to evaluate potential needed legislative changes related to fingerprinting and criminal conviction monitoring of individuals working in public schools.

We encourage continuance of the workgroup and fostering other collaborative efforts by relevant stakeholders such as the Legislature, MDE, school districts, parents, school employees and contractors, and other partners to evaluate the need for legislative clarification and/or changes to best protect school children.

Potential Statutory Clarifications and/or Changes Related to Fingerprinting and Criminal Conviction Monitoring	
Item 1	Statutory definitions related to individuals working under contract lack clarity and lead to varying application of fingerprinting requirements by school districts. State law requires individuals who "regularly and continuously work under contract" in a school district to be fingerprinted and provides a definition of this term. However, our sample of school districts showed ambiguous language within the definitions led to differing interpretations and likely resulted in school staff not being subject to fingerprint-based criminal records checks as the law intended.
Item 2	State law is silent on fingerprinting requirements for student teachers and other interns* working in schools. Current statute does not require fingerprint-based criminal records checks for student teachers and other interns, although these individuals typically have direct contact with school children similar to teachers and other instructional staff.
Item 3	The current mandated semiannual submission frequency of employment information causes the information to be inherently outdated for use in MDE's Rap Back notification process. State law only requires school districts to submit employment information in REP two times per year, in December and June. Accordingly, MDE's capability to identify current school employment status of actively contracted staff for use in the Rap Back criminal conviction monitoring process is significantly hindered (see Finding 2, first bullet).
Item 4	State law is silent on how quickly MDE must notify school districts of Rap Back criminal convictions it receives from MSP. Statute does not set forth a time frame for MDE's notification to school districts of criminal convictions. MDE takes up to 21 calendar days to provide an e-mail notification to school districts of criminal convictions it receives through the Rap Back monitoring process.
Item 5	State law is silent on requirements and/or responsibilities for removal of individuals from the State Rap Back process. Without statutory removal requirements, many individuals who have been fingerprinted to work in a school remain subject to Rap Back criminal conviction monitoring despite never being hired or leaving school employment (see Finding 4).

* See glossary at end of report for definition.

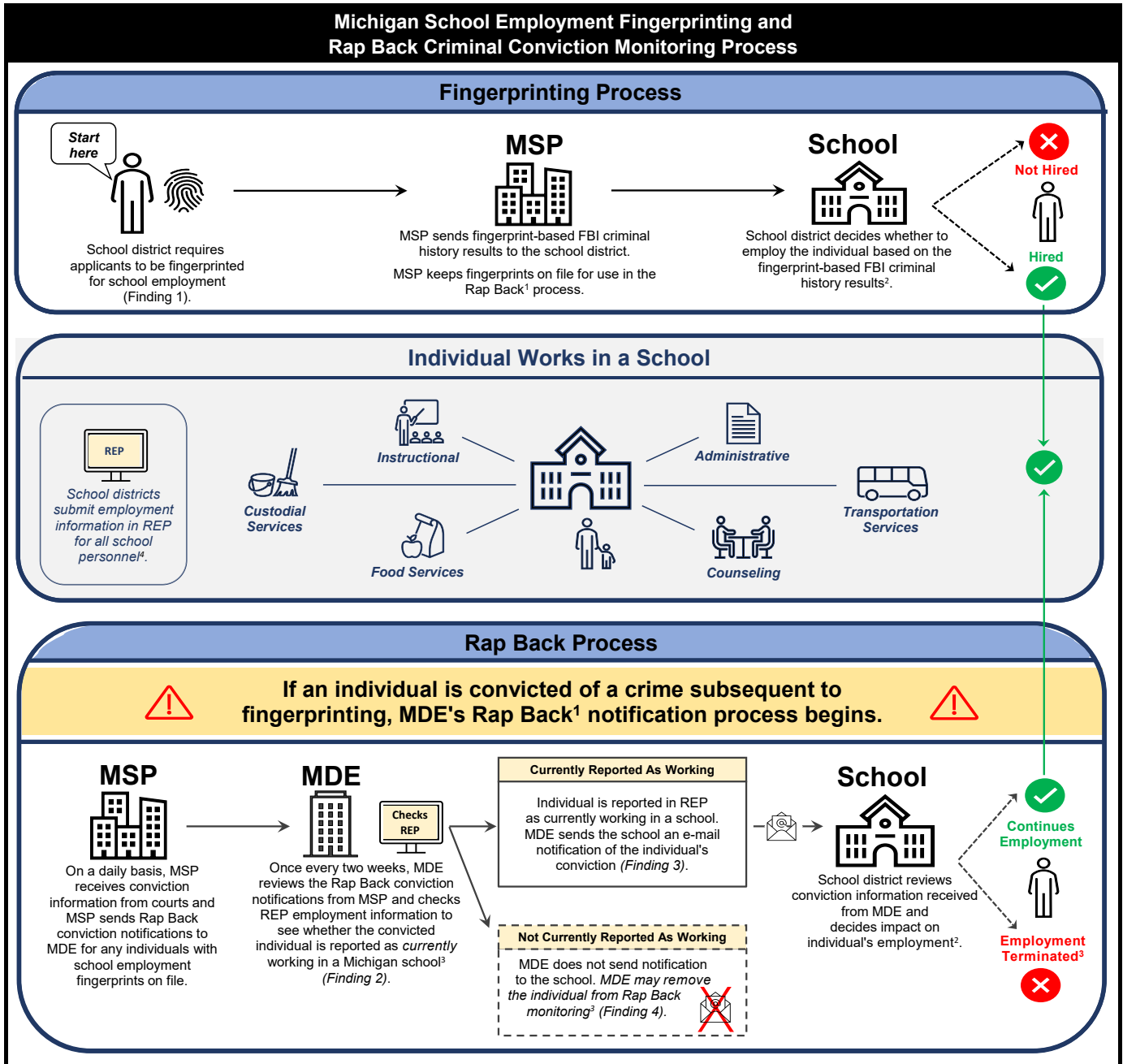
OBSERVATION 3

Michigan does not participate in the federal Rap Back criminal conviction monitoring program.

Initial FBI fingerprint-based criminal records check results provided to school districts prior to an individual's employment include federal, State, out-of-state, and tribal information. However, conviction information used in MDE's Rap Back monitoring process during an individual's employment is limited to State-held criminal history information and does not include federal, out-of-state, and tribal conviction information from the FBI because Michigan does not participate in the federal Rap Back program. Therefore, convictions in these jurisdictions during an individual's school employment would be unknown to MDE and the employing school district through the current State Rap Back process.

We encourage the relevant stakeholders to evaluate whether participation in the federal Rap Back program would benefit the State and enhance the protection of Michigan's school children.

FINGERPRINTING AND CRIMINAL CONVICTION MONITORING OF PUBLIC SCHOOL CONTRACTED STAFF
Michigan Department of Education



¹ A notification of criminal history that is sent from MSP to MDE when an arrest fingerprint and/or criminal conviction is submitted by police (arrest), prosecutors (arraignment), or courts (conviction) and matches against fingerprints previously submitted under MCL Sections 380.1230a or 380.1230g. For purposes of this report, the term Rap Back is used to refer to notifications only. This does not include federal Rap Back criminal history information (see Observation 3).

² State law precludes school employment for any conviction listed in the Sex Offender Registry Act; for any non-listed felony offenses, State law requires written approval from the school board in order for the individual to be employed in a school (MCL Sections 380.1230(9), 380.1230a(10), 380.1230c(1), and 380.1230g(8)).

³ Many individuals who have been fingerprinted for school employment but were never hired or have left school employment continue to be included in the Rap Back monitoring process. Consequently, MDE continues to receive and process conviction information for these individuals. See Observation 2, Item 5.

⁴ State law requires school districts to submit employment information in REP two times per year, in December and June (MCL Section 388.1619(3)).

Source: The OAG created this exhibit using process information obtained from statute, MDE, and MSP.

A map of Michigan showing its 83 counties. The map is color-coded to show the results of the 2010 Michigan House of Representatives election. Counties are shaded in light blue to indicate the winning party. The following table lists the counties and their corresponding election results:

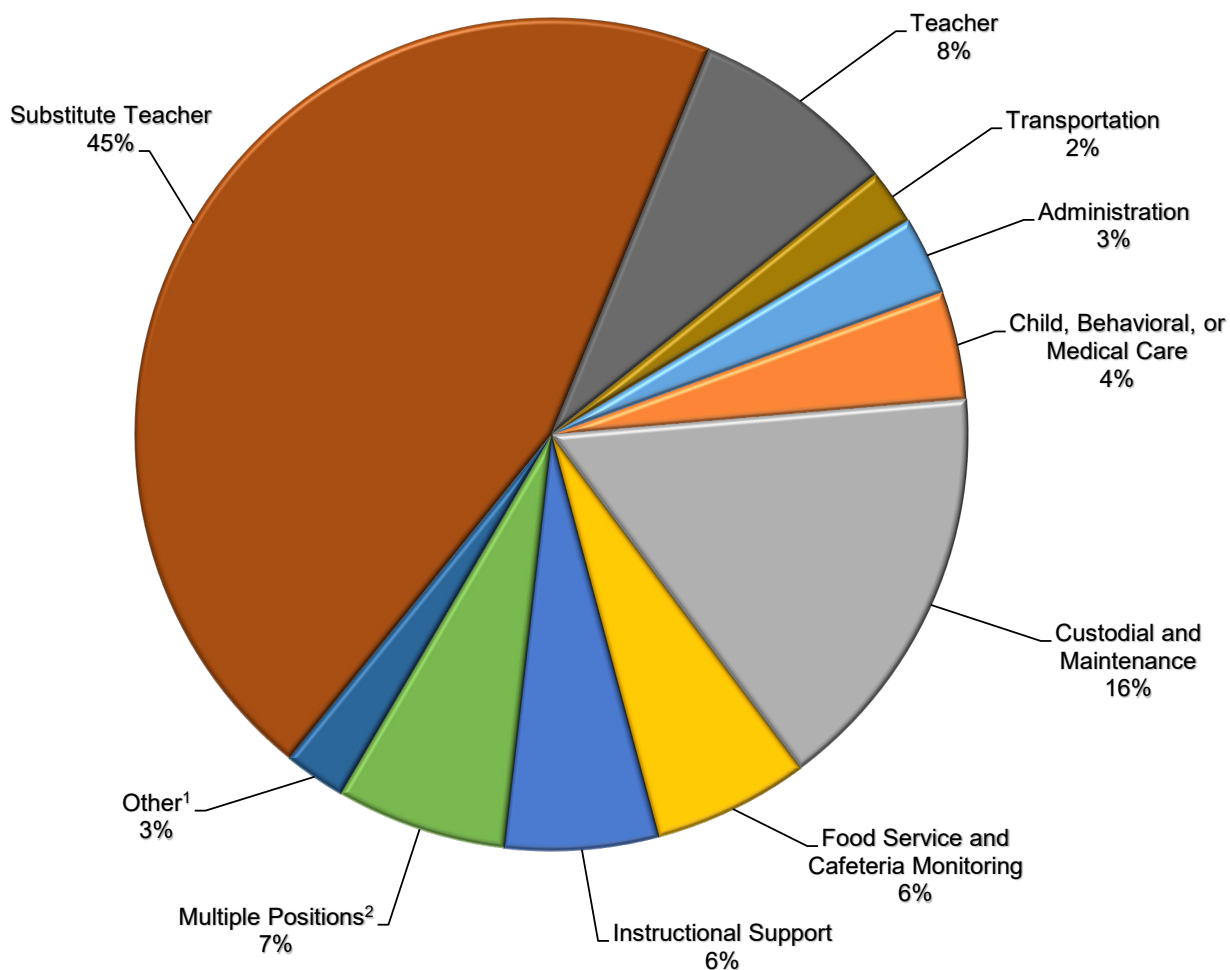
County	Winning Party	Count
Keweenaw	Democrat	0
Houghton	Democrat	1
Ontonagon	Democrat	1
Gogebic	Republican	0
Baraga	Republican	0
Marquette	Republican	0
Iron	Republican	0
Dickinson	Republican	0
Delta	Republican	0
Menominee	Democrat	1
Alger	Republican	0
Schoolcraft	Republican	0
Luce	Republican	0
Mackinac	Democrat	1
Chippewa	Democrat	2
Emmet	Republican	0
Cheboygan	Democrat	1
Presque Isle	Republican	0
Charlevoix	Republican	0
Antrim	Republican	0
Otsego	Republican	0
Montmorency	Republican	0
Alpena	Republican	0
Leelanau	Republican	0
Benzie	Republican	0
Grand Traverse	Republican	0
Kalkaska	Republican	0
Crawford	Republican	0
Oscoda	Republican	0
Alcona	Republican	0
Manistee	Democrat	1
Wexford	Republican	0
Missaukee	Republican	0
Roscommon	Republican	0
Ogemaw	Republican	0
Iosco	Republican	0
Mason	Republican	0
Lake	Republican	0
Osceola	Republican	0
Clare	Republican	0
Gladwin	Republican	0
Arenac	Republican	0
Oceana	Republican	0
Newaygo	Republican	0
Mecosta	Republican	0
Isabella	Democrat	1
Midland	Republican	0
Bay	Democrat	1
Huron	Democrat	1
Tuscola	Republican	0
Sanilac	Democrat	1
Muskegon	Republican	0
Montcalm	Democrat	3
Gratiot	Democrat	1
Saginaw	Republican	0
Kent	Democrat	3
Ottawa	Democrat	1
Ionia	Republican	0
Clinton	Republican	0
Shiawassee	Republican	0
Genesee	Democrat	1
Lapeer	Republican	0
St. Clair	Republican	0
Allegan	Democrat	1
Barry	Republican	0
Eaton	Democrat	1
Ingham	Democrat	1
Livingston	Democrat	1
Oakland	Democrat	3
Macomb	Democrat	3
Van Buren	Republican	0
Kalamazoo	Democrat	0
Calhoun	Democrat	1
Jackson	Democrat	3
Washtenaw	Democrat	0
Wayne	Democrat	5
Berrien	Republican	0
Cass	Republican	0
St. Joseph	Republican	0
Branch	Republican	0
Hillsdale	Republican	0
Lenawee	Democrat	2
Monroe	Republican	0

Source: The OAG prepared this exhibit from its sample of 42 school districts.

FINGERPRINTING AND CRIMINAL CONVICTION MONITORING
OF PUBLIC SCHOOL CONTRACTED STAFF

Michigan Department of Education

Contracted Staff Job Categories for Sampled School Districts
From July 1, 2018 Through June 30, 2021



¹ This category includes contracted staff positions in areas such as other interns, athletics, recess or hall monitors, theater, and summer camp workers.

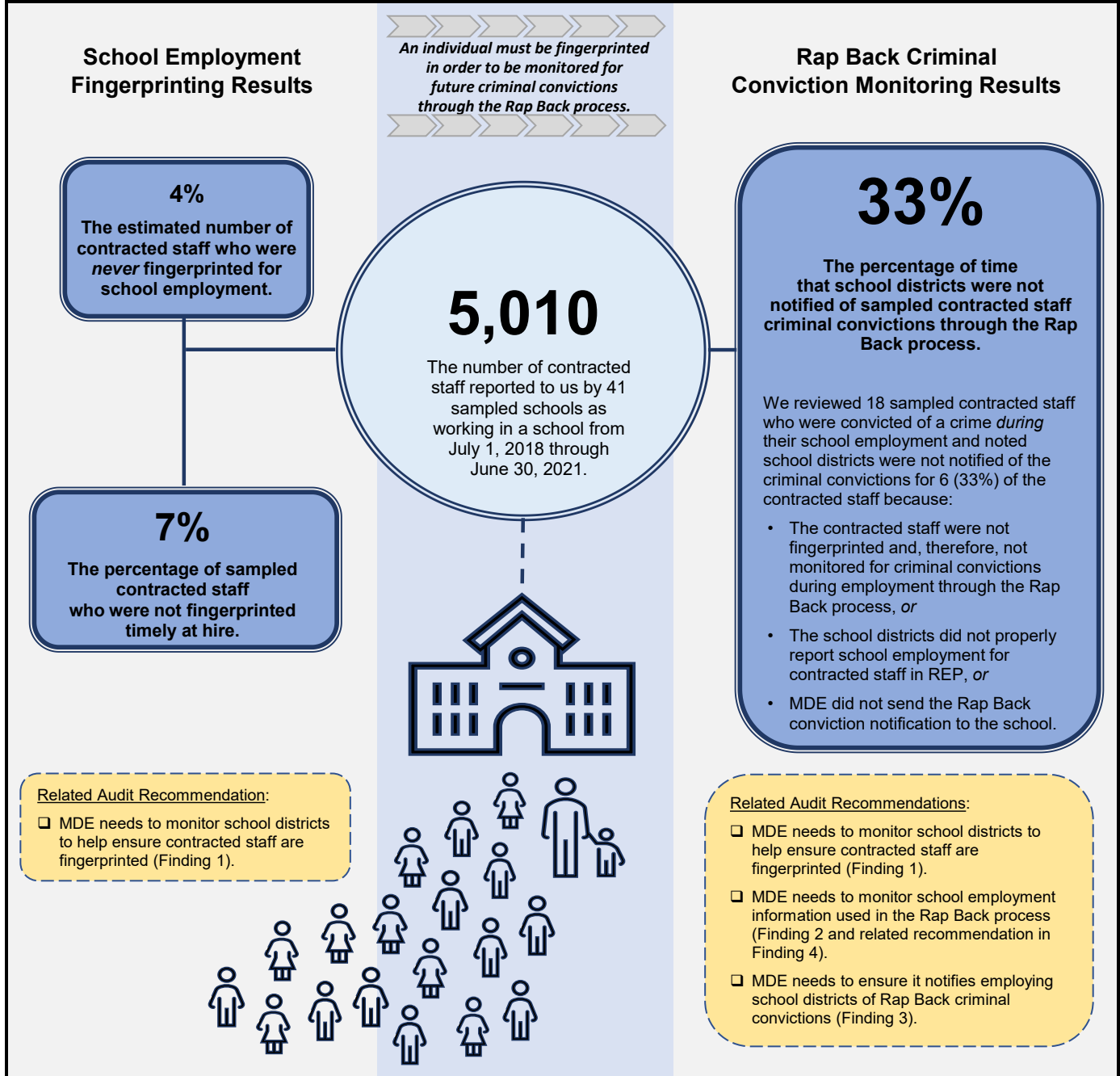
² This category was used for contracted staff who worked in more than one position.

Source: The OAG prepared this exhibit based on contracted staff information provided from 41 sampled school districts.

FINGERPRINTING AND CRIMINAL CONVICTION MONITORING OF PUBLIC SCHOOL CONTRACTED STAFF
Michigan Department of Education

Audit Results Summary

The following illustration provides a summary-level view of our overall audit results related to the breakdowns in fingerprinting and criminal conviction monitoring of public school contracted staff reported in Findings 1 through 4.



Source: The OAG prepared this exhibit to summarize the results of our audit procedures as described in the methodology section of this report.

FINGERPRINTING AND CRIMINAL CONVICTION MONITORING
OF PUBLIC SCHOOL CONTRACTED STAFF
Michigan Department of Education

State Law Citations and Additional Details for Observation 2

Observation 2 (Page 29), Item Number	Michigan Compiled Laws Section and Citation	Additional Details
1. Statutory definitions related to individuals working under contract lack clarity and lead to varying application of fingerprinting requirements by school districts.	<p><u>380.1230a(1)</u>: Requires fingerprint-based criminal records checks for individuals who regularly and continuously work under contract within a district.</p> <p><u>380.1230(15)</u>, <u>380.1230a(15)</u>, <u>380.1230c(2)</u>, <u>380.1230d(9)</u>, <u>380.1230e(2)</u>, and <u>380.1230g(12)</u> contain definitions¹ for:</p> <ul style="list-style-type: none"> • "Regularly and continuously work under contract" • "At school" • "School property" 	<p>The following language used within the definition of "<i>regularly and continuously work under contract</i>" likely requires clarification and/or expansion to help ensure all intended individuals are fingerprinted:</p> <ul style="list-style-type: none"> • <u>"more than intermittent or sporadic"</u>: This language does not provide measurement for consistent application Statewide. Our sampled school districts reported to us varying interpretations of this phrase, such as contracted staff working at least once per month, at least 3 days in the district, and working a defined schedule. • <u>"at school"</u>: This term is primarily dependent upon a separate definition of "school property" within another law (MCL Section 28.733) that has since been repealed (Public Act 295 of 2020). It is also notable with the evolution of virtual learning, the definitions do not clearly address online instructional staff with access to school children through a virtual classroom. • <u>"to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils"</u>: This list may be too restrictive considering other contracted positions within a district may have regular contact with school children, such as coaches or child care staff.
2. State law is silent on fingerprinting requirements for student teachers and other interns working in schools.	<p><u>380.1230a(1)</u>: Requires fingerprint-based criminal records checks for specified individuals, but not student teachers or other interns.</p>	<p>Michigan schools reported approximately 1,200 student teachers and other interns as of the end of the 2021-22 school year.</p>

This exhibit continued on next page.

Observation 2 (Page 29), Item Number	Michigan Compiled Laws Section and Citation	Additional Details
3. The current mandated semiannual submission frequency of employment information causes the information to be inherently outdated for use in MDE's Rap Back notification process.	388.1619(3): Requires districts only to submit educational personnel information in REP twice per year - by the first business day in December and by the last business day in June of each year. 380.1281b: Prohibits modifications or additions to an existing reporting requirement, with limited exceptions such as a change in State law.	See Finding 2, first bullet for more details.
4. State law is silent on how quickly MDE must notify school districts of Rap Back criminal convictions it receives from MSP.	380.1230d(7): Requires MDE to notify an individual's employing district(s) of criminal conviction notifications it receives from MSP; however, it does not specify a time frame.	Under its current notification process, MDE takes up to 21 calendar days from the receipt of a Rap Back notification from MSP to provide e-mail notification to school districts of criminal convictions.
5. State law is silent on requirements and/or responsibilities for removal of individuals from the State Rap Back process.	None.	Many individuals who have been fingerprinted for school employment since full implementation of the current fingerprinting requirements inadvertently continue to be included in the Rap Back monitoring process, although they were never hired or have left school employment. Consequently, MDE continues to receive and must process current conviction notifications for these individuals. The total number of individuals who need to be removed from the Rap Back monitoring process because they left employment or were never hired is unknown. However, for perspective, MDE reports each school year from 2015-16 to 2020-21 approximately 6,700 <i>teachers</i> alone have left the classroom. In the absence of prescriptive statutory requirements, MDE developed and implemented a process to remove individuals from Rap Back monitoring in certain limited circumstances. Our review noted weaknesses in MDE's process (see Finding 4).

¹ The definition citations included here relate only to Michigan's school employment fingerprinting laws within the Revised School Code; however, these terms are also defined elsewhere within the *Michigan Compiled Laws*.

Source: The OAG created this exhibit using information collected regarding the school employment fingerprinting and criminal history monitoring process.

FINGERPRINTING AND CRIMINAL CONVICTION MONITORING
OF PUBLIC SCHOOL CONTRACTED STAFF
Michigan Department of Education

Authoritative Sources Referenced Throughout the Audit Report

Finding Number(s)	Observation Number(s)	Applicable <i>Michigan Compiled Laws</i> Section	OAG Paraphrased <i>Michigan Compiled Laws</i> Description
Section 1			
Revised School Code - MDE Authority Over School Districts			
1, 2, and 4		380.1281(1)(a)	MDE must require each school district to observe the laws related to schools.
1, 2, and 4		380.1281(2)	MDE is permitted to examine and audit district records.
Section 2			
Revised School Code - School Employment Criminal History Check Requirements			
1, 2, and 4	2	380.1230	School districts must require staff working regularly and continuously under contract to have a criminal history check through MSP and receive the results from MSP before allowing the individual to work under contract in any of its schools.
1, 2, and 4	2	380.1230a(1)	School districts must require staff working regularly and continuously under contract to be fingerprinted, submit the fingerprints to MSP to have a criminal records check completed through the FBI, and receive the results from MSP before allowing the individual to work under contract in any of its schools.
1, 2, 3, and 4		380.1230a(10)	School districts are required to take employment actions on certain criminal convictions when notified of the conviction by MDE. School districts shall not allow contracted staff with listed offenses (<i>MCL</i> Section 28.722, Sex Offenders Registration Act) to work in the districts. The district shall not allow contracted staff with felony convictions other than listed offenses to work in the district unless the district's superintendent or chief administrator and board or governing body approves the work assignment in writing. Districts shall report employment actions on the types of convictions to MDE.
4	2	380.1230b	School districts are required to have applicants sign a statement authorizing current or former employers to disclose unprofessional conduct to the district, request the information, and consider it in employment decisions.
1, 2, 3, and 4	2	380.1230c	School districts shall not allow contracted staff with listed offenses to work in districts and, when notified of these offenses, shall report its employment actions to MDE.
1, 2, 3, and 4	2 and 3	380.1230d(7)	When MDE receives conviction information from MSP, it must notify the superintendent or chief administrator and the board or governing body of the individual's employing school district of the conviction.
2		380.1230e	MDE shall include all individuals who are assigned to regularly and continuously work under contract in school districts in REP.

This exhibit continued on next page.

Finding Number(s)	Observation Number(s)	Applicable Michigan Compiled Laws Section	OAG Paraphrased Michigan Compiled Laws Description
Section 2, continued			
Revised School Code - School Employment Criminal History Check Requirements			
1, 2, 3, and 4	2 and 3	380.1230f	MSP shall notify MDE of any criminal history activity that matches previously submitted fingerprints under MCL Sections 380.1230a and 380.1230g.
1, 2, and 4	2	380.1230g	School districts are required to ensure existing staff as of December 1, 2005 have a criminal history check through MSP and a fingerprint-based criminal history check through the FBI by July 1, 2008.
4	2	380.1230h	MDE is provided disclosure exemptions and allowances for Rap Back records.
Section 3			
State School Aid - Employment Information Reporting Requirements			
2	2	388.1619(3)	School districts shall report educational personnel information required by law in December and June of each year.
2		388.1694a	CEPI shall coordinate the collection of school district data required by State law and ensure the reasonable quality, validity, and reliability of the data.

Source: The OAG created this exhibit by paraphrasing the State laws applicable to the school employment criminal history check process.

DESCRIPTION

MDE was established under the Executive Organization Act of 1965 (Public Act 380 of 1965). MDE is headed by the elected eight-member State Board of Education established by the Michigan Constitution. The principal executive officer is the Superintendent of Public Instruction, who is appointed by the Board. Article VIII, Section 3 of the Michigan Constitution vests in the State Board of Education the leadership and general supervision over all public education.

The mission of MDE's Office of Educator Excellence (OEE) is to provide whole-child centered resources to ensure every student has equitable access to a high-quality, barrier-free system of education professionals. OEE accomplishes its mission by the recruitment, preparation, certification, development, support, retention, and recognition of educators through collaboration with internal and external partners. Providing guidance to public schools regarding criminal history records check requirements for school staff is among OEE's responsibilities. In addition, OEE is responsible for processing the Rap Back criminal conviction information MDE receives from MSP and notifying the convicted individuals' employing school district(s) of the criminal conviction.

OEE's appropriations totaled \$11.4 million and \$12.3 million for fiscal years 2022 and 2023, respectively. As of September 30, 2022, OEE had approximately 33 employees, including 5 employees who work a portion of their time processing Rap Back criminal history information for public school contracted staff.

AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

AUDIT SCOPE

To examine the records and processes associated with MDE's role and operations related to fingerprinting and monitoring of criminal convictions for Michigan's public school contracted staff. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit objective and corresponding audit procedures were directed toward concluding on MDE's efforts to ensure public school contracted staff are fingerprinted and monitored for criminal convictions and were not directed toward concluding on:

- School districts' compliance with the criminal history requirements for contracted staff.
- The accuracy or completeness of:
 - MSP fingerprint information.
 - Conviction information contained in the Rap Back notifications sent by MSP to MDE.
 - REP information not used in MDE's Rap Back process.

As part of the audit, we considered the five components of internal control (control environment, risk assessment, control activities, information and communication, and monitoring activities) relative to the audit objectives and determined that all components were significant.

PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered July 1, 2018 through June 30, 2021.

METHODOLOGY

We conducted a preliminary survey to gain an understanding of MDE's processes related to fingerprinting and criminal conviction monitoring of public school contracted staff and to establish our audit objective, scope, and methodology.

During our preliminary survey, we:

- Reviewed applicable federal regulations and policy, State laws and administrative rules, MDE procedures, and MDE guidance provided to school districts.
- Obtained an understanding of school districts', MDE's, MSP's, and CEPI's relationships, respective roles, and responsibilities related to school employment fingerprint-based criminal records check requirements.
- Interviewed MDE management and staff to obtain an understanding of MDE's activities related to oversight of school employment fingerprinting and criminal history monitoring requirements and processing of Rap Back notifications from MSP.
- Observed MDE staff processing a biweekly batch of approximately 140 Rap Back conviction notifications received from MSP.
- Determined available State-held school employment information did not specify all individuals' employment arrangement as either contracted or directly employed by a school district. In the absence of this information, we conducted a survey of all 886 public schools Statewide and examined the 353 responses received to help determine the extent of contracted staff working in public schools as of March 1, 2021.

OBJECTIVE

To assess the effectiveness of MDE's efforts to ensure that public school contracted staff are fingerprinted and monitored for criminal convictions.

To accomplish this objective, we:

- Judgmentally and randomly selected 42 public school districts from the Statewide population of 886 school districts and requested each sampled district to provide us with a list of contracted staff working in the district from July 1, 2018 through June 30, 2021 and respond to our related questionnaire. Forty-one school districts responded to our request (see Exhibit 2), and we established a population of 5,010 unique contracted staff from the provided listings, which served as the primary basis for conducting the following audit procedures:
 - To identify whether any of the contracted staff had criminal convictions, we independently requested MSP to match all 5,010 contracted staff to its criminal history records. The resulting criminal history information was utilized in

planning and executing our tests of details throughout our audit procedures.

Note this match showed none of the 5,010 contracted staff had criminal convictions listed in the Sex Offenders Registration Act that would prohibit school employment under State law. Also through this match, we identified 5 contracted staff with serious criminal convictions who also held educator credentials* during the audit period according to MDE's Michigan Online Educator Certification System* (MOECS) credential records, and we verified MDE took appropriate actions on the educator credentials of these contracted staff, as required.

- To determine whether the contracted staff were fingerprinted prior to employment as required by State law, we independently requested MSP match all 5,010 contracted staff to its fingerprint data. The match results showed:
 - Approximately 400 of the contracted staff were *potentially* not fingerprinted for school employment. We randomly and judgmentally selected 28 of these contracted staff and requested the sampled school districts provide any documentation that would support the individual *had* been fingerprinted for school employment. Through this review, we determined 12 of the 28 individuals matched MSP fingerprint data using alternative identifying information provided by the districts, such as a maiden name. Using the remaining 16 (57%) contracted staff without evidence of school employment fingerprinting, we estimated approximately 220 (57% x [400-12]) of the 5,010 contracted staff were never fingerprinted for school employment (see Finding 1).
 - Approximately 4,600 of the contracted staff were fingerprinted for school employment. To determine whether fingerprinting was timely completed at hire, we randomly and judgmentally selected 45 of these contracted staff and compared the school employment fingerprinting date with the hire date provided to us by the school district.

* See glossary at end of report for definition.

- To evaluate the completeness of REP employment information used by MDE in its Rap Back notification process, we performed an independent match of all 5,010 contracted staff reported to us by the sampled school districts to REP employment information. The match results showed:
 - 199 (4%) of the contracted staff were *never* reported in REP by the sampled school districts (see Finding 2).
 - 4,811 (96%) of the contracted staff were reported in REP by the sampled school districts as working in the school for *at least one* semiannual period. To determine whether school districts reported contracted staff in REP for *all* required semiannual periods in which the contractors were working in public schools, we judgmentally and randomly selected 37 of the 4,811 contracted staff and compared the semiannual REP employment information with the employment information (including hire date and termination date, if applicable) we independently obtained from the sampled school districts (see Finding 2). For any discrepancies we noted, we obtained *further* evidence from the sampled school districts to validate the individuals' employment dates, such as contractor invoices and screen prints from the contractor's staffing system.
- To determine whether MDE notified sampled school districts of criminal convictions it received from MSP through the Rap Back process for contracted staff, we:
 - Identified 16 contracted staff, through our sampling procedures described above, who had criminal convictions that occurred during the individuals' employment dates reported to us by the sampled school districts. For these 16 contracted staff, we determined whether MDE maintained evidence a criminal conviction notification(s) was sent to the employing sampled school district(s).
 - Compared superintendent or chief administrator information provided to us by the sampled districts with the school district's lead administrator information

contained in the Educational Entity Master* (EEM) to evaluate the accuracy of the contact information used in MDE's Rap Back conviction notifications to employing school districts.

- To evaluate the appropriateness of MDE's process for removal of contracted staff from the Rap Back criminal conviction monitoring process, we determined MDE removed approximately 100 of the 5,010 contracted staff from Rap Back monitoring and judgmentally and randomly selected 5 of these contracted staff for review. For the 5 selected contracted staff, we reviewed the employment information we independently obtained from the sampled school districts to determine whether the contracted staff were working in a public school at the time of MDE's removal.
- Performed a limited review of notifications MDE received from MSP prior to MDE's implementation of its revised Rap Back notification procedures in summer 2019, including judgmental and random selection of 40 notifications from a population of approximately 13,000 arrest, arraignment, and conviction notifications received from MSP. We verified MDE retained evidence it notified employing school districts of the selected convictions, as appropriate.
- Reviewed MDE's revised Rap Back notification procedures implemented in summer 2019, including:
 - Limited procedures to evaluate the overall reasonableness of MDE's automated queries used in the Rap Back notification process.
 - Analysis of MSP Rap Back conviction notifications received in MOECS from May 2020 through May 2021 to determine if MDE, generally, sent Rap Back e-mail notifications to school districts in accordance with its established 21-day batch processing cycle.
- Evaluated the reasonableness of select OEE staff rights to view and/or edit MOECS, MDE's Rap Back e-mail account, and MDE's SharePoint document storage site compared with the individual's job responsibilities related to the Rap Back notification process.

Our random samples were selected to eliminate bias and enable us to project the results to the respective populations.

* See glossary at end of report for definition.

We selected other samples judgmentally to ensure representativeness or based on risk and could not project those results to the respective populations.

CONCLUSIONS

We base our conclusions on our audit efforts and any resulting material conditions or reportable conditions*.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

AGENCY RESPONSES

Our audit report contains 4 findings and 6 corresponding recommendations. MDE's preliminary response indicates it disagrees with 2 recommendations, partially agrees with 1 recommendation, and agrees with 3 recommendations.

The agency preliminary response following each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

SUPPLEMENTAL INFORMATION

Our audit report includes supplemental information presented as Exhibits 1 through 6. Our audit was not directed toward expressing a conclusion on the information in Exhibits 1 through 3 and 5 through 6. The information presented in Exhibit 4 was used to support our findings and conclusion on the Objective.

* See glossary at end of report for definition.

GLOSSARY OF ABBREVIATIONS AND TERMS

arraignment	Court proceeding when an individual is formally charged with a crime.
auditor's comments to agency preliminary response	Comments the OAG includes in an audit report to comply with <i>Government Auditing Standards</i> . Auditors are required to evaluate the validity of the audited entity's response when it is inconsistent or in conflict with the findings, conclusions, or recommendations. If the auditors disagree with the response, they should explain in the report their reasons for disagreement.
CEPI	Center for Educational Performance and Information.
credentials	OEE-issued licenses, certificates, authorizations, and/or permits issued to Michigan educators.
Educational Entity Master (EEM)	State of Michigan's sole educational entity directory database containing directory information for entities in the educational system.
effectiveness	Success in achieving mission and goals.
FBI	Federal Bureau of Investigation.
ISD	intermediate school district.
listed offenses	sexual offenses as defined in the Sex Offenders Registration Act (<i>MCL</i> Section 28.722).
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. Our assessment of materiality is in relation to the respective audit objective.
MCL	<i>Michigan Compiled Laws</i> .
MDE	Michigan Department of Education.

Michigan Online Educator Certification System (MOECS)	MDE's secure Web-based system used to track the status of educator credentials. Beginning in 2019, MDE expanded the system's capabilities to also receive Rap Back conviction notifications from MSP and document its actions on the information.
MSP	Michigan Department of State Police.
observation	A commentary highlighting certain details or events that may be of interest to users of the report. An observation may not include all of the attributes (condition, effect, criteria, cause, and recommendation) presented in an audit finding.
OEE	Office of Educator Excellence.
other interns	All types of college student interns, except student teachers.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision-making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
public schools	Includes public school districts, ISDs, and public school academies.
Registry of Educational Personnel (REP)	The State of Michigan's database of educational personnel information collected from public school districts to meet federal and State reporting requirements and the criminal history check requirements within the Revised School Code.
regularly and continuously work under contract in a school district (contracted staff)	To work at a school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract or as an individual under a contract with a school district, ISD, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils, as defined in <i>MCL</i> Sections 380.1230(15), 380.1230a(15), 380.1230c(2), 380.1230d(9), 380.1230e(2), and 380.1230g(12).
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following

categories: a deficiency in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements; opportunities to improve programs and operations; or fraud.

**State Record of Arrest and
Prosecution Background
(Rap Back)**

A notification of criminal history that is sent from MSP to MDE when an arrest fingerprint and/or criminal conviction is submitted by police (arrest), prosecutors (arraignment), or courts (conviction) and matches against fingerprints previously submitted under *MCL* Sections 380.1230a or 380.1230g. For purposes of this report, the term Rap Back is used to refer to conviction notifications only.



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