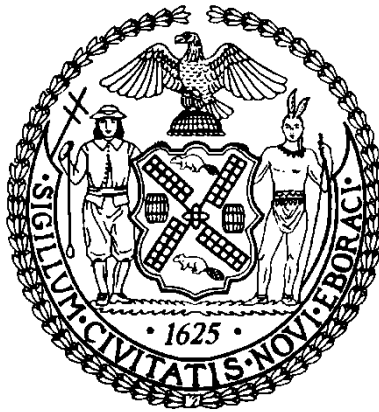


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

MANAGEMENT AUDIT

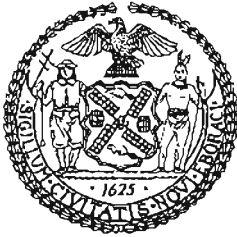
**Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Department of Education's
Compliance with the Physical Education
Regulations in Elementary Schools**

MD11-083A

October 4, 2011



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

October 4, 2011

To the Residents of the City of New York:

My office has audited the compliance of the New York City School Districts with key provisions of the New York State Education Department's (SED's) Physical Education Regulations for students in elementary schools. We audit City agencies such as this as a means of ensuring agency compliance with regulations.

The audit found that DOE is not in compliance with the SED's Physical Education Regulations for elementary-level students and middle-level students in elementary schools. DOE does not have an overall written physical education plan nor does it monitor the schools' compliance with the regulations. Therefore, DOE has no assurance that students in elementary schools are receiving the minimum required physical education. In fact, the audit's review of a sample of 31 elementary schools found limited evidence that any of the sampled schools were in compliance with the SED physical education requirements for all of its students.

The audit makes seven recommendations, including that DOE ensure that it creates, implements, and regularly updates a physical education plan that includes all requirements of the SED physical education regulations for all schools and ensure that a current plan is appropriately filed with the SED; ensure that it adequately monitors its schools' compliance with the physical education requirements; and ensure that principals are aware of the SED's physical education requirements.

The results of the audit have been discussed with DOE officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

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*The City of New York
Office of the Comptroller
Management Audit*

**Audit Report on the Department of
Education's Compliance with the
Physical Education Regulations in Elementary Schools**

MD11-083A

AUDIT REPORT IN BRIEF

This audit determined whether New York City School Districts are in compliance with key provisions of the New York State Education Department's (SED's) Physical Education Regulations for students in elementary schools.

Support for delivering physical education in New York City public schools is primarily provided by the Office of School Wellness Programs (OSWP). OSWP is a joint collaboration between the Department of Education (DOE) and the Department of Health and Mental Hygiene (DOHMH) and was created in 2010. OSWP was formerly known as the Office of Fitness and Health Education (created in 2007), and prior to this change was called the Office of Fitness and Physical Education (created in 2003).

During May 2003, in conjunction with DOHMH, DOE conducted a study of students in elementary schools. Using height and weight measurements of a representative sample of public elementary school students, researchers concluded that nearly 50 percent of kindergarten through fifth grade students were overweight or obese.

Chapter 11 of the Regulations of the Commissioner of the SED requires all schools under the jurisdiction of the SED to provide a program of health, physical education, and recreation. Section 135.4 of Chapter 11 (Physical Education Regulations) requires the trustees and boards of education to develop and implement school district plans to provide physical education to all pupils. The current plans should be kept on file in the school district office and should be filed with the SED. In addition, the Physical Education Regulations provide the minimum frequency and time requirements of physical education that is to be provided to the students in kindergarten through Grade 12.

Audit Findings and Conclusions

DOE is not in compliance with the SED's Physical Education Regulations for elementary-level students and middle-level students in elementary schools. DOE does not have

an overall written physical education plan nor does it monitor schools' compliance with the regulations. Therefore, DOE has no assurance that the students in elementary schools are receiving the minimum required physical education. In fact, our review of a sample of 31 elementary schools found limited evidence that any of the sampled schools were in compliance with the SED physical education requirements for all of its students.

Audit Recommendations

Based on our findings, we make seven recommendations, including that DOE should:

- Ensure that it creates, implements, and regularly updates a physical education plan that includes all requirements of the SED physical education regulations for all schools under its jurisdiction and ensure that a current plan is appropriately filed with the SED.
- Ensure that it adequately monitors its schools' compliance with the physical education requirements of the SED's Physical Education Regulations.
- Ensure that principals are aware of the SED's physical education requirements and advise them that it is their responsibility to ensure that their students receive the minimum physical education requirements.

Agency Response

In their response, DOE officials generally agreed with five of the audit's seven recommendations. DOE officials disagreed with the recommendation to ensure that DOE adequately monitors schools' compliance with physical education requirements and did not directly address the recommendation to require that principals certify whether students are receiving the minimum required physical education.

INTRODUCTION

Background

Support for delivering physical education in New York City public schools is primarily provided by OSWP. OSWP is a joint collaboration between DOE and DOHMH and was created in 2010. OSWP was formerly known as the Office of Fitness and Health Education (created in 2007), and prior to this change was called the Office of Fitness & Physical Education (created in 2003).

During May 2003, in conjunction with DOHMH, DOE conducted a study of students in elementary schools. Using height and weight measurements of a representative sample of public elementary school students, researchers concluded that nearly 50 percent of kindergarten through fifth grade students were overweight or obese.

Chapter 11 of the Regulations of the Commissioner of the SED require all schools under the jurisdiction of the SED to provide a program of health, physical education, and recreation. The Physical Education Regulations require the trustees and boards of education to develop and implement school district plans to provide physical education to all pupils. The current plans should be kept on file in the school district office and should be filed with the SED. The SED physical education requirements are as follows:

- Kindergarten through Grade 3 – pupils in these grades must participate in physical education requirements on a daily basis and the minimum time devoted to such programs should be at least 120 minutes in each calendar week.
- Grades 4 through 6 – pupils in these grades must participate in a physical education program not less than three times each week and the minimum time devoted to such programs should be at least 120 minutes in each calendar week.
- Grades 7 through 12 - all pupils in these grades shall have the opportunity for regular physical education not less than three times per week in one semester and two times per week in the other semester or a comparable time each semester if the school is organized in other patterns. The regulations do not stipulate minimum time requirements. However, according to SED, secondary level students in Grades 7 and 8 must have at least 90 minutes of physical education per week.

Most City elementary schools only house students up to Grade 5. However, there are some schools that also house students in upper grade levels, mostly up to Grade 8. According to SED, if an elementary school houses students up to Grade 8, the principal can make the determination about whether the students in Grade 6 will follow the requirements for students in Grades 4 and 5 or follow the requirements for students in Grades 7 and 8.

A 2009 DOHMH and DOE special report, “Childhood Obesity is a Serious Concern in New York City,” reported that childhood obesity is epidemic throughout the United States, and it increases the likelihood of adult obesity, which is associated with heart disease and cancer. The

report indicated that 21 percent of kindergarten through eighth grade students are obese and an additional 18 percent of students are overweight. Childhood obesity can result in potentially lifelong health problems, such as diabetes, asthma, high blood pressure, and high cholesterol. In addition, according to a 2010 article from the National Center for Health Statistics of the Centers for Disease Control and Prevention (CDC), there has been an increase in obesity from 6.5 percent between the period of 1976 through 1980 to 19.6 percent between the period of 2007 through 2008 among children aged 6 through 11.

The focus of this audit was on students in elementary schools.

Objective

The objective of the audit was to determine whether New York City School Districts are in compliance with key provisions of the SED's Physical Education Regulations for students in elementary schools.

Scope and Methodology Statement

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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was School Year 2010-2011. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOE officials during and at the conclusion of this audit. A preliminary draft report was sent to DOE officials and discussed at an exit conference held on August 31, 2011. On September 8, 2011, we submitted a draft report to DOE officials with a request for comments. We received a written response from DOE officials on September 22, 2011. In their response, DOE officials generally agreed with five of the audit's seven recommendations. DOE officials disagreed with the recommendation to ensure that DOE adequately monitors schools' compliance with physical education requirements and did not directly address the recommendation to require that principals certify whether students are receiving the minimum required physical education.

The full text of the DOE response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOE is not in compliance with the SED's Physical Education Regulations for elementary-level students and middle-level students in elementary schools. DOE does not have an overall written physical education plan nor does it monitor schools' compliance with the regulations. Therefore, DOE has no assurance that the students in elementary schools are receiving the minimum required physical education. In fact, our review of a sample of 31 elementary schools found limited evidence that any of the sampled schools were in compliance with the SED physical education requirements for all of its students.

DOE Does Not Have an Overall Written Physical Education Plan

DOE does not have a written physical education plan as required by SED's Physical Education Regulations. Chapter 11 of the Regulations of the Commissioner of the SED requires the trustees and boards of education to develop and implement school district plans to provide physical education experiences for all pupils. The plans should include the curriculum, required instruction, attendance, personnel, facilities, administrative procedures, grading policies, safety policies, and the basic code extraclass athletic activities. Current plans should be kept on file in the school district office and be filed with the SED.

When we requested a copy of DOE's most recent physical education plan from DOE officials, they stated that they do not have a written physical education plan. Instead, they referred us to the "Fitness and Health Education" page on the NYCDOE website as the primary avenue for communicating policies and as the central repository for physical education resources. The page includes links to the New York State learning standards, instructional requirements, fitness assessment protocols, and professional development opportunities. However, the website information does not meet all of the requirements of the SED required plan.

We contacted the SED to determine when the last written physical education plan was submitted by DOE and learned that DOE has not filed a physical education plan since 1982. According to the SED official, SED recommends that school districts review and re-file their plan at least every seven years to ensure appropriate current practice, to stay abreast of current research, and to update their curriculum as needed.

It is important for DOE to create and regularly update a physical education plan to ensure that its curriculum adheres to the physical education requirements, that students are receiving the minimum requirements, and that current research and trends in physical education are applied in City schools. A plan would provide the necessary guidance to schools and assist principals in creating physical education programs for their students, including how students are to be scheduled and the length of time of the physical education.

At the exit conference, DOE officials informed us that they never intended the information on their website to be a plan or a substitute for the plan, and that they are presently creating a plan addressing the requirements of the SED Physical Education Regulations.

Recommendation

1. DOE should ensure that it creates, implements, and regularly updates a physical education plan that includes all requirements of the SED physical education regulations for all schools under its jurisdiction and ensure that a current plan is appropriately filed with the SED.

DOE Response: “The Department is already working on a district Physical Education plan, with the goal of having a final draft at the end of summer 2012.”

DOE Does Not Monitor Elementary Schools’ Compliance with the Physical Education Requirements

DOE does not monitor its elementary schools’ compliance with the physical education requirements and whether the students are, in fact, receiving the minimum required physical education as identified in the SED’s Physical Education Regulations.

According to DOE officials, principals are accountable for ensuring that the SED physical education instructional requirements are being met. However, because DOE is not monitoring its schools’ compliance with the SED physical education requirements, it has no assurance that schools are providing the required physical education to its students or if the principals are even aware of the requirements. In fact, as will be discussed later in this section, we determined that none of the sampled schools had sufficient evidence that they were providing the required amount of physical education to all of their students. In addition, we determined that officials from most of the sampled schools did not know all of the physical education requirements for elementary school students.

DOE Response: “Physical Education is a subject area much the same as math, science, and language arts, as examples. Though the auditors remark upon the lack of a central Physical Education ‘monitoring’ presence, for sound reasons the Department does not centrally ‘monitor’ compliance with New York State instructional requirements in any subject area. Rather, our long-held policy is to empower principals to select curricula that best suit their students’ needs and to implement State subject area requirements. Furthermore, the suggestion for centralized monitoring without defining how that would be accomplished given the scope of the undertaking – 1,700 schools attended by roughly 1.1 million students – and the severe limitations on resources, is not useful.”

Auditor Comment: While DOE officials state that DOE does not monitor compliance with New York State instructional requirements in subject areas such as math, science, and language arts, students are required to take standardized tests in these subjects. Elementary school students take yearly State tests in these core academic subjects to assess their mastery of learning standards, and the test results are used to evaluate how well schools are serving students. Although the standardized tests are not a direct form of monitoring, it is a tool DOE is able to use to evaluate individual student’s abilities and overall class performance. Conversely, DOE has no mechanism in place to evaluate the

physical education programs at elementary schools and assess how well schools are serving students in this subject area. In addition, DOE states that the recommendation for centralized monitoring, without defining how it would be accomplished, is not useful. It is not our intent to prescribe to DOE precisely how to implement the recommendation, but rather to point out a deficiency and allow DOE, with its expertise in this area, to determine how to best improve its monitoring.

Although DOE required principals to complete the 2011 *Principal Compliance Checklist*¹ and *School Health Survey*² to document compliance with certain DOE policies, neither document refers to the SED physical education requirements or asks whether the students are receiving the minimum requirements. At a minimum, DOE officials should require the principals to periodically certify (e.g., on an annual basis) whether their students are receiving the minimum SED physical education requirements. This would allow DOE to hold the principals accountable if their students are not receiving the minimum required physical education.

Limited Evidence that Sampled Schools Comply with the Physical Education Requirements

None of the 31 sampled schools we visited had sufficient evidence that they fully complied with the SED physical education requirements (the minimum frequency and time requirements) for all of its students. Based on our interviews with school officials and a review of available documentation from the sampled schools, we identified nine (29 percent) schools that reportedly partially complied with the SED physical education requirements—P.S. 107, P.S. 191, P.S. 335, P.S. 66, and P.S./I.S. 104 in Brooklyn, P.S. 96 in Manhattan, and P.S. 121, P.S. 161, and P.S./I.S. 268 in Queens. The students at these nine schools were not all receiving the minimum required frequency of physical education. However, two of these schools, P.S. 191 in Brooklyn and P.S. 121 in Queens, appeared to be providing the minimum time requirements to their students in all grades. (Please refer to the Appendix for a summary of the 31 sampled schools' compliance with the SED physical education requirements.)

Limited Evidence to Document Classroom-Based Activity

OSWP, in collaboration with DOHMH, developed a classroom-based curriculum called *Move-to-Improve* that elementary schools could use and incorporate into their curriculum to supplement the students' physical education and to increase their physical activity. This curriculum was designed to help elementary school teachers incorporate short structured fitness breaks (moderate to vigorous physical activity) into their classrooms. According to DOE, these fitness breaks integrate grade-level academic concepts and physical activity in a 10-minute educational lesson and are aligned to the New York State Physical Education Learning Standards. DOE officials informed us that *Move-to-Improve* was designed to help elementary

¹ The *Principal Compliance Checklist* is a listing of questions regarding the school's compliance in various areas, including Budget, Pupil Transportation, and School Wellness. Deadlines for each individual group of questions vary. However, the checklist must be completed in full by the end of the school year.

² The *School Health Survey* was introduced in October 2010 by OSWP and was available to all principals to complete online. It is a requirement of the *Principal Compliance Checklist* and requested information about comprehensive health education, including physical education instruction and curriculum.

schools meet the SED physical education instructional requirements of 120 minutes of physical education per week. According to DOE's *Move-to-Improve K-3 Physical Activity Guide*, however, this program does *not* replace regularly scheduled physical education instruction with a designated physical education teacher.

DOE informed us that this classroom-based curriculum is not being used by all of its schools. Of the 31 sampled schools, we determined that only 21 (68 percent) schools participated in classroom-based physical activities. In addition, school officials from nine (43 percent) of these 21 sampled schools that were participating in the program reported that not all of their classes were receiving classroom-based activities.

Furthermore, due to a lack of documentation we were unable to determine whether the teachers who were trained in the *Move-to-Improve* curriculum or who were providing other classroom-based physical education were actually providing students with classroom-based physical education and physical activity. While DOE officials stated that there is no requirement to document classroom-based activity, the SED *Frequently Asked Questions* state that the days and time spent on physical education that is integrated into other curriculum areas (e.g., in the students' classroom) should be updated in the Physical Education Plan. It further states that updating the plan would help ensure that the physical education curriculum covered in this fashion counts toward the day and time requirement. Without any documentation, DOE and the principals would not know whether the students were receiving any classroom-based activities, the frequency or duration of these activities, and whether the students were meeting the SED requirements.

Comparison between Documentation Received from Schools with Data in STARS

For two (33 percent) of the six sampled schools that housed students up to Grade 8, we identified discrepancies in the amount of physical education that the students were scheduled for when comparing documentation received from the school and the information in DOE's Student Transcript and Academic Recording System (STARS)³. Because of the discrepancies between the school documentation and the information recorded in STARS, it is uncertain which record is correct and should be relied upon. Please note that this audit did not test the accuracy of the information recorded in STARS.

When we visited P.S. 96 in Manhattan, officials informed us that students in Grades 6 through 8 received two periods of physical education per week and provided us with a class schedule indicating this. However, when reviewing STARS, we identified 60 (33 percent) out of 182 students in Grades 6 through 8 who were recorded as being scheduled for only one period of physical education per week. In addition, officials from P.S. 66 in Brooklyn informed us and provided a class schedule to show that students in Grades 7 and 8 received two periods of physical education per week. However, according to STARS, we identified 33 out of 79 students in Grades 7 and 8 who were not receiving physical education for two periods each week. There

³ STARS is a web-based system used to assist middle schools and high schools in scheduling students for classes, entering students' grades, and generating students' transcripts. The elementary schools that house students in grades above Grade 6 will typically use STARS for their students in Grades 6 and above.

were six students who were not scheduled for any physical education class and 27 students who were only scheduled for one period of physical education per week.

DOE officials informed us that students who are unable to participate in physical education because of a medical condition will be excused from taking the class. However, the student will receive a Code 9-WA (waiver) and an automatic passing grade. When we reviewed the transcripts in STARS for the six P.S. 66 students who did not have any physical education scheduled for the school year, none had a medical waiver listed. Although none of these six students received any physical education classes during the 2010-2011 School Year, all six students received physical education in the 2009-2010 School Year, indicating that they probably should have been scheduled for physical education.

After receiving the preliminary draft report and at the exit conference, DOE officials stated that the information we received regarding waivers was incorrect. DOE officials stated that it is DOE's policy, in accordance with the SED Physical Education Regulations, that waivers or exemptions for physical education are not permitted; all students must attend and participate in physical education. DOE officials informed us that any students with medical limitations are still required to receive physical education, but would receive a modified physical education program. Further, DOE officials mentioned that its policy that no student should receive a waiver from physical education will be clarified on their website and that the Children First Networks⁴ will be instructed to reinforce this policy at their respective schools.

In addition, DOE officials informed us at the exit conference that the 87 students in P.S. 96 and P.S. 66 who only appeared to have one period of physical education according to STARS, actually had two periods of physical education. They also informed us that the six students in P.S. 66 who appeared to have no physical education according to STARS did have physical education. In all instances, DOE officials stated that the information was incorrectly coded in STARS, and it has since been corrected. However, DOE officials provided no documentation supporting their claim.

Contributing Factors that May be Preventing Students from Meeting the SED Physical Education Requirements

There are several possible contributing factors that may be preventing students from receiving the minimum required physical education. One contributing factor could be that school officials, including some principals, are not aware of the SED physical education requirements. During our visits to the sampled schools, when asked whether they were aware of the SED physical education requirements, school officials at 26 (84 percent) of the 31 sampled schools were unable to tell us what all the requirements were—20 (65 percent) did not know any of the physical education requirements and six (19 percent) could only tell us about some of the requirements. In addition, some school officials stated that it is difficult for them to provide the required physical education to students due to the time needed to provide the mandated

⁴ Children First Networks (CFNs) are an initiative designed to integrate operational and instructional support for schools. CFNs deliver professional services to schools, such as payroll, human resources, and food services.

curriculums for other subject areas such as math, English language arts, science, and social studies during the school day.

We also found that some sampled schools lacked designated physical education teachers and non-classroom designated areas for physical education, which could also be contributing factors preventing students from receiving the minimum required physical education. Section 135.2 of the SED regulations state that it is the duty of DOE to provide approved and adequate personnel and facilities for physical education. Two of the 31 schools visited did not have a designated physical education teacher and another two schools did not have a non-classroom designated area in the school for physical education, such as a gymnasium or multi-purpose room⁵. In addition, we found that one school did not have a designated physical education teacher or a non-classroom designated area for physical education. However, even schools that have access to only a multi-purpose room may have difficulty providing the required physical education to their students because the availability of the room might be limited during the school day depending on the other uses of the room. See Table I for the list of sampled schools that lacked a physical education teacher and a designated area for physical education.

Table I
Sampled Schools Lacking Physical Education Teachers and
Non-classroom Designated Areas for Physical Education

School Name	Borough	No Designated Physical Education Teacher	No Non-classroom Designated Area within the School for Physical Education	Appendix Sample #
P.S. 28 Mount Hope	Bronx		X	3
P.S. 47 John Randolph	Bronx	X		4
P.S. 163 Arthur Schomberg	Bronx	X	X	2
P.S. 107 John W. Kimball*	Brooklyn		X	7
P.S. 124 Silas B. Dutcher	Brooklyn	X		8
TOTAL		3	3	

*The students in Grade 2 at P.S. 107 are meeting the time requirements because they are affiliated with the local YMCA and receive physical education. They also receive both swimming and dance for half a school year.

According to school officials from the three schools without physical education teachers, budget cuts were a main factor preventing the schools from hiring or keeping their physical education teachers. Although P.S. 47 and P.S. 124 do not have designated physical education teachers, the students' classroom teachers provide them with and oversee their physical education. A designated physical education teacher would be better trained in physical fitness activities and curriculum and more aware of current trends in physical education, and would be able to apply this knowledge to the students.

⁵ Some schools that do not have gymnasiums have a room designated as a multi-purpose room that is used by the school for physical education but has other uses as well, such as a cafeteria or auditorium.

To address the lack of a designated area for physical education or to provide an additional resource to aid the schools in providing physical education to its students, some of the sampled schools have affiliations with Department of Parks and Recreation Recreational Centers and/or private recreation centers (e.g., local YMCA) to use their facilities. For example, eight (26 percent) of the 31 sampled schools have swimming programs at various centers, mostly for second grade students. However, many of these programs do not run for the entire school year. Many school officials informed us that they would like to expand the program for all class levels and for the entire year, but cannot do so because of the cost. In addition, some schools have implemented programs to promote physical fitness and to help supplement their physical education programs, such as participating in “Mighty Milers.” Mighty Milers, a New York Road Runners-sponsored program for all grade levels, is a school- and community-based program that teaches youth the health habits of running and/or walking for physical fitness and well being. While the majority of schools offered additional activity during recess time or in after-school programs, which cannot be counted toward meeting the SED regulations, it shows that schools are trying to encourage students to be physically fit.

DOE Response: “DOE has made vital connections between schools and Parks Department sites . . . and other private institutions . . . to help schools strengthen their Physical Education programs. DOE and the Department of Health and Mental Hygiene collaborated to create *Move to Improve* . . . to increase physical activity . . . and help schools meet the required 120 minutes/week. In that regard, we point to the Comptroller’s recognition that *‘the provision of a wide range of opportunities for students to be involved in MVPA [Moderately Vigorous Physical Activity] shows that schools are trying to encourage students to be physically fit.’*”

Auditor Comment: DOE’s attribution of this quote to our audit is incorrect. Although the report does discuss DOE’s affiliations with the Department of Parks and the *Move-to-Improve* curriculum, the report does not mention “the provision of a wide range of opportunities for students to be involved in MVPA . . .” and does not make the link between that and the latter part of the quoted sentence that it “shows that schools are trying to encourage students to be physically fit.” As clearly shown above, we were referring to activities offered during recess and after-school programs. Therefore, it is unclear why DOE has quoted this text in its response.

Recommendations

DOE should:

2. Ensure that it adequately monitors its schools’ compliance with the physical education requirements of the SED’s Physical Education Regulations.

DOE Response: DOE disagreed, stating: “As previously described, Physical Education is a subject area like any other and principals are empowered and accountable for meeting learning standards and state requirements. We will re-communicate SED regulations to principals (see Recommendation 5) and gather additional information through the School Health Survey (see Recommendation 3).”

Auditor Comment: While we are pleased that DOE will re-communicate the SED regulations to principals and gather additional information through the School Health Survey, these steps alone will not ensure that schools are complying with the physical education requirements. DOE needs to develop a plan to adequately monitor schools' compliance with these requirements and hold principals accountable for non-compliance with the SED regulations.

3. Require the principals to periodically certify whether their students are receiving the minimum SED physical education requirements.

DOE Response: DOE does not directly address this recommendation, stating: "The Department already includes questions about the delivery of Physical Education and use of curriculum in the annual School Health Survey. We will add a question to this year's Survey to elicit more information about the frequency and time Physical Education is taught."

Auditor Comment: While adding a question to the School Health Survey about the frequency and time physical education is taught is a step in the right direction, the frequency and time can vary by grades or classes within each school. DOE should ensure to be mindful of the variations of physical education in its schools when modifying the School Health Survey if it plans to use the survey as its means of monitoring schools' compliance with the SED regulations. Because DOE places a significant reliance on principals to ensure compliance with physical education requirements, we continue to believe that DOE should require that principals periodically certify whether their students are receiving the minimum required physical education.

4. Document and track the classroom-based physical education provided to the students if used to help meet the SED mandate to ensure that the students are provided with the minimum SED physical education instructional requirements.

DOE Response: "In our district Physical Education plan, we will include a recommendation that schools schedule and consider tracking minutes of classroom-based physical activity."

Auditor Comment: If classroom-based physical education is used to help students meet the SED physical education requirements, DOE should *require* that schools schedule and track students' classroom-based physical activity, rather than just merely recommending that principals schedule and consider tracking this activity. Without requiring that classroom-based activity be tracked and documented, DOE will have no evidence to ensure that the SED physical education requirements are being met.

5. Ensure that principals are aware of the SED's physical education requirements and advise them that it is their responsibility to ensure that their students receive the minimum physical education requirements.

DOE Response: “The Department already has comprehensive information about Physical Education requirements on its website (www.schools.nyc.gov/wellness), including ‘Quick Reference Sheets’ that summarize Physical Education requirements, and links to the NYSED regulations. We will include information about Physical Education requirements in the School Health Survey. The Department will also send a communication through *Principals Weekly* and *School Support Weekly* to remind principals about SED regulations.”

6. Determine the reasons and identify any common issues preventing students from receiving the minimum SED physical education requirements.

DOE Response: “The audit found that some principals were not aware of the Physical Education requirements at the elementary school level. As described in the response to Recommendation 5, the Department will provide additional information to principals about the requirements. In addition, the School Health Survey contains an opportunity for principals to indicate that they would like additional follow up and support. The Department will continue to follow up on these and other requests for support. We will also continue offering technical assistance to schools that may have space challenges, as well as existing ‘No Gym? No Problem!’ training, available at no cost to teachers. Our district Physical Education plan will outline options available to schools to help them meet requirements.”

7. Create initiatives to address any issues identified (from Recommendation #6) and provide the principals with the necessary assistance to ensure that the students are receiving the minimum SED physical education requirements.

DOE Response: “The Department will continue key initiatives such as *Move to Improve*, our partnership with Parks Department and other organizations, and our School Wellness Council grant program to help support schools in providing appropriate and adequate physical education for students.”

Auditor Comment: The key initiatives mentioned by DOE were in place during the scope of our audit, yet they did not help the schools in our sample provide the minimum SED physical education requirements to its students. DOE should consider developing additional initiatives to help students meet the SED physical education requirements, particularly to address other contributing factors, if any, identified by DOE in response to Recommendation #6.

DETAILED SCOPE AND METHODOLOGY

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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was School Year 2010-2011.

To obtain an understanding of the policies, procedures, and regulations governing DOE's physical education program and the physical education requirements for its students, we reviewed and used as criteria:

- §135.2 *General Regulations* and §135.4 *Physical education* of Chapter 11 of the Regulations of the Commissioner of SED,
- Education Law §803,
- SED's Physical Education Learning Standards,
- SED's *Frequently Asked Questions* (relating to the Physical Education Regulations)
- DOE's Regulation of the Chancellor,
- DOE Inter office documents regarding its physical education program,
- DOE Office of School Health *FY11 School Health Survey* (for elementary, middle and high schools), and
- Information from DOE's Website relating to physical education.

In addition, to obtain clarification of certain SED policies and regulations, we conducted phone interviews with the Associate for Physical Education and Athletics from SED's Office of Curriculum, Instruction, and Standards and confirmed our understanding in writing.

To further our understanding of DOE's operations over its physical education program and the physical education requirements for its students, we interviewed the Executive Director of OSWP, Chief of Staff, and Executive Director of School Support. We also interviewed the Business Tech Partner from DOE's Department of Instructional and Information Technology to obtain an understanding of DOE's STARS computer system and its tracking abilities of the physical education requirements.

We requested and obtained a list of all NYC Public Schools from DOE officials. The list contained the names of 1,458 schools operated by DOE located throughout the five boroughs, consisting of 767 elementary schools, 359 middle/junior high schools, and 332 high schools. As a preliminary survey, we judgmentally selected and visited one school from each of the three school levels. The three schools selected were:

1. P.S. 126 Jacob August Riis (Manhattan)
2. I.S. 204 Oliver Holmes School (Queens)
3. Science Skills Center High School for Science, Technology and the Creative Arts (Brooklyn)

We interviewed school officials (principals and/or assistant principals and physical education teachers, when available) to determine whether they were aware of the SED physical education requirements, to determine whether the students were receiving the minimum SED physical education requirements, and to obtain an understanding of how the schools track and monitor the physical education provided to their students. In addition, we determined whether the schools had any physical education teachers and a designated space for physical education and whether the students were being provided any classroom-based physical education. We also requested any available supporting documentation illustrating the frequency and length of time of the physical education provided to their students.

Based on our preliminary survey results, we decided to focus on DOE elementary schools and accordingly expanded our testing in that area.

During the fieldwork stage, we selected an additional 30 elementary schools—15 randomly selected and 15 judgmentally selected. Our total sample for elementary schools therefore consisted of 31 schools. We judgmentally selected one school for each of the 15 randomly selected elementary schools based on the proximity to the randomly selected schools to allow us to conduct visits to two schools in one day. We interviewed school officials (principals and/or assistant principals and physical education teachers, when available) at each of the 30 sampled schools to determine whether they were aware of the SED physical education requirements, to determine whether the students were receiving the minimum SED physical education requirements, and to obtain an understanding of how the schools track and monitor the physical education provided to their students. In addition, we determined whether the schools had any physical education teachers and a designated space for physical education and whether the students were being provided any classroom-based physical education. We also requested any available supporting documentation illustrating the frequency and length of time of the physical education provided to their students.

We also reviewed STARS for the 2010-2011 School Year for all six of the 31 sampled schools that housed students up to Grade 8 to determine whether all students received physical education in the 2010-2011 School Year. We also determined whether there were any discrepancies in the amount of physical education provided to the students between the documentation provided to us at the schools and the information listed in STARS.

Sampled Schools' Compliance with SED Physical Education Requirements

			Are the students receiving physical education for the weekly frequency as required by the SED Physical Education Regulations?									Are the students receiving physical education for at least the minimum number of minutes required by the SED Physical Education Regulations?								
			Grade Level									Grade Level								
	Name of School	Borough	K	1	2	3	4	5	6	7	8	K	1	2	3	4	5	6	7	8
1	P.S. 102 Joseph O. Loretan	Bronx	No	No	No	No	No	No				No	No	No	No	No	No			
2	P.S. 163 Arthur A. Schomberg School	Bronx	No	No	No	No	No	No				No	No	No	No	No	No			
3	P.S. 28 Mount Hope	Bronx	No	No	No	No	No	No				No	No	No	No	No	No			
4	P.S. 47 John Randolph	Bronx	No	No	No	No	No	No				No	No	No	No	No	No			
5	P.S. 57 Crescent	Bronx	No	No	No	No	No	No				No	No	No	No	No	No			
6	P.S. 92 Bronx	Bronx	No	No	No	No	No	No				No	No	No	No	No	No			
7	P.S. 107 John W. Kimball	Brooklyn	No	No	No	No	No	No				No	No	Yes	No	No	No			
8	P.S. 124 Silas B. Dutcher	Brooklyn	No	No	No	No	No	No				No	No	No	No	No	No			
9	P.S. 133 William A. Butler	Brooklyn	No	No	No	No	No	No				No	No	No	No	No	No			
10	P.S. 185 Walter Kassenbrock	Brooklyn	No	No	No	No	No	No				No	No	No	No	No	No			
11	P.S. 191 Paul Robeson	Brooklyn	Yes	Yes	Yes	No	Yes	Yes				Yes	Yes	Yes	Yes	Yes	Yes			
12	P.S. 221 Toussaint L Ouverture	Brooklyn	No	No	No	No	No	No				No	No	No	No	No	No			
13	P.S. 233 Langston Hughes	Brooklyn	No	No	No	No	No	No				No	No	No	No	No	No			
14	P.S. 335 Granville T. Woods	Brooklyn	No	No	No	No	No	No				Yes	No	No	No	No	No			
15	P.S. 39 Henry Bristow	Brooklyn	No	No	No	No	No	No				No	No	No	No	No	No			
16	P.S. 66	Brooklyn	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	Yes	No
17	P.S. 91 The Albany Avenue School	Brooklyn	No	No	No	No	No	No				No	No	No	No	No	No			
18	P.S./I.S. 104 The Fort Hamilton School	Brooklyn	No	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No	No	Yes	Yes
19	P.S. 126 Jacob August Riis *	Manhattan	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

			Are the students receiving physical education for the weekly frequency as required by the SED Physical Education Regulations?									Are the students receiving physical education for at least the minimum number of minutes required by the SED Physical Education Regulations?								
			Grade Level									Grade Level								
	Name of School	Borough	K	1	2	3	4	5	6	7	8	K	1	2	3	4	5	6	7	8
20	Mosaic Preparatory Academy	Manhattan	No	No	No	No	No	No				No	No	No	No	No	No			
21	P.S. 7 Samuel Stern	Manhattan	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
22	P.S. 83 Luis Munoz Rivera	Manhattan	No	No	No	No	No	No				No	No	No	No	No	No			
23	P.S. 96 Joseph Lanzetta	Manhattan	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes
24	P.S. 121	Queens	No	No	No	No	Yes	Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes	Yes		
25	P.S. 161 Arthur Ashe School	Queens	No	No	No	No	No	No	No			No	No	No	No	No	No	Yes		
26	P.S. 21 Edward Hart	Queens	No	No	No	No	No	No				No	No	No	No	No	No			
27	P.S. 79 Francis Lewis	Queens	No	No	No	No	No	No				No	No	No	No	No	No			
28	P.S. 95 Eastwood	Queens	No	No	No	No	No	No				No	No	No	No	No	No			
29	P.S./I.S. 268	Queens	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes
30	P.S. 13 M.L. Lindemeyer	Staten Island	No	No	No	No	No	No				No	No	No	No	No	No			
31	P.S. 14 Cornelius Vanderbilt	Staten Island	No	No	No	No	No	No				No	No	No	No	No	No			

*P.S 126 Jacob August Riis was visited during the Survey Stage of the Audit

Note: The gray shading indicates the grade levels not housed at the school.



Dennis M. Walcott
Chancellor

Kathleen Grimm
Deputy Chancellor

September 21, 2011

Honorable Tina Kim
Deputy Comptroller for Audit
The City of New York
Office of the Comptroller
One Centre Street
New York, NY 10007-2341

Re: Audit Report on the Department of Education's
Compliance with the Physical Education
Regulations in Elementary Schools
MD 11-083A

Dear Ms. Kim:

This letter submitted on behalf of the New York City Department of Education ("Department"), constitutes this agency's formal response to the City of New York Office of the Comptroller's ("Comptroller") draft audit report titled *Audit Report on the Department of Education's Compliance with the Physical Education Regulations in Elementary Schools*. ("Report").

We can say at the outset that the Department does not dispute the findings in general. Nonetheless, since the Report, when finalized, will become a public document, it is essential that it present a more comprehensive view of the Department's policies and significant efforts with regard to the subject area that is the focus of the audit. Inasmuch as the Report contains only very limited observations in that regard, we offer the following by way of context.

Physical Education is a subject area much the same as math, science, and language arts, as examples. Though the auditors remark upon the lack of a central Physical Education "monitoring" presence, for sound reasons the Department does not centrally "monitor" compliance with New York State instructional requirements in any subject area. Rather, our long-held policy is to empower principals to select curricula that best suit their students' needs and to implement State subject area requirements.

Furthermore, the suggestion for centralized monitoring without defining how that would be accomplished given the scope of the undertaking - 1,700 schools attended by roughly 1.1 million students – and the severe limitations on resources, is not useful.

Rather than dwell on what the Department will not or cannot do with respect to centralizing oversight, it is far more productive to elucidate what the Department has done to address the recognized childhood obesity epidemic and to provide supports for Physical Education instruction that stresses lifelong physical fitness. To those ends, and within very few years, the Department has developed a multi-faceted approach to achieving physical fitness and Physical Education standards compliance.

One innovation has been the implementation of “NYC FITNESSGRAM,” the Citywide physical fitness assessment that is incorporated into Physical Education class. NYC FITNESSGRAM supports teachers and students in effectively setting and managing personal and collective fitness goals. At the end of each school year, a report is sent home to both students and parents that summarizes each student's performance on the fitness assessments and suggests ways to help them to reach the “Healthy Fitness Zone” (optimal performance for better health based on age and gender). To provide scope, 830,000 students had completed NYC FITNESSGRAM assessments in the 2010-11 school year. Parent reports are available in one of nine languages.

DOE has made vital connections between schools and Parks Department sites, the new Park Slope Armory and other private institutions, such as the YMCA, to help schools strengthen their Physical Education programs. DOE and the Department of Health and Mental Hygiene collaborated to create *Move to Improve*, a classroom-based curriculum to increase physical activity among elementary students and help schools meet the required 120 minutes/week. In that regard, we point to the Comptroller's recognition that *“the provision of a wide range of opportunities for students to be involved in MVPA [Moderately Vigorous Physical Activity] shows that schools are trying to encourage students to be physically fit.”*

Important, as well, have been our enhancements to communications to parents, principals, and teachers. The “School Wellness Programs” page on the NYCDOE website (<http://schools.nyc.gov/Academics/FitnessandHealth/default.htm>) is the primary avenue for communicating policies and is the central repository for Physical Education resources. Examples include links to the NYS learning standards, instructional requirements, fitness assessment protocols and professional development opportunities. Key messages to administrators and teachers are also communicated through the *Principals' Weekly* and an email distribution list of Physical Education teachers, respectively. Key messages to Children First Network staff (school support structures) are communicated by the Department's Office of School Wellness Programs through notices in the Division of Academics, Performance and Support's *School*

Support Weekly (formerly the Division of School Support and Instruction Weekly) and emails to Children First Network Health Liaisons.

We are particularly proud that the Department was the first school district to receive the prestigious annual National Association for Sport and Physical Education (NASPE) Ross Merrick National Recognition Award for achievement in physical education in 2007 and that the Department's leadership position in reshaping instruction and disseminating best practices was highlighted again in July 2011 when we co-hosted the first Urban Physical Education Leadership Summit with the Center for Disease Control here in New York.

Moving forward, we have a great deal of work to do, especially at the elementary school level. We continue to:

- Promote our recommended curriculum with the overarching goal of helping students develop lifelong fitness habits;
- Provide free administrator and teacher training for all schools, along with technical assistance tailored to the unique scheduling, staffing, and facilities needs in each school;
- Collaborate with the Department of Health and Mental Hygiene in analyzing NYC FITNESSGRAM data, now the largest longitudinal web-based database of children's health-related fitness levels in the country;
- Coordinate with cluster and network staff to provide additional guidance to principals on scheduling and providing Physical Education that meets NYSED requirements, as well as proper coding of Physical Education in the STARS system;
- Expand our already significant collaboration with partners to provide physical activity and physical education opportunities for students before, during, and after the school day; and,
- Expand the work of new School Wellness Councils which focus on the unique fitness and nutritional challenges and opportunities in neighborhoods and involve staff, students, and families.

Response to Recommendations

The August 2011 Audit on DOE's Compliance with the Physical Education Regulations in Elementary Schools makes several recommendations which coincide with our ongoing efforts to improve the quality and quantity of instruction in all grades.

Recommendation 1: DOE should ensure that it creates, implements, and regularly updates a physical education plan that includes all requirements of the SED physical education regulations for all schools under its jurisdiction and ensure that a current plan is appropriately filed with the SED.

Response: The Department is already working on a district Physical Education plan, with the goal of having a final draft at the end of summer 2012.

Recommendation 2: DOE should ensure that it adequately monitors its schools' compliance with the physical education requirements of the SED's Physical Education Regulations.

Response: As previously described, Physical Education is a subject area like any other and principals are empowered and accountable for meeting learning standards and state requirements. We will re-communicate SED regulations to principals (see Recommendation 5) and gather additional information through the School Health Survey (see Recommendation 3).

Recommendation 3: DOE should require principals to periodically certify whether their students are receiving the minimum SED physical education requirements.

Response: The Department already includes questions about the delivery of Physical Education and use of curriculum in the annual School Health Survey. We will add a question to this year's Survey to elicit more information about the frequency and time Physical Education is taught.

Recommendation 4: DOE should document and track the classroom-based physical education provided to the students if used to help meet the SED mandate to ensure that the students are provided with the minimum SED physical education instructional requirements.

Response: In our district Physical Education plan, we will include a recommendation that schools schedule and consider tracking minutes of classroom-based physical activity.

Recommendation 5: Ensure that principals are aware of the SED's physical education requirements and advise them that it is their responsibility to ensure that their students receive the minimum physical education requirements.

Response: The Department already has comprehensive information about Physical Education requirements on its website (www.schools.nyc.gov/wellness), including "Quick Reference Sheets" that summarize Physical Education requirements, and links to the NYSED regulations. We will include information about Physical Education requirements in the School Health Survey. The Department will also send a communication through *Principals Weekly* and *School Support Weekly* to remind principals about the SED regulations.

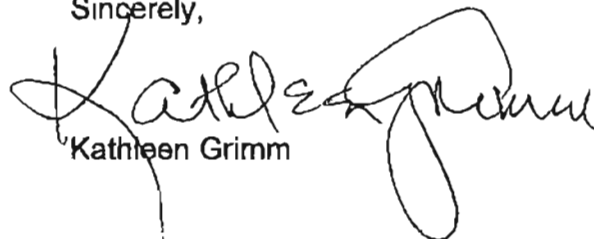
Recommendation 6: DOE should determine the reasons and identify any common issues preventing students from receiving the minimum SED physical education requirements.

Response: This audit found that some principals were not aware of the Physical Education requirements at the elementary school level. As described in the response to Recommendation 5, the Department will provide additional information to principals about the requirements. In addition, the School Health Survey contains an opportunity for principals to indicate that they would like additional follow up and support. The Department will continue to follow up on these and other requests for support. We will also continue offering technical assistance to schools that may have space challenges, as well as the existing "No Gym? No Problem!" training, available at no cost to teachers. Our district Physical Education plan will outline options available to schools to help them meet requirements.

Recommendation 7: Create initiatives to address any issues identified from Recommendation 6 and provide principals with the necessary assistance to ensure that the students are receiving the minimum SED physical education requirements.

Response: The Department will continue key initiatives such as *Move to Improve*, our partnership with Parks Department and other organizations, and our School Wellness Council grant program to help support schools in providing appropriate and adequate physical education for students.

Sincerely,



Kathleen Grimm

cc: Brian Fleischer
Roger Platt
Lindsey Harr
Stephanie Keating