

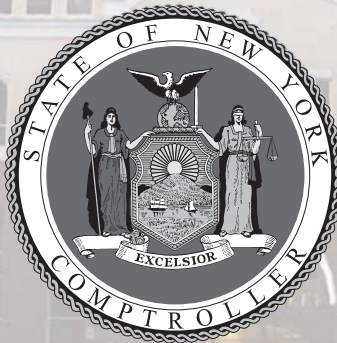
OFFICE OF THE NEW YORK STATE COMPTROLLER



DIVISION OF LOCAL GOVERNMENT  
& SCHOOL ACCOUNTABILITY

# School Districts' Compliance With Physical Education Regulations

2008-MS-6



Thomas P. DiNapoli

# Table of Contents

	<b>Page</b>
<b>AUTHORITY LETTER</b>	2
<b>EXECUTIVE SUMMARY</b>	3
<b>INTRODUCTION</b>	5
Background	5
Objective	7
Scope and Methodology	7
Comments of District Officials and Corrective Action	7
<b>PHYSICAL EDUCATION REGULATIONS</b>	9
Physical Education Plans	14
Monitoring	15
Recommendations	16
<b>APPENDIX A</b> Percentage of Compliance with Regulations and Attendance	17
<b>APPENDIX B</b> Responses From District Officials	19
<b>APPENDIX C</b> Audit Methodology and Standards	23
<b>APPENDIX D</b> How to Obtain Additional Copies of the Report	24
<b>APPENDIX E</b> Local Regional Office Listing	25

# State of New York Office of the State Comptroller

---

---

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

December 2008

Dear District Officials:

A top priority of the Office of the State Comptroller is to help school district officials manage their districts efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support district operations. The Comptroller oversees the fiscal affairs of districts statewide, as well as districts' compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving district operations and Board of Education governance. Audits also can identify strategies to reduce district costs and to strengthen controls intended to safeguard district assets.

Following is a report of our audit of 20 school districts, entitled *School Districts' Compliance With Physical Education Regulations*. This audit was conducted pursuant to Article V, Section 1 of the State Constitution, and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

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

Respectfully submitted,

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



## State of New York Office of the State Comptroller

---

# EXECUTIVE SUMMARY

Obesity in children is at epidemic proportions in the United States and poses serious public health threats. Over the past 30 years, the obesity rate has nearly tripled for children ages 2 to 5 years and youth ages 12 to 19 years, and it has quadrupled for children ages 6 to 11 years. The New York State Department of Health has declared childhood obesity a major health problem. According to the Centers for Disease Control and Prevention, 28 percent of New York high school students are overweight or at risk of becoming overweight.

A field memo to New York State school superintendents from the Interim Deputy Commissioner of the New York State Education Department (SED) in January 2007 cited asthma, diabetes and cardiovascular disease as some of the health complications suffered by overweight students. These complications can detract from the education provided to students. Numerous studies show a direct link between good nutrition, regular vigorous physical exercise and increased academic performance among children. Schools can play a key role in preventing and addressing the problem of obesity in children by providing regular physical education classes.

Chapter 11 of the Regulations of the Commissioner of the State Education Department stipulates the minimum physical education classes and the number of minutes that students in schools must be offered each week by grade level. SED also directs school districts to monitor their physical education programs.

### **Scope and Objective**

The objective of our audit was to determine whether school districts are in compliance with the State Education Department's Physical Education Regulations for the period July 1, 2007 through July 31, 2008. Our audit addressed the following related question:

- Are school districts providing physical education classes consistent with the regulations of the Commissioner of the New York State Education Department?

### **Audit Results**

We found that school districts generally are not providing physical education classes consistent with SED regulations. Only one district (Homer) in our sample is in compliance with the regulations. Students in 19 of 20 school districts that we reviewed across the State are not receiving the minimum physical education required.

The school districts typically did not provide enough physical education classes or class time to younger students in grades Kindergarten (K) through 6. Eighteen of the 20 districts did not meet the minimum regulations for grades K through 3; on average, the students in these grades were offered only 48 percent of the required classes and 72 percent of the required class time. Sixteen of the 20 districts did not meet the minimum regulations for grades 4 and 5; on average, these students were offered only 74 percent of the required classes and 77 percent of the required class time. In addition, 17 districts were not meeting the minimum regulations for grade 6; these students were offered about 85 percent of the required classes and class time.

The school districts generally provided older students with the required physical education classes.<sup>1</sup> However, three districts inappropriately offered pupils in grades 10 through 12 elective classes (e.g., wellness classes) in place of traditional physical education classes. SED officials told us that elective classes do not count toward the regular physical education regulations.

Additionally, school districts frequently either did not prepare written physical education plans, or did not file them with SED as required. An SED official told us that only 19 districts statewide have submitted plans. Of the 20 districts that we audited, seven did not have physical education plans as required by regulations, and none of the 13 districts that had a plan filed it with SED. Of the 13 districts with physical education plans, only two districts had plans that complied with regulations. One of these two districts did not follow its plan.

Positively, school districts monitored their physical education programs and assessed students' individual needs, offering an adaptive physical education program to students with disabilities.

### **Comments of District Officials**

The results of our audit and recommendations have been discussed with District officials and their comments, which appear in Appendix B, have been considered in preparing this report. Except as specified in Appendix B, District officials generally agreed with our recommendations and indicated they had already, or planned to, initiate corrective action.

---

<sup>1</sup> The Commissioner's regulations do not stipulate a minimum amount of class time for secondary students.

# Introduction

## Background

Obesity in children is at epidemic proportions in the United States, and poses serious public health threats. Over the past 30 years, the obesity rate has nearly tripled for children ages 2 to 5 years and youth ages 12 to 19 years, and it has quadrupled for children ages 6 to 11 years. The New York State Department of Health has declared childhood obesity a major health problem. According to the Centers for Disease Control and Prevention, 28 percent of New York high school students are overweight or at risk of becoming overweight.

A memo to New York State school superintendents from the State Education Department (SED) officials in January 2007 cited asthma, diabetes and cardiovascular disease as some of the health complications suffered by overweight students. These complications can detract from the education provided to students.<sup>2</sup> Numerous studies show a direct link between good nutrition, regular vigorous physical exercise and increased academic performance among children. Schools can play a key role in preventing and addressing the problem of obesity in children.

SED has regulations for the minimum frequency and duration of physical education classes required by grade level. According to the Commissioner's regulations,<sup>3</sup> the boards of education are responsible for developing and implementing school district plans to provide physical education experiences for pupils. Such plans should be kept on file in the school district office and shall be filed and updated with the SED's Division of Physical Education, Fitness, Health, Nutrition and Safety services.

SED also directs school districts to monitor their physical education programs and assess their individual students' needs and progress.

We selected 20 school districts across New York State to determine whether school districts comply with the minimum physical education regulations. The following table provides background information for each selected school district:

<sup>2</sup> Field Memo from SED (Interim Deputy Commissioner) to District Superintendents Subject: *Physical Education: Addressing Critical Issues*

<sup>3</sup> Chapter 11, NYCRR Section 135.4

<b>SCHOOL DISTRICT BACKGROUND INFORMATION</b>				
<b>District</b>	<b>County</b>	<b>2007-08 General Fund Budget (in millions)</b>	<b>Schools in the District</b>	<b>Approximate Enrollment 2007-08</b>
Akron Central School District	Erie/Genesee/ Niagara	\$25.6	3	1,600
Bolivar-Richburg Central School District	Allegany	\$18.1	2	990
Burnt Hills- Ballston Lake Central School District	Saratoga	\$50.2	5	3,500
Candor Central School District	Tioga/Tompkins	\$15.0	2	900
Clarkstown Central School District	Rockland	\$151.4	14	9,660
Commack Union Free School District	Suffolk	\$144.4	8	7,750
Elmira Heights Central School District	Chemung	\$17.2	2	1,140
Evans-Brant Central School District	Erie	\$51.3	7	2,960
Greater Amsterdam School District	Montgomery	\$49.7	6	3,680
Harpursville Central School District	Broome	\$14.4	2	1,055
Hinsdale Central School District	Cattaraugus	\$6.8	1	495
Homer Central School District	Cortland	\$36.1	5	2,235
Ilion Central School District	Herkimer	\$21.9	3	1,610
Lake Placid Central School District	Essex	\$14.6	2	730
Mineola Union Free School District	Nassau	\$75.6	7	2,410

Table continues on page 7

<b>SCHOOL DISTRICT BACKGROUND INFORMATION</b>				
<b>District</b>	<b>County</b>	<b>2007-08 General Fund Budget (in millions)</b>	<b>Schools in the District</b>	<b>Approximate Enrollment 2007-08</b>
Ravena-Coeymans-Selkirk Central School District	Albany	\$41.0	4	2,300
Saranac Lake Central School District	Franklin/Essex/ Clinton	\$25.8	6	1,480
Smithtown Central School District	Suffolk	\$201.6	14	10,270
Solvay Union Free School District	Onondaga	\$26.9	3	1,695
Waterville Central School District	Oneida/Madison	\$14.8	2	925

**Objective**

The objective of our audit was to determine whether school districts are in compliance with the State Education Department’s Physical Education Regulations. Our audit addressed the following related question:

- Are school districts providing physical education classes consistent with the regulations of the Commissioner of the New York State Education Department?

**Scope and Methodology**

We reviewed 20 school districts’ physical education programs and policies relating to students attending physical education classes for grade levels K through 12 for the period July 1, 2007 through July 31, 2008.

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

**Comments of District Officials and Corrective Action**

The results of our audit and recommendations have been discussed with District officials and their comments, which appear in Appendix B, have been considered in preparing this report. Except as specified in Appendix B, District officials generally agreed with our recommendations and indicated they had already, or planned to, initiate corrective action.

The boards of education at the school districts we audited have the responsibility to initiate corrective action. Pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of the Education Law and Section 170.12 of the Regulations of the Commissioner of Education, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and forwarded to our office within 90 days. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The boards should make the CAP available for public review in the district clerk's office in each school district.

## Physical Education Regulations

According to the Commissioner’s regulations,<sup>4</sup> boards of education are responsible for developing and implementing school district plans to provide physical education experiences for pupils. Such plans should be kept on file in the school district office and shall be filed and updated with SED’s Division of Physical Education, Fitness, Health, Nutrition and Safety services. School districts must provide their students with physical education classes that comply with SED’s regulations for minimum frequency and duration by grade-level. In addition, school districts should monitor their physical education programs and assess their individual student needs and progress.

Kindergarten through Grade 3 — SED regulations require that all pupils in grades Kindergarten (K) through 3 shall participate in physical education programs on a daily basis and the minimum time devoted to such programs shall be at least 120 minutes in each calendar week. Per SED guidelines, students attending half-day kindergarten should meet half the requirement. SED regulations allow schools to integrate programs that incorporate physical activity and/or sequential learning related to physical education into the traditional classroom setting. The regulations outline the parameters for meeting the minimum physical education regulations; however, the regulations do not specify how compliance with regulations will be determined.

We found the only districts that provided enough classes and sufficient time durations each week to satisfy the minimum regulations for this level were the Homer and Clarkstown school districts. Specifically:

- Homer — Physical education is scheduled every other day. In Week 1, students attend physical education classes three times totaling 120 minutes and movement education<sup>5</sup> activities two times totaling 30 additional minutes, for a weekly total of 150 minutes of physical activity. In Week 2, the students attend physical education classes two times totaling 80 minutes, plus three movement education activities for 40 additional

<sup>4</sup> Chapter 11, NYCRR Section 135.4

<sup>5</sup> The movement education activities are contained in the physical education plan, thus included as allowable activities.

minutes, for a weekly total of 120 minutes of physical activity.<sup>6</sup> The movement education program is led by the classroom teacher under the direction of the physical education staff. Homer has incorporated this program into its physical education plan so the program brings this District into compliance and actually exceeds the time duration requirement for Week 1.

- Clarkstown — Students attend physical education classes twice per week totaling 80 minutes. They also have 40 minutes a week of “Morning Stretch, Simon Says and Music Instruction,”<sup>7</sup> led by the classroom teacher under the direction of the physical education staff. Combined, these activities total 120 minutes and meet SED’s minimum regulations of physical activity each week. These activities were contained in the District’s physical education plan.

Three districts (Akron, Elmira Heights and Evans-Brant) have “integrated programs” for grades K through 3 that qualify as appropriate according to SED officials. These programs incorporate physical activity and/or sequential learning related to physical education into the traditional classroom setting. For both programs, SED officials informed us “these meet with the learning standards for this level...these are good activities that integrate 'activity' and core subjects...”. However, these daily activities have no quantifiable occurrence and duration; rather, they are incorporated into weekly lesson plans. These districts do not maintain records documenting the duration and occurrences of these integrated physical activities in the classroom; thus, we could not conclude whether the districts met the minimum regulations. These districts have the programs designed appropriately; they have to improve their monitoring and quantification of these activities to comply with regulations.

The other 15 districts simply do not offer enough classes or a sufficient number of minutes each week; both regulations must be met. Overall, students in grades K through 3 in these 15 districts received about 60 minutes of physical education each week, which met about half of the regulation. In addition, these districts have not attempted to design other programs to

---

<sup>6</sup> In the second week, the students receive 15 minutes of movement education on two days and 10 minutes of movement education on one day.

<sup>7</sup> The students receive 15 minutes a week of Music Instruction and 25 minutes a week of Morning Stretching or Simon Says interactive game, totaling 40 minutes a week.

offer their students physical education consistent with SED regulations.

Each district indicated difficulties in scheduling grades K through 3 for physical education five times per week due to lack of staff and facilities. Also, SED regulations outline the minimum parameters for meeting the minimum physical education regulations; however, the regulations do not specify how integrated programs shall be measured or how compliance with regulations will be determined. The three districts (Akron, Elmira Heights and Evans-Brant) that have brought their districts closer to compliance through integrated programs need to incorporate performance measures to monitor the time durations and activities each week to count towards compliance.

Grades 4 through 6 — SED regulations require that all pupils in grades 4 through 6 shall participate in the physical education program not less than three times each week and the minimum time devoted to such programs shall be at least 120 minutes in each calendar week. We found that 16 of 20 districts were not meeting the minimum regulations for grades 4 and 5 and 17 of 20 were not meeting the minimum regulations for grade 6.

Districts again cited the lack of staffing and facilities as a cause for non-compliance for grades 4 and 5. Also, although SED has established the same regulations for grades 4 through 6, only three districts (Candor, Homer and Ilion), had grade 6 students attending school in the same building with grades 4 and 5. The remaining 17 districts do not have grade 6 students attending school in the same building with grades 4 and 5. Rather, most of these students are located in a middle school, which houses grades 6 through 8, and have completely different schedules from the school that houses grades 4 and 5. However, because SED's regulations group grades 4 through 6 together, these students are held to the same standards as students in grades 4 and 5, who are in an elementary school with different schedules. Districts stated that it is difficult to adhere to regulations for their grade 6 students when they are located in separate buildings from grades 4 and 5, and therefore do not have the same schedules.

Grades 7 through 12 — SED regulations require that all pupils in secondary instructional grades 7 through 12 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 for secondary levels, but SED officials told us that the secondary instructional level should average 90 minutes per week for all semesters.<sup>8</sup>

Generally, districts were in compliance with regulations for grades 7 through 12. However, three districts (Akron, Harpursville and Saranac Lake) offered elective classes to their students in place of traditional physical education, which does not comply with regulations. These districts allowed students to substitute their physical education classes with elective classes, and/or students were exempt from physical education class, which affected the students' credit towards physical education. Specifically:

- Akron students in grades 9 and 10 were allowed to attend extra classes to receive additional help in subjects such as math and science. We found that 26 percent of students in grade 9 and 33 percent of students in grade 10 were not scheduled for, and did not attend, physical education class every other day. High school staff stated that the District wants to ensure that students entering the high school who are in danger of failing core subjects are given extra help, and therefore the students are scheduled for less physical education.
- Harpursville offered a Wellness class elective, which students in grades 10 through 12 can substitute for one year of physical education class. The Wellness class is offered for half a year and students attend this class every day. Seven students were involved in the Wellness class in 2007-08. Students participate in physical activity for approximately 50 percent of the time throughout the class duration.
- Saranac Lake students in grades 11 and 12 attended physical education class twice per week totaling 76 minutes, which did not meet the 90 minute per week SED minimum standard. Also during the 2007-08 school year, the District allowed 38 students in grades 11 and 12 to substitute a Wellness class elective in place of one year of physical education. The Wellness

---

<sup>8</sup> In some instances, the regulations allow for extra class programs and out-of-school activities for pupils in grades 10-12 to count toward the physical education regulations.

class is offered every day for the whole year. Students participate in physical activity for approximately 40 percent of the required time throughout the year.

SED officials informed us that elective classes such as these do not count towards the regular physical education credit required for graduation. The student “must be enrolled in regular physical education classes, not elective physical education classes, for the entire school year to receive credit.”

Overall, district officials indicated that the regulations for grades 7 through 12 are easier to comply with because they are more accommodating for the scheduling differences of individual districts. The regulations for grades 7 through 12 allow for an average minute requirement, on a per week basis. This differs from the lower grades where SED’s regulations are more specific.<sup>9</sup>

Districts’ failure to provide the number of physical education classes and the minimum number of minutes in compliance with SED regulations increases the risk that students will become unfit due to inactivity, which could result in increased obesity.

Attendance — We reviewed physical education attendance at each of the districts and found that overall, students at the secondary levels attended scheduled physical education classes about 92 percent of the time. Districts are not required to take attendance in physical education class for elementary students, so we tested daily attendance and found that 95 percent of elementary students attended school on average. Thus, if the districts offered classes consistent with SED regulations, students would attend them.<sup>10</sup>

Generally, attendance figures indicate that students are attending classes on a regular basis. Therefore, by offering the required number of physical education classes as required by SED regulations, schools would not only be in compliance with the regulations but they would afford the students more opportunities to take part in physical fitness and take on a

---

<sup>9</sup> A breakdown of individual districts’ percentage of compliance with SED regulations for grades K through 6 is outlined in Appendix A, Table 1. Grades 7 through 12 are not listed on the chart because districts generally are complying with regulations for these grades.

<sup>10</sup> Appendix A, Table 2 illustrates the physical education attendance at each of the schools.

necessary role in preventing and addressing the problems of obesity in children.

## Physical Education Plans

The boards of education are responsible for developing and implementing school district plans to provide physical education experiences for pupils. The plans must include information on how students are scheduled, and the length of time they must spend daily, weekly, monthly or yearly in physical education programs. The school district plan must indicate through the sequential curriculum the steps to ensure that each pupil meets the requirements for participation in the physical education programs to comply with SED's provisions. Districts must submit their plans, and any updates to the plans, to SED.

We reviewed physical education plans at each of the 20 school districts audited and found that the following seven districts did not have a physical education plan:

- Candor Central School District
- Commack Union Free School District
- Harpursville Central School District
- Lake Placid Central School District
- Saranac Lake Central School District
- Smithtown Central School District
- Waterville Central School District

Only 13 of the 20 districts had created a physical education plan. Further, 11 of the 13 plans were deficient because the plans did not provide for the minimum amount of physical education required by regulations. Two districts (Homer and Amsterdam) had plans that provided for the minimum number of classes and minutes in attendance each week. However, Amsterdam did not follow its plan when scheduling physical education classes for its students. Therefore, the actual student schedules did not provide pupils with the required number of physical education opportunities and minutes each week.

Further, no district had provided its plan to SED within the last seven years, as required by regulations.<sup>11</sup> According to SED, only 19 districts statewide currently have their plans on file with SED. The failure to establish physical education plans

---

<sup>11</sup> SED only maintains physical education plans for seven years, which is SED's record retention period.

that comply with SED regulations limits the ability of schools to provide at least the minimum levels of physical education to students, and thereby positively affect the problem of obesity in children. Subsequent to our fieldwork, four districts (Akron, Burnt Hills-Ballston Lake, Elmira Heights and Bolivar-Richburg) sent their plans to SED.

## **Monitoring**

SED directs school districts to monitor their physical education programs and assess their individual student needs and progress. We found that districts were aware and complied with these requirements. Each district offered an adaptive physical education program for students with disabilities, and each monitored their physical education programs.

We found that each of the 20 districts monitor their students' physical education programs. This monitoring is accomplished through review of teacher lesson plans, periodic meeting with physical education staff, and on-site supervision. Another method to review student progress is the use of fitness programs. These programs have various components that measure levels of fitness at several different activities. One of the programs is designed to test key fitness areas, such as: (1) aerobic capacity which may include the PACER (Progressive Aerobic Cardiovascular Endurance Run), one mile run, or walk test; (2) body composition which includes Body Mass Index (BMI); and (3) muscle strength, endurance and flexibility which includes activities such as curl-ups, trunk lift, push-up or flexed arm hang, and sit and reach or shoulder stretch. A report is generated from the results of each key fitness area tested that identifies areas where students may excel or need improvements. Districts have a choice whether to send the report home to parents with a detailed letter explaining the report. Another program tests students for their level of physical fitness in five events: (1) curl-ups or partial curl-ups; (2) shuttle run; (3) endurance run or walk; (4) pull-ups or right angle push-ups; and (5) V-sit or sit and reach. Students are tested at least twice a year, once in the fall and once in the spring. This test offers awards for students whose achievements meet certain standards.

Although these programs varied by district, many districts documented information such as students' age, height, weight and fitness test scores and sent reports to parents detailing students' results.

## **Recommendations**

1. School districts should take the steps necessary to bring the physical education program into compliance with SED's regulations.
2. School districts should prepare and file their physical education plan with SED as required.
3. School districts should work with SED to restructure integrated programs to ensure compliance with regulations and include a monitoring component.
4. School districts should ask the Commissioner to modify Regulation 135.4, to take into consideration the middle school grades. As written, the Regulation does not provide enough flexibility for defining class schedules for children in grade 6 who may or may not be in an elementary school setting.

## APPENDIX A

### TABLE 1

<b>PERCENTAGE OF COMPLIANCE WITH PHYSICAL EDUCATION REGULATIONS</b>						
	<b>Grades K - 3</b>		<b>Grades 4 - 5</b>		<b>Grade 6</b>	
<b>District</b>	<b>Number of Classes</b>	<b>Number of Minutes</b>	<b>Number of Classes</b>	<b>Number of Minutes</b>	<b>Number of Classes</b>	<b>Number of Minutes</b>
Akron	33%	56%	33%	56%	83%	85%
Bolivar-Richburg	60%	100%	100%	100%	83%	79%
Burnt Hills-Ballston Lake	50%	67%	66%	100%	83%	88%
Candor	50%	63%	83%	78%	83%	83%
Clarkstown	100%	100%	100%	100%	83%	96%
Commack	40%	59%	67%	67%	83%	83%
Elmira Heights	60%	100%	100%	100%	83%	88%
Evans-Brant	40%	100%	67%	100%	83%	79%
Greater Amsterdam	40%	50%	67%	50%	83%	85%
Harpursville	40%	50%	75%	77%	83%	88%
Hinsdale	40%	70%	67%	70%	100%	100%
Homer	100%	100%	100%	100%	100%	100%
Ilion	40%	50%	67%	50%	67%	50%
Lake Placid	33%	56%	56%	56%	83%	85%
Mineola	40%	67%	67%	67%	83%	83%
Ravena-Coeymans- Selkirk	40%	75%	67%	75%	83%	83%
Saranac Lake	40%	67%	67%	67%	83%	85%
Smithtown	40%	67%	67%	67%	100%	100%
Solvay	40%	75%	100%	93%	83%	77%
Waterville	40%	66%	66%	66%	83%	79%
<b>Average</b>	<b>48%</b>	<b>72%</b>	<b>74%</b>	<b>77%</b>	<b>85%</b>	<b>85%</b>

## APPENDIX A

### TABLE 2

<b>PHYSICAL EDUCATION ATTENDANCE</b>		
<b>School District</b>	<b>Elementary</b>	<b>Secondary*</b>
Akron Central School District	96%	87%
Bolivar-Richburg Central School District	98%	99%
Burnt Hills-Ballston Lake Central School District	96%	94%
Candor Central School District	97%	90%
Clarkstown Central School District	95%	95%
Commack Union Free School District	96%	92%
Elmira Heights Central School District	95%	93%
Evans-Brant Central School District	96%	93%
Greater Amsterdam School District	93%	88%
Harpursville Central School District	95%	92%
Hinsdale Central School District	97%	93%
Homer Central School District	95%	92%
Ilion Central School District	96%	92%
Lake Placid Central School District	96%	91%
Mineola Union Free School District	96%	95%
Ravena-Coeymans-Selkirk Central School District	95%	94%
Saranac Lake Central School District	95%	92%
Smithtown Central School District	95%	93%
Solvay Union Free School District	94%	87%
Waterville Central School District	93%	94%
<b>Average</b>	<b>95%</b>	<b>92%</b>
<p>*Note: Secondary level includes grades 6-12 with the exception of Homer and Candor, which include grades 7-12, Harpursville, which includes grades 5-12, and Solvay, which includes grades 4-12. Solvay's secondary level includes physical education attendance averages for grades 4 through 8 at 91 percent and 83 percent for grades 9 through 12.</p>		

## APPENDIX B

### RESPONSES FROM DISTRICT OFFICIALS

We provided a draft copy of this report to each of the 20 school districts we audited and requested responses. The 15 school districts that responded generally agreed with our findings and recommendations and stated they plan to initiate some corrective action. The Candor, Waterville, Ilion, Smithtown and Commack school districts were provided with an opportunity to respond, but they chose not to respond to our report.

The following comments were excerpted from the 15 responses we received (Harpursville's response letter indicated they preferred not to comment on any other district relative to their compliance or lack thereof).

#### Overall Comments

The following districts generally agreed with the findings and recommendations and some of their comments are contained below:

Ravena-Coeymans-Selkirk Central School District responded: "The Board of Education of the Ravena-Coeymans-Selkirk has reviewed the "draft" physical education requirement for school districts report. These changes will be fully implemented by second semester 2009. The district has taken the steps necessary to bring the physical education program into compliance with SED's regulations."

Solvay Union Free School District responded: "At the elementary level, the district faces time and facility constraints. However, after meeting with administration and district physical educators, we have a plan to bring our physical education program into compliance to meet the Commissioner's regulations."

Homer Central School District responded: "The district appreciates the dedication and insights of the State Comptroller's staff to enhance our Physical Education Program in ways that serve our students, staff and community."

#### MINIMUM REQUIREMENTS

The following three districts generally agreed with our findings and recommendations; however, they had comments about the difficulty in meeting the minimum requirements due to lack of time during the school day. Below are some of their comments:

Bolivar-Richburg Central School District responded: "I have reviewed your report and find your stated findings to be accurate as stated..." "...I have found your audit very informative and will work with the necessary school personnel to see where we can make corrections to our current practices so that our district can come closer to 100% compliance with SED regulations." "... You also need to factor in that SED has made changes in educational requirements for students.

They have increased academic standards and have added additional testing, but since it originally adopted the daily PE requirement of five days per week for 120 minutes, back in 1982, they have not made any changes to this requirement after adding additional requirements in other areas.”

Greater Amsterdam School District responded: “...Although the findings identify that school districts were not providing physical education classes consistent with State Education department regulations, most districts are experiencing budget problems for adequate staffing...” “...Also, elementary schedules simply do not have sufficient time built in for a daily “scheduled” physical education class or minutes beyond the traditional thirty. I would like to see some clear-cut guidelines from SED for proper criteria of utilizing recess as part of the program. If 19 out of 20 school districts that were reviewed across the State are out of compliance for not receiving the minimum physical education requirements, other options need to be explored as SED has placed many requirements on the school day for curriculum programs for SWD, AIS programs, ELA, Mathematics, Science, Social Studies, Reading, Technology, ESL, LOTE, Art and Music.”

Hinsdale Central School District responded: “...As your office found, only one district in the sample is in compliance with the Physical Education regulations as put forth by the State Education Department. I believe this is not the result of the lack of concern by the other schools; rather, the lack of direction through the State Education Department. That has recently changed, and already most schools are going in the direction of compliance in these regulations, primarily in the elementary levels with students getting daily physical education...” “...An additional 45 minutes per week must come from somewhere as we all live with contractual responsibilities. Those minutes will come from academic curricular areas — art, library, music, technology, or even trimmed from the core academic areas of math, science, social studies, English language arts...”

State Comptroller’s Note: We acknowledge that “most districts are experiencing budget problems for adequate staffing...” and are facing “many requirements in the school day for curriculum programs” along with “increased academic standards...” which include additional testing requirements. Albeit challenging, the Physical Education Regulations mandated by the State Education Department were established to ensure that students in grades K-12 are receiving the required minimum physical education classes and should be adhered to.

## **AGE OF REGULATIONS AND GRADE 6 REQUIREMENTS**

The following eight districts generally agreed with our findings and recommendations, but point out concerns with the age of the regulations, and had concerns about meeting the requirements in grades K through 6 (particularly grade 6). Their comments are contained below:

Clarkstown Central School District responded: “...We have implemented the changes necessary for full compliance on the 6th grade level...” “...As we reflect on our 6th grade, one must ponder the question, “Where does 6th grade belong?” Whereas our 6th grade is housed in the middle school, it is subject to a secondary master program; however, New York State still views the 6th grade in an elementary regard. This ‘disconnect’ causes timing issues, specifically having a varied number of physical education classes in weeks 1 and 2...”

Lake Placid Central School District responded: "...All of our elementary children spend 30 minutes a day Monday through Friday on the playground during the school year while school is in session. This should count as exercise, play, health activity, but in State Education's view it does not..." "...The State offers no flexibility and/or recognition of the variability in the middle school programming. Further, State Education's refusal to acknowledge and/or seriously review and/or value Physical Education electives is obtuse, short sighted and sadly, what local educators have come to expect..." "...Finally, as noted for the record already, time is fixed, any increased time given to Physical Education at any grade level is by definition time taken away from academic endeavors. Clearly this audit process has sent a mixed message and confusion over the purpose and focus of schools..."

We note that Saranac Lake Central School District responded very similarly.

Evans-Brant Central School District responded: "The issue of compliance with sixth grade students and the inclusion of middle level sixth grade students with elementary regulations is a bureaucratic problem rather than a compliance issue. We agree with the audit findings that our sixth grade students do not meet elementary regulations of three physical education classes per week for a total of 120 minutes of instruction. This is functionally impossible as the sixth grade students are part of our grade 6-8 middle school. All students at the middle level receive the same level of instruction based on the schedule structure for all students. It would be close to impossible to run a separate schedule in a middle level building with staff dedicated to only one grade..."

Elmira Heights Central School District responded: "...I believe the four recommendations outlined in this report are valid and that all districts should engage in further dialogue with SED. Clarification of current implementation practices in physical education, through an educational lens, may meet the threshold for actively engaging children in appropriate physical education activities, although programs may fall short of your threshold to be *quantified* based on your auditing standards..." "...I would like to note that many districts provide additional time, through recess or other means, which should be recognized as an effort to actively engage students to help diminish potential health risks and obesity in the future..."

Burnt Hills-Ballston Lake Central School District responded: "...New York physical education regulations have not been updated since 1982 and do not reflect the reality of 21st century public education. The fact that 95% of your statewide audit sample did not meet the 1982 regulations implies the regulations need to be re-evaluated..." "...SED regulations do not recognize that most 6th graders are now educated in a middle school rather than an elementary school, and their phys ed classes need to mesh with a secondary not an elementary schedule. Districts should be able to schedule 6th grade phys ed classes following either a secondary school or an elementary school model depending upon the grade configuration used in that District..." "...Elementary phys ed regulations lack the flexibility districts need in order to meet both phys ed requirements and ever-higher standards and expectations for students' English and math achievement in particular. For example, we question why at present an elementary teaching assistant under the supervision of a certified teacher can provide English, math, science and other subject lessons but not phys ed lessons..." "...we face the very real possibility that we could be forced to cut regular classroom teachers while hiring more phys ed teachers — an option that could anger many parents and residents..."

Mineola Union Free School District responded: “The most glaring logistical problem is that of the 6th graders having the requirement of an elementary program while being housed as part of the (6th — 8th grade) middle school which schedules an entire building on an alternating day schedule.”

Akron Central School District responded: “...the District feels compelled to point out the incompatibility of the Commissioner’s Regulations with the state’s middle school concept. Akron middle school is a grade 6-8 building...”

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

We reviewed each district's physical education program and policies relating to students attending physical education classes at all grade levels. We examined the school districts' physical education programs for the period July 1, 2007 through July 31, 2008, to determine if they provided the minimum physical education classes and the minimum number of minutes of physical education classes each week.

To accomplish our objective, we interviewed relevant district officials and reviewed the physical education plans and/or physical education program in place. Specifically, we reviewed:

- Individual students' schedules
- School district master bell schedules
- Monitoring programs
- Physical Education policies
- Attendance records for students
- Curriculum guides
- Other programs related to physical education

We compared actual student schedules to the school district master schedules to determine the frequency and time duration that students attended physical education classes.

We conducted our performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX D

### HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

To obtain copies of this report, write or visit our web page:

Office of the State Comptroller  
Public Information Office  
110 State Street, 15th Floor  
Albany, New York 12236  
(518) 474-4015  
<http://www.osc.state.ny.us/localgov/>

**APPENDIX E**  
**OFFICE OF THE STATE COMPTROLLER**  
**DIVISION OF LOCAL GOVERNMENT**  
**AND SCHOOL ACCOUNTABILITY**

Steven J. Hancox, Deputy Comptroller  
John C. Traylor, Assistant Comptroller

**LOCAL REGIONAL OFFICE LISTING**

---

**BUFFALO REGIONAL OFFICE**

Robert Meller, Chief Examiner  
Office of the State Comptroller  
295 Main Street, Room 1050  
Buffalo, New York 14203-2510  
(716) 847-3647 Fax (716) 847-3643  
Email: [Muni-Buffalo@osc.state.ny.us](mailto:Muni-Buffalo@osc.state.ny.us)

Serving: Allegany, Cattaraugus, Chautauqua, Erie,  
Genesee, Niagara, Orleans, Wyoming counties

**ROCHESTER REGIONAL OFFICE**

Edward V. Grant, Jr., Chief Examiner  
Office of the State Comptroller  
The Powers Building  
16 West Main Street – Suite 522  
Rochester, New York 14614-1608  
(585) 454-2460 Fax (585) 454-3545  
Email: [Muni-Rochester@osc.state.ny.us](mailto:Muni-Rochester@osc.state.ny.us)

Serving: Cayuga, Chemung, Livingston, Monroe,  
Ontario, Schuyler, Seneca, Steuben, Wayne, Yates  
counties

**SYRACUSE REGIONAL OFFICE**

Eugene A. Camp, Chief Examiner  
Office of the State Comptroller  
State Office Building, Room 409  
333 E. Washington Street  
Syracuse, New York 13202-1428  
(315) 428-4192 Fax (315) 426-2119  
Email: [Muni-Syracuse@osc.state.ny.us](mailto:Muni-Syracuse@osc.state.ny.us)

Serving: Herkimer, Jefferson, Lewis, Madison,  
Oneida, Onondaga, Oswego, St. Lawrence counties

**BINGHAMTON REGIONAL OFFICE**

Patrick Carbone, Chief Examiner  
Office of the State Comptroller  
State Office Building, Room 1702  
44 Hawley Street  
Binghamton, New York 13901-4417  
(607) 721-8306 Fax (607) 721-8313  
Email: [Muni-Binghamton@osc.state.ny.us](mailto:Muni-Binghamton@osc.state.ny.us)

Serving: Broome, Chenango, Cortland, Delaware,  
Otsego, Schoharie, Sullivan, Tioga, Tompkins  
counties

**GLENS FALLS REGIONAL OFFICE**

Karl Smoczynski, Chief Examiner  
Office of the State Comptroller  
One Broad Street Plaza  
Glens Falls, New York 12801-4396  
(518) 793-0057 Fax (518) 793-5797  
Email: [Muni-GlensFalls@osc.state.ny.us](mailto:Muni-GlensFalls@osc.state.ny.us)

Serving: Clinton, Essex, Franklin, Fulton, Hamilton,  
Montgomery, Rensselaer, Saratoga, Warren, Washington  
counties

**ALBANY REGIONAL OFFICE**

Kenneth Madej, Chief Examiner  
Office of the State Comptroller  
22 Computer Drive West  
Albany, New York 12205-1695  
(518) 438-0093 Fax (518) 438-0367  
Email: [Muni-Albany@osc.state.ny.us](mailto:Muni-Albany@osc.state.ny.us)

Serving: Albany, Columbia, Dutchess, Greene,  
Schenectady, Ulster counties

**HAUPPAUGE REGIONAL OFFICE**

Jeffrey P. Leonard, Chief Examiner  
Office of the State Comptroller  
NYS Office Building, Room 3A10  
Veterans Memorial Highway  
Hauppauge, New York 11788-5533  
(631) 952-6534 Fax (631) 952-6530  
Email: [Muni-Hauppauge@osc.state.ny.us](mailto:Muni-Hauppauge@osc.state.ny.us)

Serving: Nassau, Suffolk counties

**NEWBURGH REGIONAL OFFICE**

Christopher Ellis, Chief Examiner  
Office of the State Comptroller  
33 Airport Center Drive, Suite 103  
New Windsor, New York 12553-4725  
(845) 567-0858 Fax (845) 567-0080  
Email: [Muni-Newburgh@osc.state.ny.us](mailto:Muni-Newburgh@osc.state.ny.us)

Serving: Orange, Putnam, Rockland, Westchester  
counties