



**THOMAS P. DiNAPOLI**  
COMPTROLLER

STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**  
110 STATE STREET  
ALBANY, NEW YORK 12236

**GABRIEL F DEYO**  
DEPUTY COMPTROLLER  
DIVISION OF LOCAL GOVERNMENT  
AND SCHOOL ACCOUNTABILITY  
Tel: (518) 474-4037 Fax: (518) 486-6479

September 2018

Stephen Bovino, Superintendent  
Members of the Board of Education  
Kenmore-Town of Tonawanda Union Free School District  
1500 Colvin Boulevard  
Buffalo, NY 14223

Report Number: S9-18-8

Dear Mr. Bovino and Members of the Board of Education:

We conducted an audit of 10 school districts throughout New York State.<sup>1</sup> The objective of our audit was to determine whether school districts are providing physical education classes consistent with the regulations of the Commissioner of the New York State Education Department (Commissioner). We included the Kenmore-Town of Tonawanda Union Free School District (District) in this audit. Within the scope of this audit, we examined schedules, attendance and the physical education plan for the period July 1, 2016 through June 30, 2017. 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 New York State General Municipal Law.

This report of examination letter contains our findings and recommendations specific to the District. We discussed the findings and recommendations with District officials and considered their comments, which appear in Appendix A, in preparing this report. Except as specified in Appendix A, District officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix B includes our comments on the issues raised in the District's response. At the completion of our audit of the 10 school districts, we prepared a global report that summarizes the significant issues we identified at all of the school districts audited.

### **Summary of Findings**

The District generally complied with the physical education (PE) regulations of the New York State Education Department (SED) Commissioner.<sup>2</sup> With the exception of the District's PE plan

---

<sup>1</sup> Baldwinsville Central School District, Binghamton City School District, Brockport Central School District, Camden Central School District, Corning City School District, East Ramapo Central School District, Kenmore-Town of Tonawanda Union Free School District, Plattsburgh City School District, South Colonie Central School District, South Huntington Union Free School District

<sup>2</sup> Chapter 11 of the New York Code of Rules and Regulations (NYCRR), Section 135.4

filed with SED not accurately reflecting the District's PE program, the District provided students with the required number of PE classes and the required amount of PE time. To ensure elementary students were provided with the required PE the District used a supplementary program called ACES (All Children Exercise Simultaneously).

## **Background and Methodology**

The District serves most of the Town of Tonawanda and the Village of Kenmore, in northern Erie County. The District operates nine schools (five elementary schools, two middle schools and two high schools) with 6,705 students and 1,294 employees. District appropriations totaled \$157.1 million for the 2016-17 fiscal year, including approximately \$757,000 for physical education. The District has 37 certified PE teachers.

A five-member Board of Education (Board) governs the District. The Board is charged with the general control, management and responsibility of the District and, as such, possesses those powers and duties set forth in law. The Director of Athletics, PE and Health (Director) is responsible for the day-to-day operations of the PE program.

New York State Education Law<sup>3</sup> generally directs that school districts should provide PE to elementary and secondary school students, under the direction of the Commissioner. As a result, the New York Codes, Rules and Regulations (NYCRR)<sup>4</sup> require a PE plan to be prepared and filed with SED, indicate what should be in the plan and set the time requirements for students on a grade-by-grade basis.

The federal Centers for Disease Control and Prevention<sup>5</sup> reviewed multiple studies and released a report<sup>6</sup> indicating there is evidence that physical activity can improve academic achievement, including grades and standardized test scores. In 11 of 14 studies reviewed, increasing PE time improved students' academic achievement, while three studies found that it had no significant associations with academic achievement. Additionally, PE is important for a student's health and well-being, as childhood obesity continues to be a serious problem in the United States. The prevalence of obesity has remained fairly stable, between 2003-2004 and 2011-2012, at 17 percent and affects 12.7 million children and adolescents.<sup>7</sup>

To complete our audit objective, we reviewed the PE plan, interviewed staff, reviewed student schedules, calculated student attendance and verified compliance with PE regulations. We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on the standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the

---

<sup>3</sup> New York State Education Law Section 803

<sup>4</sup> New York Codes, Rules and Regulations Section 135.4

<sup>5</sup> A federal agency that conducts and supports health promotion, prevention and preparedness activities in the United States, with the goal of improving overall public health

<sup>6</sup> "The association between school-based physical activity, including physical education, and academic performance" (Centers for Disease Control and Prevention, U.S. Department of Health and Human Services), 2010

<sup>7</sup> Ogden CL, Carroll MD, Fryar CD, Flegal KM. "Prevalence of obesity among adults and youth: United States, 2011–2014." NCHS data brief no. 219 (National Center for Health Statistics), 2015

intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

## **Audit Results**

Physical Education Plans – The Commissioner’s regulations state that the Board of Education is responsible for developing and implementing school district plans to provide PE experiences for students. Such plans should be kept on file in the school district office and shall be filed with the SED Division of Physical Education, Fitness, Health, Nutrition and Safety Services. In addition, the NYCRR indicates specific items that the PE plan must address, such as program plans, required instruction, attendance, personnel, facilities and administrative procedures.

The District has a PE plan that is available for public view and which was filed with SED<sup>8</sup> as required; however, it incorrectly addresses the requirement to provide students with the required number of PE opportunities and minutes each week as it provided less PE than required. Positively, District officials required that all students be scheduled for PE, that student PE grade and notes be maintained each year and that teachers ensure students are attending PE classes. We confirmed students are scheduled for PE classes and that students generally attend the classes.

Additionally, the plan has not been updated to reflect the closing of three schools, which resulted in moving the fifth grade to middle school and the eighth grade to high school. As a result, the PE plan holds fifth grade students to elementary school standards while in middle school. The plan also was not updated to reflect current PE minutes the elementary school students receive each week.

Although the Director was aware of the requirements prescribed by SED and knew the District needed to have a detailed PE plan that correctly addresses the regulation PE requirements, he did not update the District’s PE plan. By not maintaining a comprehensive PE plan for guiding staff and monitoring the PE program, District officials risk not complying with regulations and not providing adequate PE for students. This could harm student academic performance and increase the potential for obesity.

Compliance With Physical Education Regulations – The Commissioner’s regulations set forth minimum standards for PE programs. This includes a minimum number of times and minutes per week that a student should receive PE (Figure 1). The regulations also allow adjustments for Districts to tailor the PE program to their own needs. For example, fifth graders can be subject to elementary school or secondary school standards depending on which school they attend.

---

<sup>8</sup> The plan was approved by the Board and filed with SED in 2015.

<b>Figure 1: Regulation PE Requirements</b>		
<b>Grade</b>	<b>Total Minute Requirement</b>	<b>Times Per Week Requirement</b>
K-3	120 Minutes	5
4-6	120 Minutes 5 <sup>th</sup> and 6 <sup>th</sup> graders have option to meet secondary school standards (grades 7-8).	3
7-8	Three times per week one semester, two times per week second semester or a comparable time if school is organized in another pattern. Should average 90 minutes per week.	
9-12	Three times per week one semester, two times per week second semester or a comparable time if school is organized in another pattern Should average 90 minutes per week	

For grades K-12, the District met all the regulation requirements and provided all students with the required number of PE sessions and minutes. The District provides elementary school students (grades K-4) with PE three times a week in 42-minute classes (126 minutes). Additionally, grade levels K-3 receive two ACES classes per week,<sup>9</sup> each approximately 10 minutes (20 minutes). The District created ACES to assist with meeting the State time and daily requirement for grades K-3. The District provides students in grades 5-7 with PE three times at 39 minutes per class (117 minutes) one week, and two times a week at 39 minutes per class the other week (78 minutes). Grades 8-12 follow the same pattern but receive 40-minute classes (120 minutes the first week and 80 minutes the following week).

### **Recommendation**

The Board should:

1. Update and adopt a comprehensive PE plan that meets the Commissioner’s regulations and file it with SED, as required.

The Board has the responsibility to initiate corrective action. Pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of the New York State 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 Board should make the CAP available for public review in the District Clerk’s office.

---

<sup>9</sup> This program is in two 10-minute sessions on the two days there is no PE class. It is a classroom video lecture created by certified PE teachers at the District. Teachers track ACES attendance separately from classroom learning and PE. The ACES program is optional for grade 4.

We thank the officials and staff of the Kenmore-Town of Tonawanda Union Free School District for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## **APPENDIX A**

### **RESPONSE FROM DISTRICT OFFICIALS**

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



**Kenmore-Town of Tonawanda  
Union Free School District**

*Office of the Superintendent*

**Stephen Bovino**  
Superintendent of Schools  
1500 Colvin Blvd.  
Buffalo, New York 14223  
(716) 874-8400 ext. 20342  
sbovino@ktufsd.org

August 1, 2018

Ms. Ann Singer  
Chief Examiner  
Office of the State Comptroller  
State Office Building, Room 1702  
44 Hawley Street  
Binghamton, NY 13901

Ms. Singer:

Please let this communication serve as confirmation that the Kenmore-Town of Tonawanda Union Free School District (KTUFSD) has received the 'summary of findings' as it relates to the physical education audit, designed to cover the 2016-17 academic year.

We would like to request that this response serve as both our response to the draft letter as well as our Corrective Action Plan.

As a whole, we found the process beneficial and we were pleased to have the opportunity to review policies and practices alike. Although we knew that our Physical Education Department was one to be very proud of, the audit substantiated those beliefs.

We accept the findings and, as a whole, agree with the vast majority of the report. In our audio conference held with [REDACTED] on Wednesday, July 11, 2018, we asked for a revision in the fourth paragraph on page 3; Physical Education Plan. It is our position that our Director was not disregarding SED requirements when he did not update the PE plan previously revised in 2015, but instead, following the recommendation of [REDACTED], the Associate in Physical Education (SED), that the Physical Education Plan be updated every seven years. At the time of the audit, the audit team was told of this recommendation by [REDACTED] and given a copy of the email documenting his counsel to our Director.

See  
Note 1  
Page 9

We now understand that the Comptroller's Office expects the Physical Education Plan be updated, board approved and resubmitted after any changes in school or grade level configurations, the scheduling of physical education, the amount of minutes each student is scheduled in the subject and any other major alterations to what is cited in our existing Plan.

To that end, our **Corrective Action** is well under way and we will submit an updated Physical Education Plan to our Board of Education for approval on August 14 and will then submit to SED. In addition, we will submit a Response to the Global Report by the August 14 deadline.

If you require any additional information, please do not hesitate to contact me.

Sincerely,

Mr. Stephen Bovino  
Superintendent of Schools

cc: Robin B. Zymroz, Assistant Superintendent for Instruction and Student Services  
Brett Banker, Director of Physical Education, Health and Athletics

## **APPENDIX B**

### **OSC COMMENT ON THE DISTRICT'S RESPONSE**

#### Note 1

Although District officials state they were following a recommendation to update the plan every seven years, an SED official informed the District that the regulations do not specify that. Regulations require current plans to be kept on file with SED and in the school district office. While the District made significant changes that impacted its PE program, the District did not update its PE plan or file it with SED, as required.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

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

- We interviewed District officials and staff to gain an understanding of the District's policies and procedures for PE.
- We obtained the District's PE plan and compared it to the NYCRR put forth by SED to determine whether the plan met the requirements of the regulations.
- We obtained a list of all District PE teachers and their certifications to determine whether they received certifications as PE teachers.
- We obtained a list of all District students and selected a sample of 160 secondary school students (2.4 percent), using a random number generator, to determine whether they were scheduled for a PE class. If they were, we determined whether the schedule matched the PE plan, information from the District and the school's master schedule.
- We obtained the master schedules for each school that indicated the PE teacher, section ID,<sup>10</sup> days of the week attended and number of students in the class. We then obtained a list of all students' attendance of PE classes and determined the attendance percentage per grade and school based on total students per class, total days of class and total absences.
- We compared the District's PE class scheduling practices to the NYCRR to determine whether they were in compliance with the required amount of classes per week and total minutes per week.

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

---

<sup>10</sup> The ID assigned to a class that identifies the grade, teacher and period (for secondary school)