



New York State Comptroller  
**THOMAS P. DiNAPOLI**

# Health, Safety, and Accessibility in District 75 Schools

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New York City Department of  
Education

Report 2019-N-7 | April 2021

Spotlight on Education



# Audit Highlights

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## Objective

To determine whether the New York City (NYC) Department of Education (DOE) is providing a safe and healthy environment that is Americans with Disabilities Act (ADA) compliant for students attending District 75 schools. The audit covered the period July 1, 2018 through October 26, 2020.

## About the Program

The DOE, the nation's largest public school system, serves 1.1 million students at its more than 1,800 elementary, middle, and high schools, including 202,000 students who receive special education services. Students with greater special education needs and challenges, such as autism spectrum disorders, significant cognitive delays, and emotional disturbances, receive services through DOE's District 75 – a special citywide school district that provides highly specialized instructional support in a wide variety of settings and locations. In school year 2019-20, approximately 26,000 special education students were enrolled in District 75 facilities/schools.

District 75's network of facilities includes 59 main sites/schools, each with one or more affiliated satellite schools. Students in District 75 main sites and satellite schools receive their services in individual school buildings or in special classes co-located with another school – either a DOE general education school or a charter school. In addition, some District 75 students receive their services in hospitals and at home.

The DOE is responsible for ensuring that District 75 schools comply with applicable health, safety, and accessibility requirements. A number of federal, State, and local laws, such as provisions of the ADA, New York State Education Law, Regulations of the Commissioner of the New York State Education Department, Regulations of the Chancellor of the NYC Department of Education, and the NYC Health Code govern these requirements.

Several DOE divisions, including the District 75 Superintendent's Office and the Division of School Facilities (DSF), play a role in monitoring District 75 schools and ensuring their compliance with these requirements. In addition, the NYC School Construction Authority manages DOE's capital program and collaborates on improvement projects with DSF.

## Key Findings

We observed building conditions for a judgmental sample of 29 District 75 schools located throughout the five boroughs of NYC – 15 main sites/schools and 14 satellite schools – and determined that the DOE could improve its oversight to ensure that children attending some District 75 schools are not exposed to unsafe and unhealthy conditions and to conditions that are not ADA compliant. Conditions we identified included:

- Peeling paint in certain areas, including classrooms.
- Lack of the required supply of epinephrine pens (EpiPens) to be used in case of allergic reaction emergencies.
- Disabled door alarms, which could result in students leaving school buildings undetected.
- Unsafe conditions on playgrounds, including cracks in pavement, protruding nails or screws

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in playground mats, uneven surfaces, and broken playground equipment. Additionally, for one school, the playground is part of a public park, which is not locked when school is in session, leaving students vulnerable to being approached or harmed by the public.

- Potentially toxic cleaning materials in unlocked cabinets in classrooms and hallways, and, in one instance, in an unlocked storage room in close proximity to the student cafeteria.
- Accessibility issues, such as difficult-to-open exterior doors and a hallway lined with wheelchairs.
- District 75 schools and students lacking full or similar access to equipment, programs, and areas as general education students in co-located buildings.

## Key Recommendations

- Improve oversight of District 75 schools' compliance with applicable health and safety laws and regulations.
- Coordinate with DSF and the NYC School Construction Authority to maintain a clean and safe environment in District 75 schools.
- Ensure that District 75 school buildings are ADA compliant and accessible.
- Work with District 75 schools and students co-located in DOE general education school buildings to ensure they have full access to all programs, facilities, and equipment available at the co-located general education schools.
- Ensure that an adequate supply of EpiPens are available at District 75 schools.



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## Office of the New York State Comptroller Division of State Government Accountability

April 12, 2021

Meisha Ross Porter  
Chancellor  
New York City Department of Education  
52 Chambers Street  
New York, NY 10007

Dear Chancellor Porter:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York City Department of Education's *Health, Safety, and Accessibility in District 75 Schools*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
ADA	Americans with Disabilities Act	<i>Law</i>
Chancellor's Regulations	Regulations of the Chancellor of the New York City Department of Education	<i>Key Term</i>
Commissioner's Regulations	Regulations of the Commissioner of the New York State Education Department	<i>Key Term</i>
DOE	New York City Department of Education	<i>Auditee</i>
District 75	District 75 schools	<i>Key Term</i>
DSF	Division of School Facilities	<i>Key Term</i>
EpiPen	Epinephrine pen	<i>Key Term</i>
Health Code	New York City Health Code	<i>Key Term</i>
Law	New York State Education Law	<i>Law</i>
Main sites	District 75's network of facilities; each of its 59 main sites/schools has one or more satellite schools	<i>Key Term</i>
Parks	New York City Department of Parks & Recreation	<i>Agency</i>

# Background

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The New York City (NYC) Department of Education (DOE), the nation's largest public school system, serves 1.1 million students at its more than 1,800 elementary, middle, and high schools, including 202,000 students who receive special education services. Students with greater special education needs and challenges, such as autism spectrum disorders, significant cognitive delays, and emotional disturbances, receive services through DOE's District 75 – a special citywide school district that provides highly specialized instructional support in a wide variety of settings and locations. In school year 2019-20, approximately 26,000 students were enrolled in District 75 facilities.

District 75's network of facilities includes 59 main sites/schools (hereafter referred to as main sites; see Exhibit A), each with one or more affiliated satellite schools. Students in District 75 main sites and satellite schools receive their services in individual school buildings or in special classes co-located with another school – either a DOE general education school or a charter school (community schools).<sup>1</sup> In addition, some District 75 students receive their services in hospitals and at home.

The DOE is responsible for ensuring that District 75 schools comply with applicable federal, State, and local laws governing student health, welfare, and safety; school health services; facility safety and security; and accessibility. These include the NYC Health Code (Health Code), Regulations of the Chancellor of the New York City Department of Education (Chancellor's Regulations), Regulations of the Commissioner of the New York State Education Department (Commissioner's Regulations), New York State Education Law (Law), and the Americans with Disabilities Act (ADA).

The DOE's Division of School Facilities (DSF) plays a key role in monitoring District 75 schools and ensuring their compliance with statutory requirements. DSF is primarily responsible for the maintenance, repair, and safe operation of school facilities, and oversees a staff of custodial workers who are responsible for building maintenance at their assigned school, such as cleaning, garbage disposal, heating and air conditioning, plumbing, carpentry, painting, and minor repairs. Within DSF, the SchoolStat Unit conducts evaluations of maintenance and cleanliness conditions twice per year at each school. In addition, the NYC School Construction Authority manages DOE's capital program and collaborates on improvement projects with DSF.

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<sup>1</sup> For the purpose of this report, District 75 schools that are co-located are identified using DOE's naming convention, which includes the program number (class) followed by the community school (location) – for example, "P.S. 368@P.S. 120."

# Audit Findings and Recommendations

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Given the vulnerability of their student populations, it is imperative that District 75 schools comply with requirements designed to ensure students' well-being and provide a learning environment that is safe, secure, and accessible. However, during our site visits to 29 schools, including 15 main sites and 14 satellite schools (see Exhibit B), we observed numerous hazards as well as non-compliance with mandated requirements, which place students at risk. Significantly, we found instances of peeling paint of unknown lead content, disabled door alarms, windows without guards or limiting devices, and unsafe playgrounds – demonstrating the need for improved oversight within District 75 schools to ensure that children are safe. We were unable to visit one satellite school due to its closure as a result of COVID-19.

DOE officials assert that a number of conditions identified throughout this report have been corrected. However, due to safety concerns as well as additional school closures resulting from COVID-19, we were unable to revisit the schools (except where noted) to confirm these corrections. While the DOE provided photographs and other documents of the corrections reportedly made (e.g., repainting of a classroom where we identified peeling paint), they were insufficient for us to determine whether they were of the actual room/school building where we identified problems.

We note that some of the issues we found could be readily resolved through repairs and/or capital improvement projects. The DOE should work with its Division of School Facilities and the NYC School Construction Authority, which manages DOE's capital program for needed repairs and upgrades, to ensure compliance with the various health, safety, and accessibility requirements.

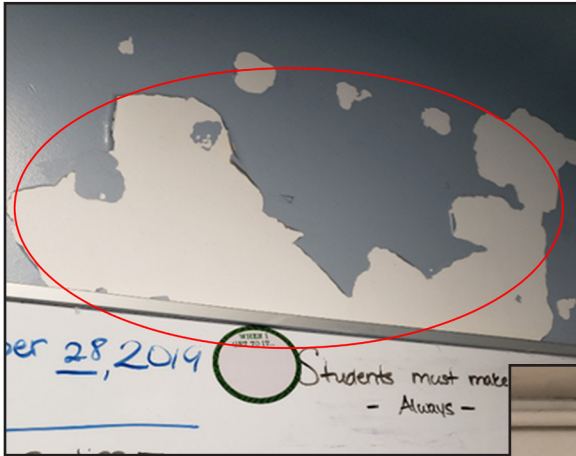
## Health-Related Issues

### Peeling Paint

According to both the National Institute of Environmental Health Sciences and the Centers for Disease Control and Prevention, exposure to lead – whether through ingestion, inhalation, or skin contact – poses serious risks to human health, especially for children, and can cause learning, behavior, hearing, and speech problems. In addition, Health Code Section 45.12 prohibits peeling lead-based paint or peeling paint of unknown lead content on any surface in a location used by kindergarten students.

At 7 of the 29 schools visited, we observed peeling paint in some classrooms (Images 1 and 2), hallways (Image 3), a gymnasium, and a nurse's office. Five of these schools have students in kindergarten and/or pre-kindergarten classes: P.S. 369 and P.S. 368@P.S. 120 in Brooklyn, P.S. 352 in the Bronx, P.S. 811 in Queens, and P.S. 373 in Staten Island. The remaining two schools – P.S. 12 and P.S. 754 in the Bronx – do not have kindergarten and pre-kindergarten students; however, given the various routes and consequences of lead exposure, conditions at these schools may pose risks to all students and staff.



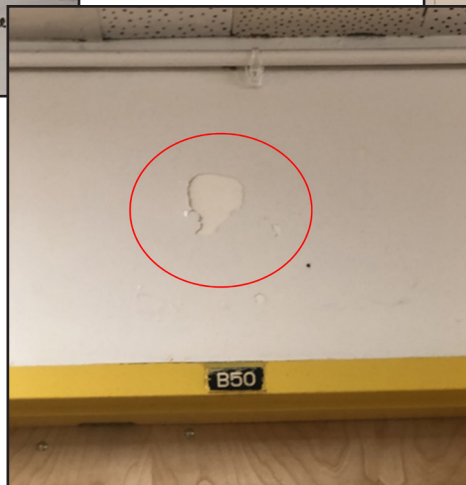


**Image 1:** Peeling paint in Bronx classroom



**Image 2:** Peeling paint on Brooklyn classroom door

**Image 3:** Peeling paint above pre-kindergarten classroom door in Brooklyn



In summer 2019, DSF inspected multiple schools to identify and remediate lead-based paint and published the results on DOE's website. We reviewed these reports and found that for the seven schools where we observed peeling paint conditions:

- No inspections had been performed at four of the schools (P.S. 12, P.S. 352, P.S. 754, and P.S. 811) as of the dates of our visits (September 2019–March 2020).
- At the remaining three schools (P.S. 368@P.S. 120, P.S. 369, and P.S. 373), although we found inspections had been conducted, they were not comprehensive and did not encompass all classrooms. For example, the inspection report for P.S. 369 showed that only 2 of the school's 20 classrooms were included in the inspection, and neither of these were among the 8 classrooms (of the 12 we visited) where we observed peeling paint. Although we did not have the peeling paint tested to determine its lead content, based on the years when these buildings were constructed (1904–1967) and the results of DSF inspections, it is likely that all seven schools we visited have some number of classrooms, hallways, and other areas with lead-based paint.

DOE officials stated, and we acknowledge, that the Health Code only requires testing of kindergarten and pre-kindergarten classrooms, and that higher-grade classrooms and common areas – such as hallways and nurse's offices, where we found peeling paint – are not subject to this requirement. However, given the health risks that

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peeling paint poses to people of all ages, especially the more vulnerable students in District 75 schools, it would be prudent of the DOE to include all classrooms as well as common areas in their inspections. DOE officials also stated that, as part of their customary maintenance protocols for schools, they have remediated conditions at the classrooms we identified and added a new layer of paint.

## **Inadequate Supply of Epinephrine Pens**

Epinephrine pens (EpiPens) are used to treat severe allergic reactions (anaphylaxis) to insect stings or bites, foods, drugs, and other allergens. Anaphylaxis can develop within seconds after exposure to an allergen and results in life-threatening symptoms, including swelling of the airways, inability to breathe, and a sudden, severe drop in blood pressure. DOE Chancellor's Regulation A-715, VII.B(2), states that all schools that have a daily nurse should have an EpiPen of each size, as appropriate for the school population, available for non-patient-specific emergency situations and/or as backup. All such schools will be supplied with EpiPens through the Office of School Health.

Our audit found that seven schools did not have an adequate supply of EpiPens, as required. During our visit to one of these schools, P.S. 12@P.S. 823, the nurse stated that EpiPens had been ordered in September 2019, at the beginning of the school year, but had not yet been received as of the date of our visit on November 14, 2019 – almost two months later. In response, the DOE asserted that its current procedures exceed the regulations and that each school is supplied with two EpiPens and additional ones may be provided based on student needs. However, on the dates of our visits, these seven schools did not have a supply of EpiPens, as required. Without an adequate supply, there is no assurance that school staff are equipped to handle potentially life-threatening emergencies that require the use of EpiPens.

## **Student Safety and Security**

### **Disabled Door Alarms**

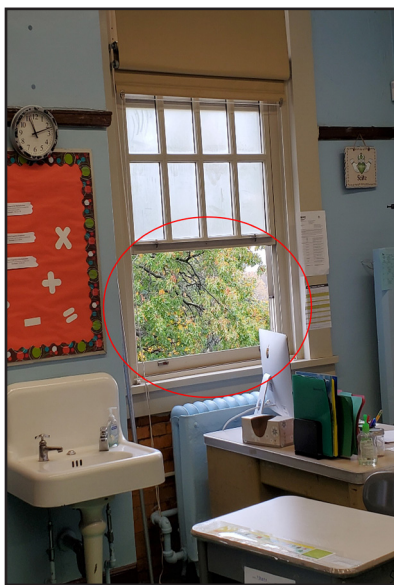
New York City Local Law 0131-2014-A, also known as Avonte's Law, amended Section 528 of the New York City Charter to require the DOE to install door alarms where it deems them appropriate to ensure student safety and to prevent students from leaving school grounds unnoticed and without permission. At each of the schools we visited, we tested the door alarms in the presence of school staff. At four schools – P.S. 369 and P.S. 368 in Brooklyn, P.S. 352 in the Bronx, and P.S. 752@P.S. 400 in Queens – some of the door alarms had been disabled, as evidenced by security alarm lights that were not lit up or were not blinking. Moreover, the doors in question lead to the exterior of these buildings. Disabled door alarms can potentially compromise the safety of students, as school officials may not be aware if students attempt to exit or actually exit the school building. It is important to note that, at all four schools, staff took immediate action to activate the disabled door alarms when it was brought to their attention.

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DOE officials responded that, on occasion, specific door alarms may be intentionally deactivated, and during this time school staff are assigned to supervise the door and then reactivate the alarm after the door is no longer in use. They further commented that these conditions are transient and would have been corrected as part of the schools' protocols for door alarms. However, on the dates of our visits, the door alarms were disabled and the doors were unsupervised. Moreover, the school staff who accompanied us during our testing were themselves unaware that the door alarms were disabled and had no knowledge of them being temporarily deactivated. While we acknowledge that the law does not specify when door alarms should be activated, to ensure that these security devices are fulfilling their intended purpose, they should be activated during school hours.

## Unguarded Windows

According to Health Code Section 45.11(n), windows in rooms above a school's ground floor should be safely guarded when the windowsills are low enough to present a "safety hazard" to the children. Window guards or limiting devices should be used to prevent students from falling out windows. We observed some classroom windows in three schools – P.S. 9, P.S. 352@P.S. 40, and P.S. 373 – that had neither window guards nor limiting devices. At one of these schools, we also found a window was left open wide enough for a student to lean out and fall through (Image 4). At another school where limiting devices had been installed, we observed that a window's glass pane was cracked (Image 5). Broken glass in classroom windows can cause serious injuries to students and may also increase the risk of unauthorized entry to the school. DOE officials stated that the broken glass has since been replaced.



**Image 4:** Open unguarded window

**Image 5:** Cracked window pane



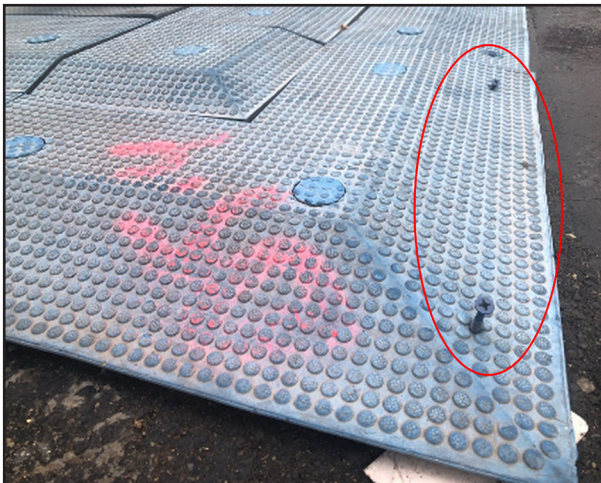
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## Unsafe Play Areas

Health Code Section 45.11(h) states that indoor and outdoor play areas should be safe, clean, easily accessible, adequate in size, and suitable for the needs of the children. Our audit found seven schools with unsafe play areas. Deficiencies included cracks in playground pavement (Image 6), nails/screws protruding from the safety mat on the outdoor playground (Image 7), and a broken slide with sharp edges (Image 8).



**Image 6** (right): Cracked playground pavement. **Image 7** (bottom left): Protruding nails/screws on safety mat. **Image 8** (bottom right): Broken playground slide



In response, DOE officials stated that the play areas at five of the seven schools were made inaccessible and will remain inaccessible until conditions are remediated. However, we noted that, on the dates of our visits, only the play area at one of the five schools (P.S. 138), based on a posted sign, was made inaccessible to students. At the four other schools (P.S. 373, P.S. 368, P.S. 396@P.S. 167, P.S. 138@I.S. 90), we observed that the play areas could be accessed or partially accessed by students even though dangerous conditions were identified. Moreover, an official at one of these schools told us that the unsafe playground conditions we observed have existed for at least four years, which is why she does not allow students to use that playground. For another school, P.S. 396, where we observed cracks in the playground pavement, DOE officials responded that the custodians did inspections subsequent to our visit and found the play area to be in good condition. We provided DOE officials with photos of the cracks we observed in the playground area (Image 6) and requested evidence that these conditions have been corrected. No such evidence was provided.

Further, on our visit to P.S 368@P.S. 120 in Brooklyn on February 5, 2020, we found that the school's playground was located in a section of a public park (see Image 9) and was not secured from the other areas in the park. A general notice posted at the entrance indicates that the park is not open to the public during school hours. However, as we observed, the gates around the park remained unlocked, allowing the public unfettered access to the park while students use it for recess playtime. The lack of a secured area puts students at risk of being injured, harmed, and/or accosted. During our visit, a school official acknowledged her concern about this condition and commented that the DOE had been notified. The official told us the school was advised by the DOE that it was a NYC Department of Parks (Parks) issue.



Image 9: School playground in public park

DOE officials responded that they were made aware that a portion of the park's fencing was missing but that the issue had since been remediated by Parks. However, on a subsequent visit to the school during school hours on October 26, 2020, we found the conditions remained the same. We were unable to determine where the fence had been repaired, and, more importantly, the unlocked gates had not been addressed. Moreover, repairing or replacing a fence would not negate the issue at hand because if the gates remain unlocked, the public can still freely access the area where students play during school hours.

## Toxic Cleaning Products Accessible to Students

At six schools (P.S. 369 in Brooklyn, P.S. 352 in the Bronx, P.S. 811@P.S. 149 in Manhattan, P.S. 9 in Queens, and P.S. 373 and P.S. 721 on Staten Island), we observed toxic cleaning products, such as bleach and Ajax powder, in unlocked storage closets located in hallways and classrooms that were accessible to students (Images 10–12). At P.S. 9, we observed cleaning products in an unlocked storage room adjacent to the student cafeteria while students were there having lunch.



Images 10–12: Cleaning materials accessible to students

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DOE officials responded that these chemicals are common cleaning supplies generally found in any household. They further stated that the cleaning products we observed were stored in cabinets/closets. While that is true, these cabinets and closets were unlocked and thus accessible to students. Further, even common household cleaning products can cause injuries if inhaled, swallowed, or absorbed through the skin.

## Panic Buttons

Some schools have panic buttons – electronic devices that school officials can activate to immediately alert authorities (e.g., police) to situations of distress and danger, such as intruders or medical emergencies. Ten of the District 75 schools we visited had no panic buttons/switches in their main office or the areas they occupy. Officials at six of the ten schools stated that, while they did not have panic buttons, they were aware that such buttons are located in the main office of the co-located school. However, this can be problematic when the main office of the general education school is located on a different floor of the building. For example, at one of the schools we visited, the main office of the co-located general education school is on the first floor of the building while the main office of the District 75 school is on the fourth floor. In the event of an emergency, the distant location of the panic button could delay notification and timely response of emergency personnel. Further, school officials at the other four District 75 schools told us they did not know if the co-located general education school had panic buttons. Lack of access to and/or information about such an important device can put District 75 schools at a disadvantage in the event of an emergency or serious incident.

In response, DOE officials stated that many buildings with co-located schools have panic buttons in centrally located areas. They also asserted that school safety agents have radios with panic buttons. However, installing panic buttons in centrally located spaces occupied by the District 75 schools, such as the main offices, would allow access by other school staff and offer another option for requesting help in case of emergency.

## Nurse Identification Badges

According to the State Education Department's Office of the Professions, all nurses are required to wear an identification badge indicating their name and professional title (e.g., registered nurse, licensed practical nurse) when practicing in a school. Identification badges are essential for helping students, staff, parents, and other visitors to identify school nurses and minimize the risk that medical services may be requested from and provided by individuals who are not licensed to provide those services. We observed that none of the nurses at the 29 schools in our sample were wearing an identification badge at the time of our visit. When asked to show their identification, nurses at 27 schools had to retrieve their badge from their bag, wallet, or desk drawer. At the remaining two schools – P.S. 352 in the Bronx and P.S. 9 in Queens – the nurses could not produce their identification badge. As a case in point, the P.S. 352 school official who accompanied us on our visit told us

she did not recognize the individual who identified herself as the nurse and had not seen her before. We later learned that the regular nurse was off that day. Nurses at these schools were not aware of the requirement to wear an identification badge and school officials are not enforcing the requirements.

## Facility Issues

We found several physical conditions at schools that need to be addressed in order to ensure the safety of students, DOE personnel, and visitors.

### Equipment and Electrical Wiring

During our site visits, we observed missing and/or broken ceiling tiles, electrical wires dangling from ceilings and hallways (Image 13), broken furniture (Image 14), broken door hinges, hot radiators with no cover, and a radiator with protruding metal guards. At P.S. 811@P.S. 149 in Manhattan, a wash basin was missing from a bathroom, leaving a protruding metal pipe covered with a plastic bag (Image 15). In response, DOE officials stated these conditions are being repaired.

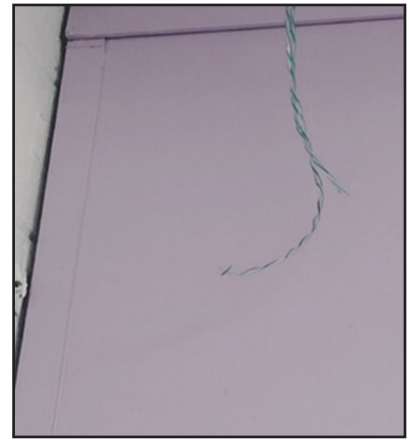


Image 13: Dangling electrical wire



Image 14: Broken chair



Image 15: Missing wash basin

At P.S. 9@P.S. 882 in Queens, we observed that the gymnasium floor was 2 to 3 inches higher than surrounding flooring (Image 16). School officials told us that the gymnasium floor was installed over the regular flooring, thus creating a height discrepancy. Left uncorrected, this uneven flooring puts students at risk of tripping and falling.

### Fire Extinguisher Inspections

Occupational Safety and Health Administration Standard 1910.157(e)(1) states that employers are responsible for the inspection, maintenance, and testing of all portable fire extinguishers in the workplace, and requires that portable extinguishers or fire hoses be visually inspected monthly.



Image 16: Uneven gymnasium floor

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Three of 29 schools in our sample had fire extinguishers with expired dates on their inspection tags. For example, on our October 2019 visit to P.S. 373 in Staten Island, the tag on a fire extinguisher indicated the extinguisher was last inspected in July 2019. During November 2019 visits to two schools in Brooklyn (P.S. 369 and P.S. 369@P.S. 133), we found inspection tags for two fire extinguishers were dated July 2019 and September 2019, respectively. Extinguishers should be regularly inspected and maintained as required, and the dates recorded on the fire extinguishers tags. Allowing inspections, testing, and maintenance to lapse creates the risk that extinguishers may not be operable in the case of a fire. In their response, DOE officials asserted that the dates on the inspection tags reflect the date of the annual inspection, and that custodians conduct visual inspections monthly and record those dates in fire safety log books. However, in all other cases, inspection tags on the fire extinguishers at the visited schools showed monthly rather than annual inspection dates.

## Non-Working Toilets and Urinals

Although all 29 schools in our sample had the required number of toilets, as specified in Health Code Section 49.07(b) and NYC Building Administrative Code 26-127, 11 schools had non-working toilets/urinals. For example, at our November 2019 visit to P.S. 12 in the Bronx, we observed a sign on one toilet indicating it was “out of order.” According to a school official, it had been out of order for more than a year. Two weeks later, school officials informed us that the toilet had been repaired. In another example, at P.S. 754, also in the Bronx, one urinal was not working and was covered with brown residue (Image 17). Additionally, we found adjacent urinals that were not flushing properly. Without sufficient working toilets/urinals, students and staff may have difficulty practicing and maintaining proper hygiene, which can promote the spread of disease. Further, at some schools, due the lack of functioning toilets at their location in the building, students were forced to use bathrooms on other floors.



Image 17: Residue in urinal

## Inaccessible Water Fountains and Inadequate Water Pressure

Health Code Section 45.11(f) states that drinking water should be available near classrooms and play areas and easily accessible to the children. Further, if bubbler fountains (curved spouts) are used, they shall be of the angle jet type with suitable guards and shall have water pressure sufficient to raise the water stream high enough above the spout to avoid contamination. At five of the schools we visited, water fountains were not easily accessible by all students. For example, at P.S. 811@P.S. 149 in Manhattan, we did not observe any water fountains on either of the two floors that District 75 students occupied. At PS. 754 in the Bronx and P.S. 721 in Staten Island, water fountains on the first floor or the basement were not working. In addition, at four other schools, the water fountains had very low water pressure when we tested them. These conditions increase the possibility of contamination



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as the students may need to place their mouths close to or on the spouts to drink. Moreover, for one of these water fountains, the area at the base of the water spout was rusted (Image 18). DOE officials asserted that these are transient conditions and that all water fountains are now in working condition.

## ADA Accessibility

Students can experience difficulty accessing areas within the school, particularly if they have to navigate wheelchairs or crutches around obstructions, which can pose a hazard during fire or other emergencies. Toward this end, the ADA requires public schools to accommodate children with disabilities. Wheelchair-accessible routes should be clear and continuously unobstructed. In addition, there must be sufficient room in the bathroom and bathroom stalls for a child to transfer from a wheelchair to a toilet. On our visits, we identified two schools with conditions that pose accessibility issues for students:



**Image 18:** Rust on base of water spout

- In order to enter P.S. 811@P.S. 566 (identified by the DOE as a “fully accessible” school), the entrance doors must be pulled outward. We found these doors to be extremely difficult to open and would be challenging for anyone in a wheelchair to open and navigate.
- Equipment (e.g., wheelchairs) used by District 75 students at P.S. 138 was stored in the hallways (Image 19). Although the photograph shows a clear path, storing wheelchairs along the path could create an unnecessary hazard during an emergency. In response, DOE officials stated they did not consider this to be an obstruction. However, the school official who accompanied us on the school visit commented that the school had been cited by the NYC Fire Department for storing equipment in the hallway as it creates an obstruction in the event of an emergency.



**Image 19:** Wheelchairs stored in hallway

## Nurse’s Office

To promote safety, privacy, and medical confidentiality, Chancellor’s Regulation A-701(VII)(A)(1) identifies a range of key characteristics that, to the extent possible, medical rooms should have. These include: adequate room size (generally at least 200 square feet); floor-to-ceiling walls; sinks with hot and cold running water; no through traffic; telephone and Internet access; designated student waiting areas; nearby student bathrooms; adequate heat, light, and ventilation; and appropriate locations in the schools. In addition, Section V.B.2 states that student medications should be stored in a locked cabinet or refrigerator. We found that the nurse’s room/ area (which is considered the medical room at DOE schools) at 14 of the schools we visited lacked one or more of these characteristics, as follows:

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- No student waiting areas at 11 schools.
  - Nurse's office/area smaller than 200 square feet at five schools. For example, at P.S. 396@P.S. 167 in Brooklyn and P.S. 373 in Staten Island, the areas measured 123 square feet and 140 square feet, respectively.
  - No nearby student bathrooms at four schools.
  - No sink or a locked cabinet to store medicine at one school (P.S. 12@P.S. 823 in the Bronx).

In response, DOE officials stated that the specifications in the regulations are taken into consideration when selecting a location for the nurse's office and are implemented when possible. We note that, effective January 2020, during the middle of the audit, Chancellor's Regulation A-701 was modified to read "should have" rather than "to the extent possible."

## Other Matters

We observed additional conditions during our school visits that we believe warrant DOE officials' attention and should be addressed.

## Student Privacy

During our visit to P.S. 396 in Brooklyn on February 4, 2020, we found paraprofessionals were changing the diaper of an upper-grade student in a classroom while the class was in session. Although the diaper changing was performed behind a folding screen, the screen provided only a limited degree of privacy as a result of the gaps in its folds. We respected the student's privacy and immediately walked away. We noted that the classroom had a bathroom with a door; however, wheelchairs and other equipment were stored there. We also noted that a bathroom was located in the hallway outside the classroom; however, it appears the paraprofessionals chose not to take the student to that bathroom. In response, DOE officials stated that this issue has been discussed with the school and will be corrected.

## Access to Programs, Facilities, and Equipment

District 75 schools and their students deserve the same access to facilities, equipment, and certain programs available to the general education schools/students with which they are co-located. However, based on our observations during school visits as well as information from the District 75 school officials, access appears to be limited at times. The following are some examples from three District 75 schools (P.S. 811@P.S. 566 in Queens, P.S. 94 in Manhattan, and P.S. 12@P.S. 823 in the Bronx):

- Officials at all three schools reported their schools were not given access to the public address system located in the school building and therefore could not make announcements.

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- Officials at P.S. 811@P.S. 566 commented that their building’s security monitors are located in the main office of the general education school and that District 75 school staff do not have access to the monitors when the general education school is dismissed for the day.
  - P.S. 94 officials stated their students (approximately 60) are limited to one daily lunch period at assigned tables in a corner of the cafeteria; in addition, they are assigned one specific daily recess period.
  - At P.S. 12@P.S. 823, officials noted that their students (approximately 49) do not have access to the gymnasium in the building; instead, they use a classroom, which also serves as their cafeteria and auditorium. The gymnasium is accessible only to the general education students.

## Recommendations

1. Improve oversight of District 75 schools’ compliance with applicable health and safety laws and regulations.
2. Coordinate with DSF and the NYC School Construction Authority to maintain a clean and safe environment in District 75 schools.
3. Ensure that District 75 school buildings are ADA compliant and accessible.
4. Work with District 75 schools/students co-located in DOE general education school buildings to ensure they have full access to all programs, facilities, and equipment available at the co-located general education schools.
5. Ensure that an adequate supply of EpiPens are available at District 75 schools.

# Audit Scope, Objective, and Methodology

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The objective of this audit was to determine whether the DOE is providing a safe and healthy environment that is ADA compliant for students attending District 75 schools. The audit scope covered the period July 1, 2018 through October 26, 2020.

To accomplish our audit objective and assess the DOE's relevant internal controls, we interviewed DOE officials from the District 75 Superintendent's Office and the DSF. We also met with NYC School Construction Authority officials to understand their role as it pertains to health, safety, and accessibility conditions at the schools. We reviewed relevant reports issued by the DSF as well pertinent laws, regulations, and health codes.

We selected a judgmental sample of 30 schools based on factors such as whether the school was a District 75 main site or a satellite school, the borough the school is located in, the school's accessibility level (full, partial, not accessible), and its SchoolStat score. Because of COVID-19 pandemic-related school closures, we were unable to visit one of the satellite schools. Therefore, our sample of 29 schools includes 15 main sites and 14 satellite schools. Because this was a judgmental sample, the results cannot be projected to the population as a whole.

We visited 50 percent of the classrooms occupied and used by the District 75 students and programs; therefore, the issues identified are based on observations of half these buildings. We were accompanied by school staff on our visits to each of the school buildings. Further, DOE officials and school staff were aware of our visits in advance.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to affirm that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They further affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials will not provide representation letters in connection with our audits. As a result, we lack assurance from DOE officials that all relevant information was provided to us during the audit.

# Statutory Requirements

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## Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

We conducted our audit in accordance with generally accepted government auditing standards. These 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 objective. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objective.

## Reporting Requirements

A draft copy of this report was provided to DOE officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of it. While DOE officials agreed with the report's recommendations, and indicated actions they have taken or will take to implement them, they disagreed with some of our conclusions. We address certain remarks in our State Comptroller's Comments, which are embedded within DOE's response.

Within 180 days of the final release of this report, we request that the Chancellor of the New York City Department of Education report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

# Exhibit A

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## District 75 Main Sites/Schools, by Borough\*

<b>Bronx</b>	
1	P.S. 754 - J. M. Rapport School for Career Development
2	P.S. 721 - John F. Kennedy Jr. School
3	P.S. 10
4	P.S. 12 - Lewis and Clark School
5	P.S. 168
6	P.S. 17
7	P.S. 176
8	P.S. 186 - Walter J. Damrosch School
9	P.S. 188
10	P.S. 469 - Bronx School for Continuous Learners
11	P.S. 721 - Stephen McSweeney School
12	P.S. 723
13	P.S. 811
14	P.S. 352 - Vida Bogart School for All Children
<b>Brooklyn</b>	
15	P.S. 140
16	P.S. 141
17	P.S. 231
18	P.S. 36
19	P.S. 368
20	P.S. 369 - Coy L. Cox School
21	P.S. 370
22	P.S. 371 - Lillian L. Rashkis School
23	P.S. 372 - Children's School
24	P.S. 373 - Brooklyn Transition Center
25	P.S. 396
26	P.S. 53
27	P.S. 721 - Brooklyn Occupational Training Center
28	P.S. 753 - School for Career Development
29	P.S. 77
30	P.S. 771
31	P.S. 811 - Connie Lekas School
32	P.S. 4

<b>Manhattan</b>	
33	P.S. 751 - Manhattan School for Career Development
34	P.S. 138
35	P.S. 169 - Robert F. Kennedy
36	P.S. 226
37	P.S. 35
38	P.S. 721 - Manhattan Occupational Training Center
39	P.S. 79 - Horan School
40	P.S. 811 - Mickey Mantle School
41	P.S. 94
<b>Queens</b>	
42	P.S. 177
43	P.S. 23
44	P.S. 224
45	P.S. 233
46	P.S. 255
47	P.S. 256
48	P.S. 9
49	P.S. 993
50	P.S. 4
51	P.S. 811
52	P.S. 721
53	P.S. 752 - Queens Transition Center
54	P.S. 277 - Riverview School
55	P.S. 75 - Robert E. Peary School
<b>Staten Island</b>	
56	P.S. 37 - David Marquis School of the Arts
57	P.S. 373
58	P.S. 721 - Richard H. Hungerford School
59	I.S./P.S. 25 - South Richmond High School

\*In addition to 59 main sites, District 75 students can also receive services in the hospital and at home. Over 300 satellite schools are associated with these main sites.

# Exhibit B

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## District 75 Schools in Sample

Main Site	Satellite School
<b>Bronx</b>	
P.S. 12	P.S. 12@P.S. 823
P.S. 352	P.S. 352@P.S. 40
P.S. 754*	P.S. 754@I.S/H.S. 362
<b>Brooklyn</b>	
P.S. 369	P.S. 369@P.S.133
P.S. 368	P.S. 368@P.S. 120
P.S. 396	P.S. 396@P.S. 167
<b>Manhattan</b>	
P.S. 94	P.S. 94@P.S. 340
P.S. 811	P.S. 811@P.S. 149
P.S. 138	P.S. 138@I.S. 90
<b>Queens</b>	
P.S. 811	P.S. 811@P.S. 566
P.S. 9	P.S. 9@P.S. 882
P.S. 752	P.S. 752@P.S. 400
<b>Staten Island</b>	
P.S. 373	P.S. 373@P.S. 6
P.S. 37	P.S. 37@Great Kills High School
P.S. 721	P.S. 721@P.S. 43

\*This school was not visited due to COVID-19 pandemic-related closing.



# Agency Comments and State Comptroller's Comments

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Office of the Chief Academic Officer  
52 Chambers Street | New York, NY 10007

March 3, 2021

Mr. Thomas P. DiNapoli, State Comptroller  
Office of the New York State Comptroller  
Division of State Government Accountability  
110 State Street, 11th floor  
Albany, NY 12236

**RE: Health, Safety, and Accessibility  
in District 75 Schools, New York City  
Department of Education,  
Report 2019-N-7**

Dear Comptroller DiNapoli,

This letter constitutes the formal response of the New York City Department of Education (DOE) to the recommendations made by the Office of the State Comptroller (Comptroller) in its draft audit report on the DOE's Compliance with Health, Safety, and Accessibility in District 75 Schools (Draft Report). The DOE is committed to meeting the needs of students with disabilities in District 75. As per District 75's Mission Statement, the district, "provides quality and rigorous individualized educational programs to students with significant challenges and diverse language styles in a variety of settings that nurture independence, ensure dignity, and support integration into the community." This commitment includes ensuring the provision of special education programs and services recommended on a student's Individualized Education Program (IEP) in a safe and accessible environment, with commensurate educational opportunities to their general education peers.

In review of the Comptroller's audit and recommendations, we offer responses focused on the following issues:

## **Peeling Paint**

As noted in the Draft Report shared with the DOE, all the schools that were visited by the auditors were in full compliance with the laws and regulations as criteria outlined by the auditors. Specifically, no peeling paint was observed in areas occupied by Kindergarten or pre-kindergarten students.

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**State Comptroller's Comment** – As cited in our report, we observed peeling paint in areas at some of the schools we visited, which were attended by kindergarten and/or pre-kindergarten students.

As to the observations of peeling paints in other areas, the DOE has a proactive approach to remediate peeling paint conditions to ensure the safety of students and staff in those facilities.

It is important to note that those few observations noted in the report—based on a walkthrough of the 29 schools—are transient observations and they would be corrected in the course of normal maintenance practices and, in fact, all paint conditions originally identified by the auditors during their visits had been remediated once it was reported by the auditors.

**State Comptroller's Comment** – We disagree with DOE's assertions that the instances of peeling paint we identified are transient observations and would be corrected in the course of normal maintenance practices. As cited in this report, we found that the DOE either had not inspected these schools for peeling paint or had not inspected all areas of some schools. Moreover, during our site visits, we were informed by school personnel that some of the conditions had existed for a number of months.

During a meeting with the auditors, a request was made for photo evidence to confirm the remediation and soon after those photos were provided by the DOE. The auditors also had an opportunity to visit at least some of those schools again to confirm that prior observations have been corrected. We are disappointed that the Draft Report discounts the evidence that was requested by and provided to the auditors and declares that they were unable to confirm the remediation.

**State Comptroller's Comment** – We did not discount the evidence provided by DOE. However, the closure of schools due to the COVID pandemic prevented us from revisiting the impacted schools to confirm that the problems had been addressed. Moreover, as we indicate on p.8 of the report, we do not have assurance that the photographs provided by the DOE are of the same areas we observed during our initial visits.

### **Epinephrine Auto-Injector**

It is our policy that District 75 medical rooms have an appropriately dosed epinephrine auto-injector to treat District 75 students. Devices for individual students assigned to a particular classroom should be kept in their respective classrooms and devices that are appropriately dosed for the student population of the school as a whole are to be kept in the medical room. As part of our continuous guidance related to health matters, we will remind nurses and nursing supervisors that an epinephrine auto-injector must be ordered immediately if the existing one has been used or is missing.

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### **Panic Buttons**

The safety and security of students and staff are of the utmost importance. The Draft Report fails to consider our emergency protocols and guidance and it discounts that School Safety Agents' radios have been equipped with panic buttons to quickly alert all occupants within the school facility of any emergency, which due to their mobility and the strategic locations where they are stationed is more effective than a static panic button.

**State Comptroller's Comment** – We do not discount that school safety agents have radios equipped with panic buttons. However, this does not preclude District 75 schools that are co-located in other schools from having a panic button in the area(s) they occupy. Moreover, as found during a previous audit conducted by our office (Report 2018-N-2: *Compliance With School Safety Planning Requirements*), radios at some DOE schools we visited were not always charged, turned on, or working.

The DOE has established systems and protocols consistent with State Law and Federal recommendations, as well as procedures that go beyond State mandates. Systems are regularly assessed for effectiveness and they are updated and enhanced as necessary, specifically aligned to any current conditions. The DOE's emergency readiness training initiatives are based on State and local laws and regulations, as well as the needs of our diverse learning communities. Vital components of emergency readiness are the School Safety Plan and Building Response Team (BRT), which is a school-based team that is activated to manage health and safety incidents or emergencies. Per New York State Education Law Section 2801-a, all school buildings must have a, "building-level emergency response plan" (*i.e.*, School Safety Plan) that is updated annually, and a, "building-level emergency response team" (*i.e.*, BRT). The BRT provides school communities with incident support during an emergency, including managing school-related emergencies until first responders arrive and the School Safety Plans must include the designation of its individual members. In a campus setting, each housed school must have one representative on the BRT. BRTs work collaboratively with School Safety Agents to ensure that procedures critical to emergency response readiness, *e.g.*, intercoms, door alarms, panic buttons, are established with clear lines of communication for building-wide notification in case of an emergency.

### **Fire Extinguisher Inspections**

The DOE is in full compliance with all the applicable safety regulations and guidance with respect to fire extinguishers and their inspections. Despite evidence shared with the Comptroller the Draft Report inaccurately states that two schools were out of compliance with their monthly inspections. The requirement is that schools' extinguishers have tags evidencing that annual inspection has been conducted. All school visited by the auditors met those requirements. The DOE also has

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written proof of its monthly inspection. At the time that we were advised of the findings, we provided the auditors with records demonstrating compliance. It is unclear to the DOE why the Draft Report continues to use inaccurate data to arrive at an erroneous conclusion.

**State Comptroller's Comment** – Our conclusions are not erroneous. The requirement is for fire extinguishers to be inspected monthly. Further, the schools in question have multiple fire extinguishers and the records provided to us do not specifically identify which extinguishers were inspected.

#### **Non-Working Toilets and Urinals and Inaccessible Water Fountains and Inadequate Water Pressure**

The DOE is in full compliance with all the applicable laws and regulations with respect to toilets, urinals, water fountains and water pressure. The Draft Report includes several instances of observations reflecting transient conditions that had and/or would be identified as part of the routine monitoring, maintenance, and repair conducted by the custodial engineer. The Draft Report thus reflects that the DOE was in compliance, but it continues to list instances observed, which may unintentionally mislead the reader that these observations might be systemic rather than transient instances. We take the observations in the Draft Report seriously, but we want to stress that in most instances, those observations had or would have been remedied as part of our established protocols and process for maintenance of school facilities.

**State Comptroller's Comment** – We disagree with DOE's assertion that our observations reflect transient conditions that would have been identified as part of routine monitoring, maintenance, and repair. Some of the conditions we cited in this report had existed for months prior to our visits and were reportedly inspected or remedied only after we brought them to the attention of DOE officials.

#### **Access to Programs, Facilities and Equipment**

In shared buildings, District 75 plays a key role from the foundational stages of the co-location process, working alongside DOE's Division of School Facilities and partnering with school districts leadership to ensure the collective needs of all students in the building are fully met, both through the allocation of space and resource to each school, as well as agreed-upon use of shared spaces. Building Councils comprised of the co-located principals/administrators from all schools continue this collaborative process on an ongoing basis. As stated in the DOE's Campus Policy Memorandum and Procedures:

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Well-executed campus management creates necessary conditions for increased student achievement, as well as principal, staff and community satisfaction. This campus management policy defines the collective responsibilities of Department of Education (“DOE”) principals and charter school leaders who share a school building, including certain D75 local campus leaders. They must create and actively participate in a Building Council, a structure for administrative decision-making for issues impacting all schools in the building. The Building Council is responsible for resolving all issues related to the smooth daily operation of all schools in the building and the safety of the students they serve.

Building Council members are equal partners in shaping the educational environment; they share responsibility and accountability for building administration, communication and culture. They must respect each other’s unique culture and simultaneously make shared decisions that are good for all students and schools on the campus.

We continue to enhance our implementation of these policies, and a good example of that effort is the Collaborative School Communities Program. District 75 and co-located District 1-32 schools implemented innovative practices that extended opportunities for all students on campus. They share resources and professional development offerings to support staff in promoting and implementing collaborative practices that benefit all students. They coordinate schedules, events and activities to ensure D75 students have increased access to general education staff and students. They often come together to share, celebrate and learn from each other.

The auditors failed to evaluate our established processes and instead chose to rely on anecdotal information without any further considerations; as such, the Draft Report does not account for this matter in a fair and balanced manner.

**State Comptroller’s Comment** – Our report is fair and balanced and was based on observations made and interviews conducted during our site visits. Any information DOE provided to us regarding this matter was taken into consideration. It should be noted that DOE’s established policies and processes are not necessarily consistent with actual practices. We evaluated DOE’s policies and practices pertinent to this issue by visiting a sample of District 75 stand-alone and co-located schools, observing practices, and interviewing school officials.

#### **Response to Recommendations**

**Recommendation 1.** *Improve oversight of District 75 schools’ compliance with applicable health and safety laws and regulations.*

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**Response.** The DOE agrees with this recommendation — compliance with health and safety laws and regulations are an ongoing priority across District 75 and any identified need to review and/or remediate practices is readily addressed in collaboration with all relevant building stakeholders.

**Recommendation 2.** *Coordinate with DSF and the NYC School Construction Authority to maintain a clean and safe environment in District 75 schools.*

**Response.** The DOE agrees with this recommendation, which is consistent with its practices and longstanding policies.

**Recommendation 3.** *Ensure that District 75 school buildings are ADA compliant and accessible.*

**Response.** The DOE agrees with the intent of this recommendation and is actively working towards accessibility for all schools. This is consistent with our current practices and efforts. Since 1992, all new buildings are constructed in compliance with The American with Disabilities' Act. The DOE has invested 750 million dollars in the current 2020-24 Capital plan in our efforts to create more accessible options for our students in our current portfolio of buildings. The needs of students with disabilities, particularly those in district 75, has been and will remain a main criteria for project planning.

**Recommendation 4.** *Work with District 75 schools/students co-located in DOE general education school buildings to ensure they have full access to all programs, facilities, and equipment available at the co-located general education schools.*

**Response.** The DOE agrees with this recommendation, which is consistent with current practices and longstanding policies. As shared above, District 75 plays a key role from the foundational stages of the co-location process as well as on an ongoing basis, working alongside DOE's Division of School Facilities and partnering with school districts leadership to ensure the collective needs of all students in the building are fully met, both through the allocation of space and resource to each school, as well as agreed-upon use of shared spaces.

**Recommendation 5.** *Ensure that an adequate supply of EpiPens are available at District 75 schools.*

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**Response.** The DOE agrees with the recommendation to have an epinephrine auto-injector of appropriate dose(s) available in every school medical room, which is consistent with current practices and longstanding policies.

Sincerely,

A handwritten signature in black ink that reads "Linda P. Chen". The signature is written in a cursive, flowing style.

Linda P. Chen  
Chief Academic Officer

# Contributors to Report

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**Ken Shulman** - *Assistant Comptroller*

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