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New York City Comptroller
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DROPPING THE BALL:

Disparities in Physical Education
in New York City Schools



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I. EXECUTIVE SUMMARY

Consistent and meaningful physical education is known to bolster student academic achievement and engagement in school, as well as instill vital knowledge and healthy behaviors in children that can last a lifetime. As U.S. Secretary of Education Arne Duncan declared when First Lady Michelle Obama launched the *Let's Move* Active Schools initiative, “Good health is not an add-on to a good education. Our children need to be healthy to be prepared to learn, and we know active students are better able to engage in the classroom and excel academically.”¹

Nowhere is this truer than in New York City, where more than 26 percent of students aged 5-14 years in Kindergarten through 8th grade (K-8) are obese or severely obese.² This crisis not only threatens the health and academic achievement of our youth, but also carries significant costs for taxpayers and the City’s economic competitiveness.

Unfortunately, schools across the five boroughs are failing to meet even minimal physical education (“PE”) standards, as required by New York State Education Department (NYSED) regulations. These include mandates for instructional time and frequency, space and personnel. For example, children in grades K-12 must participate in regular physical education classes taught, in the case of all elementary schools, either by a certified physical education teacher, or a classroom teacher “under the direction and supervision of a certified physical education teacher” for grades K-6; or in the case of middle and high schools for grades 7-12, directly by a certified physical education teacher.³

Providing robust physical education to some 1.1 million students in a city as dense as New York City is a significant challenge. Many schools lack physical fitness spaces, as will be documented in this report. But just as the First Lady has said about providing physical education in schools, “Just because it’s hard doesn’t mean we should stop trying – it means we should try harder.”⁴

There is no question that New York City must try harder. This analysis by New York City Comptroller Scott M. Stringer of physical education data – as provided by the Department of Education – reveals a troubling picture of students’ disparate access to school-day physical education instruction. A digital, interactive map of these disparities can be found at <http://comptroller.nyc.gov/reports/droppingtheball/>.⁵

Findings include:

- **506 schools in New York City (over 32 percent) lack a full-time, certified physical education teacher, including 59 percent of elementary schools (375), 17 percent of middle schools (49) and 8 percent of high schools (33). While some of these schools may have access to a part-time, certified PE teacher, the DOE failed to provide data that would substantiate that possibility.**⁶
- **435 schools in New York City (28 percent) lack a dedicated “physical fitness space”– a problem that is most acute for high schools and middle schools:**
 - **Over 41 percent of high schools have no physical fitness space; and**
 - **More than 35 percent of middle schools have no physical fitness space.**

- Nearly 80 percent of the 435 schools that have no physical fitness space are co-located. More than 46 percent of the 519 DOE buildings with co-locations have schools with no physical fitness space.
- 149 schools (or nearly 10 percent) lack both a full-time, certified physical education teacher and a physical fitness space.
- Nearly 10 percent of schools citywide do not have access to an outdoor school yard or nearby park.
- In total, over 400,000 students in New York City public schools lack one of the following three physical education attributes:
 - 230,000 students lack a full-time, certified PE teacher;
 - 153,000 students attend a school without a physical fitness space; and
 - 91,000 students attend a school that does not have access to an outdoor school yard or nearby park.⁷

This information reinforces years of findings that the DOE has failed to provide appropriate physical education programming and instruction to all City students. Indeed, a 2011 audit by the New York City Comptroller’s Office revealed that 100 percent of 31 elementary schools examined were out of compliance with State PE regulations for elementary- and middle-school students. Additional analyses of physical education in City schools conducted in 2012 – by the American Heart Association, the New York City Independent Budget Office in conjunction with the Women’s City Club, and the Campaign for Educational Equity – further support the conclusion that shortfalls in physical education are longstanding and widespread.⁸

Over the past decade the DOE has provided little data on the state of physical education in City schools, making it difficult to identify or assess ways to address the full scope of the problem. Indeed, given the poor quality of tracking data provided by the DOE, it was impossible to determine whether the DOE was meeting State requirements related to PE instructional time or class size mandates agreed to as part of collective bargaining between the City and the United Federation of Teachers (UFT). While the DOE responded to the Comptroller’s request for information on physical education in City schools in good faith, the partial nature of information returned – including a *District Physical Education Plan* dated 2012 that is incomplete and labeled “DRAFT” – suggests that there continues to be room for improvement in how the DOE gathers, tracks and uses the data it collects to inform its work in delivering services to students.⁹

To address these issues, the Comptroller’s Office recommends that the DOE:

- **Comply with state regulations requiring that all children receive physical education instruction from, or under the supervision of, a certified physical education teacher.**

The DOE should immediately undertake a system-wide assessment of certified physical education teaching positions and fitness spaces, in order to comply with state law and to target investments toward neighborhoods of greatest need. Every school should provide access to at least one certified physical education teacher. And district superintendents should identify neighborhood spaces with excess capacity – including school gyms and

fitness areas, outdoor play spaces and local recreational facilities – as part of a broader plan to provide improved access to physical fitness activities to all children.

- **Update the DOE’s *District Physical Education Plan*, submit it to NYSED as required and post a copy on the DOE website.**

Per NYCRR 135.4, every school district in New York State must regularly update and submit to NYSED a *District Physical Education Plan*, outlining how they will deliver mandated physical education instruction to students under their purview. The last known time that the City Education Department submitted a *District Physical Education Plan* to NYSED was 1982.¹⁰ Furthermore, the draft plan that the DOE shared with the Comptroller’s Office in December 2014 was dated October 16, 2012 and is missing information. The DOE should regularly update and submit this plan to NYSED, and make a copy available on its website that is easily accessible to parents and the public.

- **Develop instruments for tracking and monitoring schools’ provision of physical education to all students**

The DOE’s partial response to the Comptroller’s request for information on schools’ provision of physical education to City students suggests that no centralized tracking or monitoring system exists to meaningfully assess whether schools are providing PE programming, as required by the State. For example, the DOE did not provide the Comptroller’s Office with information on PE instructional time for students in elementary grades because, it said, “elementary schools are not required to report this information.” Further, the DOE indicated that it could not provide information on how many general education schools – or which ones – might be sharing PE teachers because, “The DOE does not centrally track PE teacher-sharing.” The DOE should develop appropriate internal systems that allow the agency to track and monitor schools’ compliance with State PE regulations.

- **Post physical education data for every City school in a single, clear location on the DOE website**

The Comptroller’s report provides a snapshot of the DOE’s uneven provision of physical education across City schools, based on a selection of data provided by the DOE that could be meaningfully analyzed. The DOE should make a comprehensive range of PE data available to the public on an annual basis so that City families can determine whether their child’s school is in compliance with State PE regulations. This information should be consolidated in a single place on the DOE’s website and include: numbers of full- and part-time certified PE teachers providing school-day physical education instruction directly to students; whether schools are meeting requirements related to instructional time and class size; numbers and types of indoor and outdoor spaces to which schools have access; and the percent of time each day and week that every school co-located with another school in a DOE building has access to shared PE space. Passage of a bill such as City Council Intro 644-2015, which requires the Department of Education to report physical education data, will help ensure that accurate, complete and timely information is made available to all stakeholders.

II. INTRODUCTION

Physical education is critical for both the health and wellness of youth, as well as their academic achievement. Extensive research finds that children's engagement in regular physical activity – including through consistent and meaningful school-day physical education – can help stave off a range of debilitating health and mental health conditions and lead to improved concentration, attentiveness and success in the classroom.¹¹

This is critically important in New York City, where according to a report by the Centers for Disease Control (CDC) more than 26 percent of students aged 5-14 in grades K-8 are classified as obese or severely obese.¹²

Research has linked obesity and severe obesity in children to a host of short- and long-term academic, socio-emotional and health problems that can last well into adulthood. These include lower performance in cognitive functioning and on standardized tests, lower self-esteem, feelings of stigmatization and social isolation, and increased risk of pre-diabetes, musculoskeletal problems and cardiovascular and liver disease.¹³ While children's health and well-being are issues of universal concern, there are clear reasons why they should be a top priority in New York City.

Indeed, while touting slight declines in obesity and severe obesity rates among City school children between School Year 2006-2007 and School Year 2010-2011, the CDC also acknowledged that students who experienced the most positive impacts in these areas were considered at lowest risk, including “non-minority and wealthy students.” By contrast, the CDC found that larger proportions of Hispanic or non-Hispanic Blacks were severely obese than non-Hispanic Whites or Asian/Pacific Islanders. Moreover, severe obesity was greatest among poor students and lowest among those who were wealthy.¹⁴

This is troubling news for the New York City public school system, where 40 percent of students are Hispanic, 28 percent are Black and 78 percent qualify for Free and Reduced Price Lunch, and many City schools lack the capacity to provide school children with regular PE instruction, let alone meet minimal State physical education requirements.¹⁵

In addition to the immense academic and health consequences of obesity, its economic costs are truly staggering. In New York City alone, obesity is projected to cost the City over \$4 billion in health care expenses annually.¹⁶ Nationwide, in 2010, obesity-related care added over \$315 billion to our medical costs, up from an inflation-adjusted \$213 billion in 2005, according to Cornell Professor John Cawley.¹⁷ Childhood obesity alone accounts for \$14.1 billion of these direct costs.¹⁸

The impact of these expenditures is of serious concern, regardless of who foots the bill, as they raise the cost of health care for every American. An obese child costs Medicaid an average of \$6,730 annually, 175 percent higher than the average health costs for all children under Medicaid—\$2,446.¹⁹

Obesity not only costs Americans billions in health care, but also makes our economy less productive. Nearly 10 percent of costs related to absenteeism—\$8.5 billion—are the product of obesity.²⁰ Studies have also shown that the health effects of obesity lead to lower productivity even when individuals are at work.²¹

While the need for physical education in schools could not be clearer, the unfortunate truth is that the DOE's failure to provide adequate physical education to City students is not a new phenomenon. A 2011 audit conducted by the New York City Comptroller's Office, for example, revealed that 100 percent of 31 elementary schools examined were out of compliance with State PE regulations. Additional analyses of PE in City schools conducted in recent years – by the American Heart Association, the New York City Independent Budget Office in conjunction with the Women's City Club, and the Campaign for Educational Equity – lend further credence to years of reports that problems related to PE instruction in schools are both widespread and longstanding.²²

A 2001 study conducted by a local non-profit group, Educational Frameworks Inc., in partnership with the NYC Board of Education (BOE), reveals the historic roots of the DOE's inadequate delivery of physical education programming and instruction to City students. That study, which analyzed 391 schools – one third of the system in that year – concluded that “physical education [was] among the last areas of the New York City school system to recover from the fiscal crisis of the mid-1970s” and that it had been “persistently undervalued” and “sacrificed to the push for academic achievement, despite research showing that organized sports and physical fitness improve children's performance both academically and socially.”²³

The report concluded that the examined schools exhibited the lingering effects of an ever-eroding physical education program, including that physical education teachers continued not to be “accorded the same importance [as] their academic colleagues.”²⁴ At the time of the report, a dearth of physical education instructors resulted in a bulging student-to-teacher ratio of 730-to-one. Meanwhile, spaces dedicated for physical education disappeared and fell apart as the Board of Education converted gyms and school yards into classrooms and parking lots, permitted athletic facilities to fall into severe disrepair, and failed to build dedicated spaces at schools that had no gyms or athletic facilities at all.

The decline of PE in New York City schools was abetted by a broader failure at the State level to enforce its own regulations around physical education. When pressed about City schools' failure to meet State physical education requirements, State officials responded that they “counted on local school districts to monitor their own compliance.”²⁵

As the Chief Financial Officer of the City, the Comptroller will continue to advocate for policies—including robust physical education in every public school—that make our residents healthier and more productive, reduce burdens on taxpayers, strengthen our economy and ensure that our workforce is the most competitive in the world.

III. NEW YORK STATE AND NEW YORK CITY PHYSICAL EDUCATION REQUIREMENTS

District Physical Education Plan

The New York State Education Department requires every school district to submit a copy of its *District Physical Education Plan* to the State’s Division of Physical Education, Fitness, Health, Nutrition and Safety Services.²⁶ According to NYSED and State Department of Health (NYS DOH) documentation, the purpose of this plan, among other things, is for school districts to explain:

- Physical education program goals and objectives for the schools under their purview;
- The manner in which they will schedule physical education programming for their students, by day, week month and/or year;
- PE program activities they will offer at each grade level and/or by year of instruction; and
- Assessment activities they will use to determine whether students are meeting stated goals and objectives.²⁷

A 2011 New York City Comptroller audit of physical education in 31 DOE elementary and middle schools found that the DOE had failed to submit a PE plan to NYSED since 1982, despite the State’s recommendation that school districts “review and re-file their plan at least every seven years to ensure appropriate practice, to stay abreast of current research, and to update their curriculum as needed.”²⁸

In 2012, a *New York Times* article profiling the rise of obesity among children and the decline of physical education in City schools revealed that the City still had not submitted an updated PE plan to NYSED.²⁹ At that time, DOE officials indicated they would present a new plan that September. Three years later, however, it remains unclear whether the DOE has followed through on this promise. In response to the Comptroller’s October 2014 request for the “most recent school district physical education plan submitted to NYSED,” the DOE provided a PE plan dated October 2012 that is incomplete and labeled “DRAFT.” The plan is not available on the DOE’s website.

Certified Teachers, Instructional Time, and Class Size

Title 8 of New York’s Codes, Rules and Regulations clearly delineates NYSED physical education personnel and instructional time requirements for students in grades K-12. Additionally, contractual agreements and guidelines for physical education class sizes exist between New York City and the United Federation of Teachers for students in grades K-12. These requirements are as follows:

Physical Education Requirements

Requirement	Elementary School Grades	Middle School Grades	High School Grades
Certified Teachers	<p>The State recommends that certified physical education teachers provide PE instruction in elementary schools. However, classroom teachers may provide PE instruction “under the direction and supervision of a certified physical education teacher.”³⁰</p> <p>When grades five and six are housed in middle schools, students in these grades must be taught by a certified PE teacher.³¹</p>	<p>Students in grades 7 and 8 must be taught by a certified PE teacher.³²</p> <p>When grades five and six are housed in middle schools, students in these grades must be taught by a certified PE teacher.³³</p>	<p>Students in grades 9-12 must be taught by a certified physical education teacher.³⁴</p> <p>Students in Grades 10 through 12 may substitute “extra-class” or outside school activities that are led by a non-certified instructor, with approval from NYSED.³⁵</p>
Instructional Time	<p>120 minutes per week:</p> <ul style="list-style-type: none"> - Grades K-3: On a daily basis - Grades 4-6: No less than three times per week³⁶ <p>*The State offers elementary schools some flexibility in meeting PE requirements through the integration of PE curriculum in the classroom. However, to engage in such programming, the DOE must “Update the District Physical Education Plan” (required by Part 135.4) and submit a copy to the State Education Department’s Office of Curriculum, Instruction and Instructional Technology.”³⁷</p>	<p>Every semester for a minimum of three periods per week in one semester and two periods per week in the other, or comparable time if schools are organized in different patterns. Physical education times/periods are equivalent to instructional classes.³⁸</p>	<p>Daily for a minimum of 180 minutes per week for seven semesters.³⁹</p> <p>OR</p> <p>Three periods per week in one semester and two periods per week in the other semester, for a minimum of 90 minutes per week for eight semesters.⁴⁰</p>
Class Size	<p>“The size of PE classes in Elementary School shall not exceed classroom size per the UFT contract.”⁴¹</p>	<p>“The size of PE classes in Middle School shall not exceed 50 students to 1 teacher per the UFT contract.”⁴²</p>	<p>“The size of PE classes in High School shall not exceed 50 students to 1 teacher (UFT Contract).”⁴³</p>

IV. FINDINGS

The following findings are based on a Comptroller's Office analysis of data provided by the DOE in response to an October 2014 request for information regarding the provision of physical education instruction and programming in DOE schools.⁴⁴ This request sought a variety of information on physical education in City schools, including whether schools have certified physical education instructors; are offering appropriate minutes of instruction per calendar week; have appropriate class sizes; and have access to indoor and/or outdoor space for PE instruction.

The partial nature of data provided by the DOE to the Comptroller's Office did not permit a complete analysis of whether NYC schools are meeting NYS physical education instructional time requirements or contractually agreed-upon class size mandates.⁴⁵ Indeed, it is possible that the state of physical education in City schools is an even greater problem than identified in this report.⁴⁶

Despite the incomplete data provided by DOE, the Comptroller's Office was able to analyze information on three key metrics:

1. Whether schools have full-time, certified physical education teachers;
2. Whether schools have indoor physical fitness space; and
3. Whether schools have access to outdoor facilities where they can provide physical education programming.

A digital, interactive map of students' disparate access to physical education in City schools can be found at <http://comptroller.nyc.gov/reports/droppingtheball/>.

Full-Time Certified Physical Education Teachers

Highly qualified, certified physical education teachers play a critical role in schools, both by engaging and encouraging students to develop healthy habits and by helping build a culture in schools that recognizes the importance of physical education in shaping and improving students' lives. A 2008 article in the *Journal of Physical Education, Recreation and Dance (JOPERD)* speaks to this vital role, stating: "[T]he physical educator is both the number one advocate for healthy, active lifestyles and a vital ambassador and liaison to ensure that strong school and community connections are valued, developed, and maintained."⁴⁷

*Data Analysis*⁴⁸

The DOE's physical education data set contained a list of 2,439 full-time, licensed PE teachers, 2,216 of whom were assigned to general education district schools in Fall 2014. The remaining 223 PE teachers assigned to District 75 schools fell outside the scope of the Comptroller's analysis.⁴⁹

According to the DOE, this data "reflects licensed PE teachers in the system, and not necessarily whether or not they are teaching." Moreover, the DOE did not provide information on part-time, certified PE teachers assigned to or working at general education schools, or information on whether any schools are sharing part-time teachers, and noted that: "the DOE does not centrally track PE teacher-sharing."

According to DOE data, the 2,216 full-time, licensed PE teachers at general education schools are assigned to 1,072 schools.⁵⁰ This leaves **506 schools citywide (over 32 percent) without a full-time, certified PE teacher.**⁵¹

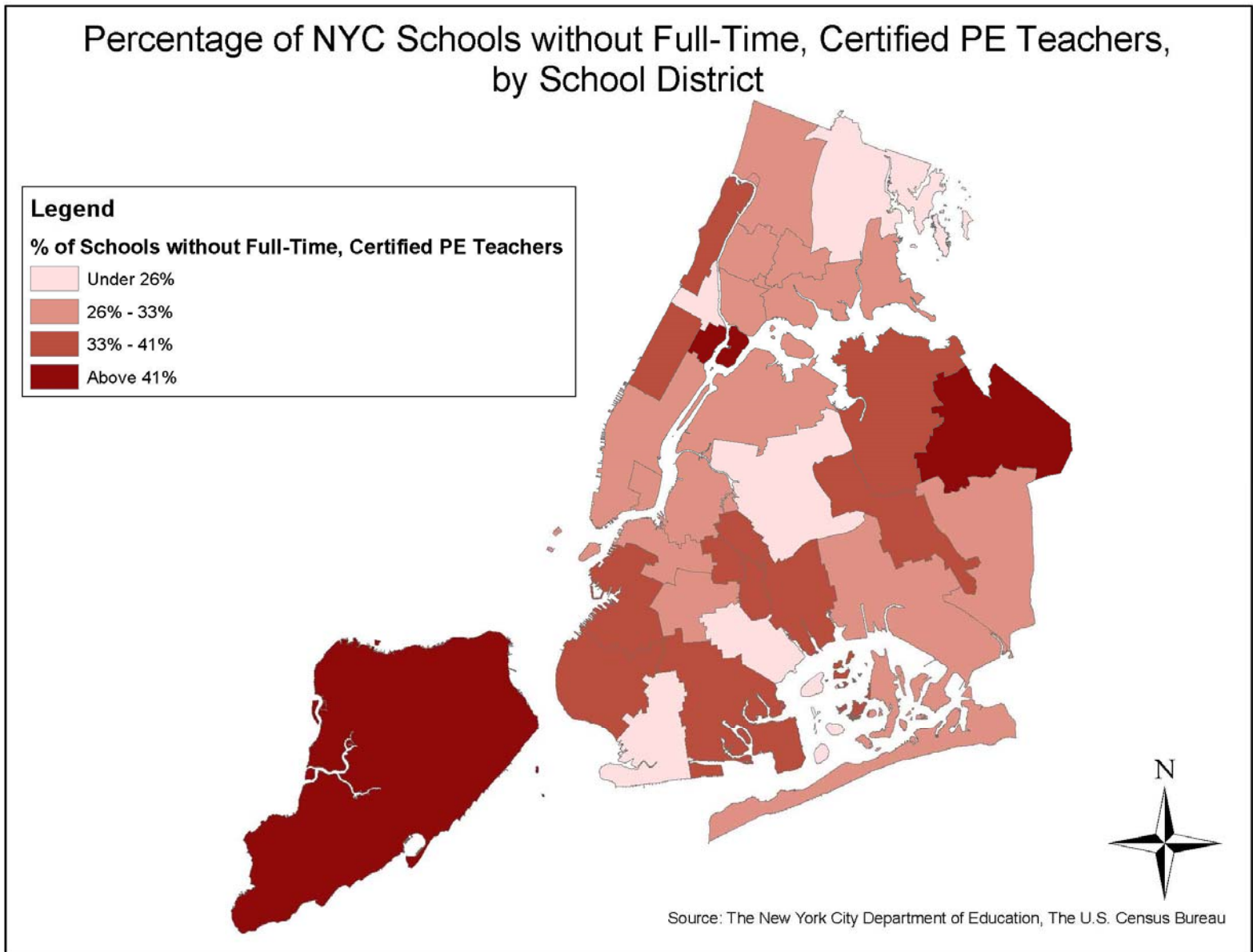
As seen in Table A below, **59 percent of City elementary schools lack a full-time, licensed physical education instructor.**⁵² In addition, **10 percent of secondary schools and eight percent of high schools lack a full-time, certified PE teacher**, despite the fact that students in grades 7-12 must be taught by a licensed physical education instructor and meet minimum PE instructional time requirements in order to graduate high school.⁵³

Table A: NYC Schools without a Full-Time Certified PE Teacher, 2013-2014

School Type	Number of Schools	Number of PE Teachers	Number of Schools with PE Teachers	Number of Schools without PE Teacher	Percent of Schools without a PE Teacher
Early Childhood	29	18	17	12	41.38%
Elementary	635	313	259	375	59.05%
High School	404	1056	371	33	8.17%
Junior High - Intermediate - Middle	297	481	248	49	16.50%
K-12 all grades	3	9	2	1	33.33%
K-8	131	173	103	28	21.37%
Secondary School	80	166	72	8	10.00%
Total	1579	2216	1072	506	32.11%

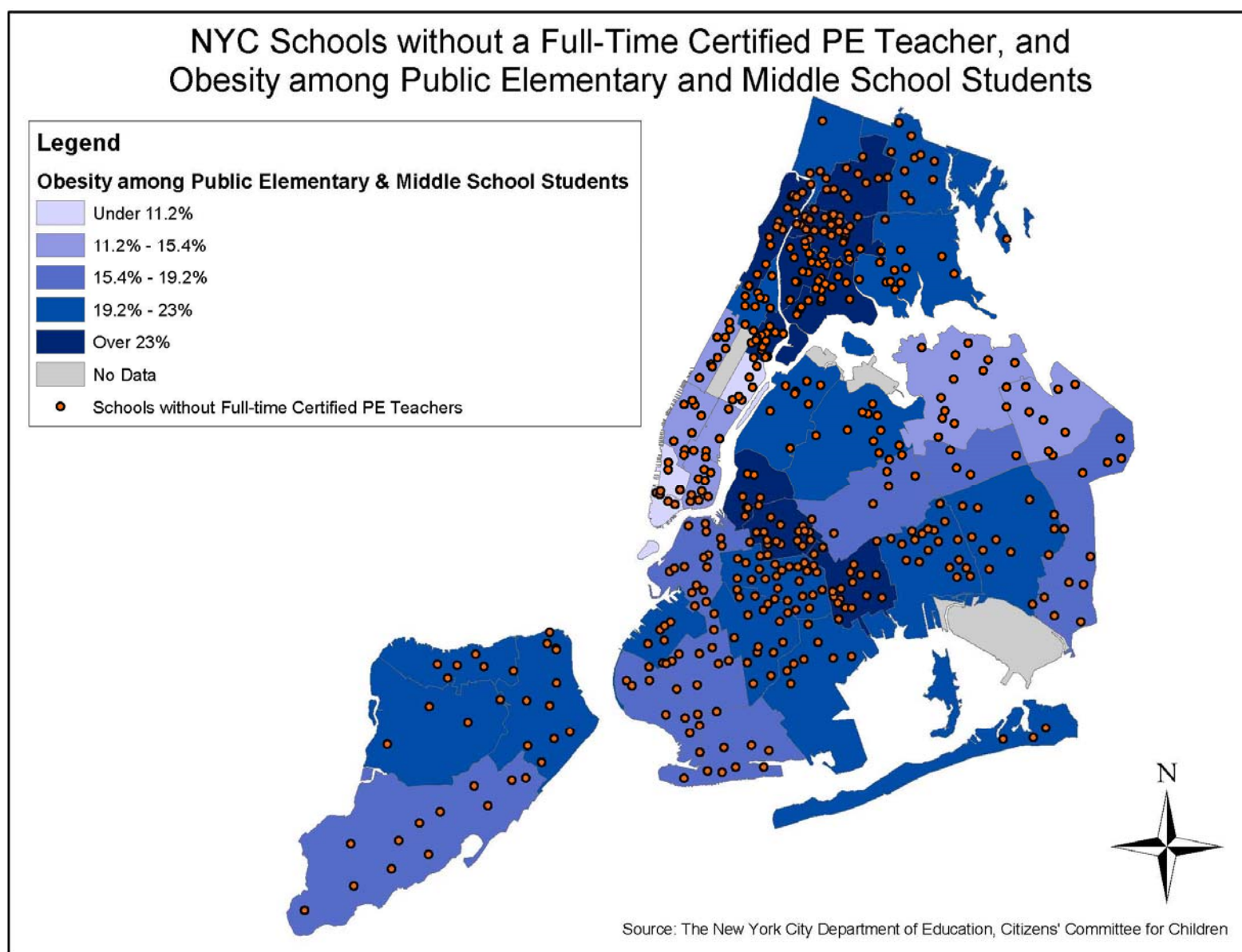
Map 1 shows the percentage of schools that lack a full-time, certified PE teacher compared against the total number of schools in their school district. Although the problem of schools lacking full-time, certified PE teachers is widespread and impacts neighborhoods of varied backgrounds, East Harlem, Staten Island, and Bayside, Queens have the greatest percentage of schools lacking a full-time, certified PE teacher. The issue is also prevalent in Northern Manhattan and throughout Brooklyn and Queens.

Map 1: Percentage of NYC Schools without Full-Time, Certified PE Teachers, by School District⁵⁴



Map 2 shows New York City schools that lack a full-time, certified PE teacher overlaid against childhood obesity rates – which are highest in Northern Manhattan, the Bronx and parts of Central Brooklyn. Although the problem of schools lacking a full-time, certified PE teacher affects all neighborhoods, it is particularly pronounced in East Harlem, where over 54 percent of schools lack a full-time, certified PE teacher, and childhood obesity rates are extremely high.⁵⁵

Map 2: NYC Schools without a Full-Time, Certified PE Teacher, and Obesity among Public Elementary and Middle School Students⁵⁶



Space for Physical Education Instruction

The DOE has publicly acknowledged that it has work to do in providing “better supports” to City schools so they can deliver required physical education programming to students. The agency also acknowledges that inadequate space is among the challenges that some principals confront in their efforts to provide mandated PE instruction.⁵⁷

At the same time, State regulations require “adequate indoor and outdoor facilities for the physical education program at all grade levels.”⁵⁸ In addition, the DOE’s *District Physical Education Plan* asserts that while “space limitations are sometimes referred to as a barrier to providing a high quality PE program,” schools are “not exempt from the PE requirement because of space challenges.” The DOE’s plan encourages schools to explore partnerships and the use of spaces both within and outside of DOE facilities for the delivery of PE to students. These include:

- NYC Parks and Recreation Centers and NYC Play Streets (organized via the NYC Department of Health and Mental Hygiene);
- Partnerships with “local gyms, fitness centers, pools, YMCAs, and community centers”;
- Empty classroom spaces – which can be used as fitness rooms for “fitness, dance and aesthetic, cooperative and personal performance activities” – so long as schools limit the number of students in these classroom spaces “based on the per pupil space per classroom size in the UFT contract”; and
- Community space to teach areas of PE such as “team sports, individual and dual sports, and adventure activities.”⁵⁹

Local Law 60

Enacted in 2011, Local Law 60 requires the Chancellor of the New York City School District to submit an annual report to the New York City Council that offers information on school capacity and utilization data for the prior school year. LL 60 incorporates DOE building data that is self-reported by a designated school leader on the Principal Annual Space Survey (PASS). The DOE posts both LL 60 and the PASS on each individual school’s website.⁶⁰

Included in the LL 60 report is information on the location and building in which each school is sited, classifications for each room in a given school building, the type/classification and square footage of each room in a school building and information on whether each room is shared with any other co-located school or program in the building.

Local Law 60 data provides information on the following facilities:

- Academic Intervention Service rooms
- Auditoriums
- Cluster rooms or specialty rooms
- Health clinics (including nurse’s offices and School-Based Health Centers)
- Libraries
- Lunchrooms/cafeterias
- Non-instructional spaces used for instructional and other student services
- Outside organizations/spaces occupied by non-school organizations
- **Physical fitness space (e.g., gymnasium, weight room, pool, basement)**
- Special Education services and supports (“SPED Support”): rooms utilized for occupational and physical therapy, speech, hearing, vision, etc.)

- Student locker rooms
- Student bathrooms
- Teachers' lounges

*Data Analysis*⁶¹

According to LL 60 data from SY 2013-2014, 1,798 rooms are designated as physical fitness spaces throughout 1,116 DOE general education schools in New York City. The Comptroller's analysis found that **435 New York City schools (over 28 percent) do not have a physical fitness space.**⁶² Table B shows that the problem is most severe for high schools and middle schools:

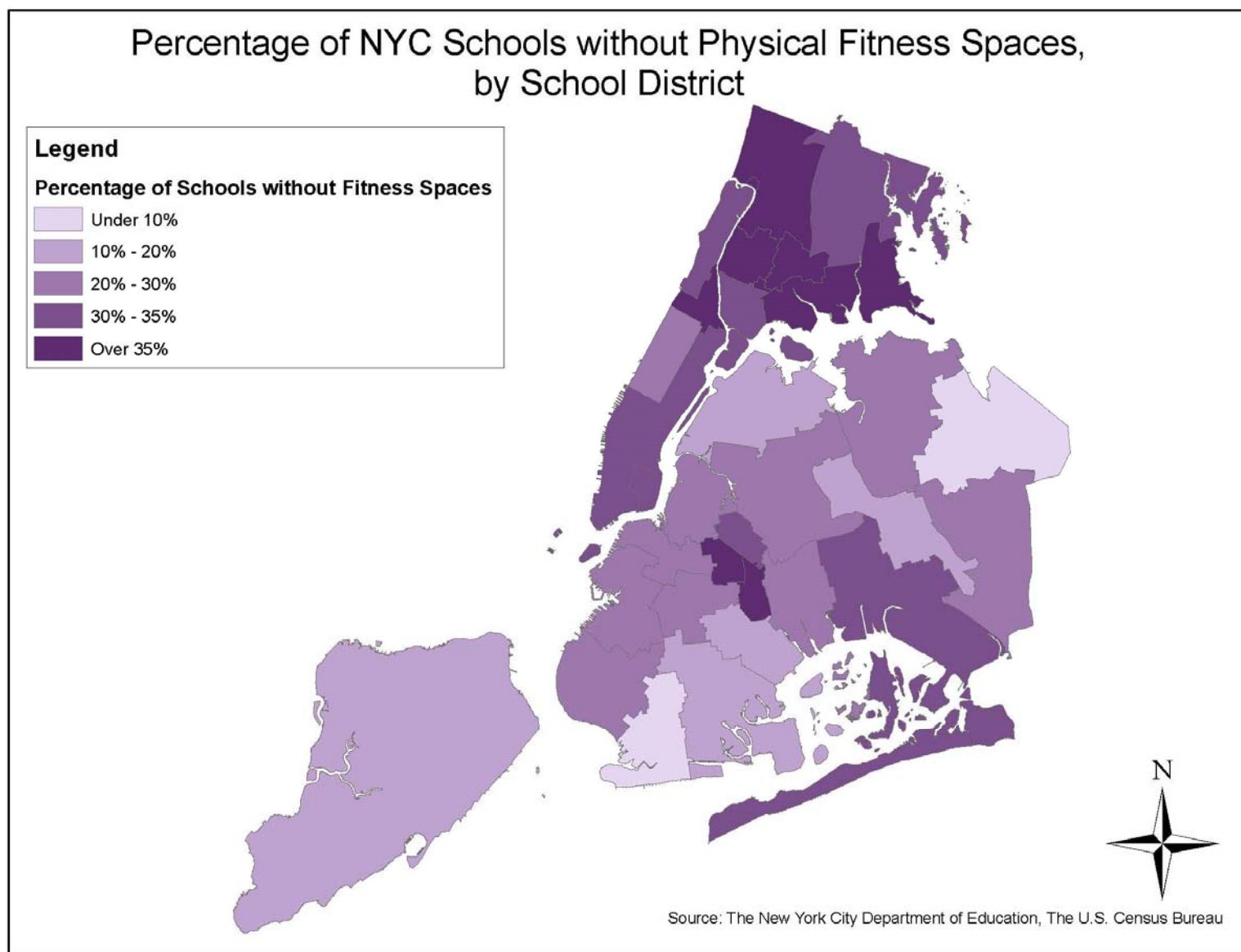
- **Over 41 percent of high schools** have no physical fitness space; and
- **More than 35 percent of middle schools** have no physical fitness space.

Table B: NYC Schools with and without Physical Fitness Spaces in DOE buildings

School Type	Total Schools	Fitness Spaces	Schools with Fitness Spaces	Schools without Fitness Spaces	Percent of Schools without Fitness Spaces
Early Childhood	29	18	15	14	48.28 %
Elementary	626	661	511	115	18.37 %
High School	394	554	230	164	41.62 %
Junior High - Intermediate - Middle	289	300	186	103	35.64 %
K-12 all grades	3	6	3	0	0 %
K-8	130	161	117	13	10.00 %
Secondary School	80	98	54	26	32.50 %
Total	1551	1798	1116	435	28.05 %

Map 3 shows that schools in the Bronx, Northern Manhattan, and Central Brooklyn – are less likely to have physical fitness spaces than schools in other parts of New York City. This is likely the result of a variety of factors, including the high frequency of co-locations in these neighborhoods.⁶³

**Map 3: Percentage of NYC Schools without Physical Fitness Spaces,
by School District**



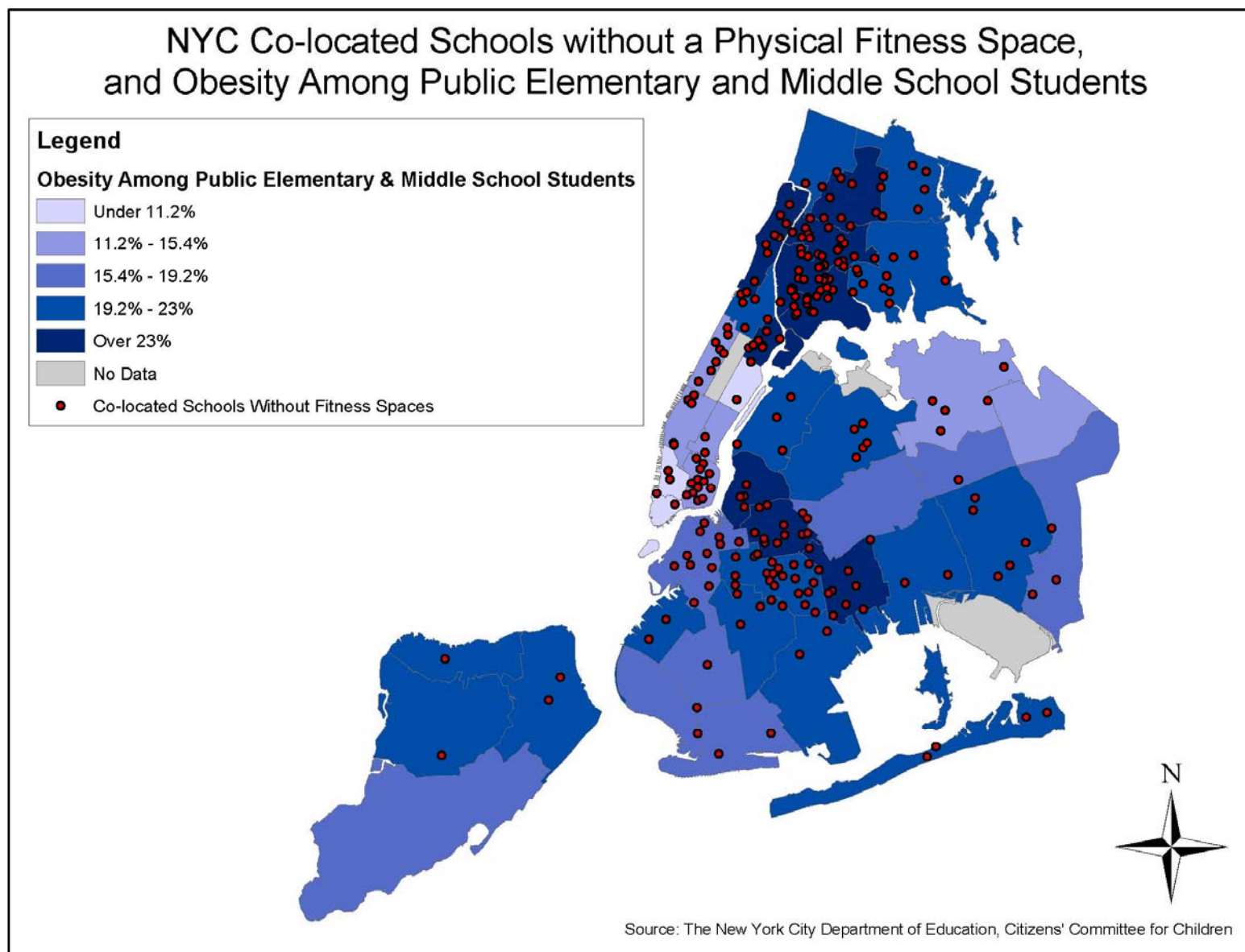
In addition, nearly **80 percent of district schools examined in this report that lack a physical fitness space, are co-located.**⁶⁴ Furthermore, **more than 46 percent of DOE buildings** that are home to co-located schools, **have schools with no physical fitness space.**⁶⁵

Table C: Co-located Schools without a Physical Fitness Space

School Type	Co-located Schools without a Physical Fitness Space
Early Childhood	5
Elementary	54
High School	153
Junior High - Intermediate - Middle	98
K-8	6
Secondary School	26
Total	342

Map 4 shows NYC schools that lack a physical fitness space and are also co-located. A large number of these schools are in the Bronx, Central Brooklyn, and East Harlem where obesity rates are also highest.

Map 4: NYC Co-located Schools without a Physical Fitness Space, and Obesity among Public Elementary and Middle Schools Students⁶⁶



NYC Schools without a Full-Time, Certified PE Teacher or a Physical Fitness Space

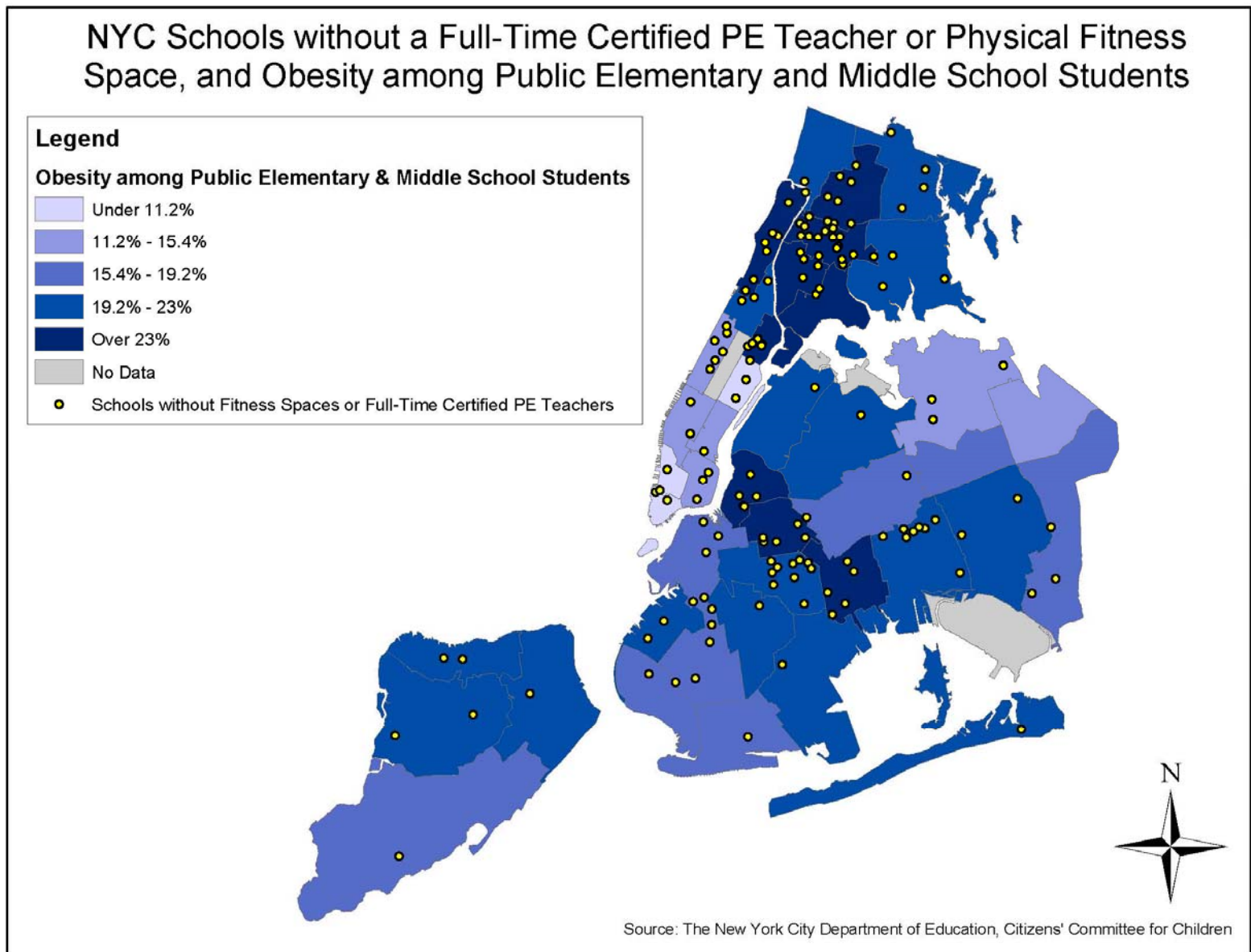
149 schools (nearly 10 percent of all City schools) lack both a full-time, certified PE teacher, and a physical fitness space. Of these, 82 are elementary schools, 31 are middle schools and 17 are high schools.⁶⁷ 87 of these schools (58 percent) are co-located.

Table D: NYC Schools without a Full-Time Certified PE Teacher or a Physical Fitness Space

School Type	Schools without a Full-Time Certified PE Teacher or a Physical Fitness Space
Early Childhood	8
Elementary	82
High school	17
Junior High-Intermediate-Middle	31
K-8	7
Secondary School	4
Grand Total	149

Map 5 shows that a disproportionate number of schools that lack both a full-time, certified PE teacher and a physical fitness space are located throughout the City, and in neighborhoods with high levels of childhood obesity.

Map 5: NYC Schools without a Full-Time, Certified PE Teacher or Physical Fitness Space, and Obesity among Public Elementary and Middle School Students⁶⁸



Outdoor Spaces

As noted earlier, New York State Department of Education regulations require “adequate indoor and outdoor facilities for the physical education program at all grade levels.”⁶⁹

Data Analysis

The Comptroller’s analysis of DOE data from a 2010-2011 Outdoor Schoolyard survey found that nearly **10 percent of schools citywide (153) have no access to an outdoor school yard or nearby park.**⁷⁰ Of these schools, **nearly 68 percent were co-located.** More than two-thirds of schools that lack access to an outdoor school yard or a nearby park **(103) are high schools, 74 of which are co-located.**

In addition to the above findings:

- 43 schools did not have an indoor physical fitness space or access to an outdoor school yard, or nearby park; and
- 21 schools had neither a full-time, certified PE teacher nor access to an outdoor school yard or nearby park.

Table E: NYC Schools without Access to an Outdoor School Yard or Nearby Park

School Type	Count
Early Childhood	2
Elementary	9
High School	103
Junior High - Intermediate - Middle	19
K-12 all grades	1
K-8	3
Secondary School	16
Total	153

V. RECOMMENDATIONS

Providing robust physical education to some 1.1 million students in a city as dense as New York City is a significant challenge. But DOE can take clear steps to improve students' access to physical education programming, beginning with the implementation of a coherent and comprehensive tracking and monitoring system that allows for a full understanding of the problems. As First Lady Michelle Obama has said about providing physical education in schools, "Just because it's hard doesn't mean we should stop trying – it means we should try harder." To that end, the Comptroller recommends the following:

- **Comply with state regulations requiring that all children receive physical education instruction from, or under the supervision of, a certified physical education teacher.**

The Department of Education should undertake a system-wide assessment of certified physical education teaching positions and fitness spaces, in order to comply with state law. Every school should provide access to at least one certified physical education teacher. And district superintendents should identify neighborhood spaces with excess capacity – including school gyms and fitness areas, outdoor play spaces and local recreational facilities – as part of a broader plan to provide improved access to physical fitness activities to all children.

- **Update the DOE's *District Physical Education Plan*, submit it to NYSED as required and post a copy on the DOE website.**

Per NYCRR 135.4, every school district in New York State must regularly update and submit to NYSED a *District Physical Education Plan*, outlining how they will deliver mandated physical education instruction to students under their purview. The last known time that the City Education Department submitted a *District Physical Education Plan* to NYSED was 1982.⁷¹ Furthermore, the draft plan that the DOE shared with the Comptroller's Office in December 2014 was dated October 16, 2012 and is missing information. The DOE should regularly update and submit this plan to NYSED, and make a copy available on its website that is easily accessible to parents and members of the public.

- **Develop instruments for tracking and monitoring schools' provision of physical education to all students**

The DOE's partial response to the Comptroller's request for information on schools' provision of physical education to City students suggests that no centralized tracking or monitoring system exists to meaningfully assess whether schools are providing PE programming, as required by the State. For example, the DOE did not provide the Comptroller's Office with information on PE instructional time for students in elementary grades because, it said, "elementary schools are not required to report this information." Further, the DOE indicated that it could not provide information on how many general education schools – or which ones – might be sharing PE teachers because, "The DOE does not centrally track PE teacher-sharing." Finally, the DOE provided no information regarding instruments it uses to collect and/or verify data on each school's compliance with

NYSED requirements, as was requested by the Comptroller's Office. The DOE should develop appropriate internal systems that allow the agency to track and monitor schools' compliance with State PE regulations.

- **Post physical education data for every City school in a single, clear location on the DOE website**

The Comptroller's report provides a snapshot of the DOE's uneven provision of physical education across City schools, based on a selection of data provided by the DOE that could be meaningfully analyzed. The DOE should make a comprehensive range of PE data available to the public on an annual basis so that City families can determine whether their child's school is in compliance with State PE regulations. This information should be consolidated in a single place on the DOE's website and include, but is not limited to: numbers of full- and part-time certified PE teachers providing school-day physical education instruction directly to students; whether schools are meeting requirements related to instructional time and class size; numbers and types of indoor and outdoor spaces to which schools have access (e.g., gymnasium, weight room, schoolyard, park, etc.) and in which each school provides required school-day PE; and the percent of time each day and week that every school co-located with another school in a DOE building has access to shared PE space. Passage of a bill such as City Council Intro 644-2015, which requires the Department of Education to report physical education data, will help ensure that accurate, complete and timely information is made available to all stakeholders.

METHODOLOGY

On October 2, 2014, the New York City Comptroller's Office submitted a Freedom of Information Law (FOIL) request to the Department of Education requesting data related to the DOE's provision of physical education to students in City public schools.⁷² A copy of the full request and the DOE's cover letter response on December 12, 2014 can be found in the Appendix of this report.

The Comptroller's FOIL request sought information including but not limited to:

- The most updated *District Physical Education Plan* submitted to the New York State Education Department (NYSED);⁷³
- Numbers of full-time and part-time certified physical education teachers providing school-day PE instruction directly to students, in total and broken out by grade level, for each school;
- Numbers of teachers not certified in physical education who are providing school-day PE instruction directly to students;
- The daily and/or weekly frequency and total minutes, per calendar week, of PE instruction, broken out by grade level, for each school; and
- Designated indoor and outdoor facilities used for PE instruction – and schools' access to these spaces – for each DOE school.

The partial nature of data provided by the DOE to the Comptroller's Office did not permit a meaningful analysis of whether NYC schools are meeting NYS physical education instructional

time requirements or contractually agreed-upon class size mandates.⁷⁴ Additionally, some information that the DOE shared suggests that the DOE's inadequate delivery of physical education in City schools may be more extensive a problem than analyses in this report identified.⁷⁵

The Comptroller's Office analyzed and mapped remaining, "useable" data and information provided by the DOE including:

- **Whether schools have full-time, certified teachers licensed in "Physical Education" and "Swimming and Physical Education."** The State advises that certified PE teachers or classroom teachers "under the direction and supervision of a certified physical education teacher" may provide instruction to students in elementary grades.⁷⁶ Students in grades 7-12 must receive physical education instruction from a licensed PE teacher, per NYCRR 135.4;
- **Whether schools have physical fitness spaces in DOE buildings.** This information is found in the Local Law 60 report, a publicly available document that the Chancellor of the New York City School District must submit annually to the New York City Council that provides school capacity and utilization data as well as information on room types in DOE school buildings, for the prior school year; and
- **Whether schools have access to outdoor spaces where they can provide physical education programming.** This includes school yards, playgrounds and leased spaces, which provide some schools alternative and/or additional spaces in which to deliver students PE instruction.

Additional notes on data provided by the DOE

- **Full-Time Certified PE Teacher Data** is current as of October 31st, 2014. There are 2,439 certified PE teachers assigned to 1,113 schools in this data. For the purpose of this analysis, 221 District 75 school instructors and 2 Alternative Learning Center instructors were omitted. An analysis of data provided by the DOE on students receiving Adaptive Physical Education is beyond the scope of this report.
- **Indoor Physical Fitness Space Data** is current as of School Year 2013-2014, and contained 1,579 DOE schools that are neither District 75 nor District 84 (charter) schools. Only 1,551 of these schools could be mapped/matched to Local Law 60 physical fitness space data.
- **Outdoor School Yard and Nearby Park Data** is sourced from a 2010-2011 Outdoor Schoolyard Survey conducted by the DOE.
- **School Co-location Data** were derived from the Department of Education's 2013-2014 Enrollment, Capacity and Utilization Report (also known as the "Blue Book"). For this analysis, all DOE buildings that were identified as housing two or more organizations were designated as co-located, including district schools, charter schools, and other organizations that occupy space. Building IDs were then matched to individual schools' information. Of the 1,460 DOE facilities listed in the Blue Book, 519 were designated as co-located for the purpose of this report.

VI. APPENDIX



DAVID SALTONSTALL
ASSISTANT COMPTROLLER FOR
POLICY

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

BUREAU OF PUBLIC AFFAIRS

October 2, 2014

Records Access Officer
NYC Department of Education
52 Chambers Street, Room 308
New York, NY 10007
FOIL@schools.nyc.gov

Re: FOIL Request for Data Related to Physical Education in DOE Schools

To Whom It May Concern:

Physical education plays an important role in supporting student achievement, social-emotional well-being and the development of strong health and wellness habits. Accordingly, I am writing to request updated information regarding the Department of Education's (DOE) provision of physical education in the public schools.

As you know, Title 8 of New York's Codes, Rules and Regulations clearly delineates New York State Education Department (NYSED) physical education regulations – both instructional and for personnel – for students in grades K-12, including:

- Grades K through 3: Students must participate in a physical education program on a daily basis. The minimum time for these activities should be at least 120 minutes per calendar week. Further, "Elementary classroom teachers may provide instruction under the direction and supervision of a certified physical education teacher." 8 NYCRR 135.4(c)(4)(i).
- Grades 4 through 6: Students must participate in a physical education program at least three times per week and the minimum time for these activities should be at least 120 minutes per calendar week. SED has advised that if an elementary school houses students up to Grade 8, the principal can make the determination whether students in Grade 6 will follow the requirements for Grades 4 and 5 or for Grades 7 and 8. As is true above, teachers of students in these grades may provide instruction under the direction and supervision of a certified physical education teacher.
- Grades 7 through 12: Students shall have the opportunity for regular physical education at least 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

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patterns). The regulations do not stipulate minimum time requirements. However, according to SED, secondary level students in Grades 7 and 8 are required to receive at least 90 minutes of physical education per calendar week. The pupils must be taught by a certified physical education teacher. The law includes a provision for students in Grades 10 through 12 to substitute extra-class or outside school activities led by a non-certified instructor, with approval.

NYSED further requires each school district to create, submit and periodically update its plan to provide physical education and provide adequate indoor and outdoor facilities for the physical education program at all grade levels.

A 2014 New York City Department of Mental Health and Hygiene study found that 21 percent of students in grades K-8 are obese, that both obesity and severe obesity “were highest among minority, poor and male children,” and that “as age increased, higher proportions of obese students became severely obese.” Obesity puts children at increased risk for Type II diabetes, asthma, high blood pressure and high cholesterol. Furthermore, research indicates that obese children are less likely than non-obese peers to be engaged in school and are more likely to repeat a grade and to miss more school days over the course of a school year.

As you are likely aware, a 2011 audit from the New York City Comptroller’s Office revealed that the NYC DOE was out of compliance with NYSED physical education regulations for elementary- and middle-level students at every one of the 31 sampled elementary schools it examined. Specifically, the audit found that DOE did not have an overall written physical education plan as required by NYSED regulations and none of the schools had sufficient evidence that they were providing – or in most cases, were familiar with – the required amount of physical education for all their students. In addition, three of the schools lacked a designated physical education teacher and three schools did not possess a non-classroom area for gym.

The audit included a number of recommendations:

- Creating and regularly updating a physical education plan that includes all requirements of NYSED’s physical education regulations for schools citywide;
- Adequately monitoring individual schools’ compliance with NYSED Physical Education regulations, including requiring principals to periodically certify that their students are receiving the minimum requirements;
- Documenting and tracking classroom-based physical education if it is used to meet SED requirements; ensuring that principals understand the requirements; and
- Identifying and addressing any compliance issues.

Meeting these mandates is critically important, given the deep interconnection between physical health, childhood obesity and student learning.

While I commend the DOE for creative approaches it has taken to improve student wellness – including the classroom-based “Move-to-Improve” initiative – a consistent, systemic approach to physical wellness in the schools is clearly necessary to meaningfully respond to the public health

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threat posed by childhood obesity. This must begin with ensuring that every City student has access to school-day physical education programming, as mandated in State Education Law.

To better understand the state of students' access to physical education opportunities in City schools, I respectfully request, in accordance with the New York State Freedom of Information Law (Pub. Off. Law, Art. VI, §§ 84-90), that the DOE provide my office with the most recent data available related to New York State physical education requirements, including:

1. The most recent written school district physical education plan submitted by DOE to NYSED;
2. The name of the designated district director of physical education;
3. The following information for each DOE school:
 - Daily and/or weekly frequency and total minutes per calendar week of physical education instruction broken down by grade level (e.g., K-3, 4-6, 7-12, with grades 6 or grades 7-8 differentiated if appropriate based on the school's overall configuration);
 - The number of designated full-time and part-time certified physical education teachers providing school-day physical education instruction directly to students;
 - The number of teachers not certified in physical education providing school-day physical education instruction directly to students; and
 - The designated indoor and outdoor facilities used for physical education, including whether each school has access to a dedicated gymnasium (i.e., non-classroom, non-multi-purpose space such as a cafeteria/auditorium) in their building that meets age-appropriate standards for space and equipment.

In addition, I hereby request the following:

- The number of full-time certified physical education instructors currently teaching physical education in NYC DOE schools in total and broken out by grade level;
- The number of part-time certified physical education instructors currently teaching physical education in NYC DOE schools in total and broken out by grade level;
- The number and names of schools that are sharing certified physical education instructors and any details about how the instructors' time is allocated;
- Information on whether each co-located NYC DOE school has access to a gymnasium in their building, broken out by the amount of time that each co-located school and/or program uses the gymnasium per week;
- The number and names of schools that do not have gymnasiums and are using non-gymnasium space such as converted classrooms, cafeterias, lobbies, etc. to provide school-day physical education instruction;
- The number and names of schools using off-site space to provide school-day physical education instruction;

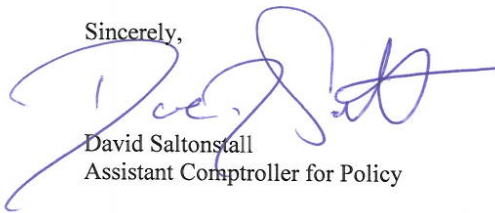
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- A copy of the instrument or instruments used to collect and/or verify data on each school's compliance with the NYSED requirements, including classroom-based physical education if it is used to meet SED requirements and any certification provided by school principals; and
- Any partnerships with outside vendors and/or consultants for school-day physical instruction and whether the vendor uses certified or non-certified physical education teachers.

We anticipate that you will provide, within five business days of the receipt of this request, a written acknowledgment of receipt and an approximate date when such request will be granted or denied, pursuant to § 89(b)(3)(a) of the Public Officers Law. We would appreciate having the data provided in an Excel spreadsheet, or if that is not possible, a .csv file format.

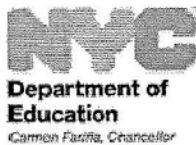
Thank you for your time and attention to this matter. Please do not hesitate to contact me with any questions at: Dsalton@comptroller.nyc.gov or 212-669-7101.

Sincerely,



David Saltonstall
Assistant Comptroller for Policy

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December 12, 2014

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LETTER VIA EMAIL

RECORDS FOR PICK-UP OR VIA REGULAR MAIL

David Saltonstall, Assistant Comptroller for Policy
c/o Erin McGill, Senior Policy Analyst for Education
New York City Office of the Comptroller
1 Center St. Rm. 510
New York, NY 10007
emcgill@comptroller.nyc.gov

RE: #F10,622
PE in Schools

Dear Assistant Comptroller Saltonstall:

This letter is in response to the Freedom of Information Law (FOIL) request referenced above, and addresses each of the requests for records (including data) found on pages 3 and 4 of the request you submitted. As discussed in detail below, records are being made available to you today, on CD-ROM. Please inform me via email if you wish to pick up the disk at the address at left, or would prefer for it to be sent via regular mail.

Section I: Request items, or portions thereof, for which records are being released

As to the first numbered item in your request (i.e., item "1"), for the most recent physical education (PE) plan (the Plan) submitted by the New York City Department of Education (DOE) to the New York State Education Department (NYSED), the Plan is attached. However, access is denied to portions of the Plan for the following reasons.¹

Public Officers Law §87(2)(g) permits an agency to deny access to records or portions thereof that are inter-agency or intra-agency materials which are not statistical or factual tabulations or data, instructions to staff that affect the public, final agency policy or determinations, or certain external audits. Accordingly, portions of the Plan that consist of non-final proposals have been redacted, as has been an expression of thanks.

As to the second numbered item in your request (i.e., item "2"), responsive records are found in the attached file named "Item 2-District Directors of PE."

¹ Please note that due to a technical error with the PDF file that I have been unable to reverse, the DOE's redaction software has automatically redacted page 65 of the Plan. However, a duplicate of this page has been inserted into the file following the page that the software has redacted in error.

As to the first bullet listed under the third numbered item in your request (i.e., item “3a”), to the extent that such data exists in a single computer storage system and could be compiled/extracted with reasonable effort, responsive data is found in the attached Excel file named “3a-STARs data.xls.”

With respect to the data for item 3a, I am informed of the following by the DOE’s Office of Academic Policy and Systems. Data is provided for grades 6-12 based on student schedules recorded in STARs, DOE’s academic reporting system, which may include a small amount of missing or incomplete information. Because elementary schools are not required to report this information, data for elementary schools is not available. Entries where “Total periods per week” equals zero and/or where “total minutes of PE instruction per week” equals zero may signify missing or incomplete data entered by the school, and does not necessarily indicate that the school is not providing PE instruction; on-going support and follow up is provided to schools to ensure accurate and complete use of STARs to record students’ academic programs. Also note that data is disaggregated by grade span (6-8 vs. 9-12) instead of specific grade levels to avoid double counting the same PE courses that serve students in multiple grades levels. In addition, data is disaggregated by academic term because the total periods of PE instruction per week may differ across terms. Possible term models are: 1 academic term (i.e., annualized); 2 academic terms (i.e., semesters); 3 academic terms (i.e., trimesters); 4 academic terms (i.e., cycles/quarters). The following example illustrates how the total minutes of PE instruction per week was calculated: a school may offer 3 PE courses, with 2 sections (classes) each, and with each section meeting 5 periods per week. The total periods of PE instruction per week in such a case would be 30 (i.e., $3 \times 2 \times 5$). The total minutes of instruction are then calculated by multiplying the total number of periods by the average period length at the school. To the extent that you are seeking additional data in response to item 3a, please see Section II below.

As to the second bullet listed under the third numbered item in your request (i.e., item “3b”), to the extent that such data exists in a single computer storage system and could be compiled/extracted with reasonable effort, responsive data is found in the attached Excel file named “Item 3b, 4-PE teachers.xls.” With respect to this data, I am informed of the following. The data reflects licensed PE teachers in the system, and not necessarily whether or not they are teaching PE. Please see the worksheet named “Business Rules” in the response file for additional important information concerning the data provided. To the extent that you are seeking additional data in response to item 3b, including data on part-time PE-licensed teachers, please see Section II below.

As to the third bullet listed under the third numbered item in your request (i.e., item “3c”), please see Section II below.

As to the fourth bullet listed under the third numbered item in your request (i.e., item “3d”), responsive data is found in the attached Excel file named “Item 3d, 7, 8-Local Law 60 Data.xls.” This data is also publicly posted here: <http://schools.nyc.gov/Offices/OSP/KeyDocuments/default.htm>. In addition, I am informed that Local Law 60 data is reported on a school basis, but that in multi-organizational buildings, gymnasiums are expected to be shared by all schools. Specifically as to the portion of this request item that concerns “outdoor facilities,” while specific data for the most recent school year is unavailable, responsive information and data are found in the following five attached files, which were produced pursuant to Chapter 544 of the Law of 2011 (A07230A/S 587-A), and consist of data for the 2010-2011 school year: (1) “Item 3d, 9-Outdoor Schoolyard Report and Summary.pdf,” (2) “Item 3d, 9-2010-11 Outdoor Schoolyard NYC-DOE Data.xls,” (3) “Item 3d, 9-Capital Plans for Schoolyards.xls,” (4) “Item 3d, 9-Charts.xls,” and (5) Item 3d, 9-Dept Parks List of JOPs.xls. To the extent that you are seeking additional data in response to item 3d, please see Section II below.

As to the first bullet listed under the phrase “In addition, I request the following:” (i.e., item “4”), the DOE’s response is identical to the response given above to item 3b. To the extent that you are seeking additional data in response to item 4, please see Section II below.

As to the second bullet listed under the phrase “In addition, I request the following:” (i.e., item “5”), please see section II below.

As to the third bullet listed under the phrase “In addition, I request the following:” (i.e., item “6”), to the extent that you are requesting data specifically concerning adaptive physical education teachers, responsive records are found in the Excel file named “Item 6-Schools with shared APE teachers.xls.” Specifically as to your request for “any details about how the instructors’ time is allocated,” responsive information is found in a PDF file named “Item 6-APEFAQ201415.pdf” in response to the question “How are APE teachers assigned? Who approves APE teacher schedules?” This PDF is also posted publicly at this link:

<http://schools.nyc.gov/NR/rdonlyres/4D6D250A-3F6E-42FC-8105-7317DE6C0F83/0/APEFAQ201415.pdf>

To the extent that you are seeking additional data in response to item 6, please see Section II below. In addition, I am informed that the DOE does not centrally track PE teacher-sharing, and that APE teachers are a unique subset of PE teachers who are centrally assigned to some (but not all) elementary and middle schools, in order to serve students who have APE mandated on their IEP.

As to the fourth and fifth bullets listed under the phrase “In addition, I request the following:” (i.e., items “7” and “8”), I am informed that to the extent that such data exists in a single computer storage system and could be compiled/extracted with reasonable effort, the data posted in response to Local Law 60 is responsive, and so please see the above response to item 3d. To the extent that you are seeking additional data in response to items 7 and 8, please see Section II below.

As to the sixth bullet listed under the phrase “In addition, I request the following:” (i.e., item “9”), please see the responsive above to item 3d as it specifically concerns “outdoor facilities,” as well as the response to item 11 below. To the extent that you are seeking additional data in response to item 9, please see Section II below.

As to the seventh bullet listed under the phrase “In addition, I request the following:” (i.e., item “10”), responsive records are found in the PDF file named “Item 10-STARS Screenshots.”

As to the eighth and last bullet listed under the phrase “In addition, I request the following:” (i.e., item “11”), a diligent search for responsive records has been conducted to the extent that your request is “reasonably described” pursuant to Public Officers Law §89(3)(a); i.e., to the extent that such records are tracked and or catalogued in a manner that can be easily searched. In response, the following records, consisting of requests for authorization, were identified as providing responsive information to this request item: (a) “Item 10 (1)-9154356 Camp Friendship, Inc. RA.pdf,” (b) “Item 10 (2)-RA Lehman College Negotiated Services Final” and (c) “Item 10 (3)-St. Francis-180 Remsen Street.pdf.” In addition, I am informed that the DOE is occupying space located at 991 Longwood Avenue in the Bronx (DOE Building I.D. No. X965) under a month-to-month agreement with the Police Athletic League; the gymnasium in that space is utilized by various high schools, including Banana Kelly High School (X530). Please note that it is possible that responsive

records exist for additional contracts, but such records could not be located based on the searchable information available in FAMIS, which the DOE's Division of Contracts and Purchasing accessed in its search for current/active agreements. To the extent that you are requesting a compilation of data in response to item 11, and as to the balance of your request, please see Section II below.

Section II: Request items, or portions thereof, for which records are unavailable

As to request items 3c and 5 in their entirety, and as to those portions of all other request items for which you have not otherwise received data,² responsive data are not available, and so these request items and portions of request items are denied for the following reasons.

Numerous diligent searches and inquiries for additional data has been conducted, but based on information provided to me, my understanding is as follows. In some cases, existing compilations of such data do not exist, and responses on DOE's part would involve more than a simple extraction of data from a single computer storage system. Rather, they would require matching records across more than one computer storage system, and/or extensive programming and that would require more than reasonable effort. FOIL does not obligate the DOE to match data across computer storage systems in order to respond to a FOIL request. Nor does it require more than "reasonable effort" in order to respond to a request for data. See Public Officers Law §89(3)(a).


More specifically, where the data is contained in an electronic record, it is considered the creation of a new record when retrieval and/or extraction of data would require more than "merely retrieving electronic data that [the agency] has already compiled and copying it into another medium," would involve more than "[a] simple manipulation of the computer," *Data Tree, LLC v. Romaine*, 9 N.Y.3d 454 (2007), or where the data requested are maintained in more than one computer storage system, and so would require matching across computer storage systems in order to respond to a request. See Public Officers Law §89(3)(a).

In other cases, responsive data are not centrally collected or tracked by the DOE, and FOIL does not require the creation of new records in order to respond to a request. See Public Officers Law §89(3)(a).

Section III: Your right to appeal

Any person denied access to a record may appeal the decision in writing within thirty days. Please state a specific ground for appeal and include copies of the initial request and the denial. Appeals should be sent to: Courtenaye Jackson-Chase, General Counsel, c/o Office of Legal Services, New York City Department of Education, 52 Chambers Street – Room 308, NY, NY 10007, FOIL@schools.nyc.gov.

Sincerely,


Joseph A. Baranello
FOIL@schools.nyc.gov

² However, based on the terms of your request, and except as otherwise noted in Section I, I believe that the DOE's response to request items 1, 2 and 10 are complete, and so Section II is inapplicable to these request items.

VII. ACKNOWLEDGMENTS

Comptroller Scott M. Stringer thanks Erin McGill, Sr. Policy Analyst for Education, and Susan Scheer, Special Assistant for Policy, the lead researchers and writers of this report, as well as Adam Eckstein, Policy Analyst, who conducted data analysis, developed maps, and wrote for this report.

Comptroller Stringer also recognizes the important contributions to this report made by: David Saltonstall, Assistant Comptroller for Policy; Andrew L. Kalloch, Deputy Policy Director; Sally Frank, Policy Analyst; Alaina Gilligo, First Deputy Comptroller; Sascha Owen, Chief of Staff; Camille Joseph, Deputy Comptroller for Public Affairs; Tim Mulligan, Deputy Comptroller for Bureau of Budget; Josh Getlin, Senior Advisor; Eric Sumberg, Deputy Communications Director and Press Secretary; Andrea Garcia, Press Officer; Jessica Duda, Director of Digital Media; and Archer Hutchinson, Creative Lead and Web Developer.

VIII. ENDNOTES

- ¹ <https://www.whitehouse.gov/the-press-office/2013/02/28/first-lady-michelle-obama-announces-unprecedented-collaboration-bring-ph>
- ² http://www.cdc.gov/pcd/issues/2014/13_0439.htm
- ³ Additional requirements related to PE instructional time and class size are outlined on page 8 of this report, and are detailed in the NYS Commissioner's Regulation Part 135.4.
<http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>. Analyses in these two areas could not be conducted due to the partial nature of data provided to the Comptroller's Office by the DOE, an issue discussed in greater detail later in this report.
- ⁴ <https://www.whitehouse.gov/the-press-office/2013/02/28/first-lady-michelle-obama-announces-unprecedented-collaboration-bring-ph>
- ⁵ The interactive map includes data for 1,576 of the 1,579 schools identified in the Department of Education's 2013-2014 Enrollment, Capacity and Utilization (Blue Book). Three schools were omitted due to geocoding errors. In addition, some information compiled, such as physical fitness space data, did not match all schools within our dataset. Schools with missing information were omitted from those analyses. Additionally, because co-located schools share space in the same physical building, the interactive map shows 1,142 DOE buildings with 1,576 schools inside those buildings. 685 of these DOE buildings (green) have schools with a full-time, certified PE teacher. 94 of these DOE buildings (yellow) have schools that both have and lack full-time, certified PE teachers. And 363 of these DOE buildings (red) house only schools that lack a full-time, certified PE teacher.
- ⁶ The breakdown of all 506 schools is as follows: 12 Early Childhood; 375 Elementary; 33 High Schools; 49 Junior High-Intermediate-Middle; 1 K-12 all grades; 28 K-8; and 8 Secondary Schools. The Comptroller's Office requested information from the DOE on the number of full- and part-time certified PE teacher providing PE instruction directly to students, as well as the number and names of schools that are sharing certified PE instructors. The DOE provided data on full-time certified PE teachers, however did not provide data on part-time, certified teachers employed at general education schools or information on whether schools are sharing teachers, explaining that: "the DOE does not centrally track PE teacher-sharing."
- ⁷ Using the DOE's 2013-2014 Enrollment, Capacity and Utilization (Blue Book) data, the City Comptroller estimated that 406,721 City public school students attend a school that lacks one of three PE attributes: 236,584 students attend a school that lacks a full-time, certified PE teacher; 153,513 students attend a school that does not have a physical fitness space; and 91,738 students attend a school that has no access to an outdoor play yard or nearby park.
- ⁸ http://comptroller.nyc.gov/wp-content/uploads/documents/MD11_083A.pdf; <https://media.gractions.com/f410dc9e068b98b88ea0b5c54d6885f750d9d0a3/2850366f-07e8-4da8-a7ba-ff6d1b687975.pdf>; <http://wccny.org/wp-content/uploads/2013/02/PETF-Position-Paper-IBO-Letter-Tables-Final.pdf>; http://www.tc.columbia.edu/i/a/document/30357_Deficient_Resources_FINAL_3.4.14.pdf; http://www.nyc.gov/html/records/pdf/govpub/2683all_work_and_no_play.pdf; <http://www.nytimes.com/2001/03/03/nyregion/03GYM.html>; <http://query.nytimes.com/mem/archive-free/pdf?res=9D0CE4DB123EE732A25752C2A9669D946890D6CF>
- ⁹ As noted, the District Physical Education Plan that the DOE submitted to the Comptroller's Office is dated October 16, 2012 and labeled "DRAFT." Examples of missing and/or incomplete information in this draft include:
- Missing information on the DOE's Move-to-Improve (MTI) initiative, which participating elementary schools may employ as a means of meeting State physical education mandates, provided that this information is submitted for approval from the State. According to NYSED, "Curriculum development is a local school district decision in New York State. If a school district's curriculum plan includes the provision of integrated physical education instruction with the certified classroom teacher as part of the above requirement, the school district must comply with Commissioner's Regulation, Part 134.4(c)(2)(i)(c) above to seek approval from the commissioner for the equivalent program":
http://www.p12.nysed.gov/ciai/pe/toolkitdocs/elementary_pe_resource.pdf. The DOE's District Physical Education Plan provides no information on MTI, making it unclear whether the DOE has sought out and/or received approval from the State to implement this kind of initiative.
 - Missing pages (pp. 68-69) in the Appendix, where names and information for the DOE's citywide directors of physical education are supposed to be according to the **Personnel** section on pp.18-19.
 - Incomplete information under the **Attendance and Graduation Policies** section (p.15), under DOE guidelines for high school transfer students.
 - Incomplete information in the **Concussion Management Policies and Form** section (p.67), which states: "For more information on the evaluation and treatment of concussion please go to [www.INSERT SITE](#)"

- 10 http://comptroller.nyc.gov/wp-content/uploads/documents/MD11_083A.pdf; http://www.nytimes.com/2012/07/11/education/even-as-schools-battle-obesity-physical-education-is-sidelined.html?_r=0
- 11 <http://www.cdc.gov/healthyyouth/physicalactivity/facts.htm>; https://www.heart.org/idc/groups/ahaec-public/@wcm/@adv/documents/downloadable/ucm_471633.pdf; https://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_467661.pdf; <http://www.nytimes.com/2013/05/25/opinion/exercise-and-academic-performance.html>
- 12 http://www.cdc.gov/pcd/issues/2014/13_0439.htm: The CDC report states that between SY 2006-07 and SY 2010-11, obesity and severe obesity rates among NYC schoolchildren in grades K-8 fell from 21.9% to 20.7% and 6.3% to 5.7%, respectively.
- 13 <http://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?article=1162&context=childrenatrisk>; <http://circ.ahajournals.org/content/128/15/1689.full>; <http://www.cdc.gov/healthyyouth/obesity/facts.htm>; https://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_467661.pdf
- 14 http://www.cdc.gov/pcd/issues/2014/13_0439.htm: The CDC found that severe obesity rates of poor students vs. wealthy students in 2010-11 were 6.5% vs 4.4% for free-meal status and 7.2% vs 4.0% for neighborhood status.
- 15 Student demographic information sourced from: <http://schools.nyc.gov/AboutUs/schools/data/default.htm>
- 16 <http://www.nytimes.com/2013/07/18/nyregion/next-steps-in-bloombergs-obesity-fight-up-the-stairs.html>: total obesity-related costs in New York State are estimated at more than \$11.8 billion annually, according to the Office of the New York State Comptroller. Over one-third—\$4.3 billion—of those costs are funded by Medicaid. See: http://www.osc.state.ny.us/reports/obesity_and_child_obesity_10_23_12.pdf.
- 16 <http://www.bloomberg.com/news/articles/2015-03-05/american-economy-has-a-weight-problem-as-costs-of-obesity-mount>; <http://www.kickthecan.info/files/documents/Journal%20of%20Health%20Economics%202012%20Cawley.pdf>
- 18 <http://onlinelibrary.wiley.com/doi/10.1038/oby.2009.67/abstract>.
- 19 <http://stateofobesity.org/facts-economic-costs-of-obesity/>; Children covered by Medicaid are nearly six times more likely to be treated for a diagnosis of obesity than children covered by private insurance. See: http://www.medstat.com/pdfs/childhood_obesity.pdf.
- 20 <http://news.yale.edu/2014/11/14/obesity-among-american-workers-costs-nations-billions-lost-productivity>.
- 21 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3047996/>.
- 22 http://comptroller.nyc.gov/wp-content/uploads/documents/MD11_083A.pdf; <https://media.gractions.com/f410dc9e068b98b88ea0b5c54d6885f750d9d0a3/2850366f-07e8-4da8-a7ba-ff6d1b687975.pdf>; <http://wccny.org/wp-content/uploads/2013/02/PETF-Position-Paper-IBO-Letter-Tables-Final.pdf>; http://www.tc.columbia.edu/i/a/document/30357_Deficient_Resources_FINAL_3.4.14.pdf; http://www.nyc.gov/html/records/pdf/govpub/2683all_work_and_no_play.pdf; <http://www.nytimes.com/2001/03/03/nyregion/03GYM.html>; <http://query.nytimes.com/mem/archive-free/pdf?res=9D0CE4DB123EE732A25752C2A9669D946890D6CF>
- 23 <http://www.nytimes.com/2001/03/03/nyregion/03GYM.html>
- 24 <http://www.nytimes.com/2001/03/03/nyregion/03GYM.html>
- 25 <http://www.nytimes.com/2001/03/03/nyregion/03GYM.html>
- 26 <http://www.p12.nysed.gov/ciai/pe/toolkitdocs/Part135RegulationMay2014.pdf>: “* Section 135.4.* Physical education. (a) **School district plans.** It shall be the duty of trustees and boards of education to develop and implement school district plans to provide physical education experiences for all pupils as provided in this section. Such current plans shall be kept on file in the school district office and shall be filed with the Division of Physical Education, Fitness, Health, Nutrition and Safety Services. All school districts shall comply with the provisions of this section by August 1, 1982. However, the requirement for submission of a plan shall become effective by January 1, 1983.”
- 27 <https://www.e1b.org/Portals/0/Files%20by%20Division/School%20Support/Healthy%20Schools/PEPWG%204.18.12%20FINAL.locked.pdf>
- 28 http://comptroller.nyc.gov/wp-content/uploads/documents/MD11_083A.pdf
- 29 http://www.nytimes.com/2012/07/11/education/even-as-schools-battle-obesity-physical-education-is-sidelined.html?_r=0
- 30 <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>: 8 NYCRR 135.4(c)(4)(i).
- 31 <http://www.p12.nysed.gov/ciai/pe/peqa.html>
- 32 <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>
- 33 <http://www.p12.nysed.gov/ciai/pe/peqa.html>
- 34 <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>
- 35 <http://www.p12.nysed.gov/ciai/pe/peqa.html>
- 36 <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>

Additionally, the DOE’s Move-to-Improve initiative

(<http://schools.nyc.gov/Academics/FitnessandHealth/MoveImprove/default.htm>) enables participating elementary schools serving students in grades K-5 to integrate physical activity into classroom-based instruction, in order to supplement and help schools meet State physical education requirements. To engage in this type of programming, school districts must receive approval from the State. However, the DOE's District Physical Education Plan provides no information on MTI, and it is unclear whether the DOE has sought and/or received approval from the State to implement such an initiative. Furthermore, the American Heart Association, based on a CDC recommendation, asserts that at least 50 percent of physical education class time should be spent in moderate to vigorous activity, and therefore MTI should not count towards schools' PE instructional time requirements. The DOE has designated nearly 100 City elementary schools as "MTI All-Star schools," which integrate PE instruction into classroom activities to help meet State PE requirements, including:

- 35 schools in Brooklyn;
- 34 in Queens;
- 11 in Manhattan;
- 12 in the Bronx; and
- 6 in Staten Island.

³⁷ <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>; <http://www.p12.nysed.gov/ciai/pe/peqa.html>:

"11. "Is there any flexibility in meeting the elementary physical education requirement?" Yes. Under Commissioner's Regulation Part 135.4(c)(4)(i), elementary classroom teachers may teach physical education under the direction and supervision of a certified physical educator. There are areas of the physical education curriculum that can be completed in the student's classroom and taught by the classroom teacher. Since physical education includes not only physical, social, and emotional skill development but also cognitive learning, certain items can easily be done in the classroom by the elementary teacher (i.e. understanding the effect of physical activity on the body, the need for proper nutrition to live an active life, staying safe, prevent injuries, etc.). Integrating physical education into other curriculum areas is encouraged and even covered in Part 135.4(c)(1)(i)(i). However, this instruction must be designed with care and under the direction and supervision of the certified physical education teacher to ensure that the learning standards are met."

³⁸ <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>

³⁹ <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>; The DOE's District PE Plan states: "PE is scheduled daily (this is a special allowance for NYC schools from NYSED): Students must attend and participate for a minimum of 180 minutes per week for seven semesters earning 0.58 credits per semester."

⁴⁰ <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf> The DOE's District PE Plan states: "PE is scheduled three times per week in one semester and two times per week in the other semester (3/2) or a comparable time each semester if the school is organized into other patterns. Students must attend and participate for a minimum of 90 minutes per week for eight semesters earning 0.5 credits per semester or the equivalent on the school's programming model."

⁴¹ http://schools.nyc.gov/NR/rdonlyres/C7D11638-1215-4D03-9E81-57A74C26FEFD/0/WQRSPEESRequirements_2014.pdf

⁴² http://schools.nyc.gov/NR/rdonlyres/B830DB93-496F-4704-8AF7-EB42A7EEF3C0/0/WQSPPEMSRequirements_2014.pdf

⁴³ http://schools.nyc.gov/NR/rdonlyres/EF999026-DBE1-482D-8011-03CA77F57C55/0/WQRSPEHSRequirements_2014.pdf

⁴⁴ Copies of the Comptroller's Office's full FOIL request and the DOE's cover letter response can be found in the Appendix of this report.

⁴⁵ In addition to requesting information related to full-time, certified PE instructors, the Comptroller's Office requested information from the DOE on the number of part-time certified PE teachers providing PE instruction directly to students, as well as the number and names of schools that are sharing certified PE instructors. The DOE did not provide data on part-time teachers at general education schools or information on whether schools are sharing teachers, and said that "the DOE does not centrally track PE teacher-sharing." Additionally, the Comptroller's Office requested, for each school, the "daily and/or weekly frequency and total minutes per calendar week of physical education instruction broken down by grade level (e.g., K-3, 4-6, 7-12, with grades 6 or grades 7-8 differentiated if appropriate based on the school's overall configuration." The DOE did not provide data on minutes and frequency of PE instruction for elementary schools because, it said, "elementary schools are not required to report this information." Further, information that the DOE did provide for middle and high school grades was presented in a manner that could not be meaningfully analyzed for the purposes of this report (e.g., across grade spans of 6-8 and 9-12). The DOE explained that it presented the data in this manner "to avoid double counting the same PE courses that serve students in multiple grades levels."

⁴⁶ For example, the DOE noted that the data it provided on full-time, certified PE teachers: "reflects licensed PE teachers in the system, *and not necessarily whether or not they are teaching PE.*" (Emphasis added by the Comptroller's Office).

- ⁴⁷ <http://www.csuchico.edu/kine/documents/TroutHighlyQualifiedTeacher016.pdf>
- ⁴⁸ All information is as of 10-31-2014.
- ⁴⁹ The data did not specify which teachers on this list, if any, were part-time or shared between schools. In addition, 223 full-time certified PE teachers were removed because they were assigned to District 75 schools. This data did not include information on PE teachers at charter schools.
- ⁵⁰ In its response to the Comptroller's Office, the DOE noted that full-time, certified teacher data it provided "reflects licensed PE teachers in the system, and not necessarily whether or not they are teaching." As a result, the Comptroller's Office refers to those teachers as "assigned" to schools rather than "working" or "teaching" in schools.
- ⁵¹ The total number of schools was derived from the DOE's 2013-2014 Enrollment, Capacity and Utilization (Blue Book) report.
- ⁵² It was not possible for the Comptroller's Office to determine whether any of the 375 elementary schools have part-time, certified PE teachers providing physical education programming to students because the DOE did not provide data on part-time certified PE teachers for general education schools. The Comptroller's Office recognizes the possibility that classroom teachers in these schools are providing PE instruction, but notes that NYSED requires that classroom teachers who deliver PE programming to elementary school students do so "under the direction and supervision of a certified physical education teacher." The Comptroller's Office also recognizes that the DOE's 2012 draft *District Physical Education Plan* notes that: "NYC DOE does provide NYC public schools with seven citywide directors of PE through the central Office of School Wellness Programs. The directors are experienced, licensed, PE teachers who hold the NYS SDA or SDL license and are assigned as education administrators." While it is possible that these directors could be providing direction and supervision to classroom teachers at the 375 elementary schools identified in this report as lacking a full-time, certified PE teacher, the Comptroller's Office could not confirm this information based on data provided by the DOE.
- ⁵³ The DOE's draft PE plan notes that: "High school students must participate in PE throughout high school earning four NYC credits in PE as required for graduation. Students must take and pass seven or eight semesters of PE depending on the scheduling model the school uses" (p. 10). Further, "Students in grades 10-12 **may be** eligible to earn PE credit for their participation on PSAL sport teams and school-based before-and after-school intramurals and club fitness/athletic programs per NYSED Regulation 135.4. It is recommended that schools provide students with a comprehensive, sequential program of instruction in physical education during the school day." There is an extensive set of requirements to qualify for the extra-class PE credit option" (p. 28).
- ⁵⁴ The Comptroller's Office compared full-time, certified physical education teacher data from the Fall 2014 with the total number of general education schools, derived from the DOE's 2013-2014 2013-2014 Enrollment, Capacity and Utilization (Blue Book) data. Because the time periods covered by the two data sets are not identical, this information may have minor inaccuracies. The total number of schools does not include District 75 or Charter schools.
- ⁵⁵ East Harlem (School District 4) has 18 out of 33 schools that lack a full-time, certified PE teacher.
- ⁵⁶ This dataset contains all schools serving all grades spans, including 33 high schools. Childhood obesity rates were sourced from the Citizens' Committee for Children's "Obesity Among Public Elementary and Middle School Students" dataset, which is based on unpublished NYC Department of Health and Mental Hygiene FITNESSGRAM data from school years 2007 to 2011: <http://data.cccnewyork.org/data/map/94/obesity-among-public-elementary-and-middle-school-students#94/a/4/143/9/a>. Additionally, this information is displayed by United Health Fund District, boundaries of which differ from those of NYC Community School Districts.
- ⁵⁷ http://www.nytimes.com/2012/07/11/education/even-as-schools-battle-obesity-physical-education-is-sidelined.html?_r=0
- ⁵⁸ <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>: 8 NYCRR 135.4(5)
- ⁵⁹ "In most cases, a classroom space will not accommodate the UFT secondary school student to teacher ratio of 50:1 for PE classes." (p. 21)
- ⁶⁰ As of 4/23/15, these report could be found under at the "Annual Facilities Survey" link on each school's DOE website. The Survey link can be accessed via "Statistics & Budget" and then, "Building/School Facilities Report."
- ⁶¹ All information is based on Local Law 60 data which sources from the DOE's 2013-2014 Principal Annual Space Survey (PASS). Charter schools and District 75 schools – for which a full complement of data was unavailable to conduct a robust comparison with district schools – fell outside the scope of this report's analysis. In total, this sample size includes 1,798 fitness spaces in 1,116 schools, out of 1,955 fitness spaces in 1,216 schools included in the full dataset. Of the 1576 mappable schools, only 1551 of those schools matched LL 60 data. The additional 25 schools were omitted from this analysis.
- ⁶² The total number of schools was taken from the DOE's 2013-2014 Enrollment, Capacity and Utilization Report (Blue Book).

- ⁶³ Co-location data was determined using the DOE's 2013-2014 Enrollment, Capacity and Utilization (Blue Book) data. Analyses conducted by the Comptroller's Office found that co-locations are more prominent in Central Brooklyn and the South Bronx than any other neighborhood in New York City.
- ⁶⁴ Co-location data was determined using the DOE's 2013-2014 Enrollment, Capacity and Utilization (Blue Book) data. The Comptroller's analysis of this data identified 519 DOE buildings that have co-locations involving general education schools. The number of co-located DOE buildings includes district schools that are co-located with other district schools, charter schools, or other organizations that occupy space.
- ⁶⁵ The Comptroller's Office identified 342 schools that did not have a physical fitness space in 241 co-located DOE school buildings. 241 out of a total of 519 school buildings equals 46.4 percent. Co-location data is from DOE's 2013-2014 Blue Book and LL 60 data is from the 2013-2014 PASS survey. Further information on co-location is in the appendix.
- ⁶⁶ This dataset contains schools serving all grade spans, including 153 high schools. Childhood obesity rates are sourced from the Citizens' Committee for Children's "Obesity Among Public Elementary and Middle School Students" dataset, which is based on unpublished NYC Department of Health and Mental Hygiene FITNESSGRAM data from school years 2007 to 2011: <http://data.cccnewyork.org/data/map/94/obesity-among-public-elementary-and-middle-school-students#94/a/4/143/9/a>. Additionally, this information is displayed by United Health Fund District, boundaries of which differ from those of NYC Community School Districts.
- ⁶⁷ The issue of overcrowding and its potential impact on schools' ability to provide space for physical education falls outside the scope of this report. The DOE provides school and building data in its Enrollment, Capacity and Utilization Report. Schools with utilization rates greater than 100 percent are most likely overcrowded. For reference, 73 schools identified in this report as lacking both a full-time, certified PE teacher and a physical fitness space have a utilization rate above 100 percent. This amounts to 49 percent of these schools, and may be a contributing factor in the absence of physical fitness spaces within these schools.
- ⁶⁸ This dataset contains schools serving all grade spans, including 17 high schools. Childhood obesity rates are sourced from the Citizens' Committee for Children's "Obesity Among Public Elementary and Middle School Students" dataset, which is based on unpublished NYC Department of Health and Mental Hygiene FITNESSGRAM data from school years 2007 to 2011: <http://data.cccnewyork.org/data/map/94/obesity-among-public-elementary-and-middle-school-students#94/a/4/143/9/a>. Additionally, this information is displayed by United Health Fund District, boundaries of which differ from those of NYC Community School Districts.
- ⁶⁹ <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>: 8 NYCRR 135.4(5)
- ⁷⁰ Schools included in the 2010-2011 Outdoor Schoolyard Survey were compared to a citywide list of schools from 2013-2014. Schools that were assigned a "N/A" (29) in the dataset were not included in our analysis. Additionally schools that did not match between the two time periods were omitted for the purpose of this analysis. These schools were assumed to have access to an outdoor school yard or a nearby park for the purpose of the interactive map.
- ⁷¹ http://comptroller.nyc.gov/wp-content/uploads/documents/MD11_083A.pdf, http://www.nytimes.com/2012/07/11/education/even-as-schools-battle-obesity-physical-education-is-sidelined.html?_r=0
- ⁷² A copy of the Comptroller's full FOIL request and the DOE's cover letter response can be found in the Appendix of this report.
- ⁷³ <http://www.p12.nysed.gov/ciai/pe/toolkitdocs/Part135RegulationMay2014.pdf>: "* Section 135.4.* Physical education. (a) **School district plans.** It shall be the duty of trustees and boards of education to develop and implement school district plans to provide physical education experiences for all pupils as provided in this section. Such current plans shall be kept on file in the school district office and shall be filed with the Division of Physical Education, Fitness, Health, Nutrition and Safety Services. All school districts shall comply with the provisions of this section by August 1, 1982. However, the requirement for submission of a plan shall become effective by January 1, 1983."
- ⁷⁴ In addition to requesting information related to full-time, certified PE instructors, the Comptroller's Office requested information from the DOE on the number of part-time certified PE teacher providing PE instruction directly to students, as well as the number and names of schools that are sharing certified PE instructors. The DOE did not provide data on part-time teachers at general education schools or information on whether schools are sharing teachers, and said that "the DOE does not centrally track PE teacher-sharing." Additionally, the Comptroller's Office requested, for each school, the "daily and/or weekly frequency and total minutes per calendar week of physical education instruction broken down by grade level (e.g., K-3, 4-6, 7-12, with grades 6 or grades 7-8 differentiated if appropriate based on the school's overall configuration." The DOE did not provide data on minutes and frequency of PE instruction for elementary schools because, it said, "elementary schools are not required to report this information." Further, information that that the DOE did provide for middle and high school grades was presented in a manner that could not be meaningfully analyzed for the purposes of this report

(e.g., across grade spans of 6-8 and 9-12). The DOE explained that it presented the data in this manner “to avoid double counting the same PE courses that serve students in multiple grades levels.”

⁷⁵ For example, the DOE noted that the data it provided on full-time, certified PE teachers: “reflects licensed PE teachers in the system, *and not necessarily whether or not they are teaching PE.*” (Emphasis added by the Comptroller’s Office).

⁷⁶ <http://www.p12.nysed.gov/ciai/pe/documents/title8part135.pdf>; 8 NYCRR 135.4(c)(4)(i)



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