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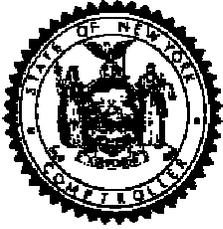


NEW YORK CITY BOARD OF EDUCATION

SPACE LEASING PRACTICES

99-N-3

**DIVISION OF MANAGEMENT AUDIT AND
STATE FINANCIAL SERVICES**



H. Carl McCall
STATE COMPTROLLER

Report 99-N-3

Mr. Harold O. Levy
Chancellor
New York City Board of Education
110 Livingston Street
Brooklyn, NY 11201

Dear Mr. Levy:

The following is our audit report on the space leasing practices of the Division of School Facilities.

We conducted our audit pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33 of the General Municipal Law. Major contributors to this report are listed in Appendix A.

*Office of the State Comptroller
Division of Management Audit
and State Financial Services*

April 10, 2001

Division of Management Audit and State Financial Services

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Executive Summary

New York City Board of Education Space Leasing Practices

Scope of Audit

The New York City Board of Education (Board) administers elementary and secondary schools in New York City. The Board's Division of School Facilities (Division) leases, repairs and maintains the Board's school buildings and other facilities. Generally, landlords renovate leased sites at Board expense. The Division typically retains ten percent of renovation costs to ensure that work is done satisfactorily.

The Division's Tenant/Landlord Relations Unit (TLRU) helps resolve problems between tenants and landlords and its Violations Control Unit (VCU) oversees the timely correction of building and safety code violations at leased sites. In November 1996, the Board revised and strengthened its process for awarding leases for sites by adding such requirements as market analysis, to support lease decisions. The Board expended \$50.1 million, net of operating expenses and renovations, for 172 leases in effect during its 1999 fiscal year. Our audit addressed the following questions concerning the Division's space leasing practices for the period July 1, 1996 through February 29, 2000:

- Does the Division take adequate steps to support the appropriateness of its leasing decisions by complying with the revised process?
- Do Division lease payments agree with lease terms?
- Does the Division provide Board occupants of leased space with an environment that is clean and safe for its intended purpose?

Audit Observations and Conclusions

We found that the Division generally complies with the revised process to support the appropriateness of leasing decisions, and Division lease payments generally agree with lease terms. For 17 sites in our sample, we concluded that significant safety and cleanliness deficiencies did not appear to exist. However, for six remaining leased sites in our audit sample, we found that the Division authorized payments of about \$2.4 million annually despite significant safety and cleanliness deficiencies which may have adverse impacts on the adequacy of the learning environment and the well-being of children, teachers and staff. Because of ongoing construction or classroom activities, we were not able to conclude

about the safety and cleanliness of three sites in our audit sample. The significant deficiencies in safety and cleanliness that we identified at six sites were often longstanding and included such things as leaking roofs; water damage to floors, walls and ceilings; ill-fitting windows, broken-up sidewalks; vermin damage; building and safety code violations; and other assorted problems. (See pp. 5-11)

Improvements in various aspects of leasing operations are necessary to detect and to prevent situations where the Division risks paying for space that has significant safety and cleanliness deficiencies. For example, the Board needs to establish formal lease management policies and procedures for monitoring complaints reported by Board occupants, promptly identifying and correcting building and safety code violations, and making sure that each site has a proper certificate of occupancy. We found that five sites in our sample only had temporary certificates of occupancy and one school has been classified for several years as a commercial property. (See pp. 11-12)

In addition, the Division needs to improve its process of routine site inspections by documenting inspection schedules and inspections determinations about the adequacy of leased space, the correction of previously identified deficiencies and the appropriate use of the leased space. Several of the deficiencies we identified in our site visits were not documented in the files of the TLRU. These deficiencies included electrical, ventilation and plumbing problems; non compliance with provisions of the Americans with Disabilities Act; rodents; disintegrating window frames; and fire safety issues that we observed at 11 sites. At one site, a condition involving exposed bricks had supposedly been corrected, but our visit identified that the problem was not corrected and the bricks were still exposed. (See pp. 13-14)

Also, we noted that the Division was not using available financial remedies when landlords were not fulfilling their responsibilities for renovations, repairs and maintenance. In particular, the Division was not terminating leases, arranging to have work done and deducting the related cost from rent owed, reducing rent in proportion to the extent that premises were unsuitable, or using retained funds to pay for all or part of the cost of renovations or outstanding items. For example, the Board had \$1 million of retained funds for a leased site with deficiencies, such as a buckled gymnasium floor, that had existed since 1996. (See p. 16)

Comments of Board Officials

Board officials indicate that actions have been taken to implement or to partially implement our audit recommendations. They report that much of the unfinished work at sites detailed in the audit has been completed.

Officials indicate that, as appropriate, landlords have been notified to make needed repairs or the Board will make them at their expense. Board officials state that our findings should be placed in the context of existing controls, new controls and external conditions, such as the lack of adequate funding to avoid the impression of widespread lack of controls and failure to appreciate controls. Officials dispute certain aspects of some findings and point out that financial recourse against landlords is used as a last resort because making repairs is difficult if legal actions ensue.

Auditors' Comments: We acknowledge that availability of resources affects the ability to maintain schools. However, leased site deficiencies noted in the audit often pertain to landlord responsibilities and certain of these have persisted for some time. In these instances, financial recourse should be strongly considered. We do not intend to convey that the Board has a widespread lack of controls or a failure to appreciate controls. We focus on improvement opportunities and acknowledge compliance with certain procedures as well as the apparent lack of deficiencies at 17 sites. We commend the Board's reported progress in correcting site deficiencies, creating a leased site database, computerizing the VCU and initiating repairs at leased sites.

We provide "Auditors' Comments" and "State Comptroller's Notes" within this report to address instances where the Board's official response (Appendix B) disputes aspects of certain findings.

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Exhibit A

Sampled Lease Sites

Appendix A

Major Contributors to This Report

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Introduction

Background

The New York City Board of Education (Board) administers elementary, intermediate and high schools in New York City. During the 1980s, enrollment in New York City schools remained relatively constant, and the Board was able to meet most of its space requirements by shifting space demand among Board-owned properties or by building new schools. However, enrollment increased from 957,000 students in the 1990-91 school year to an estimated 1,102,000 students for the 2000-01 school year. To alleviate overcrowded conditions in schools citywide, the Board began to lease property with greater frequency in the 1990s to help meet its space requirements. According to the Board, leasing provides greater flexibility in terms of long-term space management. During fiscal year 1999, the Board expended about \$50.1 million, net of operating expenses and renovations, for 172 leases.

The Board's Division of School Facilities (Division) is responsible for selecting the sites the Board leases throughout the five boroughs of New York City for various purposes, ranging from classrooms to computer centers to administrative offices. In November 1996, the Division instituted a new process to ensure that it selects appropriate lease sites. The process includes documenting the need for space, conducting a landlord background check, doing an environmental study and performing a market analysis of comparable properties in selecting lease sites. After it selects the site, the Division negotiates the price for the leased property and determines the scope of any necessary renovation work. The lessor (landlord) prepares specifications, awards renovation contracts, oversees renovation progress and pays the contractor. In addition to its responsibility for leases, the Division is generally responsible for maintaining all Board properties in a comfortable, safe condition and in a state of good repair to create an environment that fosters the education of New York City children.

Three Borough Plant Managers, who report to the Senior Director of the Office of Building Services, are ultimately responsible for the maintenance of the Division's leased properties. Each of New York City's 32 districts has a District Plant Manager who supervises the Division custodians including the high school custodians in the district. Division custodians are responsible for the daily maintenance, minor repairs and plant maintenance of the school to which they are assigned. Custodians have their own budgets and their own cleaning staff.

To protect Board interests in contracts with landlords and to help ensure a safe and clean environment for students and Board personnel at leased sites, the Board's standard lease agreement states that if the landlord, after having received written notice from the tenant of repairs needed at the landlord's property, fails to begin such repair within 20 days, the tenant may either terminate the lease on ten day's written notice, or have the repairs done at the landlord's expense (or deduct the cost from rent owed).

The Tenant/Landlord Relations Unit (TLRU) was established by Division in September 1987 to facilitate the resolution of problems that may arise between the landlord and the occupants of Board-leased sites. These problems could include issues of cleanliness, safety, maintenance or repairs. According to the Leasing Operations Director, the TLRU sends out a fact sheet for every new lease. The current fact sheet is a two-page letter that identifies the party responsible for performing routine tasks, such as interior repairs and snow removal. The TLRU sends the fact sheet to both the Division's District Plant Manager and to the school custodian, if one is assigned to the leased site.

The Division's Violations Control Unit (VCU) is responsible for monitoring violations issued against Board owned/leased sites. Violations can be issued against sites by the New York City Department of Buildings, the Environmental Control Board and the New York City Fire Department. The VCU should identify the party responsible for making the corrections and ensure violations are corrected in a timely manner.

Audit Scope, Objectives and Methodology

We audited the Division's leasing practices for the period July 1, 1996 through February 29, 2000. One of the objectives of this performance audit was to determine whether the Division takes adequate steps to justify and support the appropriateness of its leasing decisions by complying with the November 1996 revised leasing process. Our other audit objectives were to determine whether Division practices and procedures provide reasonable assurance that lease payments are made in accordance with lease terms and that leased space is sufficiently clean and safe for its intended purposes.

To accomplish these objectives, we reviewed the Division's policies and procedures, tested relevant controls and transactions and interviewed Division staff and Board personnel who occupy leased sites. We also reviewed Division lease files, which include complaint letters, internal

correspondence related to complaints and copies of (or references to) citations for code violations. Our audit also included field observations and audit tests for a judgmental sample of 30 Division leases covering 26 leased sites. (Some leased sites have more than one lease.) The leased sites accounted for lease payments totaling \$7.2 million during the Board's 1998-1999 fiscal year. We selected the leases for 18 sites based on factors such as site custodial responsibility (Board or landlord), the cost of the lease and the size of the leased space, and to get a cross-section of the Board's leased sites in New York City. The remaining 12 leases included all leases that were subject to the revised leasing process (i.e., leases with start dates on or after November 1996). We also visited 23 of the 26 leased sites to observe conditions at these properties. We did not visit two leased sites because of on-going construction and we did not visit one other leased site because of time constraints. (See Exhibit A)

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Division included within our audit scope. Further, these standards require that we understand the Division's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations within our scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach to select activities for audit. We focus our audit efforts on those activities we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. We devote little audit effort reviewing operations that may be relatively efficient or effective.

Response of Board of Education Officials to Audit

A draft copy of this report was provided to Board officials for their review and comment. Their comments were considered in preparing this report and are included in Appendix B.

Within 90 days after the final release of this report, the Chancellor of the New York City Board of Education should report to the State Comptroller advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Division Leasing Practices

We found that Division leasing practices generally complied with the November 1996 leasing process. Based on our audit tests, we also concluded that lease payments generally were calculated correctly and in conformance with lease terms. We further concluded that 17 of the 23 leased sites that we visited, were in generally good condition and had few deficiencies based upon our physical observations, review of TLRU files and interviews with Board personnel working at the leased sites.

However, we also identified that the remaining six sites we visited had significant safety and/or cleanliness deficiencies that may impact adversely on the learning environment and the well being of children, teachers and staff. Some of these conditions have persisted for years. Annual rental payments for these six sites were about \$2.4 million. The Board should not tolerate such conditions for property that it pays to have maintained in a safe and comfortable condition, and in state of good repair. We attribute these conditions in some of the Board-leased properties to weaknesses in the Division's control over certain aspects of leasing operations.

Condition of Leased Sites

The following subsections of this report present background information and our detailed findings about the six leased sites where we identified significant safety and/or cleanliness deficiencies. Included in these subsections are the viewpoints of Division officials in response to our findings.

71-77 Clinton Avenue, Brooklyn

This site has been occupied since September 1996 by approximately 600 students of the Benjamin Banneker Academy. Additional background information about the lease at this site is as follows:

- The landlord was to renovate the site to the satisfaction of the Board at a cost to the Board of \$12 million. According to the Board, the first three floors of the building were to be completed by December 7, 1995. The Board indicates that this portion of the work was completed in December 1995 and the remaining portion of the building was completed in September 1996.
- Between the start of the 1996 school year and April of 1998, three punch lists with 231 items were compiled for the renovations work for this site. The Division issued a "stop rent" order against the

landlord in August of 1998 because of the landlord's delay in correcting punch list items. The "stop rent" order was lifted in September 1998 because of cooperation from the landlord in completing punch list items.

From our review of TLRU files about this site and from our visit to this site on October 15, 1999, we noted little evidence to indicate landlord cooperation to make the site acceptable. We noted that 116 of the 146 items on an April 1998 punch list remained outstanding. Of the 30 items that were resolved, the landlord completed 19 and Board personnel completed 11 without landlord reimbursement.

During our walk through at the site we noted evidence of significant water leaks from the roof of the site. According to the Division custodian, a new roof membrane was installed on half the roof in the summer of 1998. However, the areas beneath the non-repaired portion of the roof, such as room 223, have received extensive water damage. The landlord patched up small portions of the roof, but the leaks continued. According to the custodian, when it rains water also cascades through the windows in rooms 524, 526, 514, 602 and 423 because there are no gutters to direct the water elsewhere. Another area of concern is the school's gymnasium. There is an opening in the gymnasium ceiling that allows rain to come through and damage the floor below. The damage includes severe buckling of the floor and substantial water stains on the floor. We were told by the school occupants that the building's drainage capability was insufficient to handle large storms. As a result, during heavy storms, water comes through an exit door and floods the inside of the school all the way to the lunch room - a distance of about 100 feet. Room B19, a workshop, is closed because crumbling plaster in the walls and ceiling make it unsafe. The custodian also noted that the fire alarm does not function in some places in the building.

In response to our reporting of these observations, the Division stated that it is still retaining over \$1 million in renovation funds until it is satisfied with the overall work. Division personnel who inspected the site after our visit confirmed that many punch list items remain outstanding and must be corrected. Division personnel further noted that punch lists are typically prepared near the completion of projects and include both major and minor items that either do not comply with specifications or are incomplete or unresolved. The Division maintains that the existence of punch lists does not signify that the site is unusable, or that supervision or construction work had been poor. Division managers said they are not troubled by the

extensive punch lists because minimally they would rather have construction problems identified for repair. However, this site has been fully occupied since September 1996, and some punch list items and conditions that we observed have existed and been known for at least five years.

(In response to this report, Board officials indicate that the landlord has been slow to perform on a remaining punch list and has been so notified. Officials add that the Board made repairs totaling \$127,881 and punch list items will be charged against the \$1 million retainage. Room B19 has been repaired and opened, the gym floor has been repaired and increased capacity drains and new gutters have been provided. The Board reports that it was responsible for and made fire alarm repairs. The Board intends to use lease remedies to replace the roof at a cost of \$735,000.)

227-243 West 61 Street, Manhattan

This site is for approximately 740 students of the Beacon High School and has been occupied since September 1995. Additional background information about the lease for this site is as follows:

- The landlord completed renovations to this site in 1995 at a cost to the Board of approximately \$6.6 million.
- The firm the Board hired to oversee the renovation issued a final punch list report for this site in December 1995. This 37-page report enumerated work items that remained to be done and requested the landlord to “please mobilize your forces at once to complete the outstanding punch list items...” At this time, the Board had already made most construction payments. Since 1995, additional punch lists have been prepared for this site.
- According to the Division, the landlord is seeking reimbursement from the Board for non-scope work supposedly done during the renovation of the site. The Board refuses to make the requested additional payment and continues to hold retained funds. Board actions, such as withholding monthly rent, have not been taken to compel performance from the landlord.

When we visited Beacon High School on August 16, 1999, we saw evidence that water leaked from the roof into rooms 312, 307, the cafeteria and the first floor hallway. Water leaking into room 122 is reportedly caused by plumbing problems in the science lab. We were told that rain water leaks

through the windows in rooms 306, 305, 304, 317, 201 and 202, and we observed that the windows in the science room do not fit properly in their frames. The handicapped-accessible shower in the locker room is unusable because when the shower runs water leaks out of the room and onto the bathroom floor. If the shower runs for any period of time, it floods the entire locker room. We also noted that the landlord had not obtained proper building use permits, as required by the New York City Department of Buildings (DOB), nor installed mandatory fire/safety equipment. In January 1999, four years after the opening and occupancy of the school, the DOB inspected the school and found multiple fire, safety and building code violations. This inspection revealed there were no Assembly Permits for the gymnasium, the drama studio and the cafeteria and noted that emergency lights were missing or did not meet code requirements. Another violation cited the landlord's failure to maintain the building. The DOB inspector also found that improper locks had been installed throughout the building, and that the chimney was leaning and out of plumb at the roof.

Division officials advised us in April 2000 that repairs needed due to outstanding construction issues include: fixing bathrooms that do not conform to guidelines established by the Americans with Disabilities Act (ADA); replacing missing emergency lights; and replacing poor wiring in a number of places. TLRU files for this site continues to show outstanding violations and repairs. Officials indicate that funds have been retained and are still available to fix these deficiencies. Since this building has been occupied since October 1995, we believe it is time to correct these deficiencies.

(In response to this report, Board officials indicate that progress has been made in completing most of the items on the original report. The handicapped accessible shower and the chimney have been repaired and faulty interior locks have been replaced. The gymnasium, the drama studio and cafeteria assembly permits have been obtained and a violation for the failure to maintain the building has been dismissed.)

3200 Jerome Avenue, Bronx

This site is for approximately 287 students of the Bronx New School and has been occupied for several years. This site was renovated almost a decade ago at Board expense. When we visited this site on August 17, 1999, we saw evidence that water was leaking from the roof into areas below. The school fireman who accompanied us during our visit said that

the roof requires extensive repair work which, according to the lease terms, is the landlord's responsibility. According to TLRU files, the TLRU notified the landlord about the roof condition numerous times in 1997, and again in early 1999. The landlord eventually responded to the TLRU to confirm that roof work had been completed. However, when we visited the site, personnel in the custodial unit told us the roof still leaks when it rains, so much so that 5 rooms on the first floor and 11 rooms on the second floor get wet. In fact, during our walk through, it was evident that flooding had taken place. We also noted that there was no emergency lighting in certain areas of the building.

On their follow-up visit in response to our reported findings, Division personnel stated this site was in good condition, although it needed constant repairs. They noted that the history of roof leaks was documented in the TLRU file, and that the leaks had been repaired. They maintained that only cleaning and minor repairs were needed.

(In response to this report, Board officials indicate that the roof leak identified during our visit was a new leak different than the one previously repaired. This new leak has reportedly been repaired.)

2392-98 Jerome Avenue, Bronx

This site serves as an annex to Primary School Number 33 which has an overall enrollment of 1,032 students in Kindergarten through fifth grade. There are about 159 Kindergarten students in the annex. The Board resolution to lease this site was approved in May 1998. Renovation to this site began in July 1998 and was completed by December 1998. The Board made its first rent payment in February 1999 for the period December 1998 through March 1999.

During our visit to the site on July 21, 1999 we noted that the main school building and the annex both face onto Jerome Avenue. Jerome Avenue is a high volume traffic area in the Bronx. A fenced play yard, which also faces Jerome Avenue, is between the two buildings. Since Board officials recognized that city traffic and the elevated subway line running overhead made this street a busy, potentially dangerous thoroughfare for very young children, they directed that the renovation work include constructing a side entrance that would lead from the annex directly into the play yard. However, this door was never built. As a result, when the Kindergarten children in the annex go to the play yard, they must walk along Jerome Avenue about 50 feet to enter a main gate to the yard. If this gate is

locked, the children must walk about 250 feet to the main school building, walk through the building, and finally enter the yard. If the landlord had added the side entrance as required by the Board's specifications and paid for by the Division, the direct exposure to Jerome Avenue by kindergarten students would be unnecessary. Division officials said they have withheld \$75,000 to correct deficiencies until the building meets their satisfaction. However, almost two years have passed without the required side entrance being built.

(In response to this report, Board official indicate that when work on the doorway began, it was discovered that this portion of the wall of the building is below the grade. Consequently, the Board asked the landlord to look for another section of the wall to construct a doorway. According to the Board, the landlord refused and is suing on the grounds that it no longer has responsibility for the doorway. The Board is contesting this and continues to retain \$75,000 to complete this work. Board counsel has advised that no unilateral action be taken pending the resolution of this case. Board officials also respond that the sidewalk in this area is quite wide so that there is no danger to children. However, the Board has ordered that the gate leading from the building to the yard be opened whenever necessary to avoid having students walk along Jerome Avenue to the main school building.)

108 W. 174th Street, Bronx

This four-story site houses an annex to Primary School Number 104 which has an enrollment of about 450 students in Kindergarten through fifth grade. The Board is responsible for providing custodial services. During our visit to the school on October 7, 1999, we observed evidence of water leaks and water damage on every floor throughout the building. The most severe leaks were in the first floor lunchroom which is located three floors below the roof. One entire wall in the lunchroom was stained with water marks; and some of the ceiling tiles were sagging and appeared ready to drop. There was also evidence of leaks in room 112, the hallway on the second floor, room 204 and the third floor men's room. On the fourth floor, we saw signs of leaks in the teachers' room and in the stairwell. The later leak has reportedly remained unfixed since mid-1997. The school fireman who accompanied us during our visit also pointed out a broken skylight as well as a faulty roof drain, which he said caused water to leak into the building because it was inadequate to handle heavy rain. The TLRU file for this site showed a DOB violation for failing to test the boiler.

The Division agreed that this site had a poor appearance, but believes it is in good shape, and is generally clean and well-maintained.

(In response to this report, Board officials report that the landlord made extensive repairs to the building in the fall of 1999 and the spring of 2000. The roof, skylight and roof drains were repaired, the exterior masonry was re-pointed and the windows were replaced.)

450 St. Mark's Place, Staten Island

The Board's Division of High Schools uses this one story lease site to provide about 350 students with GED instructions during both day and evening classes. No Division custodians are used at this site. The landlord is responsible for providing custodial services.

The Board's onsite school safety officer accompanied us during our visit of the site on August 9, 1999. The safety officer reported that the landlord's track record for cleaning and repairing the site had been poor. For example, the landlord reportedly does little to clear away snow in the winter and when interior and exterior walls need repainting, students do the work. Our ability to examine classrooms was limited because school was in session when we visited. However, in one classroom that we were able to enter, the safety officer directed our attention to a corner of the room where it appeared that a burrowing animal had entered. The safety officer also advised us that rats enter the building from the yard in back of the site and that an exterminator comes to the building periodically to attempt to control this problem. We also observed wooden frames on the windows in this room were decaying, thereby allowing outside air to enter the room. Division officials agreed with these observations.

(In response to this report, Board officials report that they agree the landlord did not always provide required services. The Board indicates that the Plant Manager has attested that the site is now clean. The Board plans to continue to regularly inspect this building and move to abrogate the lease if the landlord fails to keep the building clean and properly maintained.)

Controls Over Leasing Operations

To ensure the timely identification and resolution of the problems such as we identified at leased sites, the Board needs to establish certain written policies and procedures, provide for routine site inspections, promote effective communication and utilize available financial remedies.

The following subsections of this report further explain these improvement opportunities and the conditions that we found during our audit.

Policies and Procedures

The Division should have formal, written lease management policies and procedures which provide guidance for tasks and activities such as: monitoring complaints reported by Board occupants at sites, promptly identifying and correcting any building and safety code violations, and making sure each school has a proper Certificate of Occupancy. However, the Division has not adopted formal written policies and procedures to ensure it deals effectively with these aspects of day-to-day lease management. As a result of this void, we observed the following:

- The TLRU lacked a record (or database) that listed site complaints, the attempts to follow up on them, the time that they were outstanding or the action that resolved them. Instead, TLRU had site folders with stacks of loose paper pertaining to complaints. These unorganized papers took considerable time and effort to review to determine complaint status. This is inefficient and does not provide reasonable assurances of the proper monitoring and the timely resolutions of longstanding problems, such as the ones identified during our site visits.
- Some occupants of lease sites were not sure what to do with notices of building and safety code violations. Consequently, the Division's Violation Control Unit (VCU) may not become informed in a timely manner of the need to ensure the correction of some violations. We noted that the time to correct five of 13 violations issued at the six sites we visited with significant safety and cleanliness problems was 314 days on average. Eight violations were unresolved and had been outstanding for from 189 to 608 days.
- Landlords of leased sites were not always obtaining current and valid Certificates of Occupancy (COs), in accordance with Chapter 503 of the Laws of 1916. Our review of Division files on February 17, 2000 disclosed that five sites in our sample only had temporary COs and these all had expired. One property that had been used as a school almost seven years still had a CO classifying it for use as a commercial property, rather than as a school.

(In response to this report, Board officials indicate that the audit statement that the Division has not adopted policies and procedures to ensure it deals effectively with aspects of day-to-day lease management is in direct contradiction to findings that 17 sites did not appear to have significant safety or cleanliness deficiencies. They reiterate that policies and procedures are in place and explain that several actions have already been taken or are underway to upgrade these.)

Auditors' Comments: The presence of deficiencies at six sites, suggests that policies and procedures currently in place are not always sufficient to ensure that aspects of day-to-day lease management are effectively dealt with on a consistent basis.

Site Inspections

First-hand observation is an effective way to determine the adequacy of conditions at leased property, verify the actual correction of leased site deficiencies that have been reported as resolved and assess the appropriate use of leased property. Based on the results of site inspections, actions can be taken to remedy identified problems in a timely manner. However, the Division's process of routine site inspection of leased properties needs to be improved to assure that these objectives are being met.

(In response to this report, Board officials indicate that leased sites are inspected as part of Building Condition Surveys. The last such survey was performed in 1997-1998 and a new survey is presently underway. The Board adds that the New York City Department of Buildings annually inspects all school buildings and District Plant Managers routinely visit all schools in their districts.)

Auditors' Comments: We acknowledge that these activities occur. However, we conclude that the process of Division lease site inspections needs to be improved. In particular, we noted that TLRU files did not document an inspection schedule for each site or always show inspection determinations on the adequacy of site conditions, the status of correction of previously identified problems and the proper use of lease space.

Our review of TLRU files indicated that many of the problems we identified from our inspection of the adequacy of conditions at leased sites had also been identified to Division officials. However, there was no indication in the files that TLRU was aware of the several deficiencies (electrical, ventilation and plumbing problems; noncompliance with provisions of the

ADA; rodents; disintegrating window frames; and fire safety issues) that we observed at 11 sites we visited. For example, at the leased site at 95-17 Kings Highway Brooklyn we observed that sidewalks along the Kings Highway side of the school were broken into fragments, severely cracked and, in certain locations, void of any concrete. The Division custodian at the site stated that these problems have existed for some time. He also explained that the front steps to the school had been in a state of disrepair, but that he eventually fixed the steps himself without reimbursement from the landlord.

According to memorandum contained in TLRU files and dated November 13, 1998, a plant manager reported to the TLRU that he had been informed that a condition involving exposed bricks at the leased site at 411 46th Street, Brooklyn was corrected on an emergency basis. According to the memo, the plant manager was going to visit the school and confirm the correction. During our walk-through at the school ten months later on September 14, 1999, we observed that the bricks were still exposed and the condition was uncorrected. After our visit, Division officials informed us that the problem has been corrected.

For the lease site at 95-17 Kings Highway, Brooklyn, the Division's rental analysis document indicates that a certain space is to be used for playground for students. However, we visited this site twice and on both occasions we saw that about 20 vehicles occupied the playground and there was a sign stating "Parking for Board of Education Authorized Personnel Only." We were told that the students at this school use the lunchroom as a play area. After our visits, Division officials informed us that parking is no longer allowed in the playground.

However, when we revisited the site about two months later, we found that the same parking conditions originally reported still existed. There were over 20 cars parked in the playground and the parking sign was still attached to the gate.

(In response to this report, Board officials state that they have made it clear that space designated as a play yard for students at 95-17 Kings Highway, Brooklyn should not be used for staff parking. According to the Board, the Community School District Superintendent has notified the school principal that this use is incompatible with Board policies. Officials indicate that the brick wall at 411 46th Street, Brooklyn has been covered with a plaster wall.)

Communication

The Divisions' ability to establish and maintain lease sites that are in a state of adequate repair is to a considerable degree dependent on its ability to have effective communication and information sharing systems among personnel onsite at leased properties and staff working within the Division, including the TLRU and VCU. We noted the following improvement opportunities in communication and information sharing capabilities pertaining to the condition of leased properties:

- The TLRU and VCU should periodically verify that each unit is aware of building and safety code violations pertaining to lease sites. However, for the 13 violations that were issued for the six sites in our code violation sample, only five were recorded in the files of both units. One violation was recorded in neither unit, while four were recorded only in the files of VCU and three were recorded only in the files of TLRU. Both units need to have common information about violations so that each can carry out their objectives.
- The TLRU and the VCU should each identify properties in a common manner to make any necessary exchange of information about sites more efficient and effective. Presently, the TLRU identifies leased school sites by name and number and the VCU uses addresses to identify leases sites.
- The Division's fact sheet informs borough plant managers and the Division custodians about who is responsible for lease site repairs and maintenance. However, some sites, including 10 in our sample, do not have Division custodians. As a result, Board tenants at these sites do not necessarily know whom to contact to resolve repairs and maintenance problems. The Division needs to make sure that the fact sheet is also communicated to appropriate personnel at sites without custodians. Division officials have agreed to do so.

(In response to this report, Board officials state that reorganization of the VCU and expanded database access should address the need for the VCU and the TLRU to have common information about violations. Officials also indicate that the VCU and the TLRU are already sharing common identifiers for school sites. They also express their agreement that additional steps are required to ensure that staff at all leased facilities, especially those without

Division custodians, receive additional information regarding the responsibility for repairs at their schools.)

Financial Remedies

When the Board finds that landlords are not fulfilling their responsibilities for renovations, repairs and maintenance of leased properties, it can take actions such as the following to address the problems:

- terminate a lease for failure to make needed and timely repairs,
- arrange to have repair work done and deduct the cost from the rent owed to the landlord,
- reduce rent in proportion to the extent of premises unusable because of the lack of landlord performance, and
- use retained renovation funds (usually 10 percent of renovation cost) to pay for all or part of the cost of renovation deficiencies or outstanding items.

However, we found that the Division rarely utilizes these financial remedies to correct site problems, including those that we identified which pertained to site safety and cleanliness. For example, in examining the records for sites in our sample, we did not find any evidence where the Division made necessary repairs and then deducted the related cost from the rent owed. In fact, a number of Division custodians told us that they had corrected problems that were the landlord's responsibility without reimbursement from the landlord for the cost of labor and materials.

We also found only one instance where the Division withheld an amount of rent owed for the portion of a site that remained unusable. Similarly, for sites we visited with significant safety and/or cleanliness deficiencies, the Division has not used retained funds to pay for needed work. In one case the Division had a total of \$1 million of retained funds for a leased site that has substantial water leaks throughout the building and has a gymnasium floor that is essentially unusable because of water damage from a hole in the roof above. Board tenants have tolerated these dismal conditions since 1996.

In our opinion, when landlords are uncooperative, the Division should act with available financial options to provide New York City students and Board staff with a safe and clean environment.

Recommendations

1. Follow up to ensure that corrective actions are taken in a timely manner to address the site problems which are identified in this report.

(Board officials indicate that substantial progress has been made in eliminating deficiencies found at six sites highlighted in the report.)

2. Establish formal, written policies and procedures for: monitoring complaints reported by occupants; identifying an following up on code violations; and maintaining current and appropriate certificates of occupancy.

(Board officials indicate that a new lease database in the TLRU will allow for monitoring of tenant complaints and the tracking of their resolution. They also state that the VCU is now routinely following up on code violations and monitoring their status on a database. Additional procedures to monitor the status of certificates of occupancy are planned by April 1, 2001.)

3. Establish a process for routine leased property site inspections which determine the adequacy of conditions at the sites, verify the reported correction of problems, and confirm that property is being used as intended.

(Board officials responded that leased sites are covered by Building Condition Surveys, New York City Department of Building inspections and Division inspections.)

Auditors' Comments: The Division's site inspections need to be improved through the establishment of processes that adequately document inspection schedules and inspection determinations about the adequacy of site conditions, the correction of previously reported problems and the proper use of leased space.

Recommendations (Cont'd)

4. Ensure that the fact sheet is available to appropriate personnel at leased sites which lack a Division custodian.

(The Board agrees with this recommendation and reports steps have been and will be taken to implement it.)

5. Ensure that the VCU and the TLRU each are aware of all code violations at leased properties and have a common approach to identifying leased sites.

(Board officials report that information regarding violation receipts and corrections is being exchanged between the VCU and the TLRU offices and both offices use or record building I.D. numbers in their respective files.)

6. Utilize financial remedies including lease termination, reduced rent, and expending of retained renovation funds, when problems that are the responsibility of landlord have not been resolved in a timely manner.

(In response to this report, Board officials state that financial remedies written into lease agreements with the Board are intended as a last resort. The Board prefers to work with landlords to resolve problems and tenant issues rather than automatically resort to financial penalties. If no timely resolution can be found concerning a dispute with the landlord, the Board will exercise its rights under the lease and withhold rent or utilize retainage funds to make repairs uncompleted by the landlord as has been done at 71-77 Clinton Avenue.)

Auditors' Comments: We acknowledge the Board's position and continue to urge the Board to use financial remedies when problems that are the landlords' responsibilities are longstanding and unresolved.

Sampled Lease Sites

<u>Location</u>	<u>FY 1999 Annual Rent</u>
1. 450 St. Marks Place, Staten Island	\$132,030
2. 6581 Hylan Blvd., Staten Island	\$228,500
3. 3200 Jerome Avenue, Bronx	\$195,000
4. 1732 Davidson Avenue, Bronx	\$146,450
5. 2392-98 Jerome Avenue, Bronx	\$210,000
6. 1122 East 180 th Street, Bronx	\$418,750
7. One Fordham Plaza, Bronx	\$474,844
8. 108 West 174 th Street, Bronx	\$200,312
9. 361-63 Gun Hill Road, Bronx	(in construction)
10. 75-40 Parsons Blvd., Queens	\$616,000
11. 83-34 Kew Gardens, Queens	\$215,000
12. 227-243 West 61 st , Queens	\$280,000
13. 42-15 Crescent Street, Queens	\$328,775
14. 45-18 Court Street, Queens	(in construction)
15. 19 Duryea Place, Brooklyn	\$244,950
16. 1083 McDonald Avenue, Brooklyn	\$157,500
17. 411 46 th Street, Brooklyn	\$78,025
18. 6323 7 th Avenue, Brooklyn	\$195,000
19. 9517-37 Kings Highway, Brooklyn	\$153,750
20. 1155 DeKalb Avenue, Brooklyn	\$422,483
21. 71-77 Clinton Avenue, Brooklyn	\$814,000
22. 129 West 67 th Street, Manhattan	\$108,724
23. 227-243 West 61 st Street, Manhattan	\$863,625
24. 601 West 183 rd Street, Manhattan	\$323,179
25. 4124-4130 9 th Avenue, Manhattan	\$246,500
26. 17 Lexington Avenue, Manhattan	<u>\$158,752</u>
Total Rent	<u>\$7,212,149</u>

Notes: Sites Not Visited = 9, 14 and 26

Sites With Leases Beginning or Renewed November 1996 = 4, 5, 8, 9, 13, 14, 15, 19, 20, 22, 24, and 26

Sites With Significant Safety And/Or Cleanliness Deficiencies = 1, 3, 5, 8, 21, and 23

Exhibit A

Major Contributors to This Report

Jerry Barber
Michael Solomon
Anthony Carbonelli
Karl Koller
Arthur Lebowitz
Unal Sumerkan
Ken Haque
Nancy Varley



BOARD OF EDUCATION OF THE CITY OF NEW YORK

HAROLD O. LEVY, Chancellor

JESS FARDELLA, Auditor General

February 26, 2001

Jerry Barber, Audit Director
Office of the State Comptroller
A. E. Smith Building
Swan Street
Albany, NY 12236

Re: Audit of BOE's Space Leasing
Practices (99-N-3)

Dear Mr. Barber:

Enclosed are the Division of School Facilities (DSF) comments on issues raised in the above report along with their responses to the audit recommendations. As indicated in the response, DSF has taken issue with certain of the auditors' findings.

DSF agrees with, and has already implemented, three (3, 5 and 6) of the six recommendations directed to it, has partially implemented the remaining recommendations (1, 2, 4) and will fully implement these recommendations by August 2001.

The Board is pleased to note that the auditors concluded that DSF's procedures generally complied with the new leasing process put into place in November 1996, and that the vast majority of sites visited during the course of this audit were found to be in generally good condition. As indicated in DSF's response, many of the unfinished contract work items mentioned in the report have been corrected and that other repairs to these facilities have also been completed.

In addition, as DSF points out in its response, prior to the Comptroller's audit, DSF recognized the need to improve its procedures through, among other things, the development of a database that provides information on leased sites and the restructuring of the Violations Unit. These measures, coupled with the annual inspection of all of our school buildings, including leased sites, provide the basis for continued improvement in the management of the leasing program.

Sincerely,

David Klasfeld
Deputy Chancellor for Operations

DK:mk
Enclosures

c: Harold O. Levy
Chad Vignola
Patricia Zedalis
Jess Fardella



BOARD OF EDUCATION OF THE CITY OF NEW YORK

HAROLD O. LEVY, *Chancellor*

OFFICE OF THE CHANCELLOR
110 Livingston Street, Brooklyn, New York 11201

Reference No.: 2001-81

February 26, 2001

MEMORANDUM

TO: Jess Fardella
Auditor General

FROM: Patricia Zedalis
Chief Executive
Division of School Facilities

SUBJECT: New York State Comptroller's Audit of New York City Board of
Education Space Leasing Practices (99-N-3)

The following is our response to the New York State Comptroller's Audit of the Space Leasing Practices of the New York City Board of Education.

A. Summary and Background:

We are pleased to note the auditor's conclusion that our procedures generally complied with the new leasing process put into place in November 1996 and that the vast majority of the sites visited during the course of this audit were found to be in "generally good condition and had few deficiencies based on our physical examination, review of the Tenant Landlord Relations Unit files and interviews with Board personnel working at the leased sites".

We agree with the Comptroller's use of a risk-based approach to its audit reviews, as described on page 3 of the report. Additionally, we agree that the maintenance of school facilities is a critical area deserving of considerable attention in any risk-based analysis of the leasing program. However, we respectfully request that the summary in the Audit Observations and Conclusions on the first two pages of the report should place the findings of the audit in a larger context by discussing risk in the context of existing controls, new controls that are being implemented, and external conditions that impede attempts to reduce risk, such as a lack of adequate funding. This approach is essential to a useful assessment of maintenance and repair operations at all school sites regardless of whether they are Board owned or leased properties. For example, the report makes several assertions, such as that the Division of School Facilities does not have a process of routine site inspections, that there are no formal policies or procedures for monitoring and correcting complaints, correcting

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violations or ensuring that appropriate Certificates of Occupancy are secured for each site. Apart from being factually incorrect in certain aspects (e.g., DSF has a program under which all of its buildings, BOE owned as well as leased properties, are routinely inspected), the thrust of the Comptroller's report could create the impression that there is a widespread lack of controls at DSF as well as a failure to appreciate the need for such controls. This impression is belied by the fact that only a minority of sites visited by the auditors had deficiencies.

We believe that the Comptroller's summary should also recognize that DSF was aware of the need to improve its procedures prior to the Comptroller's audit. DSF has, in fact, been working to improve its procedures through the development of a computer database, scheduled to be operational in April 2001 that will track all aspects of leased sites, including deficiencies and the status of efforts to correct deficiencies that may exist. Additionally, the Violations Unit has also been reorganized and computerized. These actions have already provided improvements in the tracking of violations.

Consideration should also be given to the fact the existence of deficiencies and the delay in correcting them is not a simple function of inadequate controls as the reader of the current draft might infer. While controls can be, and are being, improved, the undeniable fact is that the resources available to provide adequate maintenance in our public schools is woefully insufficient to achieve the standards we all desire and that our students deserve. The auditors seem to believe that landlords are responsible for the correction of all deficiencies at leased sites. Leases are individually negotiated and vary somewhat from site to site, but as a rule, landlords are responsible for repairs to a building's exteriors while the interior of leased sites routinely used by the occupants of the building, are the responsibility of the Board. Interior repairs that are deemed to be the responsibility of the Board, must be managed as part of the overall need for repairs throughout the public school system. Funding in this area, while improved in recent years, is still insufficient to make all the repairs that are necessary.

The management of repair requests and the monitoring of conditions at leased sites on a day-to-day basis, is the overall responsibility of our District Plant Managers, each of whom is responsible for the general oversight of maintenance and operations of the school sites within a specific area. 32 district plant managers are supervised by three Borough Plant Managers that report directly to the Senior Director of the Office of Building Services which supervises the maintenance and operations of all public school buildings, leased or otherwise. The auditors seem not to have recognized the integrated nature of maintenance and operations oversight for all of our school buildings. This appears to be the reason for the auditor's belief that the maintenance at leased sites are managed differently than at Board owned sites and that there are no regular building inspections performed at leased sites.

Finally, the initiation of repairs that are the landlord's responsibility at leased sites needs also to be examined in light of an understanding that the financial recourse written into our leases is intended to be used as a last resort, not as a general method of daily operation. As noted in our response to the report concerning 2392-98 Jerome Avenue in the Bronx (page 8 of the audit) landlords have the right to dispute our findings and our actions and may exercise this right by bringing legal action. Such lawsuits do nothing for the students or staff at our schools and, in fact, the initiation of legal action by a landlord makes it difficult to initiate repairs while legal action is pending. We do act to immediately ensure the health and safety of students and staff and/or protect the educational environment at leased sites where it is necessary to do so in an emergency. For these reasons, we act to enforce the punitive provisions of our leases only after negotiations with the landlord have not achieved this result. We believe the auditors findings, on page 14 of the audit, relating to financial remedies needs to be viewed in this context

Much of the unfinished contract work items (punch list) at the sites detailed in the audit have been corrected and other repairs to these facilities have been completed. Additional repairs are needed at some of these sites and we notified the landlords in question that we intend to make these repairs this Spring if they do not. The cost of these repairs will be deducted either from the retainage, if the work was called for in the original construction documents, or from the rental payments if the work involves repairs to the exterior components of the building and are not a part of the original work plan of the building.

B. Condition of Leased Sites

We reiterate fact that the auditors are pointing out only the exceptions to what they have acknowledged to be generally good conditions at the sites they visited . Nonetheless, we believe that the report contains some errors of fact and we respectfully request that these be reviewed:

Response to site specific reports

71-77 Clinton Avenue:

1. The description of this project's background presented on page 5 is inaccurate. We informed the auditors of this on several occasions. To begin with, the school district, local elected officials, the landlord and the Board agreed to a redesign of this facility while construction was in progress. Under this agreement, the first three floors of the building were to be completed by December 7, 1995. In fact, this portion of the work was completed in September 1995. The remaining portion of the building was completed in September 1996. The landlord, in fact, was not slow to

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perform and the school did not become operational 9 months late. The landlord met his commitments under the revised construction schedule that the school community requested.

2. The landlord has, however, been slow to perform the work indicated on the remaining punch list and he has been so notified. As we have not had an adequate response from the landlord regarding the remaining punch list, we made repairs at this site totaling \$127,881.47. These repairs were made between August and November 2000. Punch list items will be charged against the \$1 million retainage that we have held for this purpose. The repairs that have been completed include the repair of the gym floor and increasing the capacity of the drains to prevent flooding. New gutters have been installed. Room B19, a workshop, is now open and all necessary repairs to the plaster and the ceiling have been completed. The fire alarm was inspected by the Fire Department upon completion of the construction and was found to be in good working order. Subsequent repairs to the fire alarm system are not part of the punch list and are the responsibility of the Board. We made the necessary repairs and the system is now functioning properly.

The landlord has made several roof repairs at this facility, however, we recently inspected this roof and have determined that the entire roof needs to be replaced at an estimated cost of approximately \$735,000. We notified the landlord that this work needed to be performed and we are now scheduled to replace the roof and deduct the cost from the rent because the roof was not part of the original contract work and therefore is not part of the punch list. Accordingly, we will use the remedies in the lease to replace the roof and to finish all of the remaining punch list items. These punch list items include major items such as completing several rooms in the basement and repairing the sidewalks as well as many minor repairs, such as the replacement of missing ceiling tiles, missing light covers, door checks and door knobs.

227-243 West 61st Street

1. The auditors referred to the punch list at this school by stating, on page 7, that "this 37 page report highlighted construction deficiencies". Punch lists are a standard practice in the construction industry and do not necessarily indicate construction deficiencies. They enumerate work items that remain to be done under the existing contract.
2. The latest punch list for this school, dated October 1, 1998, is 2 pages long and contains 46 items, indicating that progress has been made in completing most of the items on the original 37 page report cited by the auditors. Repairs that have been completed include the repair of the handicapped accessible shower, the chimney and the replacement of

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faulty interior locks. Assembly permits for the gymnasium, the drama studio and the cafeteria have been obtained and a violation for the failure to maintain the building has been dismissed.

3. The landlord must take action to finish the remaining 26 items indicated on the last punch list and he must also act to repair the roof and windows to prevent further water penetration of the building. We have notified the landlord, in writing, that he must undertake these actions this spring or we will invoke the relevant portions of the lease to ensure compliance.

3200 Jerome Avenue

The report states that there were roof leaks at this site and that the landlord "responded to the Tenant Landlord Relations Unit (TLRU) that the roof work had been completed. The auditors then state that " when we visited the site, personnel in the custodial unit told us that the roof still leaks when it rains..." This leaves the impression that the initial repairs reported to the TLRU were not made as reported. In fact, after the repair reported by the landlord was made, the roof developed a new leak in an area different from the one that was previously repaired. Like all capital stock, roofs are not static; they age and require periodic and sometimes multiple repairs. The landlord has repaired the second leak. Our District Plant Manager visited this site in December 2000 and reported no signs of leakage. Emergency lights at this site have been repaired by the Board and are now fully functional.

2392-98 Jerome Avenue

1. The auditors are correct when they state on page 9 that the original design of this school contained provision for a side door that would allow direct access to the schoolyard and then to the main building without the necessity of walking along Jerome Avenue. Construction actually began on this door, but was halted when it was discovered that this portion of the wall of the building is below the grade of the schoolyard and directly opposite the schoolyard drains. As the planned installation would clearly lead to the flooding of the school, we asked the landlord to close up the opening for the side door that had been made and look for another section of the wall that would be adequate for the construction of this doorway. The landlord has refused and is currently suing us claiming that he no longer has a responsibility to provide the side door as it cannot be installed as per the original drawings. Obviously we are contesting this assertion and we are retaining \$75,000 to complete this work.

In view of the fact that the responsibility for the cost of the construction of an additional entrance is a matter being litigated, counsel has indicated the desirability of deferring unilateral action by the Board pending resolution of the case.

2. Whenever students leave the annex for either the play yard or the main building they are accompanied and supervised by staff from the school. Additionally, the sidewalk in this area is quite wide so that there is no danger to the children. However, we have also ordered the custodian to ensure that the gate leading directly from this building to the yard be opened whenever necessary so that the students will not have to walk the 250 feet along Jerome Avenue to the main school building.

108 West 174th Street

The extensive water leakage throughout the building reported by the auditors was caused mostly by water penetrating through the exterior masonry, although there were some roof leaks. The landlord made extensive repairs to this building in the fall of 1999 and spring of 2000. The roof, skylight and roof drains were repaired, the exterior masonry was re-pointed to make the walls watertight and the windows were replaced.

The boiler at this site was inspected on schedule, but the paperwork was not filed in a timely manner. These papers have been filed and the violation cited in the report has been corrected.

450 St. Mark's Place, Staten Island

We agree that, in the past, the landlord at this site has not provided the service we expect and require. Our plant manager, on numerous occasions, brought the conditions at this site to the attention of the Tenant Landlord Relations Unit, the landlord and the community school district. The TLRU, in turn, contacted the landlord requesting that the site be cleaned and that necessary repairs be made. Our plant manager reported on January 19th that the landlord had cleaned up the building. On January 25, 2001, to double-check this information, we sent another one of our plant managers unannounced to inspect the premises. He reported that the site is clean. We will continue to inspect this building on a regular basis and will move to abrogate the lease if we find that the landlord fails to keep the building clean and provide for the proper maintenance of the building.

Control Over Leasing Operations

Policies and Procedures

Referring to building and safety code violations in the introduction to this section of the report, on page 10, the auditors state that the Division has not adopted policies and procedures to "ensure it deals effectively with these aspects of day to day lease management". Such a broad statement stands in direct contradiction to the auditor's own finding in their executive summary that "for 17 sites in our sample, we concluded that significant

safety and cleanliness deficiencies did not appear to exist." We agree with this observation and offer this as an indication that we do deal effectively with issues involving building and safety code violations. Policies and procedures currently in place can certainly be improved and we are in the process of upgrading these, but we believe the auditor's general statement indicating that current policies and procedures are insufficient to ensure the proper monitoring of building deficiencies needs to be revisited in light of the auditors finding cited above.

We recently made improvements to the overall administration of the TLRU in order to improve our lease management procedures. A new Deputy Director was hired last summer whose main focus is on lease administration. This new Deputy Director is responsible for improved tracking of lease renewals, new lease negotiations and problems relating to existing leased sites.

At the bottom of page 10, the auditors reported that the TLRU lacked a database that listed complaints, the attempts to follow up on them, the time they were outstanding and other information. The auditors also state that the files containing information on individual leased sites "took considerable time to review to determine complaint status". We agree that the current filing system needs to be replaced with a computerized tracking system and we have been in the process of developing such a system. However, we feel compelled to mention the dedicated staff that is responsible for maintaining these files and coordinating communications between landlords and tenants. They are familiar with the issues at leased sites and do not have difficulties in finding materials in the files that the auditors reported.

We are currently rolling out a new tenant/landlord relations system database. This new system will contain all relevant information regarding each of our leased sites. When fully operational, this new database will greatly improve our ability to manage our leased sites and provide a powerful tool to respond promptly to requests and/or complaints relating to repairs and maintenance at our leased facilities. We believe that the new database will provide the assurances of the proper monitoring and the timely resolution of outstanding problems. The program for this database was developed over the last year. Currently there are data integrity issues that need to be resolved before the new system goes online, however, we expect that this new database will be operational by April 2001.

On page 11 the auditors express their concern that "some occupants of leased sites were not sure what to do with notices of building and safety code violations" and they go on to relate the time it takes to resolve violations. Violations are often resolved rather quickly though it can often take up to six months to have this action properly recorded and officially removed by the issuing agency. We do agree that additional communication with personnel at our leased sites to ensure that staff at every site are aware of the proper procedures for the handling

of building violations and complaints is a good idea and we will send additional information to these sites.

On page 11, the report states that 5 of the sites reviewed by the auditors had only temporary Certificates of Occupancy (CO) and that "one property that had been used as a school for almost seven years still had a CO classifying it for use as a commercial property, rather than as a school."

Two of the five sites with temporary CO's have received their permanent CO. The auditors are correct about the remaining three sites. The landlords at these three sites have been notified that they must do whatever is required to obtain their permanent CO's in a timely manner or we will enforce the penalty provisions of the lease requiring that all sites obtain and keep a permanent C O. The TLRU's data base currently being developed will provide automated tracking of the CO status leased sites and will provide the means to more aggressively track CO status.

The comments about the site with a commercial CO is also correct. When this space was originally occupied in 1991, the space was almost exclusively used for offices with some adult educational instruction. Our architects advised us at the time that these uses were compatible with a commercial CO. However, over the course of the present lease the usage gradually changed and the space is now used mainly for classrooms and does require a change in the CO to school use. This lease is currently being renegotiated and we have made it clear to the landlord that a new CO will be required.

Site Inspections:

On page 11, the auditors state that "the division does not have a process of routine site inspection of leased properties". This statement is incorrect.

Leased sites are inspected as part of our regular Building Condition Surveys required by regulations of the New York State Education Department. We are currently in the middle of this survey that is being conducted by an outside consortium of leading engineering firms consisting of Parsons Brinkerhoff Quade and Douglas, Wank Adams Slavin Associates and Ammann Whitney Consulting Engineers. The previous Building Condition Survey that was performed in 1997-1998 to provide base line information for the production of the FY 2000-2004 Five-Year Capital Plan also surveyed leased sites. Additionally, the NYC Department of Buildings annually inspects all school buildings, including leased sites.

District Plant Managers routinely visit and inspect all schools in their districts, including leased sites. In many cases, it has been the plant manager who has brought a problem to our attention. If a school plant manager identifies a potential

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emergency we immediately dispatch an engineer to inspect the building regardless of whether the site is owned by the Board of Education or leased.

The last paragraph of page 11 reports on conditions for which there were no reports in the TLRU files.

95-17 Kings Highway

On page 12, the auditors report that the area leased at 95-17 Kings Highway, Brooklyn as a play yard is currently being used as a parking lot for the staff at the school. We agree that the space, designated as a play yard for the students at this facility, should not be used for staff parking. We have made our position clear to the community school district that has the day to day responsibility for the management of this space. The Community School District Superintendent has, in turn, notified the principal of the school that this use is incompatible with Board policies.

411 46th Street, Brooklyn

On page 12, the auditors also state that "according to a memorandum contained in the TLRU files and dated November 13, 1998, a hazardous condition involving exposed bricks" at this leased site "was corrected on an emergency basis". The auditors then go on to report that during their walk through of the site ten months later "we observed that the bricks were still exposed and the hazardous condition was uncorrected". These statements are incorrect.

* Note 2

1. The note dated November 13, 1998 nowhere refers to a hazardous condition and the fact that bricks are exposed is not and never has been a hazardous condition.
2. The TLRU file indicates that the community school district requested that we remove an interior cinder block wall as a means of enlarging this space. This work exposed the brick wall. Eventually this brick wall was covered with a plaster wall. Again, there was no hazardous condition.
3. The auditors are also incorrect about the content of the note dated November 13, 1998. It does not report that the condition was corrected. It does say that our plant manager reported to the TLRU that he had been told the condition was corrected and that he was going to visit the school to see for himself if this was true. We pointed this out to the auditors during our exit conference and we showed them the actual note.

* Note 2

Communication

1. We agree with the statement at the bottom of page 12, that both the Violations Unit and the TLRU need to have common information about violations. We recently reorganized the Violations Unit to centralize and to upgrade its database. The accessibility of the TLRU database with the database of the Office of Building Services, of which the Violations Unit is a part, will provide the flow of information on violations that we agree should be our goal.
2. On page 13, the auditors state that the TLRU and the VCU should each identify properties in a common manner to make the necessary exchange of information about sites more efficient and effective. This is already the case. The Board has established I.D. numbers for every public school in the city, including leased sites. Leased properties are identified by their address during the initial lease negotiations and for the purposes of the Board Resolution that must be adopted before a site is approved. As a large part of the TLRU's function is to communicate with the landlords and their agents, they must continue to use these designations. However, each file in the TLRU has the official building I.D. clearly marked on the file and there is a cross reference list that provides both the address of the site and its respective building I.D. number.
3. We are in basic agreement with the comments in the second bullet on page 13 of the report. We believe that increased efforts to ensure that staff at leased sites, especially those that do not have Division custodians, understand who is responsible for repairs at their facility is important. We do send out information delineating these responsibilities when the site is initially occupied and we inform both the school district and the staff at the facility about these matters during the lengthy process between the lease negotiations and the actual occupation of the premises by the school. However, we agree that additional steps are required and we will act to ensure that staff at all of our leased facilities, especially those without Division custodians receive additional information regarding the responsibility for repairs at their school.

cc: David Klasfeld
Michael King
Robert Meeker
Linda Corcoran

***State Comptroller's Notes**

1. The Executive Summary of the final report has been expanded to reflect Board of Education comments provided in Appendix B "Summary and Background."
2. Certain matters addressed in the draft report were revised or deleted in the final report. Therefore, some Board of Education comments included in Appendix B may relate to matters no longer contained in this report.

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF AUDITOR GENERAL
External Audit Services

PAGE 1 OF 6

RESPONSE DATE: February 2001AUDIT TITLE: Space Leasing PracticesAUDITING AGENCY: NYS Comptroller's OfficeDIVISION: School FacilitiesDRAFT REPORT DATE: January 2001AUDIT NUMBER: 99-N-003

**B. RECOMMENDATION WHICH THE AGENCY
HAS PARTIALLY IMPLEMENTED**

1. Follow up to ensure that corrective actions are taken in a timely manner to address the site problems which are identified in this report.

WHAT HAS BEEN IMPLEMENTED?

1. School Facilities has made substantial progress in eliminating deficiencies found at the six sites highlighted in the report. These actions include the following:
 - 71-77 Clinton Ave., Brooklyn - \$127,881 has been spent on repairs cited on the punch list and will be charged to the retainage. The fire alarm was replaced by BOE.
 - 227-243 West 61st St., Manhattan - Many repairs have been made to the site including the chimney, handicapped shower, etc. by the landlord. BOE repaired emergency lights and the electrical wiring.
 - 3200 Jerome Ave., Bronx - Roof repairs have been made by landlord and emergency lights replaced by BOE.
 - 108 West 174th St. - Landlord has made repairs to the roof and skylight, and replaced disintegrating windows. Boiler has been inspected; papers to remove violation have been filed.
 - 450 St. Marks Place - Site is now clean.

WHAT HAS TO BE IMPLEMENTED?

1. Repairs are still to be made at the following sites:
 - 71-77 Clinton Ave., Brooklyn - Roof to be replaced and remaining punch list items to be corrected.
 - 227-243 West 61st St., Manhattan - Roof leaks, windows and the remaining punch list items to be corrected.
 - 2392-98 Jerome Ave., Bronx - Doorway needs to be installed. Action deferred pending resolution of litigation.

EXPECTED IMPLEMENTATION DATE

All work to be completed by August 1, 2001

RESPONSIBILITY CENTER

Signature: _____



Linda Corcoran

Print Name: _____

2/26/01

Date

Print Title: Deputy Director for Planning and Capital Development

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF AUDITOR GENERAL
External Audit Services

RESPONSE DATE: February 2001

AUDIT TITLE: Space Leasing Practices

AUDITING AGENCY: NYS Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: January 2001

AUDIT NUMBER: 99-N-003

**B. RECOMMENDATION WHICH THE AGENCY
HAS PARTIALLY IMPLEMENTED**

- 2. Establish formal, written policies and procedures for monitoring complaints reported by occupants; identifying and following up on code violations; and maintaining current and appropriate certificates of occupancy.

WHAT HAS BEEN IMPLEMENTED?

- 2.
 - The Tenant Landlord Relations Unit is in the process of reviewing the data of a new lease data base. This data base will allow for the monitoring of tenant complaints and track their history and resolution.
 - The Violation Control Unit (VCU) is now routinely following up on code violations and monitoring their status via the Unit's violation data base.

WHAT HAS TO BE IMPLEMENTED?

- 2.
 - Full implementation of lease tracking data base.
 - Three sites with Temporary Certificate's of Occupancy need to receive permanent C of O's.
 - One landlord to change Certificate of Occupancy for school usage.

EXPECTED IMPLEMENTATION DATE

- Complete implementation of Leasing Data base by spring 2001.
- Develop additional procedures to monitor the status of certificates of occupancy to ensure they are appropriate and current by April 1, 2001.

RESPONSIBILITY CENTER

Signature: 

Linda Corcoran
Print Name: _____

2/26/01
Date

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BOARD OF EDUCATION OF THE CITY OF NEW YORK
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A. RECOMMENDATION WHICH THE AGENCY
HAS IMPLEMENTED

- 3. Establish a process for routine leased property site inspections which determine the adequacy of conditions at the sites, verify the reported correction of problems, and confirm that property is being used as intended.

RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN

- 3. Leased sites are regularly inspected and rated on their conditions as part of the Building Condition Surveys being conducted by private engineering firms. Plant managers routinely visit leased sites as well as BOE owned schools as part of their job functions. State Law also requires an annual inspection and rating of school facilities. Work repairs are tracked via the Passport data base for all school facilities, including leases. If we receive a complaint about a leased site, the plant manager is sent to inspect the site and any improper use of a leased facility is referred to the school district office for resolution.

IMPLEMENTATION DATE

Current Procedure

RESPONSIBILITY CENTER

Signature: 

Linda Corcoran
Print Name:

2/26/01
Date

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B. RECOMMENDATION WHICH THE AGENCY
HAS PARTIALLY IMPLEMENTED

- 4. Ensure that the fact sheet is available to appropriate personnel at leased sites which lack a Division custodian.

WHAT HAS BEEN IMPLEMENTED?

- 4. The referral information section of the fact sheet has been revised by the Tenant Landlord Relation Unit and is being sent to the Borough Plant Manager.

WHAT HAS TO BE IMPLEMENTED?

- 4. The fact sheet will be updated and sent to the district plant manager, custodian (if there is one) and the principal/ person in charge of the leased site. Plant managers will inspect every leased property where there is no Board custodian to ensure that sites are in acceptable condition.

EXPECTED IMPLEMENTATION DATE

April 1, 2001

RESPONSIBILITY CENTER

Signature: 

Linda Corcoran
Print Name:

2/26/01
Date

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RESPONSE DATE: February 2001

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AUDIT NUMBER: 99-N-003

A. RECOMMENDATION WHICH THE AGENCY
HAS IMPLEMENTED

- 5. Ensure that the VCU and the TLRU each are aware of all code violations at leased properties and have a common approach to identifying leased sites.

RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN

- 5. Information regarding violation receipts and corrections is being exchanged between the VCU and TLRU offices. Both offices utilize or record Building I.D. numbers in their respective files.

IMPLEMENTATION DATE
Current Procedures

RESPONSIBILITY CENTER

Signature: 

Linda Corcoran
Print Name: _____

2/26/01
Date

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RESPONSE DATE: February 2001

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AUDIT NUMBER: 99-N-003

A. RECOMMENDATION WHICH THE AGENCY
HAS IMPLEMENTED

- 6. Utilize financial remedies including lease termination, reduced rent, and expending of retained renovation funds, when problems that are the responsibility of landlord have not been resolved in a timely manner.

RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN

- 6. The financial remedies written into lease agreements with the Board are intended to be used as a last resort. We prefer to work with the landlords to resolve lease site problems and tenant issues rather than automatically resort to financial penalties. If no timely resolution can be found concerning a dispute with the landlord, the BOE will exercise its rights under the lease and withhold rent or utilize retainage funds to make repairs uncompleted by the landlord as has been done at 71-77 Clinton Ave.

IMPLEMENTATION DATE

Current Procedures

RESPONSIBILITY CENTER

Signature: 

Linda Corcoran
Print Name:

2/26/01
Date

Print Title: Deputy Director for Planning and Capital Development