

New York State Office of the State Comptroller

Thomas P. DiNapoli

Division of State Government Accountability

Universal Pre-Kindergarten Program: Monitoring of Health and Safety Requirements

State Education Department



Executive Summary

Purpose

To determine whether the State Education Department's (Department) monitoring of the Universal Pre-Kindergarten providers' compliance with applicable health and safety regulations is sufficient. Our audit scope included the period January 1, 2013 through August 4, 2016.

Background

The Universal Pre-Kindergarten (UPK) program was established through Chapter 436 of the Laws of 1997 to provide all four-year-olds in the State with the opportunity for an early childhood education. UPK provides four-year-old children access, at no charge, to comprehensive early childhood education experiences that promote their social-emotional, creative expressive/aesthetic, physical, cognitive, linguistic, and cultural development. The early childhood agencies (eligible agencies) collaborating with school districts comprise a wide range of early child care and education providers, including: day care centers, nursery schools, Head Start programs, group family or family day care providers, preschool special education providers, Boards of Cooperative Educational Services (BOCES), and private schools.

Department regulations require buildings and classrooms used for UPK to be safe and to comply with applicable fire safety, health, and building codes, and for equipment and furnishings to be safe and suitable for children and maintained in a state of good repair and sanitation. For the 2014-15 school year, there were 1,338 UPK providers operating outside of New York City that reported serving 43,623 children.

Key Findings

- The Department does not directly monitor UPK providers for health and safety. Instead, the Department relies on the school district operating the UPK program, or the Office of Children and Family Services, to ensure that UPK providers are complying with health and safety requirements.
- There is a wide disparity in the way UPK providers are monitored for health and safety. Some providers are inspected regularly for health and safety, while others are reviewed mainly for program curriculum.
- There is a lack of consistency in how school districts inspect their UPK provider locations for health and safety compliance.

Key Recommendations

- Develop requirements and issue guidance for school districts to follow when performing health and safety inspections of UPK facilities.
- Implement a structured system to monitor school districts' oversight and inspections of health and safety compliance of all UPK providers.

Other Related Audit/Report of Interest

[State Education Department: Oversight of School Fire Safety Compliance \(2015-S-86\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

December 20, 2016

Ms. MaryEllen Elia
Commissioner
State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Ms. Elia:

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

Following is a report of our audit of the State Education Department entitled *Universal Pre-Kindergarten Program: Monitoring of Health and Safety Requirements*. This audit was performed according to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The Universal Pre-Kindergarten (UPK) program was established through Chapter 436 of the Laws of 1997 to provide all four-year-olds in the State with the opportunity for an early childhood education. UPK provides four-year-old children access, at no charge, to comprehensive early childhood education experiences that promote their social-emotional, creative expressive/aesthetic, physical, cognitive, linguistic, and cultural development. UPK creates an earlier entry point to education, assists in the coordination between day care settings and public education, and helps young children be better prepared to learn.

The law requires that districts use a minimum of 10 percent of their UPK grant award to contract with one or more eligible agencies for the provision of the instructional program for a specified number of enrolled children. Eligible agencies are community-based organizations that provide early childhood services, including day care centers, nursery schools, Head Start programs, group family or family day care providers, preschool special education providers, Boards of Cooperative Educational Services (BOCES), and private schools. State Education Department (Department) regulations require school districts to have a competitive process to determine which eligible agencies will be chosen to operate a UPK location.

The school district that is operating the UPK program must follow uniform quality standards for all UPK classrooms, including school district-based programs and those located at eligible agencies. These standards address curriculum, monitoring and reporting assessments, health and nutrition, class size, class qualifications, fiscal and program oversight, professional development, parental involvement, and support services. The school district must also ensure the facilities that operate the UPK program are safe for the children in the program. The district must conduct a minimum of one site visit to locations where the UPK program will operate prior to contracting for services.

The UPK program is administered by the Department, and oversight is conducted primarily through the Office of Early Learning (OEL) for program functions and the Facilities Planning Office for safety and fire inspections. Department regulations require buildings and classrooms used for UPK to be safe and to comply with applicable fire safety, health, and building codes, and for equipment and furnishings to be safe and suitable for children and maintained in a state of good repair and sanitation. The OEL performs site visits to UPK locations to monitor program compliance and school district oversight.

The Department is responsible for overseeing school fire safety and for ensuring schools comply with fire safety provisions established in State Education Law, the State Uniform Fire Prevention and Building Code, and Department regulations. These include requirements for mandatory building and fire inspections, fire drills, and other fire safety activities. Each public, private, charter, and BOCES school building must be inspected annually by qualified fire inspectors, with the results reported to the Department. Eligible agencies are also required to meet applicable building code and other requirements of the State or local licensing or registering agency. Eligible agencies do not report inspection results to the Department.

For the 2014-15 school year, there were 1,338 UPK providers that reported serving 43,623 children outside of New York City. All of these UPK programs are subject to oversight from the Department. The school districts operating the UPK programs are also responsible for overseeing the operations of the UPK providers within their districts. In addition, 514 (or 38 percent) of these providers are monitored for health and safety compliance by the Office of Children and Family Services (OCFS), which licenses them to provide day care and nursery school services. OCFS performs routine announced and unannounced inspections to evaluate compliance with regulations and review records and facilities' health and safety conditions.

Audit Findings and Recommendations

The Department relies primarily on school districts operating UPK programs and OCFS to ensure that UPK providers comply with health and safety requirements. As such, the Department's direct monitoring of UPK providers' health and safety practices was generally limited. We found significant differences in how providers Statewide are monitored for health and safety concerns. Although some providers are inspected regularly for health and safety, others are reviewed mainly for program curriculum matters.

Additionally, we found a lack of consistency in school districts' inspections of their UPK providers' facilities for health and safety compliance. For example, some school districts indicated they routinely inspected their UPK providers for health and safety throughout the year, while others stated they either inspect once annually (usually at the beginning of the school year) or they do not inspect for health and safety at all. Our observations at 48 UPK locations (see Exhibit A) throughout the State indicated that providers generally complied with health and safety requirements. However, at several locations, we identified deficiencies that warranted prompt attention.

Department Monitoring

The Department relies primarily on the school districts and OCFS to monitor health and safety requirements. Department staff visit school districts that operate UPK programs to provide technical support and assistance, including reviews of the balance of play, work, and teacher-directed activities that the programs offer. Further, according to Department officials, limited reviews of health and safety are performed during site visits. In general, Department staff focused attention on the flow (organization) of UPK rooms, bathroom cleanliness, and meals offered to students. Between January 1, 2013 and July 20, 2016, Department staff visited 81 (18.2 percent) of the 444 school districts outside New York City that operate UPK programs.

If the Department finds health and safety violations during visits to UPK providers, it reports the violations to the pertinent school district, which must address the deficiencies and formally notify the Department that the violations have been corrected. The Department relies primarily on this self-reporting to ensure that problems have been adequately addressed.

We also found wide differences in the way UPK locations are monitored for health and safety. UPK providers licensed by OCFS (38 percent) are routinely inspected by OCFS for health and safety. However, there is material risk that some non-OCFS-licensed providers receive little or no routine health and safety evaluation. Further, buildings owned, operated, or leased by a public school district, BOCES, a charter school established after 2010, as well as private schools are required to be inspected annually for fire safety compliance. Other eligible agencies must be inspected annually for fire safety compliance as well. However, only schools (both public and private) are required to report fire inspection results to the Department each year.

Since Department staff site-visited only 18.2 percent of UPK locations and do not otherwise

directly monitor health and safety, their awareness of the actual conditions at many UPK provider locations is limited. Moreover, since nearly half of the 1,338 providers are not site-visited by either OCFS or Department staff, there is increased risk that such providers have not fully complied with health and safety requirements. Additionally, since the Department does not collect fire safety inspections for eligible agencies, it has little assurance that the eligible agencies not licensed by OCFS have had fire safety inspections.

Our recent audit of the Department's oversight of school fire safety compliance (report 2015-S-86, issued August 24, 2016) found the Department relied on the school districts to accurately report required information. However, the Department did not verify school compliance, either through visits or analysis of their data. Additionally, our audit found school districts in the sample often misreported information on their inspection reports between 2013 and 2016. For example, six of the 25 sampled school districts did not complete the number of required fire drills for the year, although they reported to the Department that they had.

Department officials stated that they do not have the resources to perform health and safety reviews of all UPK providers and locations. They further indicated that the Department is not allocated funding specifically for monitoring UPK sites, and all UPK grant money goes directly to the schools to fund their UPK programs. Consequently, compensating controls, including effective UPK program oversight and monitoring by school districts, are necessary. We address district monitoring activities in the following section of this report.

School District Monitoring

Department regulations require buildings and classrooms used for UPK to be safe and to comply with applicable fire safety, health, and building codes, and for equipment and furnishings to be safe and suitable for children and maintained in a state of good repair and sanitation. These regulations further require compliance with site-specific fire prevention practices, building codes, and other regulations for buildings and classrooms owned or operated by the school district. Finally, the regulations direct school districts to follow applicable fire safety and building codes and all UPK providers to comply with any applicable facility requirements of a State or local licensing or registering agency.

However, there was considerable inconsistency in school district practices for inspecting their providers' facilities for health and safety compliance. We surveyed 24 school districts (see Exhibit B) with UPK sites to determine how those districts monitored the health and safety conditions of their providers' facilities. We received a variety of responses to all of our survey questions. For example, when we asked how many times UPK providers were inspected for health and safety throughout the year, some districts stated they continuously inspected their UPK providers while others stated that they did not inspect health and safety matters. Additionally, 11 of 24 districts did not perform any unannounced inspections of UPK facilities, and 15 indicated they did not have a standard list of items to inspect (e.g., a checklist) when assessing health and safety compliance.

Officials at some school districts we surveyed appeared to be confused with respect to the regulations and policies that should be followed. Seven of the 24 school districts could not cite

the regulations and policies they followed to comply with health and safety requirements. In addition, 14 of the 24 indicated that the Department had not provided them with any guidance regarding what to review for health and safety issues.

Although the Department instructs school districts on the appropriate regulations to follow, it had not issued any additional guidance on how they should inspect UPK providers for health and safety compliance (i.e., how many times a year and a checklist of health and safety items to look for). Moreover, the Department does not consistently or universally monitor how school districts ensure the health and safety of the UPK provider locations. Consequently, we recommend that the Department develop such guidance and implement a system to monitor school district oversight of health and safety issues at UPK programs.

Auditor Site Visit Observations at UPK Facilities

As part of our review, we made site visits to a judgmentally selected sample of 48 providers (see Exhibit A) in several regions of New York State. We did not identify any conditions that were of immediate and significant danger to children. Nonetheless, we did find instances of noncompliance at 16 (one-third) of the sites we visited. Some of the issues were more serious than others and, in certain instances, required physical repairs. The deficiencies included: bathroom stalls and fixtures that were not functioning (including a towel wrapped around a toilet bowl to stop a leak); screens and ceiling and floor tiles that were damaged or missing; exposed wiring over a door; an open floor drain; and corners of playground mats that were curled upward, thus creating hazards for tripping or falling.

A few of these deficiencies are depicted in the following photographs.



CLOSED BATHROOM STALL



WATER DAMAGED CEILING TILES



POTENTIAL PLAYGROUND TRIPPING HAZARD

In other cases, the problems could be easily solved through greater awareness and better safety practices, such as the secure storage of cleaning supplies, which we found under a sink in an unlocked cabinet within a child's reach.

Recommendations

1. Develop requirements and issue formal guidance for school districts to follow when performing health and safety inspections of UPK facilities.
2. Implement a structured system to monitor school districts' oversight and inspections of health and safety compliance of all UPK providers. The system should include procedures to ensure that deficiencies identified during inspections are corrected in a timely manner.

Audit Scope, Objective, and Methodology

Our audit objective was to determine whether the Department's monitoring of UPK providers complies with health and safety regulations. Our audit scope included the period January 1, 2013 through August 4, 2016.

To accomplish our audit objective, we conducted interviews with Department officials and representatives from the school districts in our sample and examined relevant records. We also reviewed relevant laws, regulations, policies, and procedures. We assessed the internal controls of the Department and UPK providers as they relate to health and safety inspections. Our audit

excluded all UPK programs and providers in New York City.

We judgmentally selected a sample of ten counties (Schenectady, Rensselaer, Herkimer, Oneida, Oswego, Onondaga, Nassau, Orange, Niagara, and Monroe) and 48 UPK sites. Our judgmental sample was based on both geographic location and type of UPK provider. The 48 sites we visited represented a population of 2,180 registered UPK children.

During our site visits, we made observations of the facilities for health and safety issues. We also surveyed 24 school districts to determine how they monitored for health and safety and what requirements and guidance had been issued by the Department. The school districts surveyed operated the UPK provider locations that we visited during our audit.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and formal comment. We considered their comments in preparing this final report, and they are attached in their entirety at the end of the report. The Department agreed with our recommendations and indicated the steps it has already taken to implement them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Appendix A

UPK Providers Site Visited (by County)

County	Provider
Herkimer	Barringer Road Elementary
	Harry M. Fisher Elementary
	Poland Elementary School
	West Canada Valley-Elementary
Monroe	Crestwood Family Resource Center Southwest
	Jefferson Avenue Child Development Ctr.
	Lakeside Child Development Ctr.
	Parma Free
	Ready Set Grow Pre-School
	Rush Nursery School
Nassau	Albany Avenue School
	Columbus Avenue Early Learning Center
	Harbor Child Care
	Shulamith
	Torah Academy for Girls
	Yeshiva Darchei Torah
Niagara	Carousel Academy
	LaSalle Early Childhood Development Center
	Lockport City School District
	Newfane Early Childhood Center
	Primary Building
	St. Peter's at NorthRidge
Oneida	Head Start
	Memorial Park Elementary School
	Notre Dame Pre-K
	Westmoreland Elementary School
Onondaga	Catholic Charities, Academy at Pompeii
	Catholic Charities, Park St.
	Elmcrest Early Education Center
	Erwin Nursery School
	PEACE Inc, Head Start Sumner
	St. Bridgid's
Orange	Busy Bees Preschool
	Hansel & Gretel Nursery School
	Miss Cindy's Neighborhood Nursery School
	Most Precious Blood School
	UTA
	YMCA of Middletown
Oswego	First Step UPK
	Fitzhugh Park Elementary School
Schenectady	Care-A-Lot Nursery School
	Lincoln Elementary School
	Parsons Child and Family Center, Inc.
	Rosa Venerini Early Childhood Center
Rensselaer	CEO-Family Resource Center
	Sacred Heart School
	Turnpike Elementary-Lansingburgh
	Unity House I

Appendix B

School Districts Surveyed (by County)

County	School District
Monroe	Brockport
	Hilton
	Rochester City
	Rush Henrietta
Nassau	Farmingdale
	Freeport
	Hempstead
	Hewlett-Woodmere
	Lawrence
Niagara	Lewiston Porter
	Lockport
	Newfane
	Niagara Falls
	North Tonawanda
	Wilson
Oneida	Utica
	Waterville
	Westmoreland
Onondaga	Syracuse City
Orange	Middletown
	Minisink Valley
	Valley Montgomery
Oswego	Fulton
	Oswego

Agency Comments



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
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November 4, 2016

Mr. John Buyce
Audit Director
Division of State Government Accountability
Office of the State Comptroller
110 State Street – 11th Floor
Albany, NY 12236-0001

Dear Mr. Buyce:

The following is the New York State Education Department's (Department) response to the draft audit report, 2016-S-10: Universal Prekindergarten (UPK) Program: Monitoring of Health and Safety Requirements.

Recommendation 1: Develop requirements and issue formal guidance for school districts to follow when performing health and safety inspections of UPK facilities.

We agree with the need for a unified system to ensure that New York State UPK providers adhere to health and safety requirements. The Department has already addressed this recommendation by creating a Prekindergarten Health and Safety Checklist, which along with an accompanying guidance memo, was emailed to all 460 school districts operating state-funded Prekindergarten programs on October 19, 2016. The Prekindergarten Health and Safety Checklist and guidance memo can be viewed at <http://www.p12.nysed.gov/earlylearning/>. The Prekindergarten Health and Safety Checklist and memo will be re-sent at the beginning of each subsequent school year.

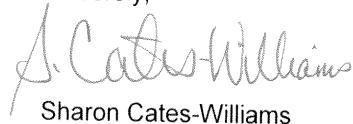
Recommendation 2: Implement a structured system to monitor school districts' oversight and inspections of health and safety compliance of all UPK providers. The system should include procedures to ensure that deficiencies identified during inspections are corrected in a timely manner.

We agree with this recommendation. The Department will modify its required electronic report which school districts submit annually to include a new section in which school districts will list all prekindergarten program providers, their respective locations, and any deficiencies noted during their site visits to ensure health and safety compliance. The report will include the date(s) that deficiencies were identified and corrected, and any other subsequent actions by the district. The

Department will review the report and follow-up as necessary (e.g., communication with licensor, site visit, desk audit).

If there are any questions regarding this response, please contact Betsey Kenney, Supervisor of Early Learning at 518 474-5807

Sincerely,



Sharon Cates-Williams

c: Jhone Ebert
Renee Rider
Betsy Kenney
Thalia Melendez