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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 22, 2006

Mr. John R. Ryan
Chancellor
State University of New York
State University Plaza
Albany, New York 12246

Re: Fire Safety at Dormitories
Report 2005-S-61

Dear Chancellor Ryan:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have audited the State University of New York's (SUNY) compliance with fire safety regulations at college dormitories. Our audit covered the period July 1, 2003 through June 30, 2005.

A. Background

SUNY has 64 campuses (including 34 State-operated institutions and 30 community colleges) throughout the State. Thirty-seven of these campuses (including 28 State-operated institutions and 9 community colleges) have on-campus dormitories for students. For the 2004-05 academic year, SUNY had a total enrollment of about 414,000 students (including the State-operated campuses and community colleges). About 70,000 of these students resided in campus dormitories. (Note: SUNY does not have statutory or regulatory authority over community college operations, with the exception of academic programs. In addition, most community college dormitories are owned and operated by independent parties who are responsible for ensuring that the buildings comply with the applicable fire safety codes.)

According to State Education Law section 807-b, officials in charge of operating any public or independent college must have their dormitories inspected at least annually for fire hazards that might endanger the lives of students and others. New York State created the Governor's Task Force on Campus Fire Safety (Task Force) to recommend policies and practices relating to fire safety in dormitories at public and independent colleges and universities throughout New York State. In July 2000, the Task Force developed a Comprehensive Fire Safety Plan, which, among other things, required the Department of State's Office of Fire Prevention and Control (OFPC) to develop fire and safety guidelines and monitor compliance with the guidelines by colleges and universities in New York State.

OFPC is statutorily responsible for the annual fire safety inspections of all SUNY campuses, except those located in New York City (NYC). Nevertheless, OFPC had an informal agreement with SUNY to conduct initial and follow-up inspections of SUNY's NYC-based campuses to help implement the Task Force's Fire Safety Plan. (SUNY's State-operated NYC-based campuses with dormitories are the Downstate Medical Center and Maritime College.) OFPC began inspections of SUNY's NYC-based campuses and assessed fines when follow-up inspections showed violations were not corrected. The fines prompted campuses to challenge OFPC's authority. As a result, OFPC officials determined that they did not have the legal authority to fully administer the inspection process as agreed to. The OFPC continues to conduct initial inspections of SUNY's NYC-based campuses, but it no longer conducts follow-up inspections or assesses fines for these campuses.

After the initial inspection, OFPC prepares a report that notes any violations for each building inspected. Based on these reports, the campuses should take appropriate actions to ensure that any code violations are corrected promptly. OFPC subsequently performs follow-up inspections of buildings to determine if violations are corrected. If a violation is time consuming or costly to correct, the campus can submit a compliance plan to OFPC for approval. If there are no violations, OFPC grants the building a certificate of compliance. Furthermore, OFPC submits fire inspection reports to the State Education Department on behalf of SUNY campuses. Additionally, Section 807 of the Education Law requires campuses to perform fire drills at certain times during the academic year.

SUNY System Administration has a limited role in campus fire safety. The individual SUNY campuses are primarily responsible for complying with established fire safety laws and regulations, and they may establish their own policies and procedures to ensure that fire safety programs are effective. In addition, System Administration requires each State-operated campus to submit an annual fire safety report detailing their policies and procedures including information regarding student responsibilities and participation in fire safety instruction.

B. Audit Scope, Objectives and Methodology

We audited SUNY's compliance with fire safety laws and regulations at dormitories for the period July 1, 2003 to June 30, 2005. The objective of our performance audit was to determine whether the SUNY campuses (including both state-operated and community colleges offering on-campus housing) are complying with sections 807 and 807-b of the State Education Law and the applicable requirements of the OFPC.

To accomplish our objective, we reviewed applicable statutes, rules, regulations, and SUNY policies and procedures governing dormitory operations. We conducted interviews with the OFPC officials to understand their role and authority regarding fire safety at SUNY campuses. We also met with SUNY System Administration officials to understand their role and responsibility regarding oversight of campus fire safety. We performed analytical reviews of OFPC data regarding notices of violations and certificates of compliance issued to SUNY campus dormitories during our audit period. We analyzed the various violations noted during the annual inspections of the dormitories and determined if they were corrected in a timely manner.

We sent a questionnaire regarding fire safety to all 37 SUNY campuses, including community colleges, which have campus dormitories. Twenty-seven campuses were excluded from our scope because they did not have dormitories. We interviewed officials at five campuses: University at Albany, Morrisville State College, College at New Paltz, Fashion Institute of Technology (a SUNY-affiliated community college), and Downstate Medical Center. During our campus visits, we reviewed dormitory fire safety procedures, capital plans (as they related to fire safety concerns), and fire safety compliance plans (if applicable), and we toured several dormitories. We also talked to students living on-campus about fire safety procedures and their knowledge of evacuation procedures.

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 SUNY's dormitory fire safety operations that are within our audit scope. Further, these standards require that we understand SUNY's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations included in our audit 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 the estimates, judgments, and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

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, several of which are performed by the Division of State Services. 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 the purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

We concluded that SUNY, as a whole, complies with fire safety regulations at its dormitories. Generally, dormitories at SUNY campuses are inspected, and campus officials completed fire drills required by the State Education Law. However, we identified some opportunities for SUNY to strengthen certain aspects of dormitory fire safety programs. The OFPC conducts annual initial inspections of all SUNY campuses, including those in NYC, to identify violations of the State fire safety code. However, the OFPC conducts follow-up inspections only for campuses outside of NYC. NYC-based campuses do not receive follow-up inspections from the OFPC, and consequently, there is increased risk that the NYC-based campuses may not correct fire safety violations timely. We also determined that SUNY System Administration's monitoring of individual campus' fire safety policies and procedures could be enhanced through better technical reviews of campuses' annual fire safety reports.

1. Annual Fire Inspections of NYC-Based Campuses

OFPC is statutorily responsible for the annual inspection of all SUNY campuses, except for those campuses located in NYC. During annual inspections, OFPC officials tour all campus buildings, including dormitories, and identify any fire safety violations. Also, OFPC completes a records review, which includes an analysis of evacuation procedures, documentation of scheduled fire drills and reports of campus fires (if they have occurred). After the tour and records review, OFPC issues violation notices (to campus officials) which prescribe the expected date(s) by which corrections of violations should take place. Usually between 30 to 60 days after the original inspection, OFPC follow-up inspects the campus to determine if the violations have been corrected. OFPC issues the campus a certificate of compliance if violations have been corrected or an order to comply if violations still exist. For uncorrected violations, OFPC can assess daily fines to the campus to compel compliance. The campus can opt to submit a compliance plan if the violation requires significant changes to the structure that are costly and/or time-intensive to repair. After OFPC approves the compliance plan, the campus has to correct the violation by the time stated in the plan or risk the assessment of fines corresponding with the original date of the violation.

Within NYC, there are two State-operated campuses with dormitories: Downstate Medical Center and Maritime College. In addition, there is a SUNY-affiliated community college - the Fashion Institute of Technology (FIT) which also has dormitories. Although the Education Law does not authorize the OFPC to inspect the State-affiliated campuses in NYC, OFPC (based on an informal agreement with SUNY) has inspected both Downstate Medical Center and Maritime College in the past. After the report by the Task Force was issued, OFPC also began to inspect the other SUNY-affiliated campuses in NYC (the College of Optometry, which does not have dormitories, and FIT, a community college sponsored by the New York City Department of Education). Based upon the work of the Task Force, OFPC officials believed that they had the authority to perform initial inspections, follow-up inspections, and assess penalties at these SUNY-affiliated campuses in NYC. However, OFPC officials subsequently determined that they did not have the legal authority for such inspections. Consequently, the inspections and the protection they afford are not the same for SUNY campuses within and outside of NYC.

Officials at NYC-based SUNY campuses stated that because Section 807-b of the Education Law does not give OFPC the authority to inspect NYC-based campuses, the annual inspections only result in an initial report to the campus of fire and safety violations. OFPC cannot conduct a follow-up inspection or assess penalties, as necessary, to ensure that campuses correct the violations. Further, we found that NYC campuses have been cited for the same or similar violations in consecutive years. For example, in OFPC's 2004 inspection at FIT, a dormitory was cited for a violation because swinging fire doors did not close from the full open position or close automatically. In 2005, the same dormitory and two others were cited for the same violation. Since OFPC cannot use fines to compel FIT to correct the violations, the potential exists that the violations remain uncorrected for extended periods of time, thereby increasing the risk of fire and related damage and/or injuries.

We believe that the inspections and enforcement processes should be consistent throughout the SUNY campus and its affiliated campus system. We recommend that SUNY work with OFPC to address this gap in the fire safety inspection and follow-up system.

2. SUNY System Administration Oversight

SUNY System Administration plays a limited role in campus fire safety. The individual SUNY campuses have the primary responsibility to ensure compliance with fire safety requirements at their facilities. Additionally, each campus is responsible for creating its own fire safety policies and procedures which should be consistent with State fire codes and regulations. SUNY established the State University Task Force on Fire Safety (SUNY Task Force) to address the recommendations of the Governor's Task Force. The SUNY Task Force recommended an annual fire safety report be completed by campus officials and sent to System Administration for review. The annual report identifies the campuses' fire safety policies and procedures, including: evacuation procedures, fire safety activities, student responsibilities, and the frequency of fire safety instruction to staff and students. Beginning in 2003, SUNY required all State-operated campuses to submit an annual fire safety report to System Administration's Office of Finance and Business (Office) for review.

However, the Office's primary responsibilities and technical expertise pertain to fiscal management, and consequently, Office personnel generally do not have extensive backgrounds in fire safety matters. Therefore, the Office's review of campus reports has generally been limited to verifying completion of required data fields, from which information is subsequently entered into a database. Moreover, we concluded that the Office's reviews of the reports' technical sufficiency, to ensure that campus fire safety programs were sound and satisfied all regulatory requirements, were generally limited. In 2005, for example, OFPC cited the College at New Paltz for not conducting a fire drill during the summer academic term, as required by the Education Law, if the campus has a summer term. In its annual fire safety report for 2005 (which was submitted in March 2005), New Paltz officials did not specifically provide (plan) for a fire drill during the summer term. However, the Office's review of New Paltz's report did not identify this deficiency. (Note: The College at New Paltz subsequently corrected this deficiency and was later issued a certificate of compliance.) Office personnel who review the reports can obtain technical assistance from fire safety experts from SUNY's Office of Residential Life, the SUNY Construction Fund and/or the Dormitory Authority of the State of New York to help assess the adequacy of campuses' reports (programs). However, the Office did not formally involve these organizations in assessing the campuses' reports. System Administration officials told us they will enhance their review processes by working more closely with fire safety experts when the fire safety reports for 2006 are received from the campuses.

Recommendations

1. *Consider proposing changes to the applicable law and regulations to enable OFPC to annually inspect, re-inspect, and assess penalties (when necessary) to the State-operated campuses located in NYC.*

(SUNY officials did not address this recommendation specifically.)

2. *Work with the OFPC and/or the City of New York to identify the appropriate agency to perform follow-up inspections on New York City-based SUNY campuses and the Fashion Institute of Technology to ensure that violations are corrected timely.*

(SUNY officials disagreed with the recommendation, again citing the absence of legal and

regulatory authority over community colleges. Officials also did not address the matter as it relates to the two SUNY-operated campuses in New York City.)

3. *Enhance System Administration's monitoring and oversight of campus fire safety programs. Specifically, the University Office of Finance and Business should formalize its reviews of campus annual fire safety reports and document the input received from fire safety experts from other organizations.*

(SUNY officials agreed with the recommendation. Officials indicated that they planned to engage outside fire safety experts, including the OFPC, for the 2006 campus survey to help improve policies and practices.)

We provided draft copies of this report to SUNY officials for their review and formal comment. We have considered the comments of SUNY officials in the preparation of this report and have included their comments as Appendix A. In addition, our rejoinders to SUNY's comments are included in Appendix B, State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chancellor of the State University of New York 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 therefor.

Major contributors to this report were Bill Clynes, Erika Akers, Kelly Evers, Sarah Purcell, and Brian Mason. We wish to thank the management and staff of SUNY System Administration and the campuses we visited for the courtesies and cooperation extended to our auditors during the audit.

Very truly yours,

Steven E. Sossei
Audit Director

cc: Michael Abbott (SUNY)
Daniel Sheppard (SUNY)
Lisa Ng, (DOB)



THE STATE UNIVERSITY of New York

Office of the
Vice Chancellor
and Chief of Staff

June 15, 2006

Mr. Steven E. Sossei
Audit Director
Office of the State Comptroller
110 State Street
Albany, New York 12236

Dear Mr. Sossei:

In accordance with Section 170 of the Executive Law, enclosed are the comments of State University of New York regarding the draft audit on Fire Safety at Dormitories (2005-S-61).

Sincerely,

Elizabeth D. Capaldi

Enclosure

UNIVERSITY COLLEGE CENTERS AND DOCTORAL DEGREE GRANTING INSTITUTIONS University at Albany • Binghamton University • University at Buffalo • Stony Brook University • SUNY Cortland • State University of New York Maritime College • State Medical University • College of Environmental Science and Forestry • College of Optometry • NYS College of Ceramics at Alfred University • SUNY College of Environmental Forestry • SUNY College of Health and Behavior at Cornell University • NYS College of Human Ecology at Cornell University • NYS College of Industrial/Labor Relations at Cornell University • SUNY College of Technology at Cortland • SUNY College of Visual Arts and Design at Cornell University • UNIVERSITY COLLEGES SUNY Brockport • Buffalo State College • SUNY Cortland • Empire State College • SUNY Fredonia • SUNY Geneseo • SUNY New Paltz • SUNY Old Westbury • College at Oneonta • SUNY Oswego • SUNY Plattsburgh • SUNY Potsdam • Purchase College • TECHNOLOGY COLLEGES SUNY State University of New York at Albany • SUNY at Canton • SUNY Cobleskill • SUNY Delhi • Farmingdale State College • Maritime College • Morrisville State College • SUNY Institute of Technology • COMBINE COLLEGES at Cortland • Broome • Cayuga County • Clinton • Columbia-Greene • Corning • Dutchess • Erie • Fashion Institute of Technology • Finger Lakes • Fulton • Montgomery • Oneida • Schoharie • Sullivan • Ulster • Westchester • SUNY Adirondack • SUNY Broome • SUNY Cayuga • SUNY Chemung • SUNY Chenango • SUNY Cortland • SUNY Delaware • SUNY Dutchess • SUNY Erie • SUNY Hamilton • SUNY Herkimer • SUNY Madison • SUNY Otsego • SUNY Rensselaer • SUNY Saratoga • SUNY Schoharie • SUNY Sullivan • SUNY Ulster • SUNY Westchester

**State University of New York
Fire Safety at Dormitories
2005-S-61**

Results of Audit – SUNY Response

We have reviewed the Office of the State Comptroller’s (OSC) Fire Safety at Dormitories report (2005-S-61), and are generally pleased with its finding that SUNY’s State-operated campuses are complying with fire safety regulations for dormitories. However, we continue to take issue with OSC’s discussion and reporting of a matter that is outside the scope of an audit pertaining to the State University’s compliance with fire safety at college dormitories. Specifically, that the report cites a previous violation (i.e. since corrected) at the Fashion Institute of Technology (FIT)—a community college—related to improperly functioning fire safety doors. This previous violation is used as the sole example to support the report’s principal finding of potential safety vulnerabilities created by OSC’s conclusion that, under NYS statute, the Office of Fire Prevention and Control (OFPC) does not have the authority to conduct follow-up inspections or assess penalties for fire safety violations at SUNY’s New York City-based campuses.

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SUNY and FIT respectfully submit the following two concerns about the use of this example in a report about fire safety compliance at the University’s residence halls:

1. As SUNY indicated to the Office of the State Comptroller in our preliminary response to this report in January 2006, the University does not have statutory or regulatory authority over community college campus operations, including compliance with fire safety regulations in dormitories and other matters related to the care and custody of campus buildings. In the case of FIT, the sponsor and responsible party is the New York City Board of Education;
2. FIT is concerned that the report’s characterization of “gaps” in the current fire safety inspection and monitoring system might lead a reader to infer that, because OFPC cannot issue fines to FIT, the campus may not address fire code violations with the same sense of immediacy as a campus that is under OFPC’s full oversight. This would be incorrect. Education Law section 807-b delegates OFPC with inspection authority in cities that have populations of less than one million, and is intended to allow local fire jurisdictions with adequate resources to carry-out the regular inspections and compliance-related activities of these laws. The intent is not to exempt New York City from the powers of the laws as the report implies. In addition, the Rules of the City of New York Title 3-Fire Code are either as stringent as the Fire Code of New York State, or in certain key aspects that directly affect the safety of FIT students, are more protective than the State Fire Code. Representatives from the Fire Department of the City of New York’s Permit Bureau make annual on-site inspections of the systems they permit, and uniformed firefighters inspect FIT campus buildings on an almost monthly basis. In addition, OFPC performs both annual inspections along with follow-up inspections to document that any violations are abated. Importantly, under the

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*See Comptroller’s Comments on p. 10

Rules of the City of New York Title 3-Fire Code, violations must be abated immediately or within a specified period of time (generally thirty days). If FIT cannot demonstrate to the Fire Department of the City of New York that it has abated a violation, a representative of FIT must appear within thirty days at a formal hearing and respond to an administrative law judge.

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The University concurs with the other finding in the report relating to the Office of Finance and Business's expertise to adequately review the annual fire safety surveys submitted by campuses, pursuant to University policy. The report suggests that this Office obtain technical assistance from "SUNY's Office of Residential Life, the SUNY Construction Fund and/or Dormitory Authority of the State of New York." As previously indicated to OSC, we were already planning to engage outside fire safety experts for the 2006 survey as part of the University's continuing efforts to improve its policies and practices. We are currently meeting with OFPC, which appears willing to assist us in this effort. It should also be noted that the Office of Finance and Business already works with System Administration's Office of University Life (which we presume is the "Office of Residential Life" that OSC is referring to) on matters related to residence hall fire safety. We will also engage experts from DASNY and the State University Construction Fund, as appropriate.

*See Comptroller's Comments on p. 10

State Comptroller's Comments

1. As stated in our report, the objective of our audit was to determine if SUNY-affiliated campuses, including both state-operated and community colleges with dormitories, complied with the prescribed fire safety requirements. Consequently, FIT was included in the scope of our audit.
2. Our report acknowledges that SUNY does not have authority over the non-academic operations of the community colleges. Nevertheless, we maintain that SUNY should be concerned about fire safety at community college dormitories, which were included within the scope of the work performed by the Governor's Task Force on Campus Fire Safety.
3. The fact remains that FIT challenged OFPC's legal authority to assess fines when OFPC inspectors attempted to fine FIT for the failure to correct violations timely. In addition, as cited in our report, FIT had a recurring problem with improperly functioning fire doors. Moreover, follow-up inspections by the OFPC (and the associated potential of fines) might have prompted FIT officials to correct this problem more timely.
4. Our report does not imply that the intent of the applicable laws was to exempt New York City - based colleges from the powers of those laws. Further, we acknowledge that the Fire Department of the City of New York (FDNY) has the authority to inspect FIT's facilities. Nonetheless, the OFPC has designed and implemented a comprehensive fire safety inspection program, consistent with the recommendations of the Governor's Task Force, to ensure compliance with section 807-b of the Education Law. We maintain that all college dormitory programs, including those based in New York City, would benefit from the OFPC's comprehensive assessments (including follow-up inspections) of this critical matter.
5. In December 2005, FIT officials told us that the most recent inspection by the FDNY was in August 2004 (16 months prior to our site visit) and that the FDNY did not conduct a follow-up inspection. FIT officials further stated that unlike the OFPC, the FDNY does not issue certificates of compliance (or permits) for the full range of fire safety regulations. The FDNY's inspections and permits were generally limited to buildings' fire extinguishers and fire alarm and sprinkler systems.