



class size matters
124 Waverly Place, NY, NY 10011
phone: 212- 674- 7320
www.classsizematters.org
email: info@classsizematters.org

Class Size Matters Response to DOE comments on the annual Temporary and NonStandard Classroom (TCU) Report

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Initial Rationale by DOE for eliminating the TCU report

In their latest document, posted on the Report and Advisory Board Review Commission website, the NYC Department of Education attempts to refute the testimony of Robert Jackson, Chair of the NYC Council Education Committee the United Federation of Teachers, Class Size Matters, and others. These individuals and organizations point out the importance of the NYC Department of Education's continuation of its annual report on Temporary Classroom Units (TCUs) for the sake of transparency, accountability, and rational capital planning.¹

In a May 11, 2012 testimony, Class Size Matters revealed that despite the DOE's claims to the contrary, its initial argument for eliminating the TCU report was incorrect and that most of the information contained within the report was unavailable elsewhere.² The DOE's claim that this information was "redundant" because it is currently included in the Department of Education's annual Report on Capacity and Utilization, (otherwise known as the Blue Book) was untrue, for the following reasons:

- The Blue Book does not contain data on how many high school TCUs are currently in existence;
- The Blue Book does not contain data as to how many actual TCU classrooms exist in *any* school (each TCU may contain 1-4 classrooms);

¹ For DOE response in full, see [DOE Comments from testimony on Temporary and Non-Standard Classroom Report](http://www.nyc.gov/html/rabrc/downloads/pdf/agency_comments_07022012.pdf). http://www.nyc.gov/html/rabrc/downloads/pdf/agency_comments_07022012.pdf. For the testimonies of Class Size Matters, CM Jackson, and the UFT, see http://www.nyc.gov/html/rabrc/downloads/pdf/testimony_reports_and_boards_hearing%2005-11-12.pdf

² See the DOE statement about "redundancy" included here: Report and Advisory Board Review Commission, "Minutes of Public Meeting held on Tuesday, February 28, 2012," at http://www.nyc.gov/html/rabrc/downloads/pdf/draft_public_meeting_minutes_and_presentation_2_28_2012_v2.pdf

- The Blue Book does not contain data concerning the current usage of these TCUs (that is, whether they are being used as general education or special education classroom, or specialty or cluster rooms – i.e. for art, music or science.)³

After public testimony was given, the DOE seemed to drop its initial arguments. Then, however, it made new claims equally incorrect and/or unconvincing, stating that the information in the TCU report is “not essential” and that the data currently included in the TCU report is “not required under the legislation” mandating this reporting. Neither one of these claims is true.

Revised DOE rationale

What is “essential” is, of course, a subjective and relative matter. Yet for the DOE to now argue that any information beyond the mere number of TCUs in elementary and/or middle schools (the only data that is replicated in the DOE’s Blue Book) is “inessential” ignores the public’s right to know the total number of students attending classes in TCUs, how overcrowded these structures are, the current usage of these units, and how many additional classrooms would be necessary to eliminate them.

The DOE’s claims also ignore the intent of the legislation that authorized this reporting, Local Law 122-2005, which states:

Although the Department of Education has for years promised to eliminate the use of temporary and non-standard classrooms, it has been slow to do so. The public is not aware of the scope of these problems, as parents are generally only familiar with their children’s schools. Therefore, public pressure to improve these substandard classrooms has not reflected the level of public dissatisfaction with such facilities. The Council finds that the Department’s efforts to eliminate temporary and non-standard classrooms would be aided by the annual public disclosure of the number of such classrooms. 122-2005.1 (emphasis added).

As such, the legislation sought to increase pressure on the DOE to remove TCUs by providing clear and regular updates to the public about the scope and severity of this problem, as well as reporting the progress of the DOE in eliminating these sub-standard structures.

As the prologue to the legislation states, TCUs are “poorly heated, ventilated and lit,” “they isolate children from their school communities,” and “likely do not meet minimal standards for appropriate classroom design.” (Section 1.) Though DOE officials may dislike the enhanced public scrutiny and pressure to replace TCUs with school seats that these reports provide, this is not a convincing rationale for eliminating the report.

The DOE also repeatedly claims in its new, follow-up statement that reporting on the number of TCUs in high schools (information available nowhere else) and data on the actual number of students who are currently attending class in these TCUs are not required in the authorizing

³ The latest Blue Book (for 2010-2011 school year) is posted here:
<http://www.nycsca.org/Community/CapitalPlanManagementReportsData/Enrollment/2010-2011-Bluebook.pdf>

legislation. Even a cursory examination of the Local Law 122-2005 would reveal that this claim is false. What follows is a point-by-point rebuttal of each of the DOE's arguments, in its latest response to the public testimony, in the same format as the original document:

Point-By-Point Rebuttal of DOE Claims

- 1. PUBLIC TESTIMONY:** It is important to report about non-standardized classrooms and TCUs because they are still in widespread use.

DOE rebuttal: *"The DOE is prepared to continue to report on the number of TCUs Citywide. We recognize the importance of this information. However, the actual enrollment of students in the TCUs themselves is not essential information about which the DOE needs to report. The decisions about using and replacing TCUs are based on overall student enrollment in a school; whether the main building can support the student enrollment, other available permanent structures to house these students. In addition, the number of overall TCUs has remained stable over the last few years."*

OUR RESPONSE: If the DOE is "prepared to continue to report on the number of TCUs citywide", then how would that occur if this report were eliminated? Nowhere else is this data publicly available. In addition, overall information about the enrollment, capacity, and utilization of TCUs should be disclosed, not only to communicate the scope and severity of this problem to the public, but also to aid policymakers in creating realistic projections about how many additional school seats are needed to replace them.

If they do intend to eventually replace or eliminate them, it is inconceivable why the DOE would not find it important to factor into their capital plan the actual number of students currently being educated in TCUs. For example, the fact that a trailer may hold only 12 students (a special education class) or 34 students should make a significant difference in DOE's estimates of what size classrooms should be built or how many additional seats are needed, either in a new school nearby or in the expansion of an existing school. Perhaps if DOE officials more carefully considered this data, including the thousands of students still crammed into these sub-standard structures, they would have made more progress in eliminating TCUs over the last decade. At least the above statement is honest in admitting that the number of TCUs has not declined in recent years.

- 2. PUBLIC TESTIMONY:** There is no [other] report on the number of TCUs used in high schools.

DOE rebuttal: *"This information is not required under this legislation. Information on the number of TCUs at a high school can be found on the school's web site in the Annual Facilities Survey."*

OUR RESPONSE: To the contrary, high school data on TCUs are required under this legislation. Local Law 122-2005 states:

The department of education shall report to the council annually, on or before October fifteenth of each year, ***the number of non-standard classrooms within the public school***

system. (emphasis added) Such report shall provide the number of non-standard classrooms, disaggregated by: school; zip code; school district; instructional region; community district; council district; and borough, and for each non-standard classroom, the number of children who attend classes in each such non-standard classroom. [122-2005§522.b]

Clearly, there is nothing in the legislation as cited above that excludes DOE from an obligation to report on the number of TCUs in high schools. Moreover, simply stating that this information can be found buried in each school's website, within its Annual Facilities Survey, should not excuse the DOE from providing the data in one coherent summary document.

There are over 400 high schools currently in NYC; assembling this data individually by logging into each school portal would be extremely time consuming and difficult for any advocate or elected official. Saying that it doesn't matter whether the DOE refuses to provide a summary report on TCUs because the data is available on individual school websites is like arguing that NYC need not release overall test score data, because each school reports its test scores separately. Furthermore, we have found that TCU data on school portals often contradicts the data in the TCU report. For more on this, see below.

- 3. PUBLIC TESTIMONY:** There is no [other] report on the current use of individual classrooms within TCUs, e.g. General education, special education, specialty classrooms, and grades.

DOE rebuttal: *"The legislation does not require reporting on the use of individual classrooms in TCUs. Moreover, this information is available elsewhere -- on a school's web site in the Annual Facilities Survey. "*

OUR RESPONSE: Although reporting on the specific use of the TCU classrooms (i.e. whether the room is used for general education, special education, art, or science) is not expressly required by the legislation, this information is important for public awareness of the problem, and in order to prepare a better capital plan. Thus, the DOE should continue reporting this information, as it does currently in the TCU report.

- 4. PUBLIC TESTIMONY:** It is important to report on both capacity and enrollment.

DOE rebuttal: *"The report requires only that the DOE report on the "number of children who attend classes" in the TCUs. The report does not require a reporting of both capacity and enrollment. The critical information that we will continue to report is the total number of TCUs. "*

OUR RESPONSE: **This is perhaps the most incoherent and confusing statement in the DOE document.** First, the DOE acknowledges that the law requires reporting on "the number of children who attend classes" in TCUs, but then contradicts this by asserting that the law does not require reporting on enrollment. What does enrollment mean but the number of children attending classes in TCUs?

5. **PUBLIC TESTIMONY:** Enrollment data helps determine how many classrooms are needed to replace TCUs.

***DOE rebuttal:** “The decision whether to replace a TCU is not based on the number of students enrolled. The decision is based on the usage of the main building, the overall student enrollment in the school and whether there is an alternative site to place students.”*

OUR RESPONSE: See our comments above. Without first taking into account the number of students currently attending classes in TCUs, it is impossible to know the total enrollment, and how overcrowded elementary or middle schools are,. And there is no way of knowing how many new seats are needed nearby without factoring in this data as well. DOE officials and other elected officials should take this information into account when deciding whether to replace TCUs.

6. **PUBLIC TESTIMONY:** DOE claims that this report is redundant because information about TCUs is contained in its Enrollment, Capacity and Utilization Report, also known as the Blue Book. However, the information on TCUs in the Blue Book is difficult to find, hard to decipher and much more limited in scope than what is provided in the Temporary and Non-Standard Classroom (TCU) Report.

The Blue Book does not reveal how many classrooms are contained in transportable units, nor what grade or type of instruction they are used for – only the TCU Report provides that data. Moreover, the Blue Book contains hundreds of pages that one must search through to find far less information than is provided in the concise, 20 or so pages of the Temporary and NonStandard Classroom Report.

***DOE rebuttal:** “This information is not required under the legislation. The TCU report only requires reporting on the number of TCUs at a school and number of students. The Annual Facility Survey which is available on each school’s web site details the number of TCUs and the use of each TCU.”*

OUR RESPONSE: Yet again, a very unconvincing rebuttal. See our general comments and responses to Points 1 and 4 above. Moreover, it is indeed true that the TCU data in the Blue Book is difficult to find, and contains far less information than the TCU report is mandated to include. We urge the members of the Commission to take a look themselves at the Blue Book to ascertain the truth of this statement.⁴ Moreover, the Blue Book contains **no information** about the usage of these structures in any school, the number of TCU classrooms, or the number of TCUs being used by high schools. The latter information may be available on individual HS websites, but again, collecting it, school by school, is extremely difficult and time-consuming.

7. **PUBLIC TESTIMONY:** It is important to report about TCUs because of the need to address the conditions in the TCUs themselves.

***DOE rebuttal:** “This concern is not relevant to the report that the DOE requests to have eliminated. We are proposing only to eliminate the requirement to report on the number of children who attend*

⁴ The latest Blue Book (for 2010-2011 school year) is posted here:
<http://www.nycsca.org/Community/CapitalPlanManagementReportsData/Enrollment/2010-2011-Bluebook.pdf>

classes in each non-standard classroom. The DOE routinely inspects the TCUs but the legislation does not require us to report on the conditions in the TCUs themselves.”

OUR RESPONSE: DOE mischaracterizes the connection between the expressed intent of the legislation and the information included in the current report. It is widely known that most of the TCUs on school grounds in NYC have remained in use far beyond their intended lifetimes. As a result, many are leaky, moldy, and even hazardous. Thus, it is important to know how many children are potentially affected in these ways.

Omissions, Errors and Misleading Data Ignored By DOE:

In addition to the weak and sometimes factually-incorrect arguments made by the DOE in response to public testimony, the Department has also failed to acknowledge the various errors and omissions in the TCU report that we highlighted in our earlier testimony. These include the following:

- Neither the Blue Book nor the TCU report has data on how many high school students are currently attending class in TCUs or trailers. This is required by the authorizing legislation, and should be included in the TCU report.
- Neither the Blue Book nor the TCU report includes data on how many elementary and middle school students take art, science, drama, or other non-core classes in TCU classrooms. This is required by the authorizing legislation, and should be included in the TCU report.
- The capacity and enrollment of many District 75 special education TCU classrooms is missing in both the Blue Book and the TCU report; this data is required by the authorizing legislation and should be included in the TCU report.

Part I of the TCU report provides data for the number of TCU units per school and total enrollment of each excluding high school and non-general education classes in elementary and middle schools. Part II of the TCU report specifies the number, use and capacity of each of the TCU classrooms, as each unit may include from one to four classrooms. And yet in comparing the data from Part I and Part II of the DOE’s latest TCU Report, and comparing this data to information in the Blue Book from the same year, we found the following discrepancies:

- The total enrollment of TCUs at a particular elementary or middle school often differs without explanation between the Blue Book and the TCU report of the same year.
- Data is often inconsistent even between Parts I and II of the same TCU report. (We can provide specific examples of this conflicting information, if the Commission members would like to see them.)
- The way in which total enrollment and capacity is reported by DOE on the initial page of the TCU report is highly misleading. The TCU report features a chart of TCU enrollment and capacity, side by side, making it appear that on average, TCUs are underutilized, as the total enrollment is far less than their total capacity, as follows:

2011 Report on Temporary and Non-Standardized Classrooms

	# of TCU Units	TCU Enrollment (Actual)	TCU Enrollment (Capacity)	Total Enrollment
2005-06	368 *	10,215	15,477	1,055,986
2006-07	399	11,004	16,077	1,042,078
2007-08	402 **	10,929	14,063	1,035,406
2008-09	387 **	10,115	13,293	1,029,459
2009-10	373 **	8,819	12,773	1,038,741
2010-11	363 **	8,582	12,630	1,043,886

Yet unmentioned in this chart is the fact that the TCU enrollment figures listed as (Actual) do not include any high school students attending classes in TCUs, or elementary and middle school students attending art, music or science in these units. Yet the capacity figures include ALL TCUs units, including those at high schools as well as those being used for art, music, etc. by elementary and middle school students.

When only the number of TCU units are included for which there is also enrollment data, that is, only those being used as general education elementary and middle school classrooms, it is clear that the TCUs are extremely overcrowded, at 109% utilization, according to the latest available TCU report (for the 2009-2010 school year), as follows.

# of TCU Units	# of TCU Classrooms	TCU Enrollment (Actual)[from Blue Book]	TCU Enrollment (target capacity from Blue Book)	TCU Enrollment (Capacity from TCU Report Pt. 2)	Average Utilization of TCU's [Blue book enrollment/capacity]
294	487	8,691	7,980	9,135	109%

Recommendations for Improvement

There should be no question that the annual TCU report must be retained; it is the only place which summarizes this critical data and the only stand-alone report in which the total number of TCUs and critical enrollment, capacity and use of TCUs can be found. All of this data should be made available to the public and utilized by DOE and other elected officials in order to assess whether the city is making adequate progress in reducing the number of these substandard structures, and replacing them with actual school seats, and how many children are affected.

However, there are several ways in which the TCU report can and should be improved:

- 1- The report should include the total number of high school students attending class in TCUs, as the legislation specifies. This could be reported as the total number of such students,

and classes held in each TCU classroom each day, along with the average class size and the capacity of each TCU classroom.

- 2- The report should also include the total number of elementary and middle school students taking art, music or other non-core subjects in TCUs, in a format similar to the above.
- 3- The TCU summary table should compare apples to apples; that is it should include only the capacity figures for TCU units and/or classrooms for which enrollment is also reported.
- 4- In order that Part I and Part II not contain contradictory data, the report should consist of only one spreadsheet, with each school listing the number of TCU units and classrooms, with their capacity, usage and enrollment reported side by side.
- 5- Though not specified in the original legislation, it would also be extremely useful for the age and condition of each TCU to be noted in the report, to better estimate the how soon they should be replaced.

Conclusion

It would be deeply disappointing for the Commission to allow an administration which repeatedly claims that it is “data-driven” to eliminate reporting on TCUs, given how many schools and children continue to be subjected to their substandard conditions. One would hope that the members of this Commission would recognize this fact, and require more information and increased clarity in the TCU reports, rather than relieve the DOE from the responsibility of reporting this information to the public.