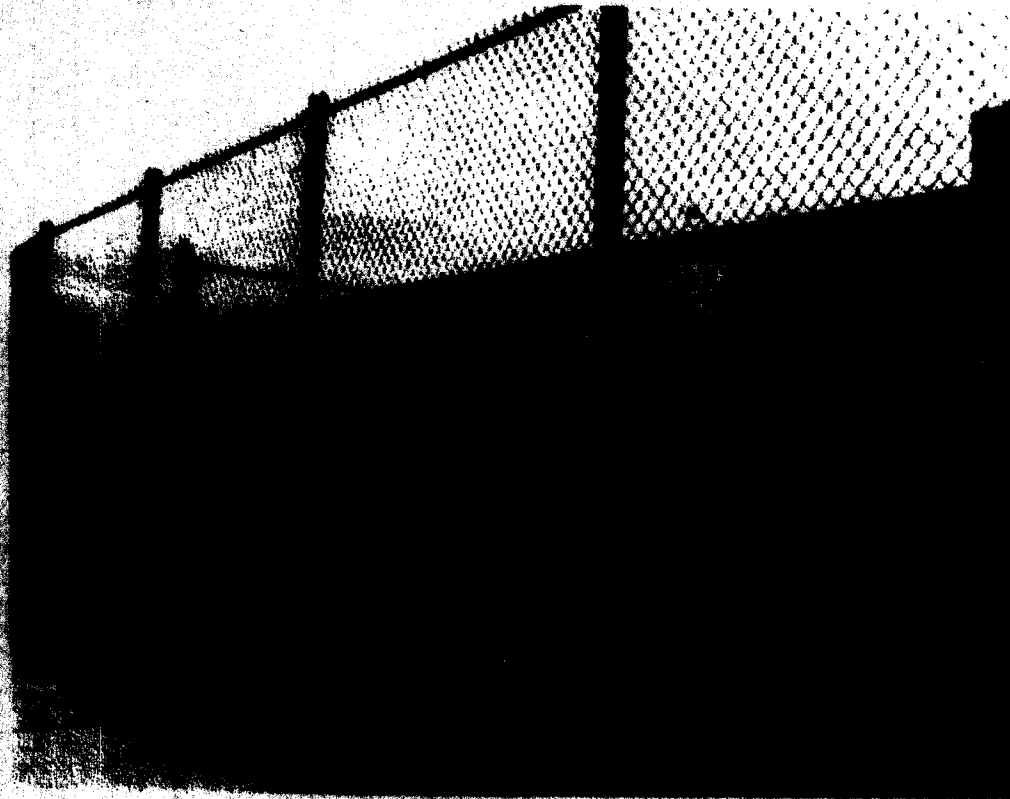


NO ROOM IN THE PLAYGROUND

**A Report Examining Playground Space in
New York City Elementary Schools**



Jeffrey Klein, Chair

**New York State Assembly Committee on
Oversight, Analysis and Investigation**

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INTRODUCTION AND OVERVIEW

The need for outdoor recreational playground space at New York public schools has long been recognized. As early as 1947, the New York State Legislature enacted a statute requiring outdoor playgrounds for all New York City public schools. That law remains on the books today. Recent and alarming news reports cite the rise in childhood obesity from poor diet and lack of physical exercise. These disturbing reports highlight even more the need for outdoor recreational areas for urban youth, where dense populations and severe space limitations exist. Healthy play and recreation can combat the conditions that lead to lifetime struggles with overweight, poor health and poor lifestyle habits. New York City provides beautiful parks and recreation areas, but our schools need to provide adequate recreational space along with suitable educational programs to ensure our urban youth have the necessary tools to build healthy, physically active lifestyles.

It is the goal of this report to examine the availability of outdoor playground facilities for New York City's 554,374¹ elementary school students attending 696 elementary schools within the City's five boroughs. This report explores the policies used by State and City agencies to define standards for adequate outdoor playground facilities. State law and state regulations governing school playgrounds are examined along with the actual processes and practices of State and City agencies responsible for regulating and overseeing such playgrounds.

¹ NYC Department of Education website. <http://www.nycenet.edu/stats/>

EXECUTIVE SUMMARY

REPORT FINDINGS AND REPORT RECOMMENDATIONS

Once a priority, physical education programs in New York City have taken a “back burner” to programs which emphasize standardized testing scores and academic achievement ratings. As an attempt at measuring accountability, recently enacted federal legislation, **No Child Left Behind**, threatens states with decreased funding when schools fail to achieve sufficient scoring or academic grades. At the same time, school playgrounds are easily eliminated, leaving schools without access to outdoor recreational space to fulfill physical education requirements.

Once a beacon in the scholar/athlete model in education, where the physical as well as the intellectual wholeness of a student was nurtured, New York City now fails to provide students with that necessary balance.²

In New York City, as in the nation, overweight youth often become unhealthy and physically unfit adults left to struggle with life long health problems. NYC Department of Health and Mental Health has released a report indicating that 43% of NYC elementary children are obese or overweight. Children who cannot run, jog, or compete in team sports because they are overweight and poorly nourished face the threat of a future of poor health and living unhealthy lifestyles. Failure to comply with state law requiring that New York City’s young people be given adequate outdoor playground space in their schools further threatens the health and well-being of New York City’s children.

This report indicates a failure by state and city agencies to consider outdoor playground space as a priority measure. The Committee investigation uncovered bureaucratic failures by New York State and New York City agencies to monitor whether adequate playground space exists. Specific examples are cited where schools’ outdoor playgrounds are filled with Temporary Classroom Units used for overcrowding. Concentration on academic achievements and accountability in maintaining high academic standards are extremely important goals for our education agencies to monitor. However, focusing on the present and future physical well-being of a future society already threatened by unhealthy lifestyles and poor physical fitness habits also requires priority attention.

KEY REPORT FINDINGS:

THE STATE DEPARTMENT OF EDUCATION (SED) FAILS TO ADDRESS ADEQUACY OF NYC SCHOOL PLAYGROUNDS:

- **The State Education Department does not monitor the adequacy of outdoor playground space for NYC public schools.**
- **The State Education Department abdicates its responsibility to review site plans and specifications pertaining to construction of NYC school buildings, additions, and renovations of school buildings, including installation of temporary classroom units installed on available outdoor playground space.**

² Hit or Miss—Fitness & Sports Opportunities in the New York City Public Schools (New York, Educational Frameworks Inc., 2000), p. iii.

EDUCATION OFFICIALS IN NEW YORK CITY FAIL TO ADDRESS ADEQUACY OF NYC SCHOOL PLAYGROUNDS:

- A key NYC Education document for primary and intermediate schools incorrectly states that playgrounds are not a mandated requirement.
- While the NYC Department of Education provides a standard for outdoor playground space, it does not effectively monitor schools compliance with its standard. It fails to collect and maintain square footage data to effectively calculate if a school meets the standard.
- Installation of Temporary Classroom Units (TCUs) on school playgrounds is based entirely on classroom overcrowding demands without weighing the loss of playground space on these same students.
- Temporary classroom units installed on playgrounds are often not temporary. TCU placements on school playgrounds are not periodically monitored for the effects on physical education programs, due to prolonged loss of playground space.
- The School Construction Authority (SCA), designated as the primary school construction entity for building new schools in New York City, fails to consider Department of Education (DOE) guidelines for outdoor recreational space when constructing additions onto existing school buildings and installing TCUs on available outdoor playground space.
- Elementary schools located in four of the five boroughs have TCU's located on playground space. Unfortunately, some of these schools do not offer adequate alternative outdoor recreational space.

NYC SOMETIMES PROVIDES A SUCCESSFUL ALTERNATIVE WHEN SCHOOL PLAYGROUNDS ARE NOT AVAILABLE ON-SITE:

- NYC Department of Education's (DOE) Jointly Operated Playgrounds (JOP) program provides excellent opportunities for schools to use NYC Department of Parks (DOP) facilities during school hours for outdoor recreational space. While recent initiatives from DOE promised enhanced relationships with DOP, they do not mention adding more JOP sites.

OUR CHILDREN ARE AT RISK

- There is a dramatic rise in the number of children diagnosed as overweight and obese and suffering with serious diseases linked to poor health habits and lack of exercise. A recent study reveals 43% of NYC elementary students are either overweight or obese.³

³ NYC Vital Signs. *Obesity Begins Early: Findings Among Elementary School Children in New York City*. Volume 2, No.5. June 2003. <http://home.nyc.gov/html/doh/pdf/survev/survev-2003childobesity>

KEY REPORT RECOMMENDATIONS:

THE STATE DEPARTMENT OF EDUCATION MUST IMPROVE ITS OVERSIGHT OF NYC SCHOOL PLAYGROUNDS:

- The State Education Department must establish and enforce a standard by which “adequate” playground space is defined for New York City Public School playgrounds.
- SED must use its current authority to receive, review, and approve all necessary plans and specifications governing renovations, additions and building construction for NYC schools, including the installation of Temporary Classroom Units on outdoor playground sites. The Department must ensure that these documents provide the necessary details to allow for a complete compliance assessment.

EDUCATION OFFICIALS IN NEW YORK CITY MUST IMPROVE OVERSIGHT OF NYC SCHOOL PLAYGROUNDS:

- Official City Education documents must recognize that playground space is a mandated requirement.
- The New York City Department of Education must maintain current data on school facilities that would allow for its assessment of available outdoor recreational playground space.
- City Education officials must ensure that the loss of adequate outdoor playground space is balanced against the need for TCU installation to relieve overcrowded classroom space and that adequate alternatives are provided when playground space is lost to TCUs.
- Annual review of each site with TCUs on outdoor playgrounds should be enforced as Department of Education policy. “Temporary” should mean temporary. Long term solutions must be ensured to address both overcrowded classroom conditions and outdoor playground space to meet physical education curriculum requirements.
- City Education officials must communicate their policy and guidelines for preferred space minimums for outdoor playground space to School Construction Authority officials.
- State law governing the School Construction Authority should be amended to require that construction onto a school playground may only occur if equivalent alternative playground area is provided. This would parallel a similar provision in current law applicable to the Education Construction Fund. [Education Law §454(20)]
- New York City school officials must continue to provide Jointly Operated Playgrounds and to search for similar alternative services that would provide NYC elementary school children with adequate outdoor playground facilities. Recent initiatives from DOE promised enhanced relationships with DOP, offering physical

education activities for NYC school children and families. Unfortunately, none of these reported initiatives mention the establishment of more JOP sites. Additional JOPs must be included in these new initiatives.

PROVIDE CHILDREN WITH THE TOOLS FOR A HEALTHY LIFESTYLE

- Efforts to establish a public campaign to address the issue of obesity and poor physical fitness habits, similar to that of the 1963 Physical Fitness campaign of President John F. Kennedy, must be established to educate our young people about the importance of a good physically fit lifestyle and the dangers of overweight and obesity. Though NYC DOE has recently released plans for more expansive physical education initiatives in the schools, the public campaign must provide increased attention to infrastructure and facility needs for outdoor playground space.

PROJECT SCOPE AND METHODOLOGY

Though it is recognized that sufficient outdoor recreation space is needed for all grades in all schools in New York, this review is limited to elementary schools within the New York City area. This decision was dictated primarily by the enormity of the student population and the number of buildings for all the different grade levels. It was hoped that narrowing Committee research to the elementary population would be more manageable. The focus was further narrowed to include only outdoor space needs. In part, this was due to the myriad alternative uses of indoor recreational space in New York City schools. In addition to sports in gym class, indoor space is also often used as a cafeteria or for classes, study halls or meetings. Analysis of the adequacy of indoor recreational space was made more difficult as a result.

This review will also examine the implications of overcrowded classrooms. This overcrowding often results in the transformation of outdoor recreational space into additional classroom space through the use of Temporary Classroom Units or buildings (TCU/TCB) onto school playgrounds. In other situations, schools unable to provide outdoor recreational facilities take part in a Jointly Operated Playground (JOP) which is maintained in a partnership between the NYC Department of Parks and the NYC Department of Education. These arrangements provide schools with playground facilities, parks, athletic fields and land maintained by the NYC Department of Parks, but shared with the NYC Department of Education during school hours and with the public on off-hours. A discussion of a few of these facilities is also included in this report.

The development of this report included detailed research of state law, regulations and policies governing playground facilities. In addition to meetings, telephone conversations and correspondence with State Education Department, School Construction Authority, and NYC Department of Education officials, Committee staff received voluminous data from City Education staff.

The City data included current enrollment, school site space [which provided the square footage of each school and its outer space], Temporary Classroom Unit locations and Jointly Operated Playground partnerships. Unfortunately much of the school site footage calculations were 15-year-old data and unverified. On-site visits and telephone calls to a sampling of NYC elementary schools tested some of this data. A great deal of time and effort was spent in collecting the school site data, analyzing it and, unfortunately, in the end, determining that much of it could not be used due to its unreliability. The on-site visits served a secondary purpose: they provided useful anecdotal and visual information about outdoor school recreational space, or the lack thereof.

Although much of the City data could not be used, the extensive time and effort given by City Education Department staff should not go unrecognized. Their combined assistance and professionalism was much appreciated.

THE NEED FOR PLAYGROUND SPACE - - A DISTURBING HEALTH TREND

Increasingly in recent years, reports and studies from across the nation indicate a public health crisis of an overweight and obese population. Data released in the Journal of the American Medical Association in October, 2002 announced results of the 1999-2000 National Health and Nutrition Examination Survey (NHANES) which overwhelmingly reported a rise in the number of children entering the unhealthy category of overweight or obese.⁴ The NHANES survey was conducted by the Center for Disease Control and Prevention (CDC). The Center director, Dr. Julie Gerberding, said, "One of the most significant concerns from a public health perspective is that we know a lot of children who are overweight grow up to be overweight or obese adults, and thus at greater risk for some major health problems such as heart disease and diabetes... One critical answer to this problem is that we all must work together to help our children make physical activity a life-long habit."⁵ The NHANES study cites a rise in the diagnosis of type 2 diabetes mellitus due to the increase in the number of overweight children. Children with impaired glucose tolerance are found most prevalent among children with severe obesity.⁶

Education about good diet and establishing physically fit and active lifestyles could turn around this disturbing trend. Children need to be properly armed with skills to monitor their diet with healthy food and to supplement healthy food with adequate exercise. "Childhood obesity is at epidemic levels in the United States", states the former U.S. Surgeon General David Satcher. "We have been remiss in shedding light on this problem Today we see a nation of young people seriously at risk of starting out obese and dooming themselves to the difficult task of overcoming a tough illness".⁷ Surgeon General Satcher, in his December, 2001 report, "*The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity*", outlined strategies for communities to address the issue. Heading his list of recommendations was: "*Ensure daily, quality physical education for all school grades....*"⁸

In 1963, President John F. Kennedy addressed similar deficiencies in the physical fitness of American youth through his *President's Council of Physical Fitness*. The program encouraged physical fitness and sports training in schools, voluntary organizations, civic organizations and professional associations. Across the country, many signed on to encourage young people to participate in outdoor recreation efforts in order to improve the health, intellectual vigor and physical strength of our nation.⁹

With the education pendulum swinging toward a more concentrated focus on academic achievement and higher academic standards, less attention has been afforded to physical education and fitness programs in our schools. With budget cutbacks, school recreation programs and efforts to focus on physical fitness have suffered. New York City's educational system, once a shining star in the scholar/athlete model, no longer stresses the importance of team sports and stellar physical education curricula.¹⁰ Over the past two decades the NYC Department of Education has decreased funding and central support programs for physical education curriculum, physical education teacher training

⁴ Ogden, C, Flegal, K.M, Carroll, M.D, Johnson, C.L., "Prevalence and Trends in Overweight Among US Children and Adolescents, 1999-2000". JAMA, October 9, 2002---Vol 288, No. 14 pp. 1728-32.

⁵ National Center for Health Statistics. Press Release, U.S. Dept. of Health and Human Services, "Obesity Still on the Rise, New Data Show", October 8, 2002. <http://www.cdc.gov/nchs/releases/02news/obesityonrise.htm>

⁶ Ogden, C, Flegal, K.M, Carroll, M.D, Johnson, C.L., "Prevalence and Trends in Overweight Among US Children and Adolescents, 1999-2000". JAMA, October 9, 2002---Vol 288, No. 14 pp. 1728-32.

⁷ Squires, Sally. "Obesity-Linked Diabetes Rising in Children, Experts Attending Agriculture Dept. Forum Call for New Strategies to Reverse Trend". *Washington Post*, [Washington D.C.], 3 November 1998; Page Z07.

⁸ U.S. Dept. of Health and Human Services. <http://www.hhs.gov/news/press/2001pres/20011213.html>

⁹ Executive Order 11074 *Establishing the President's Council on Physical Fitness*. John F. Kennedy, January 8, 1963. <http://www.lib.umich.edu/govdocs/jfkco/eo/11074.htm>

¹⁰ Kirk Johnson, "Dropping The Ball: The Decline of Sports". *The New York Times* (New York City, NY), 13 January 1999, Section A, Page 1, Column 1.

and team sports programs.¹¹

Only in recent weeks has the NYC Department of Education turned its attention to increasing teacher training and curriculum development efforts to physical education in the schools. Staff has been added within the new reorganization efforts and new programs have been announced which promise to increase attention to physical education in the schools. While these efforts sound promising, they will ring hollow without the requisite attention to infrastructure needs and outdoor playground space. Even though principals and teachers confirm that good physical education programs increase student motivation and participation in academic studies and have a strong affect on academic achievement and confidence, physical fitness programs need physical space for successful implementation.

A recent study by educators and concerned New Yorkers focusing on NYC Department of Education's current physical education programs, *"Hit or Miss- Fitness & Sports Opportunities in the New York City Public Schools*, opens with the following analysis:

"Research confirms the importance of physical education for health, learning, and social development. In New York City, physical education and sports have also played an integral part in the fabric of civic life and public schools. For countless children, immigrants and native-born, schoolyards and playing fields have provided the forum for friendships made and opportunity forged, the level playing field on which children from disparate backgrounds have met and tested themselves without advantage or benefit accorded privilege."¹²

This picture of the playground as an area where cultures and lifestyles merge is no longer the image that surfaces when we look at our school playgrounds in New York City.

Recognizing the need for good physical fitness activities, the New York State Legislature established a policy of encouraging children to keep fit and maintain a healthy lifestyle. Adequate recreational facilities are mandated in New York Education Law, Section § 2556(5):

"It shall be unlawful for a schoolhouse to be constructed in the city of New York without an open-air playground attached to or used in connection with the same."

Compliance with this provision of law will be considered in this report. Other provisions of law and regulations will also be reviewed.

¹¹ *Hit or Miss-Fitness & Sports Opportunities in the New York City Public Schools* (New York, Educational Frameworks Inc.,2000), p. iii.

¹² Ibid. p. Preface first unnumbered page (inside cover).

STATE LAWS AND REGULATIONS GOVERNING OUTDOOR RECREATION SPACE FOR PUBLIC SCHOOLS

As early as 1947, the NYS Legislature recognized the importance of requiring each New York City school be built with an outdoor recreational playground. Education Law §2556(5) provides:

“It shall be unlawful for a schoolhouse to be constructed in the city of New York without an open-air playground attached to or used in connection with the same.”

State regulations stemming from this law require sufficient space requirements for physical education activities in the schools, specifically in the area of outdoor playground space. New York Codes, Rules and Regulations (NYCRR) §135.4(5) states:

“Trustees and boards of education shall provide adequate indoor and outdoor facilities for the physical education program at all grade levels. Appropriate guidelines to schools with respect to facilities will be provided by the Division of Physical Education, Fitness, Health, Nutrition and Safety Services.”

The primary authority to oversee and guide school facilities lies with the New York State Commissioner of the State Education Department. Education Law §305(1)(2) authorizes the Commissioner to:

- “(1)...enforce all general and special laws relating to the educational system of the state and execute all educational policies determined upon by the board of regents....”*
- “(2)... have **general supervision over all schools and institutions** which are subject to the provisions of this chapter, or of any statute relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control.” [Emphasis added]*

Simply put, the jurisdiction for all school matters ultimately lies with the Commissioner. This includes school building construction, renovation or additions with plan and specification approval pursuant to Education Law, §408(3):

“(3) The commissioner of education shall approve the plans and specifications, heretofore or hereafter submitted pursuant to this section, for the erection or purchase of any school building or addition thereto or remodeling thereof on the site or sites selected therefore pursuant to this chapter, if such plans conform to the requirements and provisions of this chapter and the regulations of the commissioner adopted pursuant to this chapter in all respects; provided, however, that the commissioner of education shall not approve the plans for the erection or purchase of any school building or addition thereto unless the site has been selected with reasonable consideration of the following factors; its place in a comprehensive, long-term school building program; area required

for outdoor recreational activities; educational adaptability, environment, accessibility; soil conditions; initial and ultimate cost.”
[Emphasis added]

However, Education Law §408(1) states that the Commissioner *may* waive the right to receive plans and specifications from New York City and require only outlines of alterations affecting outdoor playground space:

(1) “... In the case of a school district in a city having seventy thousand inhabitants or more... the commissioner may waive the requirement for submission of plans and specifications and substitute therefore the requirement for submission of an outline of such plans and specifications for his review. Such outline shall be in a form which he may prescribe from time to time.”

Commissioner Richard P. Mills, in correspondence dated April 10, 2003, admits that his Department only requires outlines from New York City school districts. Since only outlines are submitted, the Commissioner further states that SED is unable to determine adequacy of playground space when alterations of school buildings occur on or near that space. Responding to the Committee Chair’s questions about Temporary Classroom Units, Commissioner Mills said:

*“Our Office of Facilities Planning reviews the outlines but cannot perform a programmatic review that would determine if the amount of planned outdoor play area is adequate”.*¹³

The Commissioner chooses to waive receipt of the full plans and specifications, requiring instead only the outlines. In turn, by providing SED with less detailed documentation to review, the Department finds the outlines insufficient to “perform a programmatic review” of whether adequate playground space remains sufficient once TCUs are installed in playgrounds. It is a classic “Catch 22” of the Department’s own creation.

Additional correspondence from SED officials confirms that SED does not determine the adequacy of outdoor recreational or outdoor educational facilities in NYC. In a letter from a SED official in August 2003, it was stated, “Long range plans generally do not discuss the provision or adequacy of outdoor play space. The capital outlines submitted to us are not detailed enough to discuss outdoor recreation areas.”¹⁴

Again in Education Law, the Commissioner is given explicit authority over the inspections of school facilities and overseeing the safety of the facilities. Education Law §409-d(2) states:

*“Commissioner’s authorization.
In implementing this program, the commissioner is authorized to:
(a) require the inspection of every public school building and prescribe qualifications of persons who may perform or supervise such inspection in accordance with the provisions of this section...
(e) establish a process for monitoring all school buildings; and*

¹³ Correspondence dated April 10, 2003 to Assembly Oversight Committee Chair Klein from Commissioner Mills.

¹⁴ Correspondence to Assembly Oversight Committee Chair Klein from Carl T. Thurneau, PE Coordinator, State Education Department, August 4, 2003.

(f) provide for waiver of the requirements of this section and/or section four hundred nine-e of this article”

The Department’s Facilities Planning Division oversees this responsibility, informing school districts, boards of education and school entities, of state requirements for safe and adequate school facilities including outdoor recreation space. Regulations and rules of SED are available to schools, districts and local boards of education through the Department’s *Manual of Planning Standards* found on its website <http://www.emsc.nysed.gov/facplan/publicat/mps1998.pdf>. The Manual provides specific guidelines by which construction, renovation or addition to school facilities, (including outdoor playground space) are required. Also included in the Manual are the procedures by which schools, districts and boards of education are to submit plans, specifications and applications to the Commissioner for approval. It should be noted that on Page 1, the manual explicitly states that its scope is not applied to New York City schools and districts.

“This Manual of Planning Standards pertains to all public school buildings, with the exception of those schools in New York City.”¹⁵

By deciding to waive its receipt of NYC plans and specifications and by excluding NYC from the standards detailed in its Manual of Planning Standards, the Department fails to directly oversee the adequacy of outdoor recreational space for New York City’s school children.

NYCRR §155.1 references school facilities as follows:

“ Each school district shall provide suitable and adequate facilities to accommodate the programs of such district. ”

Also within the Department’s authority under NYS Education Law §803 [*Instruction in Physical Education and kindred subject*] the Regents shall adopt rules determining the course of physical education studies for the State education system. Pursuant to NYCRR §135.2(a), curricula for physical education in New York State schools are required:

“All schools under the jurisdiction of the State Education Department shall provide a program of health, physical education and recreation in an environment conducive to healthful living. The program shall include:

- (1) health and safety education;*
- (2) physical education, including athletics; and*
- (3) recreation.”*

In NYCRR, Part 135.4 (2), the curriculum requirements are outlined for the instruction to elementary and secondary grade levels. The following states the curriculum requirements for elementary grade pupils for physical education:

- “(2) Required instruction.*
 - (i) Elementary instructional program—grades K through 6.*
 - (a) all pupils in grades K-3 shall participate in the physical education program on a daily basis. All pupils in grades 4-6 shall participate in the physical education program not less than three times each week. The minimum time devoted to such programs shall be at least 120 minutes.*

¹⁵ New York State Department of Education, Office of Facilities Planning website: <http://www.emsc.nysed.gov/facplan/publicat/mps1998.pdf>

State law clearly entrusts the State Education Department with responsibility over curriculum, facilities, program and operations of all schools within the State. As already noted, this includes requiring adequate facilities for outdoor playground space. In meetings, correspondence and phone conversations with State Education officials, it was made clear that the Department does not oversee New York City playground space. Such oversight is ostensibly left to the NYC Department of Education.

**NEW YORK CITY LAW and REGULATIONS
GOVERNING OUTDOOR PLAYGROUND SPACE**

New York City also has laws protecting the health and safety of school children. Found in the Health Code of the Rules of the City of New York, the condition of outdoor play areas is noted, but a definition of “adequate” space as required for outdoor activities is left undefined.

New York City Rules & Regulations - Title 24 - Health Code §45:11(h) states:

“Indoor and outdoor play areas shall be available for the use of the children. Such play areas shall be safe, clean, easily accessible, adequate in size and suitable for the needs of the children. A shady area shall be available in outdoor play areas used during the summer months.”

In §45.12(c) of the City regulations, the Health Code also provides for the safety of outdoor play equipment located in these outdoor playgrounds.

“In the indoor and outdoor play areas, sufficient play equipment shall be provided which is appropriate to the stage of development of the children and which is designed to foster physical and motor development. The equipment shall be easily accessible to the children, readily washable, clean, in good repair and free from hazards such as sharp or pointed parts, or toxic or poisonous finishes or materials.”

New York City’s health laws, thus, recognize the importance of safe and suitable outdoor recreation space and equipment for its children. The adequacy of the amount of space or the size of the play areas is found in other NYC documents.

**KEY NEW YORK CITY DEPARTMENT OF EDUCATION
POLICIES AND PRACTICES GOVERNING
OUTDOOR PLAYGROUND SPACE**

STANDARDS FOR ADEQUACY

The policies used to determine the size or adequacy of playground space are not codified in one place but are found in several different NYC Department of Education documents. With the recent restructuring of the New York City Department of Education by Mayor Michael Bloomberg, several offices and divisions have been merged. Since the reorganization, the School Construction Authority has the primary responsibility for school facilities and construction. The Office of School Facilities, NYC Department of Education was formerly the primary office to monitor school facilities. In 1994 the Division of School Facilities, Office of Capital Administration issued a document, "Standard Space Requirements - Primary and Intermediate Schools" which included guidelines for space regulations for outdoor playgrounds in NYC public school facilities. Though the document incorrectly states, contrary to state law, that playgrounds are not required in New York City, the document does set a "preferred minimum" for size and space recommendations for playground size. The document does not define "adequate" playground space, but sets the preferred minimum for size of outdoor playgrounds.

"Playgrounds are not mandated requirements. However, they are highly desirable for health and educational purposes. The BOE preferred minimum square footage is:

- *A fenced 3,000 square feet early-childhood playground for schools with LYFE centers, pre-kindergarten, and/or kindergarten classrooms.*
- *A playground with an area of 30 square feet per pupil to a maximum of 30,000 square feet for primary and intermediate schools.*
- *The area assigned to playgrounds (e.g. 30,000 square feet) includes the 3,000 square feet of the early - childhood playground, if any. For instance, an 850 pupil school will be programmed for a playground of 22,500 square feet (850x30=25,500 minus 3,000 = 22,500)¹⁶ [Emphasis added.]*

Similarly, the Division of School Buildings of the New York City Board of Education, a predecessor of the Office of School Facilities, issued two other documents in 1947¹⁷ and 1975¹⁸ each entitled "Manual of School Planning" suggesting the same guideline for space size for outdoor playgrounds. In both documents the same formula for square footage per pupil was reiterated.

When designing new schools with outdoor play areas in New York City, architects are provided with requirements for new buildings indicating the same standard noted earlier: 3,000 square feet for Early Childhood playgrounds, and 30 square feet per pupil with a maximum 30,000 square feet for primary schools.¹⁹

NO CITY PROCESS FOR TRACKING ADEQUACY STANDARDS

While fairly specific NYC Department of Education standards define outdoor space requirements, the Department is unable to calculate whether each school meets the standard. Unfortunately, school officials do not have verified or up-to-date data on the square footage for each school playground. The Department does have verified and up-to-date data on enrollment. Thus, calculating the number of

¹⁶ Standard Space Requirement - Primary and Intermediate Schools. Issued by Board of Education City of New York, Division of School Facilities, Office of Capital Administration. 1994.

¹⁷ Manual of School Planning - 1947. Board of Education of the City of New York. Fourth Revision, 1947.

¹⁸ Manual of School Planning - 1975. Board of Education of the City of New York. Division of School Buildings.

¹⁹ Board of Education draft boiler plate form for Program of Requirements for New Building. 3-23-01. p.3.

pupils in each school is possible. However, the only data available within the Department of Education indicating the square footage of buildings, the square footage of playgrounds along with the square footage of total site areas and building square footage is 15 year old and unverified.

Staff at the School Facilities division of the Department expressed caution about the reliability and use of the 15 year-old data. In light of that, Committee staff visited targeted school sites to “test” the data. Our experience confirmed the concerns raised by DOE staff that the 15 year-old data is inaccurate. As a result, Department of Education data cannot be used to assess compliance with its own standards for outdoor space because only half of the formula, the pupil enrollment, is available.

In recent weeks the Department of Education has made attempts to collect data by issuing a survey to regional plant managers about the availability of physical education facilities in schools throughout the system. The survey was a minimal attempt at answering questions of whether schools have playground space, operational physical education equipment, pools, athletic fields, etc. The survey required only a ‘Yes’ or ‘No’ response. Staff from our Committee, again attempted to “test” the data. The Committee found several schools responding affirmatively to having playground space available for recreational activities when our on-site visits told a different story. Though NYC Department of Education officials made this attempt to collect data on physical education facilities, the survey instrument was very limited and superficial in scope and apparently not verified. The City should continue in its efforts to pursue collection of accurate and verifiable information.

Most recent contact with School Construction Authority staff requesting data on specific schools was also met with the same inability to provide accurate information on square footage of school properties and facilities. Though requests were made, SCA officials did not provide the requested information of outdoor playground space size and dimensions.

NYC DEPARTMENT OF EDUCATION INSTALLS TEMPORARY CLASSROOM UNITS ON OUTDOOR PLAYGROUND SPACE



For schools suffering severe overcrowding in specific school grades, Temporary Classroom Units

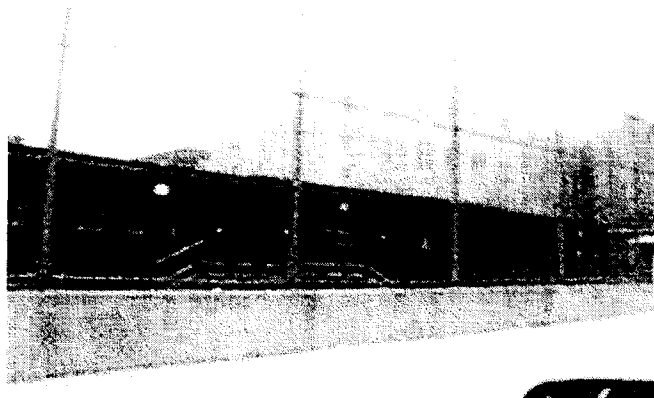
are installed on or near the school grounds to ease the overcrowding in the classroom. See photo of P.S. 276 in Brooklyn on the prior page. TCUs are approximately 1,200 square feet with adequate space for two classrooms housing 26 students in each. The agency responsible for overseeing the installation of these structures is the School Construction Authority. SCA officials concede that placement of these units is primarily on available playground space since often that is the only space available to schools within New York City. SCA officials further concede that even though available playground space is inevitably lost in the decision, overcrowding of academic classroom space takes precedence as the criteria for placing these TCUs. It appears that the primary concern when evaluating the feasibility of TCU placements by City Education officials is to address the need for more classroom space for academic learning, rather than the resulting loss of space for physical education curriculum and programs. SCA does seek to ensure that installation of the units complies with New York City building, fire and safety codes and regulations.

As of November 2002 there were 249 TCU units in 103 elementary schools in New York City. School data reveals that some "temporary" classroom units remain for as long as eight years. For example, P.S. 19 in Queens has had a TCU since 1995. TCUs are removed when overcrowding ceases or are relieved by construction of an addition or renovation of a school building providing the needed classroom space. Committee research uncovered no discernable process in writing or practice at DOE where loss of outdoor playground space is considered, let alone overrides a decision to place TCUs in overcrowded schools. School Construction Authority officials informed us that 40 TCU units were removed in recent years, however, those removed were just transferred onto other school playgrounds to relieve overcrowding in those schools.

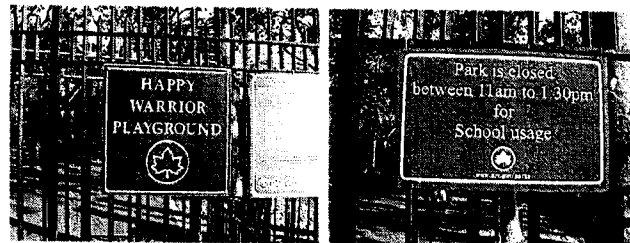
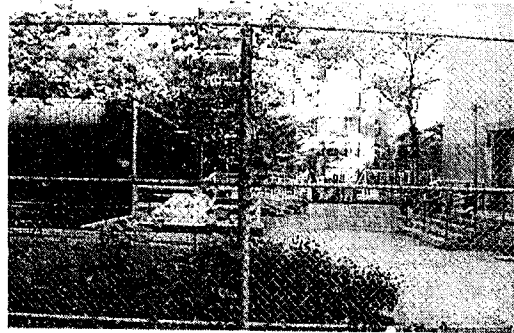
As noted earlier, Committee staff visited elementary schools in each of the five Boroughs. A total of 36 schools were visited over a four month period of time. The primary purpose of these visits was to "test" the City data concerning playground space. The visits also provided anecdotal information about TCUs and their placement on school playgrounds. The pictures included in this report were another product of these on-site inspections.

The visits revealed numerous examples of schools where the playground space was lost to TCUs and sometimes also parked cars. Virtually the entire playground area was filled with TCUs at PS 276 in Brooklyn. A school official at the school subsequently confirmed that there were "no useable outdoor facilities" for the older children (1st through 5th grades). Thankfully, there was space set aside and available for the Pre-kindergarten and kindergarten population. Other schools in Brooklyn had TCUs in the school yard but also, fortunately, had play areas of significant size, such as PS 32.

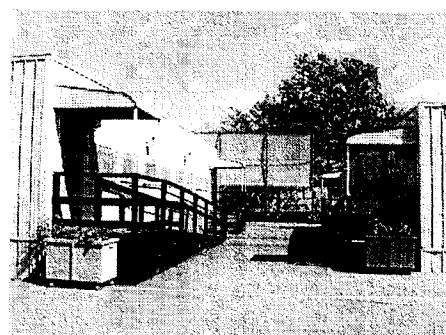
PS 96 in the Bronx showed a large portion of the schoolyard filled with TCUs. According to SCA and DOE documentation, there are 11 TCU units on that site. While there is remaining "open" space in between and in front of the TCUs at this location, a school official advised that "there is very little room" for recreation and no equipment available for the kindergarten population. The following is a picture of two of the TCUs on that site.



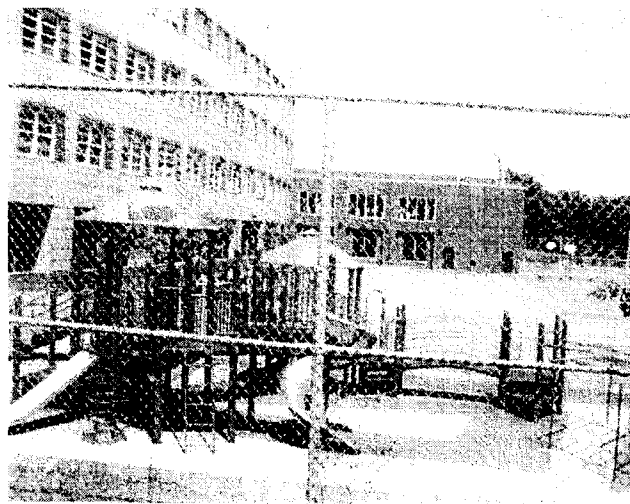
Manhattan has two schools with TCUs. Each of the schools contains two TCU units. One of these school playgrounds also contained parked vehicles, further eliminating playground space. In PS 5, TCUs took up an entire area that was once available for outdoor recreation. An area remains, however, which provides a rubberized floor and some minimal equipment. Another area of the school provides playground space for the kindergarten population. PS 163's entire school yard is taken up with TCUs. Right next to the school, however, is "The Happy Warrior", an adjacent alternative playground. This type of Jointly Operated Playground is more fully discussed in the next section. The following photos illustrate the TCUs on the site and the signs showing the adjacent park space available to students during school hours.



Sites visited in Queens provided yet other examples of TCU filled playground space with varying amounts of remaining playground space still available. At P.S. 19, mentioned earlier as housing one of the oldest TCU units on a playground site, faces such severe overcrowding, a school staff person told us bathrooms and hallways are used for storage in some places of the school building. The following shows images of TCU units in the school playground used for classroom space. It should be noted that while there are TCUs at PS 19, there is still other playground space available.



No TCUs are located in any elementary school in Staten Island. All of the schools visited had significant outdoor play space (PS 56, 60, 44 and 32), and many had state of the art playground equipment. One of the schools operated with a JOP (PS 6). The picture below on the next page is one example of a Staten Island school.



SED provides no oversight of TCU placements on school grounds in New York City. Arguably installation of TCUs on school grounds could be viewed as an erection, remodeling or construction on a school site as referred to in Education Law §408(3) and, hence, subject to SED oversight.

“(3) The commissioner of education shall approve the plans and specifications, heretofore or hereafter submitted pursuant to this section, for the erection or purchase of any school building or addition thereto or remodeling thereof on the site or sites selected therefore pursuant to this chapter, if such plans conform to the requirements and provisions of this chapter and the regulations of the commissioner adopted pursuant to this chapter in all respects; provided, however, that the commissioner of education shall not approve the plans for the erection or purchase of any school building or addition thereto unless the site has been selected with reasonable consideration of the following factors; its place in a comprehensive, long-term school building program; area required for outdoor recreational activities; educational adaptability, environment, accessibility; soil conditions; initial and ultimate cost.” [Emphasis added]

SED, as stated earlier, precludes its ability to review and approve such plans and specifications for New York City schools by accepting only outlines. This has the secondary effect of precluding review and approval of TCU installations and in turn, considering the further loss of available outdoor recreation space. Once again, the Commissioner’s response:

*“Our Office of Facilities Planning reviews the outlines but cannot perform a programmatic review that would determine if the amount of planned outdoor play area is adequate”.*²⁰

State regulations and state law bestow authority on SED to oversee that adequate space be provided. The installation of TCUs on outdoor playground space reflects on the loss of outdoor playground space and, therefore, clearly fits within the provisions of the statute requiring State Education Department oversight.

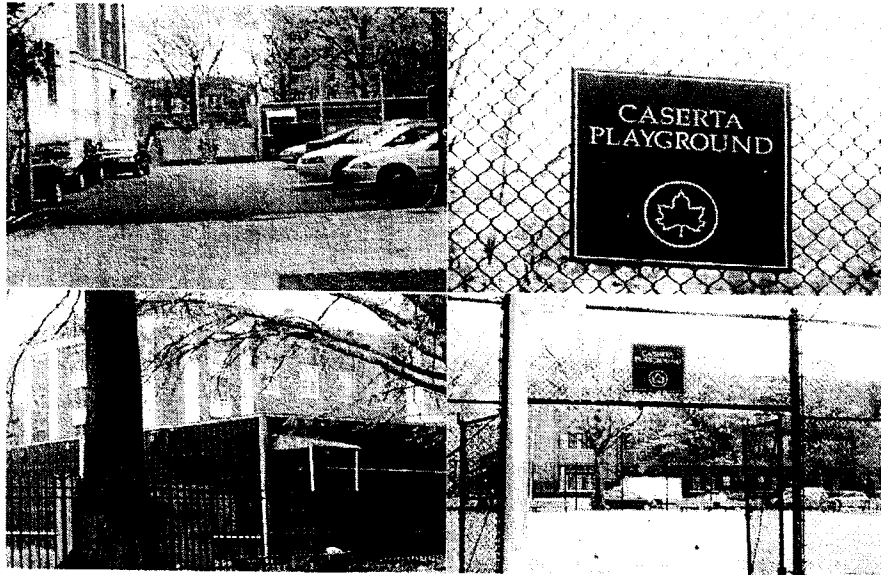
²⁰ Correspondence to Oversight Committee Chair Klein from Commissioner Mills, dated April 10, 2003.

JOINTLY OPERATED PLAYGROUNDS

When insufficient space exists for outdoor playground facilities at NYC schools, New York City officials sometimes provide Jointly Operated Playgrounds (JOP). The NYC Department of Parks and the NYC Department of Education jointly operate a shared park space, allowing for outdoor physical education curriculum activities to take place. These joint facilities are also available to schools that may already have playgrounds, but are fortunate to be located nearby to parks or facilities of this type operated by the Department of Parks. These sites are generally shared with the public but are limited to school children, teachers and school personnel during school hours.

As of October, 2002, there were 285 schools that participate in the JOP program, with 385 total acres of parks, athletic fields, gardens and land involved. The JOPs exist in all five boroughs of the City. Though staff of the Department of Education was unable to provide actual contracts or agreements executed between schools and the parks, City Education officials reported that the Parks Department staff maintains these areas with upgrading, cleaning, renovation and upkeep with school custodians having no responsibility for cleanup or maintenance. The JOP facilities may have athletic fields with large areas for teams sports to occur; asphalt areas in playground space for basketball, shuffleboard, volleyball etc; areas with playground equipment, such as slides, climbing apparatus, see-saws; and benches near paved or unpaved areas where recreational activities take place.

These facilities clearly provide excellent opportunities and options for outdoor play areas, especially for those schools that have insufficient outdoor space for recreational programs. For this option to be available, a school must be located in near proximity to a park. Thus, the JOP program is a potential for only some schools; it clearly is not the answer for all schools in need of playground space. The program should be nurtured, expanded and schools presently unconnected to nearby parks should be encouraged to develop these relationships. In other areas, these kinds of shared situations with community organizations or civic groups with available space should also be encouraged.



The collage above shows both TCUs placed in school playgrounds at P.S. 106 (Bronx) and the alternative playground, run jointly by City Parks and City Department of Education that is provided as an alternative for these students.

Though recent reports from DOE indicate an enhanced relationship with DOP on physical education activities for NYC school children and families, none of the recent initiatives speak to furtherance of

the JOP program through establishment of more JOP sites. Enhanced physical education programming is good, but the physical infrastructure is a prerequisite for any programming to be possible.

FINDINGS AND RECOMMENDATIONS

Committee findings show oversight of outdoor recreational facilities for NYC public schools falls “between the cracks” of State and City education agencies. Neither agency provides sufficient monitoring of these facilities to ensure that state law requiring that New York City’s young people be given adequate outdoor playground space is being enforced. Though State law and regulations require State Education Department oversight responsibilities of school facilities, State Education officials do not oversee New York City outdoor recreational facilities. Though New York City officials provide a standard for adequate outdoor facilities, they are unable to determine whether schools comply with their standard. Playground space is “lost between the cracks” in this shifting of responsibility and oversight.

Finding #1:

- **The State Department of Education does not monitor the adequacy of outdoor playground space for NYC public schools.**

State law requires “adequate” playground space be provided students, but education officials fail to define adequate and fail to oversee the City systems and policies.

Recommendation #1:

- **The State Education Department must establish and enforce a standard by which “adequate” playground space is defined for New York City public school playgrounds**

In order for SED to ensure that physical education curriculum is taught in all schools, SED must establish a definition of “adequate” facilities for all schools that would meet the criteria to fulfill the curriculum requirements. The Department should monitor compliance with such standards by providing staff oversight to enforce these guidelines so that our schools in New York City are provided with “adequate” outdoor playground space.

Finding #2:

- **The State Education Department abdicates its responsibility to review site plans and specifications pertaining to construction of school buildings, additions and renovations of school buildings, including installation of temporary classroom units installed on available outdoor playground space.**

SED precludes its right to review full plans and specifications for renovations or building of additions onto NYC school buildings, requiring only the outlines. Thus, SED with less detailed documentation, finds the outlines insufficient to “perform a programmatic review” of whether adequate playground space remains sufficient for school playgrounds.

Recommendation #2:

- **SED must use its current authority to receive, review, and approve all necessary plans and specifications governing renovations, additions and building construction for NYC schools, including the installation of Temporary Classroom Units on outdoor playground sites.**

By waiving receipt of full plans and specifications, SED precludes its right to perform a full programmatic review over the alterations of outdoor playground space. Provisions exist in state law for SED to receive and review full plans and specifications over outdoor playground space when additions, renovations or building occurs on the space. SED must use this authority to review and approve all plans that alter NYC’s outdoor recreation space, including the placement of TCU units onto school playgrounds in New York City. They must ensure that such plans provide the necessary details to allow for a complete SED compliance assessment.

Finding #3:

- **The City's 1994 document which sets forth standard space requirements for primary and intermediate schools incorrectly states that playgrounds are not mandated requirements.**

While this document provides detailed information governing space requirements for the City's school playgrounds, its preface incorrectly indicates that playgrounds are not mandated requirements. Both State law and regulations clearly state that adequate outdoor recreational facilities are required in NYC schools.

Recommendation #3:

- **The City should update this and any other City document to correctly state that playgrounds are mandated requirements.**

Ensuring that State law is enforced and complied with must begin with recognition that the law exists. State law clearly requires that it is unlawful to construct playgrounds in NYC without an open-air playground. The City should recognize that clearly in all of its official documents and communications.

Finding #4:

- **While the NYC Department of Education provides a standard for outdoor playground space it does not effectively monitor school compliance with its standard. It fails to collect and maintain square footage data to effectively calculate if a school fits the standard.**

New York City Department of Education officials provide a guideline for outdoor recreational space for pupils in New York City's public schools. The guideline applies a formula that calculates the number of students enrolled in the school with the square footage available for outdoor recreational space. New York City Department of Education officials are unable to provide up-to-date data on the school space square footage for playgrounds. Thus, a guideline established without critical data leaves the Department in a vacuum about compliance with its own policies.

Recommendation #4:

- **The New York City Department of Education must maintain current data on school facilities that would allow for its assessment of available outdoor recreational playground space.**

The New York City Department of Education should reassess the process by which it collects data on school buildings and facilities and update this data. The Department must regularly assess whether adequate outdoor playground space is available in each school to meet current physical education curriculum requirements.

Finding #5:

- **Installation of Temporary Classroom Units on school playgrounds is based entirely on classroom overcrowding demands without weighing the loss of playground space on these same students.**

School Construction Authority (SCA) officials concede that placement of these units is primarily on available playground space since often that is the only space available to schools within New York City. SCA officials further concede that even though available playground space is inevitably lost in the decision, overcrowding of academic classroom space takes precedence as the criteria for placing these TCUs.

Recommendation #5:

- **City Education officials must ensure that the loss of adequate outdoor playground space is balanced against the need for TCU installation to relieve overcrowded classroom space and that adequate alternatives are provided when playground space is lost to TCUs.**

Local and central Department of Education officials must balance the need for outdoor playground space when considering the installation of TCUs to meet overcrowded classroom conditions. Alternative means for providing playground space must be ensured if existing outside space is lost to a TCU.

Finding #6:

- **Temporary Classroom Units installed on playgrounds are often not temporary. Furthermore, TCU placement on school playgrounds is not periodically monitored for the effects on physical education programs due to prolonged loss of playground space.**

The elimination of playground space by the installation of Temporary Classroom Units in overcrowded school situations is not adequately monitored and “temporary” is often not temporary at all. Schools built prior to 1989, when SCA assumed responsibility for building NYC schools, are not monitored and oversight of TCU installation is not evident. Once TCUs are installed, there is no set policy administered at the NYC Department of Education to review continued need, leaving removal of the units to the discretion of the Superintendent.

Recommendation #6:

- **Annual review of each site with TCUs on outdoor playgrounds should be enforced as Department of Education policy. “Temporary” should mean temporary. Long term solutions must be ensured to address both overcrowded classroom conditions and outdoor playground space to meet physical education curriculum requirements.**

The placement of TCU units onto school playgrounds in New York City should fit the definition of an alteration of outdoor playground space and hence, would require review by SED officials. Both City and State Education officials should establish a process of regular reviews to ensure the continued need for “temporary” classroom units. Such review must also ensure that adequate playground space is also being provided.

Finding #7:

- **The School Construction Authority, designated as the primary school construction entity for new schools in New York City, fails to consider DOE guidelines for outdoor recreational space when constructing additions onto existing school buildings and installing Temporary Classroom Units on available outdoor playground space.**

SCA officials concede that placement of these units is primarily on available playground space since often that is the only space available to schools within New York City. SCA officials at no time either in phone calls or correspondence referred to the standard suggested in some Department of Education documents suggesting preferred minimums for outdoor playgrounds.

Recommendations #7:

- **City Education officials must communicate their policy and guidelines for preferred space minimums for outdoor playground space to School Construction Authority officials.**

- **State law governing the School Construction Authority should be amended to require that construction onto a school playground may only occur if equivalent alternative playground area is provided. This would parallel a similar provision in current law applicable to the Education Construction Fund. [Education Law §454(20)]**

In order for SCA to provide adequate facilities when building, renovating and remodeling NYC public schools, they must be informed of the preferred minimum space requirements established by the Department for adequate outdoor playground space. SCA President William Goldstein stated in a letter to Chairman Klein, "...I am unaware of any regulations governing the size of these spaces..."²¹ A provision in the State Education Law should be added to require that outdoor playground space cannot be lost by building, renovating or installing of structures without an alternative being provided.

Finding #8:

- **NYC Department of Education's Jointly Operated Playgrounds program provides excellent opportunities for schools to use NYC Department of Parks facilities during school hours for outdoor recreational space. While recent initiatives from DOE promise enhanced relationships with DOP, they do not mention adding any more JOP sites.**

NYC Department of Parks and NYC Department of Education jointly operate playgrounds and park space, making them available to school children during school hours for physical education programs.

Recommendation #8:

- **New York City school officials must continue to provide these JOP services and to search for similar alternatives that would provide NYC elementary school children with outdoor playground facilities. Recently announced DOE initiatives to enhance its programs at DOP facilities to include more school children and parent programming, must also include expansion where possible at more JOP sites.**

New York City has a wealth of facilities, arenas and community organizations that could provide space and facilities to areas where schools face site restrictions due to space and overcrowding. School officials should designate education staff with physical education certification to oversee a site search of community organizations and sports facilities and arenas that could provide such facilities to our schools.

Finding #9:

- **There is a dramatic rise in the number of children diagnosed as overweight and obese and suffering with serious diseases linked to poor health habits and lack of exercise. A recent study revealed 43% of elementary students are either overweight or obese.²²**

Children diagnosed with type 2 diabetes are on the rise and these children are often overweight and lack physical exercise as a regular part of their daily routine. The Center for Disease Control and the Surgeon General has called this a serious national health crisis.

²¹ Correspondence from SCA President Goldstein to Chair Klein dated April 10, 2003.

²² **NYC Vital Signs. Obesity Begins Early: Findings Among Elementary School Children in New York City.** Volume 2, No.5. June 2003. <http://home.nyc.gov/html/doh/pdf/survey/survey-2003childobesity>

Recommendation #9:

- **Efforts to establish a public campaign to address the issue of obesity and poor physical fitness habits, similar to that of the 1963 Physical Fitness campaign of President John F. Kennedy, must be established to educate our young people about the importance of a good physically fit lifestyle and the dangers of being overweight. While NYC DOE has recently released plans for more expansive physical education initiatives in the schools, this public campaign will ring hollow without increased attention to infrastructure and facility needs for outdoor playground space.**

President John F. Kennedy's 1963 physical fitness campaign excited a nation. Students, teachers and our Country's citizenry were alerted to the value and need to keep physically fit. A similar campaign today would address these same issues, providing our young people with some of the tools to face their future with healthy habits and physically active lifestyles. Schools and communities are urged to address the issue by empowering parents and providing our children with the necessary tools to stay physically fit. Adequate school playground facilities must be a critical part of this campaign.

CONCLUSION

New York City children are at risk. With the threat of nurturing a generation of “couch potatoes” facing lifelong obesity and poor health problems, New York City school children must not suffer because state and local officials are not fulfilling their responsibilities.

- State and City officials must develop a plan of action and perform their oversight responsibilities. State and City Education officials must do more.
- City officials have a reasonable standard for schools to determine the adequacy of their outdoor school playgrounds. City school officials need to update the data they have in order to ensure compliance with that formula.
- State and City officials must oversee play yards where TCU units are placed. Processes and procedures must be developed which ensure alternatives for outdoor play space and recreation, where overcrowded schools require installation of Temporary Classroom Units.

Our children need healthy living and playing. Our schools and their facilities are critical to this need.