



June 23, 2008

David L. Brewer III, Superintendent
Los Angeles Unified School District
Office of Superintendent
333 S. Beaudry Ave
Los Angeles, CA 90017

Re: Williams Complaint Physical Education Teacher Vacancies, Misassignments, and Subject Matter Competency; Quality Physical Education

Dear Superintendent Brewer:

I. Overview

The undersigned Complainants submit this complaint (“Complaint”) under the Uniform Complaint Process, Cal. Educ. Code § 35186 (“Williams UCP”). There are vacancies and misassignments of physical education teachers, and teachers are assigned to teach physical education classes for which the teachers lack subject matter competency at schools within the Los Angeles Unified School District (“LAUSD”). Cal. Educ. Code § 35186 (e)(2)(A) and (C); 5 CCR 4682(a) (1) and (3). The physical education classes are required under state law. Complainants are informed and believe that this is a problem in various schools and recurs from semester to semester and year to year. Through this process, Complainants seek to work with the LAUSD, the Board of Education, the Superintendent, and individual principals to ensure a quality physical education for all students by identifying, remedying, and publicly reporting on physical education teacher vacancies and misassignments and lack of subject matter competency, and physical education deficiencies as described in this Complaint. Complainants seek to work with LAUSD to help students move more, eat well, stay healthy, and do their best in school and in life.

“A complaint may add as much text to explain the complaint as [the complainant] wishes.” Cal. Educ. Code § 35186(a)(2). It is necessary to explain this Complaint by explaining how physical education is administered within LAUSD.

The California State Legislature has found and declared that “the physical fitness and motor development of children in the public elementary schools is of equal importance to that of other elements of the curriculum.”¹

With all due respect, LAUSD engages in a pattern and practice of not providing students a quality physical education. There are vacancies and misassignments of physical education teachers, and teachers are assigned to teach physical education classes for which the teachers lack subject matter competency. LAUSD does not enforce state law requiring an average of 20 minutes per day of physical education for students in elementary school. Many physical education classes are severely overcrowded, and severely overcrowded compared to academic

¹ Cal. Educ. Code § 51210.2(a).

classes. LAUSD does not provide adequate places and facilities for physical education and physical activity through, for example, the optimal and joint use of schools, pools, and parks. Physical education vacancies and misassignments and lack of subject matter competency, and the pattern and practice of not providing quality physical education, deprive students of qualified physical education teachers and of physical education minutes, and contribute to the risk of childhood obesity and diabetes for all students, and disproportionately for low income students and students of color. 90% of LAUSD children are children of color, and 74% are low income (qualify for free or reduced meals).² Cf. 5 CCR §§ 4610(a), 4620, 4630(b)(1), 4900, 4902 (unlawful discrimination).

Complainants request that individual principals and the Superintendent or his designee take immediate action to remedy the problems identified in this Complaint within 30 days of receipt of this Complaint, and to report the resolution of this Complaint to Complainants within 45 days of receipt. Cal. Educ. Code § 35186(b). Complainants seek to meet with LAUSD during this 30 day and 45 day time frame to address these concerns.

The *Williams* Uniform Complaint Procedure need not be adversarial. Complainants seek to remedy the deficiencies identified in this Complaint by working with LAUSD. For example, Complainants support an appropriate motion and resolution by the LAUSD Board of Education to help remedy the teacher and physical education deficiencies. Complainants look forward to working with the Board, the Superintendent, principals, teachers, parents, students, and others to support an appropriate Board motion -- and to implement the resolution. A proposed Board motion is included as Exhibit 4. An analysis of the costs associated with the proposed motion is included as Exhibit 5.

Physical education matters. LAUSD is failing fitness. Evidence-based research published by the California Endowment and others documents the importance of quality physical education teachers and programs to improve student health, youth development, and academic performance, and documents unfair health disparities based on income, race, and ethnicity. According to the California Endowment:

- Both quantity and quality of physical education are deficient in grades K-12 in California schools, but the problems are most severe at the elementary level.
- Physical education quantity and quality are particularly deficient for less affluent students and those in racial and ethnic groups at high risk for overweight and obesity.
- Personnel and material resources are clearly inadequate to support quality physical education in many schools, particularly those in less affluent communities.
- Improving the quantity and quality of physical education programs is likely to improve the health and academic performance of students. Time spent in moderate to vigorous activity is key.

² Data Quest: <http://data1.cde.ca.gov/dataquest/>; race/ethnicity 2006-07; free/reduced lunch 2006-07.

- Research-based, activity focused physical education programs for schools at all levels have been shown to improve physical activity and provide other benefits, such as improved concentration and decreased disruptive behavior.³

Policy Reports by the California Endowment are attached as Exhibits 1 and 2. These Reports are available on the web at www.cityprojectca.org/blog/archives/601.

Complainants request that principals and the Superintendent or his designee take immediate action to provide quality physical education for all students, including but not limited to taking the following actions:

- remedy vacancies and misassignments of physical education teachers, and assign teachers to teach physical education classes for which the teachers have subject matter competency;
- ensure that the data collected through the categorical program monitoring discloses the extent to which each school within LAUSD provides physical education teachers with appropriate credentials and subject matter competency;
- ensure that the data collected through categorical program monitoring discloses the extent to which each teacher vacancy, misassignment, or lack of subject matter competency within LAUSD involves a physical education class or teacher;
- ensure that the information LAUSD publishes in the District Accountability Report Card, SARC, and SARC summaries discloses the extent to which each teacher vacancy, misassignment, or lack of subject matter competency within LAUSD involves a physical education class or teacher;
- enforce the physical education minutes requirements under state law;
- limit physical education class size to a cap of 55 students per teacher;
- achieve and maintain parity in class size between physical education and academic classes;
- implement a master joint use agreement for schools, pools, and parks to make optimal use of scarce land and resources to provide places for physical education and physical activity;
- conduct a health impact assessment of the teacher and physical education deficiencies described in this Complaint;
- ensure equal justice for all students in providing a quality physical education; and
- ensure there is no retaliation by LAUSD staff, employees, or agents against Complainants or anyone else in connection with this Complaint.

³ See San Diego State University, *Physical Education Matters: A Full Report from the California Endowment* (California Endowment January 2008) [hereafter "*Physical Education Matters I*"]. See also San Diego State University, *Physical Education Matters* (California Endowment Policy Brief January 2007) [hereafter "*Physical Education Matters F*"]. Accord, UCLA Center to Eliminate Health Disparities and Samuels & Associates, *Failing Fitness: Physical Activity and Physical Education in Schools* (California Endowment Policy Brief 2007).

II. Complainants

Anonymous is/and or are anonymous.

Ike M. Kaludi and Irene Kaludi are parents of an elementary school student in LAUSD.

Cathy Figel is a physical education teacher in LAUSD.

Anahuak Youth Association focuses on improving education, health, and the environment for thousands of disproportionately low income and Latino children in underserved communities in North East Los Angeles. Anahuak also provides team soccer opportunities to children whose families cannot afford the fees charged by other programs.

California Pan-Ethnic Health Network (CPEHN) works to ensure that all Californians have access to quality health care and can live healthy lives. CPEHN's mission is to improve access to health care and eliminate health disparities by advocating for public policies and sufficient resources to address the health needs of multicultural communities.

Concerned Citizens of South Central Los Angeles is a nonprofit public benefit community-based organization whose mission is to work for social justice and economic and environmental change within the South Central community.

Prevention Institute is a non-profit national center dedicated to improving community health and well-being by building momentum for effective primary prevention. Primary prevention means taking action to build resilience and to prevent problems before they occur. Since its founding in 1997, the organization has focused on injury and violence prevention, traffic safety, health disparities, nutrition and physical activity, and youth development.

The City Project is a multicultural policy and legal advocacy organization that is working to broaden access to parks and open space, especially in underserved communities, and to fight childhood obesity by guaranteeing that students get enough physical education.

III. Physical Education Teacher Vacancies, Misassignments, and Lack of Subject Matter Competency

There are vacancies and misassignments of physical education teachers, and teachers are assigned to teach physical education classes for which the teachers lack subject matter competency within LAUSD. Cal. Educ. Code § 35186 (e)(2)(A) and (C); 5 CCR 4682(a) (1) and (3). This deprives students of the right to a qualified physical education teacher and a quality physical education.

Under state law, teachers who teach physical education are required to be fully credentialed, either through a multiple subject teaching credential or a single subject teaching credential in physical education. The elements of a credential and years of experience are the best predictors of a teacher's effectiveness in promoting high student achievement. *See* Linda Darling-

Hammond, *Access to Quality Teaching: An Analysis of Inequality in California's Public Schools* at 15-23, available at www.decentschools.org/expert_reports/darling-hammond_report.pdf.⁴

A. Teacher Vacancies, Misassignments, and Lack of Subject Matter Competency at Various Schools

In elementary schools, there are vacancies and misassignments of physical education teachers, and teachers are assigned to teach physical education classes for which the teachers lack subject matter competency. Instead, teacher's aids, parents, or outside agencies who do not have subject matter competency teach what they call "PE." Classroom teachers who have multisubject credentials go to grade level meetings during physical education class time, instead of teaching physical education classes. This deprives students of the right to a qualified physical education teacher and a quality physical education.

In middle schools, some classes such as drill team or dance are taught for physical education credit by teachers who lack subject matter competency. In these classes, there are vacancies and misassignments of physical education teachers, and teachers are assigned to teach physical education classes for which the teachers lack subject matter competency. This deprives students of the right to a qualified physical education teacher and a quality physical education.

Some high schools are giving students physical education credit for marching band even though the teachers lack subject matter competency and do not have a physical education credential. The teachers in these classes do not teach the average of 400 minutes of physical education every ten days as required under state law. High school intersession classes that should be taught by a coach with subject matter competency and a physical education credential instead are taught for extra money by individuals who lack subject matter competency and do not have a physical education credential. In these classes, there are vacancies and misassignments of physical education teachers, and teachers are assigned to teach physical education classes for which the teachers lack subject matter competency. This deprives students of the right to a qualified physical education teacher and a quality physical education.⁵

B. Physical Education Teacher Credential Requirements

The elements of a credential and years of experience are the best predictors of a teacher's effectiveness in promoting high student achievement, as discussed above.

To be a fully credentialed teacher, one must obtain either a multiple subject teaching credential (typically obtained for teaching at the elementary school level),⁶ or a single subject teaching credential in the area of physical education (typically obtained for teaching at the middle or high

⁴ See generally Public Advocates, *A Teacher is Key: Using the Williams Complaint Process to Monitor Teacher Quality* (2007).

⁵ Individual teachers are not at fault and therefore are not identified at the present time, and in the case of teacher vacancies there is no teacher to identify.

⁶ See Cal. Educ. Code § 44282(b), as amended by AB 3001 (2004).

school level).⁷ The multiple subject credentialed teacher has less training in physical education than a single subject teacher.

The multiple subject credential and single subject credential can be either a “preliminary” credential or “professional clear” credential. A preliminary credential is for beginning teachers and is valid for 5 years. An individual who holds a preliminary credential may obtain a professional clear credential after completing several further requirements.

In order to obtain the five-year preliminary multiple subject teaching credential, or a single subject teaching credential in physical education, a potential teacher must successfully complete the following: (1) A B.A. or higher, (2) passage of the standardized teachers’ test, the CBEST, (3) a professional preparation subject program, (4) alternative methods of developing English language skills, (5) subject-matter knowledge requirement through exam or program, (6) knowledge of the U.S. Constitution, (7) computer competency, and (8) recommendation from an institution of higher education.⁸

After obtaining a *preliminary* multiple subject or single subject credential, an individual may apply for a professional clear credential. The requirements for the professional clear credential must be completed within five years of the issuance of the preliminary credential and include the following: (1) valid preliminary teaching credential, (2) completion of beginning teachers’ induction or fifth year of program, (3) health education, (4) special education, (5) advanced computer-based technology, and (6) advanced study in teaching English Learners.⁹

For all prospective teachers who wish to obtain a multiple subject credential, and for those who choose to demonstrate their subject matter competence in physical education through examination, CCTC offers a series of subject matter examinations, the passage of which demonstrates an applicant’s subject matter knowledge. The examinations, the California Subject Examinations for Teachers (“CSET”), reflect the most current K–12 California Student Academic Content Standards.¹⁰

For the multiple subject teaching credential, the comprehensive subject matter requirements include three domains: Movement Skills and Movement Knowledge, Self Image and Personal Development, and Social Development.¹¹ For a single subject credential, the CSET

⁷ Cal. Educ. Code § 44257(a)(11).

⁸ See Cal Code Regs., tit. 5, § 80413(a).

⁹ See Cal Code Regs., tit. 5, § 80413(b).

¹⁰ California Subject Examinations for Teachers, About the CSET: Program Overview, *available at* http://www.cset.nesinc.com/CS13_overview.asp.

¹¹ Candidates for multiple subject credentials are required to:

Understand the key factors in the development, analysis, and assessment of basic motor skills. They understand how to structure lessons to promote maximum participation, inclusion, and engagement in a variety of traditional and nontraditional games, sports, dance, and other physical activities. Candidates select lessons and activities based on factors such as the developmental levels of students and individual differences. They can design appropriate exercise programs and activities based on physical fitness concepts and applications that encourage physically active lifestyles. They analyze the impact of factors such as exercise, relaxation, nutrition, stress, and substance abuse on physical health and well being, and can design activities to provide opportunities for enjoyment, self-expression, and communication. Candidates create cooperative and competitive movement activities that require personal and social responsibility. They

comprehensive physical education subject matter requirements include seven domains: Professional Foundations, Growth, Motor Development and Motor Learning, The Science of Human Movement, The Sociology and Psychology of Human Movement, Movement Concepts and Forms, Assessment and Evaluation Principles, and Integration of Concepts.¹²

The Legislature has sought to bolster the qualifications of physical education teachers in elementary schools where a multiple subject credential teacher may teach physical education. Because “the physical fitness and motor development of children in the public elementary schools is of equal importance to that of other elements of the curriculum,”¹³ the Legislature declared its intent “to encourage each school district maintaining an elementary school . . . to do one of the following:”

(1) Employ a credentialed physical education teacher to provide instruction in physical education for each class of grades 1 to 6, inclusive, within any elementary school in the district for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.

(2) Provide each teacher providing instruction in physical education to any of grades 1 to 6, inclusive, within any elementary school in the district with yearly theoretical practical training in developmental physical education, as set forth in the Physical Education Framework adopted by the State Department of Education pursuant to Section 33350, except that any teacher who has successfully completed one college level course in elementary physical education shall not be subject to this paragraph.¹⁴

Thus the Legislature intended that a single subject credentialed physical education teacher teach physical education classes in elementary schools, or that the multiple subject credentialed teacher at least have further physical education training.

The California Department of Education provides a professional development program for physical education teachers. *The California Physical Education-Health Project (A California Subject Matter Project)* provides focused professional development for teachers in physical education by offering three fully operating sites and an active recruitment of planning sites around California.¹⁵

C. Teacher Vacancies, Misassignments, and Lack of Subject Matter Competency Deprive Students of the Right to Quality Physical Education

Physical education teachers with the proper credentials, training, and experience, and subject matter competency are more likely to provide a quality physical education to students than other teachers. For example, qualified teachers are more likely to provide 200 minutes of physical

understand the significance of cultural and historical influences on games, sports, dance, and other physical activities.

Content Specifications for Subject Matter Requirement for the Multiple Subject Teaching Credential, *available at* http://www.cset.nesinc.com/PDFs/CS_multisubject_SMR.pdf.

¹² Physical Education Subject Matter Requirements, *available at* http://www.cset.nesinc.com/PDFs/CS_PE_SMR.pdf.

¹³ Cal. Educ. Code § 51210.2(a).

¹⁴ Cal. Educ. Code § 51210.2(b).

¹⁵ Available at <http://csmc.ucop.edu/cpehp/about/overview.html>.

education every ten days as required under state law. Qualified teachers are more likely to provide active minutes rather than “sitting around doing nothing” minutes during physical education classes. Qualified teachers are more likely to implement physical education standards during physical education classes. Physical education teacher vacancies and misassignments and lack of subject matter competency deprive students of qualified physical education teachers and the physical education to which students are entitled.

D. Categorical Program Monitoring Data Should Disclose Physical Education Teacher Vacancies, Misassignments, and Lack of Subject Matter Competency

Data published by LAUSD does not disclose or identify physical education teacher vacancies, misassignments, and lack of subject matter competency. Teacher vacancies, misassignments, and lack of subject matter competency are reported without identifying the class or subject, except for teachers of English learners. The District Accountability Report Card for 2006-07, for example, reports a total of 21,552 teacher misassignments and 99 vacancies but does not identify which of those are physical education teachers. This makes it more difficult to ensure compliance. See www.lausd.k12.ca.us/lausd/offices/bulletins/ldstldtz.html. Similarly, the School Accountability Report Card (SARC) summaries for individual schools do not identify vacancies and misassignments by physical education.

Complainants ask that the Superintendent or his designees take immediate action to:

- ensure that the data collected through the categorical program monitoring discloses the extent to which each school within LAUSD provides physical education teachers with appropriate credentials and subject matter competency;
- ensure that the data collected through the categorical program monitoring discloses the extent to which each teacher vacancy, misassignment, or lack of subject matter competency within LAUSD involves a physical education class or teacher;
- ensure that the information LAUSD publishes in the District Accountability Report Card, SARC, and SARC summaries discloses the extent to which each teacher vacancy, misassignment, or lack of subject matter competency within LAUSD involves a physical education class or teacher.

IV. Explaining this Complaint: LAUSD Engages in a Pattern and Practice of Depriving School Children of a Quality Physical Education

“A complaint may add as much text to explain the complaint as [the complainant] wishes.” Cal. Educ. Code § 35186(a)(2). It is necessary to explain this Complaint by explaining how physical education is administered within LAUSD. With all due respect, LAUSD engages in a pattern and practice of not providing students a quality physical education. The vacancies and misassignments and lack of subject matter competency for physical education teachers, and the pattern and practice of not providing quality physical education, deprive students of qualified physical education teachers and of physical education minutes, and contribute to the risk of

childhood obesity and diabetes for all students, disproportionately for low income students and students of color.

A. Physical Education, Academic Performance, and Student Health

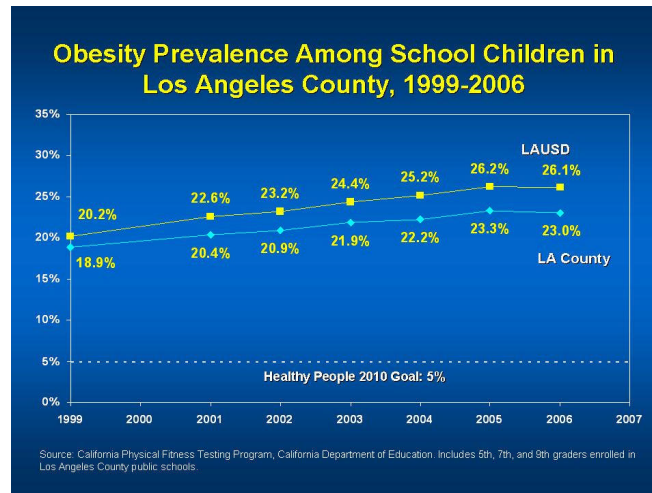
The California Legislature has found and concluded as follows:

- (a) A lack of adequate physical activity and appropriate nutrition has greatly contributed to the epidemic levels of obesity found in California.
- (b) Obesity is a key risk factor associated with a number of health problems including heart disease, diabetes, some cancers, hypertension, gallbladder disease, musculoskeletal disorders, and mental health.
- (c) According to the State Department of Public Health, the costs of obesity in California are estimated to equal more than \$21.7 billion in health care costs, workers' compensation costs, and lost productivity.
- (d) According to the State Department of Education, healthy, active, and well-nourished children are more likely to attend school and are more prepared and motivated to learn.
- (e) Healthy children are also more likely to grow up to be healthy adults and are less likely to develop costly and harmful health problems.
- (f) California's youth have the potential to advance the generational change necessary for reversing and preventing the devastating consequences of such an epidemic.
- (g) Physical education can provide necessary physical activity while motivating a child to maintain healthy eating habits and to engage in regular physical activity as an aspect of one's lifestyle.¹⁶

The Los Angeles County Department of Public Health has documented that obesity among LAUSD students has increased from 20.2% in 1999 to 26.1% in 2006, going from 1 in 5 children being obese to over 1 in 4. The percentage of overweight school children traditionally has increased at a faster rate at LAUSD than at other school districts in Los Angeles County.¹⁷ The percentage of obese school children continues to be persistently higher at LAUSD compared to other schools in the County. These facts are illustrated in the following chart from the County Health Department.

¹⁶ Senate Bill 601, amending Education Code sections 33352 and 51241 (filed Oct. 14, 2007).

¹⁷ Los Angeles County Department of Public Health, Obesity Among School Children in Los Angeles County, 1999-2006, www.flickr.com/photos/cityprojectca/2458846090.



Over 87% of LAUSD children were not physically fit under state Fitnessgram standards in 2004.¹⁸

¹⁸ Robert García and Aubrey White, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region* at 9 and authorities cited (The City Project Policy Report 2006) (hereafter “García and White, *HPSC for the Los Angeles Region*); Cara Mia DiMassa, *Here’s the Skinny: Most Students Aren’t*, L.A. Times, Nov. 25, 2004. See also Howard Blume, *It’s a stretch for schools to find enough space for P.E., As students’ health becomes a bigger issue, space constraints in L.A. Unified make fitness tougher to achieve*, L.A. Times, Nov. 26, 2006; Jennifer Radcliffe, *Going to War Against Epidemic of Childhood Obesity*, Daily News, Jan. 27, 2004.

The following chart compares the performance on Fitnessgram tests by students in LAUSD compared to the state of California.

	LAUSD	California
Obese Children ¹	30.4%	26.6%
5 th Grade Passed 6 of 6 Fitnessgram tests ²	19.7%	25.6%
7 th Grade Passed 6 of 6 Fitnessgram tests ²	19.7%	29.6%
9 th Grade Passed 6 of 6 Fitnessgram tests ²	17.7%	27.4%
People of Color ²	90.1%	70.6%
Free/Reduced Meals ²	73.6%	50.4%
API Scores ²	655	721

¹ California Center for Public Health Advocacy, www.publichealthadvocacy.org/growingepidemic.html; 2004 Fitnessgram. Obesity based on assembly district.

² Data Quest: <http://data1.cde.ca.gov/dataquest/>; Fitnessgram results from 2005-06 ; race/ethnicity 2006-07; free/reduced lunch 2006-07.

At LAUSD's South Gate High School, 1,600 children took the state Fitnessgram test and not one passed. Forty schools did not have a single physically fit student. Less than 10% of students were physically fit in nearly one-third of the 605 schools in LAUSD. Only eight schools had student populations that are more than 50% physically fit. This is shown in the following chart.

Percentage of Physically Fit Children in LAUSD Schools¹⁹

Percentage of Physically Fit Children	Number of Schools in LAUSD
0%	40
1-5%	58
6-10%	96
11-15%	123
16-20%	83
21-25%	75
26-30%	42
31-35%	38
36-40%	22
41-45%	16
46-50%	4
>50%	8

The United Teachers of Los Angeles (UTLA) supports a physical education campaign. See Exhibit 7; www.cityprojectca.org/ourwork/schools.html#utla.

¹⁹ García and White, *HPSC for the Los Angeles Region* at 9 and authorities cited.

The Los Angeles County Department of Public Health has analyzed the prevalence of childhood obesity for 128 cities and communities in Los Angeles County, as discussed below.

B. LAUSD Does Not Enforce State Physical Education Minutes Requirements

LAUSD does not enforce requirements under state law requiring an average of 20 minutes per day of physical education in elementary school.²⁰ This deprives students of the right to physical education minutes and to a quality physical education. LAUSD must enforce the law requiring physical education minutes, and must provide qualified physical education teachers to teach those minutes.

The Legislature has mandated that in grades 1 to 6, children are required to receive instruction in physical education for “not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.”²¹ For grades 7-12, that amount is increased to a “total period of time of not less than 400 minutes each 10 school days.”²² In order to receive a high school diploma, students are required to take two year-long courses in physical education, unless they are exempted.²³ Thus, state statutes provide that schools provide physical education courses.

Student exemptions and waivers are, however, permitted. Individual students may seek a (1) temporary, (2) two-year, and (3) permanent exemption from physical education courses from the governing board of a school district or the office of the county superintendent of schools of a county. A temporary exemption is granted if the student is ill or injured or the student is enrolled in school for half-time or less;²⁴ pupils may be excused from classes during grades 10-12 for driver training as well.²⁵ A two-year exemption is permitted during grades 10 to 12 if the student passes the physical performance test.²⁶ In addition, a student may be granted a permanent exemption under certain circumstances.²⁷

While section 51241 of the California Education Code outlines the individual exemptions given to students, section 33050 allows the governing board of a school district or a county board of education to request the State Board of Education to waive provisions of the education code,

²⁰ California Center for Public Health Advocacy (June 8, 2006). Thirty-seven school districts did not enforce physical education minutes requirements in 2004-05 and 2005-06. *See* Exhibit 12. LAUSD was the only school that was evaluated in both years and was out of compliance both times. *Id.* *See* Robert García and Aubrey White, *Healthy Parks, Schools, and Counties: Mapping Green Access and Equity for California* (2007).

²¹ Cal. Educ. Code § 51210 (g).

²² Cal. Educ. Code § 51222 (a).

²³ Cal. Educ. Code § 51225.3(a)(1)(F).

²⁴ Cal. Educ. Code § 51241(a).

²⁵ Cal. Educ. Code § 51222(a).

²⁶ *Id.* at (b).

²⁷ A student may be granted a permanent exemption if the student:

(1) Is 16 years of age or older and has been enrolled in the 10th grade for one academic year or longer.

(2) Is enrolled as a postgraduate pupil.

(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of Section 4346 of Title 15 of the California Code of Regulations.

Cal. Ed. Code § 51241(c).

including the physical education requirements, on a school-, district- or county-wide basis. The criteria for waivers are outlined in State Board of Education Policy # 99-03.²⁸

No physical education waivers are granted to elementary grades.

However, middle/ junior high school waivers are considered if the schools operate on a “block schedule.” A block schedule exists when new classes begin each school term or when classes are changed on alternate days.²⁹ To qualify for a waiver, a secondary school or middle or junior high school operating on a block schedule must meet specific criteria.³⁰ Exemptions to physical education requirements are commonplace, so many high school students take no physical education at all.³¹

In sum, the Legislature has mandated that children in grades 1 to 6 must receive instruction in physical education for “not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.”³² Only individual student exemptions are permitted for illness and injury for students in these lower grades. In contrast, although students in grades 7-12 are mandated to receive physical education instruction for a “total period of time of not less than 400 minutes each 10 schooldays,”³³ class and school-wide waivers are possible along with individual student exemptions.³⁴

C. LAUSD Physical Education Classes Are Overcrowded

In LAUSD, the five largest physical education class sizes averaged 93 students in middle schools and 87.5 in high schools.³⁵

²⁸ *Physical Education Requirements*, www.cde.ca.gov/be/ms/po/policy99-03-june1999.asp.

²⁹ *Block Scheduling: Boon or Bain in Physical Education*, available at www.sportsmedia.org/sportapolisnewsletter20newlook.htm.

³⁰ These criteria are:

Students are in physical education a minimum of 18 weeks in 70-90 minute daily periods during the regular school year.

The district describes a method by which it will monitor student’s maintenance of a personal education course.

The district provides evidence that alternate day scheduling for physical education rather than alternate term scheduling has been thoroughly investigated. Reasons why alternate day scheduling will not work are clearly explained.

The district provides information that shows the physical education program is aligned with the Physical Education Framework (provides a sequential, articulated, age-appropriate program).

The district provides information that shows the physical education program (in a senior or four-year high school) is in compliance with California Code of Regulations, Title 5, Article 3.1, Section 10060.

Students are prepared for and participate in the physical performance testing as specified in the Education Code.

Physical Education Requirements, available at www.cde.ca.gov/be/ms/po/policy99-03-june1999.asp.

³¹ *Physical Education Matters II* at 7.

³² Cal. Educ. Code § 51210 (g).

³³ Cal. Educ. Code § 51222 (a).

³⁴ Cal. Educ. Code §§ 33050, 51241.

³⁵ *Physical Education Matters II* at 10.

The LAUSD-UTLA Joint Class Size Task Force has presented findings and recommendations to institute a maximum cap of 55:1 for physical education classes. The Task Force Report is included as Exhibit 6. Complainants support these recommendations. Complainants are informed and believe that overcrowded physical education classes deter qualified teachers from joining or staying at LAUSD. This in turn deprives students of qualified physical education teachers and required physical education minutes.

D. Places for Physical Education and Physical Activity

Physical education facilities, such as playing fields, gyms, and equipment are essential for quality physical education. Larger school play areas are associated with increased physical activity in middle school students. Elementary teachers identify inadequate facilities and equipment as among the top three barriers to meeting physical education guidelines.³⁶

There are unfair disparities in access to school, park, and health resources including places for physical activity based on race, ethnicity, income, poverty, youth, and access to cars within the geographic area covered by LAUSD. Children of color living in poverty with no access to a car have the worst access to schools with five acres or more of playing fields, parks, and other green spaces, and the highest levels of child obesity. These children and their families and friends disproportionately do not have access to cars or a decent transit system to take them to large school fields, parks, and other natural public places. Disproportionately white and wealthy people with fewer children than the county average enjoy the best access to school fields, parks, and transportation. In a cruel irony, those who need the most have the least, and those who need less have the most. These facts are illustrated in GIS maps and demographic analyses showing access to schools, pools, and parks for LAUSD as a whole, and for each Board Member district are included in Exhibit 8 (Maps 901LAUSD and 901LAUSD1 to -7.) These maps and analyses are available on the web at www.flickr.com/photos/cityprojectca/sets/72157601164752423.

The Los Angeles County Department of Public Health has analyzed the prevalence of childhood obesity for 128 cities and communities in Los Angeles County. Cities with less open area set aside as parks, recreational areas, school fields or wilderness area are more likely to have a higher prevalence of childhood obesity. The prevalence of childhood obesity varied significantly among cities and communities, from a low of 4% in Manhattan Beach to a high of 37% in Maywood, and was found to be strongly associated with economic hardship. The County Health Department found a higher prevalence of obesity in cities or communities where the economic burden (higher poverty, lower educational attainment, more dependents, etc.) was greater compared to other cities and communities in the county of Los Angeles. (Correlation coefficient = 0.83; p-value < 0.001.)³⁷

³⁶ *Id.* at 11.

³⁷ Los Angeles County Department of Public Health, Office of Health Assessment and Epidemiology, *Preventing Childhood Obesity: the need to create healthy places. A Cities and Communities Health Report* (Oct. 2007). The levels of child obesity range from 23% to 39% by Assembly District throughout the Los Angeles region. García and White, *HPSC for the Los Angeles Region*, Map 403.

The City Project has published detailed analyses of access to park, school, and health resources. See generally Exhibit 9, Robert García and Aubrey White, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region*, 8-10 (The City Project Policy Report 2007) (hereafter "García and White, *HPSC for the L.A. Region*"). The Policy Report is also available on the web at www.cityprojectca.org/ourwork/mappinggreenaccess/documents/Healthy_Parks_Schools_Communities_textonly.pdf.

LAUSD provides 71% more play acres for non-Hispanic white students than for Latino students in elementary schools.³⁸ Only 103 out of 605 LAUSD schools have five acres or more of playing fields, and those tend to be located in areas that are disproportionately wealthy and non-Hispanic white. García and White, *HPSC for the L.A. Region* at 10; Exhibit 8, Map 901LAUSD.

LAUSD does not take steps it could take to provide more space for physical activity. For example, there were only 30 joint use agreements between LAUSD and the City of Los Angeles Recreation and Parks Department as of April 2006.³⁹

Los Angeles City Controller Laura Chick published an audit of the Los Angeles Department of Recreation and Parks calling for shared use of schools and parks as part of a strategic plan to improve recreation in every neighborhood and alleviate unfair disparities.⁴⁰ The LAUSD Independent Citizens' School Bond Oversight Committee has repeatedly demanded community and joint use of school and parks since 2000. The classic 1930 Olmsted report called for the shared use of parks and schools.⁴¹

Council Member José Huizar addressed the Los Angeles City Council on March 18, 2008, regarding joint use of schools and parks as follows: "**In terms of the existing facilities, both on the city's side and the school's side, it's just a matter of leadership and us working together to make that happen.** The limited resources are there, we just have to optimize their use and, particularly, to focus the kids at our schools and how do we provide them the parks when they need them and how do we provide more of the schools' facilities when the public needs them. And, unfortunately we are in a situation where we have budget constraints on both sides. The schools, for example, are asking local Little Leagues to pay increasing fees to use the schools. But, I think we've got to break that mold and think more creatively about how we ensure that we are working a lot closer together and that, there, is just a matter of leadership for us to collectively work together."

³⁸ Testimony and Powerpoint presentation by Michael Strumwasser, counsel for LAUSD, before the LAUSD Citizens' School Bond Oversight Committee, Nov. 17, 2004; García and White, *HPSC for the Los Angeles Region*, at 10.

³⁹ *Id.*

⁴⁰ City Controller Laura Chick, *Performance Audit of Recreation and Community Services in the Department of Recreation and Parks* 20 (Jan. 5, 2006); Deborah Schoch, *How Can L.A. Create Better Places to Play*, L.A. Times, June 1, 2007.

⁴¹ The Olmsted maps are available on the web at www.cityprojectca.org/ourwork/olmsted.html.

"On the side of new facilities, I think there we have a tremendous opportunity, both on the school side where they're still building new schools, why not create more parks while you're building the schools, get creative how you design your schools so you provide a park or some open space for the community to use as well. And us too. As we move forward, hopefully we do get a park bond and we create those additional open space and parks, we do them near our schools so that our kids can benefit from them, given that many of our schools are cluttered with bungalows and very limited places for them to recreate."

"[The City Project has] been, I think, a real lone voice on this item for a long time. We hope to amplify your voice because this is something that we continue to discuss and talk but we need to get you a big bullhorn and continue providing you that so that we make this an urgency for the city of Los Angeles and the school district." Councilman Huizar's remarks are available in a YouTube video on the web.⁴²

The LAUSD Board of Education and the Los Angeles City Council have recently passed resolutions calling for the joint use of schools and parks. Although both resolutions call for a study group that includes community groups and community organizations, the current study group does not include community groups or community organizations. The study group should include community groups or organizations that support places and policies for physical activity and healthy eating in schools and parks -- to comply with the letter and spirit of the resolutions, to ensure full and fair public participation in the process, to maximize the quality of any work product, and ultimately to serve the best interests of the children and the people of Los Angeles. See Letter from The City Project to LAUSD Board President Monica García and Councilmember Tom LaBonge, May 20, 2008, included as Exhibit 10. The letter is also available on the web at www.cityprojectca.org/blog/wp-content/uploads/2008/06/joint-use-and-cna-letters-0520081.pdf. See also Exhibit 11 (letter from The City Project to LAUSD President Monica García supporting joint use of schools, pools, and parks, Feb. 22, 2008).

V. LAUSD Should Proactively Comply with Equal Protection Guarantees in Providing Quality Physical Education for All

Recipients of public funds including LAUSD and other school districts are prohibited from engaging in practices that have the intent or *effect* of discriminating based on race or ethnicity. LAUSD should proactively comply with these laws by remedying physical education teacher vacancies, misassignments, and lack of subject matter competency, by enforcing physical education minutes taught by qualified teachers, and by providing quality physical education to students.

1. LAUSD Should Proactively Comply with Governing Equal Protection Laws

Title VI of the Civil Rights of 1964 and its implementing regulations prohibit both (1) intentional discrimination based on race, color or national origin, and (2) unjustified discriminatory impacts for which there are less discriminatory alternatives, by applicants for or recipients of federal

⁴² See www.cityprojectca.org/blog/archives/632.

financial assistance including school districts such as LAUSD.⁴³ An important purpose of the statutory equal justice framework is to ensure that recipients of public funds do not maintain policies or practices that result in discrimination based on race or ethnicity.⁴⁴

The regulations that every federal agency has enacted pursuant to Title VI bar criteria or methods of administration by recipients of federal financial assistance that have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program with respect to individuals of a particular race, color, or national origin. Intent to discriminate is not required. *See* 334 C.F.R. 100.3(b)(2).

California law also prohibits both intentional discrimination and unjustified discriminatory impacts under Government Code section 11135 and its regulations, which are analogous to Title VI and its regulations. *See* Cal Gov. Code § 11135,⁴⁵ 22 CCR § 98101(i) (2007). The regulations pursuant to 11135 bar criteria or methods of administration that have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group identification or color. Discriminatory intent is not required under the disparate impact standard.

2. LAUSD Should Proactively Comply with Laws Prohibiting Discriminatory Impacts

There are three prongs to the discriminatory impact inquiry: (1) whether a practice has a disproportionate impact based on race, ethnicity, or color; (2) if so, the agency such as LAUSD bears the burden of proving that such action is justified by, here, “educational necessity”; and (3) even if the action would otherwise be justified, the action is prohibited if there are less discriminatory alternatives to accomplish the same objective. *Larry P. v. Riles*, 793 F.2d 969, 981-83 (9th Cir. 1984) (finding IQ tests that were not validated for the purpose used had discriminatory impact on black school children placed in classes for the educable mentally retarded and were not justified by “educational necessity,” in violation of Title VI disparate impact regulations).⁴⁶

There is evidence of unjustified discriminatory impacts for which there are less discriminatory alternatives. LAUSD’s failure to provide quality physical education – including the

⁴³ Title VI provides: “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d (2004). The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and parallel state law also prohibits intentional discrimination. *See also* Section 1983 of the Civil Rights Act of 1871.

⁴⁴ *Guardians Ass’n v. Civil Service Comm’n*, 463 U.S. 582, 629 (1983) (Justice Marshall, concurring in part and dissenting in part).

⁴⁵ Section 11135 provides: “No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”

⁴⁶ Agencies such as LAUSD are obligated to comply with the regulations, even though the regulations are no longer privately enforceable in court. *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).

misassignment of physical education teachers, the failure to enforce physical education minutes requirements, overcrowded physical education classes, and lack of places and policies for physical activity -- has an unjustified disparate impact against students of color and low income students.

Physical education quantity and quality are particularly deficient for less affluent students and those in racial and ethnic groups who are at high risk for overweight and obesity, according to the California Endowment.⁴⁷ Low-income, African-American, Latino and Native-American youth make up a large percent of public school students, and these groups are at greatly increased risk of physical inactivity and its health consequences. The youth with the fewest resources are at the highest risk for health problems.⁴⁸ In LAUSD, for example, 90% of the students are of color, and 74% are low income (qualify for free or reduced meals). LAUSD provided 71% more play acres for non-Hispanic white students than for Latino students in elementary schools.⁴⁹

Students from poorer families report they are less likely to be required to take physical education in comparison with students from more affluent families.⁵⁰ Middle school girls tend to be less active than boys during physical education, and girls of color tend to be even less active during physical education. Compared to non-Hispanic white and Asian girls, national data show black and Hispanic girls were less physically active.⁵¹

Many students are not passing state-required fitness tests, and there are large disparities by race and ethnicity. Less than 30% of students met all six fitness standards in grades 5, 7, and 9. Racial and ethnic differences are consistent with the pattern of lower quantity and quality of physical education in low-resource schools serving mainly students of color. In grade 5, for example, 34% of non-Hispanic whites passed all 6 standards, compared to 23% of blacks and 20% of Latinos.⁵²

Thus (1) teacher vacancies, misassignments, and lack of subject matter competency, not enforcing the required physical education minutes, and the pattern and practice of not providing quality physical education have a disproportionate impact against students of color and low income students.

(2) The impacts are not justified by educational necessity.

(3) There are less discriminatory alternatives: LAUSD should provide qualified physical education teachers, enforce required physical education minutes, and provide a quality physical education that includes qualified teachers, physical education minutes, a cap on physical

⁴⁷ *Physical Education Matters II* at 1-2.

⁴⁸ *Id.* at 2, 15 and authorities cited.

⁴⁹ Testimony and Powerpoint presentation by Michael Strumwasser, counsel for LAUSD, before the LAUSD Citizens' School Bond Oversight Committee, Nov. 17, 2004.

⁵⁰ *Physical Education Matters II* at 7.

⁵¹ *Id.* at 15.

⁵² *Id.* at 7.

education class size, and places for physical education and physical activity that includes the joint use of schools, pools, and parks.

3. LAUSD Should Proactively Comply with Laws against Intentional Discrimination

To evaluate intentional discrimination, the following kinds of evidence are relevant: (1) the impact of the action and whether it bears more heavily on one racial or ethnic group than another; (2) a history of discrimination; (3) departures from procedural norms in reaching a decision; (4) departures from substantive norms; (5) whether the decision maker knows of the harm its decision will cause; and (6) a pattern or practice of discrimination. *See Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); U.S. Dep't Justice, Civil Rights Division, *Title VI Legal Manual* at 49-53 and authorities cited (Sept. 1998).

There is evidence of intentional discrimination regarding LAUSD's failure to provide quality physical education – including physical education teacher vacancies, misassignments, and lack of subject matter competency; the failure to enforce physical education minutes requirements; overcrowded physical education classes; and lack of places and policies for physical education and physical activity.

1. Children of color are disproportionately impacted by LAUSD's failure to provide quality physical education – including physical education teacher vacancies, misassignments, and lack of subject matter competency; the failure to enforce physical education minutes requirements; overcrowded physical education classes; and lack of places and policies for physical education and physical activity. Children of color disproportionately suffer from obesity and related disorders.
2. Historically, there is evidence of discrimination against children of color and low income children by public schools in California. *See, for example, Larry P. v. Riles*, 793 F.2d 969, 981-83 (9th Cir. 1984) (IQ tests that were not validated for the purpose used had discriminatory impact on black school children). *Cf. Jackson v. Pasadena City School District*, 59 Cal.2d 876 (1963); *Crawford v Board of Education*, 17 Cal. 3d 280 (1976); *Crawford v Board of Education*, 113 Cal. App. 3d 633 (1980). The lack of places for physical activity in communities of color is not an accident of unplanned growth, but part of the history and pattern of discriminatory land use, housing, and recreation policies in Los Angeles.⁵³
3. There are procedural irregularities in LAUSD's failure to provide quality physical education for all. For example, physical education teacher vacancies, misassignments, and lack of subject matter competency violate the Education Code. LAUSD has not engaged in any legitimate process to seek to justify or excuse such violations of the Education Code. LAUSD does not enforce state physical education time requirements in elementary schools. LAUSD has not engaged in any legitimate process to seek to justify or excuse such violations of the Education Code.

⁵³ *See Garcia and White, HPSC for the L.A. Region 16-18 and authorities cited.*

4. There are substantive irregularities in LAUSD's failure to provide quality physical education for all. Substantive concerns dictate that physical education teachers have appropriate credentials and subject matter competency and that those laws be enforced. Substantive concerns dictate that state physical education time requirements in elementary schools be enforced. Enforcing these laws would help LAUSD provide a quality physical education, improve academic performance and retention, and promote student's physical and psychic health. The failure to enforce these laws reflects systemic management failures, and the lack of accountability and responsibility, that foster a culture of lawlessness regarding physical education within LAUSD.

5. LAUSD officials including the Superintendent and Board members know of the impact that physical education teacher vacancies, misassignments, and lack of subject matter have on students including students of color. LAUSD officials including the Superintendent and Board members know of the impact that the failure to enforce physical education minutes in elementary schools has on students including students of color. Teachers, physical education experts, health experts, academics, lawyers, UTLA leaders, and civic leaders have repeatedly informed the Superintendent and LAUSD Board of these impacts. *See, e.g.*, letter from 18 teachers, physical education experts, health experts, academics, lawyers, UTLA leaders and civic leaders to Superintendent Brewer and Board President Marlene Canter, June 12, 2007, included as Exhibit 3.

6. There is a pattern of discrimination against students of color in public schools, as discussed in Sections I-V and items (1) through (5) above.

LAUSD should provide physical education teachers who have appropriate credentials and subject matter competency, enforce physical education minutes requirements, reduce physical education class size, provide places for physical education and physical activity, provide quality physical education for all, and proactively comply with education and equal protection laws, rather than risk loss of state or federal funds and litigation to enforce these laws.

CONCLUSION

"A complaint may be filed anonymously." Cal. Educ. Code § 35186 (e)(2)(C). "Local policies shall ensure that complainants are protected from retaliation." 5 CCR 4621(a).

Complainants request that a timely response to this Complaint be submitted to The City Project. *Id.*

Complainants request that principals and the Superintendent or his designee take immediate action to provide quality physical education for all students, including but not limited to taking the following actions:

- remedy vacancies and misassignments of physical education teachers, and assign teachers to teach physical education classes for which the teachers have subject matter competency;
- ensure that the data collected through the categorical program monitoring discloses the extent to which each school within LAUSD provides physical education teachers with appropriate credentials and subject matter competency;
- ensure that the data collected through categorical program monitoring discloses the extent to which each teacher vacancy, misassignment, or lack of subject matter competency within LAUSD involves a physical education class or teacher;
- ensure that the information LAUSD publishes in the District Accountability Report Card, SARC, and SARC summaries discloses the extent to which each teacher vacancy, misassignment, or lack of subject matter competency within LAUSD involves a physical education class or teacher;
- enforce the physical education minutes requirements under state law;
- limit physical education class size to a cap of 55 students per teacher;
- achieve and maintain parity in class size between physical education and academic classes;
- implement a master joint use agreement for schools, pools, and parks to make optimal use of scarce land and resources to provide places for physical education and physical activity;
- conduct a health impact assessment of the teacher and physical education deficiencies described in this Complaint;
- ensure equal justice for all students in providing a quality physical education; and
- ensure there is no retaliation by LAUSD staff, employees, or agents against Complainants or anyone else in connection with this Complaint.

We look forward to working with LAUSD to remedy the deficiencies described in this Complaint to help students move more, eat well, stay healthy, and do their best in school and in life.

Very truly yours,

Anonymous

Ike M. Kaludi and Irene Kaludi
Parents, Elementary School Student, LAUSD

Cathy Figel
Physical Education Teacher, LAUSD

Raul Macias
President and Founder
Anahuak Youth Association

Superintendent David Brewer
June 23, 2008
Page 22 of 22

Ellen Wu, MPH
Executive Director
California Pan-Ethnic Health Network

Mark Williams
Director
Concerned Citizens of South Central Los Angeles and
Antes Columbus Football Club

Manal Aboeleta
Program Director
Prevention Institute

Robert García
Executive Director and Counsel
The City Project

cc:

Monica Garcia, President, LAUSD Board of Education
Honorable LAUSD Board of Education Members