



**LOS ANGELES UNIFIED SCHOOL DISTRICT
MEMORANDUM**

TITLE: Physical Education Program Compliance with Equal Protection Laws

NUMBER: BUL-4742.0

ISSUER: Judy Elliott, Chief Academic Officer
Instructional Services

Shelley Weston, Assistant Superintendent
Secondary Instruction

DATE: June 25, 2009

PURPOSE: The purpose of this Bulletin is to inform administrators and teachers of civil rights laws and regulations that prohibit discrimination based on race, color or national origin in school physical education programs.

MAJOR CHANGES: There is no prior Bulletin on this subject.

BACKGROUND: The Board of Education unanimously adopted a resolution making physical education a priority on July 8, 2008. In this Resolution, the Board recognized that 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, as well as health disparities based on income, race, and ethnicity.

The Physical Education Resolution directed the Superintendent ensure that all physical education classes are compliant with Title VI of the Civil Rights Act of 1964 and its regulations; California Government Code Section 11135 and its regulations; and Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964 and its regulations.

This Bulletin is being issued to ensure compliance with the Resolution and applicable laws and regulations. Recipients of federal and state funds including the Los Angeles Unified School District (LAUSD) are prohibited from engaging in practices that have the intent or *effect* of discriminating based on race, color or national origin. LAUSD seeks to comply proactively with these equal protection laws by providing quality physical education to all students. To that end, LAUSD seeks to remedy physical education teacher vacancies, misassignments, and lack of subject matter competency; enforce the physical education minutes requirements under state law; limit physical education class sizes; and provide quality facilities for physical education through, for example, the joint use of schools, pools and parks.

ROUTING

All Locations

Board Members

Administrators

Physical Education Teachers



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GUIDELINES: 1. 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 financial assistance, including school districts such as LAUSD. An important purpose of the statutory framework is to ensure that recipients of public funds, including LAUSD, do not maintain policies or practices that result in discrimination based on race, color or national origin.

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. In addition, the regulations bar criteria or methods of administration by recipients of federal financial assistance that 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.

California law also prohibits both intentional discrimination and unjustified discriminatory impacts. The law also bars 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. A violation can occur with or without intent to discriminate.

2. Compliance with Laws Prohibiting Unjustified Discriminatory Impacts

There are three prongs to determine whether or not there is an unjustified discriminatory impact: (1) whether a practice has a disproportionate impact based on race, color, or national origin; (2) if so, an agency such as LAUSD bears the burden of proving that such action is justified by “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. There is evidence that the failure to provide quality physical education – including the misassignment of physical education teachers, the failure to enforce physical education minutes requirements, overcrowded physical education classes, and lack of places and facilities for physical activity - has an unjustified disparate impact against students of color and low income students.



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Research indicates that 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, youth with the fewest resources are at the highest risk for health problems. Students from poorer families report they are less likely to be required to take physical education in comparison with students from more affluent families. 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.

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. (Physical Education Matters 2008)

Thus, the lack of a quality physical education can have unjustified discriminatory impacts against students of color and low income students. There is evidence that such impacts can be avoided, mitigated, or remedied through a quality physical education curriculum, including qualified teachers, physical education minutes, a cap on physical education class size, and places for physical education and physical activity including, for example, the joint use of schools, pools, and parks.

3. Compliance with Laws Prohibiting Intentional Discrimination

The following kinds of evidence are relevant to evaluate the possibility of intentional discrimination:

- (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;¹
- (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.

¹ Historically, there is evidence of prior discrimination against children of color and low income children by public schools in California. *See, e.g., 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) (school desegregation); *Crawford v Board of Education*, 17 Cal. 3d 280 (1976) (same); *Crawford v Board of Education*, 113 Cal. App. 3d 633 (1980) (same).



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LAUSD seeks to proactively prevent intentional discrimination by providing a quality physical education to all students. The following activities will implement this goal:

- (1) Remedy any physical education teacher vacancies, misassignment, and lack of subject matter competency;
- (2) Ensure compliance with physical education minutes requirements;
- (3) Reduce the class size of physical education classes; and
- (4) Provide places for physical education and physical activity through, for example, the joint use of schools, pools, and parks.

PROCEDURES FOR FILING DISCRIMINATION COMPLAINTS RELATING TO PHYSICAL EDUCATION BASED ON RACE, COLOR OR NATIONAL ORIGIN

Anyone who wishes to make a complaint of discrimination based on race, color, or national origin relating to District physical education programs may file a complaint under the District's Discrimination Complaint Procedures, or under the District's "Uniform Complaint Procedures."

A complainant may file a complaint under the Williams Uniform Complaint Procedure for the following concerns: (1) physical education teacher vacancies, misassignment, or lack of subject matter competency; or (2) complaints about facilities.

Please see the "Related Resources" section of this bulletin for further information regarding complaint procedures and ensuring equal access to all components of the educational program, including physical education.

AUTHORITY: This is a policy of the Superintendent of Schools and the Board of Education. The following legal standards are applied in this policy:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2004), and its regulations, 34 Code of Federal Regulations section 100.3(b) (2).

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, et. seq., and its regulations, 34 Code of Federal Regulations section 106.

California Education Code sections 221.5 – 231.5, 35256, 44256, 45340-45367, 51210-51225.3, 60800.

California Government Code section 11135.

5 California Code of Regulations sections 4610, 4620, 4630, 4900, 4902.



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22 California Code of Regulations sections 98101(i) (2007).

Guardians Ass'n v. Civil Service Comm'n, 463 U.S. 582, 629 (1983).

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).

Larry P. v. Riles, 793 F.2d 969, 981-83 (9th Cir. 1984).

RELATED RESOURCES:

Resolution *Physical Education is a Priority*, July 8, 2008.

BUL-1826.0, *Sex Equity in Physical Education Programs*, issued by Instructional Services, dated August 5, 2005.

BUL-2362.8, *Williams/Valenzuela Complaint Procedures*, issued by the Office of the Chief Operating Officer, dated September 16, 2008.

BUL-2521, *Title IX Policy/Complaint Procedure*, issued by the Office of the General Counsel, dated June 6, 2006.

REF-1557, *Transgender and Gender Nonconforming Students - Ensuring Equity and Nondiscrimination*, issued by the Office of the General Counsel, dated February 15, 2005.

MEM-4210.0, *Uniform Complaint Procedures (UCP) 2008-2009*, issued annually by the Office of the General Counsel, dated May 28, 2008.

Physical Education Matters: A Full Report from the California Endowment, San Diego State University (California Endowment January 2008).

Guidelines Regarding Single Sex Classes and Schools, United States Department of Education, Office of Civil Rights, <<http://www.ed.gov/about/offices/list/ocr/t9-guidelines-ss/html>>

Failing Fitness: Physical Activity and Physical Education in Schools, UCLA Center to Eliminate Health Disparities and Samuels & Associates, (California Endowment Policy Brief 2007).



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ASSISTANCE: For assistance or further information, please contact Sue Spears, Director, Educational Equity Compliance Office/Office of the General Counsel, at (213) 241-7682 or Chad Fenwick, Advisor, K-12 Physical Education, at (213) 241-4556.