



Physical Education, Health and Equal Justice Policy Brief (July 2009)

The Los Angeles Unified School District, the second largest in the nation, adopted a policy on *Physical Education Program Compliance with Equal Protection Laws* in June 2009, BUL-4742.0. The school district adopted the policy under physical education and civil rights laws in response to the physical education campaign by The City Project working with a diverse alliance to help students move more, eat well, stay health, and do their best in school and in life.

This is the first time the school district has explicitly applied the civil rights laws to physical education and health disparities through a district wide policy. This policy is a best practice example of a public agency implementing policy change, and social change through law, to improve physical education, reduce obesity, and alleviate health disparities.

The policy relies on evidence-based research documenting the importance of quality physical education teachers and programs to improve student health, youth development, and academic performance, and to alleviate health disparities based on income, race, color, and national origin. The policy seeks to ensure compliance with the school board's resolution, physical education requirements, and civil rights laws, including Title VI of the Civil Rights Act of 1964 and its regulations, and California Government Code Section 11135 and its regulations. Those laws prohibit recipients of public funds, including the school district, from engaging in practices that have the intent or *effect* of discriminating based on race, color or national origin. The school district seeks to comply proactively with those equal protection laws by providing quality physical education to all students. To that end, the school district seeks to enforce the physical education minutes requirements under state law; remedy physical education teacher vacancies, misassignments, and lack of subject matter competency; limit physical education class sizes; and provide quality facilities for physical education through, for example, the joint use of schools, pools and parks.

At a time when civil rights enforcement can be difficult to achieve, the school district's policy is consistent with the recent United States Supreme Court decision in *Ricci v. DeStefano* (June 29, 2009), commonly known as the New Haven firefighters' case. The Supreme Court there recognized the principle that voluntary compliance through the planning process is the preferred means of achieving the objectives of the equal protection laws. The Court held that a strong basis in evidence of impermissible disparate impacts based on race, color, or national origin during the planning process can justify a race-based remedy under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination. Title VII disparate impact cases including *Ricci* are relevant to interpret the Title VI disparate impact standard, as applied by the school district in the policy.

The policy is consistent with that Supreme Court decision. The school district through the planning process relied on a strong basis in evidence of impermissible disparate impacts in physical education and health to remedy deficiencies in physical education. The strong basis in evidence includes the empirical research on disparities in physical education and health based on race, color, or national origin by the California Endowment and others. Indeed, the policy statement cites evidence of a history of intentional discrimination in public schools. (Policy statement at p. 3 n.1.) In addition, the policy adopted by the school district is not race based, unlike the remedy at issue in the *Ricci* case. The remedy adopted by the school district is race-neutral and requires improving physical education for all students.

The policy adopted by the school district is also consistent with President Barack Obama's emphasis on ensuring that recipients of federal funds, including the school district, comply with equal justice principles and laws. See Peter R. Orszag, Director, Office of Management and Budget, *Memo re: Updated Implementing Guidance for American Recovery and Reinvestment Act of 2009*, April 3, 2009, available on the web at tinyurl.com/crjpxm.

The school district's policy is a response to the physical education campaign by The City Project working with a diverse alliance. The campaign includes several elements. First, the teachers' union, United Teachers of Los Angeles (UTLA), organized a public campaign to support physical education in public schools. Second, The City Project and various youth, social justice, and health organizations and parents filed administrative complaints with the school district. Third, the school board passed a resolution to enforce the physical education and civil rights laws. Fourth, school officials working with The City Project are working on an implementation plan to enforce physical education laws requiring 20 minutes of physical education in elementary schools, and 40 minutes in middle schools and high schools. Finally, the campaign relies on evidence-based research to document the importance of physical education and health disparities based on income, race, color, and national origin. The campaign is described in the article by Robert García and Chad Fenwick, *Social Science, Equal Justice, and Public Health Policy: Lessons from Los Angeles*, in the *Journal of Public Health Policy* (2009) 30, S26-S32, available on the web at tinyurl.com/czh4pq. The diverse allies include parents, a physical education teacher, Anahuak Youth Sports Association, California Pan Ethnic Health Network, Concerned Citizens of South Central Los Angeles, and Prevention Institute. Learn more about the campaign on the web at tinyurl.com/2hqpct.

The school district's policy underscores the effectiveness of the strategies that The City Project has relied on for years to persuade recipients of public funds to enforce equal justice protections. Two of the key strategies include voluntary compliance with civil rights laws through the planning process outside the courts, and multidisciplinary research and analyses to build a strong basis in evidence to support social change through law. (The other strategies include coalition building, strategic media campaigns, and access to justice through the courts if necessary within the context of a broader campaign.)

Important work remains, however – monitoring compliance by the school district with the policy and laws in the years to come to ensure students move more, eat well, stay healthy, and do their best in school and in life.

The school district's policy statement and this Policy Brief are available on the web at tinyurl.com/m5lql6.

The work of The City Project is made possible in part by the generous support of the California Endowment, the Gilbert Foundation, Kaiser Permanente, and the Kresge Foundation.



The City Project
1055 Wilshire Blvd., Suite 1660
Los Angeles, CA 90017
213-977-1035
Visit our website and **blog** at www.cityprojectca.org
Donations are tax deductible