



September 22, 2008

The Honorable Monica García, President
David L. Brewer III, Superintendent
Ray Cortines, Deputy Superintendent
Los Angeles Unified School District
333 S. Beaudry Ave.
Los Angeles, CA 90017

Re: Civil Rights Complaint Pattern and Practice Depriving Students of Quality Physical Education; Williams Complaint Physical Education Teachers

Dear President García, Superintendent Brewer, and Deputy Superintendent Cortines:

I. Overview

The undersigned Complainants submit this Complaint to remedy the unfair pattern and practice by the Los Angeles Unified School District (LAUSD) that deprives all students, and particularly low income students of color, of a quality physical education under state and federal education, civil rights, and other laws. Complainants seek to help all students move more, eat well, stay healthy, and do their best in school and in life.

LAUSD engages in a pattern and practice of depriving students of a quality physical education. 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 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. 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. LAUSD has failed and refused to provide public information to Complainants and the public about its failure to provide quality physical education for all students, as required under the state Public Records Act and federal Freedom of Information Act.

This pattern and practice deprives all students of quality physical education, and contributes to the risk of childhood obesity and diabetes for all students, and particularly 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).¹

¹ Data Quest: <http://data1.cde.ca.gov/dataquest/>; race/ethnicity 2006-07; free/reduced lunch 2006-07.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 2 of 35

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.”²

“The District continues to be found non-compliant by the State Department of Education in meeting state mandated physical education requirements at all elementary, middle, and high school grades with the consequence of financial penalties to be paid to the State,” according to the resolution passed by the LAUSD Board of Education entitled “Physical Education Is a Priority” (the July 8 Physical Education Resolution).³

“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 health disparities based on income, race, and ethnicity,” according to the July 8 Physical Education Resolution.

Complainants submit this Complaint to work with LAUSD, the Board of Education, the Superintendent, and individual principals to ensure a quality physical education for all students. Complainants helped draft and build public support to pass the July 8, 2008, Resolution. As Complainants have repeatedly emphasized, however, it is not enough to pass the Resolution. The Resolution must be implemented, and the physical education laws must be enforced. Complainants submitted the June 23, 2008, Williams Physical Education Complaint,⁴ and submit the present Complaint, to remedy LAUSD’s pattern and practice of depriving students of quality physical education, to ensure LAUSD implements the Resolution, and to ensure LAUSD complies with the physical education and civil rights laws. Complainants also support the United Teachers of Los Angeles (UTLA) physical education campaign “For the Health of It!” that resulted in the Resolution and seeks its implementation.

The UTLA physical education campaign, the Resolution, the implementation plan, and this Complaint all seek to remedy LAUSD’s pattern and practice of depriving students of quality physical education, and to ensure LAUSD complies with the physical education and civil rights laws.

LAUSD can and must provide quality physical education for all students. In a District pilot program at three elementary schools (Marvin, Allesandro and Norwood Elementary Schools) with increased physical activity minutes and quality physical education, students’ API scores increased (40, 22 and 17 points respectively) as did their fitness levels. *See* July 8 Physical Education Resolution, page 2.

This Complaint is submitted in interrelated “counts,” which individually and collectively address LAUSD’s discriminatory pattern and practice of depriving students of quality physical

² Cal. Educ. Code § 51210.2(a)

³ The Resolution is included as Exhibit 4. An analysis of the costs associated with the motion as originally drafted and proposed is included as Exhibit 5.

⁴ The June 23 Williams Physical Education Complaint and Forms are attached as Exhibit 19.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 3 of 35

education. (1) This Complaint is submitted to remedy unjustified the discriminatory impacts and intentional discrimination that deprive students of color and low income students of quality physical education under Title VI of the Civil Rights Act of 1964 and its regulations, California Government Code section 11135 and its regulations, and other laws. *See* 5 CCR §§ 4610(a), 4620, 4630(b)(1), 4650, 4900, 4902, 4960, 4962 (unlawful discrimination). (2) This Complaint is submitted to remedy LAUSD's failure to provide an average of twenty minutes of physical education in elementary schools, as required under California Education Code section 51210(g). (3) This Complaint is submitted to remedy physical education teacher vacancies, misassignments, and subject matter competency for schools including schools listed in Exhibit 18 under the Williams Uniform Complaint Process, Cal. Educ. Code § 35186 ("Williams UCP"). *See* Cal. Educ. Code § 35186 (e)(2)(A) and (C); 5 CCR 4682(a) (1) and (3). (4) This Complaint is submitted to remedy LAUSD's failure to disclose public records to investigate and remedy physical education deficiencies under the Public Records Act. Govt. Code §§ 6258, 6259(a).

Complainants hereby formally request the opportunity to meet with the President of the Board, the Superintendent, and Deputy Superintendent Cortines within ten days of the receipt of this Complaint. If the President of the Board, the Superintendent, and Deputy Superintendent Cortines will not meet with Complainants within ten days, Complainants request notice of the refusal to meet. "The investigation shall include an opportunity for the complainant, or the complainant's representative, or both, to present the complaint(s) and evidence or information leading to evidence to support the allegations of non-compliance with state and federal laws and/or regulations." 5 CCR 4631(b).

If LAUSD does not provide an adequate remedy for the present Complaint, Complainants reserve the right to pursue all other remedies, including but not limited seeking direct intervention and/or an appeal to the California Department of Education. *See* 5 CCR 4650 (direct state intervention).

Part II of this Complaint describes the Complainants. Part III (A) and (B) describe the evidence of disparities in physical education and health based on income, race, and ethnicity. Part III(C) describes disparities in places for physical education and physical activity. Part III(D) describes the values at stake in quality physical education and places for physical activity. Part IV describes LAUSD's pattern and practice of depriving students of quality physical education. This pattern and practice deprives all students of quality physical education, and contributes to the risk of childhood obesity and diabetes for all students, and particularly for low income students and students of color. Part V describes compliance with equal protection laws requiring LAUSD to provide quality physical education for all students. Part VI discusses the requirements under state law requiring LAUSD to provide an average of 20 minutes of physical education per day and 40 minutes in middle and high schools. The physical education minutes requirements are enforceable in court through a writ of mandate under state law. Part VII analyzes the physical education teacher vacancies, misassignments, and subject matter competency for LAUSD schools, including the schools listed in Exhibit 18. Part VIII discusses LAUSD's failure to disclose public records to investigate and remedy physical education deficiencies, as required under the Public Records Act. Part IX presents the remedy Complainants seek at the present time.

II. Complainants

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

Cathy Figel is a physical education teacher in LAUSD. Ms. Figel serves on the Steering Committee of the United Teachers of Los Angeles Physical Education Campaign.

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 soccer and physical activity 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. Robert García, Executive Director and Counsel of The City Project, serves on the Steering Committee of the United Teachers of Los Angeles Physical Education Campaign. He served as Chair of the LAUSD Citizens' School Bond Oversight Committee for five years from 2000 to 2005. He signed the official voter pamphlet ballot arguments for two bonds to raise billions of dollars for school construction and modernization for LAUSD. He is a graduate of LAUSD and the father of three sons who are former LAUSD students.

III. Physical Education, Health, and Disparities Based on Income, Race, and Ethnicity

Part III (A) and (B) describe the evidence of disparities in physical education and health based on income, race, and ethnicity. Part III (C) describes disparities in places for physical education and physical activity. Part III (D) describes the values at stake in quality physical education and places for physical activity.

A. Physical Education, Health, and Disparities

The July 8 Physical Education Resolution recognizes 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, and documents 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.
- 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.⁵

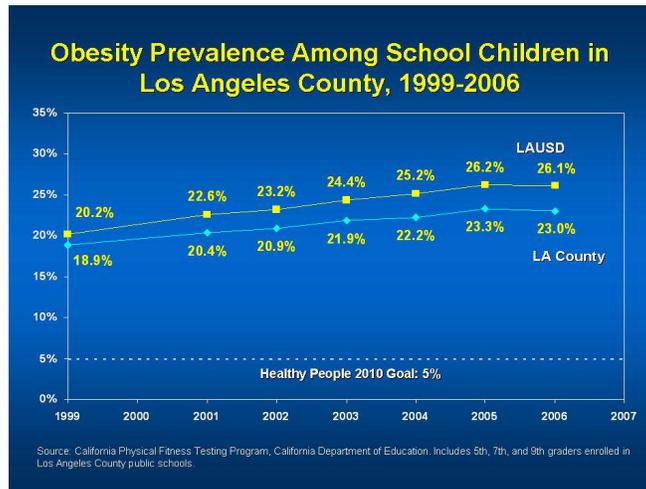
Physical education matters. LAUSD is failing fitness. Policy Reports by the California Endowment are attached as Exhibits 1 and 2. These Reports are available on the web at www.cityprojectca.org/blog/archives/601.

B. Student Obesity and Fitness in LAUSD

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.⁶ 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.

⁵ 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 I*”]. Accord, UCLA Center to Eliminate Health Disparities and Samuels & Associates, *Failing Fitness: Physical Activity and Physical Education in Schools* (California Endowment Policy Brief 2007).

⁶ 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 2004.⁷

⁷ 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 updated 2008) (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.

President García
 Superintendent Brewer
 Deputy Superintendent Cortines
 September 18, 2008
 Page 7 of 35

The following chart compares the performance on Fitnessgram tests by students in LAUSD and 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 Schools⁸

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

⁸ García and White, *HPSC for the Los Angeles Region* at 9 and authorities cited.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 8 of 35

The United Teachers of Los Angeles publicly launched a physical education campaign in December 2007. The UTLA campaign in part resulted in the July 8 Physical Education Resolution. The UTLA campaign continues to work to implement the Resolution. *See* Exhibit 7; www.cityprojectca.org/ourwork/schools.html#utla. Complainants support the UTLA campaign to help provide a quality physical education for all.

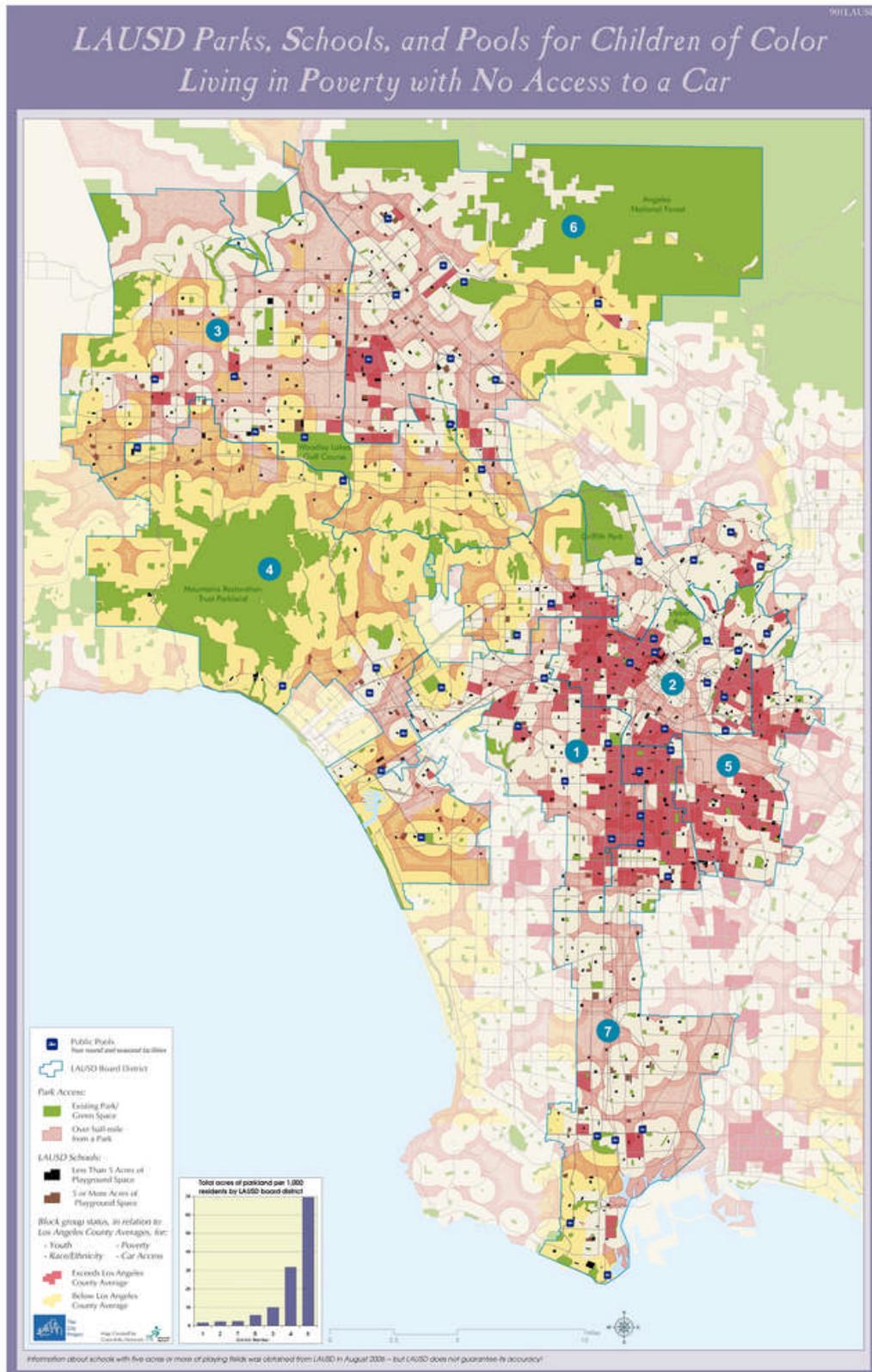
C. Places for Physical Education and Physical Activity

LAUSD does not take steps it could take to provide more space for physical activity, as discussed below.

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.⁹

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 the following GIS maps and demographic analyses showing access to schools, pools, and parks for LAUSD as a whole.

⁹ *Id.* at 11.



President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 10 of 35

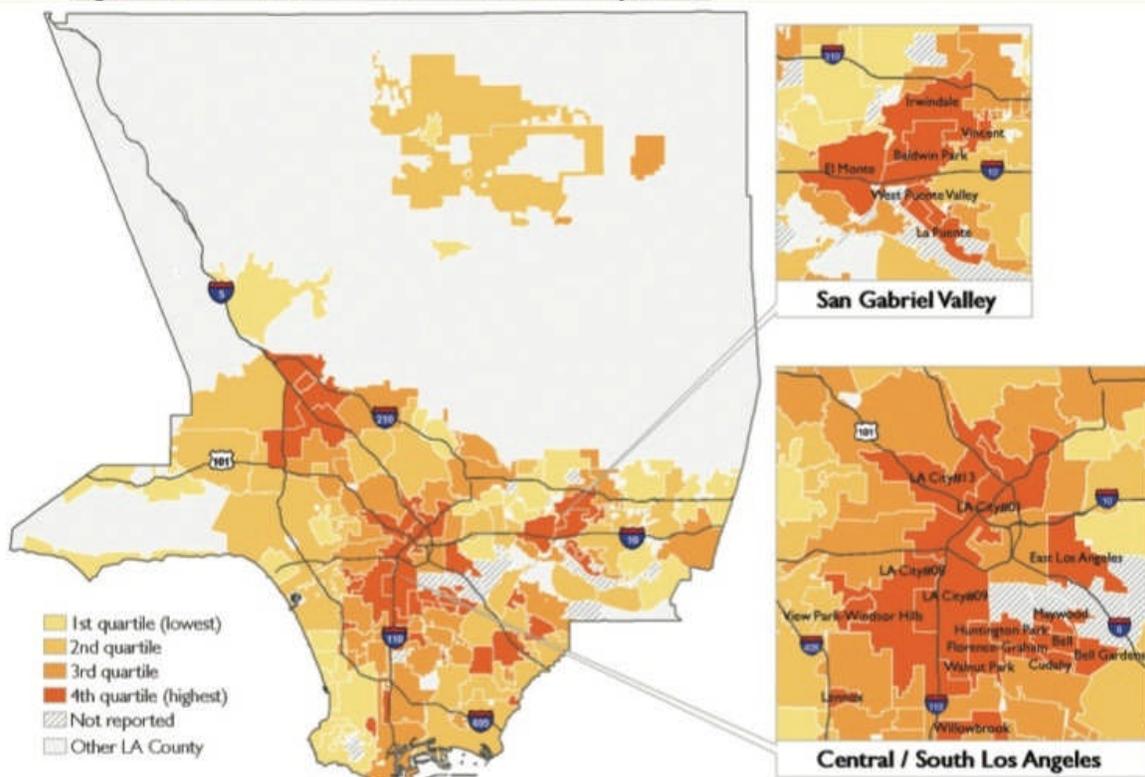
Maps and analyses for LAUSD district wide, and for each Board Member district, are included in Exhibit 8 (Maps 901LAUSD and 901LAUSD1 to -7.) These maps and analyses are available on the web at www.flickr.com/photos/cityprojectca/sets/72157601164752423.

The 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 2006 updated 2008) (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.

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 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.)¹⁰ The following map illustrates these facts.

¹⁰ 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.

Figure 1: Prevalence of Childhood Obesity, 2005



⁵ Data drawn respectively from the California Nutrition Network and several law enforcement agencies – California Department of Justice, Los Angeles County Sheriff's Department, City of Los Angeles Police Department.
⁶ Note that rankings for smaller cities and communities should be interpreted with caution as they are more subject to variation from small changes.
⁷ Correlation coefficient = 0.83; p-value < 0.001
⁸ Correlation coefficient = -0.47; p-value < 0.001

LAUSD provides 71% more play acres for non-Hispanic white students than for Latino students in elementary schools.¹¹ 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. Exhibit 9, García and White, *HPSC for the L.A. Region* at 10; Exhibit 8, Map 901LAUSD.

Los Angeles is one of the eight counties in the state with the worst green access needs, measured in combined terms of fewest acres of parks per thousand residents and highest levels of child obesity, youth, poverty, and people of color. Seven school districts in Los Angeles County do not enforce physical education requirements, including LAUSD. Over half the school districts do not enforce physical education requirements. The following map illustrates these facts.¹²

¹¹ 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.

¹² Source: Robert García and Aubrey White, *Healthy Parks, Schools, and Counties: Mapping Green Access and Equity for California* (The City Project Policy Report 2007) at 7-9 and authorities cited ("Garcia and White, *HPSC for California*").



Green Access and Equity for California

Child Obesity, Poverty, People of Color, and Green Space by County

This Map shows in red the counties with the combined highest levels of child obesity, fewest acres of parks per thousand residents, highest levels of poverty, and most children and people of color. The counties with the lowest combined levels are shown in yellow-green. The counties in orange are in between. The Map also shows 37 public school districts that do not enforce physical education requirements of 200 minutes of instruction every 10 school days.



Demographics from Census 2000, Obesity and School Fitness CA Center for Public Health Advocacy. http://www.publichealthadvocacy.org/policy_briefs/docs/policyrecs.pdf and <http://www.publichealthadvocacy.org/droppingtheball.html> Source: Green Space data is estimated from available sources www.parkinfo.org and www.legacy.ca.gov

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 13 of 35

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.¹³ 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.¹⁴

Council Member and former LAUSD Board President José Huizar addressed the Los Angeles City Council on the joint use of schools and parks on March 18, 2008. **"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."

"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.¹⁵

D. Physical Education and the Values at Stake

Physical education, and places for physical activity in schools and parks, promote many values. Physical education provides students the simple joys of playing and having fun. Children have the right to the simple joys of playing in parks and other safe public places. The United Nations recognizes the right to play as a fundamental human right.¹⁶ The United States was founded in

¹³ 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.

¹⁴ The Olmsted maps are available on the web at www.cityprojectca.org/ourwork/olmsted.html.

¹⁵ See www.cityprojectca.org/blog/archives/632.

¹⁶ *Declaration of the Rights of the Child*, Proclaimed by General Assembly resolution 1386 (XIV) of 20 November

part for the pursuit of happiness.¹⁷ Physically fit students tend to do better academically, stay in school longer, and stay out of trouble. Physical education provides life-long lessons in character and team work. Physical education prevents health costs.¹⁸ Physical education can help reduce the costs of obesity, estimated to equal more than \$21.7 billion.¹⁹

Places for physical activity in schools, and the joint use of schools, pools, and parks, promotes those values, as well social cohesion, conservation values of clean air, water, and land, habitat protection, and climate justice; economic vitality for all; spiritual values in protecting people and the earth; and sustainable regional planning. Physical activity, and places for it in schools and jointly used schools, pools, and parks, can provide a source of community pride and inspiration for further community improvements and revitalization. Social interaction and neighborhood spaces have been identified as key facets of healthy communities supporting social networks, social support, and social integration that have been linked to improvements in both physical and mental health. Sociability may alleviate some forms of mental illness and contribute to a sense of belonging and community.²⁰

The California Legislature has emphasized the value of physical education to promote health and reduce obesity:

- (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

1959, Principle 7; *United Nations' Convention on the Right of the Child*, General Assembly resolution 44/25 of 20 November 1989, Article 31.

¹⁷ U.S. Declaration of Independence. *See also* Cal. Const., art. I, § 1.

¹⁸ *See* García and White, *HPSC for California* at 7-9 and authorities cited.

¹⁹ Senate Bill 601, amending Education Code sections 33352 and 51241 (filed Oct. 14, 2007).

²⁰ García and White, *HPSC for California* at 7-9; L.F. Berkman et al., *From Social Integration to Health: Durkheim in the New Millennium*, 51 *Social Science and Medicine* 843-57 (2000).

physical activity as an aspect of one's lifestyle.²¹

Fundamental principles of equal justice and democracy underlie each of these other values associated with physical education, as discussed in the following section.

IV. LAUSD Engages in a Discriminatory Pattern and Practice of Depriving School Children of Quality Physical Education

“The District continues to be found non-compliant by the State Department of Education in meeting state mandated physical education requirements at all elementary, middle, and high school grades with the consequence of financial penalties to be paid to the State,” as recognized in the July 8 Physical Education Resolution.

A. The Discriminatory Pattern and Practice

LAUSD engages in a pattern and practice of depriving students of a quality physical education. 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 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. 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. LAUSD has failed and refused to provide public information to Complainants and the public about its failure to provide quality physical education for all students. This pattern and practice deprives all students of quality physical education, and contributes to the risk of childhood obesity and diabetes for all students, and particularly for low income students and students of color.

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.²² LAUSD must enforce the law requiring physical education 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.”²³ For grades 7-12, that amount is increased to a “total period of time of not less than 400 minutes each 10 school days.”²⁴ In order to receive a high school diploma, students

²¹ Senate Bill 601, amending Education Code sections 33352 and 51241 (filed Oct. 14, 2007).

²² California Center for Public Health Advocacy (June 8, 2006). Over half (37) the school districts audited 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).

²³ Cal. Educ. Code § 51210 (g).

²⁴ Cal. Educ. Code § 51222 (a).

are required to take two year-long courses in physical education, unless they are exempted.²⁵ 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;²⁶ pupils may be excused from classes during grades 10-12 for driver training as well.²⁷ A two-year exemption is permitted during grades 10 to 12 if the student passes the physical performance test.²⁸ In addition, a student may be granted a permanent exemption under certain circumstances.²⁹

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, 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 # 99-03.³⁰

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.³¹ To qualify for a waiver, a secondary school or middle or junior high school operating on a block schedule must meet specific criteria.³² Exemptions to physical

²⁵ Cal. Educ. Code § 51225.3(a)(1)(F).

²⁶ Cal. Educ. Code § 51241(a).

²⁷ Cal. Educ. Code § 51222(a).

²⁸ *Id.* at (b).

²⁹ 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).

³⁰ *Physical Education Requirements*, www.cde.ca.gov/be/ms/po/policy99-03-june1999.asp.

³¹ *Block Scheduling: Boon or Bain in Physical Education*, available at www.sportsmedia.org/sportapolisnewsletter20newlook.htm.

³² 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.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 17 of 35

education requirements are commonplace, so many high school students take no physical education at all.³³

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.”³⁴ 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,”³⁵ class and school-wide waivers are possible along with individual student exemptions.³⁶

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.³⁷

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. Overcrowded physical education classes deter qualified teachers from joining or staying at LAUSD, deprives students of active physical education minutes, and deprives students of quality physical education.

D. 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-

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.

³³ *Physical Education Matters II* at 7.

³⁴ Cal. Educ. Code § 51210 (g).

³⁵ Cal. Educ. Code § 51222 (a).

³⁶ Cal. Educ. Code §§ 33050, 51241.

³⁷ *Physical Education Matters II* at 10.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 18 of 35

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.³⁸

1. Teacher Vacancies, Misassignments, and Lack of Subject Matter Competency at Specific Schools

There are teacher vacancies and misassignments, and teachers lack subject matter competency, at various schools, including the schools listed on the attached Exhibit 18. This unfairly deprives students of quality physical education.

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 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.³⁹

LAUSD staff responded to these concerns as follows in a letter dated August 20, 2008 (the "August 20 Letter") in response to the June 23 Williams Physical Education Complaint. The August 20 Letter demonstrates LAUSD staff's lack of understanding of (1) the relationship between physical education and the values at stake; (2) the requirements of California law and

³⁸ See generally Public Advocates, *A Teacher is Key: Using the Williams Complaint Process to Monitor Teacher Quality* (2007).

³⁹ 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. LAUSD has also failed and refused to provide public records to identify teachers and teacher vacancies. Complainants are willing to provide additional information to LAUSD upon request.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 19 of 35

LAUSD guidelines for physical education and credentialed teachers; and (3) the July 8 Physical Education Resolution. The August 20 Letter is attached as Exhibit 14.

The August 20 Letter demonstrates that LAUSD is not following state physical education laws and LAUSD guidelines. The August 20 Letter states that the YMCA is teaching playground games to the students. *Such games are fine for increasing physical activity.* However, this does not satisfy the state physical education and teaching credential laws. There is no indication that the YMCA program is being taught by credentialed physical education teachers. To satisfy state law, the credentialed teacher must develop the lesson, deliver the content, and evaluate the students on their progress toward meeting the objectives of the lesson. This is stated in LAUSD Bul 2528 at pages 3-4.⁴⁰ As the August 20 Letter concedes, the regular classroom teachers only “participate in and oversee the implementation of this program.” The teachers are not developing the lesson, and there is no indication that the teachers are delivering the instruction.

The August 20 Letter also states that a second program, “Flexercise,” is taught by “Flexercise for Kids instructors who are assisted by paraeducators” – whatever that means. *Again, such games are fine for increasing physical activity.* However, the August 20 Letter concedes that credentialed teachers are not teaching the class. LAUSD is using these non-credentialed instructors instead of satisfying the teacher credential requirements and statutory physical education minutes.

The August 20 Letter states that “*currently* there is no record of an *ongoing* vacancy” at Huntington Park High School or Carnegie Middle School, two specific schools that were the subjects of the June 23 Williams Physical Education Complaint. That is a smoke-screen. The August 20 Letter was written during the summer when school generally was not in session. The August 20 Letter does not disclose what happened *before*, and what happens at other schools. The 7th period class at Huntington Park ostensibly taught by a math teacher was actually taught by an outside non-credentialed dance teacher and a math teacher who was present only because she has a teaching credential to minimally satisfy state law. Apparently both Huntington Park High and Carnegie Middle Schools have now taken steps to remedy these situations in response to complaints.

LAUSD has failed and refused to provide public records to investigate and remedy these and other schools, however. See Exhibits 15, 20.

2. 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),⁴¹ or a single subject teaching

⁴⁰ K-12 Physical Education Programs Bulletin BUL-2528.0 (July 18, 2006) (Appropriate Physical Education Practices).

⁴¹ See Cal. Educ. Code § 44282(b), as amended by AB 3001 (2004).

credential in the area of physical education (typically obtained for teaching at the middle or high school level).⁴² 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.⁴³

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.⁴⁴

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.⁴⁵

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.⁴⁶ For a single subject credential, the CSET

⁴² Cal. Educ. Code § 44257(a)(11).

⁴³ See Cal Code Regs., tit. 5, § 80413(a).

⁴⁴ See Cal Code Regs., tit. 5, § 80413(b).

⁴⁵ California Subject Examinations for Teachers, About the CSET: Program Overview, *available at* http://www.cset.nesinc.com/CS13_overview.asp.

⁴⁶ 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

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.⁴⁷

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,”⁴⁸ 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.⁴⁹

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.⁵⁰

3. 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

and competitive movement activities that require personal and social responsibility. They 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.

⁴⁷ Physical Education Subject Matter Requirements, *available at* http://www.cset.nesinc.com/PDFs/CS_PE_SMR.pdf.

⁴⁸ Cal. Educ. Code § 51210.2(a).

⁴⁹ Cal. Educ. Code § 51210.2(b).

⁵⁰ Available at <http://csmp.ucop.edu/cpehp/about/overview.html>.

teachers. For example, qualified teachers are more likely to provide 200 minutes of physical 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.

4. 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.

E. LAUSD Does Not Provide Adequate Places for Physical Education and Physical Activity

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 2006.⁵¹

According to Council Member and former LAUSD Board President José Huizar, "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 . . . [It] is just a matter of leadership for us to collectively work together. . . . 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 . . . many of our schools are cluttered with bungalows and very limited places for them to recreate."⁵²

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

⁵¹ *Id.*

⁵² See www.cityprojectca.org/blog/archives/632.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 23 of 35

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).

F. LAUSD Fails and Refuses To Disclose Public Records

LAUSD has “stonewalled” Complainants about the pattern and practice of depriving students of quality physical education. LAUSD has failed and refused to respond to the July 28, 2008, formal request under the Public Records Act and the Freedom of Information Act seeking information to investigate and remedy the pattern and practice of depriving students of quality physical education. *See* Exhibits 15, 20. The Board directed the Superintendent to respond to the Complainants at the September 9, 2008, hearing. Complainants have received no response.⁵³

IV. Compliance with Equal Protection Guarantees Requires LAUSD to Provide 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 must comply with these laws by providing quality physical education for all students.

The July 8 Physical Education Resolution requires that “the Superintendent ensure that all physical education classes are compliant with . . . Title VI of the Civil Rights Act of 1964 and its regulations; and Government Code Section 11135 and its regulations.”

A. 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 financial assistance including school districts such as LAUSD.⁵⁴ An important purpose of the statutory equal justice framework is to ensure that recipients of public funds do not maintain

⁵³ *See* Letter from Robert García to LAUSD, Sept. 9, 2008, attached as Exhibit 20.

⁵⁴ 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.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 24 of 35

policies or practices that result in discrimination based on race or ethnicity.⁵⁵

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;⁵⁶ 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.

The United States District Court for the Northern District of California recently upheld the right to sue to remedy discriminatory impacts on the quality of life for people of color under section 11135 in *Darensburg v. Metropolitan Transportation Commission*.⁵⁷

B. Compliance with Laws Prohibiting Discriminatory Impacts

LAUSD is not in compliance with the discriminatory impact standards as applied to physical education. 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); *Darensburg v. Metropolitan Transportation Commission*, No. C-05-01597 EDL (N.D.Ca. Aug. 21, 2008).⁵⁸

There are unjustified discriminatory impacts for which there are less discriminatory alternatives.

⁵⁵ *Guardians Ass’n v. Civil Service Comm’n*, 463 U.S. 582, 629 (1983) (Justice Marshall, concurring in part and dissenting in part).

⁵⁶ 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.”

⁵⁷ No. C-05-01597 EDL (N.D.Ca. Aug. 21, 2008).

⁵⁸ 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).

LAUSD's failure to provide quality physical education – including the failure to enforce physical education minutes requirements, overcrowded physical education classes, misassignment of physical education teachers, 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.⁵⁹ 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.⁶⁰ 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.⁶¹

Students from poorer families report they are less likely to be required to take physical education in comparison with students from more affluent families.⁶² 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.⁶³

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.⁶⁴

Thus (1) LAUSD's failure to provide quality physical education – including the failure to enforce physical education minutes requirements, overcrowded physical education classes, misassignment of physical education teachers, and lack of places and policies for physical activity -- has an unjustified discriminatory impact against students of color and low income students.

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

(3) There are less discriminatory alternatives. In a District pilot program at three elementary schools (Marvin, Allesandro and Norwood Elementary Schools) with increased physical activity

⁵⁹ *Physical Education Matters II* at 1-2.

⁶⁰ *Id.* at 2, 15 and authorities cited.

⁶¹ Testimony and Powerpoint presentation by Michael Strumwasser, counsel for LAUSD, before the LAUSD Citizens' School Bond Oversight Committee, Nov. 17, 2004.

⁶² *Physical Education Matters II* at 7.

⁶³ *Id.* at 15.

⁶⁴ *Id.* at 7.

minutes and quality physical education, students' API scores increased (40, 22 and 17 points respectively) as did their fitness levels. See July 8 Physical Education Resolution, page 2.

LAUSD must enforce required physical education minutes, provide qualified physical education teachers, limit physical education class size, provide places for physical education and activity, and provide a quality physical education.

3. Compliance with Laws Prohibiting Intentional Discrimination

LAUSD is not in compliance with laws prohibiting 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 substantive norms; (4) departures from procedural norms in reaching a decision; (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); *Darensburg v. Metropolitan Transportation Commission*, No. C-05-01597 EDL (N.D.Ca. Aug. 21, 2008); 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 – including the failure to enforce physical education minutes requirements, overcrowded physical education classes, misassignment of physical education teachers, and lack of places and policies for physical activity.

1. Children of color are disproportionately impacted by LAUSD's failure to provide quality physical education – including the failure to enforce physical education minutes requirements, overcrowded physical education classes, misassignment of physical education teachers, and lack of places and policies for 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 in California). Cf. *Jackson v. Pasadena City School District*, 59 Cal.2d 876 (1963) (segregated schools); *Crawford v Board of Education*, 17 Cal. 3d 280 (1976) (segregated schools); *Crawford v Board of Education*, 113 Cal. App. 3d 633 (1980) (segregated schools). 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.⁶⁵
3. There are substantive irregularities in LAUSD's failure to provide physical education. Substantive concerns dictate that LAUSD enforce physical education laws to help students move more, eat well, stay health, and do their best in school and in life.

⁶⁵ See García and White, *HPSC for the L.A. Region* at 16-18 and authorities cited.

Substantive concerns dictate that state physical education minutes requirements be enforced, as discussed below. Substantive concerns dictate that physical education teachers have appropriate credentials and subject matter competency and that those laws be enforced, as discussed below. The failure to enforce these laws reflects systemic management failures, and the lack of accountability and responsibility for quality physical education within LAUSD. The failure to enforce physical education laws fosters a culture of lawlessness regarding physical education within LAUSD and at school districts throughout the state.

LAUSD provides no guidance to staff on how Title VI and its regulations, and Government Code 11135 and its regulations, apply to physical education. LAUSD provides such guidance under other relevant anti-discrimination laws such as Title IX (gender discrimination).⁶⁶ This failure to provide such guidance is both a substantive and procedural irregularity. Complainants provide a draft policy statement as Exhibit 21.

4. There are procedural irregularities in LAUSD's failure to provide physical education.

For example, LAUSD does not enforce state physical education minutes requirements in elementary schools. LAUSD has not engaged in any legitimate process to seek to justify or excuse such violations of the Education Code. LAUSD simply violates the law.

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 has failed and refused to respond adequately to the June 23 Williams Physical Education Complaint. Instead, LAUSD first sent a letter on July 25, 2008, that did not even address the June 23 Complaint. LAUSD then sent the August 20 Letter falsifying the date of receipt of the June 23 Complaint, and failing to investigate or remedy the June 23 Complaint. The July 25 and August 20 letters are attached as Exhibits 13 and 14.

LAUSD has failed and refused to respond to the July 28 Public Records Act Request to investigate and remedy physical education deficiencies. LAUSD simply violates the Public Records Freedom of Information Acts. *See* Exhibits 15, 20.

5. LAUSD officials including the Superintendent and Board members know of the impact that physical education deficiencies have on students including low income students and 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. The Board recognized that “[e]vidence-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

⁶⁶ See Title IX Policy/Complaint Procedures Bulletin BUL-2521.1 (June 7, 2006).

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 28 of 35

academic performance, and documents health disparities based on income, race, and ethnicity” in the July 8 Physical Education Resolution.

6. There is a pattern and practice of discrimination against students of color and low income students in public schools, as discussed throughout this Complaint.

LAUSD must comply with state and federal civil rights laws or risk loss of state and federal funds and litigation.

V. LAUSD Is Required To Enforce Physical Education Minutes

Failure of a public entity or officer of the state including LAUSD officials to comply with statutory requirements can be challenged through a writ of mandamus that compels a ministerial duty.⁶⁷ Writ relief to compel a “public agency to perform an act prescribed by law has long been recognized.”⁶⁸ See *Kavanaugh v. West Sonoma County Union High School Dist.*⁶⁹ Similarly, section 51210(g) of the Education Code—the physical education instruction time requirements—is enforceable through a writ against LAUSD.

The elements for issuance of mandamus writ under section 1085 are “a clear, present and usually ministerial duty upon the part of the respondent, and a clear, present and beneficial right belonging to the petitioner in the performance of that duty.”⁷⁰ A ministerial act is when a “public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety.”⁷¹

The statute mandating physical education is Education Code section 51210 for grades 1-6. Under section 51050 it is “[t]he governing board of every school district” that is required to “enforce in its schools the courses of study.” Thus, the school district has a duty to enforce the minutes requirement in grades 1 to 6 for:

Physical education, with emphasis upon the physical activities for the pupils that may be conducive to health and vigor of body and mind, for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.⁷²

The LAUSD Board has a ministerial duty to enforce the physical education minutes requirement.⁷³ Students have a beneficial right to certain minutes of physical education at LAUSD.⁷⁴

⁶⁷ Extraordinary Writs § 6 Witkin, California Procedure, at 385.

⁶⁸ *Santa Clara County Counsel Attys. Ass'n v. Woodside*, 7 Cal. 4th 525, 539 (1994).

⁶⁹ 29 Cal 4th 911 (2003) (teacher's reemployment); *Welch v. Oakland Unified Sch. Dist.*, 91 Cal. App. 4th 1421 (2001) (teaching interns dismissal procedures)

⁷⁰ *Bergeron v. Dep't of Health Servs.*, 71 Cal. App. 4th 17, 21-22 (1999).

⁷¹ *Rodriguez v. Solis*, 1 Cal. App. 4th 495, 502 (1991).

⁷² Cal. Educ. Code § 51210 (g).

⁷³ See *Rodriguez v. Solis*, 1 Cal. App. 4th at 502.

⁷⁴ See *Bergeron v. Dep't of Health Servs.*, 71 Cal. App. 4th 17, 21-22 (1999).

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 29 of 35

VII. Williams Complaint Physical Education Teacher Deficiencies

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 LAUSD, including the schools listed on the attached Exhibit 18. 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. This is a problem in various schools and recurs from semester to semester and year to year. This deprives students of quality physical education. The allegations in Section IV (D) above and throughout this Complaint are incorporated by reference here. “A complaint may add as much text to explain the complaint as [the complainant] wishes.” Cal. Educ. Code § 35186(a)(2).

Complainants incorporate this entire document and all attachments here to explain the Williams Complaint forms for the schools listed in the attached Exhibit 18.

LAUSD has failed and refused to provide public records to investigate and remedy teacher vacancies, misassignments, and lack of subject matter competency, and the June 23 Williams Complaints. *See* July 28, 2008, public records act request, Exhibits 15, 20.

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 hereby formally request the opportunity to meet with the Board President, the Superintendent, and Deputy Superintendent Cortines during this 30 day and 45 day time frame to address the Williams Complaint.

VIII. LAUSD Must Disclose Public Records To Investigate and Remedy the Pattern and Practice of Depriving Students of Quality Physical Education

LAUSD has failed and refused to respond to the July 28, 2008, formal request under the Public Records Act and the Freedom of Information Act seeking information to investigate and remedy the pattern and practice of depriving students of quality physical education, and the June 23 Williams Complaints. *See* Exhibits 15, 20. The Board directed the Superintendent to respond to the Complainants at the September 9, 2008, hearing. Complainants have received no response.⁷⁵

California Government Code § 6258 provides as follows:

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearing in these proceedings shall be set by the

⁷⁵ *See* Letter from Robert García to LAUSD, Sept. 9, 2008, attached as Exhibit 20.

judge of the court with the object of securing a decision as to these matters at the earliest possible time.

If it appears that “public records are being improperly withheld from a member of the public,” the court must order the individual withholding the records to disclose them or to show cause why he or she should not do so. *Filarsky v. Superior Court*, 28 Cal.4th 419, 426 (2002); Govt. Code § 6259(a). LAUSD has waived any objections by failing to respond to the July 28 public record requests. Complainants demand the documents requested.

IX. REMEDY

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

- implement the July 8 Physical Education Resolution through an effective implementation plan that sets standards to measure progress and equity and to hold LAUSD officials accountable, including the Superintendent;
- 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 other classes;
- remedy vacancies and misassignments of physical education teachers, and assign teachers to teach physical education classes for which the teachers have subject matter competency under the September 22, 2008, Williams Complaint forms;
- remedy vacancies and misassignments of physical education teachers, and assign teachers to teach physical education classes for which the teachers have subject matter competency under the June 23, 2008, Williams Complaint forms;
- respond to public records act requests designed to investigate and remedy physical education deficiencies;
- 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;
- ensure that the Williams complaint form includes separate boxes for (1) physical education teacher vacancies, and (2) misassignment or lack of subject matter competency, to inform complainants and to facilitate the gathering and dissemination of such information;
- 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;

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 31 of 35

- 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 to study the impact on student health of LAUSD's pattern and practice of depriving students of quality physical education as described in this Complaint;
- provide guidance to LAUSD staff on how Title VI and its regulations, and Government Code 11135 and its regulations, apply to physical education (see Exhibit 21), as LAUSD under other anti-discrimination laws including Title IX (gender discrimination);
- 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;
- meet and work with Complainants to remedy these concerns.

CONCLUSION

“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.

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

Very truly yours,

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

Cathy Figel
Physical Education Teacher, LAUSD

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 32 of 35

Raul Macias
President and Founder
Anahuak Youth Association

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: Honorable LAUSD Board of Education Members without attachments in hardcopy
(attachments in hardcopy available upon request)

Exhibit List

- Exhibit 1 San Diego State University, *Physical Education Matters: A Full Report from the California Endowment* (California Endowment January 2008)
- Exhibit 2 UCLA Center to Eliminate Health Disparities and Samuels & Associates, *Failing Fitness: Physical Activity and Physical Education in Schools* (California Endowment Policy Brief 2007).
- Exhibit 3 Letter to Superintendent David Brewer *Re: LAUSD Student Health, Physical Education, and Healthy Eating* from Robert García, Executive Director and Counsel, The City Project; James Sallis, Ph.D., Accelerating School Physical Activity Promotion (ASAP) Active Living Research, Jane Warner, Executive Director, American Diabetes Association, Katie Van Cleave, American Lung Association of California, Raul Macias, Anahuak Youth Association, Antronette (Toni) Yancey, M.D., M.P.H., Center to Eliminate Health Disparities, UCLA School of Public Health, Patricia Gonzalez, City of Hope, Mark Williams, Concerned Citizens of Southcentral Los Angeles, Antes Columbus Football Club, John Wordin, Fitness Challenge Foundation, Olga Hall, Friends of the Southwest Museum, Mercedes Perez, The Healthy City Project, Aurora Flores, Healthy Eating Active Communities (HEAC), Tomas Gonzalez, League of United Latin American Citizens (LULAC), Donzella Lee, Los Angeles Free Clinic, Gloria Robertson, Office of Statewide Health and Planning Development (OSHPD), Chad Fenwick, Physical Education Advisor for Physical Education K-12 LAUSD, President of California Association of Health, Physical Education, Recreation, and Dance Unit 406, Dora Ortiz, Scripps Whittier Diabetes Program, Don MacNeil, Shaping America's Health, Bernadine Bednarz, Southern California Committee for the Olympic Games, Barry A. Sanders, Southern California Committee for the Olympic Games, Jennifer Sluder, MD, Joel Olloa, Transportation and Land Use Collaborative, Joshua Pechthalt, United Teachers of Los Angeles, American Federation of Teachers, Wendy Slusser, MD, MS, Assistant Clinical Professor, UCLA Schools of Medicine and Public Health, Norma Mendoza, The Whittier Institute for Diabetes, Peter Vidmar, Olympic Gold medalist 1984, June 21, 2007.
- Exhibit 4 Resolution, *Physical Education Is a Priority*, approved by the Los Angeles Unified School District Board of Education, July 8, 2008
- Exhibit 5 Draft Motion *Physical Education Is A Priority and Costs Associated with Physical Education Is A Priority*
- Exhibit 6 Findings and Recommendations to the Board of Education from the LAUSD-UTLA Joint Class Size Task Force

- Exhibit 7 Robert García, *UTLA Physical Education "For the Health of It!": Helping Children Move More, Eat Well, Stay Healthy, and Do their Best in School and in Life*, Adapted from United Teacher, the newspaper of United Teachers of Los Angeles.
- Exhibit 8 *LAUSD Parks, Schools, and Pools for Children of Color Living in Poverty with No Access to a Car*, maps and analyses produced by The City Project and GreenInfo Network, May 2008.
- Exhibit 9 Robert García and Aubrey White, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region* (The City Project Policy Report 2006).
- Exhibit 10 Letter to Councilman Tom LaBonge and LAUSD Board President Monica García *Re: Joint Use of Parks, Schools, and Pools – Preliminary Comments* from Robert García, May 20, 2008; and Letter to Barry A. Sanders, President, City of Los Angeles Department of Recreation and Parks Commission, Jon Kirk Mukri, General Manager, City of Los Angeles Department of Recreation and Parks, and Mia Lehrer, Mia Lehrer & Associates *Re: Healthy Parks, Schools, and Communities for All: Community Needs Assessment Response to Public Workshop Survey Questions* from Raul Macias, President, Anahuak Youth Association, Lark Galloway, President, Community Health Councils, Mark Williams, Director, Concerned Citizens of South Central Los Angeles, Manal Aboeleta, Program Director, Prevention Institute, Robert García, Executive Director and Counsel, The City Project, May 16, 2008.
- Exhibit 11 Letter to LAUSD Board President Monica García and LAUSD Board Members *Re: Support Joint Use of Schools, Pools, and Parks* from Robert García, Executive Director and Counsel, The City Project, Feb. 22, 2008.
- Exhibit 12 *Districts Out of Compliance of California PE Requirements 2004-05 / 2005-06* chart produced by The City Project and GreenInfo Network, 2006.
- Exhibit 13 Letter from Renée E. Jackson, Executive Liaison Administrator, Williams Legislation, Los Angeles Unified School District *Re: Williams/Venezuela Uniform Complaint Procedure – Teacher Vacancy or Misassignment* to Robert García, July 25, 2008.
- Exhibit 14 Letter from Renée E. Jackson, Executive Liaison Administrator, Williams Legislation, Los Angeles Unified School District *Re: Williams/Venezuela Uniform Complaint Procedure – Teacher Vacancy or Misassignment* to Robert García, Aug. 20, 2008.

President García
Superintendent Brewer
Deputy Superintendent Cortines
September 18, 2008
Page 35 of 35

- Exhibit 15 Letter to LAUSD Superintendent David Brewer *Re: Public Records Act and Freedom of Information Act Request Physical Education* from Robert García, Executive Director and Counsel, The City Project, July 28, 2008.
- Exhibit 16 Letter to LAUSD Superintendent David Brewer *Re: Williams Physical Education Complaint Request to Meet* from Robert García, Executive Director and Counsel, The City Project, July 28, 2008.
- Exhibit 17 Letter to LAUSD Superintendent David Brewer and LAUSD Board President Monica García *Re: Williams Physical Education Complaint Request to Meet* Robert García, Executive Director and Counsel, The City Project, July 28, 2008.
- Exhibit 18 List of Schools and September 22 Williams Complaints.
- Exhibit 19 June 23 Williams Physical Education Complaints.
- Exhibit 20 Letter to LAUSD Board Member Marlene Canter *Re: Williams Physical Education Complaint* from Robert García, Executive Director and Counsel, The City Project, Sept. 9, 2008.
- Exhibit 21 Proposed Title VI policy statement for physical education classes (Sept. 22, 2008).