

Public Advocates Inc.

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FOR IMMEDIATE RELEASE

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PUBLIC ADVOCATES COMMENTS ON PE CREDIT ISSUE & SFUSD

San Francisco, CA — Public Advocates Inc., a nonprofit law firm and advocacy organization, issued the following statement today on deliberations by the San Francisco Unified School District on awarding Physical Education (PE) credit for JROTC courses:

“On May 1, 2008, Public Advocates sent a Public Records Act request to Superintendent Carlos Garcia and the San Francisco Unified School District Board of Education regarding district policy allowing Physical Education (PE) credit to be given for classes that lack both PE credentialed teachers and required PE class content. These classes may include JROTC, marching band, cheerleading and drill team. A copy of our letter is attached to this statement.

“We pointed out that if the District is offering PE credit for classes without credentialed PE teachers and/or without the mandated PE class content, then it is violating state law and circumventing the State’s efforts to ensure that physical education is an important component of a child’s school life. These are not merely technical violations but go to the heart of the weakening of physical education in our schools and the diminishing health of our children.

“Subsequent public discussion of this issue has centered specifically around the JROTC program. Our focus is in no way JROTC specific. Whether or not to offer JROTC or any other course as an elective is within the discretion of the local school board. No board, however, has the discretion to award PE credit for courses that are not in fact PE courses. There is a well-documented diminution of the quality of physical education in our public schools and a rise in obesity among our youth. Public Advocates has serious concerns about any course that unlawfully provides PE credit when its content fails to meet state-mandated PE standards and its instructors fail to quality as properly credentialed PE teachers.

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“As Long Beach Unified School District did earlier this month, we urge the San Francisco Unified School District to comply with state law and meet the standards of physical education that the State has deemed necessary for the well-being of our communities. Failure to do so exposes the District to potential legal action forcing compliance.”

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Public Advocates Inc. is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing and transit equity. Public Advocates spurs change through collaboration with grassroots groups representing low-income communities, people of color and immigrants, combined with strategic policy reform, media advocacy and litigation, “making rights real” across California since 1971.

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Public Advocates

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Via fax (415) 241-6429

May 1, 2008

RE: LACK OF CREDENTIALLED PE TEACHERS AND PE CONTENT AREAS FOR PE CREDIT CLASSES IN VIOLATION OF STATE LAW

Dear Superintendent Garcia and Members of the Board of Education:

It has come to our attention that the San Francisco Unified School District (District) allows Physical Education (PE) credit to be given for classes that lack both PE credentialed teachers and required PE class content. These classes may include JROTC, marching band, cheerleading and drill team. Indeed district staff, presumably recognizing legal deficiencies, instated a policy that would have prevented students from earning physical education credit for JROTC, yet the Board voted to overturn this policy in December 2007. We understand that there is controversy surrounding JROTC. Our focus is not on the wisdom or propriety of offering any particular course. We are concerned, rather, about the diminishing quality of physical education in our public schools. To better understand if the District is contributing to this negative trend, we write to request that you provide us with the information requested below.

Increasing state and national attention has focused on the declining health of our youth and the critical role that schools play in addressing that decline. As a recent policy brief reported, “[s]chool PE is the primary instrument for preparing children with the skills, knowledge and confidence to lead physically active lives.” San Diego State University, *Physical Education Matters at 2* (California Endowment Policy Brief 2007). California’s Legislature has also recently called attention to the importance of physical education in our schools as a means to “provide necessary physical activity while motivating a child to maintain healthy eating habits and to engage in regular physical activity as an aspect of one’s lifestyle.” Senate Bill 601 (2006-2007 Reg. Sess.) (Torlakson), Sect. 1.

The quality of physical education as with any school program, depends on course instruction and content. As explained by the California Commission on Teacher Credentialing (CTC) “[t]he extent to which students learn to engage creatively in physical education and respond critically to physical education depends substantially on the

preparation of their teachers in physical education and the teaching of physical education . . .” (CTC, *Physical Education Teacher Preparation in California: Standards of Quality and Effectiveness for Subject Matter Programs; A Handbook for Teacher Educators & Program Reviewers* (2004) at p. 1).

If the District is offering PE credit for classes without credentialed PE teachers and/or without the mandated PE class content, then the District is violating state law and circumventing the State’s efforts to ensure that physical education is an important component of a child’s school life. These are not merely technical violations but go to the heart of the weakening of physical education in our schools and the diminishing health of our children. The State has created standards to facilitate greater physical activity in the lives of our youth. We urge the District to come into compliance with state law and meet the standards of physical education the State has deemed necessary for the well-being of our communities.

PUBLIC ADVOCATES’ EDUCATION WORK

Over its thirty-six years, Public Advocates has had a long-standing commitment to improving educational opportunities. Public Advocates was a lead counsel on the landmark case, *Williams v. California*, which resulted in a settlement that makes important steps to providing all California students with basic educational necessities, including properly credentialed teachers. Public Advocates recently supported SB 601 (Torlakson), an important tool for the public to understand how their school districts fare in state law physical education requirements—for example, districts report whether students are being provided PE instruction by properly credentialed PE teachers. *See* Cal. Educ. Code § 33352(b)(9).

PHYSICAL EDUCATION MUST BE TAUGHT BY PROPERLY CREDENTIALLED PE TEACHERS

As the *Williams v. California* settlement legislation has made clear, a teacher is misassigned if she or he lacks subject-matter competency, a proper teaching credential, or authorization to teach English Learners. *See* Cal. Educ. Code §§ 35186(e)(2)(B), 35186(e)(2)(C), 35186(h)(2)), 44258.9(b)(1)(A). The proper teaching credentials that authorize teachers to provide instruction in the subject of physical education are single subject teaching credentials in the area of physical education (*see* Cal. Educ. Code §§ 44256(a); 44257(a)(11); Cal Code Regs., tit. 5, § 80005(a)(11)) and multiple subject teaching credentials, which cover the subject of physical education (*see* Cal. Educ. Code §§ 44282(b); 44256(b); Cal Code Regs., tit. 5, § 80003) for K-8 settings. At the high school level, a class for which PE credit is awarded must be taught by a properly credentialed PE teacher. A properly credentialed high school PE teacher is one who holds a Preliminary or Clear Single Subject Teaching Credential listing “Physical Education” as the authorized subject of instruction or at a minimum a substandard authorization, such as a temporary Short Term Staff Permit, specifically authorizing the teaching of PE in the district by the credential holder.

In sum, a district that has placed a teacher who is instructing physical education without: (1) subject-matter competency in physical education, (2) a credential that authorizes teaching the subject of physical education, or (3) the authorization to teach English Learners (if necessary) has misassigned an instructor in violation of the law and is subject to immediate correction. *See* Cal. Educ. Code § 44258.9.

PHYSICAL EDUCATION CREDIT MUST BE GIVEN ONLY FOR CLASSES THAT MEET THE STANDARDS FOR PHYSICAL EDUCATION

The governing board of every school district is required to “enforce in its schools the courses of study.” Cal. Educ. Code § 51050. Physical education is a mandated course of study (*see* Cal. Educ. Code §§ 51210; 51222) and is required for graduation from high school (Cal. Educ. Code § 51225.3(a)(1)(F)); therefore, it is the duty of the school districts to enforce physical education as a course of study in the schools. Under state law, physical education classes in high schools are required to cover all eight of the following content areas: effects of physical activity upon dynamic health, mechanics of body movement, aquatics, gymnastics and tumbling, individual and dual sports, rhythms and dance, team sports, and combatives for boys. Cal. Code Regs., tit. 5, § 10060(a). If these state-mandated content areas are not covered in the classes, then the District may not legally provide PE credit for those classes. Citing this regulation, the California Department of Education (CDE) has emphasized that:

Every high school in California must provide instruction for all eight areas. Every student must participate in learning all eight areas. These content areas provide a wide variety of physical activities necessary to develop the skills and knowledge essential to the individual for the selection of lifetime pursuits.

Calif. Dept. of Educ., *Physical Education Framework for California Public Schools, Field Review Draft for 2008, Chapter 4* at 2. Marching band, drill team activities, cheerleading, or JROTC courses which tend to focus on singular physical activities do not deliver the eight content areas required of PE courses as required in *California Code of Regulations*, title 5, section 10060(a).

Indeed, the California State Board of Education and the California Department of Education have issued a legal opinion that interprets and relies on *California Code of Regulations*, title 5, section 10060 to conclude that PE credit should not be given to courses which do not meet the standards of the PE curriculum.

The California Department of Education does not support granting physical education credit for single activities such as marching band, drill team, ROTC, and cheerleading. These activities typically do not meet the requirements within the description of a course in physical education . . .

CDE Opinion on Granting Physical Education Credit for Single Activities such as Marching Band, Drill Team, ROTC and Cheerleading (Approved on June 11, 1999 by California State Board of Education). Reaffirming this position recently, the CDE’s draft Physical Education Framework states:

Marching band, cheerleading, and ROTC also offer students opportunities to be physically active. These elective courses do not prepare students to meet grade- or course-level standards in physical education and do not meet the requirements for a high school physical education course of study. Although these courses are appropriate for elective course credit, they are not appropriate for physical education course credit.

Calif. Dept. of Educ., *Physical Education Framework for California Public Schools, Field Review Draft for 2008* at 17. As these sources state clearly, elective courses which lack the state

standards and content required for physical education are not appropriate for physical education credit. Courses such as marching band, drill team activities, cheerleading, or JROTC in the District do not warrant PE credit; if PE credit is given it is in violation of state law.

Given that courses such as JROTC do not meet the PE content standards as required by *California Code of Regulations*, title 5, section 10060(a), it is disturbing that in a survey conducted last year of 848 JROTC participants, 15.6% stated they were “placed in the program without [their] consent” and 19.3% participated because they “did not want to take PE.” *JROTC Satisfaction Survey, Response Summary* (Dec. 4, 2007). Students placed in JROTC without their consent are missing a vital component of physical education instruction involuntarily. The students who have avoided PE classes are also lacking important aspects of quality PE. Just as with a prescribed math or English course, the State has determined it is in our society’s interest for students to receive PE instruction according to state-established content standards even if a given student would prefer to avoid the class.

PUBLIC RECORDS ACT REQUEST

We wish to obtain further information about the District’s potential violation of state law in this area. Accordingly, we submit the following request for information pursuant to the California Public Records Act, *California Government Code* § 6250 *et seq.* Please provide us with:

1. For each course in which PE credit is given, documents reflecting the school instructor’s name (including first, middle, and last names) and a copy of his or her current valid California teaching credential and English Learner authorization, if any;
2. For each course in which PE credit is given in high school, documents reflecting the course title description and curriculum for each such course sufficient to indicate whether the content areas for PE pursuant to Cal. Code Regs., tit. 5, § 10060(a) are covered in the course;
3. For each course in which PE credit is given in high school, documents reflecting the racial, ethnic, and gender breakdown of students by course;
4. All documents that reflect the District’s policies concerning whether to offer PE credit for non-standard PE courses, including, but not limited to, cheerleading, marching band, drill team, and JROTC;
5. All documents reflecting the number of students in non-standard PE courses;
6. All documents that reflect the District’s policies or practices concerning the involuntary or nonconsensual placement of students in non-standard PE courses, such as JROTC, in which the students do not consent to the placement in the course and the student receives PE credit for the course;
7. All documents reflecting the number of students placed in non-standard PE courses, such as JROTC, on an involuntary or nonconsensual basis.

By “documents” this request intends to include policy documents, memoranda, correspondence, guidelines, checklists, agendas, training materials, notes and any other written material, including material that is stored in computer files. Public Advocates will pay for reasonable copying costs.

If the District is illegally granting PE credit, we urge the District to: (a) correct any PE instructor misassignments by providing properly credentialed PE teachers for each class awarding PE credit; (b) desist from providing PE credit to classes that lack mandated PE content (unless the student is graduating this year); (c) inform students who are attending classes, such as marching band, drill team, cheerleading, and JROTC, and their parents that these classes do not fulfill the PE requirements. We also urge the District to: (d) disclose the documents described above through the Public Records Act Request within ten days, pursuant to *California Government Code* § 6253(c).

An initial step to ensure access to quality physical education and to promote the well-being of our children is to abide by the state PE standards. Thank you for your prompt attention to this matter. Should you have any questions, please do not hesitate to contact us.

Sincerely,

Michelle N. Rodriguez
Staff Attorney

John T. Affeldt
Managing Attorney

cc: Senator Tom Torlakson
Jack O’Connell, State Superintendent of Public Instruction
Glee Johnson, President, State Board of Education
Carrie Strong-Thompson, Standards & Assessment Division, California Department of Education
Dale Janssen, Executive Director, California Commission on Teacher Credentialing
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