

## YOU AND THE LAW

## School Compliance to a Physical Education Lawsuit Settlement

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The elementary school years are a particularly crucial time for children to engage in quality physical education (PE). Increasing the proportion of elementary schools that require daily PE is a Healthy People 2020 objective (PA 4.1; Office of Disease Prevention and Health Promotion, n.d.). Concerns over deficiencies in the quantity and quality of PE in California, especially in elementary schools, have been voiced for decades (San Diego State University [SDSU], 2007). For example, 48% of California elementary schools have been found to not comply with the state PE time requirements of 200 PE min/10 days (California Education Code § 51210.7) and direct observation of lessons showed teachers were providing PE an average of only 30 min/week (SDSU, 2007). California schools at that time were monitored for compliance to PE requirements only every 4 years, and schools meeting academic goals could be exempted from PE monitoring. Meanwhile, the consequences for being out of compliance were minimal, as the school had only to submit a written plan for improvement (SDSU, 2007).

This situation began to change in 2010 when a California appellate court ruled in favor of a plaintiff who sought the enforcement of the state PE time requirements for his third-grade son who was receiving less PE (i.e., 80 fewer min/10 days) than the amount stipulated by law (*Doe v. Albany Unified School District*, 2010). Specifically, the

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court ruled that “(1) state law imposes a mandatory duty on school districts to provide minimum physical education requirements, and (2) parents can sue public schools to seek enforcement of the state law” (*Doe v. Albany Unified School District*, 2010).

Subsequently, a follow-up class action lawsuit (*Cal 200 et al. v. San Francisco Unified School District et al.*, 2014) was successfully litigated against 37 school districts that were selected, in part, based on information the plaintiffs obtained through statewide e-mails that requested teachers report how much PE they offered (Adams, 2015). Among settlement stipulations, the court ruled that for 3 years—through the 2017–2018 academic year—the 37 school districts were required to collect, maintain, and report the documentation of the PE minutes that schools provided. Specifically, teachers were to document their PE in writing by showing the days, times, and duration of their scheduled PE lessons, and this information was to be posted in the classroom or on the school website. Subsequently, teachers were also to complete monthly certification forms for instructional minutes, and in instances of making a schedule change that resulted in lost PE minutes, they were to identify when the compensated time was or would be provided. Additionally, the school administrator (or designee) was to create a school site schedule that indicated the day and time of PE for each class of students within the school. Combined, these stipulations required documentation that afforded an opportunity for evaluating how schools scheduled PE time pursuant to the settlement agreement and in accordance with state law.

We examined the websites of 860 elementary schools (Grades 1 to 6)—proportionately randomly sampled from 1,208 schools within the 37 school districts—between March and June 2018, a time that corresponded to the final semester that schools were required to collect and disseminate PE minute data pursuant to the settlement agreement. We searched for PE schedules (master schedules by school or grade level or for individual classes) and assessed websites for any additional verbiage about the frequency and duration of PE when a schedule was not posted.

Overall, 92 schools (10.7%) posted PE schedules on their website and an additional 14 schools provided weekly PE lesson frequency ( $n = 9$ , 1.0%) or lesson duration ( $n = 5$ , 0.6%) without providing a specific schedule. In particular, only 1.6% of the targeted schools

in Los Angeles Unified School District (LAUSD), the second largest school district in the United States, posted a PE schedule. A majority of schedules ( $n = 47$ , 51.1%) were current (i.e., Fall 2017 or Spring 2018), with schedules representing previous academic years 2016–2017 ( $n = 14$ ), 2015–2016 ( $n = 9$ ), 2014–2015 ( $n = 3$ ), and 2013–2014 ( $n = 1$ ). Eighteen schools (19.6%) did not identify a specific semester or school year on their posted schedules.

For the 101 schools posting lesson frequency, PE was scheduled an average of  $3.5 \pm 1.3$  days/week, and for the 97 schools posting lesson length, the average lesson was scheduled for  $31.2 \pm 11.4$  min. The overall scheduled PE volume/dosage for the 92 schools that provided it was  $99.0 \pm 23.0$  min/week (range, 23.0–140.0 min/week). Most schools (68.6%) identified scheduling a PE volume that met the statutory requirements equal to 100 min/week. Yet even after their districts had lost in court, 29 schools posted a PE schedule that was below the state mandated minutes, with 9 schools scheduling PE for  $\leq 50$  min/week. Further, no school indicated having a PE schedule that met the national professional recommendation of 150 min/week (Shape America, n.d.).

National surveillance data found that 3.1 min of a typical elementary PE lesson was lost to changing clothes and administrative tasks and children were inactive during this time (Centers for Disease Control and Prevention, 2015). Based on the notion that “short” lessons were likely scheduled to reach prescribed PE minute thresholds rather than to provide quality PE instruction, we calculated the frequency of classes  $\leq 10$  min in duration. Three short lesson lengths were common: 10 min ( $n = 318$  lessons, 29.1%), 5 min ( $n = 43$ , 4.0%), and 2 min ( $n = 5$ , 0.5%). Seventeen schools (18.5%) posted schedules with at least one lesson  $\leq 10$  min, and five of these indicated most of their lessons were scheduled for  $\leq 10$  min in duration. Such short lessons, even if managed efficiently, would unlikely produce desirable outcomes in student physical activity accrual, physical fitness, and motor skill development.

Nearly all schools across the United States now have websites that serve as “public windows” for providing up-to-date information on school goals and programs. A follow-up study in these same school districts and schools could determine long-term compliance to state statutory PE laws in the absence of litigation. Parents, physical

educators, and community stakeholders interested in schools providing quality PE should examine their state's education codes for language mandating PE minutes and determine whether they are being provided in accordance with state law. If not—and if informal negotiations with school and district administrators do not resolve a PE time deficiency—there is legal precedent for utilizing litigation to ensure PE is provided as specified by law.

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