



February 6, 2015

PHYSICAL EDUCATION RELATED LAWSUITS MAY BE COMING TO KERN COUNTY

Several Districts in Kern County have recently received a Uniform Complaint Procedure (UCP) complaint alleging that they are not in compliance with state law regarding physical education instruction. This UCP complaint has been filed by Marc Babin. Mr. Babin works for attorney Donald Driscoll. Recently, Mr. Driscoll has successfully sued 37 school districts and recovered \$1.2 million in attorney's fees. Additional lawsuits against other districts are presently pending.

Such complaint must be responded to using the district's uniform complaint procedures and within the corresponding timeline. Be advised that the Babin/Driscoll UCP complaint may have been preceded by inquiries emailed directly to and answered by district teachers. Some teachers may have responded to inquiries by providing information that suggests the district is not in compliance with the requirements of the Education Code. Note that the Babin/Driscoll UCP complaint is sometimes preceded by a California Public Records Act (CPRA) request. CPRA requests must be responded to within statutory timelines as well.

~~~~~

Elementary schools, grades 1 through 6, are required to adopt a course of study which emphasizes physical activity that is conducive to the health and vigor of body and mind and which provides physical education for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period. (Cal. Educ. Code § 51210.)

In addition, per California Education Code section 51210.2, elementary schools, grades 1 through 6, are "encouraged" to either:

- (1) Employ a credentialed physical education teacher to provide instruction in physical education for each class of grades 1 through 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; or

(2) Provide each teacher giving instruction in physical education to any of grades 1 through 6, inclusive, within any elementary school in the district training in developmental physical education, as set forth in the Physical Education Framework adopted by the State Department of Education, except that any teacher who has successfully completed one college level course in elementary physical education shall not be subject to this training requirement.

District Board Policy 6142.7 and District Administrative Regulation 6142.7 may further articulate district procedures and goals with regard to physical education.

~~~~~

In anticipation of responding to the Babin/Driscoll UCP complaint and a possible related lawsuit, Districts should review their practices with respect to physical education to ensure compliance with California law.

The California Department of Education's website has a document describing age-appropriate activities required to meet schools' PE requirements. It can be accessed at <http://www.cde.ca.gov/be/st/ss/documents/pestandards.pdf>. Also see, <http://www.cde.ca.gov/pd/ca/pe/physeducfaq.asp>

Districts need to be able to prove that they are in compliance. Toward this end:

- Teacher lesson plans must include a total of at least 200 minutes of PE every 10 schooldays per Education Code section 51210 discussed above;
- Teacher lesson plans must describe the nature of the physical education in which pupils are participating and the lesson plan should be consistent with the "*Physical Education Framework for California Public Schools Kindergarten Through Grade Twelve*" adopted by the California State Board of Education and published by the California Department of Education Sacramento, 2009;
- Teachers providing the physical education instruction should be qualified per Education Code section 51210.2 discussed above;
- Assemble documentation showing that the required educational minutes have been delivered;
- Assemble documentation showing that the yearly training in developmental physical education has been conducted, if it is required, or that any particular teacher is exempt because he/she has completed a college level course in elementary physical education;

- If the district is not in compliance with the Education Code requirements, then quickly adjust the curriculum and training so that it is compliant;

- If the district is not in compliance and cannot quickly become compliant, then articulate in writing a “corrective action plan” designed to bring the district into compliance.

If assistance is required in responding to the Babin/Driscoll UCP complaint or CPRA request, please do not hesitate to contact our office.

– Alan B. Harris

ABH/crj

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.