

DOE V. ALBANY UNIFIED SCHOOL DISTRICT (2010)

Analysis and Implications Regarding Enforcement of Physical Education for Obesity Prevention Advocates

The California case *Doe v. Albany Unified School District* (2010) [No. C063271 (Cal. App. Nov. 30, 2010)] (*Doe v. AUSD*) declared 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. The case provides a victory for students, parents, and proponents of physical education who want to use litigation as a tool to advance and enforce physical activity goals.

Case Summary

In *Doe v. AUSD*, the parent of a third-grade student at Cornell Elementary School (CES) in Albany Unified School District (AUSD) sued the District, the District's Board of Education, and the California Department of Education (CDE) after repeatedly asking the school to provide the 200 minutes of physical education every 10 school days required by section 51210 of the California Education Code (CES provided students only 120 minutes of PE every 10 school days). The suit alleged that AUSD was not in compliance with section 51210 and that CDE had violated the law by failing to compel AUSD to satisfy the statute's requirements. The parent sought a court order to make AUSD comply with the statute and CDE enforce the minimum PE requirements.

The trial court dismissed the suit on the grounds that Section 51210 does not impose a mandatory duty on school districts to comply with the minimum PE requirements; it instead establishes non-mandatory "goals and guidelines" that are not enforceable by a private party, such as a student or his or her parent. The appellate court reversed the trial court's dismissal of the suit and sent it back to the trial court, **finding that section 51210 imposed a mandatory duty on AUSD to provide 200 minutes of physical education every 10 days**, excluding lunch or recess. The appellate court also **ruled that the parent could seek enforcement of the statute, provided that he is able to show at a future trial court hearing that the student has a legally protected beneficial interest in enforcing the state's minimum physical education requirements.**

Implications

1. A role for litigation in legal advocacy for physical education reform

Many obesity prevention and other advocates want stronger options for enforcing physical education requirements. This court's decision changes the landscape by using litigation for the first time to enforce physical education requirements. This case establishes that schools throughout California, regardless of budgetary and other circumstances, are required to provide the minimum physical education requirement. School districts that fail to do so are in violation of the law. Using litigation as a strategy to enforce physical education requirements gives parents and physical education advocates leverage in their negotiations with school districts. To avoid the risk of litigation, school officials may be more willing to work with the community and provide the legally required amount of physical education.

2. Not all legal advocacy requires litigation

This decision may prove helpful even if litigation is not pursued in a particular situation, because the threat of litigation alone may be persuasive in getting schools to meet physical education requirements. This has certainly been effective in other contexts. For example, the City Project (a legal and policy organization based in Los Angeles) has worked with the LA Unified School District (LAUSD) to use law and policy to advocate for physical education reform. In 2008, the City Project filed an administrative complaint on behalf of parents, students, and health advocates under civil rights and education laws to require LAUSD to comply with physical education requirements. Rather than risk litigation, LAUSD took the opportunity to work with the community and health and legal experts to enforce the law. The City Project, teachers, and school officials have agreed to resolve the complaint by working on an implementation plan to enforce physical education requirements.

3. A new enforcement mechanism

This case puts school districts on notice that litigation may be used as an enforcement mechanism to hold

schools accountable for physical education requirements. School districts wanting to cut elementary school physical education programs will have to show they are still providing 200 minutes of physical education every ten days. Note, however, that schools have discretion regarding how they structure their physical education programs, including how to balance health education and nutrition studies and physical activity.

4. Unknown impact

The threat of litigation is not new to schools, and the response to and impact of this case is not known.

5. Unintended consequences

While parents and obesity prevention advocates may be encouraged by the court's ruling, the case could have unintended consequences. Facing the threat of litigation, school officials could petition the state legislature to amend this statute to clarify that the state's physical education rule does not establish mandatory duties. This would increase the likelihood that school districts continue to make cuts to physical education programs. Obesity prevention stakeholders should be prepared to address the underlying reasons for not enforcing physical education, such as lack of personnel or resources.

6. Further questions and considerations

- School districts will likely contend that their resources are better spent on students and school programs, rather than costly and time-consuming litigation. How can obesity prevention advocates best prioritize litigation among other strategies such as coalition building and policy advocacy?
- School district resources are already stretched thin, especially in low-income communities. What role does law and policy have in prioritizing physical education and health alongside education and achievement? Can social science research be used to show that enforcement of physical education and activity standards will reduce both the achievement gap in education and health disparities based on race, ethnicity, and socioeconomic factors?
- Both the quantity and quality of physical education are important considerations. This court's ruling that the state's physical education requirements are mandatory addresses quantity but not quality. Could a parent sue the school district for not providing equipment, instruction, or space for physical activity that affects the quality of physical education? What are the strategies, both litigation and non-litigation based, for improving the quality of physical education programs?
- How can physical education proponents and obesity prevention stakeholders use this case to further their goals? What strategies will best encourage the enforcement of physical education mandates?

By providing physical education and physical activity opportunities throughout the school day, schools can promote children's health overall and play an important role in the fight against childhood obesity. While the full impact of *Doe v. AUSD* remains to be seen, it has established that: (1) California's physical education standards are mandatory; (2) schools are on notice that they can be sued for not meeting these mandatory standards; and (3) strategies like litigation and the threat of litigation, along with coalition-building and policy and legal advocacy outside the courts, can be used to hold schools accountable for failing to provide quality physical education.

Selected Resources

Active Living Research, *Research Syntheses, Summaries, & Briefs*:

www.activelivingresearch.org/resourcesearch/summaries.

Bridging the Gap, *School Policies and Practices to Improve Health and Prevent Obesity: National Elementary School Results*: Executive Summary available at:

www.bridgingthegapresearch.org/_asset/92v1fd/ES_2012_execsumm.pdf.

California School Board Association, *Successful Students through Healthy Food and Fitness Policies*:

www.csba.org/PhysicalActivity.aspx.

Centers for Disease Control and Prevention, *The Association Between School-Based Physical Activity, Including Physical Education, and Academic Achievement*:

www.cdc.gov/healthyyouth/health_and_academics/pdf/pa-pe_paper.pdf.

The City Project, *Schools, Health, and Community*: www.cityprojectca.org/ourwork/schools.html.

Leadership for Healthy Communities, *Making the Connection: Linking Academic Achievement to Policies to Promote Physical Activity*:

www.leadershipforhealthycommunities.org/images/stories/LHC_ConnectionBrief_PE-PA_v5.pdf.

National Association for Sport and Physical Education and American Heart Association, *Shape of the Nation: Status of Physical Education in the USA*:

www.aahperd.org/naspe/publications/upload/Shape-of-the-tion-Revised2PDF.pdf.

The National Institute on Out-of-School Time (and UMass Boston and the YMCA): Healthy Eating and Physical Activity Standards for Out-of-School Time Programs, available at:

www.niost.org/pdf/host/Healthy_Eating_and_Physical_Activity_Standards.pdf.

Slater *et al.*, The Impact of State Laws and District Policies on Physical Education and Recess Practices in a Nationally Representative Sample of US Public Elementary Schools. Archives of Pediatrics & Adolescent Medicine (American Medical Association, December 5, 2011). Key findings available at:

www.rwjf.org/vulnerablepopulations/product.jsp?id=73663.

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