



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Nancy L. Klein
Jennifer E. Nix
Steven P. Reiner
Mia N. Robertshaw
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Janna L. Lambert
Virginia A. Riegel

LEGAL UPDATE

November 10, 2015

To: Superintendents, Member School Districts (K-12)
From: Frank Zotter Jr., Senior Associate General Counsel *FZ*
Subject: **Legislation Eliminates Private Right to Sue Over 200-Minute Physical Education Requirement**
Memo No. 30-2015

On October 9, 2015, Governor Brown signed Assembly Bill 1391 into law. The bill was in response to a number of lawsuits initiated throughout the State, primarily in southern California, against school districts over enforcement of the 200-minute physical education requirement found in Education Code § 51210, subd. (a)(7).

Section 51210 requires that the adopted course of study for grades 1 through 6 to include instruction in specified areas of study, including physical education, with emphasis upon the physical activities for pupils that are conducive to health and vigor, for a total period of time of not less than 200 minutes each 10 school days (not including recesses and the lunch period). It likewise requires that instruction in physical education in an elementary school maintaining any of grades 1 through 8 include a total period of time of not less than 200 minutes each 10 school days.

In 2013 and 2014, an organization calling itself “Cal200” initiated a series of lawsuits against school districts throughout California, particularly districts in southern California, although a number of the districts named were in the Bay Area and North Bay. The lawsuits were usually brought without any prior attempt to resolve the matter short of litigation. The Cal200 “organization” apparently consisted of one person living in Alameda, California, and the lawsuits were brought exclusively by a sole practitioner attorney from Albany. Settlements with the named districts typically involved agreements that the districts would enforce the 200-minute requirement more closely, and pay attorney’s fees to Cal200’s attorney.

The new bill would authorize a complaint that a school district or county superintendent of schools has not complied with the instructional minute requirements of the physical education adopted course of study for pupils in those



grades to be filed with the school district or county superintendent of schools by filing a complaint under the Uniform Complaint Procedures. The new bill amends § 51210 to state the Legislature's finding and declaration that the provisions prescribing the requirements for the adopted course of study for elementary grades were not intended to create a private right of action.

It would still be possible to bring a lawsuit to enforce a district's noncompliance with the 200-minute requirement, but the new law requires that the complainant first exercise the uniform complaint administrative remedies. This will give targeted districts the opportunity to agree to reform any failure either to comply with the 200-minute requirement, or at least to begin keeping more detailed records of their compliance, thus making the need for a lawsuit less compelling.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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