
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 1391
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Urgency: Yes
Consultant: Lynn Lorber
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Fiscal: Yes

Subject: Pupil instruction: adopted course of study: elementary school: physical education: complaints

SUMMARY

This bill, an urgency measure, expands the Uniform Complaint Procedures to include complaints of non-compliance with the required minimum instructional minutes for physical education.

BACKGROUND

Existing law:

- 1) Requires the adopted course of study for grades 1-6 to include instruction in, among other subject matter areas, physical education, with emphasis on the physical activities for the students that may be conducive to health and vigor of body and mind, for a total period of time of at least 200 minutes each 10 schooldays, exclusive of recess and the lunch period. (Education Code § 51210)
- 2) Requires instruction in physical education in elementary schools with grades 1-8 to be for a total period of time of at least 200 minutes each 10 schooldays, exclusive of recess and lunch periods. (EC § 51223)
- 3) Through regulation, requires local educational agencies to adopt uniform complaint procedures through which the public can register complaints regarding educational programs and rights. (California Code of Regulations, Title 5, § 4600 et seq.)

ANALYSIS

This bill, an urgency measure, expands the Uniform Complaint Procedures to include complaints of non-compliance with the required minimum instructional minutes for physical education. Specifically, this bill:

- 1) Authorizes a complaint of non-compliance with the required minimum instructional minutes for physical education for grades 1-6 and for elementary schools serving students in grades 1-8 to be filed with a local educational agency (LEA) under the Uniform Complaint Procedures (UCP).
- 2) Authorizes a complainant who is not satisfied with the decisions of a LEA to appeal the decision to the Superintendent of Public Instruction (SPI), and requires that the

complainant receive a written decision regarding the appeal within 60 days of the SPI's receipt of the appeal.

- 3) Requires the local educational agency (LEA) to provide a remedy to all affected students, parents and guardians if the LEA or the Superintendent of Public Instruction (SPI) finds merit in a complaint.
- 4) States Legislative findings and declarations that neither the original provisions of the section of the Education Code amended by this bill, nor any subsequent amendments to it, were intended to create a private right of action. This bill further finds and declares that, nothing in the provisions of this bill restricts or expand the existing right of any party to seek relief from non-compliance pursuant to a writ of mandate.
- 5) Includes an urgency clause, in order to protect public schools from unnecessary lawsuits that take funds away from classrooms.

STAFF COMMENTS

- 1) **Need for the bill.** According to the author, "While current law requires a minimum amount of instructional time in physical education for pupils in grades 1-6, the law does not include any specific recordkeeping mechanisms to document compliance with this requirement. A private attorney has exploited this oversight by filing a class-action lawsuit against 37 school districts, using costly and time-consuming litigation to supposedly enforce compliance. The basis for the litigation is a Court of Appeal ruling, *Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668. The court ruled even if the PE minutes requirement does not create an explicit right of action, a plaintiff could bring a civil action through a writ of mandate if they can allege that there is no other adequate remedy of law to resolve allegations of non-compliance. The Court noted that the availability of an adequate administrative remedy was not clear in that case, and allowed the case to go forward."
- 2) **Litigation Background.** According to the Assembly Judiciary Committee analysis of this bill, the Code of Civil Procedure § 1085 permits any person to seek a writ of mandate from any court to compel a governmental entity to comply with the law. The writ generally requires the entity to either perform the legally required act or to show cause before the court why it should not perform the act. In *Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, the California Court of Appeal for the Third district concluded that the physical education requirement in the Education Code "means what it says and that, while individual school districts may have discretion as to how to administer their physical education programs, those programs must satisfy the 200-minute-per-10-school-day minimum."

In 2013 the advocacy group Cal200 filed a class action lawsuit against 37 school districts in the state alleging that these schools were out of compliance with the minimum required instructional minutes for physical education. The action sought a writ of mandate and injunctive relief. (*Cal200 and Marc Babin v. San Francisco Unified School District, et.al.* San Francisco Superior Court, Case No. CGC-13-534975, March 6, 2013.) According to an amended complaint filed in that action, for at least some of the schools, the plaintiff attempted to use the UCP process. In

February of 2015, most if not all of the schools settled with the plaintiff. One of the conditions of the settlement is that elementary school teachers will be required to document, and make publicly available, how many minutes of physical education students receive. While the action in the *Cal200* case was for a writ of mandate and injunctive relief, not for damages, the settlement reportedly still required the 37 districts, collectively, to pay \$1.1 million in attorney's fees for the plaintiff's attorney.

3) ***Uniform Complaint Procedures (UCP)***. Required by federal law, the UCP was established in 1991 as a means of creating a “uniform system of complaint processing” for educational programs. The authority for this process is located in regulations, not state statute. These regulations require the adoption of the UCP by school districts, county offices of education, charter schools receiving federal funds, and local public or private agencies which receive direct or indirect state funding to provide school programs or special education or related services. The UCP process generally involves the following steps:

- a) The filing of a complaint by an individual, agency, or organization.
- b) The investigation and written response by the local educational agency (LEA) within 60 days.
- c) An appeal by the complainant to the California Department of Education (CDE) within 15 days of receiving the LEA response.
- d) The response by the CDE to the appeal, with the investigation completed with 60 days.
- e) A request for reconsideration by the complainant or LEA within 35 days of receiving CDE's response to the appeal.
- f) A response by the CDE within 35 days.

Complaints regarding pupil fees, harassment, discrimination, bullying, intimidation, local control and accountability plans (LCAPs) and some charter school requirements generally follow the UCP, but differ slightly in terms of timelines, anonymity of complainants, confidentiality, and with whom a complaint can be filed.

4) ***Fiscal impact***. According to the Assembly Appropriations Committee, this bill would impose:

- a) General Fund administrative costs to the CDE not likely to exceed \$50,000 to the extent there is an increase in UCP complaint filings.
- b) Expanding the existing UCP process to include complaints related to physical education instruction could expand the number of reimbursable claims associated with this state mandate. This bill could also result in potential cost savings to some individual LEAs to the extent that utilization of this process reduces litigation.

- 5) **Technical amendments.** To ensure consistency with the existing UCP and related legislation, **staff recommends** the following technical amendments:
- a) On page 3, line 30, strike “Superintendent” and insert “department” and on page 3, line 31, strike “Superintendent’s” and insert “department’s”
 - b) On page 3, line 30, before “and” insert “pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations”
 - c) On page 4, line 19, strike “Superintendent” and insert “department” and on page 4, line 20, strike “Superintendent’s” and insert “department’s”
 - d) On page 4, line 19, before “and” insert “pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations”
- 6) **Related legislation.** AB 379 (Gordon, 2015) expands the UCP to include complaints of non-compliance with certain rights and responsibilities regarding the education of students who are in foster care or who are homeless, including school placement decisions, responsibilities of foster youth liaisons, provisions regarding school transfers, exemption from locally-imposed graduation requirements, and the awarding of partial credit for completed coursework. AB 379 is scheduled to be heard by this Committee on June 24.

AB 412 (Chavez, 2015) authorizes complaints of non-compliance with the required minimum instructional minutes for physical education to be filed with a local complaint process or through the UCP. AB 412 was never heard.

SB 81 (Committee on Budget and Fiscal Review, 2015) among other things, expands the UCP to include complaints regarding an alleged violation by a local agency of federal or state law or regulations governing adult education programs or regional occupational centers and programs. SB 81 is passed both houses of the Legislature and is pending in Engrossing and Enrolling.

SB 425 (Hernandez, 2015) among other things, expands the UCP to include complaints regarding an alleged violation by a local agency of federal or state law or regulations governing adult education programs or regional occupational centers and programs, including allegations of unlawful discrimination, harassment, intimidation, or bullying. SB 425 is pending in the Assembly Higher Education Committee.

AB 907 (Burke, 2015) is nearly identical to SB 425. AB 907 is pending in this Committee.

AB 1012 (Jones-Sawyer, 2015) prohibits a school district from assigning any students in grades 7-12 to any "course period without educational content" for more than one week in any semester, or to a course that the student has previously completed with a grade sufficient to meet the A-G requirements and graduation

requirements, unless specifically authorized. AB 1012 also expands the UCP to include complaints of noncompliance with these requirements. AB 1012 is pending in this Committee.

AB 302 (Cristina Garcia, 2015) requires local educational agencies (LEAs) to provide reasonable accommodations to a lactating pupil on a school campus to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding, and expands the UCP to include complaints of non-compliance with this requirement. AB 302 is scheduled to be heard by this Committee on July 1.

SUPPORT

California Association of School Business Officials
California School Boards Association
California State PTA
Los Angeles Unified School District
Paramount Unified School District
Riverside County Superintendent of Schools
San Bernardino County District Advocates for Better Schools
San Diego County Office of Education
San Francisco Unified School District
School Employers Association of California

OPPOSITION

None received.

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