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March 20, 2009

Honorable Mary Salas
California State Assembly
State Capitol, Room 2137

Sacramento, CA 95814

By Fax: (916) 319-2179

RE: AB 351 (SALAS) – OPPOSE

Dear Assembly Member Salas:

Public Advocates regretfully opposes your legislation, AB 351, because it would lower Physical Education (PE) state standards in California public schools and potentially negatively impact our most vulnerable populations. Increasing state and national attention has focused on the declining health of our youth, particularly youth of color, and the critical role that schools play in addressing that decline. In Children Now's 2008 County Scorecard, only 62% of Latino children and 68% of African American children in California were within a healthy weight zone compared to 75% of white children. Because of the importance of PE in facilitating the health and well-being of all of our children, California has required PE for high school graduation.

The quality of school PE, as with any school program, depends on course instruction and content. As explained by the California Commission on Teacher Credentialing (CTC) "[t]he extent to which students learn to engage creatively in physical education and respond critically to physical education depends substantially on the preparation of their teachers in physical education and the teaching of physical education . . ." (CTC, *Physical Education Teacher Preparation in California: Standards of Quality and Effectiveness for Subject Matter Programs; A Handbook for Teacher Educators & Program Reviewers* (2004) at p. 1).

AB 351 would broaden the availability of PE credit to courses such as marching band, drill team, and JROTC, none of which require PE course content nor PE credentialed teachers. AB 351 would allow schools to circumvent the state-mandated, standards-based PE currently required, and that students have a right to expect, which the State has determined plays an important role in encouraging a healthy and active lifestyle. In the face of the declining health of our children and rising obesity rates, AB 351 seeks to diminish our state standards for PE. The thrust of California's education reform has been to raise standards, not lower them by giving fraudulent

credit to courses that fail to meet standards. AB 351 would be a step in the wrong direction.

Public Advocates is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing and transit equity. Over its thirty-eight years, Public Advocates has had a long-standing commitment to improving educational opportunities. As you know, Public Advocates was a lead counsel on the landmark case, *Williams v. California*, which resulted in a settlement that established minimum standards for basic educational necessities, including properly credentialed teachers. Public Advocates supported SB 601 (Torlakson), an important tool for the public and policymakers to understand how school districts fare in state law physical education requirements—for example, districts report whether students are being provided PE instruction by properly credentialed PE teachers. *See* Cal. Educ. Code § 33352(b)(9).

CURRENT STATE LAW REQUIRES THAT PHYSICAL EDUCATION MUST BE TAUGHT BY PROPERLY CREDENTIALLED PE TEACHERS

As the *Williams v. California* settlement legislation has made clear, students have a right to a qualified teacher defined as having subject-matter competency, a proper teaching credential, or authorization to teach English Learners. *See* Cal. Educ. Code §§ 35186(e)(2)(B), 35186(e)(2)(C), 35186(h)(2)), 44258.9(b)(1)(A). The proper teaching credentials that authorize teachers to provide instruction in the subject of physical education are single subject teaching credentials in the area of physical education (*see* Cal. Educ. Code §§ 44256(a); 44257(a)(11); Cal Code Regs., tit. 5, § 80005(a)(11)) and multiple subject teaching credentials, which cover the subject of physical education (*see* Cal. Educ. Code §§ 44282(b); 44256(b); Cal Code Regs., tit. 5, § 80003) for K-8 settings. At the high school level, a class for which PE credit is awarded must be taught by a properly credentialed PE teacher. A properly credentialed high school PE teacher is one who holds a Preliminary or Clear Single Subject Teaching Credential listing “Physical Education” as the authorized subject of instruction or at a minimum a temporary authorization, such as a Short Term Staff Permit, specifically authorizing the teaching of PE in the district by the credential holder.

AB 351 would undermine these important standards by allowing students to receive PE credit without being taught by a properly credentialed PE teacher, who has the training to provide students with the necessary PE content in the classroom.

CURRENT STATE LAW REQUIRES THAT PHYSICAL EDUCATION CREDIT MUST BE GIVEN ONLY FOR CLASSES THAT MEET THE STANDARDS FOR PHYSICAL EDUCATION

The governing board of every school district is required to “enforce in its schools the courses of study.” Cal. Educ. Code § 51050. Physical education is a mandated course of study (*see* Cal. Educ. Code §§ 51210; 51222) and is required for graduation from high school (Cal. Educ. Code § 51225.3(a)(1)(F)); therefore, it is the duty of the school districts to enforce physical education as a course of study in the schools. Under current state law, physical education classes in high schools are required to cover all eight of the following content areas: effects of physical activity upon dynamic health, mechanics of body movement, aquatics, gymnastics and tumbling, individual and dual sports, rhythms and dance, team sports, and combatives for boys. Cal. Code Regs., tit. 5, § 10060(a). If these state-mandated content areas

are not covered in the classes, then the District may not legally provide PE credit for those classes. Citing this regulation, CDE has emphasized that:

The California Department of Education has the responsibility of monitoring the extent to which high schools provide a course of study that includes these eight content areas. These content areas provide a wide variety of physical activities necessary to develop the skills and knowledge essential to the individual for the selection of lifetime pursuits.

Calif. Dept. of Educ., *Physical Education Framework for California Public Schools, Pre-Publication Version, September 15, 2008, Chapter 4* at 116. Marching band, drill team activities, cheerleading, or JROTC courses which tend to focus on singular physical activities do not deliver the eight content areas required of PE courses as required in *California Code of Regulations*, title 5, section 10060(a).

Indeed, the California State Board of Education and the California Department of Education have issued a legal opinion that interprets and relies on *California Code of Regulations*, title 5, section 10060 to conclude that PE credit should not be given to courses which do not meet the standards of the PE curriculum.

The California Department of Education does not support granting physical education credit for single activities such as marching band, drill team, ROTC, and cheerleading. These activities typically do not meet the requirements within the description of a course in physical education . . .

CDE Opinion on Granting Physical Education Credit for Single Activities such as Marching Band, Drill Team, ROTC and Cheerleading (Approved on June 11, 1999 by California State Board of Education). Reaffirming this position recently, the CDE's Physical Education Framework states:

Marching band, cheerleading, and ROTC also offer students opportunities to be physically active. These elective courses do not prepare students to meet grade- or course-level standards in physical education and do not follow the high school course of study established by California Code of Regulation, Title 5, Section 10060. Although these courses are appropriate for elective course credit, they are not appropriate for physical education course credit.

Calif. Dept. of Educ., *Physical Education Framework for California Public Schools, Pre-Publication Version, September 15, 2008, Chapter 1* at 13.

As these sources state clearly, elective courses which lack the state standards and content required for physical education are not appropriate for physical education credit. Just as with a prescribed Math or English course, the State has determined it is in California's interest for students to receive PE instruction according to state-established content standards.

We understand that San Diego Unified School District's support of AB 351 is based in part on a study the District conducted. The study conducted by the District shows that a greater percentage of students in marching band (total of 125 students) performed better on the Fitnessgram test than regular PE students (total of 6270 students), although students in JROTC

(total of 527 students) performed less well than those students who attended regular PE classes. Even on its face value the study is a skewed comparison. A mere 125 students in marching band compared to 50 times that number of students in PE—6270—may simply show that PE classes have many students who begin the class at a greater variety of fitness levels than the smaller pool of students in marching band. More to the point, these are reasons a school may consider in determining whether to offer marching band or JROTC as electives; however, whatever the study in San Diego shows, it does not justify rewriting state law and watering down PE standards for all California students. Accordingly, the fact that a given individual may come to marching band more fit than the average high school student no more justifies awarding PE credit for the class than would awarding math credit for band members who come to class well-versed in math. Similarly, the fact that an individual may employ some subset of PE skills in marching around a field no more equates to a full PE course than using some math in Economics warrants an award of calculus credits.

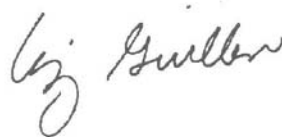
Regardless of individual anecdotes, the State is responsible for setting standards across California. The State has determined by codifying in regulations and statutes that the best means to ensure a minimum standard of quality for physical education for every student is to require PE class content and PE credentialed teachers. These are the current minimum standards required for all districts to ensure there is a baseline of PE quality across California. The State encourages elective activities such as marching band or JROTC that may improve or enhance certain aspects of physical fitness in our youth. Encouraging such electives, however, is no substitute for ensuring that PE standards are met.

We support high standards for PE. AB 351 would undermine the standards the State has set to support the health and fitness of our students. For all of these reasons, we oppose AB 351.

Sincerely,



Michelle N. Rodriguez
Staff Attorney



Liz Guillen
Director of Legislative & Community Affairs

cc: Paul Navarro, Deputy Legislative Secretary, Governor's Office
Assembly Member Julia Brownley, Chair, Assembly Education Committee
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