November 3, 2014

VIA ELECTRONIC MAIL

Mr. Josh Daniels, President, Board of Education
Berkeley Unified School District
2020 Bonar Street, Room 202
Berkeley, CA 94702
boardofed@berkeley.net

Re: DREDF Opposition to Proposed Policy on Recess Restriction

Dear President Daniels:

Disability Rights Education & Defense Fund (DREDF) strongly urges the Berkeley Unified School District (BUSD) Board to reject the proposed policy on recess restriction that will be considered by the Board at its meeting on November 5, 2014. Although state law permits school boards to adopt “reasonable rules” to restrict recess for disciplinary purposes,¹ the Board should not adopt such a policy because it would be antithetical to federal education rights and policies that recognize recess as an essential component of education, the District’s own Positive Behavioral Interventions and Supports (PBIS) and Response to Instruction and Intervention (RTI²) systems, and the overwhelming scientific evidence that such policies are harmful to childhood development.

Founded in 1979 by people with disabilities and parents of children with Disabilities and located in Berkeley, DREDF is a national law and policy center dedicated to advancing and protecting the civil rights of people with disabilities. DREDF is a Parent Training and Information Center (PTI) funded by the U.S. Department of Education and has served Alameda, Contra Costa and Yolo counties for 25 years.

While state law permits the adoption of recess restriction policies, DREDF must remind the District of its separate obligations under federal disability education and discrimination laws, including the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). For example, the U.S. Department of Education’s Section 504 regulations require school districts to ensure that students with disabilities participate with nondisabled students in nonacademic

¹ Cal. Educ. Code § 44807.5 (“The governing board of a school district may adopt reasonable rules and regulations to authorize a teacher to restrict for disciplinary purposes the time a pupil under his or her supervision is allowed for recess”).
activities—including “recess periods”—to the maximum extent appropriate to the needs of the disabled student in question. 34 C.F.R. § 104.34(b). Excluding students from recess due to disability-related behaviors and depriving them of the opportunity to interact with their typically developing peers would be a form of discrimination.

The District must also consider how recess restrictions would affect mandated Section 504 and Individualized Education Program (IEP) services and accommodations, particularly for students with behavioral or attentional disabilities who would benefit from recess the most. For example, research has shown that recess is especially critical for students with attention deficit/hyperactivity disorder (ADHD). A recent study published in the Journal of Abnormal Child Psychology found that a 12-week exercise program improved math and reading test scores in all kids, but especially in those with signs of ADHD. Another study showed that “levels of inappropriate behavior were consistently higher on days when participants [with ADHD] did not have recess, compared to days when they did have it.”

The District’s proposed recess restriction policy may be counterproductive in terms of encouraging positive replacement behaviors in students with ADHD.

Furthermore, the proposed policy raises many questions about the District’s commitment to its own PBIS and RTI2 policies. In terms of PBIS policy, there is clear guidance from the U.S. Department of Education that outlines clear "action steps" for schools to develop positive climates and improve disciplinary policies and practices, including using removal and exclusionary practices only as a last resort for identified "serious" infractions, etc. and ongoing training of staff. While this guidance is focused


on more severe disciplinary actions than recess restriction, recess is a form of exclusionary and negative discipline, an arcane form of punishment. It is contrary to an evidence-based, multi-tiered RTI approach and only fosters a negative school climate across the entire District.

In fact, the District’s own RTI\(^2\) policy states that team referrals are for students “who do not respond consistently to whole class and school-wide positive behavior systems.” Again, recess restriction is not a component of a functioning school-wide positive behavior system, and may in fact exacerbate student behaviors. Instead of codifying a recess restriction policy, the District should commit to improving implementation of its current PBIS and RTI\(^2\) policies through greater teacher and school site administrator training in behavior management techniques to address the issues/behaviors that are causing them to use or want to use recess retention.

Finally, there is no recognized scientific support for restricting recess as a punishment. According to a 2013 report by the American Academy of Pediatrics (AAP), recess is a “crucial and necessary component of a child’s development and, as such, should not be withheld for punitive or academic reasons.”\(^6\) In addition to its obvious physical benefits, recess promotes social and emotional learning and development for children by offering them a time to engage in peer interactions in which they practice and role play essential social skills.\(^7\) Moreover, eliminating recess may be counterproductive to academic achievement, as studies have shown that it also promotes cognitive performance.\(^8\) The AAP concluded that withholding recess for punitive or academic reasons would be “counterproductive to the intended outcomes” and “have unintended consequences in relation to a child’s acquisition of important life skills.”\(^9\)

These findings are in addition to the overwhelming medical consensus that recess is critical to combatting childhood obesity. According to the Centers for Disease Control and Prevention, recess is an indispensable component of the fight to end childhood obesity because it is “accessible to all students, including those who are not athletically

---


\(^{7}\) Id. at 184.

\(^{8}\) Id. at 186.

\(^{9}\) Id.
gifted and those with special health care needs.” DREDF must also note that the Board’s approval on the proposed policy on recess restriction would be completely inconsistent with its unanimous support for Proposition D and the city’s efforts to combat childhood obesity.

Thank you for your consideration of our opposition to the proposed policy on recess restriction. Please contact me with any questions or concerns.

Very truly yours,

Susan Henderson
Executive Director

---