



Chairman of the Board
James J. Postl

President
John J. Warner, MD

Chairman-elect
Bertram L. Scott

President-elect
Ivor Benjamin, MD, FAHA

Immediate Past
Chairman of the Board
Alvin L. Royse, JD, CPA

Immediate Past President
Steven R. Houser, PhD, FAHA

Treasurer
Raymond P. Vara, Jr.

Directors
Mary Ann Bauman, MD
Emelia J. Benjamin, MD, ScM, FAHA
Douglas S. Boyle
Lloyd H. Dean
Mitchell S. V. Elkind, MD, MS, FAHA
J. Donald Fancher
Linda Gooden
Ron W. Haddock
Robert A. Harrington, MD, FAHA
Marsha Jones
Stacey E. Rosen, MD
Lee Shapiro
David A. Spina
Bernard J. Tyson
Thomas Pina Windsor
Joseph C. Wu, MD, PhD, FAHA

Chief Executive Officer
Nancy A. Brown

Chief Operating Officer
Suzie Upton

Chief Science & Medical Officer
Rose Marie Robertson, MD, FAHA

Advocacy Department
1150 Connecticut Ave., NW | Suite 300 | Washington, DC 20036
P 202-785-7900 | F 202-785-7950 | www.heart.org

September 18, 2017

Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW, Room 6E231
Washington, DC 20202

Docket ID: ED-2017-OS-0074

Dear Ms. Malawer:

On behalf of the American Heart Association, including the American Stroke Association and our more than 30 million volunteers and supporters, I am writing in response to the request of the U.S. Department of Education (ED or the Department) for public input on ED regulations that may be appropriate for repeal, replacement, or modification.

The American Heart Association is the nation's oldest and largest voluntary organization dedicated to fighting cardiovascular disease and stroke. Consistent with that mission, we support strengthening standards for physical education throughout K-12 education to address cardiovascular health and long-term well-being of our nation's children.

Regular physical activity is associated with a healthier, longer life and with lower risk of heart disease, high blood pressure, diabetes, and some cancers. In addition, physically fit children have higher scholastic achievement, better classroom behavior, greater ability to focus, and less absenteeism than their unfit counterparts. Unfortunately, many children and youth are essentially sedentary, meeting neither physical education nor physical activity recommendations.

Physical education in schools has been decreasing in recent years. According to studies conducted in the last decade, only 3.8 percent of elementary, 7.9 percent of middle, and 2.1 percent of high schools provide daily physical education or its equivalent for the entire school year, and 22 percent of schools do not require students to take any physical education at all. More recent research indicates that only 51.8 percent of high school students attend at least some physical education

classes and fewer than one-third of those students, 31.5 percent, have daily physical education. However, there remains strong parental support for physical education: a recent survey conducted by the American Heart Association found that 95 percent of parents with children under age 18 believe that physical education should be part of the curriculum for all children, kindergarten through grade 12.

This disturbing trend is counterintuitive to the role of schools. The Centers for Disease Control and Prevention recommend that children receive 60 minutes of daily moderate to vigorous physical activity, and 30 of those minutes should be while in school. Several large-scale studies found improvements in students' academic performance and cognitive ability with increased time spent in physical education. Thus, physical education is a key piece of the puzzle to help ensure our children are healthy, gaining life-long skills they will need to stay healthy, and perform better in school. But we are not giving schools the tools and resources they need to provide this vital part of the curriculum.

Drawing from this framework, we offer a series of recommendations for improvement to the Department's regulations. In order to cover the entire regulatory environment in which these programs operate, these recommendations cover both formal regulations and the accompanying nonregulatory guidance. Our recommendations follow.

Update the regulations for Title I schoolwide programs, including by emphasizing the importance of physical education as a component of a schoolwide program.

The Every Student Succeeds Act (ESSA), the recent reauthorization of the Elementary and Secondary Education Act (ESEA), made significant changes to the authorization for the Title I "Schoolwide Programs" authority, including by revising the requirements for schoolwide program plans and for the components of a schoolwide program. Yet the pre-reauthorization regulations for schoolwide programs (34 CFR 200.25-29) remain on the books, and the Department has not yet taken action to bring those regulations into conformance with current law. We recommend that the Department update those regulations, including by emphasizing the potential importance of physical education as an element of a schoolwide plan and program. For example, section 1115(b)(6) provides that a school's plan for implementation of a schoolwide program must be based on a "comprehensive needs assessment of the entire school that takes into account information on the academic achievement of children in relation to the challenging academic standards...." The revised regulations should stress that this needs assessment should not focus only on academic needs, but should cover the needs of the entire child, including the need for physical education and physical activity.

Further, the law calls for schools implementing schoolwide programs to implement strategies that "address school needs," such as strategies for improving students' skills outside the academic subject areas, professional development and other activities to help educators to improve instruction, as well as strategies for assisting preschool children in the transition to elementary school. The regulations should emphasize that each of these activities will optimally include a focus on physical education, physical activity, or improved physical education instruction.

We further recommend that updated and improved schoolwide program regulations be accompanied by nonregulatory guidance that provides information on best practices for the incorporation of evidence-based physical education that meets national standards.

Through regulations or nonregulatory guidance, incorporate an emphasis on physical education into Title I accountability policies.

Late last year, the Department published final regulations on accountability and state plans under Title I as reauthorized by ESSA. However, these regulations have been rescinded under the procedures of the Congressional Review Act (CRA). Pursuant to the CRA, the Department may not issue a new regulation in “substantially the same form” as a regulation that has been rescinded under the Act. The Department has not taken action to develop new Title I accountability and state plan regulations or to issue nonregulatory guidance in the same areas, leaving states and local educational agencies (LEAs) with only a minimal state plan template to use as guidance in these important areas.

We recommend that the Department, through regulations or guidance (or both), take action to highlight the importance of physical education and physical activity in a state K-12 accountability system. The regulations or guidance could emphasize important principles such as the following:

- Section 1111(c)(4)(B)(v) requires that a state’s accountability system include at least one indicator of school quality or student success. The Department should clarify that the indicator may be a measure of the extent to which schools provide, or students participate in, physical education programs meeting national standards, or of the extent to which students participate in physical activity.
- Section 1111(d)(1) requires that a school identified for comprehensive support and improvement implement an improvement plan that is based on a school-level needs assessment. The Department should clarify that the needs assessment and the improvement plan may address students’ need for physical education.
- Section 1111(h) describes the requirements for state and local report cards on school and student achievement. The report cards must include a number of specified data elements, as well as “Any additional information that the State believes will best provide parents, students, and other members of the public with information regarding the progress of the State’s public elementary and secondary schools...” The Department should clarify that the report card may include data on provision of and participation in physical education and on students’ physical activity.

Although all states are now well along in their development of new ESEA consolidated state plans (with some states having already submitted them), we believe that it would still be timely and appropriate for the Department to clarify policy in these important areas. In particular, as no state has yet issued its initial state report card under the new law, it would be quite timely to issue regulations or guidance clarifying that they may include information on physical education and encouraging them to do so.

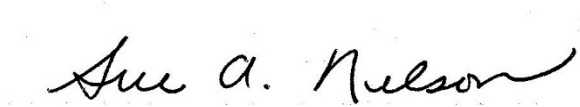
Update the guidance for other programs to emphasize physical education and physical activity.

Since the enactment of ESSA, the Department has updated a number of its nonregulatory guidance packages (in such areas as early learning, English learners, and

the Title II program) to reflect the provisions of the reauthorized statute. As ED continues to update program guidance, it should incorporate appropriate language emphasizing the allowability and advisability of including physical education in ESEA programs. For example, the ED guidance on Title I targeted assistance programs and on allowable Title I expenditures more generally has not been reissued in many years, and it would be very beneficial if the Department updated those guidance packages and used them to highlight the potential role of physical education in Title I programs. We also strongly encourage ED to include appropriate references to physical education and physical activity in updated 21st Century Community Learning Centers guidance. More generally, as the Department rolls out new or updated nonregulatory guidance for any ESEA program, we urge you to remember that physical education is an important, essential component of K-12 education and to consider how it can be supported, to the maximum extent possible, through ESEA programs.

Thank you for the opportunity to comment on this important initiative. If you have any questions or need any assistance, please contact Kristy Anderson at (202) 785-7927 or kristy.anderson@heart.org

Sincerely,

A handwritten signature in black ink that reads "Sue A. Nelson". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Sue A. Nelson
Vice President, Federal Advocacy