CALIFORNIA TEACHERS ASSOCIATION

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DEPARTMENT OF LEGAL SERVICES

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ADVICE MEMORANDUM

PHYSICAL EDUCATION MINUTES LITIGATION

Many certificated CTA members have received directives from school administrators to provide information pertaining to time used for physical education ("PE").

On October 21, 2013, an organization named Cal200 filed a class action lawsuit against 37 school districts (San Francisco Superior Court, Case No. CGC-13-534975). The lawsuit claimed that many school districts had failed to provide students with the PE minutes required by Section 51210(g) of the Education Code as part of the course of study for Grades 1-6. That law requires a non-charter school to provide 200 minutes of PE activities over each period of ten (10) school days.

The school district defendants have now settled that lawsuit. Under the court-supervised settlement terms, school principals have been directed to demonstrate compliance with the PE minutes requirement. In turn, school employees have received directives to verify that their assigned students receive the required PE time. The settlement requires administrators to post PE schedules; to obtain forms from teachers that report PE time; and to notify parents and guardians of Education Code requirements regarding PE time.

Similar lawsuits are still pending against other school districts, and school employees in those other districts may find themselves asked to provide similar statements and documents to their employers.

School employees have been concerned about being contacted by representatives for the parties, and likely some teachers may be concerned about any potential liability or discipline they fear might result from providing evidence or assistance to the parties. Section 51210(g) places a legal duty on the governing board of a school district, not on individual teachers. Educ. Code § 51053. The lawsuits have not named any individual teachers as defendants.

CTA Legal reviewed the complaint filed by Cal200 and some related directives sent to school employees. In lawsuits it is routine for parties to be required to not destroy any documents or evidence in their possession or under their control that might be relevant to the litigation. Employees should, as a rule, comply with their employer's direction in such matters.

There are very few legal bases for an individual witness to challenge a court order or employer directive related to litigation documents or a court-approved settlement. Thus far, in connection with the Cal200 lawsuit, CTA has not seen any employer directives that go beyond reasonable requests related to preservation of documents, assigned job duties, or compliance with the settlement agreements. If a bargaining unit member has a reasonable concern that complying with such directives could result in discipline, then the member should contact their local chapter for assistance.

If a chapter is aware that the employer has settled litigation over provision of PE minutes, and the chapter wants to ensure that the employer's directives are within the scope of the settlement, then the chapter could send an information request under EERA asking for a copy of the litigation settlement agreement between the district and the plaintiffs. At this point, it does not appear that the Cal200 settlement procedures and compliance forms trigger effects bargaining. However, if a chapter is concerned that a district's directives unilaterally change, or have a reasonably foreseeable effect on, hours or other mandatory subjects, primary contact staff and CTA Legal should be consulted.