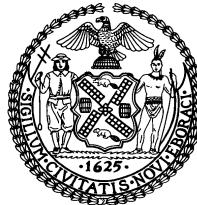


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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION**

Jeffrey Baker, *Legislative Director*  
Andrea Vazquez, *Deputy Director for Human Services*

**COMMITTEE ON EDUCATION**

Hon. Mark Treyger, *Chair*

**May 28, 2019**

**PROPOSED INT. NO. 242-B:**

By Council Members Reynoso, Brannan, Richards, Lander, Torres, Gibson, Holden, Treyger, Cumbo, Ampry-Samuel, Rose, Cohen, Levin, Cabrera, Menchaca, Rivera, Adams, Rosenthal, King, Cornegy, Eugene, Salamanca, Lancman, Powers, Ayala, Kallos, Moya, Constantinides and Ulrich

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on funding for after school athletics

**ADMINISTRATIVE CODE:**

Adds new chapter 27 to the Administrative Code

**PROPOSED INT. NO. 1294-A:**

By Council Members Rosenthal, King, Cornegy, Eugene, Reynoso, Levine, Richards and Rose

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to reporting by the department of education on adaptive physical education

**ADMINISTRATIVE CODE:**

Amends subdivision b and adds a new subdivision d of section 21-960 of the Administrative Code

**PROPOSED INT. NO. 1298-A:**

By Council Members Treyger, Kallos, King, Cornegy, Eugene, Gibson, Reynoso, Levine, Richards and Rose

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on physical education curricula in New York city public schools

**ADMINISTRATIVE CODE:**

Amends subdivisions b and c and adds a new subdivision e of section 21-960 of the Administrative Code

**PROPOSED RES. NO. 85-B:**

By Council Members Reynoso, Salamanca, Rosenthal, King, Cornegy, Eugene and Rivera

**TITLE:**

Resolution calling upon the New York City Department of Education (DOE) to ensure that all students have equitable access to after-school athletic activities and associated funding.

**RES. NO. 811**

By Council Members Miller, Treyger, Dromm, Rosenthal, Chin, Lander, Kallos, Eugene, Cornegy, Barron and Ampry-Samuel

**TITLE:**

Resolution calling upon the New York State Legislature to pass and the Governor to sign legislation to require inclusion of Employee Protection Provisions (EPPs) in all current and future school bus contracts in New York City

## **INTRODUCTION**

On Tuesday, May 28, 2019, the Committee on Education, chaired by Council Member Mark Treyger, will hold a vote on Proposed Introduction Number 242-B sponsored by Council Member Antonio Reynoso; Proposed Introduction Number 1294-A, sponsored by Council Member Helen Rosenthal; Proposed Introduction Number 1298-A, sponsored by Council Members Mark Treyger and Ben Kallos; Proposed Resolution Number 85-B, sponsored by Council Member Antonio Reynoso; and Resolution Number 811, sponsored by Council Member I. Daneek Miller. The Committee previously heard testimony on this legislation<sup>1</sup> from the Department of Education (“DOE”), parents, students, educators, advocates, unions, and other members of the public.

### **I. BACKGROUND**

Regular physical activity in childhood and adolescence promotes lifelong health and well-being. Physical activity reduces the risk of numerous diseases and conditions, including obesity, heart disease, stroke, hypertension, Type 2 diabetes, and a number of cancers.<sup>2</sup> Regular physical activity contributes to overall health by strengthening bones, improving sleep, and reducing the risk for and symptoms of anxiety and depression.<sup>3</sup> Physical activity also improves the brain’s “executive function” processes that help plan and organize daily activities and other components of cognition, including memory, processing speed, and attention.<sup>4</sup> Research also shows a link between physical activity and academic performance. According to the Centers for Disease Control and Prevention, increased physical education (“PE”) time improves cognitive skills such

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<sup>1</sup> Hearing held on December 3, 2018.

<sup>2</sup> U.S. Department of Health and Human Services, *2018 Physical Activity Guidelines Advisory Committee Scientific Report*, February 2018, accessed 11/19/18 at <https://health.gov/paguidelines/second-edition/report/>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

as concentration and creativity, as well as standardized test scores and grade point averages.<sup>5</sup> In addition, increased PE time enhances student self-esteem, motivation, and conduct.<sup>6</sup>

School athletics programs provide all of the above health benefits as well as a number of others. Students who play sports are less likely to smoke cigarettes or use drugs, and female high school athletes are less likely to become pregnant than non-athletes.<sup>7</sup> Studies also show that student athletes have higher grade point averages and test scores, better attendance, lower dropout rates, and a greater chance of going to college.<sup>8</sup> Participation in team sports also teaches students valuable social skills, such as cooperation and teamwork, time management, and leadership development.<sup>9</sup>

Despite the recognized benefits of PE and athletics programs, a 2015 report by the New York City Comptroller revealed that 32 percent of City schools lacked a full-time, certified PE teacher and 28 percent lacked a dedicated physical fitness space.<sup>10</sup> This Comptroller's report reinforced earlier findings, such as a 2012 survey of schools by the American Heart Association, which found that DOE failed to provide adequate PE instruction to all City students.<sup>11</sup> In response, the City Council enacted Local Law 102 of 2015 ("LL 102/2015"), which requires DOE to provide

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<sup>5</sup> Centers for Disease Control and Prevention, *The Association Between School-Based Physical Activity, Including Physical Education, and Academic Performance*, U.S. Department of Health and Human Services, April 2010, accessed at [https://www.cdc.gov/healthyyouth/health\\_and\\_academics/pdf/pa-pe\\_paper.pdf](https://www.cdc.gov/healthyyouth/health_and_academics/pdf/pa-pe_paper.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, "The Benefits of Playing Sports Aren't Just Physical!" May 30, 2012, accessed at <https://health.gov/news/blog/2012/05/the-benefits-of-playing-sports-arent-just-physical/>.

<sup>8</sup> *Id.*

<sup>9</sup> Grace Chen, "10 Reasons Why High School Sports Benefit Students," Public School Review, updated August 28, 2018, accessed at <https://www.publicschoolreview.com/blog/10-reasons-why-high-school-sports-benefit-students>.

<sup>10</sup> Office of the Comptroller, "Dropping the Ball: Disparities in Physical Education in New York City Schools," May 5, 2015, accessed at [http://comptroller.nyc.gov/wp-content/uploads/documents/Phys\\_Ed.pdf](http://comptroller.nyc.gov/wp-content/uploads/documents/Phys_Ed.pdf).

<sup>11</sup> American Heart Association, "Physical Education in New York City: Ignoring the 800 lb. Gorilla, Preliminary Results of the American Heart Association's Survey on Physical Education," January 2013, accessed at <https://media.gractions.com/F410DC9E068B98B88EA0B5C54D6885F750D9D0A3/2850366f-07e8-4da8-a7ba-ff6d1b687975.pdf>.

an annual report regarding the amount of time each week that PE instruction is provided to students in each grade level at every school.<sup>12</sup> The law also requires DOE to report the number of full-time state certified PE instructors employed for grades K through 12, as well as information about PE space, including lists of all schools using non-gymnasium space and those using off-site space for PE instruction.<sup>13</sup> Since LL 102/2015 was enacted, DOE has submitted three reports, which show an increase in the number of students receiving the State-mandated amount of PE, though many students are still not getting the required amount.<sup>14</sup> According to the latest data for the 2017-18 school year, 76 percent of students Citywide received the required amount of PE, an increase from 71 percent during 2016-17 and 53 percent in 2015-16.<sup>15</sup> Elementary students are less likely than their older peers to receive the required PE instruction. In 2017-18, 87 percent of high school and middle school students received the required amount of PE, while only 63 percent of elementary school students did.<sup>16</sup> There were also 179 more licensed PE teachers in 2017-18, compared to 2016-17.<sup>17</sup> It should be noted that the law includes a redaction provision to protect student privacy, and the most recent report provided by DOE was heavily redacted such that it included minimal school-level data. The Council has been working with DOE to address this issue and receive an accurate report.

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<sup>12</sup> Local Law 102 of 2015, accessed at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2170477&GUID=2682A7A6-EE35-49F7-947A-4DC6FC69B2E2&Options=Advanced&Search=>

<sup>13</sup> *Id.*

<sup>14</sup> DOE email, on file with the Committee, and *PE Report for 2017-2018*, accessed at <https://infohub.nyced.org/reports-and-policies/government/intergovernmental-affairs/physical-education-reporting>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

In recent years, stakeholders have brought inequities in access to sports teams to the Council’s attention.<sup>18</sup> Students staged a protest relating to disparities in the distribution of sports teams to small high schools serving primarily low-income students of color at a 2014 Council budget hearing.<sup>19</sup> These efforts led to the incorporation within DOE of the independent Small Schools Athletic League (“SSAL”), with the help of an initial City Council grant of \$825,000 in Fiscal 2015.<sup>20</sup> However, inequities in access to sports teams remain. In June 2018, New York Lawyers for the Public Interest (“NYLPI”) filed a class action lawsuit, on behalf of the student-led organization Integrate NYC, and Black and Latino students, charging that DOE and Public Schools Athletic League (“PSAL”) “have engaged in racial discrimination by denying Black and Latino students equal opportunity to play high school sports.”<sup>21</sup> The suit charges that, on average, Black and Latino students have access to far fewer teams and sports, and are twice as likely as students of other races to attend schools without sports teams.<sup>22</sup> Further, the suit charges that the City spends much less on sports teams per Black and Latino student than for students of other races.<sup>23</sup> The lawsuit seeks to “create equal access to high school sports for all students, regardless of race,” arguing that access to school sports can affect students’ physical and mental health as well as college opportunities.<sup>24</sup>

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<sup>18</sup> See testimony of David Garcia-Rosen and Mark Doorman, Transcript of Education Committee hearing, March 20, 2014, accessed at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1665399&GUID=77F8DAEE-5C95-4C19-8CE4-D02F96B6D3DA&Options=Advanced&Search=>.

<sup>19</sup> Bob Cook, “In The Biggest City, A Fight Over Sports For the Smallest Schools,” *Forbes*, May 29, 2014, accessed at <https://www.forbes.com/sites/bobcook/2014/05/29/in-the-biggest-city-a-fight-over-sports-for-the-smallest-schools/#114e7a832c8f>.

<sup>20</sup> Alex Ellefson, “High School Athletes Flag DOE for Violating Their Civil Rights,” *The Independent*, May 19, 2015, accessed at <https://indypendent.org/2015/05/high-school-athletes-flag-doe-for-violating-their-civil-rights/>.

<sup>21</sup> New York Lawyers for the Public Interest press release, “Discrimination Lawsuit Filed Against New York City Department of Education and Public Schools Athletic League Calls for Equal Access to School Sports,” June 21, 2018, accessed at <http://www.nylpi.org/nylpi-files-discrimination-lawsuit-against-new-york-city-department-of-education-and-public-schools-athletic-league-calling-for-equal-access-to-school-sports/>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

### **III. STATE LAWS AND REGULATIONS REGARDING PE AND ATHLETICS**

New York State Education Law (“SEL”) requires all pupils above the age of eight years old in all elementary and secondary schools, public and private, to receive instruction in physical education.<sup>25</sup> The New York State Board of Regents adopt rules determining the subjects to be included in courses of physical education, the period of instruction in each course, the qualifications of teachers, and course attendance requirements.<sup>26</sup> According to the regulations, local boards of education are required to develop and implement school district plans to provide PE experiences for all pupils and to keep current plans on file in the school district office and with the State Education Department.<sup>27</sup> This school district plan must include detailed information on PE curricula, required instruction, attendance, personnel, facilities, administrative procedures, and policies for school athletic activities outside of class.<sup>28</sup>

Pursuant to the rules, students in grades K-6 must participate in PE for at least 120 minutes per week (exclusive of time required for dressing and showering) as follows:

- Pupils in grades K-3 shall participate in PE on a daily basis.
- Pupils in grades 4-6 shall participate in PE no less than three times per week.<sup>29</sup>

While it is recommended that PE is taught by a certified PE teacher, elementary classroom teachers may provide PE instruction under the supervision of a certified PE teacher or supervisor.<sup>30</sup>

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<sup>25</sup> SEL §803.1.

<sup>26</sup> *Id.* §803.5.

<sup>27</sup> 8 NYCRR §135.4 (a).

<sup>28</sup> 8 NYCRR §135.4 (c).

<sup>29</sup> 8 NYCRR §135.4 (c)(2)(i)(a).

<sup>30</sup> 8 NYCRR §135.4 (c)(4)(i).

Students in grades 7-12 are required by the State rules to participate in PE at least three times per week in one semester and two times per week in the other semester.<sup>31</sup> Students in grades 7-12 must be taught by a certified PE teacher.<sup>32</sup>

New York State does not grant waivers or permit exemptions from PE.<sup>33</sup> If a student has a medical certificate of limitation, it must indicate the area of the PE program in which the pupil may participate.<sup>34</sup> Additionally, State regulations require districts to “provide adequate indoor and outdoor facilities for the physical education program at all grade levels.”<sup>35</sup>

In the area of athletics, State law does not mandate participation, but does require that coaches of “extra-class public school athletic activities” receive instruction in and hold a valid certificate of completion of a state- approved first aid course, which must include cardiopulmonary resuscitation.<sup>36</sup> Commissioner’s Regulations also specify the ages for interschool athletic competition for pupils in grades 7 through 12.

#### **IV. PE AND ATHLETICS IN NYC SCHOOLS**

DOE’s Office of School Wellness Programs (“OSWP”) is responsible for overseeing PE as well as comprehensive health education and other wellness programs.<sup>37</sup> OSWP develops DOE’s Wellness Policy, in collaboration with a District Wellness Advisory Council consisting of representatives including parents, students, PE teachers, health education teachers, school health professionals, school administrators and other community partners and stakeholders.<sup>38</sup> According

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<sup>31</sup> 8 NYCRR §135.4 (c)(2)(ii)(a).

<sup>32</sup> *Id.*

<sup>33</sup> 8 NYCRR §135.4 (c)(3)(i).

<sup>34</sup> *Id.*

<sup>35</sup> 8 NYCRR §135.4 (c)(5).

<sup>36</sup> SEL §3001-b.

<sup>37</sup> New York City Department of Education Wellness Policy, 2017, accessed 11/27/18 at <https://infohub.nyced.org/reports-and-policies/policies/doe-wellness-policy>.

<sup>38</sup> *Id.*

to DOE’s Wellness Policy, PE is an academic subject in which “students learn about their bodies, how to take care of them, and how to move, as well as the skills to engage in lifelong healthy habits.”<sup>39</sup> The Wellness Policy acknowledges DOE’s responsibility to provide students in grades K–12 with PE in accordance with New York State Education Law and Commissioner’s Regulations, including the time and frequency requirements for each grade.<sup>40</sup> To assist elementary schools with meeting time and frequency requirements, DOE has introduced the “Move-to-Improve” classroom-based physical activity program.<sup>41</sup> Elementary schools in which at least 85 percent of eligible teachers are trained in the program are permitted to use up to 40 minutes per week of Move-to-Improve activities to help meet the 120 minutes of required PE.<sup>42</sup> In elementary schools, classroom teachers may only provide instruction under the guidance of a certified PE teacher so there must be at least one certified PE teacher in every elementary school.<sup>43</sup> PE instruction in middle and high schools must be provided by a certified PE teacher.<sup>44</sup> DOE’s policy specifies that schools will make appropriate accommodations and adapt PE classes to meet the needs of students with disabilities.<sup>45</sup> DOE’s Adaptive Physical Education (“APE”) program is specifically designed for students with disabilities who may not be able to safely or successfully participate in the activities of a regular PE program.<sup>46</sup>

DOE’s Wellness Policy also recommends that classroom teachers provide short physical activity breaks between lessons or classes and strongly recommends that all elementary schools

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> DOE website, “Physical Education” accessed on 11/19/18 at <https://www.schools.nyc.gov/school-life/learning/subjects/physical-education>.

offer at least 20 minutes of recess per day, but emphasizes that these activities do not count toward the PE requirements.<sup>47</sup>

DOE also promotes physical fitness through NYC FITNESSGRAM, which is an individualized assessment required for all eligible students in grades K—12 conducted in PE class.<sup>48</sup> Parents can access their child's annual NYC FITNESSGRAM report via their NYC Schools Account.<sup>49</sup>

Regarding sports and athletic programs, DOE provides opportunities for students to participate in activities before and/or after the school day through CHAMPS Sports and Fitness Programs in elementary and middle school, and PSAL programs in high schools.<sup>50</sup> CHAMPS is a sports and fitness program that runs in three seasons (Fall, Winter, and Spring).<sup>51</sup> At the beginning of each school year, schools have the opportunity to apply for programs. Principals can choose from a range of activities, including basketball, tennis, golf, badminton, yoga, dance, and running. The City Council has provided \$125,000 to support CHAMPS annually since Fiscal 2007. The total Fiscal 2018 budget supported 1,583 CHAMPS programs at 428 middle schools. Most of the funding pays for coaches, who are school personnel, and also supports student insurances, school supplies, and transportation.<sup>52</sup> Similar to CHAMPS, PSAL programs are offered in the Fall, Winter, and Spring. Sports include badminton, baseball, basketball, soccer, bowling, cricket, cross country, double dutch, fencing, flag football, football, golf, gymnastics, handball, indoor track,

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> DOE website, “Sports and Staying Active” accessed on 11/19/18 at <https://www.schools.nyc.gov/school-life/health-and-wellness/sports-and-staying-active>.

<sup>52</sup> Information provided by DOE to Council Finance, on file with Council Finance.

lacrosse, outdoor track, rugby, softball, swimming, table tennis, tennis, volleyball, and wrestling.<sup>53</sup>

All PSAL and CHAMPS coaches must complete concussion training every two years.<sup>54</sup>

## **V. DOE'S RECENT INVESTMENTS IN PE & ATHLETICS**

Over the past four years, the Administration has made targeted investments to improve PE in schools. In the Fiscal Year 2016 Budget, the Administration baselined \$6.6 million for PE and wellness.<sup>55</sup> Of this, \$2.4 million was for eight PE and wellness support staff in Borough Field Support Centers who are responsible for identifying PE needs in schools, providing training and professional development to teachers, supporting school in PE compliance, and developing partnerships to support PE efforts. The remaining \$4.2 million funded an additional 50 PE teachers.<sup>56</sup>

In Fiscal 2017, the Administration added another \$9.1 million for PE and fitness.<sup>57</sup> This investment grew to \$39.8 million in Fiscal 2019 and \$20.9 million in Fiscal 2020. This funding supports 455 PE and wellness staff in Fiscal 2019 and 441 in Fiscal 2020, as well as the Move-to-Improve training programs.<sup>58</sup> According to former-Chancellor Carmen Fariña, the Fiscal 2017 funding was added specifically “to move all elementary schools to compliance with State PE regulations by June 2019.”<sup>59</sup> This initiative, called “PE Works,” provides funding to schools with

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<sup>53</sup> PSAL website, “Sports,” accessed on 11/19/18 at <http://www.psal.org/>

<sup>54</sup> New York City Department of Education Wellness Policy, 2017, accessed 11/27/18 at <https://infohub.nyced.org/reports-and-policies/policies/doe-wellness-policy>.

<sup>55</sup> Fiscal 2016 Adopted Budget, Office of Management and Budget.

<sup>56</sup> *Id.*

<sup>57</sup> Council Finance report on DOE Fiscal 2017 Executive Budget, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2016/05/040-Education-Expense.pdf> and Fiscal 2017 Executive Budget, Office of Management and Budget.

<sup>58</sup> *Id.*

<sup>59</sup> DOE testimony at Fiscal 2017 Executive Budget hearing, May 16, 2016, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2702766&GUID=5BF6B5F1-C4FA-4272-BA3E-3A105D59B1B7&Options=&Search=>

elementary grades that did not have a PE certified teacher to hire a certified PE teacher.<sup>60</sup> Funding is provided at 100 percent for the first year and then decreases each year until the school assumes full responsibility for the PE teacher salary in the fourth year.<sup>61</sup> Schools are also provided with funding to support the formation of, or to strengthen, a School Wellness Council. In Fiscal 2019 \$28.6 million is being provided directly to schools through PE Works.<sup>62</sup>

In Fiscal 2018, the total PSAL budget, including allocations made to schools to support their teams, was \$34.5 million.<sup>63</sup> This includes \$1 million in City Council discretionary funding.<sup>64</sup> The Council has provided \$1 million to support PSAL annually since Fiscal 2015; this funding is specifically to support teams in the SSAL and Multiple Pathways League, created in 2014 as a replacement for the Transfer League to serve over-age students in Transfer High Schools.<sup>65</sup> Approximately two-thirds of the total PSAL budget is for coaches and athletic directors, other costs include \$5.7 million in OTPS team costs, \$2.7 million for central staff, \$1.1 million for equipment and IT upgrades, and approximately \$2 million for travel, Big Apple Games, and privately funded initiatives.<sup>66</sup> This funding has supported more than 3,000 teams with approximately 44,000 student athletes at 528 schools.<sup>67</sup> While the average cost per PSAL program is \$9,207, funding ranges from as little as \$1,000 to as much as \$30,000 per program.<sup>68</sup> The cost of each program is based on the number of allowable hours for each sport, as determined by the

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<sup>60</sup> DOE, *PE Works Year Three Report (2017-18)*, accessed at <https://infohub.nyced.org/reports-and-policies/citywide-information-and-data/annual-pe-works-reports>.

<sup>61</sup> School Allocation Memorandum No. 40, FY 2019, [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy18\\_19/fy19\\_docs/fy2019\\_sam040.htm](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy18_19/fy19_docs/fy2019_sam040.htm)

<sup>62</sup> *Id.*

<sup>63</sup> Fiscal 2018 Term & Condition, DOE PSAL Report, <https://council.nyc.gov/budget/fy2018/>

<sup>64</sup> *Id.*

<sup>65</sup> PSAL website, <http://www.psal.org/sports/sport.aspx?spCode=072&flag=MPL>.

<sup>66</sup> Fiscal 2018 Term & Condition, DOE PSAL Report, <https://council.nyc.gov/budget/fy2018/>.

<sup>67</sup> *Id.*

<sup>68</sup> These costs do not include fringe for the personnel spending.

PSAL coaching Collective Bargaining Agreement negotiated by DOE and the United Federation of Teachers, among other factors.

Pursuant to a Fiscal 2018 Term and Condition, DOE reported PSAL program applications that were denied.<sup>69</sup> In Fiscal 2018, 150 teams that applied for PSAL funding were denied.<sup>70</sup> Half of these requests were denied due to “lack of funding,” while other common reasons for denial were “facility is at full capacity,” or because DOE determined the school had a large number of teams and preference was given to schools with fewer PSAL teams. DOE did fund 42 new PSAL programs in Fiscal 2018, including 23 SSAL teams and six Multiple Pathways League teams.<sup>71</sup>

While all schools are required to provide PE, not all schools have PE space. Capital funding is expended to repair and construct the facilities in which PE programming is offered. In June 2017, the Mayor announced a “Universal Physical Education” initiative to ensure all students have access to appropriate PE space by 2021, including \$105.5 million in capital funding.<sup>72</sup> The proposed Fiscal 2020-2024 Five-Year Capital Plan also includes \$25 million for the Universal Physical Education initiative.<sup>73</sup> In the first phase of the initiative, the School Construction Authority (“SCA”) is exploring options to construct new gyms, renovate schoolyards, or convert existing space for schools that do not currently have sufficient access to indoor PE space.<sup>74</sup> The SCA has already identified three schools that will receive a new standalone gym annex: P.S. 81 in Queens, P.S. 18 in Brooklyn, and P.S. 6 in the Bronx. In addition, two schools will be getting

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<sup>69</sup> Fiscal 2018 Term & Condition, DOE PSAL Report, <https://council.nyc.gov/budget/fy2018/>.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> [Office of the Mayor press release, “Mayor de Blasio, Speaker Mark-Viverito, Chancellor Faríña Announce Universal Physical Education Initiative,” June 5, 2017, accessed at https://www1.nyc.gov/office-of-the-mayor/news/390-17/mayor-de-blasio-speaker-mark-viverito-chancellor-fari-a-universal-physical-education#/0.](https://www1.nyc.gov/office-of-the-mayor/news/390-17/mayor-de-blasio-speaker-mark-viverito-chancellor-farin-a-universal-physical-education#/0)

<sup>73</sup> [SCA Fiscal 2015-2019 Five-Year Capital Plan, accessed at http://www.nycsca.org/Community/Capital-Plan-Reports-Data#Capital-Plan-67.](http://www.nycsca.org/Community/Capital-Plan-Reports-Data#Capital-Plan-67)

<sup>74</sup> *Id.*

gymnasiums though an addition/annex funded in the Capacity program: P.S. 254 in Brooklyn and P.S. 340 in the Bronx. The Fiscal 2018 Adopted Budget also included \$1.8 million in expense funding to cover 21 leases of gymnasium space.<sup>75</sup>

Beyond the capital funding for the Universal Physical Education initiative, small amounts of funding have been allocated for “physical fitness upgrades” (swimming pools and gymnasiums) and athletic fields that need upgrading.<sup>76</sup> In addition, a portion of Temporary Classroom Unit (TCU) removal funding is also for playground redevelopment. Council Members and Borough Presidents often allocate discretionary capital funding to renovation of PE space as well.<sup>77</sup>

## **VI. BILL ANALYSIS**

**Proposed Int. 242-B** - A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on funding for after school athletics

This bill would require DOE to provide a report on after school athletic funding to the Council and post the same report on its website. The report would include data with respect to funding for coaches, referees, athletic directors, equipment, uniforms, and transportation. The bill would also require reporting on student demographic information, athletic teams requests, and athletic facilities used for after school athletics. The bill would take effect immediately.

**Update to B version:** The bill was amended to conform its requirements with how DOE collects and reports certain data. The disaggregation of students in paragraph 2 of subdivision b no longer includes eligibility for the free and reduced price lunch program because the City now provides free lunch to all NYC public school students irrespective of need. Finally, the bill now

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<sup>75</sup> Fiscal 2019 Preliminary Budget Report for DOE and SCA, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/03/FY19-Department-of-Education-and-the-School-Construction-Authority.pdf>

<sup>76</sup> SCA Fiscal 2015-2019 Five-Year Capital Plan, accessed at <http://www.nyescfa.org/Community/Capital-Plan-Reports-Data#Capital-Plan-67>.

<sup>77</sup> *Id.*

includes an expiration date and is deemed repealed 2026.

**Proposed Int. 1294-A** - A Local Law to amend the administrative code of the city of New York, in relation to reporting by the department of education on physical education

This bill would amend the report required by Local Law 102 of 2015 to require additional reporting by DOE on whether students with disabilities are provided with adaptive physical education, or waivers from physical education activity, including the number of students receiving each of these options per individual school. The bill would also require reporting on the average physical education class size per school. The bill would take effect immediately.

**Update to A version:** The reporting requirement for physical education waivers was removed from the bill because New York State does not permit waivers for physical education. The bill was updated to require DOE to report on whether students with disabilities whose individualized education program recommends adaptive physical education are provided adaptive physical education and the number of students with disabilities whose individualized education program recommends adaptive physical education who receive adaptive physical education.

**Proposed Int. 1298-A** - A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on physical education curricula in New York city public schools

This bill would amend the report required by Local Law 102 of 2015 to require additional reporting by DOE on PE curricula, including whether individual schools are in compliance with State PE regulations regarding curricula for each grade of instruction. The bill would also require reporting on professional development received by certified physical education instructors. The bill would take effect immediately.

**Update to A version:** The bill was amended for formatting purposes. The bill was also amended to require reporting regarding District 75. Finally, further reporting would be required

on certified instructors and DOE would be required to report on whether instructors are certified or not and whether they are full-time or part-time.

## **VII. CONCLUSION**

Today's hearing will provide an opportunity to review DOE's provision of PE, including the department's plans for and progress towards meeting State PE requirements. The Committee will also review DOE's athletic programs, and the access to sports teams across the city. This hearing will also allow the Committee to consider the legislation that will increase transparency around PE instructions and access to athletics citywide. Finally, the Committee will hear the concerns and recommendations of parents, community groups, and advocates regarding the City's efforts to meet State PE requirements and to provide equitable access to sports and athletic programs.

**UPDATE:** On Tuesday, May 28, 2019, the Committee on Education, chaired by Council Member Mark Treyger, will consider Proposed Introduction Number 242-B sponsored by Council Member Antonio Reynoso; Proposed Introduction Number 1294-A, sponsored by Council Member Helen Rosenthal; Proposed Introduction Number 1298-A, sponsored by Council Members Mark Treyger and Ben Kallos; Proposed Resolution Number 85-B, sponsored by Council Member Antonio Reynoso; and Resolution Number 811, sponsored by Council Member I. Daneek Miller.

Proposed Int. No. 242-B

By Council Members Reynoso, Brannan, Richards, Lander, Torres, Gibson, Holden, Treyger, Cumbo, Ampry-Samuel, Rose, Cohen, Levin, Cabrera, Menchaca, Rivera, Adams, Rosenthal, King, Corney, Eugene, Salamanca, Lancman, Powers, Ayala, Kallos, Moya, Constantinides and Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on funding for after school athletics

Be it enacted by the Council as follows:

Section 1. Title 21-A of the administrative code of the city of New York is amended by adding a new chapter 27 to read as follows:

Chapter 27. After School Athletic Funding

§ 21-998 After school athletic funding. a. For the purposes of this section, the following terms have the following meanings:

Athletic facility. The term “athletic facility” means an indoor or outdoor facility used by high schools for athletics.

Athletics. The term “athletics” means after school interscholastic athletic competition for students.

High school. The term “high school” means a school of the city school district of the city of New York that contains any combination of grades from and including grade nine through grade 12.

Student. The term “student” means any pupil under the age of 21 as of September first of the academic period being reported, who does not have a high school diploma and who is enrolled in a high school.

b. No later than December 1, 2019, and annually thereafter, the department shall submit to the speaker of the council and post on the department's website an athletics report for the preceding academic year, which shall include, but not be limited to, the following:

1. For each high school, the total amount of funding provided by the department for athletics and the amount of such funding allocated for each of the following categories: (i) coaches and athletic directors, and (ii) other than personal service related to the public schools athletic league;

2. For each high school, the total number of students participating in athletics and the number and percentage of such students disaggregated by:

(a) Race or ethnicity;

(b) Gender;

(c) Special education status;

(d) English language learner status; and

(e) Calendar year of entry to grade nine;

3. A list of all criteria used by the department when making decisions about new team requests including any changes in the criteria from the preceding academic year;

4. A list of all new team requests received by the department, including the high school that submitted such request, whether each request was approved or denied by the department and the reason for such approval or denial; and

5. A list of all athletic facilities used by high schools in the prior academic year, including athletic facilities under the jurisdiction of the department of parks and recreation.

c. The report required pursuant to this section shall provide citywide data, as well as data disaggregated by borough and community school district, except that paragraph 5 of subdivision b of this section shall be disaggregated solely by borough.

d. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state, or local law relating to the privacy of student information or that would interfere with law enforcement investigations or otherwise conflict with the interest of law enforcement. If a category contains between one and five students, or allows another category to be narrowed to between one and five students, the number shall be replaced with a symbol. A category that contains zero shall be reported as zero, unless such reporting would violate any applicable provision of federal, state or local law relating to the privacy of student information.

§ 2. This local law takes effect immediately and expires and is deemed repealed upon the issuance of the report due on December 1, 2026 as required by section one of this local law.

LS# 3641/Int. 1010-A-2017

LS# 325

KW/SMD/MMB

4/19; 1:40 p.m.

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Proposed Int. No. 1294-A

By Council Members Rosenthal, King, Cornegy, Eugene, Reynoso, Levine, Richards and Rose

A Local Law to amend the administrative code of the city of New York, in relation to reporting by the department of education on physical education

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 21-960 of the administrative code of New York is amended by adding a new paragraph 11 to read as follows:

11. Whether students with disabilities whose individualized education program recommends adaptive physical education are provided adaptive physical education and the number of students with disabilities whose individualized education program recommends adaptive physical education who receive adaptive physical education.

§ 2. Paragraph 4 of subdivision b of section 21-960 of the administrative code of New York, as amended by a local law to amend the administrative code of the city of New York, relating to requiring the department of education to report on physical education curricula in New York city schools, as proposed in introduction number 1298-A for the year 2018, is amended to read as follows:

4. The number and percentage of students who have an individualized education program that recommends adaptive physical education, disaggregated by classification of disability;

§ 3. Section 21-960 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

d. The report required pursuant to this section shall also include:

1. A summary of key findings; and

2. If the department is not in full compliance with physical education requirements pursuant to the New York state education department regulations, steps the department will take to achieve full compliance.

§ 4. This local law takes effect 180 days after a local law amending the administrative code of the city of New York, relating to requiring the department of education to report on physical education curricula in New York city schools, as proposed in introduction number 1298-A for the year 2018, takes effect.

PLS/MMB  
LS #4474  
4/1/19; 1:44 p.m.

Proposed Int. No. 1298-A

By Council Members Treyger, Kallos, King, Cornegy, Eugene, Gibson, Reynoso, Levine, Richards and Rose

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on physical education curricula in New York city public schools

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 21-960 of the administrative code of the city of New York, as added by local law number 102 for the year 2015, is amended to read as follows:

b. Not later than August 31, 2016, and annually thereafter on or before August 31, the department shall submit to the council and post conspicuously on the department's website[ , in a manner searchable by individual school, school district, and borough,] a physical education report for the preceding academic year which shall include, but not be limited to the following information on a citywide basis:

1. The total number of students and average physical education class size;  
2. The average frequency and average total minutes per week of physical education instruction provided to students [in each grade level in each school.];  
[2]3. [For each grade level in each school, data specifying the frequency and total minutes per week of physical education instruction received by students in that grade, including (i) the] The number and percentage of students who are receiving the required amount of physical education instruction; [(ii) the number and percentage of students who are receiving less physical education than required; and (iii)]

4. [the] The number and percentage of students who have an individualized education program that recommends adaptive physical education[. This data shall be disaggregated by (i)

race and ethnicity; (ii) gender; (iii) special education status; and (iv) English language learner status];

[3]5. The number of designated full-time and part-time certified instructors providing physical education instruction [at the school]; [and] the ratio of [full time] certified instructors to students [at the school], including whether such instructor is a full-time certified instructor, part-time certified instructor, or uncertified instructor; the number of certified instructors who have received professional development concerning physical education instruction provided by the department in the preceding two school years; and the total number of certified instructors who attended multiple sessions of professional development concerning physical education instruction provided by the department in the preceding two school years, disaggregated by the number of trainings attended;

[4]6. Information on all designated indoor and outdoor facilities used by the school for physical education instruction including, but not limited to:

(a) Information on all designated physical education instruction spaces inside or attached to the school including (i) the size of the space in square feet; (ii) whether the space is used for any purpose other than physical education instruction; and (iii) whether the space is used by any other schools including co-located schools in the same building and the names of such schools;

(b) Information regarding all off-site indoor and outdoor spaces that are used by the school for the purpose of physical education instruction, including but not limited to (i) the name and the location of the off-site space or facility; and (ii) whether the space is being used by any other schools including co-located schools in the same building and the names of such schools;

[5]7. Information regarding the department's supplemental physical education program, including but not limited to, "Move to Improve";

[6]8. [Information regarding the] The number of students who were permitted a substitution by the department; [and]

[7]9. A cross-referenced list of schools, including co-located schools, that share certified instructors with at least one other school[.] and the number of certified instructors that are shared;

10. A description of the department's physical education scope and sequence, including the topics covered by such physical education scope and sequence; whether the department's physical education scope and sequence satisfies the requirements for physical education instruction pursuant to the New York state education department regulations; and the date of the last assessment and update of the physical education scope and sequence; and

§ 2. Subdivision c of section 21-960 of the administrative code of the city of New York, as added by local law number 102 for the year 2015, is amended to read as follows:

c. [No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of student information or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement. If a category contains between 0 and 5 students, or contains an amount that would allow the amount of another category that is five or less to be deduced, the number shall be replaced with a symbol] Disaggregation of data. 1. The data required pursuant to this section shall be disaggregated by borough, community school district, district 75, and individual school.

2. The data required pursuant to paragraphs 2, 3, 4, and 8 of subdivision b of this section shall be disaggregated by demographic information including, but not limited to, the following categories:

(a) Grade;

(b) Race or ethnicity;

(c) Gender;

(d) Special education status; and

(e) English language learner status.

§ 3. Section 21-960 of the administrative code of the city of New York is amended by adding a new subdivision e to read as follows:

e. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of student information or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement. If a category contains between one and five students, or allows another category to be narrowed to between one and five students, the number shall be replaced with a symbol. A category that contains zero shall be reported as zero, unless such reporting would violate any applicable provision of federal, state or local law relating to the privacy of student information.

§ 4. This local law takes effect immediately.

PLS/MMB  
LS #3517  
4/19; 1:43 p.m

Proposed Res. No. 85-B

Resolution calling upon the New York City Department of Education (DOE) to ensure that all students have equitable access to after-school athletic activities and associated funding.

By Council Members Reynoso, Salamanca and Rosenthal

Whereas, In June 2018, a class action lawsuit was filed on behalf of student-led organization Integrate NYC and Black and Latino students, charging that the DOE's Public Schools Athletic League (PSAL), racially discriminated against Black and Latino students by denying them equal access to high school sports; and

Whereas, According to the lawsuit, high schools with the highest percentage of Black and Latino students have the fewest number of sports teams; and

Whereas, As noted in the lawsuit, students in high schools with a 0-10% Black and Latino student population have, on average, 42 PSAL teams available to them, while students in high schools with a 90-100% Black and Latino student population have on average ten PSAL teams available to them; and

Whereas, The lawsuit alleges that more than 17,000 Black and Latino New York City high school students attend schools without a PSAL team, and Black and Latino students are twice as likely than their peers to attend schools that don't have a sports team; and

Whereas, The lawsuit also charges that PSAL approves applications for new teams at lower rates for schools with more Black and Latino student enrollment; and

Whereas, From 2012 to 2017, PSAL granted schools with a 0-10% Black and Latino student population 91% of the teams the schools applied for, but granted schools with a 90-100% Black and Latino student population just 55% of the teams the schools applied for; and

Whereas, As reported by the New York Times, Miranda Barbot, DOE's Spokesperson, referred to participating in sports as "a transformative experience that strengthens school communities"; and

Whereas, The importance of extracurricular athletics for students is widely accepted to benefit academic performance; enhance interpersonal skills, social skills, mental wellness, and a defined sense of community; and to decrease juvenile arrests, teen births, school dropouts, drug use, depression, and suicide; now, therefore be it

Resolved, That the Council of the City of New York calls upon the New York City Department of Education to ensure that all students have equitable access to after-school athletic activities and associated funding.

Res. 913-2015  
LS#3642  
ML/AES/JP/KJ/BG  
12/3/18

Res. No. 811

Resolution calling upon the New York State Legislature to pass and the Governor to sign legislation to require inclusion of Employee Protection Provisions (EPPs) in all current and future school bus contracts in New York City.

By Council Members Miller, Treyger, Dromm and Rosenthal

Whereas, The New York City Department of Education's Office of Pupil Transportation (OPT) is the largest school transportation department in the country; and

Whereas, Almost the entire transportation budget is spent on contracts with private vendors that provide busing services; and

Whereas, School-bus drivers and matrons are hired by these companies, not by the City; and

Whereas, A 1979 agreement negotiated between Local 1181 Amalgamated Transit Union and the DOE (after New York City bus drivers and escorts went on strike) produced the Employee Protection Provisions (EPPs); and

Whereas, EPPs apply to K-12 transportation and requires the DOE to maintain a seniority list of drivers, escorts and mechanics; and

Whereas, Bus companies that win bids must hire from this list in order of seniority and maintain workers' wages and pensions; and

Whereas, In 2009 the Bloomberg Administration elected to remove EPPs from Request for Bids for pupil transportation services, and subsequently new contracts issued to school bus companies in 2013 did not contain EPPs; and

Whereas, Bus drivers and matrons went on strike in early 2013 over this issue but returned to work without a settlement; and

Whereas, When contracts were awarded under the new bids a number of employees lost

their jobs; and

Whereas, In December of 2013, Local 1181 voted not to accept a new scaled down contract from the City's largest school bus contractor, Atlantic Express, which then subsequently announced it was going out of business; and

Whereas, Additionally, according to Local 1181, the removal of EPPs from school busing contracts could create a deficiency in pension funds for current and retired workers due to a loss of contributions; and

Whereas, After years of costly litigation failed to restore EPPs, in December 2018 the New York Supreme Court made clear that the New York State Legislation can easily resolve this issue by requiring EPPs in any future school bus contracts; and

Whereas, School buses transport some of the City's youngest and most vulnerable students and should have the most experienced and professional employees available; and

Whereas, Numerous parents and workers believe that those providing these transport services should be treated fairly and in accordance with established employee protections provisions; now,

Whereas, Despite an initial increase in costs for higher salaries, a comprehensive economic analysis shows that by mandating EPPs state lawmakers would save New York taxpayers more than \$288 million over five years; and

Whereas, The New York State Assembly and the New York State Senate each included language in their respective one house budget resolutions mandating the inclusion of EPPs in all New York City school bus contracts; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass and the Governor to sign legislation to require include inclusion of the

Employee Protection Provisions (EPPs) in all current and future school bus contracts in New York City.

LS# 1221/ Res 797-2015

LS# 6390

JP/JA

3/25/19