No Child Left Behind: A Critique of School-Based Physical Education Initiatives and Their Impact on Students with Disabilities

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I. INTRODUCTION

It is no secret that childhood obesity is a serious problem in the United States; according to a report to the President from the White House Task Force on Obesity, one of every three children is now obese and $150 billion is spent annually to treat obesity-related illnesses. Perhaps unsurprisingly, these rates are even higher among children with physical or developmental disabilities. The White House Task Force on Obesity was announced as an initiative of First Lady Michelle Obama in February 2010 with the goal of eliminating childhood obesity within a generation by encouraging healthy food and activity choices at a young age with school programs as an integral part of achieving this goal. In this paper, I will argue that students with disabilities should receive equal physical education opportunities as their able-bodied peers, and preferably in an integrated rather than segregated environment.

Just as the problem is indisputable, so are the benefits of being physically active. As noted in the Fitness Integrated with Teaching (“FIT”) Kids Act proposed as an outgrowth of Mrs. Obama’s initiative, “regular physical activity is associated with a healthier, longer life and a lower risk of cardiovascular disease, high blood pressure, diabetes, obesity, and some cancers.” Moreover, “research suggests a strong correlation between children’s fitness and their academic

1 Loyola University Chicago, J.D. May 2010
5 Fitness Integrated with Teaching Kids Act, H.R. 1585.EH, 111th Cong. [hereinafter “FIT Kids”].
performance as measured by grades in core subjects and standardized test scores.\textsuperscript{6} Of course “fitness” as a term is rather amorphous since it could be measured by any number of factors – weight, number of push-ups that can be performed, body-mass index – and it can be influenced by factors ranging from diet to genetics to physical activity. For purposes of this paper, I will argue for the importance of equal access to physical activity for students with physical or developmental disabilities, rather than physical fitness, in particular because of the varied nature of the individuals within the class of disabled people.\textsuperscript{7}

II. BACKGROUND

Just as inclusion and opportunities for success and participation are important to non-disabled children, the benefits of participation in sport and recreation for children with disabilities in terms of increased self-reliance and empowerment is perhaps even greater than for other children.\textsuperscript{8} On the other side of the coin, exclusion from meaningful participation in such activities can have truly devastating and potentially life-long effects on a disabled child’s physical and mental well-being, as well as their socialization and community inclusion.\textsuperscript{9} In fact, despite several broad efforts at inclusion, one of the biggest problems facing children with disabilities even today is a lack of stimulation\textsuperscript{10} which could be countered if these children were given time specifically for physical activity and were taught appropriate activities for all activity levels. Indeed, some studies have indicated that promoting inclusion of students with disabilities can best be accomplished in the physical education setting.\textsuperscript{11} 

\textsuperscript{6} Id. 
\textsuperscript{9} Id. at 265. 
\textsuperscript{10} Id. at 266. 
\textsuperscript{11} John T. Foley et al., How to Develop Disability Awareness Using the Sport Education Model, 78 JOURNAL OF PHYSICAL EDUCATION, RECREATION & DANCE 32, 32 (2007).
There are signs of hope, however. If the FIT Kids Act is passed by the Senate and signed by the President as it reads today, it will impose new requirements on educational agencies at all levels, including:

- annual reports to parents and families from local and state education agencies on the status of health and physical education (“PE”) programs
- information to the parents from the board of education about whether the school’s PE curriculum adheres to the national guidelines set by the Centers for Disease Control and Prevention of Health and Human Services
- studies by the Department of Education about the impact of PE programs on learning

Rather than address the needs of students with disabilities directly, however, the Act would have the Department of Education conduct further studies and provide information regarding best practices for the physical education of students with disabilities. This is insufficient. According to a study cited by the National Center on Physical Activity and Disability (NCPAD), a mere 40% of students with physical disabilities and 77% of students with intellectual disabilities believed their participation levels in PE were equivalent to that of other students in the class.\(^{12}\)


If passed, even without further recommendations and requirements for the physical education of students with disabilities, the FIT Kids Act will hopefully provide a useful ingredient in the total education of students with disabilities in conjunction with the other laws currently providing educational rights of students with disabilities in school. These are the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

The IDEA guarantees students with disabilities a “free appropriate public education” that will prepare them for future endeavors including further education, employment, and independent living, and it includes a requirement that students with disabilities must have equal
access to physical education.\textsuperscript{13} As indicated by the NCPAD study, however, this requirement seems to have thus far been ineffective. Indeed, 59\% of schools with a population of disabled students allowed these students to be exempt from enrolling in physical education courses.\textsuperscript{14} Furthermore, although it sets out many requirements for special education teachers generally, the IDEA fails entirely to address the requirements for teachers who teach physical education to children with disabilities.

In order for the FIT Kids Act to truly accomplish the White House Task Force’s goal of eliminating childhood obesity within a generation, there should be more included for children with disabilities than simply a promise to do studies of best practices and give recommendations. Currently, there is a proposal to amend the language of the IDEA to require a “highly qualified adapted physical education teacher” for students who require individualized or specialized physical education instruction.\textsuperscript{15} “Adapted physical education” is simply “physical education to meet the needs of children with disabilities.” Teachers certified to teach adapted physical education can work in integrated settings, segregated settings, in the community, or any combination of these settings.\textsuperscript{17} They may also work with disabled or regularly-abled children.\textsuperscript{18} The White House Task Force’s report to the President on childhood obesity discusses the problems of student with disabilities in physical education classes as they are taught today, but does not go so far as to specifically recommend specially-certified teachers who can handle both

\textsuperscript{13} 20 U.S.C. § 1400 et seq. The Supreme Court has limited the scope of this statute by holding that a student with a disability is only entitled to receive enough services to achieve passing grades and nothing further. See Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982). Included within those services denied is what is arguably equal access to interscholastic sports. See, e.g., Dixon v. Hamilton City Schs. & Ohio High Sch. Athletic Ass’n, No. C-1-99-827, 1999 U.S. Dist. LEXIS 21488 (S.D. Ohio Nov. 4, 1999).


\textsuperscript{16} Id.

\textsuperscript{17} Id.

\textsuperscript{18} Id.
non-disabled and disabled students and create specialized plans to promote physical activity for all students. Such a requirement would also fit nicely into the FIT Kids Bill, and should be considered as an addition by the Senate before it gets passed on to the President.

Students with disabilities are also afforded protection and rights by the Rehab Act of 1973 and the ADA for non-academic school-based activities. § 504 of the Rehab Act prohibits discrimination on the basis of disability by those receiving federal funds, and the ADA prohibits discrimination on the basis of disability by public entities like school districts in Title II and places of public accommodation in Title III. In the context of physical activity, several students with disabilities have brought suit under these provisions alleging discrimination in athletic eligibility requirements. Particularly, students with learning disabilities who have been held back one or more grades have sued for discriminatory age limits by athletic associations with varying results.

Furthermore, although it has not yet been ratified by the United States (only signed), the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) has also recognized the importance of opportunities for physical activities and inclusion for individuals with disabilities. The UNCRPD is the first UN human rights treaty of the new millennium. Rather than focusing on disability as a medical deficiency, the Convention focuses on individuals with disabilities’ capabilities and encourages their inclusion in all aspects of community life. To that end, it attempts to usher in an international paradigm shift from a world where exclusion

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21 This is a widely written about topic that is generally beyond the scope of this paper.
is the norm to one in which individuals with disabilities can live, work, and play side by side with others in the community.\textsuperscript{23}

III. RECOMMENDATIONS OF THE WHITE HOUSE TASK FORCE ON OBESITY

Unlike the proposed FIT Kids Act, the White House Task Force on Obesity specifically addresses the special needs of children with disabilities in its report to the President. Indeed, it acknowledges the higher rates of obesity among children with physical and developmental disabilities, and notes that this is more likely attributable to a lack of access to services and programs rather than as a direct result of the disability itself.\textsuperscript{24} This distinction is important because it parallels the shift in the disability movement from a medical focus, wherein the person is defined by their medical condition, to a focus on the person who happens to have a disability.\textsuperscript{25}

In response to this problem, the Task Force has listed a number of proposals for consideration. One key recommendation is that “state and local educational agencies should be encouraged to provide opportunities in and outside of school for students at increased risk for physical inactivity, including children with disabilities, children with asthma and other chronic diseases, and girls.”\textsuperscript{26} In order to achieve this goal for children with disabilities, the Task Force recommends that physical education plans be included in a child’s Individualized Education Plan pursuant to the IDEA and/or the ADA.\textsuperscript{27} Moreover, the Task Force emphasizes the importance of teaching lifetime physical activities as opposed to a traditional concentration on team sports


\textsuperscript{24} Task Force at 67.

\textsuperscript{25} The ADA defines disability as “a physical or mental impairment that substantially limits one or more of an individual’s major life activities.” 42 U.S.C. § 12102. “Persons with a Disability” are defined in the UNCRPD as including “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” Convention on the Rights of Persons with Disabilities, available at http://www.un.org/disabilities/default.asp?navid=12&pid=150 (last visited Dec. 17, 2009), at Art. 1

\textsuperscript{26} Task Force at 74.

\textsuperscript{27} Id.
because such lessons are more inclusive of all students. Finally, the Task Force recommends that schools and districts create partnerships with organizations to promote after-school options for physical activity, both in terms of sports options and lifetime activities. All told, the Task Force’s eighty-seven page report is quite ambitious and, if fully implemented, could very well accomplish the stated goal of ending childhood obesity within a generation. Although it is certainly encouraging that the Task Force did not ignore the needs of children with disabilities in its report, its recommendations for the physical activity levels of these children fail to account fully for the socialization aspects of physical education that can be realized by disabled children and non-disabled children alike.

IV. CHILDREN WITH PHYSICAL OR DEVELOPMENTAL DISABILITIES SHOULD BE INTEGRATED INTO PHYSICAL EDUCATION CLASSES WITH NON-DISABLED CHILDREN WHENEVER POSSIBLE

It is commonly known that most children with disabilities experience some level of social isolation and have trouble being accepted by their peers. While there may be many explanations for this isolation, much of it can be traced to a general lack of understanding and awareness on the part of non-disabled children of their disabled peers. While certainly not the only method of increasing disability awareness in non-disabled children, encouraging joint physical activities among disabled and non-disabled children can provide valuable opportunities for increasing awareness and understanding while at the same time having fun and being physically active.

There are several extracurricular programs currently available that provide integrated physically-engaging options for this very purpose. One such program is the disAbility Awareness Challenge put on by the Boy Scouts of America at their National Scout Jamboree.

28 Task Force at 76.
29 Task Force at 74-75
30 Task Force at 26
31 Id.
event every four years. Activities at this event include wheelchair basketball, bowling, and archery. For girls, the Girl Scouts encourages membership in a troop regardless of ability level, and sponsors Disability Awareness activities that simulate for non-disabled scouts the experience of living with a disability. Other programs encouraging integrated participation and disability awareness including Camp Fire USA, a “co-educational youth-oriented, nonprofit, after-school program that parents can join, too,” and various other programs sponsored by the Boys & Girls Clubs of America and the YMCA.

While these after-school programs are certainly a step in the right direction, the fact that they are voluntary and outside of the school setting means that they may not be benefiting those who need to learn lessons of tolerance and inclusion the most. A better approach would be to require integrated physical education classes in schools. Even Dr. Jim Rimmer, President of NCPAD, acknowledges that our emphasis in sports in physical education classes has come to be on competition rather than socialization and participation. He believes that the rules of sports commonly played in physical education classes can be altered to promote inclusion of students with disabilities without fundamentally altering the nature of the game. He gives the example of baseball: “[one could] simply mark an area with chalk so any ball in that area would be picked up by the child [with disabilities] and held until a person hits the base for an out.” This type of modification is especially important in schools where there may not be a large enough population of students with disabilities to put on a full game otherwise.

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32 McGinley, Kathleen. Accessibility After Class: Organizations that Offer Inclusive Membership Teach Children that Disability is Only One Aspect of a Person’s Being. PARAPLEGIA NEWS, Sept. 1, 2005.
33 Id.
34 Id.
35 Id.
36 Id.
37 Id.
38 Id.
One viable and simple potential recommendation that should have been included in the Task Force’s report is the implementation of the sports education model (SEM). The SEM encourages students to become “competent, literate, and enthusiastic sportspersons.”\textsuperscript{39} “Competent” sportspersons have the ability to “understand and appreciate strategies that are common during gameplay;” “literate sportspersons” are able to “understand and value the specific rules, rituals, and traditions within sport or general game play;” and “enthusiastic sportspersons” are able to “voluntarily participate, protect, and enhance the notion of sport at all levels.”\textsuperscript{40} These goals are accomplishable by students of all ability levels and the program encourages all students to find some aspect of sport that they can have success with.

For example, in a floor hockey unit, a Frisbee could be used instead of a small puck for children who may lack some motor skills, and if a student on one team is wheelchair-bound, then the other team may be required to designate a player as wheelchair-bound as well.\textsuperscript{41} For other students, ideal participation in the game may be as a referee or announcer.\textsuperscript{42} Regardless of the roles taken on by individual students, the SEM has been shown to increase disability awareness through exposure to students with disabilities; experiencing disability through, for example, the use of a wheelchair; and after exposure and experience students begin to take ownership of physically active situations and ensure that students with disabilities are being included and treated fairly.\textsuperscript{43}

V. Conclusion

Objectively speaking, it is much better to be an American student with a disability today than it was fifty years ago. Not only have medical and technology advances made it much easier

\textsuperscript{39} Foley, supra note 11.
\textsuperscript{40} Id.
\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
for all people with disabilities to become active participants in the community, but school-aged children with disabilities in particular are now guaranteed a free appropriate public education and discrimination against anyone with a disability by a public entity has been outlawed. Despite these advances, however, there remains room for improvement. As public policy shifts towards addressing the growing problem of obesity in the US, the initiatives promulgated should keep in mind the scope of the problem and the range of needs of persons with disabilities and take these into account and encourage activity not just for activity’s sake, but for its opportunities for engagement and socialization as well.