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LEGAL UPDATE

May 1, 2009

To: Superintendents/Presidents, Member Community College Districts

From: Marko Fong, Assistant General Counsel *MF*

Subject: **FLU ADVISORY**
REVISED Memo No. 08-2009(CC)

As you are likely aware, the H1N1 virus aka "Swine Flu" presents special issues of concern for public schools. We strongly urge all clients to closely monitor and follow the advisories from your state and local health agencies. Education Code section 76403 requires community college districts to cooperate with the efforts of local health officers to carry out measures necessary to prevent and control communicable diseases. We have provided some direct links to county health agencies at the bottom of this page. In addition, the California Department of Education has posted a variety of school-specific information that includes sample flu notifications at <http://www.cde.ca.gov/ls/he/hn/fluinfo.asp>.

Under Education Code sections 76403 and 76020, schools have the authority to send a student home whenever there is a good reason to believe that the student is suffering from a recognized contagious or infectious disease. We recommend that you consult with your local public health agency should you have questions about what constitutes "good reason," but the Center for Disease Control has stated that the symptoms of the H1N1 virus are "expected to be similar to the symptoms of regular human seasonal influenza and include fever, lethargy, lack of appetite and coughing. Some people with H1N1 flu also have reported runny nose, sore throat, nausea, vomiting and diarrhea."

In addition, Districts may send any affected academic staff members home under Education Code section 87765. Non-academic staff are similarly covered under Education Code section 88199. Staff may use their own sick leave if they are ill or at personal risk of infection, but they may not arbitrarily stay home or refuse particular duties unless there is a public health order that so specifies. Districts should consult their health and safety-emergency plans and protocols to determine best practices. In addition, we recommend reviewing your labor agreements with respect to rights to compensation, designation of type of leave, etc.

If the District has reason to believe that a particular student or staff member has been infected with a contagious disease, the College Health Service is required to report the matter immediately to the local Public Health Agency consistent with Title 17 CCR Section 2500.

Schools should take any recommended precautions including providing information for staff on how to spot symptoms and how to report possible cases of infection.

Please contact us if you have any questions about any legal issues relating to the H1N1 virus or other contagious diseases.

Sonoma County's Public Health Division has information at:
<http://www.sonoma-county.org/health/ph/news/index.htm>,

Mendocino County's Public Health Division has information at:
<http://www.co.mendocino.ca.us/ph/flu2009.htm>

Humboldt County's Public Health Division has information at:
<http://www.humboldthealthalert.org/SwineFlu.asp>

Alameda County's Public Health Division has information at:
http://www.acphd.org/documents/health_advisory.htm

Marin County's Public Health Division has information at:
<http://www.marinflu.org/default.aspx>

Santa Cruz County's Public Health Division has information at:
<http://www.santacruzhealth.org/SwineFlu/>

In addition the California Department of Education has a site
<http://www.cde.ca.gov/nr/ne/yr09/yr09rel63.asp>