SCHOOL AND COLLEGE LEGAL SERVICES
of California

A Joint Powers Authority serving school and college districts throughout the state with offices in Eureka, Hayward, San Rafael, Santa Cruz and Santa Rosa

General Counsel
Margaret M. Merchat

Attorneys
Janna L. Lambert
Nancy L. Klein
Marko H. Fong
Carl D. Corbin
Patrick C. Wilson
Virginia A. Riegel
Loren W. Soukup
Frank Zotter, Jr.

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578—0517
santarosa@sclscal.org

Employer-Employee Relations Coordinator
Robert S. Latchaw

Of Counsel
Susanne K. Reed

LEGAL UPDATE

April 9, 2010

To: **Superintendents/Presidents, Member School Districts (K-12)**

From: **Frank Zotter Jr., Sr. Associate General Counsel** FZ

Subject: **Classified Employees Not Entitled to Pay for Staff Development Days**
Memo No. 10-2010

On March 11, 2010, the California Court of Appeal, Second District, published its decision in *California School Employees Association* v. *Torrance Unified School District* (2010) ___ Cal.App.4th ___, 2010 WL 820316 ruling in favor of the District in its dispute with the classified employees' union. The court's decision interprets Education Code § 45203, and concludes that classified employees who did not work on staff development "student free" days were not entitled to be paid for those days according to the language of that statute.

FACTS:

In the 2006-2007 school year, the district had 180 instruction days for students on Mondays through Fridays. The school year went from September 7, 2006, to June 21, 2007. School was closed and no credentialed teachers worked on Saturdays, Sundays, state-wide school holidays, or on local school holidays designated by the district under Education Code § 37220, subdivision (a)(13) (the days before and after Thanksgiving, winter break from December 22, 2006-January 5, 2007, and spring break from April 9-13, 2007).

Teachers were paid for working 185 days from September 5, 2006, to June 22, 2007. In addition to the 180 instructional days, teachers worked on September 5, 2006, two days before classes started, and June 22, 2007, the day after classes ended. Teachers also worked on three staff development "student free" days (also referred to as "in-service days"), on September 6, 2006, October 9, 2006, and February 2, 2007. In-service days were neither state-wide nor local school holidays.

Different classified employees worked a different number of days depending on their classification. For example, adult education instructional assistants were paid for 167 days, while child development instructors were paid for between 231 and 235 days, depending on the

location they worked.

This case involved three categories of classified employees—paraeducators, instructional assistants, and a group of special education assistants. These employees were not paid on the second and third staff development student free days on October 9, 2006 and February 2, 2007.[1]

THE COURT'S DECISION:

The classified union, CSEA, sued the District and a variety of its officials, arguing that the District violated Education Code § 45203[2] by failing to pay regular wages to classified employees who did not work on the staff development days. The superior court ruled against the union, and the union appealed. The court of appeal succinctly summarized the issue: "whether the classified employees who did not work on staff development student free days on October 9, 2006 and February 2, 2007, are entitled to be paid regular wages for those days" under § 45203. The court concluded that they were not.

Section 45203 is a lengthy statute dealing with paid holidays, but the language relevant to this decision is fairly brief:

> Notwithstanding the adoption of separate work schedules for the certificated and the classified services, on any schoolday during which pupils would otherwise have been in attendance but are not and for which certificated personnel receive regular pay, classified personnel shall also receive regular pay whether or not they are required to report for duty that day.

As the court explained, "The district contends that the staff development student free days are not schooldays 'during which pupils would otherwise have been in attendance'" within the meaning of § 45203, and the court agreed.

The court initially reached its decision by examining the language of the statute. School districts in 2006-07 were required to provide at least 180 instructional days to students per academic year.[3] The district scheduled 180 days of instruction for the 2006-2007 school year, but the in-service days were *in addition to*, not in lieu of, any of those 180 instructional days. The court therefore concluded that these days thus were not schooldays "during which pupils would otherwise have been in attendance." Under the plain meaning of the statute, classified employees who did not work on those days were not entitled to be paid regular wages.

The court reached the same conclusion by examining the legislative history of the statute. The court explained that during the 1960s, the predecessor to § 45203 had provided holidays for certificated staff. A 1974 Attorney General's opinion interpreted the language of the statute to require that classified staff be given those days as holidays as well. This created concerns, according to the court, because many classified staff work during school break periods (e.g., over winter or spring break), which arguably meant that they were working on school *holidays*.

---

[1] Under the District's collective bargaining agreement, all classified workers except adult education instructional assistants were paid for the first staff development days on September 6; the adult education assistants did not begin working until after that day.

[2] Future section references to statutes standing alone are to provisions of the Education Code.

[3] Education Code § 46200, subd. (c). Although this statute has not changed, under ABx4 2 of the Budget Act of 2009-10 (Omnibus Education Trailer Bill), districts are now permitted to reduce the school day to 175 days.

Under that interpretation, they would have been entitled to holiday pay at the time-and-a-half rate, even though these were in effect part of their "regular" work schedule.

The court found that the language that now appears in § 45203 was added in 1974 in response to this concern. Classified employees would still be entitled to regular pay if they do not work on days that a District chooses to make a local holiday. For example, many districts hold classes on Columbus Day, which is a federal holiday, but some elect to take the day as a local school holiday. In those districts, classified employees would receive their regular pay even if they do not work on that day.

The *Torrance* court also distinguished another court decision, *California School Employees Assn.* v. *Azusa Unified School Dist.*, which had held that classified employees had to be paid for six days designated by that district as either "local holidays for students" or "professional/conference days."[4] In that case, however, the six days were arguably part of the regular 180-day schedule, and so were schooldays "during which pupils would otherwise have been in attendance." Because the *Azusa* case was somewhat unclear on whether these were part of the normal schooldays or not, however, the *Torrance* court declined to follow it, even if the *Azusa* decision was contrary.

IMPLICATIONS FOR DISTRICTS:

This decision can be cited for the time being. Given the potential conflict with the earlier decision in *Azusa*, however, it is likely that CSEA will try to get the decision either reviewed by the California Supreme Court or to convince that court to "depublish" the case, after which it could no longer be cited as precedent. The decision becomes final 60 days after it was issued (or approximately on May 10), after which CSEA would have 10 days to ask the Supreme Court to review the decision.

Assuming that this decision is neither reviewed nor "depublished" by the Supreme Court, it supports not paying regular wages to classified employees who do not work on an in-service day for certificated staff. Collective bargaining agreements, of course, can still treat such days differently despite this court's interpretation of § 45203—the Torrance District, as noted in the court's opinion, had already agreed to pay almost all of its classified staff for one of the three such days in the school year at issue in this case.

We will notify you of any subsequent developments in the case. In the meantime if you have any questions, please contact one of the attorneys in our offices.

---

[4] *California School Employees Assn.* v. *Azusa Unified School Dist.* (1984) 152 Cal.App.3d 580.