



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
serving school and college  
districts throughout the  
state.*

5350 Skylane Boulevard  
Santa Rosa, CA 95403

Tel: (707) 524-2690  
Fax: (707) 578-0517  
santarosa@sclscal.org  
www.sclscal.org

*General Counsel*  
Carl D. Corbin

*Attorneys*  
Ellie R. Austin  
Monica D. Batanero  
Jennifer Henry  
Sarah Hirschfeld-Sussman  
Nancy L. Klein  
Damara L. Moore  
Jennifer E. Nix  
Steven P. Reiner  
Kaitlyn A. Schwendeman  
Loren W. Soukup  
Erin E. Stagg

*Of Counsel*  
Robert J. Henry  
Margaret M. Merchat  
Patrick C. Wilson  
Frank Zotter, Jr.

## LEGAL UPDATE

October 16, 2019

**To: Superintendents/Presidents/Chancellors, Member  
Community College Districts**

**From: Kaitlyn Schwendeman, Schools Legal Counsel** KAS

**Subject: Recovery of Instructional Days Due to Emergency Closures  
Memo No. 15-2019(CC)**

---

Our office has received multiple inquiries from clients regarding making up instructional days due to emergency school closures following PG&E’s Public Safety Power Shutoff (“PSPS”). This Legal Update provides guidance for determining whether to make-up missed instructional days.

### **Entitlement to Apportionment**

As a general rule, districts must “maintain the colleges of the district” and have a minimum of 175 days of instruction in order to receive the full apportionment.<sup>1</sup> If a district fails to meet the 175 day minimum, its apportionment may be withheld by “the product of 0.01143 times the district’s apportionment for each additional day the district would have had to maintain its colleges in order to meet the requirement prescribed by [the regulation].”<sup>2</sup>

However, if a district is prevented from maintaining its schools for at least 175 days because of an emergency as set forth in the regulation, the district “shall receive the same apportionment from the State School Fund as it would have received had it not been so prevented from maintaining school for at least 175 days.”<sup>3</sup>

In addition, if “the full-time equivalent student of a district is materially decreased during any fiscal year because of: ... 5) the imminence of a major safety hazard as determined by local law enforcement, ... 7) the unavailability of classroom facilities leased by the district ... and is caused by extraordinary factors wholly external to and beyond the control of the district,” or certain other conditions, then

---

<sup>1</sup> 5 C.C.R. § 58142.

<sup>2</sup> 5 C.C.R. § 58142.

<sup>3</sup> 5 C.C.R. § 58146.



“[t]he funding workload measures of the district for the fiscal year shall be estimated by the Board of Governors in such manner as to credit to the district from the State School Fund approximately the total which would have been credited to the district had the emergency not occurred.”<sup>4</sup> In order to get credit when the full-time equivalent student has been materially decreased, the district must demonstrate that it made good faith efforts to seek alternate facilities.<sup>5</sup> Such credit will not be allowed for facilities that are unavailable for more than one full term from the beginning of the particular condition that caused the decrease.

To receive full apportionment when either the district is prevented from maintaining school for 175 days or when the full-time equivalent student has been materially decreased due to extraordinary conditions, the governing board of the district must submit an affidavit to the Chancellor’s Office asserting the applicability of one or more of the above circumstances.<sup>6</sup>

We have attached a relevant memorandum from the Chancellor’s Office discussing emergency closures, and available here: [https://www.cccco.edu/-/media/CCCCO-Website/College-Finance-and-Facilities/Emergency-Preparedness/Updated-Emergency-Conditions\\_Nov2018\\_ADA.ashx?la=en&hash=02E586B447258FA377DF02AB48686761E83C9BA7](https://www.cccco.edu/-/media/CCCCO-Website/College-Finance-and-Facilities/Emergency-Preparedness/Updated-Emergency-Conditions_Nov2018_ADA.ashx?la=en&hash=02E586B447258FA377DF02AB48686761E83C9BA7).

### **Making Up Instructional Time**

Depending on the length of the closure, districts may need to make up instruction time or, if the district was unable to provide all or substantially all of the instruction in the course, the district may need to refund course fees.<sup>7</sup>

If course cancellations result in a course falling below the minimum credit standards set in 5 C.C.R. § 55002.5, that is, one credit hour equaling 48 semester hours of total student work or 33 quarter hours of total student work, the district may be required to consider making up instruction at least to that minimum level.

If the district is required to make up instruction, we recommend review of collective bargaining agreements and district policies regarding changes to the work schedule and other applicable provisions.

Please contact our office with questions regarding this Legal Update or any other matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

© 2019 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client’s own non-commercial purposes.*

---

<sup>4</sup> 5 C.C.R. § 58146(c).

<sup>5</sup> 5 C.C.R. § 58146(d).

<sup>6</sup> 5 C.C.R. § 58146(a), (c).

<sup>7</sup> 5 C.C.R. § 58509(a).