



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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To: Superintendents, Member School Districts (K-12)
From: Loren W. Soukup, Senior Associate General Counsel ^{LS}
Subject: Emergency Conditions that Require School Closure
Memo No. 38-2019

The recent fires and weather conditions have prompted many questions about when schools are required to close due to the loss of utility services such as water and electricity, including loss of the fire alarm system.

We begin by noting that no specific provision of the Education Code or any other provision of state law directly addresses the issue of when schools must close due to loss of necessary utilities. There are, however, several provisions of law that establish health and safety standards that must be maintained.

As to Employees

Labor Code Section 6400 provides that “every employer shall furnish employment and a place of employment which are safe and healthful for the employees therein.”

Labor Code Section 6401 provides, in part, that “every employer shall do every other thing reasonably necessary to protect the life, safety and health of employees.”

Labor Code Section 6402 provides that “no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.”

Labor Code Section 6404 provides that “no employer shall occupy or maintain any place of employment that is not safe and healthful.”

Although these provisions may appear redundant, it is prudent to assume that the very redundancy underscores the significance of the legislative mandates. This significance is further underscored by reference to Labor Code Section 6423-



6436, which create criminal and civil penalties for those managers and employers who are found to have violated the provisions of the Labor Code sections referred to above.

Finally, Labor Code Section 6401.7 requires every employer to adopt procedures under which, among many other duties, the “employer shall correct unsafe and unhealthy conditions...in a timely manner based on the severity of the hazard.”

Under Labor Code Sections 6304 and 3300, these provisions apply to all public agencies (*Oakland Policy Officers Assoc. v. City of Oakland* (1973) 30 Cal.App.3d 96), including school districts (*Lehmann v. Los Angeles City Board of Education* (1957) 154 Cal. App. 2d 256).

Recommendations as to Employees

Based on the law referred to above, it is our opinion that the loss of water and other utilities should be reviewed on a case-by-case basis to determine whether the loss results in an unsafe or unhealthy work environment that will require that the condition be corrected, the employees transferred to a different work location, or that the employee be “sent home.”

We recommend that each district adopt standing procedures under which the administrator in charge of each facility will determine “in a timely manner” whether an unsafe or unhealthy condition exists and, if so, what must be done to correct the situation. Districts should also be familiar with any collective bargaining language concerning employee safety and ensure compliance with those additional requirements.

In determining whether to close a school, circumstances to consider include: (1) whether the facility has enough natural light to permit employees to remain without undue risk; (2) whether the fire alarm systems are operational without electricity and if they are not, whether a fire watch is permissible, as discussed below; (3) whether overhead sprinklers and toilet facilities are operational without water; and (4) whether the outside temperatures are extreme enough to render the workplace too cold or too hot to work.

As to Students

We begin with the obvious: if circumstances require that employees be excused from work, then students also must be excused. This conclusion is derived more from common sense than from any particular law. In addition to common sense, we have identified several provisions of law that address the issue of health and safety of students. These provisions provide as follows:

Title 5 of the California Code of Regulations Section 630 provides “governing boards, superintendents, principals, and teachers are responsible for the sanitary, neat, and clean condition of the school premises and freedom of the premises from conditions that would create a fire or life hazard.”

Title 5 of the California Code of Regulations Section 631 provides “adequate separate toilet facilities shall be maintained for each sex, and all buildings and grounds shall be maintained according to the regulations of the Board of Health having jurisdiction over the school district.”



Education Code Section 17573 provides “the governing board of every school district shall provide a warm, healthful place in which children who bring their own lunches to school may eat the lunches.” Additionally, Education Code Section 38086 and Title 42 of the United States Code Section 1758 requires school districts to provide students with free drinking water during meal times.

Education Code Section 17576 provides in part “the governing board of every school district shall provide, as an integral part of each school building, or as part of at least one building of a group of separate buildings, sufficient patent flush water closets for the use of the pupils. In school districts where the water supply is inadequate, chemical water closets may be substituted for patent flush water closets by the board.”

Education Code Section 17577 provides “In addition to the other powers granted the governing board of each school district may provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each school property. For this purpose it may construct adequate systems or acquire adequate disposal rights in systems constructed or to be constructed by others for these purposes without regard to their proximity. The cost thereof may be paid from the building fund, including any bond moneys therein.”

Education Code Sections 32000 *et seq.*, require each school to maintain a “dependable and operative fire warning system.” However, Title 24 of the California Code of Regulations, Section 901.7 provides as follows:

Where a required fire protection system is out of service, the fire department and the fire code official shall be notified immediately and, where required by the fire code official, the building shall be either evacuated or an approved fire watch shall be provided for all occupants left unprotected by the shutdown until the fire protection system has been returned to service.

Where utilized, fire watch shall be provided with not less than one approved means for notification of the fire department and their only duty shall be to perform constant patrols of the protected premises and keep watch for fires.

Title 24 of the California Code of Regulations sections 901.7.1- 901.7.6, sets forth the specific emergency action requirements that must be taken if the fire protection system becomes inoperable. If the fire code official permits the district to conduct a fire watch in lieu of evacuation, these requirements must be followed.

Pursuant to Title 24 of the California Code of Regulations section 202, the following definitions are provided:

"Fire Code Official" - The fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative.



"Fire Watch" - A temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals for the purposes of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the fire department.

As such, a district would be permitted to conduct a fire watch in lieu of evacuation provided approval is obtained from the fire code official and the district complies with the required fire watch procedures.

Lastly, pursuant to Education Code Section 32282, school districts are required to have emergency procedures in their school safety plans, which should include plans for notifying parents of school closures. Most school districts likely have Board Policy and Administrative Regulation 3516 already in place which requires the district to ensure that the school safety plan's emergency procedures include a plan for determining when closing a school is appropriate.

Recommendations as to Students

Based on our review of all applicable law, it is our opinion that the decision to close schools and send students home must be made on a case-by-case basis with due consideration given to both the health and safety of students. By way of example, the loss of water may not generate an immediate safety issue if the fire sprinkler system is operational using water stored in-site and that water is not contaminated. We recommend that districts contact our office to assist with making these case-by-case decisions.

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

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