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LEGAL UPDATE

August 25, 2020

To: Superintendents, Member School Districts (K-12)
From: Damara Moore, Senior Associate General Counsel *DM*
Subject: Lost Minutes of Instructional Time Due to Fires
Memo No. 49-2020

In the midst of rolling black outs and fires in Northern California, we are providing this review of procedures for asking the California Department of Education (“CDE”) to waive penalties for lost instructional time due to emergency school closures.¹

The Request for Allowance of Attendance Due to Emergency Conditions, Form J-13A, is used by local educational agencies (“LEAs”) to obtain approval of attendance and instructional time credit from the CDE that was lost due to an emergency condition. The [CDE affirmed](#) (link embedded) on August 1, 2020, that J-13A waivers are available for this purpose this school year.² This may be submitted after the emergency event.

In prior years, the J-13A waiver process was available to LEAs seeking to avoid being penalized for a material decrease in average daily attendance (“ADA”) during an emergency closure. This is not an issue for LEAs in 2020-2021 due to Senate Bill 98 guaranteeing ADA funding.³ However, there remains a fiscal penalty for LEAs that fail to meet the number of annual minimum instructional days and daily minute requirements.⁴ Approval of a Form J-13A request from the CDE, combined with other attendance records, serve to document an LEA’s compliance with instructional time laws and provide authority to maintain school for less than the required instructional days and minutes without incurring a

¹ Emergency conditions that qualify for a waiver are those due to fire, flood, impassable roads, epidemic, earthquake, the imminence of a major safety hazard as determined by the local law enforcement agency, a strike involving transportation services to pupils provided by a nonschool entity, or an order provided for in Section 41422, which includes state and federal orders of emergency or other extraordinary conditions. Cal. Educ. Code § 46392. The COVID-19 pandemic is not a qualifying reason this year because schools are expected to offer distance learning.

² See FAQ Number 2 in the section headed “Form J-13A.”

³ Cal. Educ. Code § 43502(b).

⁴ Cal. Educ. Code § 43504(i).



fiscal penalty to the LEA's Local Control Funding Formula (LCFF) funding. Instructions for filing may be found [here](#) (link embedded) ⁵

If a student cannot participate in daily live interaction during a day of distance learning, the student must be counted as absent.⁶ However, we believe that the LEA, as a whole, should be considered to have provided an instructional day to students when it was providing instruction, even if individual students were unable to participate due to an emergency condition. The LEA should document the absence; however, for purposes of reporting its chronic absenteeism rates in its local control and accountability plan and to avoid penalties for failing to do so.⁷

Please contact our office with questions regarding this Legal Update, assistance filing the J-13A form, 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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⁵ The references in the instructions related to calculating Material Decreases do not apply this year.

⁶ Cal. Educ. Code § 43504(f)(1).

⁷ Cal. Educ. Code §§ 43504(f), (i).