



BARGAINING ADVISORY

Coronavirus 2019 (COVID-19)

Background

An outbreak of a respiratory illness caused by a new coronavirus (COVID-19) has been identified, originating in Wuhan, China. Some patients contracting the virus have had only mild symptoms, while others have suffered more severely, with over 3,000 fatalities attributed to the outbreak so far. Although evidence suggests children are less susceptible, districts and local associations should be prepared as the virus spreads and impacts our schools and communities.

The Centers for Disease Control and Prevention (CDC) reports that, “Health officials are currently taking steps to prevent the introduction and spread of COVID-19 into US communities. Schools can play an important role in this effort by preparing to take steps to prevent the spread of COVID-19 among their students and staff, should local health officials identify such a need. School plans should be designed to minimize disruption to teaching and learning and protect students and staff from social stigma and discrimination. Plans can build on everyday practices (e.g., encouraging hand hygiene, monitoring absenteeism, communicating routinely) that include strategies for before, during, and after a possible outbreak.” As discussed below, we urge chapter leaders to meet with district administrators to develop and/or expand existing plans to limit exposure and reduce spread to students and staff.

Districts will be working with local health departments to share resources and develop plans as exposure to the virus becomes more widespread. Likewise, it is important that association and district leaders discuss the many issues impacting students, staff, and schools as the spread of COVID-19 is likely to continue and even accelerate. As explained below, it is important that chapters review their collective bargaining agreements and engage in discussions, consultation, and/or bargaining with district administration over this situation.

Frequently Asked Questions

What should school employees do to help prevent the spread of coronavirus?

The CDC has issued guidance regarding prevention of coronavirus, including tips like washing your hands with soap thoroughly and frequently, not touching your mouth, nose or face, and regularly disinfecting frequently touched surfaces. The CDC’s guidance can be found at www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html.

More information from the CDC, including information about how coronavirus spreads and what to do if you are sick, can be found at www.cdc.gov/coronavirus/2019-ncov/about/index.html.

What happens to the district’s funding if a school temporarily closes to contain the spread of the virus?

The district should not lose funding in this situation. The Education Code contains a hold harmless provision specifying that in the event a school is closed due to an epidemic or emergency order by a



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federal, state, city, or county official, the district is credited for the estimated average daily attendance (ADA) funding the school would have received if not for the epidemic or emergency order (Educ. Code Secs. 46390, 46392). The Code further specifies that a district unable to operate a full school year due to an epidemic or an emergency order by a federal, state, city, or county official is to receive “the same apportionment from the State School Fund as it would have received” if it had operated for a full school year of 175 days (Educ. Code Sec. 41422).

Will schools that are closed have to make up the days at the end of the year?

The Education Code excuses districts from complying with the full school year requirements in the event of an epidemic or order by a federal, state, city, or county official in response to an emergency (Educ. Code Sec. 41422). See also Educ. Code Sec. 37202 (excusing such schools from the “equal time” requirement).

Are districts obligated to pay staff at schools that are closed?

Nothing in the Education Code excuses districts from their contractual obligations to pay staff in the event a school is closed due to an epidemic or emergency order. The fact that the Education Code protects the district’s funding makes it extremely difficult for districts to argue that they cannot comply with contractual commitments due to the school closure. For these reasons, the past practice in California has been to pay school staff even when schools are shut down due to an emergency.

It is important to understand, however, that the legal basis for this obligation is the commitment the district made in the collective bargaining agreement, which the district cannot modify without bargaining. You should therefore review your agreement closely to see if it contains any provisions that address the obligation of the district to pay staff in the event schools are closed due to an epidemic. If you believe your agreement has language that excuses the district from paying staff in such situations, and/or your district indicates that it will not pay staff at schools that are shut down, contact your CTA primary contact staff person immediately.

What are my legal rights to take a leave of absence if I get coronavirus?

The same sick leave provisions apply to illness from coronavirus as apply to other illnesses.

In addition to leave provided for in your collective bargaining agreement, the Education Code guarantees certificated employees who are employed five days a week a minimum of ten (10) paid days of leave due to illness for a school year of service (Educ. Code Sec. 44978). A prorated amount of leave is due to part-time certificated employees. Classified employees employed five days a week for a full fiscal year are entitled to twelve (12) days of paid leave due to illness (Educ. Code Sec. 45191). A prorated amount is due to classified employees working less than five days a week who are employed for less than a full fiscal year.

Employees who have exhausted all available and accumulated sick leave and continue to be absent for up to five months due to illness are eligible for differential pay leave (Educ. Code Sec. 44977 for certificated employees and Sec. 45196 for classified employees).



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Additional unpaid leave may be available under the federal Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA). Article 23 of the CTA Contract Reference Manual, found at www.CTASearch.org, has additional information regarding these provisions.

Finally, the Education Code specifically gives districts discretion to grant paid leave to certificated staff due to an epidemic. This is in addition to the leave the district already provides, and includes not only leave due to illness, but also due to quarantine. (Educ. Code Sec. 44964). Similarly, districts have discretion to grant additional leaves of absence, including with pay, to classified employees for purposes including illness and quarantine (Educ. Code Sec. 45199; see also Educ. Code Secs. 45190, 45195, 45198).

Can a district force someone off work if s/he is suspected of being infected but is not officially quarantined by any health agency?

As stated above, in addition to other leaves a district provides, Education Code Sections 44964 and 45199 give districts discretion to grant paid leave to certificated and classified staff due to an epidemic – both for illness and quarantine. Therefore, if a district wishes to compel someone to take leave due to suspected illness or exposure, chapters should insist that such leave be paid under Section 44964 or 45199 and not be deducted from the employee’s accumulated leave time.

What if my contract requires a doctor’s note after a certain length of absence?

Part of the CDC’s advice is that those exposed the virus self-quarantine and not see a doctor unless their condition worsens, requiring medical care. The association should work with the district to allow flexibility so that unit members who are ill, or are caring for ill family members, do not need to leave their homes to acquire or present such notes and potentially infect others.

My district rewards students and/or staff for good attendance. Is continuation of this practice a good idea under these circumstances?

No. Chapters should urge districts to suspend all student and staff attendance-related programs, incentives and/or awards and instead urge those who are sick to stay home.

Are hand sanitizers allowed in schools?

Association leaders should insist the district maintain a safe and sanitary school environment, such as by providing adequate sanitary supplies (like alcohol-based hand sanitizer) and additional cleaning of school facilities to prevent the spread of the virus. There is nothing in the law that prohibits the use of alcohol-based hand sanitizers in school settings. The California Department of Education (CDE) has issued guidance for the use of alcohol-based hand sanitizers at this link: www.cde.ca.gov/ls/he/hn/handsanitizers.asp.

What else can districts and associations do to prepare for the possible spread of the virus?

The Education Code requires every school district have a comprehensive school safety plan (Educ. Code Secs. 32280-32289). To respond to the current coronavirus, the CDE is urging districts to review



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their plans and to follow their existing protocols for responding to a flu pandemic. You should review your district's plan as well and make sure it covers all the basic elements of a flu pandemic response.

For a list of those elements, see "The Pandemic Flu Planning Checklist for K-12 School Districts," which is found at www.cde.ca.gov/ls/he/hn/coronavirus.asp and www.cdc.gov/flu/pandemic-resources/pdf/schoolchecklist.pdf.

If your district does not yet have a plan, or the plan does not address critical issues for the association, you should demand to be included in the development of an adequate plan.

What are other issues chapters should consider in determining if a district plan is adequate?

- Does the plan address how the district will deal with an unusual number of absences of both students and staff? If the district does not have adequate employee resources, is there a plan to obtain additional help?
- Does the plan establish procedures to be followed in the event the district office is closed, such as procedures for paying employees if the staff who process payroll are absent or the payroll office is shut down?
- Does the plan address the status of school staff as "disaster service workers" and specify whether staff are to be assigned any other activities if their school is closed? Under California Gov. Code Sec. 3100 et. seq., all public employees are declared to be "disaster service workers" subject to such disaster services activities as may be assigned by their supervisors or by law.
- Does the plan establish a communication system with employees to inform them of the status of the situation?
- Has the district made sure that all staff are aware of the plan and understand how it is to be implemented?

Bargaining Advice

The safety of students and staff should be the primary focus when reviewing your current collective bargaining agreement. The CTA Contract Reference Manual, found at www.CTASearch.org, has helpful language, particularly in Articles 21.9.4 (Hours and Adjunct Duties) and 22.1.6 (School Safety). The following is the language found in both sections:

"In the event of an emergency closure of District facilities, including but not limited to natural disaster, quarantine, or government order, unit members shall receive their daily rate of pay and benefits. If make-up days are required by law, the District shall negotiate said days with the Association."



A JOINT ADVISORY FROM THE CTA LEGAL DEPARTMENT
AND CENTER FOR ORGANIZING AND BARGAINING (C4OB)

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To help mitigate the impact of any school closure, review and consider the information regarding district requests for fiscal credit due to lost attendance and instructional time during an emergency. Two Education Code sections, 41422 and 46392, differ in detail but effectively hold school districts harmless from the loss of revenue that may result from reduced ADA or instructional time in emergencies. Districts may submit a Request for Allowance of Attendance Due to Emergency Conditions (Form J-13A) to the CDE. Approval is contingent on several factors and is not guaranteed. For more information on the waiver process, go to www.cde.ca.gov/fg/aa/pa/j13a.asp.

Finally, instead of completely shutting down, districts may wish to provide alternative, nonclassroom-based learning opportunities, such as through distance learning technologies. If this is the case, districts should immediately begin planning such alternatives, such as through the internet, cable television, telephone, or radio. If this is being considered or initiated, chapters should demand to bargain over any related changes in working conditions or impacts. The CTA Contract Reference Manual contains sample language in Article 35.14 for such situations (Technology and Related Contract Provisions – Distance Learning).

Additional Resources

Centers for Disease Control and Prevention

www.cdc.gov/coronavirus/2019-ncov/index.html

California Department of Public Health

www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx

California Department of Education (Crisis Response)

www.cde.ca.gov/ls/ss/cp/crisisresp.asp

This Advisory will be updated as additional information becomes available. In the meantime, questions should be directed to your local CTA Primary Contact Staff.