



Schools Legal Service
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To: Schools Legal Service Clients
From: Christopher W. Hine
Re: California School Employees Association
Communication on H1N1 (Swine Flu) Virus Issues

Our office has been forwarded a communication from the California School Employees Association (“CSEA”) by several districts. The letter from CSEA appears to have been generated from the CSEA offices in San Jose, California, and to have been disseminated on a statewide basis. In the letter, CSEA requests that districts take a series of six actions in response to H1N1. Although some of these actions are consistent with guidance provided by the Kern County Superintendent of Schools (“KCSOS”) on its website (www.kern.org) and the Kern County Department of Public Health Services, it does not appear that the one-size-fits-all approach taken by CSEA is appropriate and, indeed, may be counterproductive in some instances.

The following is a response with regard to each of the six actions requested by CSEA.

1. “Conduct an H1N1 in-service for employees, specifically for CSEA unit members who come into direct contact with students.”

This request is consistent with KCSOS’ guidance to provide appropriate education and training for all district employees with regard to handling H1N1. The term “in-service” is susceptible to a number of interpretations depending on the past practice and applicable collective bargaining agreements in each district. We would, therefore, recommend that appropriate training be provided based upon the normal organizational procedures for each district. For example, some districts may have weekly or monthly safety meetings or staff meetings. It would be appropriate to have procedures for dealing with H1N1 as an agenda item for those meetings without the necessity of having a more formal meeting during noninstructional time solely dedicated to the subject of H1N1.

2. “Provide H1N1 flu shots to students and CSEA unit members.”

We are unaware of any statutory or regulatory mandate that requires students or employees of school districts to obtain H1N1 flu shots before they can come to work or attend school. In the absence of such authority, we would advise districts not to mandate flu shots.

It also appears that this request is contrary to current guidance from CDC and the Kern County Department of Public Health Services with regard to the individuals who should receive H1N1 flu shots. These shots, at this time, would appear to be contraindicated for at least some groups of students and employees. We believe that the better practice would be to provide employees and the parents and guardians of students with information regarding opportunities to receive flu shots from properly licensed medical providers. At this time, it appears that the decision on whether or not to receive a flu shot is best left to the student's family or the employee and that individual's personal medical professional.

3. "Adhere to CDC/CDE advisories regarding relaxed leave provisions (encourage unit members to stay home when ill and not require medical releases to return to work, since doing so will only impede medical services)."

We encourage districts to follow CDC and CDE advisories regarding relaxed leave provisions. The specific provisions for granting relaxed leave are best resolved by each district based on the needs of its students and employees. Districts which are interested can contact our office for a sample policy regarding relaxed leave.

4. "Provide appropriate supplies and equipment to manage an H1N1 emergency at each work site (i.e., respirators for workers assigned to sick rooms)."

We would urge each district to follow applicable guidance from CDC and the Kern County Department of Public Health Services, as well as medical professionals consulted by that district with regard to appropriate measures in dealing with an "H1N1 emergency."

KCSOS is in the process of receiving, and will be distributing, free medical supplies to schools to assist them in their response to influenza cases. The CDE, in collaboration with the State of California, has requested LEAs be willing to accept and be the distribution point. The medical supplies include gloves, N95 respiratory masks (for those treating ill students), and surgical face masks (for ill students). These supplies are consistent with guidance to schools on Influenza Response from the CDC.

5. "Take every action necessary to insure that those positions essential to effectively combat the H1N1 virus be funded and utilized to help you provide a safe and healthy work environment for students and workers."

The phrase "take every action necessary to insure" would appear to be somewhat extreme under the circumstances as they are currently known. However, we would advise that all districts take appropriate measures which are reasonably designed to provide a safe and healthy work environment for students and workers.

6. "Ensure that uninsured and underinsured students and school employees are provided the seasonal and H1N1 flu shots free of charge."

As we stated in our above responses, we believe that districts should provide information to employees and students regarding opportunities to obtain H1N1 flu shots consistent with applicable CDC and Kern County Department of Public Health Services' guidance, as well as the advice of the employee's or student's personal healthcare provider. At the same time, it should be emphasized that there is no statutory or regulatory requirement that students or school employees receive the H1N1 or seasonal flu shots as a condition of continued work or school attendance.

Although it does not appear that any response to CSEA is required, if a district does decide to respond specifically to CSEA, you may want to draft a short cover letter referencing this letter and attach a copy of this letter to the cover letter.

Schools Legal Service member districts should feel free to contact Chris Hine if you have any questions related to collective bargaining issues. You should contact Shelly Northrup of the Kern County Superintendent of Schools Office at 661/636-4539 with health-related questions.

CWH/alj-cp