



December 29, 2006

CONFIDENTIAL ATTORNEY/CLIENT
PRIVILEGED COMMUNICATION

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To: Schools Legal Service Clients

From: Dwaine Chambers, General Counsel
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Re: Tuesday, January 2, 2007 is **NOT** a School Holiday or a Paid Holiday

On December 28, 2006, President George W. Bush issued a proclamation designating Tuesday, January 2, 2007 as a national **day of mourning** in observance of the death of former President Gerald R. Ford.

Several clients have asked if President Bush's "day of mourning" constitutes either a paid holiday within the meaning Education Code sections 45203/88203 or a school holiday within the meaning of Education Code sections 37220/79020. Those code sections provide, in effect, that the public schools shall close and classified employees shall be entitled to a paid holiday for **"... every day appointed by the President, or the Governor of this state . . . for a public fast, thanksgiving or holiday . . ."**

However, a close review of both the language contained in the foregoing code sections and the California Supreme Court's decision in *California School Employees Association v. Governing Board of the Marin Community College District* (1994) 8 Cal.4th 333, reveals that the President's "day of mourning" does not establish a school or paid holiday within the meaning of the statutes.

In the *Marin Community College* case, CSEA argued that President George H. Bush's "National Days of Thanksgiving" proclamation at the conclusion of the Persian Gulf conflict established a paid holiday within the meaning of the "public fast, thanksgiving, or holiday" provisions contained in Education Code sections 88203 (community college) and 45203 (K-12). The Supreme Court rejected CSEA's contention concluding that, in order to constitute a paid holiday within the meaning of the foregoing statutory language, the proclamation must **"... disclose an intent that such days be treated as a special national holiday."** Further, the intent to designate a national holiday must also be apparent in the language of the proclamation.

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In reviewing both the language of the proclamation and the surrounding circumstances, neither discloses an intent to establish either a national holiday or a paid holiday for any public school employee.

And lastly, it is imperative that you review your Board policies, administrative regulations, personnel commission rules and collective bargaining agreements for the purpose of determining if the President's "day of mourning" constitutes a school or paid employee holiday under local rules.

To reiterate, Tuesday, January 2, 2007, does not, in our opinion, constitute a day on which schools must close or for which classified employees must be given a holiday.

If you have any questions concerning any issue contained in this Alert, please do not hesitate to call me.

DLC/cp