

June 10, 2004

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**CONFIDENTIAL ATTORNEY/CLIENT  
PRIVILEGED COMMUNICATION**

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To: Schools Legal Service Clients

From: Dwaine Chambers, General Counsel  
Schools Legal Service

Re: Friday, June 11, 2004 Is **Not** A School Holiday or a Paid Holiday

On June 6, 2004, President George W. Bush issued a proclamation designating Friday, June 11, 2004 as a national **day of mourning** in observance of the death of former President Ronald Reagan. With the exception of certain offices and installations related to national security or defense, President Bush issued an executive order directing that all federal government agencies be closed as a mark of respect for President Reagan.

On June 7, 2004, Governor Arnold Schwarzenegger issued a proclamation declaring Friday, June 11, 2004 as a **day of remembrance** of the life of President Reagan. Governor Schwarzenegger's proclamation authorizes executive branch employees, consistent with the provisions of Government Code section 19991.10, to have eight hours of informal time off on June 11, 2004. That section clearly provides that a paid leave of absence, for purposes of that section, does not constitute a holiday.

As the foregoing events began to unfold, public school officials began to question if President Bush's "day of mourning" and/or Governor Schwarzenegger's "day of remembrance" constituted 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, upon close review of both the language contained in the foregoing code sections and the California Supreme Court's decision in *Californian School Employees Association v. Governing Board of the Marin Community College District* (1994) 8 Cal.4th 333, it became clear that neither the President's "day of mourning" nor the Governor's "day of remembrance" proclamations established 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.

In reviewing both the language of the proclamations and the surrounding circumstances, neither discloses an intent to establish either a national holiday or a paid holiday for any public school employee, other than paid time off for certain state employees. The President's proclamation appears limited to certain types of federal employees while the Governor's proclamation is limited to state executive branch employees. Also, noticeably absent in both proclamations is the word "holiday."

Our conclusion is supported by the opinions of the California State Department of Education ("CDE") and the California School Boards Association ("CSBA"). On June 7, 2004, Jack O'Connell, the State Superintendent of Public Instruction, concluded:

These issuances [proclamations] . . . do not affect the operation of California's schools. The decision whether to close your schools will be left up to you and what you believe is the most appropriate course of action for your districts and your schools.

The following day, Rick Miller, the Director of Communications for SDE, observed, with respect to those districts that voluntarily close school on Friday, June 11, 2004, that there may be certain financial consequences associated with declaring a holiday in that:

As with all school holidays, the Education Code is clear that if you designate Friday a school holiday **the day will NOT be viewed as a school day for purposes of your annual school year calendar or be eligible for average daily attendance through the emergency waiver provisions.**

In the same context, School Services of California observed:

We are hearing that some school districts are deciding to close on June 11, 2004, even though they are not required to do so. If you are thinking of closing on that day, make sure that you consider all of the variables, including minimum number of days, instructional minutes, and annual average daily attendance generated revenues, just to name a few.

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 either the President's "day of mourning" or the Governor's "day of remembrance" proclamations constitutes a school or paid employee holiday under local rules.

To reiterate, Friday, June 11, 2004 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