



PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION Eric C. Davis, Chairman

DEPARTMENT OF PUBLIC INSTRUCTION Catherine Truitt, Superintendent of Public Instruction

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TO Superintendents, Charter School Operators, Finance Officers and Board Attorneys

FROM Eric Davis, Chair, State Board of Education
Allison Schafer, General Counsel, State Board of Education

DATE October 29, 2021

CANCELLING SCHOOL DAYS FOR STUDENTS AND STAFF – LEGAL RESTRICTIONS

It has come to our attention that a number of school districts and charter schools are deciding to alter their school calendars to take extra “mental health” days for students and staff by completely cancelling school on one or more days in November. There are some legal restrictions on what schools are permitted to do under the law. The purpose of this correspondence is to remind you of the law on these issues and to address any confusion about the position of the State Board of Education and the Department of Public Instruction.

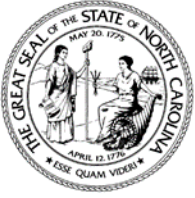
STUDENTS

As you know, all public schools must provide a minimum of 185 instructional days or 1,025 hours per academic year. See G.S. Sec. 115C-84.2(a)(1). So long as the minimum number of instructional days or hours are provided, the local board of education may adjust the calendar to eliminate or reschedule instructional time. G.S. 115C-84.3, from Session Law 2021-130/Senate Bill 654, which was enacted into law on August 30, 2021, provides for remote instructional days under certain circumstances and only for the 2021-2022 school year. However, these must be days or hours of actual instruction, not undefined activities.

STAFF

The school calendar for staff is also very clearly spelled out in state statute. See G.S. Sec. 115C-84.2(a). Each school calendar must consist of 215 days. These days include a minimum of 10 annual vacation leave days on which staff may take their accumulated vacation leave. G.S. Sec. 115C-84.2(a)(2). They must also include the same or the equivalent number of legal holidays set by the State Human Resources Commission for State employees. G.S. Sec. 115C-84.2(3). Note that school districts do not have the authority to add to the total number of paid holidays determined by the State Human Resources Commission. The remaining days must be used for teacher workdays, additional instructional days or other lawful purposes, two of which must be designated as days on which teachers may take additional annual leave if they have the accrued leave time. See G.S. 84-2(a)(5).

In order to be eligible to be paid for a workday, staff must either be working, on approved leave or on paid holiday leave. Article I Sec. 32 of the North Carolina State Constitution prohibits “Exclusive emoluments.” The provision articulates that public monies cannot be paid to someone “except in consideration of public services.” In other words, public monies cannot be



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used as gifts to individuals but must be payment for services rendered. The bottom line is that school districts are not free to “give” extra paid leave days to employees other than those permitted by state statute or State Board of Education rules or policies.

Individuals may be permitted to take leave or work from home on workdays, but they must be on paid leave or actually working in order to be paid. Many employees can take work home. However, the problem arises for staff whose work requires them to be present physically in order to perform it. Cafeteria workers, bus drivers, maintenance and other such workers cannot be paid for work not performed. Accordingly, they must be assigned work tasks, allowed to take leave or be on leave without pay.

We hope that this summary of the law provides you guidance about the law and the rules and policies of the State Board of Education as you consider revising your calendar. We encourage you to consult with your board or school attorney if you need legal advice about specific situations.

Cc: Catherine Truitt, State Superintendent of Public Instruction
Alexis Schauss, Chief Financial Officer, Department of Public Instruction