

Date of Hearing: May 6, 2020

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 2052 (O'Donnell) – As Amended May 4, 2020

**SUBJECT:** Pupil instruction: instructional time requirements

**SUMMARY:** Authorizes local educational agencies (LEAs) to meet minimum instructional day requirements by both: adding remaining instructional minutes to remaining instructional days in a school year when the LEA is unable to meet instructional day requirements under specified conditions, and by submitting affidavits of members of the governing board or body of the school district, county office of education (COE), or charter school and the county superintendent of schools.

Specifically, **this bill:**

- 1) Authorizes a LEA to be deemed to have met the minimum instructional day requirements by meeting both of the following requirements:
  - a) By adding instructional minutes to instructional days.
  - b) If the minimum number of instructional day requirements of a LEA has not been met, that fact must be established to the satisfaction of the Superintendent of Public Instruction (SPI) by affidavits of the members of the governing board or body of the school district, COE, or charter school and the county superintendent of schools. Requires the affidavits be submitted to the CDE within 30 calendar days of the completion of the affidavits.
- 2) Requires that the minimum number of instructional days may not be met due to the following reasons:
  - a) Inclement weather;
  - b) Fire;
  - c) Flood;
  - d) Impassable roads;
  - e) Epidemic;
  - f) Earthquake;
  - g) The imminence of a major safety hazard as determined by the local law enforcement agency;
  - h) A strike involving transportation services to pupils provided by a non-school entity; or
  - i) Conditions disqualifying school districts from apportionments, as specified.

- 3) Requires that compliance must be specifically verified in the report of the annual audit of the school district, COE, or charter school for each year in which option is used by the LEA. If an audit report for a year in which the additional time is to be maintained does not verify that the time was provided, requires that the LEA repay the apportionment or pay a penalty.
- 4) Defines a LEA as a school district, COE, or charter school.

**EXISTING LAW:**

- 1) Requires that a school district, other than one newly formed, may not receive any apportionment based upon average daily attendance (ADA) from the State School Fund unless it has maintained the regular day schools of the district for at least 175 days during the next preceding fiscal year.
  - a) If any schools within a school district fails to maintain its school for the required 175 days, requires the SPI to withhold from the district's apportionment based upon ADA a product of 0.01143 multiplied by the district's apportionment for each instructional day the school would have had to maintain operations to meet the 175 day requirement.
  - b) Requires the State Board of Education (SBE) to establish the standards and criteria for defining a day qualifying for the 175-day requirement. (Education Code (EC) 41420)
- 2) Requires that for a school district, COE, or charter school that is prevented from maintaining its schools during a fiscal year for at least 175 days or is required to operate sessions of shorter length than otherwise prescribed by law because of fire, flood, earthquake, or epidemic, or because of any order of any military officer of the United States or of the state to meet an emergency created by war, or of any civil officer of the United States, of the state, or of any county, city and county, or city authorized to issue that order to meet an emergency created by war, or because of other extraordinary conditions, or because of inability to secure or hold a teacher, or because of the illness of the teacher, which fact must be shown to the satisfaction of the Superintendent by the affidavits of the members of the governing board of the school district, the governing board of the county office of education, or the governing board or body of the charter school and of the county superintendent of schools, will receive the same apportionment from the State School Fund as it would have received had it not been so prevented from maintaining school for at least 175 full-length days. (EC 41422)
- 3) Requires that a school district or COE receiving an apportionment, and that offers less than 180 days of instruction or, in multitrack year-round schools, fewer than the number of days, the SPI must withhold from the school district's local control funding formula (LCFF) grant apportionment for the ADA of each affected grade level the sum of 0.0056 multiplied by that apportionment for each day less than what was required in subdivision (a) of this section, as it read on January 1, 2013, up to a maximum of five days. (EC 46200 and 46200.5)
- 4) Requires that the SPI to withhold from the school district or COE's LCFF grant apportionment, for the ADA of each affected grade level, the sum of that apportionment multiplied by the percentage of the minimum offered minutes at that grade level that the school district failed to offer:
  - a) Thirty-six thousand minutes in kindergarten;

- b) Fifty thousand four hundred minutes in grades 1 to 3, inclusive;
  - c) Fifty-four thousand minutes in grades 4 to 8, inclusive; and
  - d) Sixty-four thousand eight hundred minutes in grades 9 to 12, inclusive. (EC 46201 and 46201.5)
- 5) Authorizes the SBE to waive the fiscal penalties for a school district or COE that fails to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year, or both.
- a) For fiscal penalties incurred as a result of a shortfall on instructional time in the 2000–01 fiscal year or thereafter, a waiver may only be granted by the SBE upon the condition that the school or schools in which the minutes, days, or both, were lost, maintain minutes and days of instruction equal to those lost and in addition to the amount otherwise as specified for twice the number of years that it failed to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year following the year, or both, commencing not later than the school year following the year in which the waiver was granted and continuing for each succeeding school year until the condition is satisfied. Compliance with the condition must be specifically verified in the report of the annual audit of the school district or county office of education for each year in which the additional time is to be maintained. If an audit report for a year in which the additional time is to be maintained does not verify that the time was provided, the school district or COE will be required to repay the apportionment or pay a penalty. (EC 46206)
- 6) Requires the SPI, for apportionment purposes, to credit to a LEA a material loss of ADA due to the following reasons, provided the loss has been established to the satisfaction of the SPI by affidavits of the members of the governing board or body of the LEA:
- a) Fire.
  - b) Flood.
  - c) Impassable roads.
  - d) Epidemic.
  - e) Earthquake.
  - f) The imminence of a major safety hazard as determined by the local law enforcement agency.
  - g) A strike involving transportation services to pupils provided by a non-school entity. (EC 46392)
- 7) In the event of a state of emergency declared by the Governor in a county, requires the SPI to determine the length of the period during which ADA has been reduced by the state of emergency, and prohibits the SPI from extending the period into the next fiscal year except

upon a showing by a LEA, to the satisfaction of the SPI, that extending the period into the next fiscal year is essential to alleviate continued reductions in ADA attributable to the state of emergency. (EC 46392)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Need for the bill.*** According to the author: “The frequency and reasons for school closures continue to increase. For decades a school closure was an anomaly due to inclement weather or a one-time event. Now natural disasters such as wildfires, power safety power shutoffs and the pandemic outbreak of COVID-19 mean that unanticipated temporary school closures are now a part of everyday life.

Local school administrators need statutory flexibility in order to make up lost instructional time due to unscheduled school closures. It is critical that a minimum standard of instructional time continue to be met, but LEAs must have the option to make up lost time in a creative format that works best for the needs of the local school community.”

***Instructional time requirements.*** LEAs are held to both minimum instructional day and minute requirements for each school year. Failure to meet either or both requirements result in the LEA either repaying the excess apportionment or paying a penalty. When schools close due to unforeseen circumstances, LEAs may submit a Request for Allowance of Attendance Due to Emergency Conditions to the CDE in order to document a LEA’s compliance with instructional time laws and provide authority to maintain school for less than the required instructional days and minutes without incurring a fiscal penalty to the LEA’s LCFF funding (see below). Current law does not allow for instructional day requirements to be met with extra instructional minutes; both day and minute requirements must be met annually.

***School calendars and unplanned school closures.*** Each LEA establishes a school calendar prior to the start of the school year, and the adopted calendar sets forth a plan to meet minimum state instructional minute and day requirements. The school calendar is often bargained with the various unions representing the employees of the LEA. In the last several years, unplanned school closures have occurred due to increased natural disasters, power safety power shut offs, active shooter events, and the COVID-19 pandemic.

***The increasing frequency of natural disasters in California.*** According to the Governor’s Office of Emergency Services (Cal OES), the Governor proclaimed 16 State of Emergencies in 2018. Of those proclaimed emergencies, the President issued 3 Major Disaster Declarations. Wildfires, in particular, have been more prevalent and destructive than ever before.

***The Camp Fire.*** The Camp Fire, which began in November 2018, in Butte County was the deadliest and most destructive wildfire in California history. The fire burned 153,336 acres of land (almost 240 square miles) and destroyed the town of Paradise, which had a population of 27,000, within the first six hours of the fire. According to a November 21, 2018, report by the *Redding Record*, when the fire was 95 percent contained it had destroyed 13,631 residences, 275 multifamily residences, and 514 commercial buildings. At least eighty-five deaths were confirmed. The total monetary damage was \$16.5 billion. Due to the evacuations, one hundred-percent of the student population met the definition of homeless under federal law and are considered homeless for the duration of the 2018-19 school year. In addition to the impact to

students, 260 of 400 district staff members lost their homes and another 60 were displaced by the fires. School closures in Butte County ranged from several weeks to over a month.

**COVID-19 pandemic.** COVID-19, also known as “coronavirus”, is a respiratory illness caused by a novel virus that has spread worldwide. Tens of thousands of community-acquired cases have been confirmed in California, and 1,000 individuals have died in the state. State officials gain more understanding of COVID-19’s epidemiology, clinical course, immunogenicity, and other factors as time progresses, and the situation is changing daily. Reported illnesses have ranged from mild to severe, including illness resulting in death. Older people and people with certain underlying health conditions like heart disease, lung disease and diabetes, for example, seem to be at greater risk of serious illness.

As of March 2020, public K-12 schools in California closed for the remainder of the 2019-20 school year in order to stop the spread of COVID-19, resulting in several months of unplanned school closures and loss of instructional time.

**The Request for Allowance of Attendance Due to Emergency Conditions, Form J-13A.** Current law authorizes the SPI to grant normal apportionment credit to LEAs in emergencies, and holds LEAs harmless from the revenue loss that might otherwise result from the loss of ADA or instructional time in emergencies. When one or more schools must be closed because of “extraordinary conditions” the SPI is authorized to maintain apportionment. When the SPI authorizes credit for days that school was closed, LEAs receive instructional time credit for the day(s) and minutes lost to the emergency closure and approval to reduce the divisor used for calculating ADA. The instructional time credit satisfies state law with regard to both the instructional day and minute requirements.

LEAs obtain credit for days and minutes lost to emergency closure and material decreases in attendance due to emergency events by submitting a Request for Allowance of Attendance Due to Emergency Conditions (Form J-13A). The J-13A form is used to obtain approval of attendance and instructional time credit for unplanned school closures. Approval of a Form J-13A request from the CDE, combined with other attendance records, serve to document a LEA’s compliance with instructional time laws and provide authority to maintain school for less than the required instructional days and minutes without incurring a fiscal penalty to the LEA’s LCFF funding.

LEAs do not need to submit a J-13A form due to COVID-19 related school closures due to provisions included in SB 117 (Committee on Budget and Fiscal Review), Chapter 3, Statutes of 2020.

**Loss of instructional time.** According to an April 2020 policy brief by The Annenberg Research Network on International Communication, *COVID-19 and the Distance Learning Gap*, “The COVID-19 crisis has forced the closure of school campuses across California, and the transition to distance learning for more than 1.5 million students in Los Angeles County alone. This transition is exerting a disproportionate toll on low-income and minority students, as it lays bare existing inequalities in access to the required technology for distance learning. Unless remedial initiatives are put into place, distance learning is likely to aggravate existing student achievement gaps across income and racial lines.”

Although significant periods of unplanned school closures are a relatively new phenomenon statewide (with the exception of inclement weather), existing bodies of research related to summer learning loss and chronic absenteeism provide relevant insight to the potential impacts of the learning loss today's students face due to COVID-19 or other events such as natural disasters. Some students may have roughly the equivalent of two summer breaks during the summer of 2020 if distance learning is ineffective, potentially increasing summer learning loss that would have occurred due to a more traditional summer schedule.

- *Students who are chronically absent have skill levels one to two years below their peers:* “A new state-by-state analysis of national testing data demonstrates that students who miss more school than their peers score lower on the National Assessment for Educational Progress (NAEP). This is true at every age, in every racial and ethnic group and in every state and city examined. In many cases, the students with more absences have skill levels one to two years below their peers. While students from low-income families are more likely to be chronically absent, the ill effects of missing too much school hold true for all socio-economic groups.” *Absences Add Up: How School Attendance Influences Student Success*. Attendance Works, August 2014.
- *Summer learning loss disproportionately affects low-income students, and contributes substantially to the achievement gap:* “During summer vacation, many students lose knowledge and skills. By the end of summer, students perform, on average, one month behind where they left off in the spring. Of course, not all students experience “average” losses. Summer learning loss disproportionately affects low-income students. While all students lose some ground in mathematics over the summer, low-income students lose more ground in reading, while their higher-income peers may even gain. Most disturbing is that summer learning loss is cumulative; over time, the difference between the summer learning rates of low-income and higher-income students contributes substantially to the achievement gap.” *Making Summer Count: How Summer Programs Can Boost Children's Learning*, RAND Corporation, 2011.
- *Summer learning loss equates to one month's worth of school year learning:* “A comprehensive review of the literature summarized several findings regarding summer loss: 1) on average, students' achievement scores declined over summer vacation by one month's worth of school-year learning, 2) declines were sharper for math than for reading, and 3) the extent of loss was larger at higher grade levels. Importantly, they also concluded that income-based reading gaps grew over the summer, given that middle class students tended to show improvement in reading skills while lower-income students tended to experience loss. However, they did not find differential summer learning in math, or by gender or race in either subject.” *Summer Learning Loss: What is it, and What Can We Do about it?* Brookings Institute, September 2017.

Although current statute provides protection for the loss of apportionment for LEAs during a period of unplanned school closures, LEAs are largely forgiven from meeting instructional time requirements and are not required to make up lost instructional time. Lost instructional time due to chronic absenteeism and summer learning loss appears to have a significant impact on all students, and a greater negative impact on at-risk student populations.

**Related legislation.** SB 117 (Committee on Budget and Fiscal Review), Chapter 3, Statutes of 2020, contains changes for education programs that ensure LEAs continue to receive funding

during the COVID-19 emergency and allow for flexibility for LEAs to continue to provide educational options to their students.

AB 2126 (O'Donnell) of this Session requires the CDE to develop and implement a website and app for the purpose of collecting temporary school closure information for LEAs from superintendents and charter school administrators.

SB 884 (Dodd) of this Session would add public safety power shutoffs to the list of emergencies for which LEAs may submit a J-13A form request, and would establish the Disaster Relief Instructional Recovery Program for the purpose of allocating funding to eligible LEAs to make up instructional days lost due to emergency or other extraordinary conditions.

AB 1840 (Committee on Budget), Chapter 426, Statutes of 2018, requires the SPI to extend through the 2018-19 fiscal year the period during which it is essential to alleviate continued reductions in ADA attributable to a state emergency declared by the Governor in October 2017, for a school district where no less than 5 percent of the residences within the school district or school district facilities were destroyed by the qualifying emergency.

AB 2228 (Wood) of the 2017-18 Session would have allowed the SPI to extend, by an additional fiscal year (2019-20), the period that is essential to alleviate continued reductions in ADA for a school district, county office of education or a charter school attributable to the state of emergency declared by the Governor due to the 2017 wildfires. Additionally, AB 2228 would have required the SPI to make a supplemental apportionment to a school district, COE, or a charter school in an amount that credits to the school district, COE, or charter school 50 percent of the apportionment the school district, COE, or charter school would have received based on the ADA they lost due to the 2017 wildfires.

SB 97 (Committee on Budget and Fiscal Review), Chapter 357, Statutes of 2013, creates the LCFF, and specifies that the penalty for districts that fail to meet instructional day requirements is a maximum of five days' ADA apportionments.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file

##### **Opposition**

None on file

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