



THE SCHOOL CALENDAR AND STATUTORY HOLIDAYS

Each spring, school boards must look ahead and establish a school calendar for the next school year. The calendar sets forth the days students' attendance will be required and establishes school holidays, recesses and vacations. The school calendar, by extension, also establishes that teacher attendance will be required when the students are in school.

The process of establishing a school calendar is largely governed by districts' traditions. The chief school administrator usually submits several proposed calendars which the board is then free to accept, reject, or modify. In some districts, the administrator or the board may accept recommendations directly from the staff, union, P.T.A., and other interested parties.

Just as the process of establishing the school calendar is bound by tradition, so is the placement of vacations within the school calendar. Nearly every school calendar provides for recess periods which coincide with the Christmas/New Year's and Spring vacations. Some calendars offer a mid-winter break sandwiched between Lincoln's and Washington's Birthdays in February. They may also provide for school closings on certain religious holidays (usually out of deference to a sizable segment of the student and/or staff population), on statutory holidays, and during the annual NJEA Workshop.

Although very much governed by tradition and community expectation, the establishment of the school calendar is a clear board function which is not subject to negotiations. However, in exercising their unilateral rights to establish the academic calendars, boards should be aware of the legal framework which can affect the administration of their academic calendars.

The Teacher Work Year and the Calendar

Although the establishment of the academic calendar

is a nonnegotiable managerial function, the length of the teacher work year, beyond the required minimum of 180 days of student instruction, is mandatorily negotiable.¹ The negotiability of the teacher work year includes the possibility of negotiating the total number of workdays and, within those days, the number of student contact days, the number of days reserved for inservice, or other non-student contact activities, and additional days of orientation for new staff members.

The negotiated length of the teachers' work year affects the nonnegotiable formulation of districts' academic calendar to the extent that the number of student contact days, above the 180 days required by the State, drives the number of instructional days that can be included in the calendar. However, a negotiated work year cannot affect the placement of days within a district's calendar. The Court in *Burlington County College* held that the commencement and termination of the school year, as well as the scheduling and length of vacations within the school year, are matters of educational policy that are not negotiable.

Further, a board of education retains the right to change an adopted calendar. A number of court decisions have held that changing the school calendar is a managerial prerogative of school management which cannot be diluted through negotiations.² However, while the decision itself is not negotiable, the impact of a required calendar change may be negotiable. In its 1998 decision in *Piscataway*,³ the court held that a "mere connection between the exercise of a managerial prerogative and the impact of that exercise on employees does not render the impact issue non-negotiable." Rather, the court relied on the balancing test enunciated in *Woodstown-Pilesgrove*⁴ to hold that the Public Employment Relations Commission would need to determine the negotiability of the impact issue on a case-by-case basis to determine if negotiations over the impact would significantly or substantially

¹ *Burlington County College Faculty Association*, 64 N.J. 10.

² See, for example, *Burlington County College*, *supra.*; *Edison Township Board of Education*, App. Div. Dkt. No. A-5164-77, Sept. 21, 1979, cert. den. 82 N.J. 274 (1980); *Piscataway Township Education Association*, App. Div. Dkt. No. A-7215-95T2, Jan. 14, 1998, cert. den. ___ N.J. ___ (1998).

³ *Piscataway Township Education Association*, *supra.* Note that this decision, while affirming *Edison's* holding that the decision to reschedule was not negotiable, reversed the earlier holding that the impact of a calendar change was not negotiable.

⁴ *Woodstown-Pilesgrove Board of Education*, 81 N.J. 582 (1980).

encroach upon the management prerogative. The court concluded that if “the answer is yes, the duty to bargain must give way. If the answer is no, bargaining should be ordered.”

These decisions form the legal framework which governs the establishment of districts’ calendars. In adopting their local calendars, boards must also consider negotiated teacher work year and the number of student contact days as well as their needs for parent-teacher conferences and their communities’ expectations for vacations and school recesses. In addition, teachers’ statutory rights to observe legal holidays must be considered.

Statutory Holidays

N.J.S.A. 18A:25-3 establishes that teaching staff members may exercise their legal right not to work on statutory holidays without loss of pay.

Statutory holidays are identified in *N.J.S.A.* 36:1-1 and include:

- January 1, known as New Year’s Day;
- The third Monday in January known as Martin Luther King’s Birthday;
- February 12, known as Lincoln’s Birthday;
- Third Monday of February, known as Washington’s Birthday;
- Good Friday;
- Last Monday in May, known as Memorial Day;
- July 4, known as Independence Day;
- First Monday in September, known as Labor Day;
- Second Monday in October, known as Columbus Day;
- November 11, known as Armistice Day or Veteran’s Day;
- Fourth Thursday in November, known as Thanksgiving Day;
- December 25, known as Christmas Day; and
- General Election Day, usually the first Tuesday following the first Monday in November.

The statute further states that whenever any holiday can and does fall on Sunday, that holiday shall be observed the next following Monday. A separate statute, *N.J.S.A.* 36:1-1.2, specifically gives state employees the right to take off the Friday preceding a state holiday that falls on a Saturday. No similar statutory provision applies to teaching staff members whenever a holiday falls on a

Saturday. Should this occur, teachers do not have the right to claim either the Friday preceding that Saturday or the next following Monday as a statutory holiday.⁵

These statutory holidays provide a minimum statutory benefit which cannot be contravened by local negotiations or by the board’s establishment of the school calendar. Regardless of the requirements of the local calendar, teachers cannot be docked in pay for not working on days statutorily specified as holidays.

In addition, *N.J.S.A.* 18A:31-2 specifically authorizes full-time teaching staff members and school secretaries to attend the annual NJEA convention. The statute provides that attendance shall be without loss of pay, provided that proof of attendance is submitted. In response to this statutory provision, most New Jersey school districts declare a school recess on the days of the annual convention.

Statutory provisions concerning legal holidays and attendance at the NJEA convention become natural factors which must be considered when the board proceeds to establish its academic calendar. A knowledge of case law interpretations of district and teachers’ rights may assist boards’ design of their calendars.

Case Law Development

Relatively little case law exists on this topic, but what does exist suggest the following:

- As discussed earlier, teaching staff members may not be required to work on any declared public holiday. Should the district require these teaching staff members to work on these days and they decide not to, the district cannot deduct a day’s pay from the salary of each teacher involved;⁶
- A teaching staff member who exercises his/her legal right not to work on a public holiday may not be docked for a day’s pay. Under the collective bargaining agreement, however, the district may require the teacher to work an additional day to complete his contractual obligation to the district;⁷
- Compensation for rescheduled inservice days for teachers who exercised their right not to work on statutory holidays is mandatorily negotiable;⁸
- A school district properly withheld the pay of teachers who refused to work on the Friday immediately preceding a Saturday public holiday. The teachers incorrectly claimed that they had a legal right to take off the day without loss of pay.⁹

⁵ *Rumson-Fair Haven Ed. Assn., et al. v. Bd. of Ed. of the Rumson-Fair Haven Reg. H.S. Dist.*, 1984 SLD (Feb. 3).

⁶ *Carl Moldovan et al. v. Bd. of Ed. of Hamilton Twp.*, 1971 SLD 246.

⁷ *Carl W. Dohm v. Bd. of Ed. of the Twp. of West Milford*, 1983 SLD, (Jan. 6).

⁸ *Black Horse Pike Reg. Bd. of Ed.*, PERC No. 84-157, 10 NJPER 15200.

⁹ *Rumson-Fair Haven Ed. Assn., et al. v. Bd. of Ed. of the Rumson-Fair Haven Reg. H.S. Dist.*, 1984 SLD (Feb. 3).

Establishing School Calendars: Considerations and Concerns

Although a local school district has the nonnegotiable right to set the school calendar, it must, at a minimum, consider a number of issues, including the length of the teachers' negotiated work year and the need to schedule a sufficient, continuous number of instructional days. Teachers' entitlement to paid absences on statutory holidays can become one of the most vexing issues surrounding the scheduling of instructional days within the academic calendar. Until the legislature acts to remove this obsolete statutory benefit, boards will need to continue to wrestle with the issue of whether or not student instruction or inservice should be scheduled on public holidays. A consideration of the benefits and drawbacks of scheduling school, or inservice, on those days may be helpful to boards' decision making.

The benefits are obvious but limited in scope. Scheduling instructional time on these public holidays minimizes interruptions in the educational program, provides for longer vacation periods elsewhere during the school year, and allows schools to close earlier in June. Teachers traditionally do not report to work until after Labor Day. Within the next six months, at least six single-day holidays occur: Columbus Day, General Election Day, Veteran's Day, Martin Luther King's Birthday, Lincoln's Birthday, and Washington's Birthday.

The drawbacks or, better put, the risks are considerable. Unless school law is amended, teaching staff members can exercise their legal right not to work on public holidays. Although a district may arguably require these teachers to later make up the days, the point is their salaries cannot be docked when they refuse to work on these days. A local association may agree to support a school calendar calling for teachers to work on certain holidays, but such agreement cannot waive an individual teacher's statutory right to take off the day. During difficult negotiations, a local association may change its mind and encourage its members not to work on a public holiday.¹⁰ A school district may then have to hire substitutes on that day but still pay its teachers who take off the day or the district may choose to cancel school that day and reschedule it later in the school year.

Despite the possibility that teachers may choose

not to work on school holidays, most still work because they realize that should schools be closed, the district schedules another workday later in the school year.

Another drawback is that the community may expect schools to close on certain holidays. Local celebrations, parades, commemorative observances, or family vacations may be planned on those days. Scheduling school, therefore, may offend large segments of the community, and low student attendance may result.

In establishing their local calendars, boards will want to assess all the pros and cons of scheduling school on statutory holidays. In addition, boards will want to keep in mind that although the adoption of the calendar is a nonnegotiable issue, the procedures for adoption are mandatorily negotiable. Many contracts provide for the staff's or the association's input and calendar recommendations prior to the board's adoption of the next academic year's calendar. Boards will therefore need to be guided by their contractual procedures; other boards may wish to seek staff input even in the absence of contractual requirements. Under any circumstances, staff recommendations are only advisory and the final responsibility to determine the calendar rests with the board of education.

Summary

Establishing a school calendar requires careful planning. School board members and administrators must be mindful of the many considerations involved in setting their district calendar. Some of these considerations include traditional vacation periods, religious holidays, parent-teacher conference days, NJEA convention, and the calendar of neighboring districts, particularly regional and receiving ones to which many of the district's students are sent. In addition, employees' statutory right to absences on public holidays is a major consideration that cannot be overlooked. Knowledge of the legal rights accorded to boards and to teachers will help in this task. Check with your resources, including the NJSBA Labor Relations Department, to assure that you are aware of the latest development in this potentially changing area of school law.

¹⁰ For a full discussion of how boards can respond to such a concerted activity, please see the article "Responding to Concerted Activities and Limited Job Actions" in the Impasse section of *The Negotiations Advisor*.