

To: Granville County Schools Administration
From: Eva DuBuisson, Tharrington Smith LLP
Re: Options for Employee Makeup Days Due to Inclement Weather
Date: December 13, 2017

This memorandum summarizes the legal options for making up employee absences due to inclement weather closures.

School Closures Due to Inclement Weather

The calendar statute (115C-84.2) requires a school calendar of 215 days, including a minimum of 185 days or 1025 hours of instruction, 10 required annual vacation leave days, 10 legal holidays, and the remaining days “for use as teacher workdays, additional instructional days, or other lawful purposes.” The statute requires that the calendar “include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.”¹

Specific statutes address inclement weather closures for principals/supervisors (115C-285), teachers (115C-302.1), and all other staff (115C-316), respectively. In nearly identical language, the statutes provide options for employees on inclement weather days: :

- When school is closed for students and staff due to inclement weather, the employee shall work the scheduled make-up day.
- When school is closed for students but open for staff due to inclement weather, employees have three options:
 1. Report to work for the day.
 2. Take accumulated annual leave, personal leave (teachers), compensatory time (classified), or leave without pay.
 3. Arrange to make up the day at a time agreed upon by the employee and the employee’s supervisor.

GCS Board Policy 7550, Absences Due to Inclement Weather, provides the same options.

Under North Carolina law, public funds may only be used to compensate employees for work actually completed. There is no legal basis for the school system administration to “forgive” absences by paying hourly employees for hours that they did not work, whether

¹ Also, note that “if school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy.” The relevant State Board policy (GCS-G-001) is discussed in greater detail below.

because of school closures or other reasons. This affects exempt salaried employees somewhat differently, as will be explained further below, because their pay does not vary based on hours worked, as long as they stay within the workdays and calendar authorized by statute.

Make-Up Days

As described in the statutes above, there are two possible scenarios for inclement weather: 1) schools closed for all students and staff, and 2) schools closed for students but open for staff.

Schools Closed for Students and Staff

Certified / Salaried Employees

When schools are closed for all students and staff, the statutes state that employees “shall work the scheduled make-up day.” However, the district has significant flexibility in scheduling this make-up day. If the district has built in instructional hours such that the missed day does not need to be made up for students, there are three options:

1. Forgo the make-up day entirely. In this situation, salaried employees could be paid as if they had worked, but classified employees could not (see below).²
2. Make up the day anyway. Having a normal make-up day would preserve flexibility for later in the year if more inclement weather closures became necessary.
3. Make up the day for staff only. Because the instructional hours are not required, the district could schedule a work-day as the make-up.

If the district needs to make up the day, or chooses to do so even though the remaining calendar meets the statutory minimum for instructional time, the options for make-up days include:

1. Designated annual leave days (such as spring break)
2. Holidays (only Veteran’s Day is statutorily protected)
3. Saturdays

If a previously designated annual leave day or holiday is used as a make-up day, the district may exchange the designation of the make-up day with that of the missed day. For example, if schools closed on February 12 (a normal instructional day) due to inclement weather and the district decided to make up the day during spring break on April 6 (a designated annual leave day), the district could declare April 6 an instructional day and February 12 a designated annual leave day. The statute contemplates a single

² The Department of Public Instruction and the State Superintendent have expressed a different interpretation of the statute that would require a staff make-up day even if the student make-up day is not scheduled, thus eliminating this option. We are not convinced that their interpretation is correct, but note it here for the district’s consideration.

make-up day scheduled by the district rather than a discretionary system left to supervisors.

Classified Employees

As with certified and salaried employees, when schools are closed for all students and staff, classified employees shall work the scheduled make-up day. If the district chooses not to make up the canceled day, or if the scheduled make-up day is a day that classified employees would have worked anyway (such as a previously designated teacher workday), there are several legal options with respect to hourly employees:

1. Do not allow hourly employees to make up the canceled day. The employees will simply not be paid for the missed hours. This approach saves money but may create hardships for hourly workers.
2. Allow hourly employees to make up the missed hours in coordination with supervisors. This approach mitigates the hardship noted in #1, but is logistically complicated and requires specific guidance to supervisors regarding appropriate make-up options and avoiding situations that would involve comp time.
3. It may be possible to pay or otherwise compensate classified employees for the day not worked or made up, but such compensation would have to be from local funds only and would require Board action.

One significant issue regarding make-up days for classified employees involves hourly employees who are not exempt under the Fair Labor Standards Act, who can only work 40 hours per week unless they are provided with compensatory time. There are two options for addressing the comp time issue:

1. Schedule make-up days only on previously designated holidays or on Saturdays in the same workweek (as defined by Board policy) as a designated holiday. This will avoid the comp time issue but severely restricts the number of available make-up days, especially toward the end of the school year.
2. Allow hourly employees to work overtime, and but provide time credit to be used the same day. For example, an hourly employee could work 5 1/3 hours on a Saturday in an otherwise normal workweek, and immediately apply the 2 2/3 comp hours earned to equal the 8 hours of make-up time for a snow day.

Schools Closed for Students but Open for Staff

The scenarios become more complicated if the school district closes for students but not for staff. As noted above, pursuant to state law staff members can report to work, take an annual leave day, or arrange to make up the day with their supervisors.

Certified / Salaried Employees

If the canceled student day will not be made up because the district has extra instructional time built into the calendar, then certified employees can exercise the three statutory options without significant logistical issues. Employees who elect to use the make-up

option should coordinate the make-up date with their supervisors. While the statutes are not explicit on this point, we recommend that certified employees make up a whole day at one time rather than portions of a day. For logistical reasons, the district may want to provide supervisors a specific set of preferred make-up days.

If the canceled student day will be made up, two additional issues arise due to the fact that the make-up day will be an additional workday on the calendar:

1. Irrespective of their choices on the original closure day (report to work, take leave, or schedule a make-up day), all employees will be expected to work the district-wide student make-up day. Because the student make-up day is an additional workday for all staff, it cannot be used as an employee's make-up day from the original closure day.
2. Because the original closure day still counts as a workday for teachers, the student make-up day will be an additional workday for teachers above those described in the original calendar. If this happens only once or twice, it is unlikely to create a legal issue. However, if it happens repeatedly, the district may risk exceeding the 195-day cap on teacher workdays in N.C.G.S. § 115C-84.2.³

Classified Employees

If the canceled student day will not be made up, or if it will be made up on a day that classified employees were already scheduled to work (e.g., a previously scheduled teacher workday), classified employees can also exercise their three statutory options without significant logistical issues. Again, employees who elect to use the make-up option should coordinate the make-up date with their supervisors. Because there are potential Fair Labor Standards Act issues involved with making up time at a later date, it may be advisable for the district to provide guidance to supervisors about scheduling make-up time for classified employees. Hourly employees may make up missed time incrementally in coordination with their supervisors, but this approach can be administratively burdensome.

If the canceled student day will be made up on a day when classified employees otherwise would not have worked (such as a Saturday), there may be FLSA issues with both the supervisor-based make-up time for the original closure and the newly schedule student make-up day. In addition, the district will be adding a workday (and the attendant costs) for any employees who chose to work on the original closure day.

As indicated above, this topic is both administratively and legally complex. This memo represents a very brief overview of make-up options and attendant logistical and legal issues. If you would like to discuss any of these options or the issues involved in more detail, please do not hesitate to contact me.

³ This issue is avoided if the student make-up day is scheduled on a day previously designated a teacher workday.

