

FISCAL MANAGEMENT ADVISORY 86-06

July 21, 1986

TO: County & District Superintendents County and District Financial Officers

FROM: William C. Pieper
Deputy Superintendent for Administration

SUBJECT: Instructional Time Incentives

On January 9, 1984, the Department issued a Program Advisory (CIL: 83/4-7) regarding instructional time and average daily attendance. Much of the advice offered at that time remains valid today, although the passage of legislation subsequent to that advisory, and the experience of some school districts implementing longer year and day provisions of SB 813 have raised new questions. The purpose of this advisory is to apprise you of legislative amendments and provide further direction on the interpretation of Education Code provisions governing instructional time incentives.

The purpose of the instructional time incentive is to increase opportunities for students to learn. If students are going to master the new graduation requirements and curricular expectations, they need to be exposed to comprehensive instructional programs. There are multiple settings in which students receive instruction, including formal instruction in the classroom and structured activities within the school. This advisory should help business and program staff to determine the ways in which instructional time incentives may be used to promote a high quality instructional program.

On the whole, the instructional time incentives established by SB 813 and AB 70 in 1983 (Chapters 498 and 1302 of 1983) have been extraordinarily well received by California schools. Almost all districts in the State offered at least 180 days of instruction in school year 1984-85 and thus earned (and continue to receive) incentive funds of \$35 per ADA. Instructional time schedules which had eroded under fiscal constraints of prior years have been restored and, in many cases augmented, as California educators have engaged in a mutual and virtually universal effort to improve both the quantity and quality of instructional time. In fact, surveys have indicated that most school districts have not waited for 1986-87 to meet the instructional minutes-per-year goals established in reform legislation. The addition or restoration of secondary school sixth or seventh periods and the lengthening of school days at all grade levels have provided our schools with time and money to engage in other reforms in addition to direct enhancement of time on task.

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I. INSTRUCTIONAL TIME GOALS AND INCENTIVE REQUIREMENTS

The fiscal years 1984-85 and 1985-86 were transition years in the process of increasing instructional opportunities for California students. The "longer year" provision of SB 813, whereby school districts were provided \$35 per ADA for offering 180 days a year, was wholly implemented in 1984-85. Of course districts must maintain 180 day years in order to continue to receive the "longer year" funds through their revenue limits. By contrast, the "longer day" provisions of SB 813 have been phasing in during 1984-85 and 1985-86 and any district may have had different instructional minute requirements compared to its neighbor, depending upon time offerings in 1982-83. In 1986-87, all districts (except those who must maintain longer 1982-83 schedules) have the same "minutes-per-year" goals of Education Code Section 46201. Those goals, for 1986-87 and later years are:

Kindergarten	36,000 minutes per year
Grades 1 through 3	50,400 minutes per year
Grades 4 through 8	54,000 minutes per year
Grades 9 through 12	64,800 minutes per year

1982-83

Any district that offered more than the above minutes in a given grade level during 1982-83, should substitute the longer 1982-83 offering for the amount shown in the above schedule. Districts with 1982-83 offerings that meet or exceed the 1986-87 goals need only to maintain the 1982-83 offering in order to receive all incentive funding, but reducing the offering of any year below a "longer" 1982-83 level would cause such a district to forfeit all incentive funds (all three years' worth) as well as all revenue limit adjustments for cost-of-living.

ALL DISTRICTS, WHETHER OR NOT THEY ARE CLAIMING INSTRUCTIONAL TIME INCENTIVE FUNDS, MUST OFFER AT LEAST AS MUCH INSTRUCTIONAL TIME AS WAS OFFERED IN 1982-83 OR THE DISTRICT WILL LOSE REVENUE LIMIT INCREASE FUNDING (COLA). Please review Education Code Section 46202 for the exact mandate.

Avoiding Loss of Incentive Funds

A close reading of Education Code Section 46200 may suggest that, as long as a district meets the instructional minute requirements of E.C. Section 46201, the district may reduce its instructional year to less than 180 days but still retain its 180-day incentive funds. This "loophole" was unintended and closed by control language in the 1985-86 and 1986-87 Budget Acts. This language, which is legally binding, mandates the loss of 180-day incentive funds for any district that fails to offer at least 180 days each year. (This rule would not apply to year-round schools where the requirement is to maintain an increase "equivalent to" five days of the same length as offered in 1982-83.)

Emergency Days

Education Code Section 41422 allows the Superintendent of Public Instruction to grant regular apportionment credit to districts in which schools must be closed due to fire, flood or other specified emergencies. This section was amended in 1985 so that the Superintendent's approval also allows the days to count for the purposes of the longer year and day incentives, but the regulations governing the Superintendent's approval process were not amended to reflect the fact that most districts were offering the "longer year" of 180 days. These regulations, Sections 428 and 429 of Title 5 of the California Administrative Code, generally require that districts mitigate any loss of instructional time by extending the school year, reducing or eliminating holidays (if they are not holidays required by law) or by holding school during time which would otherwise be a vacation period. The regulations go on to note that "mitigation shall not be deemed possible" if the emergency occurs after Spring break or the school will meet the 175-day minimum year requirement anyway. Since the regulation only required schools to make up days that would leave the district with less than 175 days for the year, many districts that experienced emergencies in 1985-86 were granted approval of emergency days without having to make up the time lost to the "longer year." (Approval of "emergency days" must be obtained by filing a Form J-13 in the prescribed manner.)

Although many districts received approval for emergency days in 1985-86 without having to mitigate the loss, districts should not assume that days lost to emergencies will receive similar treatment in 1986-87 and future years. The Department will soon ask the State Board of Education to amend the regulations so that districts who want emergency days to count for incentive purposes will be required to make up losses which occur before Spring break unless the school will be in operation for 180 days during that year. Those districts that regularly schedule "extra" days in anticipation that some days will be lost to snow conditions would be wise to continue that practice.

Reductions

Reducing instructional time offerings in 1986-87 or later years may be possible for those districts with current offerings that exceed the goal levels shown above. When rearranging instructional schedules, districts should exercise caution to insure that:

- 180 days will be offered during the regular school year. (Districts offering less than 180 days face loss of the \$35 per ADA bonus plus any COLA adjustments that had been made on that bonus while it was part of the district's revenue limit).
- Instructional minutes per year, offered at each grade level, will not be less than the greater of the 1982-83 offering or the 1986-87 goal level (shown above) for the appropriate grade.

Districts that do offer less than goal level minutes per year at a given grade level will lose funds in reverse order from the manner in which those funds were earned. For example, a district that offers less than its 1986-87 goal level, but offers at least as many minutes per year as the district was required to offer in order to claim its 1985-86 increment, may keep the 1984-85 and 1985-86 incentive funding even though it will not earn (or after 1986-87, keep) its 1986-87 bonus funding. Note, however, that districts are required to maintain goal levels, not necessarily actual offerings if the actual offering of the given year exceeded the goal level.

Transitional Weighted Average

During the "phase in years" of 1984-85 and 1985-86, districts were allowed to use a weighted average to meet the 1/3 and 2/3 progress goals of those years (Sec 46201). Using this method of calculation, districts could fully meet 1986-87 goals for one third of their student population, provide no increased time to the remainder of the students, and still meet the 1984-85 goals. In 1985-86, the requirements were met if two-thirds of the population met 1986-87 standards. In either year, the weighted average would show that the districts had increased time "on average" by the necessary increment. This kind of a weighted average is no longer a valid means of meeting instructional time requirements for 1986-87 or later years. (A new site specific form of weighted average is allowed; however, see "New Legislation" for further details on this allowance.) From 1986-87 on, all school sites must meet the 1986-87 goals, and the fact that offerings at some sites may exceed those goals does not relieve the district from the obligation to offer the required amount of instructional time to each student at each site.

Late Program Adoption

Contrary to advice offered in our January 9, 1984 Program Advisory, it has been determined that a district may decide to increase instructional time (in accordance with E.C. Sec. 46201) after 1984-85, offer the time required for the year of entry and claim that year's incentive funding. This will only be useful to those few districts that offered the instructional time required for 1984-85, or will offer the time required for 1986-87, without having met the time requirements for 1984-85 and/or 1985-86. This is also a very limited option; please note:

- No district that failed to offer 180 days in 1984-85 may claim the \$35 per ADA bonus for initially offering 180 days in a later year. The opportunity to claim "longer year" funding under Section 46200 is closed to all districts that did not offer the 180 days in 1984-85. Districts that did offer the 180 days in 1984-85 may, of course, continue to receive the incentive funds (through revenue limits) so long as they continue to offer 180 days each year.

- A district may not claim the incentive funding for an earlier year (in which the required time was not offered) by meeting the requirement for a later year. This means that a district that failed to meet Section 46201 requirements in 1984-85 and 1985-86, may not claim the increments of incentive funding for those years by meeting the instructional time requirements of 1986-87. Such a district could only claim the 1986-87 increments (\$20 per K-8 ADA and \$40 per 9-12 ADA) and would never receive the prior year bonuses, even though the earlier years' goals were now being exceeded.
- While incentive funds earned during 1984-85, 1985-86 and 1986-87 may be maintained by districts that maintain the time, no district may "enter" the program in 1987-88 or any later year and receive any incentive funding.

Waivers

With one exception, the statutory provisions governing instructional time incentives (E.C. Sec. 46200 et seq) are NOT WAIVABLE by the State Board of Education (or any other state agency). The State Board's general waiver authority of Education Code provisions may be found in E.C. Section 33050, but paragraph a.9. of that section prohibits waiver of any provision specified in Section 52033. Section 52033, in turn, prohibits waiver of any provision in Part 26 of the Code (commencing with Section 46000) and instructional time provisions are in that Part. The one exception to nonwaiverability is the "6-period day" requirement for grades 9-12, which may be found in Section 46201. That requirement may be waived by its *own* terms, as explained further in the part of this advisory which discusses the 6 period requirement. (See "New Legislation")

Record Keeping

All school districts and county offices of education that claim incentive funds under Education Code Sections 46200, 46200.5, 46201 and 46201.5 should maintain all records which are needed to establish the validity of their claim in the event of an audit. Local agencies should remember that the receipt of incentive funds is based upon certification by local boards (generally executed by the district superintendent) that all requirements have been met, and the burden of proof to validate that certification rests with the local agency. At a minimum, records to be maintained should include district instructional calendars and school site bell schedules as well as any other records and bulletins that would be necessary to document that sufficient days/minutes were offered. Records should be maintained for at least the three years during which financial records may be corrected; however, those who must reference 1982-83 instructional schedules for any reason (including verification of progress in 1984-85 and 1985-86), should maintain the "base" year documentation for as long as necessary to verify the reference.

Good record keeping will be particularly important to those districts that must maintain instructional schedules that are longer than 1986-87 goal levels (because longer offerings were made in 1982-83) and to those districts that have year-round schools or schools using "weighted average" computations.

Districtwide Compliance

If it has not been made sufficiently clear elsewhere in this Advisory, it should be independently noted that districtwide compliance is required for a district to claim instructional time incentive funds for any grade or grades. While it is possible to use a weighted average in some schools, but not others, and it is possible to operate some schools on a year-round calendar while other schools follow a conventional schedule, it is not possible to fail to meet the instructional time requirements in certain grades in one school, while claiming incentive funds for ADA in those same grades in other schools. If one school in the district fails to offer at least the time required in Kindergarten, then the district may not claim incentive funding for any of the Kindergarten ADA in the district. This example follows for other grades as well. The failure to offer required time to grade one student in one school (that does not qualify under the weighted average) disqualifies all first grade ADA in that school and all other schools in the district. This would also apply to days in the school year. One school that fails to offer 180 days (without reason, such as a year-round schedule that is otherwise in compliance) prevents the whole district from receiving, or continuing to receive, "longer year" incentive funds under Section 46200 of the Education Code.

Year-Round Schools

For year-round schools, Education Code Section 46200 provides:

"A year round school shall be deemed to be in compliance with the 180-day requirement, if it certifies to the Superintendent of Public Instruction that it is a year-round school and maintains its school for five more days, or the equivalent thereof, than maintained in the 1982-83 fiscal year not to exceed 180 days."

In our 1984 Program Advisory we interpreted this language to provide three options for year-round schools. We believe that these options are still valid:

- operate school for 180 days, exclusive of attendance counted pursuant to Education Code Section 41836 ("Summer School" or intersession for year-round schools).
- - Operate school five more days than were operated in 1982-83.

- Operate school for additional minutes equivalent to five additional days. To calculate equivalent minutes, divide the annual instructional minutes offered in 1982-83 by 175, then multiply the resulting quotient by five. (As in schools that do not operate year-round, these additional minutes may be the same minutes used to qualify for incentive funds under Education Code Section 46201.)

With increasing interest in conversion to year-round schools, several districts have asked whether a school that was not on a year-round schedule in 1984-85, and met the requirements of E.C. Section 46200 by offering 180 days in that year, may now convert to a year-round schedule using "equivalent minutes" (rather than 180 days). The answer is yes, however, it is important to note that actual increase is required. The equivalent of five more days is not always the same as "180 days of 1982-83 length." Five more "1982-83 days" worth of time is required.

II. NEW LEGISLATION

Subsequent to the enactment of SB 813 and AB 70 in 1983, the statutes governing instructional time incentives have been augmented and amended, but this generally did not affect the intent of the original legislation. We have attempted to identify, and elaborate on, significant changes below but urge the reader to also examine the applicable statute before proceeding with implementation.

o Early-Late Reading Program

When instructional time schedules were examined in 1984 it was discovered that many school districts were offering elementary grade reading instruction using an "early-late" format (sometimes known as a "split reading schedule"). Typically, where schools used an early-late reading schedule, half of the students in particular grade levels would come to school "early" for reading instruction while the other half of the students would stay "late." In our 1984 Advisory, it was noted that only one instructional time offered to all students could be counted as an instructional offering and therefore;

"If the early session is 30 minutes and the late session is 30 minutes, then a total of 30 minutes of instructional time has been offered and may be counted; the combined length of the two sessions may not be counted to equal one hour of instructional time."

This advice was nullified by later legislation (Chapter 268 of 1984) which added Section 46205 to the Education Code. Under this section, districts that operated early-late reading program during the 1983-84 fiscal year may add the time offered during both sessions and apply the sum towards their instructional offering (in the previous example, the 60 minutes would count). It is

important to note that this allowance is only available to districts that operated the early-late reading program in 1983--84, unless the district has received specific approval from the Superintendent of Public Instruction to initiate such a program in a later year. Additionally, programs can only be operated for pupils in grades 1 through 8. There is no allowance for an early-late reading program in Kindergarten at this time.

In response to inquiries, the Department has also noted that the early-late reading program allowance only applies to the time required to meet the instructional time incentive requirements. Section 46205 does not apply to other time mandates of the Education Code and this special method of calculating early-late reading program time cannot be used to satisfy minimum day and attendance requirements.

o Instructional Time incentives for County Office Special Day Classes

Sections 46200.5 and 46201.5 were added to the Education Code in 1985 to allow county offices of education to claim instructional time incentive funds for special day classes operated pursuant to Section 56364 of the Education Code. Incentives per pupil are greater than for school districts in recognition of the higher costs of special education. Section 46200.5 allows county offices to claim \$70 per special day class ADA for offering a 180-day year in 1985-86.

The instructional time incentives of Section 46201.5 require the offering of specified minutes per year for 1985-86 and 1986-87, with different bonuses for the two years. The following schedule shows amounts of time and associated bonuses for County Offices of Education:

Minutes Per Year	1985-86	1986-87
Kindergarten	34,500	36,000
Grades 1-3	46,016	50,400
Grades 4-8	50,000	54,000
Grades 9-12	57,200	64,800
Incentives (per special day class ADA)		
Grades K-8	\$80/ADA	\$40/ADA
Grades 9-12	\$160/ADA	\$80/ADA

Incentive funds will be incorporated into entitlement calculations after the initial year and instructional days and minutes must be maintained in future years to avoid forfeiture of incentive funds. County Offices may claim incentive funding on Form J-50-DYR, and Sections 46200.5 and 46201.5 should be closely reviewed for specific requirements.

The usual rules and allowances governing instructional time apply also to the instructional time offered by county offices to special day class students with one exception. Lunch time and recess are not included in the instructional offering of regular districts but, under specified conditions, special education instruction during lunch or recess may be included as time offered for purposes of Section 46201.5. To qualify, special education lunchtime and recess activities must be instructional, required by the students' I.E.P. and conducted under the direct supervision of qualified, properly credentialed, special education teachers.

As shown in the schedule above, county office instructional time goals and incentive funding differ by grade levels. To insure that appropriate goals are met and incentive funds properly credited, it is important that all special day class ADA be classified by grade level. Ideally, the grade level of the special day class student should be noted in that student's IEP. If this is not the case, the county should be prepared to explain how the grade level of the student was determined (by age cohort, assessment, etc.). Clear guidelines, consistently followed, will guard against any challenge that ADA was arbitrarily assigned its highest incentive value, or that any student was offered too little instructional time.

o Six Period Day

Legislation, effective for 1985-86, requires that the instructional time of 64,800 minutes per year in grades 9 through 12 must be offered in no less than six class periods per day. Each class period must include at least 45 minutes of uninterrupted instructional time. This requirement was made by amendment to Section 46201 of the Education Code. This requirement is not in Section 46201.5 and, therefore, does not apply to county offices.

The six-period-day requirement for high schools appears to be aimed at insuring that each student is offered an opportunity to take a variety of courses during the high school experience. The requirement to offer six periods each day may be waived by the State Board of Education for any district that demonstrates that "its program for grades 9 to 12, inclusive, will offer to each student the equivalent of 24 course years of instruction." One "course year of instruction" may be considered to be the equivalent of the opportunity to take one course for a full school year, or one course in each of two semesters or one course in each of three quarters. Course content may differ so long as the opportunity to take a course was available all year. There may be several reasons for requesting a waiver, but a typical reason would be to allow a high school to maintain a schedule that includes a 7-period junior year, but only a 5-period senior year. (Remember that, even with such an arrangement, the district must still offer 64,800 instructional minutes each year in grades 9 through 12. A waiver would not relieve the district of this responsibility, but would only eliminate the need to offer 6 periods in the senior year, in this example.)

Some concern has been expressed by local agencies that the exact language of the amendment, which calls for "six class periods each day," could be interpreted to prohibit the scheduling of minimum days or final exam days during which the "normal" schedule is abbreviated or modularized. We believe that this is too narrow an interpretation of the amendment which was obviously intended to ensure that students have the opportunity to take at least six classes each semester (or quarter). We, therefore, conclude that no one day should be considered invalid simply because six class periods are not scheduled, so long as the intent of the amendment is followed. The existence of a regular class schedule (bell schedule) which shows at least six class periods, of no less than 45 minutes each, is therefore sufficient to meet the six-period-day requirement.

o Weighted Average

The use of a weighted average of minutes for the instructional offering in grades one through eight is now explicitly allowed by recent amendment to Section 46201 of the Education Code. This allowance may be found in paragraph (5) of subdivision (a) of Section 46201. Since this allowance is not mentioned in Education Code Section 46201.5, county offices should not use a weighted average for instructional offerings to special day class students. While the use of a weighted average to meet time requirements may offer desirable flexibility for some schools and districts, the use of this calculation method is specifically limited to one school site. While the allowance may be used at several school sites, each calculated average applies only to one site and the instructional time offered at one site may not be averaged with the time offered at a separate site. The use of a weighted average to meet instructional time goals at a school site appears intended to ensure that a student who attends all grades at that school will receive, over time, as much instructional time as would have been received had the school not used a weighted average. Ideally, should the student be offered a "short year" at one grade level, that student will be offered additional instructional time in a future grade to make up for the deficit of the "short year."

A weighted average may be calculated either in terms of total time offered, or in terms of "deficits" and "surpluses." The total time method would require the calculation of an average instructional time offering per grade. This would be compared with an average of the required time per grade to determine whether or not the requirement had been met. To make these calculations, for example, in a K-6 school:

One would first calculate the average of required minutes; the "goal" for this example school. A K-6 school would have three grades (1-3) requiring 50,400 minutes each and three grades (4-6) requiring 54,000 minutes each. (Kindergarten cannot be included in the weighted average and is, therefore, not part of the calculation, but its own 36,000-minute goal must still be met.)

3	grades x 50,400 minutes =	151,200
3	grades x 54,000 minutes = +	162,000
		313,200

This sum (313,200) is then divided by the six grades (1-6) to obtain the average instructional minute goal per grade. Since 313,200 divided by 6 is 52,200, the actual instructional minute average must meet or exceed 52,200 in the example school.

For purposes of the example, let us assume that grades 1 and 2 are operated for 46,800 minutes per year, grades 3 and 4 are operated for 54,000 minutes and grades 5 and 6 are offered 57,600 minutes for the year. The calculation would, therefore, be:

$$\begin{array}{r}
 2 \text{ grades} \times 46,800 \text{ minutes} = \quad 93,600 \\
 2 \text{ grades} \times 54,000 \text{ minutes} = \quad 108,000 \\
 2 \text{ grades} \times 57,600 \text{ minutes} = + \quad 115,200 \\
 \hline
 \quad \quad \quad \quad \quad \quad \quad 316,800
 \end{array}$$

The sum in the example, when divided by the six grades yields an average of 52,800 minutes per grade, which is greater than the 52,200 minute goal, and, therefore, meets the instructional time requirement.

The "deficit/surplus" method of calculation arrives at the same result, but may be easier to understand because it concentrates attention on how one is making up time lost in some grades with extra time in other grades. Using the same example school, we would make the calculation by comparing each grade's offering with its goal, determining its deficit or surplus and then adding the results to arrive at a net balance or surplus. In the example school the calculation would look like this:

Grade	Offering	subtract	Goal (min/yr)	=	Deficit (-) or surplus (+)
1	46,800	-	50,400	=	- 3,600
2	46,800	-	50,400	=	- 3,600
3	54,000	-	50,400	=	+ 3,600
4	54,000	-	54,000	=	-0-
5	57,600	-	54,000	=	+ 3,600
6	57,600	-	54,000	=	+ 3,600
Net Surplus				=	+ 3,600

Districts that wish to use the weighted average method to meet instructional time goals in one or more schools should not manipulate the school's schedule over the years so as to deprive any age cohort of its "instructional time rights" over the years. For example, no school's schedule should be changed from year to year so that the same students who received a "short" grade 2 are later offered a "short" grade 4. Although the calculation may be made annually, the intent of the concept encompasses several years.

o Participation by Grade Level

The same legislation that provided for meeting instructional time requirements by "weighted average" also specified that school districts could exercise the option of meeting instructional time goals by "grade level or levels." This change contradicts the advice we offered in 1984, when we wrote:

“Districts will not receive incentive payments for increasing instructional time in only some of the grade categories in which they provide instruction. - - ”

Districts that choose to exercise their option to offer increased instructional time to only certain grades will have to note this at the time they file their certification for receipt, or maintenance, of instructional time incentive funds. Districts that decide to utilize this new flexibility to cease offering increased instructional time to certain grade levels will have to be sure to report how much ADA will no longer be eligible to receive incentives and which year's incentives the ADA will be ineligible to generate. It is possible, for example, to offer instructional time to a grade level that exceeds the 1984-85 goal level but does not meet the 1985-86 or 1986-87 goals. In a case like this, the district would have to forfeit the 1985-86 and 1986-87 incentive funds for the ADA in all grades affected, but could retain the 1984-85 funding for these same pupils. Districts should note that this option may NOT be exercised for only one or two schools, while incentive funds for the same grade levels are retained for other schools. Failure to offer the required instructional time at any grade level in any school will disqualify the district from receiving instructional time incentive funds for ALL ADA at that grade level in all schools.

III. VALID INSTRUCTIONAL OFFERINGS

In our 1984 Program Advisory, we attempted to define an instructional offering as follows:

“In counting instructional time for purposes of the financial incentives provided by law, the operative word is "offers." Instructional time is offered if each pupil has access to a substantial course and all pupils desiring access are accommodated. Districts must demonstrate that substantial courses, appropriate for each grade instructed, realistically are available to all pupils. For example, a seventh period consisting of a few classes appropriate only for high school seniors would not be adequate to qualify as an instructional time offering in a typical three- or four-year high school. Districts need to keep evidence of demonstrated access to satisfactory course offerings for purposes of review by State administrative agencies or local citizens, or in judicial proceedings.

This definition remains valid today, although the experience of a few districts seems to call for elaboration. The use of the term "offers" in connection with instructional time is a relatively new development in attendance law. Most statutes refer to "requiring the attendance of pupils" or the "attendance of pupils while engaged in educational activities," and it appears that the concept of an instructional "offering" was first used in the statutes providing for financial incentives to increase instructional time. It is apparent that the term is meant to convey something different, something more flexible, than a simple mandatory attendance requirement upon each and every pupil. It is also clear that substantial financial incentives would not have been offered to districts without the intent to increase instructional time for all students.

The primary flexibility inherent in the term "instructional offering" appears to be that students are not required to accept the offering by attending for the full time offered. (All students, who are not exempt for other reasons, are still required to attend for the minimum day legally mandated for their grade. The "offering" concept only applies to the incentive statutes.) The "optional seventh period," offered in many high schools, is typical of the type of time that may count for instructional time incentive purposes, although such time would not satisfy the minimum day statutes.

Many districts, and practically all elementary schools, choose to make no distinction between the instructional offering required for incentive purposes and the school day which students are required to attend. This is understandable and eliminates the need to determine whether an instructional offering is valid since any instructional time which a student is required to attend may be deemed to be valid. When student attendance is not mandatory, the district must be able to demonstrate that the instructional offering has indeed been made "realistically available to all pupils" in all grade levels which rely on the attendance optional time to meet incentive goals.

Every student must have the opportunity to take the annual minutes of instruction required for incentive purposes. If these minutes include some "attendance optional" time, then the district must be able to demonstrate that each student could sign up for the courses offered. This opportunity may be evidenced by a "pre-registration" period, of reasonable duration, during which each student is guaranteed the right to sign up for as many classes as are necessary to meet the annual instructional minutes requirement. Students do not need to be guaranteed the course of their choice, so long as they may enroll in courses that are academically valuable for their grade and ability level. This means that offering courses for only one grade in a group, or only disadvantaged or gifted students, or only a portion of the population who have taken certain prerequisites, would not be acceptable. Offering such courses, in combination with other courses for the other students may, however, be acceptable. Finally, it is important that no student be denied an opportunity to take some course of value simply because of lack of staffing. While a particular course may be "closed" due to its popularity and the lack of qualified staff to open another section, the district must be prepared to meet the general demand for instruction by providing adequate staffing.

In our 1984 Program Advisory we defined various forms of instructional time and mentioned that a valid offering required that pupil attendance should be "recorded and reported as part of their daily program schedule." In view of the fact that attendance during the instructional offering may be optional, this advice seems needless and does not have to be considered as a "requirement" of the offering. The recording and reporting of attendance is still necessary for compliance with other statutes such as the minimum day requirements for crediting of average daily attendance, but it need not be considered an independent rule of the instructional offering required for incentive purposes.

IV. NONINSTRUCTION "INSTRUCTIONAL" TIME

In the 1984 Program Advisory it was acknowledged that "tradition, convention and rational application" established that time spent on certain noninstructional activities might be counted towards mandatory attendance time (minimum day). Some of these activities, such as passing time, have not been mentioned in statute, but have been allowed in audit standards as necessary components of the instructional day. Insofar as these activities had been allowed to count towards the more stringent requirements of a minimum day, it was thought that they should also count towards the more flexible "instructional offering" required by the new incentive laws.

None of these noninstructional components of instructional time has, as yet, been specifically prohibited by legislative action but districts should be cautioned that widespread abuse of any of these allowances will be likely to result in statutory prohibition. Much of the description of these components which follows is reprinted from the 1984 Advisory. Additional comments are, therefore, noted as new.

o Passing Time. Neither the Education Code nor the California Administrative Code specifically provides for passing time as part of instructional activity. Since 1967, however, the Attendance Accounting Manual has recognized and included a limited amount of passing time credit. Actual passing time -- not to exceed ten minutes -- between classes of like programs is allowed for those pupils changing instructors and/or courses. Traveling time from home to school, school to home, or to or from other programs (such as regional occupational or adult programs) is not credited as passing time. One passing time is authorized for the periods straddling a lunch break, but the passing time must be distinct from the actual lunch period and -- where applicable to establish the attendance of pupils for a minimum school day as required by law -- pupils must return to instructional activity after the lunch period. Where classroom activities are scheduled as single, continuous sessions of 150 minutes or more, passing time credit may be counted for one break -- not to exceed ten minutes -- for purposes normally accomplished during passing time.

New: Passing time is allowed for a lunch break only in departmentalized instructional settings, when pupils are "changing instructors and/or courses." A "lunch passing time" is, therefore, not appropriate in most elementary schools. Common sense dictates that passing periods should be as long as reasonably necessary for students or teachers to move from one class to the next, but in no event should any one passing period exceed ten minutes. Obviously, the Legislature did not enact substantial financial incentives to increase passing periods between classes and districts or schools that have increased passing times since 1982-83 should be prepared to justify the need for such increases.

- o Recess. Education Code Section 37045 specifically includes recess within the minimum school day applicable in kindergarten. Recesses, thus, may be considered instructional activity for kindergarten. Otherwise, recesses are not considered instructional activity. (See Education Code Section 46115.)

New: Recesses should not be disguised as a "passing time" in a nondepartmentalized school (see above comment on passing time). County offices may be allowed to consider recess, and lunch, as instructional time for special day class students. (See the discussion of the county office incentives in the "New Legislation" section.)

- o Study Halls/Home Room. Study halls and home room may be considered instructional activities (and, thus, counted as instructional time), if those activities are under the immediate supervision and control of a properly credentialed teacher and pupils are regularly assigned with their attendance recorded and reported as part of their daily program schedule.

New: Although encouraged, "the regular recording and reporting of attendance is not essential for a study hall or a structured school activity to count towards the instructional time offered for incentive purposes. The supervision and control of a properly credentialed teacher is essential, however, and pupil assignment, attendance recording and reporting is still necessary for a study hall, home room and structured activities to qualify under mandatory attendance/minimum day requirements.

- o Staff Development Days. Education Code Sections 44670.6, 52022, 52854, and 56242 (i.e., "AB 551" Staff Development, School Improvement, School-Based Coordinated, and Special Education programs) provide for setting aside days to conduct local staff development programs during the regular school year. If part of approved plans, these staff development days may be considered instructional time for the number of minutes regularly scheduled in the school day as established by the district for that school year. The law limits to eight the potential maximum number of creditable staff development days. The actual number applicable in a given district depends on that district's approved staff development, school improvement, or school-based coordinated plan. Up to two staff development days may be set aside for teachers of special education, but in no event may the total number of creditable staff development days exceed eight.

New: More questions have been raised concerning staff development days than any other component of instructional time. The following comments are intended to address these concerns.

- (a) Under the Education Code Sections 52022 and 52854 (cited above), staff development days" may also be used for student advisement. Please examine the most current version of each section cited for particular allowances.
- (b) Staff development days are school and program specific, which is to say that they are not districtwide "days off." The staff development day may only be held at the particular school which is operating the categorical program in question, all other schools, must remain in regular session. (Staff development days may be held simultaneously in several eligible program schools.) The staff development conducted must be relevant to the program which authorized the day and where the scheduling of the day is required to be part of a plan or application, the purpose of the staff development (or advisement) must clearly relate to the goals of the plan or application.
- (c) School site plans and applications for School Improvement and School Based Coordinated programs are no longer required to be approved by the Department of Education but still must be approved by local governing boards at a public meeting. When staff development days are proposed as part of any such plan or application, the days must be explicitly noted so that the local board is aware of its approval of the proposed action.
- (d) All of the Education Code sections cited above require that staff development days, if taken for ADA credit, be scheduled "during the regular school year." The Department of Education advises that to qualify, the day must be taken on one of the calendar days identified in the official school calendar (presumably adopted by the Governing Board) as a normal day of that particular school year. As a rule this means that staff development days, which are to count for instructional time, may not be scheduled on a Saturday, Sunday or school holiday. Under no circumstances may a creditable staff development day be held on one of the holidays required by the Education Code or any other officially declared state or national holiday.
- (e) For purposes of instructional time computation, staff development days are separate one-day events and may not be divided into partial day equivalents. This means that the maximum of eight days may not be turned into 16 half days or any similar variant.

- (f) For purposes of Education Code Section 46201 the number of instructional minutes which may be credited for a staff development day is the number of instructional minutes offered on any regular day in the same school. Schools may hold a staff development day on the same calendar day as a minimum instructional day and thereby gain credit for a "regular" day's worth of minutes. When possible it is preferable to hold a minimum day followed by staff development (or student advisement) functions as contrasted with dismissing students for a full instructional day (note, however, that no more than one day of attendance is credited for each student on such a day).
- (g) For attendance reporting purposes, if a staff development day is held in conjunction with a minimum day of student attendance, then the actual attendance of the minimum day is used. If students are not present for any part of the staff development day, then actual attendance on the next regular school day either before or after the staff development day may be used for attendance apportionment credit. (This method should be used for 1986-87 and later years, regardless of previous advice.)
- (h) Contrary to previous advice, a staff development day may be held on the first or last day of school if all other conditions are met. Be sure that the day in question is a regularly "calendared" day (see "d" above).

V. CONCLUSION

At several points in this advisory we have mentioned that a district that fails to meet the instructional time goal of a particular year may not claim that year's incentive funding by meeting the goal in a future year. It should be apparent from this and other advice that the instructional time incentive laws are not written in a manner that tolerates errors. If a district makes a mistake and offers a few minutes less than a goal level, or, overlooking a holiday, miscalculates the number of days for any given year, there is no means by which that mistake can be rectified, and that year's lost funding reclaimed. (Remember that waivers aren't available either!) The point of reviewing these matters is to strongly advise all local agencies to not "play close to the line." Allowing your district some "extra" room for error, an extra day or an extra few minutes each day, is not only prudent but may prevent the district from losing substantial funding when a mistake is discovered too late.

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In this advisory, we have attempted to address the most commonly asked questions regarding instructional time incentives. For further information or clarification, you may wish to contact:

For questions regarding this advisory contact:
Jim Wilson at (916) 322-4310.

For questions regarding district claim of incentive funds (including amounts in revenue limits) contact:
Bob Oliphant at (916) 324-4546.

For questions regarding county office claims for special day classes (Form J-50-DYR) contact:
Nona Martinez at (916) 323-3282.

More complex issues should be addressed in writing to any of the above named individuals at the following address:

Local Assistance Bureau
Department of Education
Post Office Box 944272
Sacramento, CA 94244-2720