

# UNDERWOOD

## EDUCATION LAW SECTION

### CLIENT ALERT

March 12, 2020

**RE: COVID-19**

Infectious disease - namely COVID-19 - is a matter of great concern among many educators this week. This Alert is intended to offer current resources and guidance for frequently asked questions.

COVID-19 is an infectious respiratory disease which is spread from person-to-person through droplets produced when an infected person coughs or sneezes. The Center for Disease Control (CDC) reports symptoms include fever, cough, and shortness of breath. There is currently no vaccine for COVID-19, and the best actions to take include: avoiding close contact with people who are sick, avoiding touching your face, and washing hands frequently with soap and water. See [CDC Guidelines on Handwashing](#). At the moment, school-aged children are not identified as more susceptible to COVID-19 or identified as an at-risk population. See [Frequently Asked Questions and Answers: Coronavirus Disease 2019 \(COVID-19\) and Children](#). All districts should remain in continual contact with their local health departments, which can be found here: [Local Health Departments](#). Additionally, if you do not have an identifiable local health department, you may wish to contact your regional department or the [Department of State Health Services](#). These agencies will provide valuable information and should be included in conversations surrounding preventative measures.

One of the critical components of an effective school response to COVID-19 is to maintain a rigorous communications campaign. Such a campaign should include informing the school community of the facts regarding the disease, as well as providing resources for the school community. See, e.g., [Dallas ISD Coronavirus FAQ](#). See also [Talking to Children About COVID-19 \(Coronavirus\): A Parent Resource](#). As a part of any communication campaign, the district should ask that parents and staff inform the school about any potential contact they have with public health officials about their own or their families' risk of exposure.

Several insurance companies, at the request of the Governor and other officials, have begun waiving insurance co-pays and deductibles for medically necessary testing. This includes the TRS health plans which have already announced their intention to honor the request. See [TRS Insurance Press Release](#). This information may be helpful as school officials request such testing of students and staff. See [Governor Press Release](#).

Avoiding attendance of infected students at campuses and activities is obviously a primary concern for school officials. Any student presenting with COVID-19 symptoms should not attend school or school activities until cleared by health officials. Districts may make inquiries of students to determine the likelihood of exposure to the virus and may include a questionnaire to be sent home to all students. As with any student who feels ill, the student may be sent to the nurse's office for medical screening. A district may exclude a student from attendance if the school determines that the student is currently showing signs of an illness, including a fever. See [25 Tex. Admin. Code § 97.7](#). For any student subject to long term exclusion, the District should consider alternatives such as remote conferencing, distance learning, and homebound instruction. For students covered by special education, the student's ARD committee should be involved in any decision making. See [Questions and Answers on Providing Services to Students with Disabilities during the Coronavirus Disease 2019 Outbreak](#). Such meetings may be conducted through video or teleconference calls. See [34 C.F.R. 300.328](#).

With respect to current employees, the district may make reasonable inquiries to identify employees who have been exposed to an infectious disease. See [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#). This inquiry may include, in limited circumstances, requiring that an employee submit to a medical evaluation to verify whether the employee presents a threat to the health and safety of the school community. See [42 U.S.C. § 12112\(d\)](#).

Further, the district may require that an employee stay home when the employee poses a direct threat to the health and safety of students, employees, or others. This directive to stay away from work would apply to employees who actively feel ill, or are exhibiting symptoms of COVID-19, as it has been recognized as a pandemic by the World Health Organization. A district may also ask questions of employees to identify who may have been exposed to COVID-19. For instance, if public health officials recommend that people who have visited identified high risk areas remain home for several days to confirm they do not have symptoms, an employer may ask whether the employee is returning from one of those locations, and may require the employee to not report to work until it's determined that the employee does not pose a direct threat to health or safety of students.

Whether an employee poses a direct threat is determined by asking: 1) whether the disease is a significant risk to health and safety that cannot be eliminated through reasonable accommodation, and 2) is there objective evidence that the employee may pose a risk of contagion? According to the EEOC, these determinations may not be based on generalizations, irrational fears or subjective perception. Rather, employers are required to obtain current public health advice in their area. See [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#). Although the COVID-19 designation by the WHO as a pandemic answers the first question, whether a particular employee is a risk of contagion must be a specific inquiry. In these unique circumstances, the District should work with its attorney to ensure all appropriate steps are taken and appropriate leave policies are applied. Some districts have required that parents, students, and employees register any travel with the district in an attempt to track and screen potential exposures. See [Houston ISD Provides Coronavirus Update](#).

In the face of concerns for the legitimate risks posed by district-related student and employee travel, many school districts have begun precautionary measures, and have taken the step to cancel all nonessential school travel. However, when considering school closures some health departments have recommended not taking such actions. The Houston Health Department recommends that schools stay open because children are not a high-risk population. Moreover, health officials learned during the H1N1 influenza pandemic that many children still gathered in group settings and still had exposure to one another. See [Coronavirus Disease 2019 \(COVID-19\) Updates](#).

We recommend that all districts make an effort to accurately inform their public with factual resources and information and consult with local health officials about steps to be taken. As a reminder, it is important to understand that the cancellation of events, school, or other interruptions to the district's ordinary schedule should be communicated as a serious health and safety risk and a control to prevent the exponential growth of COVID-19. Our firm is closely following developments related to the COVID-19 pandemic. We hope this Alert, with its included hyperlinks, will be a helpful resource to you. If you have any questions, please do not hesitate to contact our office.

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