



Texas Association of School Boards

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org

Serving Texas Schools Since 1949

Responding to the Risk of Infectious Disease in Public Schools

Published online in [TASB School Law eSource](#)

Note: Please consult with your local health officials for guidance specifically related to any infectious disease. For legal questions regarding an evolving public health issue, please consult with your school attorney or call TASB Legal at 800.580.5346.

When a health crisis like an infectious disease catches national attention, the media, the community, and parents often have elevated concerns about the spread of the disease in public schools. Each year school districts address concerns about influenza and other communicable diseases. Similar to other types of annual safety planning, school districts should review infectious disease response plans each school year. School districts should also continue to monitor available resources to ensure that the most current guidance is followed, particularly when concerns are heightened from a spreading epidemic or an unfamiliar and potentially deadly disease.

Table of Contents

A. Understanding Infectious Disease.....	1
B. Communicating with Staff, Students, Parents, and the Media	3
C. Emergency Operations Planning	5
D. Student Health, Attendance, and Privacy Issues.....	7
E. Employee Issues	12
F. Facility Issues and School Closures.....	17
G. Liability Issues.....	18
H. Helpful Links:	19

A. Understanding Infectious Disease

Public health agencies provide extensive information about the risks and preventative measures for infectious disease.

Information regarding infectious diseases can be found on the websites for [Centers for Disease Control and Prevention](#) (CDC) and [Texas Department of State Health Services](#) (DSHS). The websites provide further information about the following infectious diseases.

COVID-19: The coronavirus (COVID-19) is a highly contagious respiratory disease. The virus is most commonly spread through respiratory droplets produced when an infected person coughs or sneezes and through contact with people who are infected. The disease can spread among individuals at any age, including from child to adult and adult to child. Experts emphasize the importance of physical distancing to reduce transmission of COVID-19. Studies suggest people without symptoms can spread the virus.

Symptoms of COVID-19 vary and may include fever, cough, shortness of breath, and loss of taste or smell. Because this is a new virus, experts are continuing to learn more about the symptoms and explore vaccines and treatments. Currently, however, the best actions to take are preventive: avoid exposure to the illness by limiting contact with others outside your household, avoid touching the eyes, nose, and mouth, frequently wash hands with soap and water, especially after contact with respiratory or bodily fluid, clean and disinfect frequently touched surfaces, and cover your mouth and nose with a mask when around others outside your household. For CDC mask recommendations, see the [CDC Use of Masks to Help Slow the Spread of COVID-19 Website](#). Districts can also reduce the spread of COVID-19 by screening individuals before the individuals enter school facilities and requiring individuals with confirmed or suspected COVID-19 to stay home throughout the infection period. For more information about facilitating employee leave, see TASB Legal Services' [Personnel Issues During Epidemics and School Closing](#).

For more information about COVID-19, see the [CDC Coronavirus webpage](#) and the [DSHS Coronavirus webpage](#). Federal and state agencies have also released the following guidance specific to schools about the coronavirus:

- The Texas Education Agency [informational updates website](#);
- The Department of Education [coronavirus resources website](#);
- CDC [guidance for school settings](#), including guidance on school closures.

Influenza: Influenza (flu) is a contagious respiratory illness that can cause mild to severe illness. The common flu continues to present a significant health risk to vulnerable populations. Historically, flu epidemics have been difficult to predict. The CDC recommends everyone over 6 months of age receive the flu vaccination every season. Similar to COVID-19, the flu is highly contagious and spread through airborne transmission. Preventative measures include avoiding close contact with people who are sick, frequent hand washing with soap and water, avoiding touching the eyes, nose, and mouth, and cleaning and disinfecting surfaces that may be contaminated with the virus. Districts can reduce the spread of the flu by requiring students and staff to stay home when they are sick.

For more information, see [CDC Seasonal Influenza Information for Schools & Childcare Providers](#) and [DSHS Texas Influenza Surveillance Activity Report](#). The CDC also maintains [an informational website on the flu](#).

Ebola: The Ebola virus is a rare and deadly disease caused by infection with one of the Ebola virus strains. Ebola can only spread from one person to another after symptoms begin. The symptoms of Ebola include fever, diarrhea, vomiting, stomach pain, headache, muscle pain, and unexplained bruising or bleeding. Ebola is spread through direct contact (through broken skin or mucous membranes in, for example, the eyes, nose, or mouth) with blood or body fluids (including but not limited to urine, saliva, sweat, feces, vomit, breast milk, and semen) of a person who is sick with Ebola; objects (like needles and syringes) that have been contaminated with the virus; and infected animals. For more information, see the [CDC Ebola webpage](#) and the [DSHS Ebola webpage](#).

Enterovirus: Enteroviruses are relatively common viruses, particularly during flu season. A particular virus, Enterovirus-D68, has been linked to the deaths of children in the United States. Mild symptoms may include fever, runny nose, sneezing, cough, and body and muscle aches. Severe symptoms may include wheezing and difficulty breathing. The virus spreads from person to person when an infected person coughs, sneezes, or touches a surface that is then touched by others. For more information, see the [CDC Enterovirus-D68 webpage](#).

Zika Virus: The Zika virus is primarily spread to humans through the bite of an infected mosquito. Although most people who contract the Zika virus have no symptoms or have mild symptoms, the Zika virus has been linked to birth defects and a rare auto-immune disease. Mild symptoms may include fever, rash, joint pain, and conjunctivitis. People can reduce the risk of exposure to the Zika Virus by avoiding mosquito bites. For more information, see the [CDC Zika Virus webpage](#) and the [DSHS Texas Zika Virus Website](#).

B. Communicating with Staff, Students, Parents, and the Media

1. What can a school district communicate now, even before a concern arises?

School districts should provide information to parents, students, and personnel about the facts regarding infectious disease. Clear factual communications can calm unsubstantiated fears and rumors that commonly arise at the onset of an outbreak. Providing facts about infectious diseases from verifiable sources can provide the school community with confidence that schools and buses are safe for children and staff.

Districts should use communication strategies that meet their needs, maintain their education mission, and comply with privacy laws. Districts may reference the [Readiness and Emergency Management for Schools](#) and CDC Websites for communication strategies and additional resources. In addition, school district communications should emphasize how all members of the school community can help stop the spread of a disease through personal responsibility, including hand washing, covering coughs or

sneezes, getting immediate medical attention if symptoms develop, and avoiding contact with other people if necessary. Emphasize that staff and students are asked to stay home if they are exhibiting symptoms. Remind parents and staff about your procedures for documenting an excused absence for illness.

Additionally, ask that parents and staff inform you about any personal contact they have with the CDC, DSHS, or local health department about risk of exposure. Outreach from public health officials is typically to affected individuals and the local health department; as a result, schools may receive this information second hand. If you learn of a concern for a local individual, follow up by contacting the local health department or CDC, as described below under Emergency Operations Planning. During times of heightened health concerns, districts may also want to remind parents that the school district does not provide medical services for students and encourage parents to secure health care coverage for their children or access community programs that offer health care.

2. What approach should a school district adopt in responding to the media in the event of an issue in the community?

In addition to your existing protocols for responding to the press and the public, publicity regarding a health scare may require additional steps by the district to both effectively communicate with your community and maintain security and order at your school facilities.

Districts that are home to students or employees who have been identified as potentially passing near an infected individual have found it necessary to increase security and create a perimeter around school facilities. Media outlets have wanted access to school buildings to film background footage of campus buildings and students passing by. If possible, you might choose to work with the media to give them access to this type of footage without disrupting school operations. Similarly, media will be seeking interviews with a variety of school personnel. To the extent you can make appropriate personnel available at regular intervals for interviews, you may gain an additional means of reaching parents with your message.

Dallas ISD was the first Texas school district to experience media coverage related to students placed under observation for potential exposure to Ebola. District officials resolved that as new information became available, they would use their available communication tools to inform parents first and the media second. The district went to great lengths to give the media the information they needed to keep the public informed, but the district did not allow reporters and cameras on campus. Instead the district itself filmed campus footage and interviews and released the content for the media to use.

Finally, the district made it a point to show that high-level staff members were present at affected campuses, signaling that they felt safe, and parents should too. The district's proactive, cooperative media plan minimized disruption, maximized communications with parents, and prevented disputes over Public Information Act requests.

3. What steps should a school district take to work with another school district when the districts are scheduled to compete in athletics or otherwise visit school facilities and a potential concern has been raised at the host district?

In the face of a legitimate risk of contagion, nonessential travel for sports, other competitions, or field trips may be cancelled by a district superintendent or designee. The superintendent, athletic director, or other appropriate administrator should verify with the appropriate administrator at the host district that there is a legitimate cause for concern. Factual information from public health and health care professionals should govern decision making with respect to not only your home district but also other districts and their students.

C. Emergency Operations Planning

1. Does the school district need to create a specific emergency plan to address the spread of infectious diseases?

A school district does not need to create a new emergency plan if they already have an emergency operations plan (EOP) in place. The EOP should already contain information on addressing a health risk to the school community, such as an outbreak of infectious disease. Districts may develop a public health and medical annex as part of the EOP that outlines procedures for response to public health and medical emergency or support functions.

Each district must adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the commissioner. The plan must provide for: (1) district employee training in responding to an emergency; (2) measures to ensure district employees have classroom access to a telephone allowing for immediate contact with district emergency services or emergency service agencies, including the health department; (3) measures to ensure district communication technology and infrastructure are adequate for communication during an emergency; (4) mandatory school drills and exercises to prepare students and employees for responding to an emergency; (5) measures to ensure coordination with the DSHS and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and (6) the implementation of a required safety and security audit. Tex. Educ. Code 37.108(a). See TASB Policy CKC(LEGAL).

The Texas School Safety Center has prepared a [school-based emergency management toolkit](#) to provide guidance and information for schools on addressing and preparing for an emergency. School districts are encouraged to use the toolkit as a starting point in preparing or updating the district's EOP.

2. Should a school district contact local health officials when there is a concern regarding the spread of infectious disease in the school community?

A school district's EOP requires the district have measures in place for coordinating with necessary local government agencies. Districts must follow Federal Emergency Management Agency guidelines for resource requests and reporting procedures. As such, if districts are made aware of notifiable conditions, they should report these conditions to their local or regional health department, which will report the data to the Texas Department of State Health Services (DSHS). The DSHS will then report to the CDC as applicable. Information on notifiable conditions can be found on the [DSHS Website](#).

In the event of a concern regarding the spread of contagious disease, the school district should be in communication with the local health department as well as the CDC. See the [DSHS Public Health Regions webpage](#) to locate your school district's local health department.

Typically, in instances of a documented outbreak, the local health department is working in conjunction with the CDC to identify affected individuals and implement a care and isolation plan for the identified individuals. The local health department or the CDC may contact the school district to inform them of this information and the identity of the student or the employee under observation. If a student/parent or employee makes a self-report to the school district of a concern of infection, the school district should immediately contact the local health department for guidance.

Depending on the circumstances, the school district may be asked to identify other students or staff who came in close contact or proximity with the individual under observation. The CDC or local health department may require the school district to close certain campuses or portions of a school district depending on the nature of the disease and risk of infection.

3. What steps should the school district take to disinfect or sanitize school buildings and vehicles?

The degree of disinfection and sterilization appropriate on school campuses and vehicles may depend on whether a school district experienced a documented case of exposure to an infectious disease. In the absence of a documented case of active infection on school property, school districts may determine that regular cleaning and disinfecting protocols are adequate, with additional directed cleaning as a preventative measure.

Cleaning can be accomplished through the district's regular janitorial staff wearing routine protective gear such as dust masks, gloves, and eye goggles. A district may consider using a cleaning service or additional staff, as needed.

If a district were to experience a documented case of a deadly disease on school property, such as active infection of COVID-19, the school district should work with local health officials and the CDC to determine a more intensive disinfecting and sterilizing process. This may involve using a professional cleaning company equipped with medical grade cleaning supplies and personal protective equipment.

D. Student Health, Attendance, and Privacy Issues

1. What inquiries may a school district make regarding whether students have traveled to affected locations or been exposed to an infectious disease?

A school district may make inquiries of students in order to determine the likelihood of exposure to an infectious disease, such as COVID-19, if in coordination with local health officials the school district determines such screenings or questions are appropriate. A general questionnaire may be sent to all students and/or all new students. A school district may not use a person's race or national origin to determine which students will be asked to complete a questionnaire.

2. Can the school district conduct a health screening of a student exhibiting symptoms of infectious disease?

School personnel may refer a student to the school nurse or campus office as they would in any instance when a student complains of feeling ill. The school nurse or other staff member may take the student's temperature and conduct a medical screening. Some school districts may have a questionnaire for school nurses to follow in determining whether a student poses a risk of infection.

If more intrusive medical procedures—such as blood samples or throat swabs—are needed to determine a student's condition, the student's parent should be contacted and the student should be referred to the student's medical professional or local health department for further screening. School districts may want to be prepared to share resources with students, parents, and staff about infectious disease and where to seek further medical care or information. Again, encourage students and staff to take personal responsibility to monitor their health and stay home if they feel ill.

3. When should a student stay home?

If a student has been experiencing symptoms of an infectious disease, the student should stay home until the student is symptom free and/or cleared by a medical professional to return to school. The district should follow normal procedures for

requiring a doctor's note when a student is out sick in these instances. If, on the other hand, a school district becomes aware that a student has an infectious disease or has a risk of infectious disease requiring monitoring by local health officials, the student must stay home until he or she is cleared by the health department or other official guidelines as safe to return to the school environment.

A school district may exclude a student from attendance if the school determines that the student is currently showing symptoms of illness, including a fever. 25 Tex. Admin. Code § 97.7.

On the other hand, if rumors or suspicions arise regarding the exposure of a student who is not currently sick, the school district should contact the local health department for more information. Absent guidance from public health officials, TEA, or a health care provider, schools should not exclude from attendance students who are not showing symptoms of illness. See the [DSHS Public Health Regions webpage](#) to locate the school district's local area health department.

4. If a student stays home because he or she has contracted an infectious disease or is under observation, how can a school district continue to provide educational services?

A student may continue to receive instruction at home during the period the student is not attending school. Depending on the length of the student's absence, continuing educational services may be as simple as sending assignments home or as elaborate as creating a home learning environment by providing instructional technology (such as a laptop or tablet and home internet access), with the option for live instruction via teleconference or videoconferencing software (such as Skype or Face Time) or distance or remote learning through the Texas Virtual School Network (TxVSN) or other means. In 2014, when students in Dallas ISD stayed home from school for three weeks during an observation period for the Ebola virus, the district provided each student a laptop, Internet hot spot, books, e-mail, and live instruction through a home learning kit, which the district assembled and gave to the CDC for distribution to the students' homes. In 2020 during the COVID-19 pandemic, districts provided remote instruction for their entire student population.

Remote conferencing: Even if students' absences are excused during a period of illness or observation, school districts are eligible for Average Daily Attendance (ADA) funding only in accordance with rules set by the Texas Education Agency (TEA) in the Student Attendance Accounting Handbook or other TEA guidelines. Claiming ADA for instruction provided during a time of confinement will likely require a waiver or other action from TEA.

With a TEA waiver, a district may use remote conferencing to provide instruction, even for a period too brief to qualify for homebound services. Remote conferencing means remote instruction in which a student at an off-campus location is able to virtually participate in classes provided on the student's campus. If a district provides instruction through remote conferencing to a regular education student, the district may, with a TEA waiver, count the student in attendance for funding purposes, provided:

- the student is unable to attend school because of a temporary medical condition; and
- the student's temporary medical condition is documented by a physician licensed to practice in the United States. See the [TEA Student Attendance Accounting Handbook](#).

Distance learning: Distance learning, such as the TxVSN, is also funded in accordance with rules established by TEA. See TASB Policy EHDE(LEGAL).

Homebound instruction: A student is eligible for general education homebound services when the student: (1) is expected to be confined at home or in a hospital bed for a minimum of four weeks (the four weeks need not be consecutive); (2) the student is confined at home or in a hospital for medical reasons only; and (3) the student's medical condition is documented by a physician licensed to practice in the United States. See the [TEA Student Attendance Accounting Handbook](#).

A student eligible for homebound services must be provided educational services by a certified general education teacher. The teacher must provide instruction in all of the student's core academic instruction courses. A student provided with homebound services retains the same ADA eligibility he or she had prior to receiving homebound services.

Instruction must be provided in person, absent a waiver allowing remote instruction. Remote instruction means instruction provided through a technology that allows for real-time, two-way interaction between a student and teacher who are in different physical locations. The technology must allow for both two-way audio and two-way video interaction.

Special education: Students who are eligible for special education services should continue to receive those services to the best of the district's ability in light of the circumstances. If a special education student will be receiving services through remote conferencing or remote homebound instruction, the student's Admission, Review, and Dismissal (ARD) Committee should determine how best to meet the student's needs in the temporary setting. To be eligible for funding:

- the student's ARD committee must have determined, in a manner consistent with state and federal law (including requirements for a Free Appropriate Public Education and the Least Restrictive Environment), that the remote instruction to be provided meets the needs of the student; and

- the ARD committee must have documented that determination in the student's individualized education program (IEP).

For more information regarding homebound services, remote instruction, and the submission of waivers, see the [TEA Student Attendance Accounting Handbook](#) and TASB policy EEH(LOCAL).

5. How should school officials prepare for a student's return to school after a period of quarantine or observation?

The school district should convene necessary school personnel to prepare for students' arrival back into the classroom environment after a period of quarantine or observation. Ideally, counselors, teachers, and other student support staff and/or mental health professionals should work together to serve affected students and ensure a smooth transition back to the school environment.

Part of ensuring a smooth return includes completing staff and student training to explain why returning students present no risk to the school environment and to emphasize the district's policies against bullying, harassment, and retaliation.

The school district should coordinate its re-entry plan with the students and the students' parents. The school district may want to check in with the students and their parents periodically to ensure that the students are not falling behind in course work or experiencing negative reactions from peers.

6. What happens to a school district's funding if campuses are temporarily closed due to an outbreak or preventative measures?

School districts must operate for at least 75,600 minutes per school year, including instruction, intermission, and recess time. Tex. Educ. Code § 25.081(a). The Texas commissioner of education, however, may approve fewer minutes of instruction for students if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools. Tex. Educ. Code § 25.081(b). School districts may also choose to add additional minutes to the end of the district's normal school hours as necessary to compensate for minutes of instruction lost due to these causes. Tex. Educ. Code § 25.081(c).

TEA provides applications that districts may complete to request a waiver for missed instructional days due to inclement weather or health and safety-related reasons, among other causes. TEA's Website specifies, however, that the first two missed days of instruction must be made up. TEA also provides an application that a district may complete to excuse certain instructional days from average daily attendance ADA calculations. This waiver is for instructional days with low attendance due to inclement

weather or health and safety-related reasons, among other causes, if the attendance level is at least ten percentage points below the last school year's average attendance. The forms to request these waivers can be found at the [TEA Attendance State Waivers webpage](#). TEA may also have special provisions during a widespread pandemic if compliance with the current waiver process is difficult or impossible.

7. When is a student's absence due to illness or observation excused?

In accordance with school district policy, a school official may excuse the temporary absence of a student for any acceptable reason including illness, quarantine, or exclusion during a period of observation. However, the student will not be counted as present for funding purposes absent an exception (like homebound instruction). Tex. Educ. Code § 25.087; 19 Tex. Admin. Code § 129.21.

If students in a school district have been identified by public health officials as having had a risk of exposure to infectious disease, a school district may experience a drop in attendance due to concern about contagion. For example, school districts with students (or students with relatives) who were identified as having had a risk of exposure to Ebola experienced a slight, temporary drop in attendance following media reports about the concern. Once factual information was provided about the conditions under which Ebola spreads (i.e., that transmission is possible only through contact with the bodily fluids of a person currently exhibiting symptoms), school attendance returned to normal. If a district chooses to excuse absences for the day following a public announcement, while a situation is being investigated and stabilized, the district has that authority. Once that district has announced that classes will resume as normal, however, student absences unrelated to actual illness or periods of observation should be addressed as any other absence under the school district's policies and procedures. Repeated absences without excuse may violate compulsory attendance laws and/or affect a student's ability to receive credit or final grades for classes. Tex. Educ. Code §§ 25.085, .092. See TASB Policies FEA, FEB, and FEC.

8. If a local health authority has requested information about students in response to an investigation into the spread of the infectious disease, is the school district required to comply?

The school district should provide requested information to local or state health authorities if the request is to protect the health and safety of the student or others. The Family Educational Rights and Privacy Act (FERPA) generally prohibits the release of personally identifiable student information contained in education records unless the student's parent or guardian authorizes the release of such information or an exception to this requirement exists. 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

An exception exists when the school district determines that there is an articulable threat to the health and safety of students; the district may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. In making a determination, a school district may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. 20 U.S.C. § 1232g; 34 C.F.R. Part 99. Within a reasonable period of time after a disclosure is made under this exception, the school district must record in the student's education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed. 34 CFR § 99.32(a)(5).

Additionally, a school district may be asked to provide state or federal health authorities information about staff assignments, student assignments, and daily schedules to determine the specific individuals who may have come in contact with a student or staff member with an infectious disease. School districts, even those without present concerns, may want to examine how this information is stored and retrieved so that it could be readily available in the case of an urgent public health necessity.

9. Must the school district tell parents that their child's information was provided to a local or state health authority?

The school district must provide a parent with any information the parent requests about the parent's own child. A school district must maintain a record, kept with the education record of each student, that indicates all individuals, agencies, or organizations that have requested or obtained access to a student's education records, as well as the names of state and local educational authorities and federal officials and agencies that may make further disclosures of personally identifiable information from the student's education records without consent. A district must obtain a copy of the record of further disclosures maintained by the named authorities, officials, and agencies and make it available in response to a parent's request to review the record. 20 U.S.C. § 1232g; 34 C.F.R. Part 99. In other words, if a parent asks if their own student's name was included on a list provided to health officials, the school district must provide the parent that information; however, the parent would not be entitled to see the entire list.

E. Employee Issues

1. May a district screen applicants and new employees for potential infection with a contagious disease?

A district may not make medical inquiries of applicants, but may make reasonable inquiries of individuals who have been offered employment. Any such inquiries must comply with the Americans with Disabilities Act (ADA). See TASB Policy DBB.

Applicants: Districts may be concerned about hiring foreign nationals who are from countries that are impacted by a contagious disease. Similarly, a district may be concerned that a member of an applicant's household is a national of an affected country or that the individual has recently travelled to an affected country. However, such inquiries are strictly prohibited. An employer may not make medical inquiries of job applicants unless and until an offer of employment has been made. 42 U.S.C. § 12112(d)(2)(A).

A district should not ask an applicant about his or her medical condition, even if the applicant is a citizen of a country that is the source of a contagious disease. Similarly, a district should not inquire about recent travel activities or about the citizenship of members of an applicant's household. In addition to potential ADA violations, a district that makes such inquiries risks claims of national origin and race discrimination.

New employees: The district may make reasonable inquiries after it has extended an offer of employment. The ADA permits employers to make medical inquiries if all entering employees in the same job category are subject to the same inquiries and examinations. 42 U.S.C. § 12112(d)(3)(A); 29 C.F.R. § 1630.14(b). Thus, for example, a district may require all new hires to complete a questionnaire about recent travel or possible exposure to an infectious disease.

If a district determines that a new hire is at risk of developing an infectious disease, the district may not withdraw the offer of employment unless the district also determines that the new hire poses a direct threat to the health or safety of the new employee or others (*direct threat* is discussed below). U.S. Equal Employment Opportunity Commission (EEOC), [*Pandemic Preparedness in the Workplace and the Americans with Disabilities Act*](#) (Mar. 21, 2020). In addition, the district must determine whether the direct threat could be eliminated through reasonable accommodation. In the context of a contagious disease, reasonable accommodation may include providing leave, or delaying an employee's start date, until the completion of an incubation or quarantine period.

Current employees: An employer may make inquiries that are targeted at identifying current employees who may have been exposed to an infectious disease. Such inquiries would not be disability-related inquiries. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have symptoms of a contagious disease, an employer may ask whether employees are returning from these locations, even if the travel was personal. EEOC, [*Pandemic Preparedness in the Workplace and the Americans with Disabilities Act*](#) (Mar. 21, 2020).

2. May a district ask a current employee to submit to a medical examination for an infectious disease?

Yes, but only if the district has objective evidence indicating that the employee poses a direct threat to the health or safety of the employee or others. An employer may require a current employee to submit to a medical examination if the request is job-related and consistent with business necessity. 42 U.S.C. § 12112(d). An examination is *job-related* and *consistent with business necessity* when the employer has a reasonable belief, based on objective evidence, that:

- An employee’s ability to perform essential job functions will be impaired by a medical condition; or
- An employee will pose a direct threat due to a medical condition. *Direct threat* means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. 42 U.S.C. § 12111(3).

The employer’s reasonable belief must be based on “objective evidence obtained, or reasonably available to the employer, prior to making a disability-related inquiry or requiring a medical examination.” EEOC, [Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act](#) (July 26, 2000) (General Principles § B).

Before asking a current employee to submit to a medical examination, a district should check its local policy. Most districts have a policy at DBB(LOCAL) that authorizes the superintendent or designee to require employees to submit to medical examinations if the employee poses a direct threat to the health or safety of the employee or others.

3. How can a district determine whether an employee poses a direct threat with respect to a contagious disease?

In the context of an infectious disease, the determination of whether an employee poses a direct threat is a two-part analysis. First, the employer must determine whether the infectious disease poses a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. Second, the employer must determine whether there is objective evidence that the specific employee may pose a risk of contagion. Both determinations should be based on objective, medical evidence, not on stereotypes or generalizations about members of specific racial, ethnic, or other protected groups.

The EEOC has stated that employers should rely on the latest information from the CDC and state or local public health authorities: “[E]mployers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for

their location, and to make reasonable assessments of conditions in their workplace based on this information.” EEOC, [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) (Mar. 21, 2020).

Assessments of whether an employee poses a direct threat in the workplace must be based on objective, factual information, “not on subjective perceptions . . . [or] irrational fears” about a specific disability or disabilities. EEOC, [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) (Mar. 21, 2020). EEOC regulations identify four factors to consider when determining whether an employee poses a direct threat: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that potential harm will occur; and (4) the imminence of the potential harm. 29 C.F.R. § 1630.2(r).

4. Can we require an employee whom we suspect of having an infectious disease to stay home?

Yes, but only if the employee poses a direct threat to the health or safety of students, employees, or others. The district should rely on current medical knowledge and objective evidence, not on speculation, conjecture, or assumptions, in determining whether an employee poses a direct threat.

If a district determines that an employee poses a direct threat, the district should first solicit voluntary exclusion. If an employee refuses to remain home, the district may consider involuntary exclusion based on a determination that an employee poses a direct threat to the health or safety of the employee or others in the workplace. The determination that an individual poses a ‘direct threat’ must be based on an individualized assessment of the employee’s present ability to safely perform the essential functions of the job. 42 U.S.C. § 12111(3); 29 CFR § 1630.2(r). In other words, there must be an objective basis for the district’s concern that an individual presents a threat of infecting others.

TASB recommends that districts work with their local health departments and other qualified medical personnel in determining whether an individual should be asked to stay home. A district should also consult its school attorney before imposing an involuntary exclusion. In addition, the district may consider providing additional leave if a district requests that an employee stay home from work as a precautionary measure.

5. If we require an employee to stay home against his or her wishes, can we require the employee to use accrued leave?

Yes, but only if the employee is verifiably sick. The district may apply its usual policies and practices relating to district-initiated exclusions. In most districts, policy DBB(LOCAL) allows an employee to be placed on paid administrative leave while awaiting results of a

medical examination. If the results are that the employee has an infectious disease, the district has a legal basis for requiring the employee to use accrued leave. If the exclusion is merely precautionary, however, the district should consider maintaining the employee on paid administrative leave. Through a board-approved resolution, a district can establish additional leave for employees who decide to stay home voluntarily or if the district requests that the employee stay home. For more information see TASB Legal Services' article [Personnel Issues During Epidemics and School Closings](#).

6. Can we take disciplinary action against employees who refuse to come to work because of concern about contracting an infectious disease?

Maybe, but the district should consider the reasonable accommodation requirements of the Americans with Disabilities Act (ADA). As a general rule, a district may discipline an employee who refuses to come to work if the district remains open, unless the employee is eligible for leave.

However, a district must reasonably accommodate physical and mental impairments. Some employees may have physical conditions that preclude them from risking exposure to a contagious disease. Similarly, an employee may have extreme anxiety or another mental impairment associated with fear of exposure to contagions. Reasonable accommodation may include excusing an employee from work due to a mental or physical impairment associated with an infectious disease—even if the employee has no available paid leave.

7. Should districts be concerned about employment discrimination claims in light of concerns about the spread of contagious diseases?

Yes. As discussed above, districts must comply with ADA requirements when conducting medical inquiries. In addition, districts should be wary of stereotypes of assumptions based on racial and ethnic characteristics. For example, districts should not assume that employees who are from countries affected by a specific outbreak, or whose relatives are from affected countries, are more likely to contract an infectious disease.

Districts also have a legal obligation to protect employees from workplace harassment based on medical conditions and racial/ethnic status. An employee who has been exposed to an infectious disease, or whose family member has been exposed to a disease or who has become sick, may be targeted by co-workers for harassment or exclusion upon return to work. Similarly, co-workers may target an employee who is a member of a racial or ethnic group associated with a particular infectious disease. A district has a duty to protect such an employee from harassment based on his or her protected status or condition.

8. If an employee is exposed to an infectious disease in the course and scope of district employment, is the employee eligible for workers' compensation benefits?

Several factors will determine whether an employee is eligible for workers' compensation benefits due to a work-related exposure to an infectious disease. These factors include the type of disease, the circumstances underlying the exposure, the employee's usual job duties, and the carrier's policies. Districts should contact their workers' compensation carrier with questions regarding benefits.

F. Facility Issues and School Closures

1. Can our school board meet to discuss the emergency or address other issues surrounding the potential spread of infectious disease?

A school board may hold an emergency meeting only if an emergency exists as defined by the Texas Open Meetings Act. An emergency exists only if *immediate action* is required because of: (1) an imminent threat to public health and safety; or (2) a reasonably unforeseeable situation. Tex. Gov't Code § 551.045(b). The district must post notice of an emergency meeting or an emergency addition to an existing agenda no less than one hour before the scheduled time of the meeting. The notice of the emergency meeting or the additional agenda item must clearly identify the emergency or urgent public necessity justifying the short notice. Tex. Gov't Code § 551.045(a), (c).

It is important to note that the emergency exception to the Texas Open Meetings Act exists to allow a board to take *immediate action* to address an emergency. Periodic briefings to update the board on steps the district is taking to address concerns may be accomplished without a meeting through informational e-mails or phone calls from the superintendent or designee to each trustee. Consult your school attorney before relying on the emergency exception.

2. What if a school district needs to purchase goods or services immediately due to an emergency?

The Texas legislature has provided an avenue for school districts to purchase goods or services valued over \$50,000 without the need for a competitive process in the event of an emergency. Texas Education Code section 44.031(h) says that if school equipment, a school facility, or part of a school facility, is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the board determines that the delay arising from following the regular purchasing methods would prevent or substantially impair the conduct of classes or other essential school activities, the board is

not required to use one of the regular purchasing methods required by law to address the issues, even if the value of the contract exceeds \$50,000. Tex. Educ. Code § 44.031(h). This emergency purchasing exception may or may not apply to goods or services purchased in response to a potential outbreak. Consult your school attorney before relying on this exception.

3. Who in the school district has the authority to close a campus or all campuses temporarily?

Just as happens in the event of inclement weather, superintendents have the authority to close schools on a temporary basis. No school board action is required. During the Ebola crisis in 2014, the superintendents who closed campuses in response to concerns about contagious disease did so in close consultation with public health officials.

A school district should close school campuses if the CDC or other local or state health department advises the district to close all or some school campuses to prevent spread of the disease. A school district should exercise caution in deciding on its own to close school campuses without concrete information that an infectious disease has affected the school community. When concerns are identified and communicated broadly through news media and health agencies, closing campuses may cause a high level of concern about infection when no risk exists for your immediate community.

If a school district closes campuses or classrooms due to potential exposure to a communicable disease, the school district should take immediate steps to have the classrooms and other pertinent areas in the school sanitized and disinfected by school district janitorial staff or a professional cleaning company.

For more information on school closures, see TASB Legal Services' article [Personnel Issues During Epidemics and School Closings](#).

G. Liability Issues

1. Can the district be held liable if a student, staff, or community member is diagnosed with a contagious disease after being on school property or at a school activity?

Probably not. A person may file a lawsuit, but the chances of succeeding on a claim are low. Texas adheres to the doctrine of governmental immunity. This means that school districts cannot be held liable for the negligence of their employees, except in the limited instances expressly permitted by the state legislature. *Satterfield & Pontikes Const. v. Irving Indep. Sch. Dist.*, 197 S.W.3d 390 (Tex. 2006). The exceptions to governmental immunity are unlikely to include claims that the district (or its employees or agents) did not adequately prevent the transmission of a contagious disease.

If a parent or community member nevertheless threatens litigation against a district, the district should consult with its insurance carrier and local counsel. For more information, see TASB Legal Services' articles [We've Been Sued! Now What?](#) and [The Board's Role in Risk Management](#).

2. Does a district need waivers for school activities?

No. As discussed above, school districts are immune from claims that the district or its staff negligently failed to protect against a contagious disease. Waivers may be helpful, however, in alerting the person signing to the risks associated with the activity and the fact that the school district has immunity from liability. Some districts may choose to have parents or community members sign an acknowledgement and assumption of risk for extracurricular activities or school events. While not legally necessary, the forms can communicate expectations and risk management strategies. For example, the form may require a parent to acknowledge that a student with symptoms of an infectious disease may not participate or that parents and students are expected to take certain precautions. On the other hand, requiring waivers for participation does not actually change the applicable law, increases the administrative burden on the district, and delays or denies some students participation if they fail to return the form. TASB Legal Services recommends that districts that wish to draft waivers consult with local counsel.

3. If an employee contracts a contagious disease at work, are they covered by workers' compensation?

Only in rare circumstances. As employers, school districts are responsible for providing workers' compensation coverage to employees who are injured on the job. Employees who claim to have been exposed to an infectious disease may present a claim for workers' compensation. If the communicable disease is widespread, linking the employee's exposure to the workplace will be difficult. That said, an employee seeking to file a claim should be directed to the appropriate forms, and each claim should be evaluated individually. For more information, see TASB Risk Management Fund's article [Six Common Questions about Coronavirus and Worker's Compensation](#).

H. Helpful Links:

[Centers for Disease Control and Prevention](#)

[Texas Department of State Health Services](#)

[U.S. Department of Education Readiness and Emergency Management for Schools](#)

[U.S. Department of Education Pandemic Flu Guide](#)

[Student Privacy Policy Office \(SPPO\)](#)

[Family Policy Compliance Office FERPA and H1N1 FAQ](#)

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/responding-to-risk-of-infectious-disease-in-public-schs.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

Updated August 2020