

Education Law Client Alert (March 20th)- Updates regarding COVID-19 (with multiple links)

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Education Law Client Alert: Updates Regarding COVID-19 (With Collection of Important Links)

March 20, 2020

As we continue the unprecedented health and safety crisis created by the Coronavirus, Underwood is updating current resources for our clients. As you saw in our previous [Client Alert](#), on March 12, 2020, the rapid spread of the virus is of grave concern as all levels of policymakers continue to urge limited gatherings. As a result of action taken yesterday, all districts will remain closed until April 3, with extended closures still possible. Underwood will continue to serve our clients, and our attorneys are fully capable of working remotely. The Firm has already setup the necessary infrastructure to give all attorneys and staff access to all firm systems in a virtual setting.

Executive Order

Yesterday, the Governor of Texas ordered all schools closed through April 3rd. Additionally, the Order requires Texans to avoid social gatherings of more than 10 people. This mandate likely does not apply to essential functions of the District. However, out of an abundance of caution, districts should avoid initiating gatherings of 10 or more people for any purposes for the duration of the Order. To the extent any group meeting is necessary, Districts should consider limiting participation by establishing groups of 10 or fewer people in separate locations. The District may also consider designating separate entrances/exits to the building for each group and scheduling group meetings at different times during the day. Thus, avoiding contact of 10 or more individuals at any given time. You can find a copy of the Governor's Order [here](#).

Leave and the Families First Coronavirus Response Act

Our Firm recently provided an update on the newly signed Families First Coronavirus Response Act. Please note that this does apply to public employers such as school districts. You can find that [Client Alert here](#).

Elections

The Governor recently released a proclamation allowing local governments to move their elections from May to November. An election involving a trustee would not alter the Trustee's term (it would be as if the Trustee was elected in May). Additionally, the proclamation requires that counties enter into an election services agreement for that election, if so requested. See additional guidance from the Secretary of State [here](#).

Texas Public Information Act (TPIA)

This week the Texas Attorney General released [clarifying information](#) on how to appropriately calculate "business days" for the purposes of fulfilling a TPIA request. Most notably, the AG states: "If a governmental body has closed its physical offices for purposes of a public health or epidemic response or if a governmental body is unable to access its records on a calendar day, then such day is not a business day, **even if staff continues to work remotely or staff is present but involved directly in the public health or epidemic response** (emphasis added)."

We urge districts to use good judgment when invoking these exceptions in order to maintain a defensible position in the event a complaint is later filed concerning the calculation of "days" under the Act. Good record keeping of when physical offices are closed may become critical, if challenged.

Texas Open Meetings Act (TOMA)

After the President urged groups to remain at ten or less people, many schools have asked whether Trustees should continue to meet in-person to perform their governance functions. Our colleagues at the Texas Association of School Boards have provided a helpful guidance [document](#) highlighting several of the provisions of the TOMA which have been suspended due to the current disaster declaration. It is vital that districts understand that the public still has a right to participate in any meeting. This includes meetings conducted via teleconference or videoconference. In those situations, districts must give the public access to a conference call line or other technology to ensure two-way communication. However, please note that under the videoconferencing exception, the normal technology requirements have been suspended. Please also note that the open session portions of any meeting during which teleconference or videoconference is used for trustee participation must be audio recorded and made available to the public.-

Custody Issues

The Texas Supreme Court issued an [order](#) today attempting to alleviate confusion related to access to a child under a possession schedule. The Court simply states that the original school schedule controls unless another agreement is made. Thus, despite the use of language such as “extending spring break” parents will still need to treat such extensions as if the child is attending school.

School Lunch Program

Under normal circumstances meals provided under the USDA’s summer meal programs must be served in a group setting. However, the Texas Department of Agriculture recently submitted a [waiver](#) to the USDA to ensure that these meals can be provided in various other settings. Questions relating to the waiver and its applicability should be directed to child nutrition experts at your Regional Education Service Center or the [Texas Department of Agriculture](#). *See also* TASA [Guidance](#) and [FAQs](#).

Payment of Hourly/At-Will Employees

Several districts have already decided to continue paying non-contractual employees who would normally receive no compensation while the school is not operating. The Texas Association of School Boards has provided a useful [FAQ](#) to assist in these circumstances. The most pressing concern is that the districts avoid an improper gift of public funds. To accomplish this, the District must pass a resolution that (1) finds a public purpose for the expenditure; (2) demonstrates that the district will retain sufficient control of the expenditure in order to ensure that the public purpose is accomplished; and (3) ensure that the district receives a return benefit. While several districts have opted to use blanket resolutions, we would urge districts to contact their legal counsel to ensure a comprehensive approach is taken when addressing these matters. In some instances, it may be advantageous to delegate additional authority to the Superintendent in order to ensure continuity and efficiency during this time of need. Underwood clients are encouraged to contact their usual point of contact to ensure that the proper language is included in the resolution adopted by your District.

Contact with the Agency and the Commissioner

The Commissioner of Education has held multiple conference calls with superintendents and other stakeholders to endeavor that all needs are met. The Agency has posted transcripts of those calls [here](#). It is vital that all lines of communication continue to remain open as we navigate this uncharted and rapidly evolving territory.

Students with Disabilities

Please see the March 19, 2019 [Client Alert](#) to special education directors discussing issues relating to students with disabilities.

Vendors and Remote Instruction

Several vendors have provided extraordinary assistance to school districts as they prepare for the challenges relating to remote instruction. The Texas Cable Association has [announced](#) several partners’ contributions to

ensure internet connectivity. Additionally, companies such as AT&T and others have declined to pursue charges for broadband overages at this time. We urge districts to reach out to the corporate partners in their area to review any possible innovative strategies that would assist in providing remote instruction and services. Some districts have begun installing wifi in school buses and parking them throughout the district to help underserved areas receive internet access. Moreover, some companies providing internet access have begun a similar strategy at various locations throughout their communities.

Underwood will endeavor to provide updates throughout this national emergency and assist as we can. We are inspired by all of the wonderful leadership being displayed by our educators. In this challenging time, the focus remains on serving and protecting our students and preserving the health of their families and the health of our staff. While the current circumstances are concerning, we continue to see people helping others, despite all of the uncertainty.

Thank you all for your service and dedication to Texas schoolchildren.

This Client Alert was prepared by the Underwood Law Firm for its clients. It is intended to be used for general information only and is not to be considered legal advice.

For legal advice regarding your particular situation, please consult an attorney.