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## **COVID-19: Districts and Employees – The Balance Between Educating Students and Keeping Everyone Safe**

**Karl “Tiger” Hanner, Law Office of Tiger Hanner  
Cynthia Rincón, Fort Worth ISD**

Tiger Hanner, Law Office of Tiger Hanner

[tigerhanner@gmail.com](mailto:tigerhanner@gmail.com)

Kristi Godden, O’Hanlon, Demerath & Castillo

[kgodden@808west.com](mailto:kgodden@808west.com)

Cynthia Rincón, Fort Worth ISD

[cynthia.rincon@fwisd.org](mailto:cynthia.rincon@fwisd.org)

# **COVID-19: Districts and Employees – The Balance Between Educating Students and Keeping Everyone Safe**

Karl “Tiger” Hanner, Law Office of Tiger Hanner  
Kristi Godden, O’Hanlon, Demerath & Castillo  
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In March 2020, in districts across Texas, students and school staff left campuses expecting a week of fun and rest as they embarked on spring break. No one could have predicted that schools would remain closed for the remainder of the school year.

In the last 10 months, navigating the turbulent waters of the pandemic, in an effort to balance the mission of educating students while keeping students and staff safe, has created unique challenges for school boards, campus staff, and district administrations.

Fear of an unknown virus, lack of information, and many other factors have impacted decision-making. In this paper, we examine: (1) both the district’s and the employee’s role with regard to the interactive process in facilitating requests for accommodation during this pandemic; (2) the resources and guidance available to both employers and employees; and (3) how the new vaccine impacts the school environment moving forward.<sup>1</sup>

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<sup>1</sup> This paper is not intended to be an in-depth discussion on the legal requirements regarding reasonable accommodation; nor will it provide a full discussion of many important ADA terms and concepts. For additional information on these topics, see EEOC ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE AMERICANS WITH DISABILITIES ACT (Oct. 17, 2002), *available at* [www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html) [hereinafter ENFORCEMENT GUIDANCE].

## **ACCOMMODATION REQUESTS**

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities. It also requires reasonable accommodations for those individuals. The U.S. Equal Employment Opportunity Commission (“EEOC”) has recognized that the rapid spread of COVID-19 is likely to cause unexpected or increased requests for reasonable accommodation(s), including requests for telework based on the employee’s underlying medical condition(s) that increase the risk of severe COVID-19 illness.<sup>2</sup> Many school districts have seen increased requests for telework as they reopened for in-person instruction.

Although these are abnormal times, the procedures a school district must follow in responding to a request for accommodation under the ADA largely remain the same.<sup>3</sup> The school district and the employee should engage in the interactive process to discuss accommodation requests and explore possible effective alternative accommodations as soon as possible, but should use interim solutions to permit employees to continue working to the extent possible, prior to engaging in the full interactive process.<sup>4</sup> The school district should establish clear written procedures and designate a central office administrator to supervise the accommodation process to ensure that employees who are similarly situated are treated as consistently as

<sup>2</sup> See WHAT YOU SHOULD KNOW ABOUT COVID-19 AND THE ADA, THE REHABILITATION ACT, AND OTHER EEO LAWS (updated Dec. 16, 2020), *available at* [www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws](http://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws) [hereinafter COVID GUIDANCE] at Question D.17.

<sup>3</sup> See COVID GUIDANCE at Section D.

<sup>4</sup> ENFORCEMENT GUIDANCE at Question 5, COVID GUIDANCE at Questions D.6-D.7.

possible, taking into consideration the unique characteristics of their work assignments and environments.

## THE INTERACTIVE PROCESS

The interactive process should be exactly that – interactive. During this process, the school district must work with the employee to determine reasonable and effective accommodation(s) to address the employee’s limitations as a result of the disability.<sup>5</sup> Communication is key. The school district should not shy away from a robust back-and-forth discussion with the employee. Similarly, the employee should be prepared to engage in the process in good faith, by providing any requested information in a timely manner and by considering reasonable alternative accommodations.<sup>6</sup> The employee should also recognize that the goal of the interactive process is to provide a reasonable, effective accommodation to allow the employee to perform the essential functions of the job. What constitutes a reasonable accommodation may not always be the employee’s proposed or perfect accommodation.<sup>7</sup> Even where an employee’s proposed accommodation is reasonable, the employer has the discretion to choose an alternate, effective accommodation, if one exists.<sup>8</sup>

During the interactive process, the school district may ask questions or request medical documentation, if necessary, to establish whether the employee’s disability supports the need for the requested accommodation or any other reasonable accommodation.<sup>9</sup> This is a highly fact-based inquiry. Each

accommodation request should be carefully considered independently, with attention to the employee’s limitations, including how those limitations impact the employee’s ability to perform the essential functions of the employee’s position.

Some questions that a school district might ask include: (1) how the employee’s disability creates a particular limitation; (2) how the requested accommodation will address the limitation; (3) whether an alternative accommodation could address the limitation; and (4) how a proposed accommodation will permit the employee to perform the “essential functions” of the position.<sup>10</sup> For example, many employees have submitted remote work accommodation requests stating that the employee’s condition increases the employee’s risk of severe complications and hospitalization due to COVID-19. But such a conclusory statement, without further explanation, may not be sufficient to support a determination that an accommodation is needed. The CDC’s guidance regarding medical conditions that increase or may increase the risk of complications due to COVID-19 can serve as a resource, but it is important to recognize that the CDC’s list is not intended to be exhaustive and is being continuously updated.<sup>11</sup> For employees who do not have a listed condition, the school district may need to ask how and why the employee’s condition increases the employee’s risk due to COVID-19. The employee’s medical professional should be able to provide a medical

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<sup>5</sup> ENFORCEMENT GUIDANCE at Question 5.

<sup>6</sup> *Id.* at Questions 5-6, 9.

<sup>7</sup> *Id.* at Question 9.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at Questions 6-7.

<sup>10</sup> ENFORCEMENT GUIDANCE at Question 5, COVID GUIDANCE at Question D.6.

<sup>11</sup> See PEOPLE WITH CERTAIN MEDICAL CONDITIONS (updated Dec. 29, 2020), *available at*

[www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)

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