

Frequently Asked Questions Regarding Educators and Coronavirus/COVID-19 –

“Essential Worker” Status

My school board is considering a policy to make educators “essential workers.” What does this mean, and should I be concerned?

For a detailed, legal explanation on the history and evolution of “essential worker” designations, see the previously released TEA FAQ found [here](#).

In a nutshell, a local school board’s designation of an educator as an essential worker is something that a few school boards across the state have been doing, and they are doing this at their peril during this pandemic, especially when they are requiring those same educators to perform in-person, as opposed to remote, services. First, the essential worker designation was based on mere guidance from the federal government. It is not based on either state or federal law. Essentially, what the designation means is that the school board is ignoring the Tennessee Department of Health recommendations and mandating that even educators who have been exposed to COVID-19 must nonetheless continue to report to work and perform in-person instruction of their students.

Requiring an educator to teach in person, as opposed to teaching virtually, after the educator has been determined to be a close contact of someone with COVID-19 not only puts the teacher and the teacher’s students at risk, but also puts the educator at odds with Tenn. Code Ann. § 49-5-1003, an educator’s obligations to students, which is a legal obligation imposed upon teachers. Subsection 4 of the Teachers Code of Ethics requires that an educator

Make reasonable effort to protect the student from conditions harmful to learning or to health and safety;

It should also be noted that a teacher could be dismissed or fired for not following state law, which includes the Teacher Code of Ethics (*see Tenn. Code Ann. §49-5-511*). Arguably, a Board’s passage of any critical infrastructure policy requiring educators to report to work after being exposed to COVID-19 could cause an educator to violate state law.

Finally, under current Tennessee law, a school district could be opening itself up to legal exposure by creating the essential worker protocol. While Governor Lee and Commissioner Schwinn maintain that the “essential worker” designation is a local decision, there is concern that in doing so, a local school district might open itself up for a lawsuit. *See the joint letter from Commissioner Schwinn and Dr. Piercey sent to school superintendents [here](#).*

When the General Assembly reconvened a few weeks ago, the [liability law](#) passed did not eliminate all lawsuits against a school district for COVID-19 related issues. Rather, the courts will decide whether a school district acted improperly by requiring an educator to return to in-person instruction after having been exposed to COVID-19. Under Tennessee law, gross

negligence is defined as a conscious neglect of duty or a callous indifference to consequences or such want of care as would raise a presumption of a conscious indifference to consequences (see *Buckner v. Varner*, 793 S.W. 939 (Tenn.Ct.App. 1980) (citing *Thomason v. Wayne County*, 611 S.W.2d 585 (Tenn. Ct. App. 1980); *Sampley v. Aulabaugh*, 589 S.W.2d 666 (Tenn. Ct. App. 1979))). Arguably, given the pandemic and COVID infection rates across the state, a school board's act of requiring in-person instruction following a known exposure could satisfy the definition of gross negligence.

TEA's Policy and Position Statement on Essential Worker Designation

The health and safety of every employee and student (as well as their families) is paramount. Requiring exposed educators to remain on the job demonstrates a want of care for the health and safety of students and educators.

TEA recommends that educators who have been identified as a close contact of someone diagnosed with COVID-19 be able to take paid leave or work remotely. An abundance of caution and work flexibility to limit transmission of the virus as much as possible will not only serve to protect school districts from potential liability but is also sound policy protecting the health and safety of students and educators. Finally, it will prevent future disruption of in-person instruction.