

Authority to Close Schools to Control Communicable Disease

Prepared by: Office of General Counsel
Texas Department of State Health Services
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Question: Is the Texas Education Agency (TEA) or the State Board of Education authorized to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: No, neither TEA nor the State Board of Education have authority to close schools under these circumstances.

Question: Is the board of trustees of an independent school district authorized to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: Yes, a board of trustees of an independent school district has authority to close schools under these circumstances. A board of trustees has "the exclusive power and duty to govern and oversee the management of the public schools of the district". Education Code, Section 11.151(b).

Question: Who is the appropriate contact within a school district to address the issue of whether to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: The superintendent is the appropriate contact. A superintendent has authority to close schools if the Board of Trustees has granted the superintendent authority, through its policies, to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event. With or without that authority, the superintendent remains the contact regarding issues pertaining to school closure. A superintendent is the chief executive officer of the school district. The superintendent is required to "on a day-to-day basis, ensure the implementation of the policies created by the board". The duties of a superintendent include "managing the day-to-day operations of the district as its administrative manager", developing "appropriate administrative regulations to implement policies established by the board of trustees", and "providing joint leadership with the board of trustees to ensure that the responsibilities of the board and superintendent team are carried out". Education Code, Sections 11.1512(a) and 11.201(a) and (d)(5), (8) and (14).

Management of day-to-day operations by the superintendent could include making the decision to close schools under these circumstances if the Board's policies grant the superintendent that authority. The superintendent could be charged with carrying out a policy of the board of trustees authorizing the superintendent to close schools under these circumstances. This type of authority is regularly exercised by Texas superintendents for events such as weather-related closures.

Question: Is a health authority authorized to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: Yes, a health authority has authority to close schools under these circumstances. The Communicable Disease Act authorizes DSHS to "exercise its powers in matters relating to protecting the public health to prevent the introduction of disease into the state" and to "impose control measures to

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prevent the spread of disease in the exercise of its power to protect the public health". Sections 81.021 and 81.081. A health authority also has specific duties and responsibilities under the Communicable Disease Act. The Act gives a health authority "supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by (DSHS)". Section 81.082(a).

A "health authority" is (1) a physician appointed under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121 by the governing body of a city, county, or public health district or that physician's designee; or (2) a physician appointed as a Department of State Health Services (DSHS) regional director who performs the duties of a health authority or the regional director's designee. A DSHS regional director may perform the duties of a health authority in a jurisdiction if there is no appointed health authority or if the appointed health authority fails to perform duties or is absent or incapacitated. Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81, (Communicable Disease Act), Section 81.003(2) and Title 25, Texas Administrative Code (TAC), Section 85.1 (DSHS Rule 85.1).

DSHS Rule 85.1(g) states that a "health authority shall perform each duty that is necessary to implement and enforce a law to protect the public health as stated in the Health and Safety Code, Section 121.024." Under Section 121.024 a health authority is required to perform each such duty; to establish, maintain, and enforce quarantine; to aid the Texas Board of Health in relation to local quarantine, inspection, disease prevention and suppression; to report disease; and to aid the Texas Board of Health in the enforcement of rules and quarantine laws. Health and Safety Code, Section 121.024(b)(1) and (c)(1)-(3) and (5). The Texas Board of Health adopted DSHS Rule 85.01(g) in 2000 to give direction to health authorities as to their duties to aid the Board. (Note: Statutory responsibilities of the Texas Board of Health were transferred by law to the Health and Human Services Commission on September 1, 2004.)

Along with DSHS Rule 85.1 above, DSHS has rules at Title 25, TAC, Chapter 97, Subchapter A, Control of Communicable Diseases (Communicable Disease Rules). These rules state that a health authority "shall take such action and measures as may be necessary to conform with the appropriate control measures standards", describe control techniques including acceptable measures necessary to reduce morbidity and mortality, and authorize a building or place to be a place of quarantine. Communicable Disease Rules, Sections 97.6(g), 97.8(3), and 97.9(a).

Communicable Disease Rules at Section 97.6(h) state that a health authority "is empowered to close any public or private child-care facility, school, or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly shall not reopen until permitted by the health authority who caused its closure". This rule is a statement of one type of control measure, i.e., closure of a school, which a health authority may utilize.

Taking these laws and rules together, a health authority has broad authority to provide for the administration of control measures within the health authority's jurisdiction, including closure of a school.

Question: How may a health authority exercise the authority to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: There are two scenarios:

1. A health authority could issue a recommendation to close schools at any time. Compliance would be voluntary.

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2. The Communicable Disease Act provides for the application of control measures to individuals or groups, property, or area quarantines. Communicable Disease Act, Sections 81.083, 81.084, and 81.085. In order to mandate and enforce the closure of schools, a health authority would use one of these statutory methods for the application of control measures. Compliance with these provisions would ensure that any mandate or order issued by a health authority to close schools is enforceable through civil court action, law enforcement activities, and criminal prosecution.

Question: How may the statutory provisions on individual or group control measures in the Communicable Disease Act, Section 81.083 be used to close schools?

Answer: A health authority may issue a control measure order to a group of five or more individuals if the health authority has reasonable cause to believe the members have been exposed to or infected with a communicable disease. Notice must be provided in writing and delivered personally or by registered or certified mail to each member of the group or the member's parent, legal guardian, or managing conservator if the member is a minor. If the name, address, and county of residence of any member of the group are unknown, the health authority must publish notice in a local newspaper. Because the control measure is directed to the group of individuals, this type of order could mandate that the group of individuals may not attend or go on the property of schools. This effectively closes the schools.

Alternatively a health authority may issue a control measure order to each individual student at a school within the health authority's jurisdiction. The health authority must have reasonable cause to believe that the individual is ill with, has been exposed to, or is the carrier of a communicable disease. Notice must be provided in writing and delivered personally or by registered or certified mail to a minor's parent, legal guardian, or managing conservator. Because the control measure is directed to individuals, this type of order could mandate that the named individuals may not attend or go on the property of schools. This effectively closes the schools.

Question: How may the statutory provisions on area quarantine in the Communicable Disease Act, Section 81.085 be used to close schools?

Answer: If there is an outbreak of communicable disease, a health authority may impose an area quarantine and additional control measures within the area. The area quarantine must be coextensive with the area affected. A health authority could declare an area quarantine for all or a portion of the health authority's jurisdiction and order the closure of schools within the area as one of the control measures within the affected area.

A health authority must consult with DSHS before imposing an area quarantine. A health authority must give written notice to and consult with the city council and commissioners' court in the health authority's jurisdiction as soon as practicable. Prior approval of the city council or commissioners' court is not required. Certain notice requirements will apply.

Question: How may the statutory provisions on property control measures in the Communicable Disease Act, Section 81.084 be used to close schools?

Answer: A health authority who has reasonable cause to believe that property is or may be infected or contaminated with communicable disease may place the property in quarantine. The term "property" includes a parcel of land or a structure. If a school building or school grounds are infected or contaminated, the health authority could issue an order closing the school and measures to disinfect the school.

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The health authority's order must be delivered or sent to the person who owns or controls the property, notice posted on the land, and notice posted at a place convenient to the public in the county courthouse. This type of order must be removed if the property is found not to be infected or contaminated.

Question: Is DSHS staff authorized to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: Yes, the Commissioner of DSHS and DSHS regional directors are authorized to close schools under these circumstances. The DSHS regional directors who perform the duties of health authorities may impose control measures to close schools as described above for health authorities.

The statutory authority of the Commissioner of DSHS to impose control measures is different in some aspects from the requirements relating to health authorities as described above.

Question: How may the Commissioner of DSHS close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: The Commissioner is the executive head of DSHS. The Commissioner could issue a recommendation to close schools at any time. Compliance would be voluntary.

In order to mandate and enforce the closure of schools, the Commissioner would use one of the statutory methods for the application of control measures. Compliance with these provisions would ensure that any mandate or order issued by the Commissioner to close schools is enforceable through civil court action, law enforcement activities, and criminal prosecution.

Question: How may the statutory provisions on individual or group control measures in the Communicable Disease Act, Section 81.083 be used by the Commissioner to close schools?

Answer: The Commissioner has the same authority as a health authority to mandate the application of control measures to individuals or groups as described above. This includes ordering that individuals or groups of individuals not attend school or go on property of schools.

Question: How may the statutory provisions on property control measures in the Communicable Disease Act, Section 81.084 be used by the Commissioner to close schools?

Answer: The Commissioner has the same authority as a health authority to impose control measures on property as described above.

Question: How may the statutory provisions on area quarantine in the Communicable Disease Act, Section 81.085 be used by the Commissioner to close schools?

Answer: The Commissioner may impose an area quarantine if there is an outbreak of communicable disease. The area quarantine must be coextensive with the area affected. The Commissioner could declare an area quarantine for all or a portion of the State of Texas and order the closure of schools within the area as the control measure within the affected area. This is the same authority as stated for a health authority.

The Commissioner has additional authority to impose an area quarantine. The Commissioner may impose an area quarantine if the Commissioner has reasonable cause to believe that individuals or property in

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the area may be infected or contaminated with a communicable disease. This authority is only for the period necessary to determine whether an outbreak of communicable disease has occurred within the area quarantined. Certain notice requirements will apply.

Question: What is a public health disaster and does it affect any authority to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: A “public health disaster” means that the Governor has issued a declaration of a state of disaster and there has been a determination by the Commissioner of DSHS that there exists an immediate threat from a communicable disease that (1) poses a high risk of death or serious long-term disability to a large number of people and (2) creates a substantial risk of public exposure because of the disease’s high level of contagion or the method by which the disease is transmitted. Communicable Disease Act, Section 81.003(7). The existence of a public health disaster authorizes the Commissioner or a health authority to more expeditiously request a civil court order to impose control measures on an individual, negates the need for notice for property control measures, and authorizes DSHS or a health authority to impose additional control measures. A declaration of a public health disaster is not a prerequisite for control measures to close schools.

Question: Is the Governor authorized to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: Yes, the Governor may order the closure of schools under these circumstances. The Governor is authorized to issue a proclamation declaring a state of disaster. The term “disaster” includes the occurrence or imminent threat of widespread injury or loss of life from any natural or man-made cause, including epidemic or other public calamity requiring emergency action. The “governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area”. Texas Disaster Act of 1975, Government Code, Chapter 418, Sections 418.004(1), 418.014(a), and 418.018(c). The authority to control the movement of persons and the occupancy of premises could include prohibiting individuals from attending schools, prohibiting individuals from going onto school property, and closing schools within a disaster area.

In addition upon the application of the chief executive officer or governing body of a county or city during an emergency, the Governor may proclaim a state of emergency and designate the area involved. A directive issued by the Governor expires 72 hours after the issuance of the proclamation although the Governor may issue successive proclamations. The Governor’s directive may provide for “designation of specific zones in the affected area in which, if necessary, the use and occupancy of buildings and vehicles may be controlled”; “control of the movement of persons”; and “control of places of amusement or assembly”. Government Code, Chapter 433, Section 433.001, 433.002(a)-(b), and 433.003. The authority to control the movement of persons, places of assembly, and the use and occupancy of buildings could include prohibiting individuals from attending schools, prohibiting individuals from going onto school property, and closing schools within the designated area.

Question: Is a county judge or city mayor authorized to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: Yes, a county judge or mayor is authorized to close schools under these circumstances. A county judge or a city mayor may issue a declaration of local disaster for a period of up to seven days or a longer period of time with the consent of the city council or commissioners’ court. The county judge or mayor “may control ingress to and egress from a disaster area under the jurisdiction and authority of the

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county judge or mayor and control the movement of persons and the occupancy of premises in that area". Texas Disaster Act of 1975, Government Code, Section 418.108. The authority to control the movement of persons and the occupancy of premises could include prohibiting individuals from attending schools, prohibiting individuals from going onto school property, and closing schools within a disaster area.

Question: Is there authority to waive or suspend any of the legal requirements relating to authority to close schools to control the spread of communicable disease during an epidemic, pandemic, disease outbreak, or other disease-related event?

Answer: Yes, the Governor "may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency". Suspension is authorized if strict compliance would prevent, hinder, or delay necessary action in coping with the disaster. Government Code, Section 418.016. The application of this provision to particular statutes, rules, or orders should be further discussed with the Governor's office.

This provision would not allow the waiver of federal or constitutional requirements.