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THE REGISTER CITIZEN

Opinion: Some school districts violate federal law on COVID

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Christian Abraham / Hearst Connecticut Media

Earlier this month, Connecticut Education Commissioner Miguel A. Cardona stated that “we take very seriously the ADA requirements,” adding that Americans with Disabilities Act compliance was “non-negotiable.” Cardona was referring to whether school districts are making accommodations to protect teachers and staff to the same extent they are protecting students from COVID-19.

Many teachers with high-risk medical conditions, forced to teach in classrooms instead of remotely, would not embrace Cardona’s confident assertions.

The linchpin of the employment section of the ADA is its requirement that employers must provide a reasonable accommodation to a qualified individual with a disability unless it would give rise to an undue hardship.

According to the Centers for Disease Control and Prevention, individuals with certain underlying medical conditions were hospitalized at six times the rate of, and died 12 times as often as, otherwise healthy individuals after contracting

COVID-19. These conditions would also be generally considered “disabilities” under the ADA. The Equal Employment Opportunity Commission, which enforces the ADA’s employment section, similarly recognized that persons with certain impairments are at greater risk for COVID-19 and, as a result, may be entitled to an accommodation.

The primary accommodation for “high-risk” individuals has been working remotely. Nevertheless, several Connecticut school districts implemented “no remote teaching” policies and refused to make exceptions for individuals with high-risk medical conditions. As a result, those teachers had to choose between risking potentially severe consequences if they contracted COVID-19 at school or having no income. Most of the teachers could not afford to go without an income and returned to school. Some retired. Others left teaching.

Many jobs cannot be done remotely. You can’t drive a school bus or pack up shipments at a warehouse remotely. You can teach remotely.

Several Connecticut school districts have offered remote teaching opportunities for high-risk individuals. For example, Stamford Public Schools created a Distance Teaching and Learning Academy to give students the option of taking all classes remotely, providing teachers the option of teaching remotely for a medical reason, with permission from its human resources department.

Accommodating a high-risk teacher seeking to teach remotely can be accomplished while still having students in a classroom. In fact, Gov. Ned Lamont recently noted that aides are needed to keep an eye on classrooms so teachers with pre-existing conditions could teach via Zoom. In the leading reasonable accommodation case, the Second Circuit Court of Appeals concluded that providing a classroom teacher’s aide might be a reasonable accommodation.

At the time that several Connecticut school districts adopted their “no remote teaching” policies in late August, Connecticut had some of the best COVID-19 metrics in the country. However, Connecticut has not been immune from escalating metrics over the past four weeks. Connecticut’s daily positive test rate for the previous week has risen to 5.5 percent.

Approximately half the positive COVID-19 cases within New Haven’s public schools were reported the week of Nov. 12-18. The state Education Department

reported that during that same week, there was a 70 percent increase over the prior week in the number of K-12 students who tested positive and a 49 percent increase over the prior week for staff. And, as temperatures drops during a holiday season when more people will gather indoors, the situation will likely get worse. Yale-New Haven Health's Chief Clinical Officer Dr. Thomas Balcezak said the peak of COVID cases in this wave will not likely hit until the end of December.

In light of the rise in COVID-19 cases, a coalition of education unions called on the state to shift to fully remote learning unless stronger protections are implemented. However, Lamont and Cardona said that decision is best left at the local level in accordance with state guidelines.

At a minimum, guidelines should be implemented immediately to protect teachers who are at high risk. Otherwise, some school districts will continue to try to get around the ADA by grafting onto the teacher's job duties a requirement to be in the classroom.

In his plan to reopen schools for the 2020-2021 school year in the midst of a pandemic, Lamont stated that the considerations would be grounded in six guiding principles; the first was "safeguarding the health and safety of students and staff."

Although certainly well-intentioned, it lacks legal enforcement authority. In contrast, New York state's reopening plan set forth a specific remote teaching accommodation policy which stated that "a reasonable accommodation to work from home will be considered under the ADA and in line with the medical condition as set forth by the U.S. Centers for Disease Control and Prevention."

There is a general perception that if you don't die from COVID, you'll be fine. That isn't the case. Many will live with health problems that won't go away. They are known as the "long haulers," and will be dealing with conditions that go on for months.

Unless and until the Connecticut Department of Education follows New York state's example, some Connecticut teachers who are at high risk will unnecessarily contract COVID. Some will recover completely. Others will suffer long-term health complications. Some will die.

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