

**STUDENTS WITH HIV-RELATED ILLNESS**

The Board of Education recognizes the public concern over the health issues surrounding Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus Infection (HIV). The Board also recognizes, based upon the current state of medical knowledge, that the virus associated with AIDS is not easily transmitted and there is no evidence that AIDS or the HIV virus can be transmitted by casual social contact in the open school setting.

The Board acknowledges the rights of those students diagnosed as having AIDS or HIV infection to continue their education as well as the rights of all students in the school district to learn and participate in school activities without being subjected to significant risks to their health. The Board also takes notice that under current law and regulations the disclosure of confidential AIDS and/or HIV-related information must be strictly limited.

Accordingly, it is the policy of the Board of Education that no student shall be denied the opportunity to attend school, continue his/her education, or take part in school-related activities solely on the basis of being diagnosed as having AIDS or HIV infection.

In accordance with current State law and regulations, it is also the policy of the Board of Education to prevent any student from being subjected to adverse or discriminatory treatment or stigma because he or she has been diagnosed as having AIDS or being HIV-infected.

The Superintendent of Schools will develop administrative regulations in regard to the education of students diagnosed as having AIDS or being HIV-infected.

The Superintendent shall establish and implement, and all school personnel shall comply with, guidelines and routine sanitary hygiene procedures for dealing with all spills of blood and other body fluids in or on school premises and grounds. The Superintendent should consult public health officials, as appropriate, for the most current methods and information pertaining to such procedures.

The Superintendent shall develop and implement in-service education and training for all school personnel concerning AIDS and HIV infection and the routine sanitary hygiene procedures to be followed in the case of all spills of blood and other body fluids.

Cross-Reference: 8123, Hygiene Precautions and Procedures

Reference: Public Health Law, Article 27-F  
Education Law §§ 4401; 4401-a  
8 NYCRR Part 20  
10 NYCRR Part 63

**STUDENTS WITH HIV-RELATED ILLNESS REGULATION****A. Definitions**

HIV-Related Illness, means any clinical illness that may result from or be associated with HIV infection, including AIDS.

Protected Individual, shall mean a person who is the subject of an HIV-related test or who has been diagnosed as having HIV infection or HIV-related illness (Pursuant to 10 NYCRR 63.1(f)).

Significant Risk, is created when three necessary factors are present:

- the presence of a significant risk body substance,
- a circumstance which creates the risk of contracting or transmitting HIV infection, or
- the presence of an infectious source and a non-infected person.

\* See 10 NYCRR 63.10 for further definitions of these factors.

**B. Confidentiality and Release of Information**

School officials and employees shall keep HIV-related information confidential, however obtained. The information shall not be disclosed to any person, unless the protected individual, or a person authorized by law if the protected individual lacks the capacity to consent, has completed and signed the Health Department Authorization for Release form (“Authorization Form”), a court order granted under Public Health Law Section 2785 has been issued, or the person to whom the information has been furnished is authorized to receive such information under Public Health Law Section 2782 without a release form. Persons authorized to receive confidential HIV-related information without a release include physicians providing care, agencies monitoring such care, and insurance companies for payment purposes. Disclosure to school district personnel and staff requires an Authorization Form or a court order.

If disclosure occurs pursuant to an Authorization Form or court order, the confidential HIV-related information shall only be released to those listed on such form or order, for the time period specified, and only for the purpose stated on the form or order. (Pursuant to 10 NYCRR 63.5(a)).

Such Authorization Form shall be signed by the protected individual or when the protected individual lacks capacity to consent, a person authorized by law to consent to health care for the individual. Questions in regard to such capacity shall be referred to the school attorney.

All written disclosures must be accompanied by a statement prohibiting re-disclosure. The statement shall contain the following language:

“This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information

without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not, except in limited circumstances set forth in this part, sufficient authorization for further disclosure. Disclosure of confidential HIV-related information that occurs as the result of a general authorization for the release of medical or other information will be in violation of the state law and may result in a fine or a jail sentence or both". (Pursuant to 10 NYCRR 63.5(b)).

All oral disclosures, if necessary, must be accompanied or followed, as soon as possible, but no later than ten (10) days, by the statement required above. (Pursuant to 10 NYCRR 63.5(c)).

### **C. Penalties**

Persons who disclose confidential HIV-related information to unauthorized persons or parties or who fail to obtain informed consent for the HIV-related test may be subject to a \$5,000 civil penalty and a criminal misdemeanor charge, pursuant to Public Health Law Section 2783. The District may also pursue disciplinary action against employees in violation of the law, which may include, but is not limited to, discharge, termination, suspension, or warning.

### **D. Procedures**

1. The procedure set forth here shall be followed in any instance where the school district receives confidential HIV-related information concerning a student from the student and/or person in parental relation to the student without benefit of an Authorization Form or court order.
  - a. The Superintendent or building administrator to whom the confidential HIV-related information has been given shall request a meeting with the student and/or person in parental relation to the student for the purpose of discussing the student's condition, concerns, treatment, and should the situation arise, educational alternatives. Such alternatives may include homebound instruction during periods of short-term illness as well as provision of educationally related support services. At this point, the student's physician, school or public health personnel may be consulted, provided that the appropriate Authorization Form has been obtained. The student and/or person in parental relation to the student should be informed of this and asked to sign such Authorization Form for personnel whose consultation is needed for delivery of appropriate educational services.
  - b. If a school officer or employee who has not been made privy to confidential HIV-related information pursuant to an Authorization Form or court order reasonably believes that a student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the person, he/she should express these concerns to the Superintendent of Schools, who may attempt to obtain an Authorization Form from the protected individual or person authorized by law if the protected individual lacks the capacity to consent. Should this request be refused, the Superintendent may recommend to

the school board that the school district seek a court order for disclosure of confidential HIV-related information, pursuant to Public Health Law Section 2785.

2. The procedures set forth here shall be followed in any instance where the school district receives confidential HIV-related information concerning a student through the Authorization Form or through a court order.
  - a. The Superintendent or building administrator to whom the HIV-related information has been given shall request a meeting with the student and/or person in parental relationship to the student for the purpose of discussing the student's condition, concerns, treatment, and should the situation arise, educational alternatives. At this point, the student's physician, school or public health personnel may be consulted, provided that the appropriate Authorization Form has been obtained. The student and/or person in parental relation to the student should be informed of this and asked to sign such Authorization Form for personnel whose consultation is needed for the delivery of appropriate educational services. If a parent concurs in writing to the provision of educational alternatives, no referral to the Committee on Special Education (CSE) will be made.
  - b. If a school officer or employee who has not been made privy to confidential HIV-related information pursuant to an Authorization Form or court order reasonably believes that a student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the person, he/she should express these concerns to the Superintendent of Schools. If the Superintendent has been given the authority, pursuant to the Authorization Form, to inform such person(s) who may be at significant risk, he/she should proceed to do so. If the Superintendent does not have this authority, he/she should attempt to obtain an Authorization Form from the protected individual or person authorized by law if the protected individual lacks the capacity to consent. Should this request be refused, the Superintendent may recommend to the school board that the school district seek a court order for disclosure of confidential HIV-related information pursuant to Public Health Law Section 2785.
  - c. If a professional staff member of the school district who has been made privy to confidential HIV-related information pursuant to an Authorization Form or court order reasonably believes that a student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the person, he/she should make a referral of the student to the CSE, if appropriate. Staff are also expected to encourage students to seek advice from their physician and AIDS counseling centers and to behave responsibly by contacting those persons with whom they have engaged in behavior of significant risk.
3. If a professional staff member of the school district suspects that a student may have a handicapping condition, whether or not the staff member has been made privy to confidential HIV-related information, the staff member shall refer the student in writing to

the CSE, or to the building administrator of the school which the student attends, in accordance with Part 200.4 of the Commissioner's Regulations.

4. If a student has been referred to the CSE and the CSE reasonably believes either, (a) that the student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the student, or (b) that the student has or is suspected of having a handicapping condition and that the condition may be due, in whole or in part, to HIV-related illness, the CSE shall inform the Superintendent, who shall attempt to obtain an Authorization Form from the protected individual or person authorized by law if the protected individual lacks the capacity to consent. Should this request be refused, the Superintendent may recommend to the school board that the school district seek an order for disclosure of confidential HIV-related information pursuant to Public Health Law Section 2785.

When seeking the confidential HIV-related information through either an Authorization Form or court order, the Superintendent shall attempt to have the protected individual or person authorized by law if the protected individual lacks the capacity to consent or court agree to disclose such information to the CSE, and may attempt to have the protected individual or person authorized by law if the protected individual lacks the capacity to consent or court agree to disclose such information to the classroom teacher(s) and any other personnel the Superintendent and the school attorney believe are appropriate.

5. If no such Authorization Form or court order is obtained, the school district shall take no further action in this matter and shall instruct the appropriate officers or employees not to disclose information in regard to the case.
6. If disclosure occurs pursuant to an Authorization Form or court order, the confidential HIV-related information shall only be released to those listed on such form or order, for the time period specified, and only for the purpose stated on the form or order.
7. At such time as the CSE receives confidential HIV-related information, it shall, on a case-by-case basis, review all of the medical information pertinent to the individual situation and make a determination as to whether the current mode of instruction and classroom setting for the student meets his or her current and ongoing needs, or if it is appropriate.

In making its determination, the CSE shall consider the following factors: (1) the physical condition of the student and any behavior which might increase the risk of transmission of HIV-related illness, and (2) the expected type of interaction with others in the school setting.

The CSE may also consult with the appropriate public health officials pursuant to Article 27-F of the Public Health Law.

In all other respects, the CSE shall carry out its responsibilities and make recommendation based upon a written evaluation setting forth the reasons for the recommendations to the student, person in parental relation to the student, and Board of Education as it would with any other student who has or is suspected of having a handicapping condition.

Because of the provisions in Article 27-F of the Public Health Law permitting physicians to disclose confidential HIV-related information under certain circumstances, the school physician will be required to attend all meetings of the CSE in regard to students suspected or diagnosed as having HIV-related illness.

The CSE shall also have the authority to invite the appropriate professionals familiar with HIV-related illness to any meeting concerning the educational program for any such student, provided, however, that such professional is named on a completed and signed Authorization Form or a court order granted under Public Health Law Section 2785.

8. If the student had previously been evaluated and been recommended for placement by the CSE, and thereafter the student is deemed dangerous to himself or others, protective procedures may be invoked, including, but not limited to, a short-term suspension of five days or less. However, where the person in parental relation to the student choose to exercise their due process rights under the appeal procedures set forth in state and federal law, a student must remain in the current placement until appeal procedures are completed, or after consent from the person in parental relation to the student or a court order for alternative placement is obtained.

If the student had not previously been evaluated and recommended for placement by the CSE, Section 4 (above) shall apply.

9. Pursuant to Article 27-F of the Public Health Law, a physician may, upon the consent of the person in parental relation to the student, disclose confidential HIV-related information to a State, county or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

#### **E. Additional Matters**

In the event of the presence of any contagious or communicable disease (such as chicken pox or measles, etc.) in the school population, which may constitute a risk to a protected individual, the Superintendent or school physician or nurse with authorization to obtain the confidential HIV-related information shall inform the student and the person in parental relation to the student about such risk. Any temporary decision or recommendation in such circumstances should be made by the protected individual's personal physician and the person in parental relation to the student, in consultation with the Superintendent and school physician and nurse.