

MEDICAL POLICY REGARDING HIV/AIDS

STUDENTS WITH AIDS/HIV INFECTION HAVE THE SAME RIGHT TO ATTEND CLASSES OR PARTICIPATE IN SCHOOL PROGRAMS AND ACTIVITIES AS ANY OTHER STUDENT.

Medical research has revealed in recent years that HIV/AIDS is not transmitted through casual contact. Courts have given greater recognition to the privacy rights of individuals with HIV/AIDS and have applied federal and state laws prohibiting discrimination on the basis of handicap to such individuals. Therefore, school personnel can no longer assume that they will have knowledge of a student's HIV/AIDS status. Furthermore, exclusion of students on the basis of HIV/AIDS status may well result in a claim of discrimination based on handicap. While complying with these laws related to the rights of an HIV/AIDS student, schools must also fulfill their duty to protect other students from harm.

- A. Laws protecting privacy prohibit schools from requiring parent/guardians, students, or physicians to inform school personnel that a student is infected with HIV/AIDS.

A diagnosis of AIDS/HIV is information which a student or his/her parent/guardian is entitled to keep confidential. See, e.g., M.G.L. c.214, S1B (the Massachusetts Privacy Act; M.G.L. c.111, S70F (prohibiting disclosure of information regarding HIV); and *Doe v. University of Cincinnati*, 538 N.E.2d 419, 53 Ed.L.R. 980 (Oh.Ct.Ap. 1988) (an individual's constitutional right of privacy includes the right not to be identified as the donor of blood which contains HIV antibodies).

- B. Even if a student or parent/guardian chooses to inform a member of the school staff of a student's HIV/AIDS status, laws protecting privacy severely restrict the dissemination of that information.

Because school personnel have a duty to protect students from harm, they do face some risk of liability if they are aware of an HIV/AIDS student and another individual within the school setting contracts the disease as a result of school personnel's failure to warn of the presence of an HIV/AIDS student. Nonetheless, we will abide by the attached "Policy Regarding School Attendance and Confidentiality of Information for HIV/AIDS Students" which specifies that a school staff member who obtains information with regard to a student's HIV/AIDS status may not inform other staff members without the specific, written consent of the student or parent/guardian.

The mandate of nondisclosure is recommended for several reasons. First, the risk of liability for failure to warn of the presence of an HIV student is extremely limited. Current medical opinion indicates that AIDS/HIV is not transmitted through the casual contact which generally occurs in the school setting. Given this prevailing view, even if transmission did occur, the court would likely find that school personnel behaved reasonably in not issuing a warning with regard to the presence of the student. Furthermore, proving causation would be quite difficult. Finally, a court would likely find that a school had fulfilled its duty of care to protect students/staff by excluding all students who exhibit conditions that would make transmission of blood-borne disease and educating teachers and students to use universal precautions when contact with body fluids is necessary.

Second, in disseminating information regarding an HIV/AIDS student, school personnel would face a great risk of liability for violating the student's privacy rights. Several Massachusetts cases do support the limited disclosure of private information such as HIV/AIDS status if there is a legitimate reason for doing so. See, e.g., *Cronan v. New England Telephone Co.*, 41 FEP 1273 (Suf.Sup.Ct. 1986) (employer's disclosure of an employee's suffering from AIDS requires the balancing of the employer's legitimate business interest in obtaining and publishing information against the substantiality of the intrusion on the employee's privacy); *Bratt ~ IBM Corp.*, 392 Mass. 508, 509-510 (1984) (intercorporate communication regarding a medical condition can constitute an unreasonable invasion of privacy under M.G.L. c.214, s.1B; legitimate, countervailing business reasons may render the disclosure of personal information reasonable). However, given the prevailing view that HIV/AIDS is not likely to be transmitted in a school setting, a court would likely find there was no legitimate reason for disclosing a student's HIV/AIDS status.

C. Federal laws prohibiting discrimination based on handicap prohibit the exclusion of students from school merely on the basis of their HIV/AIDS status.

Infection with HIV/AIDS is considered a handicap within the meaning of the Rehabilitation Act of 1973, Section 504, 29 U.S.C.A. 794 and the Americans with Disabilities Act and therefore cannot be used as the basis for adverse action, including exclusion. The attached "School Attendance Policy for Students Who Bleed Uncontrollably" would likely be upheld under these federal statutes because the policy discriminates on the basis of conditions which are likely to cause health risks within the school rather than on HIV/AIDS status.

School Attendance and Confidentiality of Information

Epidemiologic studies show that HIV/AIDS is transmitted via sexual contact or blood-to-blood contact. Research indicates that it is not transmitted through casual contact such as that found in a school setting. State and federal laws which prohibit discrimination based on handicap prohibit exclusion of students with HIV/AIDS from school unless their attendance would present an immediate danger to themselves or others.

Federal and state laws also protect the confidentiality of students with HIV/AIDS. These laws prohibit school personnel from requiring that students or their parent/guardians inform the school that a student has HIV/AIDS. Furthermore, if a parent/guardian or students chooses to inform school personnel, school personnel are prohibited from disseminating this information without the consent of the student or his/her parent/guardians.

Based on research indicating that HIV/AIDS is unlikely to be transmitted in a school setting and legal requirements regarding student confidentiality, the following policy statement is approved by the School Committee:

1. A parent/guardian is not required to inform school personnel if the student has HIV/AIDS. However, the parent/guardian is urged to inform school personnel regarding the infection. If informed, school personnel may be able to better attend to the needs of the child, including informing the parent/guardian of the occurrence of contagious disease (e.g., influenza, measles, etc.) within the school population to which the HIV/AIDS infected student might be particularly susceptible, and administering medications if needed.
2. If a parent/guardian or student chooses to inform school personnel regarding the student's HIV/AIDS infection, the staff member receiving the information may not inform other school personnel without the specific, informed, written consent of the parent or guardian. If the student has independently sought HIV testing and informs school personnel of his/her HIV/AIDS status, the school staff member may not inform others without the student's specific, informed, written consent.** Due to its confidential nature, information regarding a student's HIV/AIDS status should not be kept in the student's record.
3. A student will not be excluded from school merely on the basis of his/her HIV/AIDS status. However, students with HIV/AIDS are not exempt from exclusion under the board's policy of excluding from school all students who bleed in an uncontrollable fashion.

** A minor's right of consent is based on M.G.L. c.112, S12F which allows minors to consent to their own medical testing diagnosis and treatment in certain circumstances, including HIV infection. This law mandates confidentiality of medical information except when an attending physician reasonably believes that the condition of the minor is so serious that the minor's life or limb is in immediate danger.

School Attendance for Students who Bleed in an Uncontrollable Fashion

A number of serious infectious diseases are spread by contact with human blood, including Hepatitis B Virus and the Human Immunodeficiency Virus. Consequently, all students who exhibit the following conditions will be advised not to attend school until the conditions are resolved:

1. The student has weepy or bloody skin or mouth sores that cannot be successfully covered or controlled with medication;
2. The student exhibits the behavior of biting other individuals with unusual frequency or severity and there is likelihood that the actual transfer of blood from the biter will occur, as might happen only from a student with chronically bloody gums or mouth; or
3. The student exhibits bloody diarrhea.

These conditions are grounds from the exclusion of any student from a school setting, regardless of whether he/she is known or suspected to harbor a blood-borne infection.

Adapted from *Medical Update to Policy Guidelines: Infants, Toddlers 3rd Preschoolers with HIV Infection/AIDS in Early Childhood Settings* (Department of Public Health, June 1989)

Universal Precautions for School Settings

In order to protect themselves from infection by blood-borne disease, such as Hepatitis B Virus and Human Immunodeficiency Virus, all staff should instruct students to avoid areas where body fluid spills have occurred in the school setting. Staff should use the following precautions when the clean-up of body fluid spills is necessary:

1. Treat all blood spills with caution.
2. Clean up blood spills promptly.
3. Inspect the intactness of skin on all exposed body parts, especially the hands. Cover any and all open cuts or broken skin, or ask another staff member to do the clean-up. Latex gloves contribute an added measure of protection, but are not essential if skin is intact.
4. Clean up blood spills with a solution of one part household bleach to ten parts water, pouring the solution around the periphery of the spill. Disinfect mops, buckets and other cleaning equipment with fresh bleach solution.
5. Wash hands after any contact with body fluids. This should be done immediately in order to avoid contaminating other surfaces or parts of the body. Be especially careful not to touch your eyes before washing up. Soap and water will kill HIV.
6. Unless grossly contaminated with blood, other body fluids such as urine, vomitus, or feces do not pose a significant risk of infection and can be cleaned up in the usual manner.

Adapted from *Universal Precautions for School Settings; Massachusetts Department of Education and Medical Update to Massachusetts Policy Guidelines: Infants, Toddlers and Preschoolers with HIV Infection/AIDS in Early Childhood Settings* (June, 1989)