

TENNESSEE STATE BOARD OF EDUCATION

HIV AND AIDS POLICY FOR EMPLOYEES AND STUDENTS OF TENNESSEE PUBLIC SCHOOLS

5.300

Policy Sections

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Local education agencies (LEAs) shall not discriminate against or tolerate discrimination against any individual who is diagnosed with human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), or anyone perceived as having been diagnosed with HIV or AIDS. LEAs shall always strive to maintain a respectful work and school climate and not allow physical or verbal harassment of any individual having, or perceived as having HIV or AIDS. HIV can be transmitted through unprotected sexual intercourse, through blood-to-blood contact (such as the sharing of injection drug needles and syringes), and from an infected woman to her baby at or before birth. Research has demonstrated that HIV is not transmitted through casual contact, such as in a school setting; therefore, all Tennessee LEAs shall adopt policies addressing the following:

1. The right of an employee or student living with HIV or AIDS to continue his or her employment or education;
2. The legal and ethical need to maintain privacy regarding the medical condition and medical records of an employee or student living with HIV or AIDS;
3. The importance of adhering to infection control guidelines so that all employees and students may work or attend school without being subjected to significant health risks;
4. The right of a student living with HIV or AIDS to participate in school athletic programs;
5. The value of HIV prevention education and training for the school community and the community-at-large; and
6. The necessity of HIV and Tennessee Occupational Safety and Health Administration (TOSHA)-related staff development for employees.

Each LEA shall adopt a comprehensive HIV and AIDS policy for employees and students that complies with the guidelines set forth in this policy.

1. School and District Employees

- a. A school or district employee diagnosed or perceived as being diagnosed with HIV infection or AIDS shall not be terminated based solely on the diagnosis or perceived diagnosis. No discrimination, disciplinary action, or other adverse

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personnel action shall be taken against an employee solely on the basis of HIV infection or AIDS.

- b. Consideration for job application, employment, advancement, discharge, compensation, training, or other terms, conditions, or privileges of employment cannot be denied to individuals on the basis of HIV or AIDS status.
- c. In accordance with the Americans with Disabilities Act of 1990, an employee living with HIV or AIDS may continue working as long as he or she is able to perform the essential functions of the position. Every employee is entitled to the rights, privileges, and services accorded to employees generally, including benefits provided to employees with long-term diseases or disabling conditions. School authorities shall make reasonable accommodations to allow an employee with HIV infection or AIDS to continue his or her assigned duties. A reasonable accommodation is any modification or adjustment to a job, the job application process, or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process, perform the essential functions of the job, or enjoy the benefits and privileges of employment.
- d. No employee shall be required to have a blood test or medical consultation to determine HIV or AIDS status.
- e. An applicant or employee may choose to report her or his HIV or AIDS status to school personnel but shall not be required to disclose such information.
- f. Upon an employee's disclosure of HIV or AIDS status, the Director of Schools shall initiate procedures which will ensure privacy and maintenance of all medically-related documents. All health records and other documents which reference a person's HIV or AIDS status shall be secured by appropriate safeguards intended to limit access to these confidential records. Information regarding HIV or AIDS status shall not be added to an employee's personnel or health records without prior written consent.
- g. An employee who refuses or objects to working with or providing services to a person who has or is perceived to have HIV or AIDS shall be counseled and educated in the nature of HIV, the transmission of HIV, and the district's policy on HIV and AIDS. Should the employee continue to refuse to work with or provide services to such an individual, the employee may be subject to appropriate discipline.

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2. Students

- a. A student with HIV infection or AIDS has the same right to attend school and receive services and shall be subject to the same rules and policies as other students.
- b. Mandatory screening for communicable diseases not spread by casual, everyday contact, such as HIV infection, shall not be a condition for school entry or attendance.
- c. HIV or AIDS status shall not factor into decisions concerning class assignments, privileges, or participation in any school-sponsored activity. In determining the educational placement of a student known to be infected with HIV, school authorities shall follow established policies and procedures for students with disabilities. School authorities shall reassess placement if there is a change in the student's need for accommodations or services.
- d. A student or student's parent or guardian may choose to report his or her HIV or AIDS status to school personnel but shall not be required to disclose such information.
- e. Upon a student's disclosure of HIV or AIDS status, the Director of Schools shall initiate procedures which will ensure privacy and maintenance of all medically-related documents. All health records and other documents which reference a student's HIV or AIDS status shall be secured by appropriate safeguards intended to limit access to these confidential records. Information regarding HIV or AIDS status shall not be added to a student's permanent educational or health records without prior written consent.
- f. Students shall have access to voluntary, confidential, age- and developmentally-appropriate counseling about matters related to HIV infection and AIDS. School administrators shall maintain a list of counseling and testing resources in the community and make it available for voluntary student use. LEAs are encouraged to collaborate with HIV and AIDS prevention efforts in the community that address youth at high risk for acquiring HIV or AIDS.
- g. Students living with HIV infection or AIDS who are capable of vigorous physical activity shall not be restricted from recreational sports, intramural, or interscholastic athletic participation. Schools shall make reasonable accommodations to allow students living with HIV infection or AIDS to participate in school-sponsored physical activities. A student living with HIV infection or AIDS and his or her parent or guardian are encouraged to consult with their health care provider for advice in regard to the student's health-related limitation(s) to participate in recreational, intramural, or interscholastic athletic events.

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- h. All physical education teachers and athletic program staff shall consistently adhere to infection control guidelines in locker rooms and all play and athletic settings. Physical education teachers and athletic program staff shall complete an approved first-aid and injury prevention course that includes implementation of infection control guidelines. Student orientation about safety on the playing field shall include guidelines for infection control. Athletic rulebooks shall reflect these guidelines, and first-aid kits should be on hand at every athletic and recreational event.

3. Privacy

- a. Every employee shall treat as highly confidential any knowledge or speculation concerning the HIV or AIDS status of a student or employee.
- b. HIV-related information is confidential regardless of the source, including whether the information is obtained intentionally or unintentionally from the person with HIV or AIDS or through oral, written, or electronic communication from another source. Unauthorized disclosure by employees is cause for disciplinary action, up to and including dismissal, and could lead to individual liability in addition to criminal or civil penalties against LEAs and their personnel.
- c. No information regarding a student's or employee's HIV or AIDS status shall ever be disclosed to any individual or organization without a court order or the informed, written, signed, and dated consent of the person with HIV infection or AIDS (or the parent or guardian of a legal minor). The written consent must specify the recipient of the information and the purpose of the disclosure. Any disclosure shall be made in accordance with the *Health Insurance Portability and Accountability Act* (HIPAA), the *Family Educational Rights and Privacy Act* (FERPA) and all other applicable state and federal laws.

4. Infection Control

- a. Each LEA shall develop an Occupational Safety and Health Administration (OSHA)-based infection control plan. For each school within the LEA, the plan shall:
 - i. Provide for well-maintained and easily accessible materials necessary to follow universal precautions; and
 - ii. Designate first responders responsible for implementing infection control guidelines, including investigating, correcting, and reporting on instances of exposure.

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- b. LEAs shall follow the most current Centers for Disease Control and Prevention (CDC) *Universal Precautions for Preventing Transmission of Bloodborne Infections* and OSHA's Bloodborne Pathogens Standard.
- c. LEAs shall provide infection control training, including bloodborne pathogens and universal precautions training, on an annual basis, to all employees. All employees shall consistently follow infection control guidelines in all settings and at all times, including playgrounds and school buses.
- d. If a situation occurs at school in which a person may have been exposed to an infectious agent, such as blood-to-blood contact, school authorities shall counsel that person to seek appropriate medical evaluation. If a student is exposed to an infectious agent, school authorities are required to alert a parent or guardian. LEAs shall follow state guidelines for reporting communicable diseases.

5. HIV Prevention Education

- a. Each LEA shall provide age-appropriate, ongoing HIV prevention education instruction in accordance with the state's Health Education and Lifetime Wellness standards.
- b. The HIV prevention education program shall:
 - i. Be taught at every level, kindergarten through grade twelve (K-12);
 - ii. Follow content guidelines prepared by the Centers for Disease Control and Prevention (CDC);
 - iii. Build knowledge and skills from year to year;
 - iv. Be appropriate to students' developmental levels, behaviors, and cultural backgrounds;
 - v. Include accurate information on reducing the risk of HIV infection;
 - vi. Include the benefits of abstinence from sexual activity, alcohol, and other drug use;
 - vii. Address students' concerns about HIV transmission;
 - viii. Be taught by well-prepared instructors with adequate resources and support;
 - ix. Be consistent with community standards; and
 - x. Be available for review by parents and guardians pursuant to T.C.A. § 49-6-1305.

6. Staff Development

- a. Each Director of Schools shall ensure that all employees, including newly hired staff, receive annual HIV and AIDS training that includes:

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- i. HIV epidemiology;
 - ii. Methods of transmission and prevention;
 - iii. Bloodborne pathogens;
 - iv. Universal precautions;
 - v. Psychological and social aspects of HIV and AIDS;
 - vi. Related federal and state laws and policies; and
 - vii. School procedures and policies regarding HIV and AIDS-related issues.
- b. LEAs may utilize the educational and training resources of state or federal agencies, community organizations, or private institutions with personnel trained in the areas of HIV and AIDS prevention education.

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**APPENDIX A
GLOSSARY**

Acquired Immunodeficiency Syndrome (AIDS): A condition caused by the human immunodeficiency virus (HIV). AIDS is characterized by a weakened immune system.

Bloodborne Pathogens: Infectious microorganisms present in human blood and body fluids that can cause disease in humans.

Exposure Control Plan: An OSHA-mandated plan that outlines procedures for addressing occupational exposure to bloodborne pathogens at a worksite.

Family Educational Rights and Privacy Act (FERPA): A federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

Health Insurance Portability and Accountability Act (HIPAA): A federal law that ensures privacy protection of individuals' health information. Under HIPAA, health plans, healthcare providers, and organizations which receive or transmit individuals' healthcare information are required to follow strict privacy guidelines.

Human Immunodeficiency Virus (HIV): A virus spread through certain body fluids that attacks the body's immune system. The virus may be passed from one person to another when infected blood, semen, or vaginal secretions come in contact with an uninfected person's broken skin or mucous membranes. In addition, an infected pregnant women can pas HIV to her baby at or before birth, as well as through breast-feeding. Some people develop AIDS as a result of HIV infection.

Occupational Safety and Health Administration (OSHA): The federal agency responsible for the development, administration, and enforcement of employment-related health and safety regulations.

Tennessee Occupational Safety and Health Administration (TOSHA): The state agency responsible for the enforcement of employment-related health and safety regulations.

Universal Precautions: An approach to infection control to treat all human blood and certain body fluids as if they were known to be infectious for HIV and other bloodborne pathogens.