

TENNESSEE STATE BOARD OF EDUCATION	
HIV/AIDS POLICY FOR EMPLOYEES AND STUDENTS OF TENNESSEE PUBLIC SCHOOLS	5.300

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Introduction:

The State Board of Education (SBE) recognizes the need for a state policy that addresses the serious educational, legal, and social issues raised by HIV infection. A sound HIV/AIDS policy protects the rights of employees and students living with HIV/AIDS; provides essential guidance and legal protection to local education agencies (LEAs); and offers reassurance to families, students, and employees.

It is the responsibility of each LEA to develop a comprehensive HIV/AIDS policy. An LEA may develop an HIV/AIDS policy, using the SBE's HIV/AIDS policy as a model, or adopt the SBE's HIV/AIDS policy as its own.

Preamble:

The State Board of Education recognizes HIV is not transmitted through casual contact and, therefore, is not reason in itself to treat individuals having HIV differently from other members of the school community. LEAs shall not discriminate against or tolerate discrimination against any individual who is HIV positive or perceived as being HIV positive. 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/AIDS. Accordingly, with respect to HIV/AIDS, all Tennessee LEAs acknowledge:

- The right of a employee or student living with HIV/AIDS to continue his/her employment or education;
- The legal and ethical need to maintain privacy regarding the medical condition and medical records of a employee or student living with HIV/AIDS;
- 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;
- The right of a student living with HIV/AIDS to participate in school athletic programs;
- The value of HIV prevention education and training for the school community and the community-at-large; and
- The necessity of HIV and TOSHA-related staff development for employees.

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Policy

Employment:

No LEA shall discriminate against an employee or applicant on the basis of HIV status. Consideration for job application, employment, advancement, discharge, compensations, training, or other terms, conditions, or privileges of employment cannot be denied to individuals on the basis of HIV status. No employee shall be required to have a blood test or medical consultation to determine HIV status.

In accordance with the Americans With Disabilities Act of 1990, an employee living with HIV/AIDS is welcome to continue working as long as he/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 employees with long-term diseases or disabling conditions. School authorities shall make reasonable accommodations to allow an employee living with HIV/AIDS to continue his/her assigned duties.

An employee who refuses or objects to working with or providing services to a person who has or is perceived to have HIV shall be counseled and educated in the nature of HIV, the transmission of HIV, and the State Board of Education's policy on HIV. Should the employee continue to refuse to work with or provide services to such an individual, the employee may be subject to appropriate discipline.

School Attendance:

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. No student shall be required to have a blood test or medical consultation to determine HIV status. A student with HIV infection has the same right to attend school and receive services and shall be subject to the same rules and policies as other students. HIV infection 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.

Privacy:

Due to the gravity of the HIV/AIDS epidemic and the potential for discriminatory abuse, maintenance of an individual's right to privacy is of utmost importance. Students and

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employees are not required to disclose HIV infection to anyone in the education system. Every employee has a duty to treat as highly confidential any knowledge or speculation concerning the HIV status of a student or other staff member.

In accordance with HIPPA and FERPA guidelines, no information regarding a student's or employee's HIV 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 the parent or guardian of a legal minor). The written consent must specify the recipient of the information and the purpose of the disclosure. Information pertaining to a person's HIV status shall not be faxed.

Legal Liability:

HIV-related information is confidential regardless of the source, including whether the information is obtained intentionally or unintentionally from the person with HIV/AIDS or through oral, written, or electronic communication from another source. Disclosure of HIV-related information could result in a loss of privacy, harassment, and discrimination. 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.

Disclosure:

A student or student's parent/guardian, or an applicant/employee may choose to report her/his HIV status to school personnel. Upon a student's or employee's disclosure of HIV 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 status shall be secured by appropriate safeguards intended to limit access to these confidential records. Information regarding HIV status shall not be added to an employee's personnel record or a student's permanent educational or health record without written consent.

Infection Control:

It is the responsibility of each LEA to develop an Occupational Safety and Health Administration (OSHA)-based infection control plan. For each school within the LEA, the plan shall:

- Provide for well-maintained and easily accessible materials necessary to follow universal precautions; and

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- Designate first responders responsible for implementing infection control guidelines, including investigating, correcting, and reporting on instances of exposure.

LEAs shall follow the most current Centers for Disease Control and Prevention (CDC) *Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health Care Settings* and the OSHA bloodborne pathogens standard. Universal precautions constitute a series of strategies and actions designed to minimize the risk of transmission of infectious agents which are spread by contact. These precautions recognize the premise that all blood and body substances of **all** persons are potentially infectious.

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. Students shall be taught universal precautions through the *K-8 Healthful Living* and *Lifetime Wellness* curricula and through each LEA's HIV prevention education program.

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 to alert a parent or guardian. LEAs shall follow state guidelines for reporting communicable diseases.

HIV and Athletics:

Students living with HIV/AIDS who are capable of vigorous physical activity shall not be restricted from recreational sports, intramural, or interscholastic athletic participation. School authorities shall make reasonable accommodations to allow students living with HIV infection to participate in school-sponsored physical activities. A student living with HIV/AIDS and his/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.

To date, there has never been a confirmed case of HIV transmission through athletic activity. HIV is not transmitted through casual contact such as touching, rubbing, sharing sports equipment or using the same locker room or bathroom facilities. The virus has never been identified in sweat and has been found only rarely in minute concentrations in saliva. Transmission does not occur from swimming pool water or through the air.

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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.

HIV Prevention Education:

The goals of HIV prevention education are to promote healthful living and discourage the behaviors that put people at risk of acquiring HIV. All Tennessee LEAs shall provide age-appropriate, ongoing HIV prevention education instruction in accordance with the Tennessee Department of Education's *Lifetime Wellness* curriculum, the *K-8 Healthful Living* curriculum, and the *Family Life Education Law of 1989*. The HIV prevention education program shall:

- Be taught at every level, kindergarten through grade twelve;
- Follow content guidelines prepared by the Centers for Disease Control and Prevention (CDC);
- Build knowledge and skills from year to year;
- Be appropriate to students' developmental levels, behaviors, and cultural backgrounds;
- Include accurate information on reducing the risk of HIV infection;
- Stress the benefits of abstinence from sexual activity, alcohol, and other drug use;
- Address student's own concerns about HIV transmission;
- Be taught by well-prepared instructors with adequate resources and support;
- Be consistent with community standards; and
- Involve parents and families as partners in communication.

Parents and guardians shall have convenient opportunities to preview all HIV prevention curricula and materials in accordance with the provisions of the *Family Life Education Law of 1989*.

Staff Development:

Annually, each LEA's Director of Schools shall ensure that all employees, including newly hired staff, receive current HIV training to include:

- HIV epidemiology;
- Methods of transmission and prevention;
- Bloodborne Pathogens;

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- Universal precautions;
- Psychological and social aspects of HIV;
- Related federal and state laws and policies; and
- School procedures and policies regarding HIV-related issues.

An LEA may utilize the educational and training resources of agencies or private institutions with personnel trained in the areas of HIV/AIDS prevention education, or an LEA may utilize the HIV resources of community organizations and HIV state resources such as the Tennessee Department of Education's HIV Teacher Training Center.

Related Services:

Students shall have access to voluntary, confidential, age and developmentally appropriate counseling about matters related to HIV infection. School administrators shall maintain a list of counseling and testing resources in the community and make it available for voluntary student use. It is recommended that each LEA endeavor to cooperate with HIV prevention efforts in the community that address youth at high-risk for acquiring HIV.

General Provisions:

It is recommended that LEAs annually educate students, their family members, and employees about current laws and policies concerning HIV infection, and to provide convenient opportunities to discuss them.

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APPENDIX A GLOSSARY

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

Bloodborne Pathogens: Bacteria and viruses 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.

FERPA (Family Educational Rights and Privacy Act): 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.

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

HIV (human immunodeficiency virus): The virus that causes AIDS and destroys the body's ability to fight infection. 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, infected pregnant women can pass HIV to their baby during pregnancy or delivery, as well as through breast-feeding. People with HIV have what is called HIV infection. Some of these people will develop AIDS as a result of HIV infection.

LEA: Local education agency.

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

SBE: State Board of Education.

TOSHA: Tennessee Occupational Safety and Health Administration: 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.

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APPENDIX B

ANNOTATED LEGAL REFERENCES

1. **Americans with Disabilities Act of 1990 (ADA) (42 USC 12101)**-ADA prohibits discrimination in employment and education on the basis of disability.
2. **Family Educational Rights and Privacy (FERPA) (20 USC 1232g)**-FERPA provides for privacy restrictions concerning student records.
3. **Family Life Education Law of 1989 (Tennessee Code 49-6-1008)**-The Family Life Education Law addresses HIV/STI prevention education in Tennessee public schools.
4. **Health Insurance Portability and Accountability Act of 1996 (HIPPA) (P. L. 104-191)**-HIPPA establishes privacy guidelines to protect individuals' medical records.
5. **Individuals with Disabilities Education Improvement Act of 2004 (IDEA), PL 108-446** -IDEA requires states and school systems to provide special education and related services to eligible students with disabilities.
6. **Occupational Safety and Health Act of 1970 (29 USC 65, et seq.)**-OSHA requires safe working conditions in places of employment.
7. **Occupational Exposure to Bloodborne Pathogens Standard (29 CFR 1910.1030)**-OSHA's bloodborne pathogens standard requires employers to develop and maintain a written Exposure Control Plan regarding bloodborne pathogens and mandates adherence to universal precautions.
8. **Section 504, Rehabilitation Act of 1973 (29 USC 794)**-Section 504 guarantees services for students with special healthcare needs.

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APPENDIX C HIV/AIDS RESOURCES

State Resources

Tennessee Department of Education
HIV Prevention Education Program
615/532-6277

Tennessee Department of Health
HIV/AIDS /STD Branch
1-800-525-2437

Teacher Training Center

Director: Dr. Jacqueline Fleming Hampton
615/963/3112

The TTC is a component of the State HIV Prevention Education Program that delivers free HIV and bloodborne pathogens training to public school teachers and select school staff members.

Tennessee Occupational Safety and Health Administration (TOSHA)
1-800-325-9901





Federal Resources

CDC National AIDS Hotline: 1-800-342AIDS
www.cdc.gov

U. S. Department of Education: 1-800-872-5327 (Information Resource Center)
www.ed.gov

American Red Cross Tennessee Chapters

The American Red Cross offers trainings in the following areas: first aid, HIV prevention, bloodborne pathogens, universal precautions, and exposure control planning.

 Chattanooga-	423/265-3455
 Knoxville-	865/584-2999
 Memphis-	901/726-1690
 Nashville-	615/250-4300