

## Superintendent's Regulation 5191-R



Approved upon Superintendent's Initials

6/27/14

Date

### Students with HIV-Related Illness Regulation

#### *Confidentiality*

##### 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-related illness.

"Capacity to consent" means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, and to make an informed decision concerning such service, treatment or procedure.

##### 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 with capacity to consent) has completed and signed the Health Department Authorization for Release form ("Authorization Form"), a court order granted under Public Health Law §2785 has been issued, or the person to whom the information has been furnished is authorized to receive such information under Public Health Law (PHL) §2782 without a release form. Persons authorized to receive HIV information without a release include physicians providing care, agencies monitoring such care, and insurance companies for payment purposes. Disclosure to school personnel staff requires a release or court order.

If disclosure occurs pursuant to a signed release or order, the 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.

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

##### C. Testing

No HIV-related testing of any student shall take place without first receiving the written informed consent of the person to be tested on a form approved by the State Health Department. Such consent shall only be given by an individual with capacity to consent as defined above.

#### D. Penalties

Persons who disclose confidential HIV information to unauthorized parties or who fail to obtain informed consent for the HIV test may be subject to a \$5,000 penalty and a criminal misdemeanor charge.

#### E. 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 of Schools or building administrator to whom the information has been given shall request a meeting with the person in parental relation and/or the student for the purpose of discussing the student's condition, concerns 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, school or public health personnel may be consulted provided that the appropriate Authorization Form is obtained. The person in parental relation and/or the student should be apprised of this and asked to sign such release 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 who may attempt to obtain an Authorization Form from the individual or someone else with the capacity to consent. Should this request be refused, the Superintendent may recommend to the school Board that the district seek an order for disclosure of confidential HIV-related information, pursuant to Public Health Law §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 released, may request a meeting with the parent, or person in parental relationship, and the student for the purpose of discussing educational alternatives. Such alternatives may include homebound instruction during periods of short-term illness as well as provision of educationally related support services. The Superintendent or building administrator may enlist the expertise of the child's physician, or any school or public health personnel, provided that the appropriate release forms have been obtained. 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, through 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 individual or someone else with the capacity to consent. Should this request be refused, the Superintendent may recommend to the school Board that the district seek an order for disclosure of confidential HIV- related information, pursuant to Public Health Law §2785.
    - c. If a professional staff member of a 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 is 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 a school district suspects that a student may have a disability, whether or not the staff member has been made privy to confidential HIV-related information, the staff member shall refer such 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 disability 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 student or someone else with the capacity to consent. Should this request be refused, the Superintendent may recommend to the school Board that the district seek an order for disclosure of confidential HIV- related information, pursuant to Public Health Law §2785.

When seeking the confidential information through either said Form or court order, the Superintendent shall attempt to have the person or court agree to disclose such information to the CSE, and may attempt to have the person 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 consent or court order is obtained, the 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 confidential HIV-related information is obtained, it shall be disclosed only to those individuals listed on the form or pursuant to the court order and only for the purposes specified, for the specified time period.
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 the virus; and (2) the expected type of interaction with others in the school setting. The CSE may also consult with 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 recommendations based upon a written evaluation setting forth the reasons for the recommendations, to the student, parent or guardian of the student and Board of Education as it would with any other student who has or is suspected of having a disability.

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, providing however, that such professional is named on a completed and signed Authorization Form or a court order granted under Public Health Law §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, a short-term suspension (of five days or less) may be imposed, or other protective procedures may be invoked. However, where parents/guardians 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 parental consent or court order for alternative placement is obtained.

If the student had not been evaluated and recommended for placement by the CSE, section 6 (above) shall apply.

9. Pursuant to Public Health Law article 27-F, a physician may, upon the consent of a parent or guardian, 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.

#### *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 an infected individual, the Superintendent or school nurse with authorization to obtain the confidential HIV-related information may inform the student, the student's parents or legal guardian about such risk. Any

temporary decision or recommendation in such circumstances should be made by the individual's personal physician and the student's parents/guardians, in consultation with the Superintendent, school physician and nurse.