

HIV in School Settings

School Attendance and Inclusion

Students with HIV infection, whether symptomatic or asymptomatic, have a fundamental right to attend school and are subject to the same rules and policies as other students. Schools will admit all children living within the district who meet enrollment requirements, and will not discriminate on the basis of HIV status.

HIV infection shall not factor into decisions concerning class assignments, privileges, or participation in any school-sponsored activity. HIV status is not among permissible grounds for suspension or expulsion.

Students living with HIV will be allowed to continue in all academic and extracurricular activities for which the student is otherwise qualified. Specific, individualized factors that constitute a direct threat of increased transmission risks based on objective, expert medical assessment may be considered on a case-by-case basis, following established policies and procedures for students with chronic health problems and/or students with disabilities.

All district personnel shall strive to maintain a respectful school climate and not allow physical or verbal harassment of any individual or group by another individual or group. This includes taunts directed against a person living with HIV infection, perceived as having HIV infection, or associated with someone with HIV infection.

Privacy and Confidentiality

Students are not required to disclose HIV infection status. HIV antibody testing is not required for any purpose. School-maintained health records are part of the education record and are protected by the Family Educational Rights and Privacy Act (FERPA). Student's education records cannot be shared without parental consent unless the disclosure is specifically exempted under FERPA. In some situations, school-maintained health records may also be protected by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.

Every employee has a duty to treat as highly confidential any knowledge or speculation concerning the HIV status of a student or a student's family member. Disclosures of private medical information may be cause for disciplinary action, in addition to any other civil or criminal penalties that may apply, either to the unauthorized disclosing employee or to the school/district.

Infection Control

Schools will implement U.S. Occupational Health and Safety Administration (OSHA) rules which require the practice of universal precautions for protection from blood-borne pathogens. All employees are required to consistently follow infection control guidelines in all settings and at all times, including playgrounds and school buses. As HIV status disclosure is not required, all children should be considered potential carriers of blood borne pathogens in a situation of blood-to-blood exposure.

Equipment and supplies needed to apply infection control guidelines will be maintained and kept accessible. A designated person shall implement the precautions and investigate, correct, and report on instances of lapse. Care should be taken to avoid breaches of confidentiality.

All school staff will participate in annual blood borne pathogens/universal precautions training.

Authority

School Attendance and Inclusion

ARIZ. CONST. art. XI, §§ 1, 6

Shofstall v. Hollins, 110 Ariz. 88, 90, 515 P.2d 590, 592 (Ariz. 1973)

Ariz. Rev. Stat. Ann. §§ 15-821,-840, and -841

Americans with Disabilities Act (ADA) of 1990, PL 101–336, July 26, 1990, 104 Stat 327 Sec. 201 and 202 (codified at 42 U.S.C.A. § 12131 and 12132)

Bragdon v. Abbott, 524 U.S. 624, 637, 641–42 (1998)

Section 504 of Rehabilitation Act of 1973 (codified at 29 U.S.C.A. § 794)

28 C.F.R. § 35.104(4)(1)(i)(B)(ii)

Gates v. Rowland, 39 F.3d 1439, 1446 (9th Cir. 1994)

Ray v. School District of Desoto County, 666 F. Supp. 1524 (M.D. Flo. 1987); Doe v. Dolton Elementary School District, 694 F. Supp. 440 (N.D. Ill.1988)

Thomas v. Atascadero Unified District, 662 F. Supp. 376 (C.D. Cal.1986)

42 U.S.C. § 12182(b)(3); 28 C.F.R. § 36.208

Bragdon v. Abbott, 524 U.S. 624, 650–54 (1998); *Lockett v. Catalina Channel Express, Inc.*, 496 F.3d 1061, 1066 (9th Cir.2007); Doe v. Deer Mountain Day Camp, Inc., 682 F. Supp. 2d 324, 346–48 (S.D.N.Y. 2010).

Doe v. Deer Mountain Day Camp, Inc., 682 F. Supp. 2d 324 (S.D.N.Y. 2010); U.S. v. Morvant, 898 F.Supp. 1157, 1166 (E.D.La.1995); *Martinez ex rel. Martinez v. School Board of Hillsborough County*, 711 F. Supp. 1066, 1072 (M.D. Fla. 1989)

Chalk v. U.S. Dist. Court Cent. Dist. of California, 840 F.2d 701, 709 (9th Cir. 1988)

Individuals with Disabilities in Education Act (IDEA), 20 U.S.C.A. § 1400, et. seq.

Ariz. Rev. Stat. Ann. § 36-136(L); Ariz. Admin. Code § R9-6-1006(B)

Ariz.Rev. Stat. Ann. § 15-341(A)(37)

Privacy and Confidentiality

Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 20 U.S.C. §§ 12132h and 1232i; 34 C.F.R. Part 99

34 C.F.R. § 99.31(a)(1)

20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36

Administrative Simplification Rules (Privacy Rule) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 45 C.F.R. Parts 160, 162, 164 (a.k.a. “HIPAA Privacy Rule”)

Ariz. Rev. Stat. Ann. § 15-141

Infection Control

Occupational Safety and Health Act (OSHA) and 29 C.F.R. Part 1910

29 C.F.R § 1910.1030

Ariz. Rev. Stat. Ann. § 23-403(B); Ariz. Admin. Code § R20-5-602