

# POLICY

No. 4052

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## HUMAN IMMUNODEFICIENCY VIRUS (HIV) ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

The Board of Cooperative Educational Services of Albany-Schoharie-Schenectady-Saratoga Counties (BOCES) recognizes the public concern about the Human Immunodeficiency Virus (HIV) infection and Acquired Immune Deficiency Syndrome (AIDS). BOCES acknowledges the rights and interests of students diagnosed with HIV and AIDS to continue their educational program. BOCES also recognizes the interests of employees diagnosed with HIV or AIDS to continue their employment. The interests of all students and employees to be able to attend school and to work without being subjected to significant risks to their health is a paramount concern. However, based upon representations made by the New York State Department of Health, HIV is not easily transmitted by casual social contact and, therefore, an individual infected with HIV does not present a significant risk by coming into casual social contact with students or employees.

### **NON-DISCRIMINATION**

1. No student's right to attend school and receive an education shall be interrupted or curtailed solely on the basis of having been diagnosed with HIV or AIDS.
2. No employee shall be prevented from continuing his/her employment solely on the basis of having been diagnosed with HIV and AIDS.
3. No individual (student or employee) shall be discriminated against on the basis of having been diagnosed with HIV or AIDS.
4. Action may be taken against an individual with a disability or medical condition which interferes with his/her ability to participate in his/her educational program or to carry out the normal duties of his/her employment in a reasonable manner or his/her condition is determined to present a significant risk to students or employees.

**Adopted:** February 15, 1993

**Ratified:** March 15, 1993

**Amended:**

**HIV/AIDS TESTING**

No individual shall be required to undergo a HIV or HIV-related test. This shall not interfere with the right of BOCES to require any student or employee to undergo a physical or mental examination when other illness is suspected provided, however, that such examination may not include an involuntary HIV or HIV-related test.

**CONFIDENTIALITY**

Confidential HIV-related information about any individual (student or employee) which has been obtained by BOCES or any of its members, agents or employees shall not be disclosed by any BOCES employee or agent to any other person, organization or agency except as provided herein.

1. Confidential HIV-related Information Confidential HIV-related information is any information indicating that an individual (a) has been tested for HIV, (b) has the HIV infection, or (c) has AIDS or other HIV-related illness.
2. Student When confidential HIV-related information is obtained by a teacher or any other employee of BOCES from a student about himself or herself, the teacher or other employee of BOCES should refer the student to the school nurse. The school nurse shall take such steps as may be reasonable and necessary in order to determine the accuracy of the information and whether there are or should be any limitations or restrictions on the student's activities. If so, the school nurse shall advise the student (or the parent or guardian where necessary) to have the student's qualified health care provider furnish a written report indicating the student's medical condition and any limitations or restrictions on the student's activities. If such medical report is furnished, it shall be filed with the student's medical records. Neither the teacher nor other employee of BOCES who received the confidential HIV-related information, nor the school nurse, shall disclose such information to any other student, employee of BOCES or to any person outside of BOCES.
3. Employee When confidential HIV-related information is obtained by an administrator from an employee about himself or herself, the administrator should advise the employee to furnish a written statement from a qualified health care provider indicating the medical condition and any limitations or restrictions on the activities of the employee. If such medical report is furnished, it shall be filed in the employee's medical records. The administrator shall not disclose the confidential HIV-related information to any other employee of BOCES or person outside of BOCES.
4. Child/Adult Protective Information The prohibition on disclosure of confidential HIV-related information shall not limit the responsibility or authority of BOCES to investigate and report child protective or adult protective services information.

**EXCEPTIONS**

Disclosure of confidential HIV-related information may be made in the following instances:

1. Written Release Disclosure may be made pursuant to a written authorization signed by the protected individual who was the subject of a HIV-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness. If the protected individual does not have the capacity to understand and appreciate the nature and consequences of giving a release and to make an informed decision whether to do so, the release may be signed by a person who is authorized to consent to health care for the protected individual.

Form The written release shall be on a form prepared by the New York State Commissioner of Health and shall state: (1) the person, organization or agency to whom disclosure is authorized, (2) the purpose of the disclosure, and (3) the time period during which disclosure may be made.

2. Health Facility - Health Care Provider Disclosure may be made to a hospital or other health facility or to a health care provider when necessary to provide appropriate care or treatment to the protected individual.
3. Health Officer Disclosure may be made to a Health Officer of the Federal, State, County or local government where such disclosure is mandated by Federal or State law. Documentation of a statutory mandate must be furnished prior to disclosure.
4. Court Order Disclosure may be made pursuant to an order issued by a court of competent jurisdiction.
  - a) Subpoena Disclosure shall not be made pursuant to a subpoena.
  - b) Freedom of Information Law Disclosure shall not be made pursuant to a request for information pursuant to the Freedom of Information Law.
5. Protected Individual Disclosure may be made to the protected individual.

**PROCEDURE FOR DISCLOSURE**

Disclosure of confidential HIV-related information may only be made by the school nurse.

Redisclosure Prohibited All written disclosures must be accompanied by a statement prohibiting redisclosure. Oral disclosures must be followed by not more than ten (10) days by a statement prohibiting redisclosure. The statement prohibiting redisclosure shall

include the following language:

"This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not, except in limited circumstances set forth in this Part, sufficient authorization for further disclosure. Disclosure of confidential HIV information that occurs as the result of a general authorization for the release of medical or other information will be in violation of the State law and may result in a fine or a jail sentence or both."

## **RECORDS**

1. Medical Record All confidential HIV-related information which is obtained by BOCES or any of its members, agents or employees shall be kept in the medical record of the person it relates to. All such medical records shall be kept in a locked file cabinet provided, however, that access to such records shall be available in the event that they are needed to provide proper medical care or treatment. A copy of the statement prohibiting redisclosure set out in quotation marks under the heading REDISCLOSURE PROHIBITED above shall be attached to such confidential information. In the event that disclosure is made orally, written confirmation of the disclosure shall be made to the recipient of such information within ten (10) days accompanied by the notice prohibiting redisclosure.
2. Disclosures All disclosures by BOCES of confidential HIV-related information shall be noted in the medical record of the protected person. The protected person or parent of a student under the age of 21 shall be informed of all such disclosures.