

# Washington West Supervisory Union Model Policy

## Policy E9

### E9: COMPREHENSIVE HIV POLICY FOR SCHOOLS PRE-K - 12

#### Preamble

The evidence is clear that the risk of transmitting Human Immunodeficiency Virus (HIV) is extremely low in school settings when proper guidelines are followed. The presence of a person living with HIV infection or diagnosed with acquired immunodeficiency syndrome (AIDS) poses no significant risk to others in school, daycare, or school athletic settings. HIV is not transmitted through casual contact and, therefore, is not reason in itself to treat individuals having or perceived as having HIV differently from other members of the school community. HIV is a bloodborne pathogen and is treated as such in the same manner as any other bloodborne pathogen.

School/District/Supervisory Union shall strive to protect the safety and health of children and youth in its care, and its employees, recognizing:

- the rights of students and employees with HIV;
- the importance of maintaining confidentiality regarding the medical condition of any individual;
- the importance of an educational environment free of significant risks to health; and
- the necessity for HIV education and training for the school community and the community-at-large.

#### Rights of Faculty/Staff

##### I. Equal Employment

School/District/Supervisory Union does not discriminate on the basis of an employee's HIV infection or association with another person with HIV infection. No applicant shall be denied employment and no employee shall be prevented from continued employment on the basis of having or being perceived as having HIV.<sup>1</sup> In accordance with the Americans with Disabilities Act of 1990, an employee with HIV infection is welcome to continue working as long as he or she is able to perform the essential functions of the position, with reasonable accommodations if necessary.<sup>2</sup>

#### Rights of Students

##### II. School Attendance

- A. A student with HIV infection has the same right to attend school and receive services as any other student and will be subject to the same rules and policies as any student without HIV. Except as deemed appropriate to accommodate students with disabilities, HIV infection shall not factor into decisions concerning class assignments, privileges, or participation in any school-sponsored activity.<sup>3&4</sup>

<sup>1</sup> 21 V.S.A. § 495(a) (6) and (7)

<sup>2</sup> 42 U.S.C. §12101 et seq., American with Disabilities Act

<sup>3</sup> 29 U.S.C. § 794, 34 C.F.R. § 104.1 et seq., The Rehabilitation Act of 1973 (Section 504)

<sup>4</sup> 42 U.S.C. §§ 2000d and 2000e, Title IV, Civil Rights Act of 1964 and as amended by the Equal Employment Act of 1972

- B. The special education coordinator, Section 504 coordinator or other designated school authorities will follow established policies and procedures for students with chronic health problems or students with disabilities to determine on a case-by-case basis the educational placement of a student known to be infected with HIV.<sup>5</sup> Respecting students' and families' privacy rights school authorities may consult with the student's parent or guardian, seek waiver from parent/guardian to consult with the student's physician, and reassess the placement if there is a change in the student's need for accommodations or services.

### **Rights for Students and Staff**

#### III. Nondiscrimination

- A. *School/District Supervisory Union* is committed to providing a learning environment and workplace free of discrimination. School staff members will strive to maintain a respectful school climate and not allow physical or verbal harassment against a student or staff member based on their HIV positive status.<sup>6</sup> This includes conduct directed against a person living with HIV infection, a person perceived as having HIV infection or a student or employee's family member's actual or perceived status as HIV positive.
- B. This school district shall not discriminate against an applicant, prospective or current student on the basis of a person's having a positive test result from an HIV-related diagnostic test.<sup>7</sup>

#### IV. Confidentiality of HIV-related Information and Testing

- A. *School/District/Supervisory Union* will protect the student's and family's privacy rights consistent with state and federal law pursuant to the *School/District/Supervisory Union* Student Records Policy and Employment Records Policy.
- B. No school official shall require HIV-related testing of any employee applicant, current employee or prospective or current student for any purpose.<sup>8</sup>
- C. Students, students' parents/guardians, or applicants/employees are not required to disclose HIV status to any school personnel.<sup>9</sup>
- D. Service providers, including those dispensing medication, will maintain student confidentiality. Unless for the limited purpose of an exception of state law, federal law, the Student Records policy, or the Employee Records policy that applies, school personnel shall not disclose any HIV-related information about a prospective or current school personnel or students to anyone except in accordance with the terms of a written consent.<sup>10</sup> The superintendent shall develop a written consent form (see Appendix A) which provides for a description of information to be disclosed, to whom it may be disclosed, its specified time limitation, and the specific purpose for the disclosure. The school district shall not discriminate against any individual who does not provide written consent.

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<sup>5</sup> 20 U.S.C. §1400 et seq., 34 C.F.R. § 300, Individuals with Disabilities Education Act (IDEA)

<sup>6</sup> 18 V.S.A. §1127(a); see also 16 V.S.A. §§11(a) (26); 14; 565 regarding discrimination based on disability

<sup>7</sup> 18 V.S.A. § 112 7

<sup>8</sup> 18 V.S.A. § 112 7(a)

<sup>9</sup> 18 V.S.A. § 112 7(b)

<sup>10</sup> 1 V.S.A. § 317(b)(7) and (11)

- E. All health records, notes, and other documents that reference a person's HIV status will be kept confidential.<sup>11</sup> Access to these confidential records is limited to those named in written permission from the person or parent/guardian and to emergency medical personnel.

### Health Protections and Universal Precautions

#### V. Infection Control

HIV is a bloodborne pathogen. Therefore, infection control for HIV is to be addressed in the same manner as any other blood borne pathogen.

- A. School/District/Supervisory Union shall comply with applicable Vermont Occupational Safety and Health Administration (VOSHA) rules in order to protect employees who are reasonably anticipated to be exposed to blood borne pathogens as part of their regular job duties.<sup>12</sup>
- B. The superintendent or his/her designee shall determine those employees (by job class and possibly by task or procedure) who are reasonably anticipated to have occupational exposure to blood or other potentially infectious materials as part of their duties. These employees will be protected in strict accordance with the provisions of the Bloodborne Pathogens Standards.<sup>13</sup>
- C. A written Exposure Control Plan concerning bloodborne pathogens, which includes the use of universal precautions, shall be developed, maintained and followed.<sup>14</sup>

### Curriculum, Instruction and Extra-Curricular Activities

#### VI. HIV/AIDS Prevention Education

The school district shall provide systematic and extensive elementary and secondary comprehensive health education including education on HIV infection, other sexually transmitted diseases as well as other communicable diseases, and the prevention of disease.<sup>15</sup>

#### VII. Athletics

- A. Participation in physical education classes, athletic programs, competitive sports, and recess is not conditioned on a person's HIV status. School authorities will make reasonable accommodations to allow students living with HIV infection to participate in school-sponsored physical activities.<sup>16</sup>

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Cross References:

- A. WWSU Policy F20-R: Prevention of Harassment of Students
- B. WWSU Policy D12-R: Prevention of Harassment of Employees
- C. WWSU Policy F5-R: Education Records
- D. WWSU Policy D-5: Personnel Records
- E. WWSU Policy G7-R Educational Support Systems
- F. WWSU Policy G10 Special Education
- G. WWSU Policy C6 for Section 504
- H. WWSU Policy F1-R Student Discipline
- I. WWSU Policy D13-R for Health Insurance Portability and Accountability Act (HIPAA) Compliance
- J. WWSU Bloodborne Pathogens Exposure Control Plan
- K. See Applicable WWSU Collective Bargaining Agreements

<sup>11</sup> 20 U.S.C. § 1232g The Family Education Rights and Privacy Act, 1974 (FERPA)

<sup>12</sup> 29 U.S.C. §§653, 655, and 657 Occupational Safety and Health Act of 1970

<sup>13</sup> 29 U.S.C. §§653, 655, and 657 Occupational Safety and Health Act of 1970

<sup>14</sup> 29 C.F.R. § 1910.1030 Occupational Exposure to Bloodborne Pathogens Standard

<sup>15</sup> 16 V.S.A. § 131 et seq., § 906

<sup>16</sup> 29 U.S.C. § 794, 34 C.F.R. § 104.1 et seq., The Rehabilitation Act of 1973 (Section 504)