

STUDENTS WITH HIV- RELATED ILLNESS REGULATIONS

- I. Definitions. In these regulations of the Berlin Central School District, the following terms shall be understood as follows.
 - A. Authorization Form means the New York State Department of Health Authorization for Release of Confidential HIV Related Information form.
 - B. AIDS means acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the U.S. Public health Service.
 - C. Capacity to consent means an individual's ability, determined without regard to her/his 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.
 - D. CSE means Committee on Special Education.
 - E. HIV means human immunodeficiency virus.
 - F. HIV-related illness means any illness that may result from or may be associated with HIV infection.
 - G. Parent means parent, guardian, or other person in parental relation to a student.
 - H. Protected individual means a person who is the subject of an HIV-related test or who has been diagnosed as having HIV-related illness.
 - I. Superintendent means the Superintendent of Schools of the Berlin Central School District.

- II. Confidentiality and Release of Information

Any employee of the Berlin Central School District who comes into possession in any manner or by any means of information related to the HIV status of any individual, including a student in the District, shall keep that information strictly confidential. The information shall not be disclosed to any person whatsoever, except and solely as described at 3.A, below, unless the protected individual has completed and signed an Authorization Form, or unless a court order granted under Public Health Law Sec. 2785 has been issued, or unless the person to whom the information has been furnished is authorized to receive such information without an Authorization Form under Public Health Law Sec. 2782.

Disclosure to District personnel of HIV-related information about any student in the District shall require an Authorization Form or a court order.

If disclosure occurs pursuant to an Authorization Form or a court order, then the information shall be released only to those listed on such Authorization Form or order, only for the time period specified, and only for the purpose or purposes stated on the Authorization Form or order.

An Authorization Form shall be signed by the protected individual. When the protected individual lacks the capacity to consent, then a person authorized pursuant to law to consent to health care for that individual shall sign the Authorization Form.

Questions regarding an individual's capacity to consent shall be directed through the Superintendent to the District's legal counsel.

III. Procedures Related to Receipt of HIV Information from Student or Parent Without Benefit of an Authorization Form or Court Order

In any instance where District personnel receive confidential HIV-related information concerning a student, either from the student or from a Parent, or both, without benefit of an Authorization Form or court order, the following procedures shall be followed.

IV. Superintendent's Action Upon Receiving Such Information

The Superintendent shall request a meeting with the parent or with the student, as appropriate, 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 educationally related support services.) Provided that an Authorization Form is then obtained, school or public health personnel with expertise in the field may be consulted. The student or parent should be advised of the possibility of such assistance through the District, and asked to include on the Authorization Form such personnel whose consultation is needed for provision to the student of appropriate educational services.

V. Employee's Reasonable Belief that Student Presents a Clear and Imminent Danger to Another

If a District official or other 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 that student, then that official or employee should express her/his concerns immediately to the Superintendent. The Superintendent may attempt to obtain an Authorization Form from the student or from someone else who has the capacity to consent.

VI. Superintendent May Seek Order of Disclosure

In the event that a student about whom the Superintendent has made a reasonable determination that she/he presents a clear and imminent danger, as described in 3.B, above, or the parent, refuses the Superintendent's request for execution of an Authorization Form, then the Superintendent may recommend to the Board of Education that the District seek an order for disclosure of confidential HIV-related information, pursuant to Public Health Law Sec. 2785.

VII. Procedures Related to Receipt of HIV Information from Student or Parent Through an Authorization Form or Court Order.

In any instance where District personnel receive confidential HIV-related information concerning a student through an Authorization Form or court order, the following procedures shall be followed.

A. Meeting to Discuss Educational Alternative. The Superintendent or the building administrator to whom the HIV-related information has been released may request a meeting with the parent and the student for the purpose of discussing educational alternatives for the student. 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 then no referral to the CSE will be made.

B. Action When Staff Believe That Student Presents Clear and Imminent Danger to Another Individual.

1. When Staff Member Is Not Privy To Confidential HIV- Related Information. If a school official or other employee of the District 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 that student, then she/he should express these concerns immediately to the Superintendent.
 - a. If the Superintendent has been given the authority through the Authorization Form or court order to inform such persons who may be at significant risk, then she/he should proceed to do so as soon as possible.
 - b. If the Superintendent does not have this authority then she/he should attempt to obtain an Authorization Form for this purpose from the student or someone else with the capacity to consent. If this request is refused, then the Superintendent may recommend to the Board that the District seek an order of disclosure pursuant to Public Health Law Sec. 2785.
2. When Staff Member Is Prvy to Confidential HIV-Related Information. If a member of the District's professional staff 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 student, then she/he should make a referral of the student to the CSE, if appropriate. Staff are also expected to encourage students to seek advice from their physicians and AIDS counseling centers and to behave responsibly by contacting those persons with whom they have engaged in behavior of significant risk.

VIII. Staff Member's Suspicion That Student Has a Disability.

If a member of the District's professional staff 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 pupil in writing to the CSE, or to the building administrator of the school that the student attends, in accordance with Section 200.4 of the Regulations of the Commissioner of Education.

IX. CSE Concerns That Student Poses a Danger or That Disability Is Related to HIV-Related Illness.

If a student has been referred to the CSE and the CSE reasonably believes either (i) 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 (ii) that the student has or is suspected of having a disability that may be due in whole or part to HIV- related illness, then the CSE shall so inform the Superintendent. The Superintendent shall then attempt to obtain an Authorization Form from the student or someone else with the capacity to consent. If this request is refused, then the Superintendent may recommend to the Board that the District seek an order of disclosure pursuant to Public Health Law Sec. 2785.

The Superintendent, when seeking the confidential information through either said Authorization Form or court order, shall attempt to have the person or court agree to disclose such information to the CSE, and may attempt to have such person or court agree to disclose such information to the student's classroom teacher(s) and any other personnel the Superintendent and the District's legal counsel believe are appropriate.

X. No Further Action When Consent or Court Order Is Not Obtained.

If no Authorization Form is executed or no court order is obtained under sec. 6, above, then the District shall take no further action in this matter, and the Superintendent shall instruct the appropriate officials or employees of the District to disclose no information whatsoever in regard to this case.

XI. Action If Confidential Information Is Obtained.

If confidential HIV-related information is obtained, then it shall be disclosed only to those individuals listed on the Authorization Form or pursuant to the court order, and only for the purposes specified, and only for the period of time that is specified.

XII. CSE's Receipt Of Confidential HIV-Related Information.

A. CSE to Make Determination on Appropriateness of Current Instruction

In the event that the CSE receives confidential information related to HIV in regard to a particular student, it shall review all the medical information that pertains to the specific situation, and on the basis of that review determine whether the current manner in which the student is receiving instruction and the student's current classroom placement meet her/his current and anticipated needs, or whether other arrangements are called for.

B. Factors CSE to Consider

In making its determination under 9.A., above, the CSE shall consider:

1. the student's physical condition
2. any behavior by the student that might increase the risk of the student's transmitting the virus; and
3. the expected type of interaction the student will have with others in the school setting.

The CSE may also consult with other 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 of the student. The CSE shall set forth the reasons for the its recommendations, which shall be provided to the student, the parent, and the Board of Education, just as it would do for any other student who has or is suspected of having a disability.

C. Required Involvement of School Physician

The provisions of Article 27-F of the Public Health Law permit physicians to disclose confidential HIV-related information under certain circumstances. The District's school physician shall therefore be required to attend all meetings of the CSE when they concern a student who is suspected of or who has been diagnosed as having HIV-related illness.

D. Involvement of Other Professionals as Authorized

The CSE shall have the authority to invite appropriate professional persons who are familiar with or have expertise in the area of HIV-related illness to any meeting concerning the educational program for a student who is suspected of or who has been diagnosed as having such illness, so long as any such professional is named on a completed and signed Authorization Form or court order issued under Public Health Law Sec. 2785.

XIII. Action When Student is Deemed to Pose a Threat to Him/Herself or Others.

A. Action When Student Has Been Previously Evaluated & Recommended by CSE for Placement

If a student with HIV infection or HIV-related illness has been previously evaluated by the CSE and recommendations for placement have been made, and thereafter the student is deemed dangerous to her/himself or others, then a short-term suspension, i.e., of five days or fewer, may be imposed, or other protective procedures may be invoked. Nevertheless, where the parent elects to exercise requisite due process rights under the appeals procedures set forth in state and federal law, then such a student shall remain in the original placement until appeals procedures have been completed, or the parent consents to a change in placement, or a court order for alternative placement has been obtained.

B. Action Where Student Has Not Been Previously Evaluated & Recommended by CSE for Placement

If a student with HIV infection or HIV-related illness has not been previously evaluated by the CSE and recommended for placement, then sec. 8, above, shall apply.

XIV. Physician's Review of Student's Medical History to Determine Fitness to Attend School.

Pursuant to Article 27-F of the Public health Law, a physician may, with the consent of a student's parent, disclose confidential HIV-related information to a health officer of the State, county, or locality, for the purpose of reviewing the medical history of a child to determine the child's fitness to attend school.

XV. Notice by School Officials of Contagion That May Pose a Threat to Safety of HIV-Infected Student.

In the event of the known presence among the school population of any contagious or communicable disease (e.g., chicken pox or measles) that might constitute a risk to a person infected with HIV, the Superintendent or school nurse with authorization to obtain the confidential HIV-related information may inform the student or the student's parent about the risk. Any temporary decision or recommendation under such circumstances shall be made by the student's personal physician and parent, in consultation with the Superintendent, school physician, and school nurse.