

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

June 7, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Communicable and Chronic Infectious Disease-5:40

This policy has been updated to reflect additional duties for the team members of the District Communicable and Chronic Infectious Disease Review Team. Legal references have also been updated.

We ask that you use this as your first reading period and then put this on the next BOE meeting agenda for a second reading and approval.

## General Personnel

### Communicable and Chronic Infectious Disease <sup>1</sup>

The Superintendent shall develop and implement procedures for managing known or suspected cases of a communicable and chronic infectious disease involving District employees that are consistent with State and federal law, Illinois Department of Public Health rules, and School Board policies. <sup>2</sup>

An employee with a communicable or chronic infectious disease is encouraged to inform the Superintendent immediately and grant consent to being monitored by the District's Communicable and Chronic Infectious Disease Review Team. The Review Team, if used, provides information and recommendations to the Superintendent concerning the employee's conditions of employment and necessary accommodations. The Review Team shall hold the employee's medical condition and records in strictest confidence, except to the extent allowed by law. <sup>3</sup>

An employee with a communicable or chronic infectious disease will be permitted to retain his or her position whenever, after reasonable accommodations and without undue hardship, there is no substantial risk of transmission of the disease to others, provided an employee is able to continue to perform the position's essential functions. <sup>4</sup> An employee with a communicable and chronic infectious disease remains subject to the Board's employment policies including sick and/or other leave, physical examinations, temporary and permanent disability, and termination.

LEGAL REF.: Americans With Disabilities Act, 42 U.S.C. §12101 et seq.; 29 C.F.R. §1630.1 et seq.  
 Rehabilitation Act of 1973, 29 U.S.C. §791; 34 C.F.R. §104.1 et seq.  
 20 ILCS 2305/6.  
 105 ILCS 5/24-5.  
 820 ILCS 40/1 et seq.  
 Control of Communicable Diseases, 77 Ill.Admin.Code Part 690.

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**The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.**

<sup>1</sup> State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This policy concerns a topic on which a board should seek legal advice before proceeding.

<sup>2</sup> District employment is contingent upon satisfactory results of a physical examination and freedom from communicable diseases (105 ILCS 5/24-5). The U.S. Supreme Court, however, has held that the Rehabilitation Act prohibits discrimination against a person handicapped by a communicable disease, provided that person is "otherwise qualified" to perform the job. School Bd. of Nassau County, Fla. v. Arline, 107 S.Ct. 1123 (1987) (teacher with tuberculosis was protected by the Rehabilitation Act). The decision supports the position that an HIV-positive employee or applicant who is "otherwise qualified" to perform the job must be reasonably accommodated despite having AIDS. The Americans With Disabilities Act may also protect an HIV-positive employee or applicant (42 U.S.C. §12102(2)(A)).

<sup>3</sup> This paragraph is optional. While not required by law, the creation and use of a Communicable and Chronic Infectious Disease Review Team could greatly assist a district's efforts to review data on an employee who has a communicable or infectious disease. Its members are appointed by the superintendent according to board policy, 2:150, *Committees*.

The Americans with Disabilities Act (ADA) specifies that only an employee's direct supervisor and someone who would need to know in the event of an emergency may have access to an employee's medical records (42 U.S.C. §12112(d)). The Review Team's ability to operate may depend on the employee's waiver of the ADA's confidentiality provisions.

<sup>4</sup> Required by 42 U.S.C. §12101 et seq.

CROSS REF.: 2:150 (Committees), 5:30 (Hiring Process and Criteria), 5:180 (Temporary Illness or Temporary Incapacity)

## **General Personnel**

### **Communicable and Chronic Infectious Disease**

The Superintendent shall develop and implement procedures for dealing with known or suspected cases of a communicable and chronic infectious disease involving a District employee consistent with State and federal law, rules of the Illinois Department of Public Health, and Board of Education policies.

Employees with a communicable or chronic infectious disease will be permitted to retain their positions whenever, after reasonable accommodations and without undue hardship, there is no substantial risk of transmission of the disease to others, provided an employee is able to continue to perform the position's essential functions. Employees who cannot retain their positions shall remain subject to the Board's employment policies including sick leave, physical examinations, temporary and permanent disability, and termination. Determining whether an employee with a communicable or chronic infectious disease may retain his or her position will be made in accordance with established procedures.

The recommendation of whether the employee's placement is appropriate shall be made on a case-by-case basis by the District's Communicable and Chronic Infectious Disease Review Team.

LEGAL REF.: Americans With Disabilities Act, 42 U.S.C. § 12101 et seq.  
Rehabilitation Act of 1973, 29 U.S.C. § 791.  
20 ILCS 2305/6.  
105 ILCS 5/24-5.  
820 ILCS 40/1 et seq.  
Rules and Regulations for the Control of Communicable Diseases, issued by  
the Illinois Department of Public Health.

CROSS REF.: 2:150 (Committees), 5:30 (Hiring Process and Criteria), 5:180 (Temporary  
Illness or Temporary Incapacity)

ADOPTED: May 20, 2002