

General Personnel

Communicable and Chronic Infectious Disease ¹

The Superintendent or designee 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. ²

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. ³

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

¹ 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.

² 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. *Sch. Bd. of Nassau County, Fla. v. Arline*, 480 U.S. 273 (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.

Following the expansion of the definition of a disability under the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325, the ADAAA may protect an HIV-positive employee or applicant. 42 U.S.C. §12102(2)(A); 29 C.F.R. Part 1630. The federal government's position is that HIV infection qualifies as a disability under the Americans ADAAA. See: www.ada.gov/hiv/ada_hiv_enforcement.htm (U.S. Dept. of Justice) and www.eeoc.gov/eeoc/publications/hiv_individual.cfm (U.S. Equal Employment Opportunity Commission (EEOC)). The EEOC also issued guidance on COVID-19 as a potential disability requiring accommodation under the ADA, see *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* (updated 12-14-21) at: www.eeoc.gov/coronavirus.

For a discussion of guidance and challenges related to school personnel vaccination/testing mandates and other mitigations during the COVID-19 pandemic, see sample policy 4:180, *Pandemic Preparedness; Management; and Recovery*, at f/n 5.

Other contagious diseases may also qualify as disabilities under the ADAAA; however, employers are not required to accommodate employees in those cases where there is an actual direct threat to the health or safety of others that cannot be eliminated or reduced by reasonable accommodation. 29 C.F.R. §1630.2(r). Boards should consult with their attorneys regarding how the ADAAA and its implementing regulations impact the employment of an individual with a communicable disease who is otherwise qualified to perform the job.

³ This paragraph is optional. While not required by law, the creation and use of a Communicable and Chronic Infectious Disease Review Team (CCIDRT) 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 sample policy 2:150, *Committees*. Whether the CCIDRT is an administrative committee organized by the superintendent and/or administrators or a board committee subject to the Open Meetings Act must be discussed with the board attorney (see also 2:150-AP, *Superintendent Committees*). The CCIDRT is guided by the board's policies, Ill. Dept. of Public Health rules and regulations, and all other applicable State and federal laws. The CCIDRT also consults the employee's personal physician and local health department officials before making any recommendations.

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.⁴ 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.: 42 U.S.C. §12101 et seq., Americans With Disabilities Act, amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325; 29 C.F.R. §1630.1 et seq.
29 U.S.C. §791, Rehabilitation Act of 1973; 34 C.F.R. §104.1 et seq.
105 ILCS 5/24-5.
20 ILCS 2305/6, Department of Public Health Act.
820 ILCS 40/, Personnel Record Review Act.
77 Ill.Admin.Code Part 690, Control of Communicable Diseases.

CROSS REF.: 2:150 (Committees), 4:180 (Pandemic Preparedness; Management; and Recovery), 5:30 (Hiring Process and Criteria), 5:180 (Temporary Illness or Temporary Incapacity)

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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.

⁴ Required by 42 U.S.C. §12101 et seq. See also f/n 2, above.