

CVUSD Board Policy

BP 4119.41, 4219.41, 4319.41

Personnel

Employees With Infectious Disease

Note: The Americans with Disabilities Act defines AIDS as a physical disability. School districts have a legal obligation to determine on a case by case basis, based on sound medical information, whether an HIV-infected employee can remain and work in the school environment. Both state and federal law require employers to reasonably accommodate a disabled person.

Note: Section 504 of the Federal Rehabilitation Act of 1973 provides that no otherwise qualified handicapped person may, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. In School Board of Nassau County, Fla, v. Arline, the U.S. Supreme Court extended this law's protection to employees significantly impaired by infectious diseases.

The Governing Board encourages each employee to inform the district as soon as possible if he/she contracts an infectious disease which creates a physical or mental disability. The Board will reasonably accommodate the needs of such individuals.

The Board may reassign or grant disability leave to an employee who is unable to perform his/her job responsibilities because of illness or because the employee's illness significantly endangers his/her health or safety or the health or safety of others.

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

(cf. 4261.1 - Personal Illness/Injury Leave)

No employee will be discriminated against because of his/her disability. Legal protections established for disabled persons extend to individuals significantly impaired by infectious diseases.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

***Note: Both state and federal courts have cited with approval the Center for Disease Control's guidelines on AIDS/HIV. These guidelines state that the risk of HIV transmission is not posed by the kind of nonsexual, person-to-person contact generally occurring in workplaces other than those where body fluids may be exchanged, such as the workplace of a health care worker. ***

Note: Decisions regarding reasonable accommodation of employees with infectious diseases should be made in consultation with one or more medical doctors, including the employee's physician, and with legal counsel. When the district's medical expert, the employee's treating physician and the district's legal counsel do not agree as to what accommodation is reasonable, the Superintendent may convene a medical review panel consisting of a public health physician with expertise in infectious disease, the employee's treating physician, the employee and/or employee's representative, and the Superintendent or designee. All determinations regarding reasonable accommodation should be reviewed by legal counsel.

When informed that an employee has a disabling infectious disease, the Superintendent or designee may request that the employee sign a release form to provide confidential medical information and records.

In determining a reasonable accommodation of the employee's condition, the Superintendent or designee may consult with public health officials or physicians with expertise in the diagnosis and treatment of infectious disease. The Superintendent or designee may also communicate with the employee's physician regarding the employee's ability to perform the essential requirements of the job with reasonable accommodation and without posing significant health or safety risks to the employee or others.

The Superintendent or designee shall prepare a confidential report which includes his/her recommendation and the medical information upon which it is based. These recommendations shall take into consideration:

1. The nature of the disease and the probability of its being transmitted, including the duration and severity of the risk
2. The physical condition of the employee, including diagnosis, treatment, and prognosis of the condition
3. The actual requirements of the employee's job and the expected type of interaction with others in the school setting

This report shall be forwarded to the Board for confidential review and action.

The job assignment of an employee with a disabling infectious disease shall be reevaluated whenever there is a change in medical knowledge or in the employee's medical regimen or health which might affect his/her assignment.

Confidentiality

Note: The California Health and Safety Code prohibits testing an individual's blood for evidence of AIDS antibodies without the written consent of the person being tested. The law also prohibits all unauthorized disclosure of such tests results. Release of any information from an employee's medical records can subject the district, Board members, Superintendent and/or other staff to substantial legal liability.

The Board and the Superintendent or designee shall ensure that employee rights to confidentiality are strictly observed. The district shall disclose medical record information only to the extent required or permitted by law. The medical records of any employee with a disabling infectious disease shall be held in strict confidence.

Note: Before adopting policy in this area, the district should consult with legal counsel regarding its obligation to meet and/or negotiate with employee representatives about the policy and its effects on collective bargaining unit members. Legal counsel should also be consulted regarding proposed reasonable accommodation which includes reassignment, leave of absence, or other topics addressed in the collective bargaining agreement.

Legal Reference:

CIVIL CODE

56-56.37 Confidentiality of medical information

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

HEALTH AND SAFETY CODE

120975-121020 Mandated blood testing and confidentiality to protect public health

CODE OF REGULATIONS, TITLE 2,

7293.5 et seq.

UNITED STATES CODE, TITLE 29

701-797a Rehabilitation Act of 1993

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

COURT DECISIONS

School Board of Nassau County, Fla. v. Arline, 408 U.S. 273 (1987)

CSBA: (6/88) 12/91

CVUSD Global Adoption: August 19, 2008