

General Personnel

Administrative Procedure - Communicable and Chronic Infectious Disease

The following procedures will be implemented when a District employee has a communicable and/or chronic infectious disease. A copy of the procedures will be given to the employee.

The District shall not discriminate against an employee disabled by a communicable or chronic infectious disease. An employee with a communicable and/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.

Evaluation of the Employee's Condition

1. The employee who has or is suspected of having a communicable and/or chronic infectious disease is encouraged to self-report to inform the Superintendent immediately.
2. Upon having knowledge of a known or suspected case of a communicable and/or chronic infectious disease, the Superintendent or designee:
 - a. Notifies the *local health authority*¹ as required by 77 Ill.Admin.Code §690.200 and within the time frames required by 77 Ill.Admin.Code §690.100, and
 - b. Follows directions for temporarily excluding an employee from school according to local health authority direction and 77 Ill.Admin.Code Part 690. See also Exhibit 7:280-E2, *Reporting and Exclusion Requirements for Common Communicable Diseases*, identifying the diseases for which there is mandatory reporting.
3. The Superintendent will inform the Communicable and Chronic Infectious Disease Review Team (CCIDRT) within three days.²
4. The Communicable and Chronic Infectious Disease Review Team CCIDRT will meet within three days to:
 - a. Meet with the employee or a member of the employee's family to review the status of the employee's health, and
 - b. Evaluate the employee and submit a written report with recommendations to the Superintendent.
5. The School Board will receive a report, both written and verbal, of the Communicable and Chronic Infectious Disease Review Team CCIDRT's evaluation from the Superintendent.

The footnotes should be removed before the material is used.

¹ The *local health authority* is a full-time official health department, as recognized by the Ill. Dept. of Public Health (IDPH), having jurisdiction over a particular area, including city, village, township, and county boards of health. If there is not a local health authority recognized by the Ill. Dept. of Public Health (IDPH), the local health authority is IDPH. 77 Ill.Admin.Code §690.10. The Communicable Disease Report Act, 745 ILCS 45/1, grants immunity from slander or libel to persons who in good faith make such reports to local health authorities. A district's duty to report staff cases of communicable diseases aligns with its duty to report student cases; see sample administrative procedure 7:280-AP, Managing Students with Communicable or Infectious Diseases.

² 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 Communicable and Chronic Infectious Disease Review Team's (CCIDRT) ability to operate depends on the employee's waiver of the ADA's confidentiality provisions. For more information about the functions of the CCIDRT, see sample administrative procedure 2:150-AP, Superintendent Committees.

6. The employee or a member of the employee's family will receive a report, both written and verbal, of the ~~Communicable and Chronic Infectious Disease Review Team~~ CCIDRT's evaluation from the Superintendent.
7. The employee may be required to submit to a physical examination, given by a physician chosen and paid for by the District.³

Monitoring the Employee's Condition

The employee's health condition will be reviewed on a schedule determined by the ~~Communicable and Chronic Infectious Disease Review Team~~ CCIDRT. The CCIDRT's employee status report will be given to the Superintendent.

Each status report will indicate an employment recommendation for the employee, such as:⁴

1. Continued employment at the same position, with possible accommodations,
2. Continued employment but transfer to another position, with possible accommodations,
3. Temporary exclusion from the work-place, or
4. Dismissal.

Employee Dismissal

The dismissal of an employee on contractual continued service shall be in accordance with 105 ILCS 5/24-12.

The dismissal of an employee not on contractual continued service shall be in accordance with the law or policy applicable to his or her position.

Confidentiality⁵

The employee's medical condition and records shall be held in strictest confidence and shared only with members of the ~~Communicable and Chronic Infectious Disease Review Team~~ CCIDRT, the

The footnotes should be removed before the material is used.

³ The federal ADA supersedes 105 ILCS 5/24-5 (allowing boards to require physicals of current employees "from time to time"). 42 U.S.C. §12112(d)(4), amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325. The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program. *Id.* Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level. 42 U.S.C. §12113; 29 C.F.R. ~~§Part~~ 1630.2(r). Districts should monitor for supplemental guidance that is issued by federal and State agencies during specific disease outbreaks. For example, during the COVID-19 pandemic, the Equal Employment Opportunity Commission (EEOC) and State agencies released guidance that detailed what types of medical inquiries related to COVID-19 were permissible under the ADA and Ill. Human Rights Act. See the State's *Guidance for Employers and Employees on Workers' Rights and Safety* (12-9-20), at: <https://labor.illinois.gov/content/dam/soi/en/web/idol/siteassets/pages/default/guidance-on-workers-rights-and-safety.pdf> ~~www2.illinois.gov/dhr/Documents/Guidance%20on%20Workers%20Rights%20and%20Safety%2012-9-20.pdf~~ and the EEOC's *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* (12-14-21), at: www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eco-laws.

⁴ A district must make reasonable accommodation to a known physical or mental limitation of an otherwise qualified employee, unless it can show that the accommodation would impose an undue hardship on the district's operation. 42 U.S.C. §§12112 and 12113, amended by the ADAAA.

⁵ The 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)(3). The ~~CCIDRT~~ review team's ability to operate depends on the employee's waiver of the ADA's confidentiality provisions.

employee's direct supervisor, and someone who would need to know in the event of an emergency. Medical records will not become part of the employee's personnel file.

DRAFT

The footnotes should be removed before the material is used.

Discuss with the board attorney whether the district is a covered entity as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191. Covered entities must follow HIPAA Privacy Rules (45 C.F.R. Part 164) and generally cannot disclose *protected health information* (PHI), which is generally defined as *individually identifiable health information* that is transmitted by, or maintained in, electronic media or any other form or medium. While a district is likely to have access to such information when an employee has a communicable or chronic infectious disease, the district is still unlikely a *covered entity* triggering HIPAA Privacy Rule.

See *HIPAA Privacy Rule and Public Health; Guidance from CDC and the U.S. Department of Health and Human Services* at: www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm, and for an additional helpful explanation why school districts are often not HIPAA covered entities because they do not engage in covered transactions as defined under HIPAA, see pgs. 7-8 in *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records (2019)* at: www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance-508.pdf.