

Know Your Rights



Disclosure in school and daycare



Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

The information contained in this publication is information about the law, but it is not legal advice. For legal advice, please contact a lawyer in your region.

Copies of this brochure are available at www.aidslaw.ca



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I. When do I need to disclose my child's status to a school or daycare?

In most cases, there is no legal obligation to tell a school or daycare that your child has HIV. Whether you disclose your child's HIV status at school or daycare, and to whom, should be entirely up to you. Your child's personal health information, including HIV status, is private, personal information.

HIV is not transmitted through casual contact or through vomit, sweat, stool, urine, tears or nasal secretions. Children do not catch HIV by going to school or sharing toys, food and drink with someone who is infected, so there is usually no reason for a school to require disclosure.

Parents of younger children in daycare settings may be more concerned about the risk of HIV transmission through spitting, scratching and biting. However, contact with saliva alone has never been shown to result in transmission of HIV, and there is no documented case of transmission that resulted from a person living with HIV spitting on another person. Similarly, there is no risk of transmission from scratching because there is no transfer of body fluids between individuals. HIV transmission

through biting is extremely rare.

Documented cases where transmission did occur included severe trauma with extensive tissue damage and the presence of blood.

The only time there is a need to inform school authorities of your child's HIV status is if it is required for the protection of the child or the public. In the unlikely event that this notification is necessary, school authorities should keep to an absolute minimum the number of staff members who are made aware of your child's condition.

Canada's human rights laws prohibit discrimination based on disability when providing services, including education. HIV and AIDS are considered disabilities under the law. This means that a school cannot inquire about your child's HIV status, just as it cannot ask about your child's religion or other similar personal characteristics. It would be unlawful discrimination for school authorities to request this information as a condition of acceptance or continuation in the school.

2. If I tell someone at school or daycare that my child has HIV, do they have to keep it confidential?

It depends on whom you tell. If you disclose your child's HIV status to a school authority (e.g., a principal, teacher, counsellor, administrative staff, or others working in an official capacity at school), that person must keep this information confidential — with one significant exception explained further below. Legally, the school cannot disclose information about a student's HIV status — or other medical information — to others (e.g., parents, teachers, other students) without your consent, except in rare circumstances.

A child's medical record is confidential and cannot be released by school personnel without the permission of the parent. If HIV status is recorded in your child's file at the school's health or counselling services, it is considered confidential information and should not be shared with other school staff.

Even if you did not disclose your child's HIV status to a school authority but a school authority becomes aware of the information through another source, your child's right to privacy must still be respected. The information must be kept strictly confidential and the number of persons who are aware of the diagnosis must be limited by their need to know.

However, in some provinces (e.g., Alberta, Ontario, Newfoundland, Nova Scotia, Prince Edward Island), school authorities are legally obligated to report a student in the school who has or may have HIV to the provincial Medical Officer of Health, who has an obligation to keep this information confidential.

Daycares are also subject to privacy legislation, so if you disclose your child's HIV status to a daycare provider, they are also obliged to keep this information confidential, unless you consent to disclosure. This duty of confidentiality continues to apply even after your child leaves daycare.

In most provinces and territories, the legal obligation to keep your child's HIV status confidential *does not apply to a classmate or any other person at the school or daycare who is not acting in an official capacity*. This is because most privacy laws do not protect the flow of information between individuals. Where there may be a legal cause of action for breach of privacy between private citizens (as is the case in some provinces), there are limited circumstances in which a person will be found liable.

In practice, it is often difficult to control the flow of information at school or daycare, and legal remedies are limited if a breach of privacy occurs. Federal, provincial and territorial privacy laws protect the confidentiality of an individual's personal information, including health information in official school or daycare records. If you believe that your child's privacy has been violated by their school or daycare, contact a lawyer, legal clinic or your provincial/territorial privacy commissioner for advice.

For more information on remedies for breach of privacy, see **“Remedies for discrimination and privacy violations in the workplace”** in this series. Much of that information is also applicable in the school and daycare context.

3. If I tell someone at school that my child has HIV, will it be recorded in my child's school file?

School authorities are required to safeguard students' medical information, including a student's HIV status. A school authority may record HIV status in your child's student record, but this information should remain exclusively with designated personnel in a secure filing

system to protect your child's privacy.

In some jurisdictions (e.g., B.C. and Ontario), health information may be kept together with your child's academic record. However, access to this information should be limited and only accessible to designated school personnel.

4. What if I haven't yet told my child that they are HIV-positive, but the school, daycare or other caregiver knows?

If your child's caregiver works in an official school or daycare capacity, the caregiver has the same legal obligation to keep your child's HIV status confidential, including from the child. In most provinces

and territories, this legal obligation does not apply if your child's caregiver is not acting in an official school capacity (e.g., as a babysitter).

5. When do I need to disclose my child's HIV status in other settings (e.g., to a babysitter, during a sleepover, to the head of my child's sports team)?

As with school and daycare, in most cases there is no legal obligation to disclose your child's HIV status in other settings because HIV is not transmitted through casual contact. If your child plays sports, the Canadian Academy of Sport Medicine has concluded, "The risk of transmission of HIV in the sport setting is exceedingly low. ... Participants in sport are subject to the

same risks of HIV infection as any other individual in the general population."

The only time there is a need to inform others of your child's HIV status is when required for the protection of the child or the public. However, in most provinces and territories, there is no legal obligation on other parents (e.g., a volunteer parent sports coach) to maintain your child's confidentiality.

6. Will my child's activities be restricted as a result of HIV-positive status?

There is a negligible risk of HIV transmission through casual contact between a child living with HIV and other children. Children living with HIV should be able to participate in activities without restriction. In some provinces, the Medical Officer of Health may find that there are special circumstances (e.g., behavioural or neurological conditions) that necessitate some restriction. However, the need for any possible restrictions on your child's activities should be reassessed periodically by the Medical Officer of Health and the child's physician.

Regardless of whether a school or daycare is aware of any children living with HIV among the students or children in its care, standard precautions should be employed in all cases where there is contact with blood or bodily fluids. Schools and daycares should have emergency protocols in place and all personnel should be aware of correct first aid procedures and be able to apply these procedures. It is the responsibility of the school or daycare to ensure that personnel are competent in administering the correct practices in these scenarios.

7. Can my child's school accommodate my child?

Once a child has identified a need related to a disability (such as HIV), a school has a duty to accommodate the student to allow equal access to school services, up to the point of "undue hardship." The right to equal treatment and the duty to accommodate exist for publicly and privately funded early childhood pre-schools, elementary schools and secondary schools.

If you request accommodation from your child's school, you will be required to provide information about your child's HIV-related needs to facilitate the accommodation. In most cases, this does not require you to inform school authorities of your child's HIV status, or to provide specific medical information such as a diagnosis, since this will not usually be relevant to or necessary for planning accommodation. School authorities should strive to accommodate a student's needs without requiring a formal diagnosis.

However, there may be some cases where a school requires more specific information about your child's condition in order to make accommodation, including in some cases medical confirmation of the condition. When a medical diagnosis

is necessary, your child's school is responsible for ensuring your child's confidentiality (subject to the exceptions mentioned above), requesting information that is limited to that which is specifically needed for accommodation, and only sharing information about the student's condition with those responsible for administering the accommodation.

There is no blanket approach to accommodation and a school must accommodate each student's unique needs. Forms of accommodation could range from modifications to improve the physical accessibility of a school, to modified curricula or approaches to evaluation, to in-class assistance from specialized professionals (e.g., tutors, note-takers, personal readers), to transportation to and from school.

The standard for undue hardship is high, and only three factors are to be considered: cost, outside sources of funding, and health and safety. The burden of proof is on the school claiming undue hardship, and there must be evidence (e.g., facts, figures and scientific data or opinion) to support the claim that the proposed accommodation in fact causes undue hardship.

8. What protection does a person have against discrimination and harassment at school?

If you believe your child is being discriminated against or harassed at school, you should try to keep a record by documenting relevant details of the discrimination (e.g., dates, descriptions of the incidents, names and contact information of witnesses, if any, copies of all relevant e-mails, text messages, postings on social media, letters and documents).

Most schools, formal childcare providers and school boards have extensive policies and procedures in place to address various forms of discrimination and harassment. It is their responsibility to provide safe and caring environments and most take bullying, discrimination and harassment very seriously. Your child's teacher, principal or the director of the daycare centre may therefore be the best people to speak with first in order to find support for your child and to stop the harassment.

Under human rights law, you are protected from HIV-related discrimination and harassment (which is considered a form of discrimination) at school. In most jurisdictions, the applicable human rights commission offers information and services to people who believe they have suffered discrimination. Many complaints are settled through mediation. If mediation efforts are unsuccessful, the commission will decide whether to refer the case to a human rights tribunal for a hearing. If the commission decides not to refer the case to a tribunal, it will be the end of the complaint.

The procedures and services available in each province or territory vary, so contact the appropriate commission for detailed information.

In B.C., Ontario and Nunavut, complaints are filed directly with the provincial or territorial human rights tribunal, rather than with the commission. Note that there is usually a "limitation period," which means you must file your complaint within a certain period of time after the discrimination takes place. Often this period is one year, but check with the relevant commission or tribunal.

Filing a human rights complaint is free of charge. You do not need a lawyer to represent you, although you may choose to have one. If you hire a lawyer, it will be at your own expense, unless you are able to get free services through a legal clinic or other legal aid service. The human rights commission or tribunal you contact can suggest resources of these sorts that may be available. Remember that many different people and organizations can provide you with information and support, but only a lawyer can give legal advice specific to your individual situation.

For more information on what you can do if your child experiences discrimination at school, see "**Remedies for discrimination and privacy violations in the workplace**" in this series. Much of that information is also applicable in the educational context. Seek legal advice from a lawyer or legal clinic about your own personal situation.

For further information

- The Charter in the Classroom: Students, Teachers and Rights, "Concept 8: Equality — Accommodation of Difference" and "Concept 9: Equality — Protection from Discrimination." On-line: www.thecharterrules.ca.
- The National Educational Association of Disabled Students (NEADS): www.neads.ca.
- Ontario Human Rights Commission, "Guidelines on Accessible Education" (2004; revised 2009). On-line: www.ohrc.on.ca.
- Ontario Human Rights Commission, "Consultation paper: Education and disability — Human Rights issues in Ontario's education system" (2006). On-line: www.ohrc.on.ca.
- College of Physicians & Surgeons of Ontario, "Blood-borne Pathogens," Policy #3-12 (1998; revised 2005, 2012). On-line: www.cpsso.on.ca ("Policies").
- Comité d'adaptation de la main d'œuvre pour personne handicapée, « Diagnostic sur la formation des personnes handicapées » (2014). On-line: www.camo.qc.ca/documentation/diagnosticformation.php.

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