

What to do when it's more than a bug:

How School Boards can prepare for,
prevent, and react to the spread of
infectious diseases.

Andrea E. White, Esq.

Lindsay Anne Thompson, Esq.

Duff, White & Turner, LLC

Infectious Diseases in Schools

- Schools can be breeding grounds for all kinds of infectious diseases.
- Students and staff are in close proximity to one another for seven or more hours each day. Young children may have poor personal hygiene.
- Certain individuals in schools, such as those who are immunocompromised, in poor health, or deemed “medically fragile,” can be at a greater risk of contracting serious and potentially deadly diseases.
- South Carolina law and district policies only partially guide school districts in dealing with communicable diseases.

State Laws

- Testing Prior to Employment
 - Pursuant to state law, all employees are required to have tuberculosis tests prior to their first employment in a school district.
 - Employees must submit a DHEC form, signed by a doctor that states if the employee is negative for TB, of if the employee is positive for TB, how the employee is being treated
 - State law does not require employees to be tested for any other disease to be employed in a district.

State Laws

- Vaccination Laws:
 - there are state regulations that describe all of the vaccinations students must receive and at what age they must receive them.
 - in SC, there are three exemptions from the vaccination requirements
 1. medical exemption (generally for medically fragile students when certain vaccines may compromise their health);
 2. Administrative exemption (30-day special exemptions given by administration when waiting for records transfers);
 3. Religious exemption (To obtain the religious exemption, the parent must submit a notarized form to DHEC stating that they are members of a recognized religious denomination in which the tenets and practices of the religious denomination conflict with immunizations.)

State Laws

- DHEC has exclusionary lists that describe the procedures for dealing with students with the most common school-age diseases and infections, such as chickenpox, head lice, ringworm, and whooping cough.
- The exclusionary lists give specific guidelines for how long students should be excluded from school, what must happen before the student can return to school, and when the infection or disease should be reported to DHEC.
- The exclusionary lists contain a statement that DHEC has determined that certain diseases/infections must be reported to DHEC immediately. These reports do not violate FERPA, as they are included under the “health and safety emergency” exception to FERPA’s parental consent requirements.

State Laws

- SC has a state statute dealing with students with HIV/AIDs. (SC Code Ann. 44-29-135(f))
- That statute states that if a public school student in grades K-5 has HIV or AIDS, DHEC must notify the school district superintendent and the nurse or other health professional assigned to the school the student attends that the student has HIV/AIDS. This notification and information contained in the notification must not be recorded in the child's permanent record, but that information should be removed from the child's permanent record folder before the child enters the sixth grade.

District Policy

- Most districts have a communicable disease policy that contains wording such as, “The district will not automatically exclude students with a serious communicable disease from school attendance. When a child has a physical condition that would interfere with his/her ability to learn or would expose other students to infection, the superintendent, after consultation with appropriate authorities, will make the decision regarding attendance.”
- Most of these policies reference the HIV/AIDS statute and include the district’s head lice policy, but generally there is no other information included about other diseases.
- Accordingly, most districts have very little guidance on dealing with serious and harmful diseases that could affect students and staff.
- Consider how you as a school board member would handle the following situations.

Scenario One

- Employee A, a school secretary, has been feeling sick for several weeks, but she has not missed any work. She is over 70 years old, and has not been in the best of health for a few years. Eventually, she fails to return to work and sends a note from her doctor stating that she will not be able to return to work. The note does not say what illness Employee A is being treated for, but the school staff assumes she has cancer.
- A few weeks after Employee A leaves work, the superintendent is contacted by a SC DHEC employee who wants to tour the school where Employee A worked to learn more about Employee A's working environment and her work contacts. While the DHEC employee is on campus, the superintendent learns that she works in DHEC's tuberculosis division, but, due to confidentiality concerns, she cannot tell you whether Employee A has been diagnosed with TB.

Scenario One (con't)

- The superintendent remains in contact with the DHEC employee, but he is never informed whether Employee A has TB or not.
- The employees who worked most closely with Employee A are tested by DHEC and cleared to return to work immediately. Their “return to work” notes do not say what disease they were tested for, but it is generally understood that they were tested for TB.
- You know that all of your employees had to have TB tests to work for the district, but many of those employees took their TB tests more than 20 years ago.
- What action should the school board take?

Scenario Two

- A family with three school-age children moves to your district from a country where thousands of people are suffering from a widespread, highly contagious, and deadly disease.
- No one in the family has shown any symptoms of the disease, and all of the children have had the required immunizations. The family is able to provide all of the required paperwork for enrollment.
- The students are in middle and high school, and the principals of those two schools are afraid that allowing these students to enroll could place the entire student population at risk of contracting this deadly disease. The principals take the issue to the superintendent, who in turn wants to discuss the matter with the board.
- If you were a board member in this district, what steps would you take?

Scenario Three

- Your district, like all SC districts, requires students to have the appropriate vaccines before enrolling in school. A parent of a child with autism petitions the school board to ask for an exception to the vaccination requirement.
- The parents state that they have a firmly held belief that the first series of vaccines their son took caused his autism. They refuse to allow their son to receive any further vaccinations for fear that the vaccines will cause his autism to worsen.
- They have a letter from the son's doctor stating that the vaccines may worsen the son's condition, but the doctor cannot attest to that with a medical certainty. They do not have a medical exemption form from DHEC.

Scenario Three (con't)

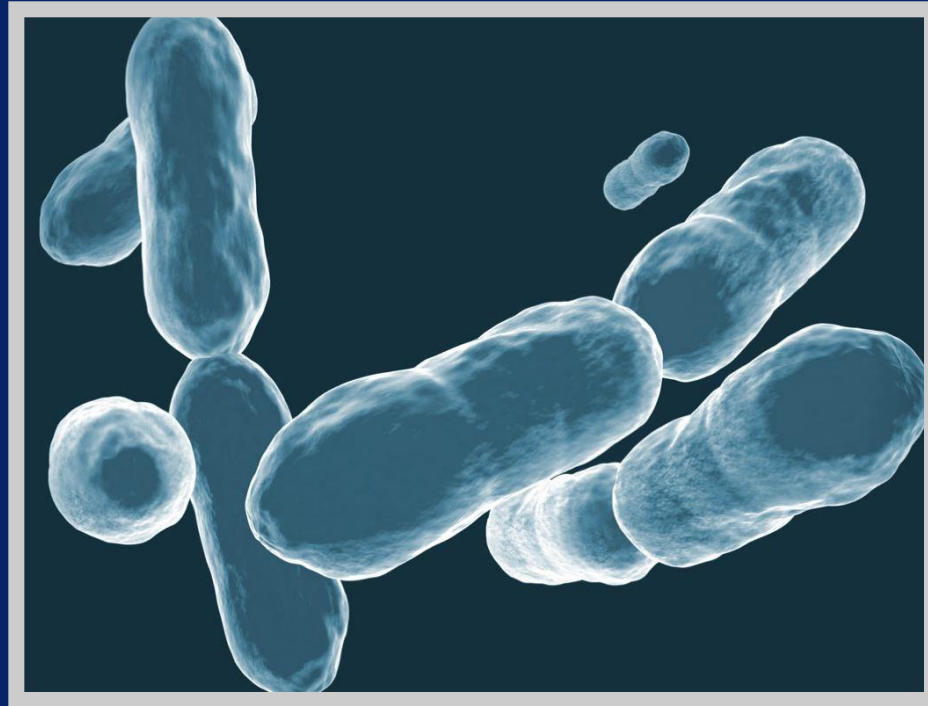
- The parents claim that if their son is not allowed to enroll in school immediately, they will file a claim of disability discrimination against the district with the US Office for Civil Rights. The parents state that because they believe the vaccines will cause their son's disability to worsen, that not allowing him to enroll without the vaccines is discrimination against their son based on his autism.
- Your school board does not want to face a claim of discrimination, but you know that if all students do not have their proper immunizations, an outbreak of a serious disease could occur.
- What should the school board decide?

Scenario Four

- Employee B has been diagnosed with HIV, the virus that causes AIDS. She receives blood transfusions on a regular basis, but is completely symptom-free. She takes sick leave days for the transfusions, but has never gone over her sick-leave allotment.
- Employee B works as a special education teaching assistant, and she is a model employee. All of the students and staff adore her.
- Employee B requests a day of sick leave from her principal so that she can have a blood transfusion. The principal asks Employee B why she needs a day of sick leave, and Employee B states that she is having a medical procedure. The principal continues to badger Employee B until Employee B reveals that she has HIV and is receiving a blood transfusion.

Scenario Four (con't)

- The next day, the principal calls Employee B into her office. She informs Employee B that when she returns from her blood transfusion, she will be assigned to a new position in the bookroom. Employee B will receive the same pay and benefits, but she will no longer have any contact with students and only limited contact with staff members.
- Employee B files a grievance, stating that the principal has violated the District's anti-discrimination policy. The grievance eventually gets to the school board, and the board decides to hear it.
- Based on the information presented, how would you vote in Employee B's grievance hearing?



Questions?