

# Laws and Model Policies that Affect School Health Service Programs in Michigan

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As schools plan for the health needs of children, instruction, and safe learning environments, there must be a foundation upon which they are based. Legal standards and model policies are key to the foundation for administering school health services. Legal standards include federal laws, federal regulations and Supreme Court decisions; state laws and state regulations; local ordinances, policies and procedures; and professional standards of practice (Laubin, Schwab and Doyle, 2012). It is imperative that school policies are in accordance with laws and standards of practice to ensure ethical and legal school health practices along with protecting student health and safety.

There are a full range of laws and regulations relevant to school health service programs. **This document does not cover the entire current legal and policy landscape for school health services and new laws are continually enacted.** This guide provides an overview of federal and state laws that can establish parameters for policy options concerning Michigan school health services. Links to the specific federal or state law are included. **This document is offered as a resource to guide policy and procedure development but it is not intended as a substitute for legal counsel.** As part of any policy development, legal review should be required. Laws are hyperlinked.

FEDERAL STATUTES	
<a href="#">Americans with Disabilities Act of 1990 (ADA)</a>  ADA Amendments Act of 2008 <a href="https://www.eeoc.gov/laws/statutes/adaaa.cfm">https://www.eeoc.gov/laws/statutes/adaaa.cfm</a>	Disability discrimination prohibited.  An Act to restore the intent and protections of the Americans with Disabilities Act of 1990.
<a href="#">Autism CARES Act of 2014</a>	The law has specific goals of increasing awareness of ASD, reducing barriers to screening and diagnostic services, improving evidence-based research, and increasing training of professionals to provide screening and intervention for persons with ASD.
<a href="#">Section 504, Rehabilitation Act of 1973</a>	Protects the rights of children with special health-care needs (CSHCN) by providing related services, including health services, to those not eligible for special education.
<a href="#">CPL 2-2.69 (November 27, 2001)</a>	Revised Bloodborne Pathogens Standard; expands bloodborne pathogens to include any pathogenic microorganism, including hepatitis C virus (HCV) present in blood or other potentially infectious materials (OPIM).
<a href="#">Every Student Succeeds Act (ESSA)</a>	This Act reauthorizes the 50-year-old Elementary and Secondary Education Act (ESEA), the nation's national

<sup>1</sup> Adapted from Legal Issues Affecting School Nurse Practice Michigan Association of School Nurses, July 10, 2003, (Updated 2009; 2014; 2016).

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	education law and longstanding commitment to equal opportunity for all students. ESSA replaces No Child Left Behind.
<a href="#">29 CFR Part 1910 (December, 1991)</a>	Occupational safety; Bloodborne Pathogen Standard.
<a href="#">Civil Rights Act of 1991</a>	Applies to employee discrimination. Prohibits discrimination on basis of disability.
<a href="#">34 CFR Part 300 Individuals with Disabilities Act of 1997 (IDEA)</a>	Guarantees access to education and related services to assist children with disabilities benefit from special education. <a href="#">Reauthorization of 2004, Sec. 602 (26)</a> list school nurse services as a related service.
<a href="#">34 CFR 99 Family Educational Rights and Privacy Act (FERPA)</a>	Provides privacy restrictions on student records. School health records are covered under this act. At the elementary or secondary school level, students' immunization and other health records that are maintained by a school district or individual school, including a school-operated health clinic, that receives funds under any program administered by the U.S. Department of Education are "education records" subject to FERPA, including health and medical records maintained by a school nurse who is employed by or under contract with a school or school district. Some schools may receive a grant from a foundation or government agency to hire a nurse. Notwithstanding the source of the funding, if the nurse is hired as a school official (or contractor), <b>the records maintained by the nurse or clinic are "education records" subject to FERPA.</b> (United States Department of Education, Office of Elementary and Secondary Education (2008).
<a href="#">PL 104-91 Health Insurance Portability and Accountability Act of 1996 (HIPAA)</a>	Provides privacy restrictions on student records. When a school provides health care to students in the normal course of business, such as through its health clinic, it is also a "health care provider" as defined by HIPAA. If a school also conducts any covered transactions electronically in connection with that health care, it is then a covered entity under HIPAA. As a covered entity, the school must comply with the HIPAA Administrative Simplification Rules for Transactions and Code Sets and Identifiers with respect to its transactions (United States Department of Education, Office of Elementary and Secondary Education (2008).
<a href="#">Head Start Programs</a>	Head Start Program requirements include a physical exam based on EPSDT guidelines; dental exam; immunizations;

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	<p>vision; hearing and developmental screening and a nutritional snack and lunch. Head Start Programs do not have to have nurse on staff, yet 10% of the enrolled HS children must have a disability, some of these are related to health needing medication or treatments during their time in school.</p>
<p><a href="#">CAPTA Reauthorization Act of 2010</a> <a href="#">P.L. 111-320</a></p>	<p>Purpose: To amend and reauthorize the Child Abuse Prevention and Treatment Act, the Family Violence Prevention and Services Act, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and the Abandoned Infants Assistance Act of 1988, and for other purposes.</p>
<p><a href="#">Justice for Victims of Trafficking Act of 2015</a> <a href="#">P.L. 114-22</a></p>	<p>Enacted May 29, 2015 Purpose: To provide justice for the victims of trafficking through grants to States for child abuse investigation and prosecution programs, services for victims of child pornography, and domestic child human trafficking deterrence programs. The act also authorized specialized training programs for law enforcement officers, first responders, health-care and child welfare officials, juvenile justice personnel, prosecutors, and judicial personnel to identify victims and acts of child human trafficking and to facilitate the rescue of child victims of human trafficking.</p>
<p><a href="#">18 U.S. Code § 116 - Female genital mutilation</a></p>	<p>The federal law addressing Female Genital Mutilation (FGM) in the U.S. makes it illegal to perform FGM in the U.S. or knowingly transport a girl out of the U.S. for purpose of inflicting FGM (Equity Now, 2016).</p>
<p><a href="#">Asthmatic Schoolchildren’s Treatment and Health Management Act of 2003, Public Law 108-377</a></p>	<p>Gives preference for asthma-related federal grants to states that require every elementary and secondary school, public and private school to allow students to self-administer medication for asthma or anaphylaxis.</p>
<p><a href="#">Title IX, Education Amendments of 1972 (Title 20 U.S.C. Sections 1681-1688)</a></p>	<p><b>Prohibition against discrimination; exceptions.</b> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.</p> <p>The U.S. Department of Justice and the U.S. Department of Education provides a guidance letter about civil rights protection for transgender students. The letter can be retrieved from <a href="http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf">http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf</a></p>

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<p>Title IV and Title VI of the Civil Rights Act of 1964</p> <p><a href="http://www.justice.gov/crt/title-vi-civil-rights-act-1964-42-usc-2000d-et-seq">Http://www.justice.gov/crt/title-vi-civil-rights-act-1964-42-usc-2000d-et-seq</a></p> <p><a href="http://www.justice.gov/crt/types-educational-opportunities-discrimination">http://www.justice.gov/crt/types-educational-opportunities-discrimination</a></p>	<p>Title IV does not prohibit discrimination based solely on sexual orientation, but they protect all students, including students who are LGBT or perceived to be LGBT, from sex-based harassment.</p> <p>When bullying based on religion is severe, pervasive, or persistent, the Department of Justice’s Civil Rights Division may be able to intervene under Title IV of the Civil Rights Act.</p> <p>Often religious harassment is not based on the religion itself but on shared ethnic characteristics. When harassment is based on shared ethnic characteristics, the Department of Education’s Office for Civil Rights may be able to intervene under Title VI of the Civil Rights Act.</p>
<p><a href="#">Title VI of the Civil Rights Act of 1964</a></p>	<p>Emergency plans must comply with legal requirements for language access.</p>
<p><a href="#">Food and Drug Administration (FDA) Food Safety Modernization Act (FSMA)</a></p>	<p>The FDA Food Safety Modernization Act (FSMA) enables FDA to better protect public health by strengthening the food safety system.</p>
<p><a href="#">Public Law 108-265 Section 204</a></p>	<p>LOCAL WELLNESS POLICY – became law June 30, 2004 as part of the Child Nutrition and WIC Reauthorization Act of 2004. Local education agencies shall establish a local school wellness policy. The policy includes goals for nutrition education, physical activity, nutrition guidelines for all foods sold on campus, assure that school meals meet USDA regulation, establish plan for measuring implementation of wellness policy, involve students, parents, representatives of school food authority and others.</p>
<p><a href="#">USDA Healthy, Hunger-Free Kids Act of 2010</a></p> <p><a href="#">USDA Healthy, Hunger-Free Kids Act Updates</a></p>	<p>The legislation authorizes funding and sets policy for USDA's core child nutrition programs. The Healthy, Hunger-Free Kids Act allows USDA an opportunity to make real reforms to the school lunch and breakfast programs by improving the critical nutrition and hunger safety net for millions of children.</p> <p>Includes all final rules to HFFK of 2010 as of July 2016</p> <p>The USDA recently announced guidance for schools in ensuring access to healthy food, nutrition standards for foods sold at school, and greater integrity for school wellness policies, Includes final rules on "Smart Snacks in School", "Local School Wellness Policy", "Community Eligibility Provision" &amp; "Administrative Review".</p>

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<p><a href="#">McKinney-Vento Homeless Education Assistance Act</a></p>	<p>The <a href="#">McKinney-Vento Homeless Education Assistance Act</a> is a federal law that ensures equal access to education for homeless youth. Homelessness is not sufficient to bar a student from mainstream education. McKinney-Vento provides federal funding to states for the purpose of supporting district programs that serve homeless students.</p>
<p><a href="#">Protection of Pupil Rights Amendment (PPRA) (20 U.S.C., sec. 123h, 34 C.F.R., Part 98)</a></p>	<p>Provides mandates to school districts for the protection of student’s privacy in any program funded by the U.S. Department of Education. One section discusses limits on surveys, analysis or evaluation.</p>

<b>Michigan General Statutes – School Health</b>	
<b>Anaphylaxis – Non-Specific Epinephrine</b>	
<p><a href="#">PA 186 of 2014</a></p>	<p>Addresses stock epinephrine in schools. A prescriber may issue a prescription for and a dispensing prescriber or pharmacist may dispense an auto-injector epinephrine to a school board for meeting the requirements of section 1179a of revised school code, 1976, PA 451, MCL 380.1179a.</p>
<p><a href="#">PA 187 of 2014</a></p>	<p>Requires each Michigan public and nonpublic school to have at least two Epinephrine auto-injectors in addition to policies based on updated medication guidelines, training requirements and reporting requirements.</p>
<p><a href="#">PA 221 of 2015</a></p>	<p>Allows prescribers to prescribe and pharmacists to dispense auto-injectable epinephrine to authorized entities under certain circumstances and limit liability. This would include non-public schools.</p>
<b>Asthma</b>	
<p>§ <a href="#">380.1179</a></p>	<p>Allows pupil to carry and self-administer prescribed inhalers and/or epinephrine auto-injector for emergency use with the written order and approval of the child’s physician and written permission of the parent/legal guardian.</p>
<p><a href="#">Model Policy on the Management of Asthma in Schools</a></p>	<p>Model policy from the Michigan Department of Education (2004). Note: Not a law.</p>
<b>Autism</b>	
<p>Autism Coverage Fund <a href="#">Public Act 99 of 2012</a> <a href="#">Public Act 100 of 2012</a> <a href="#">Public Act 101 of 2012</a></p>	<p>Michigan’s Autism Insurance Reform legislation (PA 99 and PA 100 of 2012) went into effect on October 15, 2012. For-profit, commercial, HMO, and non-profit health insurance companies regulated by the state of Michigan are mandated to provide an autism benefit to its insured members covering services related to the diagnosis and treatment of autism spectrum disorders (ASD) through 18 years of age.</p>

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<p><a href="#">Federal Centers for Medicare and Medicare (CMS) Bulletin for Policy Guidance on Services to Children with ASD (July 7, 2014)</a></p> <p><a href="#">Medicaid Early Periodic Screening Diagnostic and Treatment (EPSDT) Benefit</a></p> <p><a href="#">Michigan ASD Medicaid Benefit</a></p>	<p>An informational bulletin published in July 2014 clarifying Medicaid coverage of services for children with ASD under the federal Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit.</p> <p>Michigan’s Medicaid treatment coverage of ASD in children, covering Behavioral Health Treatment, including Applied Behavior Analysis, services to individuals with Autism Spectrum Disorder</p>
<b>Bullying</b>	
<p><a href="#">The REVISED SCHOOL CODE (EXCERPT) Act 451 of 1976. Michigan Compiled Law 380-1310b.</a></p> <p><a href="#">Michigan Compiled Laws Sexual Harassment Policy Section 380.1300a</a></p> <p><a href="#">Michigan Penal Code Act 328 of 1931.</a></p> <p><a href="#">Michigan Department of Education (2010). Model Anti-Bullying Policy</a></p>	<p>The board of a school district or intermediate school district or board of directors of a public school academy shall adopt and implement a policy prohibiting bullying at school, as defined in this section.</p> <p>School boards must adopt and implement a sexual harassment policy.</p> <p>Hazing is prohibited.</p> <p>Michigan Department of Education Anti-Bullying Policy</p>
<b>Bloodborne Pathogens</b>	
<p><a href="#">MIOSHA Standard 1209</a></p>	<p>Employer responsibilities to employee regarding training and response to exposure to blood borne pathogens.</p>
<p><a href="#">Michigan Department of Environmental Quality Epinephrine Auto-Injector Disposal Guide</a></p>	<p>Regulations for auto-injector disposal</p>
<b>Cardiac Emergency Response Plan</b>	
<p><a href="#">PA 12 of 2014</a></p>	<p>The governing body of a school that operates K-12 shall adopt and implement a cardiac emergency response plan for the school. The plan must include at least: 1) Use and regular maintenance of the auto external defibrillator, 2) Activation of a cardiac emergency response team during an identified cardiac emergency, 3) A plan for effective communication, and 4) If a school is grades 9-12 a training plan for use of an auto external defibrillator in CPR rescue techniques.</p>
<b>Child Protection</b>	
<p><a href="#">Child Protection Law-Act 238 of 1975. MCL 722.623</a></p>	<p>Delineates persons required to report child abuse or neglect; written report; transmitting report and results of investigation to prosecuting attorney or county family independence agency; pregnancy of or venereal disease in</p>

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	child less than 12 years of age. Section 8(8) of the Child Protection Law requires the school to cooperate with the investigation and to permit access “if access is necessary to complete the investigation or to prevent abuse or neglect of the child.”
<a href="#">§333.5131(5)(f)</a>	State records and reports related to HIV/AIDS are not confidential if information is required under the Child Protection Law.
<a href="#">6869 Op. Attorney Gen. 92 (1995)</a>	A child protective services worker may interview a child in the school setting without parental consent or school personnel involvement.
<b>Communicable Disease</b>	
<a href="#">§ 333.5111</a>	Establishes requirements for reporting and other surveillance methods for measuring the occurrence of diseases, infections, and disabilities and the potential for epidemics.
<b>Concussions</b>	
<a href="#">Public Act 137 of 2017 Section 333.9155 Amended</a>	Lists components of concussion awareness training program, MDHHS requirement to review programs and materials, provides definitions.
<a href="#">Section 333.9156 Amended</a>	Completion of training program every three years, training material requirements, removal of youth if concussion suspected, requirement for clearance from health professional
<a href="#">Public Act 342 of 2012</a>	Requires the Michigan Department of Health and Human Services development, adoption, and approval of educational and training materials for sports concussion awareness compliance.
<a href="#">Public Act 343 of 2012</a>	Requires Compliance of Sports Concussion Awareness Training for organizing entities, sponsors or operators of an athletic activity in which youth athletes will participate.
<b>Confidentiality</b>	
<a href="#">§ 600.2165</a>	Communication between teacher, guidance officer, school executive, or “other professional person” are confidential.
<b>Curriculum</b>	
<b>Sex Education, HIV Education, Health Education and Physical Education</b>	
<a href="#">§380.1502</a>	Requires that health and physical education for pupils of both sexes be established and provided in all public schools for students attending public school who are physically fit and capable of doing so must take the course in physical education.
<a href="#">§380.1169</a>	Requires that the principle modes by which communicable diseases including HIV/AIDS are spread and the best methods for preventing these diseases be taught in every Michigan



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	school. Also requires that each person who teaches K-12 about HIV and AIDS to be trained in HIV & AIDS.
<a href="#"><u>§380.1507</u></a>	<p>Instruction in sex education; instructors, facilities, and equipment; stressing abstinence from sex; elective class; notice to parent or guardian; request to excuse pupil from attendance; qualifications of teacher; sex education advisory board; public hearing; distribution of family planning drug or device prohibited; “family planning, class,” and “course” defined.</p> <p>A pupil shall not be enrolled in a class in which the subjects of family planning or reproductive health are discussed unless the pupil's parent or guardian is notified in advance of the course and the content of the course, is given a prior opportunity to review the materials to be used in the course and is notified in advance of his or her right to have the pupil excused from the class. The state board shall determine the form and content of the notice required in this subsection.</p> <p>Exclusion from HIV/AIDS instruction Parents may review HIV/AIDS curriculum, observe its instruction, and, if desired, excuse their child from these instructional units.</p>
<a href="#"><u>§380.1170</u></a>	Requires that school districts develop comprehensive school health education programs with special reference to substance abuse, including the abusive use of tobacco, alcohol, and drugs, and their effect upon the human system. A parent/guardian can excuse their child from instruction if the content of the curriculum is in conflict with his or her religious beliefs.
<b>Delegation and Scope of Practice</b>	
<a href="#"><u>§ 333.17201</u></a> <a href="#"><u>PUBLIC HEALTH CODE (EXCERPT)</u></a> <a href="#"><u>Act 368 of 1978</u></a>	Defines nursing scope of practice. The RN’s scope of practice includes the teaching, direction, and supervision of less skilled personnel in the performance of delegated nursing activities. Public Health Code, 1978 PA 368, as amended, recognizes registered nurses as fully licensed health professionals.
<a href="#"><u>§ 333.16104</u></a>	Defines delegation as the “authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee and which, in the absence of the authorization, would constitute illegal practice of a licensed profession”.
<a href="#"><u>§ 338.10104</u></a>	The Michigan Board of Nursing has promulgated specific administrative rules about delegation. In accordance with the Board of Nursing General Rules on Delegation, only a

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	registered nurse may delegate nursing acts, functions, or tasks.
<a href="#">§ 333.16109</a>	Supervision requires continuous availability of direct communication in person or by radio, telephone, or telecommunication between the supervised individual and a licensed health professional, the availability of the licensed health professional to review the practice of the supervised individual, to provide consultation to the supervised individual, to review records, and to further educate the supervised individual in the performance of the individual's functions.
<b>Diabetes</b>	
<a href="#">Model Policy on Diabetes</a>	Model policy approved by Michigan department of Education 2011. Note: Not a law.
<b>First Aid and CPR</b>	
<a href="#">Medical Services and First Aid</a> R325.47201, Part 472	MIOSHA - Guidelines indicate employer must adequately have a trained first aid certified person on site. [BSR/CET-5951 (11/01)] "in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees." An employer shall ensure that suitable facilities for quick drenching or flushing of the eyes and body are provided within the work area for immediate emergency use when the eyes or body of any person may be exposed to injurious or corrosive materials.
<a href="#">Michigan Law PA 18 of 2003</a>	Requires newly hired teachers to be certified. There are no requirements for recertification.
<b>Hearing and Vision</b>	
<a href="#">§ 333.9301</a>	Requires local health departments to conduct free periodic hearing and vision testing for children. Also requires all children entering kindergarten to have a vision screening.
<b>Health Services</b>	
<a href="#">Public Health Code (Excerpt) Act 368 of 1978, Part 9101</a>	The department (MDHHS) shall establish a plan for health services for pupils in elementary and secondary schools of this state. Plan shall include a definition of school health services and standards for implementation.
<b>HIV</b>	
<a href="#">§722.621</a> to 722.636	Information pertaining to an individual infected with HIV, or diagnosed with AIDS, can be released if the information is part of a report required under the child protection law.
<a href="#">§333.5131</a>	HIV-related information is confidential and cannot be released unless the patient authorizes disclosure, or a statutory exception applies.

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§ <a href="#">333.5131(5)(c)</a>	<b>Exceptions</b> - the Michigan Department of Health and Human Services) or local health officer may release information pertaining to an individual who has HIV/AIDS to a school employee if the information is necessary to prevent a reasonable foreseeable risk of transmission of HIV to pupils in the school district. The school employee is bound by the confidentiality requirements of the statute.
<b>Immunizations</b>	
§ <a href="#">333.9205</a>	Requires that a parent/guardian of a child provide for the child's immunization by an authorized health professional, physician, local health department, clinic, or other agency offering immunizations for diseases and within an age period prescribed by the department.
§ <a href="#">333.9208</a>	A parent, guardian, or person in loco parentis applying to have a child registered for the first time in a school and a parent, guardian, or person in loco parentis of a child entering the sixth grade, shall present to school officials, at the time of registration or not later than the first day of school, a certificate of immunization or statement of exemption.
§ <a href="#">333.9215</a>	Immunization exemption requirements.
§ <a href="#">380.1177</a>	The parent/guardian of a child enrolling in school for the first time must submit a certificate showing required immunizations have been given; or a physician-signed waiver that required immunizations could not be given because of medical contradictions or a parent/guardian signed waiver that for religious or other reasons the immunization has not been given.
§ <a href="#">333.9209</a>	Schools are required to report their students' immunization status to their local health Departments before November 1 of each year and before the following February 1, to update the list to show the additional immunizations received by each child since entering the school.
§ <a href="#">333.9206</a>	A parent, guardian, or person in loco parentis applying to have a child registered for the first time in a school in this state and, beginning January 1, 2014, a parent, guardian, or person in loco parentis of a child entering the seventh grade, shall present to school officials, at the time of registration or not later than the first day of school, a certificate of immunization or statement of exemption.  A teacher or principal shall not permit a child to enter or attend school unless a certificate indicating that a minimum of 1 dose of an immunizing agent against each of the diseases specified by the department has been received and certified to by a health professional.
§ <a href="#">380.1177</a>	A child enrolling in a public or nonpublic school for the first time or, beginning in the 2014-2015 school year, enrolling in grade 7 for the first time shall submit 1 of the following: 1)

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	sign physician statement of immunization compliance, signed parent statement for religious objection or sign physician statement child in the process of compliance.
<a href="#">§325.176</a>	Any parent/guardian who wants to claim a nonmedical waiver will need to receive education regarding the benefits of vaccination and the risks of disease from a county health department before obtaining the certified nonmedical waiver form through the Local Health Department. The new rule requires the use of the State of Michigan nonmedical waiver form dated January 1, 2015.
<b>Medication Administration</b>	
<a href="#">§380.1178</a>	Liability- sets forth legal provisions for the immunity of school employees, <b>designated by the school administrator</b> , against an allegation of “simple” negligence if the employee administers the medication under certain requirements including being in the presence of another adult. <i>If a school employee is a licensed registered professional nurse, subsection (1) applies to that school employee regardless of whether the medication is administered in the presence of another adult.</i>
<a href="#">§ 380.1179</a>	Allows pupil to carry and self-administer prescribed inhalers and/or epinephrine auto-injector for emergency use with the written order and approval of the child’s physician and written permission of the parent/legal guardian.
<a href="#">Attorney General Opinion, No. 5679, April 11, 1980</a>	A physician must delegate and supervise the act of medication administration if the school district does not employ a school nurse.
<a href="#">MDE Model Medication Policy</a>	The Michigan Department of Education issued a memo to school superintendents outlining a model medication policy (2002). Note: Not a law.
<a href="#">P.A. 385 of 216</a>	Allows school districts to stock and provide an opioid antagonist to pupils or other individuals who are believed to have an opioid-related overdose.
<b>Meningitis</b>	
<a href="#">Michigan Law PA 240 of 2005</a>	Requires schools to provide information on meningococcal disease, vaccine & availability of vaccine to parents of 6th, 9th & 12th graders.
<b>Mental Health</b>	
<a href="#">§ 330.1707(1)</a>	A minor of 14 years of age or older up to 12 visits or four months whichever comes first may request and receive

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	mental health services on an outpatient basis without the consent or knowledge of a parent or guardian. Consent to inform the parent or guardian must be obtained from the minor unless there is a compelling need for disclosure and the minor is informed of the health professional's intent to notify the party.
<b>Pregnancy</b>	
§ <a href="#">333.9132</a>	If a minor consents to the provision of prenatal and pregnancy related health care by a health facility or agency or health professional, the consent is valid and binding. For medical reasons the treating physician or another health professional (on the advice of the treating physician) may withhold or provide information regarding the minor to the parent, guardian, or person in loco parentis even if the minor refused to have the information released.
<a href="#">THE STATE SCHOOL AID ACT OF 1979 (EXCERPT) Act 94 of 1979 388.1709 Sec. 109.</a>	Under Michigan state law, all school districts are required to provide homebound or hospitalized instructional services to students who are absent for five or more consecutive school days because of a medical condition, including pregnancy, childbirth, and recovery.
<a href="#">Safe Delivery of Newborns Law</a>	Safe Delivery allows parents to safely surrender their newborn child no more than 72 hours old to an employee who is inside and on duty at any hospital, fire department, police station, or by calling 911. This program is a safe, legal and anonymous alternative to abandonment or infanticide and releases the newborn for placement with an adoptive family. More information about the Safe Delivery of Newborns Law can be the Michigan Department of Health and Human Services: <a href="http://www.michigan.gov/mdhhs/0,5885,7-339-71548_7200---,00.html">http://www.michigan.gov/mdhhs/0,5885,7-339-71548_7200---,00.html</a>
<b>Record Retention</b>	
<a href="#">MCL 399.5</a>  And  <a href="#">MCL 750.491</a>	Requires that all public records be listed on an approved Retention and Disposal Schedule that identifies the minimum amount of time that records must be kept to satisfy administrative, legal, fiscal and historical needs.
<a href="#">MCL 24.401-24.406</a>	Records Reproduction Act identifies acceptable formats for retaining public records. Agencies are responsible for understanding and complying with these laws. Different types of school health records vary in the amount of time they need to be retained.
<b>Reproductive Health</b>	

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<a href="#">§ 388.1766</a>	Dispensing or distributing family planning or drug or device, dispensing prescriptions for family planning drug, or making referrals for abortion.
<a href="#">§380.1507</a>	(7) A person shall not dispense or otherwise distribute in a public school or on public school property a family planning drug or device. (8) As used in this section, "family planning" means the use of a range of methods of fertility regulation to help individuals or couples avoid unplanned pregnancies; bring about wanted births; regulate the intervals between pregnancies; and plan the time at which births occur in relation to the age of parents. It may include the study of fetology. It may include marital and genetic information. Clinical abortion shall not be considered a method of family planning, nor shall abortion be taught as a method of reproductive health.
<a href="#">§ 722.903</a>	No abortion may be performed on minor without her consent and that of one parent or guardian except in medical emergency; court may waive parental consent if minor is mature and well-informed so as to be able to make the decision, or waiver is in minor's best interest.
<b>Rights of Minors</b>	
<a href="#">§ 330.1707(1)</a>	<b>Mental Health</b> - a minor may request and receive mental health services on an outpatient basis without the consent or knowledge of a parent or guardian. Consent to inform the parent or guardian must be obtained from the minor unless there is a compelling need for disclosure and the minor is informed of the health professional's intent to notify the party.
<a href="#">§ 333.6121</a>	<b>Substance Abuse</b> - if a minor professes to be a substance abuser, consent for the provision of treatment for the substance abuse may be provided by the minor. For medical reasons the treating physician or another health professional (on the advice of the treating physician) may withhold or provide information regarding the minor to the parent, guardian, or person in loco parentis even if the minor refused to have the information released.
<a href="#">§ 333.5127</a>	<b>Venereal Disease or HIV</b> - a minor who professes to be infected may seek medical or surgical treatment or services by a hospital, clinic or physician without the consent of a parent, guardian, or person in loco parentis. For medical reasons the treating physician or another health professional (on the advice of the treating physician) may withhold or provide information regarding the minor to the parent, guardian, or person in loco parentis even if the minor refused to have the information released.

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<b>School Nursing</b>	
Administrative Rule R340.1163	Pertains to function of the school nurse. Assess and evaluate health status; interpret medical evaluations; plan course of action to minimize or prevent health problems; intermediary to family, physician, and social agencies; initiate supplemental testing; develop in-services and school policies. (School Code)
<a href="#">MCLA 380.1252</a>	The board of a school district may employ registered nurses necessary to provide professional nursing services.
<a href="#">R 340.1161 - R340.1170</a>	School Nurse Certification rules through the Michigan Department of Education.
<b>School Safety</b>	
<a href="#">PA 187 of 2006</a>	<u>Lock Down Drills:</u> Amends the Fire Prevention Code to require a school that has any grades between K-12 to conduct a minimum of two (2) drills in which occupants are restricted to the interior of the building and the building is secured. Requires a K-12 school to conduct a minimum of six (6) rather than eight (8) fire drills.
<a href="#">PA 337 of 2006</a>	<u>Terrorism Drills:</u> Amends the Fire Prevention Code to require a school that operated any grades between K-12 to conduct some of the drills required under the Code during lunch or recess or at other times when a significant number of students were gathered, but not in the classroom.
<b>School Wellness</b>	
<a href="#">Model Policy for Michigan</a>	Michigan State Board of Education Model Local Wellness Policy.
<b>Sun Safety</b>	
<a href="#">Public Health Code Act 368 of 1978 Section 333.13405</a>	Tanning facility - In the case of a customer under 18 years of age, the written statement described in subsection (1) shall also be signed by the customer's parent or legal guardian while the parent or legal guardian is physically present at the tanning facility and shall be signed in the presence of the owner or operator. The customer agrees to use protective eyewear.

Anti-Discrimination Laws Regarding HIV Infection

There are a number of federal and state statutes that prohibit discrimination against someone who is HIV-infected, or believed to be HIV-infected. These include Section 504 of the Federal Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act (ADA) of 1990, and the Michigan Persons with Disabilities Civil Rights Act of 1976. These statutes provide that a person who is HIV-infected, or is believed to be HIV infected, must be treated in a non-discriminatory manner as any non-HIV-infected person.

### Americans with Disabilities Act

The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment. The ADA does not specifically name all of the impairments that are covered.<sup>2</sup>

A major life activity includes education. Therefore, if a student attends school and has a disability (of which HIV is one), the ADA affects the school's responsibility to that student. School teams are responsible for determining what barriers exist for a student with a disability and how to resolve those issues.

The Americans with Disabilities Act (ADA) provides comprehensive civil rights protections for individuals with disabilities. Title II of the ADA covers programs, activities and services of public entities. Title II requires that "No qualified individual with a disability shall, by reason of such disability be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity".

### The Family Educational Rights and Privacy Act (FERPA) <sup>3</sup>

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Parents or eligible students have the right to inspect and review the student's education records maintained by the school. In general, parental consent is required for others to access information in students' health records. FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):

- School officials, including teachers who have a "legitimate educational interest"
- Mandatory reporting of certain communicable diseases
- Instances of child abuse or neglect
  
- Appropriate officials in cases of health and safety emergencies
- To comply with certain legal situations including subpoenas or investigations of criminal offenses

### Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) (formerly called P.L. 94-142 or the Education for all Handicapped Children Act of 1975) requires public schools to make available to all eligible children with disabilities, a free appropriate public education in the least restrictive environment appropriate to their individual needs. IDEA requires public school systems to develop appropriate Individualized Education Programs (IEP's) for each child.

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<sup>2</sup>US Department of Justice, A Guide to Disability Rights Law, 2005. <http://www.usdoj.gov/crt/ada/cguide.htm>

<sup>3</sup>US Department of Education, Ed.gov. <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>



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The specific special education and related services outlined in each IEP reflect the individualized needs of each student.<sup>4</sup>

The IEP outlines the specific services and supports the child's needs within the least restrictive environment (LRE). The IEP and LRE provisions have been protected as basic rights of children with disabilities. Parent involvement is also a fundamental principle of IDEA. Parents must be fully informed of their children's rights, and they can participate in all decisions affecting their child. IDEA also outlines due process provisions, which allow parents to challenge school district decisions.<sup>5</sup>

IDEA release and disclosure requirements are substantially identical to those in FERPA.

### Section 504 of the 1973 Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in all programs and activities conducted by recipients of federal financial assistance. This applies to employees of education agencies as well as to students.

In matters pertaining to education, the lead agency is the U.S. Office for Civil Rights, U.S. Department of Education. Section 504 has a substantial effect on education, since educational programs for students with disabilities must be equal to those provided to others. Educational agencies that receive U.S. Department of Education funds, either directly or indirectly, are considered recipients.

Like IDEA, Section 504 requires identification, evaluation, and provision of appropriate services, notification of parents, an individualized accommodation plan, and procedural safeguards. Accommodation plans (including individual health care plans) are developed to provide needed health services in the school for children requiring medication or other health services. These activities must be performed in accordance with Section 504 regulations, which have some requirements that differ from those of IDEA.

### Health Information Portability and Accountability Act of 1996 (HIPAA)

Public Law 104-191, Health Information Portability and Accountability Act of 1996 (HIPAA) was implemented by the federal government to ensure uniform privacy protections of individuals' health information, including those with HIV. HIPAA provides privacy regulations to protect patients by limiting the ways that health plans, pharmacies, hospitals, and other covered entities can use patients' personal medical information. A school is subject to HIPAA if it provides medical care and electronically transmits health information as part of a "covered transaction" (i.e. billing). The Privacy Rule of the law, however, provides a broad exemption for personal health information maintained in education records, which is protected under FERPA.<sup>6</sup>

### Bloodborne Pathogen Standard<sup>7</sup>

29 CFR Part 1910 (December 1991), Occupational safety; Bloodborne Pathogen Standard is a law requiring employers to protect employees from occupational exposure to bloodborne pathogens. Under 1910.1030, public school employers who have employees with occupational exposure (as defined by paragraph (b) of the standard) must establish an Exposure Control Plan which describes how the following elements of the standard, at a minimum, will be implemented: methods of compliance, including engineering and work practice controls,

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<sup>4</sup>US Department of Justice, A Guide to Disability Rights Law, 2005. <http://www.usdoj.gov/crt/ada/cguide.htm>

<sup>5</sup>National PTA website: <http://www.pta.org/ptawashington/issues/idea.asp>

<sup>6</sup>National Forum on Education Statistics. Forum Guide to Protecting the Privacy of Student Information: State and Local Education Agencies, NCES 2004-330. Washington, DC: 2004. <http://nces.ed.gov/pubs2004/privacy/index.asp>

<sup>7</sup>*Public Schools: Requirements for Written Programs*, Lisa Costanzo, Occupational Hygienist Volume No. 47, Fall 2006 CONN-OSHA Quarterly

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personal protective equipment, and housekeeping; Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up; Communication of Hazards to Employees; and Recordkeeping, including medical records, training records, and Sharps Injury Logs.

The Exposure Control Plan also must include an exposure determination, which lists all job classifications in which all employees in those job classifications have occupational exposure, all job classifications in which some employees have occupational exposure, and those tasks and procedures in which occupational exposure occurs and are performed by those employees determined to be occupationally exposed. Any employee, determined to be occupationally exposed, as defined by the standard, must be offered the Hepatitis B vaccination within 10 working days of initial assignment but after the employee has received the initial training required by this standard.

The Exposure Control Plan must be reviewed at least annually and updated whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and also to reflect new or revised employee positions with occupational exposure. Although documentation of the review is not required, it is recommended that the employer do so to ensure that the review is being conducted at least on an annual basis and that each affected employee has access to the most current plan.

In addition to the annual review of the Exposure Control Plan, the employer must provide information and training as outlined in paragraph (g) (2) (vii) to employees with occupational exposure at the time of initial assignment to tasks where occupational exposure may take place, at least annually thereafter (which means within one year of their previous training), and whenever changes (i.e. to tasks or procedures) take place that affect the employee's occupational exposure. Training must be documented in accordance with paragraph (h) (2) (i) of the standard.

### RESOURCES

Jones, S.E. (2008). Executive Summary. A CDC review of school laws and policies concerning child and adolescent health. *Journal of School Health*, 78(2), 69 -128. doi: 10.1111/j.1746-1561.2007.00272\_4.x

Laubin, M.C., Schwab, N., & Doyle, J. (2012). Understanding the legal landscape. In C. Constante (Ed.), *School Nurse Administrators* (pp. 459 – 519). Silver Spring, MD: National Association of School Nurses.

HIV/STD and Sex Education in Michigan Public Schools, A Summary of Legal Obligations and Best Practices. Available at [http://www.michigan.gov/documents/mde/3\\_Four\\_Page\\_Summary\\_of\\_Legal\\_Obligations\\_249414\\_7.pdf](http://www.michigan.gov/documents/mde/3_Four_Page_Summary_of_Legal_Obligations_249414_7.pdf)

Michigan Board of Nursing Administrative Rules [http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=33810101&Dpt=CH&RngHigh=](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33810101&Dpt=CH&RngHigh=)

Michigan Revised School Code <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-451-of-1976.pdf>  
<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-451-of-1976.pdf>

Michigan Current Revised School Code (PA 451 of 1976) and State School Aid Act (PA 94 of 1979) Provisions Regarding the Teaching of HIV/AIDS, Sex Education, Health Education, and Physical Education in Michigan Schools [http://www.michigan.gov/documents/Current\\_Revised\\_School\\_Code\\_115941\\_7.pdf](http://www.michigan.gov/documents/Current_Revised_School_Code_115941_7.pdf)

Michigan Public Health Code [http://www.legislature.mi.gov/\(S\(mcs4ho55goeot1royfu1ne45\)\)/mileg.aspx?page=getobject&objectname=mcl-act-368-of-1978](http://www.legislature.mi.gov/(S(mcs4ho55goeot1royfu1ne45))/mileg.aspx?page=getobject&objectname=mcl-act-368-of-1978)

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Protecting and Disclosing Student Health Information. How to Develop School District Policies and Procedures, 2005. The Guidelines, reviewed by representatives from the U.S. Depts. of Education and Health and Human Services, were developed in conjunction with representatives from 20 national organizations. Available from the American School Health Association at [http://www.ashaweb.org/i4a/ams/amsstore/category.cfm?category\\_id=1](http://www.ashaweb.org/i4a/ams/amsstore/category.cfm?category_id=1)

### A Brief Review of Federal Laws Protecting the Privacy of Education Records<sup>8</sup>

Federal Law	Federal Agency	Right Afforded to	Contents of Education Records	Notification Requirement	Prior Consent	Requirement of Recording Release
Family Educational Rights and Privacy Act (FERPA)	Family Policy Compliance Office	Parents and eligible students	All education records as defined in the law	Local education agency to notify annually	Required with exceptions	Recordation requirements
No Child Left Behind Act replaced by Every Child Succeeds Act (ESSA)	U.S. Department of Education	Parents and eligible students				
Individuals with Disabilities Education Act (IDEA)	Office of Special Education Programs	Parents and students who have reached the age of majority under state law	All education records as defined in FERPA	Local education agencies to notify annually	Required with exception	
Health Insurance Portability and Accountability Act	Office for Civil Rights of U.S. Department of Health and Human Services	Patients	Privacy Rule does not apply to records protected by FERPA and IDEA	Health care providers must provide Notice of Privacy Practices	By patient	

<sup>8</sup>Adapted from: National Forum on Education Statistics. Forum Guide to Protecting the Privacy of Student Information: State and Local Education Agencies, NCES 2004–330. Washington, DC: 2004. <http://nces.ed.gov/pubs2004/privacy/index.asp>