

**Excerpt from Legal Action Center’s Rule 56.1 Statement
in Support of Summary Judgment Motion, Doe v. Deer Mountain Day Camp**

This excerpt was a response to defendant camps’ statements that they denied admission to plaintiff because they needed time to “research” how to avoid HIV transmission through pools and toilets. The excerpt cites public health standards in effect in August 2004, when the discrimination at issue occurred. In a decision reported at 2010 WL 181373 (S.D.N.Y. Jan. 13, 2010), the court granted summary judgment to plaintiff and denied summary judgment to defendant. The case ultimately settled the damages issue.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JANE DOE, as Parent and Natural : 07-Civ-5495 (WCC) (GAY)
Guardian, on behalf of ADAM DOE, a :
Minor, :
:
Plaintiff, :
v. :
:
DEER MOUNTAIN DAY CAMP, INC. :
and DEER MOUNTAIN BASKETBALL :
ACADEMY, :
:
Defendants. :
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**PLAINTIFF’S STATEMENT OF
UNDISPUTED FACTS PURSUANT TO LOCAL CIVIL RULE 56.1**

Views of Public Health Authorities on HIV Issues

1. Since the 1980s, public health authorities have been of the view that HIV is not transmissible through the use of pools or toilets.

2. In one of the first major studies on the HIV virus in the mid-1980s, the Surgeon General noted “[t]here is no evidence that HIV is transmitted by normal casual and nonsexual contact in . . . school [or] day care . . . settings.” REPORT OF THE SURGEON GENERAL’S WORKSHOP ON CHILDREN WITH HIV INFECTION AND THEIR FAMILIES 58 (1987), available at http://profiles.nlm.nih.gov/NN/B/B/C/F/_/nmbbcf.pdf (last visited Feb. 11, 2009). (“SURGEON GENERAL’S REPORT”).

3. In 1999, five years prior to Adam’s application to the Camps’, the Center for Disease Control (“CDC”), stated definitively in its guidelines on HIV transmission that “HIV is spread by sexual contact with an infected person, by sharing needles and/or syringes (primarily for drug injection) with someone who is infected, or, less commonly (and now very rarely in countries where blood is screened for HIV antibodies), through transfusions of infected blood or blood clotting factors.” See Centers for Disease Control and Prevention, HIV and Its Transmission 1 (July 1999), available at <http://www.cdc.gov/hiv/pubs/facts/transmission.htm> (last visited Feb. 11, 2009).

4. The CDC also explained that “[c]ontact with saliva, tears, or sweat has never been shown to result in transmission of HIV.” Id. at 3.

5. The New York State Department of Health (“NYDOH”) has stated that “HIV is not easily transmissible,” and in particular that the virus is not transmissible through “air, water, food or casual contact such as . . . use of restrooms.” NEW YORK DEPARTMENT OF HEALTH, 100 QUESTIONS AND ANSWERS ABOUT HIV/AIDS at Qs. 10-11, 30 (1998), submitted as Ex. L to Tenreiro Decl. (“NYDOH Q&A”).

6. The NYDOH has also stated that the virus cannot be transmitted in swimming pools or hot tubs, noting that “the virus is killed by the normal levels of chlorine used to disinfect public swimming pools.” Id. at Q. 32.

7. Since the 1980s, doctors have held the view that the HIV virus is easily destroyed by chlorine. See, e.g., Richard Green, M.D., The Transmission of AIDS, in AIDS AND THE LAW 28, 33 (Harlon L. Dalton, Scott Burris eds., Yale AIDS Law Project, 1987), submitted as Ex. M to Tenreiro Decl. (“the [HIV] virus is destroyed by standard solutions of almost all common disinfectants, such as hydrogen peroxide [and] bleach”); see also DL 40:25-41:2 (chlorine in DMBA pool would “more than likely kill any HIV virus”).

8. In August 1999, the American Academy of Pediatrics (“AAP”) further explained that “[a]ll body fluids containing HIV pose a theoretical risk, but some (eg, tears, urine, and stool) have not been implicated in transmission of the virus.” See Issues Related to Human Immunodeficiency Virus Transmission in Schools, Child Care, Medical Settings, the Home, and Community, 104 PEDIATRICS 318, 319 (1999) (citation omitted), submitted as Ex. N to Tenreiro Decl. (“AAP Issues Related to HIV”).

9. Public health authorities have been of the view since the 1980s that no restrictions should be placed on the participation of HIV-positive children in school and athletic programs, given the non-existent risk of transmission.

10. The Surgeon General stated “[s]creening of children for . . . HIV . . . is neither warranted nor recommended.” SURGEON GENERAL’S REPORT at 58.

11. The NYDOH has stated that “children with AIDS or HIV infection should be allowed to attend school and classes” and that “[s]chool officials, including the school nurse, do

not have the right to exclude a student . . . infected with HIV from school” NYDOH Q&A at Q. 81.

12. The NYDOH has also explained that “[i]t is highly unlikely that HIV transmission could occur [through a school yard fight or a contact sport like football]. The external contact with blood that might occur in a sports injury is very different from direct entry of blood into the bloodstream which occurs from sharing needles.” Id. at Q. 83.

13. The AAP has noted: “HIV-infected children should be admitted without restriction to . . . schools and allowed to participate in all activities,” and “athletes with HIV infection [should] be permitted to participate in all competitive sports.” AAP Issues Related to HIV, 104 PEDIATRICS at 321, 323.

14. These recommendations were repeated without modification in the AAP’s 2000 and 2003 “Red Book,” a report on infectious diseases. See 2000 RED BOOK: REPORT OF THE COMMITTEE ON INFECTIOUS DISEASE 125 (25th Ed., 2000), submitted as Ex. O to Tenreiro Decl. (“2000 RED BOOK”) (risk of transmission during contact sports is “extremely low,” and therefore HIV-infected athletes should “be allowed to participate in all competitive sports.”); see also 2003 RED BOOK: REPORT OF THE COMMITTEE ON INFECTIOUS DISEASE 144 (26th Ed., 2003) submitted as Ex. P to Tenreiro Decl. (“2003 RED BOOK”) (“[a]thletes infected with HIV . . . should be allowed to participate in all competitive sports”).

15. Since the 1980s, public health authorities have consistently maintained a parent need not disclose his or her child’s HIV status to a school if he or she does not desire to do so.

16. The Surgeon General has stated that “[t]he decision to inform others of HIV infection should only be made with the consent of the parent and/or guardian. Although it is

ideal that someone in day care or school know that a child is ill, that should not be a prerequisite for attendance.” SURGEON GENERAL’S REPORT 58.

17. The NYDOH made a similar pronouncement in 1999, noting that the “appropriate decision makers are the child’s parent or guardian and doctor, with consultation from public health personnel and school officials, if necessary.” NYDOH Q&A at Q. 81.

18. The AAP’s recommendation is the same, with respect to disclosure in both schools and athletic programs: “[k]nowledge of a child’s HIV status is unnecessary for school entry,” in part because “discrimination has occurred” against HIV-positive children attending school due to the fact that “erroneous information, ie, [that] HIV is likely to be transmitted in the school setting, has been given.” AAP Issues Related to HIV, 104 PEDIATRICS at 322.

19. This recommendation has been repeated in the AAP’s Red Books. See 2000 RED BOOK at 125 (athlete’s right to confidentiality includes “not disclosing [HIV] infection . . . to other participants or the staff of athletic programs”); 2003 RED BOOK at 144 (“[s]tudents infected with HIV . . . do not need to be identified to school personnel” and that the confidentiality rights of athletes include “not disclosing [their] status to . . . the staff of athletic programs”).