HIV/AIDS POLICY

It is the position of Florida Keys Community College that a balance be maintained between the rights of persons infected with the Human Immune Deficiency Virus (HIV) to obtain education and employment and the rights of students and community college employees to an environment which provides reasonable protection from infection with HIV. Florida Keys Community College establishes this policy to respond appropriately to the needs and right of students and employees who are HIV-positive. This policy defines an HIV-positive student or employee as an individual who:

(a) is diagnosed as having Acquired Immune Deficiency Syndrome (AIDS)
(b) is determined to be HIV Antibody-Positive but has not yet developed the symptoms of AIDS or
(c) is determined to have HIV-positive (HIV positive) Spectrum diseases.

The college provides HIV-positive students and employees with reasonable accommodations and support services, while protecting rights to privacy and confidentiality. This policy prohibits mandatory HIV testing of employees and students. All decisions regarding treatment of students or employees are made on an individual basis. The college will continue to monitor and amend this policy as needed (Board Rule 4.410).

LEGAL BACKGROUND

This policy complies with all state and federal laws protecting persons with disabilities. The Americans with Disabilities Act and the Federal Vocational Rehabilitation Act of 1973 prohibit discrimination against qualified disabled individuals by institutions contracted with the federal government. The college receives federal funds; therefore, the college must comply with the
provisions of the Rehabilitation Act. Under the Rehabilitation Act a college may not discriminate against any employee or student who has a physical or mental impairment which substantially limits one or more major life activities, who has a record of such impairment, or who is regarded as having such impairment. These disability discrimination laws are intended to eliminate situations in which an individual who is qualified to perform the essential functions of a job would be denied an opportunity to fill the job or is treated adversely simply because the individual has a disability.

The Individuals with Disabilities Education Act (IDEA) assures that the rights of children and youth with disabilities and their parents/guardians are protected in terms of fairness, appropriateness, and due process in decision making about the provision of special education and related services. The Florida Educational Equity Act also prohibits discrimination on the basis of disability against any student or employee in the state system of public education. Section 504 of the Rehabilitation Act protects the civil rights of individuals with disabilities. In a Florida case, Arline v. School Board of Nassau County, the Eleventh Circuit of the United States affirmed, that the language of the Rehabilitation Act in every respect supports a conclusion that persons with contagious diseases are within the coverage of the Rehabilitation Act. Although the plaintiff in Arline had tuberculosis, the decision may apply to any contagious disease which “substantially limits major life activity.” The court in Arline also stated that an employer may not arbitrarily determine that an individual’s disability prevents the individual from performing required duties. The employer must make a well informed judgment grounded in careful and open minded weighing of the risks and alternatives. (Arline, 772 F.23 765 and 107 s. Ct. 1123)

The limitations on “reasonable accommodation” for an “otherwise qualified” disabled person in accordance with Section 504 of the Rehabilitation Act is a central issue in these cases. Citing its earlier opinion in Southeastern Community College v. Davis, 442 U.S. 397 (1979), the Court said: An otherwise qualified person is one who is able to meet all of a program’s requirements in spite of his handicap. In the employment context, an otherwise qualified person is one who can perform “the essential functions” of the job in question. When a handicapped person is not able to perform the essential functions of the job, the court must also consider whether any “reasonable accommodation” by the employer would enable the handicapped person to perform those functions. Accommodation is not reasonable if it either imposes “undue financial and
administrative burdens” on a grantee, or requires a “fundamental alteration in the nature of (the) program.

Arlene, 107 S. Ct. at 1131 n.17 (Citations omitted).

HIV constitutes a disability. Under State Law; Chapter 760 of the Florida Statutes, it prohibits employment discrimination against disabled individuals by employers with more than fifteen employees. Colleges should not “discharge or fail to hire or otherwise discriminate with respect to compensation, conditions, or privileges of employment” because the individual is disabled, (760.10(1) (a), Florida Statutes). In addition, colleges should not segregate or classify a disabled individual in any way which would deprive or tend to deprive any individual of employment opportunities. Furthermore, it is unlawful to adversely affect any individual’s status as an employee because of a handicap, (760.10(1)(b), Florida Statutes). A disable person should not be isolated by the college unless the individual poses a scientifically proven risk to co-workers or students. The language of Chapter 760 protects disabled employees and, therefore, HIV positive individuals from arbitrary dismissal, discrimination in hiring, promotion, and compensation decisions, and any other actions as employer may take that adversely affects the employee’s status.

**PRIVACY AND CONFIDENTIALITY**

Florida Keys Community College recognizes and respects that any HIV-positive student or employee has a right to privacy and confidentiality. When college employees or students have knowledge (or are informed) that an employee or student may or may not be HIV-positive, that employee or student is not to share the information with a third party. No information regarding the medical status of any student will be released without the expressed written consent of the student unless such disclosure of information in health and safety emergencies is mandated by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g and Florida Statute Section 1006.68. No information regarding the medical status of any employee will be released without the expressed written consent of the employee unless such disclosure of information in health and safety emergencies is mandated by a court of competent jurisdiction.
GUIDELINES FOR STUDENTS

This policy allows for an HIV-positive student who poses no threat to others or self, to remain in the regular classroom. HIV-positive students with mental, emotional, or physical disabling conditions will be provided with reasonable accommodations.

DISABLED AND MENTAL HEALTH SUPPORT SERVICES AND REFERRAL

The Coordinator of Students with Disabilities and the Equity Coordinator shall provide support services to HIV-positive students and employees. Referral to the local health care network is available. The local health care network includes:

AIDS Help, Inc. 296-6196
AIDS Middle Keys 289-0055
Helpline Crisis Line Inc. 296-4357
Care Center for Mental Health 292-6843
Guidance Clinic of the Middle Keys (24 hours) 434-9000
Guidance Clinic of the Upper Keys 853-3284
Health Care Center 292-6885

EDUCATION AND INFORMATION

Florida Keys Community College recognizes the need for a strong and aggressive HIV/AIDS Education Program. Current information on HIV spectrum diseases and AIDS, and the Florida Keys Community College HIV/AIDS Policy, will be made available to all students through publication in the Student Handbook. The Student Handbook is available in the administrative offices of the Key West Campus and Upper and Middle Keys Centers. Student and employee education/information events will include, but not be limited to:
• employee in-service training conferences

• student orientation meetings

• HIV/AIDS presentations

• inclusion of the Florida Keys Community College HIV/AIDS Policy in the employee handbook