

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 3RD CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1289

6 By: Smith (Dale) and Reese of
7 the House

8 and

9 Henry and Muegge of the
10 Senate

11 3RD CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to schools; amending 70 O.S. 1991,
13 Section 24-102, as last amended by Section 3, Chapter
14 350, O.S.L. 1997 (70 O.S. Supp. 1998, Section 24-
15 102), which relates to pupil searches; providing
16 immunity for certain school personnel for certain
17 actions; providing construction of certain language;
18 clarifying authority of school districts to adopt and
19 enforce alcohol and drug testing policies; requiring
20 alcohol and drug testing policies to conform to
21 certain Act at certain time; authorizing Office of
22 Juvenile Affairs to administer and award certain
23 grants; requiring competitive process; requiring
24 promulgation of certain rules; stating certain
25 contingency for implementation of certain grant
26 programs; enacting Standards for School Drug and
27 Alcohol Testing Act; providing short title; providing
28 definitions; providing construction of certain act;
29 providing governance of certain student testing after
30 certain date; exempting certain testing from certain
31 act; authorizing and limiting drug and alcohol
32 testing of public school students; authorizing random
testing of certain students; authorizing scheduled,
period testing of certain students participating in
certain activities; authorizing reasonable suspicion
testing of certain students under certain
circumstances; stating requirements for certain
testing after certain date; stating components of
certain policy; requiring certain notice for certain
policy change; requiring policy to have provision for
certain confirming test; requiring certain notice for
implementation of certain policy changes; requiring
posting of certain policies; requiring distribution
of certain policy to certain persons; stating times
when certain testing can occur; requiring district to
pay certain costs; requiring certain approval of
certain testing products; stating qualifications of
certain test administrators; requiring filing of
certain statement; authorizing State Board of Health
to promulgate certain rules; requiring certain
laboratory facilities to meet certain qualifications
after certain date; setting certain licensing fee;

1 authorizing administrative fine for certain offense;
2 stating requirements for certain sample collection
3 and handling; requiring certain chain of custody
4 records; requiring district to maintain certain
5 reports; making certain information confidential;
6 authorizing certain disciplinary action on basis of
7 certain tests and on basis of refusal to submit to
8 certain tests; providing immunity for districts and
9 employees under certain conditions; authorizing
10 certain civil action; providing for injunctive
11 relief; stating limitation; stating venue for certain
12 actions; prohibiting certain testing program after
13 certain date under certain conditions; authorizing
14 continuation of certain testing programs until
15 certain date; creating certain misdemeanor; providing
16 punishment; providing for codification; providing an
17 effective date; and declaring an emergency.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 70 O.S. 1991, Section 24-102, as
20 last amended by Section 3, Chapter 350, O.S.L. 1997 (70 O.S. Supp.
21 1998, Section 24-102), is amended to read as follows:

22 Section 24-102. The superintendent, principal, teacher, or
23 security personnel of any public school in the State of Oklahoma,
24 upon reasonable suspicion, shall have the authority to detain and
25 search or authorize the search, of any pupil or property in the
26 possession of the pupil when said pupil is on any school premises,
27 or while in transit under the authority of the school, or while
28 attending any function sponsored or authorized by the school, for
29 dangerous weapons, controlled dangerous substances, as defined in
30 the Uniform Controlled Dangerous Substances Act, intoxicating
31 beverages, low-point beer, as defined by Section 163.2 of Title 37
32 of the Oklahoma Statutes, wireless telecommunication devices or for
missing or stolen property if said property be reasonably suspected
to have been taken from a pupil, a school employee or the school
during school activities. The search shall be conducted by a person
of the same sex as the person being searched and shall be witnessed
by at least one other authorized person, said person to be of the
same sex if practicable.

1 The extent of any search conducted pursuant to this section
2 shall be reasonably related to the objective of the search and not
3 excessively intrusive in light of the age and sex of the student and
4 the nature of the infraction. In no event shall a strip search of a
5 student be allowed. No student's clothing, except cold weather
6 outerwear, shall be removed prior to or during the conduct of any
7 warrantless search.

8 The superintendent, principal, teacher, or security personnel
9 searching or authorizing the search shall have authority to detain
10 the pupil to be searched and to preserve any dangerous weapons,
11 controlled dangerous substances, intoxicating beverages, low-point
12 beer, wireless telecommunication devices or missing or stolen
13 property that might be in the pupil's possession including the
14 authority to authorize any other persons they deem necessary to
15 restrain such pupil or to preserve any dangerous weapons, controlled
16 dangerous substances, intoxicating beverages, low-point beer,
17 wireless telecommunication devices or missing or stolen property.
18 Students found to be in possession of such an item shall be subject
19 to the provisions of Section ~~±~~ 24-101.3 of this ~~act~~ title.

20 Pupils shall not have any reasonable expectation of privacy
21 towards school administrators or teachers in the contents of a
22 school locker, desk, or other school property. School personnel
23 shall have access to school lockers, desks, and other school
24 property in order to properly supervise the welfare of pupils.
25 School lockers, desks, and other areas of school facilities may be
26 opened and examined by school officials at any time and no reason
27 shall be necessary for such search. Schools shall inform pupils in
28 the student discipline code that they have no reasonable expectation
29 of privacy rights towards school officials in school lockers, desks,
30 or other school property. Any superintendent, principal, teacher or
31 security personnel detaining, searching or authorizing such
32 detention or search for drugs or alcohol shall have immunity from

1 civil liability that might otherwise be incurred or imposed as a
2 result of such action.

3 Nothing in this section shall be construed to prohibit a school
4 district from adopting and enforcing an alcohol- and/or drug-testing
5 policy for all pupils or for pupils participating in extracurricular
6 and cocurricular activities or programs provided but not required by
7 the schools. Beginning September 1, 2000, all school alcohol- and
8 drug-testing policies and programs must conform to the Standards for
9 School Drug and Alcohol Testing Act.

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 24-160 of Title 70, unless there
12 is created a duplication in numbering, reads as follows:

13 A. The Office of Juvenile Affairs in consultation with the
14 State Department of Education and the Department of Mental Health
15 and Substance Abuse Services shall be authorized to administer and
16 award grants through a competitive process to any public school
17 district that voluntarily submits a request and provides matching
18 fund for drug testing/treatment of students. The grant requests and
19 drug-testing policies that will be a part of any grant-funded
20 programs shall be developed by the school district and evaluated by
21 the Office of Juvenile Affairs in consultation with the State
22 Department of Education and the Department of Mental Health and
23 Substance Abuse Services.

24 B. The Office of Juvenile Affairs in consultation with the
25 State Department of Education and the Department of Mental Health
26 and Substance Abuse Services will promulgate rules to implement this
27 program.

28 C. The implementation of subsections A and B of this section is
29 contingent upon the provision of redirected state funds made
30 available through the appropriations process or from the federal
31 drug-free schools program or other sources.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 24-160.1 of Title 70, unless
3 there is created a duplication in numbering, reads as follows:

4 Sections 3 through 19 of this act shall be known and may be
5 cited as the "Standards for School Drug and Alcohol Testing Act".

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 24-160.2 of Title 70, unless
8 there is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "Administrator" means an administrator as defined in Section
11 6-101.3 of Title 70 of the Oklahoma Statutes;

12 2. "Alcohol" means ethyl alcohol or ethanol;

13 3. "Board" means the State Board of Health;

14 4. "Confirmation test" means a drug or alcohol test on a sample
15 to substantiate the results of a prior drug or alcohol test on the
16 same sample and which uses different chemical principles and is of
17 equal or greater accuracy than the prior drug or alcohol test;

18 5. "Department" means the State Department of Health;

19 6. "Drug" means amphetamines, cannabinoids, cocaine,
20 phencyclidine (PCP), hallucinogens, methaqualone, opiates,
21 barbiturates, benzodiazepines, synthetic narcotics, designer drugs,
22 or a metabolite of any of the substances listed herein;

23 7. "Drug or alcohol test" means a chemical test administered
24 for the purpose of determining the presence or absence of a drug or
25 its metabolites or alcohol in a person's bodily tissue, fluids or
26 products;

27 8. "Good faith" means reasonable reliance on fact, or that
28 which is held out to be factual, without the intent to deceive or be
29 deceived and without reckless or malicious disregard for the truth;

30 9. "On-site alcohol test" means a test that is easily portable
31 and that can meet the federal Department of Transportation
32 guidelines for an initial alcohol test;

1 10. "On-site drug test" means a drug test that is easily
2 portable and can be administered in a location outside a laboratory
3 such as a school site and that meets the requirements of the federal
4 Food and Drug Administration for commercial distribution and can
5 meet generally accepted cutoff levels such as those in the Mandatory
6 Guidelines for Federal Workplace Drug Testing Program;

7 11. "Random selection basis" means a mechanism for selecting
8 students for drug or alcohol testing that:

- 9 a. results in an equal probability that any student from
10 among the students subject to the selection mechanism
11 will be selected, and
12 b. does not give a school employee discretion to waive
13 the selection of any student selected under the
14 mechanism;

15 12. "Reasonable suspicion" means a belief that a student is
16 using or has used drugs or alcohol in violation of the district's
17 written policy drawn from specific objective and articulable facts
18 and reasonable inferences drawn from those facts in light of
19 experience, and may be based upon, among other things:

- 20 a. observable phenomena, such as:
21 (1) the physical symptoms or manifestations of being
22 under the influence of a drug or alcohol while at
23 school or participating in an extracurricular or
24 cocurricular activity, or
25 (2) the direct observation of drug or alcohol use
26 while at school or participating in an
27 extracurricular or cocurricular activity,
28 b. a report of drug or alcohol use while at school or
29 participating in an extracurricular or cocurricular
30 activity, provided by reliable and credible sources
31 and which has been independently corroborated,
32

1 c. evidence that a student has tampered with, or caused
2 another person to tamper with, a drug or alcohol test
3 administered pursuant to this act, or

4 d. evidence that a student is involved in the use,
5 possession, sale, solicitation or transfer of drugs
6 while on school premises, while in transit under the
7 authority of the school, or while attending any
8 function sponsored or authorized by the school;

9 13. "Review officer" means a person, qualified by the State
10 Board of Health, who is responsible for receiving results from a
11 testing facility which have been generated by a school district's
12 drug- or alcohol-testing program, and who has knowledge and training
13 to interpret and evaluate a student's test results together with the
14 student's medical history and any other relevant information;

15 14. "Sample" means tissue, fluid or product of the human body
16 chemically capable of revealing the presence of drugs or alcohol in
17 the human body;

18 15. "Student" means a person who is enrolled in a public school
19 in this state; and

20 16. "Testing facility" means any person, including any
21 laboratory, hospital, clinic or facility, either off or on school
22 premises, which provides laboratory services to test for the
23 presence of drugs or alcohol in the human body, and excluding a
24 person whose training and certification are limited to on-site
25 testing for purposes of this act.

26 SECTION 5. NEW LAW A new section of law to be codified
27 in the Oklahoma Statutes as Section 24-160.3 of Title 70, unless
28 there is created a duplication in numbering, reads as follows:

29 A. The Standards for the School Drug and Alcohol Testing Act
30 shall not be construed as requiring or encouraging schools to
31 conduct drug or alcohol testing.
32

1 B. Except as provided in subsection C of this section, school
2 districts that choose to conduct drug or alcohol testing of students
3 after September 1, 2000, shall be governed by the provisions of this
4 act and the rules promulgated for its implementation.

5 C. Drug or alcohol testing required by and conducted pursuant
6 to federal law or regulation shall be exempt from the provisions of
7 the Standards for the School Drug and Alcohol Testing Act and the
8 rules promulgated for its implementation.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 24-160.4 of Title 70, unless
11 there is created a duplication in numbering, reads as follows:

12 School districts that choose to conduct drug or alcohol testing
13 may request or require student to undergo testing under only the
14 following circumstances:

15 1. Applicant or participant testing: A school administrator
16 may request or require a student who applies to participate in any
17 extracurricular or cocurricular activity or any student who is
18 participating in an extracurricular or cocurricular activity to
19 undergo drug or alcohol testing on a random or scheduled, periodic
20 basis as defined and authorized in this act, provided that such
21 testing does not violate the provisions of the Americans with
22 Disabilities Act of 1990, 42 U.S.C., Section 12101 et seq., and
23 provided that such testing is required for all students who apply to
24 participate or who are participating in such activity;

25 2. Random testing: Any student may be requested by an
26 administrator to undergo drug or alcohol testing on a random
27 selection basis if the testing is part of the district's written
28 policy and meets the requirements for random selection set forth in
29 this act. Random testing may be on a district-wide or school site-
30 wide basis or may be applied only to students who have applied to
31 participate or who are participating in an extracurricular or
32 cocurricular activity;

1 3. Scheduled, periodic testing: A student who is participating
2 in an extracurricular or cocurricular activity may be requested by
3 an administrator to undergo drug or alcohol testing if the test is
4 scheduled routinely for all students who are participating in such
5 activity and the district's written policy includes a requirement
6 for such testing;

7 4. Reasonable suspicion testing: An administrator may request
8 or require a student to undergo drug or alcohol testing if the
9 administrator has a reasonable suspicion that the student has
10 violated the district's written policy on drug and alcohol use.

11 SECTION 7. NEW LAW A new section of law to be codified in
12 the Oklahoma Statutes as Section 24-160.5 of Title 70, unless there
13 is created a duplication in numbering, reads as follows:

14 A. On or after September 1, 2000, no school district may
15 request or require a student to undergo drug or alcohol testing
16 unless the school district has first adopted a written, detailed
17 policy setting forth the specifics of its drug- or alcohol-testing
18 program. The written policy shall be uniformly applied to those
19 covered by the policy and shall include, but not be limited to, the
20 following information:

21 1. A statement of the district's policy respecting drug or
22 alcohol use by students;

23 2. Students or student groups that are subject to testing;

24 3. Circumstances under which testing may be requested or
25 required;

26 4. Substances which may be tested, including the brand or
27 common name, if any, and the chemical name of any drug or its
28 metabolite to be tested;

29 5. Testing methods and collection procedures to be used,
30 including whether on-site tests will be administered;

31 6. Consequences of refusing to undergo testing;

32

1 7. Potential adverse action which may be taken or sanctions
2 which may be imposed as a result of a positive test result;

3 8. The rights of a student to explain, in confidence, the test
4 results;

5 9. Requirement for referral to a substance abuse counseling,
6 treatment or rehabilitation program as required in this act and
7 procedures for such referral;

8 10. The rights of a student to obtain all information and
9 records related to the student's testing;

10 11. Confidentiality requirements; and

11 12. The available appeal procedures, remedies and sanctions.

12 B. A district may require either on-site testing or testing at
13 a facility licensed pursuant to this act for an initial drug or
14 alcohol test. The district policy shall clearly state which of the
15 two methods shall be used. A district may alternate between on-site
16 testing and testing at a facility only upon a change in policy and
17 after notification of the policy change as required in subsections D
18 and E of this section.

19 C. Drug or alcohol testing governed by the Standards for School
20 Drug and Alcohol Testing Act shall not be requested or required of a
21 student by a school district unless the district's policy includes a
22 requirement that a student who tests positive, or whose test result
23 is confirmed by a second test if a second test is requested by the
24 student or parent or guardian, shall be referred to an in-school or
25 other program for substance abuse counseling, treatment or
26 rehabilitation.

27 D. A district that is implementing a drug- or alcohol-testing
28 policy for the first time, or is implementing changes to its policy,
29 shall provide at least thirty (30) days' notice to students and
30 parents or guardians prior to implementation of the policy or
31 changes to the policy.

1 E. The district shall post a copy of the drug or alcohol
2 testing policy, and any changes to the policy, in a prominent
3 student access area at the school site and shall give a copy of the
4 policy, and any changes to the policy, to each student.

5 SECTION 8. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 24-160.6 of Title 70, unless
7 there is created a duplication in numbering, reads as follows:

8 A. Any drug or alcohol testing by a school district shall occur
9 during or immediately after the regular school day or during or
10 immediately before or after an extracurricular or cocurricular
11 activity.

12 B. The school district shall pay all costs of testing for drugs
13 or alcohol required by the district, including confirmation tests
14 required by this act and the cost of transportation if the testing
15 of a student is conducted at a place other than the school site
16 where the student regularly attends. It is permissible for school
17 districts to fund these costs out of existing federal drug-free
18 school funds as available. Provided, however, a student or parent
19 or guardian who requests a retest of a sample in order to challenge
20 the results of a positive test shall pay all costs of the retest,
21 unless the retest reverses the findings of the challenged positive
22 test. In such case, the district shall reimburse the student or
23 parent or guardian for the costs of the retest.

24 SECTION 9. NEW LAW A new section of law to be codified
25 in the Oklahoma Statutes as Section 24-160.7 of Title 70, unless
26 there is created a duplication in numbering, reads as follows:

27 A. A school district that includes on-site drug and alcohol
28 tests of students as part of the district's drug- and alcohol-
29 testing policy shall use only products approved by the federal Food
30 and Drug Administration for commercial distribution and alcohol
31 tests approved under the federal Department of Transportation
32 guidelines for an initial alcohol test and shall use the products in

1 accordance with the manufacturer's instructions. On-site testing
2 under this act shall be conducted only by a test administrator who
3 is certified or trained as provided in this act. A district may
4 designate employees for training and certification, may authorize
5 trained and certified employees to collect samples and conduct on-
6 site drug and alcohol tests, or may contract for the services of a
7 trained and certified on-site test administrator.

8 B. If a district administers on-site drug or alcohol tests, the
9 district shall ensure that each person administering on-site tests
10 had received training and meets the qualifications of this act. An
11 on-site test administrator shall:

12 1. Be trained on the proper procedure for administering the
13 test and accurate evaluation of on-site test results;

14 2. Be certified in writing by the State Board of Health as
15 competent to administer and evaluate the on-site test;

16 3. Be trained to recognize adulteration of a sample to be used
17 in on-site testing; and

18 4. Sign a statement that clearly states that the on-site test
19 administrator shall hold confidential all information related to any
20 phase of a test in accordance with this act.

21 C. The Board shall have the power and the duty to promulgate,
22 prescribe, amend and repeal rules governing the training of district
23 employees or other persons who are responsible for collecting and
24 testing samples. The training shall include preparation of the
25 collection site, the collection of samples, the examination of
26 samples to detect any tampering or adulteration, test
27 administration, proper labeling of samples, and preservation of the
28 chain of custody of samples.

29 D. No later than October 1 of each year, a district using on-
30 site tests shall file with the State Department of Health a
31 statement signed by the superintendent certifying that to the best
32 of the superintendent's knowledge:

1 1. The tests are being administered according to the federal
2 Food and Drug Administration package insert that accompanies the
3 test; or

4 2. The tests are being administered according to the
5 instructions of the manufacturers;

6 3. The district has adopted a policy in accordance with the
7 Board's rules;

8 4. Chain of custody procedures are being followed; and

9 5. Persons administering on-site tests are trained and
10 certified in the use of the tests according to the Board's rules.

11 SECTION 10. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 24-160.8 of Title 70, unless
13 there is created a duplication in numbering, reads as follows:

14 A. The State Board of Health shall have the power and duty to
15 promulgate, prescribe, amend and repeal rules for the licensure and
16 regulation of testing facilities to be used for purposes of the
17 Standards for School Drug and Alcohol Testing Act and for the
18 establishment and regulation of minimum testing standards and
19 procedures to be applied for purposes of the Standards for School
20 Drug and Alcohol Testing Act, which shall include, but not be
21 limited to, the following:

22 1. Qualifications of testing facilities which shall include the
23 requirement that facilities doing urine analysis for initial or
24 confirmation tests either be certified for forensic urine drug
25 testing pursuant to guidelines or regulations of the federal
26 Department of Health and Human Services or be accredited for
27 forensic urine drug testing by the College of American Pathologists
28 or other organizations recognized by the State Board of Health;

29 2. Qualifications of testing facility personnel;

30 3. Body component samples that are appropriate for drug and
31 alcohol testing;

32

1 4. The drugs in addition to marihuana, cocaine, opiates,
2 amphetamines and phencyclidine, and their metabolites, for which
3 testing may be conducted;

4 5. Methods of analysis and internal quality control procedures
5 to ensure reliable test results;

6 6. Internal review and certification process for test results;

7 7. Security measures to preclude adulteration;

8 8. Chain-of-custody procedures;

9 9. Retention and storage procedures and durations to ensure
10 availability of samples for retesting;

11 10. Procedures for ensuring confidentiality of test results;

12 11. Proficiency testing;

13 12. Training and qualifications of review officers which shall
14 include, but not be limited to, licensure to practice medicine and
15 surgery or osteopathic medicine or holding a doctorate in clinical
16 chemistry, forensic toxicology, or a similar biomedical science;

17 13. Training and qualifications of collection site personnel;

18 14. Sample collection procedures that ensure the privacy of the
19 individual and prevent and detect tampering with the sample; and

20 15. Sample documentation, storage and transportation to the
21 testing facility.

22 B. The rules promulgated by the State Board of Health pursuant
23 to the provisions of this act shall in all applicable respects be
24 consistent with any federal laws and regulations for drug and
25 alcohol testing in schools and shall include safeguards, standards
26 and procedures not less stringent than those applicable to the
27 Standards for Workplace Drug and Alcohol Testing Act, Sections 551,
28 et seq. of Title 40 of the Oklahoma Statutes.

29 SECTION 11. NEW LAW A new section of law to be codified
30 in the Oklahoma Statutes as Section 24-160.9 of Title 70, unless
31 there is created a duplication in numbering, reads as follows:
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1 A. On and after September 1, 2000, no testing facility shall
2 provide laboratory services to a school district to test for the
3 presence or absence of drugs or alcohol unless it meets the
4 qualifications established for testing facilities pursuant to this
5 act and is licensed by the State Department of Health to perform
6 such tests. The State Board of Health shall promulgate rules
7 relating to the issuance of such license, including rules governing
8 license revocation, suspension and nonrenewal.

9 B. The fees for licensure of testing facilities by the State
10 Department of Health shall be set by the State Board of Health and
11 shall not be more than One Hundred Fifty Dollars (\$150.00) annually.

12 C. Any testing facility providing laboratory services to a
13 school district to test for the evidence of drugs or alcohol which
14 is not licensed by the State Department of Health pursuant to this
15 section shall be subject to an administrative fine of not more than
16 Five Hundred Dollars (\$500.00) for each offense. Each test
17 performed by the unlicensed testing facility in violation of this
18 section shall constitute a separate offense.

19 SECTION 12. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 24-160.10 of Title 70, unless
21 there is created a duplication in numbering, reads as follows:

22 All sample collection and testing for drugs and alcohol pursuant
23 to the provisions of this act shall be conducted in accordance with
24 the following conditions:

25 1. Samples shall be collected and tested only by individuals
26 deemed qualified by the State Board of Health and may be collected
27 on the premises of the school site;

28 2. Only samples deemed appropriate by the State Board of Health
29 for drug and alcohol testing shall be collected;

30 3. The collection of samples shall be performed under
31 reasonable and sanitary conditions;

32

1 4. A sample shall be collected in sufficient quantity for
2 splitting into two separate specimens, pursuant to rules of the
3 State Board of Health, to provide for any subsequent independent
4 analysis in the event of challenge of the test results of the main
5 specimen;

6 5. Samples shall be collected and tested with due regard to the
7 privacy of the individual being tested. In the instances of
8 urinalysis, no school district employee shall directly observe an
9 student in the process of producing a urine sample; provided,
10 however, collection shall be in a manner reasonably calculated to
11 prevent substitutions or interference with the collection or testing
12 of reliable samples;

13 6. Sample collection shall be documented, and the documentation
14 procedures shall include:

- 15 a. labeling of samples so as reasonably to preclude the
16 probability of erroneous identification of test
17 results, and
- 18 b. an opportunity for the student or parent or guardian
19 to provide notification of any information which the
20 student or parent or guardian considers relevant to
21 the test, including identification of currently or
22 recently used prescription or nonprescription drugs,
23 or other relevant information;

24 7. Sample collection and storage, on-site tests, and
25 transportation to the testing facility shall be performed so as
26 reasonably to preclude the probability of sample contamination or
27 adulteration;

28 8. Sample testing shall conform to scientifically accepted
29 analytical methods and procedures. If confirmation is requested,
30 testing shall include gas chromatography, gas chromatography-mass
31 spectroscopy, or an equivalent scientifically accepted method of
32

1 equal or greater accuracy as approved by Board rule, at the cutoff
2 levels as determined by Board rule; and

3 9. A written record of the chain of custody of the sample shall
4 be maintained from the time of the collection of the sample until
5 the sample is no longer required.

6 SECTION 13. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 24-160.11 of Title 70, unless
8 there is created a duplication in numbering, reads as follows:

9 A. School districts shall maintain all drug- and alcohol-test
10 results and related information, including, but not limited to,
11 interviews, reports, statements and memoranda, as confidential
12 records, separate from other student records. Unless such records
13 are ordered released pursuant to a valid court order, such records,
14 including the records of the testing facility, shall not be used in
15 any criminal proceeding, or any civil or administrative proceeding,
16 except in those actions taken by the district or in any action
17 involving the student and the district. The records may be released
18 to a program to which a student is referred by the district for
19 substance abuse counseling, treatment, or rehabilitation.

20 B. The records described in subsection A of this section and
21 maintained by the district shall be the property of the district
22 and, upon the request of the tested student or parent or guardian,
23 shall be made available for inspection and copying to the student or
24 parent or guardian. Unless acting pursuant to a valid court order
25 or pursuant to authorization on this act, a district shall not
26 release such records to any person other than the student or parent
27 or guardian, unless the student or parent or guardian, in writing
28 following receipt of the test results, has expressly granted
29 permission for the district to release such records.

30 C. A person performing on-site tests, a testing facility, or
31 any agent, representative or designee of the facility, or any review
32 officer, shall not disclose to any person or entity, based on the

1 analysis of a sample collected from a student for the purpose of
2 testing for the presence of drugs or alcohol, any information
3 relating to:

4 1. The general health, pregnancy or other physical or mental
5 condition of the student; or

6 2. The presence of any drug other than the drug or its
7 metabolites that the district requested be identified and for which
8 a medically acceptable explanation of the positive result, other
9 than the use of drugs, has not been forthcoming from the student or
10 parent or guardian.

11 Provided, however, a district using on-site tests or a testing
12 facility shall release the results of the drug or alcohol test, and
13 any analysis and information related thereto, to the student or
14 parent or guardian of the student who was tested upon request of the
15 student or parent or guardian.

16 SECTION 14. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 24-160.12 of Title 70, unless
18 there is created a duplication in numbering, reads as follows:

19 A. If a student tests positive on an initial test, an
20 administrator may prevent the student from participating in
21 extracurricular or cocurricular activities until the results of a
22 confirmation test, if requested, are obtained.

23 B. If the student refuses to undergo testing, if no
24 confirmation is requested following an initial positive test result,
25 or if a confirmation test shows the initial positive result was
26 accurate, an administrator may take disciplinary action in
27 accordance with the district's disciplinary policy. Except for
28 denial of participation in an extracurricular activity or
29 cocurricular activity, a district may take no action against a
30 student based on an initial positive test result if a confirmation
31 test has been requested by the student or a parent or guardian
32 unless the test result has been confirmed by a second test using gas

1 chromatography, gas chromatography-mass spectroscopy, or an
2 equivalent scientifically accepted method of equal or greater
3 accuracy as approved by rule of the State Board of Health, at the
4 cutoff levels determined by Board rule.

5 SECTION 15. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 24-160.13 of Title 70, unless
7 there is created a duplication in numbering, reads as follows:

8 A. If a school district has established a drug- or alcohol-
9 testing program pursuant to this act, a person may not bring an
10 action for damages against the district or a district employee or
11 agent for:

12 1. Actions in good faith based on the results of a positive on-
13 site drug or alcohol test;

14 2. Failure to test for drugs or alcohol or failure to test for
15 a specific drug or another controlled substance;

16 3. Failure to test for, or if tested failure to detect, a
17 specific medical condition or a mental, emotional, or psychological
18 disorder or condition.

19 B. A person may not bring an action for damages based on test
20 results against a district or a district employee or agent of a
21 district that has established and implemented a drug- or alcohol-
22 testing program pursuant to this act unless the action was based on
23 a false positive test result and the district employee or agent knew
24 or clearly should have known that the result was in error and
25 ignored the true test result because of reckless or malicious
26 disregard for the truth or the willful intent to deceive or be
27 deceived.

28 C. The district and its agents and employees will not be liable
29 for monetary damages if the reliance on a false positive test result
30 was reasonable and in good faith.

31 D. A person may not bring an action for damages against a
32 district or a district employee or agent for an action taken related

1 to a false negative on-site drug or alcohol test if the test is
2 conducted in accordance with this act.

3 SECTION 16. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 24-160.14 of Title 70, unless
5 there is created a duplication in numbering, reads as follows:

6 A. Any student or parent or guardian aggrieved by a willful
7 violation of the Standards for School Drug and Alcohol Testing Act
8 may institute a civil action in a court of competent jurisdiction
9 within two (2) years of the person's discovery of the alleged
10 willful violation or of the exhaustion of any internal
11 administrative remedies available to the person. Failure to
12 institute action within two (2) years shall bar the person from
13 obtaining the relief provided for in subsection B of this section.

14 B. Any action for damages brought pursuant to this act against
15 a school district or school employee or agent must be brought
16 pursuant to the Governmental Tort Claims Act in the county where the
17 district board of education office is located.

18 C. A student, parent, or guardian may seek injunctive or
19 declaratory relief in the district court in the county where the
20 district board of education is located.

21 SECTION 17. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 24-160.15 of Title 70, unless
23 there is created a duplication in numbering, reads as follows:

24 On and after September 1, 2000, no school district shall
25 implement a drug- or alcohol-testing program unless the program is
26 in compliance with the provisions of this act and the rules
27 promulgated for its implementation. A school district drug- or
28 alcohol-testing program which is in effect prior to September 1,
29 2000, shall be in compliance with the provisions of this act and the
30 rules promulgated for its implementation no later than September 1,
31 2000.

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1 SECTION 18. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 24-160.16 of Title 70, unless
3 there is created a duplication in numbering, reads as follows:

4 Any person who willfully and knowingly violates the provisions
5 of the Standards for School Drug and Alcohol Testing Act shall be
6 guilty of a misdemeanor and, upon conviction, punishable by a fine
7 of not less than One Hundred Dollars (\$100.00) nor more than Five
8 Thousand Dollars (\$5,000.00) or imprisonment in the county jail for
9 not more than one (1) year, or by both such fine and imprisonment.

10 SECTION 19. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 24-160.17 of Title 70, unless
12 there is created a duplication in numbering, reads as follows:

13 The State Board of Health shall adopt rules necessary to
14 implement this act no later than March 1, 2000. The Board of Health
15 shall provide the rules and necessary interpretive policy statements
16 to the State Department of Education no later than March 15, 2000,
17 for distribution to the school districts. Amendments to the rules
18 and interpretive statements shall be provided to the State
19 Department of Education in a timely manner for distribution to the
20 school districts.

21 SECTION 20. Sections 1 through 18 of this act shall become
22 effective September 1, 2000.

23 SECTION 21. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby
25 declared to exist, by reason whereof this act shall take effect and
26 be in full force from and after its passage and approval.

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