

1 STATE OF OKLAHOMA

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

3 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 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; creating certain
10 presumption; authorizing certain civil action;
11 providing for injunctive relief; stating limitation;
12 stating venue for certain actions; prohibiting
13 certain testing program after certain date under
14 certain conditions; authorizing continuation of
15 certain testing programs until certain date; creating
16 certain misdemeanor; providing punishment; providing
17 for codification; providing an effective date; and
18 declaring an emergency.

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

20 SECTION 1. AMENDATORY 70 O.S. 1991, Section 24-102, as
21 last amended by Section 3, Chapter 350, O.S.L. 1997 (70 O.S. Supp.
22 1998, Section 24-102), is amended to read as follows:

23 Section 24-102. The superintendent, principal, teacher, or
24 security personnel of any public school in the State of Oklahoma,
25 upon reasonable suspicion, shall have the authority to detain and
26 search or authorize the search, of any pupil or property in the
27 possession of the pupil when said pupil is on any school premises,
28 or while in transit under the authority of the school, or while
29 attending any function sponsored or authorized by the school, for
30 dangerous weapons, controlled dangerous substances, as defined in
31 the Uniform Controlled Dangerous Substances Act, intoxicating
32 beverages, low-point beer, as defined by Section 163.2 of Title 37
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

1 by at least one other authorized person, said person to be of the
2 same sex if practicable.

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

10 The superintendent, principal, teacher, or security personnel
11 searching or authorizing the search shall have authority to detain
12 the pupil to be searched and to preserve any dangerous weapons,
13 controlled dangerous substances, intoxicating beverages, low-point
14 beer, wireless telecommunication devices or missing or stolen
15 property that might be in the pupil's possession including the
16 authority to authorize any other persons they deem necessary to
17 restrain such pupil or to preserve any dangerous weapons, controlled
18 dangerous substances, intoxicating beverages, low-point beer,
19 wireless telecommunication devices or missing or stolen property.
20 Students found to be in possession of such an item shall be subject
21 to the provisions of Section ~~4~~ 24-101.3 of this ~~act~~ title.

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

1 security personnel detaining, searching or authorizing such
2 detention or search for drugs or alcohol shall have immunity from
3 civil liability that might otherwise be incurred or imposed as a
4 result of such action.

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

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

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

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

30 C. The implementation of subsections A and B of this section is
31 contingent upon the provision of redirected state funds made
32

1 available through the appropriations process or from the federal
2 drug-free schools program or other sources.

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

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

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

11 As used in this act:

12 1. "Administrator" means an administrator as defined in Section
13 6-101.3 of Title 70 of the Oklahoma Statutes;

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

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

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

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

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

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

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

32

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

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

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

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

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

- 23 a. observable phenomena, such as:
 - 24 (1) the physical symptoms or manifestations of being
25 under the influence of a drug or alcohol while at
26 school or participating in an extracurricular or
27 cocurricular activity, or
 - 28 (2) the direct observation of drug or alcohol use
29 while at school or participating in an
30 extracurricular or cocurricular activity,
- 31 b. a report of drug or alcohol use while at school or
32 participating in an extracurricular or cocurricular

1 activity, provided by reliable and credible sources
2 and which has been independently corroborated,

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

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

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

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

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

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

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

1 A. The Standards for the School Drug and Alcohol Testing Act
2 shall not be construed as requiring or encouraging schools to
3 conduct drug or alcohol testing.

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

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

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

15 School districts that choose to conduct drug or alcohol testing
16 may request or require student to undergo testing under only the
17 following circumstances:

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

28 2. Random testing: Any student may be requested by an
29 administrator to undergo drug or alcohol testing on a random
30 selection basis if the testing is part of the district's written
31 policy and meets the requirements for random selection set forth in
32 this act. Random testing may be on a district-wide or school site-

1 wide basis or may be applied only to students who have applied to
2 participate or who are participating in an extracurricular or
3 cocurricular activity;

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

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

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

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

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

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

27 3. Circumstances under which testing may be requested or
28 required;

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

32

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

3 6. Consequences of refusing to undergo testing;

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

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

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

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

13 11. Confidentiality requirements; and

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

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

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

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

1 parents or guardians prior to implementation of the policy or
2 changes to the policy.

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

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

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

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

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

29 A. A school district that includes on-site drug and alcohol
30 tests of students as part of the district's drug- and alcohol-
31 testing policy shall use only products approved by the federal Food
32 and Drug Administration for commercial distribution and alcohol

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

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

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

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

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

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

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

31 D. No later than October 1 of each year, a district using on-
32 site tests shall file with the State Department of Health a

1 statement signed by the superintendent certifying that to the best
2 of the superintendent's knowledge:

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

6 2. The tests are being administered according to the
7 instructions of the manufacturers;

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

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

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

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

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

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

31 2. Qualifications of testing facility personnel;

32

1 3. Body component samples that are appropriate for drug and
2 alcohol testing;

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

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

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

9 7. Security measures to preclude adulteration;

10 8. Chain-of-custody procedures;

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

13 10. Procedures for ensuring confidentiality of test results;

14 11. Proficiency testing;

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

19 13. Training and qualifications of collection site personnel;

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

22 15. Sample documentation, storage and transportation to the
23 testing facility.

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

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 24-160.9 of Title 70, unless
3 there is created a duplication in numbering, reads as follows:

4 A. On and after September 1, 2000, no testing facility shall
5 provide laboratory services to a school district to test for the
6 presence or absence of drugs or alcohol unless it meets the
7 qualifications established for testing facilities pursuant to this
8 act and is licensed by the State Department of Health to perform
9 such tests. The State Board of Health shall promulgate rules
10 relating to the issuance of such license, including rules governing
11 license revocation, suspension and nonrenewal.

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

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

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

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

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

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

1 3. The collection of samples shall be performed under
2 reasonable and sanitary conditions;

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

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

15 6. Sample collection shall be documented, and the documentation
16 procedures shall include:

17 a. labeling of samples so as reasonably to preclude the
18 probability of erroneous identification of test
19 results, and

20 b. an opportunity for the student or parent or guardian
21 to provide notification of any information which the
22 student or parent or guardian considers relevant to
23 the test, including identification of currently or
24 recently used prescription or nonprescription drugs,
25 or other relevant information;

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

30 8. Sample testing shall conform to scientifically accepted
31 analytical methods and procedures. If confirmation is requested,
32 testing shall include gas chromatography, gas chromatography-mass

1 spectroscopy, or an equivalent scientifically accepted method of
2 equal or greater accuracy as approved by Board rule, at the cutoff
3 levels as determined by Board rule; and

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

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

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

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

31 C. A person performing on-site tests, a testing facility, or
32 any agent, representative or designee of the facility, or any review

1 officer, shall not disclose to any person or entity, based on the
2 analysis of a sample collected from a student for the purpose of
3 testing for the presence of drugs or alcohol, any information
4 relating to:

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

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

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

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

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

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

1 unless the test result has been confirmed by a second test using gas
2 chromatography, gas chromatography-mass spectroscopy, or an
3 equivalent scientifically accepted method of equal or greater
4 accuracy as approved by rule of the State Board of Health, at the
5 cutoff levels determined by Board rule.

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

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

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

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

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

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

29 C. There is a rebuttable presumption that the test result was
30 valid if the district and its employees or agents complied with the
31 provisions of this act.

32

1 D. The district and its agents and employees will not be liable
2 for monetary damages if the reliance on a false positive test result
3 was reasonable and in good faith.

4 E. A person may not bring an action for damages against a
5 district or a district employee or agent for an action taken related
6 to a false negative on-site drug or alcohol test if the test is
7 conducted in accordance with this act.

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

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

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

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

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

29 On and after September 1, 2000, no school district shall
30 implement a drug- or alcohol-testing program unless the program is
31 in compliance with the provisions of this act and the rules
32 promulgated for its implementation. A school district drug- or

1 alcohol-testing program which is in effect prior to September 1,
2 2000, shall be in compliance with the provisions of this act and the
3 rules promulgated for its implementation no later than September 1,
4 2000.

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

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

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

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

25 SECTION 20. Sections 3 through 18 of this act shall become
26 effective September 1, 2000.

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

31

32 47-1-7295 MCD 6/11/15