STUDENT DRUG TESTING LEGAL ISSUES AND RESEARCH

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THE LAW IS ON YOUR SIDE

- Two U.S. Supreme Court cases

- State Supreme Courts
- New Jersey, Colorado, Washington, Oregon, Indiana and Pennsylvania
- State statutes – New Jersey, Virginia, New York, etc.

STATE AND FEDERAL LAW

- Searches
- Privileges
- Parental consent
- Truly random selection
- Community support
- Proper procedures, confidential, non-punitive, written policy

The Drug and Alcohol Testing Process

1. Specimen collection – initial screening test

2. Laboratory confirmation

3. Review by a Medical Review Officer

4. Limited release of results

5. Consequences- evaluation - education - treatment

Specimen Collection

Drug testing begins with the collection of a specimen

There are well established procedures for collecting specimens and protecting the chain of custody. State law or SAMHSA procedures. State law may govern drug/alcohol testing

Chain of custody insures safe handling and accurate analysis

TYPE OF SPECIMEN

- URINE
- SALIVA
- HAIR
- SWEAT
- BLOOD
- Check state law

Drug Test Confirmation

All initial screening tests should be confirmed by GC/MS

The US Supreme Court has determined that an initial immunoassay drug test confirmed by GC/MS meets all legal requirements for accuracy
NTEU v. Von Raab

Medical Review Officer

All positive confirmed results are reviewed by a Medical Review Officer (MRO), a physician trained in drug and alcohol testing

The MRO determines test accuracy and then contacts the student/parents to determine if the positive drug test has a legitimate medical reason If the test does not have a legitimate medical reason, then it is be reported to the school as a positive

AMERICANS WITH DISABILITIES ACT

- Due to ADA you cannot ask about prescription drug use prior to testing. You may ask only after there is a confirmed positive result.
- Have the MRO ask

On-Site Testing

There are now a number of very accurate on-site drug and alcohol screening tests that can test urine and saliva

On-site tests can be administered at the school and can show results within a few minutes

On-site tests can be cleared by the FDA in the case of a drug test or DOT in the case of an alcohol test

CONTRACTS

- Collective Bargaining Agreements
- Drug/alcohol test services purchase contracts
- Student assistance contracts
- Indemnification

Written Policy

A written policy on drug and alcohol testing should be provided to school personnel and to parents and to students.

The goal of testing is deterrence. A written policy helps that goal.

Written Policy Contents

1. Statement of need
2. School's position on substance abuse
3. Policy implementation procedures
4. Student rights and school's responsibilities
5. Consequences – out of activity, education, treatment

HEALTH VS. SAFETY AND EDUCATION RATIONALE

- CLIA
- HIPAA
- CASE LAW FAVORS SAFETY AND EDUCATION
- ACLU and DPA

STATEMENT OF NEED

The policy should begin with a statement of need based on data

Data sources include: drug/alcohol arrests, overdoses, disciplinary problems, suspensions, drug sales, school violence, concerns of parents and school personnel, national and state studies

CONFIDENTIALITY

- FERPA
- 42 CFR PART 2
- STATE LAW
- SCHOOL POLICY
- HIPAA
- WHEN IN DOUBT DON’T LET IT OUT

INSURANCE

- Liability
- Directors and officers
- Drug test provider should be insured
- Indemnification
- Legal costs

STUDIES ON RANDOM STUDENT TESTING

- DuPont study - school officials support testing
- Hunterdon Central - major reductions in multi-drug use
- Indiana study - reductions in use and discipline problems
- Oregon - 73% reduction in use

THE MICHIGAN STUDY

- **The Michigan Study does not differentiate between schools that do intensive, regular random screening and those that test only occasionally. As a result, it does not rule out the possibility that the most vigilant schools do a better job of curbing drug use.**
- Joye v. Hunterdon Cent. Regional High School Bd. of Educ., 176 N.J. 568, 606, 826 A.2d 624, 647 (2003