



Public School Policies: Keeping Students Drug and Alcohol Free

A top goal of schools is to keep students free of alcohol and other drugs (AOD). The most effective policies pertaining to the use, possession, and distribution of these substances are both comprehensive and compassionate. They emphasize prevention and nondisciplinary intervention, as well as fair and consistent discipline, to hold students accountable for their behavior.

To offer insight into school policies, United Educators (UE) analyzed more than 50 claims and incidents involving student AOD use. These included overdoses, hospitalizations, and criminal charges for driving under the influence. We also looked at situations in which AOD use contributed to student suicides, accidental deaths, injuries, and sexual misconduct. In these matters, the student's family alleged that schools erred in the following ways:

- **Unfair discipline or investigation:** 48 percent challenged the school's investigation or disciplinary process as unfair or depriving the students of due process.

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- **Negligent or inadequate supervision:** 30 percent alleged that the school was negligent in its supervision or breached the enrollment agreement by allowing the students' substance abuse to occur at school or related activities.
- **Unlawful distribution by educators:** 22 percent involved situations in which school employees or volunteers, typically faculty members or coaches, provided the substances to students.

As the UE claims study shows, schools are faulted both when they do too little and when they do too much in enforcing school policies. Following is an overview of some of the problems schools face and advice to help you strengthen your policies.

Assessing AOD Use

The first step in deterring student AOD use is to assess your population's risk. Effective programs consider students' age, gender, and ethnicity. One tool for assessing AOD use is the annual Youth Risk Behavior Survey (YRBSS) by the U.S. Centers for Disease Control and Prevention. The national survey is designed for students between grades nine and 12 and administered to public and independent schools which are selected to participate. If not selected, schools may independently administer the questionnaires, but the results are not included in the national statistics. Participation allows schools to gauge their student AOD problems and the effectiveness of school policies over time.

Nationwide, the 2013 YRBSS revealed the following about high school student use of AOD:

- 34.9 percent of students had consumed alcohol
- 23.4 percent had used marijuana
- 15.7 percent had smoked cigarettes and 8.8 percent had used smokeless tobacco
- 6.6 percent of students had used ecstasy (also called MDMA) one or more times during their life
- 5.5 percent of students had used a form of cocaine

Additionally, the 2013 Monitoring the Future survey, conducted at the University of Michigan, found that 3.6 percent of 12th-grade students nationally have used Oxycontin and 5.3 percent used Vicodin for nonmedical purposes.

Establishing School Policies

Given the troubling problem of student substance abuse, schools should adopt policies pertaining to prevention, nondisciplinary intervention, and enforcement of conduct standards. A school's AOD policy must be incorporated into the Code of Student Conduct which often is required reading for the student and parent or guardian at the start of each school year.

Philosophy and Rationale

In drafting your school's AOD policy, begin by stating the philosophy, purpose, or rationale. This will help educators consistently apply the policy. Typically, the overriding goal is to establish the school as a drug-free community. Include statements that AOD use is illegal, has a negative impact on physical and psychological health, and undermines the educational process for both the using students and those around them.

School policies are designed to hold students accountable for their behavior. Thus, schools need to have investigatory and disciplinary procedures to maintain order among students, prevent illegal activity, and avoid liability for personal injuries that may occur when students possess, use, or distribute drugs at school or sponsored events.

Prevention Programs

Schools often assert that they share responsibility with students' families and the local community in both prevention (educating students to understand the health risks and dangers of AOD use) and intervention (identifying and responding to students of concern). Further, the federal Safe and Drug-Free Schools and Communities Act of 1994, as amended, has declared that schools have a role in educating students about the dangers of AOD use.

Comprehensive prevention programs geared for educators, families, and students are essential to prevent students from experimenting with substances and to protect and support students who opt for drug-free lifestyles. The basic program aspects are as follows:

Educator Training

Provide all educators with basic information on how to identify the signs and symptoms of student substance abuse (and other mental health problems) and how to intervene or get the student help. Train school nurses, counselors, and faculty on how to deliver substance abuse prevention curricula in the classroom. Instruct administrators and security personnel on the legal requirements for reporting student substance abuse to law enforcement as well as on when and how to search students and their belongings for evidence of AOD use, possession, or distribution.

Family Programs

Parent education reinforces what children learn in school. Refer parents to family-based prevention programs such as Drugfree.org that enhance bonding and relationships with their children. Many programs focus on improving parenting skills, covering topics such as setting rules, monitoring activities, praising good behavior, and using moderate, consistent discipline.



Student Education

Substance abuse education is best taught from a health perspective. Inform students that AOD use carries various health risks, including reduced brain functioning, impaired memory, and mental health problems. Students who abuse drugs are more likely to perform poorly in school, be truant, and become dropouts. Early alcohol and drug use is a strong predictor of abuse or dependence later in life.


It is important to dispel the belief that the use of substances is widespread or acceptable among peers or adults. Research compiled by the National Social Norms Resource Center, FCD (Freedom From Chemical Dependency) Educational Services, and other organizations demonstrates that AOD use diminishes once students recognize that abstinence is respected as the school norm.

Engage students through discussion, role-playing, and other learning activities rather than through passive activities such as lectures and films. Students often act negatively or do not listen to material that they regard as patronizing, moralistic, or threatening.

Schools can locate prevention programs that have research-backed success through the online National Registry of Evidence-based Programs and Practices (NREPP; www.nrepp.samhsa.gov), operated by U.S. Department of Health and Human Services, as well as other resources published by the National Institute of Drug Abuse.

Intervention With Students

- **A student assistance team** can identify and respond to students who may be experiencing a substance abuse problem. Create a team of trained teachers and health professionals who meet regularly. Early intervention may consist of a team member or other adult expressing concern to a student about his or her behavior. If the concern appears justified, the next step may be to inform the student's parents and encourage a substance abuse evaluation. This will determine the extent and seriousness of the student's AOD use.
- **"Safe harbor" policies** give students immunity from disciplinary action in certain situations and must be documented in the student code of conduct. Under such policies, students may refer themselves or other students for assistance with substance abuse or other problems. An adult such as a school employee, parent, or friend may also make the referral. School policies typically give the referring or referred student immunity from disciplinary action only if the information has not already been disclosed or will not otherwise become available to school officials through ongoing proceedings. The immunity may be conditioned on the student's open and honest



communication with school officials. Schools can only promise safe harbor from disciplinary consequences, not from criminal charges or other circumstances outside the school's control.

- **Behavioral contracts and action plans** are effective in implementing corrective measures for students who have AOD problems. Consult with the student and his or her parents about the contract, and require them to show their agreement by signing it. The contract must be included in the student code of conduct. Tailor the terms of the contract to the student's age and specific AOD problems, and state the consequences for the student's failure to successfully complete the contract terms. Many schools will offer a behavioral contract only once; if the student violates it or the AOD rules again, they impose more severe discipline or expulsion.

Following are examples of nondisciplinary measures that can be effective in addressing student AOD problems:

- Substance abuse and/or mental health counseling with progress reports sent to the school
- Medical leave from the school to allow the student to enter an intensive therapeutic program
- Monitoring of the student's abstinence through random drug or alcohol testing and random searches
- Research project to learn about alcohol and drug use and the effects on the student, his or her family, or society in general
- Supervised visit to observe courthouses, jails, or other appropriate sites or agencies
- Physical and personal challenge course such as Outward Bound, wilderness camping, karate, or meditation, designed to provide a fulfilling experience without the use of drugs and alcohol
- Community service project
- Participation in a student assistance or peer mediation program to help other students examine their potential or actual use of alcohol or other drugs

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Standards of Conduct

Since prevention and nondisciplinary intervention may not eliminate all student AOD activity, schools need clearly defined standards of student conduct. Commonly prohibited behaviors include the use, possession, or distribution of alcoholic beverages, prohibited drugs, and drug paraphernalia. "Look-alike" drugs—that is, substances designed to resemble controlled or illegal drugs—are often prohibited under the rationale that they may contain impurities or mislead users about their potency and effects. Further, public schools may, consistent with the First Amendment to the U.S. Constitution, restrict student speech at a school event when that speech is reasonably viewed as promoting illegal drug use.

Clearly describe what is prohibited while giving school officials enough flexibility to apply the rules on a case-by-case basis. Include examples and use words like “including, but not limited to” when drafting your policy.

School conduct proceedings differ from criminal proceedings, so school policies generally should not make reference to criminal laws. Exceptions will depend on state laws but may include defining certain controlled substances.

AOD rules can raise some complex issues. For example:

- Do “alcoholic beverages” include beverages with only small amounts of alcohol? Does a student violate school rules by “spiking” nonalcoholic beverages? Or by drinking one sip of beer? Many schools define alcoholic beverages to include “any beverage that contains alcohol” to avoid having to prove the exact amount of alcohol that a student possessed or consumed.
- How does the school regulate illegal use of prescription and over-the-counter drugs? Many schools define prohibited drugs to include controlled substances prohibited by law, alcoholic beverages, and “any prescription or over-the-counter drug, except those for which permission to use in school has been granted.”
- Does a student violate the conduct code by being present when alcohol or illicit drugs are found, such as in a vehicle or at a party? Many schools discourage students from getting into these situations by defining possession to include substances that are “on a student’s person or within an area of a student’s control, including but not limited to a car, locker, books, and clothing.” Less severe sanctions may be imposed on students who did not consume or distribute the substances.

Jurisdiction

As a general rule, public schools can regulate student conduct that disrupts the educational mission or poses a threat or danger to the safety of other students, staff, or school property. Many schools seek to reserve the broadest possible discretion to impose discipline if the circumstances warrant it. A broadly written policy may state that it applies any time a student is participating in a school-related activity, such as field trips, school-sponsored activities, and athletic events.

Disciplining students for off-campus behavior requires a careful balancing of the student’s right to a public education with the need to prevent harm or disruption to the school environment. For example, courts have approved expulsions or suspensions from school or co-curricular activities for activities that include the following:

- A student refused to take down a banner bearing the phrase “BONG HITS 4 JESUS” at an approved off-campus school trip during school hours (*Morse v. Frederick*, U.S.S.Ct. 2007).
- An underage student athlete attended a party where alcohol was consumed by other underage students and did not consume alcohol (*Bush v. Dassel- Cokato Board of Education*, D. Minn. 1990).
- A student sold cocaine to an undercover officer on three separate occasions off-campus during the summer (*Howard v. Colonial School District*, Del. 1992).
- A student sold marijuana off school grounds, though the negotiations for the sale occurred at school and the students who purchased the drugs were later caught smoking it on school grounds (*Giles v. Brookville Area School District*, Pa. Comwlth. 1995).

Although courts are usually reluctant to overturn school decisions, they have in some situations invalidated student discipline and the loss of co-curricular privileges. When this occurs, the most common rationale is that the off-campus AOD-related misconduct was minor, the sanction was too extreme, or the student did not reasonably know the behavior was prohibited. For example:

- A student was expelled for possessing marijuana in the trunk of his car off school grounds and after school hours. The court determined that the student did not have adequate notice that such conduct, “by itself and without some tangible nexus to school operation,” was “seriously disruptive of the educational process,” as required by state law to expel the student (*Packer v. Board of Education*, Conn. 1998).

School Investigations

In order to enforce AOD school rules, educators must understand their authority to question students, conduct searches, and in some cases, implement drug-testing procedures.

Questioning

School officials have authority to question students about suspected violations of conduct rules. If school officials are acting on their own and not at the direction of the police, they can usually question students without giving “Miranda”-type warnings or prior notice to parents. If the questioning is conducted by or at the direction of the police, those warnings and notice to the parents may be required, depending on the circumstances. Schools should consult state education laws to verify specific requirements for questioning students.

In certain situations, parent notification or approval is not mandated. Examples include the following: when the questioning is part of a child abuse or neglect investigation, when it is required due to an emergency or urgent situation that presents a potential danger to life or property, or when reasonable efforts to notify the student’s parents have been unsuccessful.

Search and Seizure

School officials are permitted to search a student’s clothing and belongings (including a vehicle on school grounds) when they have “reasonable suspicion” that the student is under the influence of or possesses prohibited drugs or has paraphernalia at school. Even highly intrusive strip searches of students are allowed in certain situations. Courts have approved strip searches when school officials had reliable evidence that a student used or intended to distribute illegal drugs at school and the search was conducted in a reasonable manner, such as in the privacy of a locked nurse’s office or locker room, by a school official and staff witness who are the same gender as the student.



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To justify a search, a school official should be able to articulate both the particular information that prompted the suspicion and the reasons why the area and subject of the search would reveal evidence of a violation of the law or school rules. School officials do not need reasonable suspicion to conduct a search if the alcohol or drugs are in plain sight, the student consents to the search, or pressing circumstances threaten students' health and safety.

In addition to reasonable suspicion searches, school officials may adopt a locker inspection policy. The policy must inform students that lockers are school property and may be searched at any time on a routine, nontargeted basis. Drug-detection dogs may also be used as part of a locker inspection program. These procedures are typically used at schools with documented problems such as drug trafficking.

Schools should consult with legal counsel in determining the applicable standards for searches conducted by school resource officers. The standard of proof may depend on the role that school resource officers play at the school and whether the school or law enforcement initiates or directs the search. Generally, law enforcement officers are required to obtain a court-issued warrant to search students or their belongings on school grounds, unless the contraband is in plain view, the student consents to the search, or the student is being lawfully arrested for a criminal offense.

Provide school nurses, assistant principals, school resource officers, and others who conduct searches of students with medical training on detecting drug and alcohol use. Training on preservation of evidence and establishing the chain of custody of contraband is also valuable, as discrepancies are often raised in student discipline hearings. Schools should take photographs of evidence, particularly if the evidence will be turned over to the police.

Drug Testing

Although controversial, limited drug testing programs of public school students have been held to be constitutional and not an unreasonable search and seizure under the Fourth Amendment of the U.S. Constitution. In *Board of Education of Independent School District No. 02 v. Earls*, the U.S. Supreme Court in 2002 approved random drug testing of all students in grades seven to 12 who sought to participate in competitive extracurricular activities. Other courts have upheld the drug testing of students who seek the privilege of driving and parking on campus. School policies may also allow drug testing of a particular student if the school has reasonable suspicion that the student has used prohibited drugs or alcohol. In most cases, schools must obtain parental consent to the drug testing of students on a reasonable suspicion or random basis.



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Accurate drug testing programs can be expensive, so school boards should carefully weigh the costs and benefits. As noted in a 2007 article distributed by the National School Boards Association, schools should consider:

- The purpose of the program
- Students to whom the program will apply
- Substance to be tested
- Types of testing that will be required
- Procedures for determining who will be tested
- Testing procedures
- Confidentiality of test results
- Consequences of a refusal to test or a positive test

Disciplinary Procedures and Sanctions

Students have a constitutionally protected interest in public education that cannot be denied through disciplinary suspension or expulsion without due process of law. Generally, due process requires that students be given oral or written notice of the charges against them, an explanation of the evidence supporting the charge, and an opportunity to present their side of the story. State laws may prescribe more extensive safeguards, especially for suspensions of more than 10 days. Such safeguards may include a right to legal counsel, examination of records, presentation of evidence, and cross-examination of witnesses at hearings.

When providing notice of a conduct violation, state whether the student knew or acted recklessly in regard to the possession, use, or distribution of prohibited drugs. In group situations, address the extent to which a student is culpable for AOD activity. For students in special education programs, determine whether the student's disabling condition or improper placement in such programs rendered him or her less culpable for the AOD violation.

Specify a range of sanctions for drug and alcohol violations. In addition to nondisciplinary options, consequences may include a warning; suspension from participation in athletic competitions, artistic performances, exhibitions, leadership positions, and other extra-curricular activities; suspension from school; law enforcement contact (if criminal laws may have been violated); expulsion; and transfer to an alternative education program.

Any sanction or action imposed against a student must be authorized by the school policy. Maintain records of sanctions to ensure consistency with similar cases. Reserve the most serious sanctions for situations in which the students knowingly violated the conduct rules, exposed themselves or others to harm or danger, or had prior conduct violations.

Criminal Proceedings

If a student is charged in both school conduct and criminal proceedings, the school may choose to delay a hearing until the criminal case is resolved. Weigh the pros and cons of a delay in each case. Attorneys often advise students not to make statements or cooperate in the school proceeding out of concern that doing so may compromise their criminal defense. However, many schools will proceed with disciplinary proceedings to prevent a student from escaping punishment, particularly if the offense occurs toward the end of the school year. Schools can reserve the option of reopening a disciplinary proceeding if new evidence comes to light exonerating the student.

A Healthy School Environment

Comprehensive and compassionate substance abuse policies promote a healthy and positive school environment. By partnering with students, their families, and communities, schools can help all students reach their potential.

Acknowledgments

This publication, “Public School Policies: Keeping Students Drug and Alcohol Free,” was written by KarenAnn Broe, JD, associate vice president of learning programs for UE.



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