

LEGAL ASPECTS OF STUDENT DRUG TESTING

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REASONABLE SUSPICION THE GRACEFFO CASE

- Decision of the Commissioner of Education
- Interpreting NJSA 18A:40A-12
- Once a teaching staff member, school nurse or other educational personnel makes a report
- Based on observation and articulation of specific indicators

- That a student may be under the influence of alcohol or other drugs
- The principal or his/her designee must arrange for an **immediate** medical examination of the student – this should include a drug/alcohol test
- **YOU HAVE IMMUNITY UNDER THE LAW AND THE CASE OF HEDGES V. MUSCO**

RANDOM TESTING - THE LAW IS ON YOUR SIDE

- Two U.S. Supreme Court cases
- New Jersey State Supreme Court
- Colorado, Washington, Oregon, Indiana and Pennsylvania
- State statutes – New Jersey, Virginia, New York, etc.

RANDOM TESTING AND THE 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 - activity cessation - each school chooses

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

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

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

CONTRACTS

- Collective Bargaining Agreements
- Drug/alcohol test services purchase contracts with the state of New Jersey
- Student assistance contracts
- Indemnification

The New Jersey Statute

- Random testing – grades 9-12
- Extracurricular, sports, parking
- All drugs and steroids – alcohol implied
- Consequences – out of activity
- Public hearing required
- Written policy

NJ STATUTE POLICY REQUIREMENTS

- Notice that consent is required
- Procedures for collecting and testing
- Method for selection for testing
- Procedures to challenge results
- Confidentiality
- Discipline to be imposed
- Referral for counseling
- Scope of disclosure of results