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ABSTRACT

It was requested that the Virginia Crime Commission develop a plan for drug-free schools that could be distributed to Virginia's local education agencies. Meetings were held to examine the key issues relating to developing drug-free environments in the public schools. Four issues were identified as critical to reducing the availability of drugs in schools and to providing assistance to students with substance abuse problems and a total of 10 recommendations were made in these areas. In the area of school drug policies it was recommended that training be offered on the importance of writing drug policies which conform to federal and state laws and local school divisions should appoint expert advisory committees. In the area of search and seizure on school policies it was recommended that school employees receive adequate training in laws pertaining to schools and that local school division officials should meet regularly with local law enforcement officials. In the area of drug-free zones on school properties it was recommended that information be provided on the drug-free zone law as it pertains to schools; and that changes be made in the posting, purchase, and provision of drug-free school signs. In the area of student assistance programs it was recommended that local school divisions should be encouraged to develop student assistance programs and that the Drug Policy Office of the Governor expand its student assistance programs. (ABL)

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REPORT OF THE
VIRGINIA STATE CRIME COMMISSION ON

The Virginia Plan for Drug-Free Schools

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 47

COMMONWEALTH OF VIRGINIA
RICHMOND
1992

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IN RESPONSE TO
THIS LETTER TELEPHONE
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F L RUSSELL
EXECUTIVE DIRECTOR

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

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ATTORNEY GENERAL'S OFFICE
H LANE KNEEDLER

December 10, 1991

TO: The Honorable L. Douglas Wilder, Governor of Virginia, and Members of the General Assembly:

House Joint Resolution 360, adopted by the 1991 General Assembly, directed the Virginia State Crime Commission develop "a plan to ensure drug free schools." On December 10, 1991, the Virginia State Crime Commission adopted the Virginia Plan for Drug Free Schools report, approved it for publication and requests that the Governor and General Assembly adopt the recommendations therein. I have the honor of submitting herewith the Virginia State Crime Commission report on a plan for drug free schools.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:dgs

Enclosure

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The Virginia Plan for Drug-Free Schools

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The Virginia Plan for Drug-Free Schools

I. Authority for Study

During the 1991 legislative session, Delegate E. R. "Ted" Harris, Jr. of Lynchburg successfully patroned House Joint Resolution 360 directing the Virginia State Crime Commission to develop "a plan to ensure drug free schools" in the Commonwealth of Virginia. House Joint Resolution 360 (1991) is a continuation of Delegate Harris' 1990 House Joint Resolution 161, that directed this activity to the Crime Commission's Drug Trafficking Task Force.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission to "study, report and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate its recommendations to the Governor and General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study to produce a Virginia plan for drug-free schools.

II. Members Appointed to Serve

At the April 16, 1991, meeting of the Crime Commission, Chairman Elmon T. Gray of Sussex selected Raymond R. Guest, Jr. to serve as Chairman of the Drug Issues Subcommittee studying the development of a plan for drug-free schools. The following members of the Crime Commission were selected to serve on the subcommittee:

Delegate Raymond R. Guest, Jr., Chairman, Front Royal
Delegate James F. Almand, Arlington
Robert C. Bobb, Richmond
Senator Elmon T. Gray, Sussex
H. Lane Kneedler, Attorney General's Office
Speaker A. L. Philpott, Bassett
Rev. George F. Ricketts, Sr., Richmond

III. Executive Summary

Delegate Harris requested that a report be developed to encourage school divisions to develop student assistance programs, and promote better drug law enforcement in the schools. He did not recommend or request any changes in existing Virginia law. After meeting with Delegate Harris, it was agreed that the Virginia State Crime Commission could utilize the mandate of HJR 360 to develop a technical assistance manual for local school divisions. Therefore, the final report of HJR 360 does not include any recommendations to amend Virginia law. However, it does include information for the benefit of local school divisions on the following subjects:

1. Student and Employee Drug Policies
2. Search and Seizure on School Properties
3. Drug-Free Zones on School Properties
4. Student Assistance Programs

The recommendations in HJR 360 are directed to the Governor and General Assembly, and to local school boards and superintendents. In general, the recommendations encourage school divisions to upgrade their drug policies, work in cooperation with local and state law enforcement agencies, post drug-free school zone signs and develop their student assistance programs.

The information included in the HJR 360 is the most updated available. The Youth Risk Prevention Office of the Virginia Department of Education supports the distribution of the HJR 360 report to local school divisions as an effective way to assist local school divisions. It best illustrates the Commission's intent to promote drug prevention programs in the schools.

HJR 360 recommendations:

A. School Drug Policies

1. The Virginia Department of Education should offer regular training for the local Drug Act Contacts on the importance of writing student and employee drug policies that comply with federal and state laws.

2. Local school divisions should appoint expert advisory committees to review annually the divisions' student and employee drug policies, and require annual public review and approval of these policies by the local school board.

B. Search and Seizure on School Properties

1. The Virginia Department of Education and local school divisions should ensure that school employees receive adequate training in the understanding of laws pertaining to schools, including those laws allowing law enforcement agencies to conduct drug investigations and execute search and arrest warrants on school properties.

2. Local school division officials should meet regularly with local law enforcement agency officials to develop mutual guidelines and memoranda of agreement concerning law enforcement officers' access to school properties for the purpose of drug investigations, searches and arrests.

C. Drug-Free Zones on School Properties

1. The Virginia Department of Education and the Department of State Police should include information about the drug-free zone law as it pertains to schools in parent training, school employee training and the student DARE curriculum to promote common understanding of the law and its consequences.

2. Local school divisions should post each school and administration property with at least two drug-free school zone signs per property. Local school divisions should continue to work with the Drug Policy Office of the Governor to acquire drug-free school zone signs at a minimal cost to the school division.

3. The Virginia Department of Education should review its policy prohibiting the use of local Drug-Free Schools and Communities Act federal grant funds to purchase drug-free school zone signs.

4. The Drug Policy Office of the Governor should continue to promote the posting of drug-free school zone signs, and continue to provide low-cost signs for purchase by the local school divisions.

D. Student Assistance Programs

1. The Virginia Department of Education should encourage local school divisions to develop student assistance programs by providing training in student assistance program development and implementation.

2. The Drug Policy Office of the Governor should expand its student assistance program grant funding to make start-up and enhancement grants available to more local school divisions.

IV. Study Design

House Joint Resolution 360's chief patron, Delegate E. R. Harris, Jr., requested that the Crime Commission develop a plan for drug-free schools that could be distributed to Virginia's local education agencies as a technical assistance document. Meetings were held with Delegate Harris and with the staff of the Youth Risk Prevention Office of the Department of Education to examine the key issues related to developing drug-free environments in Virginia's public schools. Four issues were identified as critical to reducing the availability of drugs in schools and to providing assistance to students with substance abuse problems:

1. Student and Employee Drug Policies
2. Search and Seizure on School Properties
3. Drug-Free Zones on School Properties
4. Student Assistance Programs

Commission staff proceeded to development research and recommendations designed to assist local school divisions in promoting drug-free environments on school properties. Invaluable assistance was received from the Department of Education Office of Youth Risk Prevention and the Drug Policy Office of the Governor.

V. Study Goals and Objectives

Based upon the requirements of HJR 360, the following issues and objectives were presented to the Subcommittee for consideration:

- Determine how to audit the presence of illegal drugs in schools without violating the privacy rights of students, and without engaging in illegal search and seizure on school properties;

- Determine how to provide counseling and treatment services to substance-abusing students, and how to involve students' families in the rehabilitative process.

The Commission pursued the following activities in furtherance of the above-mentioned objectives:

- Met with the patron of HJR 360 and the staff of the Youth Risk

Prevention Office of the Department of Education to identify issues and design a technical assistance document for local school divisions;

• Reviewed the relevant sections of the Code of Virginia to identify search and seizure laws pertaining to local schools for inclusion in the final report of HJR 360;

• Reviewed federal laws pertaining to student and employee drug policies in local education agencies, and reviewed local school policies to identify six model student and employee drug policies;

• Reviewed research on student assistance programs and drug-free zones to include technical assistance information for local school divisions; and

• Developed administrative recommendations that encourage better working relationships between the local schools and law enforcement agencies related to drug law enforcement and drug abuse prevention in Virginia's elementary and secondary schools.

VI. Background

A. School Drug Policies

The Virginia Department of Education and each local education agency in Virginia receives federal funds for alcohol and drug prevention programs from the U. S. Department of Education under the terms of the Drug-Free Schools and Communities Act of 1986 and the 1989 Amendments to the Act. (Public Law 101-226.) The Act and Amendments require that, "as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education, State educational agency or local educational agency must certify that it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees." This requirement was enacted as part of President Bush's National Drug Control Strategy, issued in September, 1989.

In order to comply with the requirements of the federal law, each institution of higher learning, state education agency and local education agency must adopt and implement a drug prevention program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of the educational agency's activities. Each agency must provide a written certification that it has adopted and implemented a drug prevention program.

Two federal laws control local school divisions' obligation to have in place

student and employee drug policies:

1. The Drug-Free Workplace Act of 1988;
2. The Drug-Free Schools and Communities Act of 1986 and the Amendments of 1989.

The Drug Free Schools and Communities Act of 1986 and its 1989 Amendments is the Act by which each of Virginia's local school divisions is eligible to receive Drug-Free Schools and Communities Act federal grants for drug prevention and intervention programs (DARE, PULSAR, YADAPP, SODA, QUEST, Peer Counselors, etc.) Every local school division is required by Public Law 101-226 to certify that it has "adopted and implemented a program to prevent the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees." Drug Act Contacts in each school division sign the assurances in the federal grant applications to meet this certification requirement. The regulations that lay out the specific requirements of Public Law 101-226 are in the Code of Federal Regulations, 34 CFR Part 86.

It is the responsibility of the State education agency, i.e., the Virginia Department of Education, to develop a drug prevention program certification form and application submission schedule for local education agencies. In response, the Virginia Department of Education developed a Drug-Free Schools and Communities Act grant application for local education agencies that requires that student and employee drug policies be submitted regularly with applications for funds. Additionally, the grant application requires descriptions of drug prevention programs in place in the schools, including conflict management and resolution, substance abuse counseling and referral, and programs targeted at high risk youth. The Department of Education must provide to the U. S. Secretary of Education a list of local education agencies that either submitted or failed to submit drug prevention program and policy certifications. If a local education agency fails to file certification of its drug policies and programs, then it can be found ineligible to receive funds or any other form of financial assistance under any Federal program.

Requirements that apply to both student and employee policies:

1. Certify the adoption of a drug prevention program by signing the "assurances" in the grant application.

2. Implement the drug prevention programs. Annual review by the State education agency is allowed under the Act, which is accomplished through the grant applications each year and through site visits by the Department of Education.

3. Firm enforcement which requires that each school division keep

publicly accessible records of its programs and policies. The Act makes it clear that a local school division not in compliance with the provisions of the Act can lose its eligibility for federal funds.

4. Illicit drugs and alcohol must be covered by the policy, which can include improperly possessed or distributed prescription drugs, or any other substances prohibited by law for minors, such as tobacco products.

Student Drug Policy Requirements:

A student drug policy must include, at a minimum, the following components:

1. Age appropriate, developmentally-based drug and alcohol education and prevention programs for all students of the schools operated by the State or local education agency, from early childhood level through grade 12. The programs must address the legal, social and health consequences of drug and alcohol use, and provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol;

2. A statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful;

3. Standards of conduct that are uniformly applicable to students in all schools covered by the policy. The policy clearly must prohibit the unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as part of any of its activities;

4. A clear statement of disciplinary sanctions consistent with law, up to and including expulsion and referral for prosecution. The law also requires a description of these sanctions, which can include completion of an appropriate rehabilitation program. A local school division does not have to be able to provide direct rehabilitation services, but it can contract for these services to be provided by the local Community Services Board or by a private provider. There is nothing in the Drug-Free Schools and Communities Act that requires local school divisions to pay for these treatment services. However, if a student is entitled to such services under another federal or state law, then the school division may otherwise be required to pay for the services or provide them directly;

5. Information about drug and alcohol counseling, rehabilitation and re-entry program opportunities for students must be made available; and

6. All students and parents must be given a copy of the standards of conduct and possible sanctions, including notice of the consequences of a violation and notice that compliance with these standards is mandatory.

Employee Drug Policy Requirements:

The Drug-Free Workplace Act of 1988, which is Public Law 100-690, Title 5, Subtitle D, requires contractors and grantees of federal agencies to certify that they will provide drug-free workplaces. While the Drug-Free Schools and Communities Act makes local school divisions eligible for federal anti-drug program funds, the Drug-Free Workplace Act requires all federal fund recipients to comply with its provisions independent of any other laws.

The basic requirements of the Drug-Free Workplace Act are as follows:

1. The employer must make a good faith effort to meet the specific requirements of the Act;

2. At a minimum, the local school division must have a policy statement and a drug awareness program for all employees. However, this federal law does not require employers to:
   a) establish an Employee Assistance Program (EAP);
   b) conduct drug testing; or
   c) include specific components, such as employee education, employee assistance, supervisory training, or drug detection.

A drug awareness program as defined by the Drug-Free Workplace Act may be nothing more than notice to employees that a policy is in effect that prohibits the use or distribution of illegal drugs in the workplace.

Enforcement of the Drug-Free Workplace Act is achieved by requiring employers to certify that they have a drug policy in place and that employees are aware of it. Through grant administration, the federal Office of Management and Budget will check compliance via grant audits.

While this Act has few requirements, its provisions are mandatory and separate from the Drug-Free Schools and Communities Act requirements. Compliance by a local school division with the Drug-Free Workplace Act is not enough to automatically bring the division into compliance with the Drug-Free Schools and Communities Act. They are two separate, independent requirements for each school division to meet in order to receive federal grant funds.

The Drug-Free Schools and Communities Act requirements in Section 86.201 for employee policies parallel the student drug policy requirements:

1. At a minimum, each employee policy must contain standards of

conduct for employees that clearly prohibit the unlawful possession, use or distribution of illicit drugs and alcohol on school premises or as any part of its activities. This leaves open the question of tobacco use by school employees on school property or at school functions, but such prohibition could be part of a division employee policy;

2. A clear statement of disciplinary sanctions up to and including termination of employment and referral for prosecution must be included. A disciplinary sanction can include the completion of an appropriate rehabilitation program;

3. Information about drug and alcohol counseling and rehabilitation and re-entry programs available to employees must be included. The Drug-Free Workplace Act does not require school divisions to provide this type of information to employees, but the Drug-Free Schools and Communities Act does require that treatment referral information be provided to all division employees; and

4. Employees must receive a copy of the standards of conduct and the statement of disciplinary sanctions to put them on notice that compliance with the standards of conduct is mandatory and that sanctions will be imposed for violations.

It is advisable that each local school division have its school attorney or the local Commonwealths' Attorney review its drug policies for clarity, due process and equal protection and interpretation of the federal law. The Department of Education is required by federal law to periodically collect copies of the local school divisions' employee and student drug policies; however, Department staff cannot substitute for good legal counsel. The Department's acceptance of these policies does not act as a stamp of approval for their contents or as compliance with federal and state law.

B. Search and Seizure on School Properties

The fourth amendment to the United State Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The language of the fourth amendment leaves many questions unanswered, mostly because our founding fathers failed to define the meaning the term, "unreasonable," or its relationship to probable cause and the need for a search

warrant. The U. S. Supreme Court through case decisions over the years has sought to strike a balance between effective law enforcement and the compelling interest in preserving the privacy rights of American citizens.

The fourth amendment was written to ensure that an individual's right to privacy is respected by the government. However, the Court has had to decide through a series of cases when and where an individual has a reasonable expectation of privacy. The Court has held that a person reasonably can expect his home to be protected from warrantless searches and searches absent exigent circumstances or consent. However, the Court also has held that an individual cannot reasonably expect to assert his right to privacy in public places, or in places where a third party could give valid consent to search. A student cannot reasonably expect the same degree of privacy to be afforded him while he is on school property that he can expect in his home.

Code of Virginia §19.2-83 allows a police officer to "detain a person in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or possesses a concealed weapon in violation of §18.2-308, and may require of such person his name and address." The section also allows a police officer to search the person for dangerous weapons when the officer reasonably believes the person intends to do him bodily harm. Finally, the officer may confiscate any concealed weapon he finds on the person. The Virginia law is more stringent than that stated by the U.S. Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968), which allows a police officer to detain a person for a suspected felony or misdemeanor, but the Virginia law does specifically allow an officer to detain a person suspected of possessing a concealed weapon. The Virginia Court of Appeals has held that suspicion of narcotics possession and distribution can infer dangerousness to confer authority upon a police officer to conduct a pat-down search of the subject (Williams v. Commonwealth, 4 Va. App. 53, 354 S. E. 2d 79 (1987).)

Code of Virginia §18.2-322.1, passed by the Virginia General Assembly in 1989, makes it "unlawful for any person in possession or control of a beeper or similar portable communications device to remain in or upon the grounds of any public or private elementary or secondary school after having been requested to leave by lawfully authorized school officials." This law was enacted after it became common practice for drug dealers to use beepers and other portable communication devices to conduct business and remain in contact with other dealers and purchasers of illegal drugs. The purpose of the law is to curtail this form of communication between drug dealers and buyers on school property to discourage the activity of drug dealing to students. The law makes exceptions for persons authorized to carry portable communication devices for other lawful reasons, including legitimate business trade and medical necessity.

At times the missions of law enforcement and education can be at odds, and the subject of search and seizure on school property raises concerns for both professions. A basic tenet of education philosophy is that schools should strive to meet the educational and development needs of students, and exercise compassion in dealing with problematic students. However, the mission of law enforcement is to uphold the law and effect the prosecution of any person who violates the law. Often school officials are faced with deciding whether to discipline a student who violates a school regulation that also may be a violation of a state or federal law, or notifying a law enforcement agency of the violation so that a criminal investigation can be initiated.

It is important for local school and law enforcement officials to establish strong working relationships so that the agencies can reach agreement on when law enforcement officials will be notified of possible criminal activities on school properties. A joint local advisory committee of school officials, law enforcement officials and representatives from the juvenile court services unit should be appointed to address issues of police access to school properties to effect searches and arrests. Working together, law enforcement agencies and the schools can establish mutual goals and procedures that help to ensure a school environment that is crime-free, drug-free and promotes a positive educational atmosphere.

C. Drug-Free School Zones

One of the most effective laws for inhibiting drug trafficking in Virginia is the drug-free zone law. Until recently the law has been known as the "drug-free school zone law," but amendments enacted by the 1991 General Assembly have expanded the scope of the law to include public recreation and community centers. The law imposes enhanced penalties for drug trafficking near schools and community centers where children are most likely to be found.

The Virginia General Assembly first addressed the growing concern about drug trafficking on school properties in 1982, when the Code of Virginia was amended to specifically prohibit the sale of certain controlled substances or marijuana on the grounds of any public, private or parochial elementary, middle or high school facility. Code of Virginia §18.2-255.2 imposes a "separate and distinct felony" for selling drugs on school properties that can be applied when a person is convicted for the sale or distribution of controlled substances or marijuana.

The law was amended in 1989, 1990 and 1991, each time expanding the scope of the law to specify its application and enhance its penalties. Some of these changes were initiated by the Virginia State Crime Commission during its two-year study of drug trafficking in Virginia. The Education Subcommittee of the Commission's Drug Study Task Force proposed expansion of the law to strengthen it and encourage its enforcement. Now the law has grown to:

- include all controlled substances and marijuana;
- apply to any person who violates it, not just adults;
- enhance the penalty to five to ten years imprisonment and a fine of up to $100,000;
- apply at any time, even on school properties when school is not in session;
- include properties open to the public within 1,000 feet of the protected property;
- include all public and private schools, two- and four-year colleges and post-secondary schools; and
- apply to public recreation and community centers.

The application of the drug-free zone law means that if a person convicted of selling drugs in Virginia sold the drugs near a school or public recreation center within the protected zone, the enhanced penalties of §18.2-255.2 may be imposed by the court.

The most effective way to educate the public about the drug-free zone law is by posting protected properties with drug-free zone signs. In 1990, a statewide survey was conducted by the Crime Commission on the use of drug-free school zone signs in the Commonwealth. Every school district in Virginia responded to the survey, and at that time only 25 percent of the districts had drug-free school zone signs posted at their schools. Eighty-six school districts without signs responded that they would be interested in posting their schools, but many did not have the funds or know how to get the signs printed.

In 1991, the Governor's Office, with the assistance of 3-M Corporation, was able to offer school districts the opportunity to purchase two drug-free school zone signs per school at the minimal cost of $15.00 per sign. This enabled many school districts throughout Virginia to post signs at their schools to warn drug dealers that school properties are no place to sell drugs.

Virginia's future rests on its youth, and the citizens of the Commonwealth must seize every opportunity to protect young people from the dangers of drug abuse and drug-related crime. Drug-free zones around schools and public recreation areas help deter traffickers from preying on children, and promote healthy, drug-free environments for Virginia's youth.

D. Student Assistance Programs

The development of student assistance programs as a means to provide comprehensive intervention and prevention services to students is growing in popularity in Virginia. The student assistance program is based on the employee assistance program model developed by private sector businesses. Employers recently discovered that, when an employee suffers from a chemical dependency,

his work performance also suffers. Therefore, in an effort to maintain and improve the workplace performance of employees, employers have established programs to help employees conquer substance abuse problems.

There is a similar incentive to assist students with substance abuse or related problems. School administrators believe that, if a student's substance abuse problems are resolved, then a stumbling block to academic performance for that student is removed. While it is commonly assumed that students with substance abuse problems face increased odds of having academic performance problems, research is just beginning to support this theory. According to a New Jersey state survey of drug and alcohol abuse self-reported by students, 75 percent of those with alcohol or other drug abuse problems also were struggling with their studies in school. The National Clearinghouse for Alcohol Information reports that nearly one in three high school students in America has an alcohol abuse problem.

In Virginia, the dropout statistics are staggering. Nearly 18,000 students leave school before graduation each year, according to a General Assembly study of school dropouts and self-esteem (pursuant to HJR 386, 1991.) According to the Department of Education, many students report health (including substance abuse), financial, behavioral and achievement problems as contributing factors to dropping out of school.

The student assistance program model seeks to provide prevention, intervention and after-care services for students with substance abuse problems in order to improve a student's chance to stay in and succeed in school. The comprehensiveness that is integral to the program is a key to its success. The most effective student assistance programs share these characteristics:

1. The program recognizes the complexity of alcohol/drug-related problems.
2. The program comprehensively addresses the unique needs of individual students.
3. The program performs six basic functions: early identification, assessment, intervention, treatment, support and coordination.
4. The program clarifies the roles of the student assistance team members.
5. The program offers a variety of services to students and parents.
6. The program is supported by appropriate school division policy.
7. The program provides key staff with appropriate training.
8. The program is a result of a conscious implementation plan.
9. The program is the result of a joint school/community effort.
10. The program addresses student alcohol/drug problems as "system issues" that consider all aspects of a student's environment.

There are three basic models for designing a student assistance program:

1. *Core Team Model* - School-based personnel, including teachers, school psychologists, guidance counselors, nurses, resource officers and administrators, form a team to coordinate and provide services for students. Each of the team members is trained in substance abuse recognition and issues related to referral and treatment. As a team, the members meet regularly to determine how to identify and provide the requisite prevention, intervention and after-care services to help a student overcome a substance abuse problem and maintain an educational program.

An advantage of the core team model is that the team members share responsibility for the success of the program. Additionally, the program is cost-effective because it utilizes existing personnel who are based at the school facility. However, to be effective, a school-based team must acknowledge one person to direct the program to ensure that it remains focused and that every member completes his or her responsibilities. Another possible drawback is that a school-based team whose members are not compensated for the additional duties may result in a passive or less committed team. A student also may be hesitant about sharing confidential information with a student assistance team member who also is his teacher.

2. *Externally-based Team Model* - In this model, services are provided by a team of substance abuse prevention and treatment professionals from an outside agency who spend a designated amount of time in the schools. Students often are more comfortable sharing confidential information with persons who are not connected with the school administration or faculty. Also, an externally-based team can be more flexible in meeting the schedules and needs of the students, and already has established relationships with resources in the community. However, providing services under this model also can be more expensive and therefore less likely to be approved by a school board or administration. Additionally, the externally-based team must spend time with teachers and school officials to coordinate service plans for each student, which some teachers and officials resent as a duplication of effort.

3. *Internally-based Team Model* - Often described as a composite of the core team and externally-based team models, the internally-based student assistance team is comprised of school-based employees hired by the district specifically to implement the student assistance program. The advantages of the internally-based team model are that services can be centrally coordinated within the school district, and team members are better able to build cooperative relationships with teachers, guidance counselors and other key personnel. However, this can be a more expensive model to implement, since staff are hired full-time rather than contracted with for specific services.

Which student assistance program model is adopted by a school division usually depends on what financial and professional resources are available to the

school division. Additionally, community interest and support, system flexibility and degree of need are factors that determine if and when a school division implements student assistance programs.

The Governor's Drug Policy Office, directed by Special Assistant Robert Northern, has made funding for student assistance programs a priority project in 1991, and awarded a $10,000 grant to the Virginia Department of Education to provide student assistance program training to local school divisions. Additionally, grants from the Governor's Office were awarded for the 1991-92 fiscal year to 18 local education agencies to initiate new student assistance programs or enhance existing ones. These grants totaled $681,986.84. In all, 43 school divisions applied for grants, but funds were available only for 18 applicants. The 18 local school divisions that received Governor's Office grants for 1991-92 are:

Albemarle	Culpeper	Franklin City	Mathews	Prince Edward
Amelia	Danville	Roanoke Co.	Goochland	Washington
Bedford	Dinwiddie	Harrisonburg	Norfolk	
Bristol	Essex	Roanoke City	Martinsville/Patrick/Henry	

Each of the school divisions that received student assistance program grant awards was required to attend a technical assistance workshop on the implementation of student assistance programs.

Efforts also are underway to set up a statewide student assistance program network to enable student assistance program coordinators to meet regularly with each other and exchange ideas. Cynthia Barnes, a former student assistance program coordinator in Chesterfield County, has been hired by the Virginia Department of Education to assist student assistance program coordinators in the local school divisions.

Although more funds are needed to further the development of student assistance programs in Virginia, the Governor's Drug Policy Office will continue to give funding priority to the development of student assistance programs, and to seek additional sources of grant funds to implement the programs.

VII. Recommendations

A. School Drug Policies

Recommendation 1: The Virginia Department of Education should offer regular training for the local Drug Act Contacts on the importance of writing student and employee drug policies that comply with federal and state laws.

Recommendation 2: Local school divisions should appoint expert advisory committees to review annually the divisions' student and employee drug policies, and require annual public review and approval of these policies by the local school board.

B. Search and Seizure on School Properties

Recommendation 3: The Virginia Department of Education and local school divisions should ensure that school employees receive adequate training in the understanding of laws pertaining to schools, including those laws allowing law enforcement agencies to conduct drug investigations and execute search and arrest warrants on school properties.

Recommendation 4: Local school division officials should meet regularly with local law enforcement agency officials to develop mutual guidelines and memoranda of agreement concerning law enforcement officers' access to school properties for the purpose of investigations, searches and arrests.

C. Drug-Free Zones on School Properties

Recommendation 5: The Virginia Department of Education and the Department of State Police should include information about the drug-free zone law as it pertains to schools in parent training, school employee training and the student DARE curriculum to promote common understanding of the law and its consequences.

Recommendation 6: Local school divisions should post each school and administration property with at least two drug-free school zone signs per property. Local school divisions should continue to work with the Drug Policy Office of the Governor to acquire drug-free school zone signs at a minimal cost to the school division.

Recommendation 7: The Virginia Department of Education should review its policy prohibiting the use of local Drug-Free Schools and Communities Act federal grant funds to purchase drug-free school zone signs.

Recommendation 8: The Drug Policy Office of the Governor should continue to promote the posting of drug-free school zone signs, and continue to provide low-cost signs for purchase by the local school divisions.

D. Student Assistance Programs

Recommendation 9: The Virginia Department of Education should encourage local school divisions to develop student assistance programs by providing training in student assistance program development and implementation.

Recommendation 10: The Drug Policy Office of the Governor should expand its student assistance program grant funding to make start-up and enhancement grants available to more local school divisions.

VIII. Acknowledgements

The members extend special thanks to the following agencies and individuals for their cooperation and valuable assistance to this study effort:

Delegate F R. Harris, Jr., of Lynchburg

Governor's Drug Policy Office:
- Robert Northern, Special Assistant to the Governor for Drug Policy
- Richard Smith, Student Assistance Programs

Virginia Department of Education:
- Office of Youth Risk Prevention-
- Cynthia Barnes, Consultant
- Marla Coleman, Principal Specialist (now with Henrico County Public Schools)
- Arlene Cundiff, Associate Specialist
- Cynthia Downing, Area Field Coordinator for Southeast Regional Center
- Marsha Hubbard, Associate Specialist
- Rayna Turner, Associate Specialist
- Betty Jo Yates, Grants Manager

- Douglas Cox, Principal Specialist, Pupil Personnel
- Dr. Lissa Power-Cluver, Principal Specialist, Policy Analysis

Virginia Local Education Agencies (Drug Act Contacts):
- Anne Atkinson, Henrico County Public Schools
- Beverly Coltrane, Augusta County Public Schools
- Douglas Eadie, Prince William County Public Schools
- Joseph Kirby, Salem City Public Schools
- John Liddy, Roanoke County Public Schools
- Carl Stanley, Wise County Public Schools

Virginia Parent/Teachers Association:
- Deloris Delaney, Education Chairman
- Billy Hobbs, Juvenile Protection Chairman
- Barbara Keller, Substance Abuse Chairman

Appendix A

1991 SESSION

LD9009325

HOUSE JOINT RESOLUTION NO. 360

Offered January 18, 1991

Requesting the Virginia State Crime Commission to continue the development of a plan to ensure drug free schools.

Patrons—Harris, E.R., Philpott, Reynolds, Guest, Forehand, Jackson, Ball, Diamonstein, Woods, Smith, Johnson, Jones, R.B., Thomas, Bennett, Heilig, Plum, Parker, Marks, Woodrum, Callahan, Keating, Munford, Finney, Murphy, Moss, Ealey, Eck, Hargrove, Councill, Fill, Orebaugh, Cranwell, Phillips, Almand, Dillard, Clement, Abbitt, Moore, DeBoer, Dickinson, O'Brien, Stosch, Rollins, Tata, Jones, J.C. and Van Yahres; Senators: Gray, Cross, Holland, E.M., Anderson and Joannou

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Referred to the Committee on Rules

WHEREAS, the Task Force on Drug Trafficking of the Virginia State Crime Commission was established pursuant to Senate Joint Resolution No. 144 by the 1990 General Assembly to study drug trafficking, abuse, and related crimes; and

WHEREAS, pursuant to House Joint Resolution 161 (1990), the task force was directed to develop a plan to ensure drug free schools; and

WHEREAS, the task force determined that many issues must be considered in the development of programs to combat the problems of drug abuse among youth, and that there is a need to determine the extent to which illegal drugs are present in schools while ensuring the privacy rights of students and avoiding unlawful search and seizure; and

WHEREAS, the epidemic of drug abuse among youth in Virginia remains a challenge to all concerned with the eradication of this problem; and

WHEREAS, eliminating the scourge of drug abuse requires a collaborative and coordinated effort by various state and local agencies and the community to address effectively those factors which contribute to drug abuse among young people and the resulting problems; and

WHEREAS, the task force, after determining that several legislative study committees have been charged to examine various facets of or issues related to the drug abuse problem, and that certain state agencies already administer programs and services designed to address this critical problem, conferred with the chairmen of such study committees and representatives of such agencies concerning their respective efforts; and

WHEREAS, the task force, the chairmen, and representatives agree that a collaborative approach will facilitate communication and avoid duplication of efforts; and

WHEREAS, considerable work remains to be done to ensure that the goals and responsibilities of law-enforcement agencies, public schools, and all parties involved in the war against drugs are congruent and are performed accordingly to provide a school environment that is safe, drug free, and conducive to learning; and

WHEREAS, more time is necessary to complete the plan for drug free schools begun by the task force and to work collaboratively with the legislative study committees and state agencies; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is requested to continue the development of a plan to ensure drug free schools. The Commission shall examine the issues which have been identified for further study, and confer and collaborate with legislative study committees which have been charged to study related issues and state agencies which are responsible for administering programs and services designed to address drug abuse. The Commission shall provide for the participation of the education community, the private sector, and state and local law-enforcement officials in its deliberations.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1992 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The costs of this study are estimated to be $11,800, and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly for the conduct of this study.

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Appendix B

federal register

Thursday
August 16, 1990

Part II

Department of Education

34 CFR Part 86

Drug-Free Schools and Campuses; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 86

RIN 1880-AA46

Drug-Free Schools and Campuses

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Drug-Free Schools and Communities Act Amendments of 1989, Public Law 101-226, require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE), State educational agency (SEA), or local educational agency (LEA) must certify that it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees. The purpose of these final regulations is to implement these statutory requirements. The regulations specify the content of the drug prevention program to be adopted and implemented; the nature of the certification requirements; the responses and sanctions to be applied for failure to comply with the requirements of this part; and the appeal process.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: For information about these regulations and the certification process for SEAs, contact: Drug-Free Schools and Campuses Task Force, U.S. Department of Education, 400 Maryland Avenue, SW., room 4126, Washington, DC 20202-0499, telephone number: (202) 401-0709, or William H. Wooten (202) 401-0709.

For information about these regulations for IHEs, contact: Office of Policy Development, Office of Postsecondary Education, U.S. Department of Education, 7th & D Streets, SW., room 4060, Washington, DC 20202-5121, telephone number: (202) 708-9071, or Jerry M. Whitlock (202) 708-9071. For information about the certification process for IHEs, contact: Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, 7th & D Streets, SW., room 3916, Washington, DC 20202-5323, telephone number: (202) 708-7471, or Mary L. Jenkins (202) 708-7471.

SUPPLEMENTARY INFORMATION:

Additional Sources of Information

- *The National Institute on Drug Abuse Hotline*, 1-800-662-HELP, an information and referral line that directs callers to treatment centers in the local community;
- *The National Institute on Drug Abuse Workplace Helpline*, 1-800-843-4971, a line that provides information only to private entities about workplace programs and drug testing (This helpline will not assist SEAs, LEAs, or public IHEs.);
- *The National Clearinghouse for Alcohol and Drug Information*, 1-301-468-2600, an information and referral service that distributes Department of Education publications about drug and alcohol prevention programs, as well as material from other Federal agencies;
- *The Network of Colleges and Universities Committed to the Elimination of Drug and Alcohol Abuse*, 1-202-357-6206, was established in 1987 as a joint effort of the U.S. Department of Education and the higher education community for the purpose of developing an institutional response to the alcohol and other drug problems on campuses. As a means of self regulation, some 1,300 schools have adopted a set of Standards that were developed by the Network and reviewed, modified, and affirmed by the U.S. Department of Education. The Standards are designed to serve as education programs, assessment techniques, and enforcement procedures aimed at eradicating alcohol and other drug abuse on campuses, and may serve as a useful starting point for developing alcohol and other drug prevention programs that comply with these regulations. A copy of the Standards can be received by writing to the Network at the U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208-5644. Information can also be provided about training and conferencing activities, newly formed regional networks, and the IHEs in a particular State or region that are network members. IHEs are encouraged to contact network members in their State or region;
- *Department of Education Regional Centers Drug-Free Schools and Communities*, assist IHEs, SEAs, and LEAs in developing prevention programs by providing training and technical assistance. Addresses for the five centers are listed below.

Northeast Regional Center for Drug-Free Schools and Communities, 12 Overton Avenue, Sayville, NY 11782-0403, (516) 589-7022, serving Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont;

Southeast Regional Center for Drug-Free Schools and Communities, The Hurt Building, 50 Hurt Plaza, Suite 210, Atlanta, Georgia 30303, (404) 688-9227, serving Alabama, District of Columbia, Florida, Georgia, Kentucky, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia;

Midwest Regional Center for Drug-Free Schools and Communities, 2001 N. Clybourn, Suite 302, Chicago, IL 60614, (312) 883-8888, serving Indiana, Illinois, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin;

Southwest Regional Center for Drug-Free Schools and Communities, 555 Constitution Avenue, Norman, OK 73037, (405) 325-1454, serving Arizona, Arkansas, Colorado, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, and Utah; and

Western Regional Center for Drug-Free Schools and Communities, 101 SW. Main Street, Suite 500, Portland, OR 92704, (503) 275-9476 ((800) 547-6339 outside Oregon), serving Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Republic of Palau, Washington, and Wyoming.

Background

President Bush's National Drug Control Strategy issued in September 1989 proposed that the Congress pass legislation to require schools, colleges, and universities to implement and enforce firm drug prevention programs and policies as a condition of eligibility to receive Federal financial assistance. On December 12, 1989, the President signed the Drug-Free Schools and Communities Act Amendments of 1989 (Amendments), Public Law 101-226. Section 22 of the Amendments amends provisions of the Drug-Free Schools and Communities Act of 1986 and the Higher Education Act of 1965 to include these requirements.

On April 24, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for Drug-Free Schools and Campuses in the Federal Register (55 FR 17384).

In the preamble to the NPRM, the Secretary summarized the provisions of the proposed regulations. In addition, the Secretary provided "Appendix D—Questions and Answers" to address specific concerns about implementing a drug prevention program in compliance with the regulations, and to provide technical assistance to IHEs, SEAs, and

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LEAs in complying with the statute. By and large, the questions and answers contained in appendix D to the NPRM have been incorporated in the discussion of public comments contained in appendix C to this document.

As a result of public comment, the Secretary has clarified the meaning of "student" for the purposes of the drug prevention program certification for IHEs and added a requirement that an IHE, SEA, or LEA seeking reinstatement after termination for violating these regulations must demonstrate that it has corrected the violation or violations on which the termination was based. The Secretary has also provided, in appendices A and B to this document, a description of the sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol, and a description of the health risks associated with the use of illicit drugs and the abuse of alcohol.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 94 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as appendix C to this document.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Some of the programs affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rule and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 86

Drug abuse, Education, Elementary and secondary education, Grant programs—education, Postsecondary education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: August 2, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 86, to read as follows:

PART 86—DRUG-FREE SCHOOLS AND CAMPUSES

Subpart A—General

Sec.
86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?
86.2 What Federal programs are covered by this part?
86.3 What actions shall an IHE, SEA, or LEA take to comply with the requirements of this part?
86.4 What are the procedures for submitting a drug prevention program certification?
86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?
86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?
86.7 What definitions apply to this part?

Subpart B—Institutions of Higher Education

86.100 What must the IHE's drug prevention program include?
86.101 What review of IHE drug prevention programs does the Secretary conduct?
86.102 What is required of an IHE that the Secretary selects for annual review?
86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

Subpart C—State and Local Educational Agencies

86.200 What must the SEA's and LEA's drug prevention program for students include?
86.201 What must the SEA's and LEA's drug prevention program for employees include?
86.202 What review of SEA and LEA drug prevention programs is required under this subpart?
86.203 What is required of an SEA or LEA that is selected for review?
86.204 What records and information must an SEA or LEA make available to the Secretary and the public concerning its drug prevention program?

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?
86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?
86.302 What are the procedures used by the Secretary for providing information or technical assistance?
86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?
86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

Subpart E—Appeal Procedures

86.400 What is the scope of this subpart?
86.401 What are the authority and responsibility of the ALJ?
86.402 Who may be a party in a hearing under this subpart?
86.403 May a party be represented by counsel?
86.404 How may a party communicate with an ALJ?
86.405 What are the requirements for filing written submissions?
86.406 What must the ALJ do if the parties enter settlement negotiations?
86.407 What are the procedures for scheduling a hearing?
86.408 What are the procedures for conducting a pre-hearing conference?
86.409 What are the procedures for conducting a hearing on the record?
86.410 What are the procedures for issuance of a decision?
86.411 What are the procedures for requesting reinstatement of eligibility?

Authority: 20 U.S.C. 1145g, 3224a.

Subpart A—General

§ 86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

The purpose of the Drug-Free Schools and Campuses Regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which adds section 1213 to the Higher Education Act and section 5145 to the Drug-Free Schools and Communities Act. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher

education (IHE), State educational agency (SEA), or local educational agency (LEA) must certify that it has adopted and implemented a drug prevention program as described in this part.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.2 What Federal programs are covered by this part?

The Federal programs covered by this part include—

(a) All programs administered by the Department of Education under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance; and

(b) All programs administered by any other Federal agency under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.3 What actions shall an IHE, SEA, or LEA take to comply with the requirements of this part?

(a) An IHE, SEA, or LEA shall adopt and implement a drug prevention program as described in § 86.100 for IHEs, and §§ 86.200 and 86.201 for SEAs and LEAs, to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities.

(b) An IHE, SEA, or LEA shall provide a written certification that it has adopted and implemented the drug prevention program described in § 86.100 for IHEs, and §§ 86.200 and 86.201 for SEAs and LEAs.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.4 What are the procedures for submitting a drug prevention program certification?

(a) *IHE drug prevention program certification.* An IHE shall submit to the Secretary the drug prevention program certification required by § 86.3(b).

(b) *SEA drug prevention program certification.* An SEA shall submit to the Secretary the drug prevention program certification required by § 86.3(b).

(c) *LEA drug prevention program certification.*

(1) The SEA shall develop a drug prevention program certification form and a schedule for submission of the certification by each LEA within its jurisdiction.

(2) An LEA shall submit to the SEA the drug prevention program certification required by § 86.3(b).

(3)(i) The SEA shall provide to the Secretary a list of LEAs that have not submitted drug prevention program certifications and certify that all other LEAs in the State have submitted drug prevention program certifications to the SEA.

(ii) The SEA shall submit updates to the Secretary so that the list of LEAs described in paragraph (c)(3)(i) of this section is accurate at all times.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

(a) An IHE, SEA, or LEA that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE, SEA, or LEA receives or desires to receive assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

(a) After October 1, 1990, except as provided in paragraph (b) of this section, an IHE, SEA, or LEA is not eligible to receive funds or any other form of financial assistance under any Federal program until the IHE, SEA, or LEA has submitted a drug prevention program certification.

(b)(1) The Secretary may allow an IHE, SEA, or LEA until not later than April 1, 1991, to submit the drug prevention program certification, only if the IHE, SEA, or LEA establishes that it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(2) An IHE, SEA, or LEA that wants to receive an extension of time to submit its drug prevention program certification shall submit a written justification to the Secretary that—

(i) Describes each part of its drug prevention program, whether in effect or planned;

(ii) Provides a schedule to complete and implement its drug prevention program; and

(iii) Explains why it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(3)(i) An IHE or SEA shall submit a request for an extension to the Secretary.

(ii)(A) An LEA shall submit any request for an extension to the SEA.

(B) The SEA shall transmit any such request for an extension to the Secretary.

(C) The SEA may include with the LEA's request a recommendation as to whether the Secretary should approve it.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.7 What definitions apply to this part?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in this part are defined in the Act:

Drug abuse education and prevention
Illicit drug use

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77:

Department
EDGAR
Local educational agency
Secretary
State educational agency.

(c) *Other definitions.* The following terms used in this part are defined as follows:

Compliance agreement means an agreement between the Secretary and an IHE, SEA, or LEA that is not in full compliance with its drug prevention program certification. The agreement specifies the steps the IHE, SEA, or LEA will take to comply fully with its drug prevention program certification, and provides a schedule for the accomplishment of those steps. A compliance agreement does not excuse or remedy past violations of this part.

Institution of higher education means—

(1) An institution of higher education, as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education, as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution, as defined in 34 CFR 600.6; and

(4) A vocational school, as defined in 34 CFR 600.7.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart B—Institutions of Higher Education

§ 86.100 What must the IHE's drug prevention program include?

The IHE's drug prevention program must, at a minimum, include the following:

(a) The annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit except for continuing education units, regardless of

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the length of the student's program of study, of—

(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(3) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

(4) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(5) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (a)(1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(b) A biennial review by the IHE of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (a)(5) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

§ 86.101 What review of IHE drug prevention programs does the Secretary conduct?

The Secretary annually reviews a representative sample of IHE drug prevention programs.

(Authority: 20 U.S.C. 1145g)

§ 86.102 What is required of an IHE that the Secretary selects for annual review?

If the Secretary selects an IHE for review under § 86.101, the IHE shall provide the Secretary access to personnel, records, documents and any other necessary information requested by the Secretary to review the IHE's adoption and implementation of its drug prevention program.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

§ 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

(a) Each IHE that provides the drug prevention program certification required by § 86.3(b) shall, upon request, make available to the Secretary and the public a copy of each item required by § 86.100(a) as well as the results of the biennial review required by § 86.100(b).

(b)(1) An IHE shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraph (a) of this section.

(ii) Any other records reasonably related to the IHE's compliance with the drug prevention program certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the IHE shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

Subpart C—State and Local Educational Agencies

§ 86.200 What must the SEA's and LEA's drug prevention program for students include?

The SEA's and LEA's program for all students must, at a minimum, include the following:

(a) Age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for all students in all grades of the schools operated or served by the SEA or LEA, from early childhood level through grade 12.

(b) A statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful.

(c) Standards of conduct that are applicable to students in all the SEA's and LEA's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as part of any of its activities.

(d) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law), up to and including expulsion and referral for prosecution, will be imposed on students who violate the standards of conduct required by paragraph (c) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(e) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to students.

(f) A requirement that all parents and students be given a copy of the standards of conduct required by paragraph (c) of this section and the statement of disciplinary sanctions described in paragraph (d) of this section.

(g) Notification to parents and students that compliance with the standards of conduct required by paragraph (c) of this section is mandatory.

(h) A biennial review by the SEA or LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (d) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

§ 86.201 What must the SEA's and LEA's drug prevention program for employees include?

The SEA's and LEA's program for all employees must, at a minimum, include the following:

(a) Standards of conduct applicable to employees that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as part of any of its activities.

(b) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law) up to and including termination of employment and referral for prosecution, will be imposed on employees who violate the standards of conduct required by paragraph (a) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(c) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to employees.

(d) A requirement that employees be given a copy of the standards of conduct required by paragraph (a) of this section and the statement of disciplinary

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sanctions described in paragraph (b) of this section.

(e) Notification to employees that compliance with the standards of conduct required by paragraph (a) of this section is mandatory.

(f) A biennial review by the SEA and LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (b) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

§ 86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

(a)(1) An SEA shall annually review a representative sample of LEA programs.

(2) If an SEA finds, as a result of its annual review, that an LEA has failed to implement its program or consistently enforce its disciplinary sanctions, the SEA shall submit that information, along with the findings of its review, to the Secretary within thirty (30) days after completion of the review.

(b) The Secretary may annually select a representative sample of SEA programs for review.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

§ 86.203 What is required of an SEA or LEA that is selected for review?

(a) If the Secretary selects an SEA for review under § 86.202(b), the SEA shall provide the Secretary access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(b) If the SEA selects an LEA for review under § 86.202(a), the LEA shall provide the SEA access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(Authority: 20 U.S.C. 3224a)

§ 86.204 What records and information must an SEA or LEA make available to the Secretary and the public concerning its drug prevention program?

(a)(1) Each SEA that provides the drug prevention program certification shall, upon request, make available to the Secretary and the public full information about the elements of its drug prevention program, including the results of its biennial review required by §§ 86.200(h) and 86.201(f).

(2) The SEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the SEA's compliance with the certification.

(b)(1) Each LEA that provides the drug prevention program certification shall, upon request, make available to the Secretary, the SEA, and the public full information about the elements of its program, including the results of its biennial review required by §§ 86.200(h) and 86.201(f).

(2) The LEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the LEA's compliance with the certification.

(c)(1) Each SEA or LEA shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraphs (a) and (b) of this section.

(ii) Any other records related to the SEA's or LEA's compliance with the certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the SEA or LEA shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

§ 86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

An IHE, SEA, or LEA violates this part by—

(a) Receiving any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification in accordance with § 86.3(b); or

(b) Violating its certification. Violation of a certification includes failure of an IHE, SEA, or LEA to—

(1) Adopt or implement its drug prevention program; or

(2) Consistently enforce its disciplinary sanctions for violations by students and employees of the standards of conduct adopted by an IHE under § 86.100(a)(1) or by an SEA or LEA under §§ 86.200(c) and 86.201(a).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

(a) If an IHE, SEA, or LEA violates its certification, the Secretary may issue a response to the IHE, SEA, or LEA. A response may include, but is not limited to—

(1) Provision of information and technical assistance; and

(2) Formulation of a compliance agreement designed to bring the IHE, SEA, or LEA into full compliance with this part as soon as feasible.

(b) If an IHE, SEA, or LEA receives any form of Federal financial assistance without having submitted a certification or violates its certification, the Secretary may impose one or more sanctions on the IHE, SEA, or LEA, including—

(1) Repayment of any or all forms of Federal financial assistance received by the IHE, SEA, or LEA when it was in violation of this part; and

(2) The termination of any or all forms of Federal financial assistance that—

(i)(A) Except as specified in paragraph (b)(2)(ii) of this section, ends an IHE's, SEA's, or LEA's eligibility to receive any or all forms of Federal financial assistance. The Secretary specifies which forms of Federal financial assistance would be affected; and

(B) Prohibits an IHE, SEA, or LEA from making any new obligations against Federal funds; and

(ii) For purposes of an IHE's participation in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965 as amended, has the same effect as a termination under 34 CFR 668.94.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.302 What are the procedures used by the Secretary for providing information or technical assistance?

(a) The Secretary provides information or technical assistance to an IHE, SEA, or LEA in writing, through site visits, or by other means.

(b) The IHE, SEA, or LEA shall inform the Secretary of any corrective action it has taken within a period specified by the Secretary.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?

(a) If the Secretary intends to issue a response other than the formulation of a compliance agreement or the provision of information or technical assistance, the Secretary notifies the IHE, SEA, or LEA in writing of—

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(1) The Secretary's determination that there are grounds to issue a response other than the formulation of a compliance agreement or providing information or technical assistance; and

(2) The response the Secretary intends to issue.

(b) An IHE, SEA, or LEA may submit written comments to the Secretary on the determination under paragraph (a)(1) of this section and the intended response under paragraph (a)(2) of this section within 30 days after the date the IHE, SEA, or LEA receives the notification of the Secretary's intent to issue a response.

(c) Based on the initial notification and the written comments of the IHE, SEA, or LEA, the Secretary makes a final determination and, if appropriate, issues a final response.

(d) The IHE, SEA, or LEA shall inform the Secretary of the corrective action it has taken in order to comply with the terms of the Secretary's response within a period specified by the Secretary.

(e) If an IHE, SEA, or LEA does not comply with the terms of a response issued by the Secretary, the Secretary may issue an additional response or impose a sanction on the IHE, SEA, or LEA in accordance with the procedures in § 86.304.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

(a) A designated Department official begins a proceeding for repayment of Federal financial assistance or termination, or both, of an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance by sending the IHE, SEA, or LEA a notice by certified mail with return receipt requested. This notice—

(1) Informs the IHE, SEA, or LEA of the Secretary's intent to demand repayment of Federal financial assistance or to terminate, describes the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(2) Specifies, as appropriate—

(i) The amount of Federal financial assistance that must be repaid and the date by which the IHE, SEA, or LEA must repay the funds; and

(ii) The proposed effective date of the termination, which must be at least 30 days after the date of receipt of the notice of intent; and

(3) Informs the IHE, SEA, or LEA that the repayment of Federal financial assistance will not be required or that the termination will not be effective on the date specified in the notice if the designated Department official receives, within a 30-day period beginning on the date the IHE, SEA, or LEA receives the notice of intent described in this paragraph—

(i) Written material indicating why the repayment of Federal financial assistance or termination should not take place; or

(ii) A request for a hearing that contains a concise statement of disputed issues of law and fact, the IHE's, SEA's, or LEA's position with respect to these issues, and, if appropriate, a description of which Federal financial assistance the IHE, SEA, or LEA contends need not be repaid.

(b) If the IHE, SEA, or LEA does not request a hearing but submits written material—

(1) The IHE, SEA, or LEA receives no additional opportunity to request or receive a hearing; and

(2) The designated Department official, after considering the written material, notifies the IHE, SEA, or LEA in writing whether—

(i) Any or all of the Federal financial assistance must be repaid; or

(ii) The proposed termination is dismissed or imposed as of a specified date.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart E—Appeal Procedures

§ 86.400 What is the scope of this subpart?

(a) The procedures in this subpart are the exclusive procedures governing appeals of decisions by a designated Department official to demand the repayment of Federal financial assistance or terminate the eligibility of an IHE, SEA, or LEA to receive some or all forms of Federal financial assistance for violations of this part.

(b) An Administrative Law Judge (ALJ) hears appeals under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.401 What are the authority and responsibility of the ALJ?

(a) The ALJ regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b) The ALJ is not authorized to issue subpoenas.

(c) The ALJ takes whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The scope of the ALJ's review is limited to determining whether—

(1) The IHE, SEA, or LEA received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification; or

(2) The IHE, SEA, or LEA violated its certification.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.402 Who may be a party in a hearing under this subpart?

(a) Only the designated Department official and the IHE, SEA, or LEA that is the subject of the proposed termination or recovery of Federal financial assistance may be parties in a hearing under this subpart.

(b) Except as provided in this subpart, no person or organization other than a party may participate in a hearing under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.403 May a party be represented by counsel?

A party may be represented by counsel.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.404 How may a party communicate with an ALJ?

(a) A party may not communicate with an ALJ on any fact at issue in the case or on any matter relevant to the merits of the case unless the other party is given notice and an opportunity to participate.

(b)(1) To obtain an order or ruling from an ALJ, a party shall make a motion to the ALJ.

(2) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(3) If a party files a written motion, the party shall do so in accordance with § 86.405.

(4) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(5) The date of service of a motion is determined by the standards for determining a filing date in § 86.405(d).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 85.405 What are the requirements for filing written submissions?

(a) Any written submission under this subpart must be filed by hand-delivery or by mail through the U.S. Postal Service.

(b) If a party files a brief or other document, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next Federal business day.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.406 What must the ALJ do if the parties enter settlement negotiations?

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or for the parties to obtain approval of a settlement agreement, the ALJ grants the stay.

(b) The following are not admissible in any proceeding under this part:

(1) Evidence of conduct during settlement negotiations.

(2) Statements made during settlement negotiations.

(3) Terms of settlement offers.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.407 What are the procedures for scheduling a hearing?

(a) If the IHE, SEA, or LEA requests a hearing by the time specified in § 86.304(a)(3), the designated Department official sets the date and the place.

(b)(1) The date is at least 15 days after the designated Department official receives the request and no later than 45 days after the request for hearing is received by the Department.

(2) On the motion of either or both parties, the ALJ may extend the period before the hearing is scheduled beyond the 45 days specified in paragraph (b)(1) of this section.

(c) No termination takes effect until after a hearing is held and a decision is issued by the Department.

(d) With the approval of the ALJ and the consent of the designated Department official and the IHE, SEA, or LEA, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.408 What are the procedures for conducting a pre-hearing conference?

(a)(1) A pre-hearing conference may be convened by the ALJ if the ALJ thinks that such a conference would be useful, or if requested by—

(i) The designated Department official; or

(ii) The IHE, SEA, or LEA.

(2) The purpose of a pre-hearing conference is to allow the parties to settle, narrow, or clarify the dispute.

(b) A pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.409 What are the procedures for conducting a hearing on the record?

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an ALJ.

(b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) The hearing process may be expedited as agreed by the ALJ, the designated Department official, and the IHE, SEA, or LEA. Procedures to expedite may include, but are not limited to, the following:

(1) A restriction on the number or length of submissions.

(2) The conduct of the hearing by telephone conference call.

(3) A review limited to the written record.

(4) A certification by the parties to facts and legal authorities not in dispute.

(d)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) The designated Department official has the burden of persuasion in any proceeding under this subpart.

(3)(i) The parties may agree to exchange relevant documents and information.

(ii) The ALJ may not order discovery, as provided for under the Federal Rules of Civil Procedure, or any other exchange between the parties of documents or information.

(4) The ALJ accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(e) The ALJ makes a transcribed record of any evidentiary hearing or oral argument that is held, and makes the record available to—

(1) The designated Department official; and

(2) The IHE, SEA, or LEA on its request and upon payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.410 What are the procedures for issuance of a decision?

(a)(1) The ALJ issues a written decision to the IHE, SEA, or LEA, the designated Department official, and the Secretary by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing if one is held; or

(iii) The date on which the ALJ terminates the hearing in accordance with § 86.401(c)(3).

(2) The ALJ's decision states whether the violation or violations contained in the Secretary's notification occurred, and articulates the reasons for the ALJ's finding.

(3) The ALJ bases findings of fact only on evidence in the hearing record and on matters given judicial notice.

(b)(1) The ALJ's decision is the final decision of the agency. However, the Secretary reviews the decision on request of either party, and may review the decision on his or her own initiative.

(2) If the Secretary decides to review the decision on his or her own initiative, the Secretary informs the parties of his or her intention to review by written notice sent within 15 days of the Secretary's receipt of the ALJ's decision.

(c)(1) Either party may request review by the Secretary by submitting a brief or written materials to the Secretary within 20 days of the party's receipt of the ALJ's decision. The submission must explain why the decision of the ALJ should be modified, reversed, or remanded. The other party shall respond within 20 days of receipt of the brief or written materials filed by the opposing party.

(2) Neither party may introduce new evidence on review.

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(d) The decision of the ALJ ordering the repayment of Federal financial assistance or terminating the eligibility of an IHE, SEA, or LEA does not take effect pending the Secretary's review.

(e)(1) The Secretary reviews the ALJ's decision considering only evidence introduced into the record.

(2) The Secretary's decision may affirm, modify, reverse or remand the ALJ's decision and includes a statement of reasons for the decision.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.411 What are the procedures for requesting reinstatement of eligibility?

(a)(1) An IHE, SEA, or LEA whose eligibility to receive any or all forms of Federal financial assistance has been terminated may file with the Department a request for reinstatement as an eligible entity no earlier than 18 months after the effective date of the termination.

(2) In order to be reinstated, the IHE, SEA, or LEA must demonstrate that it has corrected the violation or violations on which the termination was based, and that it has met any repayment obligation imposed upon it under § 86.301(b)(1) of this part.

(b) In addition to the requirements of paragraph (a) of this section, the IHE, SEA, or LEA shall comply with the requirements and procedures for reinstatement of eligibility applicable to any Federal program under which it desires to receive Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Appendix A

Note: This appendix will not be codified in the Code of Federal Regulations.

This appendix contains a description of Federal trafficking (i.e., distribution) penalties for substances covered by the Controlled Substances Act (21 U.S.C. 811), and is taken from a Department of Justice publication entitled *Drugs of Abuse* (1989 Edition). Persons interested in acquiring the entire publication or in obtaining subsequent editions in the future should contact the Superintendent of Documents, Washington, DC 20402. This appendix also contains a description prepared by the Department of Justice of Federal penalties and sanctions for illegal possession of a controlled substance. Legal sanctions for the unlawful possession or distribution of alcohol are found primarily in State statutes.

The Department of Education is providing this information as an example of the minimum level of information that IHEs may provide to their students and employees in order to comply with the requirements in § 86.100(a)(2) of these regulations relating to the distribution to students and employees of a description of the applicable legal sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information. In future years, IHEs should distribute the most current editions of these documents that are available.

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Appendix C

STUDENT DRUG POLICIES

HENRICO COUNTY PUBLIC SCHOOLS

ALCOHOL AND OTHER DRUGS NOT PRESCRIBED FOR THE STUDENT ARE NOT PERMITTED.

CHEMICAL ABUSE: "possessing, using, or having evidence of prior use of illegal chemicals, alcohol, "look-alike" drugs, anabolic steroids, any drug not prescribed for the student by a physician, or any substance presented as a drug; OR possession or use of drug paraphernalia on school grounds or at any school-related event"

First Offense:
(1) report to Youth Services Officer
(2) referral to Disciplinary Review Hearing officer
(a) recommend minimum five-day suspension from school
(b) recommended 30-day exclusion from all extracurricular activities
(c) absences during suspension will be unexcused with no right to make up missed work
(d) if the student successfully completes Awareness and Intervention Program, and parent participates in one meeting with Program staff, any suspension IN EXCESS OF FIVE DAYS may be waived; all absences during suspension will be excused, with the right to make up work; and any exclusion from extracurricular activities IN EXCESS OF TEN DAYS may be waived.
(e) the parent may enroll student in community drug counseling program of their choice, and sign permission to share information between school and program, in which case the provision of Paragraph (d) shall apply.

Second Offense:
(1) report to Youth Services Officer
(2) referral to Disciplinary Review Hearing Officer
(a) recommended minimum ten- day suspension from school.
(b) recommended 60-day exclusion from all extracurricular activities.
(c) absences during suspension will be unexcused, with no right to make up missed work.
(d) if parent and student successfully complete a drug treatment program as recommended by the Substance Abuse Intervention Counselor and give permission for program to share information between school and program, then absences during suspension will be excused with the right to make up work; any suspension IN EXCESS OF TEN DAYS may be waived, any exclusion from extracurricular activities IN EXCESS OF 30 DAYS may be waived.

Subsequent Offenses:
(1) report to Youth Services Officer
(2) referral to Disciplinary Review Hearing Officer
(a) recommended minimum 30-day suspension from school
(b) recommended exclusion from all extracurricular activities for one calendar year.
(c) absences during suspension will be unexcused, with no right to make up missed work.
(d) if parent and student successfully compete an inpatient drug treatment program and sign permission to share information between school and program, then absences during suspension will be excused with the right to make up work.

Distribution or Attempted Distribution of Drugs (whether sale or gift):
(1) report to Youth Services Officer
(2) referral to Disciplinary Review Hearing Officer
(3) recommendation to school board for expulsion

Tobacco Products

The use and possession of tobacco products by elementary and middle school students are prohibited. High school students are prohibited from the use and possession of tobacco products on school property during the school day or in association with any instructional day activity. The instructional day begins when the student enters school property in the morning and ends when he or she leaves school property. Also prohibited are matches and lighters.

Penalties for the use and possession of tobacco products are as follows:

First Offense:
Student conference, parent conference and alternative school program.

Subsequent Offenses:
Out-of-school suspension.

WISE COUNTY SCHOOLS

DRUG AND ALCOHOL POLICY
A student shall not possess, allege to possess, use, allege to use, sell, allege to sell, transmit, allege to transmit, be under the influence or allege to be under

the influence of any narcotic drug, hallucinogenic drug, stimulant drug, amphetamine, barbiturate, marijuana, alcoholic beverage, anabolic steroid, intoxicant of any kind, or mood or mood behavior altering substance of any kind.

A student using a medical prescription in accordance with a physician's directions and within guidelines established by the School Board or school shall not be considered in violation of this rule. The principal and/or his/her designee may confiscate and dispose of any unprescribed or improperly used drug or beverage covered by this rule.

Under normal circumstances, first-time offenders using any beverage or substance covered by this rule shall receive a 10-day suspension from school and probation for the remainder of the semester. Also, counseling will be recommended. Second-time offenders abusing any substance or beverage covered by this rule will be subject to expulsion from school and possible prosecution in the courts of this state.

SUBSTANCE ABUSE REFERRAL PROCEDURES

All students identified as involved in substance abuse will be subject to appropriate disciplinary measures as stated in the Wise County Student Conduct and Attendance Code Handbook. In addition, these students must be referred to parents for treatment as discussed below.

Tobacco use violation and referrals for treatment should involve a written referral to parents. All students under the age of sixteen years who are using tobacco products are involved with a violation of State Law #18.2-371.2 which states: "It shall be illegal for any person to sell to or purchase for any person less than sixteen years of age, knowing that such person is less than sixteen years of age, any tobacco product, including but not limited to cigarettes and cigars..."

Parents should be encouraged to investigate the purchase source and advised that they may be in violation of this law themselves. Students should be encouraged to discontinue tobacco use. Treatment programs designed to help are available in this area and are listed in the Wise County Prevention of Substance Abuse Brochure.

All student accused of alcohol and other abuse must be referred to the Wise Count Discipline Committee. In addition to disciplinary measures, the Discipline Committee and/or school principal must provide a list of treatment resources to the parents with a strong recommendation that parents consider professional treatment or counseling. Parents should be advised that second time offenders may be less likely to be expelled from school if proof of such treatment or counseling has been sought or is ongoing.

Second time offenders must be referred to the Discipline Committee again. The Discipline Committee shall determine options based on student behaviors and possible treatment intervention since the initial referral. Some available options are referral to the Wise County School Board for action, suspension (long or short term), expulsion and/or prosecution by the courts. Expulsion and referral for prosecution may be the most appropriate options for those offenders who have sought no treatment or made little effort to change inappropriate behaviors.

A copy of this procedure should be distributed to all student and parents and should be widely publicized to gain public assistance in maintaining schools free of substance abuse.

Possession of Medication and Prescription Drugs

1. In order that school authorities will know what medicine a student is taking in case of an emergency and in order to prevent trafficking in drugs, no student may have in his possession any medication or prescription drugs, even ifrecommended or prescribed for the student's use. All such items shall be taken to the office of the principal or his designee at the start of the school day for safekeeping. No medication will be administered except that authorized by a licensed physician and requested by written permission on a form available at each school. "Medication" shall mean any drug or other substance used in treating diseases, healing, or relieving pain, including all over-the-counter drugs such as aspirin, cough syrups, gargles, caffeine pills and the like. Students who violate this policy will be disciplined.

Reports to Principal

1. All incidents involving the possession, use, sale or distribution of alcoholic beverages, controlled substances, drug paraphernalia, or imitation controlled substances, as these terms are defined above, by students, School Board employees, or anyone else on school grounds or at school-sponsored activities shall be reported to the principal. The principal shall report any suspected violations of law to the appropriate law enforcement authorities.

Students Seeking Voluntary Drug/Alcohol Assistance

1. The school will provide, without penalties, assistance to any student voluntarily seeking drug and alcohol treatment or advice. If a student voluntarily seeks information or assistance about illegal substance use, and has not been apprehended for any such violation by school authorities, staff will take the following action:

(a) Immediately consider the best possible means of helping the student, including the use of members of the school staff, pupil personnel services, team conference, or private and community resources

(b) Parents are an important factor in helping the individual student and could be involved as

soon as it is considered to be appropriate.

(c) Students who voluntarily seek help or treatment will be given the opportunity to make up any school work missed.

CITY OF SALEM PUBLIC SCHOOLS

Rule 7 - Drugs, Alcohol and Tobacco

I. Alcohol and Other Drug Abuse

As one of its major tasks, the school is responsible for providing a safe and healthy environment conducive to wholesome living and effective learning. To help provide such an environment at a time when drug abuse is a serious social and health problem, the school board hereby establishes policies and procedures relative to drug abuse in the schools and on school property. This is necessary so that all school personnel (students as well as employees), local health agencies, local law enforcement officials, parents, and citizens of the community are aware of the role the school will play in any situation involving the use of drugs including anabolic steroids in school.

The City of Salem School Division has defined Alcohol and Other Drug Abuse as follows: "possessing, using, or having evidence of prior use of illegal substances, alcohol, "look-alike" drugs, any drug not prescribed for the student by a physician, or any substance represented as a drug; OR possession or use of drug paraphernalia on school grounds or at any school-related event."

The definition specifically includes:

1. Use, possession, distribution, intent to sell, selling attempting to sell, or being under the influence of a controlled substance, marijuana, illegal drugs or intoxicants, including alcohol, on school property or while engaged in or attending a school activity or in any manner so as to endanger the well-being of students or staff.
2. Being present upon school grounds within a reasonable time after having consumed or used a controlled substance, marijuana, illegal drugs or intoxicants, including alcohol.
3. Possession or distribution of "imitation controlled substances" which by dosage unit appearance, including color, shape, size, and markings, or by representations made, would lead a reasonable person to believe that the substance is a controlled substance.
4. The use, possession distribution, intent to sell, selling, or attempting to sell drug paraphernalia on school property or while engaged in or attending a school activity, or in any manner so as to endanger the well-being of students or staff.

Drug paraphernalia means any equipment, products, and materials of any kind including the constituent parts thereof that are either designed for use or which are intended by the student for use in packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled substance. Drug paraphernalia shall include, but not be limited to, those things defined in Section 18.2-265.1 of the Code of Virginia, which is available for review in each principal's office.

Administrative Procedures for Handling Alcohol and Other Drug Abuse Policy Violations

I. Use, Possession, or Being Under the Influence

First Offense

1. Report to school administration and Youth Services Officer (Police) with recommendation to prosecute
2. Automatic suspension from school.
Minimum: five-days suspension
Maximum: ten-days suspension
3 Absences during suspension will be unexcused and student will not be allowed to make up work for credit.
4. Automatic 30-day exclusion from all extracurricular activities.

Second Offense

1. Report to school administration and Youth Services Officer (Police) - with recommendation to prosecute.
2. Automatic suspension from school.
3. Absences during suspension will be unexcused and student will not be allowed to make up work for credit.
4. Automatic suspension from all extracurricular activities for the remainder for the school year.
5. Referral to Disciplinary Review Committee for consideration for expulsion from school.

II. Distribution, Intent to Sell, Selling, Attempting to Sell

(Distribution or Attempted Distribution of Alcohol and Other Drugs, whether sale or gift)

1. Report to school administration and Youth Service Officer (Police) with recommendation to prosecute.
2. Automatic suspension from school.
3. Absences during suspension will be unexcused and student will not be allowed to make up work for credit.
4. Automatic suspension from extracurricular

activities for the remainder of the school year.
5. Referral to Disciplinary Review Committee for consideration for expulsion from school.

III. It is the policy of the Salem City School Division to require the student and his family to develop a contract with the principal which provides for the satisfactory completion of an intervention or treatment program, whether in-patient or out-patient. The student is further encouraged to take advantage of academic support programs currently in place.

B. Tobacco
The use of tobacco by students in all schools is prohibited.

ROANOKE COUNTY PUBLIC SCHOOLS

A. Philosophy Statement
The Roanoke County School Board recognizes that the use of alcohol and other drugs and the problems associated with it are becoming increasingly commonplace in our society and among youth. One's own chemical use or that of a loved one can have serious and lifelong consequences.

The Roanoke County School Board also recognizes that the abuse of alcohol and/or drugs often precedes the development of problems. At some point, an individual's use of alcohol or other drugs may be deemed destructive to him/herself or to others, causing problems in daily living. Where the capacity to make responsible decisions regarding alcohol and other drug use has been reduced or compromised, prompt and appropriate attention can help the vast majority of individuals involved.

The Roanoke County School Board recognizes that students often need education, assistance, and support because of their own drug use or because of drug-related problems in those they care about. Many students will require support for their decision to remain drug- free. Since chemical dependency is preceded by the abuse of alcohol or other drugs, the school system wishes to provide education and/or assistance to any student displaying signs of harmful involvement.

The Roanoke County Schools also recognizes that a person's use of alcohol or other drugs can lead to the illness of chemical dependency. Complete recovery is possible, however, if the illness is identified early and treated appropriately through referral to community agencies. The Roanoke County Schools regards alcoholism, drug addiction, and dependency as it does any other illness or chronic behavioral/medical problem. Our primary purpose is to be helpful and to eradicate the judgments or blame which only continue to stigmatize those with such problems and make their recovery difficult or impossible.

The Roanoke County School Board believes it is in the best interest of the community for it to take steps to promote, enhance, and maintain a drug-free school system and student body, and that along with parents and other segments of the community it has a role to play in helping students to remain drug-free.

Whenever factors arise which interfere with a student's school performance, the Roanoke County Schools will mobilize its resources to address the situation. Therefore, the Roanoke County Schools wishes to cooperate with all segments of the community in making the means of assistance available to all those individuals who develop alcohol or other drug-related disabilities.

B. Student Assistance Program Policy
The Roanoke County Schools establishes a Student Assistance Program to provide education, assistance, and support for students affected by their own or others' drug and alcohol-related problems along the following guidelines:

1. Students shall not use, be under the influence of, or have in their possession on school property or while engaged in or attending a school-sponsored activity, alcoholic beverages, marijuana, anabolic steroids, or other controlled substances as defined in the Drug Control Act of the Code of Virginia, or drug paraphernalia. As used in this policy "drug paraphernalia" shall include, but not be limited to, those items defined in Section 18.1-265.1 of the Code of Virginia.

(a) First Offense: Parents and law enforcement will be contacted immediately upon verification of the violation. The student will receive an out-of-school suspension, with no right to make up missed work, for from five (5) to ten (10) days, and will be ineligible for participation in all extracurricular activities for a period of one (1) calendar year. The building administrator may reduce the suspension to five (5) days in-school with the right to make up work and loss of extracurricular eligibility for 30 calendar days if:
(1) The student agrees to see the SAP Coordinator/Counselor or the Core Team and follows their recommendations satisfactorily; OR
(2) The student and family agree to a drug and alcohol assessment provided at a state-approved alcohol/drug agency in the community and conducted by a Certified Alcoholism/Drug Abuse Counselor, and follow their recommendations satisfactorily. Assessment shall be completed within fifteen (15) school days.

(b) Second Offense: Parents and law enforcement will be contacted immediately upon verification of

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the violation. The student will receive an out-of-school suspension for ten (10) days with no right to make up work, and will be ineligible for participation in all extracurricular activities for a period of one (1) calendar year. A recommendation for expulsion will be made to the Superintendent. The building administrator or the Board of Education Disciplinary Review committee may hold recommendation for expulsion in abeyance if:

(1) The student agrees to see the SAP Coordinator/Counselor or the Core Team and follows their recommendations satisfactorily; OR

(2) The student and family agree to a drug and alcohol assessment within the suspension period provided at a state-approved alcohol/drug agency in the community and conducted by a Certified Alcoholism/Drug Abuse Counselor, and follow their recommendations satisfactorily. Assessment shall be completed within fifteen (15) school days.

(c) When an assessment is completed by an alcohol/drug agency, the agency's recommendations will be reviewed and monitored by the SAP Coordinator or Core team. Modifications to the assessment recommendations may be made by the SAP Coordinator and/or Core Team if deemed appropriate. An appeal of the assessment recommendations may be reviewed by the Disciplinary Review Panel.

2. Students shall not give, sell, distribute, or possess with the intent to give, sell, or distribute on school property or while engaged in or attending a school-sponsored activity, alcoholic beverages, marijuana, anabolic steroids, or other controlled substances as defined in the Drug Control Act of the Code of Virginia, drug paraphernalia or imitation controlled substances. As used in this policy, drug paraphernalia shall include, but not be limited to, those items defined in Section 18.2-265.1 of the Code of Virginia. As used herein, imitation controlled substances shall mean a pill, capsule, tablet, or other item which is not a controlled substance, alcoholic beverage, anabolic steroid, or marijuana but which by dosage unit appearance, including color, shape, size, marking, and package, or by representation made, is intended to lead or would lead a reasonable person to believe that the substance is a controlled substance.

(a) First Offense: Parents and law enforcement will be contacted immediately upon verification of the violation. The principal shall immediately effect an out-of-school suspension for ten (10) school days and shall consult with the director of administration and secondary education relative to recommendations for expulsion. In the event expulsion is not recommended, the student may be referred to the Student Assistance Program.

3. Because of the potential dangers to the student presented by his/her acute intoxication with alcohol or other drugs, students exhibiting evidence of acute intoxication, incapacitation, or a drug overdose in school or at school-sponsored events will be transported immediately to the local hospital or facility designated to provide detoxification services, followed by immediate notification of parents and police. Following his/her return to school, Section 1 of this policy will be implemented.

4. Reductions in length of suspension or extracurricular ineligibility, or withholding of expulsion may be revoked whenever a student fails to demonstrate compliance with expectations of or satisfactory progress in the Student Assistance Program. Whenever any of these actions are being considered, the procedural requirements of the Student Conduct Code will be followed.

All school staff members are expected to refer to the appropriate Student Assistance Program staff:

(a) Any student who they witness in violation of Section 1 above;

(b) Any student who exhibits a definite and repeated pattern of unacceptable school performance and does not respond to usual and customary attempts to correct it;

(c) Any student exhibiting signs, symptoms, or indications of an alcohol or drug-related problem;

(d) Any student whose self-disclosed alcohol/drug-related behavior places them or others at risk or in imminent danger.

Referral of a student to the Student Assistance Program by itself does not constitute an allegation that a student has an alcohol/drug-related program.

6. Students may also be referred to the SAP Coordinator/Counselor or the Core Team through self-referral or referral by peers, parents, or community representatives.

7. An essential feature of the program is that students and their family members are encouraged to contact the building administrators and/or the SAP Coordinator/Counselors for help with alcohol and other drug-related problems, with the assurance that such contact will be handled sensitively and confidentially.

8. Upon referral to the SAP Coordinator/Counselor or the Core Team they may consult with the student, parents, and/or staff members in an attempt to assess the nature and scope of the student's problem. This initial screening will result in one or more of the following recommendations.

(a) No apparent personal or performance problem at this time; no further action is necessary at this time.
(b) No apparent alcohol/drug-related problem at this time; however, referral to other in-school or community services is appropriate.
(c) Further assessment interviews with the SAP Coordinator/Counselor or Core Team are needed.
(d) The student needs to contract for specific behavioral changes in AODA-related behavior, monitored through regular meetings between the student and the SAP Coordinator/Counselor or Core Team representative.
(e) The student needs to satisfactorily participate in an in-school support group, after which additional recommendations will be made.
(f) The student requires referral to an approved AODA agency for a professional assessment.
(g) Assessment information supports the need for chemical dependency treatment in an inpatient or outpatient program in the community.
(h) The student requires involvement in other community services, such as Alateen, Alcoholics Anonymous, Narcotics Anonymous, etc.

9. Except for violations reported under Section 1, a student who self-refers to the Student Assistance Program or Core Team and who is making satisfactory progress in following their recommendations will not be liable to suspension, extracurricular ineligibility, or other disciplinary action for behavior which occurs prior to self-referral unless:
(a) The student discloses conduct already reported under Section 1 as a witnessed violation.
10. Evaluations concerning "satisfactory progress in the Student Assistance Program" will be made by the building SAP Coordinator/Counselor or Core Team member in consultation with the building administrator, support group facilitators, and other members of the Core Team.
11. Participation in the Student Assistance program is voluntary. At all times it is the prerogative of the student and/or parent to accept or reject referral to the SAP Coordinator/Counselor or Core Team member or to community-based services.
(a) Regardless of whether a student accepts or rejects assistance, it remains his/her responsibility to bring school performance up to acceptable levels or face such corrective or disciplinary actions as may be warranted.
(b) If a student accepts treatment for chemical dependency, that fact will be regarded as any other illness with respect to the student's rights, benefits, and privileges.
(c) When either the student or parent(s) do not wish to cooperate in making needed assistance available, the student's status in school will be reevaluated, taking into account the best interests of the student, the nature of the problem, and the health, safety, welfare, educational opportunity, and rights of other students and staff.
12. No records of the student's participation in the Student Assistance Program will become part of the student's permanent record or cumulative file. Diagnostic labels such as "drug abuser" or "chemically dependent," in addition to pejorative labels, are never to be used in documents referring to a student or in conversation about the student with third parties by any staff member.
13. The use of prescription medications is to be construed as an exception to this policy when used by the individual for whom they are prescribed, when used in the manner and amounts prescribed and when used in the manner and amounts prescribed and when used in accordance with other school policies governing student medications.
14. Parents of all students participating in the Student Assistance Program will be specifically notified of their child's involvement at some point.
(a) Parents will be informed of their child's involvement in the Student Assistance Program immediately in cases of violations of this policy.
(b) In cases where students participate in the program through self-referral or other avenues (Section 5), parents will be notified as soon as practical. The SAP staff will document reasons behind their decision to postpone parent notification and involvement.
(c) Prior parent notification and consent will be required in all cases before student contact with any Certified AODA Counselor who is from an approved AODA community agency and who is not a school district employee.
15. The school board's protection from liability will be extended to all staff to the extent that they act in accordance with this policy and observe the procedures consistent with it established within their respective buildings.
16. The responsibility for operating the Student Assistance Program will be in the hands of each building administrator (or his/her designee), who will interpret the division's policy to students, staff, parents, and the community.
(a) Final decisions regarding disciplinary action and the consequences of other violations of this policy will be made by the building administrator in consultation with the SAP Coordinator/Counselor and other members of the building Core Team.
(b) It shall be the responsibility of each building administrator (or his/her designee) to develop procedures consistent with this policy and to provide the staff training and in service necessary

for their implementation.

C. PROGRAM ROLES

Anyone within the school system could conceivably become involved in the identification, assessment, intervention, treatment, and/or support of a student who has an alcohol or other drug abuse-related problem.

D. INSTRUCTIONAL STAFF

As the person in the best position to observe and note changes in student conduct on a regular, daily basis, the classroom teacher plays the most vital role in the early identification of students who may have alcohol or other drug abuse-related problems.

The role of the staff members is clearest in the case of "witnessed use," or the firsthand observation of instances where students are violating school policies (and state, federal, and local ordinances) against the manufacture, possession, use, delivery, or sale of alcohol or other mood-altering drugs on school grounds or at school-sponsored activities. If a staff member witnesses a violation of such a policy during the school day, he/she should take a number of steps, including: obtain the student's name, inform the student of the apparent violation, note any others in the area who may also have witnessed the student's behavior or conduct, confiscate the chemical and/or any evidence of its use, escort the student to the office of the principal or his/her designee, document and report details of the incident to the principal and/or his/her designee. The principal would then take the standard disciplinary steps as spelled out in the school's alcohol/drug policy. The Student Assistance Counselor/Coordinator and/or the Core Team member would become immediately involved to begin the assessment process.

Students who are heavily intoxicated or who are incapacitated may be suffering from a drug overdose. Such intoxication should always be regarded as a medical emergency and responded to in the same manner as other medical emergencies.

Additional responsibilities of all staff include: be alert to unexplained or persistent changes in performance or behavior; confer with members of the Student Assistance Program regarding potential student referrals; document patterns of unacceptable behavior or performance; refer students to the SAP staff when appropriate; participate in the assessment process by providing SAP staff with information when requested; participate in intervention meetings; respect student rights to privacy and confidentiality; have a knowledge of AODA; be alert to the presence of anyone not enrolled as a student in the school building or on the school grounds.

E. BUILDING ADMINISTRATORS

As the source of leadership within the individual school building, the administrator's role is chiefly concerned with actively supporting various aspects of the program and its policies and procedures: be an active member of the building's core team; provide vocal support for the SAP; acquire training in fundamental alcohol and other drug abuse concepts; refer to the SAP those students involved in disciplinary action and who are suspected of being involved with substance abuse, enforce the school system's substance abuse policy; review and interpret the school board's policy relative to drug abuse to both professional and nonprofessional staff; see that all areas of the school, including restroom and locker rooms, are properly supervised; report all drug abuse incidents to the division superintendent of schools or his/her designee; designate a staff member to keep accurate and detailed records on all drug incidents (all such information should be treated as being confidential); require any student under medical care and using prescribed medication in school to present to the principal, or to someone officially designated, a doctor's order stating the type of medication prescribed for the student, dosage and time to be administered, and the duration of the treatment. If the student is in need of immediate medical attention, inform the student's parents and make arrangements to transfer the student to a hospital to be placed under the care of the family physician.

F. PUPIL PERSONNEL SERVICES STAFF

School counselors, social workers, psychologists, and other pupil personnel services staff members are frequently in contact with students and/or families over issues ranging from minor problems to crises. Pupil personnel services staff members should be members of the core team, and may be identified as individual Student Assistance Program counselors. A few basic expectations define the role of pupil personnel services staff persons in the SAP in general: acquire proper training in alcohol/drug skills and concepts, refer students with potential substance abuse-related problems to the SAP staff, be an active member of the core team/screening team.

G. SAP COUNSELOR/COORDINATOR

The role of the Student Assistance Program Counselor/Coordinator, as the title implies, combines counseling and coordinative functions. In smaller schools a single individual may perform the functions listed below. In larger settings, the SAP Coordinator retains the program management functions, and the remaining tasks are carried out by one or more individuals designated as SAP counselors. The SAP Coordinator and those designated as SAP counselors are always members at the building's core team/screening team and participate in its tasks during the program's development and maintenance. If all the responsibilities of the Student Assistance

Program Counselor/Coordinator are the province of a single individual in a school building, they would include counseling, education, and program management function. The SAP Coordinator shall act as an advisor, upon request, to the Disciplinary Review Panel in cases involving substance abuse.

H. CORE TEAM

A team of professional personnel, usually consisting of an administrator, counselor, and teacher, who act in the role of the Student Assistance Program Counselor/Coordinator where that individual is not available on staff.

I. VOLUNTARY/WRITTEN CONSENT

In order to participate in Student Assistance Program support groups, written parental permission is required. Such permission is not necessary in the case of one-to-one counseling. Information received during counseling from a student about the student's or another's drug-related problems is considered confidential and cannot be disclosed unless (a) the student consents to the disclosures, or (b) the staff members judge that the student or another is in imminent danger and that disclosure will alert others to the danger.

J. SEARCH AND SEIZURE

Lockers and other storage facilities made available to students for temporary storage of their personal possession remain under the joint control of the school administration. The school administration, upon reasonable suspicion, has the right to search lockers, desks, and other storage facilities for items which violate law, school policies and regulations, or which may be harmful to the school or its students.

The school administration also has the right to search any student when there is reasonable suspicion to believe that the student possesses an item which violates law, school policies and regulations, or which may be harmful to the school or its students. Searches of students' automobiles shall only be conducted where probable cause exists. The above procedures will be conducted by an administrator or his designee(s) in the presence of a witness(es). In no event shall strip-searches, breathalyzer tests, nor urine tests of students be conducted by school personnel. It is recommended that the School Resource Deputy or other law enforcement officer be contacted to assist in performing any strip-search, breathalyzer test, or urine test of students.

Contraband material or other physical evidence is to be turned over immediately to the principal or designated person in his absence who is personally responsible for holding and delivering such material to the public authorities.

Such materials should be received in the presence of witnesses and marked for future identification. A receipt with witnesses' signatures should be furnished the owner, if know, and one requested from the officer who takes possession.

K. VIOLATIONS OF CRIMINAL LAW

In addition to any disciplinary action taken by the principal or other school authority under this code, any violation of criminal law will be handled with the Sheriff's Office as outlined below:

1. The principal may discuss any case felt to be severe enough with the proper school administrative personnel; however, all criminal violations of law that come to the attention of the principal or other administrative personnel, will be reported to the Sheriff's Office. The assigned School Resource Deputy will be utilized whenever possible. In emergencies or cases where time is essential, and the School Resource Deputy will be delayed, the Sheriff's Office will be contacted directly.
2. Principals should be advised of the action taken on investigations conducted at the school or on school grounds within the restrictions and limitations imposed by law.

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS

The approved Code of Behavior for Prince William County Public Schools states that "the possession, use, or distribution (by sale, gift or otherwise) or attempted distribution of drugs (illegal, prescription, and/or over-the-counter), alcohol, inhalant intoxicants, anabolic steroids or lookalikes (placebos) on school property, at school functions or going to and from school is expressly forbidden."

A substance abuse offense includes the **possession** or **use** of:

- alcohol, alcohol products or alcohol containers
- illegal prescription and over-the-counter drugs
- lookalikes or placebo drugs
- inhalant intoxicants
- anabolic steroids
- drug paraphernalia

A substance abuse suspension offense shall receive no less than three days out-of-school suspension. A first time substance abuse offense shall be referred to the school substance abuse prevention staff for assessment and, if appropriate, the student will be expected to successfully complete the **IMPAC** Program. **IMPAC** is a five-day substance abuse education program for students and their parents. If the student chooses not to complete the **IMPAC** Program, the student will be given two additional days out-of-school suspension.

Out-of-school suspension days are unexcused absences and students receive failing grades for any assigned work in accordance with Regulation 724-1. The principal has the latitude to provide make-up options which would avoid automatic failure.

A substance abuse suspension offense shall also result in a suspension for thirty calendar days from participation in all school activities (teams, clubs, and other school-sponsored activities), including practice.

The student shall also be on disciplinary probation for 90 calendar days.

> **The principal or principal's designee shall immediately notify the student's parent(s) and the Pupil Personnel Department of the suspension. The student's parent(s) shall be informed of the conditions under which the suspension will be served, the fact that the absences will be unexcused, that all substance abuse violations are reported to the police, and the consequences of further violations. The student and parent will be requested to sign a statement acknowledging that they have been informed of the consequences of any subsequent violations.**

The approved Code of Behavior for Prince William County Public Schools states that "the possession, use, or distribution (by sale, gift or otherwise) or attempted distribution of drugs (illegal, prescription, and/or over-the-counter), alcohol, inhalant intoxicants or lookalikes (placebos) on school property, at school functions or going to and from school is expressly forbidden."

In addition to the requirements of policy, notice and other regulations, the following provisions shall be followed for all students involved in the use, possession, or distribution of illegal drugs, paraphernalia, or intoxicants:

1. In all cases, parents/guardians shall be notified as soon as possible. In the event parents/guardians cannot be reached or cannot come to the school promptly, the principal or his designee is to represent the best legal interests of the student(s) involved as well as the interests of the total school and community.
2. Students involved in the possession/use of alcoholic beverages at school or who arrive at school under the influence of same, are subject to either suspension or expulsion from school. The illicit beverages may either be turned over to the parents/guardians or destroyed by the principal. A school witness shall be present in either case. Police representatives would normally not be contacted in these cases unless the student is disorderly, disruptive and/or a threat to the safety of others or property. In such instances, the police may be contacted and requested to assume custody. Parents/guardians are to be notified as soon as possible that their child is being placed in the protective custody of the police. Normally, however, these youngsters should be turned over to the parents/guardians and suspended from school. The length of suspensions in these cases may vary from three days to the maximum allowable due to the nature and degree of involvement in each individual case. All student expulsion recommendations must be cleared by the appropriate area associate superintendent prior to the principal informing parents/students of such a recommendation.
3. Students involved in the possession, use or distribution of drugs (illegal, prescription, and/or over-the-counter), alcohol, inhalant, intoxicants or lookalikes (placebos) or paraphernalia, on school property, or who arrive at school under the influence of same, are subject to suspension and/or expulsion from school.
   (a) A minimum three-day suspension from school is required in all but very unusual and extenuating instances for all students using or in possession of such drugs or paraphernalia, or if these substances are found in a location clearly under the direct control of the student(s).
   (b) Staff shall recommend a suspension alternative for students involved (for the first time) in a substance abuse offense which results in the penalty of suspension. **This alternative is available in suspension cases only** and will follow the guidelines as outlined below:
      (1) Out-of-school suspension days are unexcused absences and no credit shall be given for the work missed.
      (2) The automatic failure provision will be waived, provided the student and parent or legal guardian agree to and satisfactorily participate in the IMPAC (Interschool Management of Problems due to Alcohol and Chemical involvement) Program.
      (3) A substance abuse suspension offense shall also result in a suspension for thirty calendar days from participation in all school activities (teams, clubs, and all other school-sponsored activities), including practice.
      (4) The student shall also be on disciplinary probation for ninety (90) calendar days. Any discipline problem occurring within 90

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days of the substance abuse suspension offense will receive the maximum suspension for the offense.

(5) The principal or principal's designee shall immediately notify the student's parent or legal guardian and the Pupil Personnel Department of the suspension. The student's parent or legal guardian shall be informed:
- of the conditions under which the suspension will be served,
- of the fact that the absences will be unexcused,
- if the student and his or her parent or legal guardian satisfactorily participate in the IMPAC Program then the automatic failure provision will be waived and the student shall receive only three days of suspension. (Five days of unexcused absences result in failure for the grading period.)
- of all substance abuse violations reported to the police,
- of the consequences of further violations.

The student and parent or; legal guardian will be requested to sign statement acknowledging that they have been informed of the consequences of any subsequent violations.

(c) The second such offense in the same school year will bring an automatic recommendation to the School Board for the expulsion from school of said student. An automatic recommendation for expulsion by the building principal is also to occur the first time a student is involved in the distribution of illegal drugs, paraphernalia, alcohol, over-the counter drugs or placebos (lookalikes). Parents/guardians and the community resource officer are to be contacted as soon as possible. An incident report and a property receipt must also be prepared at that time. The student is to be suspended from school until such time as the appropriate area associate superintendent review the recommendation for expulsion and make a recommendation to the Division Superintendent and/or until such time as the School Board has a hearing on the expulsion recommendation. The principal shall work with the appropriate area associate superintendent in preparing all material and procedure for the parents/guardians and the reviews or hearing. In any case of suspension or expulsion, the procedures required for such action must be consulted as followed.

(d) A principal should conduct whatever investigation he deems reasonably necessary before making a final decision concerning whether a student has been involved in using, possessing, or distributing an illegal drug. This investigation shall be for school purposes only, and all prosecution shall be undertaken by the appropriate authorities. If the investigation reveals facts and circumstances from which the principal can reach an immediate conclusion, he should act forthwith. Some examples include cases in which a student sells, distributes, uses or possesses material which the student has represented to be an illegal drug, cases in which the material can be identified with reasonable certainty by the principal or the authorities as an illegal drug, cases in which a student admits to the allegations, and the like. A principal may rely upon any source of information he considers to be reliable in reaching his conclusion, including information from students, teachers, or police authorities. If, however, the investigation reveals that there may be an innocent explanation for the simple use of possession of a substance, the principal should use discretion in determining whether to suspend or recommend expulsion before the results of a police investigation or chemical analysis are received. The principal should in the interim take administrative action as necessary to prevent recurrence of the incident, as by forbidding the student from bringing unexplained substances to school, conferring with the parents/guardians, and so forth.

4. The disposition of illegal drugs and/or paraphernalia that are involved in possession, use or distribution cases, shall be dealt with as follows:

(a) The school administrator or faculty members coming into possession of the above will contact the community resource officer responsible for support to that particular school. The officer is to be fully briefed concerning the circumstances and will make the decision concerning prosecution. If the community resource officer cannot be contacted, contact the Juvenile Bureau or police department. Attempts will be made to dispatch a member of the bureau to your location.

(b) If no member of the Juvenile Bureau is available, the administration or faculty member should take necessary action administratively, secure the contraband and turn it over to the community resource officer as soon as possible for investigation or disposition.

(c) In no event should a regular patrol unit be requested unless you have an uncontrollable situation. After the situation has been stabilized, the building administrator should make no decision

concerning prosecution until the matter has been coordinated with the community resource officer or police headquarters. The School Division has, in conjunction with the Commonwealth's Attorney and the chief of police, determined that the community resource officer will make the decision as to the question of prosecution and handling the contraband material.

(d) The contraband itself should not be transferred between persons but retained by the first person who takes possession. It should be sealed and annotated. This person must insure that the contraband is in his sole possession, under such security as is necessary to insure that it cannot be removed, replaced, or tampered with until delivered to the police officer.

5. For every incident involving students using or in the possession of or distributing illegal drugs, paraphernalia, or intoxicants an incident report will be completed and forwarded to the Office of Safety and Security. In addition, a copy of this report and a copy of the written communication with the parent outlining the incident and disciplinary action taken by theschool shall be forwarded to the appropriate area associate superintendent.
6. Any disciplinary actions that may result in a change in a special education student's IEP should follow the procedures outlined in Regulation 745-2.

Principals and the area associate superintendents shall be responsible for the implementation and monitoring of this regulation.

Smoking/Possession and/or Use of All Tobacco Products

The Prince William County Code of Behavior expressly forbids smoking for K-12th grade students.

1. All kindergarten, 1st, 2nd, 3rd, 4th and 5th graders involved in the smoking and/or possession/use of tobacco products at school or on bus are to be disciplined as follows:

   1st offense - conference with parent and child.
   2nd offense - 1 day suspension
   3rd offense - 5 days

In any case of suspension, the due process procedures required by such action must be followed.

2. All 6th, 7th, 8th, 9th, 10th, 11th and 12th graders involved in the smoking and/or possession/use of tobacco products at school or on the bus are to be suspended from school.

The lengths of suspension these cases are:

1st offense - 3 days
2nd offense - 4 days
3rd offense - 5 days

In any case of suspension, the due process procedures required by such action must be followed.

The principal and the appropriate area superintendent are responsible for the implementation and monitoring of this regulation.

Searches and Seizures

Searches of students' persons, papers and effects shall be made by school administrators only for the purpose of preserving student safety or morality, the safety of persons or property, and for maintaining discipline and control in the school. Such searches may be made when reasonable suspicion exists that a student possesses one or more of the following upon his person or among his papers and effects:

1. A prohibited weapon, explosive device, or other item which presents a physical danger to persons or property.
2. An illegal drug, stolen property, or other illegal or contraband item.
3. The possession of an automatic telephone beeper or intercom pager.

The use/or possession of automatic telephone beepers or intercom pagers is strictly prohibited. Any automatic telephone beeper or intercom pager found to be in the possession of a student will be confiscated. The student will be subject to further disciplinary action as deemed necessary by the building principal.

Any exception will be by prior approval of the principal upon the request of the student and parent with sufficient justification.

4. Obscene material.
5. Any other material or thing which a student has been prohibited from possessing at school, or which presents a danger to order and discipline, or to the welfare of persons or property, if allowed to remain in the student's possession.

Searches should not be made for the purpose of prosecuting a student, but rather for the above purposes. Illegal items discovered during a search shall be turned over to the police because of the nature of the item, and not for the purpose of prosecution. Thereafter, the decision as to whether or not to prosecute shall rest in the discretion of the police and the Commonwealth.

Items which are not illegal to possess, but are prohibited, shall be returned to the student at the end of the day, or to the student's parent, with the

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understanding that these items are not to be brought back to school.

Desks and lockers are the property of the school, and it is understood that they are the subject to the control and right of inspection by administrators at all times. Such inspections should be conducted for school purposes as detailed above, and not for purposes of prosecution. For purposes of such inspections, the contents of desks and lockers shall not be considered the "persons, papers and effects" of students which are protected hereunder.

The principal and the area associate superintendent are responsible for the implementation and monitoring of this regulation.

AUGUSTA COUNTY SCHOOLS

Pupils

The Augusta County School Board realizes that the use and abuse of drugs and alcohol by students has become a local, state, and national problem and recognizes that the local school system is responsible for maintaining an environment in which students are protected from drugs and drug related activities. Therefore, in accordance with the Code of Virginia, the use, possession, sale and/or distribution of drugs (except as medically prescribed), alcohol, and drug paraphernalia while on school property or while involved in school activities is expressly prohibited. Behaviors which indicate evidence of prior use may warrant an investigation and with reasonable cause be considered a violation of this policy.

The principal has the overall responsibility within the school for the handling of substance abuse cases. All referrals concerning suspected substance abuse within the school shall be made to the principal or designated assistant. The principal will investigate the suspected policy violation. A conference will be held with the student and parent(s) or guardian(s) prior to making a final determination of a violation, giving the student and parent(s) or guardian(s) an opportunity to respond to the charge and to ensure due process. All penalties for violation of the substance abuse policy will be in effect from the day the violation is determined and may result in out-of-school suspension and/or expulsion. Offenses which may result in criminal charges must be reported immediately to law enforcement and the Assistant Superintendent for Administration using the Substance Abuse Report Form.

The school administration reserves the right to search a student's person or personal effects in the event of reasonable suspicion of violation of this policy. The basis for reasonable suspicion could include, but not be limited to, eyewitnesses testimony, information which incriminates the student, and any other independent evidence. There is no expectation of privacy on or about school property. The regulations that apply to search and seizure will be in effect.

Definitions

Substance Abuse - The distribution, use, possession, or being under the influence of drugs, alcohol, or other controlled substances in violation of state or federal law or in violation of School Board policy.

Evidence of Prior Use - Observable behaviors which are commonly associated with substance abuse which result in impaired mental and physical abilities and/or are developmentally inappropriate. Examples include, but are not limited to, slurred speech, dilated pupils, staggering, uncontrollable behaviors, noticeable smell of alcohol, extreme lethargy, sleepiness, lack of coordination, etc.

Distribution - The selling, giving, or transferring of drugs, alcohol, or any other controlled substance.

Drug Paraphernalia - Equipment or apparatus designed for or used for the purpose of measuring, packaging, distributing or facilitating the use of drugs.

CHOICE Program - A program with six drug education classes for parents and students held after hours.

Alcohol - Any liquor, wine, beer, wine-cooler or other beverage with alcoholic content.

Imitation Controlled Substance/ Look-alike - A pill, capsule, tablet, caplet, liquid, or any other substance in any form whatsoever which by overall appearance would cause the likelihood that it would be mistaken for a controlled substance.

Drugs - Controlled substances, including illegal drugs, inhalants, legal prescription and over-the-counter drugs used or possessed or distributed for unauthorized purposes, and counterfeit (imitation controlled substances).

Procedures for suspected Drug and Alcohol Abuse Violations

Grades K-5

A teacher or other school employee who suspects students of illegally distributing, possessing, or using alcohol or other drugs, including anabolic steroids, must report that concern to the principal or his designated assistant.

The principal should attempt to determine whether the student is:

(1) distributing drugs or alcohol
(2) using drugs illegally
(3) under the influence of drugs or alcohol (Evidence of prior use)
(4) possessing illegal drugs or alcohol

PENALTIES FOR VIOLATIONS-First Offense

After a violation has been determined, the age of the child and nature of offense will dictate the action taken by the school. The principal in conjunction with the Assistant Superintendent for Administration will develop a disciplinary plan. One or a combination of the following possible consequences may be included but the plan is not limited to these suggestions:

- talk with DARE officer
- refer to guidance counselor
- complete drug abuse packet (to be obtained from Central Office)
- assign public service work at school (perform simple jobs at school)
- complete educational component (independent research paper)
- attend mandatory session with substance abuse counselor at parents expense
- report to Child Protective Services
- suspend-in school and out-of-school

The principal will contact the parent(s) and/or guardian(s) and arrange a conference which includes a due process hearing. At this conference the parents will be given two options.

Option I

The parent(s) and/or guardian(s) may accept the plan as explained by the principal and agree to work with the principal.

Option II

The student will be suspended out-of-school for five school days. When a student is suspended from school, there is no opportunity to make up work and a zero will be given for all expected work. The student will also be suspended for thirty days from extra curricular activities. (i.e. field trips, school programs)

When a parent chooses option II, the principal must report the decision for suspension to the Assistant Superintendent for Administration.

Second Offense

The student will be suspended from school for five days. When a student is suspended from school there is no opportunity to make-up missed work and a zero is given for all expected work. A conference with the Assistant Superintendent for Administration is required during the suspension.

Grades 6-12

A teacher or other school employee who suspects students of illegally distributing, possessing, or using alcohol or other drugs, including anabolic steroids, must report that concern to the principal or his designated assistant.

The principal should attempt to determine whether the student is:

(1) distributing drugs or alcohol
(2) using drugs illegally
(3) Under the influence of drugs or alcohol (Evidence of prior use)
(4) possessing illegal drugs, alcohol, imitation controlled substance, or drug paraphernalia

PENALTIES FOR VIOLATION

Distributing Drugs or Alcohol

First Offense

When a student is found in violation of this section of the policy the principal will immediately conduct a complete due process hearing with the student and parent(s) and/or guardian(s), suspend out-of-school for ten days with a mandatory hearing before the Discipline Committee, notify law enforcement and Assistant Superintendent for Administration. The Discipline Committee will determine the student's educational future in Augusta County Schools. Any legal actions taken will be in cooperation with the law enforcement authorities.

Using Drugs Illegally, Under the influence of drugs or alcohol (evidence of prior use) and/or possessing drugs or alcohol

First Offense

When a student is found in violation of this section of the policy the principal will immediately conduct a complete due process hearing with the student and parent(s) and/or guardian(s) and suspend the student out-of-school for three days. At this conference the student and parent(s) or guardian(s) will be given two options.

OPTION I

The student will be suspended for seven additional school days (total suspension ten days) and required to appear before the Augusta County Discipline Committee to determine under what conditions the student will be readmitted to school. The student will also be suspended for thirty days from all extra curricular activities.

OPTION II

Following the required three day suspension the student and parent(s) or guardian(s) will attend six consecutive sessions of the CHOICE Program. The student will also be suspended from all extra curricular activities for ten school days. A conference will again be held with the student, principal, and parent (s) or guardian(s) at the completion of the CHOICE program.

Any Subsequent Violation

When a student is found in violation of this section of the policy, the principal will immediately conduct a complete due process hearing with the student and parent(s) and/or guardian(s), suspend out-of school for ten days with a mandatory hearing before the Discipline Committee with a recommendation for extended out-of-school suspension or expulsion, notify law enforcement and Assistant Superintendent for Administration. The Discipline Committee will determine the student's educational future in Augusta County Schools. Any legal actions taken will be in cooperation with the law enforcement authorities.

APPEAL PROCEDURES FOR GRADES K-12

A principal's decision concerning a substance abuse violation may be appealed to the Assistant Superintendent for Administration within three days. After review, a referral may be made to the Augusta County Discipline Committee if it appears that due process has been violated.

Choice Program

The CHOICE Program is an alternative drug education program designed to educate first time offenders ONLY. This program consists of six classes, one every other Monday night dealing with substance abuse education. If a student chooses to participate he/she must attend these classes with parent/guardian. Classes are taught by a variety of instructors including legal representatives, inmates from the Staunton Correctional Center and their counselors, drug abuse counselors, psychologists, and treatment center representatives.

ADMINISTRATIVE PROCEDURES FOR CHOICE

The principal will thoroughly explain the two options available for the policy violation. Within the three days mandatory suspension, the student and parents must notify the principal of their decision. When CHOICE is selected, the principal will review the written agreement with the parent/guardian and student and complete the required documents according to the directions enclosed in the CHOICE packet.

Attendance will be kept for each class and rolls returned to the appropriate principal. The rolls will be maintained as confidential information. If the roll indicates that a student or parent/guardian has been absent from a class, the principal shall determine whether or not the reason for the absence was justifiable and set an alternative date for make-up or void the agreement.

During the second semester, the CHOICE option changes for Seniors. Principals should refer to the annual memo concerning CHOICE dates for these students.

The CHOICE agreement can be voided by the principal for disciplinary reasons or non-attendance at CHOICE. The decision to void the CHOICE Agreement may be appealed within ten days to the Augusta County Discipline Committee.

Use of Tobacco

Use of tobacco products in any form by students is prohibited on school property or under school supervision.

1. Students are not allowed to use tobacco on school property .
2. Tobacco use is never permitted on school buses.
3. Students are not permitted to use tobacco at any school-sponsored activity.
4. Student athletes, see Athletic Policy handbook, page 21, Policy 4.2-#4, and page 22,]Policy 4.3.

Appendix D

§ **19.2-83. Authority of police officers to stop, question and search suspicious persons.** — Any police officer may detain a person in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or possesses a concealed weapon in violation of § 18.2-308, and may require of such person his name and address. Provided further, that such police officer may, if he reasonably believes that such person intends to do him bodily harm, search his person for a dangerous weapon, and if such person is found illegally to possess a dangerous weapon, the police officer shall take possession of the same and dispose of it as is provided by law. (Code 1950, § 19.1-100.2; 1970, c. 390; 1975, c. 495.)

§ **18.2-322.1. Possession of beeper or similar communications device in schools after request to leave; penalty.** — A. It shall be unlawful for any person in possession or control of a beeper or similar portable communications device to remain in or upon the grounds of any public or private elementary or secondary school after having been requested to leave by lawfully authorized school officials. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

B. Any such school may promulgate rules and regulations prohibiting the use of beepers and other such portable communications devices and establishing disciplinary procedures pursuant to § 22.1-277 to which pupils violating this section shall be subject.

C. Any beeper or similar portable communications device possessed or controlled in violation of subsection A shall be subject to seizure by school officials or law-enforcement officers and forfeiture in compliance with the procedures of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 which shall apply, mutatis mutandis, to this subsection.

D. This section shall not apply to any school official, teacher, security officer, support employee, law-enforcement officer or any other person who may use or possess such devices for any lawful reason or in the performance of his duties in a legal trade or business or for medical necessity. (1989, c. 707.)

Appendix E

§ 18.2-255.2. **Prohibiting the sale of drugs on or near certain properties.** — A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance or marijuana at any time while (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; or (iv) upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than $100,000. However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he shall be guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby. (1982, c. 594; 1989, cc. 619, 682, 709; 1990, cc. 617, 622; 1991, c. 268; 1991, Sp. Sess., c. 14.)

Appendix F

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