

# Drugs & Alcohol Policy Q & A



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This policy Q & A addresses the legal requirements for schools related to drugs and alcohol in schools.

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## **What kinds of discipline can a school district employ if students are found possessing or using drugs or alcohol?**

If the student engages in the unlawful possession, selling, dispensing, or use of a controlled substance, a range of consequences may occur. These substances include an imitation controlled substance (defined in section [28-401](#)), a substance represented to be a controlled substance, or alcoholic beverages (defined in section 53-103.02). Students under the influence of any controlled substance or alcoholic liquor may also be subject to school discipline. Tobacco possession and use is also regulated (See also the [Policy Q & A on Smoking & Tobacco Use](#)).

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## **What are the potential consequences allowed in school?**

The student can then be given a short-term or long-term suspension, expulsion, or mandatory reassignment (Neb. Rev. Stat. 79-267(6)). These are not mandated, nor the only disciplinary actions which a school can use, but these consequences are specifically allowed in the law.

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### **Is it necessary to call the police?**

Yes, a school official must call the police when a student has engaged in one or more of the acts in section [79-267](#) on student conduct, *and the school official knows or suspects this student has violated* the [Nebraska Criminal Code \(Neb. Rev. Stat. 79-293\(1\)\)](#).

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### **Is it required that charges are filed against the student?**

This depends on the circumstances of each individual case. If there have been criminal activities and there is evidence of these activities, then criminal charges may be filed by the county attorney. Ultimately the school will not have the say in whether these charges are filed, as that decision is left to county attorneys and the police. If there is very little evidence of criminal misconduct, but only school rules have been violated then criminal charges are not necessary because there has not been a crime committed.

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### **Can states drug test student athletes?**

The Supreme Court in a 1975 case (Vernonia School District 47J v. Acton. 115 S. Ct. 2386. (1995)) held that schools may conduct drug testing on student athletes. The federal Safe and Drug-Free Schools and Communities Act, which has become part of the No Child Left Behind Act (also known as the Elementary and Secondary Education Act of 2001; No Child Left Behind Act. 20 U.S.C. §4002. (2001) <http://www.gpo.gov/fdsys/pkg/PLAW-107publ110/pdf/PLAW-107publ110.pdf>), provides funding for programs that prevent the illegal use of drugs (20 U.S.C. § 4002, 2001). State laws may or may not allow drug testing of student athletes, but this act remains silent on whether a procedure must be in place for drug testing in a school district. As a result state laws may clarify this issue. Nebraska law is silent on this and leaves such policies to local districts.

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### **What disciplinary actions can a school take if a student is caught selling or using anabolic steroids?**

Penalties provided in the Uniform Controlled Substances Act (criminal charges filed and possible jail time) and section [79-267](#) disciplinary consequences may be enacted. As well as, any student under nineteen who possesses, dispenses, delivers, or administers anabolic steroids (defined in section [28-401](#)) may be prohibited from participating in any extracurricular activities for thirty consecutive days

or less for the first offense. For any additional offenses, the student may be barred from participation in such activities for any period of time the institution deems appropriate pursuant to the written policy of the institution ([Neb. Rev. Stat. 79-296\(1\)](#)).

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**Does the school have to have a written policy to implement the additional consequences section 79-296 allows in regard to anabolic steroids?**

Yes. The policy must be written, posted in a conspicuous place, and the student can have a copy of the policy on request ([Neb. Rev. Stat. 79-296\(2\)](#)).

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**What about the use of either prescription or over the counter medications by students in school?**

Most schools prohibit the use of all prescription or over the counter medications unless the parents have provided a written note or copy of the prescription which is on file in the office or nurse's office. Usually students must go the office or the nurse for these medications to be administered, although there can be exceptions based on the medical situation. Schools will typically have policies or procedures which are provided to parents related to these types of medications.

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**What are the requirements for searches and seizures in schools?**

It is beyond our scope here to describe all of the considerations related to search and seizure in school settings but a brief discussion may be useful. The Supreme Court case *New Jersey v. T.L.O.* addresses searches and seizures in schools (*New Jersey v. T.L.O.* 469 U.S. 325. (1985) <http://supreme.justia.com/cases/federal/us/469/325/case.html>). This case held that the Fourth Amendment applies to searches and seizures in schools. A student may be searched without probable cause or a search warrant, as long as a two-part test is met. A court will look at the reasonableness of a search based on all circumstances of the individual case using the following test: the administration of the school must have a good reason to believe that they will find evidence of wrongdoing, and the search cannot be more intrusive than is necessary to find the item the administration expects to find. When determining intrusiveness, a court would look at the age and sex of the student, as well as the nature of the infraction. In order to determine if a search is permissible, the measures taken must be reasonably related to the objectives of the search and not excessively intrusive (*New Jersey v. T.L.O.*, 1985).

There are typically state laws or policies in place to address the minimum requirements for searches and seizures, but districts can always choose to put more protections for students in place.

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