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Proposed Breathalyzer Testing Policy for the Public Schools

It is the intention of [insert school name] to afford the utmost respect for students' and parents' fundamental rights, including students' rights to due process of law and to be free from unreasonable searches and seizures under the Fourteenth and Fourth Amendments, respectively, and parents' fundamental right to direct and control the upbringing of their children under the Fourteenth Amendment.

In order that [insert school name] might safeguard the individual and general welfare of all students while respecting foundational civil rights, [insert school name] hereby adopts the following protocol to govern the administration of breathalyzer tests within its schools. No breathalyzer test may be administered at school or in conjunction with school-related activities except as set forth herein.

Students exhibiting signs of having consumed alcohol, including, but not limited to glassy eyes, slurred speech, unsteadiness on the feet or emission of an alcoholic odor may be requested to take a breathalyzer test administered by a school administrator. If test results are negative, no action shall be taken. If a student tests positive for alcohol, he or she will receive one additional opportunity to take the test. Students who test positive for alcohol (a .02 reading on the breathalyzer test) or students who exhibit other objective indications of alcohol use upon completion of the observation checklist (see attached) may be subject to proportional, appropriate disciplinary proceedings in accordance with [insert school name] policies. However, under no circumstances will denial of consent to undergo breathalyzer testing be construed as evidence of alcohol use.

Proposed Protocol for Use of Breathalyzer Testing in the Public Schools

1. When a student is suspected of alcohol use, he or she will be conducted to an administrator's office, where the administrator will complete the observation checklist in the presence of another administrator or a teacher.
2. Under no circumstances may the Breathalyzer be administered based solely on accusations that are unsubstantiated by objective data collected through the observation checklist.
3. The Breathalyzer may be administered only where completion of the observation checklist indicates a reasonable likelihood that the student is under the influence of alcohol.
4. If completion of the checklist indicates a likelihood that the student is under the influence of alcohol, the administrator must immediately contact the student's parent(s) or guardian(s) to request their consent to administer the Breathalyzer.
5. If the student's parent(s) or guardian(s) refuse to consent to the Breathalyzer but the observation checklist indicates a reasonable likelihood that the student is under the influence of alcohol, the administrator may require a parent to take custody of the student.
6. The Breathalyzer will only be administered by a school administrator who has been trained by law enforcement in the proper use of the equipment.
7. In order to ensure fair and impartial completion of the checklist and administration of the Breathalyzer, two representatives of the school must be present during completion of the observation checklist and any subsequent administration of the Breathalyzer.
8. Upon receipt of parental consent, the Breathalyzer will be administered only in a private area, away from other students, and school officials will make efforts to protect the privacy of the accused student and ensure that other students are not aware of the testing.
9. The student will have two opportunities to take the Breathalyzer. The initial test may be administered at any time. A second test will be conducted fifteen minutes after the first test has been administered. The results of the Breathalyzer test(s) will be documented and attached to the observation checklist.
10. If a student does not pass the Breathalyzer, or if he or she admits to using alcohol, his or her parent(s) or guardian(s) will be notified that the student must be released into their custody. If a parent or guardian cannot be reached, the student will remain in the custody of the administrator until a parent or guardian is available.

Proposed Alcohol Observation Checklist

Observation of Student

Name: _____

Date: _____ **Time:** _____

Check all that apply:

- | | | | | | | |
|----------------------|--------|----------------------|----------------------|------------|-------------|----------|
| 1. Walking: | normal | stumbling | staggering | falling | unsteady | |
| 2. Speech: | normal | shouting | slurred | incoherent | whispering | |
| 3. Demeanor: | normal | sleepy | crying | fighting | overexcited | agitated |
| 4. Eyes: | normal | bloodshot | glassy | watery | dilated | |
| 5. Personal Conduct: | normal | profanity | hostile | erratic | | |
| 6. Breath: | normal | clear alcoholic odor | faint alcoholic odor | | | |

7. Other Observations: _____

Questions:

Are you feeling ill? Yes No If yes, please describe: _____

Are you taking any medication? Yes No

If yes, would you care to tell us what it is?

Have you consumed alcohol today? Yes No How did you get here?

Disposition/conclusion:

Next action:

Contact parents to remove student: Yes No

Breathalyzer test results attached: Yes No

Staff member's name:

Witness: