STATE OF NEW YORK

2617

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the education law, in relation to random testing for anabolic steroids in athletes in public and private schools; and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new article 20 to read as follows:

ARTICLE 20

ANABOLIC STEROID TESTING FOR ATHLETES IN PUBLIC AND PRIVATE SCHOOLS

Section 949. Legislative intent.
950. Definitions.
951. Required drug testing.
952. School authority policy contents; prior written notice.
953. Reliability and fairness safeguards.
954. Disciplinary actions.
955. Privacy, confidentiality and privilege safeguards.
956. Required educational programs.
957. Reporting.

§ 949. Legislative intent. This article requires the department to promulgate rules and regulations which shall be used as guidelines for public and private schools that are required to institute an anabolic steroid testing program for their athletes.

At the present time, this state has no regulations or guidelines for school districts or private schools to establish an anabolic steroid testing program. The department is directed to establish guidelines to be used in a uniform manner.

Efforts to stop the abuse of anabolic steroids at the grassroots level is expected to be accomplished with local school participation. Early

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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detection and intervention measures to complement existing drug educational programs are instrumental in this effort.

For the safety and well-being of all students, student athletes in particular, measures should be in place to prevent injury to the athlete, teammates and/or opposing competitors. A random anabolic steroid testing procedure is a natural extension of the educational programs designed to encourage athletes to respect their bodies and maintain healthy, drug free lives.

An athlete under the influence of anabolic steroids has the ability to cause serious injury to himself or herself and others. Local school districts and private schools have the responsibility of doing what is necessary to protect student athletes and to provide a level playing field of competition.

§ 950. Definitions. For the purposes of this article, the terms and phrases defined in this section have the following meanings:

1. "Confirmatory test" and "confirmatory retest" mean a drug test that uses a method of analysis approved by the commissioner under subdivision one of section nine hundred fifty-one of this article as being reliable for providing specific data as to the drugs or their metabolites detected in an initial screening test.

2. "Drug" means an anabolic steroid as defined in subdivision (h) of schedule II of section thirty-three hundred six of the public health law.

3. "Drug testing" and "drug test" mean analysis of a body component sample approved by the commissioner under subdivision one of section nine hundred fifty-one of this article for the purpose of measuring the presence or absence of drugs or their metabolites in the sample tested.

4. "Initial screening test" means a drug test which uses a method of analysis approved by the commissioner under subdivision one of section nine hundred fifty-one of this article as being capable of providing data as to general classes of drugs or their metabolites.

5. "Positive test result" means a finding of the presence of drugs, or their metabolites in the sample tested in levels at or above the threshold detection levels set by the commissioner under subdivision one of section nine hundred fifty-one of this article.

6. "Random selection basis" means a mechanism, designed by the department, for selection of student athletes that (a) results in an equal probability that any pupil from a group of student athletes subject to the selection mechanism will be selected and (b) does not give school authorities discretion to waive the selection of any student athlete selected under the mechanism unless the student has produced evidence that he or she is taking a drug under prescription by a duly licensed physician.

7. "Reasonable suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

8. "School authorities" means the athletic director of each public school district and each private school in the state, and the coach of the team on which a student athlete participates.

9. "Student athlete" means any child in the public or private schools of this state attending grades nine through twelve, inclusive, participating in any interscholastic athletic competition, including cheerleading.

§ 951. Required drug testing. 1. (a) The department shall by rule and regulation establish guidelines for school authorities who are chosen to conduct testing of student athletes under this article. Such guidelines shall include but not be limited to the requirements of this article.

The department is required to choose thirty percent of the public and private high schools in the state for such drug testing, and at least three percent of the students in each chosen school shall undergo the testing. Schools required to do the testing shall be chosen by the commissioner.

(b) School authorities shall not request a student athlete to undergo drug testing except as authorized in this section.

(c) School authorities shall not request a student athlete to undergo testing unless the testing is done pursuant to a written drug testing policy that contains the minimum information required in section nine hundred fifty-two of this article.

2. (a) The rules and regulations shall provide that a student may not participate in athletic competition sponsored or sanctioned by a public or private school unless the student agrees not to use anabolic steroids, and the student submits to random testing for the presence of illegal anabolic steroids in the student's body, and

(b) The public or private school obtains from the parent or guardian of the student a statement signed by the parent and acknowledging that:

(i) state law prohibits possessing, dispensing, delivering or administering an anabolic steroid in a manner not allowed by state law;

(ii) state law provides that bodybuilding, muscle enhancement, or the increase of muscle bulk or strength through the use of an anabolic steroid by a person in good health is not a valid medical purpose;

(iii) only a medical doctor may prescribe an anabolic steroid for a person; and

(iv) a violation of state law concerning anabolic steroids is a criminal offense punishable by imprisonment.

3. School authorities may require a student athlete to undergo testing as part of an annual routine physical examination.

4. In addition, school authorities may require a student athlete to undergo testing on a random selection basis throughout the school year and in circumstances where the school authorities have a reasonable suspicion that the student athlete:

(a) is under the influence of anabolic steroids; or

(b) has violated the school authorities' rules prohibiting the use, possession, sale or transfer of anabolic steroids while the student athlete is in school or on school property, provided the rules are in writing and contained in the drug testing policy of the school authorities.

5. School authorities may require a pupil to undergo testing without prior notice if the student athlete previously has been referred by the school authorities for chemical dependency treatment or evaluation, or is participating in a chemical dependency treatment program under a plan of the school authorities.

6. School authorities shall not conduct testing of its student athletes using a testing laboratory owned and operated by such school authorities. Except as provided in subdivision eight of this section, school authorities shall not request or require a student athlete to contribute to or pay the cost of testing under this article.

7. (a) Within three school days after notice of a positive test result on a confirmatory test, student athletes may submit information to the school authorities, in addition to any information already submitted under paragraph (c) of subdivision one of section nine hundred fifty-two of this article, to explain that result, or may request a confirmatory retest of the original sample at the student athlete's own expense.

(b) Within three school days after receipt of a test result report from the testing laboratory, school authorities shall inform in writing a student athlete who has undergone drug testing of the results of a positive test and inform the student athlete in writing of the rights provided in this article.

8. A student athlete may request a confirmatory retest of the original sample at the student athlete's own expense after notice of a positive test result on a confirmatory test. Within five working days after notice of the confirmatory test result, the student athlete shall notify the school authorities in writing of the pupil's intention to obtain a confirmatory retest. Within three working days after receipt of the notice, the school authorities shall notify the original testing laboratory that the student athlete has requested the laboratory to conduct the confirmatory retest or transfer the sample to another laboratory licensed to conduct the confirmatory retest. The confirmatory retest shall use the same drug threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse action based on the original confirmatory test shall be taken against the student athlete.

9. A student athlete has the right to request and receive from the school authorities a copy of the test result report on any test.

§ 952. School authority policy contents; prior written notice. 1. The drug testing policy of school authorities shall conform to written guidelines promulgated by the department and shall, at a minimum, set forth the following information:

(a) the student athletes subject to testing under the policy;

(b) the circumstances under which testing is required;

(c) provision for a student to explain the fact that he or she is taking an anabolic steroid under prescription by a duly licensed physician;

(d) the consequences of refusal of a student athlete to undergo anabolic steroid drug testing;

(e) any disciplinary or other adverse action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test, including, but not limited to, denying the student athlete the privilege of participating in interscholastic athletics;

(f) the right of a student athlete to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest; and

(g) any appeal procedures available.

2. School authorities shall provide written notice of its testing policy to all affected student athletes and their parents or guardians upon adoption of the policy and at the beginning of each school year. School authorities shall also post notice in an appropriate and conspicuous location on the public or private school premises that the public or private school has adopted a drug testing policy and that copies of the policy are available for inspection during regular school hours.

§ 953. Reliability and fairness safeguards. School authorities who request or require a student athlete to undergo testing shall use the services of a licensed testing laboratory with current certification from the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services.

§ 954. Disciplinary actions. 1. School authorities shall not discharge, discipline, discriminate against or request or require rehabilitation of a student athlete on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

2. Disciplinary action against a student shall be provided by rule and regulation of the commissioner and shall provide a broad range of penalties which must include the following:

(a) a written public reprimand, subject to confidentiality requirements imposed by this article or other law;

(b) a probationary period, not to exceed three years, during which a student may be required to comply with reasonable conditions in order to participate in an athletic competition sponsored or sanctioned by the school district or private school and avoid a more severe penalty; and

(c) a suspension period, not to exceed three years, during which a student may be prohibited from participating in or practicing with other students for an athletic competition sponsored or sanctioned by the school district or private school.

§ 955. Privacy, confidentiality and privilege safeguards. 1. A laboratory shall only disclose to the school authorities test result data regarding the presence or absence of anabolic steroids or their metabolites in a sample tested.

2. Except as otherwise provided in section nine hundred fifty-seven of this article, test result reports and other information acquired in the testing process shall be deemed to be private and confidential information and shall not be disclosed by school authorities or laboratories to another public school or private school or to a third-party individual, governmental agency, or private organization without the written consent of the student athlete and parent or guardian of the student athlete. Test result reports and other information acquired in this testing process may be disclosed to school authorities and the parents or guardian of the student tested.

3. Positive test results from a student athlete testing program shall not be used as evidence in a criminal action against the school authorities or student athlete tested.

4. A student athlete shall be given access to information in the student athlete's personal file relating to positive test result reports and other information acquired in the testing process, and conclusions drawn from and actions taken based on the reports and other acquired information.

§ 956. Required educational programs. The commissioner shall require in each public or private high school chosen to do anabolic steroid testing that each employee who serves as an athletic coach or a coach for an extracurricular athletic activity attend an educational program developed by the commissioner or a comparable program developed by the school district or a private entity with relevant expertise as to anabolic steroid use and related issues.

§ 957. Reporting. 1. Every school district or private school in which school authorities conduct testing of student athletes shall annually, on or before the first of July, report to the department the number of student athletes administered drug tests during the previous school year, the number of positive test results from confirmatory tests and confirmatory retests during such school year, and any problems encountered in implementing the provisions of this article.

2. The department shall compile, examine and evaluate the information received pursuant to subdivision one of this section, and, on or before the first of August of the third calendar year commencing after the effective date of this article, shall submit to the governor, the temporary president of the senate and the speaker of the assembly a report of its findings based on such information and a recommendation on whether

testing for student athletes should be mandatory for all public and private high schools.

§ 2. Section 3641 of the education law is amended by adding a new subdivision 17 to read as follows:

17. Testing for anabolic steroids. a. The commissioner shall, upon application therefor and within amounts appropriated for such purpose, provide grants to school districts and private schools which conduct drug testing of students for anabolic steroids.

b. Grants pursuant to this subdivision shall be equal to the cost of testing for the presence or absence of anabolic steroids in each student so tested by a school district or private school.

c. The commissioner shall promulgate any rules and regulations necessary for the implementation of the provisions of this subdivision.

§ 3. The sum of one million dollars ($1,000,000), or so much thereof as may be necessary, is hereby appropriated to the education department out of any moneys in the state treasury in the general fund to the credit of the local assistance account, not otherwise appropriated, and made immediately available for the purpose of carrying out the provisions of subdivision 17 of section 3641 of the education law, as added by section two of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of education in the manner prescribed by law.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that sections two and three of this act shall take effect on the first of July next succeeding the date on which it shall have become a law. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.