

# STATE OF NEW YORK

4907

2021-2022 Regular Sessions

## IN SENATE

February 18, 2021

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:

1 Section 1. The education law is amended by adding a new article 20 to  
2 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.

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

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

22 Efforts to stop the abuse of anabolic steroids at the grassroots level  
23 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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1 detection and intervention measures to complement existing drug educa-  
2 tional programs are instrumental in this effort.

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

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

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

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

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

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

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

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

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

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

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

49 9. "Student athlete" means any child in the public or private schools  
50 of this state attending grades nine through twelve, inclusive, partic-  
51 ipating in any interscholastic athletic competition, including cheer-  
52 leading.

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

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

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

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

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

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

19 (i) state law prohibits possessing, dispensing, delivering or adminis-  
20 tering an anabolic steroid in a manner not allowed by state law;

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

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

26 (iv) a violation of state law concerning anabolic steroids is a crimi-  
27 nal offense punishable by imprisonment.

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

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

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

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

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

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

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

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

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

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

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

26 (a) the student athletes subject to testing under the policy;  
27 (b) the circumstances under which testing is required;  
28 (c) provision for a student to explain the fact that he or she is  
29 taking an anabolic steroid under prescription by a duly licensed physi-  
30 cian;

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

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

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

39 (g) any appeal procedures available.

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

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

52 § 954. Disciplinary actions. 1. School authorities shall not  
53 discharge, discipline, discriminate against or request or require reha-  
54 ilitation of a student athlete on the basis of a positive test result  
55 from an initial screening test that has not been verified by a confirma-  
56 tory test.

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

4 (a) a written public reprimand, subject to confidentiality require-  
5 ments imposed by this article or other law;

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

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

14 § 955. Privacy, confidentiality and privilege safeguards. 1. A labora-  
15 tory shall only disclose to the school authorities test result data  
16 regarding the presence or absence of anabolic steroids or their metabol-  
17 ites in a sample tested.

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

28 3. Positive test results from a student athlete testing program shall  
29 not be used as evidence in a criminal action against the school authori-  
30 ties or student athlete tested.

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

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

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

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

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

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

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

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

12 c. The commissioner shall promulgate any rules and regulations neces-  
13 sary for the implementation of the provisions of this subdivision.

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

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