

Model Intervention for
Students with
Substance Abuse Problems Act

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Model Intervention for Students with Substance Abuse Problems Act

Policy Statement

Education, prevention, and counseling services enable students with alcohol or other drug problems to better understand the disease of alcoholism and its attendant effects and take action to regain control of their lives. Services for such students can reduce the emotional and physical damage caused by their abuse and reduce the risk of future alcohol and other drug abuse.

However, some teachers, school administrators, and student assistance professionals may not feel willing to refer to professional care students with possible alcohol or other drug problems due to fear of legal actions for becoming involved.

This Act is intended to encourage teachers and school administrators to act in the best interest of their students when possible personal or family alcohol and other drug problems interfere with their education. This Act establishes a process through which teachers, school administrators, or student assistance professionals can help students with possible alcohol or other drug problems receive proper counseling, education, or treatment.

Should all of the confidentiality and procedural provisions be met, teachers, school administrators, and student assistance professionals shall qualify for protection from liability for acting in good faith to assist a student to receive substance abuse counseling or assistance.

The important roles of student assistance programs and professionals are highlighted in this Act. Student assistance programs assist in the identification and resolution of school-related problems that affect a student's school performance, including alcohol and other drug related problems. Student assistance professionals that direct such programs are specially trained to refer alcohol and other drug related cases to the necessary and relevant service providers for appropriate diagnosis, treatment, and assistance. For those schools that offer student assistance services, the student assistance professional can be an important link between the identification of alcohol or drug related problems and help for the troubled student. The Commission strongly encourages the development of student assistance programs.

This legislation primarily is directed towards students who are referred to counseling or treatment by teachers, school administrators, or student assistance professionals. A companion bill, the Model Preventive Counseling Services for Children of Alcoholics and Addicts Act, primarily is directed towards children who make self-referrals for preventive alcoholism and addiction counseling. However, neither piece of legislation is meant to exclude the other situation and it is intended that they should be considered in tandem.

Highlights of the Model Intervention for Students with Substance Abuse Problems Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that schools are an important point of intervention to help identify students with alcohol and other drug abuse problems and to refer them to appropriate counseling or treatment services.
- Recognizes that education, prevention, and counseling services can enable students with alcohol and other drug problems to better understand the diseases of alcoholism and addiction and their attendant effects and that such services can reduce the risk of future alcohol and other drug abuse.
- Recognizes that teachers, school administrators, and those who provide children's services can be deterred by a perception of possibly becoming criminally or civilly liable due to their good faith intervention on behalf of an alcohol or other drug abusing student.
- Recognizes that it is in the public interest to protect from liability teachers and school administrators who intervene on behalf of an alcohol or other drug abusing student and the student's family.
- Provides that the school student assistance professional notify the student's parent(s) about the alcohol and/or other drug abuse problem where appropriate and take appropriate action when information is learned about criminal activities of other drug-abusing or drug-distributing students or non-students that jeopardizes the safety of the school and its students.
- Provides, where a school does not have a student assistance professional, a procedure for teachers and school administrators to refer notice of a student alcohol and/or other drug abuse problem to a treatment program licensed by the [single state authority on alcohol and other drugs].
- Provides a limitation of liability for any teacher, school administrator, or student assistance professional who makes a report pursuant to this Act or participates in any resulting judicial proceeding.
- Provides confidentiality provisions in accordance with federal and state laws and regulations.

SPECIFIC RECOMMENDATIONS

- Provides a duty for teachers and school administrators to refer notice of a student alcohol and/or other drug abuse problem to the school student assistance professional, or notice of a student who appears to be affected by a parent's alcohol or other drug abuse problem.

Model Intervention for Students with Substance Abuse Problems Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Intervention for Students with Substance Abuse Problems Act.”

Section 2. Legislative Findings.

(a) Schools are an important point of intervention to help identify students with alcohol or other drug abuse problems and to refer them to appropriate counseling or treatment services. Efforts to address the problems of alcohol and other drugs in schools must enable students to seek help for their problems through student assistance programs, treatment alternatives, and other avenues designed to foster safe and drug-free school environments and students.

(b) Education, prevention, and counseling services can enable students with alcohol or other drug problems to better understand the diseases of alcoholism and addiction and their attendant effects. Services for such students can reduce the emotional and physical damage caused by their abuse and reduce the risk of future alcohol and other drug abuse.

(c) The willingness of teachers, school administrators, and those who provide children’s services to refer to professional care students with possible alcohol and other drug problems can be deterred by a perception that they put personal assets and careers at risk with the possibility of criminal or civil liability arising from their involvement.

(d) The contributions of teachers and school officials are diminished when such perceptions compromise their willingness to make or become involved in student and family alcohol and other drug problem referrals.

(e) It is in the public interest to protect from liability the teachers or school administrators who exercise their right and duty to act in the best interest of the student and his or her family, absent willful or wanton misconduct on the part of the teacher or school administrator.

Section 3. Purpose.

The provisions of this [Act] are intended to encourage teachers and school administrators to act in the best interest of their students when possible personal or family alcohol and other drug problems interfere with their education. This [Act] establishes a process through which teachers, school administrators, or student assistance professionals can help students with possible alcohol and other drug problems find proper counseling, education, or treatment.

Section 4. Definitions.

As used in this [Act]:

(a) “Alcohol and other drug abuse problem” means any pattern of alcohol and/or other drug use causing impairment in school or social functioning, or that produces physiological dependency evidenced by physical tolerance or withdrawal.

(b) “Parent(s)” means a biological or adoptive parent, or a legal guardian or other person authorized under state law to act in the minor’s behalf.

(c) “[Single state authority on alcohol and other drugs]” means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(d) “Student assistance professional” or “qualified student assistance professional” means an individual who is professionally qualified through appropriate training and experience to provide school-based student assistance services. The student assistance professional is also trained to refer cases to the necessary and relevant service providers for appropriate diagnosis, treatment, and assistance.

(e) “Student assistance program” means a broad-based program involving a variety of school-based personnel. It is designed to assist in the identification and resolution of school-related problems associated with students who are affected by personal concerns, including, but not limited to: health, family, alcohol and

other drugs, financial, legal, emotional, stress, and/or other concerns that may adversely affect educational performance.

(f) "Willful and wanton misconduct" means conduct that is committed with an intentional or reckless disregard for the safety of others or with an intentional disregard of a duty necessary to the safety of another or another's property.

Section 5. Duty to Report.

(a) Whenever any teacher or school administrator with reasonable cause suspects or believes that a child enrolled in the school has an alcohol and/or other drug abuse problem, it is the duty of that teacher, school administrator, or school employee to refer notice of the student's problem to the school student assistance professional. This referral should include as much pertinent information as possible to better enable the student assistance professional to adequately address the problem.

(b) Whenever any teacher or school administrator with reasonable cause suspects that a student is being adversely affected by a parent's alcohol and/or other drug abuse problem, it is the duty of that teacher or school administrator to refer notice of the student's problem to the school's student assistance professional. This referral should include as much pertinent information as possible to enable the student assistance professional to adequately address the problem.

COMMENT

This section establishes for teachers and school administrators a duty to report possible student substance abuse problems to the school student assistance professional. The purpose is to insure that teachers and school administrators intervene on behalf of the student as quickly as possible to allow for timely professional intervention, support, and services.

Section 6. Duties of the Student Assistance Professional.

Once notice of a possible student alcohol or other drug problem has been referred to the student assistance professional, the student assistance professional shall, in addition to his or her professional duties:

(a) Notify the student's parent(s) about the problem, except where the student assistance professional rea-

sonably determines in good faith and based upon independent evidence that such notification would jeopardize the well-being of the student; and

(b) Take appropriate action, in consultation with the school principal, when information is learned about criminal activities of other drug-abusing or drug-distributing students or non-students that jeopardize the safety or well-being of the school, its student body, and its employees.

COMMENT

As part of the student assistance professional's responsibilities, he or she generally will seek the involvement of parent(s) or family member(s) in any counseling or problem resolution relating to the student. However, in certain circumstances, the student assistance professional may determine that parental notification may jeopardize the well-being of the student.

The student assistance professional shall also take appropriate action, in consultation with the school principal, in situations where information about criminal activities of other drug-involved students that jeopardizes the safety or well-being of the school, its student body, and its employees becomes known.

There is inherent tension between confidentiality statutes concerning the alcohol and other drug records of students and a parent's or family member's desire to know that a child has an alcohol and other drug problem and is seeking or engaging in counseling or treatment. Confidentiality issues — particularly whether parents have a right to access their child's student assistance program files — should be discussed, determined, and publicized before the student assistance program is established in a school.

Section 7. Duties of Schools, Teachers, and School Administrators in the Absence of a Student Assistance Professional.

Where the school does not have a qualified student assistance professional on staff:

(a) The school shall establish and maintain a written referral agreement with one or more alcohol and other drug treatment programs licensed by the [single state authority on alcohol and other drugs] in that school's county or local jurisdiction.

(b) The school shall provide information concerning such programs to all teachers, administrators, or other school employees annually.

(c) Whenever any teacher or school administrator with reasonable cause suspects or believes that a child enrolled in the school has an alcohol and/or other drug abuse problem, it is the duty of the teacher, school administrator, or other school employee to refer notice of the student's problem to a treatment program from the list provided by the [single state authority on alcohol and other drugs], and to notify the principal or his or her designee of this referral.

(d) The treatment program to which notice of the student's problem was referred should inform the student's parents of the problem, except where the program reasonably determines in good faith and based upon independent evidence that such notification would jeopardize the well-being of the child.

(e) Whenever any teacher or school administrator with reasonable cause suspects that a student is being adversely affected by a parent's or other family member's alcohol and/or other drug abuse problem, it is the duty of that teacher or school administrator to refer notice of the student's problem to a treatment program from the list provided by the [single state authority on alcohol and other drugs], and to notify the principal or his or her designee of this referral.

(f) The treatment program to which notice of the student's problem was referred in accordance with subsection (e) shall seek parental or family involvement in the student's counseling and/or treatment. Such involvement shall be sought only with the written consent of the student and in conformity with the confidentiality requirements of this [Act] and the [Model Preventive Counseling Services for Children of Alcoholics and Addicts Act], found in Volume V, Drug-Free Families, Schools, and Workplaces. Parental or family involvement shall not be sought where the program reasonably determines in good faith and based upon independent evidence that such notification would jeopardize the well-being of the student.

COMMENT

This section establishes a process through which students with possible substance abuse problems can be referred to appropriate resources in the absence of a school student assistance professional. A state licensed treatment program will be able to make an initial assessment of the student's situation, provide education or treatment, or refer the case to an appropriate facility for resolution.

Again, parental or family member involvement in the

counseling or treatment process is generally sought, except in circumstances where such involvement jeopardizes the well-being of the student.

Section 8. Duties of the [Single State Authority on Alcohol and Other Drugs].

The [single state authority on alcohol and other drugs] is annually required to:

(a) Provide to every school in the state lists of relevant local or county licensed treatment programs that are qualified to receive students who have been identified in Section 7(b) and (d).

(b) Notify local or county licensed treatment programs of the provisions of this [Act].

Section 9. Limitation of Liability for School Employees.

Any teacher, school administrator, or student assistance professional making a report pursuant to this [Act] or participating in any resulting judicial proceeding shall be presumed to be acting in good faith. A teacher, administrator, or professional found to have acted in good faith in compliance with this [Act], and absent willful or wanton misconduct, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of actions taken pursuant to this [Act]. Similarly, any student assistance professional or qualified professional who provides in accordance with this [Act] any preventive alcoholism or addiction counseling, education, or treatment to a student who has been referred to his or her care shall be rebuttably presumed to be acting in good faith. A professional found to be acting in good faith in compliance with this [Act], and absent willful or wanton misconduct, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

COMMENT

This section provides immunity from liability for any teacher or school administrator who in good faith assists or enables a child to access counseling, education, or treatment resources. The same immunity from liability is extended to any student assistance professional who provides such counseling in good faith. This immunity is extended to those individuals in order to encourage proper, good faith intervention on behalf of children of alcoholics or addicts or alcohol and/or drug abusing students.

Section 10. Confidentiality.

(a) The identity of a student, his or her records, and all other information maintained in connection with the provision of referral services, counseling, education, or treatment shall be confidential and may not be disclosed except in compliance with the federal and state laws and regulations mandating confidentiality of the records of alcohol and drug abuse patients, insofar as the information pertains to the individual student.

(b) Pursuant to Sections 5 and 7, the reporting of an alcohol- or other drug-involved student to a student assistance professional, school administrator, or licensed treatment program shall not constitute a breach of confidentiality. Similarly, the reporting of parental alcohol or other drug use or abuse, abusive behavior towards the student related to alcohol and other drug use, or neglect of the student related to alcohol or other drug use to a student assistance professional, school administrator, or licensed treatment program shall not constitute a breach of confidentiality.

(c) A principal shall take appropriate action when information is learned about the criminal activities of other drug-abusing or drug-distributing students or non-students that jeopardize the safety or well-being of the school, its student body, and its employees. Such reporting of information related to the criminal activity of others shall not constitute a breach of confidentiality.

Section 11. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 12. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].