
Personal Statement, Salem, Oregon

Statement Before the Salem-Keizer School Board

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(With Supporting Materials)

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District rules against drugs definitely encompass the drug Caffeine. District disciplinary rules regarding drugs refer to the Uniform Controlled Substances Act, ORS 475.005. **(Ref. Pg. #7)**

ORS 475.005 defines a “Drug” as “Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement to any of them;” **(Ref. Pg. #7)**

Caffeine is of course listed as a drug and as a component of numerous other drugs as it has been for many decades.

The School Board is required by State law to uphold the rules of the District...

ORS 339.240 Rules of student conduct, discipline and rights; duties of state board and district school boards. Paragraph 3: Every district school board shall enforce consistently and fairly its written rules regarding pupil conduct, discipline and rights. **(Ref. Pg. #8)**

The District is in ongoing violation of its own rules by contracting for the delivery of and profiting from the sales of a listed drug. Furthermore, it has joined in a defined plan to increase the abuse of this drug by 50% in a 10 year period to maximize its profits from it. As a result of these actions, the District is in ongoing violation of State law for not enforcing its rules regarding pupil conduct, discipline and rights. The ongoing violation of State law means of course that this paradox requires immediate resolution.

Contracting guidelines require that any contract with the District be in compliance with the law. Because the contract with Pepsi results in the delivery of a listed drug to our children while in the care of the District and in direct violation of District rules, the contract was never actually in compliance with the law. Therefore, you may not have an actual contract.

You may find in your guidelines for contracting that a contract found not to be in compliance with the law could be the responsibility of the contractor as they are expected to know the laws and guarantee compliance as a prerequisite of contracting with the District. As a result of this, you may bear no further obligation to the contractor upon correction of the oversight and may be free to take appropriate actions immediately with no concern for contractual issues.

I am confident that you will find this information to be useful in reaching a swift corrective decision. I am providing you with detailed copies of the referenced rules and laws that impact this issue. I have taken care to be sure that they are necessarily complete and accurate. Thank-you very much for your time.

Pgs. 2, 3, 4 = District Policy JCC & JCC-R (complete). Pg. 4, 5, 6 = District Policy JD & JD-R (excerpts). Pg. 7 = Uniform Controlled Substances Act 475.005 definitions. Pg.8 = Oregon Revised Statute 339.240 (complete) Pgs. 9, 10 = Information from Pepsi on Caffeine and Contracting. Page ref's. Marked.

JCC

6/01 Salem-Keizer School District 24J – Marion County, Oregon

ALCOHOL, TOBACCO, TOBACCO PRODUCTS AND/OR OTHER DRUGS

1. The District will establish and maintain a healthy, drug-free environment during school, school activities, on school property, and/or to and from school.
2. A student who observes possession, use, sale and/or distribution of alcohol, tobacco, tobacco products and/or other drugs by students is encouraged to report such observations to an administrator.
3. A staff person who observes possession, use, sale and/or distribution of alcohol, tobacco, tobacco products and/or other drugs by students shall report such observations to an administrator.
4. The District will assist students in making responsible decisions to avoid the use of alcohol, tobacco, tobacco products, and other drugs.
5. The District will facilitate access by students to education or treatment resources which are available in the District and in the community.
6. A student who violates policies, rules, and procedures relating to alcohol, tobacco, tobacco products and/or other drugs will be held accountable for his/her actions according to school and District policies and rules.
7. The Superintendent shall develop rules providing for procedures of prevention, intervention, and discipline relating to alcohol, tobacco, tobacco products, and/or other drugs.

LEGAL REFERENCE: ORS 339.240, 339.250.

JCC-R-1

ALCOHOL, TOBACCO, AND OTHER DRUGS

1. Prevention:

1.01 The focus of District efforts will be prevention, early intervention, after care/recovery support, and curriculum which reinforce a healthy, safe, and drug-free environment and which support the best interests of the student and maintain a positive learning environment.

1.02 Use of tobacco, tobacco products, alcohol, and other drugs; and the misuse of prescription or over-the-counter drugs constitute health/safety issues and will result in disciplinary action.

1.03 Possession, use, transmitting, selling, buying, distribution, or being under the influence of tobacco, tobacco products, alcohol, or other drugs, drug paraphernalia, look-alikes, or substances represented as being mood- or mind-altering pose a threat to the school environment.

1.04 Communication about chemical use, abuse, and dependency with students and parents will be conducted in a direct and caring manner.

1.05 Confidentiality will be maintained whenever possible.

2. Intervention and discipline:

2.01 Early identification of students at risk of becoming involved or who are already involved with tobacco, tobacco products, alcohol, or other drugs is an important prevention and early intervention strategy.

2.01.01 District employees will be trained to identify and document appropriate behavioral signs and performance indicators.

2.01.02 Such documentation will be noted on a referral form and submitted to the designated student services team/youth services team/student assistance team referred to as the CARE Team focusing on unhealthy or unsafe life decisions.

2.01.03 The CARE Team will review the documentation and make recommendations regarding intervention needs.

2.02 The role of the school resource officer will be to support the District program and the remedial efforts.

2.02.01 The resource officer is available for consultation, participation in prevention activities, and classroom education presentation.

2.02.02 All alcohol, tobacco and other drug offenses will be referred by

the school administrator to the school resource officer.

2.03 In a situation which appears to involve a relapse, intervention and/or disciplinary consequences will be determined on a case-by-case basis by the school administrator/student services team/youth services team or an alcohol and drug specialist in consultation with other appropriate individuals.

2.04 Every effort will be made to support a student's effort to maintain his/her academic standing while in a recovery program.

2.05 A student unable to meet attendance requirements because of absence while in treatment will be assisted by his/her resident school in making up the required work.

2.06 Voluntary request for assistance:

2.06.01 Disciplinary consequences may be set aside for a student who voluntarily requests assistance or who comes forward prior to being disciplined or apprehended for an offense involving tobacco, tobacco products, alcohol, or other drugs.

2.06.02 Such a student must meet with the Prevention Intervention Resource Teacher, school counselor, or other community program specialist, and must follow the recommendations of the professional.

6/99 Salem-Keizer School District 24J – Marion County, Oregon

JD - (EXCERPTS)

DISCIPLINE

This policy applies to student behavior to and from school, on and off campus during regular school hours, in all classrooms and at other activities sponsored or cosponsored by the school or District regardless of whether such activities are held in or out of the classroom, in or out of the school building, on or off the school grounds, and during or outside the regular school year, including summer school.

1. Introduction: The District's discipline policy, in partnership with students, family, community, and schools, works to hold students accountable for their behavior so they can become contributing citizens and productive workers which is consistent with the District's Mission Statement.

2.18 In loco parentis: Legal obligation applied to the District or its agents to act in place of parent in a manner which would provide an appropriate environment conducive to education.

2.27 School Yard Law: Federal and state statutes which increase penalties for distribution of drugs within 1000 feet of a school, subject to the following conditions:

2.27.01 Does not require knowledge of the proximity of a school.

2.27.02 Does not require evidence that children are currently or likely to congregate.

2.27.03 Does not require proof that the sale or distribution of drugs had a detrimental effect on children.

LEGAL REFERENCE: 18 USC § 921, 20 USC § 1400 to 1485; ORS 161.015, 161.205, 332.061, 332.107, 336.109, 339.115, 339.240, 339.250, 339.254, 339.430; OAR 581-021-0065, 581-021-0071.

JD-R (EXCERPTS)

DISCIPLINE

1. This rule applies to student conduct which occurs while a student is:

1.01 On school premises before, during, or after normal school hours.

1.02 At a school-sponsored event before, during, or after normal school hours, including field trips and school sponsored tours and activities in another city, state or country.

1.03 Traveling to and from school or a school-sponsored event.

1.04 On school premises at any other time when the school is being used for a school-sponsored event.

1.05 Enrolled in summer school and/or intersessions.

1.06 Off school premises when such conduct involves threats of harm to students, staff and/or District property.

ALCOHOL AND OTHER DRUGS

5.08 Possession, transmitting, selling, buying, distributing, use of, or being under the influence of an alcoholic beverage; inhalants, including solvents and other dangerous substances; or any other drug as defined by but not necessarily limited to the Uniform Controlled Substance Act, ORS 475.005; (1) possession of paraphernalia, possession of look alikes being represented as being a controlled substance, and/or misuse of prescription or nonprescription drugs.

5.08.01 The proper, prescribed use of medication obtained by medical prescription from an appropriate medical provider shall not be considered a violation of this rule.

5.08.02 The District supports law enforcement efforts to enforce the School Yard Law, which establishes state and federal penalties for distribution of drugs within 1000 feet of a school.

5.08.03 The administrator will consider criteria, such as severity of the offense, number of prior offenses, mitigating circumstances, and/or willingness of the student to accept responsibility for his/her actions, as part of the decision regarding appropriate disciplinary action.

5.08.04 All offenses:

5.08.04.01 Confiscation of any item(s) related to the offense.

5.08.04.02 Contact and conference with parent.

JD-R-11

5.08.04.03 Referral to law enforcement authority.

5.08.04.04 Referral to Prevention Intervention Resource Teacher or counselor who may also refer to the CARE Team, Youth Services Team, and/or IEP Team, if a special education student.

5.08.04.05 Current drug assessment at a community agency offering assessments or privately at expense of parent prior to readmission to school. Student will follow the recommendations from the assessment report. Participation in an approved community alcohol or other drug education program of the parent(s) choice prior to readmission to school. If there is a cost associated with the program it shall be borne by the parent(s).

5.08.04.06 Suspension, in or out of school, for up to ten (10) days, participation in an alcohol and other drug program at parent expense and participation in extended education/study program as diversion to expulsion.

5.08.04.07 Continuing suspension and a recommendation for expulsion and participation in an intensive alcohol and other drug program. If there is a cost associated with the program it shall be borne by the parent(s).

(2) UNIFORM CONTROLLED SUBSTANCES ACT

475.005 Definitions for ORS 475.005 to 475.285 and 475.940 to 475.999. As used in ORS 475.005 to 475.285 and 475.940 to 475.999, unless the context requires otherwise:

(1) "Abuse" means the repetitive excessive use of a drug short of dependence, without legal or medical supervision, which may have a detrimental effect on the individual or society.

(6) "Controlled substance" means a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the term "precursor" in this subsection does not control and is not controlled by the use of the term "precursor" in ORS 475.940 to 475.999.

(8) "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

(12) "Distributor" means a person who delivers.

#(3)

(13) "Drug" means:

(a) **Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement to any of them;**

(b) **Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;**

(c) **Substances (other than food) intended to affect the structure or any function of the body of humans or animals; and**

(d) Substances intended for use as a component of any article specified in paragraph (a), (b) or (c) of this subsection; however, the term does not include devices or their components, parts or accessories.

(17) "Person" includes a government subdivision or agency, business trust, estate, trust or any other legal entity.

OREGON REVISED STATUTE

Chapter 339 — School Attendance; Admission; Discipline; Safety

STUDENT CONDUCT AND DISCIPLINE

339.240 Rules of student conduct, discipline and rights; duties of state board and district school boards.

(1) The State Board of Education in accordance with ORS 183.310 to 183.550 shall adopt rules setting minimum standards for pupil conduct and discipline and for rights and procedures pertaining thereto that are consistent with orderly operation of the educational processes and with fair hearing requirements. The rules shall be distributed by the Superintendent of Public Instruction to all school districts.

(2) Every district school board shall adopt and attempt to give the widest possible distribution of copies of reasonable written rules regarding pupil conduct, discipline and rights and procedures pertaining thereto. Such rules must comply with minimum standards adopted by the State Board of Education under subsection (1) of this section.

#(4)

(3) Every district school board shall enforce consistently and fairly its written rules regarding pupil conduct, discipline and rights. This subsection does not apply to a pupil who is eligible for special education as a child with disabilities under ORS 343.035. [1971 c.561 §2,3; 1993 c.45 §123; 1999 c.726 §1]

Comments from Pepsi

Source: Pepsiworld web site <http://www.pepsi.com/current/index.html>

Pepsi's Source: International Food Ingredients Council's (IFIC)

People differ greatly in their sensitivity to caffeine. Some individuals can drink several cups of coffee, tea or soft drinks within an hour and notice no effects, whereas others may feel stimulating effects after one serving. In general, those who regularly consume caffeine use common sense and know their limit.

Most experts agree that moderation and common sense are the keys for consuming caffeine-containing foods and beverages. Moderate caffeine consumption is considered to be about 300 mg, which is equivalent to 3 cups of coffee, but this depends on the individual and can vary from one to several beverages. Consumers with certain health problems may wish to consult their physician or health care provider about caffeine consumption.

Parents should use common sense in deciding how much caffeine-containing food or beverages they give their children, as with any food.

SCHOOL PARTNERSHIP POLICY

Source: Pepsiworld web site <http://www.pepsi.com/current/index.html>

Pepsi-Cola has always been a very youth-focused company. Along with our bottlers, we have had a long and productive relationship with schools and are committed to supporting education. The Pepsi system offers a wide array of refreshment beverages to students, faculty and staff. Supplemental revenue from the sale of our beverages in schools has helped in numerous and significant ways to provide local funding sources for academic, athletic and enrichment programs.

When it comes to defining the parameters of a school/business partnership, the schools set the rules. Typically, a partnership begins with discussions on a school's needs and expectations from a beverage partner. Pepsi takes special care in the way we structure contractual relationships with schools. Freedom of choice and providing the school with options that best fit their needs are critical factors in forming such partnerships. **We believe a solid, productive balance can be struck between our business goals and the public's need for strong, well-funded education.**

In the competitive bidding process, a school may seek an exclusive contract if it believes that exclusivity will best fit its needs. Exclusivity is not a Pepsi requirement in school contracts. Rather, the Pepsi system supports freedom of choice and the availability of a full range of brands and products. Ultimately, however, local school officials decide how relationships with their beverage suppliers are created in order to make the best possible arrangements for their respective institutions.

The guidelines which Pepsi and our bottlers follow to develop school partnerships are as follows:

- Our partnerships are based on the enhancement of school life, with the balance of each relationship favoring students and educators.
- Our commercial messages will not interfere with a school's curriculum or a school's general course of study.
- Our business partnerships with schools assure a wide variety of beverage choices is available to students, faculty and staff.
- These partnerships are clearly a "win-win" scenario. We offer refreshment for students and provide much-needed financial support for extracurricular academic and athletic programs that enhance the student experience.
- We offer schools our full portfolio of beverages in vending machines, including carbonated soft drinks, water, juices, iced teas, functional beverages and sport drinks, as well as other sugar-free and caffeine-free beverages.
- **Our school partnerships must comply with all state, local and federal regulations, including when and where soft drink vending machines are operated and placed. Education decisions, including decisions regarding availability of foods and beverages, are the responsibility of the local schools and local school districts.**
- **We will promote the importance of a healthy lifestyle, with emphasis on a nutritious diet, adequate and varied fluid intake, and daily physical activity.**

Pepsi is committed to fulfilling these agreements in a mutually beneficial and most responsible way. While striving to make a difference for schools, our efforts must be grounded in sound judgment and exemplary ethics. Ultimately, the goal is to make positive, lasting impressions among students and educators everywhere. When it is done right, everyone benefits.