



## INTERPRETING AND ENFORCING ARTICLE XIV, SECTION XI

### Tobacco, Alcohol and Controlled Substance Rule

The following has been developed to help school administrators interpret and enforce Part Two, Article XIV, Section XI of the NDHSAA Constitution and By-Laws.

#### **Part II, Art. XIV, SEC. XI - NDHSAA By-Law**

"The use or possession of tobacco, alcohol or any controlled substance as defined by North Dakota Law is prohibited. Any student who is in violation of the foregoing shall be suspended from participation in interscholastic contests or activities for a minimum period of six consecutive school weeks for the first offense and a period of 18 consecutive school weeks for any subsequent offense".

**Special Note:** A student may be reinstated for competition upon completion of an inpatient alcohol or drug treatment program, provided the student or school provided a signed completion report from said treatment center to the NDHSAA office and eligibility is approved by the local school's administration.

#### **THINGS TO DO BEFORE ACTIVITIES START**

1. Put the training and conduct rules of your coaches and school in writing.
2. Have your school attorney review the rules.
3. Have your School Board review and adopt your rules.
4. Have the rules printed in the student handbook.
5. Print the rules in the school paper.
6. Post the rules in the locker rooms and on bulletin boards.
7. Give your activities participants a copy of the rules found on the NDHSAA website entitled "**Safeguarding Your Athletic Eligibility**".
8. Send the rules home to parents.
9. If possible, have your local newspaper publish the rules.

#### **Suggested Procedures When a Violation is Reported**

The designated school administrator shall immediately investigate any alleged violation of the alcohol, tobacco and controlled substance rule that is made known to the administrator and if the administrator finds reasonable grounds to believe this rule has been violated he/she shall give the student notice as provided below.

The period of suspension shall begin from the date and time notification is given to the student by the school administrator.

1. If there is a rule violation, promptly notify the parent(s) and student. Inform them of the rule and the facts of the violation.
2. Remind students that they may not play on non-school teams while under suspension.

#### **NDHSAA ATTORNEY'S OPINION OF "POSSESSION"**

You have asked for an opinion on whether or not Part II, Article XIV, Section XI, should further define the word "possession". The bylaw presently reads "the use or possession of tobacco, alcohol or any controlled substance as defined by North Dakota law is prohibited".

The use of tobacco, alcohol or any controlled substance is prohibited. Likewise the possession of tobacco, alcohol or any controlled substance is also prohibited. The offense of use and possession are two distinct prohibited violations. As might be expected, no definition can be drawn that will totally define the act of possession. The school administrator will have to investigate the alleged violation to determine if the student was in possession of the prohibited substance. In order to show that a person is in possession of a prohibited substance, it is generally necessary to show that the defendant was aware of the presence and character of the particular substance and was intentionally and consciously in possession of it.

In many instances, the school administrator, as the trier of facts, will need to determine that a student was in possession of an unlawful substance simply from the facts and inferences that may be drawn. For example, three students are in an automobile where there is an open container of alcohol, if an arresting officer finds that all three students have the smell of alcohol on their breath, are blurry eyed and unable to walk a straight line, the inference is that all of the students were in possession of the alcohol and that all used it. If one of the students denies the use of the alcohol, is clear headed, walks a straight line and only got in the automobile a block away, the clear inference is that the student was not in possession nor was he/she using alcoholic beverages.



The North Dakota state law does not define possession, and the Federal Uniform Narcotic Drug Act appears only to refer to the offense of possession.

It would appear that it will be the school officials, as the triers of the facts, who determine whether or not a student was in possession of tobacco, alcohol or any controlled substance as defined by North Dakota law.

## QUESTIONS AND ANSWERS

**Q.** Who determines whether a student has violated the rule and enforces the penalty?

**A.** As is true of all other rules, the local school authorities are responsible for determining whether a student has complied with the rule, and for the enforcement of the penalty in case of violations. As is the case with all rules, should a member school feel that another school is not complying with the rule, they may enter a protest with the State Association as provided under Part Two, Article IV, Section III.

**Q.** If a school is not aware of the violation until several days afterwards and as a result the student participates in a contest after the date of violation when does the penalty begin?

**A.** In all cases the penalty would be prescribed as six weeks from the date and time of notification of suspension by the school administration.

**Q.** If the suspension runs into Christmas vacation, is the period extended by an amount equal to the length of said vacation?

**A.** No, the suspension period is for six calendar weeks from the date of suspension.

**Q.** If the violation occurs two weeks before school is out in the spring, does the suspension carry over to the next school year?

**A.** No, the suspension remains in effect until the end of the spring activity season (unless local school policy is longer).

**Q.** Is the rule applicable during the Christmas vacation or during the summer months?

**A.** The rule is applicable during the Christmas vacation period as this is considered as part of the school term. However, it is not applicable during the summer vacation, unless made so by local school rule. Otherwise, it becomes effective with the opening of school in the fall or with the opening of the fall sports.

## NORTH DAKOTA CENTURY CODE FILES AND RECORDS GOVERNED BY THE UNIFORM JUVENILE COURT ACT

Files and records of the juvenile court in a proceeding under this chapter shall not be disclosed to the public, except as provided by law.

### UNIFORM JUVENILE COURT ACT North Dakota Century Code 27-20-51 Inspection of court files and records

Juvenile court files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:

a. Upon showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and

b. By the principal of any public or private school that is a member of the North Dakota High School Activities Association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota High School Activities Association.

## LAW ENFORCEMENT - Duty to Inform NDCC 15.1-24-05

### PRESENCE ON PREMISES WHERE ALCOHOL SOLD

#### Section 5-02-06 - Prohibitions as to persons under twenty-one years of age

##### Penalty - Exceptions

"Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which the alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age, and is not engaged in the sale, dispensing, delivery or consumption of alcoholic beverages..."