

ENERGY DRINK POLICIES: MINI-CASE STUDIES

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Executive Summary

Adverse health effects from the consumption of energy drinks by children, adolescents and young adults is a growing source of concern. State and local governments and non-governmental organizations can play an important role to raise awareness about the issue and to enact policies to reduce consumption of energy drinks. This series of mini-case studies highlights examples of policies enacted by school districts, high-school and collegiate athletic associations and a state government. The case studies describe the following policies:

Klamath-Trinity Joint Unified School District, Hoopa, CA, Energy Drink Policy prohibiting consumption of energy drinks by all students K-12. (page 2)

King Philip Middle School, Norfolk, MA, Energy Drink Policy to discourage energy drink consumption by middle school students. (page 3)

Virginia High School League, Inc. Statewide Energy Drink Policy for high school athletes. (page 4)

National Collegiate Athletic Association Drug-Testing Policy screening college athletes for elevated caffeine levels and discouraging energy drink use. (page 6)

State of Rhode Island Ban on Distribution of Performance-Enhancing Dietary Supplements by high school and college athletic coaches. (page 7)

These policies range from an individual school handbook policy to a district-wide ban to a national athletic association policy. The formulation of these policies was followed by local and national media and had the co-benefit of raising awareness about energy drinks in communities.

While we did not conduct a comprehensive review of energy drink-related policies, some trends did emerge. Policies to protect middle-school-aged children and student athletes appear to have gained the most traction. Concerns motivating middle-school policies were primarily rooted in a desire to maintain an orderly school environment and to keep students from getting caffeine intoxication. With respect to student athletes, policies were motivated by concerns that student athletes could confuse energy drinks with sports drinks and that the consumption of energy drinks during practices and sporting events could lead to serious injury. The successful adoption of these policies shows that school districts and athletic associations can play an important role at the local, state and national level to protect children, adolescents and student athletes from the health risks associated with energy drink consumption.



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Introduction

The Klamath-Trinity Joint Unified School District is located in Hoopa, California and includes 9 schools that serve 1,054 students in grades K through 12.¹ In September 2011, the district banned the consumption of energy drinks by students on all school grounds.² The rule came amidst a growing concern and awareness about the health risks associated with consumption of high levels of caffeine and other nonnutritive stimulants found in energy drinks.

What Inspired Klamath-Trinity School District to Address Energy Drinks?

The Klamath-Trinity School District ban built upon state-wide efforts to improve the nutritional value of beverages consumed by students. Since 2006, the only beverages that can be sold on school campuses in the state of California are fruit and vegetable juice with at least 50 percent juice and no added sweeteners, two-percent, one-percent, or nonfat milk, soy milk, rice milk, or other non-dairy, unsweetened water, and, only at the middle and high school levels, electrolyte replacement beverages if water is the first ingredient and it has no more than 2.1 grams of added sweeteners and no added caffeine.³

The Klamath-Trinity rule came just weeks after Hoopa Valley High School (one of the high schools in Klamath-Trinity School District) had enacted an energy drink ban. Students at Hoopa Valley High School cannot consume energy drinks on school grounds.⁴ Matt Levesque, vice principal of Hoopa Valley High School, came up with the idea to ban energy drinks when he noticed that students would quickly consume the beverages and then “literally vibrate in their chairs.”⁵ According to the Levesque, the students could not focus after consuming the drinks.⁶ As a result, anything with more than 5 mg of caffeine per ounce is prohibited on campus.⁷

The Klamath-Trinity School District Energy Drink Policy

In September 2011, the Klamath-Trinity School District banned energy drink consumption.⁸ The policy states that consumption of energy drinks by students on district campuses during school hours, and thirty minutes prior to and after school is prohibited.⁹ The ban was enacted with full support of the district – the school board voted to approve the rule 6-0.¹⁰ According to the district Superintendent, Mike Reid, allowing students to consume energy drinks on campus didn’t match up with the district’s health and nutrition policies because of the high amount of sugar and caffeine in the beverages, as well as the presence of other substances.¹¹

The Klamath-Trinity School District energy drink policy cites health concerns as the purpose of the ban. The policy notes that “heavy caffeine consumption, such as drinking Energy Drinks, has been associated with serious health consequences such as increased blood pressure, sleep disturbances, increased anxiety, seizures, mania, stroke and sudden death.”¹² It

concludes that “it is the desire of the Board to discourage caffeine consumption by children in an effort to reduce the potentially harmful adverse physical and developmental effects by prohibiting the consumption of Energy Drinks by students on school campus.”¹³

Conclusion

The Klamath-Trinity Unified School District energy drink ban aligns with the district’s overall health and nutrition policies. Since the September 2011 enactment, the energy drink issue has not been raised in the school board meetings, which suggests the policy remains in effect. However, the means of enforcement is unknown. The school handbook is not included on the district’s website and the Klamath-Trinity School District policy section of the California Board of Education website has not been updated to reflect the energy drink ban.¹⁴

¹ Klamath-Trinity Unified School District, Education.com, www.education.com/schoolfinder/us/california/district/klamath-trinity-joint-unified-school-district/ (last visited July 10, 2012).

² Klamath-Trinity Joint Unified School District, *School Board Meeting Minutes*, Sept. 13, 2011, www.ktjUSD.k12.ca.us/schoolboard/Ag-Min_11-12/MINS-9-13-11.pdf.

³ Cal. Educ. Code § 49431.5 (West 2006); Cal. Dep’t of Educ., *Summary of Food and Beverage Restrictions in California*, Management Bulletin 06-110 (Aug. 2006), available at www.cde.ca.gov/ls/nu/sn/mb06110.asp (stating that the standards apply to high schools even though not specified in the statute).

⁴ Jessica Cejnar, *Klamath-Trinity Issues Prohibition on Energy Drinks; Rockstar, Monster, Red Bull Off-Limits to Students at School*, Times-Standard, Sept. 19, 2011, www.times-standard.com/localnews/ci_18927501.

⁵ Jessica Cejnar, *Klamath-Trinity Issues Prohibition on Energy Drinks; Rockstar, Monster, Red Bull Off-Limits to Students at School*, Times-Standard, Sept. 19, 2011, www.times-standard.com/localnews/ci_18927501.

⁶ Jessica Cejnar, *Klamath-Trinity Issues Prohibition on Energy Drinks; Rockstar, Monster, Red Bull Off-Limits to Students at School*, Times-Standard, Sept. 19, 2011, www.times-standard.com/localnews/ci_18927501.

⁷ Jessica Cejnar, *Klamath-Trinity Issues Prohibition on Energy Drinks; Rockstar, Monster, Red Bull Off-Limits to Students at School*, Times-Standard, Sept. 19, 2011, www.times-standard.com/localnews/ci_18927501.

⁸ Klamath-Trinity Joint Unified School District, *School Board Meeting Minutes*, Sept. 13, 2011, www.ktjUSD.k12.ca.us/schoolboard/Ag-Min_11-12/MINS-9-13-11.pdf.

⁹ Klamath-Trinity Unified School District, *A Resolution Prohibiting the Consumption of Energy Drinks by Students on School Campuses* (Resolution No. 2012-04) (on file with author).

¹⁰ Klamath-Trinity Joint Unified School District, *School Board Meeting Minutes*, Sept. 13, 2011, www.ktjUSD.k12.ca.us/schoolboard/Ag-Min_11-12/MINS-9-13-11.pdf.

¹¹ Jessica Cejnar, *Klamath-Trinity Issues Prohibition on Energy Drinks; Rockstar, Monster, Red Bull Off-Limits to Students at School*, Times-Standard, Sept. 19, 2011, www.times-standard.com/localnews/ci_18927501.

¹² Klamath-Trinity Unified School District, *A Resolution Prohibiting the Consumption of Energy Drinks by Students on School Campuses* (Resolution No. 2012-04) (on file with author).

¹³ Klamath-Trinity Unified School District, *A Resolution Prohibiting the Consumption of Energy Drinks by Students on School Campuses* (Resolution No. 2012-04) (on file with author).

¹⁴ See *Klamath-Trinity Joint USD*, GamutOnline, www.gamutonline.net/ (follow “go” hyperlink and enter username “klamathtrinity” password “public”) (last visited July 12, 2012).

Introduction

King Philip Middle School (KPMS) is the middle school of the King Philip Regional School District, which spans the towns of Norfolk, Plainville and Wrentham, Massachusetts. KPMS has approximately 850 students enrolled each year.¹ In July 2009, KPMS enacted an energy drink policy to prohibit its middle school students from consuming the beverages at school and during school-sponsored events. The policy came amidst a growing concern and awareness about the consumption of energy drinks among adolescents.

What Inspired King Philip Middle School to Address Energy Drinks?

King Philip Regional School District decided to rewrite the middle school student handbook to discourage the consumption of energy drinks after a student got sick from the drinks on a school ski trip.² The measure was reportedly spearheaded by concerned parents who notified the school of the issue.³ The KPMS policy came one month after a neighboring district, Dudley-Charlton School District, banned energy drinks at middle schools and middle school-sponsored activities after its school officials observed “kids chugging down Red Bull and Monster” at breakfast,⁴ then “bouncing off the walls . . . with racing pulses and pounding hearts,” and quickly crashing as the effects of the drinks wore off.⁵ The Dudley-Charlton middle school handbook explains that the ban is “[d]ue to the adverse effects [energy drinks] can have on middle school aged children.”⁶

The King Philip Middle School Energy Drink Policy

The KPMS energy drink policy that was enacted in July 2009 is written as an advisory to discourage the consumption of energy drinks, rather than an enforceable rule. The policy first appeared in the 2009–2010 KPMS Student Handbook: “Due to the high amounts of sugar and caffeine in energy drinks, we are requesting that students not bring these drinks into the school building or...[school]-sponsored activities.”⁷ Sharply contrasting the clear penalties for alcohol and drug violations, KPMS’s energy drink policy does not include any references to discipline from the school.⁸ At the time the policy was written into the handbook, it was reported that it “stopped short of an outright ban to allow [KPMS officials] more time to study the issue.”⁹ To date, there have been no changes to language of the policy.¹⁰

Conclusion

The KPMS policy to discourage consumption of energy drinks by middle school students remains a simple advisory. According to Patrick Francomano, who was a member of the King Philip Regional School Committee when the KPMS policy was enacted, it was meant to “encourage healthy habits.”¹¹ Information on the success of the policy and the prevalence of energy drink consumption at KPMS in the three years since the policy was enacted has not been released.

¹ *Mission Statement*, King Philip Regional School District, www.kingphilip.org/profile/index.html (last visited June 26, 2012).

² Michele Morgan Bolton, *Some Schools Put the Lid on High-Caffeine Beverages; Say Energy Drinks Pose Health Risk Packed With Caffeine*, Boston Globe, July 25, 2009, www.boston.com/news/education/k_12/articles/2009/07/25/school_district_prohibits_energy_drinks_at_middle_school/.

³ *Id.*

⁴ Danielle M. Williamson, *Caffeinated Drinks Kicked Out of School*, Worcester Telegram & Gazette, June 24, 2009, www.telegram.com/article/20090624/NEWS/906240411/1101.

⁵ Bolton, *supra* note 2.

⁶ Dudley Charlton Regional School District, *Dudley-Charlton Regional School District 2011-2012 Middle School Handbook* at 15, www.dcrsd.org/uploads/dm/Middle_School_Handbook.pdf.

⁷ King Philip Regional School District, *King Philip Middle School Handbook 2009-2010* at 20, www.kingphilip.org/kpnorth/KPMS-Student-Parent-%20Handbook-2009-2010%20_2_.pdf.

⁸ *Id.*

⁹ Bolton, *supra* note 2.

¹⁰ See King Philip Regional School District, *King Philip Middle School Handbook 2011-2012* at 20, www.kingphilip.org/kpnorth/handbook/handbook1112.pdf.

¹¹ Bolton, *supra* note 2.

Introduction

The Virginia High School League, Inc. (VHSL) is the organization of the public high schools of the Commonwealth of Virginia that regulates competitive activities (both athletic and academic) among its 311 member schools.¹ The VHSL governs 200,000 student athletes participating in 27 different sports and eight academic activities annually.² In September 2010, VHSL enacted an energy drink policy following a recommendation from its Sports Medicine Advisory Committee.³ The policy came amidst a growing concern and awareness about the consumption of energy drinks among young athletes nationally, and particularly in the Commonwealth of Virginia.

What Inspired VHSL to Address Energy Drinks?

In 2006, Fairfax County in Virginia banned the consumption of energy drinks among student athletes following an incident where two student athletes were transported to the hospital with symptoms of tachycardia (abnormally high heart rates) that doctors attributed to energy drinks that the students admittedly consumed before practice.⁴ Jon Almquist, Athletic Training Program Administrator of the Fairfax County Public Schools, explained that if consumption of a couple of energy drinks by a student athlete necessitates EMS services, the county has a responsibility to take action to prohibit the products: “if we didn’t prevent it, we would be condoning it.”⁵ The Fairfax County energy drink ban remained in effect until it was replaced by the VHSL’s 2010 state-wide ban.⁶

In 2008, the National Federation of State High School Associations (NFHS) issued a position paper on energy drinks.⁷ The NFHS position paper noted that “beverages are particularly popular among young athletes who see the consumption of energy drinks as a quick and easy way to maximize athletic and academic performance,” and articulated the possible health risks associated with energy drink consumption.⁸ The NFHS position statement also emphasized that energy drinks are likely to be confused with fluid replacement drinks and provided information to distinguish sports drinks (like Gatorade) which are hydrating, from energy drinks, which can cause dehydration.⁹

The VHSL Energy Drink Policy

Enacted in 2010, the VHSL energy drink policy serves as a platform for educating schools and students on the dangers of energy drinks.¹⁰ The VHSL Sports Medicine Advisory Committee voted on the policy in September 2010. Prior to the vote, Committee Chair, Dr. Katherine Dec, M.D., explained that:

[T]he kids see [the drinks] as something to give them energy. . . . But it’s not the physical nutritional energy that they need to perform well, so we want to try and keep with that hydration, replenishment concept. We want them to be appropriately replenished post practice and games and appropriately hydrated so they don’t run into problems

with heart rate, blood pressure, jitteriness — some of the complaints from kids through the past few years after drinking these drinks.¹¹

In light of the growing use of energy drinks and the potential risks, the VHSL felt it had an obligation to educate members. Tom Dolan, Assistant Director of the VHSL, also explained that, given the known risks, “[t]here is a certain amount of liability that goes along with allowing [energy] drinks.”¹²

Elements of the Policy

The VHSL Safety Policy on Energy Drinks is formally included in its Handbook. The policy states that “athletes [are] not to consume energy drinks during participation in VHSL practices and competitions [and] VHSL will issue an official warning for first violation.”¹³ The VHSL rule itself provides that energy drinks do not provide hydration and “may lead to adverse side-effects.”¹⁴ The policy also notes the concern about the lack of regulatory control over energy drinks, which calls into question the content and purity of the product.¹⁵ The VHSL provides additional information on the deleterious effects of energy drink consumption for its members on its website and cites the NFHS’s energy drink position statement.¹⁶

Enforcement

With respect to enforcement, although the handbook refers to the policy as a “recommendation,” VHSL Asst. Director Dolan clarified in an interview that it is in fact a ban on energy drink consumption: if an athlete is found to have violated the policy, the school where the athlete attends is notified and receives a warning.¹⁷ The VHSL Handbook defines a warning as a form of penalty that the League may impose for violation of any VHSL rule or regulation.¹⁸ “A warning may be given . . . to an individual sport, academic activity or school for a one-year period . . . [and] cumulative warnings over a period of time may result in suspension or probation for that sport, academic activity or the school.”¹⁹ By imposing the potential penalty on the school, the League places the initial responsibility on the school authorities, rather than on individual student violators, to ensure compliance with VHSL rules and regulations.

Conclusion

VHSL’s 2010 energy drink ban came in response to the growing awareness about the prevalence of energy drink consumption among young athletes and the potential health and safety risks associated with such consumption, including dehydration and heart arrhythmia. The ban provides a platform to educate student athletes as well as coaches, educators and parents, about the use and potential risks of energy drinks.

- ¹ Virginia High School League, Inc., *Virginia High School League, Inc. Handbook and Policy Manual 2011-12* (July 2011) [hereinafter VHS� Handbook], www.vhsl.org/doc/upload/pub-handbook-2011-123.pdf; *About VHS�: Member School Directory*, Virginia High School League, Inc., www.vhsl.org/about.member-school-directory (last visited June 21, 2012); Virginia High School League, Inc., *VHS� Directory – School Information* (May 11, 2012), www.vhsl.org/doc/upload/pub-directory-sch10.pdf.
- ² *About VHS�: Participation*, Virginia High School League, Inc., www.vhsl.org/about.participation (last Visited June 21, 2012).
- ³ *VHS� Executive Committee Meeting Sept. 22, 2010*. BoardDocs, www.boarddocs.com/vsba/vhsl/Board.nsf/Public (follow “Meetings” tab to Sept. 22, 2010; then follow “Agenda” tab and go to item 11 “Action Agenda”); VHS� Handbook, *supra* note 1, at 197; Mike Dowling, *Virginia High School League Bans Energy Drinks*, Clarke Daily News, Sept. 28, 2010, www.clarkedailynews.com/virginia-high-school-league-bans-energy-drinks/12920.
- ⁴ Fairfax County Public Schools, *FCPS Risk Management Fact Sheet: Energy Products* (Jan. 2006), www.fcps.edu/supt/activities/atp/FCPSSFA/supportdocs/Energy%20Products%20rm-51.pdf; *School Says “No” to Energy Drinks*, The Connection Newspapers, April 11, 2006, www.connectionnewspapers.com/news/2006/apr/11/schools-say-no-to-energy-drinks/; Michael Popke, *Administrators Point Out Potential Dangers of Energy Drinks*, Athletic Business, Oct. 2010, at 68-70, available at <http://athleticbusiness.com/articles/article.aspx?articleid=3627&zoneid=33>.
- ⁵ Popke, *supra* note 4, at 69.
- ⁶ *See Important Issues in Athletic Training*, Fairfax County Public Schools, www.fcps.edu/supt/activities/atp/parents_students/important_issues.shtml (last visited June 25, 2012); *FCPS Coaches Education and Sports First Aid: Steroids, Nutritional Substances and Banned Substances* (updated Nov. 8, 2009), Fairfax County Public Schools, www.fcps.edu/supt/activities/atp/FCPSSFA/7_nutritionsup.htm.
- ⁷ National Federation of State High School Associations Sports Medicine Advisory Committee, *Position Statement and Recommendation for the Use of Energy Drinks by Young Athletes* (revised Oct. 2011), www.vhsl.org/sportsmed.steroids-supplements (follow “NFHS Statement on Energy Drinks” hyperlink).
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ Popke, *supra* note 4.
- ¹¹ Katherine Dunn, *Young Athletes May Not Know Risks of Energy Drinks*, The Baltimore Sun, Sept. 15, 2010, http://articles.baltimoresun.com/2010-09-15/health/bs-sp-va-energy-drinks-20100915_1_energy-drinks-caffeine-intoxication-red-bull.
- ¹² Popke, *supra* note 4, at 70.
- ¹³ VHS� Handbook, *supra* note 1, at 197.
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ *VHS� Sports Medicine: Steroids/Supplements*, Virginia High School League, Inc., www.vhsl.org/sportsmed.steroids-supplements (last visited June 22, 2012).
- ¹⁷ Telephone Interview with Tom Dolan, Assistant Director of the VHS� (May 14, 2012).
- ¹⁸ VHS� Handbook, *supra* note 1, at 74.
- ¹⁹ *Id.*

The National Collegiate Athletic Association (NCAA) coordinates athletic programs for its more than 1,000 member-colleges and universities.¹ The organization is composed of three divisions and oversees more than 400,000 student-athletes competing in 23 different sports.² While the NCAA does not expressly ban energy drinks, it restricts the use of caffeine and tests athletes for caffeine at high levels.³

What Inspired the NCAA Caffeine Restriction?

According to the National Center for Drug Free Sport (the company that administers the NCAA's drug-testing program), the NCAA bans high levels of caffeine because it considers the effects "performance enhancing" during athletic competition.⁴ However, the NCAA's Associate Director of Health and Safety, Mary Wilfert, has also linked the organization's caffeine ban specifically to a concern about the uncertainty of energy drinks. In a 2011 USA Today news report, Wilfert was quoted saying that "the overarching concern is we just don't know what's in a lot of these [energy] drinks."⁵ Various NCAA materials echo Wilfert's concerns, warning that nutritional supplements, including energy drinks, are not well regulated and can contain substances not listed on their labels.⁶

The NCAA Policy

Caffeine is listed on the NCAA's list of banned substances and the organization tests athletes for caffeine as part of the organization's drug screening process.⁷ Players will be found ineligible for competition if caffeine concentration in urine exceeds 15 micrograms/ml.⁸ The rule effectively prohibits the use of energy drinks because there is no formula to calculate the amount of caffeine consumption that will trigger a positive test and the amount of caffeine in the beverages is generally not provided on the product label.⁹ The current NCAA Sports Medicine Handbook also includes an advisory specifically about energy drinks. It states:

Fluids (e.g., energy drinks) containing questionable supplement ingredients and high levels of caffeine or other stimulants may be detrimental to the health of the competitive athlete and are not effective forms of fuel or hydration.¹⁰

The organization further addresses the risks of energy drinks in the context of drug testing and eligibility:

Student-athletes should be aware that nutritional supplements are not limited to pills and powders; "energy" drinks that contain stimulants are popular. Many of these contain large amounts of either caffeine or other stimulants, both of which can result in a positive drug test. Student-athletes should be wary of drinks that promise an "energy boost," because they may contain banned stimulants. In addition, the use of stimulants while exercising can increase the risk of heat illness.¹¹

Enforcement

All NCAA student athletes are subject to drug testing.¹² The testing is conducted at championship events and there is year-round random testing in sports.¹³ If a student athlete tests positive, the student will be declared ineligible and withheld from all intercollegiate competition.¹⁴

Caffeine concentration above 15 micrograms/ml is treated like any other positive drug test. The student athlete is ineligible for, at minimum, a full season of all sports, subject to an appeals process.¹⁵ Generally, the athlete will remain ineligible for a full year from the date of the positive drug test, at which point he or she will be re-tested. Eligibility is re-instated after a clean drug test is obtained.¹⁶

Conclusion

Although the NCAA does not expressly ban energy drinks, the organization's caffeine ban means that a student athlete who consumes energy drinks risks a positive drug test, which would render him or her ineligible. Through its drug testing policy, the NCAA is able to ensure that members are aware of the risks and uncertainties associated with energy drinks.

¹ *Who We Are*, NCAA.org, www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/ (last visited July 6, 2012).

² *Who We Are*, NCAA.org, www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/ (last visited July 6, 2012).

³ National Collegiate Athletic Association, *2011-2012 NCAA Banned Drugs*, www.drugfreesport.com/rec/files/clientforms/2011_2012NCAABannedDrugs.pdf; *NCAA Banned Drug List*, NCAA.org, www.ncaa.org/wps/wcm/connect/public/NCAA/Health+and+Safety/Drug+Testing/Resources/ (last visited July 5, 2012).

⁴ *Frequently Asked Questions*, DrugFreeSport.com, www.drugfreesport.com/rec/rec-faq.asp#caffeine (last visited July 6, 2012).

⁵ Robin Norwood, *NCAA, Other Leagues Monitoring Energy Drinks*, USA Today, December 5, 2011, www.usatoday.com/sports/story/2011-12-01/ncaa-some-leagues-monitoring-energy-drink-use/51557618/1.

⁶ National Collegiate Athletic Association, *2011-2012 Sports Medicine Handbook* (July 2011), at 21, 49, www.ncaapublications.com/productdownloads/MD11.pdf; National Collegiate Athletic Association, *Drug Testing Program 2011-2012*, at 3, www.drugfreesport.com/rec/files/clientforms/Drug-testing.2011.2012.pdf.

⁷ *NCAA Banned Drug List*, NCAA.org, www.ncaa.org/wps/wcm/connect/public/NCAA/Health+and+Safety/Drug+Testing/Resources/ (last visited July 5, 2012).

⁸ National Collegiate Athletic Association, *Drug Testing Program 2011-2012*, at 2-4, www.drugfreesport.com/rec/files/clientforms/Drug-testing.2011.2012.pdf.

⁹ See *Frequently Asked Questions*, DrugFreeSport.com, www.drugfreesport.com/rec/rec-faq.asp#caffeine (last visited July 6, 2012); Chad J. Reissig et al., *Caffeinated Energy Drinks – A Growing Problem*, 99 *Drug & Alcohol Dependence* 1-10, 4 (2009).

¹⁰ National Collegiate Athletic Association, *2011-2012 Sports Medicine Handbook* (July 2011), 44, www.ncaapublications.com/productdownloads/MD11.pdf.

¹¹ National Collegiate Athletic Association, *2011-2012 Sports Medicine Handbook* (July 2011), 49, www.ncaapublications.com/productdownloads/MD11.pdf.

¹² National Collegiate Athletic Association, *Drug Testing Program 2011-2012*, at 5, www.drugfreesport.com/rec/files/clientforms/Drug-testing.2011.2012.pdf.

¹³ National Collegiate Athletic Association, *2011-2012 Sports Medicine Handbook* (July 2011), 20, www.ncaapublications.com/productdownloads/MD11.pdf.

¹⁴ National Collegiate Athletic Association, *Drug Testing Program 2011-2012*, at 10, www.drugfreesport.com/rec/files/clientforms/Drug-testing.2011.2012.pdf.

¹⁵ National Collegiate Athletic Association, *Drug Testing Program 2011-2012*, at 10, www.drugfreesport.com/rec/files/clientforms/Drug-testing.2011.2012.pdf.

¹⁶ National Collegiate Athletic Association, *Drug Testing Program 2011-2012*, at 14, www.drugfreesport.com/rec/files/clientforms/Drug-testing.2011.2012.pdf.

Introduction

In 2005, the Rhode Island legislature enacted a statute prohibiting teachers and athletic coaches from providing or advocating the use of “performance-enhancing dietary supplements” among students.¹ The law also requires that all high school athletic coaches complete training on “health information relating to performance-enhancing dietary supplements” as part of a mandatory first-aid course.² The statute deals with “performance-enhancing supplements” including products with more than 200 milligrams of caffeine per serving.³ While energy drinks are not expressly addressed, the statute provides a broad and flexible definition of performance-enhancing supplements. This is particularly useful given that efforts to introduce legislation specifically restricting energy drinks have been stalled (in 2008 the Rhode Island state legislature dropped a bill prohibiting the sale of energy drinks on school campuses while it was still in committee).⁴

What Inspired the Rhode Island Law?

The Rhode Island law came amidst concern about steroid use in athletes. State Senator John J. Tassoni Jr. (D-Dist. 22, Smithfield, North Smithfield), who sponsored the bill, explained:

Following the recent Major League Baseball hearings before Congress, the nation’s attention is still drawn to reports and stories about steroid use in professional sports . . . [and] studies have shown that high school athletes are also turning to substances that artificially boost their ability to perform. The [Rhode Island] legislation . . . is necessary to ensure that coaches, teachers and other adults are helping students understand that these supplements can be dangerous.⁵

Tassoni expressed a concern that performance-enhancing supplements could be particularly detrimental to young adults:

These athletes are still young adults whose bodies are still growing and developing. The effects of performance enhancing supplements on their bodies isn’t always known and can no doubt be even more dangerous than they are in adults . . . Young adults should be taught that these supplements are not safe or necessary, and they certainly should not have coaches or adults encouraging their use.⁶

The Rhode Island Law

The Rhode Island legislature enacted chapter 21.4, “Performance-Enhancing Dietary Supplements and High School Athletes,” amending Title 16 (Education) in the Rhode Island General Laws in 2005.⁷ The law creates a restriction upon Rhode Island educators, not students. It provides that “[n]o teacher, athletic director, sports coach, or other school official or employee may knowingly sell or distribute to students or knowingly promote the use by students of

any performance-enhancing dietary supplement.”⁸ It further requires that all high school athletic coaches complete training on “health information relating to performance-enhancing dietary supplements” as part of a mandatory annual first-aid course.⁹

At least some energy drinks may fall within the definition of “performance-enhancing dietary supplements” under the Rhode Island statute. The statute defines “performance-enhancing” supplements as

a dietary supplement designed or marketed to improve athletic performance or physical development by promoting body or muscle growth, stimulating or altering the cardiovascular system or the central nervous system, altering the perception of pain, or otherwise enhancing athletic performance or physical development above levels that would be anticipated under normal conditions with appropriate nourishment.¹⁰

The statute permits substances generally recognized as safe by the FDA, but substances containing caffeine (e.g. guarana) in excess of 200 milligrams per serving are not (which may include some energy drinks).¹¹

Energy drinks that do not meet the definition of dietary supplement under federal law may not be subject to the Rhode Island law. Pursuant to the Dietary Supplement Health & Education Act of 1994 (DSHEA), a dietary supplement is a product that contains a dietary ingredient (such as a vitamin, mineral, herb or amino acid) and must be labeled as a “dietary supplement.”¹² Not all energy drinks are labeled “dietary supplement.” Therefore, the Rhode Island law could be read to exclude products that do not meet the definition of dietary supplement under DSHEA.

The Rhode Island statute creates a mechanism to expand the definition of performance-enhancing dietary supplements so that energy drinks could be expressly included in the future. The statute directs the R.I. Department of Health, in consultation with the R.I. Department of Elementary and Secondary Education, “to develop a list of performance-enhancing dietary supplements,” for the purposes of the law by January 1, 2007, and allows for annual amendments.¹³ The current list developed pursuant to statute identifies broad categories of banned drugs and substances: stimulants, anabolic agents, diuretics and other urine manipulators, street drugs, peptide hormones and analogues, and anti-estrogens.¹⁴ The list includes examples of substances associated with each category, but provides that the examples are not exhaustive: “[n]o substance belonging to the prohibited class may be used, regardless of whether it is specifically listed as an example.”¹⁵ Energy drinks could conceivably fall into those categories or could be added to the list through an amendment.

Conclusion

Although the Rhode Island performance-enhancing statute does not expressly address energy drinks, it is a step in the right direction, and can be used to educate about the dangers of energy drinks. Energy drinks labeled as supplements and containing more than 200 milligrams of caffeine fall within the definition of “performance-enhancing dietary supplement” under the statute. Additionally, the list of performance-enhancing supplements developed by the Rhode Island Department of Health pursuant to the statute provides broad categories, which arguably cover energy drinks labeled as supplements now – and could be expanded to expressly include all energy drinks in the future.

¹ R.I. Gen. Laws Ann. § 16-21.4 (West, Westlaw through ch. 25 of the 2012 Reg. Sess.); 2005 R.I. Pub. Laws, Ch. 244, § 1; 2005 R.I. Pub. Laws, ch. 246, § 1.

² R.I. Gen. Laws Ann. § 16-21.4-4; R.I. Gen. Laws Ann. § 16-11.1-1 (West, Westlaw through ch. 25 of the 2012 Reg. Sess.).

³ R.I. Gen. Laws Ann. § 16-21.4-1.

⁴ H.B. 7649 (R.I. 2008), <http://status.rilin.state.ri.us/> (enter session year 2008, bills “7649” and click “enter” hyperlink) (last visited July 3, 2012) (showing final activity on the bill was recommended for further study in 2008, but no further action has yet been taken).

⁵ Press Release, Legislative Press & Information Bureau, R.I. State House, *Senate Approves Ban on Performance-Enhancers in Schools* (May 18, 2005), www.rilin.state.ri.us/news/pr1.asp?prid=2246.

⁶ Press Release, Legislative Press & Information Bureau, R.I. State House, *Senate Approves Ban on Performance-Enhancers in Schools* (May 18, 2005), www.rilin.state.ri.us/news/pr1.asp?prid=2246.

⁷ R.I. Gen. Laws Ann. § 16-21.4.

⁸ R.I. Gen. Laws Ann. § 16-21.4-2.

⁹ R.I. Gen. Laws Ann. § 16-21.4-4; R.I. Gen. Laws Ann. § 16-11.1-1.

¹⁰ R.I. Gen. Laws Ann. § 16-21.4-1.

¹¹ R.I. Gen. Laws Ann. § 16-21.4-1; Chad J. Reissig et al., *Caffeinated Energy Drinks – A Growing Problem*, 99 *Drug & Alcohol Dependence* 1-10 (2009) (noting that there are hundreds of different brands of energy drinks on the market, with caffeine content ranging from 50 milligrams to 505 milligrams per serving).

¹² 21 U.S.C.A. § 321(ff).

¹³ R.I. Gen. Laws Ann. § 16-21.4-3.

¹⁴ Rhode Island Department Health, Rhode Island Department of Education, *Drugs/Dietary Supplements Banned for Rhode Island Secondary School Athletics* (2008), www.ride.ri.gov/HighSchoolReform/DOCS/20080520_BannedSupplementsAthletics_V1_JM.pdf.

¹⁵ Rhode Island Department Health, Rhode Island Department of Education, *Drugs/Dietary Supplements Banned for Rhode Island Secondary School Athletics* (2008), www.ride.ri.gov/HighSchoolReform/DOCS/20080520_BannedSupplementsAthletics_V1_JM.pdf.



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