



Policy Number: 2170

Dated: Updated 06/28/2022

## POLICY DRUG FREE WORKPLACE

### PURPOSE

The Board of Trustees of American Leadership Academy recognize that every employee should have the opportunity to work in an environment that is safe, conducive to the educational goals of the school, and free from unnecessary disruption. The use, manufacture, possession, influence, distribution, dispensation, and sale of tobacco, alcohol, drugs, or other similarly harmful substances or drug paraphernalia in the workplace jeopardizes this safe environment and constitutes a hazard to the health and welfare of students and employees, in addition to being illegal under state and federal law. In order to maintain a secure and orderly learning environment, the school has this policy to assist employees in avoiding the dangers of the Prohibited Substances outlined herein. It is the policy of American Leadership Academy under the Drug-Free Workplace Act of 1988, 41 USC 8101, et seq., 34 CFR 84.100, et seq., to adopt, implement, maintain, and enforce a drug- and alcohol-free workplace.

### PROHIBITED SUBSTANCES

Unless specifically authorized by law, no employee may use, manufacture, possess, be under the influence of, sell, dispense, or distribute any of the Prohibited Substances described in this policy while on school property; in any bus or other vehicle dispatched by the school; at any activity trip, educational field trip, or overnight travel; or at any time while on duty, supervising students, or otherwise acting within the scope of employment. These prohibitions apply whether or not the actions occur during regular school hours.

For purposes of this policy, employees are considered to be on duty during the entirety of any activity trip, educational field trip, or overnight travel, regardless of location, time of day or night, or number of other individuals present or said to be supervising students. Employees traveling with students are never considered off duty. Likewise, employees traveling for school business may not engage in behavior or activities that reflect negatively on the school or incur civil or criminal liability. Moreover, the Utah Medical Cannabis Act is superseded by federal law related to commercial driver licenses (CDL) for bus drivers, and drivers' use of medical marijuana remains prohibited.

The following are Prohibited Substances:

1. **Addictive Prescription Drugs:** These are drugs for which a prescription is required and which have a high potential for abuse and may lead to severe or moderate psychological or physical dependence. All drugs listed in Schedule II of the federal Controlled Substances Act, and most

from Schedule III, fall under this category. Examples include, but are not limited to, oxycodone (such as Percocet and OxyContin), Fentanyl, Morphine, hydrocodone/codeine (such as Lortab and Vicodin), and Paregoric.

2. **Alcohol:** Alcohol is a chemical and a drug typically found in drinks such as beer, wine, and spirits as well as other products. Alcohol includes alcoholic beverages and alcoholic products as those terms are defined in the Utah Alcoholic Beverage Control Act, UTAH CODE ANN. § 32B-1-102. Alcohol includes beer, liquor, and any product that contains at least 0.5% of alcohol by volume and is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than 0.5% of alcohol by volume.
3. **Electronic Cigarette:** This is a broad category meant to encompass anything used in relation to vaping. As defined in UTAH CODE ANN. § 76-10-101, it means: any electronic oral device that provides an aerosol or a vapor of nicotine or other substance; and which simulates smoking through its the use or through inhalation of the device; a component of the device described above; and an accessory sold in the same package as the device described above. It includes any oral device that is composed of a heating element, battery, or electronic circuit; and is marketed, manufactured, distributed, or sold as and e-cigarette; an e-cigar; an e-pipe; or any other product name or descriptor if it meets the above definition. It includes an “electronic cigarette product,” as defined in UTAH CODE ANN. § 76-10-101; 2.4.3.4. It includes an “electronic cigarette substance,” as defined in UTAH CODE ANN. § 76-10-101, which is any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette; It includes a “flavored electronic cigarette product,” as used in UTAH CODE ANN. § 76-10-101, which is an electronic cigarette product that has a taste or smell that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic cigarette product, including a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; It includes a “prefilled electronic cigarette,” as used in UTAH CODE ANN. § 76- 10-101, which means an electronic cigarette that is sold prefilled with an electronic cigarette substance.
4. **Illegal Drugs:** These are drugs that state or federal law prohibits a person from using, possessing, or distributing. Drugs are defined in the Utah Controlled Substances Act, UTAH CODE ANN. § 58-37-2, as substances intended to affect the structure or any function of the body. As used in this policy, the term “drug” or “drugs” includes all drugs and controlled substances as defined in Utah Code Ann. § 58-37-2, including those listed in Schedules I through V of both the federal Controlled Substances Act and the Utah Controlled Substances Act.
5. **Imitation and Other Harmful Substances:** This is a broad category intended to encompass harmful substances not otherwise defined in law or this policy. These include imitation controlled substances as defined in the Utah Imitation Controlled Substances Act, UTAH CODE ANN. § 58-37b-1, et seq. These include psych toxic chemical solvents as defined by UTAH CODE ANN. § 76-10-107. These include nitrous oxide as defined by UTAH CODE ANN. § 76-10-107. These include performance enhancing drugs. These include any other substance that when

applied, ingested, injected, inhaled, or otherwise consumed with the intent to affect the structure or any function of the body cause a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses; or in any manner change, distort, or disturb the aural, visual, or mental processes.

6. **Nicotine:** Nicotine, as defined in UTAH CODE ANN. § 76-10-101, is a poisonous, nitrogen containing chemical that is made synthetically or derived from tobacco or other plants. It includes an “alternative nicotine product,” as defined in UTAH CODE ANN. § 76-10-101, which is a product that contains nicotine, is intended for human consumption, is not purchased with a prescription from a licensed physician, and is not approved by the United States Food and Drug Administration as nicotine replacement therapy, and includes pure nicotine, snortable nicotine, dissolvable salts, orbs, pellets, sticks, or strips, and nicotine-laced food and beverage; It includes a “nicotine product,” as defined in UTAH CODE ANN. § 76-10-101; It includes a “nontherapeutic nicotine device,” as defined in UTAH CODE ANN. § 76-10-101, which means a device that has a pressurized canister that is used to administer nicotine to the user through inhalation or intranasally, is not purchased with a prescription from a licensed physician, and is not approved by the United States Food and Drug Administration as nicotine replacement therapy; It includes a “nontherapeutic nicotine device substance,” as defined in UTAH CODE ANN. § 76-10-101, which means a substance that contains nicotine, is sold in a cartridge for use in a nontherapeutic nicotine device, is not purchased with a prescription from a licensed physician, and is not approved by the United States Food and Drug Administration as nicotine replacement therapy; It includes a “nontherapeutic nicotine product,” as defined in UTAH CODE ANN. § 76-10-101, which means a nontherapeutic nicotine device, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device; and It includes a “prefilled nontherapeutic nicotine device,” as defined in UTAH CODE ANN. § 76-10-101, which means a nontherapeutic nicotine device that is sold prefilled with a nontherapeutic nicotine device substance.
7. **Paraphernalia:** Paraphernalia refers to objects that have been or may be used in connection with a prohibited substance. As defined in the Utah Drug Paraphernalia Act, UTAH CODE ANN. § 58-37a-3, it includes any equipment, product, or material used or intended for use to store, contain, conceal, inject, ingest, inhale, or to otherwise introduce any Prohibited Substance into the human body. Notwithstanding this provision, employees may use and possess asthma inhalers, epinephrine auto-injectors (EpiPens), and equipment necessary for the administration of diabetes medication.
8. **Tobacco:** Tobacco is a product or substance made from a type of plant whose leaves have high levels of the chemical nicotine. The leaves are processed in various ways to create a substance that is smoked, applied to the gums, or inhaled. It includes a cigar, as defined in UTAH CODE ANN. § 76-10-101, which is a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any substance containing tobacco, other than any roll of tobacco that is a cigarette as described below. It includes a cigarette, as defined in UTAH CODE ANN. § 76-10-101, which is a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of any roll of tobacco wrapped in paper or in any substance not containing tobacco, or any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or

purchased by, consumers as a cigarette. It includes tobacco paraphernalia as defined in UTAH CODE ANN. § 76-10-101, which is equipment, product, or material of any kind that is used, intended for use, or designed for use to package, repack, store, contain, conceal, ingest, inhale, or otherwise introduce a tobacco product or an electronic cigarette substance into the human body, and includes the following:

- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- b. Water pipes;
- c. Carburetion tubes and devices;
- d. Smoking and carburetion masks;
- e. Roach clips, meaning objects used to hold burning materials, such as a cigarette, that has become too small or too short to be held in the hand;
- f. Chamber pipes;
- g. Carburetor pipes;
- h. Electric pipes;
- i. Air-driven pipes;
- j. Chillums;
- k. Bongs; and
- l. Ice pipes or chillers.

“Tobacco paraphernalia” does not include matches or lighters.

The following are Non Prohibited Substances:

1. **Non-Addictive Prescription Drugs:** These are drugs for which a prescription is required but which have a lower potential for abuse and a limited likelihood of leading to psychological or physical dependence. Drugs listed in Schedules IV and V of the federal Controlled Substances Act fall under this category. Examples include cough suppressants, antibiotics, diet drugs, non-amphetamine stimulants, long acting barbiturates, Valium, Lyrica, and other drugs not known to be addictive and which are not typically used recreationally.
2. **Over-the-Counter Drugs:** These are drugs that have a currently accepted medical use and for which a prescription is not needed.

It is not a violation of this policy for an employee to possess, use, or be under the influence of an over-the-counter drug or a prescription drug legally prescribed to the employee, so long as the employee has not used more than the prescribed or recommended dosage or the effects of the drug do not interfere with the employee’s ability to perform required job functions. It is also not a violation of this policy for an employee to distribute a single dose of an over-the-counter drug consistent with the drug’s directions for use and all ALA policies.

## **PROHIBITED CONDUCT**

No employee, volunteer, or visitor may engage in any of the following conduct with a prohibited substance while on school property, in any bus or other school vehicle, or at any school- sponsored activity. These prohibitions apply whether or not the conduct occurs during regular school hours.

1. **Distribute:** An employee may not give or lend a prohibited substance to another, even temporarily. More specifically, as defined in the Utah Controlled Substances Act, UTAH CODE ANN. § 58-37-1, et seq., and the Imitation Controlled Substances Act, UTAH CODE ANN. § 58-37b-1 et seq., the word distribute means deliver and includes the actual, constructive, or attempted transfer, delivery, or dispensing to another of any prohibited substance. Distribution encompasses the selling of a prohibited substance, but does not require an exchange of money, goods, or services. Any sharing of a prohibited substance, whether in exchange for something of value or not, constitutes distribution and is prohibited by this policy.
2. **Influence:** An employee may not be under the influence of any prohibited substance in a way that impairs the employee, limits their ability to do their job, or interferes with the work of other employees or learning of students. Influence means the effects of any prohibited substance identified or defined in this policy. An employee is under the influence if the employee has applied, inhaled, ingested, injected, or otherwise consumed a prohibited substance and is found on school property, including vehicles, or at a school-sponsored event, before effects of the substance have worn off.
3. **Possession or Use:** An employee may not possess or use any prohibited substance. In addition to the descriptions below, an employee may be found in possession or use of a prohibited substance if it is on the employee's person, in a bag or container under the control of the employee, in the employee's vehicle, or near enough to the employee that the employee could touch it. As defined in UTAH CODE ANN. § 58-37-2, the terms possession and use both mean the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption of a prohibited substances. Possession and use include individual, joint, or group possession or use of prohibited substances. For an employee to be found to have possessed or used a prohibited substance, it is not required that the employee be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the employee jointly participated with one or more persons in the use, possession, or control of any prohibited substance with knowledge that the activity was occurring. An employee may be found to have possessed or used a prohibited substance if it is found in a place or under circumstances indicating that the employee had the ability and the intent to exercise dominion and control over it.
4. **Smoking:** An employee may not smoke while on duty. As defined in UTAH CODE ANN. § 76-10-101, smoking means the possession of any lighted cigar, cigarette, pipe or other lighted smoking equipment. Therefore, an employee may be found to have smoked whether the employee inhaled or not.
5. **Vaping:** An employee may not vape while on duty. Vaping is not defined in Utah law. As used in this policy it means the use of an electronic cigarette or nicotine, as defined in subsections.

#### **NOTIFICATION AND REPORTING**

1. Employees must notify Human Resources of any drug or alcohol related arrest within 48 hours of the arrest or as soon as possible consistent with UTAH ADMIN. CODE, R277-316.

2. Employees must notify Human Resources of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
3. Administration shall report drug or alcohol conviction, arrest, or offense information received from a licensed educator to the USBE within 48 hours of receipt of the information from the licensed educator.

## **EMPLOYEE DISCIPLINE**

1. Employees found in violation of this policy will be subject to disciplinary action, up to and including termination, consistent with ALA Employee Discipline Policy and UTAH CODE ANN. § 53G-11-501, et seq.
2. Investigation and Due Process: Upon being apprised of a possible violation of this policy, the administration shall promptly and thoroughly investigate the alleged misconduct and document the findings. Prior to taking any disciplinary action beyond a verbal directive/written summary, the school must provide the employee with minimal due process. Such due process includes notice of the accusation, evidence of the misconduct, and the opportunity to present the employee's side of the story. The notice and informal hearing must precede the imposition of disciplinary action.
3. If a supervisor or administrator has reason to believe that an employee has committed a crime and may be under the influence of a Prohibited Substance, law enforcement should be contacted.
4. Alcoholism may constitute a disability under the law, but accommodations may not permit an employee to use, possess, sell, or be under the influence of alcohol as prohibited by this policy, and all employees must maintain the ability to perform the essential functions of their jobs.

## **REFERENCES**

Controlled Substances Act, 21 USC § 801 et seq.

Rehabilitation Act of 1973 (Section 504), 29 USC § 794(a); 34 CFR Part 104

Drug Free Workplace Act, 41 USC § 8101 et seq.; 34 CFR Part 84.

Americans with Disabilities Act, 42 USC § 12101 et seq.; 28 CFR Parts 35-36; 29 CFR 1615, 1630, 1640 Utah Medical Cannabis Act, UTAH CODE ANN. § 26-61a-101 et seq.

Alcoholic Beverage Control Act, UTAH CODE ANN. § 32B-1-101, et seq.

Utah Controlled Substances Act, UTAH CODE ANN. § 58-37-1, et seq.

Utah Drug Paraphernalia Act, UTAH CODE ANN. § 58-37a-1, et seq.

Imitation Controlled Substances Act,

UTAH CODE ANN. § 58-37b-1, et seq.

UTAH CODE ANN. § 53G-11-501, et seq.

UTAH CODE ANN. § 76-10-101.

UTAH CODE ANN. § 76-10-107.

UTAH CODE ANN. § 76-10-107.5.

UTAH ADMIN. CODE R277-316.

UTAH ADMIN. CODE R477-14