

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

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DEBORAH BROWN et al.,)	
)	
Plaintiffs and Respondents,)	(On Appeal from an Order
)	of the Superior Court of the
v.)	State of California, County
)	of Shasta Granting a
SHASTA UNION HIGH SCHOOL)	Preliminary Injunction,
DISTRICT et al.,)	Case No. 164933,
)	The Honorable
Defendants and Appellants.)	Monica Marlow, Judge)
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)	
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**APPLICATION OF THE CALIFORNIA TEACHERS ASSOCIATION,
CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF
PEDIATRICS, CALIFORNIA SOCIETY OF ADDICTION MEDICINE,
NATIONAL ASSOCIATION OF SOCIAL WORKERS, CALIFORNIA
PUBLIC HEALTH ASSOCIATION-NORTH, AMERICAN ACADEMY OF
ADDICTION PSYCHIATRY, AND THE CENTER FOR GENDER AND
JUSTICE FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND
BRIEF *AMICI CURIAE***

IN SUPPORT OF RESPONDENTS

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Theshia Naidoo, State Bar No. 209108
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APPLICATION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Pursuant to California Rule of Court 8.200(c), *amici curiae* – California Teachers Association, California District of the American Academy of Pediatrics, California Society of Addiction Medicine, National Association of Social Workers, California Public Health Association-North, American Academy of Addiction Psychiatry, and the Center for Gender and Justice – move for leave to file the attached brief *amici curiae* in support of Respondents, Brown, *et. al.*

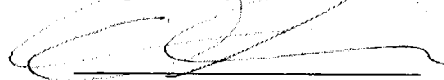
This case concerns a school district’s policy that requires students to be drug tested before they can participate in certain school-related activities that are traditionally necessary for graduation or for college entrance requirements. As such, this case addresses matters of fundamental concern to *amici*, who wish to submit this brief to highlight the broader public policy and health issues raised by this case, but not fully addressed by the parties, because such issues are of central importance to the health and well-being of California’s children.

As the names of the *amici* organizations suggest, and the descriptions of these organizations set forth below underscore, *amici* comprise a broad range of organizations including teachers, pediatricians, addiction specialists, and social workers. What unites *amici* is their recognition that student drug testing policies are ineffective and run counter

to well-established principles of how educators and parents can best promote healthy choices among adolescents.

Amici, who are committed to combating adolescent alcohol and drug use, seek to inform the court of the research showing that random student drug testing does not prevent or reduce drug use among students. *Amici* also seek to provide information on how such policies can have unintended, negative consequences and may actually harm the school's legitimate interest in preventing adolescent substance abuse.

Respectfully submitted,



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INTERESTS OF *AMICI CURIAE***

Amici oppose mandatory suspicionless drug testing of students.

Further, *amici* are particularly troubled by the Shasta Union High School District's ("District") policy at issue here which requires all students to be drug tested before they can participate in co-curricular classes and activities traditionally necessary for graduation or for college entrance requirements. *Amici* are united in their recognition that such drug testing policies are of unproven efficacy and employ tactics that run counter to well-established principles of how educators and parents can best promote healthy choices among adolescents, particularly those identified as "at risk."

Amici are committed to combating adolescent alcohol and drug use. In light of this steadfast commitment, *amici* seek to inform the court of the strong evidence base in opposition to random student drug testing, the pragmatic problems with such testing, and the fact that the school district's drug testing policy is hampering, rather than advancing the district's legitimate interest in preventing adolescent substance abuse and reducing alcohol and drug-related harms.

STATEMENT OF ARGUMENT

At the outset it must be noted that each *amicus curiae* adamantly opposes adolescent alcohol, tobacco and illicit drug use and is fervently

** Descriptions of *amici* are set forth in Appendix A of this brief.

committed to reducing such risky behaviors. To this end, *amici* strongly endorse student involvement in school-related activities because such involvement unquestionably *decreases* the likelihood of illegal drug or alcohol use and helps students become productive members of society.

Mandatory suspicionless drug testing policies like the one crafted by the District, however, create unwarranted obstacles to student participation in school-related activities and may themselves pose risks to student health and well-being. Indeed, research has failed to demonstrate that random, suspicionless drug testing of high school students prevents or reduces student alcohol or drug use. As a result, the nation's leading experts in adolescent health have issued strong reservations about student drug testing and have increasingly opposed calls for such testing programs.

On the other hand, research has consistently shown that student involvement in school-related activities is highly beneficial to healthy adolescent development and constitutes an important "protective factor" for youth who are at particular risk of substance abuse. Because participation in such activities helps insulate students from alcohol, tobacco and other drugs, erecting barriers to such participation is counterproductive.

Yet, mandatory student drug testing programs, like the one implemented by the District, threaten to curb participation in certain co-curricular activities that are graded components of coursework, are required for graduation, or for entrance to public universities in California. By

conditioning participation on the willingness of students (and the consent of parents) to undergo random drug tests, the District's policy erects an uncomfortable hurdle for many families who, for instance, oppose intrusion into their medical privacy through the forced disclosure of medications, recoil at the notion of having to urinate while being monitored, distrust the accuracy and reliability of drug testing procedures, and/or simply disapprove of a scheme that treats high school students as guilty until proven innocent.

Moreover, mandatory drug testing disrupts the delicate balance of trust and honesty that educators work hard to foster with their students. Teachers and administrators, once potential confidants and counselors for students with questions, concerns, and problems, are cast as drug enforcers.

Particularly worrisome is that students who are inclined towards drug experimentation may attempt to "beat" the drug test by ingesting substances, such as alcohol, not detected by the test but which pose even greater dangers to their health than the drugs for which the tests were designed to catch. This dangerous, unintended consequence is a little-mentioned but highly pertinent issue that plagues any assessment of drug testing's purported benefits.

Finally, any discussion of drug testing must take account of the distinct risk of—and harms engendered by—inaccurate drug test results. The accuracy and reliability of drug testing programs is particularly

pertinent in the school context, where testing programs operate on very limited budgets and without the benefit of binding guidelines or regulatory oversight.

In sum, student drug testing programs like the District's *cannot* work in the way they are hoped and will, for some adolescents, interfere with sound drug prevention, detection and treatment processes.

ARGUMENT

I. Scientific Research Does Not Support the Safety or Efficacy of Random Student Drug Testing

The current state of scientific research fails to support the District's assumption that random, suspicionless drug testing reduces student drug use. In fact, just the opposite has occurred in the District, where the use of most drugs among students *increased* after the drug testing policy was expanded.¹

¹ According to a District-level survey of student drug use conducted before (2006) and after (2008-2009) the District implemented its expanded drug testing program, the percentage of 9th graders reporting current use (defined as use within the past 30 days) of any drug or alcohol increased from 29% to 35%; current use of alcohol increased from 25% to 30% of 9th graders; current use of marijuana jumped from 13% to 19% of 9th graders, while its use among 11th graders did not change; current use of inhalants increased from 3% to 6% among 9th graders; current use of cocaine among 9th graders rose from 1% to 4%, and remained static among 11th graders; and current methamphetamine use rose from 1% to 3% of 9th graders and was unchanged among 11th graders. *See* SAFE AND HEALTHY KIDS PROGRAM OFF., CAL. DEP'T OF EDUC. & HEALTH AND HUM. DEV. DEP'T, WESTED, CALIFORNIA HEALTHY KIDS SURVEY: SHASTA UNION HIGH,

Leading experts on adolescent health and their professional associations have steadfastly questioned the wisdom of undertaking such testing. For example, the American Academy of Pediatrics (AAP), an organization of 60,000 pediatricians committed, *inter alia*, to the social health and well-being of all adolescents and young adults, opposes involuntary drug testing of adolescents. Specifically, the AAP's March 2007 addendum to their original policy statement reaffirmed its opposition to mandatory drug testing.² "In 1996, the AAP published (and reaffirmed in 2006) its policy statement titled 'Testing for Drugs of Abuse in Children and Adolescents' which opposed involuntary testing of adolescents for drugs of abuse."³ The AAP policy statement is attached hereto as Exhibit A. The AAP "believes that more research is needed on both safety and efficacy before school-based testing programs are implemented" and notes that "there is little evidence of the effectiveness of school-based drug

DISTRICT LEVEL REPORT—TECHNICAL REPORT, SECONDARY 78 (2006); SAFE AND HEALTHY KIDS PROGRAM OFF., CAL. DEP'T OF EDUC. & HEALTH AND HUM. DEV. DEP'T, WESTED, CALIFORNIA HEALTHY KIDS SURVEY: SHASTA UNION HIGH, SECONDARY—TECHNICAL REPORT 21 (2008-2009).

² Am. Acad. of Pediatrics, Committee on Substance Abuse and Council on School Health, *Testing for Drugs of Abuse in Children and Adolescents: Addendum—Testing in Schools and at Home*, 119 PEDIATRICS 627 (2007) [hereinafter "AAP COMM. ON SUBSTANCE ABUSE AND COUNCIL ON SCHOOL HEALTH"].

³ *Id.*

testing in the scientific literature.”⁴ This conclusion mirrors that of many other adolescent health professionals and professional associations.⁵

Notably, the first national large-scale study of student drug testing found no association between school-based drug testing and students’ reported drug use.⁶ Data collected between 1998 and 2001 from 76,000 students nationwide in 8th, 10th and 12th grades led University of Michigan researchers to conclude that drug testing did *not* have an impact on illicit drug use among students.

Dr. Lloyd D. Johnston, an author of *Monitoring the Future*—the leading federal survey of trends in student drug use and attitudes about drugs—observed that the Michigan study “suggests that there really isn’t an impact from drug testing as practiced I don’t think it brings about any constructive changes in [student] attitudes about drugs or their belief in the danger associated with using them.”⁷

The Michigan researchers subsequently conducted a larger study encompassing more schools, more data and with a particular focus on

⁴ *Id.* at 628.

⁵ Melissa Weddle & Patricia K. Kokotailo, *Policy Forum—Confidentiality and Consent in Adolescent Substance Abuse: An Update*, 7 VIRTUAL MENTOR: AM. MED. ASS’N J. ETHICS (2005) available at <http://virtualmentor.ama-assn.org/2005/03/pfor1-0503.html> (“There is little evidence of the effectiveness of school-based drug testing in the scientific literature.”)

⁶ Ryoko Yamaguchi, et al., *Relationship Between Student Illicit Drug Use and School Drug-Testing Policies*, 73 J. SCH. HEALTH 159-164 (2003).

⁷ Greg Winter, *Study Finds No Sign that Testing Deters Students’ Drug Use*, N.Y. TIMES, May 17, 2003,.

random drug testing programs.⁸ The results of this second study reinforced the researchers' earlier conclusions:

[D]oes drug testing prevent or inhibit student drug use? Our data suggests that . . . **it does not**

The two forms of drug testing that are generally assumed to be most promising for reducing student drug use—random testing applied to all students . . . and testing of athletes—**did not produce encouraging results.**⁹

Finally, the lack of scientific support for student drug testing was recognized by the California legislature when it passed Senate Bill 1386 (passed by both the Senate and the Assembly in 2004, but vetoed by the Governor).¹⁰ The bill expressed the legislature's intent "to ban the costly and ineffective practice of random, suspicionless drug and alcohol testing" in schools, based in part on the legislative finding that "random drug testing is not an effective deterrent to drug use by pupils."¹¹ In vetoing the bill, the Governor did not express any disagreement with the findings.¹²

⁸ Ryoko Yamaguchi, Lloyd D. Johnston & Patrick M. O'Malley, *Drug Testing in Schools: Policies, Practices, and Association with Student Drug Use*, YOUTH, EDUC. & SOC'Y (YES) OCCASIONAL PAPERS SERIES (The Robert Wood Johnson Foundation, Ann Arbor, MI) 2003 at 15-16.

⁹*Id.* at 16 (emphases added).

¹⁰ Floralynn Einesman, *Drug Testing Students in California—Does It Violate the State Constitution?*, 47 SAN DIEGO L. REV. (forthcoming Aug. 2010).

¹¹ S. B. 1386, 2003-2004 Leg., Reg. Sess. (Cal. 2004). (The Legislature based this finding on an article appearing in the April 2003 edition of the *Journal of School Health*. See Yamaguchi et al., *supra* note 6.)

¹² S. B. 1386, Veto Message, 2003-2004 Leg., Reg. Sess. (Cal. 2004), available at: http://info.sen.ca.gov/pub/03-04/bill/sen/sb_1351-1400/sb_1386_vt_20040918.html. (The Governor's veto message stated

II. Participation in School-Related Activities is Required for Graduation or for Entrance into College, Leads to Better Academic Outcomes, and Is a “Protective Factor” for Adolescents at Particular Risk of Substance Abuse

A. The District’s Drug Testing Policy Erects Barriers to Participation in School-Related Activities that are Required for Coursework, Graduation, and College Entrance Requirements

The District’s policy in this case requires drug testing of students who are involved in any “competitive representational activity.” Competitive representational activities include those that are required for students’ coursework, for graduation, or for entrance requirements to the University of California or the California State University System. As such, the District’s policy covers activities that cannot be fairly characterized as “voluntary,” in that students who wish to graduate and pursue a post-secondary education through a public university in California *must* participate in at least some activities which are subject to mandatory drug testing.

The District’s policy in this case is similar to a drug testing program that was struck down by the Colorado Supreme Court in *Trinidad School Dist. No. 1 v. Lopez By and Through Lopez*, (Colo. 1998) 963 P.2d 1095. In *Lopez*, students enrolled in band for academic credit also were required to participate in the “extracurricular” marching band—an activity that was

that the issue should be determined by local communities and not by the state.)

subject to mandatory drug testing under the school's policy—and a student's grade was based in part on the student's performance in the marching band. *Id.* at 1105. Thus, the Trinidad School District's testing program was not limited to students who voluntarily chose to participate in an activity; rather, the drug testing program applied to all students who were enrolled in certain *for-credit* classes. *Id.* at 1105. The Colorado Supreme Court struck down the testing program as unreasonable under the United States Constitution. *Id.* at 1105-1110. Using the framework established by the United States Supreme Court in *Vernonia Sch. Dist. 47J v. Acton*¹³, (1995) 515 U.S. 646, the *Lopez* Court stated that “the type of voluntariness to which the *Vernonia* Court referred does not apply to students who want to enroll in a for-credit class that is part of the school's curriculum.” *Id.* at 1107. The *Lopez* Court concluded that the District's policy was too sweeping and raised many concerns about its reasonableness.

The policy at the Shasta Union High School District, like that of *Lopez*, includes drug testing for students participating in school-related activities that are graded components of coursework, and so violates not

¹³ While *Lopez* was decided prior to the United States Supreme Court's decision in *Board of Ed. of Independent School Dist. No. 92 of Pottawatomie County, et al., v. Lindsay Earls, et al.* (2002) 536 U.S. 822 (upholding drug testing of students who participated in voluntary extracurricular activities), *Lopez* and the case at bar are distinguishable from *Earls* because the activities covered by both schools' policies are not voluntary.

just the United States Constitution, but also the more protective privacy provisions of the California Constitution. However, even if not all of the activities covered by the Shasta Union policy are graded or required for graduation, participation in extracurricular activities is, as recognized by the *Lopez* Court, “a vital adjunct to the educational experience.” *Id.* at 1109. College-bound students (and their parents) are acutely aware that a strong record of involvement in both school-related and extracurricular activities is all but essential to securing admission to any competitive undergraduate institution. For all intents and purposes, public school students who wish to pursue higher education have no choice but to engage in one or more school-sponsored activities. Such students who attend school in Shasta Union High School District and who refuse to consent to drug testing are effectively denied the tools to gain college admission.

The Shasta Union High School District’s drug testing policy forces students to choose between their privacy rights and their education. If a student refuses to give up his or her privacy rights and be subject to drug testing, he or she would be unable to meet graduation and college entrance requirements, which, in turn, would impede if not altogether thwart his or her ability to pursue a post-secondary education.

B. Young People Derive Important Academic and Social Benefits from Participation in School-Related Activities

It is important to recognize the myriad benefits conferred upon adolescents through participation in school-related activities (the topic of this section) in order to understand the magnitude of the dangers posed by mandatory student drug testing policies on the development and well-being of high school-aged youth, as discussed in the remainder of this brief.

Students who participate “in a number of activities not only achieve better academically but also express greater satisfaction with the total high school experience than students who do not participate.”¹⁴ Empirical research confirms that students who participate in school-related and extracurricular activities are more likely to stay in school, earn higher grades, set more ambitious educational goals and achieve those goals.¹⁵

¹⁴ NAT’L FED’N OF STATE HIGH SCHOOL ASS’NS, THE CASE FOR HIGH SCHOOL ACTIVITIES 5 (2008), available at <http://www.nfhs.org/content.aspx?id=3262>.

¹⁵ See, e.g., Jacquelynne S. Eccles & Bonnie L. Barber, *Student Council, Volunteering, Basketball, or Marching Band: What Kind of Extracurricular Involvement Matters?*, 14 J. ADOLESCENT RES. 10, 19 (1999); Philip H. Winne & John Walsh, *Self-Concept and Participation in School Activities Reanalyzed*, 72 J. EDUC. PSYCH. 16, 25 (1980) (finding “clear evidence” that participation in extracurricular activities produces higher than expected grade point averages); Joseph L. Mahoney & Robert B. Cairns, *Do Extracurricular Activities Protect Against Early School Dropout?* 33 DEV. PSYCH. 241 (1997); Fred M. Newman, Gary G. Wehlage & Susan D. Lamborn, *The Significance and Sources of Student Engagement in Student Engagement and Achievement in American Secondary Schools* (Fred M. Newman ed., 1992); NAT’L CTR. FOR EDUC. STATS., *EXTRACURRICULAR PARTICIPATION & STUDENT ENGAGEMENT* (1995).

Additionally, “pro-social” values and habits for success inculcated through participation in school-related activities transfer to many aspects of life.

Involvement in school-related activities plays an important role in protecting students from substance abuse and other risky behaviors.

However, the benefits derived from participating in such activities are needlessly jeopardized when unwarranted obstacles—such as mandatory suspicionless drug testing—are imposed as a condition of participation in such activities.

C. Young People Derive Important Health Benefits from Participation in School-Related Activities and As a Result are Far Less Likely to Use Alcohol, Tobacco or Other Drugs than Are Their Less Involved Peers

Students who participate in a range of structured activities are less likely to use illegal substances than those students who do not.¹⁶ Empirical research shows that students who participate in school-related activities are significantly less likely to develop substance abuse problems and more likely to stay in school and achieve higher grades than are their less-involved peers.¹⁷

¹⁶ “...adolescents involved in a broad range of adult-endorsed activities report lower rates of substance use than their noninvolved peers (citing James Youniss, Miranda Yates & Yang Su, *Social Integration into Peer and Adult Society: Community Service and Marijuana Use in High School Seniors*, 12 J. ADOLESCENT RES. 245-263 (1997)). See Eccles & Barber, *supra* note 15, at 10, 19.

¹⁷ See NICHOLAS ZILL, CHRISTINE WINQUIST NORD & LAURA SPENCER LOOMIS, U.S. DEP’T OF HEALTH AND HUM. SERV., ADOLESCENT TIME USE, RISKY BEHAVIORS AND OUTCOMES: AN ANALYSIS OF NATIONAL DATA

Participation in structured activities plays an independent, “protective” role—especially for students who are at high risk.¹⁸ As a 1992 Carnegie Corporation study, *A Matter of Time: Risk and Opportunity in the Nonschool Hours*, documented, 40% of adolescent waking hours are “discretionary,” *i.e.*, not committed to school, homework, employment, or chores.¹⁹ In 2002, 52% of parents of youth in grades 9-12 reported leaving their children without adult supervision after school for several hours per

(1995), (“students who reported spending no time in school-sponsored activities were 49 percent more likely to have used drugs”); Lee Shilts, *The Relationship of Early Adolescent Substance Use to Extracurricular Activities, Peer Influence, and Personal Attitudes*, 26 *ADOLESCENCE* 613, 615 (Fall 1991) (finding that among adolescents studied, “the non[drug]using group reported significantly higher involvement in extracurricular activities as compared to the using and abusing groups”). See Michael D. Resnick et al., *Protecting Adolescents From Harm: Findings From the National Longitudinal Study on Adolescent Health*, 278, *JAMA* 823, 828-30 (1997) (finding that higher levels of connectedness to school were associated with less frequent alcohol and marijuana use). See also, Maureen Glancy, F.K. Willits & Patricia Farrell, *Adolescent Activities and Adult Success and Happiness: Twenty-four Year Later*, 70 *SOC. & SOC. RES.* 242 (1986).

¹⁸ See, e.g., Laurence Steinberg & Shelli Avenevoli, *Disengagement from School and Problem Behavior in Adolescence: A Developmental-contextual Analysis of the Influences of Family and Part-time Work*, in *NEW PERSPECTIVES ON ADOLESCENT RISK BEHAVIOR* (Richard Jessor ed., 1998); Margaret E. Ensminger & Hee Soon Juon, *Transition To Adulthood Among High-Risk Youth*, in *NEW PERSPECTIVES ON ADOLESCENT RISK BEHAVIOR* (Richard Jessor ed., 1998).

¹⁹ See U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUST., *SAFE AND SMART: MAKING AFTER-SCHOOL HOURS WORK FOR KIDS* (1998), available at <http://www.ed.gov/pubs/SafeandSmart/index.html> (collecting research on disparate rates of drug use, cigarette smoking, violence, and vandalism occurring during this time period).

day.²⁰ In fact, a vastly disproportionate amount of adolescent drug use and other dangerous behavior occurs during the unsupervised hours between the end of classes and parents' arrival home in the evening.²¹

Students who engage in school-related activities, however, spend substantial time under adult supervision, thus helping decrease the opportunities and incentives for—as well as the actual incidence of—adolescent drug use and other risky behaviors.²²

Timely adult supervision and structured activity are not the only reasons why school-related activities are protective of student well-being. Students also benefit from interaction with peers and teachers/mentors. Through participation, students are able to acquaint themselves with teachers/mentors on a less formal basis, fostering an honest and open relationship.

School-related activities encourage students to make rational decisions and learn responsibility. The increased involvement allows the student to bond with other students who have similar interests and gain a

²⁰AFTERSCHOOL ALLIANCE, *AMERICA AFTER 3 PM: A HOUSEHOLD SURVEY ON AFTERSCHOOL IN AMERICA*, Executive Summary (2004), available at http://www.afterschoolalliance.org/america_3pm.cfm.

²¹See U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUST., *supra* note 19, at 5-24.

²²See Deborah Cohen et al., *When and Where do Youths have Sex? The Potential Role of Adult Supervision*, 110 PEDIATRICS 66 (2002); see also, DEBORAH COHEN, ET AL., CARNEGIE CORPORATION, *A MATTER OF TIME: RISK AND OPPORTUNITY IN THE NONSCHOOL HOURS* (1992); see also, U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUST., *supra* note 19; NAT'L INST. ON OUT-OF-SCHOOL TIME, *FACT SHEET ON SCHOOL-AGE CHILDREN'S OUT-OF-SCHOOL TIME* (March 2001).

sense of pride from succeeding in their chosen activity. Whether the math club or the marching band, students work in close unison to achieve the best outcome possible. In working so closely, the student gains positive social networks, allowing the student to rely on other students and teachers/mentors for support and guidance.²³

III. Random Student Drug Testing Will Operate, Unjustifiably, to *Deny* Participation in School-Related Activities Which Provide Important Benefits and Anti-Drug Protections

A. Many Students Find Testing Policies Intrusive on Privacy

Mandatory suspicionless drug testing policies typically require every student selected for a drug test to urinate in a cup while being monitored by test administrators and to disclose to school officials all medications that each student takes. Many students find such requirements embarrassing and humiliating. The sense of anxiety and shame may be experienced far more keenly as adolescents are particularly uncomfortable about their developing bodies and intimate bodily functions.²⁴ These feelings can be heightened by the public manner in which students are removed from class or activities for testing. If students test positive they

²³ See Eccles & Barber, *supra* note 15, at 10, 29 (“over time, the coalescence of one’s personal identity, one’s peer group, and the kinds of activities one participates in . . . can shape the nature of one’s pathway through adolescence.”).

²⁴ Susan Harter, *Causes and Consequences of Low Self-esteem in Children and Adolescents* in SELF-ESTEEM: THE PUZZLE OF LOW SELF-REGARD 87 (Roy Baumeister ed., 1993) (research finding body image is the strongest unique predictor of overall feelings of adolescent self-worth).

are typically punished through suspension from their school-related activity for a set period of time; indeed, in a nationally representative study, roughly two thirds (66.5%) of school districts with random suspicionless drug testing programs suspended students testing positive for the first time from extracurricular activities or from at least one athletic team.²⁵ This chain of events allows teachers and fellow students to easily decipher the results of drug tests, breaking the promise of confidentiality and potentially stigmatizing the student within the community.

What is more, the District's drug testing policy requires the disclosure of prescription medications after an initial positive test. The forced disclosure of prescription medications can result in students having to divulge highly sensitive, even shame-inducing medical conditions (e.g., depression, hyperactivity, HIV and sexually transmitted diseases) about which young people can feel uniquely vulnerable.²⁶ In fact, not only does the District require the disclosure of prescription medications, the District specifically tests for several prescription drugs that are used to treat panic, anxiety disorders, behavioral symptoms of attention-deficit/hyperactivity

²⁵ Chris Ringwalt et al., *Responses to Positive Results From Suspicionless Random Drug Tests in US Public School Districts*, 79 J. SCH. HEALTH 177-183 (2009).

²⁶ See, e.g., Allen Crocker et al., *Supports for Children with HIV Infection in School: Best Practices Guidelines*, J. SCH. HEALTH 64, 32-34 (1994).

disorder, and pain.²⁷ These are sensitive medical conditions that students would not want to divulge to school officials. Pledges of confidentiality cannot eliminate the *risk* (and fear) that students' personal medical information will become known to educators and others whose decisions could influence their lives.²⁸

²⁷ The District tests for several prescription drugs such as: tricyclic antidepressants (used to treat behavioral symptoms associated with attention-deficit/hyperactivity disorder), *see, e.g.*, Charles Popper, *Antidepressants in the Treatment of Attention-Deficit/Hyperactivity Disorder*, 58 J. CLIN. PSYCH. 14-29 (1997); benzodiazepine (used to treat panic disorder and anxiety), *see, e.g.*, AM. PSYCHIATRIC ASS'N, PRACTICE GUIDELINE FOR THE TREATMENT OF PATIENTS WITH PANIC DISORDER (2009), *available at* http://www.psychiatryonline.com/pracGuide/loadGuidelinePdf.aspx?file=PanicDisorder_2e_PracticeGuideline); methadone, oxycodone, and propoxyphene (used to treat severe pain), *see, e.g.*, *Physician's Desk Reference* (57th ed. 2003) at 2851-57, 3503-05; Andrea D. Furlan et al., *Opioids for Chronic Noncancer Pain: A Meta-analysis of Effectiveness and Side Effects*, 174 CAN. MED. ASS'N J. 1589-1594 (2006); AM. PAIN SOC'Y & AM. ACAD. OF PAIN MED. CLINICAL GUIDELINES FOR THE USE OF CHRONIC OPIOID THERAPY IN CHRONIC NONCANCER PAIN: EVIDENCE REVIEW (2009) *available at* http://www.ampainsoc.org/pub/pdf/Opioid_Final_Evidence_Report.pdf), and barbiturates (used to treat insomnia and convulsive disorders, though no longer as widely prescribed, replaced by newer medicines), *see, e.g.* U.S. Drug Enforcement Admin., "Barbiturates," *available at* <http://www.justice.gov/dea/concern/barbiturates.html>; Pedram Navab & Christian Guilleminault, *Emerging Pharmacotherapeutic Agents for Insomnia: A Hypnotic Panacea?* 7 EXPERT OPINION ON PHARMACOTHERAPY 1731-1738 (2006). Some students would find it intolerably intrusive to have to disclose such sensitive medical information and prescription medications to school officials or test administrators.

²⁸ *See Board of Ed. of Independent School Dist. No. 92 of Pottawatomie County, et al., v. Lindsay Earls, et al.* (2002) 536 U.S. 822 (evidence presented that student's choir teacher was allowed to look at the student's prescription drug list and proceeded to leave the list where other students could read the list).

B. Random Student Drug Testing Deters Students from Participating in School-Related Activities

Some students, to be sure, will experience the intrusion and privacy risks related to drug testing as simply annoying, and others will consider the intrusions a troubling, but not insurmountable obstacle to partaking in certain school-related activities. Still other students, however, when faced with the District's policy, will choose not to participate in co-curricular activities to avoid being subject to the indignities and intrusions of suspicionless drug testing.²⁹

For students whose principles or sense of modesty make the random drug test offensive and unbearable, the losses are great. These students are denied participation in activities that are required for their coursework, for graduation, or for entrance requirements to the University of California or the California State University System. They are cut off from school friends who share their interests; they may find themselves the subject of suspicion or rumor concerning what the drug tests would have revealed; and their candidacies for admission to competitive colleges will be prejudiced by their non-participation.

²⁹ *Bean v. Tulia Indep. Sch. Dist.*, WL 22004511 (N.D. Tex.) (Feb. 18, 2003) (Since the implementation of the drug testing program, there has been a dramatic reduction in extracurricular involvement. The court noted one student's explanation as knowing "lots of kids who don't want to get into sports and stuff because they don't want to get drug tested. That's one of the reasons I'm not into any [activity]. 'Cause ... I'm on medication, so I would always test positive, and then they would have to ask me about my medication and I would be embarrassed.")

Of particular concern are the students at the “margins,” namely those students whose interest in certain school-related activities may be tentative and undeveloped and who are likely to opt out of participating in those activities rather than undergo random, suspicionless drug testing for fear of revealing some uncomfortable fact about themselves to their peers and teachers. For example, among the adolescent populations who are considered at particular risk for substance abuse are young people suffering from depression³⁰ and those with substance abuse problems in their family background. Such students have much to gain from participating in school-related activities; erecting obstacles to their participation, in turn, magnifies the risks of harm to their health and well-being.

This dangerous dynamic is recognized by the National Association of Social Workers, which publicly stated, “[u]sing drug testing as a prevention program not only deters kids least likely to use drugs and alcohol, but it may actually close the only avenue of support for a student seeking to turn away from drug involvement.”³¹ (The Press Release is attached hereto as Exhibit B.)

IV. Mandatory Suspicionless Drug Testing Is Ill-Suited to the Public Health Purposes It Claims to Fulfill

³⁰ See e.g., E.Y. Deykin et al., *Adolescent Depression, Alcohol and Drug Abuse*. 76 AM. J. PUB. HEALTH 178 (1987).

³¹ Press Release, National Association of Social Workers, Social Workers Disagree with Supreme Court Decision to Test Students for Drug Use, (June 27, 2002), available at <https://www.socialworkers.org/pressroom/2002/062702.asp>.

A. Random Student Drug Testing Undermines Trust in Student-Teacher Relationships while Creating a Hostile School Environment

Mandatory suspicionless drug testing of students disrupts the fragile balance of trust between adolescents and their teachers, coaches, and administrators by creating an adversarial role where students are treated as guilty until proven innocent. Such policies also deter students from seeking assistance when it is most needed.³²

The trust in a traditional student-teacher relationship is jeopardized when teachers, who have traditionally held themselves out to students as potential confidants, are conscripted to administer and enforce student drug testing procedures. The National Association of Social Workers warns “[d]rug testing . . . creates more of a challenge to the recovery from substance abuse and breaks down the walls of trust between student and school—a bond which time and again proves to decrease the likelihood of students participating in risky behaviors.”³³ Casting teachers in the role of front-line enforcers can interfere with honest and supportive communication with adults that is critical for struggling adolescents.

³² The California Legislative Findings in Senate Bill 1386 (passed by the legislature in 2004, but vetoed by the Governor), states that: “Random, suspicionless drug and alcohol testing impairs the trust and cooperation between parents, pupils, and school staff that is instrumental to a productive learning environment, thereby distracting pupils, educators, and administrators, from the core educational mission of the public schools.” CAL. EDUC. CODE § 49052 (a)(4).

³³ See Press Release, National Association of Social Workers, *supra* note 31.

Trust in students' relationships with teachers, coaches and administrators is further eroded when schools respond punitively to positive drug tests, as many have been proven to do. A national study of U.S. school districts published in the *Journal of School Health* in 2009 found that a substantial portion of districts with suspicionless random drug testing programs responded to a student's first positive test with negative academic or legal consequences: nearly one-third (31%) suspended the student from school; 13.6% sent the student to an alternative school; and nearly one-tenth (8.4%) of districts expelled the student from school altogether. Most disturbingly, the researchers found that almost half (45.1%) of school districts surveyed notified law enforcement officials after a student tested positive for the first-time, even though such actions violate the Family Educational Rights and Privacy Act (FERPA) and federal regulations protecting the confidentiality of patient alcohol and drug abuse records.³⁴

B. Drug Testing Regimes May Lead to More Risky Behavior

While many students will react to drug testing with embarrassment, some students will almost certainly harbor *resentment*. Random, suspicionless drug testing is perceived by adolescents as an expression of adult mistrust and suspicion. Such perceptions can, in turn, trigger

³⁴ Ringwalt et al., *supra* note 25, at 180 (referencing Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. § 1232(g); and 42 CFR § 2.1

oppositional behavior—including actions that will enable students to “beat” the test, *i.e.*, defying its drug-use-prevention purpose, while obtaining a “clean” result from the testing laboratory. The American Academy of Pediatrics observes that “it is fairly easy to defeat drug tests, and most drug-involved youth are all too familiar with ways to do so.”³⁵

It should not be assumed that the threat of detection by a random drug test will decrease the risky behavior among students who opt to experiment with alcohol or drugs. Even when administered and validated properly, drug testing provides very limited information about student drug use.³⁶ Remarkably, the standard five-panel drug test has a short window of detection of less than 72 hours for most drugs other than marijuana. The standard drug test does not detect many of the drugs most frequently used by adolescents, such as MDMA (Ecstasy) or inhalants.³⁷ The American Academy of Pediatrics warns that mandatory testing may motivate some drug-involved adolescents to switch from using drugs with relatively low levels of morbidity and mortality, such as marijuana, to those that are not screened for but which pose substantially greater risks to physical and mental health (for example, inhalants). No studies have yet been conducted on this dangerous unintended consequence of school drug testing, but this

³⁵ AAP COMM. ON SUBSTANCE ABUSE AND COUNCIL ON SCHOOL HEALTH, *supra* note 2, at 629.

³⁶ *Id.*

³⁷ *Id.*

very real potential raises questions about the overall efficacy and safety of such policies.³⁸

V. Drug Testing Is Highly Technical and Fraught with Error

Drug testing is highly technical and imperfect. Myriad problems infect testing techniques and analyses, including the substantial risk of false positive test results, false negative test results, specimen contamination, and chain of custody, storage and re-testing issues.³⁹ As the American Academy of Pediatrics notes, few public schools have sufficient resources or trained staff to adhere to the complex, time-consuming and expensive protocols necessary to ensure the reliability of specimens and test results.⁴⁰

Unlike federal workplace testing, school-based drug testing is entirely unregulated. There are no binding regulations governing the drug

³⁸ *Id.*

³⁹ Sharon Levy *et al.*, *Drug Testing of Adolescents in Ambulatory Medicine: Physician Practices and Knowledge*, 160 ARCHIVES PEDIATRIC ADOLESCENT MED. 146-150 (2006) (“Improperly conducted drug tests can result in false accusation (reporting illicit drug use here none exists) or false reassurance (failing to identify actual use.”); Sharon Levy *et al.*, *A Review of Internet-Based Home Drug Testing Products for Parents*, 113 PEDIATRICS 720, 725 (2004); *citing* R. Schwartz., *Testing for Drugs of Abuse: Controversies and Techniques*, 4 ADOLESCENT MED. 353-370 (1993) (reporting that in a study of more than 2,600 urine samples analyzed by certified laboratories using immunoassay procedures as a screening testing with confirmation of positive results, “the false-positive rate was between 2% and 4%” and the “rate of false-negative tests varied from 6% to 40% depending on the drug detected.”).

⁴⁰ AAP COMM. ON SUBSTANCE ABUSE AND COUNCIL ON SCHOOL HEALTH, *supra* note 2, at 628. *See also*, Weddle & Kokotailo, *supra* note 5 (“interpretation of testing can also be complicated by false positives and validity questions that arise from the potential adulteration of specimens”).

testing of students and no mandatory oversight and accreditation of laboratories that process student tests. As a result, the accuracy and reliability of school-based drug testing programs is not merely unknown, but potentially unknowable absent universal standards.⁴¹

Accuracy and reliability are essential components of drug testing. A false-positive drug test is a devastating accusation for an adolescent. Yet, according to the American Academy of Pediatrics, over-the-counter decongestants can cause false-positive results for amphetamine, for example, on both the initial screen and confirmation tests.⁴²

VI. Random Student Drug Testing Policies Do Not Respect the Proper Allocation of Responsibility among Parents, Doctors, and Schools

School policies that require students to submit to an in-school urine testing regime do not respect the judgment of doctors and treatment experts—or the wishes of parents. The urine screen is administered under

⁴¹ See Levy et al., *Drug Testing of Adolescents in Ambulatory Medicine: Physician Practices and Knowledge* (2006) *supra* note 39 at 146 (“The federal government has established extensive national drug testing guidelines, including supervision of all federally mandated drug testing programs by a physician certified as a medical review officer by the Medical Review Officer Certification Council to protect employees and employers from the consequences of incorrect information. Adolescents, however, are far more likely to have drug testing performed by a physician who does not have medical review officer training.”)

⁴² AAP COMM. ON SUBSTANCE ABUSE AND COUNCIL ON SCHOOL HEALTH, *supra* note 2, at 629.

circumstances when testing is considered medically inappropriate⁴³ and in a manner that departs from professional norms—without regard for the student’s or parents’ wishes or the medical judgment of his pediatrician. A 2006 national survey found that 83% of physicians (pediatrics, family medicine, and adolescent medicine) surveyed disagree with drug testing in public schools.⁴⁴

In addition, such policies are not respectful of the delicate student-parent relationship, where a false positive will result in the mandatory disclosure of all prescription medications even where a parent may be unaware of such medications. For example, a parent may be unaware of birth control medication or medications relating to his/her child’s mental/sexual health.⁴⁵ If a student does not want her use of birth control

⁴³ Levy et al. (2004), *supra* note 39 (“The American Academy of Pediatrics (AAP) [and] the American Medical Association . . . have statements that pertain to drug testing of adolescents [and] recommend drug testing as an adjunct to an evaluation performed by a qualified professional rather than as a screening tool to be applied to an entire population.”)

⁴⁴ Sharon Levy et al., *Drug testing in General Medical Clinics, in School and at Home: Physician Attitudes and Practices*, 38 J. OF ADOLESCENT HEALTH 336-342 (2006).

⁴⁵ There are medical emancipation statutes in California that authorize minors to obtain sensitive medical services without the consent of or disclosure to a parent or guardian. 87 Ops.Atty.Gen.168, Opinion No. 04-112. For example, a minor may consent to medical care related to the prevention or treatment of pregnancy. *Id.* A minor aged 12 or older may obtain treatment of an infectious, contagious, or communicable disease. *Id.* A minor aged 12 or older may consent to and obtain care related to the diagnosis or treatment of drug-related or alcohol-related problems. *Id.* A minor of any age may consent to HIV testing. *Id.* See also Weddle & Kokotailo, *supra* note 5 (“Most states subsequently added laws that allowed

pills relayed to her parents, she is forced to not participate in school-related activities for fear of a random drug test jeopardizing her privacy interests. A policy forum article published in the *American Medical Association Journal of Ethics* found that “[m]ost physicians . . . recognize that within some relationships, parents’ knowledge of substance use or sexual activity can hinder the minor’s treatment and might lead to punishment or abuse.”⁴⁶

Mandatory urine testing of students overrules the judgment of parents who, for a variety of reasons, would want their children to participate in certain school-related activities, but *not* the school’s testing regime with its forced disclosure of sensitive medical information. However, policies such as the one at issue do not allow for parental control over the invasive technique of random student drug testing and displace parental authority relating to the important and serious issue of their child’s health and well-being.

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minors to consent to one or more of the following: alcohol and substance abuse treatment, mental health care, and contraception.”).

⁴⁶ Weddle & Kokotailo, *supra* note 5.

CONCLUSION

For the reasons stated above, *amici* request that the Court find the District's policy unconstitutional.

Respectfully submitted,

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APPENDIX A: DESCRIPTION OF *AMICI*

Amicus Curiae California Teachers Association (“CTA”) is an employee organization that represents 325,000 education employees in this State. CTA exists to protect and promote the well-being of its members; to improve the conditions of teaching and learning; to advance the cause of free, universal, and quality public education; to ensure that the human dignity and civil rights of all children and youth are protected; and to secure a more just, equitable, and democratic society. As a matter of its policy, CTA opposes any drug testing program in the educational workplace.

Amicus Curiae California District of the American Academy of Pediatrics (“AAP-CA”) represents over 5,000 board-certified pediatricians in the state. The mission of the AAP-CA is to attain optimal physical, mental, and social health and well-being for all infants, children, adolescents and young adults living in California. The AAP-CA is wholly committed to the prevention of the use of illicit drugs by adolescents. The AAP-CA agrees with the American Academy of Pediatrics’ published policy that the use of random student drug testing as a component of drug prevention programs is unsupported and requires additional, more rigorous scientific evaluation. The AAP-CA supports policies that encourage all students to pursue extra- and co-curricular activities at school which can build student confidence and bonding to the school, and believes these

activities are particularly important for students who are at-risk for illicit drug use.

Amicus Curiae California Society of Addiction Medicine (“CSAM”) is a specialty society of physicians founded in 1973. Since 1989, CSAM has been a State Chapter of the American Society of Addiction Medicine (ASAM). CSAM’s mission is to advance the treatment of alcoholism and other addictions through education of physicians, physicians-in-training, and other health professionals. Additionally, CSAM promotes research, prevention, and implementation of evidence-based treatment. CSAM opposes random suspicionless drug testing policies because evidence does not support their safety or efficacy in preventing youth addiction, and because such policies detract from proven prevention and treatment strategies for adolescents.

Amicus Curiae National Association of Social Workers (“NASW”) is a professional membership organization comprised of 145,000 social workers, with chapters in every State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and an international chapter in Europe. The NASW, California Chapter (“NASW-CA”) has 11,163 members. Created in 1955 by the merger of seven predecessor social work organizations, the purposes of NASW include improving the quality and effectiveness of social work practice in the United States and developing

and disseminating high standards of social work practice, concomitant with the strengthening and unification of the social work profession as a whole. In furtherance of these purposes, NASW promulgates professional standards and criteria. Additionally, NASW conducts research, prepares studies of interest to the profession, sponsors the NASW press, provides opportunities for continuing education, and enforces the *NASW Code of Ethics*, which NASW members are required to honor.

NASW and its members have a significant interest in policies, such as the one at issue in the present case, that negatively affect children and youth. In NASW's policy statement, *Civil Liberties and Justice*, the Association expressed concern about the unwarranted invasion of privacy that occurs when mandatory drug testing is used as a precondition for the receipt of services for which an individual would otherwise be eligible. Additionally, the Association's policy statement, *Adolescent Health* states, "Schools and communities should provide prevention and early intervention services for all youths in the least intrusive manner possible, using such modalities as student assistance programs, school-based health services, youth mentoring, and peer-facilitated health and life skills education curricula." *Social Work Speaks* 3, 8 (NASW, 8th ed., 2009). The Association believes the negative and chilling effect on student participation in extracurricular activities caused by mandatory pre-participation drug testing requires review and reconsideration.

Amicus Curiae California Public Health Association-North (“CPHA-N”) is an association of public health experts and community advocates founded in 1915. CPHA-N provides leadership in public health in California by studying and becoming familiar with public health needs and problems, and by initiating and supporting action to meet needs or remedy problems including education and legislation. CPHA-N works to provide an opportunity for persons actively engaged or interested in the broad field of public health to share knowledge and experiences in order to achieve the primary goal of protecting and promoting public, environmental and personal health. CPHA-N also functions actively as an affiliate of the American Public Health Association by supporting and contributing to the work of the national organization. CPHA-N believes that drug use by teenagers is a serious public health issue. However, the use of random student drug testing is not an effective means of preventing drug use among students and such testing will divert limited resources from more proven methods of controlling substance abuse. Therefore, CPHA-N is opposed to the random student drug testing policy employed by the Shasta Union High School District.

Amicus Curiae American Academy of Addiction Psychiatry (“AAAP”) is an international professional membership organization founded in 1985 with approximately 1,000 members. Membership consists

of psychiatrists working with addiction, faculty at various academic institutions, medical students, residents and fellows, and related health professionals who contribute to the field of addiction psychiatry. AAAP's mission emphasizes the importance of evidence-based practices in prevention and treatment of substance use disorders.

While drug testing by trained professionals is an effective method for monitoring alcohol and other drug use during treatment for substance use disorders, it does not determine whether an individual has a problem, nor its severity. As such, AAAP does not support random drug testing of adolescents as there is insufficient research demonstrating its safety and efficacy as either a prevention or screening method. Interventions with our children should have a favorable harms profile. At present, there is clearly insufficient funding and training to support equitable and effective testing, without which, students will be exposed to the harms of false positive results, false negative results, and misinterpretation of results. AAAP supports the American Academy of Pediatrics position stating that *"Physicians should not support drug testing in schools ... [because] it has not yet been established that drug testing does not cause harm."* The association warns that students subjected to random testing are more likely to disengage in school activities, and argues that federal funding earmarked for the enactment of drug testing programs *"may be more effectively spent on drug prevention programs or well-established counseling programs."*

Amicus Curiae Center for Gender and Justice (“CGJ”) seeks to develop gender-responsive policies and practices for women and girls who are in the criminal or juvenile justice system. CGJ is committed to research and to the implementation of policies and programs that will encourage positive outcomes for this underserved population. CGJ opposes random, suspicionless drug testing of pupils in public schools because of the deleterious impact such programs can have on adolescent girls at risk of drug use and criminality.

EXHIBIT A



POLICY STATEMENT

Testing for Drugs of Abuse in Children and Adolescents: Addendum—Testing in Schools and at Home

Organizational Principles to Guide and Define the Child Health Care System and/or Improve the Health of All Children

Committee on Substance Abuse and Council on School Health

ABSTRACT

The American Academy of Pediatrics continues to believe that adolescents should not be drug tested without their knowledge and consent. Recent US Supreme Court decisions and market forces have resulted in recommendations for drug testing of adolescents at school and products for parents to use to test adolescents at home. The American Academy of Pediatrics has strong reservations about testing adolescents at school or at home and believes that more research is needed on both safety and efficacy before school-based testing programs are implemented. The American Academy of Pediatrics also believes that more adolescent-specific substance abuse treatment resources are needed to ensure that testing leads to early rehabilitation rather than to punitive measures only.

BACKGROUND

In 1996, the American Academy of Pediatrics (AAP) published (and reaffirmed in 2006) a policy statement titled "Testing for Drugs of Abuse in Children and Adolescents," which opposed involuntary testing of adolescents for drugs of abuse.¹ The policy statement also stated that laboratory testing for drugs under any circumstances is improper unless the patient and clinician can be assured that the test procedure is valid and reliable and patient confidentiality is ensured. This policy statement was published shortly after a 1995 US Supreme Court ruling (*Vernonia v Acton* [515 US 646]) held that random drug testing of high school athletes is constitutional. Since that time, national interest in school-based drug testing has increased. In June 2002, the US Supreme Court, in a 5-to-4 decision, ruled that public schools have the authority to perform random drug tests on all middle and high school students participating in extracurricular activities (*Board of Education v Earls* [536 US 822, 122 S Ct 2559, 153 L Ed 2d 735 {2002}]). Writing for the majority, Justice Clarence Thomas wrote, "Testing students who participate in extracurricular activities is a reasonably effective means of addressing the School District's legitimate concerns in preventing, deterring and detecting drug use." Shortly after this Supreme Court ruling, the President's Office of National Drug Control Policy published a guidebook designed to encourage schools to incorporate drug-testing policies for all students.²

Interest in drug testing of adolescents reaches beyond public schools. During recent years, a substantial number of companies have begun to market home

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Key Words

adolescence, substance-related disorders, substance abuse detection

Abbreviation

AAP—American Academy of Pediatrics
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drug-testing products directly to parents.³ Products that identify alcohol and drugs in urine, saliva, and hair are now available at retail outlets and via the Internet. Pediatricians may be asked about home drug testing by parents of their adolescent patients. Pediatricians involved in school health may be asked to assist in implementing school-based drug-testing programs. For these reasons, the Committee on Substance Abuse has conducted a review of the available science on drug testing of adolescents and is issuing this addendum to the 1996 policy statement. Although much has been written on the pros and cons of testing adolescents for drugs, relatively little has been published in peer-review scientific journals.

BENEFITS AND RISKS OF DRUG TESTING IN SCHOOLS AND AT HOME

School- and home-based drug testing poses a number of potential benefits and risks. On the positive side, both procedures would likely increase the number of adolescents who are screened for use of illicit drugs. Population-based screening also offers the potential for providing early intervention and treatment services to more adolescents. The Office of National Drug Control Policy guidebook states: "Results of a positive drug test should not be used merely to punish a student. Drug and alcohol use can lead to addiction, and punishment alone may not necessarily halt this progression. However, the road to addiction can be blocked by timely intervention and appropriate treatment."² Proponents of drug testing also claim that the existence of a school- or home-based drug-testing program will help adolescents refuse drugs and provide legitimate reasons to resist peer pressure to use drugs, although these claims are not yet proven. On the negative side, drug testing poses substantial risks—in particular, the risk of harming the parent-child and school-child relationships by creating an environment of resentment, distrust, and suspicion.⁴ In addition to the effects on the individual adolescent, the safety and efficacy of random drug testing requires additional scientific evaluation. Broad implementation of random drug testing as a component of a comprehensive drug-use prevention program should await the results of these studies.

Currently, there is little evidence of the effectiveness of school-based drug testing in the scientific literature. Goldberg et al⁵ compared 2 schools, one of which implemented a mandatory drug-testing program for student athletes and the other of which did not. They found at follow-up that the use of illicit drugs, but not alcohol, was significantly lower among athletes who were drug tested. However, they also found that athletes who were drug tested experienced an increase in known risk factors for drug use, including an increase in normative views of use, belief in lower risk of use, and poorer attitudes toward the school.

A larger observational study by Yamaguchi et al,⁶ which analyzed data from the national Monitoring the Future study, found no association between school-based drug testing and students' reports of drug use. Among the nationally representative group of more than 300 schools, drug testing was most commonly conducted "for cause" (ie, suspicion; 14% of schools) and was far less commonly required for student athletes (4.9% of schools) or students participating in other extracurricular activities (2.3% of schools). Regardless of the reason it was performed, drug testing was not significantly associated with reduction in the use of marijuana or any other illicit drug among students in any grade studied (ie, 8th, 10th, or 12th grade). However, 1 observational study is not sufficient to establish causation or lack of causation. In addition, no detail was provided regarding the extent of drug testing in the study schools, and at some schools, it may have been minimal. Further scientific investigation is warranted.

Laboratory testing for drugs of abuse is a technically complex procedure. To ensure the validity of the specimen, urination must be directly observed, which is a potentially embarrassing procedure for all involved, or the collector must use a fairly complex and expensive federally approved protocol, which involves documentation of a continuous chain of custody in handling and includes temperature testing and controls for adulteration and dilution.⁷ Few schools will have sufficient staff with proper training to implement these costly procedures, and a recent survey of pediatricians, adolescent medicine specialists, and family physicians found that few physicians will be able to help, because less than 25% are familiar with proper procedures for collection, validation, and interpretation of urine drug tests.⁸ Similarly, most parents cannot implement the federal collection protocol and, for ethical and developmental reasons, should not directly observe their teenaged children urinating. Although drug testing of hair and saliva is available, validity has not been firmly established. Questions remain regarding how passive exposure to drugs as well as differences among races and sexes can affect hair testing.⁹⁻¹² In addition, hair testing is more likely to be useful in detecting historical drug use rather than current use.^{9,13} Oral fluid testing (ie, saliva or oral swab), by contrast, gives a more accurate picture of current use.¹⁴ However, accuracy of oral fluid testing varies across drugs of abuse. Oral fluid testing performs well in detecting the use of opiates and methamphetamine, but it performs poorly in detecting the use of benzodiazepines and cannabinoids.¹⁵⁻¹⁷

Interpretation of drug tests can also be complex. School staff members and/or parents need to be able to assess possible false-positive results, especially when screening test results are positive for amphetamines or opioids. Over-the-counter cold medications containing pseudoephedrine can cause false-positive screening re-

sults for amphetamine, although follow-up testing with gas chromatography and mass spectrometry is highly specific and can reliably confirm the presence of amphetamine.¹⁷ Ingestion of foods that contain poppy seeds makes interpretation of drug testing more difficult, because it can cause screening and gas chromatography and mass spectrometry results to be falsely positive for morphine and/or codeine.¹⁸

It is fairly easy to defeat drug tests, and most drug-involved youth are all too familiar with ways to do so. Even properly collected specimens must have checks for validity (eg, urine specific gravity and creatinine), because the easiest way to defeat a drug testing is by simple dilution.¹⁹ Even when properly collected and validated, urine drug tests yield very limited information. With the exception of marijuana, the window of detection for most drugs of abuse is 72 hours or less.¹⁹ Therefore, negative test results indicate only that the adolescent did not use a specific drug during the past several days. Even adolescents with serious drug problems may have negative test results on most occasions.²⁰ Standard drug-testing panels also do not detect many of the drugs most frequently abused by adolescents, such as alcohol, ecstasy (3,4-methylenedioxymethamphetamine [MDMA]), and inhalants, and information on the limitations of screening tests and ways to defeat them is widely available to adolescents via the Internet.³ Widespread implementation of drug testing may, therefore, inadvertently encourage more students to abuse alcohol, which is associated with more adolescent deaths than any illicit drug but is not included in many standard testing panels. Mandatory drug testing may also motivate some drug-involved adolescents to change from using drugs with relatively less associated morbidity and mortality, such as marijuana, to those that pose greater danger (eg, inhalants) but are not detected by screening tests. No studies have yet been conducted on this important issue. Safety of randomly testing adolescents for the use of drugs should be scientifically established before it is widely implemented.

Drug testing may also be perceived by adolescents as an unwarranted invasion of privacy. A policy statement is being developed by the Council on School Health on the role of schools in combating substance abuse. It will discuss the potential risks of school-based drug testing and alternative approaches to school-based prevention of drug abuse. Few physicians support school-based testing of adolescents for drugs; a national survey of physicians (pediatrics, family medicine, and adolescent medicine) found that 83% disagreed with drug testing in public schools.²⁰

A key issue at the heart of the drug-testing dilemma is the lack of developmentally appropriate adolescent substance abuse and mental health treatment.²¹ Adequate resources for assessment and treatment must be available to students who have positive test results. However,

many communities lack substance abuse treatment services dedicated to adolescents, and adult substance abuse treatment programs may be inappropriate and ineffective for adolescents.²¹ Federal support for school-based drug testing should include an allocation of resources that will facilitate greater access to adolescent substance abuse treatment.

ADDITIONAL CONCLUSIONS AND RECOMMENDATIONS

1. The AAP supports rigorous scientific study of both the safety and efficacy of school- and home-based drug testing of adolescents.
2. The AAP recommends that school- and home-based drug testing not be implemented before its safety and efficacy are established and adequate substance abuse assessment and treatment services are available.
3. The AAP encourages parents who are concerned that their child may be using drugs or alcohol to consult their child's primary care physician or other health professional rather than rely on school-based drug screening or use home drug-testing products.
4. The AAP recommends that health care professionals who obtain drug tests or assist others in interpreting the results of drug tests be knowledgeable about the relevant technical aspects and limitations of the procedures.

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EXHIBIT B



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April

June 27, 2002
FOR IMMEDIATE RELEASE

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Social Workers Disagree with Supreme Court Decision to Test Students for Drug Use

WASHINGTON—The Supreme Court's decision today to allow drug testing in schools sets a precedent, no matter how well intentioned, that social workers believe is both invasive and counterproductive to combating drug and alcohol abuse in schools.

Thousands of social workers nationwide devote their lives to understanding, preventing, and treating substance abuse. School social workers focus primarily on helping students succeed; creating a safe and supportive learning environment for students to get the education they deserve and need. Policies such as this one deny participation in a broad range of extra-curricular activities for those students who refuse to submit to "suspicionless" drug testing—regardless of whether that decision was based on principle or modesty. They are, in essence, guilty until proven innocent. Empirical evidence, however, continues to show that students who participate in extra-curricular activities are least likely to be involved with alcohol and drugs, or any other "risky behaviors."

"We are disappointed by the Supreme Court's ruling today. Social workers, concerned with a child's well-being, question whether this policy will do more harm than good," says Elizabeth J. Clark, PhD, ACSW, MPH, Executive Director of the National Association of Social Workers, "What programs are in place for prevention, and what happens to the child if a test comes back positive—what steps will be taken to keep this child involved in school and to treat the problem, as well as prevent it from happening again?"

"What is most effective in keeping kids away from drugs and alcohol are substance abuse prevention programs based on scientific research," adds Clark.

Using drug testing as a prevention program not only deters kids least likely to use drugs and alcohol, but it may actually close the only avenue of support for a student seeking to turn away from drug involvement. Drug testing, in the manner allowed today by the Supreme Court, creates more of a challenge to the recovery from substance abuse and breaks down the walls of trust between student and school—a bond which time and again proves to decrease the likelihood of students participating in risky behaviors.

Clark adds, "Drug testing in this manner disregards the importance of prevention and treatment which social workers view as fundamental to helping kids make smart decisions and succeed in life."

Media Outlets: For more information or to interview a school social worker on drug testing in schools or school social work please contact Lahne Mattas-Curry at 202-336-8228 or lc Curry@naswdc.org.

The National Association of Social Workers (NASW), in Washington, DC, is the largest membership organization of professional social workers with 153,000 members. It promotes, develops and protects the practice of social work and social workers. NASW also seeks to enhance the well being of individuals, families and communities through its work and through its advocacy.

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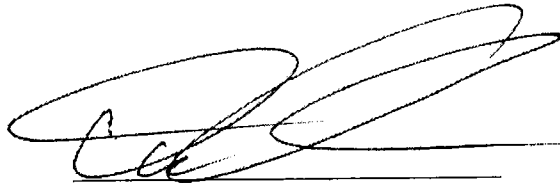
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I, DANIEL N. ABRAHAMSON, declare as follows:

I am the attorney for *Amici Curiae* in this matter. On May 20, 2010, I performed a word count of the above-enclosed brief, including footnotes and Appendix A, which revealed a total of 7,663 words.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of May, 2010 in Berkeley, California.

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DANIEL N. ABRAHAMSON

DECLARATION OF SERVICE

I am a resident of the State of California and over the age of eighteen years. My business address is Drug Policy Alliance, 918 Parker Street, Building A21, Berkeley, CA 94710. On May 20, 2010, I served or caused to be served the within document(s):

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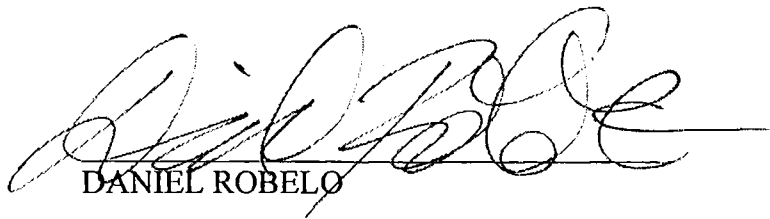
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