July 14, 2008

Bev Stupek, President
Board of Trustees
Shasta Union High School District
2200 Eureka Way, Suite B
Redding CA 96001

Dear President Stupek:

I am writing on behalf of the American Civil Liberties Union of Northern California. It has come to our attention that the Shasta Union High School District intends to require all students who participate in a wide variety of school-related activities to be subject to random urine testing for drugs, even absent any indication of wrongdoing. Because we believe that this new policy would violate the privacy clause of the California Constitution, as well as other constitutional provisions, we are asking that the District rescind it. We are also asking that the District provide us with documents relating to the policy under the California Public Records Act.

As we understand it, the District Board of Trustees has decided to "establish a nonvoluntary, random urinalysis drug testing program for all students participating in district representational activities."[1] Under this program, "[s]tudents participating in representation activities may be tested for the presence of illegal drugs during each season and shall be subject to random testing during the entire season."[2] In order for a student to participate in these activities, his or her parent must provide written consent for testing. Positive drug tests can result in suspension from activities and other sanctions. Representational Activities include "[a]ll activities during which the Participant represents the school or the district and which do not occur during the regular course of the school day (including activities which occur during summer vacation)." This would apparently include activities related to classes such as journalism, orchestra, and choir, so that students whose parents refused to agree to have their children subject to random, suspicionless drug testing would be unable to participate fully in these classes. All extracurricular activities would also apparently be included.

We see from your February 8, 2008 letter to parents that "the Board of Trustees based this decision to implement a more widespread drug testing policy on the United States Supreme Court case *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*," 536 U.S. 822 (2002)." This statement is troubling for two reasons.

First, your proposed program is broader even than the one upheld in *Earls*. The school in that case tested only students who were participating in competitive extracurricular activities;

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[1] District Policy, No. 5131.61.
[2] Administrative Regulation 5131.16.

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the SUHSD plan will also apply to students who wish to participate fully in classes with a so-called representational component. Thus, although a bare majority of the justices *Earls* held that the Fourth Amendment to the federal Constitution permits drug testing of students involved in competitive extracurricular activities, the opinion does not authorize the testing of students as a requirement of participating in co-curricular activities.

More importantly, the privacy rights of the people of our state are not limited to those protected by the federal constitution. More than 30 years ago, the people of California amended our state constitution so that it expressly protects our right to privacy, regardless of how narrowly the U.S. Supreme Court may read the federal Bill of Rights.[3] This state right to privacy extends to all Californians, including teenagers and other students.[4]

The California Supreme Court has made clear that a "drug testing program unquestionably implicates privacy interests protected by the State Constitution."[5] This type of program is lawful only if the government's need to enact it outweighs those privacy interests.[6] And these interests are substantial – aside from the stark indignity of having to provide a urine sample, the analysis of that sample may reveal sensitive information about prescription drug use. Furthermore, the program requires a student's parent to provide additional medical information to school officials in the event of a positive test. On the other side of the balance, the District's primary reason for conducting this program seems to be to monitor students whose behavior does not in any way suggest drug use, who have not caused any problems at school, and whom school officials have absolutely no reason to believe are doing anything wrong. This is simply not a sufficient justification to institute a random, suspicionless drug-testing program.

For these reasons, we hope that the Board will reconsider its decision to conduct suspicionless drug tests of students, particularly where a student's parents object to the testing. If the Board believes that some sort of drug testing is necessary, we would hope that testing would be limited to cases where there is some reason to believe that an individual student is involved with drugs.

We are also requesting following the following records relating to the new drug-testing program under the California Public Records Act: [7]

- records that relate to the policy, including documents that explain why the Board has decided to implement this new policy and any studies or information that the show a need for the policy;
- records that show which classes or activities will be subject to or affected by the new policy;
- records that show how the policy will be implemented, how the testing will be conducted, and how the privacy of students and their personal information will be protected;

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[3] Cal. Const. Art. I § 1; *see also id.* Art. I § 13.
[4] *In re William G.*, 40 Cal.3d 550, 563 (1985).
[5] *Loder v. City of Glendale*, 14 Cal.4th 846, 896 (1997) (opn. of George, C.J.).
[6] *Id.* at 897.
[7] California Public Records Act (Gov't. Code § 6250 *et seq.*); *see* Cal. Const. Art. I § 3(b).

- records that show the expected cost of the expanded drug testing and how it will be funded, including any applications for grants or other funding.

I am asking that you respond to this request within the law's ten-day limit, either by providing all the requested information or by providing a written response setting forth the legal authority on which you rely in failing to disclose each document.[8] This request applies to all documents in the District's possession, including documents that were created by another government agency or a private party.[9] If specific portions of any documents are exempt from disclosure, please provide the non-exempt portions.[10]

If I can provide any clarification that will help identify responsive documents or focus this request,[11] please contact me by mail or at (415) 293-6373 or mrisher@aclunc.org.

Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that would be normally applicable to a Public Records Act request.[12] However, should you be unable to do so, the ACLU will reimburse your agency for the "direct costs" of copying these records (if your agency elects to charge for copying) plus postage. If you anticipate that these costs will exceed $50, please contact me before making any copies. Otherwise, please copy and send them as soon as possible, and we will promptly pay the required costs.

Thank you for your time and attention to this matter.

Very truly yours,

Michael T. Risher
Staff Attorney

cc: Shasta-Tehama-Trinity Chapter of ACLU-NC

[8] Gov't. Code § 6255.
[9] *See Poway Unified School Dist. v. Superior Court*, 62 Cal.App.4th 1496 (1998)
[10] Gov't. Code § 6253 (a).
[11] Gov't. Code § 6253.1.
[12] *See North County Parents Organization v. Department of Education*, 23 Cal.App.4th 144 (1994).