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10 Attorneys for Plaintiffs

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF SHASTA  
14 UNLIMITED JURISDICTION

15 \_\_\_\_\_ )  
16 BENJAMIN BROWN, a minor, by and ) Case No. 164933  
through his parent and guardian *ad litem*, )  
17 DEBORAH BROWN, *et al.*, ) SETTLEMENT AGREEMENT AND  
 ) STIPULATION FOR ENTRY OF  
18 Plaintiffs, ) JUDGMENT  
 )  
19 vs. )  
 )  
20 SHASTA UNION HIGH SCHOOL )  
21 DISTRICT, *et al.*, )  
 )  
22 Defendants. )  
23 )  
24 \_\_\_\_\_ )

25 This Settlement Agreement and Stipulation for Entry of Judgment is entered into by  
26 and between (1) BENJAMIN BROWN, (2) BRITTANY DALTON, and (3) JESSE  
27 SIMONIS, all of whom formerly were minors, but who have now reached the age of

1 majority; and (4) DEBORAH BROWN; (5) KENNETH BROWN; and (6) JOHN  
2 DALTON, on the one hand, and (1) the DISTRICT (as defined below); (2) the BOARD (as  
3 defined below); (3) JIM CLONEY, in his official capacity as Superintendent of Shasta  
4 Union High School District; and (4) BEV STUPEK, (5) KRISTEN SCHREDER,  
5 (6) JAMES SCHWERDT, (7) CHARLES HAASE, and (8) CONSTANCE PEPPLER, in  
6 their respective official capacities as Trustees of the DISTRICT (as defined below), on the  
7 other hand.

8  
9 **RECITALS**

10 WHEREAS, all PLAINTIFFS (as defined below) have alleged that the expanded  
11 random suspicionless drug testing policy first implemented in the fall of 2008 throughout  
12 the DISTRICT (as defined below) violated their respective rights under the California  
13 Constitution and commenced this legal action in December 2008;

14 WHEREAS, at the time of the commencement of the Action and/or the filing of the  
15 First Amended Complaint herein on April 20, 2009, each of BENJAMIN BROWN,  
16 BRITTANY DALTON, and JESSE SIMONIS was a minor for whom a guardian *ad litem*  
17 was appointed by Order of this Court;

18 WHEREAS, each of BENJAMIN BROWN, BRITTANY DALTON, and JESSE  
19 SIMONIS subsequently has attained the age of majority and may appear and settle this  
20 action in his or her own name and right, their respective guardian *ad litem* appointments  
21 having been vacated and dissolved by the Court;

22 WHEREAS, the Honorable Monica Marlow, Judge of the Superior Court, County of  
23 Shasta issued a final ruling on the motion for preliminary injunction on May 6, 2009 and  
24 issued the preliminary injunction order on May 7, 2009, a true and correct copy of which is  
25 attached hereto as Exhibit A;

26 WHEREAS, DEFENDANTS (as defined below) timely filed notice of appeal of the  
27 trial court's preliminary injunction order on May 27, 2009;

28



1 d. "JIM CLONEY" shall mean Defendant Jim Cloney in his official capacity as  
2 Superintendent of SHASTA UNION HIGH SCHOOL DISTRICT;

3 e. "BEV STUPEK" shall mean Defendant Bev Stupek in her official capacity  
4 as Trustee of the DISTRICT;

5 f. "KRISTEN SCHREDER" shall mean Defendant Kristen Schreder in her  
6 official capacity as Trustee of the DISTRICT;

7 g. "JAMES SCHWERDT" shall mean Defendant James Schwerdt in his  
8 official capacity as Trustee of the DISTRICT;

9 h. "CHARLES HAASE" shall mean Charles Haase in his official capacity as  
10 Trustee of the DISTRICT.

11 i. "CONSTANCE PEPPE" shall mean Defendant Constance Pepple in her  
12 official capacity as Trustee of the DISTRICT;

13 j. "DEFENDANTS" means the BOARD; the DISTRICT; JIM CLONEY, in  
14 his official capacity as Superintendent of the DISTRICT; and BEV STUPEK, KRISTEN  
15 SCHREDER, CHARLES HAASE, JAMES SCHWERDT and CONSTANCE PEPPE, in  
16 their respective official capacities as members of the BOARD and Trustees of the  
17 DISTRICT;

18 k. "BENJAMIN BROWN" shall mean Plaintiff Benjamin Brown;

19 l. "DEBORAH BROWN" shall mean Plaintiff Deborah Brown in her  
20 individual capacity;

21 m. "KENNETH BROWN" shall mean Plaintiff Kenneth Brown;

22 n. "BRITTANY DALTON" shall mean Plaintiff BRITTANY DALTON;

23 o. "JOHN DALTON" shall mean Plaintiff John Dalton in his individual  
24 capacity;

25 p. "JESSE SIMONIS" shall mean Plaintiff Jesse Simonis;

26 q. "PLAINTIFFS" means BENJAMIN BROWN, BRITTANY DALTON,  
27 JESSE SIMONIS, DEBORAH BROWN, KENNETH BROWN, and JOHN DALTON.

28

1           r.       “PARTIES” means all PLAINTIFFS and all DEFENDANTS, each of which  
2 is a “PARTY.”

3           s.       “CLAIMS” shall mean all claims, demands, obligations, damages, actions,  
4 and causes of action of any kind whatever, for any relief whatever, on any basis whatever,  
5 whether known or not, whether asserted or not, whether fixed or contingent; and

6           t.       “EXPANDED DRUG TESTING POLICY” shall mean the random,  
7 suspicionless drug testing policy incorporated into the revised Competitive  
8 Representational Activities Code implemented at the beginning of the 2008-2009 school  
9 year for the DISTRICT, a copy of which is attached hereto as Exhibit C.

10

11           2.       Expanded Drug Testing Policy

12           DEFENDANTS agree that within thirty (30) days of the date of the formation of  
13 this STIPULATION, DEFENDANTS will officially repeal the EXPANDED DRUG  
14 TESTING POLICY and will not thereafter apply the EXPANDED DRUG TESTING  
15 POLICY, or any drug testing policy that is substantially similar to the EXPANDED DRUG  
16 TESTING POLICY, to any student in the DISTRICT during the term of this  
17 STIPULATION (as set forth in Paragraph 8 below).

18           This STIPULATION and the repeal of the EXPANDED DRUG TESTING  
19 POLICY do not apply to the DISTRICT’s drug testing of DISTRICT students based on  
20 reasonable suspicion of drug use and/or drug possession on the part of the student being  
21 tested, nor does this STIPULATION apply to the prior Sports Related Drug Testing  
22 Program already in place before the EXPANDED DRUG TESTING POLICY was adopted.

23

24           3.       Future Drug Testing Policy

25           DEFENDANTS agree that any future suspicionless drug testing policy or practice  
26 implemented by the DISTRICT during the term of this STIPULATION shall not authorize  
27 any drug testing of any DISTRICT students other than the following:

28

1           A.     Students involved in interscholastic athletics during the season in which the  
2           students are so involved;

3           B.     Students who have consented to such testing, with “consent” being strictly  
4           defined to mean all of the following: (1) that both the student and one of his or her parents  
5           or legal guardians have given written, express, voluntary, and INFORMED CONSENT (as  
6           defined below) to such drug testing; (2) that there is a process available under any such  
7           drug testing policy or practice by which either student or parents may withdraw such  
8           INFORMED CONSENT once it is given; and (3) that the potential consequences under any  
9           such drug testing policy or practice of a positive student drug test shall not include  
10          suspension of the student from any curricular, co-curricular, or extracurricular activity.  
11

12           4.     Informed Consent

13           Under this STIPULATION, consent to suspicionless drug testing must be express,  
14           truly informed, and affirmative. “INFORMED CONSENT” means that one of the parents,  
15           or, in the case of divorced partners or a guardianship, the custodial parent or guardian for  
16           the affected student, and also the affected student himself or herself must be provided  
17           complete information, in writing, concerning any drug testing program. The aforesaid  
18           informational writing must include a disclosure of all substances that will be tested, a  
19           complete description of the method of testing (including if the student will miss any class  
20           time to be tested), all possible consequences of a positive test, and the protections in place  
21           to protect student privacy. The aforesaid informational writing also must include a  
22           description of the rights the student and parents are waiving if they consent to the  
23           suspicionless drug testing program and must clearly and conspicuously inform both parents  
24           and student that students who do not opt-in to the DISTRICT’S voluntary drug testing  
25           program will not suffer any adverse consequences as a result and that the consent forms  
26           will be kept confidential. The affected student himself or herself and one of the parents, or,  
27           in the case of divorced partners or a guardianship, the custodial parent or guardian for the  
28

1 affected student, must both affirmatively choose to opt-in in writing to any drug testing  
2 program, with the presumption being that INFORMED CONSENT has not been given in  
3 the absence of the definitive, written proof thereof.

4  
5 5. Withdrawal of Consent to Drug Testing

6 Any voluntary suspicionless drug testing program available to students not  
7 participating in interscholastic athletics must have a mechanism by which either the student  
8 or the parents can withdraw his, her, or their consent to suspicionless drug testing without  
9 penalty of any kind.

10  
11 6. Consequences of a Positive Test

12 DEFENDANTS agree that if a student who is not currently participating in  
13 interscholastic athletics has voluntarily consented to suspicionless drug testing, and such  
14 student tests positive for alcohol, tobacco, steroids, or illegal drugs, the punishment or  
15 consequence of such a positive test result will not include any adverse academic  
16 consequence or suspension of the student from any curricular, co-curricular, or extra-  
17 curricular activities.

18  
19 7. Defendants' Payment of Plaintiffs' Attorneys' Fees and Costs (C.C.P.  
20 § 1021.5)

21 By check made payable to the ACLU Foundation of Northern California and  
22 delivered to the American Civil Liberties Union Foundation of Northern California,  
23 39 Drumm Street, San Francisco California 94111 within 30-days after the full execution of  
24 this STIPULATION, DEFENDANTS shall pay fifty thousand dollars (\$50,000) in full  
25 satisfaction of any and all attorneys' fees, costs, and damages in the MATTERS.

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8. Term

The term of this STIPULATION shall be 3 ½ years from the date the STIPULATION becomes fully executed.

9. Entry of Judgment

This Stipulation shall not be filed with the Court except as provided in this Paragraph 9.

The PARTIES agree that if DEFENDANTS commit or are alleged to have committed a material breach of the STIPULATION in the future, PLAINTIFFS, upon giving five (5) days' notice to DEFENDANTS, may apply *ex parte* to seek entry of Judgment in this action substantially in the form attached hereto as Exhibit D. In connection with and in support of any such *ex parte* application, PLAINTIFFS shall be authorized to file this Stipulation with the Court. Any such *ex parte* application for entry of Judgment need be supported further only by competent testimonial evidence in the form of a declaration or declarations attesting that DEFENDANTS have committed a material breach of the terms of this STIPULATION. At or before the *ex parte* hearing, Defendants shall be entitled to adduce evidence to refute PLAINTIFFS' contention that DEFENDANTS have committed a material breach of this STIPULATION. If after hearing and weighing the evidence, the trial court finds by a preponderance of the evidence that a DEFENDANTS have committed a material breach of this STIPULATION, PLAINTIFFS shall be entitled to entry of Judgment pursuant to this STIPULATION.

10. Dismissal

A Request for Dismissal, with prejudice, shall be filed within ten (10) days of the receipt of the \$50,000 payment made pursuant to Paragraph 7 of this STIPULATION, provided the Shasta County Superior Court shall retain jurisdiction to enforce the



1 STIPULATION, including but not limited to vacating said dismissal and entering Judgment  
2 pursuant to the STIPULATION in accordance with Code of Civil Procedure section 664.6.

3

4 11. Mutual Releases

5 PLAINTIFFS, and each of them, hereby release and fully discharge each of the  
6 DISTRICT, the BOARD, JIM CLONEY, BEV STUPEK, KRISTEN SCHREDER, JAMES  
7 SCHWERDT, CHARLES HAASE, and CONSTANCE PEPPLER of and from any and all  
8 CLAIMS whatsoever arising from, or connected with, the MATTERS, including, but not  
9 limited to, the allegations in Shasta County Superior Court Case No. 164933.

10 DEFENDANTS, and each of them, hereby release and fully discharge each of  
11 BENJAMIN BROWN, DEBORAH BROWN, KENNETH BROWN, BRITTANY  
12 DALTON, JOHN DALTON, JESSE SIMONIS, and Robert Simonis (JESSE SIMONIS'  
13 former guardian *ad litem*) of and from any and all CLAIMS whatsoever arising from, or  
14 connected with, the MATTERS or any other claim of any kind that any of DEFENDANTS  
15 has had and/or presently has against each, any, or all of PLAINTIFFS.

16

17 12. Civil Code Section 1542 Waiver

18 Each PARTY acknowledges that he, she, or it may not now know fully the number  
19 or magnitude of the claims regarding the MATTERS such PARTY may have against each of  
20 the PARTIES such PARTY is releasing herein and thus may suffer some further loss or  
21 damages, which are unknown or unanticipated at this time. Each PARTY has taken these  
22 risks and possibilities into account and accepts that, nevertheless, this STIPULATION  
23 covers all claims regarding the MATTERS which, although unknown at the time of the  
24 execution of this STIPULATION, may be discovered later. Each PARTY further  
25 understands and assumes these risks and expressly waives the provisions of Civil Code  
26 section 1542, which states:

27 **A general release does not extend to claims which the creditor**  
28 **does not know or suspect to exist in his or her favor at the time of**

1           **executing the release, which if known by him or her must have**  
2           **materially affected his or her settlement with the debtor.**

3           13.     All promises and undertakings in this STIPULATION are mutual and  
4     provide consideration for each other.

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6           14.     Any breach of this STIPULATION by any PARTY will entitle the  
7     non-breaching PARTY or PARTIES to all available legal and equitable remedies.

8           15.     Each PARTY stipulates that if the facts, with respect to which this  
9     STIPULATION is executed, should be found hereafter to be different than now believed,  
10    the STIPULATION shall remain effective nevertheless; each PARTY expressly accepts and  
11    assumes the risk of such possible difference in facts.

12  
13          16.     The waiver by any PARTY of any breach of any term of this  
14     STIPULATION shall not be construed as a waiver of any subsequent breach. The text of  
15     this STIPULATION is the product of negotiation among all PARTIES and is not to be  
16     construed as having been prepared by PLAINTIFFS, DEFENDANTS, any PARTY, or any  
17     group of PARTIES.

18  
19          17.     The laws of the State of California shall govern the interpretation of this  
20     STIPULATION. The language and terms of this STIPULATION are to be understood in  
21     their ordinary sense except where they are defined herein.

22  
23          18.     The undersigned PARTIES acknowledge that they have been represented by  
24     their respective counsel in the negotiation, preparation, and review of this STIPULATION,  
25     that they have read this STIPULATION, that they are fully aware of its contents and of its  
26     legal effect, that the preceding paragraphs recite the sole consideration for this  
27     STIPULATION, that all agreements and understanding between the PARTIES are

1 embodied and expressed herein, and that each PARTY enters into this STIPULATION  
2 freely, without coercion based upon the PARTY's own judgment and not in reliance upon  
3 any representation or promise made by the other PARTY than those contained herein.  
4

5         19. This STIPULATION constitutes the entire agreement between the PARTIES  
6 and supersedes any and all other agreements, understandings, negotiations, or discussions,  
7 either oral or in writing, express or implied, between the PARTIES to this STIPULATION.  
8 The PARTIES to this STIPULATION each acknowledge that no representations,  
9 inducements, promises, agreements, or warranties, oral or otherwise, have been made by  
10 them or anyone acting on their behalf which are not embodied in this STIPULATION.  
11

12         20. This STIPULATION shall become legally effective when executed by all  
13 PARTIES.  
14

15         21. The PARTIES agree to execute all documents and take all further actions  
16 reasonably necessary to accomplish the provisions of the STIPULATION.

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1 Dated: 6/23, 2011.

SHASTA UNION HIGH SCHOOL DISTRICT

By [Signature]  
Its Superintendent

5 Dated: 6/23, 2011.

SHASTA UNION SCHOOL DISTRICT BOARD OF TRUSTEES

By [Signature]  
Its Board President

9 Dated: 6/23, 2011.

JIM CLONEY  
[Signature]

12 Dated: 6/23, 2011.

BEV STUPEK  
[Signature]

15 Dated: 6/23, 2011.

KRISTEN SCHREDER  
[Signature]

17 Dated: 6/23, 2011.

JAMES SCHWERDT  
[Signature]

19 Dated: 6/23, 2011.

CHARLES HAASE  
[Signature]

22 Dated: 6/23, 2011.

CONSTANCE PEPPE  
[Signature]

24 APPROVED AS TO FORM:

25 HALKIDES, MORGAN & KELLEY

27 By [Signature]

28 Attorneys for Defendants

# EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SHASTA  
UNLIMITED JURISDICTION

**FILED**  
MAY - 7 2009 *KS*

CLERK OF THE SUPERIOR COURT  
BY: K. BESANA, DEPUTY CLERK

BENJAMIN BROWN, a minor, by and  
through his parent and guardian *ad litem*,  
DEBORAH BROWN, *et al.*,

Plaintiffs,

vs.

SHASTA UNION HIGH SCHOOL  
DISTRICT, *et al.*,

Defendants.

Case No. 164933

PROPOSED *MM*  
PRELIMINARY INJUNCTION

Date: May 4, 2009  
Time: 8:30 a.m.  
Courtroom: 4  
Judge: Monica Marlow

The motion of plaintiffs Benjamin Brown et al., for a preliminary injunction was heard at the above date and time. Appearing as attorneys were: Thomas V. Loran III, Marley Degner, and Michael T. Risher for the plaintiffs, and John Kelley for the defendants. The Court has considered the papers filed in support and in opposition to the motion and has considered the respective parties' evidentiary objections. The Court issued a tentative ruling in advance of the hearing of the motion and heard oral argument, at which the parties stipulated that a preliminary injunction bond in the amount of \$100.00 would be sufficient in this case. Following argument the Court adopted the tentative ruling and issued its Final Ruling on the Motion for Preliminary Injunction ("Final Ruling"), *dated 5-6-09.* ~~and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.~~ Plaintiffs have already deposited the \$100.00 with the Court.

PLAINTIFFS' [PROPOSED] PRELIMINARY INJUNCTION

1 Satisfactory proof having been made, in accordance with the Final Ruling and good  
2 cause appearing therefore,

3 IT IS ORDERED that:

4 1. During pendency of this action or until further court order, defendant Shasta  
5 Union High School District and all of its agents, officers, employees, and representatives,  
6 and anybody working in concert with any of them, including but not limited to the other  
7 named defendants, are enjoined from engaging in or performing the following acts:

8 a. Enforcing Shasta Union High School District Board Policy 5131.61, or  
9 Competitive Representational Activities Code §§ 5.2, 5.5-5.6.5;

10 b. requiring that any student submit to any test for drugs, including alcohol or  
11 tobacco, in the absence of reasonable suspicion to believe that the student has used or is  
12 under the influence of a prohibited substance;

13 c. taking any action against any students, including restricting or prohibiting them  
14 from taking part in any activity, because of their or their parents' refusal to consent to  
15 suspicionless drug testing.

16 2. This order does not prohibit the District from applying these policies to students  
17 who are involved in the District's competitive athletic programs.

18 3. This order does not affect the duty of students who have already tested positive  
19 to comply with the requirements of the District's drug-diversion program.

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Date: 5-7-09

M. Marlow  
MONICA MARLOW  
JUDGE OF THE SUPERIOR COURT

# EXHIBIT B

FILED

SEP - 2 2010

COURT OF APPEAL - THIRD DISTRICT  
DEENA C. FAWCETT  
BY \_\_\_\_\_ Deputy

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA .

THIRD APPELLATE DISTRICT

(Shasta)

----

DEBORAH BROWN et al.,

Plaintiffs and Respondents,

v.

SHASTA UNION HIGH SCHOOL DISTRICT et  
al.,

Defendants and Appellants.

C061972

(Super. Ct. No. 164933)

In *Vernonia School Dist. 47j v. Acton* (1995) 515 U.S. 646 [132 L.Ed.2d 564] (*Acton*), the United States Supreme Court held that a school district's policy of suspicionless random drug testing of student athletes did not violate the federal constitutional right to be free from unreasonable searches. In *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls* (2002) 536 U.S. 822 [153 L.Ed.2d 735] (*Earls*), the court, in a five to four decision, extended *Acton* to uphold, against a Fourth Amendment challenge, a school district's drug testing policy that applied to all students participating in competitive extracurricular activities.

DELETED

Following the decision in *Earls*, Shasta Union High School District expanded its random drug testing policy from covering only student athletes to covering all students who participated in competitive representational activities, such as band, choir, future farmers of America (FFA), and science bowl. In this case, we must determine whether the trial court abused its discretion by granting a preliminary injunction based on a finding that plaintiffs, three students and their parents as guardians ad litem, were likely to prevail at trial on their challenge to the expanded drug testing policy, facially and as applied, under the California Constitution.

Defendants, the Shasta Union High School District, the superintendent of the District, and members of its Board of Trustees (collectively, the District), appeal from the grant of a preliminary injunction, enjoining enforcement of the District's expanded random drug testing policy. The District contends the random drug testing program does not violate the right to privacy, the prohibition against unreasonable search and seizures, or equal protection under the California Constitution. The District urges this court to decide the merits of the lawsuit on its appeal from the preliminary injunction.

We limit our review to whether the trial court abused its discretion in granting the preliminary injunction. We conclude that the District has failed to show that the trial court abused its discretion in finding, on this record, that plaintiffs were likely to prevail on their challenge to the expanded drug

testing program on privacy grounds under the California Constitution. Unlike the federal Constitution, California's Constitution grants an express right to privacy; thus, we focus on California case law on the right to privacy rather than federal law on the Fourth Amendment, as the District urges. Plaintiffs put forth a showing sufficient to establish the threshold elements of a claim for invasion of the constitutional right to privacy. In balancing that invasion against the District's justification for the expanded drug testing, the trial court could reasonably find that plaintiffs were likely to prevail due to the District's vague and shifting justifications for expanding drug testing to these participants in competitive representational activities and the lack of any showing that selecting only these students for testing was reasonable to further the District's goal of deterring drug and alcohol use. We affirm the preliminary injunction and let the matter proceed to trial on the merits.

#### FACTUAL AND PROCEDURAL BACKGROUND

##### *The District's Adoption of an Expanded Random Drug Testing Program*

Before 2008, the District had a random drug testing program limited to athletes.<sup>1</sup> Some parents thought it was unfair to test

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<sup>1</sup> Plaintiffs do not challenge the random drug testing of athletes, or testing with consent, or based upon a reasonable suspicion of drug use or possession.



only athletes, and there was some resentment among the coaches that other students were not tested as well.

Beverly Stupek was elected to the Board of Trustees of the District in late 2005. She was concerned about student drug use, based on many conversations, including those with her children who participated in music activities in the District's schools. She spoke with the superintendent, Michael Stuart, about expanding drug testing. Stuart had heard a "tremendous" amount of anecdotal evidence that students, including music students, used drugs and alcohol. His sons had reported drug use at school. A choreographer who worked on the school musical complained about students coming to class stoned.

The Board was concerned about drug use by students, believing it was too high. They were not concerned about whether the drug use was higher than the national average.<sup>2</sup> In response to interrogatories, the District stated the need for the expanded drug testing was to reduce drug use. The District's goals were to reduce drug use by providing students an excuse or reason to not use drugs and to provide counseling and further education for those who used drugs. The interrogatory response stated there had been disciplinary events involving students in extracurricular events possessing, using, or selling drugs and alcohol. "High school students were being

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<sup>2</sup> A grant proposal to obtain federal funding for the expanded drug testing program stated drug use in the District was higher than the national average. The District conceded there was no support for this statement.

injured and killed from drug and/or alcohol use."<sup>3</sup> The idea behind the drug testing program was to give the students a tool to say "no"; they would lose something they loved--participation in certain activities--if they chose to drink or use drugs.

The District researched federal law on the legality of random drug testing of students. A law firm provided the District with a legal memorandum that concluded, relying on *Acton* and *Earls*, that random drug testing of students who voluntarily participated in athletics or extracurricular activities was constitutional. The memorandum analyzed only federal law. Stuart talked to school officials in Oklahoma who had been involved in a drug testing program that had been upheld by the United States Supreme Court in *Earls*. James Cloney, the District's subsequent superintendent, explained it was "important to test [the] students that we are able to." He had no reason to believe students involved in competitive representational activities used drugs or alcohol more than other students; it was not an issue of fairness, but an issue of what could be done "as far as preven[t]ative measure to prevent students in general from using drugs."

#### ***The Expanded Random Drug Testing Program***

In 2008, the District approved an expanded random drug testing program. A description of the program was included in

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<sup>3</sup> In his deposition, Superintendent Stuart could not recall a specific incident of a student being injured or killed. Nor could he recall specific events demonstrating a need for the policy.

the student handbook for the 2008-2009 academic year. The program requires mandatory random drug testing for all students who participate in Competitive Representational Activities (CRA's). The District's Competitive Representational Activities Code defines CRA's as "All activities sanctioned by and under the control and jurisdiction of the Shasta Union High School District that are competitive, extra-curricular or co-curricular. These activities do not occur during the regular course of the school day, and include Competitive Representational Activities which occur during the summer vacation."

In addition to athletics, CRA's include choir, band, science bowl, trimathlon, mock trial, and future farmers of America.<sup>4</sup> Some of these activities are part of a graded course, which satisfies one of the admission requirements for the University of California and California State University.<sup>5</sup> The

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<sup>4</sup> According to allegations of the complaint, the District's draft list of CRA's also included activities such as bowling club, chess club, photography club, future business leaders of America, and ROTC.

<sup>5</sup> Plaintiffs contend that although the District considers CRA's to be extracurricular or co-curricular, not all CRA's meet the definition of these terms set forth in the Education Code. The Education Code defines an extracurricular activity as "a program that has all of the following characteristics: [¶] (A) The program is supervised or financed by the school district. [¶] (B) Pupils participating in the program represent the school district. [¶] (C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program. [¶] (D) The program includes both preparation for performance and performance before an audience or spectators." (Ed. Code,

expanded random drug testing policy covers 56.8 percent of the high school students in the District.

The drug testing program tests for methamphetamine, chlorochromate, amphetamine, phencyclidine, cocaine, marijuana, methadone, barbiturates, benzodiazepines, opiates, oxycodone, nicotine, and alcohol.

Through January 14, 2009, the District had conducted 391 random drug tests. In the 2008-2009 school year, there were 8 positive tests and 20 false positives.<sup>6</sup> In 2007-2008, before the expanded program went into effect and only athletes were tested, there were 10 positive drug tests.

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§ 35160.5, subd. (a)(1).) An "extracurricular activity" is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time." (Id., subd. (a)(2).) A "cocurricular activity" is defined as a program that may be associated with the curriculum in a regular classroom." (Ed. Code, § 35160.5, subd. (a)(3).)

Courses that fulfill entrance requirements for state universities are excluded from these definitions. "Any teacher graded or required program or activity for a course that satisfies the entrance requirements for admission to the California State University or the University of California is not an extracurricular or cocurricular activity as defined by this section." (Ed. Code, § 36160.5, subd. (a)(4).)

Because declarations by plaintiffs establish that some CRA's satisfy university admission requirements, we deny plaintiffs' request for judicial notice of the District's course catalog and certified course lists for UC and CSU to establish the same.

<sup>6</sup> A false positive occurs when the initial result shown in the I-Cup indicates positive, but the lab confirms it is negative.

### ***The Testing Procedure***

The District contracted with a drug testing company, Compliance Associates, to conduct the testing. The same protocol is used for the expanded program as was used for the athlete testing program. Rosters of students who are eligible for testing are sent to Compliance Associates who pulls a random list for each testing day. The goal is to test 35 students at each of the three main high schools, Foothill, Enterprise and Shasta. An assistant principal reviews the list to make certain each student is still participating in a CRA. An alternate list of 10 students at each school is also prepared. All three high schools are tested the same day in the morning.

On the day of testing, an assistant principal pulls the student out of class. There is no advance notice to the student's parents. The student is taken to a secured restroom where he signs a chain of custody form. Males go to one restroom and females to another. Compliance Associates provides a male and female monitor at each test site. An assistant principal is nearby. An armed sheriff's deputy may also be present for supervision.

The student goes in a stall and urinates into a special cup, known as an I-Cup. The monitor waits in the restroom and can hear the student urinate. The student places a lid on the cup and hands it to the monitor.

The results are reported to the project coordinator usually within a week. If the initial test result on the I-Cup is positive, the sample is sent to a certified lab. If the result

is confirmed positive, a medical review officer, selected by Compliance Associates, contacts the student's parents to ask about prescription medicine the student is taking that could affect the result. The medical review officer verifies the student's prescription medicine and makes the final determination of whether the drug test is positive.<sup>7</sup>

A positive result is disclosed to the program coordinator, an assistant principal, the principal, the student and the student's parents. A positive result is not reported to law enforcement. The test results are kept in a locked cabinet and the records are destroyed when the student graduates.

#### ***Consequences of a Positive Test Result***

The consequences for a positive test, primarily loss of the ability to participate in a CRA, are progressively greater for each positive test. For a first positive test, the student and his parents are notified and given a chance to be heard on the matter with the principal or his designee. The student is given two options. He may take a weekly drug test at his expense for six weeks, with all negative results (a positive result is considered a second offense), miss two weeks of participation in the CRA, and enroll in and attend the District's drug diversion program or a similar program at his expense. Alternatively, the student is suspended from the CRA for nine weeks and must be retested before he is eligible for participation in another CRA.

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<sup>7</sup> It is unknown if the medical review officer is a physician. There is no procedure for challenging a positive result.

For a second offense, the student may not participate in a CRA for that season and the following season. He must be retested to be eligible to participate in a CRA. For the third offense, the student is not eligible for participation in a CRA for 12 months. For reinstatement, he must take a monthly drug test at his expense for 12 months, with all negative results. Further violations result in a permanent ban from CRA's.

Under the District's program, missing a co-curricular activity due to a positive drug test will not result in a reduction of a course grade. The student will be given an alternate assignment in lieu of the missed event. The District has no policy regarding alternative assignments.

The District's drug diversion program has three components: five two-hour classes, two individual counseling sessions, and one family counseling session. The expanded drug testing has not increased the size of the classes. In the past five years, drug use in the area has been consistent. The recidivism rate for the drug diversion program is about six percent. Drug and alcohol abuse education are part of the District's personal growth and psychology classes.

#### ***The Lawsuit***

In December of 2008, plaintiffs, two high school students and their parents as guardian ad litem, brought suit to declare the District's expanded random drug testing program unconstitutional both facially and as applied. The two student plaintiffs were Benjamin Brown and Brittany Dalton. Brown was a

senior at Enterprise High.<sup>8</sup> He took five music classes, had a 3.75 grade point average, and was on the Honor Roll. Dalton was also a senior at Enterprise. She took four music classes, had a 3.5 grade point average, was on the Honor Roll, and had a job.

Plaintiffs alleged the random drug testing program violated their rights under the California Constitution to privacy, to be free of unreasonable searches and seizures, and to equal protection. They also asserted a taxpayer action for illegal and wasteful expenditure of public funds. They sought a preliminary and permanent injunction and a declaration that the program was unconstitutional on its face and as applied.

The complaint was amended to add Jesse Simonis as a plaintiff. Simonis was a sophomore at Foothill High School. He took integrated agricultural biology, which met the requirements for the University of California and California State University and required participation in FFA. The amended complaint alleged Simonis objected to drug testing; when an assistant principal threatened him with not being able to participate in FFA and being kicked out of his biology class, he submitted.

***Motion for Preliminary Injunction***

Plaintiffs moved for a preliminary injunction to enjoin both enforcement of the expanded drug testing program and any adverse action against any student plaintiff due to his

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<sup>8</sup> In his deposition, Superintendent Stuart testified the main disagreement with the expanded drug testing program came from Enterprise parents.



objection or refusal to consent to the program on the grounds that the program was invalid. They asserted they had no adequate remedy at law, and they would suffer irreparable injury without an injunction.

In support of the motion, plaintiffs provided the declaration of Howard Taras, a professor of pediatrics at the University of California San Diego who was not compensated for his declaration. He declared the District's drug testing program did not meet most criteria for a reasonable public health screen and did not responsibly measure whether such intervention might be the cause of plausible, inadvertent harm to students. He found very little evidence supporting drug testing as a deterrent. He cited two studies; one found no relationship between drug testing and drug use, and the second found there was less steroid use with testing, but testing had no effect on alcohol use. Taras believed the District was acting irresponsibly in not weighing the benefits and harm of the program. He identified possible harms of drug testing: deterioration of unstable homes when there was a positive result; creating anxiety and discouraging participation in CRA's; increasing the use of riskier but less detectable drugs; creating a less supportive school environment; and taking money away from proven programs.

In opposition, the District provided the declaration of Robert DuPont, a psychiatrist whose career was devoted to drug abuse research, treatment and prevention. DuPont was an advocate of random drug testing of students; random student drug

testing was one of four priorities of the Institute of Behavior and Health of which he was the president. DuPont had led a new study, yet to be published, on student drug testing. The study showed that students believed drug testing reduces their drug use and that tested students were less likely to use drugs than nontested students. DuPont opposed suspicion-based drug testing as not feasible because teachers were not able to identify drug use, particularly in teenagers who commonly have mood swings and unpredictable behavior.

Plaintiffs objected to the lack of foundation for DuPont's unpublished study.

The District also provided the declaration of Jim Cloney, the current superintendent. He stated that all CRA's have unique features that distinguish them from the regular curriculum. All CRA's have after school and weekend events. Most involve long bus rides and many require rigorous physical activity that could lead to serious injury. Because the events took place off campus, students had to be more independent, with little or no supervision. In November 2007, only three months before the District voted to expand the drug testing, three choir students were caught selling prescription drugs on a bus.

#### ***The Ruling***

The trial court found plaintiffs met their burden for a preliminary injunction. The court found plaintiffs were likely to prevail on the privacy claim and the search and seizure claim. It did not address the equal protection claim. The court found plaintiffs would suffer irreparable harm. The court

received DuPont's declaration concerning the unpublished study for the limited purpose of providing the basis of his opinion and not for the truth of the matter. Other objections to his declaration were sustained.

## DISCUSSION

### I.

#### Standard of Review

"[A]s a general matter, the question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) "The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause. [Citation.]" (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 73.)

Generally, a superior court's ruling on an application for a preliminary injunction is reviewed for an abuse of discretion. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.) The party challenging the superior court's order has the burden of making a clear showing of an abuse of discretion. (*Biosense Webster, Inc. v. Superior Court* (2006) 135 Cal.App.4th 827, 834.)

The District notes that, on appeal from the grant of a preliminary injunction, a reviewing court may determine the merits of facial constitutional attacks on legislation or a

regulation, thus implicitly urging this court to do so here. Such an approach may be appropriate where there are no material factual issues to be resolved. (See *Cohen v. Board of Supervisors*, *supra*, 40 Cal.3d 277, 287, and cases cited therein.) We decline to resolve the merits of this case because, as discussed below, disputed material factual issues remain. Further, plaintiffs' challenge to the constitutionality of the District's expanded drug testing program is not limited to a facial challenge. They also challenge the constitutionality of the program as applied which, of course, raises factual issues:

## II.

### **The Trial Court Did Not Abuse Its Discretion in Finding Plaintiffs Were Likely to Prevail on Their Privacy Challenge**

Unlike the federal Constitution, the California Constitution contains an explicit guarantee of the right of privacy. (Cal. Const., art. I, § 1; *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 326.) Article I, section 1 of the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and *privacy*." (Italics added.) "[I]n many contexts, the scope and application of the state constitutional right of privacy is broader and more protective of privacy than the federal constitutional right of privacy as

interpreted by the federal courts. [Citations.]<sup>9</sup> (*American Academy of Pediatrics v. Lungren, supra*, at pp. 326-327.)

This constitutional provision, in itself, "creates a legal and enforceable right of privacy for every Californian." (*White v. Davis* (1975) 13 Cal.3d 757, 775.) "The party claiming a violation of the constitutional right of privacy established in article I, section 1 of the California Constitution must establish (1) a legally protected privacy interest, (2) a reasonable expectation of privacy under the circumstances, and (3) a serious invasion of the privacy interest." (*International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 338, citing *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40 (*Hill*)).

These three "elements" are properly viewed "simply as 'threshold elements' that may be utilized to screen out claims that do not involve a significant intrusion on a privacy interest protected by the state constitutional privacy provision. These elements do not eliminate the necessity for weighing and balancing the justification for the conduct in question against the intrusion on privacy resulting from the conduct in any case that raises a genuine, nontrivial invasion

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<sup>9</sup> Indeed, the California Constitution has often been construed "as providing greater protection than that afforded by parallel provisions of the United States Constitution." (*Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252, 261, fn. 4.)

of a protected privacy interest." (*Loder v. City of Glendale*, (1997) 14 Cal.4th 846, 893 (*Loder*).)<sup>10</sup>

"Whether a legally recognized privacy interest is present in a given case is a question of law to be decided by the court. [Citations.] Whether plaintiff has a reasonable expectation of privacy in the circumstances and whether defendant's conduct constitutes a serious invasion of privacy are mixed questions of law and fact. If the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests, the question of invasion may be adjudicated as a matter of law." (*Hill, supra*, 7 Cal.4th at p. 40.)

***Legally Protected Privacy Interest***

"Legally recognized privacy interests are generally of two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy'); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ('autonomy privacy')." (*Hill, supra*, 7 Cal.4th at p. 35.) Here both privacy interests are at stake. Informational privacy is implicated both by testing the urine sample and by requiring the student's parent to disclose any

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<sup>10</sup> There was no majority opinion in *Loder*; the lead opinion was signed by two justices but five justices concluded that the challenged drug testing program was valid in the preemployment context and four justices concluded it was invalid in the prepromotion context. (*Loder, supra*, at p. 853, fn. 1.) All citations to *Loder* are to the lead opinion unless otherwise stated.

medications the student is taking. Autonomy privacy is implicated by requiring the student to submit to monitored urinalysis.

"As the *Hill* decision establishes, a procedure that (1) requires individuals to provide a urine sample under monitored conditions, (2) authorizes the administering entity to test the sample in order to acquire information concerning the internal state of the tested individual's body, and (3) requires an individual to disclose medications that he or she currently is taking, clearly intrudes upon both autonomy privacy interests and informational privacy interests that are protected by the state Constitution." (*Loder, supra*, 14 Cal.4th at p. 896.) This conclusion applies to children as well as adults. (*In re Carmen M.* (2006) 141 Cal.App.4th 478, 490 ["Without question, court-ordered drug testing of dependent children implicates those individuals' right to privacy, protected by article I, section 1 of the California Constitution"].)

***Reasonable Expectation of Privacy***

While public school children do not shed their constitutional rights at the schoolhouse door (*Tinker v. Des Moines School Dist.* (1969) 393 U.S. 503, 506 [21 L.Ed.2d 731, 737]), it is well established that a student's privacy rights are "considerably restricted" at school. (*In re William G.* (1985) 40 Cal.3d 550, 563.) Attendance is mandatory and school officials have an obligation to protect the health and welfare of students and to provide a safe and welcoming school environment. (*Ibid.*) This custodial function is now mandated

by the state constitution. Article I, section 28, subdivision (c), of the California Constitution provides: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." (See also *In re Joseph F.* (2000) 85 Cal.App.4th 975, 987 [in Fourth Amendment case, "California's constitutional mandate and legislative scheme relative to school safety render the schools akin to those places and situations in which the courts have recognized that 'administrative searches' are permissible".]) School "officials must be permitted to exercise their broad supervisory and disciplinary powers, without worrying that every encounter with a student will be converted into an opportunity for constitutional review." (*In re Randy G.* (2001) 26 Cal.4th 556, 566.)

While a student's expectation of privacy at school is diminished, it is not extinguished. (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 338 [83 L.Ed.2d 720, 732]; *In re William G.*, *supra*, 40 Cal.3d at p. 563.) "The privacy of a student, the very young or the teenager, must be respected." (*In re William G.*, *supra*, 40 Cal.3d at p. 563.) "[A] student always has the highest privacy interests in his or her own person . . . ." (*Ibid.*)

Other factors may reduce the expectation of privacy. In *Hill*, the California Supreme Court found the NCAA's drug testing program, which required that randomly selected college student athletes competing in postseason championships and football bowl games provide closely monitored urine samples to be tested for



proscribed substances, did not violate the state constitutional right to privacy. (*Hill, supra*, 7 Cal.4th at p. 9.) The court found students who participated in intercollegiate athletics had a diminished expectation of privacy. (*Id.* at p. 42.) Their activity involved close regulation and scrutiny of physical fitness and bodily condition, required physical examinations and regulation of sleep, diet, fitness and other activities. (*Id.* at p. 41.) Further, athletes frequently disrobe in front of others in locker rooms where private parts are readily observable by others. (*Id.* at pp. 41-42.) There is no showing the CRA's involve the same reduction in an expectation of privacy as athletics with its locker room environment and emphasis on physical fitness.

The District argues all students are already required to undergo physical exams and vaccinations so their expectation of privacy is reduced. In California, however, not all students are subject to these examinations and vaccinations; parents may refuse to consent to a physical examination (Ed. Code, § 49451) and may object to vaccinations on certain grounds (Health & Saf. Code, § 120365 [contrary to religious beliefs]; Health & Saf. Code, § 120370 [dangerous due to medical or physical condition].)

The *Hill* court also found the student athlete's reasonable expectation of privacy diminished by the program's advance notice and the opportunity to consent to testing. (*Hill, supra*, 7 Cal.4th at p. 42.) The court emphasized that athletic participation was not a government benefit or an economic

necessity and plaintiffs had no legal right to participate in intercollegiate athletic competition. (*Id.* at pp. 42-43.)

The trial court found the advance notice and opportunity to consent before signing up for certain CRA's was insufficient. In his deposition in April 2009, Cloney testified the list of CRA's "is being developed" and has been subject to change during the year. He was not sure how parents would know which activities would subject their children to drug testing. While parents were to sign off on consent to drug testing prior to their child's participation in a CRA, this procedure was not always followed. Simonis declared that when he was called out of class for drug testing he did not know why or what was going on and had to call his mother.

Further, participation in CRA's is different than participation in intercollegiate athletic competition. Public secondary education is a government benefit. (*Zobriscky v. Los Angeles County* (1972) 28 Cal.App.3d 930, 933.) "It can no longer be denied that extracurricular activities constitute an integral component of public education. Such activities are "generally recognized as a fundamental ingredient of the educational process." [Citations.] They are "[no] less fitted for the ultimate purpose of our public schools, to wit, the making of good citizens physically, mentally, and morally, than the study of algebra and Latin . . . ." [Citation.]" (*Hartzell v. Connell* (1984) 35 Cal.3d 899, 909, fn. omitted.) "In a variety of legal contexts, courts have emphasized the vital importance of student participation in educational

extracurricular programs." (*Ibid.*) Moreover, as discussed in footnote 5, *ante*, participation in some CRA's is part of the curriculum and fulfills a requirement for admittance to state universities.<sup>11</sup>

Although plaintiffs' expectation of privacy is reduced, the trial court did not abuse its discretion in finding that plaintiffs were likely to prevail on establishing a sufficient expectation of privacy to assert a claim for violation of the constitutional right to privacy.

#### ***Seriousness of Invasion***

In *Hill*, the court noted that not every intrusion of privacy gives rise to a cause of action for invasion of privacy. (*Hill, supra*, 7 Cal.4th at p. 37.) "Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right." (*Ibid.*) In *Loder*, the court found *Hill's* application of this element "makes it clear that this element is intended simply to screen out intrusions on privacy that are de minimis or insignificant." (*Loder, supra*, 14 Cal.4th at p. 895, fn. 22.)

In contrast to *Hill* where the NCAA implemented the drug testing program, here the invasion is by the government not a

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<sup>11</sup> The District does not address this aspect of some CRA's, nor does it address plaintiffs' allegation that plaintiff Jesse Simonis was threatened with expulsion from integrated agricultural biology due to his objection to drug testing. These are factual issues that can be explored at trial.

private individual or company. Public school officials are government agents for purposes of the protection of students' constitutional rights. (*In re William G.*, *supra*, 40 Cal.3d 550, 558-562.) "[T]he pervasive presence of coercive government power in basic areas of human life typically poses greater dangers to the freedoms of the citizenry than actions by private persons." (*Hill*, *supra*, 7 Cal.4th at p. 38.) Further, the District controls a necessary item--public secondary education. "[I]f a public or private entity controls access to a vitally necessary item, it may have a correspondingly greater impact on the privacy rights of those with whom it deals." (*Id.* at p. 39.)

In *Hill*, the California Supreme Court found direct observation of the athlete's urination "particularly intrusive." (*Hill*, *supra*, 7 Cal.4th at p. 43.) Here collection of the urine sample is less intrusive as the monitor can only hear, not see, the act of urination. We recognize that a majority of the United States Supreme Court found the privacy interests invaded by obtaining a student's urine sample for drug testing in similar circumstances to be "negligible." (*Acton*, *supra*, 515 U.S. at p. 658 [132 L.Ed.2d at p. 577].) However, as Justice Breyer noted in his concurring opinion in *Earls*, "not everyone would agree" and some would find providing a urine sample with someone listening outside the door seriously embarrassing. (*Earls*, *supra*, 536 U.S. at p. 841 [153 L.Ed.2d at p. 751] (conc. opn. of Breyer, J.).) Plaintiffs provided evidence that this monitored urination was embarrassing. Dalton declared she would

be "extremely uncomfortable"; when she was called out of class for a drug test, she "felt shaky and nervous" and one of her friends reported that the testing process made her extremely uncomfortable although her tests were negative. Brown declared it "might be embarrassing" to provide a urine sample while someone is listening.

The District relies on *Smith v. Fresno Irrigation Dist.* (1999) 72 Cal.App.4th 147 (*Smith*), which upheld drug testing of employees in safety-sensitive positions. The *Smith* court found indirect monitoring of the collection process was "a negligible intrusion into the privacy interests." (*Id.* at p. 161.) The court also cited Justice Chin's dissent in *Loder*, in which he stated, "I think it beyond reasonable dispute that City's drug testing program resulted in only a slight, minimal, or 'negligible' intrusion on personal privacy." (*Loder, supra*, 14 Cal.4th at p. 926, (dis. opn. of Chin, J.)) The testing procedures in *Loder* and *Smith* occurred in a separate medical office; in *Loder* it was part of a required medical examination.<sup>12</sup> (*Loder, supra*, at pp. 853-854; *Smith, supra*, at p. 152; see also *Kraslawsky v. Upper Deck Co.* (1997) 56 Cal.App.4th 179, 183, fn. 2 [employee drug test conducted at medical facility].)

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<sup>12</sup> There was evidence of an inconsistent application of the drug testing program as to the collection of urine samples. Jesse Simonis was allowed to go to Compliance Associates for his drug test. John Dalton, in a meeting with the school principal, offered to have his daughter Brittany tested at a private drug testing company and supply the District with the results. The principal did not respond to the offer.

Here, the urine sample is collected at school during the school day; the student is pulled out of class, so other students know about the test (and probably the result depending on whether the tested student continues to participate in a CRA). Finally, we cannot discount that teenagers have a greater self-consciousness about their bodies, so monitored urination, like any search of the body, has the potential to cause embarrassment and humiliation. (See *Cornfield by Lewis v. School Dist. No. 230* (7th Cir. 1993) 991 F.2d 1316, 1321, fn. 1; *Horton v. Goose Creek Ind. School Dist.* (5th Cir. 1982) 690 F.2d 470, 479.)

The trial court did not abuse its discretion in finding plaintiffs likely to prevail in establishing a serious, as opposed to de minimis or insignificant, privacy invasion.

***Balancing Justification against the Intrusion***

Where a case involves a genuine, nontrivial invasion of a privacy interest, it is necessary to weigh and balance the justification for the conduct in question against the intrusion on privacy. (*Loder, supra*, 14 Cal.4th at p. 893.) In a state constitutional privacy case, a defendant may prevail by establishing, "as an affirmative defense, that the invasion of privacy is justified because it substantively furthers one or more countervailing interests." (*Hill, supra*, 7 Cal.4th at p. 40.)

The District contends the justification for the expanded drug testing policy is to deter drug use by students and to identify and offer help to those students who use drugs. There is no question that deterring drug use among school children is

an important interest. (*Acton, supra*, 515 U.S. at pp. 661-662; *Earls, supra*, 536 U.S. at pp. 839-840 (conc. opn of Breyer, J.).) The question is whether the District's drug testing program, expanded to cover students participating in CRA's, "substantively furthers" this strong countervailing interest. (*Hill, supra*, 7 Cal.4th at p. 40.) The balancing test requires consideration of the means the District has chosen to advance its strong interest in deterring drug use.

The District has not shown a specialized need to target students participating in CRA's for drug and alcohol testing. There was no evidence of a particularly acute problem of drug or alcohol use among students who participated in CRA's, although there was anecdotal evidence that music students used drugs. Cloney testified he had no reason to believe students who participated in certain CRA's are using drugs and alcohol more than those students who did not participate. The therapist who ran the drug diversion program testified that, in her experience, participation in an extracurricular activity made no difference as to drug use.<sup>13</sup> This lack of evidence is in sharp contrast to *Acton*, where athletes were targeted because they "were the leaders of the drug culture." (*Acton, supra*, 515 U.S. at p. 649 [132 L.Ed.2d at p. 571].) "A demonstrated problem of

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<sup>13</sup> There is evidence to the contrary. "Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers. [Citation.]" (*Earls, supra*, 536 U.S. at p. 853 [153 L.Ed.2d at p. 759] (dis. opn. of Ginsburg, J.).)

drug abuse, while not in all cases necessary to the validity of a testing regime, [citation], would shore up an assertion of special need for a suspicionless general search program."

(*Chandler v. Miller* (1997). 520 U.S. 305, 319 [137 L.Ed.2d 513, 526] [striking down Georgia's requirement that candidates for state office pass a drug test].)

The trial court found the District tests students who participate in CRA's simply because it believes it can. "It is an attempt to cast a wide net for drug testing of students based on the general concern about drug use among students in general, and the good faith belief that the Policy will be found to be constitutional." Substantial evidence supports the trial court's conclusion. In his deposition, Cloney testified it was important to test those students they were allowed to test, so they tested the math team, the choir, and FFA because they were allowed to. He had not heard the concern that it was dangerous for students to be under the influence while competing in CRA's. Stupek testified in her deposition that she would support drug testing even if she was presented with information that it did not reduce drug use.

The District, relying on Cloney's declaration, claims the expanded drug testing program is justified because it is aimed at students who participate in CRA's, and all CRA's have unique features that distinguish them from the regular curriculum and make drug testing particularly appropriate. All CRA's involve travel and many pose safety concerns due to the physical activities involved. That declaration, however, conflicts with



Cloney's deposition testimony about the reason the students in CRA's were chosen. Based on the record before us, travel and safety concerns were not cited during discovery as the basis for the policy. The differing rationales offered for the expanded drug testing program indicates a disputed factual issue as to the reason for selecting the students tested; the issue is not uncontested as the District claims. Moreover, the District has not shown why safety concerns are greater with respect to all CRA's than as to other activities at school, such as chemistry lab or gym class, that also pose physical risks. Certain CRA's, such as choir, science bowl, and trimathlon, appear to pose no greater safety risk than that faced by all students at school.<sup>14</sup> While those participating in CRA's might have less supervision during off-campus events, it is likely those who do not participate in CRA's have less supervision between class and during free periods and during travel for certain non-CRA school activities such as field trips.

The efficacy of the District's random drug testing program on these students is relevant because if the program does not

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<sup>14</sup> When it was mistakenly concluded that Brittany Dalton had refused a drug test, she was prohibited from playing her flute in the Christmas parade, but allowed to carry a banner. It is difficult to understand how an impaired student would pose a greater danger, to herself or others, playing a flute in a parade than carrying a banner. This action, as well as the alleged threat to remove Simonis from his biology class, not just from FFA, calls into question--at least as the program is applied--the District's assertion that the expanded drug testing program is not punitive.

accomplish its alleged goals, then the government's justification for the intrusion is diminished. As shown by the competing expert declarations submitted and the briefs submitted by Amici, the effectiveness of random drug testing to deter drug use is subject to sharp dispute.<sup>15</sup> The District asserts, "Random drug testing reduces drug use by students." The District relies on DuPont's declaration, in which he discussed an unpublished study conducted by his Institute for Behavior and Health. The trial court, however, sustained plaintiffs' objection to this study based on lack of foundation and received the study for the limited purpose of providing the basis for DuPont's opinion and not for the truth of the matter. Plaintiffs provided the court with the declaration of Taras, which discussed studies showing random drug testing had little or no effect on drug use and pointed out potential harms from such testing. On this record, the effectiveness of random drug testing on these students

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<sup>15</sup> As plaintiffs note, the Legislature has weighed in on this dispute on the plaintiffs' side. In 2004, the Legislature passed Senate Bill 1386, which would have added sections 49052 through 49055 to the Education Code and would have limited drug testing in schools to cases of reasonable suspicion. (Sen. Bill No. 1386 (2003-2004 Reg. Sess.) enrolled Aug. 23, 2004.) The Legislature cited studies showing that random drug testing is not an effective deterrent and declared its intent "to ban the costly and ineffective practice of random, suspicionless drug and alcohol testing." (*Id.*, § 1.) The Governor vetoed the bill. (Governor's veto message to Sen. on Sen. Bill No. 1386 (2003-2004 Reg. Sess.) Sen. Daily J. (Oct. 4, 2004) p. 5574 <[http://www.leginfo.sen.ca.gov/pub/03-04/bill/sen/sb\\_1386\\_vt\\_20040918.html](http://www.leginfo.sen.ca.gov/pub/03-04/bill/sen/sb_1386_vt_20040918.html)> [as of Sept. 1, 2010].)

cannot be used to justify a program that has little, if any, fit between those chosen to be tested and the need for testing.

The trial court did not abuse its discretion in finding that plaintiffs were likely to prevail on their privacy claim. Since the District does not challenge the trial court's finding as to irreparable harm, the trial court did not abuse its discretion in granting the preliminary injunction. Because the preliminary injunction can be justified based on the privacy claim, there is no need to discuss plaintiffs' constitutional claims relating to search and seizure and equal protection.

Affirming a preliminary injunction is not a decision on the merits of the complaint. (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d 63, 75-76.) It is appropriate to proceed with careful deliberation and allow full exploration of the factual issues raised in this case before reaching a conclusion as to the constitutionality of the District's expanded drug testing program because it involves important privacy rights of school children. "That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." (*West Virginia State Bd. of Edu. v. Barnette* (1943) 319 U.S. 624, 637 [87 L.Ed. 1628, 1637].)

DISPOSITION

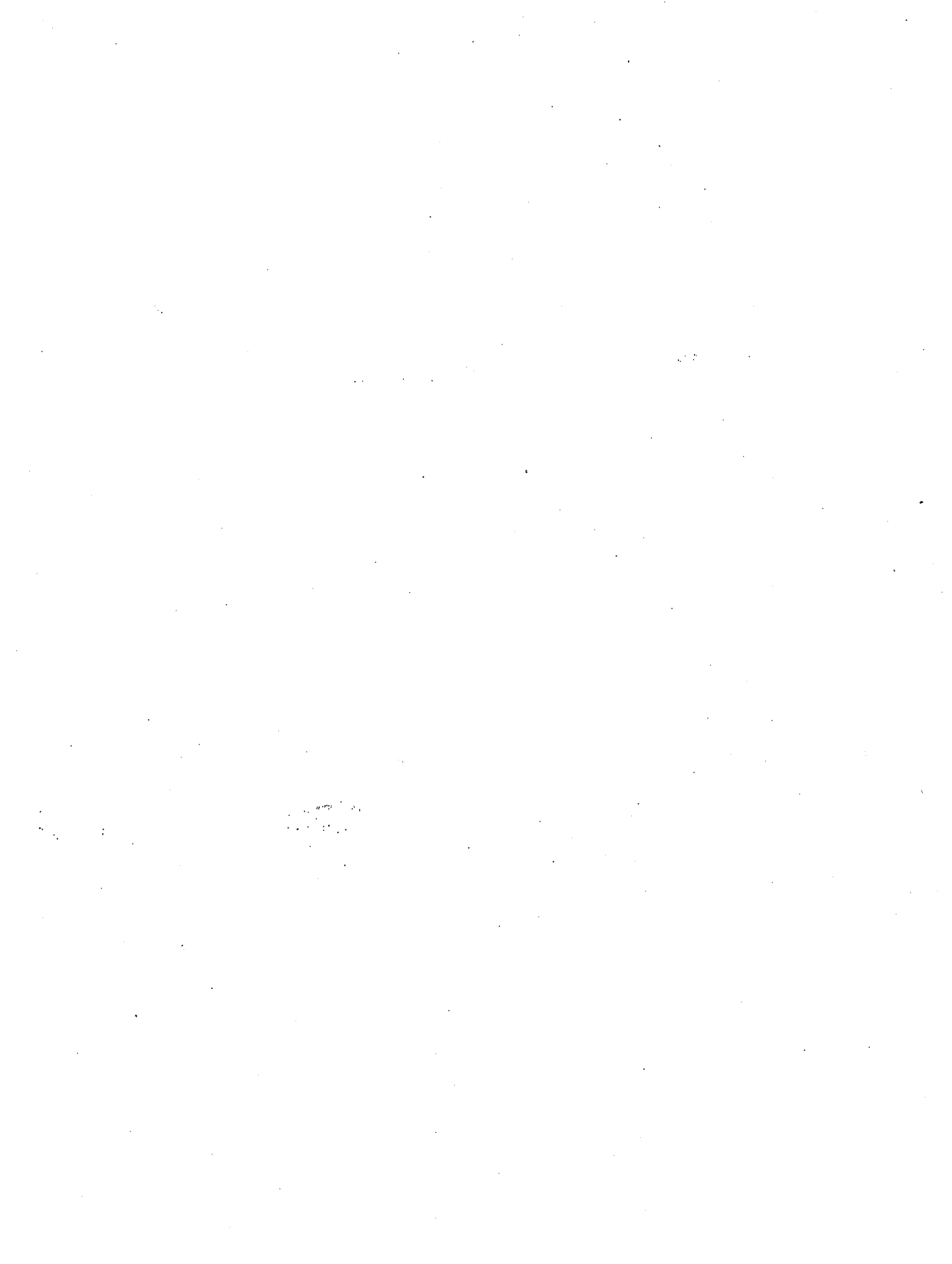
The judgment (granting the preliminary injunction) is affirmed. Plaintiffs shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (a)(2).)

CANTIL-SAKAUYE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.



IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
THIRD APPELLATE DISTRICT

MAILING LIST

Re: Brown et al. v. Shasta Union High School District et al.  
C061972  
Shasta County No. 164933

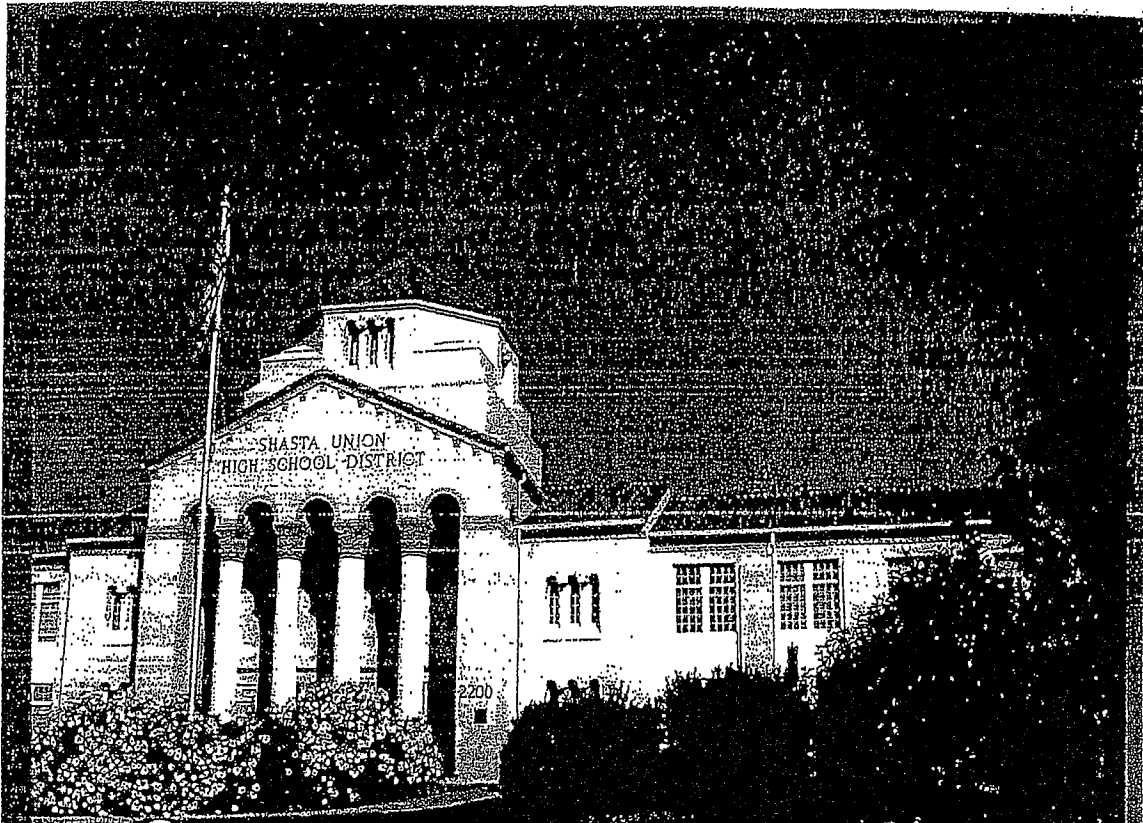
Copies of the attached document have been sent to the individuals checked below:

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Shasta County Superior Court - Main  
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# EXHIBIT C



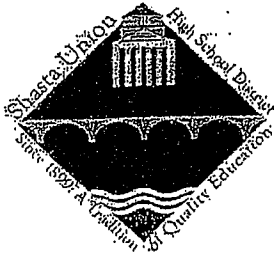


# Shasta Union High School District

2008-2009

Student/Parent Handbook

*A Tradition of Excellence Since 1899*



Board of Trustees

Bev Stupek  
Kristen Schreder  
Constance Pepple  
Charles Haase  
Jim Schwerdt

Superintendent

Jim Cloney

August 2008

Dear Students and Parents:

Welcome to the Shasta Union High School District. High school is a special time when you will be challenged both personally and academically. It is also a time when you will make new friends and important decisions about your future.

This handbook contains descriptions of our educational programs, support services and co-curricular activities, and is designed to help you achieve your goals. I encourage you to plan your four-year program with care. Counselors, teachers, career technicians and administrators will assist you with making these decisions.

I also encourage you to participate in our extensive co-curricular and extra-curricular programs. Involvement in clubs and sports activities is a source of life-long memories and pride. It is also the greatest key to your future success.

This handbook also contains important information on policies and procedures related to student discipline. It is extremely important for parents to be aware of these policies.

Finally, I encourage parents to become actively involved in school planning and support activities. The School Site Councils, Parent-Teacher Organizations and Booster Clubs all need parent participation.

I hope you have a memorable and productive year.

Sincerely,

Jim Cloney  
Superintendent

Shasta Union High School District  
2200 Eureka Way, Suite B, Redding, CA 96001  
(530) 241-3261 • FAX (530) 225-8442

BOARD OF TRUSTEES

Bev Stupek.....President  
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Jim Cloney, Superintendent

Kyle Turner, Associate Superintendent, Instructional Services  
Art Schmitt, Chief Business Official

Dana Reginato, Associate Superintendent, Human Resources  
Chris Adams, Administrator of Educational Services

Enterprise High School

3411 Churn Creek Road, Redding, CA 96002  
(530) 222-6601 • FAX (530) 222-5138

Eric Peterson, Principal      Keith Turner, Asst Principal, Athletic Admin  
Serna Teixeira, Asst Principal      Monica Cabral, Head Counselor

foothill High School

9733 Deschutes Road, Palo Cedro, CA 96073  
(530) 547-1700 • FAX (530) 245-2701

Jim Bartoy, Principal      Kevin Green, Asst Principal, Athletic Admin  
Shawn Austine, Asst Principal      Mike O'Leary, Head Counselor

Shasta High School

2500 Eureka Way, Redding, CA 96001  
(530) 241-4161 • FAX (530) 241-9571

Milan Woollard, Principal      Heath Bunton, Asst Principal, Athletic Admin  
Leo Perez, Asst Principal      Sherrie Howard, Head Counselor

Pioneer High School

2650 Eighth Street, Redding, CA 96001  
(530) 243-1880 • FAX (530) 243-0753

Elsbeth Frimmore, Principal

Freedom Community Day School

928 W. Cypress Ave, Redding, CA 96001  
(530) 245-2660

Guy Malain, Principal

Shasta Adult School

490 Mary Street, Redding, CA 96001  
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Guy Malain, Principal

North State Independence High School

490 Mary Street, Redding, CA 96001  
(530) 245-2760 • FAX (530) 245-2761

Guy Malain, Principal

Transportation Department

2675 Eighth Street, Redding, CA 96001  
(530) 241-0416 • FAX (530) 225-8470

Tom Carroll, Director

Shasta Union High School District Farm

4651 Eastside Road, Redding, CA 96001  
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Noah Corp, Coordinator

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## SCHOOL ATHLETICS

A complete California Interscholastic Federation (CIF) sports program is offered at Enterprise, Foothill, and Shasta High Schools. The following sports are offered: football, basketball, wrestling, cross country, track and field, baseball, tennis, swimming, golf, soccer, skiing, snowboarding, and volleyball. Junior Varsity level competition is available in all the above sports with the exception of soccer, golf, and tennis. Each school also has a cheerleader and/or drill team program.

## POLICY ON ELIGIBILITY

The SUHSD subscribes to the Pursuing Victory With Honor Sports Summit Accord adopted by the California Interscholastic Federation (CIF). We believe that interscholastic athletic competition should demonstrate high standards of ethics and sportsmanship and promote the development of good character and other important life skills. We also believe that the highest potential of sports is achieved when participants are committed to pursuing victory with honor according to the six core principles: trustworthiness, respect, responsibility, fairness, caring, and good citizenship (the six pillars of character). In order to be eligible for extra curricular competitive representational activities, students must maintain a 2.0 GPA and comply with provisions of the Shasta Union High School District's Competitive Representational Activities Code and the Pursuing Victory With Honor Code of Conduct. (These codes are included in Appendix A and are available at each school.) A parent or legal guardian must sign and return the forms acknowledging their awareness of the requirements for participation before a student may participate in extra curricular competitive representational activities. Parents are encouraged to review the Competitive Representational Activities Code as well as the Pursuing Victory With Honor Code with their son(s)/daughter(s).

Students and parents should contact their school's Athletic Administrator for information concerning eligibility questions before embarking on transfer actions between schools.

## USE OF TOBACCO, ILLEGAL DRUGS OR ALCOHOL

The Shasta Union High School District believes that competitive representational activities are an integral part of the school curriculum and as such, must contribute to the physical and mental health of students. To accomplish this, the District has enacted policies related to drug and alcohol use, both at school and outside of school activities.

In order to provide for the health and safety of students, to provide a legitimate reason for students to say "no" to drug use, and to provide an opportunity for those using drugs to receive help in locating a program of assistance, the District conducts a mandatory drug testing program for students participating in competitive representational activities. The program is not punitive. It is designed to create a safe, drug-free environment for students and assist them in getting help when needed.

Students who attend an illegal activity (where drugs or alcohol are served to minors) are also subject to this policy.

Consequences of Violating Tobacco, Illegal Drug or Alcohol Policies - Refer to section 5.6 of the Competitive Representational Activities Code in Appendix A.

## PARTICIPATION IN NON SCHOOL ATHLETIC EVENTS

If an athlete desires to compete in an invitational or an event during the season of sport which is outside the normal school schedule, the following guidelines will apply:

1. Pre approval is required for participation in non school athletic events.

REFERENCE	INFRACTION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
VC 23225 BP 25668 25662 EC 48900 Sec. C & D	Alcohol Possession or Use of	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>1-5 day suspension</li> <li>Saturday School complete learning packet</li> <li>Referral to Student Study Team</li> <li>Complete drug &amp; alcohol diversion program</li> <li>Weekly drug test &amp; miss 2 weeks of presentation activities or suspension from 9 weeks of activities</li> </ul>	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>5 day suspension</li> <li>Possible Saturday School</li> <li>Consider for placement into alternative school program (Student Study Team)</li> <li>Treatment at parent/guardian expense</li> <li>Possible expulsion</li> </ul>	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>Possible placement into alternative placement program or recommendation for expulsion</li> <li>5 day suspension at parent expense</li> <li>Possible expulsion</li> </ul>
PC 450 455	Arson	<ul style="list-style-type: none"> <li>Suspension pending Superintendent's recommendation</li> <li>Referral for expulsion</li> <li>Parent conference</li> <li>Referral to fire marshal/law enforcement</li> <li>Referral to Student Study Team</li> </ul>		
EC 44014 48902 PC 240 241.2 242 243.2 & .5 244 45 417	Assault	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>Suspension pending Superintendent's recommendation</li> <li>Referral to Student Study Team</li> <li>Referral for expulsion</li> </ul>		
	Academic Dishonesty	<ul style="list-style-type: none"> <li>Loss of credit on assignment</li> <li>Behavior contract/ academic probation</li> </ul>	<ul style="list-style-type: none"> <li>Loss of Credit in course</li> <li>"F" grade on transcript</li> </ul>	

REFERENCE	INFRACTION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
CAC Title 5 Sec. 302, 305	Dress Code Violation/ Gang Related Apparel	<ul style="list-style-type: none"> <li>Student to correct violation</li> <li>Appropriate clothes obtained or student assigned to in-house suspension pending change of clothes</li> <li>Suspension and/or Saturday School</li> </ul>	<ul style="list-style-type: none"> <li>Parent contact</li> <li>Suspension and/or Saturday School</li> <li>Student Study Team</li> </ul>	<ul style="list-style-type: none"> <li>Referral for consideration of alternative school placement</li> <li>1-3 day suspension</li> <li>Student Study Team</li> </ul>
EC Sec. 48900 C, D, J HSC 11014.5 11350 11364 11364.5 11364.7 11373 11379 11382 11680 11681 11550 HS 647 FPC	Drugs, Possession, Use of Drug Paraphernalia, Possession of	<ul style="list-style-type: none"> <li>Referral to Student Study Team for counseling referral</li> <li>Notify law enforcement agency</li> <li>1-5 day suspension</li> <li>Possible recommendation for expulsion</li> <li>Transfer to alternative education placement unless student and parent/guardian agree to complete district drug diversion program</li> <li>Restitution from all representational activities, including athletics, for length of the semester</li> </ul>	<ul style="list-style-type: none"> <li>Referral to Student Study Team for follow up counseling referral</li> <li>Notify law enforcement agency</li> <li>Possible recommendation for expulsion</li> <li>5 day suspension</li> <li>Transfer to alternative education placement</li> <li>Treatment at parent or guardian's expense</li> </ul>	<ul style="list-style-type: none"> <li>Referral to Student Study Team</li> <li>Notify law enforcement agency</li> <li>Recommendation for expulsion</li> <li>Suspension pending expulsion hearing outcome</li> </ul>
EC (above) 48915 C3 HSC (above)	Drugs, Sale of or Sharing of	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>Referral for expulsion</li> <li>Suspension pending outcome of expulsion hearing</li> <li>Referral to Student Study Team for counseling referral</li> </ul>		



## LAW ENFORCEMENT REFERRAL

The following offenses must be reported to the Police Department: when a student: 1) brings any firearm, knife, explosive or other dangerous object to school; 2) attacks or menaces a District employee; 3) causes serious physical injury to another person; 4) possesses/sells drugs, alcohol or other controlled substances; or 5) commits robbery or extortion in school. (AR 5144.1)

## DISCIPLINE BY A TEACHER

For disciplinary reasons, a teacher can:

- ◆ Suspend a student from his/her class for the day of the infraction and the next day.
- ◆ Detain a student for up to one hour at the end of the school day.
- ◆ Require a parent conference.
- ◆ Refer the student to a school counselor or administrator.

## SCHOOL SAFETY

All students should be aware of and observe common safety practices. All schools have a school wide safety and emergency plan, which is available at each site. Report any unsafe condition to your teacher or administrator. Follow safety rules particular to your class such as chemistry, industrial technology, etc.

The following are general safety practices that should be observed by all:

1. No one should sit on the backs of chairs or chair desks.
2. No one should sit on windowsills or radiators.
3. No one should use equipment unless authorized by the teacher.
4. When authorized, use ladders in the following manner:
  - a) Do not stand on the top step or next to the last step of stepladders.
  - b) Be sure that stepladders are locked in the upright position and are resting securely on an even surface.
5. Do not sit or stand on tables.

## SOLICITATION OF FUNDS

Solicitation of funds from students on school premises by any organization other than a school organization is prohibited.

## DISCIPLINE POLICY

In order to promote a safe school atmosphere in which all students can learn, it is essential that all students take responsibility for their behavior. To guide students in making decisions that add to this safety, the following Discipline Policy clarifies the behavioral expectations of Shasta Union High School District. We recognize that the promotion of a safe atmosphere requires the teamwork of students, staff members, parents/guardians and support services. Parents, counselors and the appropriate administrators will be included in every phase of disciplinary action. Administration may use one or any combination of the consequences listed for each offense. Administration may use a consequence that is not listed if deemed appropriate by the Principal.

**CODES:** (CAC = CALIF. ADMIN. CODE) (EC = EDUCATIONAL CODE)  
(HSC = HEALTH & SAFETY CODE) (VC = VEHICLE CODE)  
(BP = BUSINESS & PROFESSIONAL CODE) (PC = PENAL CODE)

REFERENCE	INFRACTION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
EC 48908 CAC Title 5 Sec. 300	Litter	<ul style="list-style-type: none"> <li>Pick up litter at lunch or after school</li> </ul>		
EC 48900 Sec. 1 PC 311.311.2 311.6	Obscene Act or Behavior	<ul style="list-style-type: none"> <li>Referral to Student Study Team for counseling</li> <li>Possible referral to law enforcement agency</li> <li>Possible suspension</li> <li>Possible recommendation for expulsion</li> </ul>	<ul style="list-style-type: none"> <li>Referral to law enforcement agency</li> <li>Suspension with possible recommendation for expulsion</li> </ul>	<ul style="list-style-type: none"> <li>Suspension pending expulsion hearing</li> <li>Recommendation for expulsion</li> <li>Possible alternative program placement</li> </ul>
EC 48900 Sec. 1 PC 311.311.2	Obscene Language (outside the classroom)	<ul style="list-style-type: none"> <li>Student warned by staff hearing obscene language and/or possible Saturday School following referral</li> <li>Possible suspension</li> </ul>	<ul style="list-style-type: none"> <li>Parent contact</li> <li>Suspension and/or Saturday School for days missed</li> </ul>	<ul style="list-style-type: none"> <li>2-5 day suspension and/or Saturday School</li> </ul>
EC 48900 Sec. H	Smoking/Use of Any Form of Tobacco on or About School Grounds	<ul style="list-style-type: none"> <li>Saturday School</li> <li>Possible referral to no-smoking class</li> <li>Site-based TUPE intervention program</li> </ul>	<ul style="list-style-type: none"> <li>1-3 day suspension and/or Saturday School</li> </ul>	<ul style="list-style-type: none"> <li>Possible placement in alternative school program</li> <li>1-5 day suspension</li> <li>Teacher-student conference</li> <li>Teacher documents</li> <li>Detention as assigned</li> </ul>
EC 48260 48261 48262 48263 48266.5	Tardiness	<ul style="list-style-type: none"> <li>Teacher-student conference</li> <li>Possible Saturday School</li> </ul>	<ul style="list-style-type: none"> <li>Teacher-student conference</li> <li>Teacher documents and/or assigns detention</li> </ul>	

APPENDIX A  
Competitive Representational Activities Code  
Revised 7/17/08

Competitive Representational Activities are an integral part of our school curriculum and contribute to the well-being of all who participate ("Participants"). Participants are reminded they represent the school and community, and their actions must be a credit to both. All school rules apply in all Competitive Representational Activities.

The District strongly opposes student or parent sponsored activities that condone or promote the use of tobacco, alcohol or drugs. Parents are encouraged to make sure their students are not involved in the abuse of these substances.

1.0 SCHOLASTIC ELIGIBILITY (Athletics Only)

A student shall be eligible for all Competitive Representational Activities if he/she meets the following requirements:

1.1 In order to be eligible for participation in athletic Competitive Representational Activities, a student in grades 9 through 12 must be enrolled in 20 semester credits of course work, and have earned a 2.0 GPA during the most recently completed grading period. (See CIF Bylaws for further regulations.) A waiver of the 2.0 GPA requirements will be permitted for any one quarter during a student's four years of high school. (BP 6145)

1.2 The grade point average used to determine eligibility shall be based on grades of the previous grading period during which the student attended class at least a majority of the time. (Education Code 35160.5)

1.2.1 The most recently completed grading period for entering 9th grade students will be the most recent GPA earned in the last school attended.

1.2.2 When students are simultaneously enrolled in college classes for which they receive credit toward high school graduation, their college grades shall be included in the computation of their grade point average.

1.2.3 Receiving an Incomplete shall have no effect on a student's academic eligibility as long as the resolution of the Incomplete would not lower his/her grade point average below 2.0. If the resolution of an Incomplete could lower the student's grade point average to below 2.0, the student shall be considered ineligible until the Incomplete is removed and the grade point average determined.

1.3 When a student does not maintain 2.0 GPA, he/she is ineligible in the subsequent grading period to participate in athletic Competitive Representational Activities. To regain eligibility, a 2.0 GPA must be earned in a grading period. Eligibility will be based on quarter grades.

1.4 In the event that a student finds that he/she is academically ineligible to participate in athletic Competitive Representational Activities in the first semester of the upcoming year, he/she may request that current summer school grades be added to the grades received in the spring semester and that the total spring semester and summer school grades be used to determine eligibility for the first semester of the upcoming school year. Summer school grades officially placed on a student's transcript will be totaled with the grades from the previous grading period and divided by the total number of courses. If a course is repeated, only the higher of the two grades will be used for calculations.

1.5 Students with any "F" grades must also maintain minimum progress towards graduation in order to meet eligibility requirements.

1.6 Students are expected to maintain good citizenship and conduct themselves in an appropriate manner while in class and on campus, and while representing the school during any Competitive Representational Activity. Failure to do so may result in ineligibility.

2.0 DOCUMENTARY ELIGIBILITY (Athletics Only)

2.1 Athletic Health Screening Examination Record, parent permission forms, insurance forms, emergency consent forms, authorization for student drug/alcohol testing, bus rules and other forms

as required shall be recorded, and on file in the School Office. Parent or legal guardian signature is required.

- 2.2 An annual physical examination is required before a student may try out, practice or participate in interscholastic athletic competition. A student will be excused from the physical examination only in compliance with Education Code 49451 provisions concerning Parents' Refusal to Consent. It is recommended that the physical be passed prior to purchasing insurance.
- 2.3 A physical examination is good for one calendar year.
- 2.4 A prospective athlete shall either secure student insurance or have his/her parent or legal guardian complete the Parent's Certification Statement of Responsibility for Athletic Insurance. Proof of payment for student insurance or the statement of responsibility shall be on file at the school.
- 2.5 The District expects that coaching staff will provide an orientation for parents at the start of each sport season.

#### 3.0 DOCUMENTARY ELIGIBILITY (other than athletics)

- 3.1 Appropriate parent permission forms, including authorization for student to be included in the drug/alcohol random testing pool, and emergency forms shall be on file at the school. Parent or legal guardian signature is required.
- 3.2 Competitive Representational Activities advisors (i.e. coaches, band leader, FBLA advisor) shall determine rules concerning appropriate conduct for the specific Competitive Representational Activity.

#### 4.0 ABSENCE FROM SCHOOL

- 4.1 Absence from school on the day of a scheduled Competitive Representational Activity shall result in denial of the privilege to participate. Students are required to attend a minimum of four (4) periods to be considered eligible for participation in the Competitive Representational Activity. Exceptions may be granted by the school administration on a case by case basis. Participation in Saturday or holiday events will be affected by attendance the last school day preceding the event.

#### 5.0 USE OF TOBACCO, ILLEGAL DRUGS OR ALCOHOL (during season of Competitive Representational Activity)

- 5.1 The Shasta Union High School District believes that Competitive Representational Activities are an integral part of the school curriculum and must contribute to the physical and mental health of the Participants. To accomplish this, the District has enacted policies related to drug and alcohol use, both at school and outside of school sponsored events.
- 5.2 In order to provide for the health and safety of the Participants, to provide a legitimate reason for students to say "no" to drug use, and to provide an opportunity for those taking drugs to receive help in locating a program of assistance, the District is conducting a mandatory random drug testing program for Participants. The program is designed to create a safe, drug free environment for Participants.
- 5.3 Participants who are under the influence, or in possession, of illegal drugs or alcohol are subject to this policy at all times (i.e. during school, at school sponsored events, and outside of school). Participants who are under the influence or in possession at school or school sponsored events are subject to school consequences as well as the consequences of BP and AR 5131.61, Random Drug Testing of Students Participating in Competitive Representational Activities.
- 5.4 Participants who attend an illegal event (where drugs or alcohol are being served to minors) are also subject to this policy even if they do not use drugs or alcohol.
- 5.5 Explanation of Terms
  - 5.5.1 Awards: School letters, certificates, or other honors and/or special recognition.
  - 5.5.2 Competitive Representational Activities: All activities sanctioned by and under the control and jurisdiction of the Shasta Union High School District that are competitive, extra-curricular or co-curricular. These activities do not occur during the regular course of the school day, and include Competitive Representational Activities which occur during summer vacation.

- 5.5.3 Consent: The parent or guardian and the Participant are required to sign a written consent for drug testing prior to participating in the Competitive Representational Activity.
- 5.5.4 Drug: Any substance considered illegal or controlled by the Food and Drug Administration. This includes tobacco products, alcohol, and performance enhancing supplements including steroids.  
Drug panel to be tested: Methamphetamine, Chlorochromate, Amphetamine, Phencyclidine, Cocaine, Marijuana, Methadone, Barbiturates, Benzodiazepines, Opiates, Oxycodone, Nicotine, Alcohol.
- 5.5.5 Medication: The parent or guardian must provide verification (prescription information and number to the Medical Review Officer upon phone call) if the drug test is positive. Participants who test positive and refuse to provide verification will be subject to actions and the reinstatement process specified below.
- 5.5.6 Participant: Any student participating in Competitive Representational Activities sanctioned by and under the control and jurisdiction of the Shasta Union High School District.
- 5.5.7 Participant Selection for Testing: Random testing will be conducted during the Season. There will be a random selection of Participants to be tested by the drug testing company; collection of all specimens will be done by the drug testing company. Selection is truly random and SUHSD employees are not involved in the process of selection.
- 5.5.8 Positive Test: The Participant's sample will first be tested using an Instant Technologies Icup to determine an initial positive or negative. Any initial positive will be sent to a Substance Abuse & Mental Health Services Administration (SAMHSA) certified lab for further analysis and confirmation. A Medical Review Officer (MRO) will contact the parent or guardian to discuss any prescription medication the Participant may be taking. Final results from the lab will be reported by the drug testing company to the Drug Testing Coordinator at the District Office. The Drug Testing Coordinator will then contact the Assistant Principal. The Assistant Principal will notify the parent or guardian and the Participant of the final lab results.
- 5.5.9 Season: Official seasons will be the same for all Competitive Representational Activities. The academic year is divided into four seasons: fall (August 1 - December 1), winter (November 1 - March 31), spring (February 1 - the last day of school), and summer (the day after the last day of school - July 31). If tryouts/meetings for competitive activities occur during a season of ineligibility, the student may attend tryouts/meetings at the discretion of the person in charge.
- 5.6 Action Taken & the Reinstatement Process
- 5.6.1 Missing a co-curricular Competitive Representational Activity due to a positive drug test will not result in reduction of a course grade. Students suspended from a co-curricular Competitive Representational Activity shall be provided with an alternative assignment in lieu of event missed.
- 5.6.2 First Offense:
1. Notify parent or guardian.
  2. The Principal or his/her designee shall notify the Participant of the charges against him/her and provide him/her a chance to be heard on the matter at a meeting with the Principal/designee, the Participant, and his/her guardian/parent.
  3. For reinstatement of eligibility, the Participant must successfully finish a five week assistance/counseling program at the Participant's expense (evidence must be submitted), or the SUHSD drug diversion program.
  4. Participant will be given the option of either A or B:
    - A. Taking a weekly drug test for six weeks (at the Participant's expense) with all negative results (any positive results are considered a second offense),

AND

missing two weeks of activities beginning with the date of the confirmed positive and ending at midnight of the 14<sup>th</sup> day.

AND

must be actively enrolled in and attending a five week assistance/counseling program (evidence must be submitted) or the S.U.H.S.D. drug diversion program.

The Participant may attend practice/meetings at the discretion of the person in charge. Participants who do not complete a successful option A must complete option B for reinstatement.

B. Being suspended from participation for a period of nine consecutive academic weeks beginning with the date of the confirmed positive and ending at midnight of the 63<sup>rd</sup> day (the summer season will not count as part of the nine weeks). The Participant will be re-tested before beginning the next activity for which he/she is eligible.

#### 5.6.3. Second Offense

1. Notify parent or guardian.

2. The Principal or his/her designee shall notify the Participant of the charges against him/her and provide him/her a chance to be heard on the matter at a meeting with the Principal/designee, the Participant, and his/her guardian/parent.

3. The Participant shall be suspended from participation for the remainder of the Season and for the next Season. Eligibility will be reinstated on the beginning date of the 3<sup>rd</sup> consecutive season following the 2<sup>nd</sup> offense. (i.e. if the student's second offense occurs during the fall season, he/she will be eligible on February 1 for sports offered in the spring season only). The Participant will be re-tested before beginning the next activity for which he/she is eligible.

Athletic Seasons		
Fall	Winter	Spring
Football	Basketball	Baseball
Volleyball	Ski Snowboarding	Softball
Boy's Soccer	Cheerleading	Track & Field
Gross Country	Wrestling	Girl's Soccer
Cheerleading		Boy's Golf
Swimming		Boy's Tennis
Girl's Golf		
Girl's Tennis		

#### 5.6.4. Third Offense

1. Notify parent or guardian.

2. The Principal or his/her designee shall notify the Participant of the charges against him/her and provide him/her a chance to be heard on the matter at a meeting with the Principal/designee, the Participant, and his/her guardian/parent.

3. The Participant shall be ineligible for all Competitive Representational Activities and participation. For reinstatement, the Participant must take a monthly drug test for twelve months (at the Participant's expense) with all negative results (any positive results are considered another offense).

5.6.5. Further violations shall result in a permanent ban from District Competitive Representational Activities. Participants who do not finish the season will not be eligible for awards, honors, or recognition.

#### 9. QUITTING A COMPETITIVE REPRESENTATIONAL ACTIVITY

Any Participant dropping a Competitive Representational Activity before the Season ends shall not be eligible to practice or participate in another Competitive Representational Activity until the end of the Season during which the drop occurred. Exceptions to this rule can be made by the Principal.

7.0 EQUIPMENT

- 7.1 All equipment is issued to a student on a loan basis, subject to normal wear and tear. Equipment that is abused or lost must be paid for by the student to whom it was issued.
- 7.2 For a student to be eligible to participate in a subsequent Competitive Representational Activity, all equipment must be turned in at the end of a Season. Failure to do so shall result in school penalties.

8.0 TRANSPORTATION

- 8.1 When district transportation is provided, Participants must be transported to and from school events on aforementioned transportation. The two exceptions to this rule will be: if a parent or guardian contacts (by note or call) the principal or designee in advance of the Competitive Representational Activity. Upon direct authorization by the principal or designee, the Participant will be released by the coach or person in charge, to the parent or guardian only for transportation following the Competitive Representational Activity; the second exception will be if the district transportation is for "drop-off" purposes only, then the parent or guardian will not need to contact the principal or designee in advance of the activity as a prerequisite to picking up the Participant.
- 8.2 Participants may provide their own transportation for Competitive Representational Activities occurring 1/2 hour after the end of the school day, within the boundaries defined as "The Golden Triangle" (West Valley to Central Valley, Shasta Foothill to Enterprise). When district transportation is provided, the rule above will be followed.

9.0 INTERPRETATION OF COMPETITIVE REPRESENTATIONAL ACTIVITIES CODE

The judgment of the Principal is final regarding the application of this Code, and any needed interpretation of it.

# EXHIBIT D



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2 MARLEY DEGNER #251923  
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American Civil Liberties Union Foundation  
7 of Northern California  
39 Drumm Street  
8 San Francisco, California 94111  
Telephone: (415) 621-2493  
9 Facsimile: (415) 255-8437

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SHASTA  
UNLIMITED JURISDICTION

\_\_\_\_\_ )  
BENJAMIN BROWN, a minor, by and )  
through his parent and guardian *ad litem*, )  
DEBORAH BROWN, *et al.*, )  
Plaintiffs, )  
vs. )  
SHASTA UNION HIGH SCHOOL )  
DISTRICT, *et al.*, )  
Defendants. )  
\_\_\_\_\_ )

Case No. 164933  
**JUDGMENT AWARDING**  
**PERMANENT INJUNCTION**

1           Based upon the Settlement Agreement and Stipulation for Entry of Judgment (the  
2 “Stipulation”) made between Plaintiffs and Defendants and upon the evidence submitted by  
3 Plaintiffs establishing the Defendants have committed a material breach of the Stipulation,  
4 IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

5  
6           A.     That, pursuant to Code of Civil Procedure section 664.6, the Judgment of  
7 Dismissal previously filed herein is hereby VACATED; and

8  
9           B.     That Defendants, and each of them, and each of his, its and/or her successors  
10 and assigns, and all other persons acting in concert with any of them, are hereby  
11 RESTRAINED, PROHIBITED, AND ENJOINED until this permanent injunction expires  
12 on November 30, 2014 from engaging in any of the following conduct:

13  
14           1.     Enforcing the random, suspicionless drug testing policy incorporated into the  
15 Revised Competitive Representational Activities Code implemented at the beginning of the  
16 2008-2009 school year for Shasta Union High School District, a copy of which is attached  
17 hereto as Exhibit A;

18  
19           2.     Enforcing any suspicionless drug testing policy or practice that is  
20 substantially similar to the drug testing policy incorporated into the Revised Competitive  
21 Representational Activities Code implemented at the beginning of the 2008-2009 school  
22 year for Shasta Union High School District;

23  
24           3.     Enforcing any suspicionless drug testing policy or practice that authorizes  
25 testing of any District students other than the following students:

26                 a.     Students involved in interscholastic athletics during the season in  
27 which the students are so involved;

1           b.       Students for whom the District has a reasonable suspicion of drug  
2 use and/or drug possession on the part of the student being tested; and

3           c.       Students who have consented to such testing, with “consent” being  
4 strictly defined to mean all of the following: (i) that both the student and all of his  
5 or her parents or legal guardians have given written, express, voluntary, and  
6 informed consent (as defined below) to such drug testing; (ii) that there is a process  
7 available under any such drug testing policy or practice by which either student or  
8 parents may withdraw such informed consent once it is given; and (iii) that the  
9 potential consequences under any such drug testing policy or practice of a positive  
10 student drug test shall not include suspension of the student from any curricular,  
11 co-curricular, or extracurricular activity;

12  
13       4.       Enforcing any voluntary, suspicionless drug testing policy or practice during  
14 the term of this Injunction against District students not then participating in interscholastic  
15 athletics, which policy or practice does not have a express mechanism in place by which  
16 either the parents or the student can withdraw their consent to suspicionless drug testing  
17 without penalty of any kind; and

18  
19       5.       Enforcing any voluntary, suspicionless drug testing policy or practice during  
20 the term of this Injunction against District students not then participating in interscholastic  
21 athletics, which policy or practice has adverse academic consequences for students,  
22 including, but not limited to, suspension of a student from any curricular, co-curricular, or  
23 extra-curricular activities on account of such student’s positive drug test.

24  
25       For purposes of this Judgment Awarding Permanent Injunction, consent to  
26 suspicionless drug testing must be express, truly informed, and affirmative, and “informed  
27 consent,” as used herein, shall mean that one of the parents, or, in the case of divorced  
28

1 partners or a guardianship, the custodial parent or guardian for the affected student, and also  
2 the affected student himself or herself must be provided complete information, in writing,  
3 concerning any drug testing program. The aforesaid informational\_writing must include a  
4 disclosure of all substances that will be tested, a complete description of the method of  
5 testing (including if the student will miss any class time to be tested), all possible  
6 consequences of a positive test, and the protections in place to protect student privacy. The  
7 aforesaid informational\_writing must also include a description of the rights the student and  
8 parents are waiving if they consent to the suspicionless drug testing program and must  
9 clearly and conspicuously inform both parents and student that students who do not opt-in  
10 to the program will not suffer any adverse consequences as a result and that the consent  
11 forms will be kept confidential. The affected student himself or herself and one of the  
12 parents, or, in the case of divorced partners or a guardianship, the custodial parent or  
13 guardian for the affected student, must both affirmatively choose to opt-in in writing to any  
14 drug testing program, with the presumption being that informed consent has not been given  
15 in the absence of the definitive, written proof thereof.

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

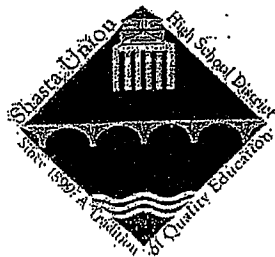
# EXHIBIT A



# Shasta Union High School District

2008-2009  
Student/Parent Handbook

*A Tradition of Excellence Since 1899*



Board of Trustees

Bev Stupek  
Kristen Schreder  
Constance Pepple  
Charles Haase  
Jim Schwerdt

Superintendent  
Jim Cloney

August 2008

Dear Students and Parents:

Welcome to the Shasta Union High School District. High school is a special time when you will be challenged both personally and academically. It is also a time when you will make new friends and important decisions about your future.

This handbook contains descriptions of our educational programs, support services and co-curricular activities, and is designed to help you achieve your goals. I encourage you to plan your four-year program with care. Counselors, teachers, career technicians and administrators will assist you with making these decisions.

I also encourage you to participate in our extensive co-curricular and extra-curricular programs. Involvement in clubs and sports activities is a source of life-long memories and pride. It is also the greatest key to your future success.

This handbook also contains important information on policies and procedures related to student discipline. It is extremely important for parents to be aware of these policies.

Finally, I encourage parents to become actively involved in school planning and support activities. The School Site Councils, Parent-Teacher Organizations and Booster Clubs all need parent participation.

I hope you have a memorable and productive year.

Sincerely,

Jim Cloney  
Superintendent

Shasta Union High School District  
2200 Eureka Way, Suite B, Redding, CA 96001  
(530) 241-3261 • FAX (530) 225-8442

**BOARD OF TRUSTEES**

Bev Stupek..... President  
Kristen Schreder..... Vice President  
James Schwerdt..... Clerk  
Constance Pepple..... Member  
Charles Haase..... Member

**Jim Cloney, Superintendent**

Kyle Turner, Associate Superintendent, Instructional Services  
Art Schmitt, Chief Business Official

Dana Reginato, Associate Superintendent, Human Resources  
Chris Adams, Administrator of Educational Services

**Enterprise High School**

3411 Churn Creek Road, Redding, CA 96002  
(530) 222-6601 • FAX (530) 222-5138

Eric Peterson, Principal      Keith Turner, Asst Principal, Athletic Admin  
Serna Teixeira, Asst Principal      Monica Cabral, Head Counselor

**Foothill High School**

9733 Deschutes Road, Palo Cedro, CA 96073  
(530) 547-1700 • FAX (530) 245-2701

Jim Bartow, Principal      Kevin Greene, Asst Principal, Athletic Admin  
Shawn Austine, Asst Principal      Mike O'Leary, Head Counselor

**Shasta High School**

2500 Eureka Way, Redding, CA 96001  
(530) 241-4161 • FAX (530) 241-9571

Milan Woollard, Principal      Heath Bunton, Asst Principal, Athletic Admin  
Leo Perez, Asst Principal      Sherrie Howard, Head Counselor

**Pioneer High School**

2650 Eighth Street, Redding, CA 96001  
(530) 243-1880 • FAX (530) 243-0753  
Elsbeth Prigmore, Principal

**Freedom Community Day School**

928 W. Cypress Ave, Redding, CA 96001  
(530) 245-2660  
Guy Malain, Principal

**Shasta Adult School**

490 Mary Street, Redding, CA 96001  
(530) 245-2626  
Guy Malain, Principal

**North State Independence High School**

490 Mary Street, Redding, CA 96001  
(530) 245-2760 • FAX (530) 245-2761  
Guy Malain, Principal

**Transportation Department**

2675 Eighth Street, Redding, CA 96001  
(530) 241-0416 • FAX (530) 225-8470  
Tom Carroll, Director

**Shasta Union High School District Farm**

4651 Eastside Road, Redding, CA 96001  
(530) 246-7030  
Noah Corp, Coordinator

**Shasta Learning Center**

2200 Eureka Way, Redding, CA 96001  
(530) 246-4050 • FAX (530) 245-2610



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## SCHOOL ATHLETICS

A complete California Interscholastic Federation (CIF) sports program is offered at Enterprise, Foothill, and Shasta High Schools. The following sports are offered: football, basketball, wrestling, cross country, track and field, baseball, tennis, swimming, golf, soccer, skiing, snowboarding, and volleyball. Junior Varsity level competition is available in all the above sports with the exception of soccer, golf, and tennis. Each school also has a cheerleader and/or drill team program.

## POLICY ON ELIGIBILITY

The SUHSD subscribes to the Pursuing Victory With Honor Sports Summit Accord adopted by the California Interscholastic Federation (CIF). We believe that interscholastic athletic competition should demonstrate high standards of ethics and sportsmanship and promote the development of good character and other important life skills. We also believe that the highest potential of sports is achieved when participants are committed to pursuing victory with honor according to the six core principles: trustworthiness, respect, responsibility, fairness, caring, and good citizenship (the six pillars of character). In order to be eligible for extra curricular competitive representational activities, students must maintain a 2.0 GPA and comply with provisions of the Shasta Union High School District's Competitive Representational Activities Code and the Pursuing Victory With Honor Code of Conduct. (These codes are included in Appendix A and are available at each school.) A parent or legal guardian must sign and return the forms acknowledging their awareness of the requirements for participation before a student may participate in extra-curricular competitive representational activities. Parents are encouraged to review the Competitive Representational Activities Code as well as the Pursuing Victory With Honor Code with their son(s)/daughter(s).

Students and parents should contact their school's Athletic Administrator for information concerning eligibility questions before embarking on transfer actions between schools.

## USE OF TOBACCO, ILLEGAL DRUGS OR ALCOHOL

The Shasta Union High School District believes that competitive representational activities are an integral part of the school curriculum and as such, must contribute to the physical and mental health of students. To accomplish this, the District has enacted policies related to drug and alcohol use, both at school and outside of school activities.

In order to provide for the health and safety of students, to provide a legitimate reason for students to say "no" to drug use, and to provide an opportunity for those using drugs to receive help in locating a program of assistance, the District conducts a mandatory drug testing program for students participating in competitive representational activities. The program is not punitive. It is designed to create a safe, drug free environment for students and assist them in getting help when needed.

Students who attend an illegal activity (where drugs or alcohol are served to minors) are also subject to this policy.

Consequences of Violating Tobacco, Illegal Drug, or Alcohol Policies - Refer to section 5.6 of the Competitive Representational Activities Code in Appendix A.

## PARTICIPATION IN NON-SCHOOL ATHLETIC EVENTS

If an athlete desires to compete in an invitational or an event during the season of sport which is outside the normal school schedule, the following guidelines will apply:

1. Pre approval is required for participation in non-school athletic events.

REFERENCE	INFRACTION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
VC 23225 BP 25608 25662 EC 48900 Sec. C & D	Alcohol Possession or Use of	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>1-5 day suspension</li> <li>Saturday School; complete learning packet</li> <li>Referral to Student Study Team</li> <li>Complete drug &amp; alcohol diversion program</li> <li>Weekly drug test &amp; miss 2 weeks of representational activities or suspension from 9 weeks of activities</li> </ul>	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>5 day suspension</li> <li>Possible Saturday School</li> <li>Consider for placement into alternative school program (Student Study Team)</li> <li>Treatment at parent/guardian expense</li> <li>Possible expulsion</li> </ul>	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>Possible placement into alternative placement program or recommendation for expulsion</li> <li>5 day suspension at parent expense</li> <li>Possible expulsion</li> </ul>
PC 450 455	Arson	<ul style="list-style-type: none"> <li>Suspension pending Superintendent's recommendation</li> <li>Referral for expulsion</li> <li>Parent conference</li> <li>Referral to fire marshal/law enforcement</li> <li>Referral to Student Study Team</li> </ul>		
EC 44014 48902 PC 240 241.2 242 243.2 & .5 244 45 417	Assault	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>Suspension pending Superintendent's recommendation</li> <li>Referral to Student Study Team</li> <li>Referral for expulsion</li> </ul>		
	Academic Dishonesty	<ul style="list-style-type: none"> <li>Loss of credit on assignment</li> <li>Behavior contract/ academic probation</li> </ul>	<ul style="list-style-type: none"> <li>Loss of Credit in course</li> <li>"F" grade on transcript</li> </ul>	

REFERENCE	INFRACTION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
CAC Title 5 Sec. 302, 305	Dress Code Violation/ Gang Related Apparel	<ul style="list-style-type: none"> <li>Student to correct violation</li> <li>Appropriate clothes obtained or student assigned to in house suspension pending change of clothes</li> <li>Suspension and/or Saturday School</li> </ul>	<ul style="list-style-type: none"> <li>Parent contact</li> <li>Suspension and/or Saturday School</li> <li>Student Study Team</li> </ul>	<ul style="list-style-type: none"> <li>Referral for consideration of alternative school placement</li> <li>1-3 day suspension</li> <li>Student Study Team</li> </ul>
EC Sec. 48900 C, D, J, HSC 11014.5 11350 11364 11364.5 11364.7 11373 11379 11382 11680 11681 11550 HS 647 fpc	Drugs, Possession, Use of  Drug Paraphernalia, Possession of	<ul style="list-style-type: none"> <li>Referral to Student Study Team for counseling referral</li> <li>Notify law enforcement agency</li> <li>1-5 day suspension</li> <li>Possible recommendation for expulsion</li> <li>Transfer to alternative education placement unless student and parent/guardian agree to complete district drug diversion program</li> <li>Restiction from all representational activities, including athletics, for length of the semester</li> </ul>	<ul style="list-style-type: none"> <li>Referral to Student Study Team for follow up counseling referral</li> <li>Notify law enforcement agency</li> <li>Possible recommendation for expulsion</li> <li>5 day suspension</li> <li>Transfer to alternative education placement</li> <li>Treatment at parent or guardian's expense</li> </ul>	<ul style="list-style-type: none"> <li>Referral to Student Study Team</li> <li>Notify law enforcement agency</li> <li>Recommendation for expulsion</li> <li>Suspension pending expulsion hearing outcome</li> </ul>
EC (above) 48915 C3 HSC (above)	Drugs, Sale of or Sharing of	<ul style="list-style-type: none"> <li>Notify law enforcement agency</li> <li>Referral for expulsion</li> <li>Suspension pending outcome of expulsion hearing</li> <li>Referral to Student Study Team for counseling referral</li> </ul>		

## LAW ENFORCEMENT REFERRAL

The following offenses must be reported to the Police Department: when a student: 1) brings any firearm, knife, explosive or other dangerous object to school; 2) attacks or menaces a District employee; 3) causes serious physical injury to another person; 4) possesses/sells drugs, alcohol or other controlled substances; or 5) commits robbery or extortion in school. (AR 5144.1)

## DISCIPLINE BY A TEACHER

For disciplinary reasons, a teacher can:

- ◆ Suspend a student from his/her class for the day of the infraction and the next day.
- ◆ Detain a student for up to one hour at the end of the school day.
- ◆ Require a parent conference.
- ◆ Refer the student to a school counselor or administrator.

## SCHOOL SAFETY

All students should be aware of and observe common safety practices. All schools have a school wide safety and emergency plan, which is available at each site. Report any unsafe condition to your teacher or administrator. Follow safety rules particular to your class such as chemistry, industrial technology, etc.

The following are general safety practices that should be observed by all:

1. No one should sit on the backs of chairs or chair desks.
2. No one should sit on windowsills or radiators.
3. No one should use equipment unless authorized by the teacher.
4. When authorized, use ladders in the following manner:
  - a) Do not stand on the top step or next to the last step of stepladders.
  - b) Be sure that stepladders are locked in the upright position and are resting securely on an even surface.
5. Do not sit or stand on tables.

## SOLICITATION OF FUNDS

Solicitation of funds from students on school premises by any organization other than a school organization is prohibited.

## DISCIPLINE POLICY

In order to promote a safe school atmosphere in which all students can learn, it is essential that all students take responsibility for their behavior. To guide students in making decisions that add to this safety, the following Discipline Policy clarifies the behavioral expectations of Shasta Union High School District. We recognize that the promotion of a safe atmosphere requires the teamwork of students, staff members, parents/guardians and support services. Parents, counselors and the appropriate administrators will be included in every phase of disciplinary action. Administration may use one or any combination of the consequences listed for each offense. Administration may use a consequence that is not listed if deemed appropriate by the Principal.

CODES: (CAC = CALIF. ADMIN. CODE) (EC = EDUCATIONAL CODE)  
(HSC = HEALTH & SAFETY CODE) (VC = VEHICLE CODE)  
(BP = BUSINESS & PROFESSIONAL CODE) (PC = PENAL CODE)

REFERENCE	INFRACTION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
EC 48908 CAC Title 5 Sec. 300	Litter	<ul style="list-style-type: none"> <li>Pick up litter at lunch or after school</li> </ul>		
EC 48900 Sec. 1 PC 311, 311.2 311.6	Obscene Act or Behavior	<ul style="list-style-type: none"> <li>Referral to Student Study Team for counseling</li> <li>Possible referral to law enforcement agency</li> <li>Possible suspension</li> <li>Possible recommendation for expulsion</li> </ul>	<ul style="list-style-type: none"> <li>Referral to law enforcement agency</li> <li>Suspension with possible recommendation for expulsion</li> </ul>	<ul style="list-style-type: none"> <li>Suspension pending expulsion hearing</li> <li>Recommendation for expulsion</li> <li>Possible alternative program placement</li> </ul>
EC 48900 Sec. 1 PC 311, 311.2	Obscene Language (outside the classroom)	<ul style="list-style-type: none"> <li>Student warned by staff hearing obscene language and/or possible Saturday School following referral</li> <li>Possible suspension</li> </ul>	<ul style="list-style-type: none"> <li>Parent contact</li> <li>Suspension and/or Saturday School for days missed</li> </ul>	<ul style="list-style-type: none"> <li>2-5 day suspension and/or Saturday School</li> </ul>
EC 48900 Sec. H	Smoking/Use of Any Form of Tobacco on or About School Grounds	<ul style="list-style-type: none"> <li>Saturday School</li> <li>Possible referral to no smoking class</li> <li>Site-based TUBE intervention program</li> </ul>	<ul style="list-style-type: none"> <li>1-3 day suspension and/or Saturday School</li> </ul>	<ul style="list-style-type: none"> <li>Possible placement in alternative school program</li> <li>1-5 day suspension</li> <li>Teacher-student conference</li> <li>Teacher documents</li> <li>Detention as assigned</li> </ul>
EC 48260 48261 48262 48263 48236-5	Tardiness	<ul style="list-style-type: none"> <li>Teacher-student conference</li> <li>Possible Saturday School</li> </ul>	<ul style="list-style-type: none"> <li>Teacher student conference</li> <li>Teacher documents and/or assigns detention</li> </ul>	

APPENDIX A  
Competitive Representational Activities Code  
*Revised 7/17/08*

Competitive Representational Activities are an integral part of our school curriculum and contribute to the well-being of all who participate ("Participants"). Participants are reminded they represent the school and community, and their actions must be a credit to both. All school rules apply in all Competitive Representational Activities.

The District strongly opposes student or parent sponsored activities that condone or promote the use of tobacco, alcohol or drugs. Parents are encouraged to make sure their students are not involved in the abuse of these substances.

1.0 **SCHOLASTIC ELIGIBILITY (Athletics Only)**

A student shall be eligible for all Competitive Representational Activities if he/she meets the following requirements:

- 1.1 In order to be eligible for participation in athletic Competitive Representational Activities, a student in grades 9 through 12 must be enrolled in 20 semester credits of course work, and have earned a 2.0 GPA during the most recently completed grading period. (See CIF Bylaws for further regulations.) A waiver of the 2.0 GPA requirements will be permitted for any one quarter during a student's four years of high school (BP 6145).
- 1.2 The grade point average used to determine eligibility shall be based on grades of the previous grading period during which the student attended class at least a majority of the time. (Education Code 35160.5)
  - 1.2.1 The most recently completed grading period for entering 9th grade students will be the most recent GPA earned in the last school attended.
  - 1.2.2 When students are simultaneously enrolled in college classes for which they receive credit toward high school graduation, their college grades shall be included in the computation of their grade point average.
  - 1.2.3 Receiving an Incomplete shall have no effect on a student's academic eligibility as long as the resolution of the Incomplete would not lower his/her grade point average below 2.0. If the resolution of an Incomplete could lower the student's grade point average to below 2.0, the student shall be considered ineligible until the Incomplete is removed and the grade point average determined.
- 1.3 When a student does not maintain 2.0 GPA, he/she is ineligible in the subsequent grading period to participate in athletic Competitive Representational Activities. To regain eligibility, a 2.0 GPA must be earned in a grading period. Eligibility will be based on quarter grades.
- 1.4 In the event that a student finds that he/she is academically ineligible to participate in athletic Competitive Representational Activities in the first semester of the upcoming year, he/she may request that current summer school grades be added to the grades received in the spring semester and that the total spring semester and summer school grades be used to determine eligibility for the first semester of the upcoming school year. Summer school grades officially placed on a student's transcript will be totaled with the grades from the previous grading period and divided by the total number of courses. If a course is repeated, only the higher of the two grades will be used for calculations.
- 1.5 Students with any "F" grades must also maintain minimum progress towards graduation in order to meet eligibility requirements.
- 1.6 Students are expected to maintain good citizenship and conduct themselves in an appropriate manner while in class and on campus, and while representing the school during any Competitive Representational Activity. Failure to do so may result in ineligibility.

2.0 **DOCUMENTARY ELIGIBILITY (Athletics Only)**

- 2.1 Athletic Health Screening Examination Record, parent permission forms, insurance forms, emergency consent forms, authorization for student drug/alcohol testing, bus rules and other forms



as required shall be recorded, and on file in the School Office. Parent or legal guardian signature is required.

- 2.2 An annual physical examination is required before a student may try out, practice or participate in interscholastic athletic competition. A student will be excused from the physical examination only in compliance with Education Code 49451 provisions concerning Parents' Refusal to Consent. It is recommended that the physical be passed prior to purchasing insurance.
- 2.3 A physical examination is good for one calendar year.
- 2.4 A prospective athlete shall either secure student insurance or have his/her parent or legal guardian complete the Parent's Certification Statement of Responsibility for Athletic Insurance. Proof of payment for student insurance or the statement of responsibility shall be on file at the school.
- 2.5 The District expects that coaching staff will provide an orientation for parents at the start of each sport season.

#### 3.0 DOCUMENTARY ELIGIBILITY (other than athletics)

- 3.1 Appropriate parent permission forms, including authorization for student to be included in the drug/alcohol random testing pool, and emergency forms shall be on file at the school. Parent or legal guardian signature is required.
- 3.2 Competitive Representational Activities advisors (i.e. coaches, band leader, FBLA advisor) shall determine rules concerning appropriate conduct for the specific Competitive Representational Activity.

#### 4.0 ABSENCE FROM SCHOOL

- 4.1 Absence from school on the day of a scheduled Competitive Representational Activity shall result in denial of the privilege to participate. Students are required to attend a minimum of four (4) periods to be considered eligible for participation in the Competitive Representational Activity. Exceptions may be granted by the school administration on a case by case basis. Participation in Saturday or holiday events will be affected by attendance the last school day preceding the event.

#### 5.0 USE OF TOBACCO, ILLEGAL DRUGS OR ALCOHOL (during season of Competitive Representational Activity)

- 5.1 The Shasta Union High School District believes that Competitive Representational Activities are an integral part of the school curriculum and must contribute to the physical and mental health of the Participants. To accomplish this, the District has enacted policies related to drug and alcohol use, both at school and outside of school sponsored events.
- 5.2 In order to provide for the health and safety of the Participants, to provide a legitimate reason for students to say "no" to drug use, and to provide an opportunity for those taking drugs to receive help in locating a program of assistance, the District is conducting a mandatory random drug testing program for Participants. The program is designed to create a safe, drug-free environment for Participants.
- 5.3 Participants who are under the influence, or in possession, of illegal drugs or alcohol are subject to this policy at all times (i.e. during school, at school sponsored events, and outside of school). Participants who are under the influence or in possession at school or school sponsored events are subject to school consequences as well as the consequences of BP and AR 5131.61, Random Drug Testing of Students Participating in Competitive Representational Activities.
- 5.4 Participants who attend an illegal event (where drugs or alcohol are being served to minors) are also subject to this policy even if they do not use drugs or alcohol.

#### 5.5 Explanation of Terms

- 5.5.1 Awards: School letters, certificates, or other honors and/or special recognition.
- 5.5.2 Competitive Representational Activities: All activities sanctioned by and under the control and jurisdiction of the Shasta Union High School District that are competitive, extra-curricular or co-curricular. These activities do not occur during the regular course of the school day, and include Competitive Representational Activities which occur during summer vacation.

- 5.5.3 Consent: The parent or guardian and the Participant are required to sign a written consent for drug testing prior to participating in the Competitive Representational Activity.
- 5.5.4 Drug: Any substance considered illegal or controlled by the Food and Drug Administration. This includes tobacco products, alcohol, and performance enhancing supplements including steroids.  
Drug panel to be tested: Methamphetamine, Chlorochromate, Amphetamine, Phencyclidine, Cocaine, Marijuana, Methadone, Barbiturates, Benzodiazepines, Opiates, Oxycodone, Nicotine, Alcohol.
- 5.5.5 Medication: The parent or guardian must provide verification (prescription information and number to the Medical Review Officer upon phone call) if the drug test is positive. Participants who test positive and refuse to provide verification will be subject to actions and the reinstatement process specified below.
- 5.5.6 Participant: Any student participating in Competitive Representational Activities sanctioned by and under the control and jurisdiction of the Shasta Union High School District.
- 5.5.7 Participant Selection for Testing: Random testing will be conducted during the Season. There will be a random selection of Participants to be tested by the drug testing company; collection of all specimens will be done by the drug testing company. Selection is truly random and SUHSD employees are not involved in the process of selection.
- 5.5.8 Positive Test: The Participant's sample will first be tested using an Instant Technologies Icup to determine an initial positive or negative. Any initial positive will be sent to a Substance Abuse & Mental Health Services Administration (SAMHSA) certified lab for further analysis and confirmation. A Medical Review Officer (MRO) will contact the parent or guardian to discuss any prescription medication the Participant may be taking. Final results from the lab will be reported by the drug testing company to the Drug Testing Coordinator at the District Office. The Drug Testing Coordinator will then contact the Assistant Principal. The Assistant Principal will notify the parent or guardian and the Participant of the final lab results.
- 5.5.9 Season: Official seasons will be the same for all Competitive Representational Activities. The academic year is divided into four seasons: fall (August 1 - December 1), winter (November 1 - March 31), spring (February 1 - the last day of school), and summer (the day after the last day of school - July 31). If tryouts/meetings for competitive activities occur during a season of ineligibility, the student may attend tryouts/meetings at the discretion of the person in charge.
- 5.6 Action Taken & the Reinstatement Process
- 5.6.1 Missing a co-curricular Competitive Representational Activity due to a positive drug test will not result in reduction of a course grade. Students suspended from a co-curricular Competitive Representational Activity shall be provided with an alternative assignment in lieu of event missed.
- 5.6.2 First Offense:
1. Notify parent or guardian.
  2. The Principal or his/her designee shall notify the Participant of the charges against him/her and provide him/her a chance to be heard on the matter at a meeting with the Principal/designee, the Participant, and his/her guardian/parent.
  3. For reinstatement of eligibility, the Participant must successfully finish a five-week assistance/counseling program at the Participant's expense (evidence must be submitted), or the SUHSD drug diversion program.
  4. Participant will be given the option of either A or B:
    - A. Taking a weekly drug test for six weeks (at the Participant's expense) with all negative results (any positive results are considered a second offense),

AND

missing two weeks of activities beginning with the date of the confirmed positive and ending at midnight of the 14<sup>th</sup> day,

AND

must be actively enrolled in and attending a five week assistance/counseling program (evidence must be submitted) or the S.U.H.S.D. drug diversion program.

The Participant may attend practice/meetings at the discretion of the person in charge. Participants who do not complete a successful option A must complete option B for reinstatement.

B. Being suspended from participation for a period of nine consecutive academic weeks beginning with the date of the confirmed positive and ending at midnight of the 63<sup>rd</sup> day (the summer season will not count as part of the nine weeks). The Participant will be re-tested before beginning the next activity for which he/she is eligible.

#### 5.6.3. Second Offense

1. Notify parent or guardian.

2. The Principal or his/her designee shall notify the Participant of the charges against him/her and provide him/her a chance to be heard on the matter at a meeting with the Principal/designee, the Participant, and his/her guardian/parent.

3. The Participant shall be suspended from participation for the remainder of the Season and for the next Season. Eligibility will be reinstated on the beginning date of the 3<sup>rd</sup> consecutive season following the 2<sup>nd</sup> offense (i.e. if the student's second offense occurs during the fall season, he/she will be eligible on February 1 for sports offered in the spring season only). The Participant will be re-tested before beginning the next activity for which he/she is eligible.

Athletic Seasons		
Fall	Winter	Spring
Football	Basketball	Baseball
Volleyball	Ski/Snowboarding	Softball
Boy's Soccer	Cheerleading	Track & Field
Cross Country	Wrestling	Girl's Soccer
Cheerleading		Boy's Golf
Swimming		Boy's Tennis
Girl's Golf		
Girl's Tennis		

#### 5.6.4. Third Offense

1. Notify parent or guardian.

2. The Principal or his/her designee shall notify the Participant of the charges against him/her and provide him/her a chance to be heard on the matter at a meeting with the Principal/designee, the Participant, and his/her guardian/parent.

3. The Participant shall be ineligible for all Competitive Representational Activities and participation. For reinstatement, the Participant must take a monthly drug test for twelve months (at the Participant's expense) with all negative results (any positive results are considered another offense).

5.6.5. Further violations shall result in a permanent ban from District Competitive Representational Activities. Participants who do not finish the season will not be eligible for awards, honors, or recognition.

#### 10. QUITTING A COMPETITIVE REPRESENTATIONAL ACTIVITY

Any Participant dropping a Competitive Representational Activity before the Season ends shall not be eligible to practice or participate in another Competitive Representational Activity until the end of the Season during which the drop occurred. Exceptions to this rule can be made by the Principal.

7.0 EQUIPMENT

7.1 All equipment is issued to a student on a loan basis, subject to normal wear and tear. Equipment that is abused or lost must be paid for by the student to whom it was issued.

7.2 For a student to be eligible to participate in a subsequent Competitive Representational Activity, all equipment must be turned in at the end of a Season. Failure to do so shall result in school penalties.

8.0 TRANSPORTATION

8.1 When district transportation is provided, Participants must be transported to and from school events on a forementioned transportation. The two exceptions to this rule will be: if a parent or guardian contacts (by note or call) the principal or designee in advance of the Competitive Representational Activity. Upon direct authorization by the principal or designee, the Participant will be released by the coach, or person in charge, to the parent or guardian only for transportation following the Competitive Representational Activity; the second exception will be if the district transportation is for "drop off" purposes only, then the parent or guardian will not need to contact the principal or designee in advance of the activity as a prerequisite to picking up the Participant.

8.2 Participants may provide their own transportation for Competitive Representational Activities occurring 1/2 hour after the end of the school day, within the boundaries defined as "The Golden Triangle" (West Valley to Central Valley, Shasta Foothill to Enterprise). When district transportation is provided, the rule above will be followed.

9.0 INTERPRETATION OF COMPETITIVE REPRESENTATIONAL ACTIVITIES CODE

The judgment of the Principal is final regarding the application of this Code, and any needed interpretation of it.