



January 17, 2014

Superintendent William Gronseth
Duluth Public Schools
215 N. 1st Avenue East
Duluth, MN 55802

Dear Superintendent Gronseth,

The ACLU-MN was disappointed to learn that the Duluth School District is considering a plan to require random, suspicionless drug testing of students who participate in extra-curricular activities and as a condition of receiving a parking permit. We respectfully urge you to reject the proposal because it is likely unconstitutional, is ineffective and is harmful to students by driving them away from extracurricular activities and undermining their trust of school officials.

By adopting a suspicionless, random drug testing policy, the Duluth School District would expose itself to potentially costly litigation challenging the policy under both the U.S. and Minnesota Constitutions. Although the U.S. Supreme Court has upheld the use of mandatory random drug testing of students, the Court determined that such drug testing schemes pass constitutional muster only for a small category of students. Specifically, those who participate in athletics and competitive extra-curricular activities. See *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 826 (2002).

A key element of the plan upheld in *Earls* was the Court's finding that students in competitive activities have a diminished expectation of privacy given the fact that students voluntarily subject themselves to privacy intrusions including communal undress and off-campus travel, and the fact that competitive activities are highly regulated and governed by significant rules that do not apply to the student body as a whole. *Id.* at 831-32. The plan being considered by the Duluth School District would sweep more broadly than that to include students who wish to park on school grounds and members of the "Pledge Makers". Another key element for the *Earls* Court was the fact that the district did not turn test results over to law enforcement. *Id.* at 833. In contrast, the Duluth plan contemplates law enforcement participation.

Even if the Duluth School District were to adopt a plan that directly tracked the plan upheld by the Supreme Court in *Earls*, the plan would still have to pass muster under the Minnesota Constitution. State Supreme Courts in both Washington and Pennsylvania, have held that suspicionless random drug testing of students violate their state Constitutions. See *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wash. 2d 297, 178 P.3d 995 (2008); and *Theodore v. Delaware Valley Sch. Dist.*, 575 Pa. 321, 836 A.2d 76 (2003). Like those courts, the

AMERICAN CIVIL
LIBERTIES UNION OF
MINNESOTA FOUNDATION
2300 MYRTLE AVENUE
SUITE 180
SAINT PAUL, MN 55114
T/651.645.4097
F/651.647.5948
support@aclu-mn.org
www.aclu-mn.org



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Minnesota Supreme Court has recognized that the Minnesota Constitution provides greater protection from unreasonable searches and seizures than the Fourth Amendment. See *Ascher v. Comm'r of Public Safety*, 519 N.W.2d 183 (Minn. 1994) (invalidating suspicionless roadblocks to identify drunk drivers and rejecting U.S. Supreme Court decision to the contrary); *State v. Carter*, 697 N.W.2d 199, 211–12 (Minn. 2005) (holding that drug-detection dog sniff outside a storage unit is a search under the Minnesota Constitution and requires a reasonable, articulable suspicion); *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (requiring reasonable, articulable suspicion of illegal activity for a warrantless dog sniff outside the door of an apartment).

In addition to being likely unconstitutional, student drug testing is simply ineffective. It does nothing to reduce drug use among students or make students safer. Drug tests will not detect the use of most drugs if they are consumed more than 48 hours before the test is administered. Hard drugs exit a person's system very quickly, and so drug use on a Friday night will most likely not show up a Monday morning. The largest national study conducted by the U.S. government's own program, Monitoring the Future, found in 2002 that random, mandatory drug testing had no impact of students' rates of drug use. This was a study over 3 years of more than 76,000 students nationwide in 8th, 10th and 12th grades. These researchers confirmed these finding again in 2003. Is this the best use for the 5000 scarce dollars from the District's already strained budget?

It is paradoxical that the District is considering suspicionless random drug testing of students in light of the fact that there are proven alternatives to drug testing that have been shown to effectively reduce students' drug use including ensuring access to after-school extracurricular programs for at-risk students (not banning these students from these activities or drug testing them as a condition for participation), providing access to an on-site school counselor with training and experience in recognizing the symptoms or risk factors for substance abuse and, most importantly, creating a school environment that supports relationships of trust between students and mentors, coaches and teachers – not requiring that these adult figures act as police by drug testing and punishing students who may test positive

Lastly, suspicionless random drug testing schemes do more harm than good by driving students away from extracurricular activities and creating an atmosphere of mistrust. By instituting a drug testing policy, the District would be teaching students the wrong civics lesson: that they can't expect to have their bodily integrity and privacy respected, even if they are innocent of any wrongdoing. Instead, the District should be instilling the fundamental American values of right

to privacy and respect for constitutional principles. Yet, through random drug testing programs, the District would be teaching their students to simply accept random and unnecessary surveillance tactics and extreme invasions of their privacy, even in the absence of suspicion.

We respectfully urge you to reject the proposed suspicionless random drug testing plan. Enclosed for your information is a helpful resource developed by the ACLU and the Drug Policy Alliance entitled, *Making Sense of Student Drug Testing: Why Educators Are Saying No.*

Sincerely,

A handwritten signature in cursive script that reads "Charles Samuelson". The signature is written in dark ink and has a long, sweeping horizontal line extending to the right.

Charles Samuelson
Executive Director