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Just Say Know: Pros and Cons of Allowing Drug Testing of Students in Public Schools

Anna Weigel Thomas

Essentials of the Argument

Over the past several decades, mandatory random student drug testing (MRSDT) has emerged as a form of genuine high-stakes testing. Embroiled in litigation and controversies, stakeholders have been searching for a balance between ensuring rights and maintaining the safety and wellbeing of students. Historical elements to the question of allowing this testing in public schools are linked to case laws that reviewed due process and protection students have against searches, seizures, and self-incrimination. The Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution are consistently challenged as local education agencies exercise their authorities over actions and behaviors that extend beyond school walls and instructional blocks. Often citing *in loco parentis* as the justification for conducting the screenings, schools are obtaining potent student information. Controversies related to the selection of participants, the means of obtainment, and the use of the results keep the constitutionality of drug testing in schools a precarious practice.

Current Practice of Drug Testing in Public Schools

MRSDT is an increasingly present participation requirement for students wanting to partake in competitive extracurricular activities. In 2003, the federal government made available state-level grant funding for promoting MRSDT in the public education setting; testing is encouraged to detect students in the early and later stages of substance addiction and to help deter substance use and abuse (James-Burdumy, Goesling, Deke, and Einspurch, 2010, p. xvii). The U.S. Department of Education's Office of Safe and Drug-Free Schools (OSDFS) oversees this grant and sponsored the James-Burdumy, et al. (2010) study, in conjunction with the Institute of Education Science. OSDFS has outlined several requirements schools must meet to remain eligible for funding. First, a minimum of 50% of the participating students must be tested annually. The sampling population must consist of students whose eligibility status will span the entire school year. Secondly, a

minimum of five substances must be screened for during the MRSDT. Under OSDFS guidelines, schools must screen for opiates, methamphetamines, cocaine, marijuana, and amphetamines. Additional screenings may be conducted, i.e. for steroids, at the school district's expense, which is why the Office of National Drug Testing Policy encourages districts looking to introduce MRSDT policies incorporate stakeholders' input during the planning stages (2000, p. 6). Third, local education agencies must ensure participants' privacy and the confidentiality of results through formal policy. According to the U.S. Department of Education (2011), local education agencies competing for the two and four year OSDFS grants must limit their testing populations to student athletes, students participating in competitive extracurricular programs, and to students of families who volunteer for random drug testing.

What is drug testing?

According to the National Institute of Health and the National Institute of Drug Abuse (2012), drug testing in schools is only part of the drug prevention and treatment piece currently available. The Office of National Drug Testing (December 2012) defines the practice as the clinical method of determining if a person has used illegal substances. While new technologies allow for sampling to be taken from hair, sweat, and oral fluid, the most common form of collection is urinalysis. Positive results are obtained when tests return information that metabolites, the residual traces of substances, are found in the samples. Regardless of the means, a drug test is a form of searching. Student protection from searches was diminished with the ruling in *New Jersey v. T. L. O.* (1985), where Fourth Amendment protections are reduced when schools conduct searches that are reasonable and justified. As later case laws indicate, the courts often find the practice of MRSDT constitutional for those exact reasons.

Pros of Student Drug Testing in Public Schools

Why are local education agencies compelled to screen for drug use? What motivations and justifications are guiding their decision to implement the contentious practice?

According to the National Institute of Health and the National Institute of Drug Abuse (2012), schools conduct MRSDDT for a variety of reasons. Above all, the belief that drug testing reduces the number and likelihood that students will use and/or abuse illegal substance (NIH, 2012; James-Burdumy, Goesling, Deke, and Einspurch, 2010). Yacoubain (2001) notes that public officials have extended the frontline of the war on drugs to schools, and the intrusion posed through MRSDDT is justifiable given the epidemic-status of drug-use in the nation.

Establishing the Scale for Future Rulings.

In *Veronia School District v. Acton*, 515 U.S. 646 (1995), the Supreme Court upheld the district's practice MRSDDT for student athletes for several reasons. Ultimately, the court noted that the district was using its custodial role, *per in loco parentis*, to use the testing as a means of addressing the growing drug problem within its student body; the cause for testing was probable as drug-use was reaching "epidemic proportions" (Velasquez, 2010, p. 181). Velasquez (2010) notes that this case lead to the adoption of the Veronia Balancing Test, a constitutional scale for comparing student privacy rights to the interests and motives of a local education agency. A similar ruling was made in the *Moule v. Paradise Valley Unified School District*, 863 F. Supp. 1098 (1994); the local education agency's drug testing policy was upheld over voiced concerns of Fourth Amendment infringement. As the trend suggests, ruling in favor of schools and drug testing policies often highlight the application of *in loco parentis* as the overarching justification.

Broadening the Scope.

The Veronia Balancing Test resurfaced during Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822 (2002). In this decision, the student rights outlined in the

Fourth Amendment were outweighed by the district's policy for conducting MRSDDT to discourage student drug use (Alexander & Alexander, 2009, p. 482). Unlike Veronia that had a documented problem of drug use, Pottawatomie County did not have an overtly evidenced need for testing; thus, the expansion of school authority to continue the practice marks a significant reduction in student rights (Velasquez, 2010, p. 182). In the Pottawatomie County case, the scope of testing extended to include students participating in any extracurricular activities. Justice Thomas, the deliverer of the court's opinion, noted that the district was only acting to preserve the wellbeing of its students (Alexander & Alexander, 2009, p. 482).

Post-Secondary Level Practice of MRSDDT.

Student health and safety has also been addressed through a recent 2011 case where all applicants to a Missouri community college had to consent to drug testing as part of the acceptance process; failure to consent to the testing denoted a withdraw from school. In *Barrett v. Claycomb*, 705 F. 3d 315 (2013), the policy was upheld due to the nature of the school's technical and mechanical course offerings. Though the American Civil Liberties Union (ACLU) has maintained that practice is unconstitutional, all applicants to Linn State Technical College must agree to the testing as contingent on their acceptance (ACLU, n.d.).

Cons of Student Drug Testing in Public Schools

Cause for concern is appropriate when civil and individual rights are infringed in the United States, particularly when the rights belong to juveniles. As the administration and participation in MRSDDT programs gain traction, students must navigate the waters of unknown consequences. While programming guides from the U.S. Department of Education and related agencies indicate that positive results are to be used to ensure interventions reach students in need of treatment and support, there exists minimal information related to false-positive results. Additionally, collaborations with law enforcement agencies, per state statutes, have schools further encroaching on due process and protection rights. In *Schail v. Tippecanoe County School Corporation*, 864 F. 2d 1307 (1988), the Seventh Circuit Court ruled that positive test results gleaned from MRSDDT could

function as evidence of possession, as school officials had been sharing the information with local law enforcement per a pre-existing state statute. The plaintiffs successfully argued that the MRSDDT policy has been, in effect, established to find offenders, and drug testing was violating Fourth and Fifth Amendment.

An Officer and an Assistant Principal?

Although the ruling in *Mapp v. Ohio*, 367 U.S. 643 (1961) was in favor of the defendant's actions, caution is warranted as the rights of local education agencies are extended beyond the parameters granted to law enforcement agencies. The court has reduced the procedural safeguards for students when searches are conducted in schools. In *Mapp v. Ohio*, an assistant principal conducted a search on school premises that could only be replicated by police officers if they had sufficient probable cause and/or a warrant been issued. However, noting that the search was reasonable, the evidence and admission of guilt obtained became admissible evidence. While *Mapp v. Ohio* is not directly linked to drug testing, it does speak to levels of intrusion schools may take in maintaining order. In this instance, school officials are invested with law enforcement levels of authority, which is in contradiction to the notion of checks and balances our government is founded upon.

For Your Eyes Only.

The Office of National Drug Testing Policy (2000) stresses that confidentiality be a corner stone for any school system implementing a MRSDDT policy. Results from drug tests are not to be shared with parties not concerned with the matter; this also extends to teachers. In light of strict conditions outlined in FERPA and HIPAA, educational and medical records must be treated with the utmost security. In essence, drug test results function as both educational and medical data. The Office of Civil Rights (OCR) oversees HIPAA, and the privacy rules outline in that legislature may serve as beneficial guidelines for local education agencies seeking to establish methods of result sharing and documentation.

Implications of MRSDDT for Virginia

Guidelines regulating MRSDDT in the Commonwealth cite several of the aforementioned cases and include additional cases that address issues related to random urine collection, consequences for the refusal of drug testing, and

revisiting the controversies associated with school-based policies of drug testing in conjunction with the Fourth Amendment (Board of Education, 2004, p. 2). Student participation in MRSDDT is voluntary and contingent of participation of competitive extracurricular activities. Additionally, their participation serves to promote the overall health and wellness of the student population. The Board of Education (2004) maintains that local school divisions must exercise extensive review when establishing a MRSDDT policy and policies related to consent, procedure, collection, confidentiality, consequences, and appeal should be unambiguously outlined. Per their 2004 report, the Board of Education limits the punishments of failed drug tests to the rendering students ineligible for participation in extracurricular activities; punishment may not extend to academic consequences.

Conclusion

In weighing the pros and cons related to MRSDDT, local education agencies need to reflect on the relevant case laws, statutes, and existing policies related to student discipline and confidentiality. In situations where the civil and property rights of students are minimized, schools must provide substantial evidence to support the need for limitations on liberty. As Alexander and Alexander (2009) note, schools have less stringent regulations surrounding searches, and conducting a drug test, in essence, constitutes a search. In addition to the testing conducted of students suspected substance use on school grounds, drug testing is used as both preventative and intervention tools. Delving into matters that extend beyond school walls and that are of a highly private nature, policies must be crafted to reflect the legislative delicacy that is inherent making the decision to implement a MRSDDT policy. Simply put, the local education agency must be in "the know".

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About the author

Anna Weigel Thomas is in the Educational Policy, Planning, and Leadership program, focusing on K-12 Administration.