

An Analysis of Random Student Drug Testing  
Policies and Patterns of Practice  
In Virginia Public Schools

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Abstract

There were two purposes to this study. First, the study was designed to determine which Virginia public school districts have articulated policies that govern random drug testing of students and if school districts' policies aligned with U.S. Supreme Court standards and Virginia statutes. The second purpose was to ascertain the patterns of practice in selected Virginia school districts that currently conduct random drug testing of students. This included identifying which student groups were being tested and for which drugs. It was also of interest to learn how school districts monitor the testing program and if drug testing practices were aligned with the policies that govern them. Data were gathered by examining student handbooks and district policies in order to determine which school districts had drug testing policies. These policies then were analyzed using a legal framework constructed from U.S. Supreme Court standards that have emerged from case law governing search and seizure in schools. Finally, data on patterns of practice were collected through in-depth interviewing and observation of those individuals responsible for implementing student drug testing in those districts that have such programs. The analyses revealed that the current policies and patterns of practice in random drug testing programs in Virginia public schools comply with Supreme Court standards and state statutes. Student groups subject to testing in Virginia public schools include student athletes and students in extracurricular activities in grades eight through twelve. Monitoring systems in the

school districts implementing random drug testing were not consistent. There is evidence that the school districts implementing random drug testing programs have strong community support for the program.

## Dedication

This dissertation is dedicated to my wife, Cathie whose love, support, and encouragement made completion possible, and to my three children Maggie, Robert, and Heidi Joann.

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## CHAPTER I

### IDENTIFICATION OF THE PROBLEM

Few concerns in our nation today have received as much media attention and created as much public debate as the problem of drug use by adolescents.<sup>1</sup> The perception by the public of teenage drug use has public school officials scrambling to find effective methods to deter drug use or to prevent drug problems.<sup>2</sup> Solutions to adolescent drug use have been elusive, yet school administrators have continued to seek answers in an effort to keep their schools drug free.

Several search and seizure procedures, including locker, canine, and strip searches, along with random drug testing, recently have gained popularity among public school authorities. In the past two decades, the federal judiciary has supported a broadening of the scope of search and seizure in public schools. The result has been for the constitutional pendulum to swing toward a lesser expectation of privacy for students in public schools than for adults generally.<sup>3</sup> This narrowing of student rights with an ever increasing focus on methods to fight drug use has opened the door for public schools to institute random drug testing on various student groups.

Due to the fact that random drug testing is now a viable option for public school authorities in their fight against adolescent drug use, it is necessary to explore how public school policy is being shaped and implemented to facilitate the testing. In particular, this study explores the current policies and practices used in random student

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<sup>1</sup> Phyllis K. Blair. *Legal Aspects of Drug Testing in North Carolina Public Schools*. A dissertation submitted to the faculty of the Graduate School at The University of North Carolina at Greensboro in partial fulfillment of the requirements for the degree Doctor of Education, (1994) 1-165.

<sup>2</sup> W. Bradley Colwell. *Beyond Vernonia: When Has a School District Drug Testing Policy Gone Too Far*. West's Education Law Reporter, (1999) 131, 547-599.

<sup>3</sup> Phillip T.K. Daniel. *Violence and the Public Schools: Student Rights Have Been Weighed in the Balance and Found Wanting*. Journal of Law and Education, (1998) 27, 573-614.

drug testing in Virginia. The purpose of the study is to determine the variation and extent of random drug testing in public schools across the state.

### Context of the Problem

Student drug testing policies and practices in public schools are significant for several reasons. First, they speak to the public concern surrounding drug use and its perceived impact on the safety and well being of children in schools. Next, public school administrators must address the issue of students' constitutional rights of privacy and of the possibility that students may become complacent about diminished constitutional rights as adult citizens. Third, public school officials need to be cognizant of the legal aspects of student drug testing policy and practice. Finally, there is evidence nationally that some school divisions have expanded such policies and practices in order to test more and more students, further testing the constitutional parameters of students' Fourth Amendment protections, as was illustrated by *Board of Education of Pottawatomie County v. Earls*.<sup>4</sup>

Much of the public sentiment toward our nation's public school policies regarding student drug testing is best expressed by John P. Walters, Director of the Office of National Drug Control Policy: "Failure to protect our children from drug abuse and addiction is unacceptable. We cannot withhold effective tools from communities that believe such measures are appropriate to save young lives."<sup>5</sup> This rationale for using

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<sup>4</sup> 122 S.Ct. 2559 (2002). Ruling held that policy requiring all students who participated in competitive extracurricular activities to submit to drug testing was a reasonable means of furthering the school district's important interests in preventing and deterring drug use among its school children, and does not violate the Fourth Amendment.

<sup>5</sup> *What you need to know about Drug Testing in Schools*. Pamphlet from the Office of National Drug Control Policy: Director of National Drug Control Policy. Deposited by U.S. Government Oct. 3, 2000.

whatever means available to schools arguably lies in statistical data on juvenile drug use.

### **Drug Use Among Adolescents**

The frequently cited *Monitoring the Future* national survey is a long-term study of American adolescents, college students, and adults through age forty.<sup>6</sup> The study is conducted annually by the University of Michigan's Institute for Social Research and is supported by research grants from the National Institute on Drug Abuse, and studies trends in drug use.<sup>7</sup>

The initial research conducted in 1975 concluded that 55 percent of young people had used illicit drugs by the time they left high school. The term *illicit drugs* was defined to include all illegal drugs.<sup>8</sup> The percentage in the same category rose to a high of 61 percent in 1981 before a gradual decline to 41 percent in 1992.<sup>9</sup> The researchers reported in 2002 that 53 percent of all high school students had used illicit drugs by the time they finished high school. These figures indicate a period of considerable increase in the 1990s (see Chart 1).<sup>10</sup> During the twenty-seven years of this study, marijuana has been the illicit drug used most widely by teenagers.

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<sup>6</sup> Lloyd D. Johnston, Patrick M. O'Malley, & Jerald G. Bachman, J. *Monitoring the future National results of adolescent drug use: Overview of key findings, 2002*. Bethesda, MD: National Institute of Drug Abuse. (NIH publication No. 03-5374) (2003). Annual study began in 1975. The *Monitoring the Future* study is a series of large, annual surveys of nationally representative sample of students in public and private schools in the United States. The study also examines cigarette and tobacco use for minors but not under the category of illegal drugs.

<sup>7</sup> Ibid.

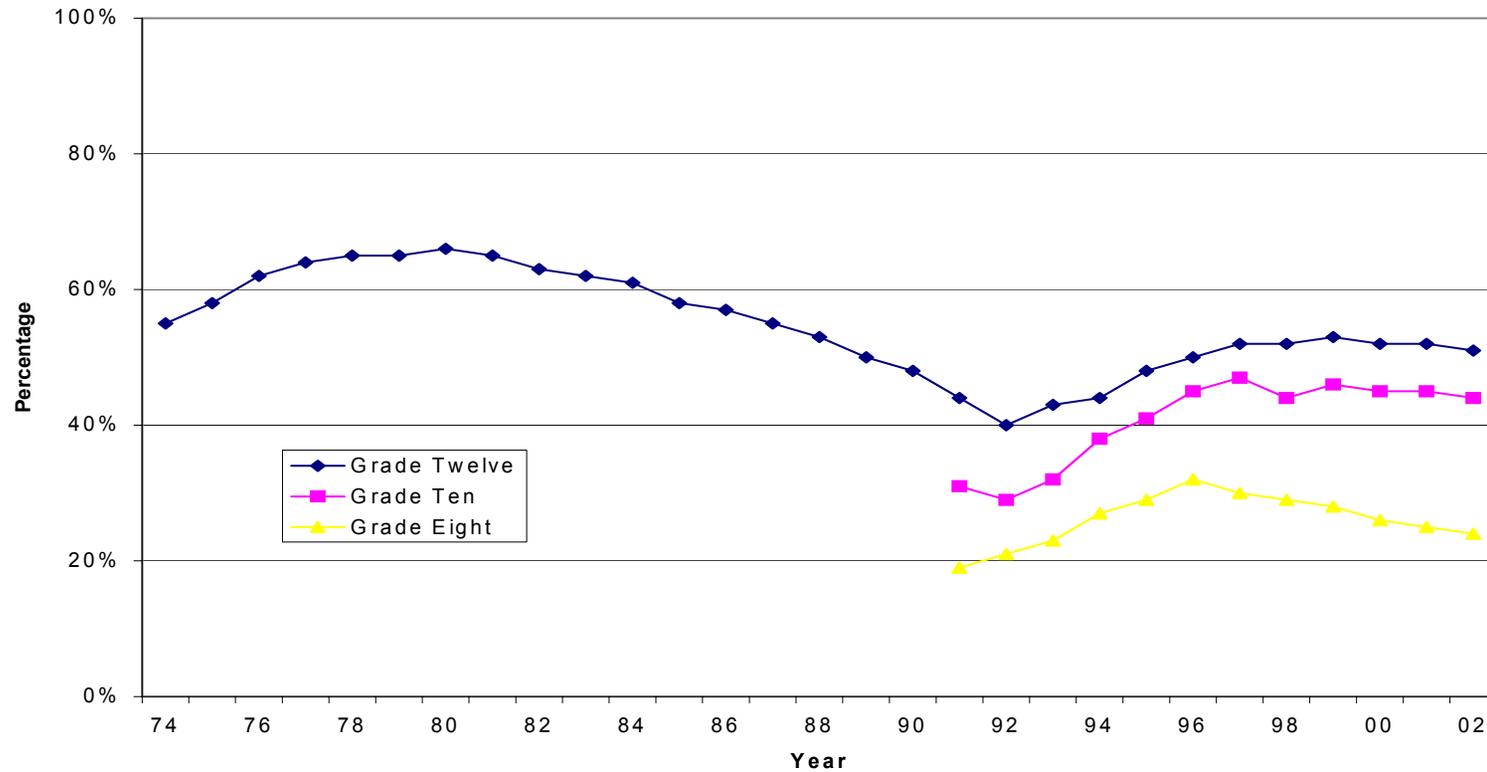
<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

Chart 1

Trends in Illicit Drug Use – Grades Eight, Ten, and Twelve  
Percent of Students Who Used Any Illicit Drug In Lifetime, 1974-2002



Source: Lloyd D. Johnston, Patrick M. O'Malley, & Jerald G. Bachman. *Monitoring the Future National Results of Adolescent Drug Use: Overview of Key Findings, 2002*. Bethesda, MD: National Institute of Drug Abuse. (NIH publication No. 03-5374) (2003) p. 7. The title of the graph and graph and graphs is identical to the graph created by Johnston, O'Malley, & Bachman. The researchers stated in a Public Domain Notice on the page following the title page that all information produced in their report may be reproduced without permission from the National Institute on Drug Abuse or the authors.

For the 2002 survey, sample sizes were 15,100 (grade eight), 14,300 (grade ten), and 12,900 (grade twelve).<sup>11</sup> About 43,700 students in 394 schools participated in the study.<sup>12</sup> The response rate for the study was high with 91 percent of eighth graders, 85 percent of tenth graders, and 83 percent of twelfth graders.<sup>13</sup> University of Michigan staff members administered questionnaires to students, typically during a regular class period.<sup>14</sup> Participation in the study was voluntary and questionnaires were formatted for optical scanning.<sup>15</sup>

The researchers reported that in 2002, 30 percent of American young people had used some illicit drug other than marijuana by the end of the twelfth grade and 21 percent had done so in the twelve months prior to the survey (see Chart 2).<sup>16</sup> Alcohol and tobacco use had remained extremely widespread and both were used more frequently by teenagers than illicit drugs.<sup>17</sup> The *Monitoring the Future* study found:

Nearly four out of every five students (78 percent) have consumed alcohol by the end of high school and nearly half (47 percent) have done so by eighth grade. In fact, more than half (61 percent) of the twelfth graders and a fifth (21 percent) of the eighth graders in 2002 report being drunk at least once in their lives.<sup>18</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

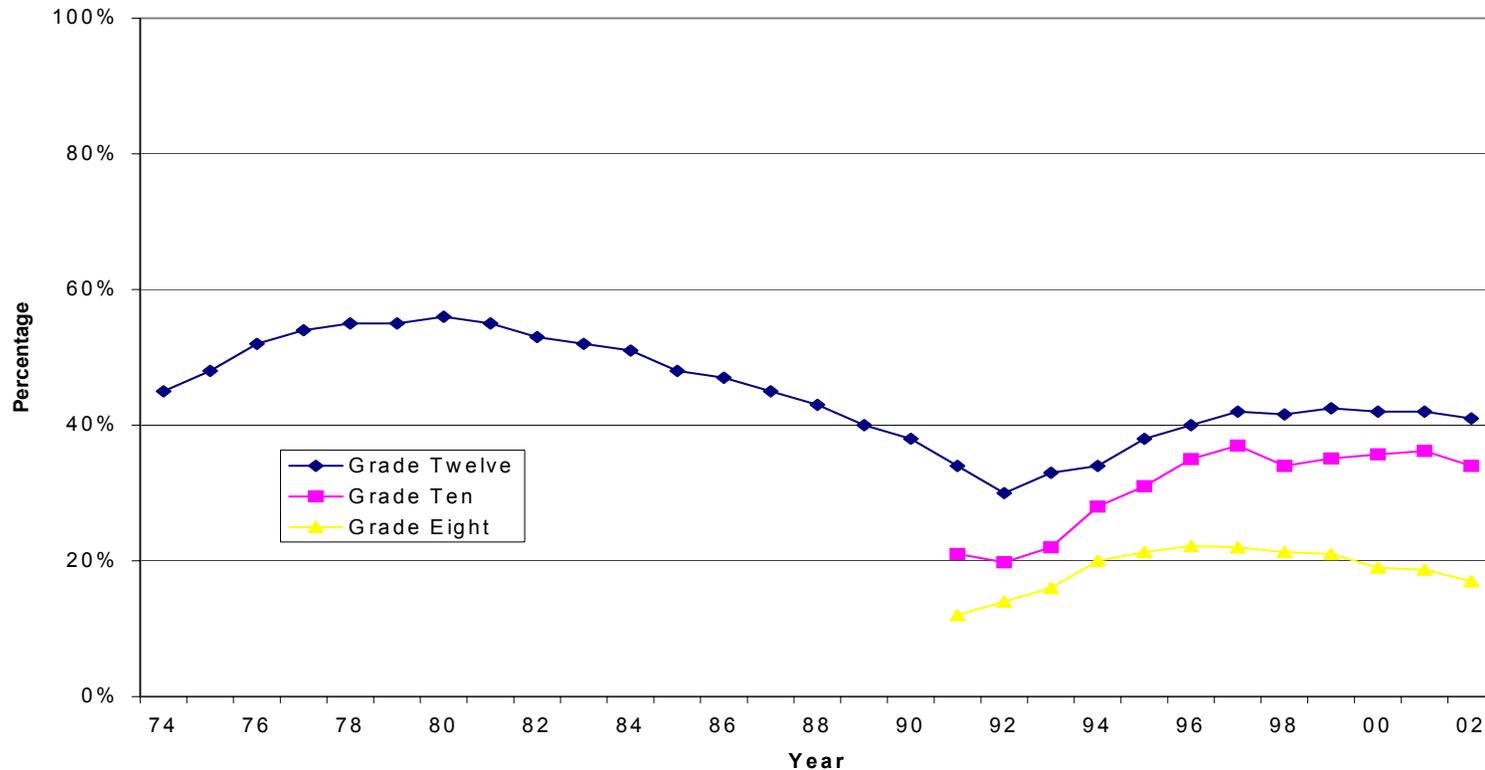
<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid. p. 5.

Chart 2

Trends in Illicit Drug Use – Grades Eight, Ten, and Twelve  
Percent of Students Who Used Any Illicit Drug in Last Twelve Months, 1974-2002



Source: Lloyd D. Johnston, Patrick M. O'Malley, & Jerald G. Bachman, J. *Monitoring the future National results of adolescent drug use: Overview of key findings, 2002*. Bethesda, MD: National Institute of Drug Abuse. (NIH publication No. 03-5374) (2003) p. 7.

The title of the graph and graph and graphs is identical to the graph created by Johnston, O'Malley, & Bachman. The researchers stated in a [Public Domain Notice](#) on the page following the title page that all information produced in their report may be reproduced without permission from the National Institute on Drug Abuse or the authors.

Cigarette use among young people indicates that 57 percent have tried cigarettes by the twelfth grade and 27 percent of twelfth graders are current smokers.<sup>19</sup>

The White House Office of National Drug Control Policy (ONDCP) Information Clearinghouse has also summarized drug trends in the United States, the results of which are useful in examining teen drug habits.<sup>20</sup> The ONDCP used information gained from the National Institute on Drug Abuse (NIDA) and the Substance Abuse and Mental Health Services Administration (SAMHSA). NIDA and SAMSHA have sponsored surveys that track drug use trends. According to the ONDCP fact sheet, the National Household Survey on Drug Abuse (NHSDA) reported in 1979, that 14.1 percent of the population age twelve and older reported having used an illicit drug in the past thirty days.<sup>21</sup> However, illicit drug use in the twelve and older population in the last thirty days dropped to 6.3 percent in 1999, before rising to 7.1 percent in 2001 (see Table 1).<sup>22</sup> This trend indicates that while there has been a recent increase, generally teen illicit drug use has diminished over the last twenty years.

The *ONDCP Fact Sheet* and the *Monitoring the Future Survey* both provided evidence that drug use by teens has diminished from the 1970s and early 1980s. The *ONDCP Fact Sheet* indicated that while more adolescents try drugs, fewer adolescents use drugs as frequently as they did between 1979 and 1981.<sup>23</sup> However, drug use among teenagers began increasing in the mid 1990s to 2001 compared with decreasing drug use by teenagers from the early 1980s to the early 1990s.

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<sup>19</sup> Ibid.

<sup>20</sup> ONDCP Drug Policy Information Clearinghouse: *Fact Sheet, Drug Data Summary*. Retrieved April 10, 2003, from <http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/index.html>

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

Table 1

Trends in the Percentage of Persons Reporting any Illicit Drug Use,  
Ages Twelve and Older, 1979-2001

<i>Recency of drug use</i>	1979	1985	1988	1990	1993	1996	1998	1999	2000	2001
Ever	31.3%	34.4%	34.0%	34.2%	34.2%	34.8%	35.8%	39.7%	38.9%	41.7%
Past Year	17.5	16.3	12.4	11.7	10.3	10.8	10.6	11.5	11.0	12.6
Past 30 days	14.1	12.1	7.7	7.7	5.9	6.1	6.2	6.3	6.3	7.1

Source: Drug Policy Information Clearinghouse: *Fact Sheet, Drug Data Summary*. Retrieved April 10, 2003, from <http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/index.html> p. 2.

Note: Table 1 displays recency of teen drug use ever, in the past year, and in the past 30 days from 1979 to 2001.

The correlation between criminal involvement and drug use is a justification for proponents who argue for more stringent measures to fight drug use in schools. In 1997, according to the ONDCP *Fact Sheet*, 45 percent of state prison inmates used drugs in the month prior to their offense.<sup>24</sup> In addition, the ONDCP *Fact Sheet* reported the National Institute of Justice's Arrestee Drug Abuse Monitoring (ADAM) program which reported that 63.6 percent of male arrestees and 63.9 percent of female arrestees tested positive for illicit drugs at the time of their arrest.<sup>25</sup>

### **Where Drug Use Occurs**

Unlike statistics showing inmate drug use, little research is available that demonstrates schools are the preferred location for drug use among adolescents.<sup>26</sup> The U.S. Department of Education's Office of Educational Research and Improvement reported drug use and abuse through the National Center of Educational Statistics *Indicators of School Crime and Safety 2002*.<sup>27</sup> The fifth edition of this report provided detailed statistical information on the current nature of crime in schools.<sup>28</sup> The data were compiled from various federal agencies, including the Center for Disease Control and Prevention's Youth Risk Behavior Survey, Bureau of Justice Statistics, and the National Crime Victimization Survey and its supplement. This report combined multiple and independent sources of data in an effort to present a more complete portrait of school crime and safety than would be possible with any single source of information.<sup>29</sup> The portion of the report discussed in this document, the *Youth Risk Behavior Survey*, was

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Steven Sussman, Allen W. Stacey, Susan L. Ames, & Laurie B. Freedman. *Self reported high-risk locations of adolescent drug use*. *Journal of Addictive Behaviors*, (1999) 23, 405-411.

<sup>27</sup> Jill F. Devoe, et al., *Indicators of school crime and safety: 2002*. *U.S. Departments of Education and Justice*. NCES 2003-009/NCJ 196753. Washington, D.C.: 2002.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

produced by the Center of Disease Control. The survey was administered to a nationally representative sample of students enrolled in grades nine through twelve in public and private schools.<sup>30</sup> The sample size for the survey was 13,600 and the response rate was 63 percent.<sup>31</sup>

The *Indicators of School Crime and Safety* report indicated that 47 percent of students in grades nine through twelve had at least one drink of alcohol during the thirty days prior to being surveyed.<sup>32</sup> Only 5 percent had at least one drink on school property during the same period.<sup>33</sup> Also, this report stated that 24 percent of students in grades nine through twelve reported using marijuana anywhere other than school during the last thirty days, whereas 5 percent reported using marijuana on school property (see Chart 3 and Chart 4).<sup>34</sup>

The study, *Self-Reported High-Risk Locations of Adolescent Drug Use*, provided analysis of locations where youth reported using drugs.<sup>35</sup> The report examined 413 high school students from thirteen Los Angeles area continuation high schools who were at a relatively high risk for substance abuse.<sup>36</sup> The participants' average age was 16.8 years. Three percent of the students declined to participate during the day data collection was conducted. The researchers gathered data through administering a twenty-one-page,

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

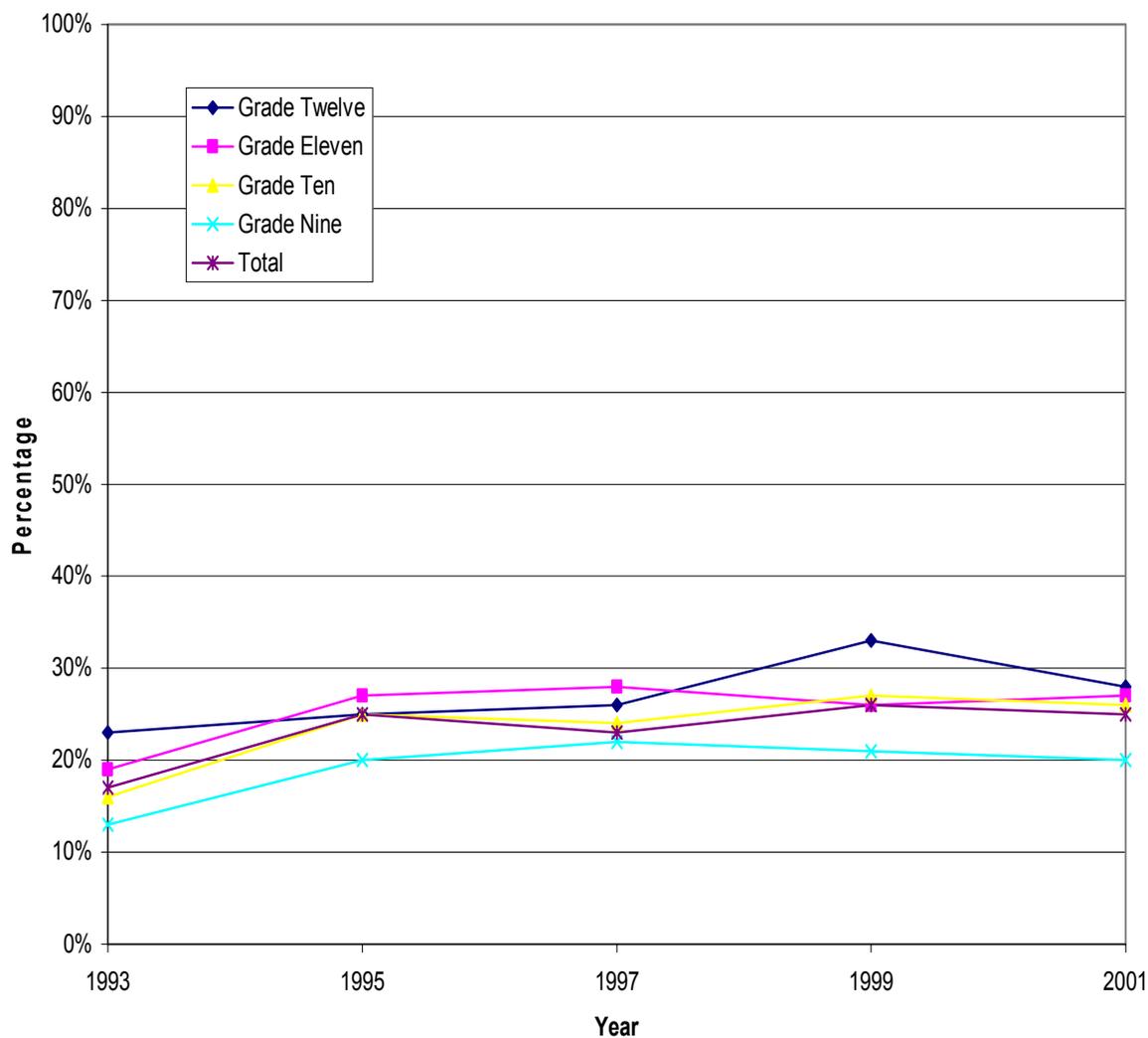
<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Supra. note 26.

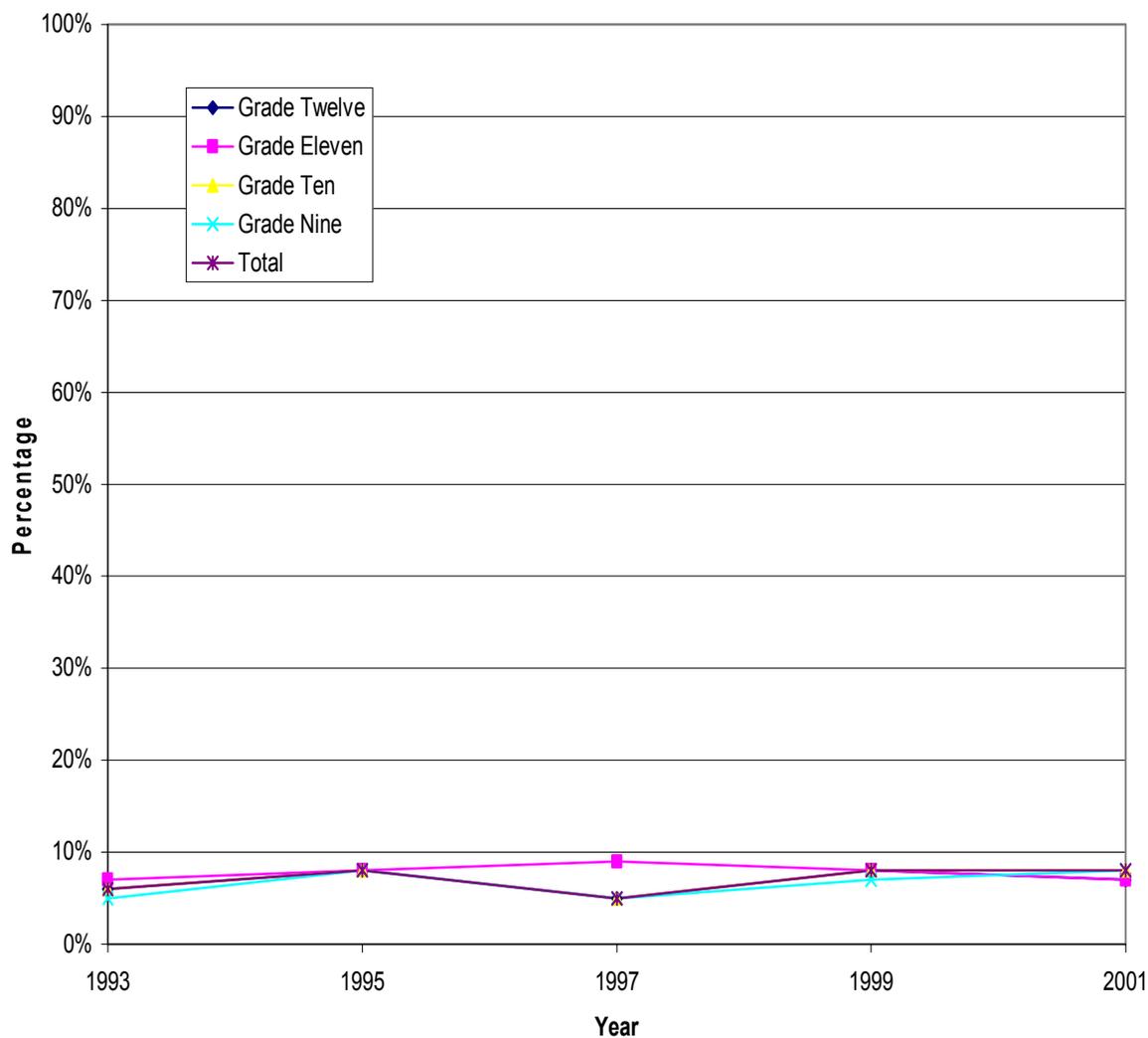
<sup>36</sup> Id.

Chart 3  
 Percentage of Students in Grades 9-12 Who Reported Using Marijuana During Previous  
 Thirty Days – Anywhere, 1993-2001



Source: T F. Devoe, et al., *Indicators of School Crime and Safety: 2002*. U.S. Departments of Education and Justice. NCES 2003-009/NCJ 196753. Washington, D.C.: 2002 p. 43.

Chart 4  
Percentage of Students in Grades 9-12 Who Reported Using Marijuana During Previous  
Thirty Days – On School property, 1993-2001



Source: F. Devoe, et al., Indicators of School Crime and Safety: 2002. *U.S. Departments of Education and Justice*. NCES 2003-009/NCJ 196753. Washington, D.C.: 2002 p. 43.

self-report questionnaire.<sup>37</sup> The responses were categorized into one of three locations: drug use at home, drug use at school, and drug use at other locations.

The Sussman study reported 75 percent of those sampled had used drugs other than cigarettes at home at a mean of approximately two to three weeks prior to the study.<sup>38</sup> Eighty-five percent of the sample reported having used drugs other than cigarettes at other locations at a mean of approximately two to three weeks prior to the study.<sup>39</sup> Other locations included at a friend's house, while driving, and in parks, among others. Further, 58 percent of the sample reported having used any drug other than cigarettes at school at a mean of approximately one to two months prior to the study.<sup>40</sup>

Of the three categories analyzed, drugs were used least at school. According to Sussman, teen drug use occurs at locations other than home and school most frequently, then at home, and least frequently at school. An examination of the adjusted percentages<sup>41</sup> of specific locations across the three general areas revealed that the most popular drug use locations were the bedroom at home (26 percent), a room other than the bedroom at a friend's house (17 percent), the yard at home (14 percent), a public sidewalk (12.8 percent), another location outside the home (12 percent), another location outside the school (12 percent), the bedroom at a friend's home (11.8 percent), and outside location within the general "other" location (11.8 percent).<sup>42</sup> Interestingly, drug use even among adolescents at highest risk occurs most often at locations other than the schools.

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<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id. Adjusted percentages refers to the percentage that responded that they used a drug in a specific location given the percentage that responded that they used a drug in that general location (Eighty-five percent reported using at other locations).

<sup>42</sup> Id.

Empirical data demonstrate that adolescents do use drugs. However, much of the information is contradictory to the context of drug use in public schools and to the necessity of limiting of student rights under the doctrine of safety. There is evidence that adolescent drug use occurs less often in public schools than in the normal everyday environment. In addition, statistical evidence reported in the *Monitoring the Future Study* and the *ONDCP Fact Sheet* points out that drug use among teens is less frequent today than in the 1970s and early 1980s.

The Sussman study and the government report *Indicators of School Crime and Safety 2002* indicate that adolescents are more likely to use drugs at locations other than school. It could be argued that student fear of search and seizure in schools results in less drug use in school. However, there is no substantial evidence in research that supports this argument.

The statistical data does not demonstrate that schools are less safe than in the past or that student drug use is increasing. In fact, there is evidence that locations other than schools are the primary location of drug use. However, there is a public perception that safety is a problem in schools and that adolescent drug use must be addressed in the public schools. Despite the fact that data indicates that adolescents use drugs less often at school, it can be concluded that public schools feel pressure to demonstrate that they are doing everything in their power to stop adolescents from using drugs anywhere.

#### Statement of the Problem

In order to clarify the direction that student drug testing may be taking in public schools, it is essential to have an understanding of the policies and patterns of practice

that are associated with random student drug testing. Student drug testing in public schools, in most cases, is a random drug test without particularized or individualized suspicion. Random drug tests are typically searches of a selected group of students, such as those students involved in extra-curricular activities. School officials typically contend that group searches are easier to conduct than individualized searches where particularized suspicion must be established.<sup>43</sup> In essence, random searches in public schools, such as random drug testing, are easier because school administrators do not have to identify an individual student based on reasonable suspicion.

The governing standards for drug testing in public schools are the *Vernonia*<sup>44</sup> and *Pottawatomie* cases.<sup>45</sup> The U.S. Supreme Court, by allowing for an expansion in the student groups being tested with the *Pottawatomie*,<sup>46</sup> may have provided school officials with policy tools that will have a significant impact on public schools and on the students who attend them. In 1989, the Vernonia school district targeted student athletes for the drug testing program with the rationale to prevent student athlete drug use, and to protect the health of the student athletes. It will be of particular interest to see if schools continue to creep toward testing more and more student groups with expanded rationales for drug testing.

It was determined in a thorough review of the existing case law and research that a study on patterns of practice in student drug testing is needed. Little study has been conducted on how public school policy has changed, resulting in an increase in student drug testing. It is unclear how schools policies and practices have been impacted by the

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<sup>43</sup> Supra. note 3.

<sup>44</sup> 515 S.Ct. 64 (1995). *Vernonia School Division 47J v. Acton*, Court allowed for the random drug testing of student athletes in public schools.

<sup>45</sup> Supra. note 4.

<sup>46</sup> Id.

legality of random student. Additionally, student groups that are being tested need to be identified to determine if school policies align with U.S. Supreme Court decisions. Identifying which student groups are being tested for drugs will paint a picture of whether there is a continuing creep to more student groups being tested, with the possibility that some school divisions may test all students.

Drug testing of students is a tool that some public schools are using to prevent and deter drug use by adolescents. In fact, the National Federation of State High School Coaches Associations (NFHS) found in a survey of 861 athletic directors that 13 percent of the nation's high schools have drug-testing policies in place to test students.<sup>47</sup> Further, the survey results indicated that 17 percent of the athletic directors conveyed that their schools were interested in pursuing student drug testing.<sup>48</sup> Drug testing of students in public schools is being conducted despite the fact that there is not clear evidence that drug testing is an effective deterrent against adolescent drug use. Research studies by Ryoko Yamaguchi<sup>49</sup> and by John Walker<sup>50</sup> failed to demonstrate that drug testing programs in schools effectively deter drug use. However, a study

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<sup>47</sup> National Federation of State High School Associations. *13 Percent of High Schools Have Drug-Testing Policy*. Retrieved on November 8, 2004 from <http://www.nfhs.org>.

<sup>48</sup> Ibid.

<sup>49</sup> Ryoko Yamaguchi, Lloyd D. Johnston, and Patrick M. O'Malley. *Relationship Between Student Illicit Drug Use and School Drug-Testing Policies*. *Journal of School Health*, (2003) 73, 159-164. Study found virtually identical rates of drug use in schools that have drug testing and the schools that do not. Study examined 722 schools and 76,000 students in grades eight, ten, and twelve.

<sup>50</sup> John C. Walker. *The Substance Use Habits and Perceptions of the Effectiveness of Drug Testing of Lynchburg City Schools' High School Athletes*. A Dissertation Presented to the Faculty of the Curry School of Education University of Virginia (1992) 1-84. Results of the study indicated that neither mandatory nor random drug testing was considered by a majority of high students athletes to be an effective deterrent against drug use. Study examined over 100 athletes in two Lynchburg, Va. Public schools.

conducted by Lynn Goldberg<sup>51</sup> demonstrated that drug testing effectively deterred athletes from using drugs in school.

Despite the fact there is no conclusive evidence that student drug testing deters adolescent drug use, there is still wide spread support for student drug testing. A study by researchers at the Institute for Behavior Health<sup>52</sup> demonstrated that there is more support for drug testing programs than opposition. In general, support was strong from school boards, law enforcement, faculty/staff, and parents.<sup>53</sup>

### Purpose of the Study

It was determined in a thorough review of the literature that a study on random drug testing policy and practices in public schools would help fill a vacuum in the research of literature on random student drug testing. Analysis of the literature demonstrates that student drug testing policy and practice is still evolving, yet little is known as to whether current student drug testing policies and practices are aligned with current Court standards or state statutes. Due to the fact the Court has allowed the door to open for drug testing of ever more students, it is essential to determine if and how school policy and practice is being shaped by the Court's sanctioning and guidance on drug testing.

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<sup>51</sup> Lynn Goldberg, Elliott L. Daine, David P. MacKinnon, Esther Moe, Kerry S. Kuehl, et al. *Drug Testing Athletes to Prevent Substance Abuse: Background and Pilot Study Results of the SATURN (Student Athlete Testing Using Random Notification) Study*. *Journal of Adolescent Health* (2003) 32, 16-25. Study conveys that drug testing may be effective in deterring drug use. Study found that a policy of random drug testing appears to have significantly reduced recent drug use among athletes. Two Oregon high schools participated in the study. One school employed random drug testing of athletes the second school did not use drug testing. Over 700 students participated in the study.

<sup>52</sup> Robert L. Dupont, Teresa G. Campbell, and Jacqueline J. Mazza. *Report of Preliminary Study: Elements of a Successful School-Based Drug Testing Program*. Prepared by The Institute of Behavior and Health, Inc. and funded by The United States Department of Education Office of Elementary and Secondary Education Safe and Drug-Free Schools Program (2002), 1-26. Study analyzed the elements of successful school-based drug testing programs in nine schools that had instituted drug testing between 1997 and 2000.

<sup>53</sup> Ibid.

The purpose of this study was twofold. First, the study determined which Virginia public school districts have articulated policies on random drug testing of students. Equally important the study analyzed school districts policies and practices to determine if they aligned with U.S. Supreme Court standards and state statutes.

Secondly, the purpose was to ascertain the patterns of practice in Virginia public school districts<sup>54</sup> that currently conduct student drug testing to identify current student drug testing procedures. This study aimed to identify which student groups are being tested and which drugs are being tested for in those districts that have instituted student drug testing. In addition, the study focused on current patterns of practice in the Virginia school districts that have student drug testing. Patterns of practice that are examined include how school districts monitor the testing program and which student groups are being tested. This study assists to fill a void in the knowledge regarding the relationship between current drug testing practices and case law.

#### Research Question

The primary guiding question for this study was: What are the current policies and patterns of practice in random student drug testing in Virginia's 132 public school districts? Data was collected to answer the following specific questions:

1. How many school districts in Virginia have instituted random student drug testing?
2. How do the policies and procedures comport with the standards for legal random drug testing as set forth by the U.S. Supreme Court?

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<sup>54</sup> The author recognizes that legally local school organizations are called divisions in Virginia. For this paper, the author will use the term school districts due to the fact this term is more commonly used across the country.

3. In those school districts that have established student drug testing policies, which categories of students have been subjected to random testing and for what kinds of substances?
4. What types of data do these districts collect to monitor the drug testing program?
5. Which school authorities are responsible for ensuring the implementation of random drug testing policies, and what procedures do they follow?

#### Limitations of the Study

Within in the context of this study, there were certain inherent limitations.

1. The study was limited to Virginia Public Schools.
2. There were a small number of public school districts that drug test students in Virginia.

#### Organization of the Study

This study consists of five chapters. Chapter I includes the introduction, the statement of the problem, the purpose of the study, the research questions, the limitations of the study, and the organization of the study. Chapter II is a review of the literature as to public school students' privacy rights and students' Fourth Amendment rights. This includes a thorough analysis of legal standards established by the court system. This chapter also reviews various studies related to student drug testing in public schools. Chapter III details the research questions, conceptual framework, data instrumentation, and data analysis. Chapter IV provides an analysis of the data that was collected for this study of random student drug testing policies and patterns of practice in Virginia public schools. Chapter V includes a summary of the literature, methodology,

and data analysis. In addition, suggestions for future research are offered along with concluding statements.

## CHAPTER II

### LITERATURE REVIEW

This review of the literature examines students' privacy under the Fourth Amendment in relation to random<sup>55</sup> student searches that occur in public schools. The chapter includes a discussion of landmark cases that have articulated the parameters of constitutionally sound search and seizure policies and practices in public schools. A legal framework for drug testing in public schools is developed in this chapter. Finally, the literature review includes an analysis of three studies related to drug testing policies and practices in public schools.

#### Students' Rights to Privacy

Students' rights to privacy are derived from the unenumerated rights granted in the due process clauses of the Fifth and Fourteenth Amendments.<sup>56</sup> Unenumerated rights are so named because they are not explicitly specified in the United States Constitution, but have been construed by judicial interpretations over time.<sup>57</sup> Privacy rights are among those rights that are incorporated into the meaning of liberty.<sup>58</sup>

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<sup>55</sup> For the purpose of this study the term random refers solely to its legal application and in no way reflects randomness in the statistical sense.

<sup>56</sup> U.S. Const. Amend V states that "no person shall be . . . deprived of life, liberty, or property without due process of law"; U.S. Const. Amend. XIV, § "nor shall any State deprive any person of life, liberty, or property without due process law."

<sup>57</sup> Jennifer A. Sughrue and M. David Alexander. *A Student's Right to Privacy and the Evolving Standards for Search and Seizure in Public School Settings*. A paper presented at the annual Educational Law Year Conference, Albuquerque, NM. Sughrue and Alexander offer that most early decisions giving meaning to unenumerated rights were rooted in the case law dealing primarily with economic regulation, particularly contract law. Two of the earliest cases are *Allgeyer v. Louisiana*, 165 U.S. 578 (1897) and *Lochner v. New York*, 198 S. Ct. 45 (1904). Two early cases involving schooling were *Meyer v. Nebraska*, 262 S. Ct. 390 (1923) and *Pierce v. Society of Sisters*, 268 S. Ct. 510 (1925). In these cases the Court provided meaning to liberty. In *Meyer*, Justice McReynolds wrote that liberty "denotes not merely freedom of bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by freeman" (at 399).

<sup>58</sup> *Ibid.*

Prior to U.S. Supreme Court examinations of privacy rights, the constitutionality of unenumerated rights could have been achieved either by holding that under natural law certain fundamental rights are protected against government intrusion or that specific clauses in the Constitution itself have an open-ended capacity to protect certain fundamental rights against governmental intrusions.<sup>59</sup> These clauses are present in the Fifth Amendment, which states that “no person shall be . . . deprived of life, liberty, or property without due process of law,”<sup>60</sup> the Ninth Amendment, which states “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people,”<sup>61</sup> and the Fourteenth Amendment, which states “nor shall any State deprive any person of life, liberty, or property without due process of law.”<sup>62</sup>

The status of unenumerated rights has been articulated by legal scholars and through case law. In recent decades, the debate over constitutional privacy has centered on issues beyond traditional Fourth Amendment applications. For example, the Court has tied privacy to control over a person’s body and marital privacy, including the use of birth control.<sup>63</sup> The nature and scope of the right to privacy has been historically the subject of much dispute, as noted by Justice Douglas who stated that, “we deal with the right of privacy older than the Bill of Rights—older than our political parties, older than our school system.”<sup>64</sup>

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<sup>59</sup> G. Sidney Buchanan. *The Right Of Privacy: Past, Present, and Future*. Ohio Northern University Law Review (1989), 16, 403-508.

<sup>60</sup> U.S. Const. Amend V.

<sup>61</sup> U.S. Const. Amend IX.

<sup>62</sup> U.S. Const. Amend XIV.

<sup>63</sup> Jonathan Kahn. *Privacy as a Legal Principle of Identity Maintenance*. Seton Hall Law Review (2003) 33, 371-410.

<sup>64</sup> 381 S. Ct. 479 (1965) p. 486. *Griswold v. Connecticut*, Supreme Court ruling that that found the law forbidding the use of contraceptives to be unconstitutional upon the right of martial privacy.

The Supreme Court examined privacy in the 1965 *Griswold v. Connecticut*<sup>65</sup> case. The defendants in this case had been convicted of violating Connecticut's birth control laws which made it a crime for anyone, including married couples, from using any drug, medicine, or instrument for the purpose of preventing conception.<sup>66</sup> In addition, Connecticut state law held that it was illegal to assist anyone in gaining information and advice on contraception.<sup>67</sup> Griswold, Executive Director of the Planned Parenthood League of Connecticut, and Buxton, a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League, "gave information, instruction, and medical advice to married persons as to the means of preventing conception."<sup>68</sup>

The Supreme Court decided in *Griswold* that the Connecticut law forbidding use of contraceptives was unconstitutional because it intruded upon the right of marital privacy.<sup>69</sup> Justice Goldberg, in his concurring opinion, stated, "the right of privacy is a fundamental personal right, emanating from the totality of the constitutional scheme under which we live."<sup>70</sup> *Griswold* established that a person's privacy rights are protected from state infringement.<sup>71</sup> Additionally, the *Griswold* holding satisfied the two conditions for the emergence of the right of privacy.<sup>72</sup> First, the Court held that certain clauses of the Constitution protected substantive rights not otherwise listed in the Constitution.

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<sup>65</sup> Ibid.

<sup>66</sup> Supra. note 57.

<sup>67</sup> Id.

<sup>68</sup> Supra. note 64 p. 480.

<sup>69</sup> Id.

<sup>70</sup> Id. p. 494.

<sup>71</sup> Supra. note 57.

<sup>72</sup> G. Sidney Buchanan. *The Right Of Privacy: Past, Present, and Future*. Ohio Northern University Law Review (1989), 16, 403-508.

Second, the Court construed such unenumerated rights as including the right of privacy.<sup>73</sup>

#### The Fourth Amendment and Individual Student Searches

Various forms of searches, including random searches and individualized suspicion searches, exist in public schools today. Therefore, the application of the Fourth Amendment right to privacy for students in public schools is of particular concern.

The Fourth Amendment provides the basis for an individual's right to privacy and for protection against illegal search and seizure by law enforcement. The amendment guarantees:

The right of people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.<sup>74</sup>

The Fourth Amendment has five critical components: (1) protection of people from government inspection in their persons, houses, papers, and effects; (2) protection from unreasonable searches and seizures; (3) the government must show probable cause to search or must provide evidence that a search is necessary; (4) the authorities must provide specific information regarding the search site and the items to be seized, and (5) a magistrate must determine if the government has sufficient evidence to justify

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<sup>73</sup> Ibid.

<sup>74</sup> U.S. Const. Amend. IV.

the search.<sup>75</sup> These components govern how federal and state law enforcement apply individual's right to privacy and the insurance that a search is specific and necessary.<sup>76</sup>

Students' right to privacy in public schools is governed by the Fourth Amendment, but it is tempered by the unique circumstances in public schools. Historically and judicially, disciplinary actions in schools, including search and seizure, have been evaluated under the *in loco parentis* doctrine.<sup>77</sup> *In loco parentis* means that school officials stand in the place of parents in maintaining discipline and in providing supervision for students in schools.<sup>78</sup> Thus, under the doctrine of *in loco parentis*, school officials, acting in place of parents, have not been considered officials of the state for the purpose of Fourth Amendment analysis.<sup>79</sup> School officials have not been subject to the constraints of probable cause and search warrants as spelled out in the Fourth Amendment.<sup>80</sup>

### **T.L.O. and Individualized Suspicion**

The U.S. Supreme Court addressed search and seizure by school officials in the landmark education case *New Jersey v. T.L.O.*<sup>81</sup> In this case, the student (T.L.O.) challenged the evidence seized in a search conducted by a school administrator on the

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<sup>75</sup> Kern Alexander and M. David Alexander. *American Public School Law Fifth Edition*. Wadsworth: Thomson Learning (2001) p. 410.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> 469 S.Ct. 325, 105 (1985). Court ruled that searches by school officials is constitutionally permissible if reasonable and not excessively intrusive.

grounds that the search fell under the *exclusionary rule*.<sup>82</sup> Ultimately, the justices advocated balancing the privacy rights of students against maintaining a safe school. This case marked a shift in the use of *in loco parentis* as the sole doctrine governing student discipline in public schools, acknowledging that students' constitutional rights must be protected. In rendering its decision, the Court stated that "in carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity for the structures of the Fourth Amendment."<sup>83</sup> This reaffirms prior court decisions that students' constitutional rights are not lost once they enter the school setting.<sup>84</sup>

In *T.L.O.*, a teacher reported that two students were smoking in the girls' bathroom.<sup>85</sup> Because smoking was a violation of school rules, the teacher escorted the two female students to the assistant principal's office.<sup>86</sup> Upon being questioned by the assistant principal, one of the students admitted to smoking and was assigned to a three-day smoking clinic.

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<sup>82</sup> *Ibid.* The Court did not address how the exclusionary rule applies to public schools. The constitutional guarantees of the Fourth Amendment are protected by the *exclusionary rule* in criminal proceedings. The exclusionary rule requires that evidence seized illegally by law enforcement be excluded from the corresponding court proceedings. School officials should not concern themselves with the strictures of the exclusionary rule because they should be more concerned with school safety than maintaining the viability of evidence. Students often contest evidence seized at school under this rule. In general, the exclusionary rule has not been applied frequently to public schools. School officials, unlike police officers, are not restrained by the Fourth Amendment requirements of probable cause and search warrants.

<sup>83</sup> *Ibid.* p. 336-337.

<sup>84</sup> 393 S. Ct. 646 (1969) p. 735. *Tinker v. Des Moines Independent School District*. The Supreme Court explicitly recognized student rights by stating "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this court for almost fifty years." In this case students willingly violated the school code of conduct by wearing arm bands that protested the Vietnam War. The Court ruled that school officials do not possess absolute authority over students under the Constitution. It should be noted that the decision in this case occurred during the civil rights movement.

<sup>85</sup> *Supra.* note 81.

<sup>86</sup> *Id.*

The other student (T.L.O.) denied she had been smoking and stated that she did not smoke at all. The assistant principal escorted T.L.O. to a private office and asked her to give him her purse. After opening the purse, the assistant principal discovered a pack of cigarettes. Underneath the cigarettes he saw in plain view a pack of rolling papers; then, upon a further search of the purse he discovered a plastic bag containing what appeared to be marijuana, along with a metal pipe to smoke marijuana, and empty plastic baggies. In addition, he found cash in small bills, along with an index card that had information pertaining to people owing money, followed by a list of names.<sup>87</sup> The assistant principal also found two separate letters (one written by T.L.O. and a return letter) implicating her in the sale of drugs.<sup>88</sup> T.L.O. was charged with delinquency on the basis of possessing marijuana with the intent to distribute and suspended from school for ten school days.<sup>89</sup>

In the Juvenile and Domestic Relations Court, T.L.O. made a motion to suppress evidence and her confession, citing her rights under the Fourth Amendment and the exclusionary rule.<sup>90</sup> The court denied the motion, finding the assistant principal had sound reason to believe a violation had occurred and that the search was necessary to maintain school discipline.<sup>91</sup> The case was appealed to the New Jersey Supreme Court, which reversed the lower court decision, holding that the search of the person failed to meet the probable cause standard.<sup>92</sup> The New Jersey Supreme Court pointed out that there was no reason to search T.L.O.'s purse because possession of cigarettes was not

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<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> Id. Plaintiff cited *Mapp v. Ohio* 1961. 367 S. Ct. 643 (1961). The U.S. Supreme Court banned illegally seized evidence from being used in state courts.

<sup>91</sup> Id.

<sup>92</sup> Id.

illegal or against school rules; however, smoking in the bathroom was prohibited, and that the assistant principal's evidence was merely a "good hunch."<sup>93</sup> Based on those facts the New Jersey Supreme Court held that the assistant principal did not have reasonable suspicion that the purse contained cigarettes. The United States Supreme Court, upon appeal, reversed the New Jersey Supreme Court's decision, establishing the "reasonable suspicion" criteria for school officials. The Supreme Court found the search to be reasonable because the assistant principal conducted the search based in part to determine the credibility of T.L.O.'s denial and that the assistant principal acted reasonably in conducting a search of T.L.O.'s purse based on the evidence he had obtained.<sup>94</sup>

In *T.L.O.*, the Supreme Court established the legalities of search and seizure in the public school setting rather than examining the exclusionary rule. However, the Court noted that that because the search in *T.L.O.* was determined not to violate the Fourth Amendment does not mean the applicability of the exclusionary rule has been resolved in public schools. In essence, the Court sidestepped the issue of the exclusionary rule in *T.L.O.*

Additionally, the Court took the opportunity to examine student rights in the context of school safety. The Court defined reasonable suspicion in *T.L.O.* as: (1) the search must be reasonable at its inception.<sup>95</sup> In that school officials must have reasonable grounds that a search will render evidence that is a violation of the law or school rules;<sup>96</sup> (2) the search must be reasonable in scope and not excessively

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<sup>93</sup> Id. p. 345.

<sup>94</sup> Id.

<sup>95</sup> Supra. note 75.

<sup>96</sup> Id.

intrusive.<sup>97</sup> Further, the court decided that the nature of the search must be related to the objectives of the search in light of the student's age, sex, and the nature of the infraction.<sup>98</sup> Therefore, a search by a school official is legal and in compliance with the Fourth Amendment as long as the search is reasonable within in the standards set forth in *T.L.O.* Finally, perhaps the most important aspect of *T.L.O.* is that the Court established that students' Fourth Amendment Rights must be balanced against school officials' obligations to maintain a safe school.

As a result of *T.L.O.*, it can be concluded that the Fourth Amendment does not protect all expectations to student privacy and protects only those privacy rights that are reasonable or legitimate. Reasonableness was determined by reviewing the inception, intrusiveness, and context of the search in *T.L.O.* Further, any student's interest in education must be balanced against the school's interest in providing a safe and conducive learning environment.<sup>99</sup> Therefore, it can be concluded that Fourth Amendment challenges to actions of school officials must be assessed on the basis of whether the particular search in question implicated a legitimate expectation to privacy.<sup>100</sup>

*T.L.O.* greatly impacted public school students' rights. The ruling guaranteed public school students constitutional protection; however, the cases that have followed *T.L.O.* have generally provided school officials greater leeway in performing search and seizures, and have continued to limit student rights within the doctrine of school safety.

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<sup>97</sup> Id.

<sup>98</sup> Id.

<sup>99</sup> Supra. note 3.

<sup>100</sup> Supra. note 75.

## Random Searches in Public Schools

Group searches in schools are generally random searches that do not require individualized suspicion.<sup>101</sup> Examples of group searches in the school setting include searches of selected classrooms, searches of members randomly selected from a particular group such as athletes, and searches of luggage for field trips.<sup>102</sup> Legal scholars believe caution should be used in random searches without individualized suspicion to prevent targeting specific students under the guise of a random search, yet school officials often assert that these types of group searches are easier to conduct when looking for illegal contraband than searches based on individualized suspicion.<sup>103</sup>

Prior to the U.S. Supreme Court examining random drug searches, lower courts have examined random searches in the public school setting. Random searches have typically been allowed to occur in public schools except in instances where the search was overly intrusive. For example in *People v. Dukes*<sup>104</sup>, a New York court upheld random searches of students by metal detectors. In this case, special police officers searched a student's book bag with a hand-held metal detector.<sup>105</sup> However, the court system limited the intrusiveness of random school searches in *Doe v. Renfroe*.<sup>106</sup> The court held that the canine sniff of students was legal because students in public schools

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<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> 580 N.Y.S. 2d 850 (N.Y. Crim. Ct. 1992). The court did not use the *T.L.O.* standard of reasonableness, but rather applied the doctrine of administrative search. An administrative search is minimally intrusive and meant to inhibit a dangerous event. In this case, school officials believed there was a legitimate threat of danger in the schools being searched which made the search constitutional, despite the fact there was not particularized suspicion of the young lady being searched. The special police officers were part of a team of police officers that were sent to schools to periodical conduct metal detectors searches at the various schools in the division. During the search, the police officer discovered a knife concealed in a manila folder. The student was charged with criminal possession of a weapon, which in this case, was switch-blade knife.

<sup>105</sup> Ibid.

<sup>106</sup> 631 F.2d 91 (7<sup>th</sup> Cir. 1980). The court held that the canine sniff of students was legal because students in public schools have a diminished expectation of privacy.

have a diminished expectation of privacy.<sup>107</sup> In *Renfro*, the court found that a nude search that resulted from the canine search was illegal.<sup>108</sup> In *Jones v. Latexo Independent School District*<sup>109</sup> the court ruled that searches of automobiles resulting from canine sniffing was legal, but determined that a canine sniff of a student without individualized suspicion was illegal.<sup>110</sup> These cases demonstrate that school officials can conduct random searches. Therefore, random drug testing of students has become an option for school officials.

### Random Student Drug Testing in Public Schools

There are several reasons to support drug testing in public schools. First, proponents of drug testing believe that schools should use any means necessary to prevent or to stop drug use, and that drug testing is a deterrent for drug use by teenagers.<sup>111</sup> Second, supporters believe that the earlier drug use is detected, the easier it is to intervene and treat the user.<sup>112</sup> Third, proponents believe that by targeting special populations, such as student-athletes, they are creating a safe playing environment and preventing injuries in students under the influence.<sup>113</sup> Fourth, school systems instituting drug testing believe they gain community support by demonstrating that they are doing everything in their power to prevent drug use.<sup>114</sup> Finally, those who favor drug testing believe that it makes schools safer.<sup>115</sup>

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<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> 499 F.Supp. 223 (E.D. Tex. 1980).

<sup>110</sup> Ibid.

<sup>111</sup> Jennifer Lawler. *Drug Testing in Schools: A Pro/Con Issue*. Enslow Publishers, Inc. Berkeley Heights, NJ (2000) 1-64.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Shannon O'Pry. *A Constitutional Mosh Pit: The Fourth Amendment, Suspicionless Searches, and The Toughest Public School Drug Testing Policy in America*. Texas Tech Law Review (2001) 33, 151-227.

<sup>115</sup> Supra. note 3.

There are a variety of reasons for opposition against drug testing in public schools. Opponents of drug testing believe that it does not reduce the demand for drugs.<sup>116</sup> Critics maintain that there is no scientific data demonstrating that student drug testing deters drug use among adolescents.<sup>117</sup> Many legal scholars argue that drug testing in public schools violates students' constitutional rights to privacy, due process, and is an illegal search and seizure.<sup>118</sup> In addition, opponents of drug testing hold the conviction that drug testing teaches impressionable students that their civil liberties can be violated without justification. Charles Russo, a noted legal scholar, offers a rhetorical question regarding drug testing, "Should school officials be allowed to use their power to test students simply because they have it?"<sup>119</sup>

Random drug testing differs from many searches conducted in schools because there is no requirement for individualized suspicion. Random drug tests are performed in a manner where the individuals chosen are selected without prior suspicion. Typically, random drug testing in public schools occurs within certain groups such as athletes, students involved in extra-curricular activities, or school employees.

The authority given to school officials to search students for evidence of drugs is often viewed as essential to maintaining a safe school,<sup>120</sup> and the Fourth Amendment remains the cornerstone to any form of search and seizure. Within the school setting, the strictures of the *T.L.O.* case guide school officials in developing search and seizure policies and practices. Even though the Fourth Amendment applies to searches in the

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<sup>116</sup> Supra. note 111.

<sup>117</sup> Id.

<sup>118</sup> Colleen J. Berry. *Student's Stripped of their Constitutional Rights. Jenkins v. Talledega City*, 115 F.3d 821 (11<sup>th</sup> Cir. 1997). Southern Illinois University Law Review, (1998) 23, 223-237.

<sup>119</sup> Charles J. Russo. *Drug Testing of Students*. Education and Law Journal, (2001) 13, 155-162, p. 160.

<sup>120</sup> Supra. note 3.

school setting, it is applied in a less stringent manner than searches conducted by law enforcement officers.<sup>121</sup> Police searches are governed by the probable cause standard, whereas searches by school officials are controlled by the lesser reasonable suspicion standard.<sup>122</sup> Thus, it can be assumed that the reasonable suspicion standard afforded to students in public schools provides less protection to students than are normally afforded to citizens under the stricter probable cause standard.<sup>123</sup> The rationale for offering students lesser constitutional protections is that rights of students in schools must be balanced against the administrator's duty to maintain order and discipline in the school.<sup>124</sup>

With drug testing being a tool that some schools use in their fight against drugs legal challenges to drug testing policies have taken place. Court decisions have been used to further shape school drug testing policies.

### **Legality of Random Drug Testing**

In two court cases, the court system has found that persons working in "safety sensitive" positions or in positions where "special needs" exist, may be subject to suspicionless drug testing.<sup>125</sup> The Court found in these cases that there are times when Fourth Amendment intrusions serve a special government need. These cases establish that random drug testing is an option for government agencies including public schools because "special needs" negates the need for reasonable suspicion.

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<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> Jacqueline A. Stefkovich and Judith A. Miller. *Law Enforcement Officers in Public Schools: Students Citizens in Safe Havens?* Brigham Young University Education and Law Journal. (1999) 25-69, p. 68.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

The Supreme Court's landmark decision in *Skinner v. Railway Labor Executives' Association*<sup>126</sup> allowed for suspicionless drug urinalysis for employees engaged in "safety-sensitive" positions.<sup>127</sup> In *Skinner*, the court upheld a federal regulation mandating post-accident drug testing of all employees involved in an accident.<sup>128</sup> The Court justified its decision by stating that the government had a compelling interest in drug testing because the employees' duties were closely associated with risk of injury to others.<sup>129</sup> The Court found that the proper collection and testing of urine is a search within the limits of the Fourth Amendment.<sup>130</sup> Although a search must generally be conducted with a warrant, the Court found that neither a warrant nor probable cause constitutes reasonableness for employees in safety sensitive positions.<sup>131</sup> In *Skinner*, the Court indicates that random suspicionless testing may be reasonable and justified if the deterrent effect of the test is realized.<sup>132</sup>

Similarly, in *National Treasury Employees Union v. Von Raab*,<sup>133</sup> which was decided on the same day as *Skinner*, the Court found that there are times when Fourth Amendment intrusions serve a special government need.<sup>134</sup> The *Von Raab* case concerned the testing of Custom Service employees who carried firearms, enforced drug laws, and had classified duties.<sup>135</sup> The Court reasoned that when positions are safety sensitive, "the government's need to discover latent conditions . . . or to prevent

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<sup>126</sup> 489 S. Ct. 602 (1989).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Supra*, note 75.

<sup>131</sup> Karin Schmidt. *Suspicionless Drug Urinalysis of Public School Teachers: The Concern for Student Safety Cannot Outweigh Teachers Legitimate Privacy Interests*. *Columbia Journal of Law and Social Problems*, (2001) 34, 253-277.

<sup>132</sup> *Supra*, note 126.

<sup>133</sup> 489 S. Ct. 656 (1989).

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

their development is sufficiently compelling to justify the intrusion on privacy entailed by conducting (suspicionless) searches.”<sup>136</sup> Therefore, suspicionless drug testing may be allowed where “special needs” exist.<sup>137</sup> The courts have used the “special needs” label to relate to those who work in public schools.<sup>138</sup>

In contrast to *Skinner and Von Raab*, the United States Supreme Court struck down drug testing that required candidates running for certain state offices to certify that they had taken and passed a drug test.<sup>139</sup> The Court switched its position from early rulings in *Skinner*,<sup>140</sup> *Von Raab*,<sup>141</sup> and *Vernonia*<sup>142</sup> that allowed for the drug testing of railroad employees, Custom Service officers, and schoolchildren.<sup>143</sup> In *Chandler*, the Court determined that candidates for state offices did not fall under the “special needs” doctrine as defined in *Von Raab*.<sup>144</sup> In rendering its decision, the Court found that candidates for public office failed to pose any threat of danger to others that would warrant a departure from the Fourth Amendment.<sup>145</sup> The Court expressed that drug testing for “a symbol’s sake”<sup>146</sup> was not justified and does not need meet the “special needs” standards.<sup>147</sup> *Skinner* and *Von Raab* laid the foundation for drug testing in public schools, and *Chandler* helped clarify limitations to such testing programs.

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<sup>136</sup> Ibid. p. 660.

<sup>137</sup> Ibid.

<sup>138</sup> Jacqueline A. Stefkovich and G. Michael O’Brien. *The Fourth Amendment and the Quest for Drug and Weapon Free Schools*. In Charles J. Russo, Harvey Polansky, and R. Craig Wood (Eds.), *Primer on Legal Affairs for the School Business* (2001) p. 1215-1226.

<sup>139</sup> 117 S. Ct. 1295 (1997) *Chandler v. Miller*.

<sup>140</sup> Supra. note 126.

<sup>141</sup> Supra. note 133.

<sup>142</sup> Supra. note 44.

<sup>143</sup> George M. Dery III. *Are Politicians More Deserving of Privacy than Schoolchildren? How Chandler v. Miller Exposed the Absurdities of Fourth Amendment “Special Needs” Balancing*. *Arizona Law Review*, (1998) 40, 74-103.

<sup>144</sup> Supra. note 139.

<sup>145</sup> Id.

<sup>146</sup> Id. p. 1305.

<sup>147</sup> Id.

Legal challenges regarding the constitutionality of drug testing of students in public schools were examined by the Supreme Court in the landmark *Vernonia School District 47J v. Acton*<sup>148</sup> and the *Board of Education of Pottawatomie Count v. Earls*.<sup>149</sup> *Vernonia* and *Pottawatomie* allow for broad suspicionless random drug testing of public school students. These cases offer school administrators a road map for developing policies within their school divisions.

The Court determined in the *Vernonia* case that the Vernonia school district policy of random suspicionless drug testing for interscholastic athletic programs is constitutional.<sup>150</sup> The Vernonia school district had established through anecdotal evidence that drug use was a problem among athletes.<sup>151</sup> The school had previously addressed the drug problem with motivational speakers and presentations designed to deter drug use.<sup>152</sup> As a result of a failure to deter drug use by the school athletes, the Vernonia school district instituted a drug testing program with the goal of preventing drug use among student athletes.<sup>153</sup>

The Vernonia school district policy required all athletes to have their parents sign consent letters allowing for drug testing.<sup>154</sup> Further, the policy required all students to be tested for controlled substances prior to participating in athletics.<sup>155</sup> Drug testing of athletes was conducted in the locker room.<sup>156</sup> Students testing positive were tested

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<sup>148</sup> Supra. note 44.

<sup>149</sup> Supra. note 4.

<sup>150</sup> Supra. note 44.

<sup>151</sup> Id.

<sup>152</sup> Id.

<sup>153</sup> Id.

<sup>154</sup> Id.

<sup>155</sup> Id.

<sup>156</sup> Id.

again, if the second test produced negative results then no further action occurred.<sup>157</sup> If the second test was positive, however, the athlete was given the choice of participating in a drug assistance program or being suspended for the remainder of the season.<sup>158</sup> A second offense of the drug testing policy would result in the athlete being suspended for the remainder of the season.<sup>159</sup> A third drug testing offense would result in the athlete being suspended for the remainder of the next two athletic seasons.<sup>160</sup>

James Acton, a seventh grade student interested in playing football, was denied the right to participate on the team because his parents refused to sign the testing consent forms.<sup>161</sup> The Acton family filed suit seeking declaratory and injunctive relief from the enforcement of Vernonia's drug testing policy on the grounds that the policy violated the student's Fourth and Fourteenth Amendments rights.<sup>162</sup>

In deciding *Vernonia*, the Court explained that the Fourth and Fourteenth Amendments were established to protect citizens against unreasonable searches and to guarantee to citizens' due process rights.<sup>163</sup> However, the Court explained that reasonableness was a key component of a search.<sup>164</sup> In addition, the Court used its *Skinner* decision in *Vernonia* to maintain that schools fell under the "special needs" category.<sup>165</sup> Therefore, the Court ruled that public schools do not need a warrant to search; rather they need only reasonableness under the special needs doctrine to

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<sup>157</sup> Id.  
<sup>158</sup> Id.  
<sup>159</sup> Id.  
<sup>160</sup> Id.  
<sup>161</sup> Id.  
<sup>162</sup> Id.  
<sup>163</sup> Id.  
<sup>164</sup> Id.  
<sup>165</sup> Id.

engage in searching of students.<sup>166</sup> As a result of its conclusion, the Court developed a balancing test where searches needed to be balanced between the intrusion of a person's Fourth Amendment interests and the search's promotion of government interests.<sup>167</sup>

In *Vernonia*, the Supreme Court developed a four-prong test to be used as a guide in determining whether or not the government could legally search without a warrant.<sup>168</sup> First, the court explained that the nature of the privacy interest must be examined.<sup>169</sup> The Court determined that since minors are in the custody of schools their privacy interests are general and that athletes' privacy rights are further diminished because the element of communal undress in athletics creates an environment where student athletes generally have less privacy.<sup>170</sup> Second, the Court reasoned that the government must determine the character of the intrusion on the individual's privacy interests.<sup>171</sup> The Court concluded that the drug testing procedure was nearly identical to the conditions students encounter in public restrooms, therefore the infringement on student rights was minimal and reasonable.<sup>172</sup> The third prong to the test established by the Court was the nature of the governmental concern.<sup>173</sup> The Court found that deterring drug use of student athletes was an appropriate concern due to the potential harm of drugs.<sup>174</sup> The fourth prong addressed immediacy of the safety concern.<sup>175</sup> The Court concluded in *Vernonia* that there was a high risk of harm to student athletes when they

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<sup>166</sup> Id.

<sup>167</sup> Id.

<sup>168</sup> Id.

<sup>169</sup> Id.

<sup>170</sup> Id.

<sup>171</sup> Id.

<sup>172</sup> Id.

<sup>173</sup> Id.

<sup>174</sup> Id.

<sup>175</sup> Id.

participated in sports, thus justifying the district's concern in drug testing.<sup>176</sup> The *Vernonia* decision expanded the possibility of more students groups being subject to random drug testing, which in turn has caused additional judicial interpretations of random student drug testing.

In the *Board of Education of Pottawatomie County v. Earls*<sup>177</sup> case, the Court based much of its decision on the precedents set forth in *Vernonia*.<sup>178</sup> However, the court went a step further in *Pottawatomie* by supporting the school division's policy by stating that "requiring all students who participated in extracurricular activities to submit to drug testing was a reasonable means of furthering the school district's important interest in preventing and deterring drug use among its school children, and therefore did not violate the Fourth Amendment."<sup>179</sup>

In 1998, the Pottawatomie County School Board adopted a drug testing policy that required all middle and high school students who participated in any extracurricular activity to be randomly drug tested and at any other time drug tested upon a reasonable suspicion.<sup>180</sup> The mandatory test was designed to detect only illegal drugs and the results were to remain confidential.<sup>181</sup> The policy was applied to all competitive extracurricular activities including the academic team, Future Farmers of America, Future Homemakers of America, band, choir, cheerleading, and athletics.<sup>182</sup> The policy was challenged by Lindsay Earls and her parents (along with another student, Daniel

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<sup>176</sup> Id. This decision relates closely to previous Court decisions in *National Treasury Employees Union v. Von Raab* and *Skinner v. Railway Labor Executives' Association*.

<sup>177</sup> Supra. note 4.

<sup>178</sup> David Schimmel. *Supreme Court Expands Random Drug Testing: Does the Fourth Amendment Still Protect Students?* West's Education Law Reporter, (2002) 170, 15-25.

<sup>179</sup> Supra. note 4 p. 2559.

<sup>180</sup> Id.

<sup>181</sup> Id.

<sup>182</sup> Id.

James), who alleged that the policy violated her Fourth Amendment rights as incorporated by the Fourteenth Amendment and requested injunctive and declarative relief.<sup>183</sup> Lindsay was a member of the choir, band, academic team, and National Honor Society.<sup>184</sup>

A major factor in allowing suspicionless random testing in *Vernonia* was that the school division provided evidence of a drug epidemic among student athletes in the school division. However, the *Pottawatomie* case signifies a major change in the Court's stance from the *Vernonia* case.<sup>185</sup> In *Pottawatomie*, the school district failed to demonstrate that drug use was a problem in their school district.<sup>186</sup> Further, several teachers reported that they had few or no problems with students using drugs of any kind.<sup>187</sup> The Court took the opportunity in *Pottawatomie* to assert that specific evidence of a drug problem in the school was not essential to a valid policy of random drug testing. Instead, the justices pointed to the drug problem nationwide as justification enough.

Public schools instituting drug testing should use the landmark *Vernonia* and *Pottawatomie* cases as guidance in setting policy. School districts that institute drug testing policies should have a rationale for beginning a drug-testing program even if the rationale is to prevent a future drug problem from occurring.<sup>188</sup> Whenever possible, school officials should present evidence of student involvement with illegal drugs and explain how these illegal substances have impaired student performance and

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<sup>183</sup> Id.

<sup>184</sup> Id.

<sup>185</sup> Ralph Mawdsley and Charles J. Russo. *Drug Testing for School Extracurricular Activities*. West's Education Law Reporter, (2003) 173, 1-17.

<sup>186</sup> Supra. note 4.

<sup>187</sup> Id.

<sup>188</sup> Supra. note 185.

threatened their safety.<sup>189</sup> School officials advocating a drug testing program can use the rationale that they are charged with maintaining a safe school environment and that a drug testing program will assist in creating a safe environment by preventing drug use.<sup>190</sup> The acknowledgement and explanation of a problem or potential problem by school officials is the beginning step in justifying the rationale for schools interested in instituting a random drug testing program.<sup>191</sup>

Recent Court decisions have clarified the legality of public schools conducting random searches in the form of drug testing. Despite critics who argue that suspicionless random drug testing violates the Fourth Amendment, the Court system has upheld random drug testing of students. The Court has relied on the rationale that illegal drug use is a problem in our society, and have held that random drug testing deters drug use and provides for safer schools. The recent Court decisions supporting drug testing will likely cause an increase in the number of school divisions that develop some form of random drug testing programs.

Despite the two landmark Court decisions it is likely that legal challenges will continue to occur regarding drug testing due to the ever changing drug testing scope. Lower courts have begun to see to legal challenges due to the widening scope of student drug testing in public schools.

### **New Drug Testing Applications Since *Pottawatomie***

Following the *Pottawatomie* decision the courts have continued to address student drug testing in public schools. Evidence from court cases suggests the *Pottawatomie* decision has further opened the door for public schools to test more and

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<sup>189</sup> Id.

<sup>190</sup> Id.

<sup>191</sup> Id.

more student groups with less justification for the testing programs. Lower courts have addressed drug testing in public schools on two occasions following *Pottawatomie*.

In July 2003, the Supreme Court of New Jersey examined drug testing in public schools in *Joye v. Hunterdon Central High School Board of Education*.<sup>192</sup> Hunterdon High School students, despite various efforts from the school including the use of drug dogs, drug-awareness programs, student assemblies, and suspicion based drug testing, continued to have a drug problem.<sup>193</sup> The school conducted a survey in 1996-1997, that indicated over 33 percent of the students in grades ten through twelve had used marijuana in the preceding twelve month period and 13 percent had used cocaine during the same time period.<sup>194</sup> As a result of these findings the school instituted random drug testing for extracurricular activities in 1997.<sup>195</sup>

In 2000, the Hunterdon School Board expanded testing to include all students authorized to park on school premises.<sup>196</sup> This program resulted from anecdotal evidence that drug use had decreased for those in extracurricular activities, but had increased in the general population.<sup>197</sup> A first time offense of the drug testing policy required students to be suspended both from extra-curricular activities and driving until they completed a five-day preventive program and submitted to a urinalysis indicating no alcohol or drug use.<sup>198</sup> A second offense resulted in the school suspending the student for 60 days from extracurricular activities or parking privileges.<sup>199</sup> In addition, the

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<sup>192</sup> 176 S. Ct. N.J. 568, 826 A.2d 624 (2003).

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> *Ibid.*

student had to attend a drug education program and would be subject to future unannounced tests.<sup>200</sup>

The Supreme Court of New Jersey overruled the trial court's decision and declared that drug testing of students in extracurricular activities and drug testing students with parking permits to be constitutional.<sup>201</sup> In its decision, the court conducted the four-prong balancing test established in *Vernonia*.<sup>202</sup> In addition, the court examined the *Pottawatomie* case and the "special needs" portion of *T.L.O.* In making its decision, the court examined the effectiveness of drug testing and drug testing trends by exploring the SATURN<sup>203</sup> study conducted by Linn Goldberg, the Yamuguchi<sup>204</sup> study, the McKinney study<sup>205</sup>, and the Dupont<sup>206</sup> study. The studies were examined despite their failure to show definitively the efficacy of testing.

An additional case, *Weber v. Oakridge School District 76*,<sup>207</sup> decided by the Court of Appeals in Oregon, ruled on a case involving drug testing in extracurricular activities.<sup>208</sup> In this case, the school division instituted random drug testing to prevent drug and alcohol use, to undermine the effects of peer pressure, and to encourage participation in treatment programs for student athletes with substance abuse problems.<sup>209</sup> The policy provided that no student that tested positive would be punished

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<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> Supra. note 44.

<sup>203</sup> Supra. note 49. Study conveys that drug testing may be effective in deterring drug use.

<sup>204</sup> Surpa. note 47. Study failed to demonstrate the effectiveness of drug testing on students.

<sup>205</sup> Joseph R. McKinney. *The Effectiveness of Random Drug Testing Programs: A Statewide Follow-up Study*. Retrieved September 10, 2003 from <http://www.studentdrugtesting.org/>. Study of 94 high schools identified as possibly implementing random drug testing.

<sup>206</sup> Supra. note 49. Study analyzed the elements of successful school-based drug testing programs. This study is examined in the policy and practice portion of this document.

<sup>207</sup> 184 Or. App. 415, 56 P.3d 504 (2002).

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

academically.<sup>210</sup> In addition, the policy required students to disclose whether they had been or were taking prescription medicine and to provide verification of the prescription.<sup>211</sup>

The plaintiffs argued that the drug testing policy violated their daughter's right to be free from unreasonable search and seizure.<sup>212</sup> The Court of Appeals found that random drug testing was not an unreasonable search.<sup>213</sup> In addition, the court found that requiring students to disclose prescription medication prior to being drug tested was unreasonable.<sup>214</sup> However, the court held that disclosure of prescription medication used to explain a positive test result was reasonable.<sup>215</sup>

The *Joye* case is significant because it provided further demarcation in the line between school safety concerns and student privacy rights by expanding the realm of student groups subject to random drug testing. However, in *Weber* the court of appeals in Oregon held the line on further privacy infringement of student rights by not allowing schools access to prescription records prior to testing. The *Joye* and *Weber* cases indicate that the courts will have to continue to clarify public school drug testing programs as these programs and policies evolve.

### **Student Searches in Virginia**

Statutes set forth by the State of Virginia align with Court standards. Virginia Law addresses search guidelines in Amendments to §§ 22.1-279.3:1<sup>216</sup>, 22.1-279.6<sup>217</sup>, and

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<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Reports of certain acts to school authorities. Code of Virginia §§ 22.1-279.3:1.

<sup>217</sup> Guidelines for school board policies; school board regulations governing student conduct. Code of Virginia § 22.1-279.6.

22.1-279.7.<sup>218</sup> The Code of Virginia required the State Board of Education to revise its student search guidelines to include policies addressing voluntary and mandatory drug testing of students. The policies were to state clearly that local school boards are not required to have drug testing programs, but that school boards may require drug testing if state board policies are followed.<sup>219</sup> “The Board of Education shall develop . . . guidelines for school boards for the conduct of student searches, including random locker searches, voluntary and mandatory drug testing, and strip searches, consistent with relevant state and federal laws and constitutional principles.”<sup>220</sup> State Board policies must include guidance in determining which groups may be tested, how test results can be used, confidentiality, privacy considerations, consent to testing, need to know, and release of information.<sup>221</sup>

The Virginia School Board Association (VSBA) recommends that school systems address student search and seizure in public schools in the following manner.<sup>222</sup> First, a school district’s policy should state that search and seizure can be used to maintain order and discipline in the school, as well as to protect the health, safety, and welfare of students and school personnel.<sup>223</sup> The policy allows administrators to search a student’s person, and their personal effects whenever school officials have reasonable suspicion.<sup>224</sup> Second, the VSBA recommended policy details various forms of searches. According to VSBA recommendations a personal search may include a student being

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<sup>218</sup> Guidelines for student searches. Code of Virginia § 22.1-279.7.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Roger E. Jones. *2003 General Assembly Update: Changes in Virginia School Law*. A Publication of The Virginia Association of Secondary School Principals, Inc. August, 2003.

<sup>222</sup> VSBA recommended policy JFG- Search and Seizure p. 1-4. Latest revision December 21, 1999.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

scanned with a metal detector.<sup>225</sup> A pat-down search may only be conducted if a school administrator has established a high level of reasonable suspicion.<sup>226</sup> Strip searches may only be used when an extremely serious situation exist requiring immediate action.<sup>227</sup> In addition, the recommended policy allows for the search of student lockers as a result of the lockers being school property and under the control of the school.<sup>228</sup> The recommended policy allows for school officials to search automobiles parked on school premises.<sup>229</sup> The search of automobiles is based on reasonable suspicion and the rationale that it is a privilege not a right for students to drive to school.<sup>230</sup>

### Legal Framework

School districts conducting student searches must be aware of legal standards set forth through Court decisions. In addition, a school districts search and seizure policies need to align with guidelines set forth by state policy. School officials should delineate between random student searches and administrative searches that occur as a result of individualized suspicion. Figure 1 illustrates the legal framework for random and individual searches in public schools.

Less clear is which student groups can be subject to random drug testing. The Court established in *Pottawatomie* that all students in extra-curricular activities can be subject to random drug tests.<sup>231</sup> However, as a result of the *Pottawottomie* and other lower court decisions, it can be surmised that public schools have more latitude in drug testing students than in the past. In fact, some school districts may move towards drug

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<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

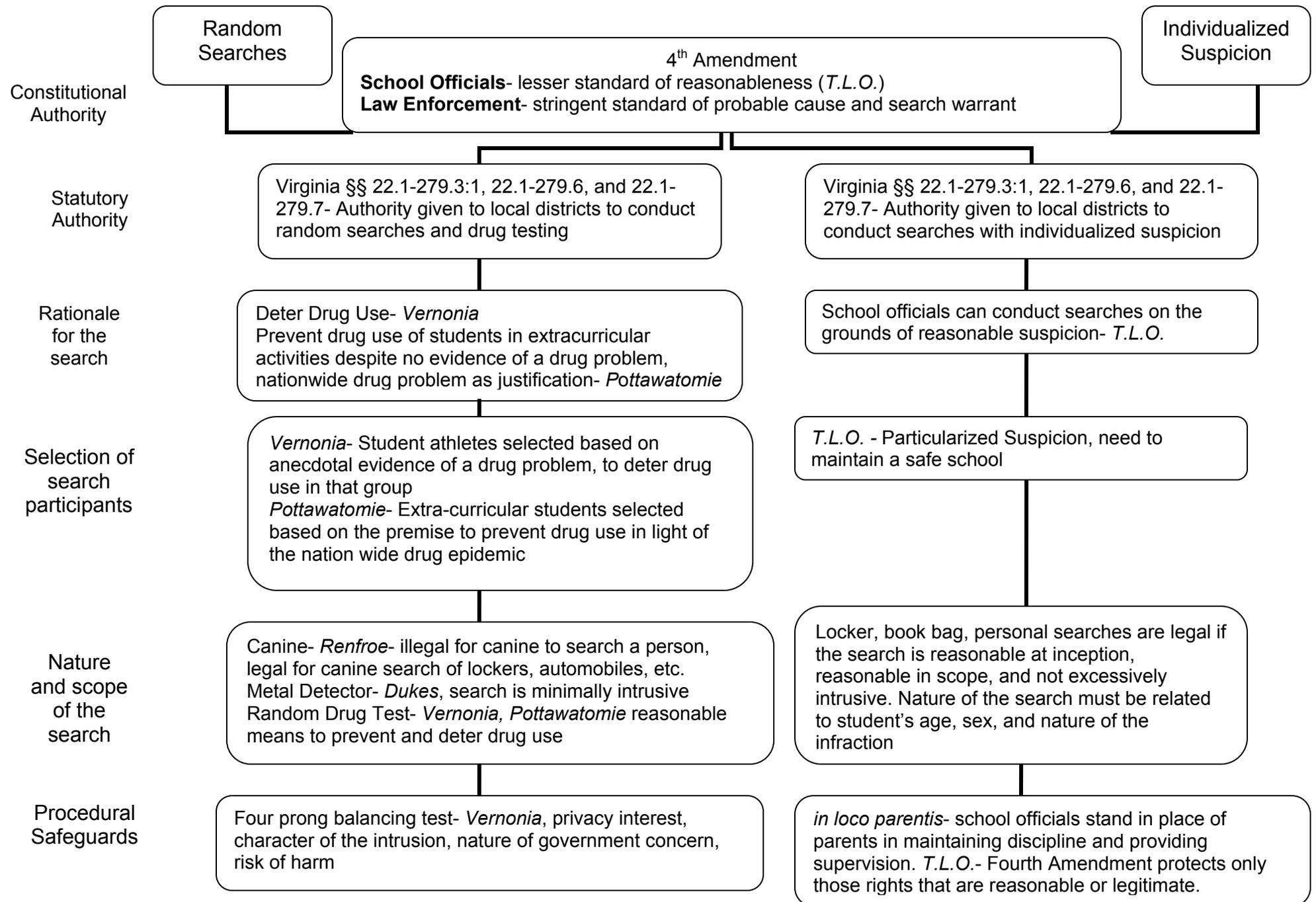
<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Supra. note 4.

Figure 1

Legal Framework



testing of all students.<sup>232</sup> Therefore, it is essential to examine the property rights of students attending school opposed to the privilege of driving to school or the privilege of participating in extra-curricular activities.

Students are required to attend school regardless of the venue.<sup>233</sup> Many states require compulsory attendance to the schooling process.<sup>234</sup> Because public schools must be accessible to all and because attendance is required, there is reason to believe that school authorities would be unable to extend drug testing to all students. The Supreme Court noted in its decisions that students who oppose random drug testing policies can choose not to participate in extracurricular activities. The same can not be said for attending school.

In *T.L.O.*, the Court established the legal standard for searches of students in public schools where individualized suspicion occurs.<sup>235</sup> The legal standards set forth in *T.L.O.* is that a search must be reasonable scope, reasonable at its inception, reasonable in the level of intrusiveness, and the context of the search must be reasonable.<sup>236</sup> Table 2 demonstrates the differences between random student searches and student searches with individualized suspicion in public schools.

In compliance with the Code of Virginia the Virginia School Board Association recommends policies for random student searches and individualized searches. The VSBA recommended search and seizure policies center around the notion that search and seizure in schools can be used in order to ensure student safety. Search and

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<sup>232</sup> Stacey L. Edmonson. *The Balance Between Student Drug Testing and Fourth Amendment Rights in Response to Board of Education v. Earls*. *Education and the Law* (2002) 14, 265-274. Research in this document indicates that fifteen public school divisions in Texas drug test all students.

<sup>233</sup> *Supra*. note 75. With compulsory attendance students must be enrolled in public schools, attend private schools, be home schooled, or have a religious exemption.

<sup>234</sup> *Id.*

<sup>235</sup> *Supra*. note 81.

<sup>236</sup> *Id.*

Table 2

## Difference between Student Searches with Individualized Suspicion and Random Searches In Public Schools

<u>School Searches</u>	<u>Examples of Searches</u>	<u>Rationale for the Student Search</u>	<u>Balancing Test</u>	<u>Students Subject to Searches</u>	<u>Court Standards</u>
Individualized Suspicion	Pat down, locker, automobile, book bag, strip search	Safety, order, discipline, reasonable suspicion	School safety needs v. student individual rights, The greater the safety concern the more intrusive the search.	Search any student where reasonable suspicion exists	<i>New Jersey v. T.L.O. (1985)</i>
Random Searches	1. Drug testing 2. Metal detectors, canine	Safety- Prevent or deter potential problems such as drugs and weapons	Generally less intrusive unless a safety concern is discovered.	Random Drug Tests- athletes, students in extra-curricular activities, students driving to school	1. <i>Vernonia v. Acton (1995)</i> , <i>Pottawatomie v. Earls (2002)</i> 2. <i>Doe v. Renfro (1980)</i> , <i>Jones v. Latexco Independent School District (1980)</i> , <i>People v. Dukes (1992)</i>

seizure policies recommended by the VSBA demonstrate that the more intrusive the search the more caution should be taken in conducting the search.

In compliance with Virginia State Statutes, the Virginia Board of Education adopted guidelines concerning student drug testing in public schools in June 2004 as a result of House Bill 2091 from the 2003 General Assembly which required public school drug testing procedures to be in accordance with constitutional principles.<sup>237</sup> The guidelines regarding student drug testing are intended to provide technical assistance for local school boards that may institute student drug testing.<sup>238</sup> These guidelines developed by the Board of Education address both the written policy and suggested procedures for school districts implementing random drug testing.

The Virginia Board of Education suggests that school districts state the purpose and intent of the drug testing program in their policy.<sup>239</sup> In addition, local school policies should clearly state which student groups are being tested and provide specific definitions for items such as “random selection,” “illegal drugs,” “reasonable suspicion,” and “positive test result.”<sup>240</sup>

The Board of Education suggests that local procedures address consent, random selection procedures, collection protocol, confidentiality, consequences, intervention, and appeal.<sup>241</sup> Consent to test should be obtained from the parent or guardian prior to the student participating in the activities identified in the policy.<sup>242</sup> The consent form should state the activities covered in the policy are a privilege and that consent is

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<sup>237</sup> *Guidelines concerning student drug testing in Virginia*. Adopted by the Board of Education June 23, 2004.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*

<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*

mandatory prior to participation.<sup>243</sup> The consent document should state when the students are chosen on the basis of random selection that students may be tested on the grounds of reasonable suspicion, and the student may be tested when they or their parents voluntarily disclose drug use by the student.<sup>244</sup>

Random selection procedures should clearly state a neutral method of selecting students in order to ensure that students are not selected on the basis of individualized suspicion.<sup>245</sup> The collection protocol must be specific in describing the procedures for selecting and handling samples in order to guarantee a minimally intrusive testing environment.<sup>246</sup> The protocol should require that the laboratories conducting the drug testing be qualified and that the laboratories have written collection procedures to ensure proper chain of custody samples, proper laboratory control, and scientifically validated testing methods.<sup>247</sup> Confidentiality of drug testing results is essential and should be guaranteed by keeping the results in a separate file from the student's scholastic records.<sup>248</sup> Disclosure of test results should be given only to parents and guardians, and to school personnel that need to know.<sup>249</sup>

Local policy should address consequences for failed tests, consequences for students refusing to provide a sample, and consequences for students tampering with their sample.<sup>250</sup> In the case of a positive test result, the local policy should address intervention and appeal.<sup>251</sup> Intervention resources for substance abuse should be

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<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

addressed and made available.<sup>252</sup> Specific procedures for appeal of suspension resulting from positive tests should be in the local policy.<sup>253</sup>

### Policy and Practice

According to John Walters, director of the Office of National Drug Control Policy, drug testing serves as a deterrent against drug use and “few methods work better or deliver clearer results.”<sup>254</sup> However, Walters has failed to demonstrate specifically how drug testing has deterred drug use by students or how drug testing has prevented a further escalation in teen drug use.<sup>255</sup>

Despite public sentiment favoring the testing of public school adolescents, few people actually understand the methodology of drug testing and the accuracy of test results. The purpose of a drug test is to measure a person’s drug use through the laboratory analysis of urine, hair, or blood.<sup>256</sup> The most common form of drug testing used in schools is urinalysis, but hair testing has begun to be used more frequently because it is less invasive and embarrassing than urine testing.<sup>257</sup> However, urine testing according to National Collegiate Athletic Association, is 90 percent accurate and more accurate than hair testing.<sup>258</sup>

School officials employ two forms of drug testing in public schools. First, school officials conduct individual searches when they suspect a student or a small group of students are in possession of contraband against school rules. In addition, individual searches or individual drug tests can occur when a student is suspected of being under

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<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> *What you need to know about Drug Testing in Schools*. Pamphlet from the Office of National Drug Control Policy: Director of National Drug Control Policy. Deposited by U.S. Government Oct. 3, 2000.

<sup>255</sup> Ibid.

<sup>256</sup> Supra. note 111.

<sup>257</sup> Id.

<sup>258</sup> Id.

the influence. Individual searches are balanced against the reasonable suspicion standard established in *T.L.O.*<sup>259</sup>

Random searches occur in schools without individualized suspicion and are used mostly as preventative measures. Random searches include the use of metal detectors, and canines. Drug-testing programs are another form of random search. Historically mass searches have been considered unreasonable within the meaning of the Fourth Amendment for law enforcement officials. However, under the guise of school safety suspicionless random drug testing by school officials has become common in schools and has been allowed through Court decisions.

### **Research Studies Regarding Policy and Practice**

Three studies were selected that demonstrate current policy and patterns of practices regarding student drug testing in public schools. A study by Stacey Edmonson, an assistant professor at Sam Houston State, examined drug testing policies among public independent school districts in Texas.<sup>260</sup> In particular, Edmonson examined the effect of the *Pottawatomie* decision on the number of schools implementing student drug testing and the range of student groups subject to drug testing. The second study examined was funded by the U.S. Department of Education and conducted by researchers at the Institute for Behavior and Health.<sup>261</sup> The purpose of the study was to analyze elements of successful school-based student drug testing programs.<sup>262</sup> Finally, an impact study focused solely on the *Pottawatomie* case conducted by Cynthia Conlon, a part-time faculty member in the School of Education at

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<sup>259</sup> Supra. note 81.

<sup>260</sup> Supra. note 232.

<sup>261</sup> Supra. note 52.

<sup>262</sup> Id.

Northwestern University, that was published in the *Journal of Law and Education* was examined.<sup>263</sup>

The Edmonson study was examined first because it demonstrates that public school district policies and patterns of practices regarding random drug testing continue to change. The purpose of the Edmonson study was to examine drug testing trends in Texas, and in particular, to explore whether Texas school districts had changed their drug testing policies following the *Pottawatomie*<sup>264</sup> decision in June 2002.<sup>265</sup>

The research was conducted in two parts with an examination of drug testing policies prior to *Pottawatomie* and an examination of drug testing policies after the *Pottawatomie* decision.<sup>266</sup> First, Edmonson examined drug testing trends in 2001, prior to *Pottawatomie*. In this original survey, 827 of the 1056 public school districts in Texas responded for a 78.3 percent rate of return.<sup>267</sup> The responses of 658 (79.5 percent) school superintendents indicated that their school districts did not implement a student drug-testing policy.<sup>268</sup> The survey indicated, as well, that 169 (20.4 percent) school superintendents responded that their school districts implemented some type of student drug-testing policy.<sup>269</sup> The survey indicated that students in extra-curricular activities (26 school districts) were the population tested most often in Texas school district drug testing polices.<sup>270</sup>

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<sup>263</sup> Cynthia K. Conlan. *Urineschool: A Study of the Impact of the Earls Decision on High School Random Drug Testing Policies*. *Journal of Law and Education* (2003) 32, 297-319.

<sup>264</sup> *Supra*. note 4.

<sup>265</sup> *Supra*. note 232.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

However, twenty-eight Texas school districts tested all students. Thirteen of these districts are state supported institutions such as correctional facilities, which leaves only fifteen school districts that test all students. Table 3 displays results from the student populations included in drug testing policies. The survey indicated that almost eighty-five percent of the 169 school districts had instituted their drug-testing policies within the last five years.<sup>271</sup> In addition, the survey found that only four school districts' (2.4 percent) drug-testing policies had been challenged in the court system.<sup>272</sup>

The second part of the survey was conducted after the *Pottawatomie* decision. The purpose of the second part of the survey was to examine whether or not the *Pottawatomie* decision had altered the number of school districts drug testing students and the extension of testing into more student groups. The response rate to the follow-up survey was not as strong as the first survey with 264 (40.1 percent) of the 658 school districts that had previously indicated having no drug testing policy responding.<sup>273</sup> Prior to *Pottawatomie*, 10.5 percent of the school districts indicated plans to implement a drug testing policy.<sup>274</sup> After the *Pottawatomie* decision, 13.3 percent of the responding districts indicated plans to implement a drug testing policy in their school district.<sup>275</sup> Edmonson examined the 169 districts that had drug testing policies in place prior to *Pottawatomie* to determine if their drug testing policies would change as a result of *Pottawatomie*.<sup>276</sup> Nineteen school districts (24.3 percent) indicated that they planned to

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<sup>271</sup> Id.

<sup>272</sup> Id.

<sup>273</sup> Id.

<sup>274</sup> Id.

<sup>275</sup> Id.

<sup>276</sup> Id.

Table 3

## Student Populations Included in Drug-Testing Policies

<u>Student population</u>	<u>Number of Districts</u>	<u>Percentages</u>
Student Athletes	53	31.4
Students in extra-curricular activities	76	45.0
All students	28	16.6
Other	3	1.8
Voluntary testing only	9	5.3

Source: Reprinted, with permission of the author (see Appendix A), from Stacey L. Edmonson, *The Balance Between Student Drug Testing and Fourth Amendment Rights in Response to Board of Education v. Earls*. The number of school districts displayed in this table is 169. This chart is nearly identical to the chart displayed by Edmonson on p. 269 titled Student populations included in drug-testing policies.

Note: Of the 28 school districts implementing mandatory testing of all students, 13 are state-supported group homes or correctional facilities.

change, with the majority (12 school districts) indicating that their policies would change to include testing for all students in extra-curricular activities.<sup>277</sup>

The Edmonson study provides an interesting analysis of Texas school district drug testing trends. First, it indicates that drug testing of students is a growing trend in Texas public school districts. Second, the study shows that more school districts will likely begin drug testing students as a result of the *Pottawatomie* decision. Third, the research indicates that students involved in extra-curricular activities are most likely to be tested. This appears to be a growing trend since the *Pottawatomie* decision. Finally, the Edmonson study, due to the lack of legal challenges against the drug testing programs, may indicate that parents support drug testing. In addition, the study may suggest that people in Texas have come to accept searches such as drug testing as common practice and are unwilling to challenge such policies.

In the second study examined in the literature review, researchers at the Institute for Behavior and Health conducted a survey of nine schools that initiated student drug testing programs between 1997 and 2000. Programs' successes were indicated by reduced number of positive tests, lowered levels of discipline problems, and self-reported survey data.<sup>278</sup> Identification of schools participating in the study was conducted by experts involved in substance abuse prevention and in the safe and drug free schools movement, and selected by the Department of Education.<sup>279</sup> Due to the fact that there was not a national data base which listed school districts involved in student drug test programs, the researchers identified potential school districts through

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<sup>277</sup> Id.

<sup>278</sup> Supra. note 52.

<sup>279</sup> Id.

a variety of methods.<sup>280</sup> The methods included identifying school districts that drug test students that had been involved in past and current court decisions, through literature reviews that identified school districts implementing testing, through internet searches that identified school districts that implement student drug testing programs, and the review of several nationwide surveys of school-based preventive programs which identify districts which have drug testing programs.<sup>281</sup>

An initial screening process of schools targeted through the aforementioned methods was conducted by the use of a short questionnaire. Based on the results of the questionnaire and those willing to participate, a potential list of 35 schools was established. Then researchers developed specific criteria to select schools for the study.<sup>282</sup> The criteria included: the student drug testing program's apparent success,<sup>283</sup> a substantial period of time the drug testing program had been in existence, a major focus on public schools, and to ensure that the study had geographic diversity.<sup>284</sup> From the criteria, the researchers selected nine schools.<sup>285</sup> A detailed survey was conducted by a representative at each selected school including Principals, Assistant Principals, Guidance Counselors, Athletic Directors, and drug prevention coordinators.<sup>286</sup> The nine schools included seven public and two private schools, were dispersed through various geographic regions of the country.<sup>287</sup> Five schools were located in suburban

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<sup>280</sup> Id.

<sup>281</sup> Id.

<sup>282</sup> Id.

<sup>283</sup> Id. The success of the drug testing program was evaluated by analyzing the number of positive tests, lowered levels of disciplinary problems, and self-reported survey data. This information was provided by each school.

<sup>284</sup> Id.

<sup>285</sup> Id.

<sup>286</sup> Id.

<sup>287</sup> Id.

communities, two were located in urban areas, and two were located in rural areas.<sup>288</sup> The schools' student populations ranged from 246 to 2500, with an average of 1255 students.<sup>289</sup>

In order to determine the elements of a successful school drug testing program the researchers conducted a survey of the schools to examine the program and policies, and the history of the programs, and the lessons learned from these programs.<sup>290</sup> The researchers found that most schools' drug testing programs are focused on high school students with a few exceptions. One school started the program in the eighth grade, two schools began testing in the seventh grade, and one school started testing in the sixth grade.<sup>291</sup> Most of the drug testing programs were directed toward specific student populations;<sup>292</sup> however, both of the private and one of the public schools tested all students (in the public school the program was voluntary and not mandatory).<sup>293</sup> Of the six schools that tested specific categories of students, all included athletes, four included other extracurricular activity participation, and three included students driving to school.<sup>294</sup> The percentage of students tested in the nine schools ranged from twenty-eight percent to one-hundred percent.<sup>295</sup>

The researchers found that all nine schools conducted drug testing on a random basis during the athletic season and the entire school year.<sup>296</sup> The findings indicate that the annual cost of each school's drug testing program ranged from \$1,500 to \$36,500

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<sup>288</sup> Id.  
<sup>289</sup> Id.  
<sup>290</sup> Id.  
<sup>291</sup> Id.  
<sup>292</sup> Id.  
<sup>293</sup> Id.  
<sup>294</sup> Id.  
<sup>295</sup> Id.  
<sup>296</sup> Id.

with a median cost of \$5,800.<sup>297</sup> The mean cost for testing each student was forty-two dollars and the median cost was twenty-one dollars (see Table 4).<sup>298</sup>

Researchers found specific consequences of a positive drug test varied at each school. Consequences included parental notification (all nine schools), loss of playing time for athletes (eight schools), drug education (eight schools), and counseling (eight schools).<sup>299</sup> Only one school imposed any type of suspension. Consequences for a repeat offender of the drug testing policy were usually more severe.<sup>300</sup> Both private schools required expulsion or withdrawal from school. One public school instituted an eight day suspension from school and most public schools instituted long suspensions from extracurricular activities lasting up to one year.<sup>301</sup>

Eight of the nine schools used urine testing to test for drugs (see Table 5). One of the nine schools used hair specimens for student drug testing.<sup>302</sup> All nine schools reported that a positive test was subject to a confirmatory test.<sup>303</sup> All but one school collected the samples at the school.<sup>304</sup> In addition, all the schools routinely tested for marijuana and cocaine (see Table 4).<sup>305</sup> Eight of the nine schools reported data on the number or percentages of positive tests for each substance during the previous two school years.<sup>306</sup> The most common source for a positive drug test was marijuana, ranging from 0.3 percent to fifteen percent of the tests.<sup>307</sup>

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<sup>297</sup> Id.

<sup>298</sup> Id.

<sup>299</sup> Id.

<sup>300</sup> Id.

<sup>301</sup> Id.

<sup>302</sup> Id.

<sup>303</sup> Id.

<sup>304</sup> Id.

<sup>305</sup> Id.

<sup>306</sup> Id.

<sup>307</sup> Id.

Table 4

## Cost of Laboratory Tests and the Drugs That Are Tested For

School	Cost Per Test (Lab Fee)	Specimen Tested	Drug Tested for Routinely
A	\$21.00	Urine	SAMHSA-5* (but not heroin/codeine or PCP + nicotine, alcohol)
B	14.00	Urine	SAMHSA-5 + synthetic opiates, nicotine, alcohol
C	10.00	Urine	SAMHSA-5 (but not PCP) + synthetic opiates
D	148.50	Urine, Saliva	SAMHSA-5 + steroids, alcohol, others
E	70.00	Urine	SAMHSA-5 + LSD, nicotine, alcohol
F	20.00	Urine	SAMHSA-5 + Ecstasy/MDMA, synthetic opiates, others
G	45.00	Hair	SAMHSA-5 + Ecstasy/MDMA
H	30.00	Urine	SAMHSA-5 + LSD
I	19.00	Urine	SAMHSA-5 + steroids, nicotine, Ecstasy/MDMA, LSD, GHB, synthetic opiates

Source: Robert L. Dupont, Teresa G. Campbell, and Jacqueline J. Mazza. *Report of Preliminary Study: Elements of a Successful School-Based Drug Testing Program*. Prepared by The Institute of Behavior and Health, Inc. and funded by The United States Department of Education Office of Elementary and Secondary Education Safe and Drug-Free Schools Program (2002), 1-26 p. 5.

Note: \*SAMHSA-5 drugs from the standard core of drug testing and include: marijuana, cocaine, amphetamine/methamphetamine, opiates (heroin/morphine/codeine), and PCP.

Table 5

## Summary Description of the Nine School Programs in the Study

School	Type	Community	Grades Tested	Year Began	Categories Tested	% of Students	Specimen Tested
A	Public	Midwest Suburban	7-12	1997	Athletics Extracurricular Student-Divers	80%	Urine
B	Public	Midwest Suburban	7-12	1997	Athletics Extracurricular Student- Drivers	80%	Urine
C	Public	West Rural	9-12	1997	Athletes Cheerleaders	41%	Urine
D	Public	East Suburban	9-12	1997	Athletics Extracurricular Student- Drivers	76%	Urine Saliva
E	Public	Midwest Suburban	9-12	1999	Athletics Extracurricular	81%	Urine
F	Public	South Suburban	9-12	1997	Athletics	28%	Urine
G	Private	South Urban	8-12	1998	All students	100%	Hair
H	Private	East Urban/ Suburban	9-12	2000	All students	100%	Urine
I	Public	Southwest Rural	6-12	1998	All Students (Currently voluntary; formerly mandatory)	100% eligible; 90% Volunteer	Urine

Source: Robert L. Dupont, Teresa G. Campbell, and Jacqueline J. Mazza. *Report of Preliminary Study: Elements of a Successful School-Based Drug Testing Program*. Prepared by The Institute of Behavior and Health, Inc. and funded by The United States Department of Education Office of Elementary and Secondary Education Safe and Drug-Free Schools Program (2002), 1-26 p. 7.

A narrative summary provided by each school indicated that some schools instituted drug testing to prevent drug use while others instituted testing to reduce existing problems.<sup>308</sup> The schools in this study identified a local drug problem through a variety of methods.<sup>309</sup> Seven schools observed drug problems such as arrests, overdoses, disciplinary problems, suspensions, and drug sales.<sup>310</sup> Six schools determined a drug problem as a response from parental and faculty/administration concerns and five schools participated in self-report surveys of student drug use.<sup>311</sup>

Table 6 summarizes the amount of support and opposition to the drug testing program when the testing program began.<sup>312</sup> The table uses a five-point scale from one being strongly opposed to five being strongly supportive.<sup>313</sup> In addition, Table 7 uses the same scale to measure the current level of support and opposition to the drug testing program.<sup>314</sup> Support for the drug testing program was greater than opposition; however, in general, support was stronger from the school board, law enforcement, and faculty/staff than from other groups.<sup>315</sup>

None of the schools conducted a formal evaluation of the effectiveness of the programs.<sup>316</sup> Measuring the effectiveness of the programs came from a combination of indicators.<sup>317</sup> Six schools provided anecdotal evidence for program success.<sup>318</sup> Six

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<sup>308</sup> Id.

<sup>309</sup> Id.

<sup>310</sup> Id.

<sup>311</sup> Id.

<sup>312</sup> Id.

<sup>313</sup> Id.

<sup>314</sup> Id.

<sup>315</sup> Id.

<sup>316</sup> Id.

<sup>317</sup> Id.

<sup>318</sup> Id.

Table 6

Total Number of School Responses to Question: Who supported and who opposed the student drug testing program at the start?

	Strongly Opposed	Opposed	Neutral	Supported	Strongly Supported
Students	0	2	3	4	0
Parents	0	0	1	4	4
Faculty/Staff	0	0	1	1	7
School Board	0	0	0	1	8
Other Schools	0	0	4	2	2
Community at large	0	0	0	6	3
Media	0	2	1	5	2
Religious Organizations	0	0	0	3	5
Law Enforcement	0	0	0	1	8
Others (Specify)	0	0	0	0	1

Source: Robert L. Dupont, Teresa G. Campbell, and Jacqueline J. Mazza. *Report of Preliminary Study: Elements of a Successful School-Based Drug Testing Program*. Prepared by The Institute of Behavior and Health, Inc. and funded by The United States Department of Education Office of Elementary and Secondary Education Safe and Drug-Free Schools Program (2002), 1-26 p. 13.

Note: Table displays the range of support and opposition to the drug testing program in the nine schools at the beginning of the drug testing program. Using a 5-point scale (from 1=strongly opposed to 5=strongly supported) and a list of stakeholders.

Table 7

Total Number of School Responses to Question: Currently, what level of support does the drug testing program have among the following groups?

	Strongly Opposed	Opposed	Neutral	Supported	Strongly Supported
Students	0	1	1	6	0
Parents	0	0	0	1	8
Faculty/Staff	0	0	0	1	8
School Board	0	0	0	1	7
Other Schools	0	0	3	1	5
Community at large	0	0	0	2	7
Media	0	1	1	4	3
Religious Organizations	0	0	0	1	7
Law Enforcement	0	0	0	0	9
Others (Specify)	0	0	0	0	3

Source: Robert L. Dupont, Teresa G. Campbell, and Jacqueline J. Mazza. *Report of Preliminary Study: Elements of a Successful School-Based Drug Testing Program*. Prepared by The Institute of Behavior and Health, Inc. and funded by The United States Department of Education Office of Elementary and Secondary Education Safe and Drug-Free Schools Program (2002), 1-26 p.14.

Note: Table displays the range of support and opposition to the current drug testing program in the nine schools. Using a 5-point scale (from 1=strongly opposed to 5=strongly supported) and a list of stakeholders.

schools mentioned tracking students who tested positive, and three schools identified declines in positive tests.<sup>319</sup> The research does not provide specifics or information regarding how each school measured testing effectiveness.

Only one of the nine schools had been directly involved in a legal challenge to the drug testing program.<sup>320</sup> However, one school had been threatened with a legal challenge and two schools suspended testing because of concerns of pending court cases in other localities.<sup>321</sup> One school reluctantly changed its program from mandatory to voluntary drug testing because of a court ruling against another school with a similar drug testing program.<sup>322</sup> Six of the nine schools responded that they would make no changes to their program if they were to do it over again.<sup>323</sup>

In making the decision to institute a drug testing program, all nine schools questioned school officials from other schools that had previously instituted testing.<sup>324</sup> Further, most of the schools consulted with faculty and staff (eight), involved local experts on drug use and drug use prevention (seven), included parents (six) and students (five) opinions, and referred to published material (six).<sup>325</sup>

The research demonstrates that within the surveyed school districts there is support for drug testing among a broad range of constituencies within a school community. This broad support is certainly a factor in the public relations area and the political area. Many school districts may feel that it is necessary to demonstrate that they are doing everything in their power to stop adolescent drug use.

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<sup>319</sup> Id.  
<sup>320</sup> Id.  
<sup>321</sup> Id.  
<sup>322</sup> Id.  
<sup>323</sup> Id.  
<sup>324</sup> Id.  
<sup>325</sup> Id.

The third study conducted by Cynthia Conlon was a survey to examine the reaction of principals regarding the *Pottawatomie* decision.<sup>326</sup> The survey was sent to eighteen high school principals in a large mid-western city. Ten of the eighteen principals responded to the survey for a 55.5 percent return rate.<sup>327</sup> The focus of the study was to gain information on how the schools responded to the *Pottawatomie* decision, the schools' current drug abuse prevention efforts, and the likelihood that their schools would adopt random drug testing.<sup>328</sup> Each principal was asked to use a five-point scale to rate the significance of factors that might influence a decision to adopt random drug testing.<sup>329</sup> In addition, the researcher conducted a follow-up interview with each of the ten principals to discuss their responses in depth.<sup>330</sup>

Results of the Conlon study indicated that three of the ten schools had some form of random drug testing.<sup>331</sup> The ten principals were asked to use a five-point scale to rank a number of factors in terms of significance in adopting drug testing in their schools.<sup>332</sup> A comparison of the rankings of principals of schools with drug testing and principals of schools without drug testing was conducted.<sup>333</sup> The comparison displays a variance in the point of view of principals in schools with drug testing and to those without drug testing as to the factors that affect implementation of random drug testing at high schools (see Table 8).<sup>334</sup> Conlon also found that only one of the ten schools

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<sup>326</sup> Supra. note 263.

<sup>327</sup> Id.

<sup>328</sup> Id.

<sup>329</sup> Id.

<sup>330</sup> Id.

<sup>331</sup> Id.

<sup>332</sup> Id.

<sup>333</sup> Id.

<sup>334</sup> Id.

Table 8

Ranking of Importance of Factors that Affect Implementation of Random Drug Testing at High Schools

Factors	Average Ranking of Schools with Random Drug Testing	Average Ranking of Schools Without Random Drug Testing
Parental Support	5.00	3.85
Student Support	4.00	2.92
School Board Support	4.67	3.08
Legal Authority	4.33	4.00
Cost	3.67	3.11
Ensuring Test Validity	5.00	2.62
Police Support	2.67	3.16
Protecting Student's Rights	5.00	3.54
Belief in Deterrence of Random Testing	4.67	3.30
Protecting Confidentiality	4.67	3.41
Having Evidence of a Drug Problem	4.33	3.43
Maintaining Trust Among Students	4.00	3.22

Scale: 1 indicating "not important" and 5 indicating "extremely important"

Source: Reprinted, by permission of the publisher George Jay Joseph (see Appendix B), from, Cynthia K. Conlan. *Urineschool: A Study of the Impact of the Earls Decision on High School Random Drug Testing Policies*. *Journal of Law and Education* (2003) 32, 297-319 p. 310.

Note: Ten principals were asked to use a five-point scale to rank a number of factors in terms of their significance in adopting random drug testing with "1" indicating not important and "5" indicating extremely important.

surveyed took action to adopt new drug testing policies after the *Pottawatomie* case.<sup>335</sup>

Additional information in the Conlon study demonstrated that the schools with drug testing were generally larger schools with greater budgets for more per pupil expenditures than schools that did not test.<sup>336</sup>

The principals indicated in the survey that a range of methods was currently used in drug prevention efforts.<sup>337</sup> The methods included: referrals to student assistance programs, surveys to determine the level of student drug use, assemblies and other educational efforts, random locker searches, and random searches by drug-sniffing dogs.<sup>338</sup> In addition, the survey found that among the seven principals without random drug testing in their schools that the average response was “unlikely” when asked if the school district would adopt random drug testing.<sup>339</sup>

Results of the Conlon study must be taken with caution due to the small size of the study; however, the study demonstrates a need for further examination in to why schools drug test and a further review of emerging trends as a result of the *Pottawatomie* decision. In addition, the possibility of increased latitude in drug testing programs in public schools may lead to more legal challenges regarding drug testing programs.

Several conclusions can be drawn from the three studies that have been presented. The research studies indicate an upward trend in the amount of drug testing that occurs in schools. The trend suggests that more school systems are testing more students, particularly those involved in extra-curricular activities. The research does not

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<sup>335</sup> Id.

<sup>336</sup> Id.

<sup>337</sup> Id.

<sup>338</sup> Id.

<sup>339</sup> Id.

indicate that schools that implement drug testing programs are safer than those that do not implement drug testing. Finally, research indicates that various constituencies displayed broad support for drug testing in public schools.

### Conclusion

As a result of recent Supreme Court rulings the expansion of random drug testing in public schools is likely to increase across the country. Despite the likelihood that drug testing programs will increase, there are still many concerns regarding student drug testing in public schools. There is concern about the level of drug use, where student drug use occurs, and whether drug testing programs target the student population most at risk.

The information provided in this document provides several important conclusions. First, evidence from the Monitoring the Future study<sup>340</sup> and the ONDCP (Office of National Drug Control Policy)<sup>341</sup> demonstrated that teens use drugs less today than in 1970's and early 1980's. Furthermore, according to the Monitoring the Future study, teens were more likely to use alcohol and tobacco than other illegal drugs.<sup>342</sup> In addition, the ONDCP reported that there was a strong correlation between criminal activity and drug use.<sup>343</sup> Research findings indicated that adolescent drug use occurs most often at locations other than school.<sup>344</sup> Regardless of the lack of conclusive evidence regarding student drug testing effectiveness, a general upward trend in the

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<sup>340</sup> Supra. note 6.

<sup>341</sup> Supra. note 20.

<sup>342</sup> Supra. note 6.

<sup>343</sup> Supra. note 20.

<sup>344</sup> Supra. note 26 and 27.

amount of drug testing that is occurring in public schools is demonstrated in both the Yamaguchi study<sup>345</sup> and the Edmonson Study.<sup>346</sup>

Finally, it can be concluded that students' rights have diminished from the high mark for Court decision regarding student rights in *Tinker*<sup>347</sup> to the more recent *Vernonia*<sup>348</sup> and *Pottawatomie*<sup>349</sup> Court decisions that have allowed for more intrusive student searches. The pendulum appears to be swinging more towards school safety than student rights. An important aspect of this issue is student drug testing. Therefore, it is essential for scholars to continue to monitor drug testing policies and patterns in public schools.

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<sup>345</sup> Supra. note 49.

<sup>346</sup> Supra. note 232.

<sup>347</sup> Supra. note 84.

<sup>348</sup> Supra. note 44.

<sup>349</sup> Supra. note 4.

### CHAPTER III

#### RESEARCH DESIGN AND METHODOLOGY

The perception of a drug problem in public schools coupled with the belief by many constituencies that there is a nexus between drug use and school safety has motivated many school officials to explore methods that they believe deter or prevent adolescent drug use. Random drug testing of students is one such tool that some public school district authorities use to address student drug use.<sup>350</sup>

*Vernonia*<sup>351</sup> and *Pottawatomie*<sup>352</sup> have kept the door open for school officials to randomly drug test various student groups within public schools. Students enjoying such privileges as participating in athletics and extra-curricular activities or driving to school are examples of the kinds of students who are being drug tested.

Most research on drug testing in public schools has investigated its effectiveness, or lack thereof, as a deterrent for adolescent drug use. Relatively little research has focused on drug testing policies and patterns of practice that are currently in place in public schools. An exploration of the variety of drug testing policies and of the patterns of practice in implementing random drug testing assists educators, policymakers, parents, and students in understanding the nature and scope of such practices. In essence, this study analyzed current student drug testing policies and patterns of practices in Virginia public schools. Additionally, it provided insight into current trends in Virginia regarding the variety and number of student groups being

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<sup>350</sup> Supra. notes 49, 50, 51, and 232. There have been various studies that have examined the effectiveness of student drug testing. The Yamaguchi study failed to demonstrate drug testing effectiveness in deterring or preventing student drug use. However, a study by Goldberg demonstrated that drug testing may be effective in deterring student drug use. Despite the lack of conclusive evidence that drug testing is effective in deterring drug use studies conducted by Yamaguchi and Edmonson demonstrate that student drug testing is a growing trend in public schools.

<sup>351</sup> Supra. note 44.

<sup>352</sup> Supra. note 4.

tested, the kinds of substances for which students are being tested and the frequency of testing. Likewise, the study addressed how school administrators are using data to monitor the impact of the testing program.

This chapter outlines how the researcher collected and analyzed the data necessary to answer the primary research questions by describing the research design and methodology. The chapter is divided into five sections: research questions, conceptual framework, data instrumentation and collection, and data analysis.

### Research Question

The primary guiding question for the study was: What are the current policies and patterns of practice in random student drug testing in Virginia's 132 public school districts? Additional data that was sought in this study includes the following:

1. How many school districts in Virginia have instituted random student drug testing?
2. How do the policies and procedures comport with the standards for legal random drug testing as set forth by the U.S. Supreme Court?
3. In those school districts that have established student drug testing policies, which categories of students have been subjected to random testing and for what kinds of substances?
4. What types of data do these districts collect to monitor the drug testing program?
5. Which school authorities are responsible for ensuring the implementation of random drug testing policies, and what procedures do they follow?

## Conceptual Framework

In determining if existing random drug testing policies and practices in Virginia public schools are legally sound, a conceptual framework was constructed. A conceptual framework explains, either graphically or in narrative form the main dimensions to be studied and the relationships among them.<sup>353</sup> The conceptual framework in Figure 2 provided a conceptual map that was followed during data collection.

The conceptual framework demonstrates the parameters school districts need to address in instituting student drug testing. These parameters include Constitutional authority, statutory authority, rationale for the search, selection of search participants, nature and scope of the search, and procedural safeguards suggested by the Virginia Board of Education. School officials should delineate between random student searches and administrative searches that occur as a result of individualized suspicion. The conceptual framework demonstrates this separation.

The Constitutional authority to conduct searches by police is spelled out in the Fourth Amendment. School officials are not restrained by the probable cause requirements established for law enforcement. The rationale for the lesser standard of reasonableness for school officials when conducting searches was established by the Court in *T.L.O.*<sup>354</sup> For the purposes of this portion of the study, the right side of the legal framework was removed because student drug testing is typically a random search.

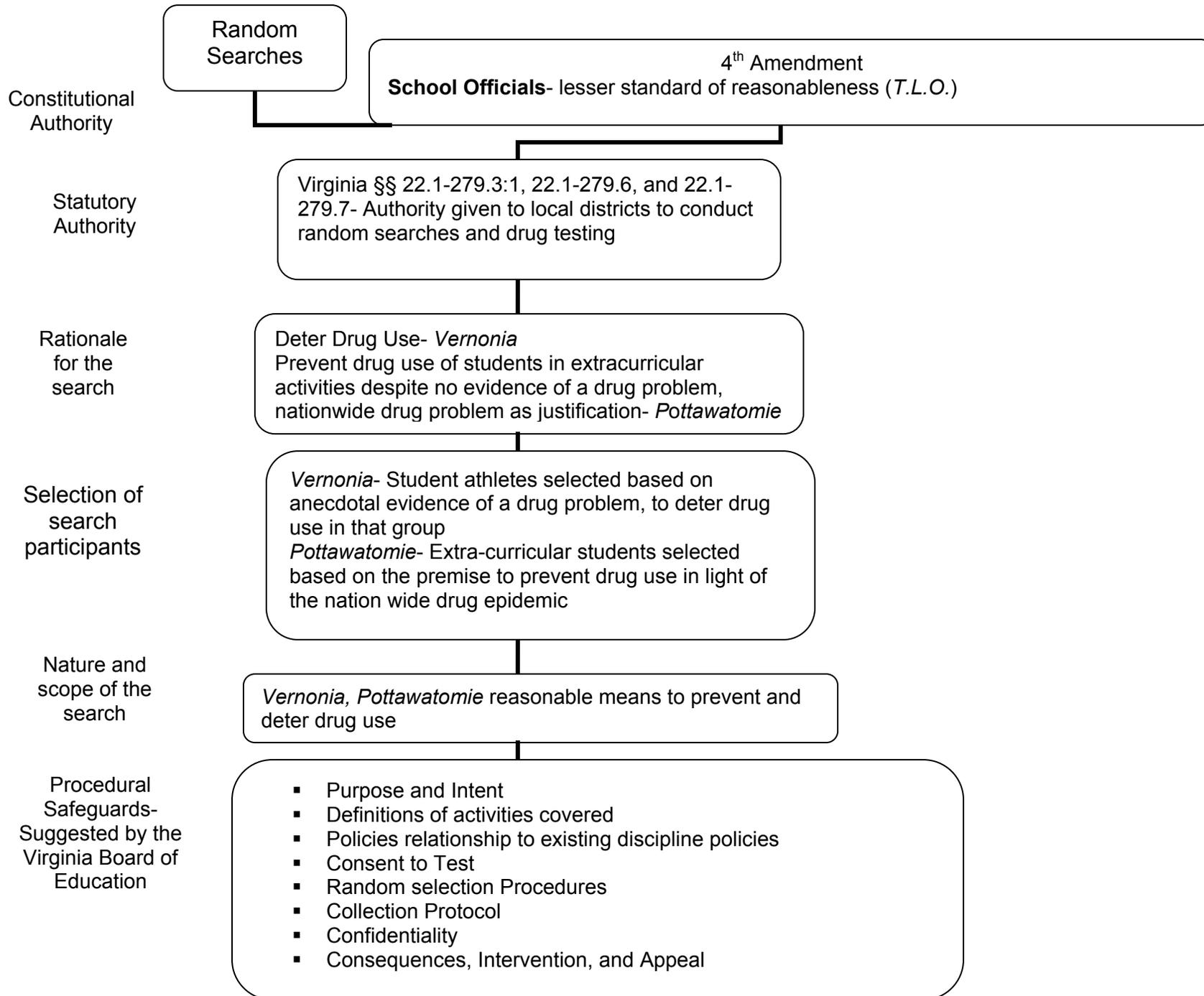
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<sup>353</sup> Mathew B. Miles and A. Micheal Huberman (1984). *Qualitative Data Analysis: A Sourcebook of New Methods*. SAGE Publications, Inc.

<sup>354</sup> Id.

Figure 2

Conceptual Framework



Statutes set forth by the state of Virginia address school officials' ability to conduct searches. In addition, the Virginia School Board Association recommends various policies for school districts to address search and seizure. The cornerstone of the state statutes is that school officials can conduct searches and seizures in schools to provide a safe environment. Virginia statutes and the policies recommend by the VSBA recommend that the more intrusive the search the more rationale is needed by school officials to conduct the search.

The rationale for conducting random student drug testing programs is typically based upon the nationwide drug problem. The selection of search participants has been addressed but not completely clarified in *Vernonia v. Acton*<sup>355</sup> and *Board of Education of Pottawatomie County v. Earls*.<sup>356</sup> The Court has established that various groups such as student athletes and students in extra-curricular activities can be selected to participate in random drug testing programs.

School districts conducting random searches need to have an understanding of the nature and scope of the search. The scope of the search corresponds to the potential for harm, with the intrusiveness of the search increasing with the potential danger to the school populous. Therefore, random searches typically are less intrusive. In the case of random drug testing, the Court has often compared the search (the collection of urine) to student athletes participating in locker room communal undress and to the use of public restrooms.<sup>357</sup>

After identifying the nature and scope of the search, school districts must spell out procedural safeguards to protect the school district and the student. In the case of

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<sup>355</sup> Supra. note 44.

<sup>356</sup> Supra. note 4.

<sup>357</sup> Supra. note 4 and 44.

random drug testing programs, the school district needs to spell out a variety of procedural safeguards. Among the procedural safeguards the school district must address are consent to test, random selection procedures, collection protocol, confidentiality, consequences for positive tests, intervention, and appeal.

### Data Collection

Data collection occurred in two phases. Phase one was structured to determine which Virginia public school districts have written random drug testing policies, which have implemented these policies, and who is primarily responsible for the oversight of the district's drug testing program. Phase two was structured to explore in-depth the policies and patterns of practice for school districts implementing random student drug testing. This section describes the rationale for the study design, the data collection procedures, and strategies used for data collection.

Descriptive research methodology was the basis for this study's research design. Fowler describes descriptive research as the description, recording, analysis, and interpretation of conditions as they exist.<sup>358</sup> This study included an initial inquiry which acquired preliminary information as to which school districts have implemented random student drug testing, and what their policies state. Next, the school districts that have instituted student drug testing were examined through in-depth observation of the drug testing program and detailed interviewing of those persons who perform the actual duties associated with its application. Finally, an examination was conducted regarding the drug testing policies and procedures of the school districts that have implemented student drug testing aligned with current Court standards and statutory law addressed in

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<sup>358</sup> Floyd J. Fowler, Jr. *Survey Research Methods Second Edition*. SAGE Publications: International Educational and Professional Publisher (1993).

the conceptual framework. The two phases of data collection provided multiple sources of data to answer each of the research questions.<sup>359</sup>

### **Participant Selection**

The Virginia Department of Education lists 132 public school districts under its jurisdiction. The superintendent in each school district was asked through an initial inquiry whether his/her school district has written policies and implements student drug testing. From an analysis of this data, it was determined that four school districts could be a part of the data collection.

Of the four districts that were possible to examine three were chosen to participate in the study. Purposeful sampling<sup>360</sup> was employed to determine which three school districts were asked to be a part of the study. Factors used in determining participation included school districts' willingness to participate, the number of years the school district had implemented random student drug testing, the written policies, and the location of the school district. A prioritized list was constructed as to the school districts that could be a part of the study.

The drug testing coordinators in the three districts selected in this study were contacted and informed regarding the topic, purpose, and participant selection for the study. The school district drug testing coordinators participating in the in-depth interview and observation were mailed a letter explaining the expectations of the study and ensuring that the findings would be confidential. Prior to the written letter, the researcher

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<sup>359</sup> Sharan B. Merriam. *Qualitative Research and Case Study Applications in Education*. Jossey-Bass Publishers (1998) p. 61. Triangulation of the data is the process of using multiple investigators, multiple sources of data, or multiple methods to confirm emerging findings.

<sup>360</sup> Ibid. p. 20. Purposeful sampling is based on the "assumption that the investigator wants to discover, understand, and gain insight and therefore must select a sample from which the most can be learned." The school districts that have instituted student drug testing will be explored because these will "yield the most information about the phenomenon of interest."

established contact with the drug testing coordinator in each school district through multiple phone calls and emails. Written consent from the school district personnel participating in the qualitative portion of the study was gathered. School districts participating in the study were not specifically identified. Further, the school districts participating in the qualitative portion were assigned the pseudonyms School District A, School District B, and School District C.

### **Data Collection Procedures**

Phase One. In the first phase of the research, superintendents or their designated representatives from each Virginia school district were requested to respond to an email that asked if their school district has a random drug testing policy. A letter was mailed to the superintendent a week before the email to inform the superintendent of the impending email inquiry (see Appendix C). The purpose of the initial inquiry was to gain information regarding which school districts have student drug testing policies and which districts implement student drug testing policies. This phase was essential to the research because it demonstrated which Virginia school districts have policies regarding student drug testing and which districts have actually implemented random drug testing programs. In addition, the initial email inquiry (see Appendix D) asked those school districts that have instituted drug testing to provide contact information regarding the person who conducts the drug testing program for the school district.

Several methods to encourage a high response rate were instituted including:

1. An informative letter was sent to the superintendent of each school district explaining that an email with two questions would be sent along with a request for a prompt response.

2. The email inquiry was clear, attractive, and easy to read.
3. The response task was checking a box from a choice of two answers.  
Written responses were available only if the respondents choose to do so.
4. Approximately fourteen days after the initial email the author sent non-respondents an email reminder emphasizing the importance of a high response rate and attached the initial inquiry.
5. Phone calls and emails were made to assistant superintendents, principals, and other administrators of non-respondent school districts after the second email inquiry to encourage the highest possible response rate.<sup>361</sup>

During the first phase, student handbooks were collected and examined in 102 school districts in Virginia in order to read and analyze the written policies regarding student drug testing. This allowed a better understanding of the articulated policies and patterns of practice of each school district in Virginia and created a foundation to determine how the written policies comport with current legal standards.

Phase Two. The second phase of the research was based on the number of schools indicating they have drug testing programs and the researcher's access to these schools. This phase was qualitative in nature. Creswell defines qualitative research as "an inquiry process" in which "the research builds a complex, holistic picture, analyzes words, reports detailed views of informants, and conducts the study in the natural setting."<sup>362</sup> Every effort to gain complex and descriptive information about

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<sup>361</sup> Ibid.

<sup>362</sup> John W. Creswell. *Qualitative Inquiry and Research Design, Choosing Among Five Traditions*. SAGE Publications (1997) p. 15.

student drug testing programs without disrupting the natural setting was made.<sup>363</sup> In addition, the researcher was the primary instrument for data collection and analysis.<sup>364</sup> Rich descriptions of each drug testing program were gained by physically visiting the three school districts' selected in order to observe student drug testing in the natural setting.<sup>365</sup>

The second phase used the results from phase one that identified which school districts in Virginia have implemented student drug testing procedures. The three school districts in Virginia that implemented student drug testing were examined through in-depth observation, shadowing, and interviewing. Merriam contends the three primary methods of gaining qualitative results for case studies are interviewing, observing, and analyzing documents.<sup>366</sup> Observing and shadowing the person who oversees drug testing in the school districts that have instituted random student drug testing allowed a firsthand account of student drug testing.<sup>367</sup> Observation and shadowing permitted drug testing to be viewed in the natural setting. Interviewing "is often the major source of the qualitative data needed for understanding the phenomenon under study."<sup>368</sup> In-depth interviews were conducted with the person who implemented drug testing programs in the school districts being examined. Interviewing was combined with observation and analyzing documents in order to paint a clear picture of student drug testing in Virginia.<sup>369</sup>

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<sup>363</sup> Supra. note 359.

<sup>364</sup> Id.

<sup>365</sup> Id.

<sup>366</sup> Id.

<sup>367</sup> Id.

<sup>368</sup> Id. p. 91.

<sup>369</sup> Id.

Access and entry to the school districts with student drug testing programs was gained through a number of methods. First, contact was made with the superintendent or the person responsible for student drug testing to request the school districts participation in the study. A formal letter to the drug testing coordinator of the school districts selected describing the interview was sent (see Appendix E). Finally, a date and time to conduct interviews and observations with the drug testing coordinator was established.

Prior to conducting the interviews informed consent (see Appendix F) was given by each of the participants. In addition, the participants were informed of the range and purpose of the study.<sup>370</sup> Participants in the study were asked to sign a consent form, which informed the participants that they have the right to not participate in the study and that every effort was made to ensure anonymity.<sup>371</sup> In addition, the consent form provided the participants with the possible uses of the interview and observation methods.<sup>372</sup>

### **Interview and Observation Procedures and Protocols**

The first step in the interview process was to identify the person in the school district that administers the student drug testing program. This person was identified in the initial inquiry in phase one of the research design. The interviews, observations, and shadowing were conducted at times that were convenient for the participants. Interviews were conducted at each school district site during a time when the drug testing

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<sup>370</sup> Irving Seidam. *Interviewing as Qualitative Research, A Guide for Researchers in Education and the Social Sciences*. Teacher College Press (1997).

<sup>371</sup> Ibid.

<sup>372</sup> Ibid.

coordinator was conducting the actual drug testing procedures in order to gain further insight into the research questions through observation.

The semi-structured interview design method was used, which required a mix of highly structured questions and less structured questions.<sup>373</sup> A portion of the interview was highly structured with specific questions regarding the school districts random student drug testing program.<sup>374</sup> The remaining portion of the interview was less structured and guided by a list of questions or issues to be explored.<sup>375</sup> An interview guide (see Appendix G) was made containing the specific questions and issues.<sup>376</sup> Interviews were recorded to ensure accuracy and to preserve data.<sup>377</sup> In addition, the interviews were transcribed to allow all necessary data to be gathered and displayed.

In conjunction with interviewing, the drug testing coordinators who implemented the drug testing programs at the three school districts were observed and shadowed. The observations and shadowing allowed a firsthand encounter with a student drug testing program.<sup>378</sup> By observing the drug testing program, an understanding of the physical environment where the drug testing exists was gained, the participants in the drug testing program were observed, and the activities associated with drug testing up to the actual urine test itself observed.<sup>379</sup> The observation allowed for an understanding of the “nuts and bolts” of a drug testing program and to observe how the drug testing program adheres with the written policies.<sup>380</sup> During the observation field notes regarding general observations were taken. Following the observations the field notes

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<sup>373</sup> Supra. note 359.

<sup>374</sup> Id.

<sup>375</sup> Id.

<sup>376</sup> Id.

<sup>377</sup> Id.

<sup>378</sup> Id.

<sup>379</sup> Id.

<sup>380</sup> Id.

were used to make a written report regarding the observation and shadowing. Follow up inquires to each school district were made through phone conversations and email correspondences.

### Data Analysis

As suggested by Merriam, data analysis was conducted in conjunction with data collection.<sup>381</sup> A review and analysis of interview notes, observation field notes, and student handbooks was conducted to answer the research questions. Information from these procedures was categorized and analyzed according to the research questions. Every attempt was made to ensure that data reporting was accurate.

In order to ensure that the data was valid, the data was triangulated. Triangulation refers to the use of multiple and different methods to corroborate findings.<sup>382</sup> Internal validity was ensured in the process because the researcher will use multiple methods such as reviewing documents, interviewing, observing, and shadowing to gain information.<sup>383</sup> Internal validity pertains to how research findings match reality. The triangulation of data also strengthens the reliability of the study.<sup>384</sup> Reliability “refers to the extent in which the research findings can be replicated” in future studies.<sup>385</sup> Reliability in the interview process was established by the researcher conducting a mock interview prior to the formal interview process.

Data analysis was aligned with the research question. An overview of information discovered in phase one of the research was provided. Information from policy documents provided the researcher with the current drug testing policies of Virginia

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<sup>381</sup> Id.

<sup>382</sup> Supra. note 362.

<sup>383</sup> Supra. note 359.

<sup>384</sup> Id.

<sup>385</sup> Id. p. 205.

school districts. These documents were categorized according to what their policy states. The categories included which school districts have drug testing policies, which school districts have random drug testing policies, which school districts have drug testing policies based on reasonable suspicion, which school districts have written random drug testing policies but don't implement random drug testing, and which school districts fail to have a policy for drug testing. The categories align with information in the conceptual model.

The second portion of data analysis was providing case studies of three school districts that conduct random student drug testing. This portion provided the essence of random student drug testing in Virginia. In addition, the case studies provide detailed descriptions of the policies and patterns of practice of the actual student drug testing programs in Virginia public schools.

Data was also analyzed according to matrices. School district policies and patterns of practices will be displayed in matrices and matched with Court standards and statutory law. The matrices were designed in a manner that enabled the researcher to visualize how the school districts' policies and patterns of practices align with Court standards and statutory law (see Appendix H).

Data reporting was conducted in two ways. Descriptive case studies of each school district provide the reader with the essence of student drug testing in public schools. Second, tables were used to demonstrate how the Virginia school districts policies and practices align with current U.S. Supreme Court standards and statutory law. Finally, frequency counts were used to demonstrate broad data.

## CHAPTER IV

### RESULTS

The purpose of this chapter is to provide an analysis of the data that were collected for this study of random student drug testing policies and patterns of practice in Virginia public schools. This information is significant to educators, policymakers, parents, and students to assist in their understanding of the nature and scope of drug testing policies and patterns of practice in public schools. The results from the study provide insights into the current trends in regard to the variety and number of student groups being drug tested, the kinds of substances being tested, and the frequency of drug testing.

Data were collected in two phases. The first phase of the study was an initial inquiry to gain information as to which schools have student drug testing policies and which schools, within that group, implement random student drug testing. Phase two of the study is qualitative in nature and used the results from phase one to identify which school districts in Virginia implement random drug testing. Three school districts in Virginia that implemented random student drug testing were examined using in-depth observation, shadowing, and interviewing to understand the complexities of random drug testing in public schools.

The descriptive data are presented in several ways, including frequency counts, case studies, and matrices in order to answer the research questions. The chapter is divided into three sections: phase one results, phase two results, and an analysis of random drug testing policy as it relates both practice and to its legal framework. The primary guiding question for this study, What are the current policies and patterns of practice in random student drug testing in Virginia's 132 public school districts?, is

answered in the phase one and phase two results. Research question one is answered in phase one results. Research questions two through five are answered in the final portion of the chapter which analyzes policies and patterns of practice in Virginia public schools.

### Phase One Results

Phase one of the study consisted of two parts. An inquiry was conducted to identify which school districts in Virginia have random student drug testing programs, and which have written policies regarding random student drug testing programs. Within that inquiry, contact information for the person implementing the drug testing program in those districts that actually implement random drug testing. Prior to an initial email inquiry, 102 student handbooks from across the state were collected in order to analyze the written policies of drug testing programs across the state of Virginia.

#### **Email inquiry results**

An email inquiry was sent to the superintendent of each school district in Virginia to determine how many and which school districts in the state have random drug testing programs, and which school districts in the state have written policies that address student drug testing. The inquiry was sent to the 132 public school superintendents. One hundred and three responses were received for a response rate to the initial inquiry of 78 percent.

Twenty-three public school districts in Virginia indicated that they had some type of student drug testing policy. Of those twenty-three school districts, five have policies for random drug testing of student-athletes or of students in extra-curricular activities. Of the five districts that have written drug testing policies, four school districts currently

implement random drug testing. The fifth school adopted a policy in the spring of 2004; however, when school board membership changed in July, 2004, the new school board discontinued the implementation of the drug testing program due to a lack of funding. The superintendent of that school district indicated in a follow-up inquiry that the policies remain in effect.

Therefore, the answer to research sub-question one regarding the number of school districts in Virginia that have instituted random drug testing is as follows. Four school districts in Virginia implement random student drug testing and a fifth school district adopted random drug testing policies in 2004, but has not implemented the program at this time.

### **Examination of Written Policies**

An examination of 102 student handbooks from each of the responding school districts in Virginia was conducted. Even though policies regarding student searches varied in each handbook, each school district's handbook addressed search and seizure. The policies regarding random searches also varied from locality to locality. In fact, one Virginia school district's policy stated that random searches are prohibited without reasonable suspicion. Additional policies from Virginia range from being very detailed to very general. For instance, one school district with a general policy reserves the right to search lockers, desks, or facilities, as well as individuals and their belongings, when there are reasonable grounds to conduct a search. An example of a detailed policy from a school district in Virginia details personal searches, metal detector searches, locker searches, and automobile searches.

Of the 102 student handbooks from Virginia public school districts, only sixteen school districts address drug testing in some form in their student handbooks. Of these sixteen, five school districts in Virginia have detailed policies for random drug testing in their student handbooks, but only four of them actually implement random drug testing programs. These four have little in common as far demographics are concerned, other than the fact that all are located in the western portion of the state. There are common threads in the written policies but there are distinct differences in those written drug testing policies as well (see Table 9).

Random Drug Testing Policies. The written rationale for drug testing varied in each of the five districts that have written random drug testing policies. Personnel in school districts B and E conducted surveys to demonstrate that because drugs were a community problem, those drug problems needed to be addressed, in part, through drug testing. In addition to statistical data, school districts B and E's written policies displayed a list of community leaders that supported the drug testing program. School District B's policies written rationale also included the reasoning for testing students in extracurricular activities. They cited that students in extra-curricular activities occupy leadership roles and influence the entire student body, and that use of illegal drugs by students in extracurricular activities is a danger not only to those students, but that drug use also adversely impacted the student body as a whole. The written rationale for random drug testing in districts A, C, and D is more general than for school district B. School district A's and C's written rationale stated that random drug testing deters drug use and helps students live drug free lives, and school district D's written

Table 9

## Virginia Public School Written Random Drug Testing Policies

School District	Description of School	Type of Drug Testing Policy and Rationale for Search	Procedural Safeguards for Random Drug Tests
A	The school district has one high school with 570 students grades 9-12.	<p><b>Type of policy-</b> Individualized Suspicion and Random Drug Test</p> <p><b>Rationale for drug testing-</b> Rationale for the search is to deter drug use and help students live drug free lives.</p>	<p><b>Substances tested-</b>Written policy does not indicate which drugs are specifically being tested for. Policy states any substance considered illegal by Virginia Statute or which is controlled by the Food and Drug Administration. (Information from the interview revealed the following substances: marijuana, opiates, PCP, amphetamines, and barbiturates)</p> <p><b>Activities covered-</b> The drug testing program is for student athletes.</p> <p><b>Consent form-</b> A parental consent form must be signed by a parent or guardian prior to participation.</p> <p><b>Random selection procedure-</b> Five percent of student athletes are selected each week. Team tests may occur at randomly selected times during the season.</p> <p><b>Collection protocol-</b> Students remove jackets and empty pockets prior to test.</p> <p><b>Confidentiality-</b> Results will not be placed on student scholastic records.</p> <p><b>Consequences-</b> First positive test athlete is removed from team for remainder of season and placed on six month suspension from athletics. A second positive result the athlete removed from practice and participation for 365 days. Third positive result the athlete is ineligible for the remainder of his/her career and must participate in a substance abuse education/prevention program. No penalties or restrictions will be placed on a student's participation in any other non-athletic activities.</p> <p><b>Intervention-</b> Athlete must participate in a substance abuse education/intervention program.</p> <p><b>Appeal-</b> An appeal may be instituted in the result of a positive test within seven calendar days. Upon request, a urine sample can be retested at the parent's expense.</p>

B	<p>The school district has three high schools each of which have less than 350 students.</p>	<p><b>Type of policy-</b> Individualized Suspicion and Random Drug Test  <b>Rationale for search-</b> School district administered a youth behavior risk survey regarding the use of tobacco, alcohol, and illegal drugs. The report indicated that 90% of parents felt that drug abuse by juveniles was a serious problem and 59% of high school students say that most of their peers have used some form of illicit drug. In addition, the policy lists multiple community agencies that support the drug testing program ranging from the local education association to the sheriff's office.</p>	<p><b>Substances covered-</b> Barbiturates, Benzodiazepines, Cocaine, Opiates, Alcohol, THC (marijuana), and/or Creatinine.  <b>Activities covered-</b> Participants in Virginia High School League extracurricular activities.  <b>Consent form-</b> A parental consent form must be signed by a parent or guardian prior to participation.  <b>Random selection procedures-</b> The principal at each high school constructs a list of all participants in a season's extracurricular activities sanctioned by VHSL. Ten percent of the seasonal list of extracurricular participants are randomly selected for drug testing.  <b>Collection protocols-</b> Urine samples are sent for overnight delivery to a toxicological lab. High school personnel designated by the principal to administer random drug-testing shall successfully complete a training course on random drug-testing procedures and protocols.  <b>Confidentiality-</b> Confidentiality is aligned with Federal Confidentiality records.  <b>Consequences-</b> Upon a first offense a minimum of a fourteen day suspension from activities and an intervention program will be designed. If student doesn't meet the progress of the intervention program then participation will be denied. A second offense will result in an 84 day (12 week) suspension from activities and an intervention program will be designed. If the student doesn't meet progress of the intervention program then participant will be denied participation. A third offense results in the student being prohibited from participation for the remainder of his/her high school career.  <b>Intervention-</b> According to the written policy, members of the Board and staff will need to determine what kind of tobacco, alcohol and/or drug intervention methods using school and community personnel should be used to afford the student education and an opportunity to assist in breaking the habit or dependence on alcohol, tobacco or other illegal drugs.  <b>Appeal-</b> If students have a positive test parents have the opportunity to share relevant information regarding the positive test.</p>
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C	A city school district with two high schools. One high school has 754 students and the second high school has 1,500 students.	<p><b>Type of Policy-</b> Individualized Suspicion and Random Drug Test</p> <p><b>Rationale for search-</b> Rationale for the search is to deter drug use and help students live drug free lives.</p>	<p><b>Substances covered-</b> Alcohol, marijuana, cocaine, and other illegal drugs. Policy notes that coaches have particular responsibility for steroid testing which falls under the category of reasonable suspicion testing. Consent document more clearly specifies the following substances: alcohol, marijuana, cocaine, opiates, amphetamines, and PCP.</p> <p><b>Activities covered-</b> Random drug testing for student athletes.</p> <p><b>Consent form-</b> Prior to trying out or participating in a sport the student athlete and his/her parent or guardian must sign the consent form. Refusal to sign the consent form results in the student not being permitted to be on the team.</p> <p><b>Random selection procedure-</b> All athletic team members in all sports will be subjected to drug testing within the athletic season. Random tests will be conducted at each high school for 5% of the student athletes each week by the testing agency. In addition, a team will be selected for a random test each week until all team members of all teams have been tested.</p> <p><b>Collection protocol-</b> A licensed medical facility selected by the superintendent and approved by the school board shall conduct all testing.</p> <p><b>Confidentiality-</b> Results will not be placed on student scholastic records. Each principal will be responsible for conducting annual meetings with his/her faculty and staff to insure confidentiality and fairness to all students.</p> <p><b>Consequences-</b> Positive test results are cumulative over the athlete's career. First offense results in a minimum of 14 calendar day suspension, completion of substance abuse education program, and the student will be allowed to participate only after a negative drug test. A second positive test results in the athlete being removed from participation for 365 days. At the end of 365 days the athlete will undergo monthly drug tests. A third positive test results in the athlete being ineligible to participate in athletics for the remainder of his high school career. No penalties or restrictions will be placed on a student's participation in any other non-athletic activities.</p> <p><b>Intervention-</b> The athletic director will schedule a meeting with the substance abuse educator the parent/guardian, student, and student's physician, if requested, to develop a plan of assistance for the student.</p> <p><b>Appeal-</b> An appeal may be instituted at any stage by the parent, and/or</p>
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			student if over the age of eighteen to the superintendent. Upon request a retest will be conducted by the testing agency at the parent's expense.
D	A county school district with one high school which has over 175 students.	<p><b>Type of policy-</b> Individualized Suspicion and Random Drug Test</p> <p><b>Rationale for search-</b> To protect the health, safety, and welfare of the student in competitive sports.</p>	<p><b>Substances tested-</b> Written policy does not indicate which drugs are being tested for in the case of a random test. Policy states that if there is reasonable suspicion that a student athlete is using a prohibited substance, (steroids) including but not limited to alcohol or drugs, that student will be required to undergo a drug test. The clinical lab testing document indicates the following substances are tested: THC (marijuana, opiates, cocaine, amphetamines, phencyclidine (PCP), tricyclic antidepressants, barbiturates, benzodiazepines.</p> <p><b>Activities covered-</b> The drug testing program is for student athletes.</p> <p><b>Consent form-</b> A parent or guardian must sign consent form prior to the student athlete being allowed to try-out or participate on any school sponsored athletic team. The consent form must be renewed annually.</p> <p><b>Random selection procedure-</b> Approximately 5% of the active student athletes will be tested each week.</p> <p><b>Collection protocol-</b> Students will be asked to empty their pockets and remove jackets before entering the bathroom. Otherwise, the student will be suspended from the team for the remainder of the season.</p> <p><b>Confidentiality-</b> Confidentiality will be addressed by the coach or athletic director at a preseason meeting. Results will be placed in student's discipline record. No penalties or restrictions will be placed on student's participation in any other non-athletic activity.</p> <p><b>Consequences-</b> Positive tests will be cumulative over a student's high school career. First positive test the athlete will be removed from the team for the remainder of the season for which she/he has tested positive and must participate in a substance abuse education/program at the parent/student's expense. Upon completion of the intervention, the student athlete can appeal the positive test and be reinstated to the team by agreeing to submit to unscheduled drug tests at the parent/students expense. A second positive result the athlete will be removed from practice and competition for 365 days. After 365, days the athlete will be eligible for</p>

			<p>participation upon agreeing to drug testing on a monthly basis at the athlete's expense and the athlete must participate in a substance abuse education/intervention program at parent's expense. A third positive result and the athlete will be ineligible for participation for the remainder of his/her career and the athlete must participate in a substance abuse education/intervention program.</p> <p><b>Intervention-</b> Following a positive test the athlete must participate in a substance abuse education/intervention program.</p> <p><b>Appeal-</b> An appeal may be submitted within seven calendar days of a positive test. Retesting of the sample will be conducted by the testing agency at the parent or guardians expense.</p>
E	<p>A city school district with one high school that has over 600 students.</p> <p>The researcher notes this school district policies remain in effect but have not been implemented due to a lack of funding.</p>	<p><b>Type of Policy-</b> Mandatory drug testing policy for students participating in extra-curricular activities. Prior to participation a student will be required to submit to a drug test.</p> <p><b>Rationale-</b> Based upon the reported observations of school staff; evidence from disciplinary hearing; findings from the Youth Risk Behavior Survey; recommendations from the school districts health advisory committee; the recognition that alcohol and drug abuse is a community problem;</p>	<p><b>Substances covered-</b> Unless otherwise designated- alcohol, marijuana, cocaine, phencyclidine (PCP), amphetamines and opiates, and substances included in the Department of Transportation "10-panel test."</p> <p><b>Activities covered-</b> Any school sponsored extracurricular activity engaged in by students in grades 9-12, by eighth graders participating in VHSL junior varsity or varsity sports, including athletic and academic activities that fall under the auspices of the VHSL.</p> <p><b>Consent form-</b> Before being eligible to participate in an activity the student's custodial parent or guardian must consent in writing to drug testing according to the policy. In the instance of a student over the age of 18 the form requests the permission of the student to disclose information to the parent or guardian.</p> <p><b>Random selection procedure-</b> Prior to participating in an activity the student must submit to a drug test. Random drug testing will be conducted from time to time throughout the school year. Selection for random testing will be by lottery drawing from a "pool" of all students in activities at the time of the drawing.</p> <p><b>Collection protocols-</b> Testing shall be done by a licensed medical facility. The facility shall be certified by the Substance Abuse and Medical Health Services Administration (SAMHSA). School personnel shall not be responsible for test administration. Sample collection, identification, chain of custody, recording, and reporting shall be the responsibility of the licensed</p>

		<p>upon statements from police and government leaders; base upon the recognition that drug abuse seriously interferes with educational attainment of students and their emotional and physical health.</p>	<p>medical facility and shall be done in accordance with protocols embodied by the US Department of Transportation drug test protocols.</p> <p><b>Confidentiality-</b> The medical testing facility shall maintain confidentiality at all times. Results and reported information shall be in accordance with privacy regulations adopted by the US Department of Health and Human Services.</p> <p><b>Consequences-</b> In the result of a positive test the Superintendent will notify parents or guardians. First positive test, the student will be encouraged to seek treatment or counseling at the family's expense. Student is suspended from activities for thirty days and reinstated after the suspension and a negative drug test is completed at the student's expense. A second positive test results in suspension from all extracurricular activities for the remainder of their attendance. The student may apply to the school board for reinstatement after eighteen months.</p> <p><b>Intervention-</b> Student shall participate in student assistance program. The student assistance counseling program will consist of one or more student assistance counselors that have been trained by a community service organization. The student assistance program will provide counseling and make referrals for additional counseling, medical, psychological, and intervention services. The professional qualifications of the student assistance counselor shall be subject to approval of the Superintendent. The cost of student assistance counseling shall be incorporated in the annual school board budget.</p> <p><b>Appeal-</b> An appeal may be instituted at any stage. Upon request, a retest of the original sample will be conducted at the parent's expense. The student may not participate or compete until the appeal process has been completed. The superintendent will exercise his/her authority on appeals.</p>
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rationale aims to protect the health, safety, and welfare of students in competitive sports.

The school districts' written policies vary regarding which substances are subject to testing. The policies for A and D do not identify which drugs are being tested for during random drug testing.<sup>386</sup> However, the written policy in School District A states that if there is reasonable suspicion to believe that a student athlete is using steroids, other prohibited substances including but not limited to alcohol or drugs, that the student will be tested for those substances. The substance being tested in School District D are listed in the clinical lab testing document provided by the independent laboratory which specifies the drug being tested and then identifies whether the drug test is positive or negative. School District B lists specifically the drugs they are randomly testing for in their written policy. These substances include barbiturates, benzodiazepines, cocaine, opiates, alcohol, THC (marijuana), and/or creatinine. School District C's written policy lists alcohol, marijuana, cocaine, and other illegal drugs as the substances covered. In addition, the written policy for School District C notes that coaches have particular responsibility for steroid testing which falls under the category of reasonable suspicion. District C's consent document and letter to the parents more clearly specifies that the following substances are tested in the drug testing program: alcohol, marijuana, cocaine, opiates, amphetamines, and PCP. School District E's policy states the substances covered are alcohol, marijuana, cocaine, phencyclidine (PCP),

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<sup>386</sup> The interview in School District A revealed the following substances are subject to testing: marijuana, opiates, PCP, amphetamines, and barbiturates. The clinical lab testing document for school district D indicates the following substances are tested: THC (marijuana), opiates, cocaine, amphetamines, phencyclidine (PCP), tricyclic antidepressants, barbiturates, benzodiazepines.

amphetamines, opiates, and substances included in the Department of Transportation “10-Panel Test.”<sup>387</sup>

The activities covered in the written policies for the five districts are similar. School Districts A, C, and D target only student athletes in their drug testing programs. In contrast, School District B and E’s written policies target all participants in Virginia High School League activities. School District E’s written policy also calls for random drug testing of eighth graders participating in VHSL activities. All five written policies require parent or guardian consent for testing prior to the student’s participation in the activity covered. School Districts C and D’s written policies clearly state that students are denied participation or the right to “try out” in the activity without a signed consent form. The random selection procedures, collection protocol, confidentiality, consequences, intervention, and appeals process vary in the written policies of the five school districts conducting random drug testing (see Table 9). Each school district has a clearly identified selection procedure, which chooses from 5 to 10 percent of the student population covered in the policy. However, School District C’s written policy was designed so that all team members will be tested, in addition to the 5 percent randomly selected each week. School District C’s written policy states that a team will be selected for a random test each week until all members of all teams have been tested. School District A’s policy states that all teams may be team tested every season they participate. School District E’s written policy requires all participants to be drug tested prior to participation and random drug testing to occur from “time to time” throughout the school year.

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<sup>387</sup> United States Department of Transportation uses a 10-panel test, which includes the substances listed and can be expanded upon by adding Barbiturates, Benzodiazepines, Methadone, Methaqualone, Propoxyphene. Retrieved from <http://www.dot.gov/> on September 9, 2004.

Written collection protocols for the five school districts conducting drug testing are vague and differ in each locality. The collection protocol in districts A and D requires students to remove jackets and empty pockets prior to the drug test. School District B's policy states that those personnel designated by the school's principal to administer testing must complete training. In addition, urine samples are sent away for overnight delivery to a toxicology lab for analysis. School Districts C and E's protocol call for a licensed medical facility selected by the superintendent and approved by the school board to conduct all testing.

Written procedures regarding confidentiality of student drug testing results differ in the districts incorporating the random tests. Schools A and C's written policies specify that drug testing results will not be placed on student's scholastic records. Further, School District C's written policy requires that each principal be responsible for conducting annual meetings with the faculty and staff to insure confidentiality and fairness to all students. Confidentiality is addressed in the written policy of School District B by stating that confidentiality will be aligned with Federal Confidentiality records. School District D's written policy calls for confidentiality to be addressed by the coach or athletic director, and states a positive drug test will be noted on the student's discipline record. School District E's written policy requires the medical facility conducting the drug testing to maintain confidentiality.

Consequences in the written policies of school districts A, C, and D are addressed in a similar manner. Each school district institutes a suspension from athletics for a first-time offense, a second positive drug test results in a 365 day suspension from participation in all athletics, and a third time offense of the drug policy

requires the student to be ineligible from participation for the remainder of his/her high school career. School District B 's written policy states that a second offense results in an 84 day (12 week) suspension and a third offense results in the student being ineligible to participate for the remainder of his/her high school tenure. School District E's written policy calls for a first time offender to be suspended from participation in that activity for 30 days and reinstated only after a negative drug test. A second positive test results in a suspension from all activities for the remainder of his/her high school career; however, the student can appeal the ban after eighteen months.

Intervention is generally addressed in all five district policies. All require that those students testing positive for drugs need to be involved in intervention. Intervention is addressed in detail only in the written policy of School District E . School District E's policy calls for the development of a student assistance program to provide counseling and make referrals for additional counseling, medical, psychological, and intervention services. In addition, the written policy states that School District E will assume the cost of the intervention program.

All five school districts address the appeal process, which can be made by a student or parent. Retesting the urine as part of the appeal process is at the parent's expense except in School District B; which does not declare in its written policy whether they or the parent is responsible for paying for the retesting of a urine sample.

Additional Drug Testing Policies. Appendix I details the various drug testing policies from the school districts in Virginia that have some form of written policy regarding drug testing other than random drug testing. The drug testing policies vary from school district to district; however, there are some common trends in the drug

testing policies. Two school districts address drug testing for athletes. School District F's written policy allows for random drug tests for student athletes that have violated the school district's drug policy. The policy for School District G allows students in extra-curricular activities that violated the drug policy to return to extra-curricular activities after a 60 day suspension from activities and participation in random drug testing. A violation of School District G's drug testing policy includes a student in possession of illegal drugs on school grounds. School District G's policy calls for drug screening for suspected offenders of the drug policy. School District G's written policy allows for drug testing student athletes based on reasonable suspicion. The policy calls for school officials to be proactive in preventing violations of the drug and tobacco policy.

Two school districts (H and I) have a drug testing policy based on reasonable suspicion. Both policies state that drug testing can occur when school officials suspect that students may be under the influence of drugs or alcohol. The researcher contacted administrators in both school systems. The principal in School District I indicated that the district had a policy for drug testing students for reasonable suspicion, but the school had never actually used the policy. The principal in School District J was not aware the policy existed in the school district.

The remaining school districts' policies fall into general categories; however, the policies vary from school district to school district. Districts J and K's written policy require students to undergo testing upon readmission into school after violating the school districts' drug policy. School District L does not have a clear written policy for drug testing, but personnel in the district indicated that students can choose to participate in an approved drug education program including drug testing. School District M's

written policy states that students or families may refer students to school guidance counselors when there is concern for substance abuse. As part of the evaluation process for substance abuse the student can undergo drug screening. The remaining three school districts N, O, and P have policies for drug testing if the student violates their existing policy on drugs.

### Phase Two Results

The second phase of the research consisted of examining three school districts in Virginia that have implemented random student drug testing procedures. Research was conducted through interviews with the drug testing coordinator in each school district, through observing the drug testing program to gain first hand knowledge, and by shadowing the drug testing coordinator in an effort to understand the essence of actual random drug testing practices within Virginia Public schools. Phase two of the study provides descriptive case studies of three school districts that are currently implementing random drug testing.

#### **Case Study- School District A**

School District A is located in the Northern portion of Virginia. The school district has one high school with 570 students in grades nine through twelve and just over 2,000 students in the entire district. The county is rural and located in the Shenandoah Valley region of the Blue Ridge Mountains. The county has 13,000 residents.

In 1999 School District A implemented a random drug testing program. The mission of the program prior to inception was to protect student health, safety and welfare; and to strengthen partnerships among faculty, administrators, coaches, parents, and students in order to reduce alcohol and other drug-related barriers to

academics, athletic, and personal development and success. This mission statement later became the cornerstone to the random drug testing policy for school district A.

School District A's written policy. School district A's random drug testing policies are included within the student athlete handbook. Following the mission statement, School District A's written policies call for the school district to respond to student needs by providing services that:

1. Protect the health, safety and welfare of the student.
2. Create supportive environments in which students are empowered to make responsible and healthy lifestyle choices.
3. Promote non-use behavior.
4. Recognize that substance abuse is a national, state, and regional problem.
5. Communicate realities, misperceptions, and secondary effects of alcohol and other drug abuse.
6. Employ strategies that will improve the school environment as well as individual attitudes towards responsible behavior.
7. Provide policies, which emphasize that the use of alcohol and other drugs will not be tolerated.
8. Provide educational programs.

School District A's written policy for drug testing is for students participating in any school sponsored athletic team. The drug testing program requires that student athletes and their parents or guardians sign a consent form prior to trying out or participating in an athletic program. Refusal to sign the consent form by the parents or students excludes the student athlete from participation.

School District A's student athlete handbook addresses drug testing for reasonable suspicion and random drug tests. The policy states that if there is reasonable suspicion to believe the student athlete is using steroids or other prohibited substances, then the student will be required to undergo a drug test to confirm or deny the suspicion.

The random drug testing policies for School District A are detailed in the student athlete handbook. The substances covered are any substance considered illegal by Virginia statute or that is controlled by the Food and Drug Administration. Random selection procedures written in the handbook state that team tests may occur at randomly selected times during the season and that five percent of the active student athletes will be selected for drug tests each week. Active student-athletes refers to team members that are participating in sports by practicing or competing. The written collection protocol requires selected students to remain under school supervision until an adequate sample (approximately 30-ml) is provided and any urine sample registering below 92 degrees Fahrenheit will be rejected. In addition, students are asked to empty their pockets and remove jackets before entering the bathroom.

The written policy for confidentiality states that drug testing results will not be placed on the student's scholastic records. The written policies demonstrate progressive consequences for positive drug tests. In the event of a positive test, the athletic director will schedule a meeting with a substance abuse educator, the parent/guardian, student, and student's physician if requested, to develop a plan of assistance for the student. Upon a first positive drug test, the athlete is removed from the team for the remainder of the season and placed on six-month suspension from athletics. A second positive drug

test results in the athlete being removed from practice and participation for 365 days. A third positive drug test results in the athlete being ineligible for the remainder of his/her career, and the person must participate in a substance abuse education/prevention program. No penalties or restrictions from positive drug test results will be placed on a student's participation in any other non-athletic activities. In the event of a positive drug test, an appeal may be instituted within seven calendar days of the positive test and a re-test of the original urine sample will be conducted at the parents'/students' expense.

Observation and shadowing School District A. The high school's athletic director who served as the school district's drug testing coordinator was interviewed, observed, and shadowed. He was a willing participant and signed a letter of informed consent to participate in this study. The random drug testing procedures were well structured, and well organized in School District A. The athletic director and the independent drug tester conducting the drug tests were experienced and appeared thorough in their procedural knowledge.

School District A officials, by their own accounts, describe the district as progressive, innovative, and on the cutting edge in terms of the approach to education. Further, eighty-two percent of the students go on to attend two or four-year colleges after completing high school. In observing the dynamics of the drug testing program, it was apparent that school personnel in School District A believed that their program is an innovative part of the educational experience. In a school publication an administrator captures the feeling of School District A's drug testing program by stating the following about drug testing, "This gives them an out, a reason not to take that drink.

We're ahead of the curve on this one. Schools across Virginia are now starting similar programs.”

Drug testing was done in a private room that was an office area for a physical education teacher. The office area contained a private bathroom with one stall and a shower. The independent drug tester, who was female, removed all items from the bathroom except toilet paper. This included soap, cleaning material, and shampoo. Water faucets and the shower heads were sealed with plastic bags so students could not tamper with their urine samples. Blue dye was placed in the toilet bowl to prevent the possibility of students tampering with the urine sample by using water from the toilet bowl.

The independent drug tester gave the drug testing coordinator a list of students who had been selected for drug testing. The drug testing coordinator gave this list to the office. Student office aides went to the students' classes and told them to report to the office. The office staff then directed the students to report to classroom number one, which was a health classroom adjacent to the private office. The students randomly selected for drug testing were held in this room and the drug testing coordinator monitored the room by standing in front of the door. He confirmed with each student that they were still an athletic participant and that they had been selected for drug testing. The students were then held in the classroom while they waited to be drug tested. The independent drug tester briefly told the students that they would be drug tested privately in the physical education office bathroom.

Prior to the actual drug test and in the privacy of the office, the independent tester reviewed drug testing procedures with the students again in more detail. She told

the students to place their urine in a cup and that the sample would be sealed as soon as they finished. Students went one by one to complete the urinalysis in the private bathroom. Students urinated in a vial, the vial was identified with a sticker that had the student's identification number on it; the sticker number matched a number that was produced in a computer generated random selection sheet. The urine vial was then placed in a plastic bag with the computer generated selection identification form, which contained the pertinent student information. During the entire process, the athletic director monitored the room where students were held. Upon completion of the process, the athletic director wrote notes for the students to return to class. At the conclusion of the urinalysis the independent drug tester sealed the urine samples in a box and shipped the samples to a lab for testing.

During the shadowing and observation, the athletic director and the independent tester expressed some of their additional concerns about the drug testing program. They expressed that in the past students had stalled to give a urine sample in order to miss class time. Additionally, the school had not always had private locations to conduct the urinalysis. The previous year the drug testing was done in a bathroom near the office where there was considerable traffic from both students and visitors. Another concern of the drug testing coordinator and independent tester was that personnel in the school didn't want drug testing to occur in their area because it caused that location to be shut down for a considerable length of time. In the past, the school district had brought a mobile testing lab to the school for testing. However, the testing company discontinued this practice after one year.

In addition to the observation and shadowing, a brief interview with the school district's superintendent was conducted. The superintendent had participated in the initial implementation of the program six years ago. The superintendent expressed that she viewed the drug testing program as innovative and a way to protect students. Her hope was that the program would be extended to students in extracurricular activities in the future. In addition, she expressed that the school district may need to develop some method to monitor the drug testing program in the future. The superintendent shared that the annual cost of the program was approximately 30,000 dollars. In addition, she shared a power point presentation from 1999 that was presented to the school board in an effort to get the drug testing program in place.

The power point presentation was presented by the principal of the high school. The presentation states that the school deciding whether or not to drug test was up to the school and the community. The power point included a history of drug testing and the process of developing the drug testing policy. According to the power point presentation a taskforce that included the athletic director, teachers, community members, school board member, coaches, students, administration, and counselor were involved developing a drug testing policy. The power point addressed consent forms, collection procedures, consequences for violations, and appeals. In addition, the presentation listed information given to the presenter as the reasons drug testing works. The reasons drug testing worked according to the presentation include: it gives students a reason to say no to drugs, student athletes are role models, it is a deterrent, student-athletes spoke in favor of the drug testing policy at school board meetings and on a

television news story, and that there is a general upward trend in the number of school districts in the country offering drug testing.

Interview with Drug Testing Coordinator School District A. The interview with Drug Testing Coordinator in School District A indicated that the drug testing coordinator viewed the program “as an innovative plan on the cutting edge.”<sup>388</sup> The interview revealed that the drug testing coordinator was experienced and had a firm grasp of the procedures the school district used in conducting the drug tests. Also, the coordinator explained that the drug testing program was for student athletes participating in Virginia High School League athletics in grades eight through twelve. Eighth graders are located in a nearby middle school, but are tested after school hours at the high school. When randomly selected, the eighth graders are met by the athletic director as they get off the bus to enter the high school for athletic practice. From that point on, they follow the same collection protocol as those in place for the high school students.

The drug testing coordinator frequently emphasized how using an independent drug tester ensured randomness, guaranteed privacy, and created fewer problems for school personnel. For example, he explained that by using an independent tester there was no way school personnel could influence random student selection. He detailed that he: first, gave a list of athletes to the independent testing company during the fall, winter, and spring athletic season. Secondly, he called the independent drug testing company to inform them they would test the next day. Third, he received a faxed list of students from the independent testing agency which matched the list given to the actual independent tester who performed the drug test at the school.

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<sup>388</sup> Transcription line 109, drug testing coordinator school district A.

The drug testing coordinator explained in detail how the school district had continued to address privacy issues. He stated that the independent drug tester was the only person present during the actual drug test and was located just outside the bathroom. He conveyed that no school district personnel were involved in any of the testing procedures except himself, and that his role was only to monitor the students as they were being tested.

The interview revealed that students, under no circumstances, were allowed to try-out, practice, or participate in any athletic activities until the parent had signed a consent form. The drug testing coordinator conveyed in the interview that the consequences for positive tests and the appeal process were consistent with the written policy.

The interview did reveal some inconsistencies between the written policies and actual practice. First, the written policy states that the school district will test athletes where reasonable suspicion occurs. However, in the interview the athletic director indicated that the school district had not had cases where they tested for reasonable suspicion. Second, the written policy indicates that there may be team drug testing, which includes an entire team being selected at one time and being drug tested. The drug testing coordinator stated that the only drug testing that was being done was random testing to 5 percent of the athletes each week and the testing did not include entire teams being tested. Third, the written policy states the school district will conduct in-service training for coaches involved in drug testing. However, according the drug testing coordinator the school district does not conduct in-service for coaches because coaches are not involved in any of the actual drug testing procedures. Finally, in both

the written policy and the interview, it is not clear for what drugs are being tested other than steroids and marijuana.

The most surprising information gathered during the interview was that the school district had not had a positive drug test during the previous three years. The drug testing coordinator stated he was not surprised because drug testing had served as a deterrent. He also suggested that due to random selection the most likely students may not have been selected during the previous three years.

Since the written policy does not specifically define the substances that are tested, a follow-up email interview revealed the exact substances the school district tested in the urinalysis. The drug testing coordinator indicated the substances tested in School District A are marijuana, opiates, PCP, amphetamines, and barbiturates.

The drug testing coordinator was not aware of any monitoring conducted by the school system of the drug testing program. He conveyed that the school district did not keep statistical information on the program and did not conduct surveys to measure the program's effectiveness. The superintendent of the school district also responded that the school district did not have methods to monitor the program at this time.

School District A's drug testing collection protocols are thorough. Both the random selection process and the privacy during the actual testing session appeared to be outstanding. Some inconsistencies appear, however, between the written policy and the actual drug testing practice in terms of testing for reasonable suspicion, in-service training for coaches, and in terms of team drug testing. In addition, the school district does not clearly indicate which substances are being tested in its program.

Tables 10-12 are matrices designed to demonstrate how patterns of practice in School District A matched with Court standards and statutory law.

### **Case Study- School District B**

School District B is located in a county located in the heart of the coalfields of the Appalachia Mountains of rural southwest Virginia. The school district has three high schools each of which have less than 350 students. The student population in the entire school district is 2,770.

On July 23, 2003, School District B established “The Extracurricular Participant Pledge Program Handbook.” As part of the “pledge program” the school district initiated random drug testing for students involved in extracurricular activities that fall under Virginia High School League (VHSL) guidelines.

School District B’s written policy. The “pledge program” handbook details the various aspects of the random drug testing program. School District B’s handbook begins with background and justification of an extracurricular participant “pledge program.” In October, 2002, School District B administrators asked the research department from a nearby college to administer a *Youth Behavior Risk Survey* to middle school students, high school students, parents, and teachers. The survey asked about the use of tobacco, alcohol, and other illegal drugs. The handbook lists many of the significant findings from the survey including:

1. Parents indicate that alcohol abuse is a serious problem in the county. Eighty-six percent of the sample said it was a problem; only 14 percent did not note this as a critical issue.

Table 10

Decision to Implement Drug Testing

School District A

How did the decision to implement student drug testing take place?

	Code of Virginia School district decision	Code of Virginia Individual School within the districts decision	Other (Describe)
Rationale to Conduct Drug Testing	X		

Table 11

## Selection of Student Groups

School District A

Which student groups are subject to drug testing?

	<i>Vernonia</i> Interscholastic athletics	<i>Pottawatomie</i> Students in extracurricular activities	Other Groups (Describe)
Selection of student groups	X		

Table 12

Person Responsible for Implementing Drug Testing

School District A

	Athletic Director	Assistant Principal	Principal	School Nurse	Central Office personnel (specify)	Independent third party (specify)	Other (specify)
Person responsible for drug testing program	X						

2. Ninety percent of the parents felt that drug abuse by juveniles was a significant problem.
3. Ten percent of the high school students said that they had driven under the influence of alcohol during the last 30 days.
4. About 65 percent of high school students said that they had used alcohol over the past 12 months.
5. High school student usage of other illegal drugs is as follows: benzodiazepenes (9 percent), cocaine (10 percent), ecstasy (8 percent), heroin (4 percent), hydrocodone (13 percent), marijuana (28 percent), methamphetamine (7 percent), oxycodone (5 percent), oxycontin (8 percent), sniffed glue or other inhalants (7 percent).
6. Fifty-nine percent of high school students say that most of their peers have used some form of illicit drugs.
7. Twenty-five percent of middle school students reported riding in a car with someone who had been drinking.
8. Approximately two percent of students ages 11-13 reported using hydrocodone, oxycodone, oxycontin, or ritalin during the past year.

As a result of the *Youth Behavior Risk Survey* and because of growing concern from community leaders, School District B's school board made several findings which are listed in the "pledge book." The Board found that students in VHSL activities were leaders and influenced the conduct of the student body. The School Board found that illegal drug, alcohol, and tobacco use among students participating in extracurricular activities was prevalent and caused a negative impact on the entire school. For these

reasons, students in extracurricular activities should pledge not to use tobacco, alcohol, and other illegal drugs, and be subject to random alcohol and drug testing.

School District B's random drug testing program is a key aspect of the school district's "pledge program." The pledge program is for every participant in a VHSL-sanctioned extracurricular activity in the school district. The program calls for VHSL participants and their parents or guardians to sign a pledge that their son or daughter will be disciplined if they violate the school district's pledge policy. Refusal to sign the pledge by students and parents will cause the student to be excluded from participating in all VHSL-sanctioned activities.

School District B's pledge program written policies address drug testing for reasonable suspicion and random testing. According to the policy, students suspected of alcohol use or illegal drugs are subject to a drug test. The policy regarding suspected offenders spells out in detail how coaches or sponsors should establish reasonable suspicion. For example, the policy states that when a coach or sponsor feels in his/her "gut" that a particular student has broken the pledge there may be a need to investigate further. In addition, the policy states that coaches and sponsors should listen inconspicuously to what other players or club members are saying about the suspect participant.

The random drug testing policy for School District B is written in the "pledge program" handbook and includes the following in random drug tests: Barbiturates, benzodiazepines, cocaine, opiates, alcohol, THC (marijuana), and/or creatinine. According to the written policies in the "pledge program" handbook, participants eligible for the random drug testing program include students in Virginia High School League

extracurricular activities. A parental consent form that must be signed by a parent or guardian prior to student participation is in the pledge book. Random selection procedures written in the handbook require the principal at each high school to construct a list of all participants in a season's extracurricular activities sanctioned by the VHSL, from which ten percent of the seasonal list of extracurricular participants are to be randomly selected for drug testing. The written collection protocol calls for the urine samples to be sent away for overnight delivery to a toxicological lab, and for those school personnel designated by the principal to administer random drug-testing to successfully complete a training course on random drug-testing procedures and protocols. The written policy for confidentiality states that confidentiality should be aligned with federal confidentiality records.

The "pledge handbook" addresses positive drug testing results in several ways. First, the policy states that students will undergo a prescribed suspension from the extracurricular activity. Second, students must satisfactorily participate in and complete a series of intervention sessions prescribed by the pledge program's intervention coordinator according to the particular substance(s) involved. In the event of a positive test, the handbook states that parents have the opportunity to share relevant information regarding the result.

School District B addresses program evaluation in its written policy and places the responsibility of evaluating the program on the Drug Testing Coordinator and an independent consultant. Interview and survey instruments are to be developed to measure the various perceptions of the "pledge programs" administration and effectiveness. The evaluations are to take place every other year. The policy further

suggests that School District B administer the Youth Behavior Risk Survey every other year beginning in the fall of 2005. The Youth Behavior Risk Survey will compare data to that compiled in 2002 which was used as justification for the program.

Observation and shadowing School District B. Traveling to School District B was like traveling back in time. The area is obviously impoverished and the people that were interviewed acknowledged that the entire area faced huge economic hurdles. The drug testing coordinator, a willing participant, was interviewed, observed, and shadowed, and signed a letter of informed consent. His formal title is Attendance Coordinator his titles and his responsibilities included truant officer, drug and safe schools coordinator/safety coordinator, disciplinary committee coordinator, and compliance officer as well as drug testing program coordinator. It was apparent he had great rapport with personnel in the school district. School District B was in the second year of its random drug testing program.

Five schools were observed within School District B. Two schools were 9-12 high schools, one was an 8-12 high school, and two were k- 8 elementary schools. The elementary schools had eighth graders that were tested because they fall under the school district's drug testing program as Virginia High School League participants. The facilities at two of the high schools can best be described as severely antiquated. In fact, one of the high school's facilities were shockingly bad.

The observation and shadowing of the drug testing program was conducted with the drug testing coordinator, a man, and the female coordinator of special education who was designated to drug test females in the school district. According to the drug testing coordinator, they attempted to test every two weeks, time permitting. In addition,

he was always accompanied by the same female to gather urine samples. Both persons conducting the drug testing carried a duffle bag with dixie cups, plastic vials, gloves, and identification strips. In addition, the researcher observed the drug testing coordinator select at random student numbers from a computer program. He then matches the numbers to Virginia High School League (VHSL) eligibility lists required for participation in VHSL activities. The drug testing program in School District B included all participants in extra-curricular activities.

After arriving at the first high school, the researcher quickly realized that the actual drug testing procedures lacked formality and could best be described as casual. An obvious rapport had been established between the drug testing coordinator and personnel at each school. At each school, the initial protocol was the same. The drug testing coordinator gave a list of names to the school secretary in order to call the students to the office. At the first school eight students were called to the office for drug testing. Several of the students had not signed the "pledge card", which is the consent document for testing. Despite not signing the consent document, the students were allowed to participate in practices and scrimmages associated with the VHSL activity in which they were participating. Confirmation of the consent card was verbally given by the student to the drug testing coordinator. It was arranged for one student to complete the random testing the following day because he had failed to have a signed consent form and his first football game was the following night. Two other students called home to get verbal permission from their parents to complete the testing and then bring the consent documents in the following day.

The actual sample collection was conducted by the drug testing coordinator for males and the special education coordinator for females. In addition, coaches accompanied the students to restrooms in the locker room where they actually observed and listened during the gathering of the urine sample. The atmosphere was in no way threatening and even seemed relaxed. Prior to urination, the students emptied their pockets on a bench in the locker room. After the students urinated in a dixie cup the specimen was transferred to a plastic vial. The students were asked to initial a label with their name on it to confirm that the urine was their sample, and two name labels sealed the vial of specimen. In addition, the drug testing coordinator asked each student to verbally confirm that this was his/her actual urine sample. The urine collection from the eight students took approximately twenty minutes, and students returned to class after completing the test. Prior to leaving the school, the drug testing coordinator established a time with the football coach for the one student to come to the school district's central office the next day to complete his urinalysis with a consent form. The locker room setting where the drug testing occurred was private and a coach made sure additional students were not allowed access to the locker room during the actual collection.

The second visit was to a kindergarten through eighth grade elementary school, which included eighth graders that participated for the aforementioned high school. It was certainly strange walking into an elementary school to conduct drug testing. However, the coordinator created an atmosphere that was relaxed. He noted that this was the first time they had been to this school to drug test students. The previous year none of the eighth graders from this school had been randomly selected for drug testing. Four eighth graders (two male and two females) were tested in teacher lounge

bathrooms near the main office. The protocol was very similar to the first school with students being escorted by the drug testing coordinator or the special education director and a coach. The students were asked if they had signed the consent form and all acknowledged that they did. The researcher was surprised that the drug testing coordinator, school personnel, or coach did not view the actual consent form prior to testing.

After visiting the first two schools, it appeared that the school personnel were in favor of the programs. The researcher talked to coaches, teachers, and administrators; all of whom expressed support for the program. In fact, one teacher/ coach made the comment that he was glad they had started a testing program before the state required schools to do so.

The third visit was to a high school, grades 9-12. The facility was archaic and the building was carved into the side of a mountain. It is hard to imagine a worse physical structure and location for a school building in Virginia. There students selected for drug testing were called to the office via the loud speaker that could be heard throughout the school. In a situation similar to the first high school observed, the drug testing coordinator asked the students if they had signed consent forms. Several students retrieved the form from their lockers and one student failed to have a consent form. The student without the consent form was allowed to call and the parent gave verbal consent to the drug testing coordinator to test prior to the urine collection. A coach and the drug testing coordinator discussed ways to get the consent forms completed in a more timely fashion. Interestingly, a recent graduate of this school had died the previous night from what was believed to be a drug overdose. Personnel in the school such as

teachers and coaches commented that these types of tragedies were the reason that drug testing was so important. The sample itself was collected in the privacy of the teacher's lounge for the males and an adjacent lounge for the females. The testing environment was private with no one other than the students being tested in the bathroom. Urine samples were gathered and labeled in the same manner as the previous schools.

Later, we visited another kindergarten through eighth grade elementary school which housed eighth graders that participated in athletics for the previous high school. Four eighth graders (two boys and two girls) were randomly selected for testing. Each student verbally acknowledged that he/she had turned in consent forms. The students were taken to private bathrooms where the specimen was obtained with a coach present in a manner similar to the previous schools. The urine samples were placed in vials and labeled in the presence of each student.

The fifth school visited was a high school with grades eight through twelve. We arrived at lunch and the secretary sent for the students subject to testing through the intercom. Several male and female students were tested after verbally confirming that they had turned in their consent forms. Students were taken to private bathrooms near the office area where the testing coordinators and a coach supervised. Two students were apparently skipping school, according to the assistant principal, and unable to take the drug test. Therefore, the drug testing coordinator selected two more names from the list of those subject to drug testing. The drug testing coordinator indicated that the two students who missed the drug test due to skipping would take the test at a later date.

The coordinator also indicated that the random selection process always included extra names in the event of absent students.

The drug testing coordinator in School District B completed a four page report and evaluation at the end of its first year of testing. The drug testing coordinator indicated that a report and evaluation would be completed yearly and that the annual data would be compared. The report for the 2003-2004 school year indicated that 247 students were tested (56.7 percent male and 43.3percent female). Of the 247 samples submitted for urinalysis, three tests resulted in positive alcohol or drug tests. Two of the three positive results were later cleared by students who produced a doctor's prescription indicating authorized medical use of drugs. The one student who tested positive for THC (marijuana) entered a recommended intervention program. Therefore, only .4 percent of all drug screens resulted in a positive test.

According to the report and evaluation the cost of the drug testing program for the 2003-2004 school year was \$3,416.00. The price included the pledge handbooks (\$730), 247 random drug tests (\$2,666), and shipping/handling of testing materials (\$20). The report did not indicate the cost of personnel. The drug testing coordinator's official title is attendance coordinator and drug testing is just one aspect of his job.

A survey was developed by personnel in School District B to measure the program's "administration and effectiveness" on reducing use of illegal substances by the youth in the school district. The survey was conducted in May 2004, and was completed by 240 pledge participants in the program, extra-curricular activity sponsors, and parents. Each group was asked the same eleven questions. The school district used frequency counts and percentages to measure results.

Results of the survey indicated that 92 percent of those surveyed agreed or strongly agreed that random drug screenings occurred regularly during each extracurricular season. Five percent disagreed and three percent indicated they did not know. Ninety-six percent of those surveyed agreed or strongly agreed they were aware of the consequences of violating the “pledge program”; whereas two percent strongly disagreed or strongly disagreed and one percent did not know. Eighty-three percent of those surveyed agreed or strongly agreed that the “pledge program” encouraged participants not to use tobacco, alcohol, or other drugs. Ten percent of those surveyed disagreed or strongly disagreed, and seven percent indicated they did not know if the program encouraged participants not to use drugs. Eighty-seven percent of those surveyed agreed or strongly agreed the mandatory preseason meetings were well organized; whereas, nine percent of those surveyed disagreed or strongly disagreed and five percent indicated that the preseason meetings were not well organized. Eighty percent of the students surveyed agreed or strongly agreed the “Pledge Program” was a deterrent to the use of illegal substances by the participants. Sixteen percent of the participants surveyed disagreed or strongly disagreed that the pledge program was a deterrent to the use of illegal substances and five percent indicated they did not know. Table 13 displays the survey results from all surveyed.

Additional survey results indicated that 56 percent of those surveyed agreed or strongly agreed random drug testing should occur more often. Thirty-nine percent of those surveyed disagreed or strongly disagreed that random drug testing should occur more often; five percent indicated they did not know. Seventy-six percent of the students surveyed agreed or strongly agreed the “pledge program” was worthwhile and

Table 13

School District B Survey Results- To Measure the Administration and Effectiveness on Reducing use of Illegal Substances

Results of all surveyed in percent

	Strongly agree	Agree	Disagree	Strongly Disagree	Don't know
Drug screenings occurred regularly during extracurricular season.	39	53	3	2	3
I am aware of the consequences of violating the program	45	51	1	1	1
The program has encouraged participants not to use illegal substances.	34	49	7	3	7
The mandatory pre-season meeting was well organized.	38	49	7	2	5
The program is a deterrent to illegal substance use and abuse.	30	50	12	4	5
Random drug testing should occur more frequently.	25	31	24	15	4
The program is worthwhile and should continue.	32	44	10	8	6
The procedures used to collect urine samples are known.	37	52	4	2	5
There is an understanding of what happens if a drug screen comes back positive.	33	55	8	1	3
The prevention programs utilized in the program are understood.	28	57	6	3	7
The pre-season meeting provided important information to the participants.	32	55	7	2	4

should continue. Eighteen percent of those surveyed disagreed or strongly disagreed that the program was worthwhile and should continue, and six percent indicated they did not know. Eighty-nine percent of those surveyed agreed or strongly agreed they were aware of testing procedures used in the “pledge program”. Six percent of the students surveyed disagreed or strongly disagreed they were aware of testing procedures used in the pledge program, and five percent indicated they did not know. Other survey information in School District B’s report and information included that eighty-eight percent of those surveyed agreed or strongly agreed that they were familiar with the consequences of a positive test result. Nine percent of those surveyed disagreed or strongly disagreed that they were familiar with what happens if a test result comes back positive, and three percent indicated they did not know. Eighty-five percent of the students surveyed agreed or strongly agreed they were familiar with the intervention methods used in the “pledge program”. Nine percent of those surveyed disagreed or strong disagreed that they were familiar with the intervention programs, and seven percent indicated they did not know. Finally, 87 percent of those surveyed agreed or strongly agreed that the mandatory preseason meeting provided participants with important information. Nine percent of the students surveyed disagreed or strongly disagreed that the mandatory preseason meeting provided participants with important information, and four percent indicated they did not know.

Interview with drug testing coordinator – School District B. The interview with the Drug Testing Coordinator in School District B indicated that the drug testing coordinator had a strong grasp of the procedures for the actual drug test. For example, he was thorough in his answers regarding random selection. He explained that random

selection was ensured by a selection of numbers from a computer program. The numbers were then matched to eligibility lists turned in by each school. He was specific his explanation of how he ensures a private drug testing environment by choosing bathrooms that are private without access to other students. In addition, he was detailed in his explanation regarding the handling of the urine samples from the moment the sample was gathered to the time it was sent to the toxicology lab for testing. During this time he demonstrated how the urine is poured from a plastic cup into a vile which is labeled and includes the student's signature. Then he showed how each vile was sealed into a plastic bag and signed by the drug testing coordinator. He described that they picked restrooms where there would be no other groups of students and that in the high schools this was typically a locker room. During the actual urinalysis, he and another monitor would stand directly behind the males to observe and the female monitors would allow the females to have the restroom door closed.

The interview revealed the school district's method of monitoring the drug testing program. The drug testing coordinator gave the researcher a five page report on how the district evaluated the drug testing program (see Table 13). The evaluation included the results of a survey which sought to determine the effectiveness of the drug testing program in reducing illegal substances by the youth in the school district. The drug testing coordinator explained that part of the local school board's requirement in instituting the program was that the "we evaluate the program yearly."<sup>389</sup> He also explained that his impression was that the survey revealed support from parents for the pledge program including random drug testing was very high.

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<sup>389</sup> Interview with Drug Testing Coordinator- School District C line 56.

The interview revealed that there were some gaps in knowledge of the written policies for the drug testing coordinator. For example, the coordinator was not clear about regarding the specifics of the appeals process or the types of substances being tested. However, he acknowledged this and referenced the “pledge handbook” when necessary to answer questions. Further, he noted that tobacco was not a substance targeted for random testing.

Perhaps the most telling information from the interview was that the drug testing coordinator felt the program worked very well for their school district. He pointed out that they had broad support for the program and the school district felt that were taking the initiative to help participants in fighting drug use in the school district. He felt the only changes he would make in the program would be to drug test more students. Finally, he believed that the school district was sending a clear message that drug use would not be tolerated.

Tables 14-16 are matrices designed to demonstrate how patterns of practice in School District B matched with Court standards and statutory law.

### **Case Study- School District C**

School District C is a city school district located in central Virginia at the foot of the Blue Ridge Mountains. The city is an urban area with a population of 64,000 people. The district has two high schools. One high school has 754 students and the second high school has over 1,500 students. School District C has just under 9,000 students enrolled in the school district.

School District C instituted a mandatory and random drug testing program in 1990 for all high school athletes. The district was the first in Virginia to institute a

Table 14

Decision to Implement Drug Testing

School District B

How did the decision to implement student drug testing take place?

	Code of Virginia School district decision	Code of Virginia Individual School Within the districts Decision	Other (Describe)
Rationale to Conduct Drug Testing	X		

Table 15

## Selection of Student Groups

School District B

Which student groups are subject to drug testing?

	<i>Vernonia</i> Interscholastic athletics	<i>Pottawatomie</i> Students in Extra-curricular activities	Other Groups (Describe)
Selection of student groups		X	

Table 16

Person Responsible for Implementing Drug Testing

School District B

	Athletic Director	Assistant Principal	Principal	School Nurse	Central Office personnel (specify)	Independent third party (specify)	Other (specify)
Person responsible for drug testing program					X Attendance Coordinator		

random drug testing program and one of the first in the nation. The athletic director at one of the two high schools in the district sums up the school district's drug testing program in a letter to parents that is posted on the internet stating, "while the effectiveness of this policy may be hard to prove, we feel the program sends a clear message to our athletes, student body, and local community; there is a clear and present danger in substance abuse." Despite a lack of proof that the program is effective, it is apparent that personnel in School District C hold strong convictions that the drug testing program works for them in their efforts to fight drug problems in their school district.

Because School District C was a forerunner in random student drug testing their model has been observed by other school districts and was the subject of a dissertation study regarding the effectiveness of random drug testing in the 1990's. In fact, the influence of School District C's written policies is apparent in school district A's written policies, as they both align closely. The dissertation study completed in 1992 found that neither mandatory or random drug testing was considered an effective deterrent for curbing substance abuse for a majority of the athletes in School District C's high schools.

School District C's written policy. School District C's written drug testing policies were adopted on July 17, 1990, and revised in 1992, 1996, and 1997. The policy is supported by a letter to student athletes and parents that details the program and includes a consent form. The letter begins with a purpose for the drug testing program, which "is not designed to be academically punitive but to assure the student's health

while participating in athletics.” In addition, the letter states that the purpose of the program is to deter drug use and help students live drug-free lives.

The policy identifies alcohol, marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) as the substances being tested. In addition, the policy states steroids are tested and that if reasonable suspicion exists that the student athlete is using steroids, then the student will be required to undergo a drug test. The letter to the students and parents reiterates the substances being tested and the policy on testing for steroids on the grounds of reasonable suspicion.

Prior to trying out or participating for any school-sponsored athletic team, the student athlete and the student’s parent or guardian must sign a consent form by which the athlete agrees to participate in the drug testing program. Refusal to sign the consent form by the student or the parents/guardians results in the student not being allowed to be a member of the team. In addition, non-compliance to the policy is addressed in the same manner when students refuse to take drug tests or tamper with or assist others in tampering with a urine sample.

The policy explains the school district’s drug testing collection protocol. According to the written policy, the school selects a licensed medical facility to conduct all testing. The written policy states that the cut-off level for positive tests are established by the National Institute for Drug Abuse (NIDA), which includes a 50 mg/ml for marijuana. Any sample below 92 degrees will be rejected. Prior to testing, students will be asked to empty their pockets before entering the bathroom. Other student possessions such as book bags, jackets, and purses will remain in the student holding area.

Random drug testing will be conducted at each high school for five percent of the student athletes each week by the testing agency. In addition, a team will be selected for random tests each week until all team members have been tested. Only student athletes in grades nine through twelve are subject to the testing program. According to the policy, all team members are assigned numbers. A committee established by the central office generates a list of numbers for each testing date. The numbers are communicated to the athletic director and the students at the time of the test. If a student is at school and fails to take the test, he will be dropped from the team. Students will be escorted to the office by school employees and remain under their supervision until a sample is provided. A student unable to provide a sample by the end of the day will be ineligible until a negative sample is provided at the next random test at his school.

The written policies demonstrate progressive consequences for positive drug tests. In the event of a positive test, the athletic director will schedule a meeting with a substance abuse educator, the parent/guardian, student, and student's physician, if requested, to develop a plan of assistance for the student. Upon a first positive drug test the athlete is removed from team for a minimum of fourteen days, the student must complete a plan of assistance that is verified by the substance abuse educator, and the student must be retested with a positive result before being reinstated. After a first positive test, the athlete can continue to practice but cannot participate in contests. Further, the student must complete drug tests once a month for the remainder of the school year as long as he/she is participating in athletics. A second positive drug test results in the athlete being removed from practice and participation for 365 days. Drug

testing will resume monthly once the student resumes participation. A third positive drug test results in the athlete being ineligible for the remainder of his/her high school career. In the event of a positive drug test, an appeal may be instituted and a re-test of the original urine sample will be conducted at the parents/students' expense. The student may not practice or compete until the appeals process has been completed.

Confidentiality of the test results according to the written policy, is the responsibility of the testing agency, the school administrative officer, the principal, the athletic director, the substance abuse educator, and the coach. Results from the drug tests are not placed on students' records. Both high school principals are responsible for conducting annual meetings with the faculty and staff to insure confidentiality and fairness to all students.

Observation and shadowing School District C. The supervisor for instructional improvement who also serves as the school district's drug testing coordinator, was interviewed, observed, and shadowed. She was a willing participant and signed a letter of informed consent. The drug testing program was well structured with the policies and practices generally conforming very well with each other.

Due to the large number of students in the two high schools that participate in the drug testing program and the time it takes to test the students, testing is done on different days at the two schools. Each week drug testing occurs at both schools at different times and on different days. The drug testing coordinator visits both schools each week to perform the drug tests.

Due to the fact that School District C was one of the first school districts to institute drug testing programs, its program has been the subject of many inquires and

studies. Other school districts that have drug testing had contacted School District C at some point for advice on instituting their own random drug testing program. During the interview and observation, school personnel acknowledged that the school frequently receives inquiries about the drug testing program from school districts across the state.

Drug testing was conducted in the balcony area of the auditorium. The location of the testing area was away from the daily operation of the rest of the school building. Even though the bathroom had four stalls, they were separated with two stalls on each side of the room. Blue dye was placed in the urinals to prevent tampering with the urine sample. Two students entered the bathroom at a time. The students used the stalls across from one another, as opposed to the bathrooms beside one another. The rationale for this was to prevent students from passing urine samples under the stalls to each other. Prior to testing, the students were asked to remove their jackets and place their book bags outside the bathroom area. Students were not asked to empty their pockets as the policy indicated.

The testing environment was set up to ensure privacy, confidentiality, and correct collection procedures. The athletic department secretary had a station established with a list of all students being tested. Each person being tested was given a laboratory form with pertinent information. As the students entered the bathroom, they were given the laboratory form and a cup for the urine sample by a technician from the lab corporation who had a table set up in the bathroom. The technician collected the urine vial from the students, made sure the name on the label sticker matched the name on the print out sheet, and had students sign the label sticker that was placed on the vial as a seal. After the vials were collected, signed, and sealed, they were placed individually in

plastic bags. Finally, the samples were placed in coolers, carried out, and taken for shipment to the testing facility.

Two types of testing occurred during the observation. One was for student athletes randomly selected and the other for an entire team. Each week the school district selects a team from each school and tests all members. Members of the football team were tested during the observation. If a team member missed the test due to absence he was placed on the testing list for the following week. Over forty members of the football team were tested in just under an hour. Team members waited in the lobby, drank water, and socialized prior to being tested. Approximately fifteen student athletes participated in the random selection process.

There were five adults present during the entire testing process, the director of drug testing, the athletic director, the athletic department secretary, and two technicians from Lab Corp. The director of testing monitored the students, hurried them along, checked with Lab Corp. personnel to make sure their needs were being met, checked the drug testing list, inspected the bathroom, and oversaw the entire program. The athletic director led the students to the testing site, encouraged them to hurry, verified student identities, and tracked down students who were in different locations in the building. The secretary checked students in and out, confirmed the consent forms, and made sure the consent forms were stamped by Lab Corp. The technicians from Lab Corp. handled all aspects of the urinalysis. They monitored the bathroom, collected the samples, and maintained proper collection protocol.

The most impressive portion of the drug testing program was the supervision. The adults created a positive atmosphere and hurried students along while creating an

environment that ensured proper collection procedures. Each adult performed specific functions related to the drug testing program to create an efficient testing environment. The athletes, along with adults, seemed familiar with the entire process and appeared to enjoy missing class time and socializing with their peers.

As the students completed their urine tests, school personnel completed checks to ensure proper collection protocol. The secretary matched the student list to the stamped consent forms to make sure all students had taken the test. Those students that were absent were placed on a list for testing the following week. The Lab Corp. computer printout, which was made in duplicates, served as an admission slip for students to return to class while the duplicate served as backup confirmation for the actual drug test.

Something that stood out during the drug testing process was the time and personnel needed to conduct drug testing. Five adults, three of whom were school district employees, spent their entire morning working with the drug testing program. Each school district employee expressed that the drug testing program was positive for the school district; however, each lamented that the program was very time consuming. In addition, the drug testing coordinator stated that faculty members had occasionally voiced concern regarding loss of instructional time due to drug testing.

School District C monitors the drug testing program by conducting surveys of students and teachers, and by reporting test results as well as time missed from class. Each year the drug testing coordinator reports to the school board the number of students tested, the number of positive tests, the time missed from class due to drug testing, drug screens performed, and the expenses related to drug testing. School

district C did not provide results from surveys conducted with students or faculty members.

Since 1998, nearly 10,000 drug tests have been conducted in School District C, of which thirty of which have been positive (see Table 17). Therefore, only .3 percent of all drug tests have been positive in School District C during the previous six school years. From 1998 through the 2003-2004 school year, the school district has conducted testing on nearly forty-two days per school year (see Table 17). Rarely are there instances in School District C when drug testing requires students to miss more than a period of classroom instruction. In fact, students generally take a period or less to complete the drug test (see Table 18).

The drug testing coordinator provided a detailed breakdown of the annual cost of drug testing. The total for the 2003-2004 school year was \$43,172.00. The cost breakdown for School District C for last school year was: two coordinator's supplements at \$836.00 (\$1,672 total), testing agency for 1,636 tests at \$25.00 per test totaling \$40,900, and drug education for 3 positive tests at \$200.00 (\$600.00 total). The cost of the program for 2002-2003 was \$40,216.

Interview with drug testing coordinator – School District C. The director of instructional improvement serves as the drug testing coordinator for School District C. The drug testing coordinator in School District C had a strong belief that the drug testing program worked well for the school district. She indicated that the drug testing program was successful in making the students safer by deterring student drug use. She felt the testing program met the mission of the school by helping to make students safer.

Table 17

## School District C Student-Athlete Drug Testing Report

	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Students Eligible for Testing	805	783	747	748	779	820
Team random tests	1198	1214	1105	1092	1323	1368
Individual random tests	318	224	277	296	283	268
Total Drug Tests	1516	1438	1382	1388	2606	1636
Total Positive Tests	1	5	5	8	7	4
Total Drug Testing Dates	45	40	41	42	39	44

Table 18

## School District C Time Missed From Class Due to Drug Testing

<b>Time missed From class</b>	<b>Number/Percentage of students missing class time</b>					
	1998- 1999	1999- 2000	2000- 2001	2001- 2002	2002- 2003	2003- 2004
15 min. or less	274 (18.1%)	356 (25.1%)	561 (40.9%)	418 (30.1%)	444 (27.6%)	525 (38.6%)
1 period	1016 (67.2%)	873 (61.5%)	745 (54.3%)	858 (62.5%)	855 (53.2%)	764 (47.6%)
1-1/2 periods	194 (12.4%)	166 (11.7%)	55 (4.0%)	85 (6.2%)	87 (5.4%)	57 (4.2%)
2 periods	25 (1.7%)	19 (1.3%)	8 (0.6%)	6 (0.4%)	13 (0.8%)	9 (0.6%)
3 periods	3 (0.2%)	6 (0.4%)	2 (0.1%)	6 (0.4%)	5 (0.3%)	3 (0.2%)
4 periods	0 (0%)	0 (0%)	1 (0.1%)	0 (0%)	0 (0%)	0 (0%)

The drug testing coordinator addressed the potential for change in several areas of the drug testing program. She expressed that the school district is considering expanding the substances tested in the program to include ecstasy. She further stated that the school district was not willing or interested in expanding drug testing into any other student groups except student athletes.

The two key aspects of School District C's random drug testing program are random drug testing and team testing. The drug testing coordinator elaborated about both. She explained that in addition to random testing five percent of all student athletes each week, the drug testing program requires that one team is pulled aside for testing each week. For example, all members of the basketball team will be tested one week, all members of the volleyball team the following week, until each team member has been tested. She explained that in both random and team testing that there is no set pattern as to the time testing will occur. She physically demonstrated how random selection occurred by showing the numbers on a list, and a jar that she shook to pull numbers that matched the eligibility list. She explained that team testing guarantees that all students are tested at least once and when combined with random testing, many students are tested twice within the same season.

A lasting impression from the interview was the detail in which the drug testing coordinator explained how the school district ensures privacy during testing. The thorough description of privacy provided in the interview was supported during the observation. She described the physical setting, the use of lab technicians, the role of the athletic director, and athletic secretary. It was evident in the interview, and supported by the observation, that the key persons, in the drug testing program is the

athletic department secretaries who are titled as the drug testing coordinator for each school. The drug testing coordinator acknowledged during the interview that the athletic secretaries probably know more about what is going on with drug testing than the athletic directors. The secretaries actually put everything together as far as setting a time for testing, having the drug testing list ready, and checking students in/out during testing.

The drug testing coordinator expressed possible changes in the program, but felt that overall the program was working and did not suggest major adjustments. She shared that the school district has a computer system available that can be used for randomly selecting students, but the system was not yet in place. In addition, she thought the school district would explore the possibility of drug testing for ecstasy.

An area that was explored during the interview was drug testing for reasonable suspicion. School District C's written policy calls for drug testing on the grounds of reasonable suspicion. The policy points out that coaches have a particular responsibility of educating student athletes on the dangers of steroid use and that students would be required to undergo a test to confirm or deny suspicion. However, she expressed that she was not aware of any drug testing that has occurred on the grounds of reasonable suspicion.

Overall, she expressed that she can not see any negatives in the drug testing unless looking at it from a "selfish" perspective. She was referring to the time she spent daily and weekly on drug testing. From the observation and interview, it was obvious that drug testing took a large amount of her time and was an everyday obligation in her job. As director of instructional improvement her job has many facets, including teacher

observation, instructional improvement plans, implementing in-services activities, and many other activities. While being impressed with the detail and knowledge she possessed regarding the drug testing program, the implication was made that the drug testing program certainly spread her thin.

The most impressive portion of the interview was the demonstration of procedural knowledge, and knowledge of the written policy. Predominately, the drug testing coordinator answered according to policy. In addition, it was obvious that she had a thorough working knowledge of student privacy rights and confidentiality. In a word, the interview revealed the approach taken by personnel in School District C as professional.

Tables 19-21 are matrices designed to demonstrate how patterns of practice in School District C matched with Court standards and statutory law.

#### Patterns of Practice

There are many common threads in the patterns of practice of random drug testing among the three school districts observed. A common element in each was the belief that there was strong community support for the program and that the program was extension of community support. In the interviews, the observations, and the policies it was obvious in each school district that demonstrating community support for the program was important. School District B in its "pledge handbook" displayed support in survey results, in interviews with school personnel and in a power point presentation school leaders in School District C demonstrated that community support for the program was essential, and School District C administrators demonstrated in letters

Table 19

Decision to Implement Drug Testing

School District C

How did the decision to implement student drug testing take place?

	Code of Virginia School district decision	Code of Virginia Individual School Within the districts Decision	Other (Describe)
Rationale to Conduct Drug Testing	X		

Table 20

## Selection of Student Groups

School District C

Which student groups are subject to drug testing?

	<i>Vernonia</i> Interscholastic athletics	<i>Pottawatomie</i> Students in Extra-curricular activities	Other Groups (Describe)
Selection of student groups	X		

Table 21

Person Responsible for Implementing Drug Testing

School District C

	Athletic Director	Assistant Principal	Principal	School Nurse	Central Office personnel (specify)	Independent third party (specify)	Other (specify)
Person responsible for drug testing program					X Director of Instructional Personnel		

written to parents and information on websites that community support was an important aspect of the program. Community support for the program may also be gauged by the lack of challenges to the testing program. In all three school districts, the drug testing coordinators said that there had been little resistance to the programs and that few parents had challenged the program by not signing the proper consent document.

An additional pattern of practice that is consistent in all three school districts is the virtual absence of positive drug tests. The drug testing coordinator in School District A reported no positive test results in the past three years, an annual report from School District B reported one positive test out of a total of 247 tests for illegal substances during its inaugural year of drug testing (an additional two positive tests were cleared by doctor's prescription) demonstrating that only .4 percent of all tests were positive, and since 1998 nearly 10,000 drug tests have been conducted in School District C of which thirty have been positive demonstrating that only .3 percent of all tests in the last six years have been positive.

Urinalysis was the sole method used for drug testing in each of the observed school districts. The actual urinalysis was done differently in all three school districts, but the testing environment in each of the three school districts was very private. In fact, in all cases the testing environment observed was more private than those encountered in public restrooms. Further, in each testing situation the students appeared relaxed and, in no way, appeared threatened by the prospects of a drug test. School District B was the only district that used school personnel to conduct the urine collection, school districts A and C used independent lab technicians. In all three testing environments, more than one person monitored the collection activity to ensure privacy.

The personnel in charge of implementing the program in the three observed districts each had different job titles. The job titles ranged from athletic director to attendance coordinator to supervisor of instructional improvement. In each case, coordinating the drug testing program was a facet of the job that was very time consuming. In all three cases, the coordinators expressed concern that the time spent drug testing spread them thin with other aspects of their job.

Another common pattern in each of the three involved school districts was a provision for testing based on reasonable suspicion occurred in their written policy; however, in practice, none of the coordinators at the three school districts cited situations where drug testing for reasonable suspicion had occurred. Further, the drug testing coordinators generally failed to demonstrate knowledge of an exact protocol for drug testing based on reasonable suspicion.

The observations and interviews revealed a pattern of practice as to the student groups being tested. Student-athletes or students in extracurricular activities in grades eight through twelve were the target of the programs. Five to ten percent of the students were selected for random testing in each school; only in district C were all student-athletes tested through team testing.

Consequences followed similar patterns in each school district. In general, there were progressive consequences for positive drug tests in each school district. Typically, a first positive tested resulted in a short term suspension from the activity in which the student participated, followed by an intervention. A second positive test resulted in a longer suspension from the activity and intervention. A third offense resulted in a ban

from all athletics or extracurricular activities for the remainder of the students' high school tenure.

Other patterns of practice that were ascertained through the case studies include: few or no appeals, how students were called to the office, and lack of knowledge of the substances tested. In all three school districts there had been few or no appeals to positive drug tests. Students in districts B and C had been exonerated from positive tests based on producing a doctor's prescription, but there had been a lack of formal appeals in all three case studies. In each of the three districts, students were called out of class by school personnel either from the office intercom or by personnel going directly to students' classes and requesting that the students report to the office. In all three school districts observed, the drug testing coordinators generally did not know which substances were being tested; however, in two of three school districts the drug testing coordinator readily accessed the information in the drug testing policies.

Table 22 is a summary of drug testing patterns of practice in school districts A, B, and C.

#### Analysis of Random Drug Testing Policy to Practice

Research question two, How do random drug testing policies and procedures comport with the standards for legal random drug testing as set forth by the U.S. Supreme Court?, is answered by analyzing the data collected in phase one and phase two of the study and comparing it to the conceptual framework.

The Fourth Amendment of the United States Constitution provides the basis for an individual's right to privacy and for protection against illegal search and seizure.

Table 22

Summary of Random Drug Testing Patterns of Practice in  
Virginia Public School Districts A, B, and C

<b>School District</b>	<b>Community Description</b>	<b>Grades Tested</b>	<b>Year Began</b>	<b>Student Categories Tested</b>	<b>% of students selected</b>	<b>Specimen Tested</b>	<b>Drugs Tested for during random tests</b>	<b>Cost of Program</b>
A	Rural	8-12	2003	Extracurricular Students-under VHSL guidelines	5% of athletes that are currently participating are tested each week	Urine	marijuana, opiates, PCP, amphetamines, and barbiturates	Over \$30,000
B	Rural	8-12	1999	Student Athletes	10% of the seasonal list of athletes are tested	Urine	barbiturates, benzodiazepines, cocaine, opiates, alcohol, THC (marijuana), and/or creatinine	\$3,416.00 (does not include the cost of school personnel)
C	Urban	9-12	1990	Student Athletes	100 % of athletes are tested (5% each week randomly and an entire team is randomly selected each week)	Urine	alcohol, marijuana, cocaine, opiates, amphetamines, and PCP	\$43,172.00 for 2003-2004

Student's privacy rights in public schools are governed by the Fourth Amendment, but are tempered by other unique factors in public schools; therefore school officials have not been confined to the probable cause and search warrants as spelled out in the Fourth Amendment. Random drug testing programs, which utilize searches through urinalysis, in Virginia public schools fall under the Fourth Amendment.<sup>390</sup> In *T.L.O.*,<sup>391</sup> the U.S. Supreme Court established that the Fourth Amendment applies less stringently to searches conducted in public schools.

Virginia state statutes §§ 22.1-279.3:1<sup>392</sup>, 22.1-279.6<sup>393</sup>, and 22.1-279.7<sup>394</sup> address search guidelines in public schools. Specifically, the statutes state that local school boards are not required to have drug testing programs, but that local school boards may require drug testing as long as state board policies are followed. The four school districts in Virginia that have implemented random drug testing programs comply with these state statutes. Each district's local school board has established drug testing policies that comply with guidelines established by the Department of Education.

The Court's landmark *Vernonia*,<sup>395</sup> and *Pottawatomie*<sup>396</sup> decisions are the standards for legal random drug testing in public schools. These cases address the rationale for the random search, the selection of participants in the search, and the nature and scope of the search. The school districts in Virginia that have instituted random drug testing comply with these Court decisions.

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<sup>390</sup> Supra. note 74.

<sup>391</sup> Supra. note 81.

<sup>392</sup> Supra. note 216.

<sup>393</sup> Supra. note 217.

<sup>394</sup> Supra. note 218.

<sup>395</sup> Supra. note 44.

<sup>396</sup> Supra. note 4.

Each school district implementing random drug testing has a rationale for the search. While the rationale for random drug testing varies from school district to school district, the rationales depend greatly on drug use being a national issue and drug testing being a part of the public's perception that the school district is doing everything in its power to prevent or deter drug use. Each school district displayed their rationale for the random drug testing program in its written policy, and the interview and observation further demonstrated the rationales for random drug testing. In two school districts (B and E) their written rationales for drug testing related closely to the public perception that drug use was a community problem that could be addressed, in part, through drug testing within the schools. School districts, A, C, and D's written rationale is based on promoting health, safety, and welfare by helping students live drug free lives.

The interviews and observation, in particular, revealed a rationale for random drug testing that was associated with public perception. The observation in each of the school districts revealed that public perception was an important rationale for the random drug testing program. School District A, in a written publication about their school district, indicates that the school district is ahead of the curve by instituting drug testing, and the drug testing coordinator and the district superintendent both indicated that the school district viewed the program as being innovative. The drug testing coordinator in School District B expressed that the school district had strong support from the public for the testing program and that surveys prior to its institution demonstrated that the public perceived a need for the program. School District C's rationale for search is related to public perception. Their observations, interviews, and

public documents demonstrate that School District C's drug testing program is related closely to the community's expectation that the school district should do everything in its power to fight student drug use.

The Court determined in *Vernonia*<sup>397</sup> that random suspicionless drug testing for interscholastic athletic programs is constitutional. The Court allowed a further extension of student groups being tested for drugs in public schools in the *Pottawatomie*<sup>398</sup> decision by allowing students involved in extra-curricular activities to be randomly tested for drugs. Each of the school districts in Virginia that have instituted random drug testing and those that have written policies for random drug testing is in compliance with the current Court standards regarding the student groups being tested for drugs.

The nature and scope of random drug testing was defined in *Vernonia*<sup>399</sup> by the four prong test. First, the Court explained that the nature of the privacy interest must be examined.<sup>400</sup> The Court determined that since minors are in the custody of schools their privacy interests are general and that athletes' privacy rights are further diminished because the element of communal undress in athletics creates an environment where student athletes generally have less privacy.<sup>401</sup> Second, the Court reasoned that the government must determine the character of the intrusion on the individual's privacy interests.<sup>402</sup> The Court concluded that the drug testing procedure was nearly identical to the conditions students encounter in public restrooms; therefore, the infringement on student rights was minimal and reasonable.<sup>403</sup> The third prong to the test established by

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<sup>397</sup> Supra. note 44.

<sup>398</sup> Supra. note 4.

<sup>399</sup> Supra. note 44.

<sup>400</sup> Id.

<sup>401</sup> Id.

<sup>402</sup> Id.

<sup>403</sup> Id.

the Court was the nature of the governmental concern.<sup>404</sup> The Court found that deterring drug use of student athletes was an appropriate concern due to the potential harm of drugs.<sup>405</sup> The fourth prong addressed the immediacy of the safety concern.<sup>406</sup> The Court concluded in *Vernonia* that there was a high risk of harm to student athletes when they participated in sports, thus justifying the district's concern in drug testing.

The scope of drug testing programs in public schools was broadened by the *Pottawatomie*<sup>407</sup> decision which allowed drug testing to be broadened to students in extra-curricular activities. In addition, the decision for school districts to drug test was widened to include drug testing to prevent student drug use without the school district identifying drug use as a major problem in the school district. The justices pointed to the drug problem nationwide as justification enough for random drug testing program to be instituted. The school districts in Virginia implementing random drug testing comport with the scope of drug testing as established in the *Vernonia* and *Pottawatomie* cases, and use drug testing to prevent or deter drug use. School District B administrators used surveys to demonstrate that drug use was a problem in the community and that drug testing could be used to deter drug use. School districts A, C, and D's drug testing programs comport with current Court standards regarding the nature and scope of the search by using drug testing to prevent and deter student drug testing.

The Virginia Board of Education adopted guidelines concerning student drug testing in Virginia public schools in 2004.<sup>408</sup> The guidelines are intended to be used for technical assistance by local school authorities in developing policies and

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<sup>404</sup> Id.

<sup>405</sup> Id.

<sup>406</sup> Id.

<sup>407</sup> Supra. note 4.

<sup>408</sup> Supra. note 237.

procedures.<sup>409</sup> The guidelines address purpose and intent, definitions, relationship to existing policies, consent to test, random selection procedures, collection protocol, confidentiality, consequences, intervention, and appeal.<sup>410</sup>

Each of the school districts that implement random drug testing or have random drug testing policies has a purpose and intent. Each of the four school districts with random drug testing policies states that drug testing occurs randomly or can occur in cases of individualized suspicion. The observation and interviews revealed that random drug testing was in place; however, none of the school districts reported incidents where drug testing occurred as a result of individualized suspicion. The purpose or intent of the policies and practices (see Table 9) of the school districts with random drug testing policies and practices all align with the guidelines set forth by the Virginia Board of Education. The policies and practice are based on deterring drug use, preventing drug use, and promoting safety.

The Board of Education guidelines suggest that local policies should clearly define which groups of students should be tested.<sup>411</sup> The written policies and practices of the school districts in Virginia with random drug testing all clearly define the groups of students being tested. Of the four districts that implement drug testing, three districts test student athletes and one district tests all students in extra-curricular activities. School District E which has a written policy, but has not implemented the program, has a written policy for all students in extra-curricular activities. An area that is vague in the in the written policies is a clear definition of the grade levels of students subject to testing. However, in practice school districts A, B, and D's programs test students in

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<sup>409</sup> Id.

<sup>410</sup> Id.

<sup>411</sup> Id.

grades 8-12 and students in grades 9-12 are tested in School District C. The policy for School District E calls for testing to include students in grade eight. Three of the five school districts clearly define the substances being tested in the written policy; however, neither the written policy or the consent form define the substances being tested in school districts B and D.

The Virginia Board of Education guidelines suggest that student drug testing should supplement and complement other local policies, rules, and regulations related to student searches and to student conduct.<sup>412</sup> None of the policies examined cited any form of search other than drug testing. Canine searches, locker searches or other school searches are not addressed in the policies examined. In fact, the random drug testing policies examined are separate from policies written in student handbooks, and are typically separate policies or policies written in an athletic code of conduct manual. Only School District C's policy is written within the student handbook.

According to the recommended guidelines by the Virginia Board of Education, consent to drug test should be obtained from the parent or guardian prior to the student participating in the activities identified in the policy.<sup>413</sup> The consent form should state the activities covered in the policy are a privilege and that consent is mandatory prior to participation.<sup>414</sup> The consent document should state how the student is chosen on the basis of random selection, that a student may be tested on the grounds of reasonable suspicion, and that the student may be tested when parents voluntarily disclose drug use by the student.<sup>415</sup> The consent forms vary from district to district, with School

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<sup>412</sup> Id.

<sup>413</sup> Id.

<sup>414</sup> Id.

<sup>415</sup> Id.

District C's consent form being the most detailed. Each of the four districts in Virginia has a consent form that must be signed prior to participation. Only School District D's consent form states that participating in the activities covered by the policy are a privilege. Only district C's consent form details how students are selected for random drug testing and only district C's consent form addresses testing on the grounds of reasonable suspicion. None of the consent forms address drug testing on the basis of parents voluntarily disclosing drug use by their children.

According to the recommended guidelines of the Virginia Board of Education, random selection procedures should clearly state a neutral method of selecting students in order to ensure that students are not selected on the basis of individualized suspicion.<sup>416</sup> None of the policies examined clearly define how random selection occurs. Each policy does clearly state the percent of students subject to random testing and the frequency of testing. Of the school districts observed, a neutral party outside the school system to conduct the actual random selection was used only in School District A.

The collection protocol as suggested by the Virginia Board of Education guidelines must be specific in describing the procedures for selecting and handling samples in order to guarantee a minimally intrusive testing environment.<sup>417</sup> Each of the written policies addresses collection protocols. However, the observations and interviews addressed the collection protocol much more than the written policy. It was evident in the observations and interviews that a strong point in each school district's practice was the actual collection protocol. In all instances the testing was private, usually more so than using a public restroom, and the drug testing coordinators made

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<sup>416</sup> Id.

<sup>417</sup> Id.

every effort to guarantee that the collection process was minimally intrusive. Only School District B's collection protocol was conducted on their own without the benefit of an outside laboratory conducting the actual urine collection. District B's protocol was less formal than the protocols used in district A or C, but the personnel were certainly aware that the testing environment should be minimally intrusive and they made every effort to guarantee that the urine collection was private, and that there was a proper chain of custody.

Each school district in Virginia that has implemented random drug testing or has random drug testing policies clearly addresses consequences in their written policies (see Table 10). None of the districts impose academic penalties as a result of a positive test and all the districts' consequences are progressive for a second or third positive test. Each of the written policies in the five school districts address that refusal to participate in a drug test will result in the students' forfeiting their right to participate in the activities. The observation revealed that each school district addressed tampering in their collection protocol and articulated to the students that the consequences for tampering were the same as those for a positive test.

Intervention resources for substance abuse should be addressed and made available according to the guidelines suggested by the Virginia Board of Education.<sup>418</sup> The policies for the school districts with random drug testing or the school districts with random drug testing policies all address intervention in the case of positive drug tests; however, in general the policies are vague and fail to detail the exact intervention process. Personnel in School District A have not had to institute intervention in the three years the drug testing coordinator has overseen the program. Administrators in School

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<sup>418</sup> Id.

District B used an intervention one time during the 2003-2004 school year. This intervention program was part of a program set up with community services. School District C's administrators placed the students testing positive for drugs in a substance abuse education course which required that students complete a plan of assistance that had been verified by the substance abuse educator. The cost of intervention for School District C was \$200 per intervention. The impression made through observation and interviewing is that school district personnel have less knowledge of the intervention process than any area of the drug testing program.

Virginia Board of Education guidelines suggest that specific procedures for appeal of a suspension resulting from positive tests should be in the local policy.<sup>419</sup> Each of the policies examined demonstrates that an appeal process is present. Typically, the policies state that the student can have the urine sample retested at his/her own expense or at the expense of his/her parents or guardians within some specified time limit, or, in some policies, an appeal can come at any time. Observations and interviews revealed that no formal appeals had been made to the current drug testing coordinators. The drug testing coordinators shared that in some cases parents presented the school district with medical prescriptions that exonerated the students from the positive drug tests.

### **Categories of Students Tested and Substance Tested**

Research question three, within those school districts that have established student drug testing policies, which categories of students have been subjected to random testing and for what kinds of substances?, is answered by data collected in phase one and phase of the study.

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<sup>419</sup> Id.

There are two categories of students that have been subjected to random drug testing in Virginia public schools. The categories are student athletes and students in extra-curricular activities. Three of the districts that have implemented random drug testing test student athletes and one district tests students in extracurricular activities, as well. Even though random drug testing is not presently implemented in School District E its written random drug testing policy includes students in extra-curricular activities. Extra-curricular activities in the two districts are activities that meet the guidelines and are under the control of the Virginia High School League. These activities include, but are not limited to, athletics, cheerleading, drama, forensics, debate, and academic activities that fall under the umbrella of the VHSL.

The school districts with drug testing policies target students in grades eight through twelve. In some cases, this includes students enrolled in middle schools, depending on the configuration of each school within the school district. Only School District C's drug testing program limits the categories of students tested to high school students in grades nine through twelve.

Substances tested in the school districts that have implemented random drug testing are similar. The substances being tested are typically listed in the drug testing policies, the consent form, and laboratory forms. The following substances are tested in the random drug testing programs in Virginia public schools: marijuana (THC), opiates, amphetamines, barbiturates, benzodiazepines, cocaine, opiates, alcohol, creatinine, phencyclidine (PCP), and tricyclic antidepressants. In addition, two of the school districts that have random drug testing programs state in their policy that drug testing for steroids can be done if based on the grounds of reasonable suspicion.

School District E's written policy, which has not implemented a random drug testing program includes alcohol, marijuana, cocaine, phencyclidine (PCP), amphetamines, and opiates. In its written guidelines district E's policy also states that drug testing will include testing for substances included in the Department of Transportation 10-panel test. According to the Department of Transportation, this would expand the substances being tested to include benzodiazepines, methadone, methaqualone, and propoxyphene.

### **Monitoring the Drug Testing Programs**

Research question four, What types of data do these districts collect to monitor the drug testing program?, is answered by data collected from the interviews and observations in phase two.

In the three districts that were observed, monitoring of the drug testing programs was done differently. School District A's drug testing program did not have a method established for monitoring the program other than by anecdotal means. School districts B and C's drug testing program have methods established for monitoring, but the methods of monitoring in those school districts examine different aspects of the testing program. The written policy of School District B was the only policy that addressed monitoring and evaluation.

School District B administrators developed a thorough report that, according to the drug testing coordinator, was required to be completed annually. The purpose of the report was to measure the administration and effectiveness on reducing use of illegal substances by the youth in the school district. The report examined three areas. The first area was testing results, which listed the results of any positive test. This portion

included the gender of the person who tested positive, the type of illegal substance that was determined in the drug test, and the results (intervention) that occurred. The results included the students being cleared by doctor's prescription, the participant entering intervention, and the participant quitting the extra curricular activity.

The second part of School District B's annual reporting was a listing of the monetary cost of the program. This included the printing of the handbooks, the random drug tests, and the shipping and handling of the drug testing materials. The cost of the school personnel instituting the program was not part of the report.

The third portion of School District B's monitoring of the program was a survey to measure the "pledge program's" administration and effectiveness on reducing the use of illegal substances by those youths in the school district who participate in VHSL extracurricular activities. The survey was administered to extracurricular activity sponsors, to extracurricular activity participants, and to parents. Each group was asked the same eleven questions. School district personnel used frequency counts and percentages to measure results. The questions ranged from asking about awareness of consequences of violating the program, to whether or not the program deters drug use, and to questions about the understanding of the interventions associated with the program. The case study of School District B on pages 111-128 details the district's random drug testing program and the results of the survey.

Administrators in School District C monitor the program annually and make a report to the school board. The report includes a drug testing report which examines the number of students eligible for team random drug tests and for individual random drug tests. The drug testing report includes the total number of drug tests, the total number of

positive tests, and the total number of drug testing dates. The data reported are compared annually.

School District C personnel also monitor and report the time missed from class due to drug testing. The data are compared annually and examined in minutes and school periods the amount of time students missed from class as a result of the random drug testing program. Table 18 displays the number and percentage of students missing class time for drug testing for School District C for the past six years.

A third aspect of monitoring performed by School District C is the total drug testing expenses. The report displays the cost of the drug testing coordinators (schools athletic secretaries), the cost of the testing agency, and the cost of the educational component which was the cost of intervention per positive drug result. The cost breakdown of School District C's drug testing program is located in the case study of School District C on page 139.

The drug testing coordinator in School District C expressed that the district interviewed/surveyed students and faculty members annually regarding the drug testing program. The coordinator reported that faculty members often stated that even though drug testing took away class time, they felt, generally, that the program was worthwhile. The coordinator expressed that students believed the program worked in deterring drugs. The impression was that the survey and interview with students and faculty was more anecdotal than formal. Results of the survey were not provided.

### **School Authorities Implementing Random Drug Testing**

Research question five, Which school authorities are responsible for ensuring the implementation of random drug testing policies, and what procedures do they follow?, is

answered by examining the written policies in phase one and by information gained in the observations, interviews, and shadowing done in phase two.

There is a range of personnel responsible for ensuring the proper implementation of random drug testing policies. The implementation of the drug testing program is conducted by the athletic directors in districts A and D. In school districts B and C, the person implementing the program operates from the school district's central office, although their job titles are different. In School District B, the person responsible for drug testing had many job titles and responsibilities along with drug testing. His titles and responsibilities included truant officer, drug and safe schools coordinator/safety coordinator, disciplinary committee coordinator, and compliance officer. According to him, his official title is Attendance Coordinator. In School District C, the supervisor for instructional improvement coordinated the drug testing program. The drug testing coordinator in School District C's job also included instructional improvement plans, faculty in-service training, and teacher observation.

The procedures for implementing the drug testing program vary at each school district. Independent drug testers or lab technicians were used to conduct the actual drug tests in school districts A and C. The independent parties in both cases were contracted with the schools but were not school employees. In both instances, the independent drug testers conducted the actual collection procedures. The drug testing coordinators ensured that the setting was private. In addition, the drug testing coordinators worked with the students to get to and from the drug test site, to explain or review the drug testing procedures, and to work with students, family, and school administrators in the event of a positive test. In School District A, one lab technician,

along with the drug testing coordinator who was also the athletic director conducted all aspects of the actual drug test. School District C's testing procedures utilized two lab technicians, the schools' athletic director, the athletic director secretary (whose title is school drug testing coordinator), and the district's drug testing coordinator. In contrast, the drug testing coordinator at School District B administered all aspects of the random drug testing program. He worked with school staff at each of the schools in the district to conduct the actual urinalysis and worked closely with a female central office employee to administer the tests. He secured the bathrooms, poured the urine into vials to get them ready for shipping, and worked with the students, faculty, and staff to get students to and from class for random drug testing. Due to the fact district B did not use independent lab technicians on site, it was necessary for them to have a male and female school district employee who supervised the collection of the samples.

The random selection of students was done differently at each school district. School District A's drug testing program included the use of independent testers to randomly select students for random drug testing. The drug testing coordinator in district A gave a list of athletic participants to the drug testing company in each of the three athletic seasons (fall, winter, and spring). Prior to the drug test, the drug testing coordinator called the testing company which then generated a list of students to be tested. School District B's drug testing coordinator used a simple computer program that claimed to randomly select numbers which were then matched to student eligibility lists for VHSL participation. School District C's drug testing coordinator randomly selected students by drawing numbers out of a jar and matching those numbers with those on the student eligibility lists used for VHSL participation.

## Summary

Data were collected in two phases in order to analyze random student drug testing policies and patterns of practice in Virginia Public schools. The first phase of the study consisted of two parts. First, student handbooks from across Virginia were collected and examined to determine how the written policies comport with current legal standards. Second, an email inquiry was sent to the superintendent of each school district in Virginia to determine how many and which school districts in the state have random drug testing programs, and which school districts have written policies that address student drug testing. The second phase of the research consisted of the researcher examining three school districts in Virginia that have implemented random student drug testing procedures. Research was conducted in phase two through (1) interviews with the drug testing coordinator in each district, (2) by observing the drug testing program, and (3) shadowing the drug testing coordinator. Following the first two phases of data collection, an analysis of random drug testing policies and practices was conducted and compared to the conceptual framework.

### **Phase One Summary**

Phase one of the study revealed that four public school districts in Virginia implement random student drug testing and an additional school district has written policies for random student drug testing but has not implemented the program at this time. Additional information gained in the initial email inquiry displayed that twenty-three superintendents in Virginia indicated that their school district had policies regarding drug testing. Sixteen of those policies were examined including the five policies for random drug testing.

The written policies for random student drug testing revealed common threads and distinct differences. The written rationales varied from the school districts and ranged between surveys demonstrating that drugs were a community problem that needed to be addressed, to drug testing deterring adolescent drug use, to protecting students' health. The written policies varied regarding which substances were tested because two school districts failed to enumerate them in the written policy; however, in practice the school districts tested for similar substances.

The written policies revealed that student athletes and students in extracurricular activities were targeted in the written policies. In addition, the written policies stated that five to ten percent of the targeted population would be randomly selected for drug testing at various times. Also, one of the school districts required that an entire team would be randomly selected each week, until all team units had been tested.

Overall, written collection protocols and confidentiality procedures were general and varied among school districts. However, each of the school districts similarly addressed consequences in their written policies. The consequences in all cases were progressive with each positive result on a drug test requiring the student to participate in an intervention protocol.

### **Phase Two Summary**

Phase two of the study examined three school districts in Virginia that have implemented random drug testing programs. The coordinator of drug testing in each school district was interviewed and shadowed, and the drug testing program was observed. The descriptive data revealed the current policies and patterns of practice in Virginia public schools.

The random drug testing program in School District A was instituted as a preventive measure to protect students' health and to prevent drug abuse; it is viewed as an "innovative and cutting edge" program by school personnel. The athletic director was responsible for implementing the drug testing programs to student athletes in grades eight through twelve. The school division's privacy and confidentiality practices complied with current U.S. Supreme Court standards. However, School District A's policy did not always align with actual practice. While the substances were not listed in the consent form or the athletic policy manual, the testing program in district A tested for marijuana, opiates, PCP, amphetamines, and barbiturates. At the present time administrators in School District A do not have a method of monitoring the program, other than anecdotal evidence and the fact the drug testing program has not had a positive test in three years. The annual cost of the drug testing program is over \$30,000.

The rationale for a random drug testing program in School District B depended on results of a survey conducted by a local college which was administered to middle school and high school students, parents, and teachers. The school board in School District B believed the results of the survey demonstrated not only a drug problem within the schools, but also that drug use among students participating in extra-curricular activities was prevalent. The board determined that drug use by students in extra-curricular activities had a negative impact on the entire school; therefore, a pledge program which included random drug testing was started to deter and prevent drug use.

School District B's random drug testing program targets students grades eight through twelve in any VHSL-sanctioned extra-curricular activity. School District B's drug testing coordinator completed random drug tests for the following substances:

barbiturates, benzodiazepines, cocaine, opiates, alcohol, THC (marijuana), and/or creatinine. The school district was the only one of three observed that did not employ independent lab personnel to conduct the actual urinalysis. Drug testing, including selection of urine samples and random student selection, was conducted by the school districts attendance coordinator with assistance from the special education coordinator. The attendance coordinator, who operated from the school districts central office, coordinated the drug testing program. Primarily, School District B's policies and practices aligned with current court standards. However, students were allowed to participate in activities, such as athletic practices, prior to having the parental consent form signed. School District B administrators completed a report and evaluation which included a survey of students, parents, and extra-curricular activity sponsors to monitor the program. Relying on the results of the survey, administrators concluded that the groups surveyed believed the program was worthwhile and the program served to deter drug use. The annual cost of the program was \$3,416; but this cost did not include the cost of school district personnel and School District B's drug testing program did not use independent lab technicians to conduct the collection process.

In 1990, School District C became the first district in Virginia to implement a mandatory and random drug testing program. Their program targets high school student-athletes in grades nine through twelve in an effort to assure the health and welfare of student athletes while they are participating in a sports program. The school district's drug testing program tests for alcohol, marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). In addition, the policy states steroid use is tested and that, if reasonable suspicion exists that a student athlete is using steroids,

then that student will be required to undergo a drug test. However, the interview and observation revealed that drug testing based on reasonable suspicion rarely, if ever, took place. The implementation of the drug testing program in School District C is carried out by the director of instructional improvement who operates from the district's central office.

School District C's policies and practices were very thorough and aligned with current Court standards. The actual drug testing was performed by five adults including the drug testing coordinator, the athletic director, the athletic department secretary, and two independent lab technicians. A unique aspect of district C's drug testing program included the random testing of entire teams in addition to the weekly random selection of five percent of the student-athletes. In essence, this practice guarantees that each student athlete in the school district will be tested one time, and many student athletes will be tested on two occasions. As a way of monitoring the program, School District C administrators compare annual data including the cost of the program (\$43,172 in 2003-2004), the number of students tested, the number of positive tests, and time missed from class.

### **Analysis of Random Drug Testing Policy to Practice Summary**

The random drug testing programs conducted in Virginia fall under the Fourth Amendment to the United States Constitution. Virginia state statutes allow local school districts discretion in implementing random student drug testing programs. The four Virginia public school districts implementing random drug testing programs comply with the landmark *Vernonia* and *Pottawatomie* decisions in regard to the rationale for the program, the selection of participants in the program, and the nature and scope of the

search. The school districts in Virginia implementing a random drug testing program maintain the rationale that the program prevents or deters student drug use, and that the program promotes safety.

There are several areas where practice and policy do not align with suggested guidelines of the Virginia Board of Education. The guidelines address: purpose and intent, definitions, relationship to existing policies, consent to test, random selection procedures, collection protocol, confidentiality, consequences, intervention and appeal.<sup>420</sup> The policies and practices of the school districts implementing random drug testing in Virginia are based on deterring drug use, preventing drug use, and promoting safety. The school districts in Virginia clearly articulate the student groups being tested as either student-athletes or students in extra-curricular activities.

There are several areas where the Virginia Board of Education suggested guidelines do not align with practice and policy. The guidelines suggest that drug testing policies should supplement and complement other local policies, rules, and regulations; however, none of the random drug testing policies examined do so. While all school districts with random drug testing have consent documents, some of the consent forms lack the detail suggested by the Board of Education such as stating that participating in the activities covered is a privilege, and that the students may be tested on the grounds of reasonable suspicion. In addition, none of the policies clearly define how random selection occurs as suggested by the Board of Education.

The collection protocol as suggested by the Board of Education guidelines must be specific in describing procedures for selecting and handling samples and need to maintain a minimally intrusive environment. The policies of the four districts with drug

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<sup>420</sup> Supra. note 237.

testing do address proper collection protocol, and observations and interviews displayed that the school districts ensured privacy in collection procedures. As suggested by the Board of Education, consequences and intervention were addressed in all policies. Consequences in each school district are progressive, with more consequences each positive test and intervention, though typically not detailed in the policy, is required upon a positive drug test. Further, all the school districts' drug testing programs, have written procedures for an appeal of a positive drug test.

The categories of those students tested and the substances tested for in random drug testing in Virginia public schools is similar from school district to school district. Students in extra-curricular activities and student athletes in grades eight through twelve are the categories of student groups tested in Virginia public schools. The following substances are tested in the random drug testing programs in Virginia public schools: marijuana (THC), opiates, amphetamines, barbiturates, benzodiazepines, cocaine, opiates, alcohol, creatinine, phencyclidine (PCP), and tricyclic antidepressants. In addition, two of the school districts that have random drug testing programs state in their policy that drug testing for steroids can be used on the grounds of reasonable suspicion.

There is not a consistent monitoring method among the school districts implementing random drug testing in Virginia. Monitoring the drug testing programs include: examining the program costs, conducting surveys to measure effectiveness of the program, examining the number of students tested, examining the number of positive tests, examining the number of test dates, examining the time missed from class due to testing, and anecdotal evidence.

Different school authorities in each district are responsible for ensuring the implementation of the random drug testing programs. All of the personnel responsible for implementing the random drug testing programs have multiple job responsibilities aside from the drug testing programs. In two of the school districts the athletic director is responsible for implementing the drug testing program. In the school districts that have more than one school that is subject to testing, a member of the central office staff implements the programs.

The procedures of implementing the program vary in the school districts observed. Independent drug testers or lab technicians are used to conduct the actual drug test collection in two of the school districts. Random selection of students was different in each district. One school district's drug testing program utilized the drug testing company to conduct the random selection, another district's drug testing coordinator used a simple computer program, and the drug testing coordinator in the remaining district used a jar to draw numbers which were matched to numbers listed on a VHSL eligibility list.

## CHAPTER V

### CONCLUSIONS

The purposes of this chapter are to present a summary of the study, concluding statements, and implications for future consideration. The chapter is divided into four sections. The first section is an overview of the context and purpose of the study, a brief review of the literature, and a summary of the research methodology and data analysis. Implications, concluding statements, and observations are presented in the second section. The last two sections provide suggestions for future research and final reactions from what the author has learned from conducting this study.

#### Overview of the Study

The perceptions by the public that adolescent drug use is not only a problem in our society, but also that the problem must be addressed in public schools has caused public school authorities to explore various methods to address teenage drug use. Random drug testing is one of the methods school officials have used to address this issue. Further, recent Supreme Court decisions have allowed random drug testing to expand from student-athletes to students in extra-curricular activities, and, thus given wider and more accepted permission for this practice.

Little research exists, however, that demonstrates that schools are the preferred location for drug use. In fact, research indicates evidence that locations other than schools are the primary location for adolescent drug use. In spite of these observations, there is a public perception that adolescent drug use is a problem that must be

addressed in the public schools and further studies indicate that there is more public support for drug testing than opposition to it.<sup>421</sup>

The Supreme Court expanded on the *Vernonia*<sup>422</sup> decision, which allowed for the random drug testing of student athletes in public schools, in its recent *Pottawatomie*<sup>423</sup> decision which allowed for the expansion of random drug testing of students in extracurricular activities. These decisions have opened the door to the possibility that more student groups may legally be drug tested in public schools. Despite the possible expansion of the number of students and the number of student groups being tested in school, there is no clear evidence that drug testing programs effectively deter student drug use.

The purpose of this study was twofold. First, the study determined which Virginia public school districts have articulated policies on random drug testing of students. Equally important to that determination, the study analyzed those school districts policies' and practices to determine if they align with U.S. Supreme Court standards and state statutes.

Secondly, the purpose was to ascertain the patterns of practice in the Virginia public school districts that presently conduct student drug testing in an effort to identify current student drug testing procedures. Within those districts that have instituted student drug testing this study aimed to identify which student groups are being tested and for which drugs they are testing. In addition, the study focused on current patterns of practice in the Virginia school districts that have student drug testing. Patterns of practice that were examined included how school districts monitor the testing program

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<sup>421</sup> Supra. note 52.

<sup>422</sup> Supra. note 44.

<sup>423</sup> Supra. note 4.

and which student groups are being tested. This study assists to fill a knowledge void regarding the relationship between current drug testing practices and case law.

The primary guiding question for this study was, What are the current policies and patterns of practice in random student drug testing in Virginia's 132 public school districts? Data were collected to answer the following specific questions:

1. How many school districts in Virginia have instituted random student drug testing?
2. How do the policies and procedures comport with the standards for legal random drug testing as set forth by the U.S. Supreme Court?
3. Within those school districts that have established student drug testing policies, which categories of students have been subjected to random testing and for what kinds of substances?
4. What types of data do these districts collect to monitor the drug testing program?
5. Which school authorities are responsible for ensuring the implementation of random drug testing policies, and what procedures do they follow?

### **Review of the Literature**

The literature review examined students' right to privacy in public schools, explored the Fourth Amendment and student searches in the public school setting, addressed random student drug testing in public schools, described the legal framework associated with drug testing in public schools, and examined drug testing policies and practices through existing research.

The Fourth Amendment provides the basis for an individual's right to privacy and for protection against illegal search and seizure by law enforcement. The Fourth Amendment applies to students' right to privacy within the various forms of searches, including random searches and individualized suspicion searches that exist in public schools. However, Fourth Amendment applications to student rights in public schools are tempered by the unique circumstances that exist in that setting. School officials have not been subject to the constraints of probable cause and search warrants as spelled out by the Fourth Amendment. Typically, searches by administrators in public schools have been evaluated under the *in loco parentis* doctrine.<sup>424</sup>

The landmark *New Jersey v. T.L.O.*<sup>425</sup> marked a shift in the use of *in loco parentis* as the sole doctrine governing student discipline in public schools. The Court acknowledged that a student's constitutional rights must be protected, but the Court concluded that the Fourth Amendment does not protect all expectations to student privacy and protects only those that are reasonable and legitimate.<sup>426</sup> The justices decided that reasonableness in student searches is determined by reviewing the inception, intrusiveness, and context of the search.

Group searches in public schools are typically random searches that do not require individualized suspicion. Random drug tests fall under the umbrella of group searches and have been supported by Court decision in *Vernonia* and *Pottawatomie*. Predominately, random drug testing in public schools occurs with certain groups such as student athletes, students involved in extra-curricular activities, or school employees. Court decisions have been used to further shape public school drug testing policies.

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<sup>424</sup> Supra. note 75.

<sup>425</sup> Supra. note 81.

<sup>426</sup> Id.

In *Vernonia*, the Court found the Vernonia school district's policy of random suspicionless drug testing of interscholastic athletic programs to be constitutional. In addition, the Court developed a four-prong test to be used as a guide to determine whether or not the government could legally search without a warrant.<sup>427</sup> The four prongs include the nature of the privacy interest, the character of the intrusion, nature of the governmental concern, and the immediacy of the safety concern.

In the *Pottawatomie* decision, the Court went a step further by allowing the school district to require all students in extracurricular activities to submit to drug testing. The *Pottawatomie* case signified a major change in the Court's stance in *Vernonia* because Pottawatomie school officials failed to demonstrate that drug use was a problem in their school district. The justices took the opportunity to assert that a drug problem in public schools was not essential to instituting a random drug testing program, and that the drug testing problem nationwide was justification enough.<sup>428</sup>

Evidence from lower court decisions indicate that *Pottawatomie* has further opened the door for public schools to drug test more student groups with less justification. For example, in *Joye v. Hunterdon Central High School Board of Education*<sup>429</sup> the Supreme Court of New Jersey declared in 2003 that drug testing students with parking permits was constitutional. Following *Pottawatomie*, the Oregon Court of Appeals has also addressed student drug testing in *Weber v. Oakridge School District 76*.<sup>430</sup> The *Weber* case is significant because the court held the line on further

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<sup>427</sup> Supra. note 44.

<sup>428</sup> Supra. note 4.

<sup>429</sup> Supra. note 192.

<sup>430</sup> Supra. note 207.

privacy infringement by not allowing schools access to prescription drug records prior to drug testing.

Virginia state statutes clearly indicate that local school boards are not required to have drug testing programs, but will allow drug testing if state board policies are followed. The Virginia Board of Education complied with state statutes by developing suggested guidelines for those public schools which are instituting drug testing. The guidelines suggest that local procedures should address consent, random selection procedures, collection protocol, confidentiality, consequences, intervention, and appeal.

Despite the fact that adolescent drug use is less today than in the 1970's and 1980's, research studies indicated an upward trend in the amount of drug testing that occurs in public schools. Further, students' rights have diminished with recent Court decisions which have allowed for more intrusive searches into more student groups.

### **Methodology**

A conceptual framework was constructed to determine whether existing random drug testing policies and practices in Virginia public schools are legally sound. The framework encompassed the parameters school districts need to address in instituting student drug testing. Framework parameters included Constitutional authority, statutory authority, rationale for the search, selection of search participants, nature and scope of the search, and procedural safeguards suggested by the Virginia Board of Education.

Descriptive research methodology was the basis for this study and data were collected in two phases. In the first phase of the research superintendents from each of the 132 school districts in Virginia were requested to respond to an initial email inquiry to determine which public school districts have written random drug testing policies,

which have implemented these policies, and who is primarily responsible for the oversight of the district's drug testing program. In addition, student handbooks from Virginia public schools were collected to analyze the districts' written policies regarding student drug testing.

The second phase was qualitative in nature and examined three school districts in Virginia that implement random student drug testing programs. Rich descriptions of the drug testing programs were gained through interviewing the person responsible for implementing drug testing in the school districts (drug testing coordinator), by observing the drug testing program, and by shadowing the drug testing coordinator. A semi-structured interview design method was used. The observations and shadowing allowed the researcher to have firsthand knowledge of the details of a drug testing program.

### **Data Analysis**

Results from the email inquiry in phase one indicated that four school districts in Virginia implement random student drug testing. In addition, a fifth school adopted random drug testing policies in 2004, but has not implemented the program at this time. The written policies for the five school districts with written random drug testing policies varied in each district. All the policies included a written rationale which generally explained the reason for the drug testing programs.

The written policies vary regarding which substances are being tested in each school district. The range of students subject to random drug testing in the written policies include students in eighth through twelfth grade that participate in athletics or are engaged in Virginia High School League extracurricular activities. The written collection protocols in each school district were vague and differed in each locality. In

addition, the written policies regarding confidentiality differed in each district; however, each districts' policy addressed confidentiality. Intervention for positive tests was briefly addressed in the student handbooks, with the exception of one school district which detailed its intervention plan. Finally, in their written policies, all schools addressed the appeals process for positive results by making the appeal the responsibility of the student or parents.

Phase two of the research consisted of examining the three school districts in Virginia that have implemented random drug testing. Patterns of practice were ascertained through the case study process. A common element in each school district was strong community support for the random drug testing program. Community support was demonstrated through various avenues including surveys, lack of challenges to the drug testing programs, and anecdotal evidence.

Other patterns of practice common to the school districts included lack of positive drug tests, urinalysis being the sole method of testing, student athletes or students in extracurricular activities in grades eight through twelve as targets of the programs, progressive consequences existing in each district for positive tests, and few or no appeals for positive drug tests. In addition, each school district's policy allowed for drug testing on the basis of reasonable suspicion; however, none of the coordinators at the three school districts cited situations where drug testing for reasonable suspicion occurred.

Data collected from phases one and two of the study were compared to the conceptual framework in order to analyze how random drug testing policies and procedures comport with the standards for legal random drug testing set forth by the

U.S. Supreme Court. The school districts in Virginia implementing random drug testing comply with Court standards because they address the rationale for the random search, the selection of participants in the search, and the nature and scope of the search in their written policies.

In 2004, the Virginia Board of Education adopted guidelines concerning drug testing in public schools. The guidelines suggest that those school districts implementing student drug testing programs should address the purpose and intent of the program, definitions, the program's relationship to existing policies, consent to test, random selection procedures, collection protocol, confidentiality, consequences, intervention, and appeal.

Each of the school districts which implement random drug testing addresses its purpose and intent by basing the testing program on deterring and preventing drug use, and promoting safety. The written policies of the school districts all clearly define the student groups being tested; however, two of the school districts failed to clearly define the substances which were being tested in their written policies or in their consent forms. In addition, the random drug testing policies generally did not supplement or complement other local policies, rules, and regulations.

Each of the school districts had consent forms for the drug testing programs, but in general, the consent forms did not address all the suggestions made by the Virginia Board of Education. The Virginia school districts implementing random drug testing complied with the Board of Education's suggested guidelines for sample collection. In all instances, the actual drug test was private, and every effort was made to guarantee a

collection process that was minimally intrusive. In addition, consequences for positive drug tests and the appeal process were clearly articulated in all the district's policies.

The Board of Education's suggested guidelines state that intervention resources should be addressed and made available in the result of a positive drug test. Each of the school districts addresses intervention in their policies; however, in practice, it appeared that school district personnel were less knowledgeable of the intervention process than of any other area of their drug testing program.

Student athletes and students participating in extracurricular activities are the groups of students subjected to random drug testing in the public school districts that implement testing programs in Virginia. These districts target students in grades eight through twelve and include middle school students. Only one school district limits drug testing to high school students in grades nine through twelve. The substances which are tested in the random drug testing programs in Virginia public schools include marijuana (THC), opiates, amphetamines, barbiturates, benzodiazepines, cocaine, opiates, alcohol, creatinine, phencyclidine (PCP), and tricyclic antidepressants. In addition, two of these school districts state in their policies that drug testing for steroids can be employed if based on the grounds of reasonable suspicion.

There was not a consistent method of monitoring the drug testing programs in the three districts that were part of the case studies. In fact, one school district used anecdotal methods as a primary monitoring device. Methods of monitoring the drug testing programs in the other districts included reporting the monetary cost of the program, number of positive results, the number of students tested, and the amount of

time missed from class due to drug testing. In addition, one school district used a detailed survey in attempt to measure the effect of the drug testing program.

There is a range of personnel responsible for implementing the random drug testing programs in Virginia public schools. Two school districts use the high schools' athletic director to implement the program, while two other school districts use personnel from the district's central office to implement the testing program.

The procedures for implementing the random drug testing programs vary in each school district. Two school districts used independent drug testers or lab technicians to conduct the actual drug tests. In all cases, the testing environment was more private than settings in public restrooms. Finally, the random selection process was completed differently at each school district ranging from the simple selection from a jar, to a computer program selecting, to the use of an independent drug testing company selecting the participants.

#### Concluding Statements, Implications, and Observations

From this study, the following concluding statements can be made:

1. Virginia public school district random drug testing programs comply with current U.S. Supreme Court standards and Virginia statutes. The expansion of drug testing into new student groups has not occurred in Virginia.

Data gathered from the written policies and the case studies indicate that the student groups subject to random drug testing in Virginia are students in extracurricular activities and student athletes. The grade levels of students subject to testing range from eighth through twelfth grade. These student groups comply with current Court standards established in *Vernonia* and *Pottawatomie*.

2. There is not a consistent method of monitoring the random drug testing programs in Virginia public schools.

The interview and observations in the case studies revealed that there is a range of methods used to monitor the random drug testing programs in Virginia public schools. The range included monitoring through solely anecdotal methods in one district, monitoring through results from a survey in another district, and monitoring the number of positive tests, the number of drug tests administered, and tracking the amount of time missed from class due to drug testing.

3. Random drug testing protocols are different at each school; however, the protocols comply not only with current U.S. Supreme Court standards, but also with suggested guidelines of the Virginia Board of Education.

Information gained through the case studies demonstrate that school districts in Virginia implementing random drug testing comply with U.S. Supreme Court standards because they address the rationale for the random search, the selection of participants in the search, and the nature and scope of the search in their written policies. Further, the case studies reveal that while collection protocols varied in each school district implementing random drug testing the school districts generally comply with the Virginia Board of Education suggested guidelines for random drug testing programs.

4. There is evidence that those school districts which implement random drug testing programs have strong community support for the program.

The case studies revealed community support for the drug testing programs through various avenues including survey results, lack of challenges to the drug testing programs, and anecdotal evidence. In the three school districts that were observed as

part of the case study, the drug testing coordinators said that there had been little resistance to the programs and that few parents had challenged the program by not signing the proper consent document.

5. In the three school districts examined there are few positive drug tests.

Information gained through the case studies, and in reports by the school districts to their governing boards indicated that less than one percent of the drug tests return positive results. In fact, one school district had not had positive test in three years, and the other two school districts had less than .4 percent of drug tests reveal positive results.

### **Study Implications**

The results of the study imply that school systems need to develop a monitoring system to measure the effectiveness of the random drug testing programs. The cost of the programs, the time spent by school personnel to administer the programs, and those policy rationales which lean heavily toward safety would be better supported if the school districts demonstrated each program's effectiveness. School systems considering using random drug testing as a tool to deter or prevent drug use could employ the knowledge gained from a monitoring program to determine whether drug testing is a method they want to explore.

Perhaps the strongest implication of the study is that random drug testing is related closely to public perception. The research indicated that a major factor for school districts implementing random drug testing programs was to demonstrate that they were doing everything in their power to deter adolescents from using illicit drugs. Due to the lack of positive drug tests, lack of challenges to the drug testing program,

lack of appeals to positive tests, and the minimal amount of monitoring being done within the programs, it is apparent that the drug testing programs often mainly serve the function of the school district's officials publicly displaying to the communities they serve that they are fighting the adolescent drug problem.

### **Observations Beyond the Research Questions**

The research experience provided several lasting impressions. First, it was apparent in the interview and observation segment that the school district personnel completing random drug testing were well intentioned and that drug testing was a means of trying to demonstrate that they were attempting, within legal boundaries, to reduce the perceived teenage drug problem in their school district. These personnel often commented on the fact that drug testing gives students a reason not to use drugs.

A second lasting impression was the fact that educators with advanced degrees, and much to offer to the educational process were spending much of their time collecting urine. Third, students being tested appeared to be sensitized to the drug testing process. The students never appeared nervous about the search and appeared to accept drug testing as a normal part of the school day. Finally, while each of the school districts had community support and the rationale for drug testing was to deter or prevent drug use, the school districts did little to demonstrate that random drug testing programs were effective.

These lasting impressions leave the author with mixed emotions. Even though I understand the desire to use a wide range of methods to prevent the dangers of adolescent drug use, I am saddened not only by the general acceptance of instructional time lost for drug testing but also by the fact that students, school personnel, and

communities condone intrusive searches for drug use within in the schools, even though that use typically does not occur at school.

### Suggestions for Future Research

In the future, several approaches may be taken to add to the understanding of policies and patterns of practice in random drug testing in public schools.

1. Will random drug testing programs expand into more student groups and which groups will those be?

Recent Court decisions have opened the door for more student groups to be subjected to random drug testing. Therefore, it stands to reason that more school districts will apply random drug testing to a wider range of student groups. Studies in the future as to the policies and patterns of practice of drug testing into new student groups may be appropriate.

2. What are the reasons for the low number of positive drug tests in the drug testing programs in Virginia public schools, and are the drug testing programs cost effective?

This study examined patterns of practice and demonstrated that very few students test positive for illegal substances in the drug testing programs in Virginia public schools. One aspect this study did not address was the possible reasons for this. It would be interesting to determine the reasons for the low number of positive tests; such as, the possibility that the testing programs are targeting student groups that are less likely to use drugs. Or, is it possible that actual student drug use and the public's perception of it are not truly accurate?

3. How do random drug testing policies vary from state to state, and do they comply with current Court standards?

Because many school districts across the country institute random student drug testing, a multi-state study would provide a wider analysis of random drug testing policies. Comparative data on various random drug testing policies from across the nation would allow for a more complete study of random drug testing patterns in public schools across the nation.

### Final Reactions

Throughout this research process I gained the most valuable information from the observations, interviews, and shadowing conducted as part of the case studies. During the case study portion, I observed three schools from various and diverse regions of the state. These observations provided me with a first hand account of drug testing programs. It allowed the author to see the actual drug testing process at work and to gain an appreciation for the tremendous amount of time, effort, and energy that it takes to implement a random drug testing program. Through the process of the case studies I learned how to implement a random drug testing program that complies with Court standards.

In hindsight, there were certain elements to the research that I felt I would conduct differently if I were to replicate this study. First, since random drug testing is so connected to the perceptions of the community it would have been interesting to interview community members or school board members (as the school board represents the community) to determine how the public perceives the program. Further, it would be interesting to see if the community's rationale for the random drug testing

programs is similar to those in the written policies. Second, after observing that students were sensitized to the random drug testing programs, I would have been interested in finding out their impressions of random drug testing.

From my perspective, two particular items stand out in the research. First, random drug testing programs in public schools are being conducted within legal limits. They are also well intentioned, established and administered by personnel who hold the conviction that they are doing everything in their power to prevent and deter teenage drug use. Finally, from my perspective, drug testing is much less about deterring and preventing student drug use, and much more about school systems demonstrating to their communities that they are fighting against adolescent drug use.

In addition, the lack of positive drug tests certainly raises questions about random drug testing in public schools. First, considering that most studies indicate that at least 30 percent of all children have used marijuana or illicit drugs by their eighteenth birthday, why then are there so few positive tests in the Virginia Public school districts which institute drug testing? Is it possible that number of children that are perceived to use drugs and the number of children that actually do use drugs are actually very different? Second, is it possible that the laboratory drug analysis or the drug tests themselves are not truly accurate? Third, could it be in the best interest of the school districts to have few positive drug tests? Fourth, is it possible that the drug testing programs are targeting the student groups least likely to use drugs? Finally, have the drug testing programs served as a deterrent to the point that well less than one percent of the groups targeted use drugs? These questions are especially perplexing

considering the time, money, and personnel that the school districts have invested in random drug testing.

That this study is worthwhile from a personal perspective is indisputable. I have been enlightened, broadened and encouraged by my observations and conclusions. I hope that these efforts can serve further by offering a basis for future research. As I see it, our challenge will be twofold. As educators, we need to employ every means available and necessary to ensure the health and safety of those whom we are entrusted, while simultaneously upholding the dignity and privacy of rights of each individual.

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## Appendix A

Date: July 26, 2004

To: Dr. Stacey Edmonson

From: Mark Y. Lineburg  
Assistant Principal  
Radford High School  
Doctoral Candidate

Re: Permission to use chart

*Background*

I am currently a doctoral student at Virginia Tech in Educational Leadership and Policy Studies. The title of the dissertation study I am completing is *An Analysis of Random Student Drug Testing Policies and Patterns of Practice in Virginia Public Schools*. A portion of the literature review examines studies pertaining to random drug testing in public schools.

*Request*

As the author of the article *The Balance between Student Drug Testing and Fourth Amendment Rights in Response to Board of Education v. Earls* I would like your permission to copy Table II titled "Student populations included in drug testing polices" on page 269 so that I can illustrate current research regarding drug testing trends in public schools. The reproduction will faithfully copy the work in its entirety and will include the copyright notice.

*Citation*

Edmonson, S. L. (2002). The Balance Between Student Drug Testing and Fourth Amendment Rights in Response to Board of Education v. Earls. *Education and the Law* 14, 265-274.

*Permission*

If you agree, please sign here \_\_\_\_\_  
and return this letter to me in the enclosed stamp addressed envelope.

*Questions?*

If you have questions, concerns, or if you would like additional information, please contact Jennifer Sughrue, Ph.D. faculty advisor and dissertation chair at [jsugh@vt.edu](mailto:jsugh@vt.edu)

or (540) 231-9707. You may also contact Mark Lineburg at [mlinburg@rcps.org](mailto:mlinburg@rcps.org) or (540) 731-3649.

## Appendix B

Date: July 26, 2004

To: George Jay Joseph  
*Journal of Law & Education*

From: Mark Y. Lineburg  
Assistant Principal  
Radford High School  
Doctoral Candidate

Re: Permission to use chart

### *Background*

I am currently a doctoral student at Virginia Tech in Educational Leadership and Policy Studies. The title of the dissertation study I am completing is *An Analysis of Random Student Drug Testing Policies and Patterns of Practice in Virginia Public Schools*. A portion of the literature review examines studies pertaining to random drug testing in public schools.

### *Request*

As the publisher of the article *Urineschool: A Study of the Impact of the Earls Decision on High School Random Drug Testing Policies* I would like your permission to copy Chart B titled "Ranking of Importance of Factors that Affect Implementation of Random Drug Testing at High Schools" on page 310 so that I can illustrate current research regarding drug testing trends in public schools. The reproduction will faithfully copy the work in its entirety and will include the copyright notice.

### *Citation*

Conlon, C. (2003). *Urineschool: A Study of the Impact of the Earls Decision on High School Random Drug Testing Policies*. *Journal of Law and Education*, 32, 297-319.

### *Permission*

If you agree, please sign here \_\_\_\_\_  
and return this letter to me in the enclosed stamp addressed envelope.

### *Questions?*

If you have questions, concerns, or if you would like additional information, please contact Jennifer Sughrue, Ph.D. faculty advisor and dissertation chair at [jsugh@vt.edu](mailto:jsugh@vt.edu)

or (540) 231-9707. You may also contact Mark Lineburg at [mlinburg@rcps.org](mailto:mlinburg@rcps.org) or (540) 731-3649.

## Appendix C

Date

Superintendent's Name  
School Division  
Address

Dear \_\_\_\_\_,

I am currently a doctoral student at Virginia Tech in Educational Leadership and Policy Studies. Under the guidance of Drs. Jennifer Sughrue and David Alexander, I am embarking on my dissertation research and am requesting your assistance. My study is focusing on the extent to which Virginia public school divisions have and are implementing random drug testing policies. It is primarily a policy study, although I am interested in visiting schools in which random drug testing exists and speaking with those who are responsible for the program in order to understand the complexities of implementing such policies.

In order to initiate this study, I need your brief input. During the week of August 15, 2004, I will email to you a short inquiry asking 3 questions. The inquiry should take under 5 minutes to answer. The email will arrive under my name, Mark Lineburg, and my email address, [mlineburg@rcps.org](mailto:mlineburg@rcps.org). I tell you this so that you will recognize the email for what it is and not as spam.

I would greatly appreciate it if you would take the few minutes necessary to respond to the questions and return the email to me at your earliest convenience. If you are interested in the results of this study, please advise. I would be happy to share them once I have defended my dissertation.

Sincerely,

Mark Y. Lineburg  
Assistant Principal  
Radford High School  
Doctoral Candidate

Jennifer Sughrue, Ph.D.  
Assistant Professor  
Doctoral Advisor

## Appendix D

## E-mail inquiry

As mentioned in a letter to you last week, this e-mail inquiry is part of my dissertation study. My study is focusing on the extent to which Virginia public school divisions have and are implementing random drug testing policies. In order to initiate this study, I need your brief input in answering the following three questions.

Responding to this inquiry should take no longer than five minutes. Simply hit the reply button, answer the questions, and send to me.

Does your school district have a random student drug testing program?

\_\_\_\_\_Yes \_\_\_\_\_No

Does your school district have policies that address student drug testing?

\_\_\_\_\_Yes \_\_\_\_\_No

Please provide contact information for the student drug testing coordinator for your school district.

Name: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Again, thank you for taking the time to participate in this inquiry.

Sincerely,

Mark Y. Lineburg  
Assistant Principal  
Radford High School  
Doctoral Candidate

Jennifer Sughrue, Ph.D.  
Associate Professor  
Doctoral Advisor  
Virginia Tech

## Appendix E

Date

Drug Testing Coordinator  
Address

Dear \_\_\_\_\_,

As you are aware from previous telephone conversations, I am interested in understanding the complexities of implementing random student drug testing policies. Your school district has been identified as one that has such policies and you have been identified as the person who is responsible for overseeing the program. For these reasons, I would like to request a time to meet with you.

The purpose of my visit would be to interview you regarding your experiences with implementing random drug testing. I would like to request 30-45 minutes for the initial interview. I would be happy to provide you with the primary questions prior to the scheduled interview, although I may have follow up questions that come up during our meeting.

I will be contacting you week of August 30, 2004 to see if you are willing to participate in the interview. Participation is completely voluntary and you may withdraw at any time. If you choose to participate, I will bring a consent letter with me to the interview and ask you to read and sign it.

I can not emphasize enough how crucial your input is to this study. Let me assure you that your participation will be kept confidential.

If you have any questions please e-mail me at [mlineburg@rcps.org](mailto:mlineburg@rcps.org). Thank you for your time and cooperation.

Sincerely,

Mark Y. Lineburg  
Assistant Principal  
Radford High School  
Doctoral Candidate

Jennifer Sughrue, Ph.D.  
Associate Professor  
Doctoral Advisor  
Virginia Tech

## Appendix F

Participant's Name:

Address:

Phone:

Thank you for agreeing to participate in this study, entitled "An Analysis of Random Student Drug Testing Policies and Practices in Virginia Public Schools", which will analyze the policies and patterns of practice of random student drug testing in Virginia public schools. The interview, observation, and shadowing will take place from (date) to (date). This form outlines the purpose of the study and provides a description of your involvement and rights associated with participation in human subjects research.

The purposes of this study are to:

1. Analyze Virginia school districts' policies on random drug testing policies and practices to see if they align with U.S. Supreme Court standards and state statutes.
2. Ascertain the patterns of practice in Virginia public school districts that currently conduct student drug testing to identify current drug testing procedures.

Interviewing, observing, and shadowing you will be the primary methods used to collect data for this study. Data obtained in your school district, and data gained from two other school districts, will be used by the researcher to write a case study as part of a dissertation prepared by and presented to Virginia Polytechnic and State University as component of his graduate program. A copy of the dissertation or the results of the study will be made available upon request.

The following will be done to maintain the anonymity and confidentiality of study participants:

1. Your real name or your school districts name will not be used at any point in the written report. You and your school district will be given pseudonyms that will be used in all verbal and written records and in the final document.
2. If you grant permission for audio taping, no audio tapes will be used for any purpose other than to complete this study. At your discretion, these tapes will be either destroyed or returned to you.
3. Your participation in this research is voluntary; you have the right to withdrawal at any point of the study, for any reason, and without any prejudices, and the information collected and records and reports will be turned over to you.
4. Upon request, you will receive a copy of the research prior to it being handed in, so that you have the opportunity to suggest changes to the researcher, if necessary.

Do you grant permission to be quoted directly?

Yes \_\_\_\_\_ No \_\_\_\_\_

Do you grant permission to be audio taped?

Yes \_\_\_\_\_ No \_\_\_\_\_

I agree to the terms:

Respondent \_\_\_\_\_ Date: \_\_\_\_\_

Study participants are encouraged to ask any questions at any time about the nature of the study and the methods used. Participants' suggestions and concerns are important to the researchers. If you have any questions or concerns related to the study, or wish to report problems regarding the conduct of the study, you may contact the following individuals:

Researcher: Mark Y. Lineburg  
211 Third Street  
Radford, Va. 24141  
(540) 731-5115

Faculty Advisor: Jennifer Sughrue, PhD  
[jsugh@vt.edu](mailto:jsugh@vt.edu)  
Assistant Professor  
Educational Leadership and Policy Studies  
Virginia Tech  
213 E. Eggleston Hall (0302)  
Blacksburg, VA 24073  
(540) 231-9707

IRB Chair: David Moore  
[moored@vt.edu](mailto:moored@vt.edu)  
Chair – Institutional Review Board for the Protection of Human  
Subjects  
Virginia Tech  
(540) 231-4991

## Appendix G

## Interview Protocol

Name of Person being Interviewed: \_\_\_\_\_

Title: \_\_\_\_\_

Background information: Description of school (urban, suburban, rural), number of students, how long has the school been using random drug testing program.

1. Describe to me your random drug testing program. (types of substances being tested)

2. Which student groups are subject to random drug testing? Follow up: How often are students tested?

3. Describe the school's testing environment.

4. How does the policy ensure randomness? What has been your experience?



**Potential follow-up questions**

Who is notified when a drug test is positive?

What are the penalties for a positive test?

What are the penalties for a second positive test?

What are the penalties for multiple positive tests?

How does the testing policy provide the students due process rights?

What are the school activities covered in the policies?

Which substances are being tested for?

What type of drug testing is used (hair or urinalysis)? And, what are the specific drug testing procedures?

How are students randomly selected?

How frequently are students tested?

How does the school district monitor the number of positive tests each year?

How does the school district determine if the program is effective in deterring or preventing student drug use?

How does the school district monitor students who have positive drug tests?

How does the school district monitor the impact of drug testing on student participation in activities?

How does the school district measure the impact of drug testing on school safety?

How has drug testing impacted the number of students using drugs in the school?

Where are the drug testing results sent?

## Procedural Safeguards- Additional Interview/Observation Questions

## School A

<b>Privacy</b> Is the school's testing environment private?	
How does the school ensure randomness?	
How does the school ensure parental consent?	
What are the sanctions for lack of parental consent?	
<b>Use of test results</b> Who is notified when a drug test is positive?	
What are the penalties for a positive test?	
What are the penalties for a second positive test?	
What are the penalties for multiple positive tests?	
<b>Articulated Policies</b> How does the testing policy provide the students due process rights?	
What are the school activities covered in the policies?	
Which substances are being tested for?	
What are the specific drug testing procedures?	
How frequently are students tested?	

## Monitoring Drug Testing

## School A

Does the school district monitor the number of positive tests each year?	
Does the school district compare annual data?	
Does the school district compile drug type frequency from the test results? (Which drug is most often used?)	
Does the school have a method to determine if the program is effective in deterring or preventing student drug use?	
Does the school district monitor students who have positive drug tests?	
Does the school district monitor community support for the program?	
Does the school district monitor student support for the program?	
Does the school district monitor the impact of drug testing on student participation in activities?	
Does the school district measure the impact of drug testing on school safety?	
How has drug testing impacted the number of students using drugs in the school?	

## Appendix H

## Decision to Implement Drug Testing

## School A

How did the decision to implement student drug testing take place?

	Code of Virginia School district decision	Code of Virginia Individual School Within the districts Decision	Other (Describe)
Rationale to Conduct Drug Testing			

## Selection of Student Groups

School A

Which student groups are subject to drug testing?

	<i>Vernonia</i> Interscholastic athletics	<i>Pottawatomie</i> Students in Extra-curricular activities	Other Groups (Describe)
Selection of student groups			

## Person Responsible for Implementing Drug Testing

## School A

	Athletic Director	Assistant Principal	Principal	School Nurse	Central Office personnel (specify)	Independent third party (specify)	Other (specify)
Person responsible for drug testing program							

## Appendix I

## Virginia School District Drug Testing Policies

School Division	Description of School District	Description of Student Drug Testing Policy
F	A city school district with one high school. The high school has just over 1,000 students.	Random drug testing for student athletes who return to school from suspension after violating the schools Alcohol and Drug policies. Such as possession, distribution, or being under the influence of a controlled substance on school grounds. The student athlete may choose random drug testing along with a 60 day activity suspension or suspension from athletics for 365 days.
G	City school district located near northern Virginia with one high school. The high school has 1,000 students.	School officials will be proactive in preventing violations of the drug and tobacco policy for student athletes. The drug policy pertains to the unlawful purchase, possession, use, or distribution of controlled substances. Prior to participation the athletes' parents must sign an acknowledgement to indicate their support for the program which includes drug screening on the grounds of reasonable suspicion. Failure to sign the document excludes the student athlete from participation. The policy states that suspected offenders of the drug and tobacco policy maybe required to undergo drug screening as directed by the principal or designee. If they athlete tests positive for drugs the school district has detailed written consequences for first, second, and third offenses. First violation for drugs or alcohol the athlete is suspended for 15 school days from the team. The principal or designee will meet with the parent, athlete, and coach confirm the suspension. The coordinator for Safe and Drug Free Schools will have a screening interview to determine the intervention plan for the student-athlete. The athlete will be subject to random drug testing for the remainder of the season. A second offense to the policy has identical consequences as a first offense with the exception of the suspension being for 20 days. A third offense to the policy and the athlete will be permanently suspended from athletic teams.

H	County with one high school located in the tidewater area. High School has 235 students.	Drug testing can occur where a principal or teacher has reasonable suspicion that the student may be under the influence of drugs or alcohol. The rationale for the search is reasonable suspicion of student being under the influence of alcohol or drugs then drug testing is permissible.
I	County with one high school located in Central Virginia. High School has 589 students.	Drug testing can occur when the school administrator has reasonable suspicion that a student is under the influence of drugs. The rationale for the search is reasonable suspicion of student being under the influence of alcohol or drugs then drug testing is permissible.
J	County located near northern Virginia with the three high schools. Two high schools have a over 1,000 students and the third high school is an alternative school.	The school district does not have a written policy for drug testing. The school district requires testing with a negative result for readmission of any student who is suspended or expelled for substance abuse. The requirement is state in a letter that goes to the student and the parents following and expulsion or suspension hearing. It states a negative drug screen is required within 30 days of the readmission hearing.
K	District located in Tidewater area of Virginia. County has five high schools with each school having over 1,000 students.	Students possessing, selling, distributing any alcoholic beverages in school, on school grounds, to and from school, on the school bus, or any school function, or coming to school or activities after consumption; possessing, or attempting, any illegal or controlled substance, or any action that contributes to the possession of any illegal or controlled substance; possessing, distributing, or inhaling any substance/ product (off-the-shelf, controlled, or illegal) or mind-altering effects; distributing, selling or purchasing any illegal or controlled substance or any action that contributes to the possession of any illegal or controlled substance are expelled by the School Board Review Committee. The School Board Review Committee is a three member panel comprised of members of the School Board. As a condition for re-instatement back into the school district, students must submit to at least 4 random drug screens and drug education. Students must have two (2) consecutive clean screenings one (1) month prior to petitioning the Board to be reinstated. Students are provided an opportunity to attend school in an Alternative Program. Drug

		<p>education is provided at the Alternative site for this population. The drug education and screening is contracted through a private Psychological Associate. A class schedule is provided to the building principal for the education portion and the Associate sets the schedule for the random screenings.</p> <p>The principal will file a CHINS petition when students test positive consistently. No other student groups are randomly drug screened.</p>
L	<p>School district located in Central Virginia with four high schools. One of the four high schools is an alternative school. The high schools have over 875 students in each.</p>	<p>If a student violates the drug policy of the school which states that no student shall possess, use, distribute, or be under the influence of any drug or simulated substance on school grounds or at any school sponsored activity. Also included in the policy is drug paraphernalia. As part of the punishment the student may chose to participate in an approved drug/alcohol education program and an assessment by a qualified counselor could reduce the suspension from 15 to days.</p> <p><b>Note:</b> According to the superintendent the school district may random drug test as part of the discipline consequence in which the student is assigned to an alternative school setting.</p> <p>Random drug testing would fall under the policy above.</p>
M	<p>School district located in tidewater area with one high school. The high school has 285 students.</p>	<p>Policy states that the school district provides a support system for students about whom there is concern for substance abuse. These students may be self or family referred for one-time evaluation conducted by outside agency at the expense of the school district. Referrals are made through guidance counselors.</p> <p>The one time evaluation includes a clinical interview, administration and scoring of a Substance Abuse Screening Inventory, urine drug screening, and treatment recommendation to the students and families.</p> <p>The student or family would be responsible fro the cost of any treatment beyond the evaluation. All</p>

		evaluations are confidential.
N	School district located in Central Virginia with one high school. The high school has 370 students.	Students violating the school districts drug policy shall participate in the prevention and intervention activities. The school board may require any student who violates the policy to undergo evaluation for drug abuse and participate in a drug treatment program recommended by the evaluator and if the student's parent consents.
O	School district located in Northern Virginia with one high school. The high school has 550 students.	Policy states that if a student is caught more than once under the influence of drugs or alcohol at school or school sponsored events, they may be subject to random testing at the expense of the school division.
P	School district located in Northern Virginia with 24 high schools. Each high school has over 1,000 students.	<p>If the student is suspected of being under the influence of alcohol, marijuana, any other controlled substances, including prescription drugs, imitation controlled substances, or drug paraphernalia the principal shall notify the parent and recommend that the parent pursue appropriate intervention. Depending on the suspected level of illegal substance involvement, the principal will refer the student to following activities:</p> <ol style="list-style-type: none"> <li>1. Participation in alcohol and other drug intervention seminar.</li> <li>2. Work with an alcohol and drug youth services school resource specialist.</li> <li>3. Drug testing and evaluation for substance abuse treatment. These services are provided at no cost, or the parent may choose to access service through a private provider.</li> </ol> <p>Policy also states that the principal may immediately require a drug test for substance abuse treatment, depending upon the suspected level of illegal involvement.</p>