



**JUSTICE & PUBLIC SAFETY CABINET  
OFFICE OF DRUG CONTROL POLICY**

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**STUDENT DRUG TESTING:  
A COMPONENT OF KENTUCKY'S  
APPROACH TO YOUTH SUBSTANCE ABUSE  
  
A WHITE PAPER**

APRIL 2006

*Prepared by:*

Office of Drug Control Policy in conjunction with  
The Student Drug Testing Advisory Council

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The Kentucky Office of Drug Control Policy (ODCP) an office of the Justice and Public Safety Cabinet, created a state-wide task force, the Student Drug Testing Advisory Council, to examine issues associated with student drug testing. *STUDENT DRUG TESTING: A COMPONENT OF KENTUCKY'S APPROACH TO YOUTH SUBSTANCE ABUSE, A WHITE PAPER*, was developed at the direction of the council. Contributors include:

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## **EXECUTIVE SUMMARY**

According to the Substance Abuse and Mental Health Service Administration (SAMHSA), students who use drugs, compared to nonusers, are more likely to drop out of school or perform other disruptive behaviors, further unsettling their educational environment. Student drug testing is one more method to help curb illicit drug use among students and help steer those who test positive toward treatment and education. The Office of National Drug Control Policy states that implementing student drug testing can achieve three public health goals:

- It helps deter children from initiating drug use
- It can identify children who have just started using drugs so administrators and parents can intervene early.
- It can help identify children who have a dependency on drugs so that they can be referred to effective drug treatment.

Student drug testing is considered a community-based strategy to help diminish middle and high school student's demand for illegal drugs. Drug testing can help identify those students who test positive and guide them toward treatment, and educate every student on ramifications of long-term drug use.

The 2002 Supreme Court decision, Board of Education of Independent School District No. 92 of Pottawatomie County vs. Earls, gave school administrators another tool for detecting drug use. Students who choose to participate in athletics as well as any extra curricular activity are now eligible for drug testing. But before a school district chooses to implement a comprehensive student drug testing program certain steps must be taken in order to protect against litigation.

To understand student drug testing, school boards, parents, state and local officials should understand some issues such as:

- Prepare a needs assessment study within the school district so officials can gauge the severity and areas of concern of their drug problem.
- Gain the support of the local community as well as student body so everyone believes inclusion and not persecution.
- Create a clear, written policy that has been vetted by legal counsel

In Kentucky, Governor Ernie Fletcher and Lieutenant Governor Steve Pence created The Kentucky Drug Control Policy Summit Assessment, in 2004, to develop a well-balanced statewide drug control policy. February 12, 2004, 51 members began the needs assessment process and were charged with evaluating the effectiveness of existing and new local, state, and federal substance abuse programs. After 20 weeks of gathering input from citizens ([Link to ODCP Report](#)), a final report was generated highlighting several recommendations to the Governor about current state-wide abuse policies. Among the numerous recommendations made in the report, drug testing was voiced as a solution to help curb illicit drug use among school-aged children.

Recommendations from the committee regarding student drug testing included:

- Establish Kentucky as a model for school drug testing as a pilot for the nation with assistance from federal funding
- Utilize a balanced, random suspicionless approach of all students who participate in any extra-curricular activity
- Consider random suspicionless testing for school personnel at piloted sites
- Consider suspicion-based testing programs that schools may utilize

### **Why begin student drug testing?**

This question has been debated for many years by school administrators throughout the state. Some schools systems have decided to test their students and some have steered away from any action because of obstacles, such as cost, privacy concerns, and lack of community support. Student Drug Testing is a complex issue that needs to be thoroughly dissected among community and school leaders, ensuring every decision is made in the best interest of students.

Kentucky's Office of Drug Control Policy (ODCP), within the Justice and Public Safety Cabinet, created a state-wide task force to examine those issues associated with student drug testing. The first meeting, held February 25, 2005, brought together 26 individuals from around the state to discuss student drug testing. Since the inaugural meeting, the task force has grown to 84 members. School superintendents, principals, state officials, and even a few high school students represented the various school districts.

As a goal of the Student Drug Testing Advisory Council, a summit would be held to bring together all school officials from the state to discuss student drug testing. In addition, a public policy white paper would be drafted for school districts across the state, helping them make an educated decision when deciding on what course of action each will take.

This white paper will serve as an informative piece examining parameters that are interwoven into this issue. ODCP hopes school administrators will closely examine their community's needs and use this resource to make the right choice for their school system.

### **Legal History**

Drug testing programs of any type raise serious privacy issues under the U.S. Constitution's Fourth Amendment and the Kentucky Constitution's § 10 protections against unreasonable search and seizure. *Vernonia School District 47J v. Acton*<sup>1</sup> and *Brd. of Ed. of Independent School Dist. v. Earls*<sup>2</sup> are the current Supreme Court authorities

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<sup>1</sup> *Vernonia School District 47J v. Acton*<sup>1</sup> 514 US 646 (1995).

<sup>2</sup> *Board. of Ed. of Independent School Dist. v. Earls*, 536 U.S. 822 (2002).

governing randomized drug testing of athletes and students participating extracurricular activities.<sup>3</sup>

In *Vernonia School District 47J v. Acton*, the U.S. Supreme Court, in a 6-3 decision, upheld a school policy that randomly drug tested student athletes. The school district instituted random drug testing of athletes in response to well documented, serious and burgeoning drug use by students and athletes in particular. The school's drug testing policies targeted student athletes because athletes were a large part of the problem and were glamorizing drug use as a result of their role model status.

The *Vernonia* decision requires a compelling governmental<sup>4</sup> interest “*important enough* to justify the particular search at hand.” The U.S. Supreme Court justified its ruling on the school's “compelling interest” in deterring drug use and promoting health and safety among students and athletes in particular. The *Vernonia* Court balanced the school's compelling interest against the student's privacy expectations. In this balancing test, the Court articulated a four-part fact specific reasonableness analysis to weigh in the balance between a school's interests in deterring drug use and a student's privacy expectations. The Court considered (1) the legitimate privacy interests of the student; (2) the character of the intrusion; (3) the immediacy of the school's interest in the activity the school seeks to prevent; and (4) the policy's effectiveness toward satisfying the schools interest. The Court then applied the specific facts to those considerations.

The Court found that the student athletes affected by the drug testing policy had a limited privacy expectation. Their privacy expectations were diminished because they voluntarily subject themselves to the policy by choosing to participate in athletics and athletes are required to submit to various physical examinations, vaccinations and communal locker rooms, all of which diminishes overall privacy expectations. The Court also found that the student's privacy expectations were further diminished by their unemancipated minor status and the school's *in loco parentis*<sup>5</sup> authority was custodial and tutelary.

The character of the schools' intrusion was found to be insignificant. The urine sample was considered minimally intrusive and the use of the test results was limited. The specimen collection method merely required collection of urine within a bathroom stall with a monitor who simply listened for sounds of tampering. The test results were kept in a separate and confidential file and provided only to persons that needed to know the results. The results were not turned over to law enforcement nor did they have any academic effect. The only use of the results was to determine whether the student would be disqualified from participating in extracurricular activities.

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<sup>3</sup> The immediate U.S. Supreme Court precedents that paved the way toward student drug testing were *Skinner v. railway Labor Executive ass'n*, 489 US 602, and *National Treasury Employees Union v. Von Raab*, and *New Jersey v. T.L.O.*, 469 U.S. 325.

<sup>4</sup> Schools and school personnel are government actors.

<sup>5</sup> Standing in the place or in the shoes of parents.

The nature of the school's interest was considered important and immediate. The *Vernonia* Court found the school's interest in protecting the student's health, safety and ability to learn compelling. The school's compelling interest in preventing drug use among students outweighs the minimal privacy intrusion incurred and was an effective prevention method.

Subsequent to *Vernonia*, the Supreme Court decided *Board Of Education Of Independent School District No. 92 Of Pottawatomie County v. Earls* in 2002.<sup>6</sup> *Earls* expanded the category of students subject to drug testing to include all students participating in extracurricular activities. In *Earls*, the Court upheld randomized drug testing of all students participating in any extracurricular activity (not just athletes). The school district in *Earls* required all students to consent to drug testing before they could participate in any extracurricular activity.

In *Earls*, the students argued that they had a higher expectation of privacy because their club membership was not subject to regular physicals or communal locker-room undress as were the athletes in *Vernonia*. The Court said that in *Vernonia* it relied more on the school's *in loco parentis* or custodial authority over students. Nevertheless, the court pointed out that even non-athletic extracurricular club members voluntarily subject themselves to faculty oversight, club rules and regulations and thus have a diminished expectation of privacy. Essentially, the Court viewed extracurricular activities as voluntary privilege not a right.

In summation, *Vernonia* and *Earls* in practical application require:

- (1) That the students affected by the drug testing have a limited expectation of privacy because participation in extracurricular activities and sports is voluntary and privileged. The court emphasized the non-punitive goals of the drug testing policy.
- (2) That the method of intrusion be minimally intrusive and that the results be used and disseminated in the most restricted and confidential manner that still achieves the schools safety and drug prevention goals.
- (3) The nature and immediacy of the school's interest in drug testing students is compelling, identifiable and well documented in fact. There must be a real and well documented drug problem.

*Vernonia* and *Earls* also require a written drug testing policy. The policy must give notice to students of the activities and circumstances that will subject them to drug testing and the consequences of refusal to participate. The school should be prepared to support the policy with school specific information documenting a genuine need for the drug testing policy. The policy should include testing procedures, chain of custody and address confidentiality of the results.

### **Other Legal Rulings**

There are a number of "extra-jurisdictional" state and federal court decisions that have no direct legal authority over student drug testing in Kentucky. These cases foreshadow the

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<sup>6</sup> *Board. of Ed. of Independent School Dist. v. Earls*, 536 U.S. 822 (2002)

direction Kentucky courts may go and provide persuasive argument that Kentucky should follow the general trend of these extra-jurisdictional decisions. Following are some notable extra-jurisdictional cases with brief synopsis:

In *Hedges v. Musco*<sup>7</sup>, the 3<sup>rd</sup> Circuit Court of Appeals ruled that suspicion based drug testing of a student who appeared to be under the influence of drugs or alcohol. This ruling supported the test even though the results of the student's test were negative.

In *Todd v. Rush County Schools*<sup>8</sup> the court upheld drug testing for all students involved in extracurricular activities including, but not limited to athletics. This ruling was before *Board of Education of Independent School Dist. v. Earls*.<sup>9</sup>

New Jersey's highest court, in *Joye v. Hunderton Central Regional High School Board of Education*<sup>10</sup>, upheld random suspicionless drug testing of student drivers who were not involved in athletics or other extracurricular activities.

While there is no direct Kentucky legal authority expressly permitting randomized drug testing of students participating in extracurricular activities, Kentucky has laid a strong legal foundation that seems likely to support student drug testing policies that are consistent with the requirements and limitations provided for in *Vernonia* and *Earls*. Thus, Kentucky schools could institute drug testing consistent with *Vernonia* and *Earls* with confidence that the programs would be validated in state court.

### **Challenges of Implementing a Student Drug Testing Program**

#### **Why Start Testing?**

School administrators continually look for preventive measures to help keep students drug free. A tragic event, such as a drug overdose by student, can persuade parents and school officials to quickly evaluate the situation. In most cases, a reactionary response such as tighter school guidelines will be implemented to address an impending drug crisis in the community. But what if school officials could prevent such an event?

School officials must consult health care professionals to help gain an understanding of drug abuse. According to the National Institute on Drug Abuse, school officials understanding drug abuse is imperative when developing preventive measures to help curb drug use. A non-punitive student drug testing is one component of various preventive measures school officials can take.

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<sup>7</sup> *Hedges v. Musco*, 204 F.3d 109 (3rd Cir. 2000).

<sup>8</sup> *Todd v. Rush County Schools*, 139 F.3d 571 (7<sup>th</sup> Cir. 1998).

<sup>9</sup> *Board of Education of Independent School Dist. v. Earls*, 536 U.S. 822 (2002)

<sup>10</sup> *Joye v. Hunderton Central Regional High school Board of Education*, 176 N.J. 568, 826 A.2d 624 (2003).

### **A Non-Punitive Approach versus Punitive**

A non-punitive approach to student testing is considered the best way when developing a student drug testing program. Student drug testing can be considered an early detection tool for students who are currently using or have experimented prior to receiving a positive test. Implementing a comprehensive drug testing program can be the most effective method to help ensure students receive counseling or treatment once a positive test occurs. The student must be open to counseling and trust the school has every intention of providing the appropriate non-punitive disciplinary action once a positive test has been recorded.

Parents and students might be leery of school administrators if their sentiments toward the program are viewed as punitive. Students might be discouraged if their beliefs are that the program is geared toward inflicting punishment. The Office of National Drug Control Policy affirms that students who feel comfortable within the program only increase the students' chance for success. A student giving a positive drug test might be inclined to feel the school is out to get them in trouble, and therefore becomes less open toward intervention.

### **Pros of Drug Testing**

- It can deter students from initiating drug use.
- It can help identify early drug use among students, thus alerting parents and school administrators of an ensuing situation and keeps intervention as a viable option.
- It helps identify students who have a dependency on drugs so they can be referred to drug treatment.
- Testing can be another tool for school administrators to help curb drug use among students, as well as being another preventive measure to help steer students away from drug abuse.
- Testing can give students another viable option to say "NO" when offered drugs.

### **Cons of Drug Testing**

- The costs associated with operating a program can be a huge obstacle for school systems. If financial resources are limited, schools must ensure its program will be comprehensive enough.
- The creation of a student drug testing program could create a perception that a particular school district might have a drug problem.
- Drug Testing is not 100% accurate.
- Maintaining confidentiality for all students and parents can create concern.
- The perception that student drug testing is a further erosion of personal privacy.

## **Who is Being Tested and Why**

According to the Office of Drug Control Policy, 82 schools in Kentucky drug test students. Currently, 42 schools systems have implemented a random drug testing program, while only 18 school districts have implemented a mandatory only testing method. But whether the school has a mandatory or random program, the courts have narrowly defined groups that fall under the allowable testing pool. The courts have defined those students who participate in any extra-curricular activity can now be deemed suitable for testing.

In other instances labeled by the U.S. Supreme Court (*New Jersey v. T.L.O.*, 469 U.S. 325, 1985) as “Special Needs” cases, thus giving school administrators the power to search areas that otherwise would need a search warrant, so long as reasonable suspicion is deemed appropriate, and evidence that a school rule violation has been broken. The Supreme Court has deemed this method as “More than a Hunch.”

### **Why should we test students?**

According to the Office of National Drug Control Policy (ONDCP), a non-punitive student drug testing can be an effective way of preventing drug abuse. In addition, student drug testing programs can create a “culture of disapproval toward drugs” helping students stand up to peer pressures among other students.<sup>11</sup> Research has shown that the strongest predictor of student drug use is student’s attitudes toward drug use and perceptions of peer use.<sup>12</sup>

In addition, school systems have a responsibility to take every precaution to ensure the safety of its students. ONDCP explains that a once a positive test is recorded, it becomes imperative to use that result to intervene on “a not yet dependent” student.<sup>13</sup> If a follow-up test concludes with another positive test administrators and parents must do everything to ensure treatment and recovery is the focus.

Currently any Kentucky school instituting randomized student drug testing should follow the following guidelines:

- A. Any school program testing students participating in extracurricular activities must be supported by substantial documented need. A school must perform a rigorous study and collect data to determine whether or not their particular school has a drug problem substantial enough to permit drug testing.
- B. Students targeted for drug testing should be voluntary participants in some activity outside of regular school curriculum. No court has upheld suspicionless drug testing of all students or students not involved in some extracurricular or school driving/parking privilege. The key words are voluntary and privilege.
- C. The testing method should be the least intrusive method available and should provide the student the highest degree of privacy reasonable in the collection

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<sup>11</sup> Alcoholism Drug Abuse Weekly, page 2

<sup>12</sup> Journal of School Health, page 164

<sup>13</sup> Ibid.

- handling and testing of the specimen. In practice this is urine testing.
- D. The testing program must be genuinely random. Every participant should stand an equal chance of selection.
- E. Develop a clear written policy. The written policy must:
- Provide a statement of need for testing providing the specific facts justifying testing at the particular school.
  - Notify both parents and students what activities will subject the students to randomized drug testing.
  - Clearly define the substances for which the school will be testing.
  - Disclose the collection method and process (including chain of custody, refer to your testing agency to recognize their chain of custody).
  - Describe what personnel will assist in collecting test samples and how that personnel will be trained (See Appendix).
  - Maintain student confidentiality by strictly limiting access to test results and maintain student privacy. The policy must define who and under what circumstances school personnel will have access to the test results.
  - Give notice to students and parents as to what non-punitive and non-academic consequences result from a positive test.
  - Provide for independent medical review for a positive result that gives students and parents the opportunity to explain a positive result.
  - Obtain written consent from students and their parents for testing and clearly state consequences for refusal (disqualification from extracurricular activities).

As a practical matter, involve the school community by encouraging community input and participation from parents, students, school administrators, teachers, school board members, and coaches to get unified consensus and support. Community involvement and support is the surest way to avoid costly and unnecessary litigation.

### **Where Does Kentucky Stand?**

The following statistical analysis compares data from the 2004 KIP survey funded by the Kentucky Division of Mental Health & Substance Abuse and the 2004 Monitoring the Future (MTF) survey from the University of Michigan. The analysis was narrowed to 10<sup>th</sup> graders and to six substances: alcohol, marijuana, prescription drugs (OTC), methamphetamine, cocaine, and inhalants. Each survey measured a youth's use in the last 30 days. (The rationale for setting the parameters for 10<sup>th</sup> graders was many serious drug users have dropped out of school by the by 12<sup>th</sup> grade). Using 10<sup>th</sup> graders ensures a normal sample size. The one and only exception of the analysis is the use of inhalants by 8<sup>th</sup> graders. Given the exceptionally high rates of their inhalant use in Kentucky and nationally, it warranted the attention for this analysis.

- **Alcohol:** According to KIP/MTF, 33% of Kentucky 10<sup>th</sup> graders compared to 35% of the nation's 10<sup>th</sup> graders responded that they had used alcohol one or more times in the past 30 days.

- **Marijuana:** According to KIP/MTF, 17% of Kentucky 10<sup>th</sup> graders compared to 16% of the nation's 10<sup>th</sup> graders responded that they had used marijuana in the past 30 days.
- **Prescription and over-the-counter (OTC):** According to the KIP survey, 8.5% of Kentucky 10<sup>th</sup> graders responded that they had used OTC's in the past 30 days. Specific statistics for prescription Oxycontin (30-day use) are 3.4% of Kentucky 10<sup>th</sup> graders. No national statistics were available.
- **Methamphetamine:** According to KIP/MTF, 2.6% of Kentucky 10<sup>th</sup> graders compared to 1.3% of the nations 10<sup>th</sup> graders responded that they had used methamphetamine in the past 30 days, twice the levels compared with the national statistics.
- **Cocaine/crack:** According to the KIP survey, 3% of Kentucky 10<sup>th</sup> graders responded that they had used cocaine/crack within the past 30 days. compared with national average of 1.7%.
- **Inhalants:** According to the KIP/MTF, 6.5% of Kentucky 8<sup>th</sup> graders compared to 4.5% of the nations 8<sup>th</sup> graders responded that they had used inhalants in the past 30 days.

| <b>Figure 1.1 30 Day Drug Use of Kentucky 10th Graders</b> |                      |                      |              |
|--|----------------------|----------------------|--------------|
| <b>Substance of Choice</b>                                 | <b>Kentucky Avg.</b> | <b>National Avg.</b> | <b>Misc.</b> |
| Alcohol  | 33%                  | 35%                  | -2%          |
| Marijuana  | 17%                  | 16%                  | 1%           |
| Prescription   | 8.5%                 | N/A                  | Question     |
| Methamphetamine  | 2.6%                 | 1.3%                 | 1.30%        |
| Cocaine/Crack  | 3%                   | 1.7%                 | 2.30%        |
| Inhalants (8 <sup>th</sup> grader use)                     | 6.5%                 | 4.5%                 |              |

Source: KIP/MTF Data, 2004

Overall, Kentucky students are statistically similar to students nationally in their 30 day drug use. The substances where Kentucky youth exceed the national averages are marijuana, inhalants (among 8<sup>th</sup> grade students), methamphetamine, and cocaine/crack. Methamphetamine and cocaine/crack were nearly double the national averages, and inhalants were two full percentage points higher than the national average.

### **What other states are doing:**

#### **Indiana**

Student Drug Testing has been implemented in Indiana High School since 1999. But in 2000, Indiana's Court of Appeals deemed the concept to be unconstitutional and all high school halted their programs. This issue was finally heard by Indiana's Supreme Court and was overturned in 2002, thus reinstating student drug testing.

Once the program was reinstated, a study was conducted by Joseph R. McKinney, J.D., Ed.D, Chair of the Department of Educational Leadership at Ball State University. His study focused one question: “Does the implementation of a random drug testing program result in a reduction of drug and alcohol use among high school students?” It further examined drug use among high school students in 1999, and after student drug testing was reinstated in 2002. A total of 83 high schools responded to the survey out of 94 high schools with random drug testing programs.

Some statistical findings from the McKinney Study are:

- 85% of high school principals reported an increase in either drug and alcohol after the drug testing program was stopped in 2000.
- 89% of principals believe that the drug-testing program undermines the effects of peer pressure by providing a legitimate reason to refuse to use illegal drugs and alcohol.
- Principals reported that 352 students were disciplined during the 1999-2000 school year for drug or alcohol use, and the year after drug testing was deemed unconstitutional 518 students were disciplined that same year.
- The McKinney Study concluded that random drug testing policies appear to provide a strong tool for schools to use in the battle to reduce alcohol and drug usage among teens.

### **Oregon**

The Oregon Health and Science University did a unique study, from 1999-2000, focusing their efforts on two high schools, one school who conducted student drug testing on athletes, and the other school choosing not to conduct any drug testing. The study focused on the comparison of Wahtonka High School, where student drug testing had been conducted on student athletes, and Warrenton High School, a similar school that was not testing their student athletes.

When comparing the two schools, statistically different trends currently exist:

- At the conclusion of the school year, 5.9% of students from Wahtonka High School students explained they were currently using illegal drugs compared to 19.4% of athletes at Warrenton High School.
- Other findings concluded that students who were drug tested were three times less likely to use performance-enhancing drugs such as steroids.

### **Michigan**

According to a press release on May 19, 2003, and printed in the Journal of School Health (Vol. 73, No. 4, pages 159-165), University of Michigan researchers Ryoko Yamaguchi, Ph.D., Lloyd Johnston Ph.D., and Patrick M. O’Malley Ph.D. (social scientists at the Institute for Social Research) published a study titled “Relationship Between Student Illicit Drug Use and School Drug-Testing Policies.” The researchers concluded that drug testing of students does not deter drug use, based on a large, multi-year national sample of the nation’s high schools and middle schools.

Their research findings challenge the fundamental belief that implementing a student drug testing program will help curb student drug use. Authors of the study analyzed data

from surveys from 1998, 1999, 2000, 2001, which highlighted information from 722 secondary schools from across the nation. School administrators were asked to determine drug testing policies of the school, and students were given surveys (students in 8<sup>th</sup>, 10<sup>th</sup>, or 12<sup>th</sup>) to conclude whether and what type of drugs might be prevalent in the school system. The Michigan survey states it's the only nationally representative sample of schools, thus being used to help assess the effectiveness of implementing drug testing policies.

The survey concluded the following:

- Investigators explained that identical rates of drug use in the schools that have drug testing and schools that do not.
- For 12<sup>th</sup> graders, 36% of those surveyed reported having used marijuana twelve months prior to the survey being administered versus 37% of students who came from drug testing schools acknowledged using marijuana twelve months before the survey being administered.
- 19% of American Secondary Schools have some form of student drug testing.
- Private and Public secondary school are equally likely to implement drug testing, (high schools are more likely than middle schools).

For a full version of the report, please click the link below:

<http://www.studentdrugtesting.org/Michigan%20study.pdf>

### **Sample Overview of Schools that Drug Test in Kentucky**

#### **Dunbar High School, Lexington, Kentucky**

In 1995, the Lexington Police Department contacted Dunbar's principal Jon Akers about several athletes who were picked up during a recent drug bust. This event shocked the principal and forced him to question his perception about behavior among student athletes. More importantly, parents began to discuss these recent events and asked school administrators to survey students on their perception of student drug use.

After results from the survey were analyzed, parents, teachers, and coaches were all shocked that rampant drug abuse was a perception among all student-athletes. An open forum was held to candidly discuss drug use in the school and to share collective attitudes among students and parents. From this meeting, the school created a site-based decision making council (SBDM) to embark on the creation of a student drug testing program.

Several questions Dunbar's site-based decision making council faced:

- What should such a policy include?
- What were the legal issues about notifying parents of this policy?
- How would they randomly select students equitably?
- What guidelines were needed to maintain confidentiality?
- What safe guards were there in place to avoid "false-positives?"
- What would they do if a student tested positive?
- Which drug testing company would they use?
- What about students who tried to use masking agents?

- What would be done with the drug testing records once an athlete graduated?

Once the SBDM decided on key issues, a comprehensive policy was submitted to the Fayette County Board of Education for approval. The Board of Education unanimously approved their program and Dunbar's student drug testing program officially began in the fall of 1996.

After completing one year of drug testing, several program components were revisited based on feedback from school administrators:

- Notifying coaches before their athletes were going to be tested was discontinued due to "information leaking out."
- Testing for "masking agents" was added in an attempt to identify those athletes who were trying to beat the system.
- Learned not to test athletes right after practice because they are usually dehydrated.
- Parent boosters began to raise money to help pay for program expenditures.
- Conduct drug tests during the last period of the school day so that students would not linger, waiting to render their urine sample.
- Learned that poppy seed muffins could alter test results.

### **Jessamine County High Schools (East/West)**

Seven years ago, Jessamine County's superintendent performed a county-wide survey getting the pulse of the community to help gauge feedback about the possibility of creating a student drug testing program. This survey led to the formation of a county-wide community based drug task force to help formulate a program/policy for school administrators to follow to begin testing students throughout the school system.

The school system did face some hurdles along the way when trying to construct a comprehensive program. Some of the negative criticism came from the community, mainly parents who did not fully understand the problem. Some concerns stemmed from parents feeling it would be a waste of school time and resources, as well as an opinion that the community did not have much of a problem altogether. An overall consensus from the task force quickly eliminated any misconceptions parents had and led to the majority of the community supporting such a program.

Now, all student athletes from grades 6-12 may be tested while their sport is in season. All students who participate in a sporting activity will have their name entered into a random testing pool to be selected. In addition, funding for their student drug testing program would be provided by the county's board of education.

But the toughest issue facing the Jessamine County School System is whether the program is geared more toward enforcement or treatment when receiving a positive test. The county has actually focused its program with a combination of both aspects encompassed within its policy. First time violators receive a four week or four game

suspension and the student athlete must adhere to any and all recommendations associated with an alcohol dependency assessment. Once the student has completed his/her punishment a follow up drug/alcohol test must be administered to ensure the student is clean.

Jessamine County has experienced only minimal negative feedback from the community. Some feedback has been voiced from students. They express displeasure that students who need to be tested have eluded the program and do not currently participate in the program. Other remarks express the program is waste of financial resources, but overall the majority of the community considers it an acceptable policy.

### **Nelson County Public Schools**

The Nelson County School System began student drug testing in 2003 in all three school districts. Its policy started with the creation of a community-based steering committee seeking information about the formation of a policy to help combat the high level of drug and alcohol use among their juvenile population. Information was gathered from the annual KIP survey as well as the Youth Risk Behavior survey to gain an understanding of their problem. Baseline data was analyzed to ensure their policy would be comprehensive and every parent would feel comfortable about it being implemented for their child.

Originally, the program was to focus strictly on student athletes, but after further investigation students competing in extra-curricular activities and holding a student parking permit are now required to participate. The program has been administered by an external drug testing agency through computer generated randomization.

The first obstacle for Nelson County was obtaining funding for their pilot project. So receiving funding, from the Federal Department of Education, allowed the school districts to implement the program. But other obstacles still existed, such as establishing strict measurable outcomes, ensuring all three school districts remained compliant, and adhering to strict guidelines to help protect the anonymity of students. But aside from obstacles in the startup of their program, Nelson County still reiterated the importance of educating parents and students about the dangers of abusing drugs and alcohol.

Nelson County believes through an internal survey conducted among their school system, this program is effective and fair to all who participate. In addition, 67% of respondents feel that drug testing makes them want to avoid illegal drugs. Furthermore, 60% reported that drug testing high school athletes and extracurricular participants is a good idea. Negative respondents listed at only 15%, expressed that drug testing is a bad idea in Nelson County.

### **Campbell County School System-(Middle/High)**

Campbell County started their student drug testing program in 2003 due to the efforts of the superintendent. Because of several drug related deaths within the community, school

officials were compelled to address this situation. Student drug testing became a viable option and it would have the full support of the community.

Once the program was started, an outside agency was contracted to perform the task of testing students. The agency was given a master list of all students who participate in extra-curricular activities, as well as all student athletes. To help pay for costs associated with student drug testing, the school system implemented a participation fee for students wanting to take part in extra-curricular activities. The fees collected for participating in each activity covered costs associated with hiring the outside testing agency.

Currently, Campbell County school systems have a tiered system of punishment for all positive tests:

- **First Violation:** A student who tests positive will be suspended from all extra-curricular activities mandated by drug testing and/or parking privileges for the next four consecutive weeks. Student drivers will be denied permission to drive and/or park on school property during this time. The suspension will begin the date that the results are received and communicated to the student by the administrator. If necessary, the suspension shall carry over to the student's subsequent participation on another athletic team/extracurricular activity and/or the following season. In addition to the suspension period, the student will also be required to speak with the school counselor of their choosing for a minimum of one acceptable counseling session (counselor will sign off on the student's success or lack thereof).
- **In order to be eligible to return to the activity and practice during the suspension:** The student must be enrolled in a school approved drug-counseling program, submit to weekly drug testing at their expense and maintain a negative test result. Prior to readmission to participation to the activity or driving, the student must submit to a new drug test administered in accordance with the same procedures utilized for random drug testing. A positive result shall be treated as a second violation.
- **After the suspension period:** The student's name will be selected for the next random drug screening. A positive result shall be treated as a second violation.

Currently, the community has supported the program and students are very comfortable operating within its guidelines. Campbell County instituted the program for its middle school students as well, and since its inception not one positive test has been recorded. In addition, Campbell County has geared their program toward treatment and education rather than focusing on enforcement.

## **Goals of Drug Testing**

The primary goal of any student drug testing program should be to prevent the use of drugs, (i.e. to help bring about healthier, drug-free students and a safe school environment). Zero tolerance policies which call for immediate termination of a student who fails a drug test or violates a drug abuse policy may alleviate the problem for the school, but not necessarily for the student. If students are uninformed about the risks of drug use/abuse and are not assessed for possible abuse/dependency problems and referred to an education or treatment program as needed, there is a high probability that the problem will persist and worsen. The student could continue to be at risk for continued rule/policy violations, thereby compromising the safety of the school environment.

In addition, he/she is a liability to themselves in terms of decreased productivity. Therefore, policies are needed that include provisions for education of students about drug abuse and dependency, assessing those who either fail drug tests or violate a substance policy. Following this, referral to either an early intervention program or an appropriate level of treatment is needed. State DUI laws that have requirements for first-time and repeat offenders are excellent examples that schools can follow for guidance in creating or upgrading their drug abuse policies.

To assure efficacy, the program should include administrative and scientific protocols so that the testing system can be implemented with a high degree of uniformity and a minimum of subjective intervention in terms of collection, analysis, and results. These protocols should then be made available and understood by all parties involved, for the purpose of building confidence and avoiding costly misunderstandings that may result in litigation.

A secondary goal of student drug testing should be intervention those who are using drugs. If the secondary goal is to prevent *further* use of drugs, then there are a number of steps that must be taken to assure that interventions are carried out in an appropriate manner.

### **Prevention, Intervention, Treatment**

Prevention is a tri-level process, addressing the following populations:

- The general, or universal, population that includes all students, regardless of drug use status.
- The selected population that includes those who are at risk of becoming drug abusers.
- The indicated population that includes those who have begun to experiment with drugs.

Student drug testing programs may involve students from all of these populations.

In America, we have a tradition of not interfering in each others' business. "A man's home is his castle," we say. "Each to his own," we declare. And yet there are times – cases of child abuse and spouse abuse are two examples – when we must intervene. We

realize that there are situations that spin out of control and that if we don't intervene, people get hurt.

Over the years, we have been less apt to intervene in someone's drinking or drug use. We've believed that alcohol and drug abuse was willful misconduct and if people wanted to quit, they simply had to make up their mind and do it. It wasn't until the 1950s that the American Medical Association classified alcoholism as a disease. We've since realized that problem drinkers and drug users can't always "just quit," that more times than not they need help to quit, and that a lifetime of pain and suffering ensues when we do nothing to intervene.

In formal terms, intervention can be defined as a "carefully prepared, precipitated crisis which breaks through the defenses" and allows the person to see how their drug use is affecting themselves and others and to understand the consequences of further use.

Employee assistance programs (EAPs) were developed in the 1970s and 80s and began to pave the way for employers to intervene with troubled employees. It became clear that these employees' personal problems were affecting their behavior at work, which affected their productivity. Student assistance programs developed in the 1980s were modeled after EAPs, and were designed to intervene with students whose personal problems affected their school work.

While student drug testing has been used for a number of years primarily with athletes, it has recently enjoyed increased popularity as a tool for schools to use in their overall drug prevention programming. For many students, drug testing acts as a deterrent. Just the thought of testing positive for drugs is enough to some from using.

For other students, drug testing acts as a wake up call. For these students, a positive drug test is so embarrassing that the test itself becomes the intervention. It is enough to deter further use. Their concern for their family, friends or reputation outweighs the benefits of using.

There are other students, however, who do not respond to a positive drug test in the same way. It is human nature to rationalize our behavior if we enjoy doing something that is bad for us. Overeating, smoking and excessive credit card debts are examples of behaviors that we may enjoy at the time, but have dire consequences later. Teen drug use is similar. There are benefits derived from using drugs, like relaxation, stress relief or escape from problems.

Students who derive benefits from their drinking or drug use are going to be more likely to see what using does for them than what it does to them. They will see the benefits of their use before they see the consequences. In some cases, the consequences may be subtle, like a slight drop in grades or an increase in absenteeism. As a result, they don't connect their use to the negative consequences occurring in their lives. For these students, drug testing offers an opportunity to explore this.

When schools offer a drug testing program, it's important to have a plan for assisting students who test positive. As stated earlier, drug testing alone - without offering follow up services - is less than ideal. This is especially true for students with substance abuse problems. Interventions that include an assessment of the student's drug use coupled with ongoing counseling - if and when appropriate- can help prevent future problems, including addiction, legal problems and health related concerns.

We cannot assume that students who test positive for drugs have a 'drug problem.' Nor can we assume they do not. A positive drug test simply reveals that a particular drug has been consumed by the student and that traces of the drug remain in the body. An assessment, (or evaluation as it's sometimes called), conducted by a qualified professional, reveals how much, how often and for how long the student has been using drugs. An assessment also tells us what problems the student has experienced as a result of his or her use. This information helps the professional counselor determine what services would be helpful for the student.

Assessments are typically conducted by qualified professionals in the community. However, due to a shortage of adolescent substance abuse assessors in the state and the difficulty many families experience in accessing community services, a number of schools in Kentucky have begun employing their own drug counselors.

If the assessment determines that the student needs treatment, then there are a variety of options to choose from. Some students may only be minimally involved, so a brief educational program offered in the school or community will suffice. These types of programs are typically 6-10 weeks in length and provide a mix of drug specific information and an opportunity for students to discuss issues like peer pressure, stress, relationships and healthy alternatives to using.

Students who are more harmfully involved with drugs may need longer, more intense treatment. Outpatient treatment commonly occurs at a community agency (although some schools in Kentucky have hired their own counselors to provide this service) and may involve individual, group or family therapy. The goal of treatment is to help the adolescent reduce or eliminate their use of drugs and outpatient treatment allows them to do this while living at home and in their community.

Students who need more restrictive care are typically referred to a residential, or in some cases, an inpatient program. Residential programs are long term programs (4-12 months) for adolescents who need to be removed from their environment for an extended period of time in order to develop fundamental coping skills and strategies for remaining drug free when they return home.

Inpatient programs are shorter in length (30-45 days on average) and are more appropriate for teens that require crisis intervention and stabilization due to co-occurring mental health problems, suicidal thoughts or acute family crises. It is generally agreed upon that adolescents are better served in their community so that their families can be involved in the treatment. However, treatment professionals will be quick to point out

that this is not always possible, and that there are times when the best intervention is inpatient hospitalization or a long-term residential program.

### **Student Drug Testing Summit**

The Office of Drug Control Policy (ODCP) and the Office of National Drug Control Policy (ONDCP) co-hosted a Student Drug Testing Summit on February 28, 2006, at The Brown Hotel in Louisville, Kentucky. Participants consisted of approximately 250 school personnel, parents, students and other interested parties who gathered to learn more about student drug testing issues.

Five breakout sessions were held in the afternoon and were then repeated. One hour of Effective Instructional Leadership Act (EILA) credit was awarded per breakout session attended. The breakout sessions were as follows:

#### ***“Conversations with . . .”***

##### *Legal issues – research issues*

David Evans, Executive Director, Drug-Free Schools Coalition (Facilitator)  
John Fogle, Kentucky School Boards Association  
Virginia Gregg, General Counsel, Fayette County Board of Education  
Bob Illback – REACH

Description: This breakout session consisted of an interactive workshop focusing on legal and research issues involved when considering the establishment of student drug testing programs. The most recent court rulings surrounding student drug testing issues were discussed. Presenters in this breakout are recognized as an expert in this field, either nationally or locally.

##### *Policies and implementation*

Dara Bass, Kentucky School Boards Association (Facilitator)  
Jan Lantz, Superintendent – Nelson County Schools  
Wanda Gaskin – Pulaski County Schools  
Stacie Wimsett – Nelson County Schools  
Gail Thompson – Nelson County Schools

Description: This breakout session consisted of an interactive workshop that provided an overview of policies and implementation of student drug testing programs. Discussion included various types of school policies and how school officials could begin a dialogue introducing student drug testing programs to their communities and how they could determine which type of program (voluntary or random/mandatory) best suits their needs. Presenters in this breakout are local experts who have been instrumental in the development of their school's program.

## *Principal conversation*

Chris Steffner, Principal – Hackettstown, NJ (Facilitator)  
John Riehemann – Kentucky School Administrators Association  
Ken Trivette, Pike County Independent Schools  
Jon Akers, Kentucky Center for School Safety

Description: This breakout session consisted of an interactive workshop with principals from across the state of Kentucky who have been involved with student drug testing programs in their schools. Issues they have addressed with operating these programs were also discussed.

## *Intervention*

Barry Kellond, Division of Mental Health and Substance Abuse (Facilitator)  
Ken Bucher, North Key  
Beth Hicks, National Student Assistance Program  
Charlie Baker, Jefferson County Public Schools

Description: This breakout session consisted of an interactive workshop with experts in the field of mental health and substance abuse and prevention. Discussion centered on strategies for intervening with the growing problem of student drug use among our youth and the options available.

## *Drug Testing and Costs*

Sonja Johnson Hoppe, Southwest Laboratories (Facilitator)  
Helen Spencer, Forward Edge  
Jeff Sims, a'Test Consultants, Inc.  
Brian Walters, Premier Drug Testing

Description: This breakout session consisted of an interactive workshop where representatives from laboratories discussed technology available for purchase and use by school districts and the costs associated with testing. They provided information about test sensitivities for detecting various types of drugs and made recommendations about which types of tests are best, depending on the nature of the drugs of abuse in their schools.

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## Glossary

**Chain of custody-** means the process of tracking specimen collection and handling from initial collection to final analysis and report.

**Confirmation test-** means a second drug or alcohol test, on the same specimen, used to identify the presence of a specific drug or metabolite or alcohol in a specimen following an initial positive screen.

**Extracurricular activity-** means any school or school related activity, including athletics, which is not required as part of a student's mandated basic educational curriculum.

**Medical Review Officer-** means a physician knowledgeable in a) drug test technology and how such tests should be administered and interpreted, and b) in the effects of drugs on the human body and how drugs are detected by drug tests.

**Random selection or random test-** means a mechanism for selecting students for drug or alcohol tests that a) results in an equal probability that any student from a group of students subject to the selection mechanism will be selected, and b) does not give the school discretion to waive the selection of any student selected under the mechanism.

**Reasonable suspicion-** means a reasonable belief that a student is using or has used drugs or alcohol in violation of the school's policy. The belief shall be drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

(a) Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being under the influence of a drug or alcohol or physical signs and symptoms consistent with such use.

(b) Abnormal conduct or erratic behavior while at school or at school activities.

(c) A report of drug or alcohol use provided by reliable and credible sources;

(d) Evidence that a student has tampered with a drug or alcohol test;

(e) Information that a student has caused, or contributed to a disciplinary incident as defined by the school's policy;

(f) Evidence that a student is involved in the use, possession, sale, solicitation or transfer of drugs or alcohol while at school or at a school activity;

(g) Adequately documented pattern of unsatisfactory school performance or a change in a student's prior pattern of school performance (absenteeism, tardiness or deterioration in school performance)

(h) A serious or potentially serious accident that may have been caused by human error, or violations of established safety, security, or other operating procedures.

(i) Fighting (to mean physical contact) and assaults, or aggressive or violent behavior or behavior that could cause injury to the student or those around the student.

## Drug Testing Panels and Methods

The various testing methods normally test for a "panel" of drugs. Typically, drug tests examine the sample for marijuana, cocaine, opiates, amphetamines, and PCP. If a school has a particular problem with club drugs such as MDMA or GHB, it may wish to expand testing for these drugs. This limited panel will not identify the use of alcohol or tobacco, two products legal for adults but illegal for teens. Research and experience have shown that when usage rates for drugs decrease, so do usage rates for alcohol and cigarettes. Alcohol is a serious problem among young people and schools may want to test students for its use. However, alcohol does not remain in the blood long enough for most tests to detect recent use. Breathalyzers and oral-fluid tests can detect current use and can be used to measure impairment.

The limited panel will not also identify LSD, GHB, Ecstasy (MDMA), volatile solvents such as glue or gasoline, or a wide range of prescription drugs that are widely abused by teens such as Xanax, Valium, Vicodin and OxyContin. It will also not detect anabolic steroids and related performance enhancing compounds. It will not detect the use of these five drugs that occurred more than 3 days before the urine sample was collected except that very heavy and prolonged marijuana use can produce a positive urine drug test for a couple of weeks in some cases.

Standard Drugs of Abuse Panel usually include:

- Amphetamines (methamphetamine, amphetamine, uppers, speed, pep pills)
- Cocaine (crack, coke, snow, rock, blow)
- Cannabinoids (marijuana, dope, weed, grass, pot, reefer, mary jane)
- Opiates (codeine, morphine, heroin-H, junk, smack, china white)
- Phencyclidine (PCP, angel dust)

Other Drugs of Concern:

- Barbiturates (Phenobarbital, butalbital)
- Benzodiazepines (Valium, Xanax)
- MDMA, (Ecstasy)
- Oxycodone (Percocet)
- Hydrocodone (Vicodin)
- Steroids

There are several testing methods available including urine, hair, blood, oral fluids and sweat (patch). These methods vary in cost, reliability, drugs detected, and detection period. Schools should determine their needs and choose the method that best suits their requirements.

Urinalysis is the most common drug testing method and currently the only allowed in federal drug testing programs.

| Urine Drug Testing   |   |
|--|---|
| Advantages   | Disadvantages   |
| <ul style="list-style-type: none"> <li>• Highest assurance of reliable results (uniform testing, performance testing, federally approved)</li> <li>• Least expensive</li> <li>• Able to test for more drugs than standard 5 panel</li> </ul> | <ul style="list-style-type: none"> <li>• No dose concentration (can only determine presence or absence)</li> <li>• Specimen can be adulterated, diluted or substituted</li> <li>• Collection procedure may be considered invasive or embarrassing</li> <li>• Detection time 2-3 days</li> </ul> |

| Hair Drug Testing   |   |
|---|---|
| Advantages  | Disadvantages   |
| <ul style="list-style-type: none"> <li>• Provides a longer estimate of time of drug use</li> <li>• More difficult to adulterate</li> <li>• Specimen is more stable</li> </ul> | <ul style="list-style-type: none"> <li>• Inability to detect recent use</li> <li>• Possibility of hair color bias</li> <li>• Collection procedures may be considered invasive</li> <li>• Concerns regarding no head hair-where to collect</li> <li>• More costly</li> </ul> |

| Blood Drug Testing   |  |
|--|--|
| Advantages   | Disadvantages  |
| <ul style="list-style-type: none"> <li>• Able to detect a wide variety of drugs</li> <li>• Test results may be interpreted in relationship to behavior of donor</li> </ul> | <ul style="list-style-type: none"> <li>• Collection is invasive, health concerns</li> <li>• Expensive (analytical methods are difficult and time consuming)</li> <li>• Longer turnaround time</li> </ul> |

| Oral Fluids Drug Testing   |  |
|--|--|
| Advantages   | Disadvantages  |
| <ul style="list-style-type: none"> <li>• Sample is obtained at any location under direct observation</li> <li>• Adulteration potential is minimal</li> <li>• Reflect very recent drug use</li> <li>• Less invasive to collect than urine, hair or blood</li> </ul> | <ul style="list-style-type: none"> <li>• Shorter window of detection</li> <li>• Concerns regarding marijuana use, differentiating passive inhalation from use</li> <li>• Limited drug panel</li> </ul> |

| Sweat Patch Drug Testing  |   |
|---|---|
| Advantages  | Disadvantages   |
| <ul style="list-style-type: none"> <li>• Non-invasive</li> <li>• Longer window of detection than urine</li> </ul> | <ul style="list-style-type: none"> <li>• Limited number of labs offering this test (one)</li> </ul> |

|  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Tamper-evident</li> </ul> | <ul style="list-style-type: none"> <li>• Passive exposure may contaminate patch and affect results</li> <li>• People with skin eruptions or excessive hair can not wear the patch</li> </ul> |
|--|--|

A Quick Look  
At State Laws

*State laws that:*

1. **Require reporting criminal activity to local law enforcement.**  
AL:Sec. 16-1-24.1(b)  
IL:105 ILCS 127/1  
LA:T.14, ch2, Pt. V, sec. 403.1  
OR:ORS Sec. 40.245 (its not specific but certainly arguable)  
UT:Utah Code Ann. Sec. 78-3e-2
  
2. **Provide immunity to school personnel who report use by students.**  
AL:Sec. 16-1-24.1(g)  
CT:Sec. 10-154a(d)  
LA:T.14,ch2, Pt. V, sec. 403.1(F)  
NJ:18A: 40A-13, 14  
NM:N.M. Stat. Ann. Sec. 22-5-4.4(B)  
OK:70 Okl. St. Sec. 24-138  
PA:42 Pa. C.S. Sec. 8337
  
3. **Authorizes alcohol testing of student suspected of being under the influence: test method must be as adopted by federal DOT.**  
WI:118.45
  
4. **Requires that certain student information be maintained confidentially.**  
LA:La. R. S. 40: 1098.8  
NJ:18A: 40A-7.1  
OH:ORC Ann. 3319.321  
OR:ORS Sec. 40.245
  
5. **Requires school to have prevention/counseling services.**  
AR:Sec. 6-13-627  
LA:La. R.S. 17: 402, 403(c)  
NJ:18A: 40A-18
  
6. **Requires each to be given written procedures for dealing with student who is under the influence.**  
OK:70 Okl. St. Sec. 24-138(B)
  
7. **Requires/permits establishing a drug free school committee.**  
AL:Sec. 16-1-24.1  
DE:14 Del. C. Sec. 3805
  
8. **Requires each certified teacher to be trained within the first year of employment regarding the identification and reporting of student substance abuse.**  
NM:N.M. Stat. Ann. Sec. 22-10-3.2

Source: Drug Free Schools Coalition





