



## Judges in the Classroom

### Drug Testing In Schools – Take A Stand

#### **Source:**

Adapted from a lesson written by Street Law, Inc. by the Institute for Citizen Education in the Law, Seattle, WA. Staff at the Washington State Administrative Office of the Courts (AOC) updated the lesson in 2019. For more information, contact AOC, Temple of Justice, 415 12<sup>th</sup> Ave SW, PO Box 41174, Olympia, WA 98504-1174. For an electronic copy of this lesson, or to view other lesson plans, visit Judges in the Classroom on the Washington Courts Web site at: [www.courts.wa.gov/education/](http://www.courts.wa.gov/education/).

#### **Objectives:**

1. Students will express their opinions about drug testing in schools.
2. Students will examine arguments in favor of, and against, drug testing in schools.
3. Students will consider and discuss consequences of a policy for or against drug testing in schools.

#### **Grade Level:**

Grades 8-12

#### **Time:**

One class period (approximately 50 minutes)

#### **Materials:**

None needed

#### **Procedures:**

1. **Begin the class by introducing yourself to the students** and telling a little bit about what you do, if this is your first class.
2. **Tell students** they will have an opportunity to "take a stand" on the issue of drug testing in schools. Write the following statement on the board: "Drug testing should be allowed in schools." Draw a line underneath, with polar positions printed at each end of the line. For example:

**Drug testing should be allowed in schools.**

Strongly in favor

Strongly against

- 3. Give students a few minutes to decide** individually where their opinion about the statement "Drug testing should be allowed in schools" falls on the spectrum. Ask them to think of at least two reasons why they feel as they do.
- 4. Ask approximately 10 students** to go up to the board and take a stand along the line at the point that corresponds with their opinion. Explain that if they are undecided, they should stand in the middle. (Remind them that even the "undecideds" should have a reason for why they are undecided.)
- 5. Once students are arranged along the continuum**, ask them to clarify their position. Probe them for what exactly they mean. For example, ask those at the "strongly in favor" end whether they think everyone should be tested, or only those who act suspiciously. Or, are there some groups, like student athletes, students participating in extra-curricular activities, or students with disciplinary histories, who should be randomly tested? Do those at the other end think no one should ever be tested, in any circumstances?

As students describe their positions, fill in the positions along the line with more descriptive words. For example:

| Strongly in favor |                            |                      | Strongly against |
|-------------------|----------------------------|----------------------|------------------|
| Test everyone     | Random testing of everyone | Test suspicious only | Never test       |

- 6. As students clarify and describe their positions**, tell them that they are free to move to the point along the line that most accurately describes their opinion, and that it is okay to change positions, as they listen to each other.
- 7. At this point, ask students to give reasons** for their opinions. Encourage discussion from the rest of the class by asking if anyone else in the class supports that position, and if they have any additional reasons to support that view. Again, encourage students to move if they are swayed by arguments given by other students. Encourage a dialogue between students at either end of the continuum, and with students sitting down. To encourage serious consideration of opposing points of view, ask students what argument opposite from theirs is most persuasive or makes them think twice. Spend about 25 minutes on this activity.
- 8. Ask the students to sit down.** Continue the discussion by asking about consequences of different positions along the continuum. For example, what would happen if schools decided to test all students for drugs? Would drug use be reduced? Should there be criminal ramifications? What about testing for drugs or alcohol at prom, graduation, attendance at football games, etc.?

**9. Ask students what they believe the law allows** – Is random drug testing constitutional? Only with suspicion of drug use?.

In *York v. Wahkiakum School Dist. No. 200*, 178 P.3d 995 (2008), the Washington Supreme Court ruled that suspicionless drug testing of students in extra-curricular activities without evidence of wrong-doing violates the Washington State Constitution.

- The Washington state constitution provides, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” WASH. CONST. art. I, § 7. The Washington Supreme Court has held that this provision of the state constitution provides greater protection than its federal counterpart, the Fourth Amendment.
- The Washington Supreme Court concluded that requiring a student athlete to provide a urine sample intrudes upon the student's private affairs and their reasonable expectation of privacy – even though students have a lower expectation of privacy at school.
- Therefore, there must be authority of law for the “search” of the students’ urine. A warrantless search is unlawful unless it fits within an exception.
- The Court held that there is no “per se” exception for drug tests of students.
- Instead, the same standard for all searches of students on school property applies – there must be individualized suspicion that a student violated a school rule or a law.
- Therefore, random, suspicionless searches are unconstitutional.

The outcome is different for students living in other states, since the U.S. Supreme Court decided in *Board of Education of Independent School Dist. No. 92 v. Earls*, 122 S.Ct. 2559 (2002), that the U.S. Constitution permits a school to require all middle and high school students to consent to urinalysis drug testing in order to participate in any extra-curricular activity.

- Concluding that the “the Fourth Amendment does not require a finding of individualized suspicion . . . on schools attempting to prevent and detect drug use by students” and that “testing students who participate in extra-curricular activities is a reasonably effective means of addressing the School District's legitimate concerns in preventing, deterring, and detecting drug use.”

The US Supreme Court expanded the *Vernonia* ruling which permitted school policies that required student athletes to consent to drug testing prior to playing on a school team. *Vernonia v. Acton*, 515 U.S. 646 (1995). In the *Vernonia* case, James Acton, who was a seventh grader during the 1991-92 school year, applied to be on football team. He was given a drug-test consent form for him and his parents to sign. This was done for every student trying out for sports. No one suspected James of using drugs. He and his parents refused to sign the form, and he was then suspended from interscholastic athletics. The Actons sued the school district. However, the Supreme Court ruled against the Actons, stating that students have a reduced expectation of privacy and should expect intrusions on their normal rights and privileges when they choose to participate in school athletics. The Court used a balancing test. It weighed

the students' privacy interests against the interests of the school district in providing a drug-free environment. The Court also pointed out the athletes regularly change clothes in front of each other and can expect to have less privacy. Because the Actons had also claimed that the drug testing violated the Oregon constitution, the U.S. Supreme Court sent the case back to the circuit court to decide whether the testing program violates the search and seizure protections of the Oregon constitution.

But see *Doe ex rel. Doe v. Little Rock School District*, 380 F.3d 349 (8th Cir.2004), where the United States Court of Appeals for the Eighth Circuit found that the practice of the Little Rock School District that subjected students to random, suspicionless searches of their persons and belongings by school officials was unconstitutional, because the searches unreasonably invaded the students' legitimate expectations of privacy. Eighth Circuit noted that public school students have lesser expectations of privacy, owing, in large part, to the government's responsibilities as guardian and tutor of the children entrusted to its care. The Eighth Circuit stated however, that “[p]ublic school students' privacy interests, however, are not nonexistent.”

Likewise, In *Hough v. Shakopee Public Schools*, 608 F.Supp.2d 1087 (D.Minn.2009), the United States District Court for the District of Minnesota found that a policy of daily, suspicionless searches was not reasonable and thus was unconstitutional. The School district argued that students waived their right to privacy when they chose to accept special-education services from the school district. The district court rejected this argument, stating that participating in a special-education program is very different from participating in athletics (as in *Vernonia School District*) or in competitive extracurricular activities (as in *Earls*). No student is entitled under the law to play football or sing in the choir, but every disabled student is entitled under the law to special-education services.

**Ask students which decision they agree with and why.** They may be interested to know why the Washington State Constitution can grant greater constitutional rights than the U.S. Supreme Court. Remind students that the U.S. Constitution sets the minimum and states are free to provide greater rights, as Washington State did in this area.