



January 8, 2016

Superintendent Matt Fisher
Northwest Public Schools
2710 N. North Rd.
Grand Island NE 68803

Dear Superintendent Fisher:

I understand through media reports and recent inquires that the Northwest Public School Board of Education is currently considering a student drug testing policy. A school district may be permitted to adopt such a policy—but only with significant safeguards in place due to the fact that serious privacy and constitutional issues that are implicated. As such, I am writing to provide you with the legal and policy framework that should be considered regarding this proposal.

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LEGAL BACKGROUND:

The US Supreme Court first permitted drug testing of all student athletes in *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646 (1995). They expanded that to all students in extracurricular activities in *Board of Education v. Earls*, 536 U.S. 822 (2002). Even prior to the US Supreme Court's ruling in *Earls*, the 8th Circuit had ruled on the issue in 1999. As you may know, the 8th Circuit is the federal circuit that covers Nebraska. In *Miller v. Wilkes*, 172 F.3d 574 (1999), an Arkansas school policy of random urine drug testing was upheld by the 8th Circuit.

LIMITATIONS ON TESTING:

While these courts have permitted testing, they imposed significant protections for the students that you must be aware of. The testing programs in those cases only passed constitutional challenge because they included the following provisions:

- Refusal of the test (or failure of the test) could only result in being forbidden from extracurricular activities—it could not impact the child's school attendance or normal curricular participation
- No results may be provided to law enforcement
- The results may only be reported to the Superintendent or his designee
- Results would be kept in a confidential file separate from the student's normal educational file
- Parents' consent is required prior to the test
- The urine sample is provided in a stall that allows for privacy and no viewing of the student during the provision of the sample

- The test screens only for drugs and alcohol—the samples are not be tested for medical conditions

POLICY ISSUES:

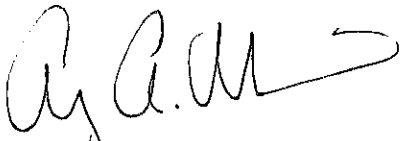
We would suggest that while you deliberate on this matter you also consider that while the testing may be legal, it has also been found to be expensive and ineffective. Several studies done in the last few years have demonstrated that in districts that have tested for a decade or more, there was no demonstrable change in substance abuse. The programs are extremely expensive—and in tight budget times there are most likely additional programming needs to be filled to enrich student achievement that should take priority over punitive and invasive testing.

Finally, these programs pull districts into a situation where they are providing a disincentive for students' participation in extracurricular activities. The American Academy of Pediatrics and National Institutes on Drug Abuse have spoken out against drug testing of students—they recommend smarter, more comprehensive programs to educate students rather than testing and punishing students. The Washington Post compiled much of this information in a recent article ("School Drug Tests" April 27, 2015) found online here:

<https://www.washingtonpost.com/news/wonk/wp/2015/04/27/schools-drug-tests-costly-ineffective-and-more-common-than-you-think/>.

CONCLUSION:

We will be monitoring implementation of your policy and have invited concerned parents or students to contact us with concerns as they arise. If we can be of any additional assistance, please do not hesitate to contact us. Thank you in advance for your time and consideration of this important matter.



Amy A. Miller
Legal Director