

# **THE EFFECTIVENESS AND LEGALITY OF RANDOM STUDENT DRUG TESTING PROGRAMS REVISITED**

by  
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## **INTRODUCTION**

It has been 3 ½ years since the United States Supreme Court broadened the authority of public school officials to use random student drug testing (RSDT) programs to test students for illegal drugs.<sup>1</sup> Increasingly, across the country school districts are adopting RSDT programs as one component of a larger drug awareness and prevention program.

The Supreme Court called the Nation's problem with illegal drug use a "national epidemic."<sup>2</sup> Indeed, recent research on the magnitude and extent of drug use among the Nation's youth indicates the Supreme Court did not overstate the substance-abuse problem. A Columbia University national survey of teens found that 62 percent of high schoolers (9.5 million students) and 28 percent of middle school students (almost 5 million students) report that drugs are used, kept or sold at their schools. Students who attend schools where substances are used, kept and sold are nearly three times more likely to smoke, drink or use illicit drugs as students whose schools are drug-free schools.<sup>3</sup>

Substance abuse adds at least \$41 billion dollars each year to the costs of elementary and secondary education in terms of special education, truancy, counseling, teacher turnover, property damage, injury, and other costs.<sup>4</sup> Joseph Califano, President of the National Center on Addiction and Substance Abuse (CASA) [and a former Secretary of Education] said, "Availability is the mother of use. We really are putting an enormous number of 12 to 17 year olds at risk."<sup>5</sup> Looking for help in solving the drug epidemic

Califano said, “I think when parents feel as strongly about drugs in the schools as they do about asbestos in the schools, we’ll start getting the drugs out of the schools.”<sup>6</sup>

Parents probably do not know the extent of drug and alcohol abuse among teenagers. By the time students finish high school 81 percent have drunk alcohol, 47 percent have used marijuana, and (35 percent in the past year) 24 percent have used another illicit drug. Nine and one-half percent have used cocaine within the past year. One million high school students are currently using steroids. The percentage of teens who know a friend or classmate that has abused prescription drugs was up eighty-six percent in 2005 compared to 2004, from fourteen percent to twenty-six percent.<sup>7</sup>

How should schools and communities deal with the drug problem among America’s teenage students? The U.S. Supreme Court found that drug testing students who participate in extracurricular activities is a reasonably effective means of addressing a school district’s legitimate interest in preventing, deterring and detecting drug use.<sup>8</sup>

It is difficult to gauge the expansion of random student drug testing (RSDT) programs around the country, but it appears certain that the number of voluntary and mandatory drug testing programs is growing in Texas, New Jersey, Indiana, California, Arkansas, Alaska, Pennsylvania, Oregon, Connecticut, Oklahoma, Mississippi, Florida, Georgia, North Carolina and Kentucky.

There are two major foundational issues that school districts encounter with respect to deciding whether to adopt and implement a RSDT program. First, are these programs effective in reducing and preventing drug use and secondly, are RSDT programs legal. The purpose of this article is to shed light on both of these issues.

This article features a follow-up study to one previously published in the Education Law Reporter regarding the effectiveness of student drug testing programs.<sup>9</sup>

This article also examines the legal issues in the context of RSDT programs.

## **I. EFFECTIVENESS OF RANDOM STUDENT DRUG-TESTING PROGRAMS**

### **A. Objectives of the Study**

As a follow-up to a 2003 survey of 65 Indiana high schools with random student-drug testing programs (RSDT), those same high schools were surveyed again in the Spring of 2005 about the effectiveness of RSDT programs. Information on the costs of such programs was incorporated into the most recent survey, along with questions regarding athletic and extracurricular participation levels, along with questions regarding the impact of random student-drug programs on student morale.

### **B. Study Design and Description**

High school principals at 65 Indiana schools were surveyed in April of 2005 about random student-drug testing program effectiveness and changes in student drug use over a period of almost three (3) school years (2002-03 school years to April 2005). The response rate to the written survey instrument was 86% (56 responses).

Of the 56 responses received, 54 of the high schools (98%) continue to utilize random student drug-testing programs as part of prevention measures. One (1) high school has discontinued the program and one (1) high school never implemented a program. Fifty-five percent of the principals described their high school as rural, thirty percent as suburban and fifteen percent as urban. Two-thirds (N=36) of the principals

responding to the survey report that their responses about student drug use were based upon written drug-use surveys of students.

### **C. Data Analysis**

The majority of respondents reported that student drug use had *decreased* since their RSDT program began, and that the RSDT programs did not affect student activity participation levels adversely. In fact, almost one-half of principals reported *increases in participation levels for athletic programs*. The reported per-test cost of a RSDT program was \$30 or less for 91% of the 54 high schools with RSDT programs.

When asked if the RSDT program negatively impacted the classroom, a full 100% (N=53) of principals responding (one respondent left this question blank), stated that they observed no evidence of a negative impact of the prevention program upon the classroom. The majority of testing programs utilized urine specimens and all schools notified parents of test results. The majority of schools temporarily restrict participation in activities upon a positive-test result. Most schools made referrals for some form of counseling when there was a positive test result.

High Schools with RSDT programs exceeded the state average for test scores on the state-mandated graduation test as well as exceeding the state average for graduation rates.

### **D. Detail of Results**

#### **1. Drug use by students (based on written self-reporting surveys)**

- 58% reported that drug use by students decreased (N=21)
- 42% reported that drug use by students remained the same (N=15)
- 0% reported that drug use had increased

Eighteen high schools responded that written surveys of student drug use are not utilized.

- 91% of principals (N=49) stated that they believe that RSDT does, in fact, limit the effects of peer pressure to use drugs.
- 9% of principals (N=5) stated that they do not believe that RSDT limits peer pressure effects.
- 41% (N=22) reported that the positive drug-test result rate has decreased.
- 56% (N=30) reported that the positive drug-test result rate has remained the same.
- 3% (N=2) reported that the positive drug-test result rate has increased.

## **2. Impact of random student drug testing programs:**

On athletic program participation:

- 0% of the high schools surveyed reported a reduction in student participation in athletic or extracurricular activities.
- 46% (N=24) of high schools reported increases in student participation in athletic activities.
- 54% (N=28) of high schools reported that student participation in athletic activities remained at the same level as before RSDT.

On extracurricular activity participation:

- 45% of high schools reported increases in student participation in extracurricular activities.
- 55% of high schools reported that student participation in extracurricular activities remained at the same level as before RSDT.

On test scores and graduation rates:

- 80% (2002-03 school year) and 79% of schools with RSDT achieved scores higher than the state average on the mandated graduation test for grades 10-12;
- 80% of high schools with RSDT programs (2003-04 school year) had more tenth graders passing the two graduation exam standards than the state average;
- 71% (2002-03 school year) and 75% (2003-04 school year) of high schools with RSDT programs had graduation rates higher than the State average (statistically significant number of high schools [37/52 – 71%] with RSDT programs in 2002-03 and 2003-04 [39/52 – 75%] had graduation rates higher than the State average.

Impact upon morale:

- 100% of principals reported that, despite critics claiming that RSDT has a negative impact in the classroom, their experiences showed this claim to be untrue.

### **3. Random student drug-testing program components:**

- Drug testing costs
  - \$15-13% (N=7)
  - \$20-50\$ (N=27)
  - \$30-28% (N=15)
  - \$40-5% (N=3)
  - \$60-4% (N=2)

91% of surveyed schools test for \$30 or less

63% of surveyed schools test for \$20 or less
- Covered activities

96% test students in athletics  
 78% test students in extracurricular activities  
 72% test students with driving/parking privileges  
 50% test students in co-curricular activities

- Drug testing methods
  - 57% (N=31) test for alcohol
  - 22% (N=12) test for steroids
  - 87% (N=47) test urine
  - 13% (N=7) test oral fluids
  
- Consequences of a positive test result
  - 85% require loss of athletics playing time
  - 79% require loss of extracurricular participation time
  - 63% require follow-up testing
  - 60% require participation in counseling
  - 43% require drug education participation
  
- Notifications of a positive test
  - 100% to parents
  - 81% to principals
  - 22% each to a counselor; a substance coordinator
  - 4% each to the school nurse and/or the Dean
  
- Student referrals
  - 44% to counseling
  - 35% each for family/parent counseling and treatment
  - 30% for drug education/prevention curriculum
  - 20% to an SAP

19% of schools reported that they do not refer students  
 7% reported “other” than the above types of referrals

## **E. Conclusions**

First, the use of formal surveys of students to assess the effectiveness of RSDT programs bolsters the credibility of research in this study, and others regarding the effectiveness of RSDT policies. The results represent “hard” empirical data.

Second, the RSDT programs' successes are particularly indicated by the decreases in student drug usage, and by the "preventive" category responses indicating drug usage remained the same.

Third, the RSDT programs' successes are particularly indicated by the decreased number of positive tests and by the "preventive" category responses indicating positive tests remained the same over a three year period.

Fourth, the proposition that RSDT programs pose a barrier to student participation in sports and extracurricular activities is false.<sup>10</sup>

Fifth, the claim by critics of RSDT programs that drug testing students has a negative impact on the classroom and creates mistrust is refuted by the professionals and is false.<sup>11</sup>

Sixth, the cost of RSDT programs is quite reasonable.

Seventh, most schools refer students who test positive to some form of counseling and/or drug education program.

## **II. CONSTITUTIONAL STANDARD FOR STUDENT SEARCHES**

### **A. Reasonableness Standard**

In *New Jersey v. TLO*, the U.S. Supreme Court held that the Fourth Amendment applied to searches and seizures conducted by public school authorities, but that the probable cause standard required of law enforcement is not required of public school officials.<sup>12</sup> The Court said a warrantless search is permissible if the school official has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order (violation of a school rule).

Both federal and state courts have held that school administrators are held to the standard of reasonable suspicion to justify a search of a student.

A “search” occurs whenever a school employee examines items or places within the possession or control of a student, that are not out in the open. A search would include looking into an opaque container such as a locker, handbag, backpack, folder, book, diary, calendar, letter or notes. Frisks or pat-downs, as well as asking a student to empty his or her pockets constitutes a search.<sup>13</sup>

A search based upon “individual suspicion” is a search that is based upon a suspicion that a particular student has committed a violation or infraction of a school rule or of the law, and that there may be evidence of the violation or infraction in a particular location. The Court ruled that the scope of the search must not be excessively intrusive considering the age, sex, and nature of the misconduct of the student.<sup>14</sup>

The Court established, for the first time, that public school officials are government representatives for Fourth Amendment purposes. The Court applied a “reasonableness” standard for non-criminal searches and seizures, creating a “special needs doctrine.”<sup>15</sup>

As a result of the *TLO* decision, all students reasonably suspected of possessing, using, or selling drugs at school could be searched by school officials. Many school districts across the country have officially adopted “reasonable suspicion” drug testing programs. These written policies spell out what constitutes reasonable suspicion for example, physical appearance, odor, possession of drug paraphernalia) and puts students on written notice that they may be required to submit to a chemical test of the student’s breath or urine.

Interestingly, reasonable suspicion programs include all students. In the *Earls* case, which resulted in a divided decision, Justice Breyer in a concurring opinion, analyzed the “individualized suspicion” requirement as it pertains to public schools in the context of RSDT. He stated... “[r]equiring individualized suspicion in this public school context, could well lead schools to push the boundaries of ‘individualized suspicion’ to its outer limits, using subjective criteria that may unfairly target members of unpopular groups or leave those whose behavior is slightly abnormal stigmatized in the minds of others.”<sup>16</sup>

### **B. The Student Drug Testing Cases**

The U.S. Supreme Court has ruled twice in favor of random student drug testing.<sup>17</sup> These decisions have legally paved the way for the expansion of RSDT programs. However, not all legal issues have been fully settled on a national basis. The possibility of a legal challenge is one major reason why school districts hesitate to implement RSDT programs.

What are the legal parameters, the safe harbors for school districts wanting to design and implement a RSDT program? First, we will look at two Supreme Court cases and the legal questions that remain unresolved after these decisions.

In *Vernonia*, the school district adopted a random urinalysis drug testing program for students who participated in its athletic programs.<sup>18</sup> The school district authorized the drug testing program because student athletes were found to be leaders in the student drug culture. The U.S. Supreme Court upheld the district policy of random testing of athletes. The Court concluded that under the circumstances of the case suspicionless

searches of all student athletes, viewed as role models was reasonable and did not violate the Fourth Amendment.

In 2002, in *Board of Education v. Earls*, the Supreme Court upheld random drug testing for students participating in extracurricular activities and athletics.<sup>19</sup> The school districts' RSDT policy applied to all middle and high school students. Parents and students alleged that testing students without suspicion of drug use or possession of drugs violated the Fourth Amendment. The plaintiffs also alleged that drug testing was invasive and that the school did not have a drug problem. Finally, plaintiffs alleged that drug testing would cause students not to participate in extracurricular activities.

The Court relied on its student drug-testing precedent in *Vernonia*. The Court reiterated that searches by public school personnel implicated Fourth Amendment interests. The Court looked at the nature of students' privacy rights in the context of the public school setting. The Court found that in the public school context, a search may be reasonable when supported by "special needs" beyond the normal need for law enforcement. The Court maintained that any reasonableness inquiry must consider the school's custodial and tutelary responsibilities for children as special needs.<sup>20</sup>

The Supreme Court explained that students have a limited expectation of privacy in the public school setting. The Court said, "Given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put, we conclude that the invasion of students' privacy is not significant."<sup>21</sup> The Court held that RSDT programs for "students who participate in extracurricular activities is a reasonably effective means of addressing the school district's legitimate concerns in preventing, deterring and detecting drug use."<sup>22</sup>

The *Earls* Court noted that the drug testing was done privately and the drug testing policy mandated confidentiality, and that “the test results are not turned over to any law enforcement authority. Nor do the test results here lead to the imposition of discipline or have any academic consequences.”<sup>23</sup>

The Tenth Circuit Court of Appeals had interpreted *Vernonia* to require specific evidence of a drug problem prior to the implementation of a RSDT program. The Supreme Court disagreed, stating “a demonstrated problem of drug abuse...is not in all cases necessary to the validity of a testing regime,” but that some evidence of student drug abuse does “shore up an assertion of special need for a suspicionless general search program.”<sup>24</sup>

The Court cited the *Von Raab* case,<sup>25</sup> where it upheld the drug testing of U.S. Department of Immigration Customs officials, for the proposition that it “has not required a particularized or pervasive drug problem before allowing the government to conduct suspicionless drug testing.”<sup>26</sup> The Court pointed out that “drug abuse is one of the most serious problems confronting our society today.” In summary, the Court absolutely rejected the notion that a public school must wait until student substance use can be shown to be pervasive and disruptive before it commences a RSDT program.

### **C. Scope of Opinions**

Against the background of these three powerful Supreme Court cases, it is fair to say that drug testing of students is legal. However, the Court established limits to drug testing and the facts of the cases constrain the holding to the following who, what, when, where, how, and why safe harbors for public schools:

1. Who can be tested? This would include the following: athletes, students participating in competitive extracurricular activities, cheerleaders, band, future farmers, future homemakers, academic teams, choir, pompoms, National Honor Society.

2. What drugs can be tested for? Illegal drugs including marijuana, opiates, amphetamines, cocaine, barbiturates, LSD.

3. When can testing take place? Before participation in a covered activity; randomly; retesting as established by school policy; and at any time upon reasonable suspicion and a signed consent from is obtained.

4. Where can drug testing take place? A closed restroom stall for either sex or boys may produce sample at a urinal, back to the monitor who stands 12 to 15 feet behind the student. The drug testing may take place at school. Conditions are similar to typical public restrooms.

5. How does school conduct drug testing? Monitor may listen for normal sounds of urination; strict procedures for chain of custody and access to test results; along with laboratory testing of the urine samples.

6. Why do schools implement a RSDT program? A safety rationale for the illicit drug and alcohol testing program and concern over student welfare with the goal of reducing and deterring drug use by students.

On a national basis, the Supreme Court cases left four major issues open.

1. Whether it would be constitutional to implement a mandatory RSDT program for all public school students as a requirement for attending schools?

2. Whether schools may expand RSDT programs to include students who drive to school or hold parking permits?

3. Whether schools may use other drug testing methods in addition to urinalysis?
4. Whether random drug testing may be unconstitutional under state constitutional provisions relating to search and seizure and privacy rights?
5. Once implemented, how long can the drug-testing scheme remain in place?

#### **D. For All Students**

It is important to note that the Supreme Court did not rule that all students could be required to submit to a drug test or an RSDT program as a condition to attend school. Justice Breyer in his concurring opinion wrote, “The testing program avoids subjecting the entire school to testing. And it preserves an option for a conscientious objector. He can refuse testing while paying a price (nonparticipation) that is serious, but less severe than expulsion from the school.”<sup>28</sup>

The Seventh Circuit Court of Appeals held in *Joy v. Penn-Harris-Madison School Corporation*<sup>29</sup> that it was approving an extracurricular RSDT program but found “the case has yet to be made that a urine sample can be the ‘tuition’ at a public school.”<sup>30</sup>

In 2001, a Texas federal district court struck down a random drug testing policy applicable to all students, noting that compulsory attendance at school is much different than voluntary participation in extracurricular activities.<sup>31</sup>

Neither has the Supreme Court nor other federal and state courts endorsed random drug testing of all students. The Supreme Court in *Earls* found that deterring illegal drug use by students was an important, perhaps compelling concern.<sup>32</sup> The Court also noted that it was endorsing random drug testing of students who voluntarily participate in extracurricular activities. The Court reasoned that voluntary participants had limited privacy rights because they subjected themselves to intrusions on their privacy compared

to the student body as a whole. The distinguishing point is that all states have mandatory compulsory attendance laws and attending school is not a voluntary activity. Clearly, any school district that would implement a drug testing program that includes all students would face a strong legal challenge. And the insurance company did not want to fund an appeal and curiously no other group volunteered to pay the school district's costs for an appeal to the Fifth Circuit Court.

### **E. Drivers**

While the *Earls* decision allows schools to test greater numbers of students for drugs, in practice, athletes and students participating in extracurricular activities constitute 60% to 75% of the student body. In order to reach as many students as possible many schools across the nation have decided to include students who drive to school and park on school premises in their RSDT programs.

The New Jersey Supreme Court weighed in on the issue of expanding random drug testing to students who want to park at school.<sup>33</sup> The Court applied the "special needs" approach, and upheld including student drivers who park at school in the RSDT program. The Court noted parking at school is voluntary and a privilege and student drivers subject themselves to rules and regulations not applicable to the entire student body.

The Indiana Supreme Court has also held that students who want to park their vehicles at school can be included in RSDT programs.<sup>34</sup> The Court devoted much of its opinion affirming the school's purpose of providing for student health and safety. The Court noted that if drug abuse increases the physical danger of participation in a school-

sponsored activity which would include parking privileges, a school corporation's interest in deterring drug abuse becomes stronger.

The Seventh Circuit Court of appeals has also approved random drug testing of student drivers who park on school grounds.<sup>35</sup> The Circuit Court found the school district's policy constitutional under the Fourth Amendment except as it applied to the testing of student drivers for nicotine. The court required the school to amend its policy. In response, the school corporation amended its policy so that a student driver would not be subject to consequences for a positive test for tobacco.

In 1998, the Seventh Circuit approved a program prohibiting a high school student from driving to and from school unless the student and parent or guardian consented to a test for drugs, alcohol or tobacco in random, unannounced urinalysis tests.<sup>36</sup> This case is important because it is the only case where a court had before it the issue of student drivers compared to students parking at school. The Court ruled it was constitutional to include student drivers in a RSdT program.

While the U.S. Supreme Court has not ruled on the issue of RSdT programs covering students who wish to drive or park at school, it has upheld suspicionless drug testing of railroad employees involved in train accidents.<sup>37</sup> The Court found a "special need" to exist in the context of transportation safety. Of course the Supreme Court has found "special needs" to exist in the public school context in the *TLO*, *Vernonia* and *Earls* cases. If a school expands its RSdT program to student drivers (in addition to athletes, and students participating in extracurricular activities) it may cover as many as ninety percent of the student body.

## **F. Other Testing Methods**

Urinalysis is the most common drug testing technique used in both the public and private sector. The Supreme Court approved the use of urinalysis in *Vernonia* and *Earls* for student drug testing. It is the only method approved for drug testing in the Federal workplace.<sup>38</sup> However, some private employers, public school districts and private schools have begun to use other types of drug tests on hair, sweat and saliva.

These methods vary in cost, reliability, drugs detected and the window of detection period. Of course, testing hair, saliva or sweat is less invasive than urine. However, this benefit must be balanced against the possibility of a legal challenge. Unquestionably, experts could testify about the accuracy, reliability, and timing of the different matrixes which can be used for testing.

#### **G. State Constitutions**

Opponents of random drug testing, after losing twice before the U.S. Supreme Court, have turned their attention to battling drug testing in state courts under state constitutional provisions. Opponents of random drug testing hope that state supreme courts find their states' fourth amendment protections stronger than the U.S. Constitution's recognized protections.

Three State Supreme Courts and one State Court of Appeals have ruled on the constitutionality of random drug testing policies and programs, as adjudged by state constitutional protections. School districts have been successful in each case defending their drug testing program.

The New Jersey Supreme Court rejected the argument that the New Jersey state constitution provided greater protection of student rights than the U.S. Constitution.<sup>39</sup>

The Court noted that the Search and Seizure Clause of the New Jersey Constitution was nearly identical to the Fourth Amendment of the U.S. Constitution. The Court relied heavily on the Supreme Court precedents, *Vernonia* and *Earls*.

Likewise, the Indiana Supreme Court found the Indiana Search and Seizure Clause to read practically the same as the Fourth Amendment to the U.S. Constitution. In *Linke v. Northwestern School Corporation*, the high school's RSDT program included all students who participated in sports, extracurricular and co-curricular activities and who wanted to park vehicles on school property.<sup>40</sup> The Court in upholding the policy, noted that a greater range of activities occur during extracurricular activities than during normal school hours and that there are many more ways for a student to be injured, to endanger fellow students, to transgress school rules, or to violate the law while participating in an extracurricular off-campus event than during the relative order of school hours.

The Court used a balancing approach focusing on the privacy interests of students and the competing interests of the school. The Court held that under a "totality of circumstances" approach that the RSDT program did not violate the Indiana Search and Seizure Clause.<sup>41</sup>

The Indiana Civil Liberties Union, representing the plaintiffs [ACLU represented *Acton* and *Earls*] argued that the school's RSDT program ran afoul of the State Constitution's Privileges and Immunities Clause. The Court held that the Indiana Privileges and Immunities Clause was not violated because the RSDT program was reasonably related to the school's legitimate purpose of promoting student health and safety, limiting peer pressure, and encouraging drug treatment.

In *Weber v. Oakridge School District 76*, the Oregon Court of Appeals upheld a drug testing policy requiring all students who wanted to participate in extracurricular school athletics to consent to random urinalysis testing throughout the school year.<sup>42</sup> The Oregon Supreme Court denied certiorari in this case, thus, allowing the Court of Appeals decision to stand.<sup>43</sup> The *Acton* case was remanded back [this case was based in Oregon].

The school's drug testing policy also required student athletes to disclose any use of prescription medicines. A student who made the volleyball team and her parents refused to consent to the RSDT program and the disclosure requirements. The parents brought an action against the school arguing that the school's policy violated the student's right to be free from unreasonable searches and seizures under the Oregon Constitution.

The trial court upheld the RSDT program under the Oregon Constitution except for the requirement calling for students to disclose use of prescription medication before testing positive for alcohol or drug use. The school district revised its policy, eliminating the disclosure requirement and the court upheld the policy under the Oregon Constitution.

The Pennsylvania Supreme Court found that a school district's RSDT policy violated the rights of students under the Pennsylvania Constitution, unless the school district could show a specialized need for an RSDT program.<sup>44</sup> The school district enacted a RSDT policy that included students participating in athletics, extracurricular activities and students holding a school parking permit. Parents of two girls who were subject to the policy filed an action to stop the testing alleging the policy violated Article I, Section 8 of the Pennsylvania Constitution. [Finally a specific state constitution clause was identified]

The Pennsylvania Supreme Court held that the State Constitution provided stronger privacy protections than the Fourth Amendment. The Court was critical of the school district for showing no evidence of a need for a RSDT program because of an existing student drug problem, particularly among the student groups included in the program. However, the Court held that if the school could show a specific need for an RSDT program – evidence of a drug problem at that school – then it would be constitutional to adopt a RSDT policy.<sup>45</sup>

## **CONCLUSION**

The Supreme Court has spoken and so have several state and federal courts. Random student drug testing is legal with some limitations. The research on RSDT programs also speaks volumes on the effectiveness of drug testing programs. RSDT programs are effective in deterring, reducing and detecting illegal drug use among students. This should not be surprising since drug testing has been effective in the U.S. military and American workplace. The Office of National Drug Control Policy (ONDCP) reports “employers who have followed the federal model [random drug testing] have seen a 67 percent drop in positive drug tests. Along with significant declines in absenteeism, accidents, and healthcare costs, they’ve also experienced dramatic increases in worker productivity.”<sup>46</sup>

As Joseph Califano, Chairman and President of (CASA) stated, “It’s time for parents to shout, ‘We’re mad as hell and we’re not going to take this anymore’! And for education officials in Washington and the states, cities, and counties to mount the same campaign to get drugs out of our schools as they are mounting to increase test scores.”<sup>47</sup> One legal and effective means to get the drugs out of schools is RSDT.

1. *Bd of Educ. of Ind. Sch. Dist. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S. Ct. 2559 (2002).
2. *Id.* at 836.
3. National Center on Addiction and Substance Abuse at Columbia University (2005) National Survey on American Attitudes on Substance Abuse X, Teen and Parents.
4. National Center on Addiction and Substance Abuse at Columbia University (2001).
5. Associated Press (AP) *Teen Survey Finds Fewer Drug-Free Schools* (August 18, 2005)
6. *Id.*
7. *See Supra* note 3. See also John McCloskey and Julian Bales, *When Winning Costs Too Much* (2005).
8. *See Supra* note 1.
9. Joseph R. McKinney, *The Effectiveness and Legality of Random Student Drug Testing Policies*, 184 Ed. Law Rep. 669 (2004).
10. See ACLU and Drug Policy Alliance, *Making Sense of Student Drug Testing* (2004).
11. *Id.* See generally, J. Stafkovich and G.O'Brian, *Student's Fourth Amendment Rights and School Safety: An Urban Perspective*, 29 Educ. & Urban Society 149 (1997). (It should be noted that the authors did not conduct any empirical research).
12. *New Jersey v. TLO*, 469 U.S. 325 (1985).
13. Joseph R. McKinney, *Legal Handbook of Indiana School Administrators* (2000).
14. *See Supra* note 12.
15. *Id.*

16. *See supra* note 1 at 841-42.
17. *Id. See also Vernonia Sch. Dist. v. Acton*, 515 U.S. 646 (1995).
18. *Vernonia, Acton*, 515 U.S. 646 (1995).
19. *See supra* note 1.
20. *Id.*
21. *Id.* at 834.
22. *Id.* at 837.
23. *Id.* at 834.
24. *Id.* at 835.
25. *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989)
26. *See supra* note 1, at 825.
27. *Id.*
28. *Id.*, at 841-42.
29. *Joy v. Penn-Harris-Madison Sch. Corp.*, 212 F3d 1052 (7th Cir. 2000).
30. *Id. See also*, Gareth Zehrbach and Julie Mead, *Urine as Tuition: Are We There Yet?*  
194 Ed. Law Rep. 776.
31. *Tennahill v. Lockney Indep. Sch. Dist.*, 133 F. Supp. 2d 919 (N.D. Tex. 2001).
32. *See supra* note 1.
33. *Joye v. Hunterdon Central Regional High Sch. Bd. of Educ.*, 176 N.J. 568, 826 A.2d  
624 (N.J. 2003).
34. *Linke v. Northwestern Sch. Corp.*, 763 N.E.2d 972 (Ind. 2002).
35. *See supra* note 29.
36. *Todd v. Rush County*, 133 F.3d 984 (7th Cir. 1998).

37. *Skinner v. Railroad Labor Executives Assn.*, 489 U.S. 602 (1989).
38. Office of National Drug Control Policy (ONDCP). *Drug Testing in Schools* (2005).
39. *Joye*, supra note 33.
40. *Linke*, supra note 34.
41. *Id.*
42. *Weber v Oakridge Sch. Dist.* 76, 56 P.3d 504 (OR App.2002).
43. *Weber v. Oakridge School District*, 69, P.3d 1233 (OR 2003).
44. *Theodore v. Del. Valley Sch. Dist.*, 575 Pa.321, 836 A.2d (Pa. 2003).
45. *Id.*
46. *See supra* note 38, at 4.
47. *See supra* note 3, at ii.