

February 7, 2006

Ms. Denise W. Koch, Chair  
Williamsburg-James City County School Board  
PO Box 8783  
Williamsburg, VA 23187

**RE: ACLU Opposition to Proposed Program for Random Drug Testing of Students in Williamsburg-James City County Schools.**

Dear Ms. Koch:

I am writing to urge you to reject or significantly modify the random student drug testing program (RSDT) proposed by Williamsburg-James City County Superintendent Gary Mathews. Because I am aware that you have thoroughly researched this issue and that many of the school board members were present at the town meeting last May where I was given an opportunity to discuss this issue, I will keep my letter short.

The reasons for opposing the proposed program are as follows:

First and foremost, this and any RSDT program invades student privacy. Before implementing a program that compromises this fundamental constitutional right, it is important to determine that the program will be effective and that it is the least burdensome means of accomplishing your goal of reducing drug use by students. By Superintendent Mathews's own admission, there is no evidence indicating that RSDT actually deters drug use. Furthermore, RSDT diminishes student privacy rights in ways that alternative programs emphasizing education and rehabilitation do not.

Second, the program as proposed by Superintendent Mathews may go beyond the legal limits allowed by the U.S. Supreme Court, thus subjecting the school system to litigation. The Supreme Court has permitted random drug testing of students engaged in athletics and other competitive extracurricular activities, and has implied that the testing of students engaged in any extracurricular activity may be permissible.

However, the nation's high court has not expressly ruled that random testing of students who use the school parking lot is constitutional. Legal scholars may disagree on the interpretation of the Supreme Court's most recent ruling on student drug testing, but it is certain that a legitimate legal challenge to the proposed policy could be mounted by the parents of a student concerned that his or her privacy rights have been impermissibly compromised.

Third, although the proposed policy ostensibly goes to some length to keep student drug testing records confidential, the mandatory punishment for a first-time positive test

includes a two-week suspension from extracurricular activities. This suspension is tantamount to announcing the positive drug test over the school's public address system and will immediately label the student as a drug user among peers and school professionals. The results of such an announcement are likely to be counterproductive.

The ACLU of Virginia recommends that you reject the proposed drug testing program in favor of an aggressive education, identification, and rehabilitation program. We believe that such a program is likely not only to be a more effective means of reducing drug use, but that it can be accomplished while fully protecting every student's constitutional right to privacy.

In the alternative, the ACLU of Virginia recommends that you modify the proposed policy to, at the very least, place the universe of students targeted for testing squarely within the boundaries permitted by the U.S. Supreme Court.

I thank you for your attention.

Sincerely,

Kent Willis  
Executive Director

cc: Ms. Elise Emanuel  
Dr. John Alewynse  
Mr. Ron L. Vaught  
Ms. Ruth Larson  
Mr. Joseph "Joe" Fuentes  
Ms. Mary Ann Maimone  
Gary S. Mathews