

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

<p>EAST BATON ROUGE FEDERATION OF TEACHERS, Plaintiff, v. EAST BATON ROUGE PARISH SCHOOL BOARD, Defendant.</p>	<p>CIVIL ACTION NO. 3:08-CV-671-JJB</p>
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

INTRODUCTION

Defendant East Baton Rouge Parish School Board (“the School Board”) imposes drug tests on its teachers whenever they suffer injuries on the job, even where there is no suspicion of drug use and despite binding Fifth Circuit precedent that this suspicionless search policy is unconstitutional. Because these suspicionless searches plainly violate the teachers’ privacy and Plaintiff, the East Baton Rouge Federation of Teachers (“the Federation of Teachers”), is likely to prevail on the merits of its claim, the Federation of Teachers respectfully requests that this Court preliminarily enjoin the School Board’s unconstitutional policy.

The School Board’s post-accident drug-testing policy involves no ordinary search. Rather, the School Board compels and analyzes teachers’ bodily fluids—revealing the teachers’ medical conditions and effectively peering into their medicine cabinets—without any suspicion that the teachers’ accidents involved illegal drugs. Compulsion of the teachers’ bodily fluids is unreasonable and degrading to these dedicated public servants. There is no justification to drug test teachers every time they sustain a contusion slipping on a wet floor or receive a cut resulting from an assault by a student. In light of binding Fifth Circuit case law, the challenged suspicionless drug-testing policy must be enjoined.

FACTS

Teachers are among the most trusted and respected government employees. They also are among the least likely public servants to use illegal drugs. Exh. A.¹ However,

¹ Exhibit A is a true and correct copy of an excerpt of a federal government study. The study, found at <http://www.oas.samhsa.gov/work2k7/work.pdf>, reports that school

they are being drug tested pursuant to the School Board's suspicionless drug-testing policy whenever they slip on a wet floor, pull a muscle while reaching for an eraser, suffer a laceration at the hands of an attacking student, or scrape their arm when participating in a faculty-student softball game.

The School Board demands that its teachers be subjected to drug and alcohol tests whenever they are involved in an accident or "near miss of an accident" during the school day. Exh. B, p. 11 (Section B.1.a). Distinct from the School Board's unchallenged suspicion-based drug-testing policy,² its suspicionless, post-accident drug-testing policy does not require that injured teachers be suspected of wrongdoing before they are forced to hand over their urine. Moreover, a teacher involved in an accident who refuses to provide her bodily fluids for a drug test can be terminated. *Id.*

The drug test of East Baton Rouge teacher Peggy Reno illustrates how the School Board's suspicionless drug-testing policy is implemented. Ms. Reno is a veteran and respected teacher. Trained to teach English language arts/reading, math, science, and social studies classes, Ms. Reno is a two-time East Baton Rouge teacher of the year. Exh. C. She has never in her life illegally used a controlled substance, and her school has never suspected otherwise. *Id.* at ¶¶ 5, 8. On September 24, 2008, a student punched Ms. Reno, but the assault did not cause any physical injuries. *Id.* at ¶ 7. After the attack, Ms. Reno was forced to submit to a drug test pursuant to the challenged post-accident drug-testing policy. *Id.* at ¶ 9. The School Board has admitted that the circumstances of

employees use drugs at lower rates than even computer scientists, mathematicians, and healthcare practitioners. Exh. A.

² The School Board drug tests its employees in a variety of other contexts, such as when it suspects that its teachers are intoxicated during school hours ("suspicion-based testing"). The Federation of Teachers does not challenge this, or any, drug-testing policy other than the suspicionless, post-accident testing policy.

the attack did not indicate that Ms. Reno was under the influence of drugs or alcohol. *Id.* at ¶ 8. Indeed, Ms. Reno has never been intoxicated during the scope of her employment. *Id.* at ¶ 5. However, as a result of the attack on Ms. Reno—an incident in which she was the victim—this award-winning teacher, never suspected of drug use, was required to provide a sample of her urine for inspection and analysis by her school officials.

Countless other teachers who have never used drugs—and who have never been suspected of using drugs—have been subjected to similar searches. These analyses of bodily fluids are significantly more invasive than typical searches. Unlike the search of a jacket pocket or desk, an analysis of urine can reveal teachers’ most sensitive medical information, such as whether they have certain diseases, whether they take prescription medication, and whether they are pregnant. *See Skinner v. Ry. Labor Executives’ Ass’n*, 489 U.S. 602, 617 (1989) (“[C]hemical analysis of urine, like that of blood, can reveal a host of private medical facts about an employee, including whether he or she is epileptic, pregnant, or diabetic.”). The initial drug test is non-specific and returns many “false positives” for illegal drugs when the teacher is merely lawfully taking a prescription drug, for example. Therefore, teachers are required to disclose their legal prescriptions—which often results in the disclosure of teachers’ sensitive medical conditions—when they hand over their urine for inspection. *See* Exh. C, ¶ 10.

Challenging this troubling policy, the Federation of Teachers filed the instant lawsuit on behalf of the 1,600 teachers it represents in the East Baton Rouge Parish School System. It seeks declaratory relief and a permanent injunction to stem these suspicionless searches of its members. It now respectfully moves for preliminary relief to enjoin the implementation of the School Board’s unconstitutional search policy.

The Federation of Teachers' members currently face the imminent threat of being forced to hand over their urine to the government for inspection, even though they are not suspected of wrongdoing. These teachers are dedicated and dutiful public servants who pose no safety threat whatsoever. They have nothing to hide, but want their privacy respected.

ARGUMENT

The Fifth Circuit has held that post-accident searching of teachers' urine is unconstitutional when there is no suspicion that the accident is due to illegal drug use. Under binding Fifth Circuit precedent, the School Board's suspicionless drug-testing policy is unconstitutional and must be enjoined.

The Federation of Teachers' claim satisfies the four-part test for the granting of a preliminary injunction: (1) there is a substantial likelihood that the Federation will prevail on the merits of its claim; (2) there is a substantial threat that the Federation's members will suffer irreparable injury if a preliminary injunction is not granted; (3) the threatened injury to the Federation's members outweighs the injury, if any, that a preliminary injunction would pose to the School Board; and (4) granting the preliminary injunction will not disserve the public interest. *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006) (providing these factors for the issuance of a preliminary injunction); *Concerned Women for Am., Inc. v. Lafayette County*, 883 F.2d 32, 34 (5th Cir. 1989) (same). In *United Teachers of New Orleans v. Orleans Parish School*, 142 F.3d 853 (5th Cir. 1998), the Fifth Circuit held that a plaintiff-teacher's union was likely to prevail on the merits of its claim that a school district's suspicionless, post-accident drug-testing policy was unconstitutional, and it instructed the district court to enjoin such suspicionless searches.

United Teachers is dispositive and compels the granting of a preliminary injunction to enjoin the School Board's identical policy.

I. THE FEDERATION OF TEACHERS IS LIKELY TO PREVAIL ON THE MERITS OF ITS CLAIM UNDER BINDING FIFTH CIRCUIT PRECEDENT.

The Federation of Teachers is likely to prevail on the merits of its claim that the suspicionless, post-accident drug-testing policy violates the Fourth Amendment. Suspicionless searches almost always offend the Constitution, and the Fifth Circuit has held that the suspicionless search policy at issue here is unconstitutional.

The Federation's Fourth Amendment claim tracks a well-recognized three-step analysis. First, drug testing is a search for purposes of the Fourth Amendment. *Chandler v. Miller*, 520 U.S. 305, 313 (1997); *Skinner*, 489 U.S. at 617. As the Supreme Court has stated, "[t]here are few activities in our society more personal or private than the passing of urine. . . . Because it is clear that the collection and testing of urine intrudes upon expectations of privacy that society has long recognized[,] . . . these intrusions must be deemed searches." *Skinner*, 489 U.S. at 617 (quoting *Nat'l Treasury Employees Union v. Von Raab*, 816 F.2d 170, 175 (5th Cir. 1987)). Second, government searches almost always must be based on *individualized suspicion* of wrongdoing. *Chandler*, 520 U.S. at 313. In other words, suspicionless searches, such as drug tests, are presumptively unconstitutional. Third, the government may institute *suspicionless* employee drug testing only pursuant to an extremely narrow and jealously protected set of circumstances: where the government satisfies its burden of demonstrating a "special need" to drug test a particular class of workers, and even then, only where the government's public interest in random drug testing outweighs the employees' personal

privacy interest. *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665-66 (1989); *see also, e.g., Baron v. City of Hollywood*, 93 F. Supp. 2d 1337, 1342 (S.D. Fla. 2000) (noting that the government bears the “burden of showing a ‘special need.’”); *O’Neill v. Louisiana*, 61 F. Supp. 2d 485, 497 (E.D. La. 1998) (“The burden falls on [the government] to demonstrate . . . [a] ‘special need’ . . .”).

Applying this framework, the Fifth Circuit held that a drug-testing policy identical to the policy challenged in this case is unconstitutional. In *United Teachers*, the court of appeal assessed the constitutionality of a school district’s “testing of all employees injured in the course of employment without regard to the circumstances, even without any suggestion that a triggering injury was caused by any misstep of the employee to be tested.” 142 F.3d at 856. The court’s analysis hinged on whether suspicionless, post-accident searches of teachers “can fit . . . within a special needs exception.” *Id.* Holding that a school district does not have a special need to subject teachers to drug tests following on-the-job accidents where the school lacks suspicion that drug use led to the accident, the Fifth Circuit held that the plaintiff-teacher’s union was likely to prevail on the merits of its constitutional challenge. *Id.* at 857.³

The School Board’s policy is materially identical—and nearly verbatim—to the policy that the Fifth Circuit held unconstitutional in *United Teachers*. As in *United*

³ *United Teachers* is consistent with judicial opinions across the country that strike down policies requiring suspicionless drug testing of teachers. While suspicionless *post-accident* testing of teachers is unique—the Federation of Teachers is unaware of any case beside *United Teachers* that has considered such a policy—the vast majority of courts to have considered suspicionless *random* drug testing of teachers have likewise struck down these policies. *See, e.g., Ga. Ass’n of Educators v. Harris*, 749 F. Supp. 1110 (N.D. Ga. 1990); *Bangert v. Hodel*, 705 F. Supp. 643 (D. D.C. 1989); *In re Patchogue-Medford Congress of Teachers v. Bd. of Educ.*, 505 N.Y.S. 2d 888 (App. Div. 1986); *see also Baron*, 93 F. Supp. 2d 1337 (striking down city’s policy of randomly drug testing all of its employees, including teachers).

Teachers, the School Board's policy requires the analysis of a teacher's urine whenever he or she is involved in an accident, even where there is no suspicion that the teacher was intoxicated. In light of this binding precedent, the Federation of Teachers is likely to prevail on the merits of its Fourth Amendment claim.

II. THE EQUITABLE FACTORS LIKEWISE MILITATE IN FAVOR OF PRELIMINARILY ENJOINING THE SCHOOL BOARD'S UNCONSTITUTIONAL POLICY.

The Fifth Circuit enjoined the suspicionless, post-accident search policy in *United Teachers* after finding that the plaintiff-teacher's union was likely to prevail on the merits of its claim; the equitable factors for an injunction so clearly tipped in favor of preliminarily enjoining the unconstitutional policy that the court did not even pause to mention them. *See id.* at 856 ("The usual standards for grant of a preliminary injunction are applicable. The only element at issue is the likelihood of success on the merits."). Here, too, the equitable factors clearly militate in favor of granting a preliminary injunction, where teachers face a serious and imminent violation of their privacy as a result of an unconstitutional search policy.

A. The Teachers Will Suffer an Imminent Injury if They Are Required to Produce Their Bodily Fluids and Valid Medical Prescriptions For Inspection.

If a preliminary injunction does not issue, the teachers' injury is irreparable and painfully clear. They stand to lose their privacy, to involuntarily disclose their most sensitive medical conditions and valid medical prescriptions, and, in the process, to forego their constitutional rights.

Privacy violations, much like First Amendment violations, are irreparable injuries. *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Once

an “infringement has occurred,” the Fifth Circuit has held, “it cannot be undone by monetary relief.” *Id.*

The inspection and analysis of one’s bodily fluids is a serious infringement of privacy. It can inform the State about a teacher’s most sensitive medical information, such as whether she has certain diseases, takes prescription medication, or is pregnant. *See Skinner*, 489 U.S. at 617 (“[C]hemical analysis of urine, like that of blood, can reveal a host of private medical facts about an employee, including whether he or she is epileptic, pregnant, or diabetic.”); *see also* Exh. C, ¶ 10 (noting that teachers are forced to disclose their legal drug prescriptions when they hand over their urine for analysis). As the federal district court for the District of Columbia noted: “[C]ompulsory urinalysis . . . can provide Government officials with a periscope through which they can peer into an individual’s private life,” highlighting the legal use of prescribed medications and exposing the “intimate details of [an] illness or illnesses.” *Bangert*, 705 F. Supp. at 649. Of course, once other people learn of this sensitive information, it cannot be “unlearned”; the harm is serious and cannot be undone.

B. The Teachers Would Suffer a Greater Hardship if the Injunction Were Denied Than the School Board Would Suffer If Its Unconstitutional Policy Were Enjoined.

The teachers, as noted above, stand to suffer serious and imminent incursions into their privacy if the suspicionless drug-testing policy is not enjoined. Their injury is far greater than the hardship, if any, the School Board would suffer if the Court grants the Federation of Teachers’ motion.

Granting a preliminary injunction would not harm the School Board. Rather, it would result in the School Board rejoining the ranks of the overwhelming majority of

school districts in this country, which do not require injured or attacked teachers to be drug tested absent suspicion of drug use. Furthermore, there is no evidence that the School Board's drug-testing policy reduces the incidence of drug use among teachers. Nor is there evidence that drug use among East Baton Rouge teachers has declined since the policy went into effect. In short, enjoining the suspicionless, post-accident drug-testing policy until this Court can decide the case fully and finally will not harm the School Board.

However, if the Court were to deny a preliminary injunction, injured teachers will have to produce their bodily fluids and valid medical prescriptions for inspection. With irreparable privacy violations on the one hand, and little to no harm to the School Board on the other hand, the balance of hardships clearly weighs in favor of preliminarily enjoining the suspicionless search policy.

C. Protecting Teachers' Constitutional Rights Will Not Disserve the Public Interest.

Preliminarily enjoining the School Board's suspicionless drug-testing policy will not dissserve the public interest. On the contrary, a preliminary injunction, which will protect teachers' privacy and uphold fundamental constitutional rights against suspicionless searches, will advance the public interest.

Where a policy threatens constitutional rights, a preliminary injunction does not dissserve the public interest. *See, e.g., Wexler v. City of New Orleans*, 267 F. Supp. 2d 559, 568-69 (E.D. La. 2003). In *Wexler*, for example, the court found that the public interest was not disserved by preliminarily enjoining an ordinance that threatened First Amendment rights: "The public interest is best served by enjoining the effect of an

ordinance which limits potentially constitutionally protected expression until it can be conclusively determined that the ordinance withstands constitutional scrutiny.” *Id.*

Here, guaranteeing the integrity of constitutional privacy “until it can be conclusively determined that the [policy] withstands constitutional scrutiny” undoubtedly serves the public interest. Ensuring teachers’ privacy is imperative. It cannot be in the public interest to require that teachers surrender their constitutional right to privacy—giving up their freedom from suspicionless searches—as punishment for their public service. Far from disserving the public interest, enjoining the School Board’s invasive and unconstitutional policy will best serve the public interest.

CONCLUSION

For the foregoing reasons, the Federation of Teachers respectfully requests that this Court grant its motion and preliminarily enjoin the School Board’s suspicionless, post-accident drug-testing policy until final adjudication of this matter.

Dated: December 22, 2008

Respectfully submitted,

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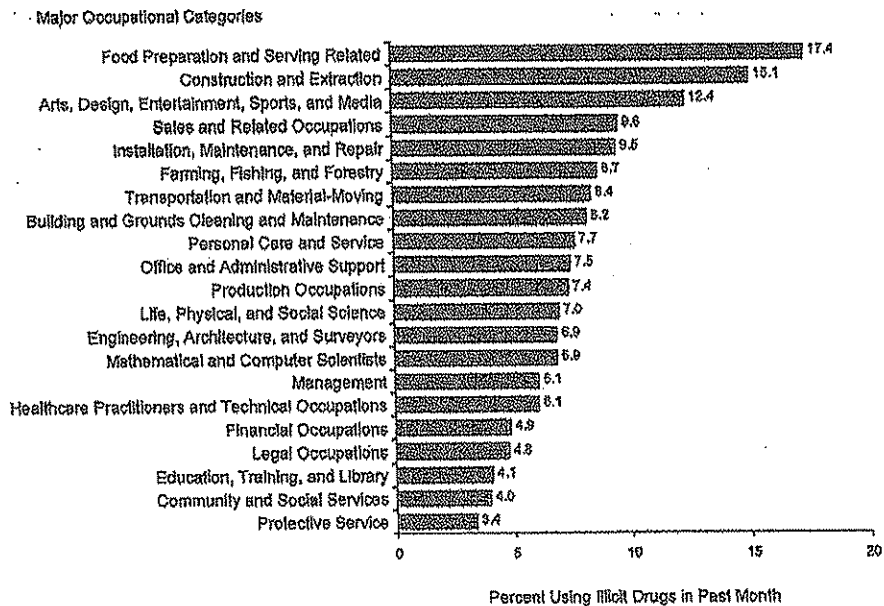
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* Applications for pro hac vice admission of out-of-state counsel are pending.

EXHIBIT A

Figure 3.1 Past Month Illicit Drug Use among Full-Time Workers Aged 18 to 64, by Major Occupational Categories: 2002-2004 Combined



3.3. Heavy Alcohol Use among Full-Time Workers, by Occupation

- The major occupational groups with the highest prevalence of past month heavy alcohol use were construction and extraction occupations (17.8 percent) and installation, maintenance, and repair occupations (14.7 percent) (Figure 3.2 and Table 3.3).
- Community and social services occupations (2.8 percent) had the lowest prevalence of past month heavy alcohol use of the major occupations (Figure 3.2 and Table 3.3).

3.4. Dependence and Abuse among Full-Time Workers, by Occupation

- The major occupational groups with the highest prevalence of illicit drug dependence or abuse in the past year were food preparation and serving related occupations (6.5 percent) and construction and extraction occupations (6.2 percent) (Table 3.4).
- Construction and extraction occupations (16.9 percent) and food preparation and serving related occupations (14.7 percent) had the highest prevalence of alcohol dependence or abuse in the past year in the major occupational groups (Table 3.4).

Figure 3.3 Past Month Illicit Drug Use among Full-Time Workers Aged 18 to 64, by Industry Categories: 2002-2004 Combined

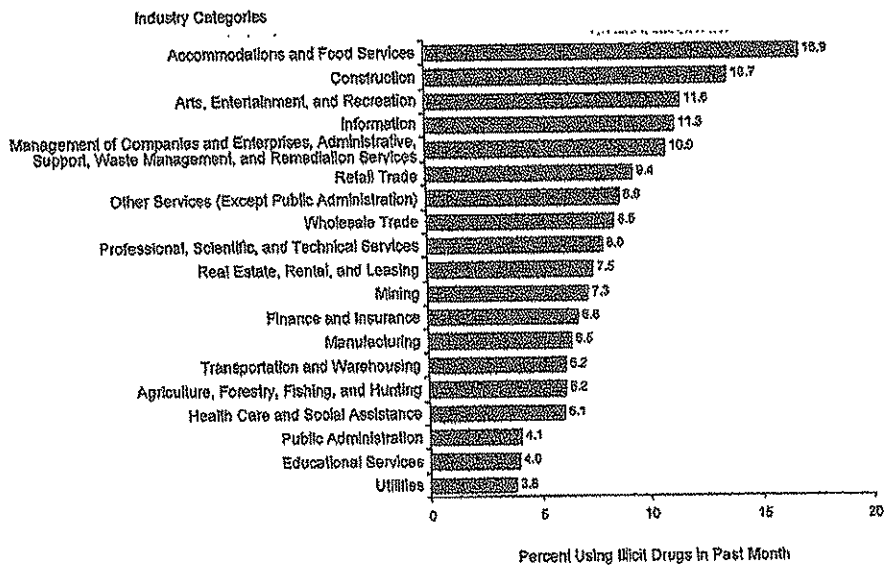


Figure 3.4 Past Month Heavy Alcohol Use among Full-Time Workers Aged 18 to 64, by Industry Categories: 2002-2004 Combined

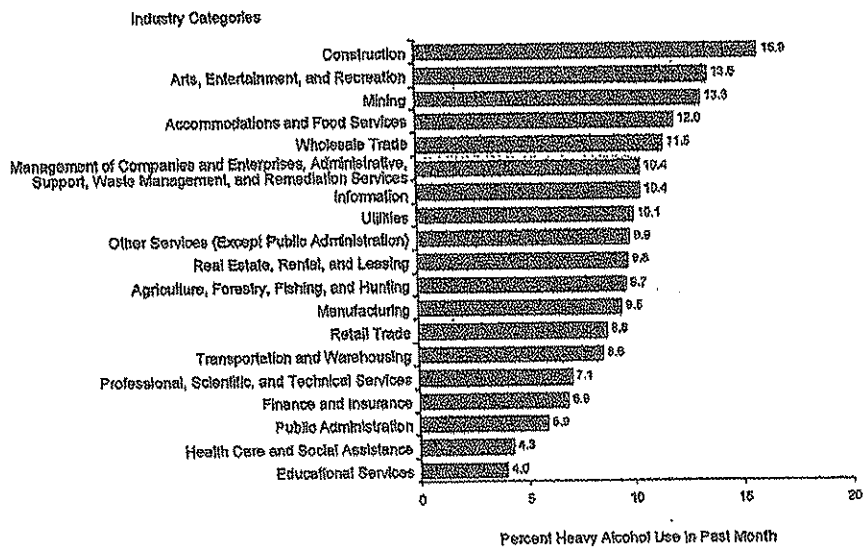


EXHIBIT B

EMPLOYEE SAFETY HANDBOOK Revised August, 1999

Quality and Equity: Our Children are the Reason

EAST BATON ROUGE PARISH SCHOOL SYSTEM

Clayton Wilcox, Ph. D., Superintendent of Schools

P.O. Box 2950 Baton Rouge, LA 70821. 922-5400
Questions regarding this policy should be referred to the Office of
Risk Management at 226-3468 or 226-3469.

EAST BATON ROUGE PARISH SCHOOL BOARD

Jacqueline Mims, Board President
Roger Moser, Vice President

William "Bill" Black
Jill Dyason-Labarber
Janet Pace
Eldon R. Ledoux
Warren Pratt

Darryl Robertson
Noel F. Hammatt
Ingrid Kelly
Alfred Williams
Patricia Haynes-Smith

Clayton Wilcox, Ph. D.,
Superintendent of Schools

East Baton Rouge Parish School System
STATEMENT OF UNDERSTANDING
and
Agreement to Comply

This form must be filled out completely, countersigned and turned in to your supervisor or principal *before* you will be allowed to begin work.

FAILURE TO COMPLY WITH THE RULES AND REGULATIONS AS PRESENTED IN THE EAST BATON ROUGE PARISH SCHOOL SYSTEM POLICY MANUAL RISK MANAGEMENT PLAN AND THE SAFETY HANDBOOK WILL RESULT IN DISCIPLINARY ACTION AND OR A MANAGEMENT REVIEW.

I have read, understand and or have had explained to me and have received a copy of the East Baton Rouge Parish School System Employee Safety Handbook and agree to abide by the policies and regulations set therein as a condition of employment.

Employee Name (Please Print)

Social Security Number

Employee Signature

Date

Signature of Employee's Supervisor or Principal

Date

Employees shall report all accidents and work-related injuries to their supervisor or principal, immediately, even if there was no apparent injury or damage. Failure to report or late reporting of an accident will be grounds for disciplinary action.

Revised 02/97

**WELCOME TO THE
EAST BATON ROUGE PARISH SCHOOL SYSTEM**

The superintendent, staff and board of the East Baton Rouge Parish School System are committed to providing a safe, healthful working and learning environment for our personnel, students, staff, visitors and all others who lawfully enter our property, or travel in our vehicles for legitimate purposes of the school system.

We do not take our employee's safety lightly. For this reason, employees will be subject to disciplinary action if they violate our SAFETY REGULATIONS or behave in a manner which exposes them or others to the risk of injury.

We welcome the questions and input of our employees on any topic related to the safe and productive accomplishment of the work at hand.

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**EMPLOYEE RESPONSIBILITIES
FOR
ACCIDENT PREVENTION AND REPORTING**

FITNESS FOR DUTY

All employees are expected to be fit for duty when they report for work. This means that they are capable of performing all of the essential aspects of the job for which they were hired.

INTERACTION WITH OTHER INDIVIDUALS

1. Fighting or horseplay is, of course, not allowed.
2. Only the school principal or his/her authorized designee is permitted to administer corporal punishment to students. Written parental permission must be on file in the principal's office and consulted before any action is taken.
3. When witness to an altercation between fellow employees or students, and/or when breaking up such an altercation or when rendering assistance, **never turn your back on either party.**
4. Do not intervene in any altercation where weapons are involved. Contact law enforcement immediately.

PERSONAL PROTECTIVE EQUIPMENT

1. Clothing suitable for the employment
 - a. Physical Plant Services maintenance and repair crews, janitorial staff, custodians, Food Service porters, teacher aides and bus aides shall wear full trousers, shirts which cover the torso with at least a four-inch sleeve and sturdy work shoes or boots (The system provides a \$20.00 reimbursement toward the purchase of this footwear by Physical Plant employees.) Shorts, tank tops, bare backs, sneakers or open toed shoes are not allowed. Leather sneakers may be worn by teacher aides and bus aides and may also be worn by roofers when working on a steeply pitched roof.

VIII. Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the Board's grievance policy, filing charges with the Equal Employment Opportunity Commission, the Office for Civil Rights, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

IX. Sexual Abuse Or Criminal Activity

Under certain circumstances, sexual harassment of a student may constitute sexual abuse under the Louisiana Children's Code. In such situations, Board personnel shall comply with Article 609(A) of the Louisiana Children's Code and directly report the sexual abuse to the Child Protection Unit of the Louisiana Department of Social Services. Also, activity of a criminal nature should be reported by the victim to the police.

X. Discipline

Any action taken pursuant to this policy will be consistent with requirements of applicable statutes and Board policies. The Board and Superintendent of Schools will take such disciplinary action for employees and non-employee volunteers they deem necessary and appropriate, including warning, transfer, suspension, or immediate discharge to end sexual harassment and prevent its recurrence.

PROHIBITION OF WEAPONS AND RELATED MATERIALS

No weapons of any kind shall be brought onto East Baton Rouge Parish School System property or events sponsored by the system. Weapons include, but are not limited to fire arms, BB and pellet guns, ammunition, reloading materials such as powder and caps, CO₂ powered guns, electronic stun guns, bows, arrows, sling-shots, blow guns, darts, fireworks, throwing stars, fixed blade knives, or folding knives with blades over three (3) inches. **Note:** Per L.R.S. 14:95.2, C(2), school officials or employees acting during the normal course and scope of their employment are exempt.

- b. Administrative, clerical and instructional staff shall wear clothing appropriate to a professional work environment.
 - i. Heels - Shoes should have at least a one square inch bottom surface to reduce slips and falls.

An inappropriately dressed employee will not be allowed to work.

- 2. Eye protection appropriate to the work being performed will be worn by all employees.
 - a. Grass-cutting and weed-eating, Chemistry, biology and physics laboratories and other operations likely to produce flying objects or other debris - Employees who do not wear glasses or who wear non-safety type prescription glasses shall wear safety glasses designed to fit over their prescription glasses. Only ANSI Z-87 prescription safety glasses with side-shields may be worn in lieu of these supplemental safety glasses.
 - b. In addition to safety glasses, workers shall also wear a face-shield while sawing, cutting, chipping or grinding.
 - c. Goggles and face-shields are required when working with hazardous liquids or solids.
 - d. #6 tint goggles shall be used for acetylene torch work; #10 tint, for welding hoods.
 - 3. Certain jobs may require additional protection such as:
 - a. Hearing protection whenever background noise exceeds the level at which normal conversation can be heard.
 - b. Respiratory protection suited to the work environment.
 - c. Gloves, cover garments, rubber-wear or barrier creams to protect skin.
 - d. Knee pads.
 - e. Steel toed boots/shoes.

FALL PROTECTION

- 1. No employee will be allowed to work more than 10 feet above the ground without fall protection.

recommendation to the Superintendent of Schools for disciplinary action. No record of an unfounded or unsubstantiated complaint will be filed in an employee's personnel file.

V. Actions

- A. Upon receipt of a recommendation that the complaint is valid involving an employee or non-employee volunteer, which has not been informally resolved, the Superintendent of Schools will take such action as appropriate, based on the results of the investigation.
 - B. The results of the investigation of each complaint filed under these procedures involving an employee or non-employee volunteer will be reported in writing to the complainant and the alleged harasser by the Associate Superintendent for Human Resources and Staff Development. The report will document any action taken as a result of the complaint.

VI. Retaliation Prohibited

The Board will discipline any individual who retaliates against any person who reports alleged sexual harassment or who retaliates against any person who testifies, assists or participates in an investigation, proceeding, or hearing, relating to a sexual harassment complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment at the time of a report or any time after a report.

VII. Non-Harassment

The Board recognizes that not every advance or consent of a sexual nature constitutes harassment. Whether a particular action or incident is a personal, social relationship without a discriminatory employment effect requires a determination based on all the facts and surrounding circumstances. Deliberate false accusations of sexual harassment can have a serious detrimental effect on innocent parties and subject the accuser to disciplinary actions.

sexual harassment by an employee or non-employee volunteer, shall immediately authorize an investigation. This investigation may be conducted by Board employees or by a third party designated by the Associate Superintendent for Human Resources and Staff Development. The investigating party shall provide a written report of the status of the investigation within 10 working days to the Associate Superintendent for Human Resources and Staff Development.

B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator or the Associate Superintendent for Human Resources and Staff Development.

C. In determining whether alleged conduct constitutes sexual harassment, the Associate Superintendent for Human Resources and Staff Development shall consider the surrounding circumstances, the nature of the sexual advances, relationships between the parties involved and the context in which the alleged incidents occurred.

D. The Associate Superintendent for Human Resources and Staff Development may use informal procedures to handle complaints when harasser agrees to a penalty and apologizes to victim.

E. The Board's Associate Superintendent for Human Resources and Staff Development shall report to the Superintendent of Schools upon completion of the investigation involving an employee or non-employee volunteer. The report may include a finding that the complaint was unfounded, informally resolved, or a

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2. Floor openings will be covered with a minimum of braced 3/4" plywood, overlapping all edges at least three (3) inches, chocked against movement and labeled "HOLE" or barricaded.

3. Never attempt to carry books, tools or materials while climbing a ladder. Use an alternative method such as a rope to pull up materials after reaching a solid footing. Never lift electrical tools or appliances by their cords.

4. Ladders shall be secured against movement and extend at least 36 inches above their point of landing.

5. Elevated scaffold decking, walkways and work areas shall be provided with safe access such as ladders, gangways or stairs. Climbing scaffold bucks is not permitted.

6. Scaffolding will be adequately decked. As a minimum, each level shall have not less than two (2) fully enclosed 2"x 12" scaffold grade planks cleated or wired to the scaffold.

7. The perimeter of elevated work areas and scaffolding shall be guarded with a handrail 42" high, midrail 30" high and toeplate.

8. Any employee working more than 10 feet above the ground, from a ladder or elsewhere shall be tied off using full body harness with lanyard unless protected by handrails, midrails and toeplate.

9. In muddy conditions, the bottoms of ladders shall be provided with a "boot scraper" for cleaning footwear prior to mounting the ladder.

10. Pay attention to footing; watch the ground; stay a safe distance away from excavations and holes; REMEMBER:

WALK . . DON'T RUN; . . CLIMB DOWN . . DON'T JUMP.

-3-

HOUSEKEEPING

Housekeeping is everyone's responsibility. Employees are expected to keep their classrooms and other work areas orderly.

1. Walkways and accessways shall be kept clear of tripping hazards such as extension cords, welding leads, torch lines, construction materials or trash and maintained a minimum of four (4) feet wide.
2. Storage areas shall be kept orderly and accessible. Materials shall not be stacked over six (6) feet high unless secured against tipping or placed on a shelf.
3. Whenever feasible, extension cords shall be secured out of walk ways or raised at least seven (7) feet above ground level to reduce tripping hazards.
4. All spills shall be cleaned up immediately.
5. Glass bottles are not permitted in construction areas or vocational education shops.
6. Pull out exposed nails in scrap lumber; do not bend them over.
7. Where water fountains are not readily accessible, portable drinking water containers shall be provided along with a hard sided cup holder and a trash receptacle.
8. Work stations for such tasks as carpentry, electrical, conduit, sheet metal cutting and welding shall maintain their scraps in containers immediately adjacent to the work station.

TOOL AND EQUIPMENT INSPECTION

1. Start out by using the proper tools for the job.

constitute sexual harassment shall report the alleged acts immediately to an appropriate Board employee as designated by this policy. If criminal activity is involved, a victim should also report the incident to the police. The Board encourages the reporting party or complainant to use the report form available in the administrative office of each building or available at the Board's central office receptionist.

A. Systemwide. The East Baton Rouge Parish School Board hereby designates the Associate Superintendent for Human Resources and Staff Development to receive reports or complaints of sexual harassment from any individual, employee or victim of sexual harassment and also from the building administrators or designated persons as outlined above.

If the complaint involves the Associate Superintendent for Human Resources and Staff Development, the complaint shall be filed directly with the Superintendent of Schools.

- B. Submission of a complaint or report of sexual harassment will not affect the individual's future employment, promotion, grades, or work assignments.
- C. Use of formal reporting forms is not mandatory.

The Board will respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed as much as possible, consistent with the Board's legal obligations and the necessity to investigate allegations of harassment and take corrective or disciplinary action when the conduct has occurred.

IV. Investigation And Recommendation

- A. By authority of the East Baton Rouge Parish School Board, the Associate Superintendent for Human Resources and Staff Development upon receipt of a report or complaint alleging

promotion or a student's education including any aid, benefits, services or treatment or

3. Such conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's work performance or education, or creating an intimidating, hostile or offensive working or education environment.

B. Sexual harassment may include but is not limited to:

1. verbal harassment or abuse;
2. uninvited letters, telephone calls, or materials of a sexual nature;
3. inappropriate and uninvited leaning over, cornering, patting or pinching;
4. uninvited sexually suggestive looks or gestures;
5. intentional brushing against a student's or an employee's body;
6. uninvited pressure for dates;
7. demanding sexual favors accompanied by implied or overt threats concerning an individual's employment, promotion, or educational status;
8. uninvited sexual teasing, jokes, remarks, or questions;
9. demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment, promotion or educational status;
10. any sexually motivated unwelcome touching; or
11. attempted or actual rape or sexual assault.

III. Reporting Procedures

Any person who believes he or she has been the victim of sexual harassment by an employee or non-employee volunteer of the East Baton Rouge Parish School Board, or any third person with knowledge or belief of conduct which may

2. Do not remove or disable the guard from any tool or disable automatic shut-off switches!

3. Tools and equipment shall be inspected prior to use and reported out of service if defective. For example:

- Any tool which shocks.
- Broken or missing guards.
- Cut or taped insulation on any power cord.
- Broken power tool cases.
- Cracked handles on shovels, picks or hammers.
- Mushroomed surfaces on any striking tool such as hammer wrench or chisel.

4. Be prepared for the jamming of power tools such as drills. Have a good footing and balance. Mount auxiliary handles if equipment is so supplied.

5. Report any damaged tools or equipment to your supervisor immediately!

MAINTENANCE WORK IN CLASSROOM / OFFICE SETTINGS

1. Physical Plant Services workers shall speak to the area supervisor **personally** as to the safety concerns of the job. This supervisor is required to notify his or her employees that non-routine work will be performed in their area and that they should stay clear.

2. Barricade the work area to prevent non-workcrew personnel from entering the "danger zone."

3. When performing overhead tasks such as replacing light bulbs or ceiling tiles, clear an area at least ten (10) feet in all directions of personnel and move or protect electronic equipment.

4. All spills shall be cleaned up immediately.

REGULAR WORK IN OFFICE SETTINGS

1. File drawers shall be kept closed unless removing, replacing or reading a file.
2. Never open more than one drawer at a time.
3. Only open file drawers far enough to retrieve the needed file. Drawers pulled out too far may fall out.
4. Do not stand on chairs, tables or desk tops to access items out of reach. Use an ANSI approved step stool or ladder designed for this purpose.
5. Retrieve dropped paper and paper clips from the floor immediately. These are a common cause of slips and falls.
6. Do not lean back in chairs not equipped with a rocking mechanism.

MATERIALS HANDLING

Materials handling shall be performed with the proper precautions to prevent injury or property damage.

1. Employees are expected to know their personal limitation before attempting to lift anything. **ASK FOR HELP** with heavy or unstable loads.
2. Make certain the footing is solid. Clear the path of travel. Have a prearranged place to put the load down. Get a firm grip on the object.
3. Lift with the leg muscles. Stand close to the object, set feet comfortably wide apart and lower the body to the object using hips and knees. Grip the object firmly. Keep your center of gravity close to that of the object being lifted. Maintain correct spinal position, with shoulders back and behind tucked in.

SEXUAL HARASSMENT POLICY

I. General Statement Of Policy

Sexual harassment is a form of sex discrimination which is prohibited by federal and state law. It is the policy of the East Baton Rouge Parish School Board to maintain a learning and working environment that is free from sexual harassment. This policy of the Board specifically prohibits all forms of sexual harassment.

It shall be a violation of this policy for any employee, non-employee volunteer, or board member of the East Baton Rouge Parish School Board to harass a student, an employee or non-employee volunteer through conduct or communication of a sexual nature as defined by this policy.

The Board through the Superintendent of Schools or designee will act to investigate all complaints, either formal or informal, verbal or written, of sexual harassment and to discipline any employee or non-employee volunteer who sexually harasses a student, employee, or non-employee volunteer of the Board.

II. Sexual Harassment Defined

A. Sexual harassment shall include, but not be limited to:
unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, of promotion, or of a student's education
2. Submission to or rejection of such conduct or communication is used as a factor in decisions affecting an individual's employment

4. When two or more people are lifting, one must give directions.
5. Do not carry loads which block your view unless accompanied by a helper.
6. Use handrails when ascending or descending stairs.
7. Watch out for sharp edges. Use gloves when possibility of hand injury is significant.
8. Always seek assistance when lifting or moving orthopedically involved students. Set wheel brakes before lifting the student from or lowering into a wheelchair.

Holes and Excavations

DO NOT enter any excavation or hole unless provisions have been made to prevent its cave-in. Some methods include:

1. Sloping the banks on both sides to the angle recommended by soil type and conditions. Vertical or shear cut excavation walls may not exceed five (5) feet in depth.
2. Shoring.
3. Working **INSIDE** a trench box.

Vehicle and Equipment Safety

1. Training and experience are required to operate power tools and heavy equipment. Employees shall not attempt to learn how to use equipment without the permission of their supervisor.
2. Only authorized employees with a valid driver's license and clean driving record shall be allowed to operate vehicles belonging to the East Baton Rouge Parish School System.
3. Lift truck operators must pass an in-house training program and carry a qualification card before being allowed to operate.

4. Never attempt to mount or dismount a moving vehicle.
5. RIDERS ARE NOT PERMITTED ON EQUIPMENT such as liftrucks, backhoes, tractors or mowers.
6. Riders will only be permitted in the open bed of a pickup truck or trailer when the bed is fitted with firmly secured seats and then only within the limits of the school grounds or other facility.
7. Enter and exit the bed only after the driver has lowered the tailgate. Do not climb over the side or over the raised tailgate.
8. Always use the handrail when ascending or descending the steps on a bus.
9. Maintain at least a 300-foot separation between School Board owned vehicles when underway.
10. DO NOT OPERATE ANY VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, ILLEGAL DRUGS OR CONTROLLED SUBSTANCE.
11. Before entering any area where equipment is working, get the operator's attention. Do not proceed until signaled to do so by the operator. Stand clear of operating equipment.

WORKING WITH HAZARDS MATERIALS

There are many potentially hazardous chemicals and other similar substances in use everyday in Board facilities. Employees have a "Right to Know" what these hazards are and what can be done to protect themselves from that hazard. If they are unfamiliar with a chemical or similar substance in their work area, employees should ask their supervisor to review the Material Safety Data Sheet for that substance. Follow the MSDS recommendations closely.

- e. As part of a program of unannounced random screening for illegal drugs of designated employees who occupy safety or security sensitive positions or to comply with D.O.T., the Omnibus Act and other federal statutes. These include:
 1. School bus operators.
 2. Any person who operates a school system vehicle,
 3. Mechanics who perform maintenance or repairs of school buses or other school system vehicles,
 4. All persons supervising or attending children on a school bus or other vehicle used to transport school children,
 5. Security guards or personnel,
 6. Physical Plant Services employees who inspect, repair or in any manner service any equipment, pipeline or apparatus which uses natural or propane gas or is connected to natural or propane gas, and
 7. All who exercise supervision over such persons.
2. Any employee whose screening sample is determined to be positive as to the presence of illegal drugs or alcohol or who refuses to submit to such screening (a refusal is presumed to be positive under state law):
 - a. Is in violation of the East Baton Rouge Parish School System Safety Regulations and
 - b. Will be required to undergo a rehabilitation or treatment program at the employee's expense or be subject to disciplinary or other authorized action and
 - c. May be denied workers' compensation and
 - d. May be terminated for wrongful conduct and
 - e. May be denied unemployment compensation.

his or her employment may be suspended or terminated, at the discretion of the Board. The above standards are mandatory.

Help is available to employees who are alcohol or drug abusers. Before disciplinary problems arise, employees should consider whether they may need help. Help available in this area includes:

- A. Confidential counseling with a representative from the Employee Relations Department or
- B. Referral to the appropriate service agency.

POLICY ENFORCEMENT

A. Pre-Employment Screening

As a condition of employment within the school system, all applicants for employment must successfully pass a screen for illegal drugs.

Applicants who refuse to submit to this testing will not be considered for employment for at least six months.

A confirmed positive test will disqualify the applicant from consideration for employment for at least six months.

B. Continued Employment Screening

- 1. As a condition of continued employment within the school system, all employees must submit to a screen for illegal drugs and alcohol:
 - a. When an employee is involved in any accident or near miss of an accident, as defined in the Safety Regulations, during the course and scope of his or her employment
 - b. Under other circumstances which result in reasonable suspicion that illegal drugs or alcohol are being used by the employee
 - c. As part of a monitoring program, to assure employee compliance with a rehabilitation or treatment agreement
 - d. In connection with any required periodic medical exams

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ACCIDENT REPORTING

It is the responsibility of all employees to report immediately to their Supervisor or Principal, **ALL ACCIDENTS** which they witness or in which they are involved, even if there was no apparent injury or damage. An accident is defined as:

- 1. Any incident which requires medical treatment, including an assault by a student, employee or third party.
- 2. Any damage to East Baton Rouge Parish School System property.
- 3. A lost time injury: any injury which results in the injured employee missing his/her next regularly scheduled work shift.
- 4. Injury to or damage to the property of a third party (non-school system employee).
- 5. Any incident which represents the **Near Miss** of an accident. A **Near Miss** is any incident which if it had proceeded to a reasonably possible conclusion would have resulted in serious injury or death.

Failure to report or late reporting of an accident by any employee will be grounds for disciplinary action.

MEDICAL TREATMENT AFTER AN ACCIDENT

In the event that medical treatment is desired or required, employees injured on the job shall be taken to one of the school system doctors for initial examination, treatment and screening for illegal drugs and alcohol. If the employee wishes, he/she may then go to their own choice of doctor. (Teachers are not required to submit to a screening for illegal drugs and alcohol if their injuries are the result of an assault by a student.) If there is a dispute between the diagnosis of the school system's doctor and employee's personal doctor the employee may be required to submit to an independent medical examination.

Please Note: Workers' compensation pays the medical costs for treatment related to an on the job injury. Gulf South and Ochsner Health Plans **DO NOT** cover job related injuries. **DO NOT** present your health plan card for treatment after an accident.

POLICY ON PROHIBITION OF ILLEGAL DRUGS AND ALCOHOL

In order to help ensure a safe, healthy and productive working and learning environment; to assure efficient operations, and to protect our property and assets, it is the policy of the East Baton Rouge Parish School Board that it is forbidden for any employee on or in any property owned, leased or used by the Board or any of its schools or departments or at any Board or school-sponsored or supervised activities or in a vehicle including school buses used, owned or leased by the Board to unlawfully manufacture, distribute, dispense, possess or use any illicit drug, controlled substance, counterfeit substance, look-alike substance, cannabis, depressant, hallucinogen, precursor, isomer, marijuana, narcotic, opiate, stimulant, anabolic steroid, or any other controlled substance or unlawful drug defined in the Controlled Substances Act (21 U.S.C. § 812) and as further defined by regulation at 21 C.F.R. 1300.11 through 1300.15 or defined in the Louisiana Uniform Controlled Dangerous Substances Law (La. R.S. 40:961 to 40:995) or for any employee to distribute, possess, use or be under the influence of any alcoholic or intoxicating fluid containing more than one-half of one percent alcohol by volume including malt, venous, spirituous, alcoholic or intoxicating liquors, beer, porter, ale, stout fruit juices, cider, or wine.

For any employee performing work under a grant from any federal agency whether directly or indirectly, it is a condition of continued employment that employees shall abide by the terms of the Board policy on unlawful drugs. Employees are required to notify the Superintendent of Schools of any conviction of a criminal drug statute for a violation occurring in any Board workplace location. The notification of any conviction must be submitted in writing to the Superintendent no later than five calendar days after such a conviction. The Board must report any such conviction to the granting federal agency.

Any employee who violates the above standards of conduct or who fails to report timely a conviction is subject to disciplinary action, and

EXHIBIT C

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

EAST BATON ROUGE FEDERATION OF TEACHERS,

Plaintiff,

v.

EAST BATON ROUGE PARISH SCHOOL BOARD,

Defendant.

**CIVIL ACTION
NO. 3:08-CV-671-JJB**

**DECLARATION OF PEGGY RENO IN SUPPORT OF PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

I, Peggy Reno, hereby declare as follows:

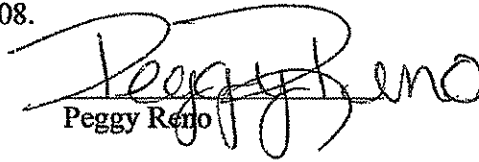
1. I am currently a teacher employed by the East Baton Rouge Parish School Board. I have been a public-school teacher for the past nine years. I have spent five of those nine years as a teacher in the East Baton Rouge Parish Schools.
2. I am a certified teacher who is qualified to teach English language arts / reading, math, science, and social studies classes.
3. I am a two-time recipient of the Teacher of the Year award. I was honored to have been given this award as recently as this past year (2008).
4. I am currently the Chairperson/Leader of the School Improvement Committee.
5. I have never used illegal drugs.
6. I have never seen any other teacher use illegal drugs.
7. On September 24, 2008, I was punched by a student in my school. Although the punch was painful at the time, it did not cause any physical injuries.
8. The school district had no reason to believe that I was punched due to my using illegal drugs. Furthermore, no school district official has told me or anyone else of whom I am aware that the school district believed the assault was due to my using drugs.
9. After the attack, I was ordered to submit to a drug test pursuant to the school district's post-accident drug-testing policy.

10. After handing over my urine for inspection, I was forced to list any and all prescription medications I take.

11. Being asked to produce and hand over my bodily fluids for inspection is degrading and an affront to my privacy. I felt like I was slapped in the face by my school. I am not a criminal, and they had no reason to treat me this way.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of December 2008.


Peggy Reno

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December 2008, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system and, additionally, I sent this document to all counsel of record, by depositing true copies thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

S. Dennis Blunt, Esq.
Phelps Dunbar LLP
445 N. Blvd., Ste. 701
PO Box 4412
Baton Rouge, LA 70821

Santa Cruz, California, December 22, 2008 s/ Neel Agrawal
ACLU Foundation
1101 Pacific Ave., Ste. 333
Santa Cruz, CA 95060