By Email Only

May 4, 2017

Board of Education
USD 320
510 E. Highway 24
Wamego, KS 66547

Re: Open Letter Opposing USD 320's Proposed Drug Testing Policy

Dear Board Members:

Based on recent press reports in *The Manhattan Mercury*, the American Civil Liberties Union of Kansas (ACLU-KS) has learned that the members of the Wamego USD 320 Board of Education are considering the adoption of a random drug testing policy under which students in grades 8 through 12 who participate in KSHSAA activities would be subject to random drug testing. I have reviewed the proposed policy on USD 320's website, and – although the mission, purpose, and goal of the proposed policy are all laudable – the ACLU-KS strongly believes that a random drug testing policy would be counter-productive to those objectives. Thus, I write this open letter to the Board of Education in order to highlight the problems with school drug testing policies like the one the Board is now considering.

General Problems with School Drug Testing Programs

- No scientific evidence supports the efficacy of school drug testing programs, according to the American Academy of Pediatrics;[i]
- Drug use among high school students has dropped significantly since 2001,[ii] and USD 320's own survey results do not show a significant problem with student self-reported drug use in the high school;[iii]
- Drug testing does not deter drug use among young people;[iv]
- Drug testing is expensive, taking away scarce dollars from other, more effective programs that keep young people out of trouble with drugs;[v]
    - According to a recent newspaper article, "the cost of the program would be paid through the Wamego city government's alcohol fund ($4,500), private donations ($2,500), and the school district's budget ($1,000)," for total cost of $8,000 per year;[vi]

- According to the American Academy of Pediatrics, drug testing programs that target students involved in extracurricular activities typically result in 1 positive test result for every 125 students tested at an average cost of approximately $3,000 per positive test result;[vii]
- The funds from the city's alcohol tax would be far better spent on programs directly addressing alcohol use by students, who self-report alcohol as the drug they most commonly use by a margin of at least 2 to 1 over marijuana use;[viii]

- Students subject to drug testing under programs like USD 320's proposed policy are the least likely to use drugs;[ix]
- Drug testing policies like USD 320's proposed policy ignore the drug most often used and abused by high school and middle school students – alcohol;[x]
- Drug testing programs – over the mid-to-long-term – actually push students involved in extracurricular activities toward drug use, according to the American Academy of Pediatrics;[xi]
- Drug testing can undermine relationships of trust between students and teachers and between parents and their children;[xii]
- Drug testing can result in false positives, leading to the punishment of innocent students;[xiii]
- Drug testing does not effectively identify students who have serious problems with drugs;[xiv] and
- Drug testing may lead to unintended consequences, such as students using drugs that are more dangerous but less detectable or not tested for by a drug screen.[xv]

Technical Problems with School Drug Testing Programs

In addition to these issues, drug testing – especially hair testing – is fraught with a wide-array of technical problems and concerns. The federal government has developed a rigorous technical protocol for employment-based drug testing of safety-sensitive workers like airline pilots, truck drivers, and railroad engineers.[xvi] Those regulations set standards for sample collection and chain of custody protections, and they require confirmation testing by GC/MS because initial screening tests are prone to false results. Those regulations also require that a doctor (known as a Medical Review Officer or MRO) review

the test data and speak to the tested employee to rule out spurious results. Moreover, the district's proposed policy would test hair samples, which the U.S. Department of Health & Human Services has not approved for purposes of drug testing[xvii] and which lack a proven track record of validity.[xviii]

With respect to these technical issues, Indiana University's School of Public Health recently advised school districts as follows:

> If a school is to implement this strategy it is imperative that the school follow all federal guidelines including: obtaining and securing medical history, following strict collection procedures, employing secondary testing of positive results, providing access to nonpunitive actions for positive results, maintaining separation of academic, behavioral, and results records, and destroying results and related files upon student leaving the school under any circumstance.[xix]

The proposed USD 320 drug testing policy fails to address many of these technical concerns at all and only briefly addresses others such as confirmation testing. In addition, it appears that the drug testing vendor will only screen students for cocaine, opiates, phencyclidine, amphetamines, and marijuana,[xx] thus ignoring alcohol, the drug most commonly used by USD 320's students.

Other Approaches are More Effective

According to Daniel Romer, director of the Annenberg Public Policy Center at the University of Pennsylvania, "[t]he bad news is that a policy of drug testing has no effect on students starting to use alcohol, cigarettes or marijuana. There's also no effect on escalating the use of those substances."[xxi] In contrast, however, effective alternatives to drug testing *do exist.* Those alternatives emphasize education, discussion, counseling, extracurricular activities, and building trust between students and adults.

According to a 2013 study, students in schools with positive climates were 15 percent less likely to start smoking cigarettes and 20 percent less likely to start using marijuana than students at schools without positive climates.[xxii] In an issue brief released in September 2013, Dr. Romer summarized the scholarly research showing that the most effective way to address drug use in schools is to foster a positive school environment:

> If schools are concerned about students going down a dysfunctional path of drug use, they should consider other approaches that have been found to be effective in preventing the initiation of drug use or

> identifying students in need of treatment. Those include the training of life skills, drug education, universal confidential screening using self-reporting, better school climates that encourage the norms of drug avoidance, and greater involvement of parents and teachers to help recognize the signs of drug use so that they can intervene and refer youth for treatment, if necessary. Looking for those cases by randomly testing students is less effective, does little to educate students about the hazards of drug use, and misses the ones more likely to be at risk.[xxiii]

Similarly, the Indiana University School of Public Health recently released a brief report that buttressed Dr. Romer's recommendations:

> It is strongly advised that schools allocate their resources to an evidence-based prevention strategy to mitigate risk factors, drug use, and associated outcomes. Some evidence-based programs for the middle or high school settings are Lifeskills Training, Positive Action, and Project Towards No Drug Abuse (blueprintsprograms.com). Communities are advised to intentionally choose evidence based programing that is intended both for the populations and desired outcomes. Research and third party counsel may be helpful in choosing the appropriate programming.[xxiv]

Although the district's proposed policy states that one of its purposes is "to partner with parents and work collaboratively in establishing a 'Helping Policy' assisting students and parents in identifying the use of illegal substances," drug testing appears to be the central – and perhaps sole – tool in the program. But that focus is ineffective and ignores better options.

Conclusion

If the Board were to adopt the proposed random drug testing policy, it would be a major mistake because it would invest the district's precious fiscal resources in a less effective, more problematic approach to student drug use and because it would target the students who are least likely to use drugs in the first place.

In summary, a drug testing program would pour scarce district resources into the pockets of a testing laboratory and would do nothing to serve the students who are most likely to use drugs – the students who are not involved in extracurricular activities. Rather than waste the taxpayers' money on a feel-good drug testing program, the district should research and implement an evidence-based program that will bring a positive climate to all of the district's schools. The district's students would be much better served by investing that

money in developing programs to insure that Wamego' schools have a positive climate. That emphasis would help all students, not just those involved in extracurricular activities.

Thank you for considering these points as you decide on this important policy issue.

Sincerely,

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[i] Sharon Levy, MD, MPH, FAAP, Miriam Schizer, MD, MPH, FAAP, "Adolescent Drug Testing Policies in Schools," 135 Pediatrics 782-783 (Apr. 2015), http://pediatrics.aappublications.org/content/early/2015/03/25/peds.2015-0054?sid=e82c4718-4c72-4eef-ac99-cc7784d93b32.

[ii] National Institute of Drug Abuse, 2013 Monitoring the Future study of 8th, 10th, and 12th graders, https://www.drugabuse.gov/related-topics/drug-testing/faq-drug-testing-in-schools.

[iii] The USD 320 website indicates that less than 15% of students self-reported using marijuana in the past 30 days. http://www.usd320drugtestinfo.com/why-now.html. That does not show a significant enough problem in the district to justify the costs of the program.

[iv] The results of a 2010 study by the U.S. Department of Education's Institute for Education Sciences showed that a random student drug testing "program's effect appeared to be limited to those students who were subject to testing, for the drugs that were likely to be detected, and only during the 30-day period prior to taking the survey" and that such drug testing had no effect on student drug usage in the longer term, specifically over a time frame of six or twelve months. Daniel Romer, Ph.D., "Issue Brief on Drug Prevention in Schools," p. 3, Annenberg Public Policy Center, Univ. of Pennsylvania (Sept. 2013), http://www.annenbergpublicpolicycenter.org/school-drug-tests-ineffective-but-a-positive-climate-might-work/. *See also* Ryoko Yamaguchi, Lloyd D. Johnston, and Patrick M. O'Malley, "Drug Testing in Schools: Policies, Practices, and Association With Student Drug Use," The University of Michigan, Youth Education and Society Study, 4-5 (2003), http://www.drugpolicy.org/docUploads/Johnston_sdt_study.pdf; Sharon R

Sznitman, Ph.D., and Daniel Romer, Ph.D., "Student Drug Testing and Positive School Climates: Testing the Relation Between Two School Characteristics and Drug Use Behavior in a Longitudinal Study," Journal of Studies on Alcohol and Drugs, 75(1), 65–73 (2014), http://www.jsad.com/doi/abs/10.15288/jsad.2014.75.65?journalCode=jsad

[v] Christopher Ingraham, "School drug tests: Costly, ineffective, and more common than you think," *The Washington Post*, Apr. 27, 2015, https://www.washingtonpost.com/news/wonk/wp/2015/04/27/schools-drug-tests-costly-ineffective-and-more-common-than-you-think/?utm_term=.6cb091c4d7f6.

[vi] Dylan Lysen, "Drug plan garners community support," TheMercury.com (May 2, 2017), http://themercury.com/articles/drug-plan-garners-community-support.

[vii] *Supra*, n.v, Christopher Ingraham, "School drug tests: Costly, ineffective, and more common than you think," *The Washington Post*, Apr. 27, 2015.

[viii] Approximately 30% of the district's high school students reported using alcohol in the past 30 days, more than twice the percentage of students who reported using marijuana and more than six times the number of students who reported using cigarettes or prescription drugs. http://www.usd320drugtestinfo.com/why-now.html.

[ix] Van E. Cooley, "A Study To Determine the Effect of Extracurricular Participation on Student Alcohol and Drug Use in Secondary Schools," Midwestern Educational Research Association (Oct. 1992), http://files.eric.ed.gov/fulltext/ED350551.pdf.

[x] "School Based Student Drug Testing Programs," Indiana University School of Public Health, 6 Prevention Resource Center 1 http://drugs.indiana.edu/spf/docs/School%20Based%20Student%20Drug%20Testing%20Programs.pdf. *See also* "Testing for Drugs of Abuse in Children and Adolescents: Addendum – Testing in Schools and at Home," American Academy of Pediatrics, Committee on Substance Abuse and Council on School Health, 119 Pediatrics 627, 629 (2007), http://pediatrics.aappublications.org/content/pediatrics/119/3/627.full.pdf. It is unclear whether the proposed policy will even test for alcohol use.

[xi] "[A]thletes who were drug tested experienced an increase in known risk factors for drug use, including an increase in normative views of use, belief in lower risk of use, and poorer attitudes toward the school." "Testing for Drugs of Abuse in Children and Adolescents: Addendum – Testing in Schools and at

Home," American Academy of Pediatrics, Committee on Substance Abuse and Council on School Health, 119 Pediatrics at 628 (2007), http://pediatrics.aappublications.org/content/pediatrics/119/3 /627.full.pdf.

[xii] Clea A. McNelly, James M. Nonnemaker, and Robert W. Blum, "Promoting School Connectedness: Evidence from the National Longitudinal Study of Adolescent Health," Journal of School Health 72(4), 138-140 (2002), http://www2.gsu.edu/~wwwche/Promoting%20School%20Connectedness%20Evidence%20from%20the%20Natl%20Longitudinal%20Study%20of%20Adolescent%20Health.pdf

[xiii] Food items and nutritional supplements can produce the same metabolites as drugs. *See* American Civil Liberties Union, "Drug Testing: A Bad Investment" (2008), p. 18, http://workrights.us/wpcontent/uploads/2011/02 /dt_drugtesting.pdf. For example, food containing poppy seeds can result in positive test results for opiates, while codeine can result in positive results for heroin. F. Leland McClure, "Poppy Seeds and the Interpretation of Opiates Drug Testing," Clinical Education Center (Oct. 26, 2015), http://education.questdiagnostics.com/insights/88. *See also* "Indiana University, *supra* note vi, at 1.

[xiv] Sharon Levy, MD, MPH, FAAP, Miriam Schizer, MD, MPH, FAAP, "Adolescent Drug Testing Policies in Schools," 135 Pediatrics 782 (Apr. 2015), http://pediatrics.aappublications.org/content/early/2015/03/25/peds.2015-0054?sid=e82c4718-4c72-4eef-ac99-cc7784d93b32.

[xv] Indiana University, *supra* note vi, at 1.

[xvi] *See, e.g.,* U.S. Dept. of Transportation, Office of Drug & Alcohol Policy & Compliance, "What Employees Need to Know about DOT Drug & Alcohol Testing," https://www.transportation.gov/sites/dot.dev/files/docs/ ODAPC%20EmployeeHandbook%20En.pdf.

[xvii] "In federally regulated programs, only urine samples are collected, although the Secretary of Health and Human Service has released proposed guidelines for the inclusion of oral fluid specimens." https://www.samhsa.gov/ workplace/resources/drug-testing.

[xviii] "Testing for Drugs of Abuse in Children and Adolescents: Addendum – Testing in Schools and at Home," American Academy of Pediatrics, Committee on Substance Abuse and Council on School Health, 119 Pediatrics at 628 (2007), http://pediatrics.aappublications.org/content/pediatrics/119/3 /627.full.pdf.

[xix] "School Based Student Drug Testing Programs," Indiana University School of Public Health, Prevention Resource Center 1(6), 1, http://drugs.indiana.edu/spf/docs/School%20Based%20Student%20Drug%20Testing%20Programs.pdf

[xx] "A current list of the drug class and analytes available to be currently tested are available at www.psychemedics.com/drug-panel/." http://www.usd320drugtestinfo.com/faq.html.

[xxi] Daniel Romer, Ph.D., "Issue Brief on Drug Prevention in Schools," p. 3, Annenberg Public Policy Center, Univ. of Pennsylvania (Sept. 2013), http://www.annenbergpublicpolicycenter.org/school-drug-tests-ineffective-but-a-positive-climate-might-work/.

[xxii] "School drug tests don't work, but 'positive climate' might." Science Daily, 13 January 2014, https://www.sciencedaily.com/releases/2014/01/140113100612.htm.

[xxiii] Daniel Romer, Ph.D., "Issue Brief on Drug Prevention in Schools," p. 3, Annenberg Public Policy Center, Univ. of Pennsylvania (Sept. 2013), http://www.annenbergpublicpolicycenter.org/school-drug-tests-ineffective-but-a-positive-climate-might-work/.

[xxiv] http://drugs.indiana.edu/spf/docs/School%20Based%20Student%20Drug%20Testing%20Programs.pdf (copy attached).