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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITTITAS COUNTY

ROBERT YOUNG, ELIZABETH WISE,
SIERRA YOUNG, MIKE NEVILLS,
KIMBERLY MAIN, CHELSEY MAIN,
and ROBERT MAIN

Plaintiffs,

v.

CLE ELUM-ROSLYN SCHOOL
DISTRICT No. 404,

Defendant

No.

COMPLAINT

INTRODUCTION

1. The Cle Elum-Roslyn School District adopted a policy of requiring students at Cle Elum-Roslyn High School to undergo suspicionless random drug tests as a condition for participation in school-sponsored co-curricular activities. This lawsuit for declaratory and injunctive relief is brought by affected families because the testing violates Article I, section 7 of the Washington constitution.

PARTIES

2. Defendant Cle Elum-Roslyn School District No. 404 ("the District") is a public school district organized and operating under the laws of the state of Washington.

3. Plaintiffs Robert Young, Elizabeth Wise and their daughter plaintiff Sierra Young are taxpayers in the District. Elizabeth Wise is a physician. Sierra Young is a student at Cle Elum-Roslyn High School ("CERHS") who participates in school-sponsored co-curricular activities. They reside in Kittitas County and the District.

4. Plaintiff Mike Nevills is a taxpayer in the District. He is a retired English teacher and a football coach at CERHS. He resides in Kittitas County and the District.

5. Plaintiff Kimberly Main, her daughter plaintiff Chelsey Main and her son plaintiff Robert Main are taxpayers in the District. Chelsey Main and Robert Main are students at CERHS who participate in school-sponsored co-curricular activities. They reside in Kittitas County and the District.

6. None of the plaintiffs condones the abuse of drugs or alcohol, but all plaintiffs object to the imposition of random, suspicionless drug tests as a condition to participation in school-sponsored co-curricular activities. They object to the drug testing requirement because it violates students' rights to privacy, bodily integrity, and to refuse unwanted medical procedures; because it places a barrier between at-risk youth and the activities that are among the best ways to reduce the risk of drug and alcohol abuse among minors; because it intrudes on parents' rights to control the upbringing of their children; and because the funds spent on drug testing would be better spent on other drug abuse prevention activities that are lawful and more effective.

7. Before filing suit, the taxpayer plaintiffs sought the intervention of the Attorney General to halt the District's unconstitutional expenditure of public funds.

1 **JURISDICTION AND VENUE**

2 8. This court has jurisdiction over this case pursuant to its general jurisdiction over
3 cases in equity. RCW 2.08.010.

4 9. Venue is proper in this court because the cause of action arose in this county and
5 because the Defendant resides in this county. RCW 4.12.020(2), 4.12.025(1).

6 **FACTS**

7 10. The District operates four schools. Cle Elum-Roslyn Elementary School (grades
8 K-5) has approximately 390 students. Walter Strom Middle School (grades 6-8) has
9 approximately 240 students. Cle Elum-Roslyn High School (grades 9-12) has approximately
10 280 students. The Swift Water Learning Center (grades 9-12) is an alternative school that has
11 approximately 25 students.
12

13 11. The District is not experiencing any significant problem with student abuse of
14 illegal drugs or alcohol. In statistics reported to the Superintendent of Public Instruction for the
15 2003-04 school year, the District reported that only six freshman, zero sophomores, zero juniors,
16 and zero seniors were suspended or expelled for alcohol or drug violations. There is no history
17 of co-curricular activities being affected or disrupted because of drug or alcohol abuse.
18

19 12. On May 23, 2005, the District adopted a policy (hereafter, "the Policy") to adopt a
20 mandatory drug testing program for all co-curricular activities at CERHS. The Policy was
21 embodied in a document entitled "Co-Curricular Drug and Alcohol Testing Program," which is
22 attached as Exhibit A and incorporated by reference.

23 13. The Policy requires any student participating in a co-curricular activity to consent
24 in writing to random drug testing before the start of the activity's season. The parents must also
25 consent to testing. Some students will be randomly chosen for testing at the beginning of each
26 season, and there may be additional random lotteries throughout the season.

1 14. The District will test the selected students without any individualized suspicion
2 that the students have illegally used drugs or alcohol. In addition, the Policy allows the District
3 to give drug or alcohol tests to students it reasonably suspects of unlawful drug or alcohol abuse.

4 15. The Policy calls for the use of a saliva-based drug test. Saliva testing is a new
5 and largely untested technology. Its error rate unknown. Unlike urine tests, there are no FDA-
6 approved methods or protocols for saliva drug testing, and there is no state or federal
7 certification procedure for laboratories that process saliva tests.

8 16. Upon a positive saliva test, a student may request verification through urinalysis.
9 Because both saliva tests and urine tests may return positive results based on the student's
10 ingestion of certain lawful prescription drugs or foods, the students must divulge to the school in
11 advance which medications they are taking and which foods they have recently eaten.

12 17. There are a series of escalating consequences for students testing positive. At the
13 first positive test, parents are notified, a school-approved drug or alcohol treatment program is
14 implemented, and the student is excluded from sports for a minimum of three weeks or from
15 other activities for a minimum of one third of the active season. On the second positive test, the
16 student is excluded from participation from 25% of the following semester's activities. On the
17 third positive test, the student is barred from all co-curricular activities for the remainder of high
18 school. Reinstatement is possible if the student undergoes an "intervention" and has negative
19 results on additional drug tests.

20 18. In adopting the Policy, the District intended primarily to send a symbolic message
21 that "illicit and harmful drug use is not acceptable and will not be tolerated."

22 19. Before adopting the Policy, the District considered and rejected a proposal made
23 by several athletic coaches to condition participation in co-curricular activities on advance
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1 consent to drug testing only when there is reasonable suspicion to suspect that a student is
2 abusing illegal drugs or alcohol.

3 20. The District will expend public funds to implement the Policy.

4 21. The violation of rights that occurs through mandatory suspicionless drug testing is
5 irreparable, and cannot be wholly compensated through monetary damages.

6 **CAUSE OF ACTION**

7 22. The Policy violates Article I, section 7, of the Washington State Constitution,
8 which states: "No person shall be disturbed in his private affairs, or his home invaded, without
9 authority of law."
10

11 **RELIEF REQUESTED**

12 Plaintiffs seek the following relief:

13 A. A declaratory judgment, pursuant to RCW 7.24.010, that the Policy violates
14 Article I, section 7, of the Washington constitution, both facially and as applied to Plaintiffs.

15 B. Preliminary and permanent injunctions preventing the District from implementing
16 the Policy.

17 C. Other relief as the Court deems appropriate.

18 DATED this 14th day of September, 2005.
19

20 **AMERICAN CIVIL LIBERTIES UNION**
21 **OF WASHINGTON**

22
23 By: _____
24 Aaron H. Caplan, WSBA #22525
25 Staff Attorney

26 Attorneys for Plaintiffs

Exhibit A

Co-curricular Drug and Alcohol Testing Program

The Board of Directors of the Cle Elum Roslyn School District is dedicated to making participation in co-curricular activities a safe and wholesome experience for every student choosing to participate. It is the Board's belief that students involved with all co-curricular activities must remain free from the effects of drugs and alcohol.

The Board believes that a policy of mandatory drug testing for students desiring to participate in co-curricular activities helps those students remain drug free. In addition to providing a strong reason for students to "Say No" to drug use, mandatory testing offers incentive for students abusing drugs or alcohol to seek help. The Board believes in a program that is preventive, educational, and supportive rather than punitive or disciplinary.

It is also important to note that students who represent Cle Elum Roslyn High School (CERHS) in co-curricular activities are looked up to as role models by younger students. Since these role models will have tested "drug-free," the Board believes the program will discourage younger students from experimenting with drugs and alcohol.

The Superintendent is directed to enact a drug-testing program for all CERHS students choosing to participate in co-curricular activities. Students, with the consent of their parents, must agree to drug testing in order to be eligible for co-curricular activity participation. Randomly selected participants will be tested at the beginning of a sport season and then other participants will be selected randomly during the course of the season to be tested. Students who are tested must produce a negative (clean) test result in order to participate.

No punitive action is to be taken against students who test positive in the random drug testing, unless they are in violation of a school rule regarding possession or use at school. Students who test positive will be governed by the sanctions laid out in this policy.

The Board of Directors believes this policy sends the strongest message possible to students and the community that illicit and harmful drug use is not acceptable and will not be tolerated. It also provides an avenue of assistance and education for those wishing to "get free" and/or "stay free" from drugs.

Co-curricular Drug Testing

Overview

Cle Elum Roslyn School District ("The District") is conducting a mandatory drug-testing program for the students participating in co-curricular activities. There are many purposes for this policy including: (1) to provide for the health and safety of all student participants; (2) to undermine the effects of peer pressure by providing another legitimate reason for students to "say no" to using illegal drugs and alcohol; (3) to encourage students currently using alcohol or illegal drugs to participate in drug treatment programs; and (4) to insure our participants are positive role models.

Definitions:

Drug:

Illegal drugs include any substance considered illegal by Washington State Statute ~~or any substance that is controlled by the Food and Drug Administration~~. Violation of the drug policy can also be applied to any legal drug that is being abused by the participant to the extent that it poses a harmful threat to the participant's well being. Example: glue sniffing, huffing, excessive doses of cough syrup or other over the counter drugs.

Co-curricular:

Co-curricular programs are defined as programs sponsored by the school, that have voluntary participation, and which are sanctioned and governed by the CERHS Associated Student Body. This includes, but not limited to, activities such as athletics, clubs, cheerleading, dance, etc.

Procedures for Students

Consent:

Each student wishing to participate in any co-curricular program shall consent in writing, prior to the start of any season, to drug testing pursuant to the District's drug-testing program. This consent form will also need to be signed by the participant's parent/guardian.

Drug Testing Process:

At the beginning of each sport season, all students who are currently involved in co-curricular activities will be eligible for selection for random drug testing. Selection for random testing will be by lottery drawing from a pool of all participants in co-curricular programs at the time of the drawing. The lottery drawing will be administered by the Principal, Athletic Director and/or the Activities Coordinator. In addition, random testing- using the same lottery process- may be conducted during the season. Approximately 10 to 25% of participants will be selected for testing during any season.

Targeted drug testing may be conducted if the school administration has reasonable suspicion that a participant may be using illegal drugs or alcohol. Targeted tests will be conducted in a confidential manner.

Alcohol Testing:

The District will use an alcohol breath analyzer to test for alcohol. This will occur any time there is a question about an individual student's possible use.

Confidentiality:

For both alcohol and drug testing, the school administration shall take all reasonable steps to insure the integrity and confidentiality of the process. The results of any test will be limited to the school principal, activity supervisor, parent and participant.

Testing Procedures:

Prior to any test, a student will be asked to complete a food and medicine form that indicates recent food or medicine intake. Students selected for drug testing shall be administered a saliva test (or urine test for some targeted tests) in a private and confidential setting. The test will be conducted without prior notice and students must comply immediately with the test request. Students must have negative test result to be eligible to play. Students who refuse to take the test will receive sanctions as if they had tested positive.

Students who produce a positive test result through the saliva test have the right to have the test verified through a urine analysis (UA). If the student wishes to have the UA, it will be conducted immediately after the saliva test. Students will be required to pay for the UA should it also result in a positive outcome. The school will pay for negative UA test results.

For alcohol, students who test positive with the breath analyzer will be given a second test approximately fifteen minutes later to verify the result.

Events following a Positive Test Result:

1. After a positive test result has been determined, parents/guardians of the student will be notified and a confidential meeting will be set up to discuss the results and the consequences.

Levels of Offense

First Offense: For the first infraction of the drug and alcohol policy the participant will:

- (a) For Sports-Be excluded from participation on the team for a minimum of three game-weeks. The suspension will begin with the first missed game and last for 21 consecutive calendar days. During the suspension, the student is required to attend practice and travel with the team, unless excused by the coach; and

For Clubs/Activities-Be excluded from club activities ~~for a term to be determined by the advisor and activities coordinator.~~ equaling to 1/3 of the club/organizations activities for the year.

- (b) Also be referred to a drug and alcohol treatment program approved by the District. This plan must be shared with the coach, advisor, principal, and athletic director, who will monitor the participant's performance in the program. The student must comply with the assessment recommendations; failure to comply will result in the student going to the next level of suspension. A student must produce a negative (clean) test result to regain eligibility.

Second Offense: For the second violation of the drug and alcohol policy, the student will:

- (a) For Sports-Be excluded from participating in extracurricular programs for the rest of the current sports season and 25% of the games of the next season in which the student chooses to participate; and

For Clubs/Activities-Be excluded from participation for the rest of the semester and 25% of the following semester.

- (b) Also be referred to a drug and alcohol treatment program approved by the District. The student must comply with the assessment recommendations; failure to comply will result in the student going to the next level of suspension. A student must produce a negative test result to regain eligibility.

Third Offense: For the third violation of the drug and alcohol policy, the student will:

- (a) Be excluded from participating in Co-curricular programs for the rest of their high school career.
- (b) The student shall receive a full intervention procedure by a team consisting of; family, coaches, teachers, friends and appropriate others and will also be referred to a drug and alcohol treatment program approved by the District. In order to ~~take a position~~ seek an appeal to the review board, the student must complete the treatment program. A student must produce a negative test result to regain eligibility.

Review Board/Appeal Process

~~A student or parent who feel that the actions resulting from the enforcement of this policy were in error, or were unwarranted, may appeal the action to a review board composed of the Principal, Coach(s)/Advisor(s), and Athletic/Activities Director. The Board has the power to reduce or eliminate the sanctions of the policy for any individual case.~~

Any student, parent, or guardian who is aggrieved by the imposition of discipline as a result of this policy shall have the right, within three business days, to an informal conference with the building principal, athletic director, and a designated coach/advisor (coaches/advisors will be selected to serve on a rotating basis so as to serve at a time when their team/student organization is not in active participation) for the purpose of resolving the grievance. During such conference the student, parent, or guardian shall be subject to questioning by the review board and shall be entitled to question school personnel involved in the matter being grieved. Subsequent to the review board meeting, the student, parent, or guardian upon two school business days' prior notice, shall have the right to present a written and /or oral grievance to the superintendent and one board member. The superintendent shall notify the student, parent, or guardian of the response to the grievance within three school business days after the date of the meeting. The decision of the superintendent and board member shall be final. The student has the right to continue participation pending the results of the appeal process.

A participant who has been excluded from participation for the rest of his/her career, may petition the Review Board for reinstatement. The petition must prove that the participant has made significant changes in behavior, that he/she has taken steps to remedy his/her problem, and that they can be a positive influence in the co-curricular program. In athletics, it is preferred that both the outgoing-season coach and the incoming-season coach be present to review the petition of reinstatement.

Self-Report

A student who has been using illegal drugs or alcohol and who wants to stop, may self-report to the school about his or her drug abuse. The student would be referred to a drug and alcohol assessment agency for treatment. The student would suffer no loss of eligibility, but must comply with the assessment program requirements. The student would need to submit to random drug test after the self-report to determine if they are "clean". Testing positive for drug use after the initiation of the treatment program would place the student in the penalty program at the level determined by the number of previous infractions.

The self-report can only be used once during the course of a participant's career at CERHS. The self-report may not be used to escape imminent action by the school for policy violations. Parents will be notified of any self-report.

Non-Punitive Nature

No student shall be penalized academically for testing positive in the random co-curricular drug-testing program. The results of the drug tests pursuant to this policy will not be documented in any student's academic records. Information regarding the results of drug tests will not be disclosed to criminal or juvenile authorities absent legal

compulsion by valid and binding subpoena or legal process, which the District shall not solicit. In the event of service of such subpoena or legal process, the student and the student's custodial parent or legal guardian will be notified.

This non-punitive clause does not apply to students who are tested for suspicion of being under the influence at school under the school policy SP3240. Students who test positive under the school-wide policy will be held accountable for penalties outlined in 3240 as well as any appropriate action under this extracurricular policy.

Extracurricular Activity

Drug Testing Authorization

I understand that my performance as a co-curricular participant, and the reputation of my school are dependent, in part, on my conduct as an individual. I hereby agree to accept and abide by the standards, rules, and regulations set forth by the Cle Elum Roslyn School District Board and the appointed leaders for activities in which I participate.

I (the student) authorize the Cle Elum Roslyn School District to conduct tests on saliva samples, which I provide immediately upon request, to test for drugs and/or alcohol use. I also authorize the use of a Breathalyzer test to test for alcohol as needed. I understand that the release of information concerning the results of such tests will be made by the testing agency only to the Cle Elum Roslyn School District and the parents and/or guardians of the student.

I understand that I am obligated to adhere to the drug and alcohol testing procedures as they are outlined in the Co-curricular Drug and Alcohol Testing Program section of the athletic code for CERHS. Failure to comply with these procedures will result in my loss of eligibility for co-curricular activities.

This shall be deemed consent pursuant to the Family Education Right to Privacy Act for the release of above information to the parties named above.

Student Signature

Date

Parent/Guardian Signature

Date

(This form must be completed and on file at Cle Elum Roslyn High School prior to the student participation in any extracurricular program.)