JULYA HAMPTON
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May 15, 2006

Dr. Larry Nyland,
Superintendent, Marysville School District
4220 - 80th Street NE
Marysville, WA 98270

Re: Drug Testing Proposal
(includes Public Disclosure Request)

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
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TIMOTHY KAUFMAN-OSBORN
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Superintendent Nyland:

The ACLU of Washington wishes to comment on the recent news that the Marysville School District will study proposals for drug tests of student athletes that would be conducted even where there is no grounds to suspect that the individual students being tested are abusing drugs.

The ACLU opposes drug testing as a condition for extracurricular activities, and therefore encourages the school board to reject the proposal. There are both legal and practical reasons for the school to stay away from suspicionless drug testing. Many of these are described in the ACLU publication "Making Sense of Student Drug Testing: Why Educators Are Saying No" (2004), available online at http://www.aclu.org/DrugPolicy/DrugPolicy.cfm?ID=14767&c=79

Legally, a drug test is a search. The District will gather bodily fluids from the student and subject them to laboratory tests designed to unearth information about the interior of a student's body that would not ordinarily be visible. Art. I, § 7 of the Washington Constitution declares that "No person shall be disturbed in his private affairs" without authority of law. A search of the interior of the body is clearly an intrusion into private affairs.

The Washington Supreme Court has already considered searches of students' luggage when they go on school-sponsored field trips. Even when there was evidence that students abused alcohol on past field trips, suspicionless searches of students' belongings on future field trips were not allowed. The Court explained that "the suspicion [must] be particularized with respect to each individual searched." Kuehn v. Renton School District, 103 Wn.2d 594, 694 P.2d 1078 (1985). See also State v. B.A.S., 103 Wn.App. 549, 13 P.3d 244 (2000) (school may not search every student who leaves campus without permission; more evidence of individual wrongdoing is required). Our constitution does not permit blanket searches of students simply as a means of deterrence. The ACLU is currently involved in litigation against the Wahkiakum School District and the Cle Elum-Roslyn School District regarding similar drug test plans. We are confident that when these cases are final, the Washington Supreme Court will find

that the rules that apply to searches of students' luggage (as in Kuehn) and pockets (as in B.A.S.), will apply with at least as much force to searches of students' bodies for evidence of past drug use.

On a practical level, drug testing as a requirement for extracurricular activities is bad educational policy. The primary reason is that it simply does not work as a method for reducing overall drug use among the student population as a whole. The most thorough study is that conducted by the University of Michigan and partly funded by the National Institute on Drug Abuse. It concluded that there is no difference in rates of drug use between schools that have drug testing programs and those that do not. Ryoko Yamaguchi, Lloyd D. Johnston, & Patrick M. O'Malley, "Relationship Between Student Illicit Drug Use and School Drug Testing Policies," Journal of School Health 73.4 (2003).

Giving students meaningful extracurricular activities is one of the best ways of avoiding drug abuse, since students will pursue these more constructive activities after class hours have ended. Making extracurricular activities appealing and inviting, rather than placing obstacles in students' path, will be the best way to encourage more participation and deter drug use. Drug testing requirements will simply drive some students away from the extracurricular activities that could be most effective.

Drug testing also drains attention and money away from better programs to combat drug abuse that the District could be pursuing. The cost-benefit analysis undertaken in Dublin, Ohio, is a good example. Initially, the district tried drug testing at a cost of $35,000 per year; this tested 1,473 students in extracurricular activities, of whom only 11 tested positive. The school cancelled its testing program, realizing that it could instead spend the money on a full-time substance abuse counselor who could offer programs to all 3,581 of the district's students. The costs dropped from $24 per student to $18 per student.

Overall, suspicionless drug testing is an ineffective approach. At a substantial cost to the taxpayers that mostly benefits the drug testing companies, there is no noticeable change in substance abuse and a risk that the program will be found to be illegal. Meanwhile, there is a clear message given to students that their school district does not trust them, considers them innocent until proven guilty, and does not value their right of privacy or right of bodily integrity. The ACLU therefore encourages the District not to go down this path.

In order to allow us to better understand the reasons for the District's proposal, please send copies of the following documents under the Public Disclosure Act, RCW 42.17:

1. All documents related to the District's proposal for drug testing.

2. Any documents indicating the incidence of drug use on campus or during extracurricular activities.

3. Any contracts, correspondence, brochures, or other documents obtained from companies selling drug testing equipment.

4. Any survey questionnaires distributed to students in the last five years soliciting information about drug or alcohol use, and the results of such surveys.

5. Any documents that provide statistics about the number of students disciplined for drug-related reasons in the last five years.

6. Any documents indicating whether the District's insurance carrier would provide coverage for constitutional litigation over the validity of student drug testing. At a minimum, this would include a copy of the District's liability policy.

Thank you for your consideration. Please feel free to contact me at (206) 624-2184 to discuss the matter further.

Sincerely,

AARON H. CAPLAN
Staff Attorney