

To Test or Not To Test? Drug Testing Teachers: The View of the Superintendent

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Purpose: School superintendents are charged with maintaining the safety and security of the schools in their district. One major recognized threat to the security and safety of students and staff is the use of illegal drugs. Superintendents are responding to the constitutionality of student drug-testing policies by implementing drug-testing programs. Are superintendents implementing drug-testing policies in response to recent court decisions that have allowed for the preemployment and the suspicionless drug testing of teachers?

Population: Superintendents nationwide were randomly selected for the study.

Research Design: A mixed methodology was used to address the following questions: (1) Have school districts adopted a mandatory drug-testing policy, either preemployment or suspicionless, for teachers? (2) Do superintendents support a mandatory drug-testing policy, either preemployment or suspicionless, for teachers? (3) Do superintendents have differentiated support for preemployment and suspicionless drug-testing policies for teachers? Legal analysis was used to map the applicable court cases and constitutional ground that forms the foundation of drug testing. Quantitative analysis was used on the 144 returned

surveys. The third part of the methodology was an analysis of short-answer questions using quasi-qualitative methods.

Conclusions: This study found that superintendents believe that they have the authority, without offending the Constitution, to implement teacher preemployment and suspicionless drug-testing policies. However, in large part, they are not implementing such policies. The responding superintendents have a greater comfort level with preemployment testing than suspicionless drug testing of teachers. Most superintendents believed that the drug problem among teachers was not large enough to warrant action, but many reserved the right to revisit the implementation of such policies if the circumstances in their school district changed.

School superintendents are charged with maintaining the safety and security of their schools. One major recognized threat to the security and safety of students and staff is the use of illegal drugs. Superintendents responded to the call for security by implementing a variety of measures (DeMitchell & Cobb, 2003). One security measure that has had a resurgent interest is drug testing teachers. Teachers serve as role models for their students (DeMitchell, 1993; Fulmer, 2002) and serve in the capacity of in loco parentis (custodial and tutelary role— *Vernonia School District 47J v. Acton*, 1995; DeMitchell, 2002). Consequently, a drug-impaired teacher affects the safety and security of the school, its students, and its employees.

The United States Supreme Court has held that random suspicionless student drug-testing policies as a condition of participation in extracurricular activities (*Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 2002; *Vernonia School District 47J v. Acton*, 1995) are constitutional. Unlike its rulings on student drug testing, the High Court has not issued a decision regarding a teacher's Fourth Amendment rights, unlike students (Roberts & Fossey, 2004). However, two federal court cases decided in the last several years have upheld the constitutionality of drug-testing policies targeting teachers. In 1998, the Sixth Circuit Court of Appeals upheld a policy of preemployment drug testing of teachers, among others, as a condition of employment (*Knox County Education Association v. Knox County Board of Education*, 1999). In 2004, a federal district court (*Crager v. Board of Education of Knott County*, 2004) expanded the ability of school districts to implement teacher drug-testing programs by upholding a suspicionless drug-testing program. Further, drug testing programs for teachers may be expanding. For example, following the *Knox* decision, Orr (2000) posited that "many public school systems will form similar policies on their own to protect students and preserve the learning environment" (p. 549).

Although the decisions of the two federal courts do not require school districts to formulate a drug-testing program for teachers, they opened the door to such policies. Wirt and Kirst (1997) wrote, "the Supreme Court legitimizes national policies and the values they reflect and, conversely, illegitimizes others" (p. 265). Two federal courts have legitimized a drug-testing policies for teachers.

The Supreme Court had the opportunity in *Knox* (1998, 1999) but declined to grant review. However, Schmidt (2001) noted that, following *Knox* (1998), at least four school districts in four different states indicated that they had either instituted a teacher drug-testing policy or were considering implementing such a policy. Because school districts implemented student drug-testing polices following court action (DeMitchell & Carroll, 1997; DeMitchell, Carroll, & Schram, 2006), will superintendents follow suit, implementing either preemployment or suspicionless drug-testing polices for teachers? A policy window (Kingdon, 1995) appears to have opened through the confluence of concern about drug use, the drive for providing security in our schools, and two court cases that held that teacher drug-testing polices do not run afoul of the Constitution.

THE STUDY

The study below explored the perceptions of randomly selected superintendents about the advisability of programs for drug testing public school teachers. This research used a mixed-method design to address the central research questions. The methodologies include legal, quantitative, and short-answer analyses. Stefkovich and Torres (2003) noted that this approach is fairly new but is "strongly supported by the education law community" (p. 263). Furthermore, Schimmel (1996) advocated the use of complementary methods as a means of adding depth and texture to legal research. The research procedures involved two phases. First, a legal analysis of primary and selected secondary sources, including major Supreme Court cases and the *Knox* and *Crager* cases, was conducted. Second, a survey instrument was developed based on the first-phase legal analysis and the DeMitchell and Carroll (1997) and DeMitchell et al. (2006) research on student drug-testing policies. A short-answer section was added to the instrument to allow superintendents to discuss their reasons for support or nonsupport of the two types of drug-testing policies. A panel of experts in school law and educational policy juried the instrument. The revised instrument was sent to a randomly selected nationwide sample of 500 superintendents.

LEGAL ANALYSIS

FOURTH AMENDMENT

The drug testing of public school teachers by school officials implicates United States constitutional protections under the Fourth Amendment. The Fourth Amendment states,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourth Amendment protection is triggered when government officials, which in our case are public school officials, intrude upon an individual's reasonable expectation of privacy. The United States Supreme Court noted that "the basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials" (*Camara v. Municipal Court*, 1967, p. 523). The principle articulated by the Supreme Court above was reflected in a public school setting in which a female student was subjected to a strip search. The Second Circuit Court of Appeals wrote, "The essential purpose of the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, in order to safeguard individual privacy against arbitrary governmental intrusions" (*Phaneuf v. Fraikin*, 2006, p. 595).

The Fourth Amendment contains two important clauses: the Reasonableness Clause and the Warrant Clause. The Reasonableness Clause applies to all searches and seizures; in other words, all searches and subsequent seizures must be reasonable. The Warrant Clause applies to those searches for which prior approval by a judge is required. The standard used is probable cause. The Supreme Court articulated an exception to this requirement that impacts drug testing in the public schools. Justice Scalia in *Vernonia School District 47J v. Acton* (1995), which upheld the random drug testing of high school athletes and cheerleaders, asserted, "a search unsupported by probable cause can be constitutional . . . 'when special needs, beyond the normal need for law enforcement, make the warrant requirement and probable-cause requirement impractical'" (p. 653, internal citations omitted). This special needs exception was also applied earlier in *New Jersey v. T.L.O.* (1985). The

United States Supreme Court, noting the special circumstances of the public school, articulated a standard of reasonable suspicion for the search of students (*New Jersey v. T.L.O.*). The standard of reasonableness within the special needs of the public school becomes central in subsequent search and seizure cases in education.

INDIVIDUALIZED SUSPICION

Individualized suspicion refers to suspicion that a particular individual has engaged in misconduct or may be in possession of contraband such as drugs or weapons (*Burnham v. West*, 1987). On the other hand, non-particularized suspicion occurs when misconduct is suspected, but the suspicion is directed at a segment of a population instead of a specific individual. Often, school administrators have a good reason to believe that misconduct has occurred but are unable to connect specific individuals to the misconduct. Ordinarily, a search must be based on some quantum of individualized suspicion.

The Supreme Court in *T.L.O.* (1985) noted that individualized suspicion is generally required for searches. However, the High Court left the question of whether individualized suspicion is an essential element of the reasonableness standard unanswered. Its only instructive language on this important issue is found in footnote #8. The Court wrote,

We do not decide whether individualized suspicion is an essential element of the reasonableness standard we adopt for searches by school authorities. . . . Exceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal, and where “other safeguards” are available to assure that the individual’s reasonable expectations of privacy is not subject to the discretion of the official in the field. (p. 744)

This issue of individualized suspicion is central to preemployment and suspicionless drug-testing policies because such policies do not rely on individualized suspicion as a basis for the search. Instead, they rely on mere membership in a specific population—for example, potential faculty member (preemployment) and current faculty member (suspicionless). In other words, drug-testing policies (preemployment and suspicionless) do not require individual suspicion that a specific teacher/applicant is currently using drugs in order to conduct a search for drug use. The fact that the individual is part of a targeted group is enough justification to overcome individualized suspicion.

SEARCH OF THE TEACHER'S DESK

Although not specifically deciding a case on the drug testing of teachers or school employees, the Court does provide some guidance. For example, in *O'Connor v. Ortega* (1987), the Supreme Court considered a case involving the search of a state-employed physician's office by hospital administrators. The High Court ruled that the plaintiff had a reasonable expectation of privacy over his desk and file cabinets where he stored personal correspondence and other personal items. In spite of the doctor's expectation of privacy, the Court concluded,

We hold . . . that public employer intrusions on the constitutionally protected privacy of government employees for non-investigatory, work-related searches as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all of the circumstances. Under this reasonableness standard, both the inception and the scope must be reasonable. (pp. 25–26)

Therefore, the employer has the right to conduct a search of an area (desk and file cabinets) where the employee has an expectation of privacy. The threshold for the search is the lower standard of reasonableness rather than the higher standard of probable cause.

The *O'Connor* (1987) standard, which mirrors the student standard articulated in *New Jersey v. T.L.O.* (1985), was applied when a mathematics teacher's classroom was cleaned out. The administration had suspended Shaul, a mathematics teacher, for misconduct with a student. When he failed to remove his personal items from his classroom by the directed date, the administration and custodians cleaned out the room in preparation for use by another teacher. In the course of cleaning out the classroom, the administrators drilled open a locked file cabinet. In the cabinet, the school officials found pictures of the schoolgirl who was the subject of Shaul's discipline.

Shaul brought suit alleging a violation of his Fourth Amendment rights (*Shaul v. Cherry Valley-Springfield Central School District*, 2004). The Second Circuit Court of Appeals held that the suspension greatly reduced, if not eliminated, Shaul's expectation of privacy in his classroom. Furthermore, even if there was a reasonable expectation of privacy, using *O'Connor* (1987), the appellate court held that the school had the noninvestigatory and work-related purpose of cleaning and organizing his classroom in preparation for use by another teacher. And, possibly more important,

the school authorities had reasonable investigative reasons for searching his classroom.

O'Connor (1987) stands for the proposition that the state may search the workplace of its employees under the concept of reasonableness. Both *O'Connor* and its application in *Shaul* (2004) were searches prefaced on individual suspicion: suspicion focused on a specific individual. The drug-testing programs of *Knox* (1998) and *Crager* (2004) do not involve suspicion of wrongdoing by a specific individual. By their very nature, they sweep in individuals for search without any individualized suspicion. This raises the question, How has the Supreme Court viewed the drug testing of individuals without any suspicion that they were using drugs?

DRUG TESTING

Blood, breath, and urine tests associated with drug testing are highly invasive of privacy and are thus considered searches necessitating Fourth Amendment protection from unreasonable search and seizure. The Supreme Court, in *Skinner v. Railway Labor Executives Association* (1989), wrote that there are “few activities in our society more personal or private than the passing of urine. Most people describe it by euphemisms if they talk about it at all” (p. 613). Urine testing is considered a search of bodily fluids, further implicating drug-testing urinalysis as a search. Most drug-testing policies involve urinalysis, in which the individual has to provide a urine sample, often under some form of observation or monitoring.

The United States Supreme Court, in two noneducation cases, provided a context for viewing drug-testing policies that are not based on individualized suspicion. First, the High Court, in *Skinner v. Railway Labor Executives Association* (1989), found that the railway industry was already heavily regulated, thus reducing the employees’ expectation of privacy, and that the “employees subject to the tests discharge duties fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences” (p. 628). The Court found that the trigger for testing railway employees—involvement in a train accident—was based on an existing link between intoxication and train accidents. Thus, the Supreme Court stated, “In limited circumstances, where private interests implicated by the search are minimal, and where an important governmental interest is furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion” (p. 624).

The second Supreme Court decision upheld the use of drug testing but

limited it to a condition of employment for Customs Service employees involved in drug interdiction, those who carried firearms, and those who handled classified materials (*National Treasury Employees Union v. Von Raab*, 1989). Unlike *Skinner* (1989), the Supreme Court held in *Von Raab* that there was no evidence linking the targeted employees and drug use. However, the Court reasoned that when employees hold positions that are “safety sensitive,” “the government’s need to discover latent conditions . . . or to prevent their development is sufficiently compelling to justify the intrusion on privacy entailed by conducting [suspicionless] searches” (p. 668).

The Supreme Court set the stage for the review of preemployment and suspicionless drug testing of teachers. The Court held that special needs exist in public schools that can support the constitutionality of random suspicionless drug testing of specific groups of students (*Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 2002; *Vernonia School District 47J v. Acton*, 1995). Furthermore, employees in heavily regulated businesses have a reduced expectation of privacy, and when holding safety-sensitive positions in which momentary lapses of judgments can have catastrophic consequences, they can be subjected to suspicionless drug testing (*National Treasury Employees Union v. Von Raab*, 1989; *Skinner v. Railway Labor Executives Association*, 1989).

KNOX V. KNOX: PREEMPLOYMENT DRUG TESTING

In 1989, the Knox County Board of Education adopted a “Drug Free Workplace Policy.” The policy was modified in 1994, allowing for the drug testing of employees under two situations: (1) when there is reasonable suspicion of drug or alcohol impairment while at work and (2) pre-employment testing for “safety-sensitive” positions such as principals, assistant principals, teachers, traveling teachers, teacher aides, substitute teachers, school secretaries, and school bus drivers. Individuals who apply, transfer, or advance to one of these safety-sensitive positions must submit to the test as a condition of employment. Candidates for employment in one of these safety-sensitive positions who refuse to take the test will not be considered a valid candidate, and their application will be withdrawn. Current employees who attempt to transfer into or be promoted into one of these positions who test positive will no longer be considered applicants. Employees who refuse to be tested forfeit the opportunity for transfer or advancement and are subject to discipline for insubordination. The Knox County Education Association brought suit in federal court, claiming that the policy violated the Fourth Amendment protection against unreasonable search and seizure.

On March 4, 1997, the District Court held that the drug-testing policy section requiring preemployment testing violated the Fourth Amendment. The court also found that the manner in which the policy permitted alcohol testing upon reasonable suspicion violated the Fourth Amendment. Both parties appealed. The Sixth Circuit Court of Appeals heard the case.

The Appellate Court articulated a two-part test for assessing the government's interest in testing:

- (1) whether the group of people targeted for testing exhibits a pronounced drug problem; and, if not, whether the group occupies a unique position such that the existence of a pronounced drug problem is unnecessary to justify suspicionless testing; and
- (2) the magnitude of the harm that could result from the use of illicit drugs on the job. (*Knox v. Knox*, 1998, p. 373)

The court first held that the existence of a pronounced drug problem is not a *sine qua non* for a constitutional preemployment drug-testing program. Following the lead of *Van Raab* (1987), the court asserted that the work of teachers and principals is unique. Speaking more closely to the work of teachers, the court argued that teachers spend most of their day “in the solitude of the classrooms surrounded only by students” (p. 375). The lack of adult scrutiny, which could uncover drug use, was coupled with the statutory role of *in loco parentis*.

In short, although the record of evidence does not reflect that the Knox County school teachers and other such officials have a track record of a pronounced drug problem, the [preemployment] testing regime is justified by the unique role they play in the lives of school children and the *in loco parentis* obligations imposed upon them. (p. 375)

Having found that the policy met the requirements of the first prong, the court turned to the next prong, balancing the magnitude of harm that could result from the use of illicit drugs. This prong is essentially a *Skinner* (1989) inquiry as to whether teachers and principals occupy safety-sensitive positions in which employees “discharge duties fraught with risks of injury when even a momentary lapse of attention can have disastrous consequences” (p. 376). The Court of Appeals acknowledged that the position of teacher “does not fit neatly” into the recognized category of safety sensitive. However, the court argued, echoing *Skinner*, that teachers do occupy such a position in which momentary lapses of

judgment can have “disastrous consequences.” The court asserted,

For example, young children could cause harm to themselves or others while playing at recess, eating lunch in the cafeteria (if for example, they began choking), or simply while horsing around with other children. Children, especially younger children, are active, unpredictable, and in need of constant attention and supervision. Even momentary inattention or delay with a potentially dangerous or emergency situation could have grievous consequences. (p. 378)

In pursuing this line of argument that teachers and administrators need clear-headed thinking and “split-second vigilance” for the safety of students, the court went so far as to almost assert that the board has a duty to institute such a policy of drug testing. The court wrote,

Indeed, we have no doubt that if a tragedy were to befall one or more of the school children of Knox County that in some manner implicated a teacher or administrator being under the influence of an illegal substance, the members of that community would rightly question why the Board had not taken all efforts possible in advance to prevent such an occurrence. (p. 378)

The Sixth Circuit Court of Appeals upheld the preemployment drug testing of teachers and others who would occupy “safety-sensitive” positions in the Knox County schools. However, the court noted that the policy under review was not overly intrusive because it was a one-time test with no random testing component. This raises the issue of whether the Sixth Circuit would have supported random suspicionless drug testing as part of an ongoing policy. The next case addressed this issue.

CRAGER V. BOARD OF EDUCATION OF KNOTT COUNTY: SUSPICIONLESS DRUG TESTING

The Board of Education of Knott County in Eastern Kentucky altered its suspicion-based method in drug testing to a suspicionless program. The change instituted a new approach in which 25% of all employees in “safety-sensitive” positions would be randomly selected for drug testing without regard for suspicion of drug use. This policy differs from the Knox policy in that Knox applied the policy to individuals who were applying for, transferring to, or advancing to a safety-sensitive position. Under the Knox policy, once an individual passed the test to get the position, he or she would not be tested again. However, under the Knott policy, individuals who held safety-sensitive positions had a 1 in 4 chance of being selected for random testing. The Knott policy expanded drug testing without individualized suspicion of wrongdoing.

A 14-year veteran teacher sought to enjoin the board's policy (*Crager v. Board of Education of Knott County*, 2004). The federal district court denied the preliminary injunction, asserting that the plaintiff had little likelihood of success on the merits of the case because the board had the right "to protect its school children and employees through the use of random testing" (p. 702).

The *Crager* court accepted the reasoning of the *Knox* court: that teachers occupy a safety-sensitive position; that teachers occupy a unique position in which, although there is no statutory required in loco parentis relationship in Kentucky, the courts recognize such a standing; and that teachers have a decreased expectation of privacy because public education is heavily regulated. However, the court broke with *Knox* on the issue of random suspicionless drug testing. The *Knox* court noted that a provision for suspicionless testing "would weigh heavily against the constitutionality" of the drug-testing policy (*Knox*, 1998, p. 384). The *Crager* court disagreed.

The *Crager* (2004) court found that the one-time test authorized in the *Knox* preemployment drug-testing policy "would not do much to reduce the likelihood of drug use among teachers" (p. 702). The court asserted that more protection than one-time testing, easily evaded, was needed, to ensure that school employees in safety-sensitive positions were drug free. Citing the Supreme Court's decisions to uphold random suspicionless drug testing of students in *Vernonia* (1995) and *Earls* (2002) and the suspicionless drug testing of employees under *Skinner* (1989), the federal district court held that the suspicionless drug policy of the Knott County Board of Education was justified. Furthermore, the court argued that the policy protects the students and "furthers the interests in meeting the requirements of [the federal Drug-Free Workplace] Act" (p. 703).

Knox and *Crager* have continued the rise of the use of drug testing in public employment and endeavors. *Skinner* and *Van Raab* carved out an exception to the need for warrants in search and seizure of employees occupying safety-sensitive positions. *Vernonia* and *Earls* allows for the suspicionless drug testing of students participating in extracurricular activities. *Knox* upheld a policy requiring preemployment drug testing, and *Crager* allowed the suspicionless drug testing of teachers who hold safety-sensitive positions, as well as serve as "role models for children" (*Crager*, p. 694, citing *Knox*, p. 374). Although not a mandate to institute preemployment and suspicionless drug testing of teachers, will superintendents take advantage of this apparent "policy window" (Kingdon, 1995) to implement either or both of these policies?

QUANTITATIVE ANALYSIS

METHOD

To assess whether superintendents are responding to this policy window, the following research questions were developed: (1) Have school districts adopted a mandatory drug-testing policy, either preemployment or suspicionless, for teachers? (2) Do superintendents support a mandatory drug-testing policy, either preemployment or suspicionless, for teachers? (3) Do superintendents have differentiated support for preemployment and suspicionless drug-testing policies for teachers?

PARTICIPANTS

Superintendents were selected for study because of their unique position in education policy making. They are professionals who develop policies for school board consideration and then implement the policies that are adopted. The superintendent stands at the cusp of the policies that direct the course of the school district and the realities of educational practice. A random sample of 500 superintendents was generated from a national database (National Center for Education Statistics, 2005) of superintendents. A letter and survey instrument was sent to each participant. A total of 144 (28.8%) superintendents responded. It is important to note that this is a low response rate. Therefore, caution is advised when generalizing the data beyond the respondents to this study. It is possible that the respondents reflect some unknown systemic difference from the nonrespondents.

INSTRUMENTS

A survey was developed to answer the research questions. The questions were based in part on previous research on superintendent responses to the *Vernonia* (1995) decision (DeMitchell & Carroll, 1997) and the *Earls* (2002) decision (DeMitchell et al., 2006), and an analysis of the *Knox* and *Crager* decisions. The instrument used Likert-style questions, forced-choice questions, and a short-answer section.

A panel of experts juried the draft survey instrument and demographic questions. The jury members had held such positions as superintendent, school law attorney, professor of school law and policy, executive director of a state-level association for school administrators, and an associate executive director of a national educational organization. Changes were

made to the original instrument consistent with the recommendations of the jury.

The instrument defined random suspicionless drug testing and preemployment drug testing so as to provide a common basis for analysis. The definitions are below.

For purposes of this research, *random suspicionless drug testing* means that the administrator has no reasonable suspicion that a particular educator has used drugs or is currently under the influence of drugs. The educator required to submit to drug testing is selected randomly from the pool of employees covered by the drug policy.

For purposes of this research, *preemployment drug testing* takes place after the individual has been selected for employment but prior to beginning the position (postoffer, preemployment). Passing the drug test is a condition of employment.

DATA ANALYSIS

Descriptive statistics (e.g., frequency, mean, and standard deviation) were calculated for all Likert-style questions. Additional analyses were conducted to address Research Question 3 (“Do superintendents have differentiated support for preemployment and suspicionless drug-testing policies for teachers?”). For example, analysis of variance (ANOVA), *t* tests, and correlations were conducted to ascertain the contour and extent of differentiation.

DEMOGRAPHICS

A total of 29 female and 111 male superintendents responded, with 4 superintendents not answering this question. Table 1 shows the demographics of the study participants.

The respondents were largely male and new superintendents to their school district, and their school district was small and had a unionized faculty. Given that the majority of the nation’s public schools are small and rural, and that the average tenure of a superintendent is often counted in months, this sample appears to be representative of the national demographics of superintendents and school districts (National Center for Education Statistics, 2005).

Table 1. Demographics

<i>Years of Service</i>					
1–4	5–9	10–15	16+	No Response	
72	42	17	7	6	
50%	29.2%	11.8%	4.9%	4.2%	
<i>Number of Students</i>					
1–2,500	2,501–7,500	7,501–10,000	10,000–20,000	20,001+	No Response
105	12	1	21	3	2
72.9%	8.3%	0.7%	14.6%	2.1%	1.4%
<i>Gender</i>					
Female	Male	No Response			
29	111	4			
20.1%	77.1%	2.8%			
<i>Unionized Faculty</i>					
Yes	No	No Response			
97	43	4			
67.4%	29.9%	2.8%			

RESULTS

The results are organized into five sections: foundation for drug policy, legal context, preemployment testing, suspicionless testing, and short-answer discussion.

FOUNDATION

The foundation questions in Table 2 provide a legal background from which superintendents base their policy decision making.

The responding superintendents did not believe that there is much of a drug problem among faculty in their school district. Half of the superintendents did not believe that drug testing teachers is an effective means of responding to drug use in the schools. Almost 22% believed that drug testing is effective, and there is a large neutral response. Over one quarter of the responding superintendents either did not know if testing was effective or had no opinion.

Superintendents were asked whether they have mandatory drug-testing programs for their middle/high school students. Those school districts that did not have a middle or high school were eliminated from this analysis. Eleven (8.0%) school districts had such a policy, and 127 (92%) did not. Only one school district had both a suspicionless drug-testing policy for students and one for teachers. None of the school districts had a suspicionless drug-testing policy for students and a preemployment

Table 2. Foundation Questions

Questions	Mean (range = 1-5)	SD	% Strongly Disagree & Disagree	% Neutral	% Agree & Strongly Agree	N
1. Drugs are a problem with educators in our district.	1.70	.78	84.6	13.3	2.1	142
2. Drug testing teachers is an effective means for combating drug use in schools.	2.65	.96	50.0	28.2	21.8	142

Note. 1 = Strongly Disagree; 2 = Disagree; 3 = Neutral; 4 = Agree; 5 = Strongly Agree.

drug-testing policy for teachers. Of the 11 school districts that implemented student drug testing, 9 had student populations of 1–2,500, one district had 7,501–10,000 students, and one district had a student body of 20,001–50,000 students. This data yielded a smaller percentage of school districts with student drug-testing policies (8%) than the DeMitchell et al. (2006) study (11.6%). We have no explanation for the discrepancy.

The superintendents in this study did not perceive that there is much of a drug problem, if any, among their educators. They are not convinced that drug-testing policies are effective. And only a small percentage of the school districts had student drug-testing policies, with only one school district adopting drug testing for both students and teachers.

LEGAL CONTEXT

This grouping of questions assessed the legal knowledge of the respondents. DeMitchell et al. (2006) found that professional knowledge, including legal knowledge, influenced the decision whether to implement a drug-testing policy for students. The average superintendent response to the question, “My knowledge of school law is: (1) minimal, (2) acceptable, (3) average, (4) above average, and (5) strong” was 3.66, close to above average. Responses to the questions on legal knowledge are found in Table 3.

By a margin of 2 to 1, superintendents agreed that knowledge of court cases influenced their willingness to formulate a policy. Coupled with the

Table 3. Application of Knowledge of School Law

Questions	Mean (range = 1-5)	SD	% Strongly Disagree & Disagree	% Neutral	% Agree & Strongly Agree	N
3. Knowledge of court decisions, in general, influences my willingness to formulate a policy on a specific issue.	3.29	1.05	25.9	21.0	53.2	143
4. Regarding the drug testing of teachers, the concern for student safety outweighs a teacher's right to privacy.	3.77	.93	10.6	19.0	70.4	142
5. My district does not need a drug-testing policy for teachers because I already have the power to require a drug test if I reasonably suspect that a teacher is under the influence of drugs.	2.81	1.13	46.7	18.0	35.2	139
6. Because teachers work with students, they have a diminished expectation of privacy.	3.09	1.07	37.3	14.8	47.9	142
7. Teachers occupy "safety-sensitive" positions, meaning that their job involves duties fraught with risks of injury to others such that even a momentary lapse of attention can have disastrous consequences.	3.73	.86	11.2	17.5	71.3	143

Note. 1 = Strongly Disagree; 2= Disagree; 3 = Neutral; 4 = Agree; 5 = Strongly Agree.

question on their knowledge of school law, it can be reasonably asserted that the superintendents perceived that they understand school law and apply that knowledge to policy decisions.

As seen in the discussion of search and seizure above, the issue of the expectation of privacy is important to Fourth Amendment questions regarding drug-testing programs. If there is a diminished expectation of privacy, the protection against unreasonable search and seizure is not as robust. This question (Question 6) seeks to ascertain if superintendents perceive that teachers, because they work with students, have a diminished expectation of privacy. If teachers have a diminished expectation of privacy, it is easier and less constitutionally burdensome for a school district to institute a drug-testing policy. The mean for this question is just above the neutral (3.09). Forty-eight percent of the superintendents agree or strongly agree that the privacy rights are diminished, and 37% strongly disagree or disagree. Question 4 goes further than Question 6 in that 70% of the superintendents agree that a teacher's right to privacy is outweighed by the need for student safety.

A door appears to be open for a drug-testing policy for teachers because almost half of the superintendents believe that teachers have a diminished expectation of privacy, and 70% believe that any privacy that teachers have is of lesser importance than protecting students. Question 5 may also strengthen the move toward adopting a policy. Just under half (46.7%) of the superintendents disagree that they already possess the power to test teachers and that a policy is not needed, meaning that nearly half of the superintendents who responded believe that they need the power of a policy behind any decision to test based on reasonable suspicion; 35% agree that they already possess the power to drug test teachers and that a policy is not needed. It is interesting that just one third of the superintendents believe that they have this ability to test. If the superintendents realized their right to require a drug test with reasonable suspicion, would they change their position on suspicionless drug testing?

The next two sections explore the superintendents' response to preemployment and suspicionless drug-testing policies.

PREEMPLOYMENT DRUG TESTING

As seen in Table 4, the response to the question of whether their school district has a preemployment drug testing policy for teachers yielded 6 (4.2%) positive responses and 137 (95.8%) negative responses. Of the six school districts that have preemployment policies, four had a student population of 1–2,500, one had a population of 2,501–5,000 students, and one had a student population of 10,001–20,000. Of the six school

districts with preemployment drug-testing policies, two were K-12, two were K-8, and two were 9-12.

Table 4. Preemployment Drug Testing

Questions	Mean (range = 1-5)	SD	% Strongly Disagree & Disagree	% Neutral	% Agree & Strongly Agree	N
8. I support adopting a mandatory preemployment drug-testing policy for teachers as a condition of employment.	3.22	1.14	28.4	23.6	47.9	144
9. Preemployment drug-testing policies violate the constitutional rights of teachers.	2.19	0.91	73.2	16.2	10.6	142

Note. 1 = Strongly Disagree; 2= Disagree; 3 = Neutral; 4 = Agree; 5 = Strongly Agree.

Approximately 48% of the superintendents supported preemployment drug testing, whereas just over 28% did not. However, nearly one fourth of the respondents took a neutral position, neither supporting nor not supporting preemployment drug testing. This is a substantial portion of the respondents. An ANOVA showed no significant difference by the number of years that the respondent had served as the superintendent in the school district and by gender. There was a negative statistically significant, strong correlation ($r = -.505$) at the .001 alpha level (Urdu, 2001: 0-.2 weak, .2-.5 moderate, and above .5 strong) for Questions 8 and 9. In other words, the more that a superintendent supported a preemployment drug-testing policy for teachers, the less likely the superintendent was to believe that such policies violated the constitutional rights of teachers, and vice versa. This indicates that superintendents understand the tie between drug testing teachers and those teachers' constitutional rights. There was a positive strong correlation ($r = .518$) significant at the .001 alpha level for respondents who supported preemployment drug testing of teachers (Question 8) and believed that drug testing teachers was effective (Question 2). Both of these correlations were expected and are intuitive.

SUSPICIONLESS DRUG TESTING

Table 5 indicates that only two (1.4%) school districts had a policy on suspicionless drug testing of teachers, and 140 (98.6%) reported that they did not. Both school districts had a student population from 1 to 2,500 students, and both were K–12 school districts. One of the school districts also had a preemployment drug-testing policy.

Table 5. Suspicionless Drug Testing

Questions	Mean (s.d.)	SD	% Strongly Disagree & Disagree	% Neutral	% Agree & Strongly Agree	N
10. I support adopting a policy allowing random suspicionless drug testing of teachers currently employed in the school district.	2.88	1.13	44.8	20.3	35.0	143
11. Random suspicionless drug testing policies violate the constitutional rights of teachers.	2.57	1.05	58.5	15.7	25.7	140

Note. 1 = Strongly Disagree; 2 = Disagree; 3 = Neutral; 4 = Agree; 5 = Strongly Agree.

A total of 35% of the superintendents supported a suspicionless drug-testing policy, whereas almost 45% did not. The number of superintendents holding no position on the policy was just over 20% of the sample. This is a large number, but not as large as the neutral responses for pre-employment. Superintendents appeared to be slightly clearer about where they stood on this policy than on preemployment.

Almost 26% agreed that this type of a policy violates a teacher's constitutional rights. A Pearson correlation for support (Question 10) and constitutionality (Question 11) was negative, statistically significant, and moderate ($r = -.405$) at the .001 alpha level. Superintendents who believed that suspicionless drug testing violates a teacher's constitutional rights tended not to support such a policy. An ANOVA for gender and years as a superintendent in the school district are both not significantly different. A Pearson correlation for Question 9, the constitutionality of preemployment drug testing, and Question 11, the constitutionality of suspicionless drug-testing policies, was strongly positive ($r = .544$) at an

alpha level of .01. The responding superintendents who believed that one form of drug testing was constitutional also believed that the other form of testing was also constitutional. However, it is interesting to note that only one school district had implemented both policies. A Pearson correlation between the effectiveness of drug testing teachers (Question 2) and the support for a policy of suspicionless drug testing was strongly positive ($r = .539$) at an alpha level of .001. Superintendents who believed that drug testing was effective in combating drug use at school tended to support suspicionless drug testing.

DISCUSSION

Superintendents did not perceive that there is much of a drug problem among their faculty. Almost 85% disagree that drugs are a problem. This is in contrast to the DeMitchell et al. (2006) study, which found that the superintendents surveyed believed that the extent of the drug problem among students is moderate to substantial. This lack of a perceived drug problem was most probably reflected in the low number of enacted teacher drug-testing policies: five preemployment, one suspicionless, and one school district that had enacted both policies.

The finding of no to little drug problem among faculty is consistent with the short-answer data discussed below. However, it is interesting that 19 (13.3%) superintendents found a safe harbor of neutral for this question. Why they selected a neutral response is unknown, but the most likely explanation is that they did not want to go on "record" as stating that there is a drug problem among their teachers. Even if neutral is added to the Agree responses, the total number of superintendents agreeing that drugs are a problem is only 22, or 15.4% of the respondents. There does not appear to be much of a perceived drug problem among educators in the school districts that responded to this survey.

The respondents believed that they were knowledgeable about the law ($M = 3.66$) and court cases ($M = 3.29$). The superintendents' understanding of the law is part of their professional knowledge base (DeMitchell et al., 2006) that is used when analyzing policy issues. Several questions were aimed at the Fourth Amendment theories that structure the right to be free from unreasonable search and seizure. As a beginning point, the superintendents believed that the safety of students outweighs a teacher's right to privacy ($M = 3.77$) and that teachers have a diminished expectation of privacy because they work with students. Both of these positions support drug-testing policies of teachers. In addition, when asked whether a specific drug-testing policy (preemployment or suspicionless) violates a teacher's constitutional rights, over one-half of the

superintendents responded no. However, a *t* test of the questions on whether preemployment policies (Question 9, $M = 2.19$) and suspicionless drug-testing policies (Question 11, $M = 2.57$) violate the constitutional rights of teachers shows a significant difference ($p = <.001$) in responses. Whereas superintendents believed that both policies do not violate the constitutional rights of teachers, superintendents were less sure that suspicionless drug testing of teachers does not violate teachers' constitutional rights. This difference between preemployment and suspicionless drug-testing constitutionality is reflected in the difference of support for the two policies.

Although the set of questions discussed above support both drug-testing policies, Question 7 (teachers occupy "safety-sensitive" positions, meaning that their job involves duties fraught with risks of injury to others such that even a momentary lapse of attention can have disastrous consequences) is aimed specifically at suspicionless drug-testing policies. As seen in the discussion of *Crager*, a particular occupation, such a train engineer, must be considered safety sensitive in order to overcome Fourth Amendment protections. Over two thirds of the superintendents believed that teachers occupy such a safety-sensitive position, thus meeting a major constitutional test for suspicionless drug testing. Yet, they did not support it to the same degree as preemployment drug testing.

The superintendents appeared to have laid a constitutionally firm foundation for drug testing teachers. One would think that with this legal base, they would support both drug-testing policies. However, the respondents did not garner a majority, which would adopt a preemployment drug-testing policy (A/SA = 47.9%), and just over a third support a suspicionless drug-testing policy (A/SA = 35%). A *t* test for supporting a preemployment drug-testing plan (Question 8, $M = 3.22$) and supporting a suspicionless drug-testing plan (Question 10, $M = 2.88$) showed a significant difference ($p = <.001$) in responses. Not only do the means fall on either side of the neutral, but that difference is also significant. Superintendents have significantly less support for teacher suspicionless drug-testing policies. Interestingly, an ANOVA for unionized faculty showed no significant difference for either question. In other words, having a unionized faculty did not influence the level of support or nonsupport for both preemployment and suspicionless drug-testing policies. One would think that a union would be a mitigating influence against the drug testing of its membership, but apparently, the presence of a union did not influence superintendents' perceptions about drug testing.

Although the responding superintendents believed that there is a legal basis for implementing drug testing, most chose not to implement such policies. Part of the explanation may be found in their perception that

there is not a drug problem in their school district that must be addressed, coupled with a perception that drug testing is not effective. However, as will be seen below, many superintendents may implement drug-testing policies if conditions in their school districts warrant a review. For example, a superintendent responding to the preemployment drug testing prompt with a position of nonsupport wrote, "We don't have a problem with our teachers at this time. If or when this becomes a problem, I would support this because of safety issues with students and because teachers act as role models." The two reasons for adopting a policy should drugs become a problem are student safety and teacher role model concerns, according to this superintendent. This is consistent with data from themes that emerged in both support and non-support of preemployment and suspicionless drug-testing responses.

Next, we will explore in further depth the perceptions of the superintendents regarding preemployment and suspicionless drug testing. The responses to our short-answer prompts are discussed below.

SHORT-ANSWER QUESTIONS

DATA ANALYSIS

A short-answer section was included in the survey instrument. Two prompts were provided that required the respondent to make a forced choice between not supporting or supporting preemployment and suspicionless drug-testing policies. The prompts were developed to extend, illustrate, and deepen our understanding of the research questions on preemployment and suspicionless drug-testing policies.

This method is a hybrid. Its purpose was derived from the quantitative portion of the survey instrument, but the data were not amenable to typical quantitative statistical treatments (case study, grounded theory, interviewing, and so on). Furthermore, the short answers, even though the data appear to be like qualitative data, do not fit into the typical qualitative analyses associated with nonnumerical data (Schram, 2005). Therefore, we developed an analysis that allowed us to uncover themes from the data using coding techniques often associated with grounded theory.

First, we had to contend with the limitations of the data. For example, we were unable to "probe" or ask, "What is happening here?" (Glaser, 1978). It was problematic to do member checks to support validity or to do theoretical sampling (Strauss, 1987). Furthermore, the one-shot aspect of the short-answer data precluded the "unfolding" of data from in-depth interviewing or multiple sequential interviews.

In spite of the challenges, the data from the short answers provide texture not usually available through quantitative data alone. First, all responses were transcribed. All three researchers received copies of the transcripts for each prompt. One researcher was assigned to the pre-employment responses, and one was assigned to the suspicionless responses. The third researcher did not take part in the iterative, winnowing processes to find themes in the data, if they existed. The first two researchers completed their assignments individually and then checked the analytical steps of the other. This was done several times until the working themes were distilled into themes. After the themes were developed, the third researcher reviewed the final themes for clarity and completeness. The third researcher remained separate from the discussions/negotiations between the first two researchers. This allocation of work allowed us to establish some checks on the data analysis to reduce personal bias and to strive for validity of theme building.

Each researcher conducted an initial coding for each statement. An iterative process of reviewing each response and its code was conducted. Categories of responses were developed and refined several times, finally distilling them into themes. When a respondent wrote a response that had several statements, each statement was treated differently and coded separately. For example, the following response was eventually coded into two themes, with one comment not included in any theme: "I believe it violates constitutional rights of teachers and because it is simply a 'feel-good' measure. Drug testing for one is not all that effective. There are ways to invalidate the results or to evade the purpose of the test." The first comment, "I believe it violates constitutional rights of teachers," became part of the theme, "negative impact of testing" after being coded first into an "unconstitutional" theme. The phrase, "and because it is just a feel-good measure" eventually did not code into a theme. The last two sentences, "Drug testing for one is not all that effective" and "There are ways to invalidate the results or to evade the purpose of the test" coded into "questionable effectiveness."

An example of how a response was coded into a theme follows. A superintendent wrote, ". . . follows through on our philosophy that we are a drug-free school." The first code was "philosophy," and the second was "consistent actions." The final code, which became the theme, was "consistent drug-free message."

As seen above, not all responses fit into themes. For example, a respondent wrote, "What would be tested? What drugs are being looked for?" The initial coding was "policy details." Although these questions would be important if a policy were being drafted, there were no other comments that looked at the details of a policy. Consequently, these

comments were not included in a theme. Another example of a comment that was not coded into a theme is, “I believe that the issue of ‘as a condition of employment’ is much different than random and suspicionless searching of current employees.” The response was coded as a “difference between drug tests.” However, the comment did not sort further because it was a statement of fact and not an opinion that specifically addressed the prompt, “I *do not* support preemployment drug testing of teachers because—”

RESPONSES

A total of 117 superintendents responded to the prompt on preemployment drug testing (“Short-Answer Questions: Select the statement that is most closely aligned with your position on the *preemployment* drug testing of teachers.”). One response was removed because the superintendent responded to both the nonsupport and support portions. This left a total of 116 responses for preemployment and 114 superintendent responses to the suspicionless prompt (“Short-Answer Questions: Select the statement that is most closely aligned with your position on the *suspicionless* drug testing of teachers.”). A total of 15 respondents switched positions from supporting preemployment drug testing to not supporting suspicionless drug testing. All other respondents took the same position of either support or nonsupport for both prompts. The 15 superintendents who switched positions considered suspicionless drug testing as going too far in eroding rights of teachers and not being necessary. No superintendents switched from not supporting preemployment to supporting suspicionless drug testing. It can be reasonably argued that the 15 superintendents who switched from support for preemployment to nonsupport for suspicionless drug testing—approximately 10% of the respondents—saw a hierarchy of intrusion between the two programs of testing. Preemployment testing was perceived as less intrusive, whereas suspicionless testing was more intrusive.

It is interesting to note that only two superintendents mentioned the union and collective bargaining even though any drug-testing program of teachers would be a subject of bargaining because it would impact the terms and conditions of employment. One superintendent wrote under the Do Not Support Preemployment Drug Testing section, “Collective bargaining agreements will prevail in our district.” What is not known is whether the collective bargaining agreement already addressed the issue of testing. The other superintendent, also responding to the preemployment section, however, selected support of the policy. The

superintendent wrote, “As a condition of employment, unions would have very little impact.”

PREEMPLOYMENT DRUG TESTING OF TEACHERS

NONSUPPORT FOR PREEMPLOYMENT DRUG TESTING

A. I do not support preemployment drug testing of teachers because—

A total of 49 superintendents selected nonsupport for preemployment drug testing with, 4 checking the selection but offering no comments. Three themes emerged from the data: drug testing not needed in my school district, the negative impact of testing, and questioning the required test.

Drug testing not needed in my school district

The major theme (30 statements) consists of perceptions that there was not a teacher drug problem in their school district or that the problem was not of sufficient scope to require such a policy. Comments such as “not a problem,” “not needed,” “not necessary,” and “the situation in our school and community does not warrant mandatory preemployment testing” reflected this theme. Some respondents qualified the extent of their concern about the size of the problem, stating that the problem was not at a critical mass that warrants implementing this type of a policy and that current nontesting procedures were effective. For example, some superintendents used such terms as *no significant need* and *not a compelling need*. In addition, some superintendents believed that, “there [were] already adequate measures to monitor the behavior of teachers, short of drug testing.” Some of the adequate measures cited were background checks, fingerprints, and reference checks.

Negative impact of testing

The secondary theme consists of concerns about the negative impact of preemployment drug testing policies. There are 11 comments in this theme, which has two components. First, there is a concern that a teacher’s constitutional rights would be infringed upon by a drug-testing policy—“violates teacher’s rights.” Second, some superintendents were concerned that drug testing teachers would harm the climate of their schools. Superintendents offered such comments as, “It supports a climate of suspicion,” “insult to the profession,” and “a ‘big brother’

approach [in] which the ‘attitude’ created may drive away good candidates.”

Questioning the required test

Two connected subthemes surfaced in the analysis to form one theme that questions two important aspects of a required drug test. The first questions the effectiveness of drug-testing policies. Superintendents who discussed this theme asserted that drug testing “does not necessarily eliminate [the] use of drugs after employment,” whereas others asserted that it is not effective, that there are ways to invalidate the results, and applicants “can stay clean until the test is concluded.” One superintendent wrote, “I find no research to indicate success at screening *all* applicants.”

The second subtheme has six statements. This theme reflects concern that preemployment drug testing is not mandated. These respondents asserted that drug testing is not required by law and is not funded; therefore, such a policy should not be implemented. One superintendent wrote, “I would support it only if the state requires such a test for licensing.” And one superintendent summed up a concern of many superintendents, writing, “It is not mandated at this time and I do not want to be the test case for the country. Let the law come from the legislature.”

SUPPORT FOR PREEMPLOYMENT DRUG TESTING

B. I support preemployment drug testing of teachers because—

A total of 67 superintendents gave their support to preemployment drug testing. Some comments were just a statement of support for the practice of drug testing. Two superintendents commented that they had such policies. One wrote, “I strongly support this statement. We have a preemployment drug testing policy for certificated and noncertificated staff. It works very well for our district and community.” The other wrote rather enigmatically, “We can do it, and we do it.” Several superintendents believed that such drug testing could be the wave of the future (“Although we have not implemented this, the topic comes up and it could become a reality in a few years.”). One superintendent offered the opinion, “It is becoming more and more acceptable to have preemployment drug testing. Then I can say the law requires it and I have no choice but to test. It takes the responsibility from me.” In other words, “I have to do it, so don’t blame me.” Four themes emerged from the iterative analysis of superintendent responses. They are discussed below in descending order.

A safe and positive educational environment

The first theme is maintaining a safe and positive educational environment. Sixteen statements support this theme. Providing a safe environment, safeguarding students, acting as a safety net, providing a safe haven, and protecting the well-being of students are descriptors indicative of this theme. One superintendent wrote, “If it helps in providing a more productive professional staff, it will result in a positive effect in student learning.” Another wrote, “Duty of care to safe guard students.” A superintendent focused his comments on labs and shops and the dangerous equipment that teachers supervise as requiring drug screening.

Teacher as role model

The second theme is teachers as role models. This theme, with its 14 comments, is consistent with arguments advanced in *Knox* and *Crager*. Descriptors such as *role model*, *set an example*, *exemplar*, and *significant influence* are found in this theme. For example, a superintendent wrote, “Teachers are in such critical positions, affecting the lives of children, that drug use should not interfere with the job at hand.” Another offered, “Educators serve as mentors and role-models. Therefore, the professional educator participates in the testing to be an exemplar for others—students and community.”

Drug testing as a filter

The third theme is preemployment drug testing as a policy, which acts as a filtering process for potential employees. This theme speaks to the intuitive purpose of screening out undesirable potential employees. There are 11 statements in this theme. Superintendents commenting on this theme characterize preemployment drug testing as being proactive, preventative, a great filter, a beneficial screen, and an aid in identifying quality candidates. One superintendent wrote that preemployment drug testing is “one more barrier to keep kooks from the classroom.”

Consistent drug-free message

That adopting preemployment drug testing of teachers is important in maintaining a consistent drug-free message and practice is the last theme. It “sends a message to students and community,” and it “creates an atmosphere of strong support for a drug-free culture in school” characterize the climate part of this theme. The equal/consistent part of this

theme is found in such statements as, “[It is] easier to hold kids accountable,” and “We require it of bus drivers, why not teachers?” These superintendents seem to say, “We have one message about drug use, and pre-employment testing reinforces this message.”

SUSPICIONLESS DRUG TESTING OF TEACHERS

NONSUPPORT FOR DRUG TESTING

A. I do not support suspicionless drug testing of teachers because—

A total of 65 respondents took a position of nonsupport of suspicionless drug-testing policies. Four respondents circled the Do Not Support option but did not offer a supporting comment. Four themes were identified: (1) Teacher drug use is not a problem or not necessary. (2) This type of a drug-testing policy harms the climate of the school, including teacher professionalism. (3) Suspicionless drug testing violates the personal liberties of teachers. (4) Such a policy would have a negative impact on the financial resources of the school district. Each of the themes is discussed below.

Teacher drug use not a problem

A total of 26 respondents characterized suspicionless drug testing using such language as “not needed!” and “not a problem here.” One respondent offered a variation of theme of “not here,” commenting, “We have issues [with] teachers . . . this not one of them. If we are going to spend a great deal of time & \$. . . it would have to be worth it. We have *bigger fish to fry*” [ellipses in original]. Several superintendents left open the door for implementing such a policy if circumstances changed: “If it was a problem or was thought to be a problem[,] I would strongly recommend it.” One respondent added, prescient of the argument in Knox and Cramer, “If parents don’t need to submit[,] the teacher acting ‘in loco parentis’ should not submit as well.”

Negative impact of testing

Negative impact on professionalism and the climate of the school characterized the second theme, with 13 superintendents commenting on this topic. “Distrust,” “creates a climate of suspicion,” “a means to intimidate or otherwise threaten teachers,” and “teachers are professionals and

should be treated as so” are indicative of the comments that form this theme. Could it be that these superintendents take the position of trust but do not verify?

Violation of rights

The third theme, violation of personal liberties, had 12 responses. Typical responses include “violation of rights,” “loss of personal liberties,” “unconstitutional,” and “an invasion of privacy.” One superintendent took a particularly strong position, writing,

This takes us so far down the road to giving up our rights I don’t even consider it. We choose to live in this country because of the very rights this suggestion takes away. It is a violation of every fundamental privacy right we have. What would be next—a political litmus test to make sure we are all radical conservatives or Nazis?

Cost of testing

The last theme is the financial impact of implementing a testing program. Seven superintendents were concerned about the cost. Comments such as “no funding,” “the cost to the school would be extreme,” and “the cost could be prohibitive” reflect this theme. The emergence of this theme is not surprising. The competition for scarce resources to meet competing demands is particularly sharp, especially when funds are scarce. This theme’s concern about cost, especially nonmandated costs, is one that also surfaced in the DeMitchell et al. (2006) study of responses to student drug testing.

SUPPORT FOR SUSPICIONLESS DRUG TESTING

B. I support suspicionless drug testing of teachers because—

A total of 49 superintendents selected the response of supporting suspicionless drug testing of teachers. Three themes emerged from the data: (1) making the school safer; (2) teacher as role model; and (3) fairness/leverage in testing others. Although not having enough responses to constitute a theme, it is interesting that 4 superintendents took the position of, Why not test the teachers if they have nothing to hide? (“This should not be a problem,” and “If one is *not* engaged in shady practices, then there should be no fear of random testing.”)

Making the school safer

The first theme, with 15 responses, is testing to make the school safer. This theme includes comments about testing serving as a strong deterrent to drug use and protecting students. For example, superintendents used such phrases as, “removes dangerous influences,” “reaffirms our commitment to children and nontolerance for illegal/immoral adult activity around children,” and “it is critical to create a *culture* of No Tolerance.”

Fairness in testing

The second theme focuses on the concepts of fairness and leverage. Twelve superintendents discussed how drug testing teachers would be fair (“It makes drug testing fair for all employees” and “You are testing all, not pointing fingers.”) and how testing of teachers may lead to testing of others, or teachers should join others who are already tested. One superintendent wrote, “We require it of bus drivers, why not teachers?” Another opined, “It may help support testing of students when needed.” This theme appeared in support for preemployment drug testing (consistency in drug-free message).

Teacher as role model

The third theme speaks to the role model theory. The core of this theme is the mandatory role model that teachers serve for students. Eleven superintendents identified this theme. Phrases such as “walk the talk,” “higher standard of moral and ethical conduct,” “teachers must be drug-free if we want students to also be drug-free,” and “set an example for students” capture this theme.

One of the more interesting comments about teacher drug testing came from a superintendent who wrote, “The crazy ideas around education and educating students are not coming from classroom teachers but from politicians in Washington. That is where the drug testing should happen. They must be on something to dream up NCLB etc.”

DISCUSSION

A total of 114 superintendents took a position of nonsupport for preemployment and suspicionless drug-testing policies. A larger number (65) of superintendents took a position of nonsupport for suspicionless testing than nonsupport for preemployment testing (49). Sixty-seven

superintendents support preemployment, and 49 support suspicionless drug testing—a close reverse mirror image of nonsupport. The themes that emerged from the data for both policies are consistent, with some variation. This is not surprising given that most superintendents who held one view for preemployment held a similar position for suspicionless testing. Their arguments for their position showed a fairly consistent approach to the total issue of drug testing. There is greater support for preemployment testing and less support for suspicionless testing. Lack of need and negative impact are two large factors in nonsupport. Safety, role model status, and fairness/consistency in message and action form a foundation for supporting drug testing.

Even though student safety did not surface as a theme of nonsupport, the tenor and language of the nonsupport comments evince a strong concern for the safety and welfare of their students. Positions on both sides of the issue of testing appear to be principled. Nonsupportive and supportive superintendents of drug testing share a common value of protecting students but differ on how best to reach it.

CONCLUSION

Superintendents did not perceive that drug abuse among their teachers is much of a problem. Few school districts have implemented teacher drug-testing policies, and superintendents question whether such policies are effective. However, there was support among the responding superintendents for drug-testing policies. More superintendents supported preemployment drug testing policies, whereas the reverse was true for suspicionless testing. It is interesting that the demographics of gender and years as the superintendent did not influence the perceptions of the respondents. There are other contextual and personal factors that possibly influence superintendents. Could it be that many, if not most, superintendents read common professional literature and attend similar conferences, thus their views are subtly influenced by common information? The role of professional knowledge as an aspect of policy making is a question worth pursuing.

Superintendents believe that teachers have diminished constitutional rights because they have a diminished expectation of privacy, and the safety of students outweighs a teacher's right to privacy, the core element of search and seizure. Both of these positions support drug testing. The legal concept that arguably separates preemployment from suspicionless drug testing is whether the employee holds a safety-sensitive position. A little less than 3 of 4 superintendents agreed or strongly agreed that teachers occupy such a position. Yet, superintendents did not favor

suspicionless testing even though they supported the concept that underlies such testing.

The superintendents in this study, even though they believe they “can,” are largely not adopting drug testing policies for teachers. This is consistent with the findings of DeMitchell et al. (2006): “The data from this research show that superintendents are reluctant to adopt [drug testing] policies [for students] allowed by the two Supreme Court decisions, *Vernonia* and *Earls*” (p. 25). Two federal courts have held that public school districts can drug test teachers, but superintendents are hesitant about taking advantage of the policy window opened by the courts. Is drug testing one step too far?

Superintendents strive to provide a safe school environment for their students. There is a willingness on the part of the respondents to support at least one form of drug testing to secure that safe environment: preemployment drug testing. Further research should focus more specifically on the difference of perception between preemployment and suspicionless testing policies. Why is one preferred over the other? One explanation is that superintendents perceived that suspicionless drug testing is more invasive of potential rights as supported by the short-answer responses (negative impact and violation of rights) and obliquely supported by the quantitative responses. Another possible explanation is that the ongoing monitoring of a suspicionless drug-testing program may be more cumbersome and more costly in terms of personnel and scarce monetary resources. A third possible explanation is that because the responding superintendents largely come from small school districts where they know the employees, it may be more difficult to subject their colleagues to the indignity of urinating into a cup. It is easier to subject the unknown person to drug testing than to subject that same person to drug testing once he or she has become “one of us.” Because most superintendents did not believe that there was a drug problem with their current professional employees, there was no sense in disturbing the status quo. As one superintendent wrote, “I do not believe in doing something just for the sake of doing it. There needs to be a problem first before we act.” However, their short-answer responses indicated a willingness to revisit the issue of drug testing if conditions change. How much change in drug use is necessary to alter policy positions is unknown.

The tension between the constitutional rights of professional employees and the professional duty to properly serve and protect students has currently reached stasis as far as implementing drug-testing programs. The problem was perceived as not large enough to institute the testing policy that the respondents believed they could, and may well, implement in the future. Will their position change, and what critical mass of

drug problems is necessary to enable superintendents to pass through the policy window opened by the courts?

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