

COMMONWEALTH OF KENTUCKY

MASSEY CIRCUIT COURT

Case No. 2018-CR-04212

Meredith **STORY**,
By and Through her mother and next friend, Amy **STORY**;
Joseph **ROGERS**,
By and Through his mother and next friend, Emily **ROGERS**

PLAINTIFFS

v.

MASSEY COUNTY BOARD OF EDUCATION;
Vivienne **WHEEL**, in her official capacity of as Superintendent
of the Massey County School District;
Andrew **CROSBY**, in his official capacity as Principal of
Massey High School

DEFENDANTS

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT

This matter comes before the Court on both parties' respective Motions for Summary Judgment. In their complaint, Plaintiffs allege the Defendant, Massey County Board of Education, et al., has violated their constitutional rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution, and the Tenth Amendment of the Kentucky Constitution, by instituting a policy of random, mandatory drug testing at Massey High School. The policy in question, Regulation 2017-ED23, was unanimously passed by the Massey County Board of Education on March 13, 2017 and was implemented at Massey High School beginning in the 2017-2018 school year. The parties have stipulated to all relevant facts, and therefore this matter is ripe for summary judgment.

FACTUAL STIPULATIONS

The parties have jointly agreed to the following stipulations of fact:

- Massey County Board of Education oversees a school district of 7 seven schools in Massey county: 4 elementary schools, 2 middle schools, and 1 high school. Massey High School has a student population of 634 from grades 9-12.

- In the past five years, the Massey Board of Education has become increasingly aware of the dangers of adolescent drug and alcohol abuse. In February, 2016, Massey High School engaged a private testing firm, Malcolm Education Services, to conduct an anonymous survey of students' drug and alcohol use.
- The results of the survey of Massey High School's 634 students revealed the following:
 - 74% of Massey High School students had drunk alcohol within the prior six months.
 - 54% of Massey High School students had drunk alcohol within the prior three months.
 - 47% of Massey High School students had smoked marijuana at least one time.
 - 39% of Massey High School students had smoked marijuana on more than five occasions.
 - 22% of Massey High School students had taken a prescription medication for which he/she did not have a valid prescription.
 - 18% of Massey High School students reported taking an illegal drug other than marijuana.
 - 16% of Massey High School students reported that, on at least one occasion, he/she had attended school while under the influence of alcohol or marijuana.
- The Massey County Board of Education noted the results of this survey indicated drug and alcohol use at Massey High School is well above the national average for adolescent drug and alcohol use. On January 28, 2017, the Massey County Board of Education proposed Regulation 2013-ED23.
- The Regulation sets forth a policy of random, school-wide drug-testing. Two public hearings were conducted concerning Regulation 2013-ED23, on February 18, 2017 and March 1, 2017. On March 13, 2017, Regulation 2017-ED23 was unanimously passed by the Massey County Board of Education. On May 28, 2017, Massey County Board of Education entered into a contract with Total Medical Testing Services ("TMTS") to conduct the required testing.
- Regulation 2017-ED23 was put into effect at Massey High School beginning in the 2017-2018 academic year. On October 2, 2017, TMTS used a computer program to randomly select 10% of the Massey

High School student population for testing. Plaintiff Meredith Story, a freshman, was randomly selected. Plaintiff Joseph Rogers, a senior, was randomly selected.

- TMTS conducted the urinalysis in a mobile trailer parked in the school parking lot. Both Ms. Story and Mr. Rogers underwent the following procedure. Each student entered the trailer and was given a specimen cup, and verified that his/her name and date of birth was accurately identified on the specimen cup. A single TMTS employee was present in the trailer. The trailer contained a single, private, fully-enclosed bathroom stall. Each student entered the stall alone, provided a urine sample, sealed the sample, and returned it to the TMTS employee who was waiting in the main area of the trailer. Each student immediately returned to class. Each student was absent from his/her class for approximately 10-15 minutes.
- TMTS conducted urinalysis immediately, in a second trailer containing a small lab also parked in the school parking lot.
- Neither Ms. Story nor Mr. Rogers tested positive for any drug or alcohol use.

LEGAL ANALYSIS

As the parties have stipulated to the above facts, and there being no issue of material fact, summary judgment is appropriate. Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).

The Plaintiffs allege Regulation 2017-ED23 violates their rights under the Fourth Amendment of the United States Constitution and Section 10 of the Kentucky Constitution, to be free from unreasonable searches and seizures. The Plaintiffs contend the required drug testing is not based on probable cause, or any articulable suspicion of drug or alcohol abuse or consumption. Rather, the testing is completely random and suspicion-less, and therefore violates their right to be free from unreasonable searches and seizure.

It should be noted that the Defendants concede the urinalysis conducted pursuant to Regulation 2017-ED23 constitutes a "search" within the meaning of the Fourth Amendment and Section 10. Holbrook v. Knopf, 847 S.W.2d 52 (Ky. 1992). Defendants likewise concede that, for purposes of the Fourth Amendment and Section 10, school officials are acting as state agents and are therefore subject to the same limitations as law enforcement officers. New Jersey v. TLO, 469 U.S. 325 (1985).

Instead, Defendants maintain the Massey Board of Education is required to provide services "necessary for the promotion of education and the general health and welfare of pupils" within its district. It asserts the problem of drug and alcohol use by high school students is a problem nation-wide, but has reached epidemic proportions locally, as evidenced by the results of the survey conducted in 2016 by Malcolm Education Services. Defendants argue Regulation 2017-ED23 is rationally related to the goal of curbing adolescent drug and alcohol use, and promoting a healthy and safe school environment for all students, faculty and staff.

The court has fully considered the briefs and oral arguments of the parties, which have been thorough and thoughtful. The court concludes Regulation 2017-ED23 is lawful, and the searches conducted pursuant to the regulation do not violate the students' constitutional rights.

When considering the validity of a regulation passed by a local school board, this court is required to determine whether the regulation is arbitrary or unreasonable. Board of Education of Harrodsburg v. Bentley, 383 S.W.2d 677 (Ky. App. 1964). If a regulation violates a student's constitutional rights, it is void.

The court notes that the Fourth Amendment and Section 10 generally prohibit warrantless searches, absent some exigent circumstance. Warrantless searches or seizures, not based on any particularized suspicion, such as in the case of road blocks, are carefully examined. See Singleton v. Commonwealth, 364 S.W.3d 97 (Ky. 2012). A random search, not based on any particularized suspicion, must be closely and rationally related to the law enforcement

objective. It is also accepted that Section 10 of the Kentucky Constitution provides "no greater protection than does the Federal Fourth Amendment." Rainey v. Commonwealth, 197 S.W.3d 89 (2006).

Certainly, the policy of drug testing required by Regulation 2017-ED23 is random and not based on any particular suspicion of any single student. Students are selected randomly through a computer program for testing. A student is not selected because there is some particular suspicion of drug or alcohol use.

However, the court must balance this fact with the realities of the search conducted. This court concludes the search is minimally invasive, brief, and without stigma. Students are aware of the random drug testing policy. Therefore, a student who is selected for testing is not immediately stigmatized. The student is absent from the classroom for a very brief period of time. The student is afforded privacy and respect in providing his or her specimen. The court also notes that adolescents enrolled in our public school system have a reduced expectation of privacy when they enter the school doors. Veronia School Dist. v. Acton, 515 U.S. 646 (1995).

More importantly, this court is convinced Regulation 2017-ED23 is rationally related to the objective of student welfare. By identifying students who use alcohol or illicit drugs, the school is able to provide services to the child before "use" becomes "abuse". Furthermore, the school can protect other students from the presence of a student who uses drugs or alcohol, and potentially provides such substances to other students. Any positive test result is not forwarded to law enforcement, therefore it cannot be rationally argued that the underlying purpose of the testing procedure is to identify criminal behavior. While it is criminal for a minor to drink alcohol or ingest scheduled drugs, it is readily apparent the purpose of this policy is to ensure the welfare of the students and promote a safe and healthy school environment.

For these reasons, the court concludes Regulation 2017-ED23 is neither arbitrary nor unreasonable. The constitutional rights of the affected students have not been violated. As such, Defendants' motion

for summary judgment is hereby **GRANTED**. Plaintiffs' motion for
summary judgment is hereby **DENIED**.

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Hon. Martin F. Montgomery
Judge, Massey Circuit Court
June 4, 2019

MASSEY COUNTY BOARD OF EDUCATION

REGULATION 2017-ED23

“A REGULATION RELATED TO THE AVOIDANCE OF DRUG AND ALCOHOL ABUSE BY MASSEY HIGH SCHOOL STUDENTS”

*Recognizing the nation-wide epidemic of adolescent alcohol and drug consumption; and
Recognizing the serious physical, developmental and educational dangers of adolescent drug and
alcohol abuse; and*

Recognizing that Kentucky Revised Statutes prohibit alcohol use by persons under the age of 21;

Recognizing that Kentucky Revised Statutes prohibit the

*Recognizing the absolute necessity of a drug- and alcohol-free school environment for the safety
of our students, faculty, and staff;*

IT IS HEREBY DECLARED

Section 1 By virtue of their enrollment at Massey High School at any time after September 1, 2017, every student agrees to submit to random drug and alcohol testing.

Section 2 The drug and alcohol testing shall be administered by an independent agency under contract with the Massey Board of Education via urinalysis. The testing shall be conducted once a month, on a day randomly selected by the independent testing agency. 10% of the Massey High School student population shall be randomly selected for testing each month. Results of the independent testing shall be provided to the Massey High School Principal within three hours of the administration of the test.

Section 3 In the event of a positive test result, the Massey High School Principal shall immediately remove the student from the classroom and summon the student's parent(s) and/or legal guardian(s). Upon consultation with the student's guidance counselor, the Student Resource Officer, and at least two of the student's current teachers; and upon review of the student's disciplinary and academic record; the Massey High School Principal shall determine the appropriate sanction within 72 hours. Upon request of the student's parent(s) and/or legal guardian(s), a retest of the student's specimen shall be conducted at the expense of the school. A student shall not be subject to expulsion or suspension unless at least three positive tests have been obtained over a period of at least six months.

Section 4 In the event of a positive test result, the student shall immediately be referred to a Massey High School guidance counselor for drug and alcohol education courses.

Section 5 The Massey High School Principal, or any other employee of Massey High School or the Massey Board of Education, is hereby prohibited from providing any test results to any law enforcement agent, agency or body.

Signed this 13th day of March, 2017 in Massey County, Kentucky /s/