

Personnel Committee Meeting
Wednesday, February 29, 2012 5:00 PM

Board Room or Don's Office
1519 10th Street
Gering, NE 69341

Agenda

1. Attendance
2. Review Sick Leave Bank Changes
3. Review Drug Testing Policy
4. Review Negotiations Proposal
 1. DECA
 2. Tennis
5. Old Business
 1. Update on Evaluations
6. Adjournment

**GERING PUBLIC SCHOOLS
GERING, NE**

SICK LEAVE BANK

Eligibility

1. All employees of Gering Public Schools shall have the right to participate in the Gering Public Schools Sick Leave Bank (Bank) under the terms set forth herein.
2. Certified, classified, and administrative staff applying to draw from the Bank must meet the following criteria:
 - a. Depleted all individual personal and sick leave .
 - b. Requested leave through the Family Medical Leave Act.
 - c. Be deemed ineligible for disability or Workmen's Compensation.
 - d. Have incurred a minimum of three (3) consecutive days unpaid prior to receiving Bank benefits.
 - e. Submitted an application for benefits in writing to the Superintendent of Schools stating the nature of the event, requested number of Bank days (not to exceed 20 per application), and eligibility as outlined in this agreement.
3. Individuals are limited to an annual maximum of 60 (sixty) days of Bank benefits.

Contributions

1. Participation as a contributor to the Bank is voluntary.
2. Sick leave days donated by participants to the Bank are irrevocable and nonrefundable.
3. Participants can not designate the recipient of individual Bank day donations.
4. An employee may annually contribute a maximum of five (5) days of accumulated sick leave to the Bank.
5. Employees wishing to contribute to the Bank must have a minimum of ten (10) sick leave days available for their own use after the time of donation.
6. Certified, classified and administrative staff eligible to participate may begin contributing to the Bank immediately.

Administration

1. Benefits from the bank may be distributed until the Bank is depleted. If the Bank is depleted, no Bank days can be approved for any applicant.
2. When the Bank reaches a level of 20 days or fewer, a notification will be sent to all GPS employees asking for additional donations to the bank.
3. Any unused sick leave bank days will be carried over to the following year.
4. A Team will jointly approve or disapprove benefits. The team will consist of the following:
 - a. Two Association designees
 - b. One member of the Board Personnel Committee
 - c. One building administrator
 - d. One classified staff member
 - e. Ad Hoc members at the team's request.
5. The team may approve up to 20 days bank leave for each application received for any applicant that meets eligibility requirements.
6. Employees may resubmit application(s) for additional Bank requests up to receipt of an annual maximum of 60 (sixty) days.
7. The maximum number of dock days will not exceed three days per school year.

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DRUG AND ALCOHOL TESTING POLICY

1. Need for Random Testing.

The Board of Education is responsible for maintaining discipline, health and safety. The Board recognizes that substance abuse presents a continuing challenge and a danger to the student population as a whole. The Board is committed to maintaining school sponsored activity programs in a safe, healthy and secure environment. The Board is further committed to being proactive in ensuring that students who participate in extracurricular activities represent the District in a positive manner.

2. Eligibility for Random Testing.

Students who participate in school sponsored competitive extracurricular activities at the high school (Grades 9-12) level are eligible for random testing. Students who do not consent to participate in the testing program shall not be eligible to participate in school sponsored competitive extracurricular activities. Students may volunteer for participation in the testing program even if they do not participate in a school sponsored competitive extracurricular activity.

3. Testing Procedure.

a. Random Testing.

A confidential testing schedule will be created by the Superintendent or designee to ensure that the testing of eligible students is conducted in a manner that is random.

b. Collection.

The testing collection process will be conducted in a manner that protects student privacy, guards against tampered specimens and ensures an accurate chain of custody. It is intended that the procedures be modeled on those applicable to the testing of CDL employees, though methods other than testing of urine samples may be used. The tests are to be designed to detect only the use of alcohol and illegal drugs, not medical conditions or the presence of authorized prescription medications.

4. Confidentiality.

All activities related to the testing policy will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), and any other applicable confidentiality laws.

5. Consequences for Positive Tests.

Any of the following shall be considered to be a positive test result:

- A confirmed positive alcohol or drug test;
- Refusal to participate in testing when selected; and/or
- Tampering with the specimen collection process.

The following shall result from a positive test result:

- The student's parents or guardians will be contacted and a meeting will be held to discuss the positive test result, with the object of collaborating on a plan to assist the student in avoiding future substance abuse.

- The student’s privilege of participating in extracurricular activities will be restricted as follows:
 - For a first positive test, the student is ineligible to participate in any extracurricular activities for two weeks or three events, whichever is longer. The student may not return to participate in extracurricular activities until the student shows proof that the student: (a) is participating in substance abuse counseling with a qualified professional and is following the recommendations of the counselor and (b) tests negative in a District-administered drug test.
 - For a second positive test, the student is ineligible to participate in any extracurricular activity for 9 weeks. The student may not return to participate in extracurricular activities until the student shows proof that the student: (a) is participating in substance abuse counseling with a qualified professional and is following the recommendations of the counselor and (b) tests negative in a District-administered drug test, and (c) agrees to submit to monthly District-administered drug test during the next twelve month period.
 - For a third positive test, the student is ineligible to participate in any extracurricular activity for one calendar year. The student may not return to participate in extracurricular activities until the student shows proof that the student: (a) is participating in substance abuse counseling with a qualified professional and is following the recommendations of the counselor and (b) tests negative in a District-administered drug test, and (c) agrees to submit to monthly District-administered drug test during the next twelve month period.
 - For a fourth positive test, the student is ineligible to participate in any extracurricular activity for the remainder of the student’s high school career.

The parents or guardians are responsible for the costs of the rehabilitation program, which includes the substance abuse counseling and follow-up.

Positive results will not lead to the imposition of any academic consequence or disciplinary action, other than the above described limitations on the privilege to participate in extracurricular activities.

6. Appeal Procedures.

A student or the student’s parents or guardians may challenge the results of a positive test through an appeal process to be developed by the Superintendent or designee. In the event a student or the student’s parents or guardians wish to challenge a positive test on a basis other than the veracity of the test result, an appeal may be made in accordance with the policy on extracurricular activity discipline.

7. Process.

The Superintendent or the Superintendent’s designee is directed to develop specific testing procedures consistent with this policy.

Approved: _____

Reviewed: _____

Revised: _____

GERING PUBLIC SCHOOLS
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Drug and Alcohol Testing Procedures

1. Eligibility for Random Testing.

Students who participate in school sponsored competitive extracurricular activities at the high school (Grades 9-12) level are eligible for random testing. School sponsored competitive extracurricular activities are activities which are sponsored or approved by the Board, but are not offered for credit towards graduation, and which involve competition, comparison, or judging of the individuals or groups with other individuals or groups as part of selection or participation. School sponsored competitive extracurricular activities include, but are not limited to, athletic programs, cheerleading, dance team, band, Student Council, National Honor Society, academic teams, One-Act, choir, Quiz Bowl, and Speech Team.

To participate in a school sponsored competitive extracurricular activity, students must submit a completed Consent to Test Form on or before the first practice or on or before the first event or meeting, whichever is applicable. The form must be signed by the student and the student's parent or guardian.

Failure to submit a completed Consent to Test Form will result in ineligibility for participation in school sponsored competitive extracurricular activities until the form is submitted.

Students remain eligible for testing from the date the Consent to Test Form is turned in until a Drop Form is completed, or until the student graduates or is otherwise no longer enrolled in the District. A student for whom a Drop Form has been submitted shall be ineligible for participation in school sponsored competitive extracurricular activities for twelve months from the date the Drop Form is submitted. Students have a fifteen (15) day grace period for reconsideration of a Drop Form.

Students who are not participants in a school sponsored competitive extracurricular activity may volunteer for participation in the testing program by submitting a completed Consent to Test Form.

2. Testing Procedure.

a. Random Testing.

A confidential testing schedule will be created by the Superintendent or designee to ensure that the testing of eligible students is conducted in a manner that is random. To maintain confidentiality and to maintain the integrity of the randomness of this program, the students eligible for testing will be identified by a unique personal identifier that does not make the student known to persons other than the school officials who are directly involved in the testing program.

No less than twenty percent (20%) of the pool of eligible students will be tested each school year. The Superintendent or designee shall have the authority to determine the percentage to test, subject to the minimum 20% level, dependent on the nature and extent of the prevailing problem with drug usage in the school community from time to time. Testing will take place throughout the school year.

b. Collection.

The testing collection process will be conducted in a manner that protects student privacy, guards against tampered specimens and ensures an accurate chain of custody of the specimen. The method of testing

may involve the use of breath, saliva, urine, or hair samples. To the extent the testing involves the collection of urine, an adult monitor is to wait outside a closed restroom stall and listen for the normal sounds of urination.

It is intended that the procedures be modeled on those applicable to the testing of CDL employees, which include the testing of specimens for alcohol and unlawful substances. The tests are to be designed to detect only the use of alcohol or illegal drugs, including but not limited to amphetamines, marijuana, cocaine, steroids, opiates, and barbituates, not medical conditions or the presence of authorized prescription medications.

3. Confidentiality.

All activities related to the testing policy will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), and any other applicable confidentiality laws.

Test results will be shared only with staff who have a legitimate educational interest in having access to the information, on a "need to know" basis. Test results will not be turned over to any law enforcement authority in the absence of a court order, subpoena, or other legal process requiring such.

Test results will be kept in confidential files separate from the students' other records. The test results will be destroyed when no longer needed for individual student situations or for the overall testing program.

4. Re-Testing.

A student or the student's parent or guardian may challenge the veracity of a positive test. If a positive test is proven to be false, the student will not be subject to the consequences of a positive test, provided that the consequences shall remain in place until the positive test is proven to be false.

The student or the student's parent or guardian shall make a request to challenge a positive test with the Superintendent or designee within 72 hours of the student being notified of the positive test. The Superintendent or designee shall determine whether the challenge shall involve a retest of the specimen or a second test.

If the challenge will involve a retest of the specimen, the specimen previously submitted will be forwarded to a testing laboratory for confirmatory testing. The laboratory must be approved by the Superintendent or designee and adhere to federal Substance Abuse and Mental Health Services Administration (SAMHSA) standards concerning drug testing protocols and procedures. Results of the re-test will be provided to the Superintendent or designee by the approved laboratory. The re-testing shall be at the expense of the student or the student's parent or guardian. To be a valid non-positive, the Superintendent or designee must be provided with information that establishes that the substance(s) detected in the initial test would remain detectable in the specimen at the time of the retest.

If the challenge will involve a second test, it will be completed using the District's standard procedures. The second test shall be at the expense of the student or the student's parent or guardian. To be a valid non-positive, the Superintendent or designee must be provided with information that establishes that the substance(s) detected in the initial test would remain detectable via the testing method chosen as of the time of the second test.

Approved: _____ Reviewed: _____ Revised: _____

Consent to Test

I understand fully that my performance as a student and the reputation of my school are dependent, in part, on my conduct as an individual. I hereby agree to accept and abide by the standards, rules and regulations set forth by the Board of Education of Gering Public Schools, the administration, and the coaches and sponsors for the activities in which I participate.

I consent to and authorize Gering Public Schools to conduct a drug and alcohol test if my number is drawn from the random pool. I also authorize the release of information concerning the results of such tests to designated District personnel.

I understand that this form remains in effect until the submission of an Activity Drop Form or graduation and/or withdrawal from the District.

_____ Student Name (print)	_____ Parent or Guardian Name (print)
_____ Student Signature	_____ Parent or Guardian Signature
_____ Date	_____ Date

I plan to participate in one or more of the following school sponsored competitive extracurricular activit(ies):

_____ I am volunteering to be placed in the testing pool.

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Activity Drop

I, _____ wish to withdraw from

I will submit this form to the Athletic Director. My name will be withdrawn from the testing pool on the date this is received by the Athletic Director.

Completing this form will pertain to all school sponsored competitive extracurricular activities. I understand that, by withdrawing, I can no longer participate in any school sponsored competitive extracurricular activities, and I may not receive recognition as a member of these activities or athletic programs. I may re-enter the testing pool after a period of one (1) calendar year by filling out a new Consent to Test form.

I UNDERSTAND THAT I HAVE 15 DAYS TO RECONSIDER THE DECISION AND RE-ENTER THE POOL.

_____ Student Name (print)	_____ Parent or Guardian Name (print)
_____ Student Signature	_____ Parent or Guardian Signature
_____ Date	_____ Date

Athletic Director

Date of Receipt

Administrators' Days 2011

Drug Testing

Shawn Scott, Superintendent
Adams Central Public Schools

Gregory H. Perry
Perry, Guthery, Haase & Gessford, P.C., L.L.O.

1. Student Drug Testing Cases

Ordinarily, the constitutionality of a student search is reviewed under the “reasonable suspicion” standard established in *T.L.O.* (1985). Under the reasonable suspicion standard, a school search is lawful where there is “a moderate chance of finding evidence of wrongdoing” and “the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”¹

Nonetheless, drug testing of students has been upheld even when there is no “reasonable suspicion” that the particular student has engaged in wrongdoing.

a. Student Athletes

In *Vernonia* (1995), the U.S. Supreme Court held that random, suspicionless, drug testing of students involved in interscholastic athletics was constitutionally permissible.²

b. Participants in Competitive Extracurricular Activities

In *Earls* (2002), the U.S. Supreme Court held that random, suspicionless, drug testing of students participating in competitive extracurricular activities was constitutionally permissible.³ The Court in *Earls* described the scope of the school's drug testing policy as follows:

¹ *Safford Unified Sch. Dist. #1 v. Redding*, 129 S. Ct. 2633 (2009) (quoting *New Jersey v. T. L. O.*, 469 U.S. 325 (1985)).

² *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646 (1995).

³ *Board of Education of I.S.D. No. 92 of Pottawatomie County, Okla. v. Earls*, 536 U.S. 822 (2002).

A random drug testing program was also upheld by the 8th Circuit in *Miller v. Wilkes*, 172 F.3d 574 (8th Cir.1999). The drug testing program at issue applied to all school activities. The program was challenged by a student who wanted to participate “in such school activities as the Radio Club, prom committees, the quiz bowl, and school dances, among others.” The decision was subsequently vacated as moot.

Recently, in *Hageman v. Goshen County Sch. Dist. No. 1*, 2011 WY 91 (Wyo. 2011), a drug testing policy that applied to students participating in any extracurricular activity, competitive or not, was held to be lawful. The court struggled with extending drug tests to students who were not participating in competitive activities, particularly since a majority of the students at the high school would be subjected to testing. “By a narrow margin,” the court determined there was a reasonable connection between the testing of all such students and the school’s drug deterrence objective.

[T]he School District adopted the Student Activities Drug Testing Policy (Policy), which requires all middle and high school students to consent to drug testing in order to participate in any extracurricular activity. In practice, the Policy has been applied only to competitive extracurricular activities sanctioned by the Oklahoma Secondary Schools Activities Association, such as the Academic Team, Future Farmers of America, Future Homemakers of America, band, choir, pom pon, cheerleading, and athletics. Under the Policy, students are required to take a drug test before participating in an extracurricular activity, must submit to random drug testing while participating in that activity, and must agree to be tested at any time upon reasonable suspicion. The urinalysis tests are designed to detect only the use of illegal drugs, including amphetamines, marijuana, cocaine, opiates, and barbituates, not medical conditions or the presence of authorized prescription medications.

The Court in *Earls* concluded that such a drug testing is permissible based on: (1) the diminished privacy interests of students, (2) the limited intrusion of drug tests, and (3) the school's interest in conducting drug tests. The Court observed that a faculty member monitored students giving urine samples, but did so while outside a restroom stall, that measures were taken to protect confidentiality, and that the "the only consequence of a failed drug test is to limit the student's privilege of participating in extracurricular activities."

c. Students Not Participating in Extracurricular Activities

The courts have held that suspicionless drug testing of students who are not involved in extracurricular activities is unlawful.⁴

2. Drug Testing Policy

Most drug testing policies include the following:

- Statement of the substance(s) for which students will be tested;
- Designation of school activities covered by drug testing;
- Requirement of a consent form;
- Procedure for determining how students are to be selected randomly;
- Procedure to be followed in collecting and testing the samples [(including confidentiality of results)];
- Defenses available to students testing positive [(e.g. prescription medications)]; and,
- Consequences of positive test.⁵

⁴ See e.g. *Willis v. Anderson Comm. Sch. Corp.*, 158 F.3d 415 (7th Cir.1998) (drug testing policy applied to all students who were suspended or violated specified rules; court ruled policy was unconstitutional); *Tannahill v. Lockney Indep. Sch. Dist.*, 133 F.Supp.2d 919 (N.D.Tex.2001) (drug testing policy applied to all students; court ruled policy was unconstitutional).

In *Joy v. Penn-Harris-Madison Sch. Corp.*, 212 F.3d 1052 (7th Cir. 2000), a drug testing policy was applied to all students who requested a school parking permit. The court ruled that testing such students for drug usage was permissible; but that testing such students for nicotine usage was not). In a related case, the court ruled the school could not test for nicotine use even if there was no adverse consequence to students who tested positive for nicotine use. *Penn-Harris-Madison, School Corp. v. Joy*, 768 N.E.2d 940 (Ind. App. 2002).

⁵ Ralph D. Mawdsley & Charles J. Russo, "Random Drug Testing and Extracurricular Activities," 159 Educ. L. R. 1

3. Resources

Office of National Drug Control Policy, Starting a Student Drug Testing Program
https://www.ncjrs.gov/ondcppubs/publications/pdf/student_drug_testing.pdf

Office of National Drug Control Policy, What You Need to Know About Drug Testing in Schools
https://www.ncjrs.gov/ondcppubs/publications/pdf/drug_testing.pdf

Office of National Drug Control Policy, Funding a Drug Testing Program
http://www.whitehousedrugpolicy.gov/dfc/files/funding_drugtest_prgm.pdf

US Dept of Education, School-Based Drug Testing Programs (grants)
<http://www2.ed.gov/programs/drugtesting/index.html>

US Dept of Education, The Effectiveness of Mandatory- Random Student Drug Testing
<http://ies.ed.gov/ncee/pubs/20104025/pdf/20104025.pdf>

Institute for Behavior and Health, A manual to Developing a RSDT Program
<http://www.preventionnotpunishment.com/pdfs/ChecklistforSuccess.pdf>

American Association of School Administrators, Drug Testing
<http://archives.aasa.org/policy/content.cfm?ItemNumber=9596>

United States Sports Academy, Student Athlete Drug Testing
<http://www.thesportjournal.org/article/student-athlete-drug-testing>

National Institute on Drug Abuse, Frequently Asked Questions About Drug Testing in Schools
<http://www.nida.nih.gov/drugpages/testingfaqs.html>

Doctoral Thesis, An Analysis of Random Student Drug Testing Policies and Patterns of Practice In Virginia Public Schools
<http://scholar.lib.vt.edu/theses/available/etd-03022005-095115/unrestricted/lineburgdissertation.pdf>

Transmetron (drug testing company), Drug Testing Schools
<http://drug-testing-schools.com/>

Devine ISD (public school), Student Drug Testing Questions & Answers
http://www.devineisd.org/information/drug_policy/DevineQA_a.pdf

(2002).