

# Reasonable Suspicion Justifies Drug Testing Of Teacher

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*Metz v. Bethlehem Area School District*, 630 C.D. 2017 (Pa. Cmwlth. Jan. 4, 2018) (The Pennsylvania Commonwealth Court upheld the termination of a tenured middle school teacher, concluding that the school district had reasonable suspicion to compel urinalysis drug testing).

## BACKGROUND

Timothy Metz (Teacher) was a tenured middle school physical education teacher at the Bethlehem Area School District (District). On February 4, 2016, the District received a copy of a letter that was addressed to Teacher's counsel as part of a private custody dispute. The letter, sent to the District by opposing counsel in the custody dispute, stated that Teacher had tested positive for cocaine metabolites in a court-ordered drug test. Immediately upon receipt of the letter, the District's Human Resources Director met with Teacher and his union representative. The Human Resources Director asked Teacher to submit to a drug test, and warned that if he refused to take one, Teacher was putting his job in jeopardy. Despite this warning, Teacher refused to take a drug test. Teacher was then put on unpaid suspension from work.

Four days later, the District sent Teacher a letter directing him to submit to a drug test pursuant to the District's Drug and Substance Abuse Policy, and 24 P.S. § 14-1418(c), which states that "School boards may require a special medical examination for any school employee at any time." On February 9, 2016, Teacher submitted to a urinalysis drug test and he tested positive again for cocaine metabolites.

The District sent Teacher a Statement of Charges and Notice of Hearing, notifying him that it would recommend for his dismissal from employment for "willful neglect of duties and immorality." At the hearing before the School Board, the District presented testimony from the Human Resources Director, the Superintendent, and a physician, who interpreted Teacher's drug test results to find that Teacher had used cocaine within four to five days prior to the administration of the test. In his defense, Teacher testified that he had never come to work impaired, had never been convicted of a drug-related offense, and was not a chronic cocaine user.

The Teacher was terminated and appealed the District's decision to the Secretary of Education. The Secretary affirmed the District's termination because (1) he engaged in conduct constituting immorality by ingesting cocaine, and because (2) his refusal to initially submit to a drug test on February 4, 2016 constituted willful neglect of duty.

On appeal to the Commonwealth Court, Teacher argued that the District did not carry its burden of proof in establishing that he engaged in immorality, because the only evidence presented – the results of the February 9, 2016 drug test – had been obtained unconstitutionally. Teacher argued that the District lacked reasonable suspicion to order such a test. The Commonwealth Court affirmed the teacher's termination and held that the District had reasonable suspicion to conduct the drug test.

## DISCUSSION

The Commonwealth Court considered Article I, Section 8 of the Pennsylvania Constitution, which provides that people shall be secure from unreasonable searches and seizures. Although there normally must be "probable cause" for the government to conduct a search, government employees have a lower expectation of privacy than other citizens regarding

intoxication. Government employers have a paramount interest in assuring that employees are free from the effects of drugs while performing their duties. The Court held that a public school teacher is a safety-sensitive occupation, and that teachers therefore can be compelled to submit to drug testing based solely upon reasonable suspicion, rather than the more demanding standard of probable cause.

The Court found that the District's receipt of the letter stating that Teacher already had tested positive for cocaine provided reasonable suspicion of drug abuse to compel a urinalysis drug test. The content of the letter appeared to the Court to be reliable, highly specific, and corroborated by additional information. In this regard, the Court noted that the letter was not from an anonymous informant, but was correspondence between the two attorneys in the custody proceeding. The letter and the underlying court order requiring a drug test as part of the custody dispute both were in close proximity to the date when the District received a copy of the letter. According to the Court, this supported the conclusion that Teacher may have been under the influence of drugs while teaching. Therefore, reasonable suspicion existed to conduct the urinalysis drug test.

#### **PRACTICAL ADVICE**

Because public school teachers hold safety-sensitive jobs, school districts may compel drug testing of teachers based on reasonable suspicion of drug use. Compared with private citizens, public school teachers have a lower expectation of privacy, because school districts have a paramount interest in assuring that teachers are free from the effects of intoxication or drug abuse while surrounded by students. When a school district receives trustworthy, reliable evidence that a teacher may be under the influence of drugs while on the job, it may command the teacher to submit to a drug test. If the teacher tests positive for drugs, the school district may seek to terminate the teacher, for violation of school district policy and immorality under Section 1122 of the Public School Code.

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