(2016) (describing the Congressional intent has expanded beyond simply providing access and ensures students with disabilities are subject to demanding standards-based assessments).

45 Osborne & Russo, *supra* note 37, at 16.

46 20 U.S.C.A. § 1414(d)(1)(A)(i)(IV)(bb) (West 2016).

47 *Endrew,* 137 S. Ct. 988, 991 (2017).

48 *Id.* at 1000.

49 *Id.* at 996.

50 *Id.* at 1001 (quoting *Rowley,* 458 U.S. at 179 (internal quotation marks omitted)).

51 *Rowley*, 458 U.S. at 200.

52 *Id.* at 192.

53 *Endrew,* 137 S. Ct. at 992.

54 *Id.*

55 *Id.* (quoting the Brief for Petitioner 40).

56 Doe v. Bd. of Educ. of Tullahoma City Schs., 9 F.3d 455, 459, 87 Educ. L. Rep. 354 (6th Cir. 1993).

57 *Endrew,* 137 S. Ct. at 1001.

58 Perry A. Zirkel, *The Supreme Court's Decision in* Endrew F. v. Douglas County School District RE-1*: A Meaningful Raising of the Bar,* 341 Educ. L. Rep. 545 (2017).

59 *Endrew,* 137 S. Ct. at 1002.

60 *Id.* at 1001.

61 Perry A. Zirkel, *Legal Currency in Special Education Law: Top Ten for School Leaders,* 262 Educ. L. Rep. 1 (2011).

62 Perry A. Zirkel, *The Case Law on Eligibility and Methodology for Students with Autism: An Update,* 262 Educ. L. Rep. 23 (2011).

63 34 C.F.R. § 300.39(b)(3)(i) (defining "specially designed instruction").

64 Transcript of Oral Argument at 13–15, *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017) (No. 15-827).

65 Decker, *supra* note 10.

66 *See generally* Claire Maher Choutka et al., *The "Discrete Trials" of Applied Behavior Analysis for Children with Autism: Outcome-Related Factors in the Case Law*, 38 J. Special Educ. 95 (2004).

67 Janet R. Decker, 25 Years of Litigation Trends: Applied Behavior Analysis (ABA) Lawsuits Involving Students with Autism. (April 30, 2017) (paper presented at the annual meeting of American Educational Research Association, San Antonio, TX).

68 *Rowley,* 458 U.S. at 207.

69 *Id.* Decker found parents/child(ren) prevailed in six cases from 1993-2004; however, parents/child(ren) won fifteen cases from 2005-2016.

70 A.M. ex rel. v. New York City Department of Education*,* 845 F.3d 523, 541, 339 Educ. 22, (2d Cir. 2017).

71 *Id.* at 542 (explaining that it must determine whether "the content, *methodology*, or *delivery* of instruction" have been narrowly tailored to "address the unique needs of the child that result from the child's disability" 34 C.F.R. § 300.39(b)(3)(i)).

72 R.E. ex rel. v. New York City Department of Education, 694 F.3d 167, 194, 284 Educ.L. Rep. 629 (2d Cir. 2012).

73 A.M. v. New York City Department of Education*,* 845 F.3d 523, 545 (2d Cir. 2017).

74 *Id.*

75 Decker, *supra* note 10. For example, in one ABA case, the court awarded parents $307,150 in attorneys' fees alone. J. P. ex rel. Peterson v. Cty. Sch Bd.*,* 641 F. Supp. 2d 499, 501, 250 Educ. L. Rep. 122 (E.D. Va. 2009).

76 *See, e.g.,* R.B. v. New York City Dep't of Educ., No. 16-1952-CV, 2017 WL 1507784 (2d Cir. Apr. 27, 2017); C.G. v. Waller Indep. Sch. Dist., No. 16-20439, ___ Fed. Appx. ___, 2017 WL 2713431 (5th Cir. June 22, 2017); Paris Sch. Dist. v. A.H. ex rel. Harter, No. 2:15-CV-02197, 2017 WL 1234151 (W.D. Ark. Apr. 3, 2017); K.M. ex rel. Markham v. Tehachapi Unified Sch. Dist., No. 115CV001835LJOJLT, 2017 WL 1348807 (E.D. Cal. Apr. 5, 2017); N.G. v. Tehachapi Unified Sch. Dist., No. 115CV01740LJOJLT, 2017 WL 1354687 (E.D. Cal. Apr. 13, 2017); N.W. v. District of Columbia, No. CV 16-0573, 2017 WL 2080250 (D.D.C. May 15, 2017); M.M. v. New York City Dep't of Educ., No. 15 CIV.5846 (PKC), 2017 WL 1194685 (S.D.N.Y. Mar. 30, 2017); T.M. v. Quakertown Cmty. Sch. Dist., No. CV 16-3915, 2017 WL 1406581 (E.D. Pa. Apr. 19, 2017); and Brandywine Heights Area Sch. Dist. v. B.M., No. 5:14-CV-06624, 2017 WL 1173836 (E.D. Pa. Mar. 29, 2017).

77 *See also* Zirkel, *supra* note 64, at 552.

78 ___ Fed. Appx. ___, 2017 WL 2713431 (5th Cir. 2017).

79 *Id.*

80 2017 WL 1406581 (E.D. Pa. 2017) at *6.

81 *Id.* at *4.

82 *Id.* at *13.

83 *Id.* at *7.

84 *Id.* at *9-10.

85 2017 WL 1234151 (W.D. Ark. 2017).

86 *Id.* at *4.

87 *Id.* at *8.

88 *Id*.

89 *Id.* at *9, n.11.

90 *Id.* at *9 (quoting *Endrew*, 137 S.Ct. 988, 999 (2017)).

91 *Id.* at *6.

92 *Id.* at *7.

93 *Id.* at *12.

94 Nonetheless, autism litigation will likely increase considering past trends. Perry A. Zirkel & Tessie R. Bailey, *Special Education Law Update XIII,* 334 Educ. L. Rep. 1 (2016).

95 *Endrew,* 137 S.Ct. 988, 1001 (2017).

96 2017 WL 1234151 (W.D. Ark. 2017) at *8 n. 10.

97 *Endrew,* 137 S. Ct. 988, 992 (2017).

Schools and the Legalization of Marijuana: An Emerging Issue*

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Introduction

Attorney General Jeff Sessions recently expressed his desire to undo federal medical-marijuana protections available under the Rohrabacher-Farr Amendment that have been in place since 2014[1] in jurisdictions where its use is legal. Sessions' comments have helped to keep this controversial issue in the headlines even as jurisdictions have increasingly legalized its use for both medical and recreational purposes. According to the Rohrabacher-Farr Amendment, "[n] one of the funds made available in this Act to the Department of Justice may be used, with respect to [thirty-two States plus the District of Columbia] to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."[2]

In light of a flurry of legislative activity legalizing the circumstances under which marijuana may be smoked or ingested, concerns associated with its use in and around schools are likely on the minds of educational leaders, their boards, and attorneys. As evidence of the growth of such laws to date, eight jurisdictions plus the District of Columbia[3] legalized the recreational use of marijuana either under the state constitution[4] or by statute.[5] Another two states enacted constitutional amendments[6] and twenty-eight others[7] plus the District of Columbia[8] legalized marijuana use for medical purposes.

Supporters calling for the legalization of marijuana typically argue that decriminalization will help to keep many young people and minorities out of trouble with the law, that state oversight would help to ensure public safety while creating new revenue sources from regulated sales.[9] On the other hand, opponents of marijuana legalization fear its legalization may have potentially harmful effects for adolescents because it can slow down learning by impeding development and interfering with schooling,[10] along with concerns that it is a gateway drug leading not only to its

increased use along with that of other substances but is addictive and can result in the adoption of undesirable lifestyles.[11]

Not surprisingly, teachers and other school employees in jurisdictions where it is legal to do so may ask whether they can legally smoke or ingest (in foods and/or drinks) marijuana during their personal time, particularly if it is for medical purposes.[12] Educators who think that insofar as they can legally consume alcohol when not at work, they should be able to smoke marijuana if doing so does not interfere with their professional duties, are likely to be mistaken.

In light of significant legal questions emerging for educational leaders, their boards, and their lawyers, not to mention school employees, over the legalization of marijuana, the remainder of this article is broken into three sections focusing on employees rather than students insofar as students are too young to smoke legally. The first part looks at federal statutes on marijuana usage before examining related litigation in the second section. The third part offers recommendations for educational leaders, their boards, and their lawyers to consider as they devise and implement policies about marijuana use by employees. The article rounds out with a conclusion.

Federal Drug Statutes Involving Marijuana

Federal Statutes

The fact that a growing number of jurisdictions have legalized marijuana for recreational and/or medical reasons notwithstanding, it is worth noting two federal statutes regulating its possession and/or use. The first, the Controlled Substances Act, initially enacted in 1970, makes it a federal crime for persons, thus including educators, to possess and/or use marijuana and a variety of other drugs.[13]

The second law, the Drug Free Work Place Act (DFWPA) of 1988,[14] applies to all recipients of federal financial aid, including public school systems. In response to the DWFPA, school boards need to have policies in place addressing the use of drugs including marijuana. While the DWFPA does not grant an exception for medical marijuana, "Congress has temporarily prohibited the Department of Justice from spending federal funds to prosecute medical marijuana businesses that comply with their states' laws."[15] Insofar as Congress did not address the recreational use of marijuana, users presumably remain fair game for prosecution. Under both federal laws, even if marijuana may be used legally for medical and/or recreational purposes, boards would be wise to have policies in place designed to keep themselves and their employees from running afoul of federal law.

Litigation on Marijuana Use

Most of the litigation involving marijuana use does not directly involve education. Even so, briefly reviewing key cases can provide guidance for educational leaders, their boards, and attorneys. Consequently, it is important to be mindful that litigation makes it clear that educators can be disciplined for using marijuana in their free time even if they may do so legally under state laws.

A fairly recent Supreme Court case illustrates the contentiousness of the legalization of marijuana. In *Nebraska v. Colorado*,[16] the Justices rejected the claim Nebraska and Oklahoma filed against the Colorado statute permitting adults to buy, sell, or use an ounce of marijuana. In an unsigned six-to-two memorandum order, the Court denied the motion of the plaintiff states for leave to file a complaint challenging the law as a violation of the federal Controlled Substances Act which categorizes marijuana as a dangerous drug along with forbidding its sale or use. In dissent, Justice Thomas,[17] joined by Justice Alito, would have allowed the case to proceed because he was convinced that the plaintiff States alleged that significant harms could befall their residents due to the legalization of marijuana use. If this case is an indication, this is an issue unlikely to go away any time soon.

Recreational Marijuana Use

In jurisdictions where it is legalized for recreational use, litigation makes it clear that educators are unlikely to succeed in claiming they cannot be disciplined for smoking marijuana when not at work. Further, while most state laws do not explicitly discuss marijuana use and employment, others defer to the judgment of employers. Accordingly, because a "[a] teacher's employment in the public schools is a privilege, not a right,"[18] boards can hold teachers to higher standards of conduct because they serve as role models for students.

The first of two cases directly involving an educator, albeit a bit dated, was litigated in Illinois where a teacher was fired after being arrested and pleading guilty to marijuana possession. On further review of the trial court's reversal of a hearing officer's decision that the teacher's dismissal was improper, an appellate court affirmed in the board's because its officials demonstrated a clear relationship between the plaintiff's possession of marijuana and his fitness to teach. The court reasoned: "[w]e do not doubt that knowledge of a teacher's involvement in illegalities such as possession of marijuana would have a major deleterious effect upon the school system and would greatly impede that individual's ability to adequately fulfill his role as perceived by the Board."[19]

In the second case, a teacher unsuccessfully challenged his dismissal after he was fired for growing, possessing, and smoking marijuana even though the criminal charges against him were dropped because the police obtained the evidence in an impermissible search in violation of the Fourth Amendment. The teacher claimed that because the criminal charge against him was dropped due to the illegal search there was a lack of substantial evidence in the record supporting his dismissal. Rejecting the teacher's argument, an appellate court in North Carolina affirmed that insofar as police did discover marijuana plants, a pipe, and rolling paper in his home and he admitted to smoking marijuana, the board had the authority to dismiss him from his job.[20]

Medical Marijuana Use

Just as with recreational use, even more litigation demonstrates that the judiciary defers to federal law or employer policies when, in non-school cases, individuals unsuccessfully claim to have been disciplined unfairly because they used marijuana for medical reasons. To this end, the Sixth Circuit emphasized that Michigan's Medical Marihuana [sic] Act did not protect an employee in a branch of a national retail chain from dismissal even though he was a registered user under state law and declared that he never smoked it while on the job or came to work under the influence of the drug. The court affirmed that insofar as the employee tested positive in a standard drug test, in violation of the company's policy, the Act did not protect him from dismissal as a result of his having ingested marijuana to treat the knee he injured himself when he twisted it the wrong way while pushing a cart.

The Supreme Court addressed the interplay between state and federal law, the Controlled Substances Act, which regulated the manufacture, distribution, or possession of marijuana to intrastate growers and users for medical purposes. *Gonzales v. Raich*.[21] In a dispute from California, then one of at least nine states that legalized the use of medical marijuana. Vacating an order of the Ninth Circuit to the contrary, the Court ruled that insofar as the Controlled Substances Act applied, two women who used doctor-recommended marijuana for serious medical reasons could face federal charges for doing so even though a California law authorized its limited use for medicinal purposes.

More recently, a telephone cable company customer service representative who worked from home because he is quadriplegic unsuccessfully challenged his dismissal for using prescribed marijuana for muscle spasms. The employee lost his job because he tested positive for etrahydrocannabinol, also known as THC, a component of medical marijuana during a random drug test. The Supreme Court of Colorado affirmed that insofar as use of medical marijuana was illegal under federal law, the Medical Marijuana Amendment of the state constitution did not protect him from the loss of his job.[22]

Recommendations

Due to the lack of clarity in the interplay between federal and state marijuana laws, with the latter typically inadequately addressing its use by employees, coupled with the litigation and growth of statutory developments, it is incumbent on boards to devise and implement legally sound policies regardless of why it is used. Yet, policies can only go so far because lingering questions are likely to remain. For example, what happens if employees ingest marijuana in jurisdictions where it is legal to do so but return home and test positive for THC? Should the employees be suspended? Dismissed? How much is the resolution of such disagreements likely to depend on language in board policies and/or collective bargaining agreements?

Educational leaders, their boards, and attorneys in jurisdictions where marijuana use is legal should be particularly mindful to devise policies informing employees about its permissible and impermissible uses. Also, regardless of whether they are in states where it is legal to do so, school administrators, their boards, and other educational leaders may wish to consider the following suggestions when devising and/or reviewing their policies about marijuana use by school employees.

1. School boards should be proactive by adopting clear, up-to-date policies about marijuana possession and use by employees.[23] Suggested members of a policy team could include a school nurse, a building and district level school administrator, a teacher, a board member, the board attorney, representatives of medical facilities, a physician, a drug rehabilitation counselor, and a faculty member from a local college or university who specializes in issues associated with drug use.
2. Board policies on marijuana use should be closely aligned with their drug testing policies for employees because most courts have upheld drug testing for individuals in safety sensitive positions such as teachers, cafeteria workers, and bus drivers.[24]
3. Policies should
   - Remind employees that although state law may allow the use of marijuana for medical or recreational purposes, they can still face legal consequences under federal law; thus, policies should advise employees to avoid using marijuana;
   - note that the possession, use, and/or cultivation of marijuana by employees either at work or during personal time can lead to prosecution under federal law;
   - address the circumstances under which employees can be tested for marijuana use along with the levels of suspicion required to do so and what amounts of elements such as THC must be present in their bodies before individuals can be sanctioned;
   - be primarily rehabilitative, meaning they are designed to help identify staff members who may be abusing marijuana and get them help, rather than punitive in nature;[25]
   - include procedures allowing employees to seek help and/or referrals for assistance without having to face job sanctions;
   - include graduated forms of disciple ranging from verbal and written warnings to suspensions and dismissals for more serious violations of board policy.
4. Educational leaders should offer regular professional development sessions for all staff members on their marijuana use policies both to inform attendees and to obtain feedback on how well plans are working.
5. To the extent that laws regarding marijuana usage are changing, it is important for policies to be kept up to date at all times.
6. Policies should be reviewed, and if necessary, updated annually, preferably during summer retreats so team members do not act in the "heat of the moment;" reviews should be conducted to ensure that policies are consistent with current best practices for substance abuse prevention as well as with federal and state statutes and litigation on marijuana use.

Conclusion

The rapid growth of the legalization of marijuana in recent years seems unlikely to slow down despite the issues and concerns raised by Attorney General Sessions. Even so, educational administrators, their boards, and other educational leaders should be careful to ensure they do not risk the loss of federal funding by neglecting to have policies in place regulating its use by employees whether for medical or recreational purposes. As such, considering the speed at which legal developments are occurring, educational leaders, their boards, and attorneys should keep up-to-date on developments in federal and state law with regard to the legalization of marijuana.

ENDNOTES

1 Chris Ingraham, *Sessions Asks to Eliminate Medical-pot Protections*, Wash. Post, June 14, 2017 at A 6, available at 2017 WLNR 18232613.

2 Congress passed the Rohrabacher-Farr Amendment to the Consolidated and Further Continuing Appropriations Act of 2015 in 1994 as Pub. L. No. 113-235, Sec. 538; 128 Stat. 2130, 2217. The statute enumerated "the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin," as being covered by this provision. See also Marulo v. The United States Border Patrol, 2016 WL 4414821 at *1 (D.N.M. 2016).

3 District of Columbia Code, § 48-1201-48-1213

(2016).

[4] Colorado Constitution article XVIII, § 16 (2012).

[5] Alaska Statutes, 17.38.020 (2016); Cal. Health and Safety Code, § 11362.1 (2016); Maine Rev. Stat. Ann., Title 7 §§ 2441 *et seq*. (2017); Mass. Ann. Laws, chapter 94H §§ 1-14 (2016); Nevada Rev. Stat. Ann. C. 453A.360 *et seq*. (2017); Oregon Rev. Stat. Ann. Cr. §§ 475B.400 *et seq*. (2016); Wash. Rev. Code Ann., § 69.50.4013(3-5) (2016).

[6] Arkansas Constitution Amend. 98 § 1 (2016); Colorado Constitution Article XVIII, § 14 (2012).

[7] Alaska Statutes, § 17.37.030 (2016); Arizona. Rev. Stat. § 36-2801 (2016); California Health & Safety Code § 11362.5 (2016); Connecticut Gen. Stat. § 21a-408(a-j) (2016); Delaware Code Ann. Rev. Tit. 16 §§ 4901A *et seq*. (2016); Florida Stat. Ann. § 381.986 (2016); Hawaii Rev. Stat. Ann. § 329-121 (2016); 410 Illinois Compilation Stat. Ann. 130/1-45 (2016); Louisiana Rev. Stat. Ann. § 40:1046 (2016); Maine Rev. Stat. Rev. Tit. 22 § 2421 *et seq*. (2016); Maryland Code Ann., Health–Gen. §§ 13-3301 *et seq*. (2016); 105 Massachusetts Code Regulations §§ 725.001 *et seq*. (2016); Michigan Compilation Laws Service § 333.26424 (2016); Minnesota Stat. Ann. § 152.22 (2016); Montana Code Ann. §§ 50-46-301 *et seq*. (2016); Nevada Rev. Stat. Annotated C. 453A.360 *et seq*. (2017); N.H. Rev. Stat. Ann. §§ 126-X:1 *et seq*. (2016); N.J. Stat. §§ 24:6I-1 *et seq*. (2016); N.M. Stat. Ann. §§ 26-2B-3 *et seq*. (2016); N.Y. Pub. Health, Chapter 45, Article 33-a §§ 3397 *et seq*., (2016); N.D. Cent. Code §§ 19-24-01 to 19-24-12 (2017); Ohio Rev. Code Ann. §§ 3796.01 to 3796.30 (2016); Oregon Rev. Stat. Ann. §§ 475B.400 *et seq*. (2016); 35 Pennsylvania Stat. Ann. §§ 10231.101 *et seq*. (2016); 21 R.I. Gen. Laws §§ 28.6-1 to 28.6-17 (2016); Vermont Stat. Ann. Rev.18, §§ 4471 *et seq*. (2016); Washington Rev. Code Ann. §§ 69.51A.005 *et seq*. (2016); W.Va. Code § 16A-1-1 *et seq*. (2017, passed April 6, 2017, effective 90 days thereafter).

[8] District of Columbia Code §§ 7-1671.01 *et seq*. (2016).

[9] *Marijuana Legalization and Regulation*, http://www.drugpolicy.org/marijuana-legalization-and-regulation.

[10] *American Academy of Pediatrics Reaffirms Opposition to Legalizing Marijuana for Recreational or Medical Use*, Jan. 26, 2016, available at https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/American-Academy-of-Pediatrics-Reaffirms-Opposition-to-Legalizing-Marijuana-for-Recreational-or-Medical-Use.aspx

[11] *See, e.g.*, John Hawkins, *5 Reasons Marijuana Should Remain Illegal*, Townhall.com, Jan. 14, 2014, available at https://townhall.com/columnists/johnhawkins/2014/01/21/5-reasons-marijuana-should-remain-illegal-n1782086; *Why Marijuana Should Not Be Legalized?* New Health Advisor, last updated June 14, 2017, available at http://www.newhealthadvisor.com/Why-Marijuana-Should-Not-Be-Legalized.html

[12] For a balanced discussion of the pros and cons of marijuana legalization, see Angela Dills, Sietse Goffard, and Jeffrey Miron, *Dose of Reality: The Effect of State Marijuana Legalizations*, Cato Institute, Sept. 16, 2016 https://www.cato.org/publications/policy-analysis/dose-reality-effect-state-marijuana-legalizations

[13] The Controlled Substances Act, 21 U.S.C. §§ 801 *et seq*. (2017).

[14] Drug Free Workplace Act, 41 U.S.C. §§ 701 *et seq*. (2017).

[15] *No Sanctuary for Marijuana*, Los Angeles Times, May 16, 2017, at p. 10, available at 2017 WLNR 15144517.

[16] 136 S. Ct. 1034 (2016).

[17] *Id*. (Thomas, J., dissenting).

[18] Board of Education of the City of Los Angeles v. Wilkinson, 270 P.2d 82, 85 (Cal. Ct. App. 1954).

[19] Chicago Bd. of Educ. v. Payne, 430 N.E.2d 310, 315 (Ill. App. Ct. 1981); *see* Bd. of Educ. of Peoria Pub. Sch. Dist. No. 150 v. Davis, 788 N.E.2d 1153, 176 Educ. L. Rep. 825 (Ill. App. Ct. 2003) (noting that the statute discussed in Payne was superseded).

[20] In re Freeman, 426 S.E.2d 100, 80 Educ. L. Rep. 1063 (N.C. Ct. App. 1993).

[21] Gonzales v. Raich, 545 U.S. 1, 5 (2005).

[22] Coats v. Dish Network, 350 P.3d 849 (Colo. 2015).

[23] "In June [2015], Maine became the first state to require all school districts to create a policy on use of the substance. Colorado and New Jersey also passed laws in the last year permitting certain students to receive the treatment in K12 schools." Alison DeNisco, *Schools Wrestle with Medical Marijuana Policies: Colorado and New Jersey Permit Certain Students to Receive Treatment*, District Administration, March 2016, available at https://www.districtadministration.com/article/schools-wrestle-medical-marijuana-policies. For more detail on Maine, see, *Maine Citizen's Guide to the Referendum Election*, Tuesday, November 8, 2016 www1.citizensgov.maine, citizensguide2016.pdf

[24] For cases upholding testing for employees in safety sensitive positions, see, e.g., Knox County Educ. Ass'n v. Knox Cnty. Bd. of Educ., 158 F.3d 361, 130 Educ. L. Rep. 62 (6th Cir. 1998)., *cert. denied*, 528 U.S. 812 (1999); Jones v. Jenkins, 878 F.2d 1476, 54 Educ. L. Rep. 1138 (D.C. Cir. 1989) (permitting testing without probable cause). English v. Talladega Cnty. Bd. of Educ., 938 F. Supp. 775, 113 Educ. L. Rep. 291 (N.D. Ala. 1996); Cox v. McCraley, 993 F. Supp. 1452, 125 Educ. L. Rep. 456 (M.D. Fla. 1998). *But see* Patchogue-Medford Cong. of Teachers v. Bd. of Educ. of Patchogue-Medford Union Free Sch. Dist., 517 N.Y.S.2d 456, 40 Educ. L. Rep. 917 (N.Y. 1987) (rejecting random testing absent reasonable suspicion). For representative commentaries on drug testing of teachers, see Robert C. Cloud, *Suspicionless Drug Testing of Public School Teachers and Other School Employees,* 282 Educ. L. Rep. 1 (2012); Charles J. Russo & Ralph Mawdsley, *Drug Testing of Teachers: Student Safety v. Teacher Rights or An Overreaching School Board?* 134 Educ. L. Rep. 661 (1999); Charles J. Russo, *Drug Testing of Teachers: Patchogue-Medford Congress of Teachers Revisited.* 40 Educ. L. Rep. 607 (1987).

[25] In Vernonia Sch. Dist. 47J v. Acton *12*, 515 U.S. 646, 101 Educ. L. Rep. 37 (1995), *on remand*, 66 F.3d 217, 103 Educ. L. Rep. 608 (9th Cir. 1995) and Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie v. Earls, 536 U.S. 822, 122 S. Ct. 2559, 153 L.Ed.2d 735, 166 Educ. L. Rep. 79 (2002), *on remand*, 300 F.3d 1222, 168 Educ. L. Rep. 581 (10th Cir. 2002), the Court upheld drug testing of students because it was primarily rehabilitative rather than punitive. For representative commentary on this issue, see Todd A. DeMitchell, Thomas Carroll, & Thomas Schram, *Student Drug Testing Policies: The Superintendent and the Courts*, 206 Educ. L. Rep. 1 (2006); David Schimmel, *Supreme Court Expands Random Drug Testing: Does the Fourth Amendment Still Protect Students?* 170 Educ. L. Rep. 15 (2002).