

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

M.M., a minor, by and through her parents,  
CHRISTOPHER McDOUGALL and MIKA  
COX McDOUGALL,

Plaintiff,

v.

THE SOLANCO SCHOOL DISTRICT,

Defendant.

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**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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CHRISTOPHER McDUGALL and MIKA  
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**COMPLAINT IN EQUITY**

1. Plaintiff brings this suit to void the provisions of a school district policy that requires students as young as eleven to submit to random, suspicionless urinalysis drug testing in order to participate in athletics or extracurricular activities through school or to obtain a school parking pass, in direct contravention of Pennsylvania Supreme Court precedent and the privacy protections of the Constitution of the Commonwealth of Pennsylvania. Plaintiff—a student at Swift Middle School in the Solanco School District currently barred from participation in school

activities because of her refusal to consent to this unconstitutional invasion of privacy—is entitled to an injunction against the District’s continued enforcement of its unconstitutional drug testing policy.

### **VENUE**

2. Venue is proper in this Court pursuant to Pa. R. Civ. P. 2103(b).

### **PARTIES**

3. M.M. is eleven years old and is a sixth grade student at Swift Middle School in the Solanco School District. She lives with her parents, Christopher and Mika Cox McDougall, and the rest of her family in Peach Bottom, Pennsylvania. In her first year at Swift Middle School, M.M. registered to play viola in her school’s orchestra and to sing in the school choir. She also intends to try out for multiple athletic teams, including volleyball, cross country, and basketball, beginning with the 2012–2013 school year, the first year she would be able to join school sports. Further, as one of the top math students in her class, she would also be able join, and intends to join, her school’s MathCounts academic competition team for the 2012–2013 school year. But M.M. was removed from her school’s orchestra and chorus at the beginning of the 2011–2012 school year and is currently ineligible to join any school athletic or academic teams. To do any of these activities, M.M. would have to agree to Solanco’s drug testing policy, permitting her school to demand that she produce a urine sample for drug screening at any time throughout the school year.

4. Defendant Solanco School District (“Solanco” or “the District”) is, and at all times relevant was, a political subdivision of the Commonwealth of Pennsylvania, located in Lancaster County. Its administrative offices are located at 121 South Hess Street, Quarryville, Pennsylvania 17566.

## FACTS

### The Policy

5. Prior to the 2005–2006 school year, the Solanco School District had a voluntary drug testing program for all students.

6. On or about February 27, 2006, the Solanco School District Board of Directors adopted a policy entitled “227.2 Drug Testing for Students in Extracurricular/Co-Curricular Activities and Student Drivers” (“Policy 227.2” or “the Policy”). The Policy was revised on or about September 25, 2006. A copy of the Policy is attached as Exhibit A to this Complaint.

7. As an Appendix to the Policy, the District provides a list of extracurricular and co-curricular activities. At the middle school level, this list includes “[a]ll interscholastic athletics, student government, band/orchestra.chorus/musical/theater productions, and competitive academic teams.” A copy of this list is attached as Exhibit B to this Complaint.

8. The Policy provides that “[n]o student will be permitted to participate in extracurricular/co-curricular activities or obtain a student parking permit unless the student consents to mandatory random drug testing under this policy.” To establish this consent, students and their parents or guardians must complete a permission form every school year authorizing the District to collect urine samples without prior notification at any time during the school year. A copy of this permission form is attached as Exhibit C to this Complaint.

9. This consent form also authorizes the District to release information about drug testing results in accordance with the Policy, which includes notification of the building principal and applicable coaches or advisors.

10. The Policy states that its urine testing is meant to determine the presence of the following drugs: “anabolic steroids, amphetamines, barbiturates, cocaine, codeine, depressants, heroin, marijuana, morphine, methamphetamines, opiates, PCP, stimulants, and valium.”

11. When a student is selected for urine testing, that student is provided with a copy of the District’s “Protocol for Drug Testing.” This protocol is attached as Exhibit D to this Complaint.

12. The Policy is “violated” when a urine sample tests positive for drugs, or when a student refuses to provide a urine sample for testing. Violations of the Policy result in referrals to the District’s Student Assistance Program, suspensions from all covered activities and privileges, and continued drug screening.

**Plaintiff Has Suffered and Will Continue to Suffer Irreparable Harm Because of Policy 227.2**

13. As a sixth grade student in the Solanco School District, Plaintiff M.M. is subject to the random mandatory drug testing provisions of the Policy, which place conditions on her participation in school athletics, ability to obtain a parking pass, and participation in extracurricular activities.

14. In September 2011, Plaintiff M.M. received a copy of the drug testing consent form (Exhibit C) because of her registration for the Swift Middle School orchestra and choir. M.M. signed the top signature line, agreeing to refrain from use or possession of drugs and alcohol. She did not sign the additional signature lines consenting to random mandatory drug testing. M.M. submitted this form to her orchestra director prior to her first orchestra rehearsal.

15. After M.M. submitted this form, Christopher McDougall was informed by school officials that M.M. would not be permitted to participate in orchestra or choir without submitting

another form and consenting to all aspects of the Solanco drug policies. M.M. did not submit another consent form.

16. Plaintiff M.M. has suffered direct harm as a result of the Policy. For refusing to consent to random testing under the Policy, M.M. was removed from the Swift Middle School orchestra and choir, and must instead attend a study hall during the final period of the school day while school musical groups rehearse. She is not eligible to try out for her school's volleyball, cross country, or basketball teams for the 2012–2013 school year. She is also ineligible to join her school's MathCounts academic competition team, despite qualifying for the team as one of the top math students in her class. The District's enforcement of the Policy violates M.M.'s constitutional right to privacy by attaching these serious consequences to her choice not to allow her school to test her urine pursuant to a baseless, constitutionally deficient drug policy.

17. While M.M. would like to participate in musical groups, after-school activities, and sports with her friends, she will not consent to drug testing because she and her family believe that Policy 227.2 is an unreasonable invasion of her right to privacy.

### **The Law**

18. In Theodore v. Delaware Valley School District, 575 Pa. 321, 836 A.2d 76 (2003), the Pennsylvania Supreme Court held that the balancing of students' privacy rights under Article I, Section 8 of the Pennsylvania Constitution and school districts' concern for student safety requires that public school drug testing policies must be supported by sufficient evidence of need in order to pass constitutional muster. Under Theodore, any Pennsylvania school enacting a random drug testing policy must "make[] some actual showing of the specific need for the policy and an explanation of its basis for believing that the policy would address that need." Theodore, 575 Pa. at 348, 836 A.2d at 92.

19. The Theodore Court held that the drug testing policy at issue “cannot be deemed constitutional on its face because it authorizes a direct invasion of student privacy, with no suspicion at all that the students targeted are involved with drugs, or even that they are more likely to be involved than the students who are exempted from the policy. 575 Pa. at 349, 836 A.2d at 93.

20. In 2011, the Courts of Common Pleas of Carbon and Pike Counties granted preliminary injunctions against nearly identical drug testing policies under Theodore, finding that the policies were likely unconstitutional and prohibiting their enforcement. See Memorandum Opinion, M.T. v. Panther Valley School District, No. 11-0552 (Carbon Cty. Ct. Comm. Pl. May 5, 2011); Order, M.K. v. Delaware Valley School District, No. 434-4011-Civil (Pike Cty. Ct. Comm. Pl. July 21, 2011).

21. At no point prior to the passage of Policy 227.2 did Solanco analyze drug use by sixth through twelfth grade students involved in school activities, or the efficacy of a policy of randomly drug testing only active and involved students as a way to address any district-wide drug concerns. In fact, the Policy and statements by school officials indicate that the Solanco School District has structured its drug policy to force as much of the student body as possible into the random drug testing pool without considering why particular groups or activities should be included.

22. Accordingly, Policy 227.2 is overinclusive and underinclusive because it singles out only students who are involved in school activities and parking privileges without tying that participation to an increased risk of danger from drug use, or to a greater likelihood of drug use. In fact, extracurricular involvement typically serves as a protective factor, decreasing the likelihood that students will abuse drugs or alcohol.

### **CLAIMS FOR RELIEF**

23. At all times relevant to this action, the Solanco School District has attempted to subject Plaintiff, and its other most active and involved students, to random drug testing with no constitutionally permissible basis.

24. The random testing provisions of Solanco School District's drug policy violate Plaintiff's right to privacy under Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania.

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Issue an order judging and declaring that Solanco School District Policy 227.2 violates Plaintiff's rights under Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania;

2. Issue preliminary and permanent injunctive relief enjoining and restraining Defendant Solanco School District from implementing, maintaining, or enforcing Policy 227.2;  
and

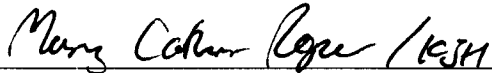
3. Grant Plaintiff such other and further relief as may be just and proper.



Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION

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