

A RESOLUTION

24-136

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 15, 2021

To declare the existence of an emergency with respect to the need to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to provide that a volunteer at a District of Columbia Public School shall not be tested for drug and alcohol use; except, that a volunteer at a District of Columbia Public School may be tested for drug and alcohol use based on reasonable suspicion, and to provide that an employee of a private contractual provider or a private licensed provider who is not an employee of a child development facility licensed by the Office of the State Superintendent of Education shall not be required to take a test for marijuana unless the test for marijuana is based on reasonable suspicion or is required pursuant to federal law, regulation, contract, or funding agreement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “DCPS Drug Testing Clarification Emergency Declaration Resolution of 2021”.

Sec. 2(a) On June 2, 2021, *Washington City Paper* reported that the District of Columbia Public Schools (“DCPS”) planned to adopt a new policy requiring drug tests, including for marijuana, for all volunteer and paid employees of partner organizations working in schools.

(b) According to the media reports and conversations between the Councilmembers, advocates, and organizations that provide programming for DCPS students in schools, DCPS claims that the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 1-620.31 *et seq.*) (“CYSHA”), mandates this new drug testing policy.

(c) Title I of the CYSHA, which does require drug testing of District government employees in some situations, does not regulate volunteers at all, and regulations adopted to implement Title I of the CYSHA explicitly state that volunteers cannot be subjected to pre-employment or random drug testing. DCPS does, consistent with Title II of the CYSHA, require background checks for all volunteers, which includes family members who wish to help in the classroom or chaperone a child’s field trip.

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(d) While the CYSHA could be read to mandate drug testing of paid employees of partner organizations working in school, the CYSHA also specifies that drug testing can only be done for unlawful drugs, and the District has legalized consumption of marijuana in some circumstances.

(e) Because testing for marijuana cannot distinguish between current impairment and past legal use, advocates for organizations that provide services for students in DCPS schools have told Councilmembers that requiring drug testing for marijuana will create significant obstacles for District residents to volunteer or work in schools. This policy could also potentially prevent a parent or other family member from reading a story to their child's class or accompanying their child's class to a museum.

(f) According to reporting, DCPS plans to adopt this new policy soon. The Council has requested additional information about DCPS legal authority to enact this policy but has not received a reply, making it necessary for the Council to provide further statutory guidance.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the DCPS Drug Testing Clarification Emergency Amendment Act of 2021 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.