

**DEPARTMENT OF EDUCATION**

RIN 1865-ZA03

**Grants for School-Based Student Drug-Testing Programs**

**AGENCY:** Office of Safe and Drug-Free Schools, Department of Education (ED).

**ACTION:** Notice of final priority, eligibility and application requirements, and selection criteria.

**SUMMARY:** The Assistant Deputy Secretary for Safe and Drug-Free Schools announces a priority, eligibility and application requirements, and selection criteria under the School-Based Student Drug-Testing Programs grant program. The Assistant Deputy Secretary may use this priority, eligibility and application requirements, and selection criteria for competitions in fiscal year (FY) 2006 and later years. We intend for the priority, eligibility and application requirements, and selection criteria to support development and implementation of drug-testing programs in schools.

**DATES:** *Effective Date:* This priority, eligibility and application requirements, and selection criteria are effective August 25, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Robyn L. Disselkoen, or Charlotte Gillespie, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E328, Washington, DC 20202-6450.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** We published a notice of proposed priority, eligibility and application requirements, and selection criteria for this program (NPP) in the **Federal Register** on May 22, 2006 (71 FR 29321). We discussed our proposals for this program in the NPP (71 FR 29322-29324).

This notice of final priority, eligibility and application requirements, and selection criteria (NFP) contains three changes from the NPP. We fully explain these changes in the *Analysis of Comments and Changes* section that follows.

**Analysis of Comments and Changes**

In response to our invitation in the NPP, five parties submitted comments. An analysis of the comments and of any

changes in the priority, eligibility and application requirements, and selection criteria follows. We group major issues according to subject. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

**Eligible Applicants**

*Comment:* One commenter argues that isolated rural local educational agencies (LEAs) should be allowed to participate in the program with one high school and one middle school rather than with two high schools.

*Discussion:* While school districts with only one high school have been eligible for a grant under previous competitions for this program, we are restricting the group of eligible applicants to districts with at least two high schools for purposes of the national evaluation of this program that ED will be conducting. The evaluation design will randomly assign schools either to the treatment condition (implementing the drug testing program) or to the control condition (delaying implementation of the drug testing program for approximately one year). The prevalence of drug use among students in the treatment school will be compared against drug use in the control school. The commenter's proposal to allow a high school and a middle school to be randomly assigned would violate key principles of the random assignment design, because ED believes that the impact of a mandatory random drug-testing program is likely to be quite different in a high school setting versus a middle school setting. Comparing student drug use between schools at different levels, therefore, would not be desirable.

*Change:* None.

**Scope of Program**

*Comment:* One commenter believes that drug testing is ineffective at deterring drug abuse and is harmful for students. The commenter suggests that funding should be concentrated on promoting accurate, fact-based education and discussion of the dangers of drug use, as well as increased involvement in extra-curricular activities.

*Discussion:* The purpose of the evaluation is to build a more robust body of evidence on mandatory random student drug testing (MRSST) using a randomized control design, the "gold standard" method for determining whether an intervention is effective. ED will use this rigorous design to determine if drug testing is effective among the group of districts that receive

grants under this competition. We recognize that drug testing is a tool that must be used in conjunction with a comprehensive drug and alcohol prevention program. For this reason, ED requires that applicants describe the prevention program they currently have in place and explain how drug testing will be a part of that program. We also agree that strategies to promote participation in extra-curricular activities are important. Such participation helps to create a bond between the student and the school that can improve academic performance as well as deter high-risk behaviors, including drug and alcohol use. This study will gather information on the impact of MRSST on rates of participation in extra-curricular activities.

*Change:* None.

*Comment:* One commenter stated that the evaluation would be based on too small a sample to be meaningful because grantees are also subject to the laws in their respective States and case law on mandatory random drug testing in many States is not yet settled.

*Discussion:* We agree with the commenter that this area of the law is evolving, and that is why we have included Eligibility and Application Requirement 2(f)(iv), which requires applicants to provide a written assurance "that legal counsel has reviewed the proposed drug-testing program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a mandatory random student drug-testing program." We do not agree, however, that the sample size will be too small to be meaningful. The primary purpose of the evaluation is to determine whether there is a significant impact of mandatory random drug testing among the ED grantees selected under this competition. The evaluation is not intended to be nationally representative nor statistically generalizable beyond this group of grantees. We expect that the grantees will have a sufficient number of participating schools to provide meaningful study results. We have designed the study to detect a 10.2 percent reduction in the 30-day prevalence of illicit drug use. In order to detect this effect, we need 30 schools. Our assumptions for the study design are: (1) A two-tailed test at 80 percent power and a 5 percent statistical significance; (2) an R<sup>2</sup> value of 0.05 because of the use of prior student drug use as a covariate; (3) a non-random sample of 30 schools with random assignment of 15 schools to receive the

intervention and 15 schools to serve as controls; (4) a minimum sample size of 200 students per school with an 80 percent response rate; and (5) an intra-class correlation coefficient of 0.05. We estimate that this design would generate minimum detectable effects (MDE) of approximately 0.17 standard deviation for continuous outcomes and 7.8 percent for binary outcomes where the control group mean is 30 percent. Because the sample of schools is purposive, and statistically generalizing beyond this sample is not valid, we have calculated the power with a fixed effects, rather than a random effects, framework. Under our assumptions, a sample of 30 schools would be sufficient to detect the reduction of 10.2 percent in the 30-day prevalence of use of any illicit drug. If the true impact were smaller than the MDE, that would not challenge the validity of the study, only its precision in detecting smaller impacts from drug-testing programs.

*Change:* None.

*Comment:* One commenter believes the control condition should include alternatives to drug testing, such as screening all students for drug use and severity via a brief professional interview, rather than simply “no intervention.”

*Discussion:* The commenter raises important drug testing program design issues regarding the control condition and suggests that other substance abuse prevention strategies be tested. That is beyond the scope of this evaluation, given that the central policy question of interest addressed by this evaluation is whether MRSDT has an impact on student drug use. Once that hypothesis has been tested, ED may decide to research alternative prevention strategies to determine whether they are more or less effective than MRSDT.

*Change:* None.

*Comment:* One commenter believes that the evaluation should monitor unintended consequences (such as successful evasion of the test, falsification of results, false negatives, and false positives) in addition to looking at the efficacy of drug testing.

*Discussion:* We agree that careful consideration of unintended impacts of MRSDT programs on high school students is important. To that end, the student survey will gather information on the impact of drug testing on students' participation in athletics and extra-curricular activities. Addressing the specific concerns raised by the commenter, however, is beyond the scope of the current evaluation.

The study is designed to assess the impact of MRSDT on reported substance use by students subject to and not

subject to MRSDT in their schools, while ensuring the confidentiality of all students subject to drug testing in schools that implement the policy. In order for the national evaluator to measure successful evasion of the test or falsification of results, the test results would have to be linked to a specific student's questionnaire. This study has been carefully designed to avoid that linkage and to protect the privacy of student participants.

*Change:* None.

#### **Institutional Review Board (IRB) Approval**

*Comment:* One commenter objected to ED's interpretation of the IES (Institute of Education Sciences) confidentiality statutes as exempting grantees from the need to have separate IRB approvals and noted that the proposal did not make clear how or why the research would pass muster under the IES ethical guidelines.

*Discussion:* While research conducted under the strict confidentiality requirements of the IES confidentiality statute is not subject to IRB review, as a policy matter, ED will obtain IRB approval for all human subjects research activities, in accordance with the Common Rule for the protection of human subjects in research (34 CFR part 97). The exemption for research done under the IES Confidentiality statute from the Common Rule for the protection of human subjects is based on the fact that the Confidentiality statute prohibits the disclosure of any information that could lead to the identification of an individual participating in the survey. This is a significantly higher standard than the protection of privacy under such acts as the Privacy Act of 1974, which only prohibits the disclosure of individually identifiable information. Not only does the Confidentiality statute prohibit disclosure of information that could potentially lead to the identification of an individual, it contains criminal penalties for disclosure. The statute also provides that information collected under the Confidentiality statute is immune from legal process. See 20 U.S.C. 9007. Even though there is the highest degree of protection for data collected under the Confidentiality statute, the Department is very interested in protecting study participants from harm. That is why we have decided to subject the research design, including review of the informed consent forms, to review by an IRB.

The national evaluator will obtain both parental consent and student assent for student participation in the

surveys, conduct all data collection for the research, analyze the data, and ensure strict confidentiality under the highest standards required by the IES Confidentiality statute. The grantees will provide the research sites, however, they will not be conducting research because all research activities will be conducted by the national evaluator that has a contract with ED to do the research. If the grantees decided to engage in human subjects research, for example, as part of separate project evaluations, they would need IRB approval for their separate research. The IES statutes require that IES contractors maintain strict data confidentiality standards. There will be compliance with these statutory requirements and ethical guidelines.

*Change:* None.

#### **Testing Pool**

*Comment:* One commenter stated that it should be made clear in student informed consent forms, or otherwise, whether participation in the evaluation is or is not a condition for participation in athletic programs or competitive extra-curricular activities, and whether students may “opt out” of the research.

*Discussion:* Participation in student surveys to be conducted by the evaluator is completely voluntary and is not a condition of participation in athletics or extra-curricular activities. If a parent or a student who is 18 years of age or older or who is an emancipated minor under State law does not sign an evaluation consent form to participate in the evaluation's student surveys, this will have no effect on that student's eligibility to participate in the school's athletic program or competitive extra-curricular activities. In fact, because participation by the student in the research requires the student's assent, even if the student refuses to complete the survey when a parent has consented, the student will remain fully eligible to participate in the school's athletic program or competitive extra-curricular activities. We will add information to the application package to make clear the voluntary, non-coercive nature of participation in the student surveys and we will direct the national evaluator to add this information to consent forms. The IRB will review the consent forms used in the evaluation research for compliance with the regulations for the protection of human subjects (34 CFR part 97). This review will include assessment of the adequacy of the consent form's information about the voluntary nature of participation in research.

*Change:* None.

*Comment:* One commenter argued that the LEA is considered “temporary staff” under the IES statute and should not view or evaluate any test results. The commenter believes that allowing the LEA to collect test results creates the potential for mishandling sensitive student information. Instead, the commenter suggests that the test results be transmitted directly to the national evaluator without personally identifiable student information.

*Discussion:* We do not agree that the LEA should be considered “temporary staff” because it will have no part in conducting the evaluation. We also do not agree that the LEA should not view or evaluate test results. Information about positive drug test results is a necessary part of the school’s operation of a drug-testing program. Without that information, the LEA would not be able to initiate appropriate intervention such as referral to a student assistance program, counseling, or drug treatment. Student drug test results are protected as education records under the Family Educational Rights and Privacy Act (FERPA) because the information is directly related to a student and maintained by the LEA or a party acting for the LEA. (20 U.S.C. 1232g(a)(4)(A)). Additionally, in order to further protect against mishandling of sensitive student information, applicants must, as a condition of receiving a grant award, agree to a stringent set of pupil privacy protections, including limiting the number of persons with access to the test results, destroying test results when the student graduates or otherwise leaves the LEA, and carrying out all proposed activities in accordance with both FERPA and Protection of Pupil Rights Amendment. (20 U.S.C. 1232h). In addition, the data regarding test results will be transmitted to the national evaluator without personally identifiable student information. Thus, there will be no way the evaluator can identify students who tested positive or connect the survey results with the drug-testing results.

*Change:* None.

*Comment:* One commenter expressed the view that the program’s requirements should only subject students to mandatory random drug testing while they are participating in the school’s athletic program or in competitive extra-curricular activities.

*Discussion:* We agree that this requirement needs to be clarified. We intend to give applicants flexibility to propose drug-testing programs that take into consideration the special needs and circumstances in the LEA; are consistent with their adopted policies; and are in accordance with the decisions of the

U.S. Supreme Court in *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822 (2002) and advice of the LEA’s legal counsel. Therefore, we will not require that students remain in the testing pool when they are not participating in a covered activity, but leave the length of time students are subject to testing to the discretion and policies of each district.

*Change:* We have changed the eligibility and application requirement in paragraph (2)(f)(viii) to read: “That schools randomly assigned to begin drug testing in year one of the grant will not be required to consider students to be in the testing pool at any specific point in time unless they are participating in a covered activity (for example, all students participating at that time in athletics and/or all students participating at that time in competitive, extra-curricular, school-sponsored activities).”

#### Drug-Test Results

*Comment:* One commenter stated that the requirement for all positive drug tests to be reviewed by a certified medical review officer is too vague. The commenter suggested that grantees use urine tests administered in compliance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs, which require that all positive urine tests be confirmed by a gas chromatography/mass spectrometry-certified lab.

*Discussion:* Although the majority of current grantees use urine tests, a few have opted to use saliva or hair tests. We do not intend to require grantees to use any specific test but, rather, leave it to local discretion, determined in consultation with local counsel, and taking into consideration the U.S. Supreme Court decisions in *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822 (2002) and the special needs and circumstances in the LEA. We agree, however, that all positive tests, whether by urinalysis or other method, should be subject to confirmation by a method appropriate for the type of test administered. For a positive urine test, gas chromatography/mass spectrometry is the preferred method for confirming test results. We also agree that further clarification is needed regarding the requirement that positive test results be reviewed by a certified medical review officer (MRO).

*Change:* We have modified the eligibility and application requirement in paragraph 2(f)(iii) to read: “That all positive drug tests will be subject to confirmation by a method appropriate for the type of test administered and that positive results will be reviewed and verified by a certified medical review officer, a licensed physician who is also an expert in drug and alcohol testing and the Federal regulations governing such testing.”

*Comment:* One commenter suggests that the five-panel test (marijuana, amphetamine, cocaine, methamphetamine, and opiates) is too broad and runs the risk of creating false positives for students using prescription medicine. The commenter believes the categories of drugs tested should be limited.

*Discussion:* The five-panel test is a standard test that screens for the presence of five substances commonly used by young people. We think it is important that schools test for, at a minimum, these commonly used substances in order to identify students who have initiated drug use and ensure they receive the help they need. Limiting the number of drugs for which schools may test runs the risk of failing to identify some students. The five-panel test provides an appropriate balance between testing for too few drugs and too many drugs. The requirement for referral to an MRO is intended to guard against reporting a positive drug test when the student is using a medicine legally prescribed for him or her.

*Change:* None.

#### SAMHSA-Certified Labs

*Comments:* None.

*Discussion:* Upon our further review of the proposed selection criteria, we believe that paragraph (a) under the *Management Plan* criterion should be changed. Under this criterion as proposed, applicants would have been required to demonstrate a commitment to using SAMHSA-certified labs to process student drug tests. ED has since learned that many of these labs are not geographically accessible to all grantees. In order to give grantees the option to select any qualified lab, we are changing this selection criterion to permit applicants to use any federally or nationally accredited lab.

*Change:* We have changed paragraph (a) of the *Management Plan* selection criterion to read: “The extent to which the applicant describes appropriate chain-of-custody procedures for test samples and demonstrates a commitment to using a federally or

nationally accredited lab to process student drug tests.”

**Note:** This notice does *not* solicit applications. In any year in which we choose to use the priority, eligibility and application requirements, and selection criteria, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each priority is as follows:

**Absolute priority:** Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

**Competitive preference priority:** Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

**Invitational priority:** Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

#### Priority

##### Participation in Evaluation of Mandatory Random Student Drug-Testing Programs

Under this priority, we will support local educational agencies (LEAs) that agree to participate in a national evaluation of the impact of mandatory random student drug testing on high school students' reported substance use. In order to meet this priority, an applicant must:

(1) Agree to carry out its drug-testing program in a manner consistent with the randomized control trial evaluation design developed by ED and its national evaluator;

(2) Propose at least two schools with three or more grades 9 through 12 to participate in the national evaluation;

(3) Not have an existing drug-testing program in operation in any of the schools proposed by the applicant for participation in the national evaluation;

(4) Consent to the evaluator's random assignment of one-half of the schools proposed by the applicant for participation in the national evaluation to begin mandatory random student drug-testing implementation in year one of the grant (following the spring 2007 survey of students), and one-half to begin mandatory random student drug testing approximately one year later (after the spring 2008 survey of students has been completed);

(5) Agree that the schools proposed by the applicant for participation in the

national evaluation will limit their mandatory random student drug-testing program to students in grades 9 through 12 and, within that group of students, to one or both of the following:

(a) All students who participate in the school's athletic program; and

(b) All students who are engaged in competitive, extra-curricular, school-sponsored activities;

**Note:** Competitive, extra-curricular, school-sponsored activities mean any activity under the direct control of the school in which students compete against students in another school. If the State maintains a list of sanctioned, competitive, extra-curricular, school-sponsored activities, the applicant may consider those activities to be competitive, extra-curricular, school-sponsored activities for the purposes of this program.

(6) Not promote or begin the implementation of its mandatory random student drug-testing program in any participating schools until it receives notification from the national evaluator about the random assignment of its schools to participate in the first or second wave of implementation, except that an applicant may conduct outreach and generate community support for its drug-testing policy;

(7) Delay the promotion, announcement, and start of the mandatory random student drug-testing program in schools assigned to the second wave of implementation until the spring 2008 student survey has been completed;

(8) Implement its mandatory random student drug-testing program consistently across participating schools and according to uniform LEA policies and procedures during the evaluation period; and

(9) Provide contact information to the national evaluator in order for the evaluator to obtain (a) the prior written consent of either the parent or the student if the student is 18 years of age or older or is an emancipated minor under State law and (b) student assent for student participation in the surveys (if the student does not have the right to consent as stated in this paragraph) and make available space for the administration of the surveys in the schools.

Once a participating school has begun implementing its mandatory random student drug-testing program in accordance with the requirements of this priority, and following the completion of the spring 2008 student survey, the LEA, at its discretion, may announce, promote, implement, and use grant funds for testing—

(a) In schools assigned to the second wave of implementation;

(b) Students in any grade 6 through 12 who, along with their parent or guardian, volunteer to be tested; and

(c) Students in grades 6 through 8 who participate in the school's athletic programs or competitive, extra-curricular, school-sponsored activities.

#### Eligibility and Application

**Requirements:** We establish the following eligibility requirements for applications submitted under this program:

(1) LEAs are the only eligible applicants; and

(2) An applicant may not have been the recipient of, or a participant in, a grant in 2005 under ED's School-Based Grants for Student Drug-Testing competition (84.184D).

The following requirements also apply to all applications submitted under this program:

(1) An applicant may not submit more than one application for a grant under the competition.

(2) In its application, an applicant must:

(a) Clearly identify the student population that will be in the drug-testing pool including, to the extent feasible, the number of students in the pool by grade, and demonstrate a significant need for drug testing within the target population;

(b) Propose to test a minimum of 50 percent of the testing pool annually, and use at least a five-panel test (marijuana, amphetamine, cocaine, methamphetamine, and opiates);

(c) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(d) Provide a comprehensive plan for referring students who are identified through the testing program as users of illegal drugs or legal medications taken without a prescription to a student assistance program, counseling, or drug treatment if necessary;

(e) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications for which the student has a prescription;

(f) Provide written assurances of the following:

(i) That results of student drug tests will not be disclosed to law enforcement officials;

(ii) That results of student drug tests will be destroyed when the student graduates or otherwise leaves the LEA or private school involved;

(iii) That all positive drug tests will be subject to confirmation by a method

appropriate for the type of test administered and that positive results will be reviewed and verified by a certified medical review officer, a licensed physician who is also an expert in drug and alcohol testing and the Federal regulations governing such testing;

(iv) That legal counsel has reviewed the proposed drug-testing program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a mandatory random student drug-testing program;

(v) That all proposed activities will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA);

(vi) That the mandatory random student drug-testing program is ready to begin no later than 9 months after receipt of the grant award. We will consider a grantee's failure to achieve readiness to begin its program within 9 months of the grant award as failure to make substantial progress consistent with the requirements of the Education Department General Administrative Regulations (EDGAR) in § 75.253(a)(2)(i). This failure could result in loss of funding for year two of the project period or termination of the grant;

(vii) That mandatory random student drug testing will be conducted for the entire academic year in the schools selected to implement drug testing; and

(viii) That schools randomly assigned to begin drug testing in year one of the grant will not be required to consider students to be in the testing pool at any specific point in time unless they are participating in a covered activity (for example, all students participating at that time in athletics and/or all students participating at that time in competitive, extra-curricular, school-sponsored activities).

(3) Funds awarded under this program may not be used for any of the following purposes:

(a) Student drug tests administered under suspicion of drug use;

(b) Incentives for students to participate in the drug-testing program;

(c) Drug treatment;

(d) Drug prevention curricula or other prevention programs;

(e) Drug tests for students in non-competitive, extra-curricular activities who do not otherwise meet the eligibility criteria;

(f) Drug tests for students in co-curricular activities who do not otherwise meet the eligibility criteria; or

(g) Drug tests for student drivers who park on campus who do not otherwise meet the eligibility criteria.

#### Selection Criteria

The Secretary will select from the following criteria those factors that will be used to evaluate applications under this competition.

##### (1) *Need for Project.*

(a) The documented magnitude of student drug use in schools to be served by the mandatory random student drug-testing program, including the nature, type, and frequency, if known, of drug use by students in the target population; and,

(b) Other evidence, if any, of student drug use in schools to be served by the mandatory random student drug-testing program, which may include, but is not limited to, reports from parents, students, school staff, or law enforcement officials.

##### (2) *Significance.*

(a) The extent to which the proposed project includes a thorough, high-quality review of Federal and State laws and relevant Supreme Court decisions related to the proposed student drug-testing program.

(b) The extent to which the applicant demonstrates school and community support for the student drug-testing program and has obtained the input of groups representing a diversity of perspectives, for example, private schools, parents, counselors, teachers, and school board members, in the development of the mandatory random student drug-testing program; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the mandatory random student drug-testing program in the grantee's schools.

##### (3) *Quality of Project Design.*

(a) The extent to which the project will be based on up-to-date knowledge from research and effective practice, including the methodology for the random selection of students to be tested and procedures outlining the collection, screening, confirmation, and review of student drug tests by a certified medical review officer.

(b) The quality of the applicant's plan to develop and implement a mandatory random student drug-testing program that includes—

(i) Evidence of the applicant's readiness to begin mandatory random student drug testing in the first year of the grant; and

(ii) Detailed procedures outlining how the school will respond to a student's positive drug test, including parental notification and referral to student

assistance programs, drug education, or formal drug treatment, if necessary.

##### (4) *Management Plan.*

(a) The extent to which the applicant describes appropriate chain-of-custody procedures for test samples and demonstrates a commitment to using a federally or nationally accredited lab to process student drug tests.

(b) The quality of the applicant's plan to ensure confidentiality of drug test results, including limiting the number of school officials who will have access to student drug-testing records.

(5) *Adequacy of resources.* The adequacy of support from the applicant, including project staff, facilities, equipment, supplies, and other resources necessary to implement a high-quality mandatory random student drug-testing program.

#### Executive Order 12866

This notice of final priority, eligibility and application requirements, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority, eligibility and application requirements, and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, eligibility and application requirements, and selection criteria we have determined that the benefits of the final priority and application requirements justify the costs. We summarized the costs and benefits in the notice of proposed priority, eligibility and application requirements, and selection criteria.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

**Electronic Access to This Document:** You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/index.html>.

(Catalog of Federal Domestic Assistance Number 84.184D—Grants for School Based Student Drug-Testing Programs)

**Program Authority:** 20 U.S.C. 7131.

Dated: July 21, 2006.

**Deborah A. Price,**

*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. 06-6492 Filed 7-25-06; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Office of Safe and Drug-Free Schools; Overview Information; Grants for School-Based Student Drug-Testing Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.184D.

*Dates: Applications Available:* July 26, 2006.

*Deadline for Transmittal of Applications:* September 5, 2006.

*Deadline for Intergovernmental Review:* October 4, 2006.

**Eligible Applicants:** Local educational agencies (LEAs). Additional eligibility requirements are listed in this notice in Section I. Funding Opportunity Description.

**Estimated Available Funds:** \$1,680,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

**Estimated Range of Awards:** \$70,000–\$200,000.

**Estimated Average Size of Awards:** \$140,000.

**Estimated Number of Awards:** 12.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 48 months. Projects will be funded for 12 months with an option for three additional 12-month periods, contingent upon substantial progress by the grantee and the availability of funds.

#### Full Text of Announcement

##### I. Funding Opportunity Description

**Purpose of the Program:** The Grants for School-based Student Drug Testing Programs provides funds to LEAs to support development and implementation of drug-testing programs in schools.

**Priority:** This priority is from the notice of final priority, eligibility and application requirements, and selection criteria for this competition, published elsewhere in this issue of the **Federal Register**.

**Absolute Priority:** For FY 2006 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority. This priority is:

##### Participation in Evaluation of Mandatory Random Student Drug-Testing Programs

Under this priority, we will support local educational agencies (LEAs) that agree to participate in a national evaluation of the impact of mandatory random student drug testing on high school students' reported substance use. In order to meet this priority an applicant must:

(1) Agree to carry out its drug-testing program in a manner consistent with the randomized control trial evaluation design developed by ED and its national evaluator;

(2) Propose at least two schools with three or more grades 9 through 12 to participate in the national evaluation;

(3) Not have an existing drug-testing program in operation in any of the schools proposed by the applicant for participation in the national evaluation;

(4) Consent to the evaluator's random assignment of one-half of the schools proposed by the applicant for participation in the national evaluation to begin mandatory random student drug-testing implementation in year one of the grant (following the spring 2007 survey of students), and one-half to begin mandatory random student drug testing approximately one year later (after the spring 2008 survey of students has been completed);

(5) Agree that the schools proposed by the applicant for participation in the national evaluation will limit their mandatory random student drug-testing program to students in grades 9 through 12 and, within that group of students, to one or both of the following:

(a) All students who participate in the school's athletic program; and

(b) All students who are engaged in competitive, extra-curricular, school-sponsored activities;

**Note:** Competitive, extra-curricular, school-sponsored activities mean any activity under the direct control of the school in which students compete against students in another school. If the State maintains a list of sanctioned, competitive, extra-curricular, school-sponsored activities, the applicant may consider those activities to be competitive, extra-curricular, school-sponsored activities for the purposes of this program.

(6) Not promote or begin the implementation of its mandatory random student drug-testing program in any participating schools until it receives notification from the national evaluator about the random assignment of its schools to participate in the first or second wave of implementation, except that an applicant may conduct outreach and generate community support for its drug-testing policy;

(7) Delay the promotion, announcement, and start of the mandatory random student drug-testing program in schools assigned to the second wave of implementation until the spring 2008 student survey has been completed;

(8) Implement its mandatory random student drug-testing program consistently across participating schools and according to uniform LEA policies and procedures during the evaluation period; and

(9) Provide contact information to the national evaluator in order for the evaluator to obtain (a) the prior written consent of either the parent or the student if the student is 18 years of age or older or is an emancipated minor under State law and (b) student assent for student participation in the surveys (if the student does not have the right to consent as stated in this paragraph) and make available space for the administration of the surveys in the schools.

Once a participating school has begun implementing its mandatory random student drug-testing program in accordance with the requirements of this priority, and following the completion of the spring 2008 student survey, the LEA, at its discretion, may announce, promote, implement, and use grant funds for testing—