

# SDDFS NOTES

## on DRUG TESTING

VOLUME 8, ISSUE 3

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### Special Points of Interest:

- Drug Testing in Florida Schools
- Nuts & Bolts of a Local Demonstration Project
- Pros and Cons of Random Drug Testing
- Policy Makers

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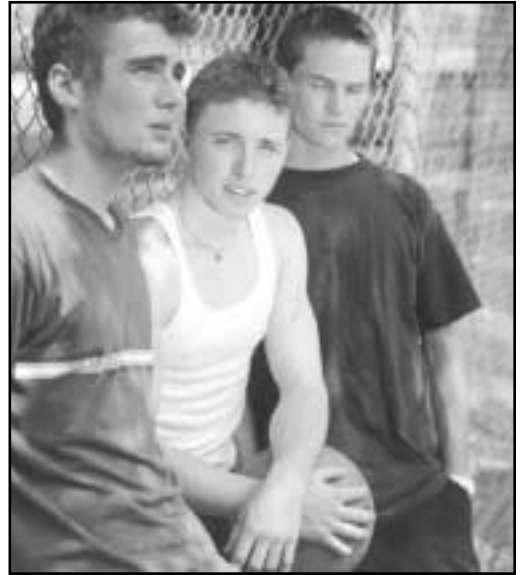
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## Laws and Policies on Student Drug Testing - on National, State, and Local Levels

No recent "hot-button" issue in the area of safe and disciplined schools has drawn more vocal support or opposition than random, mandatory student drug-testing [1]. The issue, however, is not whether this type of search may be done, for it may be. The real question is whether such testing is the best use of limited Safe and Drug-Free Schools (SDFS) funds and the best strategy a district can use to prevent illicit drug use among students.

The No Child Left Behind Act (NCLB) of 2001 authorizes the use of federal funds to test students for drugs, as outlined in Title IV, Section 4115 (b)(2)(E)(xiv). Title IV of the act states that local educational agencies may use funds they receive under NCLB to support drug and violence prevention activities that are "consistent with the fourth amendment to the Constitution of the United States, [such as] the testing of a student for illegal drug use or the inspecting of a student's locker for weapons or illegal drugs or drug paraphernalia, including at the request of or with the consent of a parent or legal guardian of the student, if the local educational agency elects to so test or inspect."

In addition to funds available to districts under Title IV of NCLB 2001, additional dollars are being made available by the U. S. Department of Education (USED) through competitive grants for drug testing. Congress approved \$10 million in the 2005 budget for 25 new awards, which would certainly



ly include demonstration projects in addition to those already in existence. ONDCP Director John Walters is quoted as saying that in addition to the millions received this year for student drug testing, President Bush has requested \$25 million for next year. Director Walters also encourages schools to seek additional financial support from their local communities for drug testing. [2]

Reasonable student searches were confirmed by the U. S. Supreme Court in a 1985 case, *New Jersey v T. L. O* in which two female students - T. L. O. and a friend - were caught smoking in the girls' restroom. T. L. O. denied the incident or even smoking cigarettes at all. The Assistant Principal (AP) searched her purse and found cigarettes. As the AP continued to search her purse, he found rolling papers, such as those used

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with marijuana.

Looking further, he found marijuana and a list of students who owed T. L. O.

money for drugs.

She was charged, based on the evidence found during the search. When challenged on Fourth Amendment grounds, the U. S. Supreme Court upheld the right of the school official to search her purse, even after he had found the cigarettes, based on his reasonable suspicion that a crime had been committed and that the safety of all the students in his charge was in jeopardy [3]. Three factors were weighed by the Court in the decision: the reasonableness of the search, the "nature of the privacy interest," and the "nature and immediacy of the governmental interest." [4]

The issue of testing student athletes was addressed again by the U. S. Supreme Court in a 1995 case, *Vernonia [Oregon] School District v Acton*. The respondent, Wayne Acton, and his parents had refused to consent to drug testing, a requirement to participate in *Vernonia's* athletic programs, under the district's Student Athletic Drug Policy. He and his parents had cited the Fourth and the Fourteenth Amendments of the United States Constitution as protection against such tests, but the Supreme Court found the practice to be constitutional and held that the district had not violated the protection from "unreasonable search and seizure". This case authorized school districts to test student athletes randomly for drugs. [5]

The U. S. Supreme Court further expanded a school's authority to test students for drugs in a 2002 case, *Board of Education of Independent School District No. 92 of Pottawatomie County [Oklahoma], et al. v. Earls, et al.* Lindsay Earls was a member of the show choir, the marching band, the Academic Team, and the National Honor Society. His fellow respondent, Daniel James, also sought to be a member of the Academic Team at Tecumseh High School in Tecumseh, Oklahoma. Both refused to



**Most recent legal challenges of random student drug testing have been made against state constitutions - as in Oregon, Indiana, New Jersey, and Washington - each holding that the constitution of the particular state granted a degree of privacy to citizens which was greater than the privacy granted by the U. S. Constitution.**

consent to drug testing on the same grounds as in the *Acton* case. The Supreme Court held for the school district stating that the practice of drug testing, as they had applied it, "effectively serves the School District's interest in protecting the safety and health of its students." [6]

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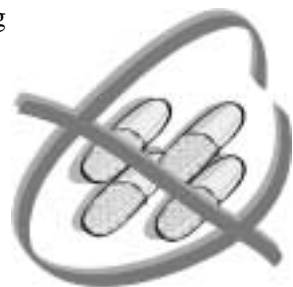
granted a degree of privacy to citizens which was greater than the privacy granted by the U. S.

Constitution. So far, in each of the challenges, drug testing programs have been deemed constitutional [7], even though the Pennsylvania Supreme Court "found that requiring students to undergo testing to participate in extracurricular activities was only appropriate if schools could prove that an actual drug crisis existed." [8]

In Florida, there is no state legislated mandate to test students for drugs. During the 2004 Florida Legislative Session, a bill (HB 0861) was introduced that would have required school districts in the state to randomly test 5 percent of their student athletes for use of performance enhancing drugs and would have conditioned a district's membership in the Florida High School Athletic Association upon a school performing such random drug tests on its student athletes. The proposed bill did not pass, dying in the Committee on K-20

Education in April of 2004. [9]

The failure of HB 0861 to pass, of course, does not preclude individual Florida school districts from adopting drug testing policies in accordance with Title IV of NCLB 2001.



## A Look at National Activities

The practice of student drug testing remains prominent on the radar screen nationally, due in part to the President's endorsement of the practice in the State of the Union Message and the series of summits held recently in four cities across the nation. The Office of National Drug Control Policy presented the four Regional Drug Testing Summits between April 19 and May 11, 2005, in Dallas, TX, Pittsburgh, PA, St. Louis, MO, and Portland, OR. At each summit, several presenters spoke on the topic of student drug testing. [10]

Nationwide data on the total number of schools that test students for drugs is not plentiful, but the "2003 University of Michigan [Monitoring the Future] Study showed that 5 percent of schools tested student athletes, and only 2 percent of schools tested participants in extracurricular activities. Some 18 percent of schools tested for any reason, including suspicion

of drug use." [11] These figures indicate that the proportion of schools that tested students for drugs remains relatively low and occurs mostly in high schools.

A study, conducted in 1997 by T. A. DeMitchell and Thomas Carroll, found that 79% of superintendents surveyed were not considering a drug testing program for their schools [12] at that time. A more recent study in 2004 by Rittenmeyer and O'Brien of Western Illinois University, the latest of three studies since 1995, found that drug testing programs grew in Illinois from about 1 percent of the 866 districts to 41 districts in 2000 and shrank to 22 districts or 2.5 percent in 2004. [13]

A Christian Science Monitor article reported that several states - including Mississippi and Oklahoma - have drug testing measures pending. Likewise, a Massachusetts proposal of the week of May 20, 2005, seeks to



give schools the option of performing student drug testing with parent consent. This option to test is an effort to address the drug problem in a state "with one of the nation's highest rates of teen substance abuse." If the plan becomes law, Massachusetts will be numbered in the list of states considering testing "as a tool to counter drugs in schools - a measure widely supported by the Bush administration." [14]

## Current Drug Testing in Florida Schools

According to a survey conducted in 2004 by the Office of Program Policy Analysis and Government Accountability (OPPAGA), there are eleven Florida school districts operating formal student drug testing programs. Certainly, more districts will test individual students if drug use is suspected, but Florida districts with specific programs in place include Columbia, Indian River, Marion, Monroe, Nassau, Okeechobee, Osceola, Polk, Santa Rosa, St. Johns, and Taylor.

Each of the eleven districts tests athletes, while Nassau and Taylor test both athletes and students participating in extracurricular activities.



Columbia tests three groups: athletes, students in extracurricular activities, and student drivers. All eleven use urine tests, while Columbia and St. Johns also test saliva. Both Columbia and Polk use a breathalyzer [15], and Polk County began testing athletes for steroids on a limited basis in January of 2005. [16]

The costs of drug testing can vary greatly, but the cost generally ranges from \$10 to \$40 dollars each, with the cost for steroid testing running much higher - between \$50 and \$200. The increase in sophistication of certain performance enhancing drugs brings with it an increase in the cost of tests.

## Demonstration Project in Polk County



*The Polk County School District was selected in October 2003 as the recipient of a \$236,080 grant from U. S. Department of Education (USED) to plan, implement, and evaluate a three year Mandatory Random Student Drug Testing Demonstration Project.* The USED Grant was one of only seven in the nation and the only one in Florida and will serve 4800 students in grades 9 through 12, according to the USED Safe and Drug-Free Schools office. [17]

Audrey Kelley-Fritz, Sr. Manager, Prevention, Health & Wellness, with the Polk County Schools, says that due to several factors, the project did not begin implementation until 2004, but the program is in full operation at this time and may go well into the fourth year, since it was started in the middle of the 2003-2004 school year. One major hurdle that was cleared was gaining Internal Review Board (IRB) approval of the project, which is required whenever any organization does research on human subjects. Such approval usually comes slowly, but the Polk County project was the first in the nation to receive IRB approval in connection with this particular USED grant program. [18]

"The Polk project has roots at the 2,000-pupil George Jenkins High

School [in Lakeland, FL], which recorded a 25 percent drop in the use of recreational drugs among students after it began testing in 1997." [19] The perception of a drug use problem in the county spurred district officials to seek grant funds to support drug testing. Survey data from the Florida Youth Substance Abuse Survey and the Polk County Prevention

Survey told officials that binge-drinking, marijuana, cocaine, and inhalant use were emerging as problem areas in the district. Believing that the issues needed to be addressed and encouraged by the recent successes at Jenkins, the county went forward with the application for the USED grant with the permission of their school board.

### The Nuts & Bolts of the Polk County Project [20]



If a school district seeks to implement a random drug testing program, practitioners, including Ms. Kelley-Fritz in Polk County, suggest the following sequence in planning the project: First, organize the SDFS Advisory Committee, making certain that representation is present from the entire community being served. Second, school personnel and the advisory committee should set about to determine the needs to be met by a program. Third, the group should develop a written policy that is fair and equitable to all concerned, one that is distributed widely throughout the community through all means possible. Care should be exercised as the group establishes procedures to pro-

tect student confidentiality, and, finally, the group should collaborate with all stakeholders to select vendors that can supply materials and conduct sample collection in a non-threatening, secure, and as private a manner as possible.

The district realized of course that community support is a critical part of the project. It is not only critical, but it is also a required element of the grant application. According to Audrey Kelley-Fritz, community support has been solid from the beginning of the program, partially because staff members in the program were carefully chosen. They have been well trained and are competent to perform the testing and security tasks necessary for adherence to the guidelines of the program. She indicated that the School Board and Superintendent have also been very supportive of the

project, that parents generally favored testing, and that students have cooperated with the program.

The following

Question and Answer section is based on Audrey Kelley-Fritz's slide presentation on the Polk County Schools Drug Testing Demonstration Project and a phone conversation and interview conducted on May 10, 2005 (Cited with permission):

**Who is tested?** The target population of the Polk County Demonstration Project includes all athletes in all public high schools and one private high school. The project attempts to test 40 percent of the athletic population each season, following a schedule of drug testing in the fall for fall sports; winter testing for fall and winter sports; and spring testing for fall, winter and

spring sports. As of May 10, 2005, Polk District Schools have tested over 3500 students.

**H**ow is it randomized? A computer program managed at the Mark Wilcox Center in Winter Haven makes random selections based on digits that are matched to athletic rosters supplied by the schools. This practice prevents students from being selected by name.

**W**ho collects the samples? The Drug Court of the 14th Judicial Circuit Court is contracted to collect samples at each participating school. Each school site visit is conducted usually by two collectors from Drug Court, as well as a grant representative. The school's athletic director and another staff member are present to confirm the identity of students and to facilitate the testing process.

**W**hat drugs are tested? Most testing involves urine samples, but a breathalyzer is used for alcohol. Drugs tested include alcohol, marijuana, cocaine, opiates, amphetamines, benzodiazepines, and propoxyphene. Steroid testing was added on a limited basis in January 2005, and 120 students have been tested.

**W**hat are the monetary costs? Each recreational drug panel costs the Polk County program \$18 per test. At \$18 per test at 3500 students tested, Polk is spending at least \$63,000 for this effort. If the sample tests positive, a confirmation test costs an additional \$50. If the results are then forwarded to the Medical Review Officer (MRO), a review of positive results is \$125. In addition, the Drug Court charges a fee of \$100 for each site visit. Steroid tests are \$105, which includes confirmation testing.

**H**ow are the urine samples analyzed? The Drug Court collects samples, provides security of the samples, and performs initial screening. If the screening is positive, the test is referred to an outside laboratory for confirmation using Gas Chromatography/Mass Spectrometry (GC/MS) analysis. If the GC/MS results are positive, results are forwarded to the MRO who calls the parents to review any medical or medication issues. If the results continue to prove positive, the Project Director is notified, and then the school is notified.



**W**hat happens if a student is positive? Once the MRO has reported the student as positive, the student is given the opportunity to participate in the Substance Abuse Assessment Program at the Mark Wilcox Center. This center is operated by the district's SDFS Department. The Center staff conducts a comprehensive substance abuse assessment for each referred student to determine the extent and nature of substance abuse. The assessment includes interviews, screenings, observations, consultations, and a formal meeting with the student and parents. All students test-

ing positive are assigned to the Substance Abuse Assessment Program for 10 days, during which the student is provided classwork from his or her school while completing a substance awareness curriculum. Students return to their regular schools after successful completion of the program. All athletes that complete the program are then allowed to return to sports as long as recommendations are followed. A prevention assistant follows up with each student at the school on a periodic basis. After testing positive, students are on "probation status" and are no longer a part of the random drug testing procedure, but are tested each time the Drug Court is on campus for at least one year. If a student tests positive a second time, he or she is removed from sports for the current season plus one full calendar year.

**W**hat happens if a student skips out or refuses? Students who refuse testing are banned from sports for that season plus one full calendar year. However, each student is given 24 hours to report to Drug Court for a screening. This time permits the parents to get involved and allows the student a chance to experience a change of heart regarding testing.

**W**hat happens if a student can't produce a sample? Students who can not produce a urine sample within the time that the Drug Court is on campus can report to Drug Court within 24 hours to produce another sample without penalty.

**W**ere there any implementation difficulties in the project? Polk County has experienced a few difficulties in the implementation of the program. Most are ones of time and calendar con-

## Proponents and Opponents of Random Drug Testing

Several national organizations weigh in on the issue of mandatory, random student drug testing, either in favor of or in opposition to the practice. The American Civil Liberties Union (ACLU), the Drug Policy Alliance, and others oppose the practice. The ACLU opposes suspicionless, random drug testing generally under the Fourth Amendment of the U. S. Constitution, although many current suits cite state constitutions, as mentioned earlier in this Note.

Marsha Rosenbaum, a reporter for the Fresno Bee, is quoted on the Drug Policy Alliance website as saying that the overall small decreases in drug use and abuse that were cited by President Bush in the State of the Union Message, as reported in the Monitoring the Future Survey 2004, could hardly be due to random drug testing in the 5 percent of our schools that practice it. She also states that "random drug testing alienates students," it is "expensive and inefficient," and it gives educators and parents a false sense of security, encouraging them to think that they are catching most drug users when they are only detecting the few who are involved in activities. [22]

Researcher George Yacoubian of the Pacific Institute for Research and Evaluation believes that when schools target only those students who are involved in extracurricular activities, the process misses most of the students who are most at risk for drug use. But rather than seeking to halt drug testing, he advocates randomly testing all students for drug use, citing the tendency of the judiciary little by little to allow more and more drug testing in schools. He says, "A random drug testing plan for all students has two major advantages. First, the use of urinalysis or an alternative testing method provides an objective measure of recent drug use

and would thus allow school officials to accurately identify the prevalence of illicit drug use. . . . Second, a drug-testing program that involves all students would accomplish the ultimate goal of reducing and preventing drug use more comprehensively than one that only involved a subset of the student body. Indeed, students who are at highest risk for illicit drug use are currently not part of the sample of students targeted for intervention." [23]



Other organizations, such as the National Student Assistance Association (NSAA), view the practice as just another tool in the prevention kit, strongly asserting that drug testing or any other single strategy cannot be a "silver bullet" answer to illicit drug use among students. The Board of Directors' Position Statement of the National Student Assistance Association (NSAA) on Drug Testing in Schools includes the statement that the NSAA "believes parents and educators must decide at the local level if random drug testing is an appropriate tool to address student drug use in their schools and neighborhoods. If schools choose to use random drug testing, we believe it is essential that a comprehensive student assistance program (SAP) be in

place. In its publication, "Drug Testing in Schools," the Office of National Drug Control Policy (ONDCP) recognizes student assistance programs as a positive referral option for students identified through random drug testing. Schools that have Student Assistance Programs (SAP) in place play a positive role in ensuring that students receive appropriate support, referral and follow-up." [24]

There is significant assertion among critics that student drug testing programs may drive away the very students who would benefit most from participation in extra-curricular activities. Such an assertion may be difficult for researchers to quantify, but it is reasonable to assume that occasional drug or alcohol using students, who would otherwise become involved in healthy pursuits, may avoid school activities in which drug testing is a requirement. If this contention were to prove true, a statistically proven, strong protective factor against drug use would be at least partially negated. For this reason, critics say that avoidance of valuable extra-curricular activities may actually increase risk factors, such as the lack of attachment to school and/or community. The fear is that there would be an increased risk of students dropping out of school, escalating illicit drug use, or moving on to more addictive drugs. According to Cynthia Kelly Conlon, "[t]hose who oppose random drug testing emphasize the violation of students' privacy and the possibility of losing students' trust." [25] She and other opponents feel that drug testing drives students away from opportunities for services that would benefit them.

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### Polk Project continued from page 5

straints for individual schools. Naturally, there is some variation of enthusiasm from school to school. Classroom time-on-task is an issue in some schools, since students must miss class to participate and since

large numbers to be tested consume class time. In an effort to minimize classroom interruptions, students are called out for testing in as small a subset as possible at any given time. [21]

# Motives Among Policy Makers and a Final Note

Certainly, both proponents and opponents of student drug testing have the best interest of the youth of Florida and the nation uppermost in their minds as they advocate their positions. Support and opposition among advocacy groups, educators, and parent groups run the entire gamut, from encouraging districts to do more testing all the way to strongly opposing any semblance of drug testing as an invasion of privacy and possible violation of at least two of the amendments of the U. S. Constitution, not to mention state constitutions as well.

There are state legislators, educators, and members of the public who hold that a student drug testing program should most certainly exist in our schools. These proponents seek to protect our children from the very real evil of drugs in our society and from peer pressure to conform to a child's erroneous perception that "everyone" participates in certain dangerous behaviors, frequently substituting drug use as a sort of "rite of passage." Proponents of drug testing seek to protect youth from the often overwhelming desire to belong to a peer group or from misguided efforts to achieve a dream of excelling



in sports, no matter what the price - to seize the immediate gratification of becoming a local sports hero or heroine, to win that scholarship that will make parents so proud, or to be recognized as the best at something that peers and adults admire. Those who support drug testing hold that children must be protected from their own misguided notions that can lead them to commit and compound errors that disable and kill them, for they are our society's most precious resource.

Conversely, there are members of those same communities who vehemently oppose such programs - their motivations just as honorable. They cite issues such as the exercise of external control over our children when one

of our primary duties to our children should be to help them develop an internal locus of control that will equip them to face the world in its complexity and to cope successfully with it. To those critics, such random, mandatory drug testing is more "Big Brother-ism" that illustrates our failure as adult professionals and parents to foster proper growth in our charges. Opponents of drug testing believe that, when, as professionals and parents, we rely on external controls to force our children to conform to values they should be developing internally, we display a fundamental lack of trust of our children and a willingness to place a stigma on them at a point in their lives when we should be most supportive.

Regardless of which side one takes, the effectiveness of drug testing as a strategy in the battle against drugs clearly depends on its use as one element of a district's comprehensive drug policy, not the least of which is a solid, proven effective prevention education program up and down the grade spectrum, one that is administered and implemented by caring and competent adults. On that fact, every expert seems to agree.

## RESOURCES

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[2] Miller, Sarah. (2005, May 20) Steps toward more drug testing in schools. Christian Science Monitor (Online). Available: <http://www.csmonitor.com/2005/0520/p01s04-ussc.html>. Information concerning application for USED student drug testing grants is found on the USED website at [www.ed.gov/programs/drugtesting/](http://www.ed.gov/programs/drugtesting/). (2005, June 10).

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- [9] FSBA Boarder-Line: Official Legislative Bulletin of the Florida School Boards Association. (2004, March 5). Volume 2004, Number 2. Available: <http://www.fsba.org/educlegis/bline/2004-02-house-bills.htm>. (2005, June 11).
- [10] Each presentation is available online at the ONDCP Website at <http://www.cmpinc.net/dts/>. The same topics were discussed at each Summit, but different speakers were used in some cases; therefore, multiple presentations are available. The reader is invited to visit this website for a wealth of materials and information.
- [11] Miller, Sarah. (2005, May 20). Steps toward more drug testing in schools. *Christian Science Monitor* (Online). Available: <http://www.csmonitor.com/2005/0520/p01s04-ussc.html>. (2005, June 10).
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- [17] OSDFS. (2004). A list of Awards of Demonstration Grants for Student Drug Testing 2003 to seven school districts may be found by searching on the Office of Safe and Drug Free Schools (OSDFS) website at <http://www.ed.gov/about/offices/list/osdfs/index.html?src=oc>. (2005, June 10).
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- [20] This section of the newsletter contains information based on the May 10, 2005, phone conversation and interview with Ms. Audrey Kelley-Fritz and includes material from her slide presentation on the Polk County drug testing project. (2005, June 14).
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- [22] Rosenbaum, Marsha. (2004, March 18). Save your time and money: random testing doesn't work. *The Fresno Bee*. Available: <http://www.drugpolicy.org/library/marsh031804.cfm>. (2005, June 12).
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The members of the SDDFS staff, as well as the staff of the Safe and Healthy Schools Office at the Department of Education, stand ready to provide support through training and technical assistance to schools and school districts. Please encourage educators to take advantage of our services. For additional information on these resources or to find out how to access these resources, please contact Patricia Elton at (850) 414-0236 (SunCom 994-0236) or by email at [sdfs\\_librarian@firn.edu](mailto:sdfs_librarian@firn.edu).

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The Department of Education, through the Bureau of Student Assistance, funds the Florida Institute of Education's (FIE's) Safe, Disciplined and Drug-Free Schools Project. FIE is an institute of the University of North Florida. The Safe, Disciplined and Drug-Free Schools Project offers technical assistance and support in the development and implementation of drug use and violence prevention strategies. For more information, contact the FIE/SDDFS Project.

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