

## **DRUG AND ALCOHOL TESTING PROGRAM REGULATION**

This administrative regulation supports the Drug and Alcohol Testing Program policy. It also establishes and explains the requirements of the school district's drug and alcohol testing program required for employees operating school vehicles. Note the Drug and Alcohol Testing Program Definitions contained in Board Policy 413.020.

A. Questions regarding the drug and alcohol testing program policy, its supporting administrative regulations or the drug and alcohol testing program may be directed to the school district contact person, the Superintendent of Schools or his/her designee.

B. Covered Drivers.

1. The following requirements apply for a driver to be covered by the drug and alcohol testing program:

- a. Drive a vehicle transporting sixteen or more persons, including the driver, OR drive a vehicle weighing over twenty-six thousand one pounds; and
- b. Require a commercial driver's license to hold the driver position.

2. Covered drivers include:

- a. Applicants seeking a position as a driver.
- b. Full time, regularly employed drivers;
- c. Casual, intermittent, occasional or substitute drivers;
- d. Leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to a school district or who operate a school vehicle at the direction of or with the consent of a school district.

3. Drivers are subject to the drug and alcohol testing program and its requirements throughout the year, including the times when school is not in session or when the driver is on leave.

C. Prohibited Driver Conduct.

1. Drivers shall not report to duty or remain on duty with a 0.04 alcohol concentration or greater.

2. Drivers shall not report for duty or remain on duty when using any drug except when a licensed medical practitioner has advised the driver that the drug does not adversely affect the driver's ability to safely operate a school vehicle.

3. Drivers shall not use alcohol at least four hours prior to, or during the performance of a safety-sensitive function.

4. Drivers shall not possess alcohol while on duty. This includes possessing prescriptions and over-the-counter medicines containing alcohol unless the packaging seal is unbroken.

5. Drivers required to take a post-accident alcohol test shall not use alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.

6. Drivers shall not refuse to submit to a drug or alcohol test. A refusal to test is considered a positive test resulting in suspension from duties pending termination of the driver.

7. Drivers shall not report for duty or remain on duty performing a safety-sensitive function if the driver has a positive drug test result.

D. Alcohol Testing Procedures.

1. Driver's breath or saliva is tested for alcohol.

2. The screening alcohol test is conducted with an evidentiary breath testing device or a saliva testing device.

a. The screening breath alcohol or saliva test determines whether the driver's alcohol concentration is less than 0.02.

(1) A screening alcohol test result of less than 0.02 alcohol concentration allows the driver to continue to perform a safety-sensitive function.

(2) An screening alcohol test result of 0.02 alcohol concentration or greater requires a confirmation test.

b. The confirmation alcohol test is conducted only by an evidentiary breath alcohol testing device to determine whether the driver can continue to perform a safety-sensitive function.

(1) A confirmation alcohol test result of less than 0.02 alcohol concentration allows the driver to continue to perform a safety-sensitive function.

(2) A confirmation alcohol test result of 0.02 alcohol concentration but less than 0.04 alcohol concentration requires the driver to cease performing a safety-sensitive function for twenty-four hours.

(3) A driver will be terminated for a confirmation alcohol test result of 0.04 alcohol concentration or greater.

3. Alcohol testing is conducted at collection sites which provide privacy to the driver and contain the necessary equipment, personnel and materials.

a. Alcohol testing is conducted at a designated collection site unless the situation requires another location.

b. In the event privacy cannot be assured, privacy will be provided to the extent practical.

4. Screening alcohol testing steps.

a. Once the driver is notified to submit to an alcohol test, the driver must complete the Alcohol/Drug Test Notification Form and proceed immediately to the collection site. Collection site personnel contact the Superintendent of Schools or his/her designee immediately when a driver does not arrive at the specified time. Failure to arrive at the collection site in a timely manner is considered a refusal to test.

b. Upon arrival, the driver must provide a photo identification. Repeated failure of the driver to produce a photo identification is considered insubordination as well as a refusal to test.

c. The testing procedure is explained to the driver by the collection site person.

d. The breath alcohol technician (BAT) or saliva test technician (STT) and the driver complete and sign the appropriate sections of the alcohol testing form.

e. Evidentiary breath alcohol testing device procedures.

(1) The driver forcefully blows into the mouthpiece for at least six seconds or until an adequate amount of breath has been obtained.

(2) The screening alcohol test is stopped when the driver fails twice to provide an adequate amount of breath. In that case:

(a) A refusal of the driver to try a second time to provide adequate breath is considered a refusal to test.

(b) A physician analyzes the driver's inability to provide adequate breath.

(c) Failure to provide adequate breath is considered a refusal to test unless the physician determines a medical condition caused the failure to

provide adequate breath.

(3) The results of the screening alcohol test are shared with the driver.

f. The driver and breath alcohol technician or saliva test technician must sign the alcohol testing form following completion of the alcohol test. Failure to sign the form after the alcohol test is not considered a refusal to test. However, in the remarks section of the form, the BAT or STT notes the driver's refusal to sign.

g. Screening alcohol test results.

(1) An alcohol test result of less than 0.02 alcohol concentration is reported to the school district in a confidential manner and the driver may continue to perform a safety-sensitive function.

(2) An alcohol test result of 0.02 alcohol concentration or more requires a confirmation alcohol test between fifteen and thirty minutes of the screening test.

(3) The BAT or STT provides the Superintendent of Schools or his/her designee with a copy of the breath alcohol testing form if written communication was not used to report the test results.

h. Potentially incomplete or invalid breath alcohol tests are repeated with corrected procedures.

5. Confirmation alcohol testing steps.

a. The driver is instructed to not eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during the fifteen-minute waiting period to avoid accumulation of mouth alcohol leading to an artificially high reading.

b. The confirmation alcohol test is done between fifteen and twenty minutes of the screening alcohol test whether or not the driver followed the requirements.

c. If a different collection site is used, the driver must be under the observation of the collection site person or school district person while in transit to the confirmation alcohol testing site or while waiting for the confirmation alcohol test.

d. If a different collection site person is used for the confirmation alcohol test, the driver must again provide photo identification.

e. The testing procedure is explained to the driver by a BAT.

f. The BAT and the driver complete and sign the appropriate sections of the alcohol testing form.

(1) Refusal of the driver to sign the form prior to the confirmation alcohol test is considered a refusal to test.

(2) The school district is notified immediately of the refusal to sign.

g. The driver forcefully blows into the evidentiary breath testing device mouthpiece for at least six seconds or until an adequate amount of breath has been obtained.

h. The confirmation alcohol test results, which are the final and official test results, are shared with the driver.

i. The driver and BAT must sign the alcohol testing form following completion of the alcohol test. Failure to sign the form after the alcohol test is not considered a refusal to test. However, in the remarks section of the form, the BAT notes the driver's refusal to sign.

j. The BAT informs the Superintendent of Schools or his/her designee of the results of the test in a confidential manner.

(1) An alcohol test result of less than 0.02 alcohol concentration is reported to the school district in a confidential manner and the driver may continue to perform a safety-sensitive function.

(2) The breath alcohol technician notifies the Superintendent of Schools or his/her designee immediately of confirmation alcohol test results of 0.02 alcohol concentration or more.

(3) The collection site person provides the Superintendent of



Schools or his/her designee with a copy of the breath alcohol testing form if written communication was not used to report the test results.

k. Potentially incomplete or invalid breath alcohol tests are repeated with corrected procedures.

l. The breath alcohol test is stopped when the driver fails twice to provide an adequate amount of breath. In that case:

(1) A physician analyzes the driver's inability to provide adequate breath.

(2) Failure to provide adequate breath is considered a refusal to test unless the physician determines a medical condition caused the failure to provide adequate breath.

(3) A refusal of the driver to try a second time to provide adequate breath is considered a refusal to test.

#### E. Drug Testing Procedures.

1. Driver's urine is tested for marijuana, cocaine, opiates, amphetamines and phencyclidine.

2. A split specimen urine drug test, often called "split sample test," is used to conduct the drug test.

a. A negative drug test result allows the driver to continue to perform a safety-sensitive function.

b. A positive drug test result on the primary sample requires the driver to be removed from performing a safety-sensitive function.

c. A positive drug test result on the primary sample allows the driver an opportunity to request the split sample be tested by another certified laboratory for the specific drug found in the primary sample. A negative drug test result on the split sample results in a negative drug test result.

d. The driver will be terminated for a positive drug test result.

3. Drivers taking medication at a licensed medical practitioner's direction may perform a safety-sensitive function if the licensed medical practitioner determines there is not an adverse affect on performing a safety-sensitive function and the school district is informed in writing of the medication and licensed medical practitioner's opinion.

4. Drug testing is conducted at collection sites which provide privacy to the driver and where the necessary equipment, personnel and materials are located.

a. Drug testing is conducted at a designated collection site unless the situation requires another location. Public restrooms can be used as collection sites in exceptional circumstances.

b. In the event privacy cannot be assured, privacy is provided to the extent practical. However, direct observation is allowed if:

(1) Reasons exist to believe the driver may alter or substitute the specimen.

(2) The driver presents a specimen with a temperature outside the allowed range and does not provide an oral body temperature or the oral body temperature varies from the specimen provided.

(3) The last specimen provided by the driver was determined by the laboratory to not meet specific gravity and urine creatinine concentration criteria.

(4) The collection site person observes conduct of the driver to substitute or adulterate the specimen.

(5) The driver has previously been determined to have used a drug without medical authorization and the particular test is for follow-up testing upon or after return to duty.

c. Direct observation is approved by the supervisor of the collection site person or the designated school district representative. Non-medical personnel performing direct observation must be of the same gender as the driver.



5. Drug testing steps.

- a. The school district contact person makes arrangements with the collection site for the test.
- b. Once the driver is notified to submit to a drug test, the driver must complete the Alcohol/Drug Test notification Form and proceed immediately to the collection site. The collection site person contacts the Superintendent of Schools or his/her designee immediately when a driver does not arrive at the specified time. Failure to arrive at the collection site in a timely manner is considered a refusal to test.
- c. Upon arrival, the driver must provide a photo identification. Repeated failure of the driver to produce a photo identification is considered insubordination as well as a refusal to test. The driver may require the collection site person to provide proof of identification.
- d. The driver may keep his or her wallet but must remove any unnecessary outer garments, purses, briefcases and similar items at the request of the collection site person.
- e. Immediately prior to providing a urine specimen, the driver must wash his or her hands.
- f. The driver must then provide forty-five milliliters of urine and deliver it immediately to the collection site person.
  - (1) Drivers who cannot provide an adequate amount of urine receive instructions for drinking water and trying again.
  - (2) The drug test is stopped when the driver fails twice to provide an adequate amount of urine.
  - (3) Failure to provide adequate urine is considered a refusal to test unless the physician determines a medical condition caused the failure to provide adequate urine.
- g. The specimen is kept in view of the driver and the collection site person.
- h. Upon receipt of the specimen, the collection site person immediately, and in no event later than four minutes from the time of urination, measures the temperature of the specimen.
- i. The driver may volunteer to have his or her oral temperature taken to provide evidence against alteration or substitution if there is some question about the temperature of the specimen.
- j. The collection site person inspects the specimen for color and other signs of contaminants and notes any unusual findings in the remarks section of the chain of custody form.
- k. Another specimen is required as soon as possible under direct observation if adulteration or substitution is suspected by the collection site person. Specimens suspected of adulteration or substitution are also sent to laboratory for testing.
- l. The specimen is divided into the primary and the split specimen, sealed and labeled. The label is initialed by the driver.
- m. The driver is required to read and sign the statement on the chain of custody form certifying the specimens are the driver's.
- n. The collection site person is required to note on the chain of custody form any unusual behavior or appearance of the driver and any failure to cooperate.
- o. The collection site person completes the chain of custody form and the driver signs the form indicating the collection is complete. Failure of the driver to sign the form after the drug test is not considered a refusal to test. However, the collection site person notifies the school district contact person and notes the driver's failure to sign on the form.
- p. The specimens are packaged for shipping to the laboratory and are shipped immediately or placed in secure storage until they can be shipped.

6. Laboratory.

- a. The laboratory used by the school district's drug and alcohol testing

program is certified by the U.S. Department of Health and Human Services (DHHS). Certified laboratories meet the testing procedures, personnel and record keeping requirements of the law.

b. Upon arrival of the specimen at the laboratory, the split specimen is stored and the primary specimen is tested.

(1) A positive drug test result on the initial test of the primary specimen requires a confirmation drug test of the primary specimen.

(2) The split specimen is discarded if the primary specimen has a negative drug test result.

7. Medical Review Officer (MRO) reviews drug test results.

a. The MRO may release drug testing records of a driver to unauthorized individuals only with the written consent of the driver.

b. The MRO keeps a record of negative drug test results and reports negative drug test results to the school district, usually within two working days.

c. The primary role of the MRO is to review and interpret positive drug test results to determine whether a legitimate explanation exists for the positive drug test result.

(1) After reviewing the chain of custody form and the laboratory drug test results, the MRO contacts the driver to discuss the positive drug test result prior to notifying the school district and to ask whether the driver requests a drug test of the split sample. The driver's request for a drug test of the split sample must be made within seventy-two hours of talking with the MRO.

(2) Upon request of the driver, the split specimen is sent to a second certified laboratory to test only for the drug found in the primary specimen.

(3) The MRO contacts the Superintendent of Schools or his/her designee for assistance if the driver cannot be reached.

(4) The Superintendent of Schools or his/her designee must confidentially inform the driver to contact the MRO.

(5) Upon contacting the driver, the Superintendent of Schools or his/her designee must inform the MRO that the driver was contacted.

(6) Drivers who cannot be contacted are placed on temporary medically unqualified status or medical leave.

d. The MRO may verify a positive drug test without talking to the driver if:

(1) The driver declines the opportunity to discuss the positive drug test.

(2) The driver fails to contact the MRO within five days after the Superintendent of Schools or his/her designee.

(3) MRO verification of positive drug test results under these circumstances can be challenged by the driver if the driver presents the MRO with information documenting a serious illness, injury or other circumstances unavoidably preventing the driver from timely contacting the MRO. The MRO, based on this additional information, may find a legitimate explanation for the positive drug test result and declare the drug test negative.

e. The driver is notified of the drugs found in a positive drug test result by the MRO, the Superintendent of Schools or his/her designee or by certified mail to the driver's last known address.

f. The school district receives a written report of the negative and positive drug test results from the MRO.

#### F. Pre-employment Testing.

1. Drivers shall submit to a drug test if a job offer is made. The job offer is contingent upon:

a. A negative drug test result; and

b. A signed written statement authorizing former employers to release all information on the driver related to drugs and alcohol.

2. Prior to allowing a driver to perform a safety-sensitive function, and no later than fourteen days after performing a safety-sensitive function, information must

be obtained or a good faith effort must have been made to obtain the information about the driver's drug and alcohol history. during the preceding two years from the date of the application:

a. The following information must be obtained about the driver for the two year period preceding the date of the application:

1. An alcohol test result of 0.04 breath alcohol concentration or greater;

2. Positive drug test results; and

3. Refusals to be tested.

b. The information must be obtained, or a good faith effort made to obtain, the information if the driver is currently performing and will continue to performed a safety-sensitive function.

c. The information must be obtained or a good faith effort made to obtain the information if the driver performed a safety- sensitive function and is no longer employed by the school district.

d. The information does not need to be obtained if the driver did not performs no a safety-sensitive function and is no longer employed by the school district.

e. The school district may obtain information held by from the prior employer for the two-year period preceding the date of application even if the information came from other employers.

f. A good faith effort requires the school district to request and hopefully receive, the information prior the driver driving and no later than (14) fourteen days after first driving by taking the following steps:

(1) Obtain the driver's written consent immediately after a conditional employment offer is made.

(2) Send a completed consent for Release of Information signed by the driver to prior employers via certified mail.

(3) Contact the prior employers' drug and alcohol testing program managers about the status of the request if no response is received within reasonable period.

(4) Take appropriate action (i.e., follow-up with a SAP, terminate employment) if the information received, whether prior to or after the fourteen day period, requires.

(5) Document and maintain the documentation of the steps taken to obtain the information when it is not received or the prior employer refuses to submit the information.

#### G. Random Testing.

1. Annually, ten percent of the average number of drivers are selected for random alcohol tests and fifty percent of the average number of drivers are selected for random drug tests.

2. The drivers' identification numbers are selected by a scientific method giving each driver an equal chance to be selected.

3. Random tests are unannounced and spread throughout the year.

4. Drivers selected for random alcohol testing are notified just before, during or just after performing a safety-sensitive function. The school district documents why some, if any, drivers were selected but not notified.

5. Drivers selected for random drug testing are notified at any time. The school district must document why some, if any, drivers were selected but not notified.

6. Once the driver is notified of being selected for a random test, the driver must proceed immediately to the collection site. However, drivers performing a



safety-sensitive function must safely stop and proceed to the collection site as soon as possible.

#### H. Reasonable Suspicion Testing.

1. A driver may be required to submit to a reasonable suspicion drug test at any time.

2. A driver may be required to submit to a reasonable suspicion alcohol test just before, during or just after the driver performs a safety-sensitive function or just before, during or just after the time the driver is required to be in compliance with the drug and alcohol testing program policy, its supporting administrative regulations or the law.

a. A reasonable suspicion alcohol test is performed within two hours and no later than eight hours of determining reasonable suspicion.

b. If the alcohol test is not given within two hours, the reasons for the delay must be documented.

c. If the alcohol test is not given within eight hours, attempts to test are stopped and the reason for not testing must be documented.

3. A reasonable suspicion test request is made by an employee who received training to determine reasonable suspicion. The reasons for the reasonable suspicion must be documented within twenty-four hours or prior to the release of the test results. If more than one employee trained to determine reasonable suspicion observes the driver, that employee must also document their reasons.

#### I. Post-accident Testing.

1. Drivers are subject to both post-accident drug and alcohol testing as soon as possible after an accident in which:

a. A fatality, other than the driver, occurred.

b. The driver was cited and bodily injury occurred to a person who, as a result of the injury, required immediate medical treatment away from the scene of the accident; or

c. The driver was cited and one or more motor vehicles incurred disabling damage as a result of the accident, requiring a motor vehicle to be transported away from the accident scene by a tow truck or other motor vehicle.

(1) "Disabling damage" is damage which precludes the departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It includes damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(2) "Disabling damage" excludes damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(a) Tire disablement without other damage even if no spare tire is available.

(b) Headlight or taillight damage.

(c) Damage to turn signals, horn, or windshield wipers which make them inoperative.

2. Drivers must remain readily available for post-accident testing.

a. Drivers who leave the scene or who do not remain readily available are deemed to have refused to test.

b. Necessary medical treatment cannot and should not be denied to a driver waiting to complete post-accident drug and alcohol tests.

3. Alcohol testing requirements.

a. The alcohol test is administered within two hours and no later than eight hours of the accident.

b. The reasons for administering the test later than two hours after the



accident must be documented.

c. The reasons for not administering the test within eight hours of the accident must be documented.

d. Drivers are prohibited from consuming alcohol for eight hours after the accident or until the alcohol test is completed.

4. Drug testing requirements.

a. The drug test is administered as soon as possible and no later than 32 hours after the accident.

b. The reasons for not administering the test must be documented.

5. Results of drug or alcohol testing conducted by law enforcement officers or other officials on the scene with independent authority to conduct such tests are presumed valid if the testing conforms with the law. The school district must receive a copy of the results to use them.

J. Drug and alcohol testing records.

1. Drug and alcohol testing records are stored in locked files at limited access locations separate and apart from the driver's general personnel records.

2. The records are released only with the written consent of the driver. Only those records specifically authorized for release may be released. However:

a. Records may be released to appropriate government agencies without a driver's written consent.

b. Records may be released to appropriate school district employees without a driver's written consent.

c. School districts may, without a driver's written consent, make a driver's drug and alcohol test records available to a decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the driver and arising from the result of an alcohol or drug test under the drug and alcohol testing program policy, its supporting regulations or the law or from the school district's determination that the driver violated the drug and alcohol testing program, its supporting regulations, or the law.

3. With a written request, drivers may access and copy their drug and alcohol test records in accordance with the board policy related to employee records. A driver is not denied access to these records for failure to pay fees associated with other records.

4. The following records of the school district's drug and alcohol testing programs are maintained for the time period indicated.

a. One year:

(1) Records of negative and canceled drug test results and alcohol test results of less than 0.02 alcohol concentration.

(2) Records related to a driver's test results.

(3) Records related to other violations of the law.

b. Two years:

(1) Records related to the alcohol and drug collection process, except calibration of evidentiary breath testing devices, and training.

c. Five years:

(1) Alcohol test results of 0.02 alcohol concentration and greater;

(2) Verified positive drug test results;

(3) Documentation of refusals to take required alcohol and/or drug tests;

(4) Evidentiary breath testing device calibration documentation;

(5) Driver substance abuse evaluations and referrals; and

(6) Annual calendar year summary.

Records related to the administration of the drug and alcohol testing program.

- d. Forever or as designated below.
  - (1) Reasonable suspicion training certificates must be retained two years after the employee is no longer authorized to make a reasonable suspicion determination.
  - (2) Records related to the education and training of drivers must be retained two years after the employee ceases to perform a safety sensitive function.

DATE OF ADOPTION: December 13, 1995

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