

**DRUG AND ALCOHOL TESTING OF SCHOOL BUS DRIVERS  
ADMINISTRATIVE PROCEDURE**

The School Committee is committed to the establishment of an alcohol and controlled substance testing program that meets all applicable requirements of pertinent state and federal laws and regulations. The purpose of the testing program shall be to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers performing safety-sensitive functions.

The following administrative procedure represents a summary of the main provisions found in federal regulations promulgated to effectuate drug and alcohol testing of bus drivers. The following procedure in no way attempts to modify said regulations, which should always be referred to when questions as to implementation of this policy/procedure arise.

**I. APPLICABILITY**

This administrative procedure applies to all School Committee employees who operate a commercial motor vehicle, and/or perform safety sensitive functions pursuant to their job duties (referred to throughout this procedure as “drivers” or “employees”).

**II. IMPLEMENTATION**

The Superintendent shall be responsible for implementing a drug and alcohol testing program which complies with procedures set forth in Title 49 Parts 40, 382, 390 and 395 of the Code of Federal Regulations. Such testing program shall include pre-employment/pre-duty drug testing, post-accident testing, random testing, reasonable suspicion testing, return-to-duty and follow-up testing. This school unit shall provide parties subject to testing with written notice of materials and information available to them as required by Part 382. Any employee who has questions about this procedure or any other materials related to drug and alcohol testing required under this procedure should contact the Superintendent.

**III. CONTROLLED SUBSTANCES**

Controlled substances in this administrative procedure refer to those covered by the Omnibus Transportation Employee Testing Act of 1991, including marijuana, cocaine, opioids (including codeine, morphine, heroin, hydrocodone, hydromorphone, oxycodone, and oxymorphone), amphetamines (including methamphetamine, MDMA, and MDA), and phencyclidine (PCP). Drivers shall inform their supervisors if at any time they are using a controlled substance that their physician has prescribed for therapeutic purposes. Such substance may be used in conjunction with duty only if the physician has advised the driver that it will not adversely affect his/her ability to safely operate a commercial motor vehicle.

#### IV. SAFETY-SENSITIVE FUNCTION

Safety-sensitive function(s) include all time from the time that an employee begins work or is required to be in readiness to work until the time that the employee is relieved from work and all responsibility for performing work. Safety-sensitive functions include, but are not limited to, all time spent at the driving controls of a commercial motor vehicle in operation; all time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, and all time repairing, obtaining assistance, or remaining in attendance upon a disable vehicle.

#### V. PROHIBITIONS

All drivers subject to this policy shall be prohibited from:

- A. Using any alcohol while on duty and four hours prior to going on duty;
- B. Possessing alcohol while on duty;
- C. Reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater;
- D. Using any alcohol for eight hours following an accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first;
- E. Refusing to submit to a required alcohol or controlled substance test(s);
- F. Reporting for duty or remaining on duty when using any controlled substance, except when use is pursuant to the instructions of a physician who advised the driver that the substance does not adversely affect the driver's ability to safely operate the vehicle; and
- G. Reporting for duty, remaining on duty, or performing a safety-sensitive function, if the driver tests positive for a controlled substance.

#### VI. REQUIRED TESTING

- A. **Pre-Employment Testing.** Prior to the first time a driver performs a safety-sensitive function for the school unit, the driver shall undergo testing for controlled substances. However, no driver shall be subjected to pre-employment controlled substance testing prior to having been offered a position. Employment is conditioned upon a verified negative controlled substance test result.
- B. **Post-Accident Testing.** As soon as practicable following an accident, each surviving driver will be subject to alcohol and controlled substance testing as follows:
  - 1. Any driver performing safety-sensitive functions with respect to the vehicle if the accident involved loss of human life;

2. Any driver who receives a citation under State or local law for a moving violation arising from the accident, if the accident involved:
  - a. Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - b. One or more motor vehicles incurring disabling damage as a result of the accident, require a motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

3. In addition, the following provisions will also apply.

- a. **Alcohol.** If a test required under this section is not administered within two hours following the accident, the school unit shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within eight hours following the accident, the school unit shall cease attempts to administer the test and shall prepare and maintain the same record. Records shall be submitted to the Federal Motor Carrier Safety Administration (FMCSA) upon request of the Associate Administrator.
- b. **Controlled Substances.** If a test required by this section is not administered within 32 hours following the accident, the school unit shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

C. **Random Testing.** All drivers subject to this policy/procedure will be subject to random and unannounced alcohol and controlled substance testing throughout the year. The minimum annual percentage rate for testing of drivers will comply with the annual percentage rates established by the FMCSA.

D. **Reasonable Suspicion Testing.** All drivers subject to this policy/procedure shall submit to alcohol and controlled substance testing when the employer has reasonable suspicion to believe that the driver has violated the prohibitions found in Part V (Prohibitions) of this procedure, with the exception of Part V. B. regarding alcohol possession (though a supervisor observing an employee in possession of alcohol could contribute to the supervisor's reasonable suspicion that testing is necessary). The school unit shall base its determination that reasonable suspicion exists requiring the driver to undergo such testing on observations concerning appearance, behavior, speech or body odors of the driver. When controlled substances are at issue, observations may include indications of the chronic and withdrawal effects of controlled substances.

In addition, the following provisions also apply.

1. **Alcohol.** Alcohol testing will be performed only if the aforementioned observations are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this policy/procedure. If a test required under this section is not administered within two hours following the reasonable suspicion determination, the school unit shall prepare and maintain on file

a record stating the reasons the test was not promptly administered. If a test required under this section is not administered within eight hours following a determination that reasonable suspicion exists, the school unit shall cease attempts to administer an alcohol test and shall state in the record reasons for not administering the test. The school unit shall submit to the FMCSA records of tests required by this section that were not completed within eight hours according to the mandates of 49 CFR §382.307 (3).

2. **Controlled Substances.** The school unit shall, within 24 hours or before the results of the controlled substances test are released, whichever is earlier, create a written record of the observations leading to a controlled substances test which shall be signed by the supervisor or school unit official making said observations.
- E. **Return-to-Duty Testing.** Prior to returning to duty requiring the performance of safety-sensitive functions when a driver has engaged in conduct prohibited under this policy/procedure, the driver shall undergo a return-to-duty alcohol and/or controlled substances test(s) as appropriate.

Drivers found to have engaged in prohibited conduct under the alcohol provisions of this policy/procedure will not be permitted to return to duty unless the subsequent alcohol test reveals a result less than or consistent with federal and state standards. In cases involving controlled substances, a **verified negative** result is necessary before a driver may return to duty.

- F. **Follow-up Testing.** In the event that a driver has been found to have been in violation of the prohibitions herein contained and is identified as requiring assistance in resolving problems associated with alcohol and/or controlled substances, the school unit shall require the driver to submit to at least six unannounced follow-up alcohol and/or controlled substances tests during the first 12 months after returning to duty. Follow-up tests will be unannounced and may continue for up to 60 months after returning to duty. Follow-up alcohol testing shall be conducted only when the driver is performing, just before, or just after ceasing to perform safety-sensitive functions.

## VII. REFUSAL TO SUBMIT TO TESTING

All drivers who are required by federal regulations to submit to drug/alcohol testing must do so immediately upon being directed to submit to the test(s). A driver's refusal to submit to testing will subject the driver to immediate removal from the performance of safety-sensitive functions. In addition, failure to comply with Federal regulations or this procedure is grounds for disciplinary action up to and including dismissal. Any of the following actions on the part of a driver constitutes a refusal to submit to a test:

- A. Failure to appear for any test (except a pre-employment test) within a reasonable time;
- B. Failure to remain at the testing site until the process is complete;

- C. In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of provision of the specimen, or to follow the observer's instructions;
- D. Failure to provide adequate specimens/samples of substance(s) undergoing testing, including but not limited to breath and urine, without a valid medical reason;
- E. Failure to take an additional drug test that the school unit or collector has instructed the employee to take;
- F. Failure to undergo a medical examination of evaluation directed by the medical review officer as part of the verification process;
- G. Failure to cooperate with any part of testing (such as refusing to empty pockets when directed by collector, behaving in a confrontational way that disrupts collection, and failing to wash hands after being directed to do so by the collector);
- H. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
- I. Admitting to the collector or medical review office that the employee has adulterated or substituted the specimen; and
- J. Refusal by an employee to complete and sign testing forms.

#### VIII. TRAINING FOR SUPERVISORS

This school unit will assign persons who will be designated to determine whether reasonable suspicion exists to require a driver to undergo testing under Part 382, with at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances. Training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

#### IX. ENFORCEMENT

This school unit, in its independent authority as an employer, shall subject any driver who violates this policy/administrative procedure or Federal regulations to potential disciplinary action up to and including dismissal. Any driver who violates this policy/administrative procedure, including by refusing to submit to a post-accident, random, reasonable suspicion, return-to-duty or follow-up test(s) shall not perform or continue to perform safety-sensitive functions, and may not return to the performance of safety-sensitive functions until the driver has completed the return-to-duty process required under this policy/administrative procedure and FMCSA regulations.

Furthermore, no driver tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions including driving a commercial motor vehicle until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered.

#### X. RECORDS

Employee drug and alcohol tests and results shall be maintained under strict confidentiality in a secure location with controlled access and released only in accordance with law. A driver, upon written request, shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug tests. Records shall be made available to subsequent employers or other identified persons only when expressly requested in writing by the driver.

## XI. NOTIFICATIONS

Each driver shall receive this procedure, and educational materials prior to the school unit's commencement of alcohol and controlled substances testing. Such material will explain the requirements of the Code of Federal Regulations, Title 49 Part 382, and contain a copy of the School Committee's policy and administrative procedures for meeting these requirements. The school unit shall also include in the package of informational material submitted to each driver, a statement certifying that he/she has received the informational material. The school unit shall maintain the original signed copy of the statement on file.

In addition to the aforementioned items, the school unit shall also make available to drivers and representatives of employee organizations information which shall identify:

- A. The procedures that will be used to test for the presence of alcohol and controlled substances; protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;
- B. Information concerning the effects of alcohol and controlled substances on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substance(s) problem (the driver's or co-worker's); and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and

## XIII. REFERRAL, EVALUATION, AND TREATMENT

**A. Referral.** A driver who has engaged in conduct prohibited by this policy/procedure shall be advised by the school unit of resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances. The information the bus driver receives will include: names, addresses, and telephone numbers of substance abuse professionals, counseling and treatment programs, in addition to information relating to his/her responsibility with regard to payment of such services.

**B. Evaluation/Treatment.** A driver who engages in such prohibited conduct shall be evaluated by a substance abuse professional who shall determine what assistance or treatment the employee needs in resolving controlled substance(s) use.

## XIV. RETURN TO DUTY

If a school unit has not discharged a driver due to his/her engagement in prohibited conduct under this policy/procedure, the bus driver must, prior to returning to safety-sensitive duties:

- A. Undergo return-to-duty testing and obtain an alcohol concentration level of less than 0.02 and/or a verified negative test for controlled substances;
- B. Have been evaluated by a substance abuse professional; and
- C. Have followed prescribed and/or recommended treatment.

#### XV. FMCSA CLEARINGHOUSE

The FMCSA operates a Drug and Alcohol Clearinghouse which requires that all employers of CDL holders conduct annual queries to determine whether CDL holders they employ have ever had a drug or alcohol program violation and/or whether CDL holders are prohibited from performing safety-sensitive functions.

For employees who are subject to FMCSA regulations, the following personal information collected and maintained under this policy shall be reported to the Clearinghouse:

- (1) A verified, positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of .04 or higher;
- (3) A refusal to submit to any test required by federal regulations;
- (4) An employer's report of actual knowledge of any of the following offenses:
  - a. On duty alcohol use;
  - b. Pre-duty alcohol use within four hours of performing safety sensitive functions;
  - c. Alcohol use within eight hours following an accident, or before the employee undergoes a post-accident alcohol test, whichever occurs first; and
  - d. Controlled substance use.
- (5) A Substance Abuse Professional's report of the successful completion of the return-to-duty process;
- (6) A negative return-to-duty test; and
- (7) An employer's report of completion of follow-up testing.

Prior to conducting a query of the Clearinghouse, the school unit must obtain consent from the relevant employee. An employee's failure to provide such consent shall result in the removal of that employee from all safety-sensitive functions until consent is given. It may also result in disciplinary action against the employee, up to and including termination.

#### XVI. OTHER POLICIES/PROCEDURES

Nothing contained in this administrative procedure shall prevent the School Committee from establishing and enforcing independent policies/procedures relating to the possession, being under

the influence of, distribution, sale or use of alcohol or controlled substances or any misconduct associated therewith and the penalties for violation of those policies/procedures, up to and including dismissal.

Legal References: 49 CFR Parts 40, 382, 390, 395  
26 MRSA §§ 681(8)(C)

Policy Reference: EEAEAA (Drug and Alcohol Testing of School Bus Drivers)

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