

8414.5-R

**ALCOHOL AND DRUG-TESTING OF BUS DRIVERS  
REGULATION**

**Any employee who operates a commercial motor vehicle and/or is in a safety-sensitive function shall be subject to alcohol and controlled substance testing. An employee having any questions concerning the district's policy or regulation or the federal regulations shall contact the Director of Transportation.**

**Any treatment, rehabilitation program or discipline will be provided in accordance with district policy and/or collective bargaining agreements.**

***I. Covered Employees***

**Covered employees includes district employees who operate a motor vehicle.**

**Such employees include, but are not limited to full time, regularly employed drivers; casual, intermittent or occasional drivers, leased drivers and independent, owner-operator contractors who are either directly employed or under lease to an employer or who operate a commercial motor vehicle at the direction or with the consent of the district.**

**Drivers will be removed from their safety-sensitive functions if they violate the district's policy or federal regulations pertaining to the possession or consumption of alcohol or controlled substances. A driver is performing a safety-sensitive function when:**

- 1. waiting to be dispatched, unless the driver has been relieved from duty;**
- 2. inspecting, servicing or conditioning any commercial motor vehicle;**
- 3. driving a commercial or school motor vehicle;**
- 4. attending a vehicle being loaded or unloaded;**
- 5. performing the driver requirements of the federal regulations pertaining to accidents; and**
- 6. attending to a disabled vehicle.**

**Covered employees are required to be in compliance with district policy and regulation:**

- when performing any on-duty safety-sensitive functions, including all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility; and**
- during all time spent providing a breath sample, saliva sample or urine specimen and travel time to and from the collection site in order to comply with random, reasonable suspicion, post-accident, return-to-duty or follow-up testing.**

## *II. Prohibitions and Consequences*

The Director of Transportation or his/her designee shall prohibit an employee from driving a school bus or performing other safety-sensitive duty if the employee:

1. possesses, consumes or is reasonably believed to possess or have consumed alcohol or a controlled substance, while on duty;
2. has consumed or is under the influence of alcohol or a controlled substance within six hours before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for controlled substances; or
4. refuses to take a required alcohol or controlled substance test. Refusal to submit shall mean the failure to provide adequate breath or urine without a valid medical explanation or to engage in conduct that clearly obstructs the testing process, such as failure to arrive for the drug testing or failure to sign the alcohol testing form prior to specimen collection.

An employee is prohibited from consuming alcohol within eight hours after being involved in an accident, or before undergoing a post-accident test, if such a test is required. Illegal drug use by drivers is prohibited on or off duty.

Any employee who tests 0.02 or greater but less than 0.04 will be removed from driving and other safety-sensitive duties until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

In the event that an employee has a breath alcohol concentration of 0.04 or greater, has tested positive for a controlled substance or has refused to take a test, he or she will, in addition to immediate removal from driving and any other safety-related duties, not be returned to duty until he or she:

- a. has been evaluated by a substance abuse professional;
- b. has complied with any treatment recommendations; and
- c. has received a satisfactory result from a return to duty test.

Upon return to duty, the employee will be subject to follow-up testing.

## *III. Types of Testing*

The Superintendent of Schools and the Director of Transportation shall ensure that the following alcohol and drug tests are implemented and that any employee who is required to take an alcohol or controlled substance test shall be notified prior to the test that it is required pursuant to federal regulations or, in the case of pre-employment alcohol testing, district policy.

1. Pre-employment: Controlled substance and alcohol tests will be conducted before applicants are hired or after an offer to hire, but before actually performing safety-sensitive functions for the first time. These tests will also be given when employees transfer to a safety-sensitive function.

8414.5-R

2. **Post-accident:** Alcohol and controlled substance tests will be conducted if a driver is involved in an accident in which:
  - a. there has been a fatality; OR
  - b. the driver has received a citation for a moving violation in connection with the accident AND EITHER
    1. there is an injury treated away from the scene of the accident; or
    2. the driver has received a citation for a moving violation in connection with the accident and there is a disabled vehicle towed from the scene.

3. **Reasonable Suspicion:** Alcohol and controlled substance tests will be conducted if the Director of Transportation or other school official who has completed the two hours of training has a “reasonable suspicion” that the driver has violated district policy and regulation. A “reasonable suspicion” must be based on specific, contemporaneous, articulable observations concerning the driver’s behavior, appearance, speech or body odors that are characteristic of controlled substance or alcohol misuse. Alcohol tests can only be done just before, during or just after the employee drives a school bus or performs other safety-sensitive duties. The supervisor who makes the determination of “reasonable suspicion” cannot do the testing.

**Reasonable Suspicion Documentation:** The employer shall document (Exhibit I) the facts contributing to and forming the basis for the reasonable suspicion whenever the Director of Transportation or designated school official finds that the available facts objectively indicate that reasonable suspicion exists so that a test of the employee would yield a positive result for the misuse of alcohol or use of prohibited drugs. These facts shall include: (a) a description of the employee’s appearance, behavior or speech; (b) names of any witnesses to the employee’s appearance, behavior or speech; (c) the facts used to support a determination of reasonable suspicion and the source of information if the employee’s appearance, behavior or speech is not the basis for testing. Such documentation shall be completed as soon as practicable after an order to test is given, but shall not delay the testing process.

4. **Random Testing:** Random alcohol tests shall be conducted at random annually for at least the minimum rate of 25 percent of the average number of positions subject to such testing pursuant to a federal regulation. Random alcohol tests must be conducted just before, during or just after the employee drives a bus or performs other safety-sensitive duties. Random controlled substance tests shall be conducted annually for at least the minimum rate of 50 percent of the average number of positions subject to such testing pursuant to federal regulation. Random controlled substance tests may be conducted at any time. Random alcohol and controlled substance tests must be unannounced and spread reasonably throughout the calendar year.
5. **Return-to-Duty Testing:**
  - a. **Voluntary Admission of Alcohol/Drug Problem**  
If a driver has volunteered that he/she has an alcohol/drug problem prior to being notified of a drug test, he/she will not be permitted

to return to those duties until he/she has been evaluated by a Substance Abuse Professional and has complied with any treatment recommendations.

- b. **Non-Voluntary Discovery of Alcohol/Drug Problem**  
If a driver has engaged in prohibited alcohol or drug use, he or she will be removed from driving duties and be subject to disciplinary procedures and penalties pursuant to district policy, the collective bargaining agreement, and Section 75 of the Civil Service Law. If that driver is subsequently permitted to return to these duties, it will only be after he or she has been evaluated by a Substance Abuse Professional, and has complied with any treatment recommendations.
- c. **Referral Evaluation and Treatment**  
Thereafter, a return-to-duty test must be performed with satisfactory results. If removal was due to alcohol use, a satisfactory result will be less than .02 alcohol concentration. If removal was due to drug use, a satisfactory result will be one that is verified as negative.

- 6. **Follow-Up Testing:** After an employee who was found to violate the district's policy against alcohol and controlled substances use returns to duty, he or she will be subject to at least six unannounced tests in the first 12 months following the employee's return to duty. Follow-up testing may be extended for up to 60 months from the date of the employee's return to duty. Follow-up alcohol testing may only be conducted before, during or after the driver has performed his or her driving duties.

#### *IV. Testing Procedures*

##### **A. Alcohol Testing Procedures**

Alcohol testing will be conducted with evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration. An approved non-evidential screening device may be used to perform screening tests, but not for confirmation alcohol tests. The employee and the Breath Alcohol Technician conducting the test must complete the alcohol testing form to ensure that the results are properly recorded. Under special circumstances a blood test conducted by a qualified hospital or clinical laboratory may be substituted for a breath test if agreeable by the employee and the district.

- a. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test.
- b. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. The confirmation test must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results.

8414.5-R

- c. If the confirmation test results indicate an alcohol concentration from 0.02 to 0.03999, the employee will be subject to discipline and restricted from duty for at least 24 hours from the time of the test.
- d. If the confirmation test results indicate an alcohol concentration equal to or greater than 0.04, the employee will be removed from all safety-sensitive duties and subject to disciplinary procedures and penalties pursuant to district policy, the collective bargaining agreement, and Section 75 of the Civil Service Law. If subsequently that employee is allowed to return to duty, it will only be after that employee has been reviewed by a Substance Abuse Professional, complied with his or her recommendations and successfully passed required return-to-duty tests. Follow-up tests will also be required.
- e. For post-accident testing, the results of breath or blood tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for alcohol testing and the results are made available to the district.

Action requirements:

- a) 2 hours - If the driver has not submitted to an alcohol test at this time, the employer shall prepare and maintain on file a record stating the reason a test was not promptly administered.
- b) 8 hours - Cease attempts to administer alcohol test and prepare and maintain record described above.

All testing procedures will conform to the requirements outlined in federal regulations (49 CFR Part 40) for ensuring the accuracy, reliability and confidentiality of test results. These procedures include training and proficiency requirements for Breath Alcohol Technicians, quality assurance plans for the EBT devices including calibration, requirements for suitable test location, and protection of employee test records.

**B. Drug Testing Procedures**

The employee must provide a urine specimen which will be analyzed at a laboratory certified and monitored by the U.S. Dept. of Health and Human Services.

- a. Regulations require that each urine specimen be divided into one "primary" specimen and one "split" specimen.
- b. All urine specimens are analyzed for the following drugs:
  - 1. Marijuana (THC metabolite)
  - 2. Cocaine
  - 3. Amphetamines
  - 4. Opiates (including heroin)
  - 5. Phencyclidine (PCP)
- c. If the primary specimen confirms the presence of one or more of these drugs, the employee has 72 hours to request that the split specimen be sent to another certified lab for analysis. [Note: The employee must be removed from driving duties at this time--pursuant to the regulations, the driver's removal cannot await the result of split sample.]

8414.5-R

- d. If the screening test has a drug-positive result, a confirmation test will then be performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis.
- e. All drug test results will be reviewed and interpreted by a physician (also called a Medical Review Officer) before they are reported to the district.
- f. If the laboratory reports a positive result to the Medical Review Officer (MRO), the MRO shall interview the employee to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of a prohibited drug, the drug test result is reported as negative.
- g. If the MRO reports a positive drug result, the employee must be removed from driving or safety sensitive duties and be subject to disciplinary procedures and penalties pursuant to district policy and regulations, the collective bargaining agreement and Section 75 of the Civil Service Law. If that employee is allowed to return to duty, it will only be after he/she is evaluated by a Substance Abuse Professional and follows that person's recommendations prior to taking a return-to-duty test. Follow-up testing is also required.
- h. For post-accident testing, the results of urine tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for controlled substance testing and the results are made available to the district.

**Action requirements:**

- a) 32 hours - If the driver has not submitted a controlled substance test at this time, the employer shall cease attempts to administer the test and prepare and maintain on file a record stating the reason a test was not promptly administered.

All controlled substance testing shall comply with the requirements of the federal regulations (49 CFR Part 40) including procedures for the proper identification, security and custody of the sample, use of certified laboratories, gas chromatography/mass spectrometry analysis testing, assurance that all drug test results are reviewed and interpreted by a physician, and confidentiality of employee test records.

**C. Refusal to Take Required Alcohol and/or Drug Tests**

An employee's refusal to take a required alcohol and/or drug test will be treated as a positive drug test result and/or an alcohol test result of .04 or greater. The employee shall be removed from safety-sensitive positions and be subject to disciplinary procedures and penalties pursuant to district policy, the collective bargaining agreement and Section 75 of the Civil Service Law.

**D. Voluntary Testing Required by an Employee**

- a) An employee who voluntarily requests assistance for an alcohol or

drug related problem prior to:

- (1) the day of selection for a random test; or
  - (2) notification of a "reasonable suspicion" test shall be tested for evidence of alcohol or drugs in accordance with the regulations. If tests are positive, the employee will immediately be removed from driving a school vehicle or any other safety sensitive duties.
- b) The employee shall be referred to a qualified substance abuse professional for evaluation. The employee must comply with any return-to-duty test. The employee shall also be subject to follow-up testing in accordance with the regulations.
  - c) The cost of the rehabilitation shall be borne by the employee and his/her medical insurance company.
  - d) A leave of absence will be allowed for treatment on an in-patient or out-patient basis only for those who voluntarily request assistance and enter into and successfully complete a certified rehabilitation program prior to (1) the day of selection for a random test; (2) notification of a "reasonable suspicion" test. While on a leave of absence, the employee may use accumulated sick leave credits, vacation leave credits, holidays and other accrued leave time up to the limit set forth in the Collective Bargaining Agreement or other applicable laws, rules or regulations. Nothing herein shall be construed to diminish any rights which may apply under the ADA, FMLA or relevant laws.

V. Consequences

- a. Prospective employees who test positive for drugs or who show a tested level of alcohol higher than .02 will not be appointed.
- b. Temporary, substitute or probationary employees who test positive for drugs or test higher than .02 for alcohol will be terminated.
- c. Permanent employees who test between .02 and .04 for alcohol, are found to be in possession of alcohol or drugs while on duty, or who use alcohol after being involved in an accident where a post-accident test is required will be suspended without pay and subject to disciplinary action under the collective bargaining agreement and Section 75 of the Civil Service Law.
- d. Permanent employees who test positive for drugs or test higher than .04 for alcohol will be suspended without pay and subject to disciplinary action under the collective bargaining agreement and Section 75 of the Civil Service Law with a District recommendation for termination.

The employee shall be served with a written notice of proposed discipline. Simultaneously, notification of proposed discipline shall be sent to the Unit President.

**8414.5-R**

**VI. *Release of Alcohol and Controlled Substances Test Information by Previous Employers.***

1. The Director of Transportation and the Director of Buildings and Grounds shall:
  - a. receive written consent of all new employees subject to the regulations.
  - b. obtain and review the information listed below from each employer of the applicant for the previous two years no later than 14 days after the first time that a driver performs safety-sensitive functions:
    1. information on the driver's alcohol test in which a positive test was indicated;
    2. information on the driver's controlled substances test in which a positive result was indicated;
    3. any refusal to submit to a required alcohol or controlled substance test.
  - c. The above information must be obtained even if the perspective employee fails to continue employment. The release of the information may take the form of personal interviews, letters, or any other method that ensures confidentiality. The district must maintain a written, confidential record with respect to each past employer contacted. Prior employers should also report no positives during the employment.
  - d. The district may not use a driver to perform safety-sensitive functions if the employer obtains information that the driver tested positive for controlled substances, or refused to test; unless the employer has evidence that the driver has been evaluated by a substance abuse professional, completed any required counseling, passed a return-to-duty test, and has/or been subject to follow-up testing.

**VII. *Training***

**The Director of Transportation and every other person designated to determine whether reasonable suspicion exists to require an employee to undergo reasonable suspicion testing must receive at least one hour of training on alcohol misuse and at least one additional hour of training on controlled substance use which they will use in making their determinations.**

**VIII. *Recordkeeping and Reporting***

**The Director of Transportation shall ensure that alcohol and drug testing records are maintained and are available, if requested, for submission to the federal government or any State or local officials with regulatory authority over the employer or any of its drivers. All employee test records will be kept confidential.**

**IX. *Required Notification***

**Every affected employee shall receive information about the signs, symptoms, and effects of alcohol misuse and controlled substance use as well as a copy of the district's policy and procedures, the consequences of testing po**

8414.5-R

**positive and who to contact within the district to seek further information and/or assistance.**

***IX. Penalties***

**Any employer or driver who violates the requirements of the federal regulations of the Omnibus Transportation Employee Testing Act of 1991 may be subject to civil penalties.**

**Note: Regulation added  
June 21, 1999**