

PERSONNEL

Service Personnel

Alcohol and Drug Testing of Employees in Safety-Sensitive Positions

Recognizing the dangers inherent in alcohol and drug use by employees, especially those in safety-sensitive positions and to ensure the safety of its students and staff, the Board hereby requires alcohol and drug testing of all employees in safety-sensitive positions.

The District shall implement and conduct a program to provide alcohol and drug testing of employees in safety-sensitive positions. Any employee whose job requires a commercial driver's license and/or who drives a school bus and/or a mechanic who works on commercial vehicles who will test drive such vehicles will be subject to such testing.

Drug and alcohol tests shall be conducted at the time of employment in or transfer to a safety-sensitive position and, thereafter, randomly throughout the school year as recommended by the Federal Highway Authority. In addition, testing will be ordered if the supervision or other appropriately trained school official has a "reasonable suspicion" that the employee has engaged in prohibited drug or alcohol use. All employee drug and alcohol testing records shall be kept confidential.

A school bus driver will not be permitted to drive if:

- the driver possess alcohol or use alcohol or drugs while on duty;
- the driver uses alcohol within four (4) hours of driving on duty;
- the driver has an alcohol concentration of .04 or higher or tests positive for drugs;
- the driver uses alcohol within eight (8) hours after being involved in an accident in which there was a fatality or which the bus driver received a moving violation and there either was an injury treated away from the scene or a disabled vehicle was toward from the scene;
- there is a reasonable suspicion that the driver has engaged in prohibited alcohol or drug use; or
- the driver refuses to take a required alcohol or drug test.

If the driver has a small amount of alcohol in his/her system (.02 or greater, but less than .04), he/she will not be permitted to drive until the start of the driver's next regularly scheduled duty period, but no less than 24 hours following administration of the test.

If an employee in a safety-sensitive position has engaged in prohibited alcohol use (.04 or greater) or drug use, he/she may not return to duty unless he/she has been evaluated by a substance abuse professional; has complied with an recommended treatment program; and has satisfactorily passed required alcohol and/or drug tests. Thereafter, he/she will be subject to unannounced follow-up testing.

It shall be the policy of the Board to discipline all employees who test positive for alcohol use (.02 or greater) or drug use in accordance with law, district policy and any applicable collectively negotiated agreement.

This policy and any implementing regulations, the testing requirements of the federal regulations and information on alcohol and drug abuse and treatment resources shall be provided to all school bus drivers and other personnel in safety-sensitive positions at the start of each school year or upon hire or transfer to a safety-sensitive position. Such employees shall also be advised of the consequences of a positive alcohol and/or drug test and the individual to contact within the District from who to seek further information and/or assistance.

The Transportation Supervisor shall maintain records of alcohol and substance abuse prevention and training programs annually, on a calendar year basis. Such records will be made available, upon request, for submission to the federal government by March 15th.

For transportation services which are contracted for, the District should audit the contractor's drug and alcohol abuse testing program.

The Superintendent shall establish regulations to implement this policy.

Approved: 10/12/95

Ref: Omnibus Transportation Employee Testing Act of 1991
49 USC Section 521 (b)
49 CFR Part 382. Part 40 and Section 395.20

REGULATION

ALCOHOL AND DRUG TESTING OF EMPLOYEES IN SAFETY-SENSITIVE POSITIONS

The Superintendent of Schools and the Transportation Supervisor shall ensure that the following schedule of alcohol and drug tests are implemented for employees in safety-sensitive positions (e.g., bus drivers, mechanics who drive vehicles to test them and any other employee who drives a vehicle for the District), as mandated by federal law:

A. **Pre-employment:** Prior to the first time a driver performs safety-sensitive functions for the District, the driver shall undergo alcohol and drug testing.

The District shall not allow a driver to perform safety-sensitive functions unless:

1. The driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04.

If a pre-employment alcohol test result indicates an alcohol content of 0.02 or greater but less than 0.04, the driver shall not be permitted to perform a safety-sensitive function.

2. The District has received a controlled substances test from the medical Review Officer indicating a verified negative test result.

B. **Post-Accident:**

An ACCIDENT is defined as an occurrence involving a commercial motor vehicle operating on a public road which results in:

- a fatality;
- bodily injury to a person who, as a result of the injury immediately receives medical treatment away from the scene of the accident; or
- one or more motor vehicles incur disabling damage as a result of the accident, which requires the vehicle to be transported away from the scene by a tow truck or other vehicle.

If an accident involves a fatality or the driver receives a citation under State or local law for a moving traffic violation arising from the accident, the following tests shall be performed:

1. **Alcohol:** As soon as practicable, and within two (2) hours, if possible, but not later than eight (8) hours after an accident, each driver will be alcohol tested. Attempts to conduct post-accident testing for alcohol will cease eight (8) hours after the accident, even if no alcohol test has been conducted.

The driver must remain readily available for testing or may be deemed by the District to have refused to submit to testing.

DRIVERS INVOLVED IN AN ACCIDENT MAY NOT USE ALCOHOL FOR EIGHT (8) HOURS AFTER THE ACCIDENT, UNLESS THEY HAVE BEEN GIVEN A POST-ACCIDENT ALCOHOL TEST.

2. **Drug:** As soon as practicable, and within eight (8) hours, if possible, after an accident, each surviving driver will be drug tested. Attempts to conduct post-accident testing for controlled substances will cease thirty-two (32) hours after the accident, even if no drug test has been conducted.

The driver must remain readily available for testing or may be deemed by the District to have refused to submit to testing.

DRIVERS INVOLVED IN AN ACCIDENT MAY NOT USE DRUGS FOR THIRTY-TWO (32) HOURS AFTER THE ACCIDENT, UNLESS THEY HAVE BEEN GIVEN A POST-ACCIDENT DRUG TEST.

C. **Reasonable Suspicion:** Alcohol and/or drug tests will be performed if the Transportation Supervisor or other school official who is appropriately trained observes behavior (e.g., frequent absences, tardiness, mood swings, failure to follow directions), appearance, behavior speech or body odors characteristic of controlled substance or alcohol use or misuse and, therefore, has a “reasonable suspicion” that the driver has violated the law and District policy. The observations may include indications of the chronic and withdrawal effects of controlled substances. Reasonable suspicion of alcohol use/misuse must be based on specific, contemporaneous, observation and shall be documented by the observer.

1. Alcohol test must be performed just before, during or just after the employee drives a school bus or performs other safety-sensitive duties.

2. Drug tests may be performed at any time.

The school official who makes the determination of “reasonable suspicion” may not also perform the testing.

D. **Random:** Alcohol and drug tests will be conducted at random for at least the minimum percentage of employees in safety-sensitive positions, as recommended by the Federal Highway Authority (currently 25% of the average number of driver positions for alcohol and 50% of the average number of driver positions for drugs).

1. These tests will be unannounced and will be spread reasonably throughout the calendar year.

2. The selection of drivers shall be made by a scientifically valid method, such as a random number generator that is matched with the drivers' social security number, payroll identification number or other identifying number. Each driver shall have an equal chance of being tested each time selections are made. Random alcohol tests must be performed just before, during or just after the employee drives a school bus or performs other safety-sensitive duties. Drug tests may be performed at any time.

3. Each driver who is notified of selection for random alcohol or drug testing shall proceed to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function at the time of notification, the driver shall cease to perform the safety-sensitive function and proceed to the test site as soon as possible.

4. A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

E. **Return-to-Duty:** If a driver or other employee in a safety-sensitive position has engaged in prohibited alcohol and/or drug use, he/she shall be removed from driving duties or other safety-sensitive duties. Such employee will not be permitted to return to driving duty or other safety-sensitive duty until he/she has been evaluated by a substance abuse professional, has complied with treatment recommendations and has had return-to-duty alcohol and/or drug tests performed with satisfactory results.

1. If removal was due to alcohol use, a satisfactory result will be less than .02 alcohol concentration.

2. If removal was due to drug use, a satisfactory result will be one that is verified as negative.

F. **Follow-Up:** If the driver or other employee in a safety-sensitive position has been referred for alcohol and/or drug counseling due to a violation of law and District policy, unannounced follow-up alcohol and/or drug tests will be performed, as directed by a substance abuse professional.

1. Follow-up tests will be unannounced and at least six (6) tests will be conducted during the first twelve (12) months following the driver's return-to-duty. Follow-up testing may continue for up to sixty (60) months from the date of the driver's return-to-duty. Follow-up alcohol testing will only be conducted before, during or after a driver has performed his/her driving duties.

Testing Procedures

A. Alcohol Testing:

1. Upon being notified by the supervisor that he/she is being subject to alcohol testing, the Breath Alcohol Technician (BAT) will require the driver to provide positive identification (photo I.D. or identification by District personnel). On request, the BAT will provide positive identification to the driver. The BAT will explain the testing procedure to the driver.

2. Alcohol testing will be conducted with evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration. The employee and the BAT conducting the test must complete the alcohol testing form to ensure that the results are properly recorded. The driver must sign the certification. **Refusal by the driver to sign the certification will be considered as a refusal to take the test.**

a. Two (2) breath tests are required to determine if the driver has a prohibited alcohol concentration. A screening test must be conducted first and, if the result is less than .02 alcohol concentration, it is considered a "negative" test.

b. If the alcohol concentration is .02 or great, a second or confirmation test must be conducted. The confirmation test must be conducted using an EBT that prints out the results, the date and time, a sequential test number and the name and serial number of the EBT to ensure the reliability of the results. If the concentration is great than .02 but less than .04, the employee must be removed from driving or other safety-sensitive duties until the start of the employee's next regularly scheduled duty period, but not less than 24 hours after administration of the test.

c. If the confirmation test results in alcohol concentration equal to or great than .04, the employee will be removed from all safety-sensitive duties, including driving, and will not be permitted to return until the employee has been reviewed by a substance abuse professional, complied with his/her treatment recommendations and successfully passed return-to-duty tests. Unannounced follow-up tests will also be required, at least six (6) tests during the following twelve (12) month period.

d. For post-accident testing, the results of breath and/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.

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

B. Drug Testing: Drivers will be tested for the presence of marijuana, cocaine, opiates (including heroin), amphetamines and phencyclidine. All drug test specimens will be analyzed at a laboratory which is certified and monitored by the U.S. Department of Health and Human Services under DOT procedures. The District and the certified laboratory will establish and maintain a clear and well-documented procedure for collection, security, temporary storage and shipment of urine specimens to a certified laboratory, including a standard drug testing custody and control form. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling the specimens.

1. The employee must provide a urine specimen for the drug test.
2. Each urine specimen shall be divided into one “primary” specimen and one “split” specimen.
3. If the primary specimen confirms the presence of one or more of these drugs, the employee has seventy-two (72) hours within which to request that the split specimen be sent to another certified laboratory for analysis.
4. If the screening test has a drug-positive result, a confirmation test must then be performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis.
5. All drug test results will be reviewed and interpreted by a Medical Review Officer (“MRO”), who must be a physician, before they are reported to the District.
6. If the laboratory reports a positive result to the 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 prohibited drug, the drug test result will be reported as negative.

Notwithstanding the above, and employee who is determined to be taking medication which may affect his/her ability to drive a school bus, in violation of Article 19-A of the Vehicle and Traffic Law and related rules and regulations, may be subject to discipline in accordance with law, District policies and any applicable collectively negotiated agreement.

7. If the MRO reports a positive drug result, the employee must be evaluated by a substance abuse professional and follow that person's recommendations prior to taking a return-to-duty test. Follow-up testing is also required.

8. For post-accident testing, the results of urine tests conducted by law enforcement officials will be accepted so long as the testing conforms with federal and state requirements for controlled substance testing and the results are made available to the District.

All controlled substance testing shall comply with the requirements of the federal regulations (at 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 (MRO) and confidentiality of employee test records.

If a driver refuses to cooperate in the specimen collection process, the collection site person shall inform the District representative and shall document the non-cooperation on the drug testing custody and control form.

Refusal of an Employee 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 alcohol concentration. Such employee must be evaluated by a substance abuse professional, follow that person's recommendations prior to taking a return-to-duty test and submit to any recommended follow-up testing. An employee in a safety-sensitive position who refuses to take a required alcohol and/or drug test will be subject to discipline, as well as to a maximum fine of \$5,000 for such refusal.

Rehabilitation

The District shall not be required to provide rehabilitation, to pay for treatment or to reinstate an employee as a driver or in another safety-sensitive position if such employee has violated the law and District policy. Any treatment or rehabilitation program will be provided in accordance with District policy and/or applicable collectively negotiated agreement.

Training

The Transportation Supervisor and every other school official designated to determine whether reasonable suspicion exists to require an employee to undergo reasonable suspicion testing must receive at least one (1) hour of training on alcohol misuse and, in addition, at least one (1) hour of training on controlled substance use, which they will use in making their determinations.

Required Information

Every employee in a safety-sensitive position shall receive a copy of the policy and regulation concerning alcohol and drug testing of employees in safety-sensitive positions, as well as a handbook which includes information regarding the signs, symptoms and effects of alcohol and drug use and misuse, the consequences of testing positive and who to contact within the District to seek further information and/or assistance. A notice shall be sent to the representatives of employee organizations advising of the availability of this information.

Recordkeeping

The District shall be required to maintain records, on an annual calendar year basis, which provides a summary of the results of its school and drug testing and prevention program for each calendar year. Such annual summary shall be completed by March 15th of each year for the previous calendar year in the form and manner prescribed by the Federal Highway Administration. Such records shall include:

1. records of driver alcohol test results indicating a result of an alcohol concentration of .02 or higher;
2. records of driver verified positive controlled drug tests;
3. documented refusals to take required alcohol and/or drug tests;
4. calibration documentation (for EBT's).

Such records shall be retained for a minimum period of five (5) years. Records related to the alcohol and drug collection process shall be maintained for a minimum period of two (2) years. Records of negative and cancelled drug test results and alcohol test results with a concentration of .02 shall be maintained for at least one (1) year.

Confidentiality

Employee alcohol testing records are confidential and may only be released to the employee, the District and the substance abuse professional. This information may not be released to others without the employee's written consent. If an employee initiates a grievance, hearing, lawsuit or other action as a result of a violation of the law and District policy, the District may release relevant information to the decision maker.

Employee drug testing records are confidential and may only be released to the employee, the District, the drug testing laboratory and the medical review officer. This information may not be released to others with the employee's written consent. This information may also be released to the Department of Transportation when license or certification actions are required or if an employee initiates a grievance, hearing, lawsuit or other action as a result of a positive drug test, the District may release relevant information to the decision maker.

22-56. May school districts lease school buses under emergency conditions?

Yes. School buses may be leased under emergency conditions that include but are not limited to strikes, delay in delivery date, theft, vandalism, fire and accident (§ 1709(25-b)). Such approval should be for no more than 90 days, unless the emergency continues (8 NYCRR § 156.6). Additionally, the board may replace a school bus because of damage or loss. It may be purchased by the board without voter approval, using any unencumbered funds, or by a budget (§ 1709(25-A); Loc. Fin. Law § 29.00).

22-57. Are computerized bus-routing services an approved transportation expense for state aid?

Yes (see § 3602(7)(b)(iv) and 8 NYCRR § 156.2(c)).

Testing Bus Drivers for Alcohol and Controlled Substances

22-58. Are school bus drivers subject to alcohol and drug testing?

Yes. School bus drivers who are required to have commercial drivers licenses (CDLs) are now subject to random alcohol and drug testing, according to new federal regulations. A school bus driver is subject to this requirement only when driving a vehicle which is designed to transport 16 or more passengers, including the driver (49 CFR §§ 382.103, 382.107).

22-59. What do the alcohol- and drug-test regulations require?

The regulations require school districts to have programs in place that will test school bus drivers for alcohol and drugs:

- Before they are employed as bus drivers.
- After a bus accident has occurred, if there was a fatality, or if the driver was cited for a moving violation in connection with the accident and there is an injury treated away from the scene of the accident or a disabled vehicle is towed away from the scene.
- If there is reasonable suspicion that the driver has used drugs or alcohol.
- Randomly, a minimum percentage of a district's average number of bus drivers per year—25 percent for alcohol and 50 percent for drugs. These percentages may vary, depending upon the Federal Highway Authority. Random tests must be unannounced and spread reasonably throughout the year.

and who have been evaluated by a substance abuse professional, before returning to work.

- Unannounced follow-up tests on drivers referred by substance abuse professionals for alcohol or drug counseling and who have returned to work.

Prior to implementing the testing programs, school districts must provide school bus drivers with information regarding the policy and regulation requirements, as well as information on alcohol and drug treatment programs and resources.

These regulations were adopted to implement the Omnibus Transportation Employee Testing Act of 1991 (49 CFR Parts 382, 391).

22-60. When must these regulations be implemented?

Employers with 50 or more employees as of March 17, 1994 must have the program in place by January 1, 1995. Employers with fewer than 50 employees must have the program in place by January 1, 1996 (49 CFR §§ 382.115, 391.125).

22-61. How will alcohol and drug testing of bus drivers be done?

Alcohol tests will be done using breath testing devices approved by the National Highway Traffic Safety Administration. This will consist of a screening test, and a confirmation test which will be administered if the screening test results in a .02 or greater alcohol concentration.

To test for drugs, a urine test will be conducted with a "primary" sample and a "split" sample being taken and analyzed by a certified laboratory monitored by the Federal Department of Health and Human Services. If the screening test is positive, then a confirmation test will be performed. The drug test results will be reviewed by a medical review officer (49 CFR §§ 382.107, 382.407).

22-62. Who has access to the results?

The alcohol and drug testing records are confidential and may only be revealed without the driver's consent to the employer and a substance abuse professional, drug testing laboratory and a medical review officer (49 CFR § 382.405).

22-63. Who pays for the rehabilitation programs?

Any treatment or rehabilitation program must be provided in accordance with the employer's policy or labor/management contracts. The regulations do not require the employer to provide rehabilitation;