

PERSONNEL

Fitness for Duty Evaluations

This Regulation outlines the responsible parties and necessary actions when an employee's fitness for duty (FFD) is in question, the steps necessary to assess the employee's physical or mental capabilities, necessary follow-up, and return to work.

This Regulation covers only those situations in which an employee is: 1) having observable difficulty performing their duties in an effective manner that is safe for the employee and/or for their co-workers; or 2) posing a serious safety threat to self or others.

A. Requirements

1. An employee shall not be allowed to work unless the employee maintains a fitness for duty required for the safe performance of the employee's essential job functions, with or without reasonable accommodation. Each employee is required to report to work in an emotional, mental, and physical condition (including free of the effects of alcohol and drugs) necessary to perform the job in a safe and satisfactory manner.
2. This Regulation does not apply to employees with short term, infectious/communicable diseases (e.g., flu, colds). If an employee exhibits symptoms of an infectious/communicable disease, the supervisor may ask the employee to leave the workplace in order to have the symptoms evaluated by the employee's own health care provider.
3. A FFD evaluation is designed to address behavioral changes in an employee that may pose a potential threat to self or others in the workplace or creates significant risk. Application of this Regulation is not intended as a substitute for policies or procedures related to chronic performance or behavioral problems or as a substitute for discipline. Supervisors shall continue to address performance or behavioral problems through the performance appraisal process and to implement appropriate corrective or disciplinary action.

B. Americans with Disabilities Act

The School Division complies with federal disability law (primarily the Americans with Disabilities Act of 1990 [ADA], as amended). Qualified employees with disabilities are protected from discrimination, including harassment, and are entitled to reasonable accommodations to known physical and mental impairment, if necessary, to assist the employee in performing the job. This Regulation is not intended to supersede or modify the procedures applicable to employees seeking reasonable accommodation under the ADA.

In general, the ADA prohibits: 1) employers from requiring an employee to submit to a medical examination; and 2) employer inquiries into whether an individual has a disability. However, the protections afforded to employees by the ADA are not without limits. Federal law permits the School Division to require a medical examination of an employee if the requirement for the examination is job-related, consistent with business necessity, and if the School Division has a reasonable belief that:

- the employee's ability to perform essential job functions may be impaired by a medical condition; or
- an employee may pose a direct threat (i.e., significant risk of substantial harm to the health and safety of self or others) due to a medical condition.

C. FFD Evaluation Procedures

An employee is expected to perform essential job functions in a safe and effective manner, and to discuss with the employee's supervisor any circumstances that may impact the employee's ability to do so. The School Division may require professional evaluation of an employee's physical, emotional, or mental capacities to determine the employee's ability to perform essential job functions.

1. Before initiating a FFD evaluation, the employee's supervisor shall meet with the Employee Relations Specialist to discuss the behavior/circumstances that have raised questions about the employee's fitness for duty. Employee Relations will determine the appropriateness of a FFD evaluation. The employee will also be given the opportunity to provide any relevant medical or psychological treatment information.
2. A FFD evaluation can be conducted by the employee's own treatment provider if the employee is currently receiving care. However, the School Division has the right to require the evaluation be conducted by an independent, licensed health care professional if deemed appropriate.
3. The School Division is responsible for paying the cost of an evaluation and any fees for document production. The employee should submit a request for reimbursement to the Department of Human Resources, Office of Employee Relations.
4. An employee referred for an evaluation will be prohibited from appearing for work or at the worksite pending the completion of the evaluation and approval for return to in-person work. During this time, applicable leave policies shall apply.
5. To the extent allowed by law, the School Division will protect the confidentiality of the evaluation and the results.
6. Non-compliance with a request for a FFD evaluation shall be cause for disciplinary action, up to and including dismissal.

D. Results of the Evaluation

The results of FFD evaluations performed by qualified, licensed health care providers shall be presumed to be valid. Results of the evaluation will be received the Office of Employee Relations, as appropriate. The employee shall be notified of the results of the FFD by the evaluator and/or the Office of Employee Relations. Employee Relations will communicate whether the employee may return to work to the employee's supervisor.

1. Information given to the employee's supervisor shall be limited to whether the employee may:
 - a. return to full duty;
 - b. not return to full duty, in which case the employee will be informed of appropriate actions based on the medical information provided; or
 - c. return to full duty with reasonable accommodations to meet the medical provider's recommendations.
2. Return to Work:

In conjunction with the employee's supervisor and the employee, the Office of Employee Relations shall discuss whether any reasonable accommodations can be implemented. During this time, applicable leave shall apply.

If it is determined that the employee cannot return to full duty because the employee can no longer perform the essential functions of the job and accommodations are not available, the employee may be separated from employment.

E. Responsibilities

1. An employee is responsible for:
 - a. Performing the job responsibilities in a safe and effective manner, with or without reasonable accommodations during the entire time at work;
 - b. Notifying the supervisor when not fit for duty;
 - c. Notifying the supervisor when a coworker is observed acting in a manner that indicates the coworker may not be fit for duty; and
 - d. Providing relevant medical and psychological information when given the opportunity to do so.

The employee's satisfactory work performance is the basis for continued employment. Participation in a treatment or rehabilitation program does not guarantee continued employment and may not necessarily prevent disciplinary action for violation of School Division policies or regulations. An employee must comply with all treatment recommendations resulting from a FFD evaluation.

2. The supervisor is responsible for:

- a. Observing the attendance, performance, and behavior of the employees under their supervision;
- b. Notifying Employee Relations when an employee is exhibiting behavior that suggests they may not be fit for duty;
- c. Following this Regulation's procedures when presented with circumstances or knowledge that indicate that an employee may not be fit for duty;
- d. Maintaining the confidentiality of an employee's medical information; and
- e. Implementing any reasonable accommodation deemed necessary.

3. The Office of Employee Relations is responsible for:

- a. Soliciting information from the supervisor regarding employee behaviors or performance and from the employee regarding any relevant previous or current medical or psychological treatment information;
- b. Identifying who will conduct the FFD evaluation;
- c. Receiving the results of the FFD evaluation;
- d. Communicating the results to the employee if not done so by the health care provider;
- e. Coordinating payment for the FFD evaluation;
- f. Implementing any recommendations proposed by the FFD evaluation;
- g. Discussing recommendations and subsequent accommodations with the supervisor; and
- h. Communicating with the employee as to their rights, responsibilities, and employment status.

Related Links

School Board **Policy 4-9**

School Board **Regulation 4-4.1**

School Board **Regulation 4-4.2**

School Board **Regulation 4-27.1**

School Board **Regulation 4-45.1**

Legal Reference

Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, as amended.

Code of Virginia § 22.1-301, as amended. Costs of medical examinations and of furnishing medical records.

Section 504 of the Rehabilitative Acts of 1973, 29 U.S.C. § 794, 34 C.F.R. § 104.7, as amended.

Virginia Human Rights Act, Virginia Code § 2.2-3900, as amended.

Age Discrimination in Employment Act of 1976, PL 90-202, U.S.C. § 621, as amended.

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