

## **4036R DRUG AND ALCOHOL TESTING (CONT.)**

### **A. General Statement of Policy/Regulation**

All persons subject to commercial drivers license requirements shall be tested for alcohol, marijuana, cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP), pursuant to Part 40 of Title 49 of the Federal Code of Regulations. Drivers who test positive for alcohol or drugs shall be subject to disciplinary action, which may include termination of employment.

### **B. Definitions**

1. "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and who operates the Evidential Breath Testing Device (EBT).
2. "Commercial motor vehicle" (CMV) includes vehicles: designed to transport 16 or more passengers, including the driver; with a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a GVWR of 10,000 pounds; all classes of school busses.
3. "Driver" includes full-time, regularly employed drivers, casual, intermittent or occasional drivers.
4. "Evidential Breath Testing Device" (EBT) means an EBT approved by the National Highway Traffic Safety Administration for the evidentiary testing of breath for alcohol concentration.
5. "Medical Review Officer" (MRO) means a licensed physician responsible for receiving laboratory results generated by the school districts drug testing program who has knowledge of substance abuse disorders and appropriate medical knowledge and training to interpret and evaluate an individuals positive test result together with that individuals medical history and any other biomedical information.
6. "Safety-sensitive functions" are on-duty functions from the time the driver begins work or is required to be in readiness to work until relieved from work, and include such functions as driving, loading and unloading vehicles, or supervising or assisting in the loading or unloading of vehicles, servicing, repairing, obtaining assistance to repair, or remaining in attendance during the repair of a disabled vehicle.
7. "Screening Test Technician" (STT) means anyone meeting the requirements for a BAT who may act as an STT, provided that the individual has demonstrated proficiency in the operation of non-evidential screening devices (approved for use in lieu of EBTS to perform screening tests).
8. "Substance Abuse Professional" (SAP) means a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of disorders relating to use of alcohol and controlled substances.

### **C. Policy and Educational Materials**

1. The school district shall provide a copy of this policy and procedures to each driver prior to the start of its alcohol and drug-testing program and to each driver subsequently hired or transferred into a position requiring driving of a CMV.
2. The school district shall provide to each driver information concerning the effects of alcohol and controlled substances use on an individuals health, work, and personal

life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.

3. The school district shall provide written notice to representatives of affected employee organizations that the information described above is available.
4. The school district shall require each driver to sign a statement certifying that he or she has received a copy of the policy and materials. The school district will maintain the original signed certificate and will provide a copy to the driver if the driver so requests.

D. Alcohol and Controlled Substances Testing Program Manager

1. The program manager will coordinate the implementation, direction, and administration of the alcohol and controlled substances testing policy for participants. The program manager is the principal contact for the collection site, the testing laboratory, the MRO, the BAT, the SAP, and the person submitting to the test. Employee questions concerning this policy shall be directed to the program manager.
2. The school district shall designate a program manager and provide written notice of the designation to each driver along with this policy.

E. Specific Prohibitions for Drivers.

1. Alcohol Concentration. No school bus driver will operate or be in physical control of any class of school bus when there is physical evidence present in the person's body of the consumption of alcohol (MN 169A.31). Any violation of this statute will result in notification of law enforcement.

No truck driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers who test greater than 0.04 will be taken out of service and will be subject to evaluation by a professional and retesting at the drivers expense.

2. Alcohol Possession. No driver shall be on duty or operate a CMV while the driver possesses alcohol.
3. On-Duty Use. No driver shall use alcohol while performing safety-sensitive functions.
4. Pre-Duty Use. No school bus driver shall perform safety sensitive functions within eight (8) hours after using alcohol. No truck driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. Use Following an Accident. No driver required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
6. Use of Controlled Substances. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance as defined in Title 49 CFR part 40, except when the use is pursuant to instructions (which have been presented to the school district) from a physician who has advised the driver that the substance does not adversely affect the drivers ability to safely operate a CMV.
7. Positive Test for Controlled Substance. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances.
8. General Prohibition. Drivers are also subject to the general policies and procedures of the school district which prohibit the possession, transfer, sale, exchange, reporting to work under the influence of drugs or alcohol, and consumption of drugs or alcohol while at work or while on school district premises or operating any school district vehicle, machinery, or equipment.

#### F. Other Alcohol-Related Conduct

No truck driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform safety-sensitive functions for at least 24 hours. All drivers removed from safety sensitive functions for this reason will be required to pass a return to duty alcohol test before being returned to the safety sensitive function. The test will be documented in the employees file. A second test of this nature within five years will require a referral to a SAP and the successful completion of the SAP recommendation(s).

#### G. Prescription Drugs

A driver must inform his or her supervisor if at any time the driver is using a controlled substance pursuant to a physician's prescription. The physician's instructions shall be presented to the school district upon request. Use of a prescription drug shall be allowed if the physician has advised the driver that the prescribed drug will not adversely affect the driver's ability to safely operate a CMV.

#### H. Testing Requirements.

##### 1. Pre-Employment Testing.

- a. A driver applicant shall undergo testing for controlled substances before the first time the driver performs safety-sensitive functions for the school district.
- b. Tests shall be conducted only after the applicant has received a conditional offer of employment.
- c. In order to be hired, the applicant must test negative and must sign an agreement in the form of Attachment A to this policy, authorizing former employers to release to the school district all information on the applicants alcohol tests with results of blood alcohol concentration of 0.04 or greater, or positive results for controlled substances, or refusals to be tested, within the preceding two (2) years.

##### 2. Post-Accident Testing

- a. As soon as practicable following an accident involving a CMV, the school district shall test the driver for alcohol and controlled substances if the accident involved the loss of human life or if the driver receives a citation for a moving traffic violation arising from an accident which results in bodily injury requiring an ambulance or disabling damage to a motor vehicle.
- b. Drivers should be tested for alcohol use within two (2) hours and no later than eight (8) hours after the accident.
- c. Drivers should be tested for controlled substances no later than thirty-two (32) hours after the accident.
- d. A driver subject to post-accident testing must remain available for testing, or shall be considered to have refused to submit to the test.
- e. If a post-accident alcohol test is not administered within two hours following the accident, the school district shall prepare and maintain on file a record stating the reasons the test was not promptly administered and continue to attempt to administer the alcohol test within eight hours.
- f. If a post-accident alcohol test is not administered within eight hours following the accident or a post-accident controlled substances test is not administered within 32 hours following the accident, the school district shall cease attempts to administer the test, and prepare and maintain on file a record stating the reasons for not administering the test.

##### 3. Random Testing

- a. The school district shall conduct tests on a random basis at unannounced times throughout the year, as required by the federal regulations.
- b. The school district shall test for alcohol and controlled substances at a rate

- defined by federal regulation.
- c. The school district shall adopt a scientifically valid method for selecting drivers for testing.
  - d. Drivers shall proceed immediately to the collection site upon notification of selection.
4. Reasonable Suspicion Testing
- a. The school district shall require a driver to submit to an alcohol test and/or controlled substances test when a supervisor or school district official, who has been trained in accordance with the regulations, has reasonable suspicion to believe that the driver has used alcohol and/or controlled substances on duty or within four (4) hours before coming on duty. The test shall be done as soon as practicable following the observation of the behavior indicative of the use of controlled substances or alcohol.
  - b. The reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The required observations for reasonable suspicion of a controlled substances violation may include indications of the chronic and withdrawal effects of controlled substances.
  - c. Alcohol testing shall be administered within two hours following a determination of reasonable suspicion. If it is not done within two hours, the school district shall prepare and maintain a record explaining why it was not promptly administered and continue to attempt to administer the alcohol test within eight hours. If an alcohol test is not administered within eight hours following the determination of reasonable suspicion, the school district shall cease attempts to administer the test and state in the record the reasons for not administering the test.
  - d. The supervisor or school district official who makes observations leading to a controlled substances reasonable suspicion test shall make and sign a written record of the observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier.
5. Return-To-Duty Testing. A driver found to have violated this policy shall not return to work until undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a confirmed negative result for the use of controlled substances.
6. Follow-Up Testing. When a SAP establishes a written follow up testing plan, the driver shall be subject to unannounced follow-up testing as directed by the SAP for up to sixty (60) months after completing a treatment program.
7. Consent to Testing. Each driver and driver applicant tested under this policy will be requested to sign a consent form at the specimen collection site that authorizes the taking of the sample and the release of the results to the proper authority.
8. Right to Refuse and Consequence.
- a. A driver or driver applicant has the right to refuse to undergo drug and alcohol testing.
  - b. Refusal to submit to testing means the employee or applicant (1) fails to provide adequate breath for testing without a valid medical explanation after he or she received notice to report for the test; (2) fails to provide adequate urine for a controlled substances test without a valid medical explanation after he or she has received notice to report for the test; or (3) engages in conduct that clearly obstructs the testing process.
  - c. Refusal to submit to testing will establish a presumption that the driver or driver applicant would test positive if a test were conducted and, therefore, the driver or driver applicant is subject to discipline or disqualification under this policy.
  - d. A driver applicant who refuses to submit to testing shall be disqualified from

- further consideration for the conditionally offered position.
- e. An employee who refuses to submit to testing shall not be permitted to perform safety-sensitive functions and will be considered insubordinate and subject to disciplinary action, up to and including dismissal. The employee will be evaluated by a SAP and must submit to a return-to-duty test prior to being reassigned to safety-sensitive functions.
  - f. An employee shall be immediately terminated if any of the following are true:
    - An employee tests positive for controlled substances or alcohol or a combination thereof for a second time.
    - An employee is involved in a crash where the employee tests positive for drugs or alcohol.
    - An employee refuses to take part in or fails to successfully complete an education and/or treatment program prescribed by a SAP.

#### I. Testing Procedures

All specimen collection, analysis, and laboratory procedures shall be conducted in accordance with safeguards set forth in Part 40 of Title 49 of the Federal Code of Regulations.

#### J. Costs

1. The cost of drug and alcohol collections and tests will be paid by the District.
2. Employees will be paid their normal hourly wage while being tested for drugs and alcohol with the exception of return to duty tests.
3. SAP referrals will be conducted through a SAP professional designated by the District. All expenses including treatment will be the responsibility of the employee and their personal health insurance.

#### K. Employee admission of alcohol and controlled substance use.

- a. Duluth Public Schools will not take adverse action against an employee who makes a voluntary admission of alcohol misuse and/or controlled substance use under the following conditions:
  1. The employee does not self identify to avoid testing. Admissions must be made before any pending alcohol/controlled substance test or disciplinary action.
  2. The employee makes the admission of alcohol misuse and/or controlled substance use prior to performing a safety sensitive function.
- b. Employees making an admission will be removed from duty without compensation and allowed the appropriate leave to seek evaluation and treatment to establish control over their drug and/or alcohol problem.
- c. Employees will be allowed to return to safety sensitive duties only upon: successful completion of an educational or treatment program as determined by a SAP; undergoing a return to duty test with a result indicating an alcohol concentration of less than 0.02; undergoing a return to duty controlled substance test with a verified negative test result for controlled substance use.
- d. Employees will be subject to random follow up testing under this provision.
- e. Cost for treatment will be the sole responsibility of the employee or their personal health plan.

#### Attachment B

School District contact(s) for drug and alcohol testing program: Ken Willms  
Certified laboratory providing controlled substance testing: Medtox  
Medical Review Officer: Dr. Mark Peterson(through Medtox)  
Controlled substance collection and alcohol testing provider: Perrin Mobile Medical

Adopted: 05-21-2013 ISD 709