

# ADMINISTRATIVE REGULATION

No. 431

## Board of Trustees Douglas County School District

## PERSONNEL

### CONTROLLED SUBSTANCE AND ALCOHOL TESTING

The Douglas County School District recognizes its responsibility to promote the health, welfare and safety of students, faculty and staff, parents/guardians, and other visitors on District property and at school-sponsored activities. This administrative regulation establishes the District's procedure concerning the use and possession of alcohol, designer drugs and controlled substances on District property, in District vehicles and at any activity sponsored by the District. Such use includes: any designer drug, any inhalant, any substance that mimics the effect of a controlled substance, any prescription drug that is not properly used in accordance with the prescription issued by the licensing medical practitioner, any over-the-counter medication or consumer product that is being used outside of the manufacturer's instructions or being ingested in a way not intended or contrary to instructions provided by the manufacturer, smokeless tobacco and "herbal" or "fake" chew products, any device which simulates smoking such as an electronic cigarette, cigar or pipe, personal vaporizer, e-hookah, or electronic nicotine delivery system.

Any required testing, other than random testing required for employment or participation in athletic events, is to be at the direction of the Superintendent or designee as informed by a supervisor. The results of any controlled substance and alcohol testing are to be reported directly to the Superintendent or designee.

Employees required to maintain a commercial driver's license (CDL) as a condition of their employment (hereinafter referred to as "driver") shall be subject to a controlled substance and alcohol testing program that fulfills the requirements of the Code of Federal Regulations, Title 49, Part 382.

Other persons who drive vehicles designed to transport 16 or more passengers, including the driver, are likewise subject to the controlled substance and alcohol testing program. (49 CFR 382.103)

Any employee designated by the Superintendent, or designee, for a fitness for duty examination shall be subject to the appropriate related physical, mental, or controlled substance and alcohol assessment by a medical physician.

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The District will require controlled substance and alcohol testing for any employee involved in any work-related injury or accident requiring medical attention other than first aid. The testing is to occur as soon after the injury or accident as practical.

Testing procedures and facilities used for the tests shall conform with the requirements of the Code of Federal Regulations, Title 49, Section 40 et seq. for all drivers and employees who are required to hold a CDL as part of their job duties.

Testing procedures and facilities used for all other controlled substance and alcohol testing shall occur through District designated professional medical facilities.

### Pre-Employment Tests

Tests shall be conducted before the first time a driver performs any safety-sensitive function for the district. (49 CFR 382.301)

Safety-sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. It includes driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents; and performing any other work for the district or paid work for any other entity. (49 CFR 382.107, 395.2)

The tests shall be required of an applicant only after he/she has been offered the position.

Exceptions may be made for drivers who have had the alcohol test required by law within the previous six months and participated in the controlled substance testing program required by law within the previous 30 days, provided that the district has been able to make all verifications required by law. (49 CFR 382.301)

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The District may require controlled substance and alcohol testing to certify the fitness for duty of any new employee to assure that the candidate is fully able to discharge the duties they are required to perform.

### Post-Accident (Vehicular or Work-Related injury) Tests

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any driver or employee:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life; bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or
2. Who receives a citation under state or local law for a moving traffic violation arising from the accident (49 CFR 382.303); or
3. Who receives medical treatment following the accident or injury that is anything other than first-aid. This shall include all injuries that result in a visit to the Emergency Room, Emergent Care Center, or other medical facility.
4. Who loses consciousness.
5. Whose performance may be a contributing factor to the accident.

The directing supervisor shall contact the Superintendent, or designee, to discuss the situation and obtain authorization to seek testing. The written report shall follow within 24 hours of the incident and be submitted directly to the Superintendent or designee.

### Reasonable Suspicion Tests for all other employees

Tests shall be conducted when a supervisor or District official trained in accordance with law has reasonable suspicion that the

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employee has violated the district's alcohol or controlled substance prohibitions and with direct authorization from the Superintendent or designee. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances.

A supervisor or District official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier, and provide it to the Director of Human Resources or the Superintendent.

### **PROCEDURES SPECIFIC TO DRIVERS AND HOLDERS OF CDL**

Drivers shall make themselves readily available for testing, absent the need for immediate medical attention. (49 CFR 382.303)

No such driver shall use alcohol for eight hours after the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first. (49 CFR 382.209)

If an alcohol test is not administered within two hours or if a controlled substance test is not administered within 32 hours, the district shall prepare and maintain records explaining why the test was not conducted. Tests will not be given if not administered within eight hours after the accident for alcohol or within 32 hours for controlled substances.

Tests conducted by authorized federal, state or local officials will fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the district. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations. (49 CFR 382.303)

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### Random Tests

Tests shall be conducted on a random basis at unannounced times throughout the year. Tests for alcohol shall be conducted just before, during or just after the performance of safety-sensitive functions. The number of random alcohol tests annually must equal 25% of the average number of driver positions. The number of random controlled substance tests annually must equal 50% of the average number of driver positions. Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. (49 CFR 382.305)

### Reasonable Suspicion Tests

Tests shall be conducted when a supervisor or District official trained in accordance with law has reasonable suspicion that the driver has violated the district's alcohol or controlled substance prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. (49 CFR 382.307)

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before or just after the period of the workday when the driver must comply with alcohol prohibitions. An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the district shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after eight hours. (49 CFR 382.307)

A supervisor or district official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier. (49 CFR 382.307)

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### Notifications

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the district's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. The information shall identify:

1. The person designated by the district to answer driver questions about the materials;
2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382;
3. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the work day the driver is required to comply with Part 382;
4. Specific information concerning driver conduct that is prohibited by Part 382;
5. The circumstances under which a driver will be tested for controlled substances and/or alcohol under Part 382;
6. The procedures that will be used to test for the presence of controlled substances and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results and ensure that test results are attributed to the correct driver;
7. The requirement that a driver submit to controlled substance and alcohol tests administered in accordance with Part 382;
8. An explanation of what constitutes a refusal to submit to a controlled substance or alcohol test and the attendant consequences;

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9. The consequences for drivers found to have violated the controlled substance and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment;
10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04; and
11. Information concerning the effects of controlled substances and alcohol on an individual's health, work and personal life; signs and symptoms of a controlled substance or alcohol problem (the driver's or a coworker's); and available methods of intervening when a controlled substance or alcohol problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management. (49 CFR 382.601)

Drivers shall also receive information about legal requirements, district policies and disciplinary consequences related to the use of alcohol and controlled substances.

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. (49 CFR 382.601)

Before any driver operates a commercial motor vehicle, the district shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. (49 CFR 382.303)

Before controlled substance and alcohol tests are performed, the district shall inform drivers that the tests are given pursuant to the Code of Federal Regulations, Title 49, Part 382. This notice shall be provided only after the compliance date specified in law. (49 CFR 382.113)

The district shall notify a driver of the results of a pre-employment controlled substance test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her employment application. (49 CFR 382.411)

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The district shall notify a driver of the results of random, reasonable suspicion and post-accident controlled substance tests if the test results are verified positive. The district shall also tell the driver which controlled substance(s) were verified as positive. (49 CFR 382.411)

Drivers shall inform their supervisors if at any time they are using a controlled substance that their physician has prescribed for therapeutic purposes. Such a substance may be used only if the physician has advised the driver that it will not adversely affect his/her ability to safely operate a commercial motor vehicle. (49 CFR 382.213) If a driver is unable to obtain such physicians statement he/she will be placed on leave until released or no longer using the controlled substance.

### **ENFORCEMENT**

Any employee who refuses to submit to post-accident, random, reasonable suspicion or follow-up tests shall not perform or continue to perform safety-sensitive functions. (49 CFR 382.211)

Any employee who refuses to submit to post accident or work-related injury controlled substance and alcohol testing shall be suspended without pay and may result in dismissal.

Employees or drivers who test positive for alcohol or controlled substances shall be subject to disciplinary action up to and including dismissal.

Any employee who violates district prohibitions related to controlled substances and alcohol shall receive from the district the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve controlled substance and alcohol-related problems. The employee shall be evaluated by a substance abuse professional that shall determine what help, if any, the driver needs in resolving such a problem.

Any substance abuse professional who determines that a driver needs assistance shall not refer the driver to a private practice, person or organization in which



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he/she has a financial interest, except under circumstances allowed by law. (49 CFR 382.605)

An employee identified as needing help in resolving a controlled substance or alcohol problem shall be evaluated by a substance abuse professional or referred to EAP to determine that he/she has properly followed the prescribed rehabilitation program and shall be subject to unannounced follow-up tests after returning to duty. (49 CFR 382.605)

### Return-to-Duty Tests

A controlled substance or alcohol test shall be conducted when a driver who has violated the district's controlled substance or alcohol prohibition returns to performing safety-sensitive duties. (49 CFR 382.309)

Employees whose conduct involved controlled substances cannot return to duty in a safety-sensitive function until the return-to-duty controlled substance test produces a verified negative result. (49 CFR 382.605)

Employees whose conduct involved alcohol cannot return to duty in a safety-sensitive function until the return-to-duty alcohol test produces a verified result that meets federal and district standards.

### Follow-up Tests

A driver who violates the district's controlled substance or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a controlled substance or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up alcohol testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions. (49 CFR 382.311)

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## Records

Employee controlled substance and alcohol test results and records shall be maintained at the District Office under strict confidentiality and released only in accordance with law. Upon written request, a driver or employee shall receive copies of any records pertaining to his/her use of controlled substances or alcohol, including any records pertaining to his/her controlled substance or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. (49 CFR 382.405)

[See Policy related to this Administrative Regulation](#)

Adopted: 12/13/94

Revised: 10/13/15