

The Board of Education, with the intent that all employees have notice and knowledge of the ramifications concerning alcohol and illegal chemical substance use, possession, purchase, sale, or distribution when the employee is on duty or on school property, does hereby adopt the following policy on testing employees and applicants for employment (other than bus drivers) with regard to the use of alcohol and illegal chemical substances.

#### STATEMENT OF PURPOSE AND INTENT

- A. The safety of students and employees of the district is of paramount concern to the Board of Education.
- B. Employees who are under the influence of alcohol or an illegal chemical substance when on duty or on school property pose serious safety risks to students and other employees.
- C. The use of alcohol and illegal chemical substances has a direct and adverse effect on the safety, personal health, attendance, productivity and quality of work of all employees and the safety of all students.
- D. Recent scientific studies demonstrate that the use of alcohol and illegal chemical substances reduces an employee's ability to perform his/her job beyond the time period of immediate consumption or use.
- E. The Board of Education recognizes that all employees have certain personal rights guaranteed by the Constitution of the United States of America and by the Constitution of the State of Oklahoma as well as by the Oklahoma Standards for Workplace Drug and Alcohol Testing Act, Okla. Stat. Tit. 40, Section 551 et seq. (Supp. 1994). This policy will not infringe on those rights.
- F. As part of this policy, the Board of Education has adopted an Employee Assistance Program in which employees may be referred to third-party providers who will provide the employee, at the employee's expense, a confidential drug and alcohol dependency evaluation and referral service for substance abuse counseling, treatment or rehabilitation. The Board of Education encourages employees who have chemical dependency problems to seek professional assistance.
- G. Due to the devastating impact the use of alcohol and illegal chemical substances can have on the safety of students and employees and their adverse effect on an employee's ability to perform his/her job, the Board of Education will not tolerate employees who use, possess, distribute, purchase, sell or are under the influence (as defined in the policy) of alcohol or illegal chemical substances when on duty or while on school property.
- H. This policy will apply to all employees of the district regardless of position, title or seniority, except that for bus/CDL (commercial driver's license) drivers, the primary policy for alcohol or illegal chemical substances is Board Policy #4028 - Alcohol and Drug Testing for Bus/CDL Drivers and the federal Omnibus Transportation Act of 1991. The district may also apply any or all of the requirements of this policy to bus/CDL drivers, and specifically may apply post-accident testing requirements under this policy to bus/CDL drivers.
- I. Violations of this policy will subject the employee to disciplinary action, including termination.

#### DEFINITIONS

- A. Applicant: A person who has applied for a position with the district and received a conditional offer of employment.
- B. Illegal chemical substance: Any substance which an individual may not sell, possess, use, distribute, or purchase under either federal or Oklahoma law. Illegal chemical substance includes, but is not limited to, all scheduled drugs as defined by the Oklahoma Uniform Controlled Dangerous Substances Act, including synthetic narcotics and designer drugs, all prescription drugs obtained without authorization, and all prescribed drugs and over-the-counter drugs being used for an abusive purpose. By this policy, applicants and employees are placed on notice that the school district may test individuals for drugs and alcohol.
- C. Alcohol: Ethyl alcohol or ethanol.
- D. Under the influence: Any employee of the district or applicant for employment with the district who has any alcohol or illegal chemical substance or the metabolites thereof present in the body in any amount which is considered to be "positive" for such alcohol or drug or drug metabolites, using any scientifically substantiated drug-use screen test and drug-use confirm test.
- E. Positive: When referring to an alcohol or drug-use test administered under this policy, means a toxicological test result which is considered to demonstrate the presence of alcohol or an illegal chemical substance or the metabolites thereof using the cutoff standards or levels determined by the State Board of Health or, in the absence of such State Board cutoff levels, using the cutoff standards customarily established by the testing laboratory administering the alcohol or drug-use test.
- F. School property: Any property owned, leased or rented by the district including, but not limited to, school buildings, parking lots and motor vehicles.
- G. Drug or alcohol test: A chemical test administered for the purpose of determining the presence or absence of alcohol or illegal chemical substances or their metabolites in a person's blood, bodily tissue, fluids, or products. Adulteration of a specimen or of a drug or alcohol test shall be considered as a refusal to test.
- H. Confirmation test: means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol

test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the initial test. In instances when a breathalyzer test is used a confirmation test means a second sample test that confirms the prior result. Where a single use test is utilized, a confirmation test means a second test confirmed by a testing facility.

- I. Employee: Any person who supplies labor for remuneration to the district and shall not include an independent contractor, subcontractor, or employees of an independent contractor; provided, however, an independent contractor, subcontractor, or employees of an independent contractor may be subject to a workplace drug or alcohol testing policy under the terms of the contractual agreement when the drug or alcohol testing policy applies to other workers at the job site or workers who are in the same or similar classification or group.
- J. On duty: Any time during which an employee is acting in an official capacity for the district or performing tasks within the employee's job description, including the taking of an annual physical examination.
- K. Bus driver: A district employee who is required to have a commercial driver's license (CDL) to perform the employee's duties; employees of independent contractors who are required to have a CDL, owner-operators, leased drivers, and occasional drivers.
- L. "Direct Child Care" means the following:
  - 1. Administering to the needs of infants, toddlers, preschool age children and school-age children outside of school hours;
  - 2. By persons other than their parents, guardians, or custodians;
  - 3. For any part of the twenty-four hour day;
  - 4. In a place other than a child's own home, except that an in-home aide provides child care in the child's own home.
- M. To the extent not specifically defined herein, the definition of any term, word, or phrase found in this policy shall be as set forth in the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.

#### PROCEDURES FOR ALCOHOL OR ILLEGAL CHEMICAL SUBSTANCE TESTING

- A. Any alcohol or drug-use test administered under the terms of this policy will be administered by or at the direction of a testing facility licensed by the Oklahoma State Department of Health and using scientifically validated toxicological methods that comply with rules promulgated by the State Department of Health. Testing facilities shall be required to have detailed written specifications to assure chain of custody of the samples, proper labeling, proper laboratory control and scientific testing. All aspects of the alcohol and drug-use testing program, including the taking of samples, will be conducted so as to safeguard the personal and privacy rights of employees and applicants. The test sample shall be obtained in a manner which minimizes its intrusiveness.  
  
In the case of urine samples, the sample must be collected in a restroom or other private facility behind a closed stall; a sample shall be collected in sufficient quantity for splitting into two (2) separate samples, pursuant to rules of the State Board of Health, to provide for any subsequent independent analysis in the event of a challenge of the test results of the main sample. The test monitor shall not observe any applicant or employee while the sample is being produced, but the test monitor may be present outside the stall to listen for the normal sounds of urination in order to guard against tampered samples and to ensure an accurate chain of custody. The test monitor may verify the normal warmth and the appearance of the sample. If, at any time during the testing procedure, the test monitor has reason to believe or suspect that an applicant or employee is tampering with the sample, the test monitor may stop the procedure and inform the test coordinator. The test monitor shall be of the same gender as the applicant or employee giving the sample.  
  
The test monitor shall give each applicant or employee a form on which the applicant or employee may, but shall not be required to, list any medications he/she has taken, or any other legitimate reasons for having been in recent contact with alcohol or illegal chemical substances.
- B. If the initial drug-use test is positive for the presence of an illegal chemical substance or the metabolites thereof, the initial test result will be subject to confirmation by a second and different test of the same sample. The second test will use the gas chromatography/mass spectrometry technique or an equivalent scientifically accepted method of equal or greater accuracy as approved by rules of the State Board of Health at the cutoff levels determined by Board of Health rules. An applicant for employment will not be denied employment or an employee will not be subject to disciplinary procedures unless the second test is positive for the presence of illegal chemical substances or the metabolites thereof.
- C. If an initial alcohol-use test is positive for the presence of alcohol, the initial test result will be subject to confirmation by a second and different test using any scientifically accepted method approved by the State Board of Health, at the cutoff levels determined by the Board of Health rules.
- D. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.
- E. Any applicant for employment or employee who is subject to disciplinary action as a result of being under the influence of alcohol or an illegal chemical substance, as and for an appeal procedure, will be given a reasonable opportunity, in confidence, to explain or rebut the alcohol or drug-use test results. If the applicant or employee

asserts that the positive test results are caused by other than consumption of alcohol or an illegal chemical substance by the applicant or employee, then the applicant or employee will be given an opportunity to present evidence that the positive test result was produced by other than consumption of alcohol or an illegal chemical substance. The district will rely on the opinion of the district's testing facility which performed the tests in determining whether the positive test result was produced by other than consumption of alcohol or an illegal chemical substance.

- F. In the case of drug-use testing, the applicant or employee will have a right to have a second gas chromatography /mass spectroscopy test performed on the same test sample at the expense of the applicant or employee. In the case of alcohol testing, the applicant or employee will have a right to have a second test performed on the same test sample using any scientifically accepted method approved by rules of the State Board of Health, at the cutoff levels determined by Board of Health rules. The request for the second test must be made within twenty-four (24) hours of receiving notice of a positive test in order to challenge the results of a positive test and subject to approval by the district's testing facility that (1) the facility selected by the applicant or employee for the second test meets the qualifications required for a testing facility under the Oklahoma Standards for Workplace Drug and Alcohol Testing Act and (2) the testing methodology used by the facility selected by the applicant or employee conforms to scientifically accepted analytical methods and procedures, including the cutoff levels, as determined by the State Board of Health. If the re-test reverses the findings of the challenged positive result, then the district will reimburse the applicant or employee for the costs of the re-test. A proper chain of custody shall be maintained at all times in transmitting the sample to and from a second testing facility.
- G. The district may permit testing for drugs or alcohol by other methods reasonably calculated to detect the presence of drugs or alcohol, including but not limited to breathalyzer testing, testing by use of a single-use test device, known as onsite or quick testing devices, to collect, handle, store, and ship a sample collected for testing. However, a breathalyzer test shall not be grounds for immediate termination absent a confirmation test.
- H. The testing facility reports and results of alcohol and drug-use testing will be maintained on a confidential basis except as otherwise required by law. The laboratory performing alcohol or drug-use tests for the district will not report or disclose to the district any physical or mental condition affecting an employment applicant or employee which may be discovered in the examination of a sample other than the presence of alcohol or illegal chemical substances or the metabolites thereof. The use of samples to test for any other substances will not be permitted.

#### APPLICANT AND EMPLOYEE ALCOHOL AND DRUG-USE TEST REQUIREMENTS

The district is authorized to conduct drug and alcohol testing in accordance with the Standards for Workplace Drug and Alcohol Testing Act. The district has chosen to conduct drug or alcohol testing under the following circumstances:

- A. Applicant testing: The district will require an applicant, as defined above, to undergo drug or alcohol testing and may use a refusal to undergo testing or a positive test result as a basis for refusal to hire;
- B. For-cause testing: The district will require an employee to undergo drug or alcohol testing at any time the Superintendent or designee reasonably believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:
  - 1. drugs or alcohol on or about the employee's person or in the employee's vicinity,
  - 2. conduct on the employee's part that suggests impairment or influence of drugs or alcohol,
  - 3. a report of drug or alcohol use while at work or on duty,
  - 4. information that an employee has tampered with drug or alcohol testing at any time,
  - 5. negative performance patterns, or
  - 6. excessive or unexplained absenteeism or tardiness.
- C. Post-accident testing: The district may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or the employer's property has been damaged, including damage to equipment. For purposes of workers' compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by the employer, shall be eligible for such compensation;
- D. Scheduled, periodic testing: The district may require an employee to undergo drug or alcohol testing as a routine part of a routinely scheduled employee fitness-for-duty medical examination of employees who:
  - 1. are police or peace officers, have drug interdiction responsibilities, or are authorized to carry firearms, or
  - 2. may be determined to be engaged in activities which directly affect the safety of others, including but not limited to school vehicle mechanics, and those employees designated as "safety sensitive" pursuant to this policy.
- E. Post-rehabilitation testing: The district may request or require an employee to undergo drug or alcohol testing for a period of up to two (2) years commencing with the employee's return to work, following a positive test or following participation in a drug or alcohol dependency treatment program.

- F. Any employee who refuses to take an alcohol or drug-use test when so required under the provisions of this policy may be deemed to have committed an act of insubordination or willful neglect of duty which will be the basis for disciplinary action, including termination.

#### EMPLOYEE USE, SALE, POSSESSION, DISTRIBUTION, PURCHASE OR BEING UNDER THE INFLUENCE OF ALCOHOL OR ILLEGAL CHEMICAL SUBSTANCE

Any employee who possesses, uses, distributes, purchases, sells or is confirmed by alcohol or drug-use tests to be under the influence (as defined by this policy) of alcohol or an illegal chemical substance while on duty, while on school property or as a result of alcohol or drug-use tests conducted under this policy will be subject to disciplinary action, including termination.

#### ALCOHOL AND DRUG-USE TESTS OF APPLICANTS FOR EMPLOYMENT - WHEN REQUIRED

All applicants for employment will be required to submit to alcohol and/or drug-use testing after a conditional offer of employment has been made to the applicant. All applicants will be notified that alcohol and/or drug-use testing will occur if they are offered a conditional offer of employment. Any applicant who refuses to submit to an alcohol or drug-use test after a conditional offer of employment will not be hired.

#### APPLICANTS UNDER THE INFLUENCE OF ALCOHOL OR AN ILLEGAL CHEMICAL SUBSTANCE

Any applicant who is confirmed by alcohol or drug-use tests to be under the influence (as defined by this policy) of alcohol or an illegal chemical substance will not be hired.

#### PERSON AUTHORIZED TO ORDER ALCOHOL OR DRUG TESTING

The following persons have the authority to require alcohol or drug-use testing of employees under this policy:

- A. The Superintendent.
- B. Any employee designated for such purposes by the Superintendent or the Board of Education.

#### RELEASE OF INFORMATION

- A. Upon written request, the applicant for employment or the employee will be provided, without charge, a copy of all information and records related to the individuals' testing. All test records and results will be confidential and kept in files separate from the applicant's or employee's personnel records.
- B. The district shall not release such records to any person other than the applicant, employee or the district's review officer unless the applicant or employee, in writing following receipt of the test results, has expressly granted permission for the district to release such records in order to comply with a valid judicial or administrative order.
- C. The testing facility, of any agent, representative or designee of the facility, or any review officer, shall not disclose to any employer, based on the analysis of a sample collected from an applicant or employee for the purpose of testing for the presence of drugs or alcohol, any information relating to the general health, pregnancy, or other physical or mental condition of the applicant or employee.
- D. The testing facility shall release the results of the drug or alcohol test, and any analysis and information related thereto, to the individual tested upon request.
- E. This policy does not preclude the district, when contracting with another employer, from sharing drug or alcohol testing results of any tested person who works pursuant to a contractual agreement.

#### MEDICAL MARIJUANA

Pursuant to OKLA. STAT. tit. 63 § 420A et seq., unless failure to do so would cause the school district to imminently lose a monetary or licensing related benefit under federal law or regulations, the school district will not discriminate against an applicant in hiring or take employment action against an employee on the basis of the employee's or applicant's status as a medical marijuana license holder.

Additionally, the school district shall not refuse to hire, discipline, discharge, or otherwise penalize an applicant or employee solely on the basis of a positive test for marijuana components or metabolites unless:

1. The applicant or employee is not in possession of a valid medical marijuana license;
2. The licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana products while at the place of employment or during the fulfillment of employment obligations; or
3. The position is one involving safety sensitive job duties as set out in this policy.

When permitted, adverse action pursuant to this policy may be taken against an employee or applicant for a positive drug test for marijuana components or metabolites.

As used in this section, a determination of whether an applicant or employee is “under the influence of medical marijuana or medical marijuana product” shall be based on the totality of circumstances. Circumstances that may contribute to a determination that the applicant or employee is under the influence may include, but are not limited to:

1. Observation of any of the conduct or phenomenon described below:
  - A. The odor of marijuana on or around the individual;
  - B. Disorganized thinking;
  - C. Paranoia and/or confusion;
  - D. Bloodshot eyes;
  - E. Increased heart rate;
  - F. Increased appetite or
  - G. Loss of coordination and
2. Any circumstance that would permit the school district to engage in “for cause” drug or alcohol testing of the employee.

The district has determined that the following categories of job qualify as having safety sensitive job duties:

1. Police or peace officers, those employees with drug interdiction responsibilities, or who are authorized to carry firearms;
2. Employees whose responsibilities require the operating, repairing, or maintaining a school vehicle, motorized equipment, machinery or power tools;
3. Employees whose responsibilities include the operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution;
4. Employees whose responsibilities include the repairing, maintaining or monitoring the performance or operation of any equipment;
5. School Nurses or employees who are authorized to administer medicine to students;
6. Employees whose responsibilities include direct patient care or direct child care;

#### NOTICE OF POLICY

This policy shall be given broad circulation to all employees of the school district which shall include prominent posting at various places in the district. Each employee shall be given a copy of this policy and each applicant shall be given a copy of this policy upon the tender of a conditional offer of employment. Delivery of the policy to applicants or employees may be accomplished in any of the following ways:

- A. Hand-delivery of a paper copy of or changes to the policy;
- B. Mailing a paper copy of the policy or changes to the policy through the U.S. Postal Service or a parcel delivery service to the last address given by the applicant or employee;
- C. Electronically transmitting a copy of the policy through an email or by posting on the employer’s website or intranet site; or
- D. Posting a copy in a prominent employee access area.

#### THE STANDARD FOR WORKPLACE DRUG AND ALCOHOL TESTING ACT

This policy is subject to and supplemented by the Oklahoma Standards for Workplace Drug and Alcohol Testing Act (the Act). To the extent that any provision of this policy is in contravention to the Act, then the Act shall control. To the extent that this policy is silent as to any matter covered by the Act, then the Act shall control. This policy shall be interpreted by the Board of Education and its employees consistent with the Act.

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