INDEPENDENT SCHOOL DISTRICT 196
Rosemount-Apple Valley-Eagan Public Schools
Educating, developing, and inspiring our students for lifelong success
Series Number **406.3.5AR** Adopted **February 2015** Revised **January 2024**

Title **Alcohol, Cannabis and Drug Testing of Employees Not Performing Duties Requiring a Commercial Driver's License (CDL)**

1. **Applications** – District 196 may request that district employees (as defined below) submit to alcohol, cannabis and/or drug testing in accordance with the provisions of this regulation and as provided in Minnesota Statutes 181.950 - 181.957. The district will not request or require an employee to undergo alcohol, cannabis and/or drug testing on an arbitrary and capricious basis.

   This regulation applies to all employees whose job duties **do not** require holding a commercial driver's license (CDL). With one exception (see section 3 below), this regulation does not apply to employees whose job duties require holding a CDL, and Administrative Regulation 406.3.4AR, Alcohol and Drug Testing of Employees Required to Have a Commercial Driver's License (CDL), shall generally govern the alcohol, cannabis and/or drug testing of those employees.

   The district does not have a legal duty to alcohol, cannabis and/or drug test any employee under this regulation.

2. **Definitions** – The following definitions apply to this regulation:

   2.1 "Employee," unless otherwise noted, means an employee of the district whose job duties do not require holding a CDL.

   2.2 "Cannabis testing" means the analysis of a body component sample according to the standards established under one of the programs listed in Minnesota Statutes, section 181.953, subdivision 1, for the purpose of measuring the presence or absence of cannabis flower, as defined in Minnesota Statutes, section 342.01, subdivision 16, cannabis products, as defined in section 342.01, subdivision 20, lower-potency hemp edibles as defined in section 342.01, subdivision 50, hemp-derived consumer products as defined in section 342.01, subdivision 37, or cannabis metabolites in the sample tested. The definitions in this section apply to cannabis testing unless stated otherwise.

   2.3 "CDL employee" means an employee of the district whose job duties require holding a CDL.

   2.4 "CDL applicant" means a person who applies to become an employee of the district in a position that requires a CDL. Drug, cannabis and/or alcohol testing of CDL applicants is governed by the provisions of Administrative Regulation 406.3.4AR.

   2.5 "Drug" means a controlled substance as defined in Minnesota Statutes, section 152.01, subdivision 4, but does not include marijuana, tetrahydrocannabinols, cannabis flower as defined in section 342.01, subdivision 16, cannabis products as defined in section 342.01, subdivision 20, lower-potency hemp edibles as defined in section 342.01, subdivision 50, and hemp-derived consumer products as defined in section 342.01, subdivision 37.

   2.6 "Drug and Alcohol Testing," "Drug or Alcohol Testing," and "Drug or Alcohol Test" mean analysis of a body component sample by a testing laboratory that meets one of the criteria listed in Minnesota Statutes, section 181.953, subdivision 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested. "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" do not include cannabis or cannabis testing, unless stated otherwise.

2.7 "Initial screening test" means a drug or alcohol test or cannabis test which uses a method of analysis under one of the programs listed in Minnesota Statutes, section 181.953, subdivision 1.

2.8 “Positive test result” means a finding of the presence of drugs, alcohol or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in Minnesota Statute 181.953, subd. 1.

2.9 “Reasonable suspicion” means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

2.10 “Safety-Sensitive Position” means a job, including any supervisory or management position, in which an impairment caused by drug, alcohol, or cannabis usage would threaten the health or safety of any person.

3. **Applicability of Regulation to CDL Employees** – Notwithstanding anything in this regulation to the contrary and to the extent not preempted by federal law, CDL employees may be subject to testing under this regulation when reasonable suspicion to test (as defined further below) arises at a time at which the CDL employee is not subject to reasonable suspicion testing under Administrative Regulation 406.3.4AR. Otherwise, this regulation shall not apply to the alcohol, cannabis and/or drug testing of CDL employees.

4. **Testing Bases** – District 196 employees may be subject to alcohol, cannabis and/or drug testing in the circumstances described below in paragraphs 4.1-4.4 and in accordance with Minnesota Statute 181.951. Cannabis testing is further limited by section 5 of this regulation. District 196 may request or require an employee to undergo alcohol, cannabis and/or drug testing if the district has reasonable suspicion based on specific facts and inferences that the employee:

4.1 Is under the influence of alcohol, cannabis or drugs;

4.2 Has violated Policy 406, section 3, Chemical-Free Workplace, incorporated by reference herein;

4.3 Has sustained a personal injury as defined by Minnesota Statute 176.011, subd. 16, Personal injury, or caused another employee to sustain a personal injury, or

4.4 Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

5. **Cannabis Testing Exceptions and Limitations**

5.1 Cannabis and its metabolites are considered a drug and subject to the drug and alcohol testing provisions in Minnesota Statutes, sections 181.950 to 181.957 for the following positions:

5.1.1 a safety-sensitive position, as defined in Minnesota Statutes, section 181.950, subdivision 13;

5.1.2 a position requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to children, vulnerable adults as defined in section 626.5572, subdivision 21or patients who receive health care services from a provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition;

5.1.3 a position requiring a commercial driver's license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of a job applicant or an employee;

5.1.4 a position of employment funded by a federal grant; or

5.1.5 any other position for which state or federal law requires testing of a job applicant or an employee for cannabis.

5.2 The school district may discipline, discharge, or take other adverse personnel action against an employee for cannabis flower, cannabis product, lower-potency hemp edible, or hemp-derived consumer product use, possession, impairment, sale, or transfer while an employee is working, on school district premises, or operating a school district vehicle, machinery, or equipment as follows:

5.2.1. if, as the result of consuming cannabis flower, a cannabis product, a lower-potency hemp edible, or a hemp-derived consumer product, the employee does not possess that clearness of intellect and control of self that the employee otherwise would have;

5.2.2 if cannabis testing verifies the presence of cannabis flower, a cannabis product, a lower-potency hemp edible, or a hemp-derived consumer product following a confirmatory test;

5.2.3 as provided in the school district's written work rules for cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products and cannabis testing, provided that the rules are in writing and in a written policy that contains the minimum information required by section 181.952; or

5.2.4 as otherwise authorized or required under state or federal law or regulations, or if a failure to do so would cause the school district to lose a monetary or licensing-related benefit under federal law or regulations.

6. **Testing Methods and Types of Drugs Tested**

6.1 Alcohol, cannabis and/or drug testing will be done by analysis of a body component sample by a licensed or accredited laboratory as required by Minnesota Statute 181.953, subd. 1. District 196 and the approved testing facility shall follow the chain-of-custody procedures outlined in Minnesota Statute 181.953, subds. 3 and 5, to ensure proper record keeping, handling, labeling and identification of the samples to be tested.

The district's chain-of-custody procedures shall include the following:

6.1.1 Possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;

6.1.2 The sample must always be in the possession of, must always be in view of, or must be placed in a secured area by a person authorized to handle the sample;

6.1.3 A sample must be accompanied by a written chain-of-custody record, and

6.1.4 Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

6.2 The drugs for which employees will be tested are, cannabis, cocaine, amphetamines, opioids and phencyclidine (PCP).

6.3 A laboratory shall retain and properly store for at least six months all samples that produced a positive result.

7. **Notification of Testing Regulation**

7.1 The district will provide written notice of this alcohol, cannabis and drug testing regulation to all affected employees upon adoption of the regulation and to a previously non-affected employee upon transfer to an affected position under the regulation.

7.2 A notification of the alcohol, cannabis and drug testing regulation will be posted in an appropriate and conspicuous location at each site and a copy of this policy will be available for inspection during regular business hours at each site.

8. **Employee Rights**

8.1 An employee has the right to refuse testing, but the refusal by an employee to take a required test will be documented by the employee's supervisor and appropriate disciplinary action will be taken in accordance with state law and/or applicable collective bargaining agreements. The employee may also be limited in the job duties assigned to the employee.

8.2 Before requesting an employee undergo alcohol and/or drug testing, the district will provide the employee with District Procedure 406.3.5.1P, Pre-test Acknowledgement Form for Employees Not Performing Duties Requiring a Commercial Driver's License (CDL), on which to acknowledge that the employee has seen the district's drug, cannabis and alcohol testing policy.

8.3 If an employee tests positive for alcohol, cannabis and/or drug use, the district or its agent will provide to the employee District Procedure 406.3.5.2P, Notice of Test Result and Various Rights for Employees Not Performing Duties Requiring a Commercial Driver's License (CDL), stating their test result and their rights according to Minnesota Statutes. The procedure states that the employee has the right to explain the positive test. The district or its agent may request the employee indicate any over-the-counter or prescription medication the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result. The employee may present verification of enrollment in the medical cannabis patient registry or of enrollment in a Tribal medical cannabis program as part of the employee's explanation. Use of nonintoxicating cannabinoids or edible cannabinoid products is not a legitimate medical explanation for a confirmed positive test result for cannabis. MROs will verify a drug test confirmed as positive, even if an employee claims to have only used nonintoxicating cannabinoids or edible cannabinoid product.

8.4 Within three working days of a positive test result on a confirmatory test, the employee may submit information to the district or its agent, in addition to any information already submitted under section 8.3 above, to explain that result, or may request a confirmatory retest of the original sample at the employee's expense as provided in Minnesota Statute 181.953, subd.9.

9. **Test Results**

9.1 The testing laboratory shall disclose to the district or its agent a written test result report for each sample tested within three working days after a negative test result on an initial screening test or when the initial screening test produced a positive test result, within three working days after a confirmatory test. A test report must indicate the alcohol, cannabis drugs or alcohol cannabis or drug metabolites tested for and whether the test produced positive or negative results.

9.2 Within three working days after receiving a test result report, the district or its agent shall notify the tested employee of the result and the employee's applicable rights using District Procedure 406.3.5.2P, Notice of Test Result and Various Rights for Employees Not Performing Duties Requiring a Commercial Driver's License (CDL). These rights include the right to receive the test results and, for an employee who tests positive on a test, the rights provided in sections 8.3, 8.4, 9.3 and 10 of this regulation.

9.3 Confirmatory retests – The testing laboratory shall conduct a confirmatory test on all samples that produced a positive test result on an initial screening test. After notice of a positive test result on a confirmatory test, an employee may request a confirmatory retest of the original sample at the employee's expense.

9.3.1. Within five working days after notice of the confirmatory test result, the employee shall notify the district or its agent in writing of the employee's intention to obtain a confirmatory retest.

9.3.2. Within three working days after receipt of the notice, the district or its agent shall notify the original testing laboratory that the employee has requested the lab to conduct the confirmatory retest or transfer the sample to another approved lab to conduct the confirmatory retest using proper chain-of-custody procedures. The same drug, cannabis and alcohol threshold detection levels that were used during the first confirmatory test will be used for the confirmatory retest.

9.3.3. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee.

10. **Limitations on Employee Discharge, Discipline and Discrimination**

10.1 Discipline or discharge decisions under this regulation will be made in accordance with state law and/or applicable collective bargaining agreements.

10.2 The district may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

10.3 The district may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on an alcohol, cannabis and/or drug test requested by the district unless the following conditions have been met:

10.3.1 The district has first given the employee an opportunity to participate in, at the employee's expense or under an employee benefit plan, either a drug, cannabis or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the district after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency, and

10.3.2 The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

10.4 Notwithstanding section 10.2, the district may temporarily place the tested employee on paid administrative leave or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the district believes that it is reasonably necessary to

protect the health or safety of the employee, coworkers, students or the public. An employee must be reinstated if the outcome of the confirmatory test or requested confirmatory retest is negative.

10.5 Notwithstanding section 10.3, the district may impose lesser discipline than discharge, including suspension, for an employee's first positive test result on a confirmatory test and may propose discharge for a positive test result on a subsequent confirmatory test.

10.6 The district may not discharge, discriminate against, or request or require rehabilitation of an employee on the basis of medical history information revealed to the district pursuant to section 8.3 and 8.4 of this regulation unless the employee was under an affirmative duty to provide the information before, upon, or after hire.

10.7 An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the alcohol, cannabis and/or drug testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

11. **Confidentiality**

11.1 The testing laboratory may only disclose alcohol, cannabis and/or drug test results to the district or its agent.

11.2 Employee test results are maintained in strict confidentiality by the district (and/or its agent) and the laboratory. Test results and other information acquired in the testing process are private data on individuals and may not be disclosed by the district (and/or its agent) or laboratory to another employer or third-party individual, governmental agency, or private organization without the written consent of the employee.

11.3 Notwithstanding sections 11.1 – 11.2, evidence of a positive test on a confirmatory test may be:

11.3.1 Used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding;

11.3.2 Disclosed to any federal agency or other unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and

11.3.3 Disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

11.4 Positive test results from the alcohol, cannabis and/or drug testing referred to in this regulation may not be used as evidence in a criminal action against the employee tested.

References: - Minnesota Statutes 181.950 – 181.957, Authorized Drug and Alcohol Testing
- Minnesota Statute 171.02, subd. 2a, Exception for certain school bus drivers
- Minnesota Statute 176.011, subd. 16, Personal injury