

Revised: \_\_\_\_\_

## **420 DRUG AND ALCOHOL TESTING**

### **I. PURPOSE**

To provide authority so that the Lakes Country Service Cooperative Board may require all employees and/or job applicants to submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in federal law and Minn. Stat. §§ 181.950-181.957.

### **II. GENERAL STATEMENT**

- A. The Agency may request or require that any Agency employee or job applicant, other than an employee or applicant whose position requires a commercial driver's license, submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- B. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed is prohibited on Agency property (including Agency vehicles), while operating Agency vehicles or equipment, and at any agency-sponsored program or event. Use of drugs which are not medically prescribed is also prohibited throughout the school or work day, including lunch or other breaks, whether or not staff is on or off Agency property. Staff under the influence of drugs which are not medically prescribed are prohibited from entering or remaining on Agency property.
- C. The use, possession, sale, purchase, transfer, or dispensing of alcohol is prohibited on Agency property (including Agency vehicles), while operating Agency vehicles or equipment, and at any agency-sponsored program or event where supervision of students is required. Use of alcohol is also prohibited throughout the school or work day, including lunch or other breaks, whether or not staff is on or off Agency property. Staff under the influence of alcohol are prohibited from entering or remaining on Agency property.
- D. Any employee who violates this section shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge.

### **III. DEFINITIONS**

- A. "Drug" means a controlled substance as defined in Minnesota Statutes.
- B. "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, Subd. 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

- C. “Other Employees” means any persons, independent contractors, or persons working for an independent contractor who perform services for the Agency for compensation, either full time or part time, in whatever form, and includes both professional and nonprofessional personnel.
- D. “Job applicant” means a person, independent contractor, or person working for an independent contractor who applies to become an employee of the Agency, and includes a person who has received a job offer made contingent on the person’s passing drug or alcohol testing.
- E. “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 Minn. Stat. § 181.953, Subd. 1.
- F. “Random selection basis” means a mechanism for selection of staff that:
  - 1. results in an equal probability that any staff member from a group of staff subject to the selection mechanism will be selected; and
  - 2. does not give the Agency discretion to waive the selection of any employee selected under the mechanism.
- G. “Reasonable suspicion” means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
- H. “Safety-sensitive position” means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

#### **IV. DRUG AND ALCOHOL TESTING FOR EMPLOYEES**

The Agency may request or require drug and alcohol testing for other Agency personnel. The Agency does not have a legal duty to request or require any staff or job applicant to undergo drug and alcohol testing as authorized in this policy.

- A. Circumstances Under Which Drug or Alcohol Testing May Be Requested or Required:
  - 1. General Limitations
    - a. The Agency will not request or require an employee or job applicant whose position does not require a commercial driver’s license to undergo drug or alcohol testing, unless the testing is done pursuant to this drug and alcohol testing policy; and is conducted by a testing laboratory which participates in one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
    - b. The Agency will not request or require employee or job applicant whose position does not require a commercial driver’s license to undergo drug and alcohol testing on an arbitrary and capricious basis.

2. Job Applicant Testing

The Agency may request or require any job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing, provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If a job applicant has received a job offer which is contingent on the applicant's passing drug and alcohol testing, the Agency may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the event the job offer is subsequently withdrawn, the Agency shall notify the job applicant of the reason for its action.

3. Random Testing

The Agency may request or require staff to undergo drug and alcohol testing on a random selection basis only if they are employed in safety sensitive positions.

4. Reasonable Suspicion Testing

The Agency may request or require any staff member to undergo drug and alcohol testing if the Agency has a reasonable suspicion that the staff member:

- a. is under the influence of drugs or alcohol;
- b. has violated the Agency's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the staff member is working or while the staff member is on the Agency's premises or operating the Agency's vehicles, machinery, or equipment;
- c. has sustained a personal injury, as that term is defined in Minn. Stat. § 176.011, Subd. 16, or has caused another staff member to sustain a personal injury; or
- d. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

5. Treatment Program Testing

The Agency may request or require any staff member to undergo drug and alcohol testing if the staff member has been referred by the Agency for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the staff member may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

6. Routine Physical Examination Testing

The Agency may request or require any staff member to undergo drug and alcohol testing

as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the staff member has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

B. No Legal Duty to Test

The Agency does not have a legal duty to request or require any staff member or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing.

C. Right of Employee or Job Applicant to Refuse Drug and Alcohol Testing and Consequences of Such Refusal

1. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing

Any staff member or job applicant whose position does not require a commercial driver's license has the right to refuse drug and alcohol testing subject to the provisions contained in Paragraphs 2 and 3 of this Section D.

2. Consequences of a Employee's Refusal to Undergo Drug and Alcohol Testing

Any employee in a position that does not require a commercial driver's license who refuses to undergo drug and alcohol testing in the circumstances set out in the Random Testing, Reasonable Suspicion Testing, and Treatment Program Testing provisions of this policy may be subject to disciplinary action, up to and including immediate discharge.

3. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing

Any job applicant for a position which does not require a commercial driver's license who refuses to undergo drug and alcohol testing pursuant to the Job Applicant Testing provision of this policy shall not be employed.

D. Reliability and Fairness Safeguards

1. Pretest Notice

Before requesting employee staff member or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, the Agency shall provide the staff member or job applicant with a Pretest Notice in the form of Attachment A to this policy on which to acknowledge that the staff member or job applicant has received the Agency's drug and alcohol testing policy.

2. Notice of Test Results

Within three (3) working days after receipt of a test result report from the testing laboratory, the Agency shall inform in writing a staff member or job applicant who has undergone drug or alcohol testing of a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test.

3. Notice of and Right to Test Result Report

Within three (3) working days after receipt of a test result report from the testing laboratory, the Agency shall inform in writing, employee staff member or job applicant who has undergone drug or alcohol testing of the staff member's or job applicant's right to request and receive from the Agency a copy of the test result report on any drug or alcohol test.

4. Notice of and Right to Explain Positive Test Result

- a. If an employee or job applicant has a positive test result on a confirmatory test, the Agency shall provide him or her with notice of the test results and, at the same time, written notice of the right to explain the results and to submit additional information.
- b. The Agency may request that the employee or job applicant indicate any over-the-counter or prescription medication that 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.
- c. The employee may present verification of enrollment in the medical cannabis registry as part of the employee's explanation.
- d. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee or job applicant may submit information (in addition to any information already submitted) to the Agency to explain that result.

5. Notice of and Right to Request Confirmatory Retests

- a. If an employee or job applicant has a positive test result on a confirmatory test, the Agency shall provide him or her with notice of the test results and, at the same time, written notice of the right to request a confirmatory retest of the original sample at his or her expense.
- b. A staff member or job applicant may request a confirmatory retest of the original sample at his or her own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the staff member or job applicant shall notify the Agency in writing of his or her intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the Agency shall notify the original testing laboratory that the staff member or job applicant has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minn. Stat. § 181.953, Subd. 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection

levels as used in the original confirmatory test. 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 or job applicant.

6. If an employee or job applicant has a positive test result on a confirmatory test, the Agency, at the time of providing notice of the test results, shall also provide written notice to inform him or her of other rights provided under Sections F. or G., below, whichever is applicable.

Attachments B and C to this policy provide the Notices described in Paragraphs 2 through 6 of this Section E.

E. Discharge and Discipline of Staff Whose Positions Do Not Require a Commercial Driver's License

1. The Agency may not discharge, discipline, discriminate against, 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.
2. **Suspension Pending Test Result.** The Agency may temporarily suspend a tested employee with or without pay, or transfer that employee to another position at the same rate of pay pending the outcome of the requested confirmatory retest, provided the Agency believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. The employee will be asked to return home, and will be provided appropriate arrangements for return transportation to his or her residence. In accordance with Minn. Stat. § 181.953, subd. 10, an employee who has been suspended without pay will be reinstated with back pay if the outcome of the requested confirmatory retest is negative.
3. In the case of a positive test result on a confirmatory test, the staff member shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.
4. The Agency may discharge a staff member for whom a positive test result on a confirmatory test was the first such result for the staff member on a drug or alcohol test requested by the Agency. The following shall be taken into consideration:
  - a. The Agency has first given the staff member an opportunity to participate in, at the staff member's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Agency after consultation with a certified chemical abuse counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
  - b. 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.

5. Notwithstanding Paragraph 1., the Agency may temporarily suspend the tested employee 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 Agency believes that it is reasonably necessary to protect the health or safety of the staff member, co- employees or the public. A staff member who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
6. The Agency may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information or the employee's status as a patient enrolled in the medical cannabis registry program revealed to the Agency, unless the staff member was under an affirmative duty to provide the information before, upon or after hire, or failing to do so would violate federal law or regulations.
7. The Agency may not discriminate against any employee in termination, discharge, or any term of condition of employment or otherwise penalize an employee based upon an employee registered patient's positive drug test for cannabis component or metabolites, unless the employee used, possessed, or was impaired by medical cannabis on Agency property during the hours of employment.
8. A staff member must be given access to information in his or her personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

F. Withdrawal of Job Offer for an Applicant for a Position That Does Not Require a Commercial Driver's License

If a job applicant has received a job offer made contingent on the applicant's passing drug and alcohol testing, the Agency may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the Agency may withdraw the job offer.

G. Chain-of-Custody Procedures

The Agency has established its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures require the following:

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;
2. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
3. A sample must be accompanied by a written chain-of-custody record; and
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.

## H. Privacy, Confidentiality and Privilege Safeguards

### 1. Privacy Limitations

A laboratory may only disclose to the Agency test result data regarding the presence or absence of drugs, alcohol or their metabolites in a sample tested.

### 2. Confidentiality Limitations

With respect to staff and job applicants, test result reports and other information acquired in the drug or alcohol testing process are private data on individuals as that phrase is defined in Minn. Stat. Ch. 13, and may not be disclosed by the Agency or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the staff member or job applicant tested.

### 3. Exceptions to Privacy and Confidentiality Disclosure Limitations

Notwithstanding Paragraphs 1. and 2., evidence of a positive test result on a confirmatory test may be:

(1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minn. Stat. Ch. 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding;

(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;

(3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

## I. Notice of Testing Policy to Affected Staff

The Agency shall provide written notice of this drug and alcohol testing policy to all affected staff upon adoption of the policy, to a previously non-affected staff member upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant's passing drug and alcohol testing. Affected staff and applicants will acknowledge receipt of this written notice in the form of Attachment D to this policy.

## V. **POSTING**

The Agency shall post notice in an appropriate and conspicuous location on its premises that it has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection



during regular business hours by its employees or job applicants in its personnel office or other suitable locations.

*Legal References:* Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. Ch. 43A (State Personnel Management)  
Minn. Stat. § 152.22 (Medical Cannabis: Definitions)  
Minn. Stat. § 152.23 (Medical Cannabis: Limitations)  
Minn. Stat. § 152.32 (Protections for Registry Program Participation)  
Minn. Stat. §§ 181.950-181.957 (Drug and Alcohol Testing in the Workplace)

**ATTACHMENT A**

**PRETEST NOTICE**

I the undersigned employee/job applicant of Lakes Country Service Cooperative (ISD 926) Fergus Falls, Minnesota (“Agency”) do hereby acknowledge that I have been provided a copy of the Agency’s Drug and Alcohol Testing Policy.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Employee/Job Applicant

\_\_\_\_\_  
Typed or Printed Name

**ATTACHMENT B**

[Employee Name] [Employee  
Address]

**RE: Drug and/or Alcohol Test  
[Date of Testing]**

**NOTICE OF TEST RESULTS AND VARIOUS RIGHTS**

Test Results:

Lakes Country Service Cooperative (ISD 926), Fergus Falls, Minnesota has received the test result report from the testing laboratory:

- Your initial screening test result was negative.
- Your confirmatory test result was negative.
- Your confirmatory test result was positive.

Test Result Report:

You have the right to request and receive from the Agency a copy of the test result on any drug or alcohol test.

Right to Explain Positive Test Result:

In the case of a positive test result on a confirmatory test, you have the right to explain the results. You may, within three (3) working days after notice of a positive test result on a confirmatory test, submit information to the Agency, in addition to any information already submitted, to explain that result. Attached to this Notice is a document entitled "Explanation of Positive Test Result" for this purpose.

Right to Request Confirmatory Retests:

In regards to drug testing and in the case of a positive test result on a confirmatory test, you have the right to request a confirmatory retest of the original sample at your own expense.

Within five (5) working days after notice of the confirmatory test result, you must notify the school Agency in writing of your intention to obtain a confirmatory retest.

Within three (3) working days after receipt of the notice, the school Agency shall notify the original testing laboratory that you have requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minn. Stat. § 181.953, Subd. 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug threshold detection levels as used in the original confirmatory test. 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 you. There is no retest for a positive confirmatory alcohol test.

Other Rights:

In the case of a positive test result on a confirmatory test, you may have other rights provided under the sections detailed below.

A. Staff Discharge and Discipline

1. The Agency may not discharge, discipline, discriminate against, request or require rehabilitation of a staff member whose position does not require a commercial driver's license on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

In the case of a positive test result on a confirmatory test, the staff member shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.

2. The Agency may discharge a staff member whose position does not require a commercial driver's license for whom a positive test result on a confirmatory test was the first such result for the staff member on a drug or alcohol test requested by the school Agency, the school Agency may consider the following in an effort to retain the employee who has tested positive.
  - a. The Agency may give the staff member an opportunity to participate in, at the staff member's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school Agency after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
  - b. If the staff member 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. The staff member will be discharged.
3. Notwithstanding Paragraph 1., the Agency may temporarily suspend the tested staff member or transfer that staff member to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the Agency believes that it is reasonably necessary to protect the health or safety of the staff member, co-employees or the public. A staff member who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
4. The Agency may not discharge, discipline, discriminate against, request, or require rehabilitation of a staff member on the basis of medical history information revealed to the school Agency, unless the staff member was under an affirmative duty to provide the information before, upon, or after hire.

5. A staff member must be given access to information in the staff member's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

B. Withdrawal of Applicant's Job Offer

If a job applicant for a position that does not require a commercial driver's license has received a job offer made contingent on the applicant passing drug and alcohol testing, the Agency may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the Agency may withdraw the job offer.

**ATTACHMENT C**

**EXPLANATION OF POSITIVE TEST RESULT**

I, the undersigned employee/job applicant of Lakes Country Service Cooperative (ISD 926) , Fergus Falls, Minnesota acknowledge receipt of a Notice of Test Results and Various Rights. This includes my right to explain the positive test result on a confirmatory test.

I am currently taking or have recently taken:

- no over-the-counter or prescription medications; or
- the following over-the-counter or prescription medications:

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I also offer the following information relevant to the reliability of, or explanation for, a positive test result:

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Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Employee/Job Applicant

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Typed or Printed Name

**ATTACHMENT D**

**ACKNOWLEDGMENT  
DRUG AND ALCOHOL TESTING POLICY**

I have received a copy of the Drug and Alcohol Testing Policy of Lakes Country Service Cooperative (ISD 926), Fergus Falls, Minnesota and have read it in its entirety.

The Agency's policy was provided to me:

- Upon adoption of the policy. (employee).
- Upon my hire. (job applicant/new employee).
- After receipt of my conditional job offer, before any testing if my job offer is contingent upon my passing of drug and alcohol testing. (job applicant).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Employee/ Applicant

\_\_\_\_\_  
Typed or Printed Name