

## 8414.5-R

### ALCOHOL AND CONTROLLED SUBSTANCE TESTING OF BUS DRIVERS AND OTHER COVERED EMPLOYEES REGULATION

Any employee who operates a commercial motor vehicle and/or is in a safety-sensitive function described below is subject to alcohol and controlled substance testing in accordance with Board policy and federal and state statutes and regulations. An employee having any questions concerning the district's policy or regulation, state law or the federal regulations are to contact the Superintendent of Schools.

Deleted: shall be

Deleted: shall

Any treatment, rehabilitation program or discipline will be provided in accordance with district policy and/or collective bargaining agreements.

#### I. Covered Employees Under Federal and State Law

Covered employees (defined in Board policy and this regulation) include district employees who operate or may be assigned to operate a commercial motor vehicle, perform in a related safety-sensitive position, and are required to obtain a commercial driver's license, and/or are referred to in this regulation as "drivers." Such employees are defined as engaging in "safety-sensitive duties" for the purpose of Board policy and this regulation. Such employees (referred to as "covered employees") include:

1. drivers of commercial motor vehicles designed to transport 16 or more passengers, including the driver, or any vehicle owned by the district or by a private company, irrespective of the number of passengers, operated to transport students, children of students, teachers, and/or other supervisory personnel to or from school or school activities;
2. drivers of commercial motor vehicles whose manufacturer's rating is 26,001 lbs. or more; and
3. any other employee who may drive or service a listed vehicle (e.g., a mechanic who performs test drives, repairs, inspects or loads or unloads a vehicle listed in this regulation).

Drivers include, but are not limited to full time, regularly employed drivers; substitute drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed or under lease to an employer or who operate a commercial motor vehicle at the direction or with the consent of the district. The term "driver" does not include volunteers who, on behalf of or as authorized by the district, transport students, children of students, teachers, and/or other supervisory personnel to or from school or school activities fewer than thirty (30) days in any school year.

Covered employees will be removed from their safety-sensitive duties if they violate the district's policy or federal or New York State regulations pertaining to the possession, consumption of, or being or appearing to be under the influence of alcohol or controlled substances. A driver is performing a safety-sensitive function when:

1. waiting to be dispatched, unless the driver has been relieved from duty;
2. inspecting, servicing or conditioning any commercial motor vehicle;

3. driving a commercial motor vehicle;
4. attending a vehicle being loaded or unloaded;
5. performing the driver requirements of applicable federal or New York State regulations pertaining to accidents; and
6. attending to a disabled vehicle.

Covered employees are required to be in compliance with district policy and regulation at the following times:

- when performing any on-duty safety-sensitive functions, including all time from the time a covered employee begins to work or is required to be in readiness to work until the time the covered employee is relieved from work and all responsibility; and
- during all time spent providing a breath sample, saliva/oral fluid sample or urine specimen and travel time to and from the collection site in order to comply with random, reasonable suspicion, post-accident, return-to-duty or follow-up testing.

## II. Prohibitions and Consequences

Covered employees (including but not limited to those covered under federal and New York State law) are prohibited from driving a listed vehicle or performing other safety-sensitive duties if the employee:

1. possesses, consumes or is reasonably believed to possess or have consumed alcohol or a controlled substance (except those lawfully prescribed), while on duty;
2. has consumed or is under the influence of alcohol or a controlled substance (except those lawfully prescribed) within eight (8) hours before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for controlled substances (except those lawfully prescribed); or
4. refuses to take a required alcohol or controlled substance test. Refusal to submit is defined as the failure to provide adequate breath, saliva/oral fluid or urine without a valid medical explanation or to engage in conduct that clearly obstructs the testing process, such as (a) a failure to arrive for the drug testing, (b) failure to sign the alcohol and/or substance abuse testing form prior to specimen collection, or (c) submission of adulterated materials, adulterated or substituted test result, or false information with respect to the administration of alcohol or controlled substance testing to such driver.

A covered employee is prohibited from consuming alcohol within eight (8) hours after being involved in an accident, or before undergoing a post-accident test, if such a test is required. Illegal drug use by drivers is prohibited on or off duty.

A covered employee will be removed from performance of safety-sensitive functions if such employee violates the district's policy or federal regulations pertaining to the possession or consumption of alcohol or controlled substances.

The Supervisor of Transportation or designee will not require or permit a covered employee to be on duty or operate a listed vehicle or other school bus, if it appears that such employee has consumed a drug/controlled substance (except those lawfully prescribed) or alcohol within the

Deleted: shall mean

preceding eight hours. This will be based on the person's general appearance, conduct, or other substantiating evidence.

A covered employee who tests 0.02 or greater but less than 0.04 will be removed from driving and other safety-sensitive duties until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test.

In the event that a covered employee has a breath alcohol concentration of 0.04 or greater, has tested positive for a controlled substance (except those lawfully prescribed) or has refused to take a test, such employee will, in addition to immediate removal from driving and any other safety-related duties, be prohibited from returning to duty until such employee:

1. has been evaluated by a substance abuse professional;
2. has complied with any treatment recommendations; and
3. has received a satisfactory result from a return to duty test.

Upon return to duty, the employee will be subject to follow-up testing.

Notwithstanding that New York State statutes permit the use of medical and adult-use cannabis, the use of medical marijuana is prohibited under federal law and its use is still prohibited for covered employees and the district will test covered employees for cannabis. Accordingly, a covered employee who tests positive for the use of marijuana (even if such use is lawful under New York State law) will be considered, for the purposes of Board policy and regulation, to have violated the federal regulations prohibiting such use and to have engaged in the improper use of a controlled substance, and will be subject to the consequences set forth in Board policy and these regulations.

Additionally, while cannabidiol (CBD) is not tested for under federal regulations, CBD products may contain tetrahydrocannabinol (THC), and CBD use may result in a positive test for marijuana if it contains more than 0.3% of THC. There is no FDA oversight to ensure that CBD products are accurately labeled. CBD use is not recognized as a legitimate medical explanation for a positive THC result, and a covered employee who tests positive for THC will be subject to consequences set forth herein even if such test results are a consequence of the use of CBD.

### III. Types of Testing

The Superintendent of Schools and the Supervisor of Transportation will ensure that the following alcohol and controlled substance testing is administered and that any covered employee who is required to take such a test shall be notified prior to the test that it is required pursuant to federal regulations or, in the case of pre-employment alcohol testing, New York State law. Such testing shall be conducted and analyzed by a laboratory licensed or certified by the New York State Department of Health.

1. Pre-employment: Controlled substance and alcohol tests will be conducted before applicants are hired or after an offer to hire, but before such person commences performing safety-sensitive functions. These tests will also be given when employees are transferred or assigned to a position in which a safety-sensitive duties as defined in Board policy and this regulation are performed.

2. Post-accident: Alcohol and controlled substance tests will be conducted if a driver is involved in an accident in which:

Deleted: not be returned

Deleted: marijuana upon certification and prescription by a health care provider

Deleted: certified and prescribed

Deleted: this regulation

Deleted: shall

- a. there has been a fatality; OR
- b. the driver has received a citation for a moving violation in connection with the accident AND EITHER
  - 1. there is an injury treated away from the scene of the accident; or
  - 2. there is a disabled vehicle towed from the scene.

A covered employee other than a driver who has been involved in a work accident shall be subject to alcohol and controlled substance testing if there is a reasonable basis, in the judgment of the Superintendent of Schools and/or the Supervisor of Transportation, to believe that such employee may have used or been under the influence of alcohol or a controlled substance at the time of the accident.

3. Reasonable Suspicion: Alcohol and controlled substance tests will be conducted if (a) the Supervisor of Transportation or (b) other school official who supervises drivers and has completed the minimum two hours of training on alcohol and controlled substance abuse required by United States Department of Transportation regulations has a reasonable suspicion that the covered employee has violated district policy and/or applicable federal or New York State regulations with respect to alcohol or controlled substance use. A "reasonable suspicion" must be based on specific, contemporaneous, articulable observations concerning the driver's behavior, appearance, speech or body odors that are characteristic of controlled substance or alcohol misuse. Alcohol tests can only be done just before, during or just after the covered employee drives a listed vehicle or performs other safety-sensitive duties. The supervisor who makes the determination of reasonable suspicion cannot do the testing.

4. Random Testing: Random alcohol testing and controlled substance testing will be conducted annually at a minimum rate established by the Federal Motor Carrier Safety Administration. Random alcohol testing must be conducted just before, during or just after the employee drives a listed vehicle or performs other safety-sensitive duties. Random testing for use of controlled substances may be conducted at any time. Covered employees who are not covered by federal law will be subject to testing in conformance with federal regulations, but the district shall maintain a separate pool and separate records for such covered employees.

Deleted: shall

Random alcohol and controlled substance tests must be unannounced and spread reasonably throughout the school year (including summer months for covered employees working during the summer).

5. Return-to-Duty Testing: A covered employee who refused to take a test (as defined above) or has engaged in prohibited alcohol and controlled substance use, except for alcohol concentration of between 0.02 and 0.04, is required to take an alcohol or controlled substance test and achieve a satisfactory result before returning to duty in the safety-sensitive position. If removal was due to alcohol use, a satisfactory result will be less than 0.02 alcohol concentration. If removal was due to controlled substance use, a satisfactory result will be one that is verified as negative. The test will not be administered until the employee has been evaluated by a substance abuse professional and has complied with any treatment recommendations.

Deleted: shall be

Deleted: it

6. Follow-Up Testing: After a covered employee who was found to violate the district's policy against alcohol and controlled substance use returns to duty, such employee will be subject to at least six (6) unannounced tests in the first twelve (12) months following the employee's return to duty. Follow-up testing may be extended for up to sixty (60) months from the date of the employee's return to duty. Follow-up alcohol testing may only be conducted before, during or after the driver has performed his or her driving duties. Follow-up testing for controlled substances may be performed at any time.

#### IV. Testing Procedures

##### A. Alcohol Testing Procedures

Alcohol testing will be conducted with evidential breath testing ("EBT") devices approved by the National Highway Traffic Safety Administration. An approved non-evidential screening device (on breath, blood or saliva) may be used to perform screening tests but not for confirmation alcohol tests. The employee and the Breath Alcohol Technician conducting the test must complete the alcohol testing form to ensure that the results are properly recorded.

1. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test.

2. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. The confirmation test must be conducted using an EBT device that meets the requirements of federal regulations governing alcohol testing of operators of commercial vehicles.

3. If the confirmation test results indicate an alcohol concentration from 0.02 to 0.03999, the employee will be restricted from duty for at least 24 hours from the time of the test.

4. If the confirmation test results indicate an alcohol concentration equal to or greater than 0.04, the employee will be removed from all safety-sensitive duties and no return to duty will be permitted until the employee has successfully passed required return-to-duty tests. The employee must also be reviewed by a Substance Abuse Professional and comply with such Substance Abuse Professional's recommendations. Follow-up tests will also be required.

5. For post-accident testing, the results of breath or blood tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for alcohol testing and the results are made available to the district.

All testing procedures will conform to the requirements outlined in federal regulations ([49 CFR Part 40](#)) for ensuring the accuracy, reliability and confidentiality of test results. These procedures include training and proficiency requirements for Breath Alcohol Technicians, quality assurance plans for the EBT devices including calibration, requirements for suitable test location, and protection of employee test records.

##### B. Drug Testing Procedures

The employee must provide a urine or oral fluid specimen which will be analyzed at a laboratory certified and monitored by the United States Department of Health and Human Services. Oral fluid will be used for direct observation if a person of the same gender is not available to do the observation, or for nonbinary or transgender individuals.

Deleted: his/her

Deleted: New York State Department of Health

1. Regulations require that each specimen be divided into one "primary" specimen and one "split" specimen.

Deleted: urine

2. All specimens are analyzed for the following drugs or drug metabolites (by-products of the body metabolizing a drug):

Deleted: urine

- a. Marijuana metabolites
- b. Cocaine metabolites
- c. Amphetamines (including methamphetamines, MDA and MDMA)
- d. Opioids (including natural opiates such as codeine, morphine, heroin, and semi-synthetic opioids such as hydrocodone, hydromorphone, oxycodone and oxymorphone)
- e. Phencyclidine (PCP)

3. If the primary specimen confirms the presence of one or more of these drugs, the employee has 72 hours to request that the split specimen be sent to another certified lab for analysis. The employee must be removed from driving duties at this time--pursuant to applicable Department of Transportation regulations, the driver's removal cannot await the result of testing of the split sample.

Deleted: [Note:

Deleted: ]

4. All drug test results will be reviewed and interpreted by a physician, also called a Medical Review Officer (MRO), before they are reported to the district.

5. If the laboratory reports a positive result to the MRO, the MRO will interview the employee to determine if there is an alternative medical explanation for the drugs found in the employee's specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of a prohibited drug, the drug test result will be reported as negative.

Deleted: Medical Review Officer (MRO)

Deleted: shall

Deleted: urine

Deleted: is

6. If the MRO reports a positive drug result, the employee must be evaluated by a Substance Abuse Professional and follow the recommendations received by the employee prior to taking a return-to-duty test. Follow-up testing is also required.

Deleted: substance abuse professional

Deleted: his/her

7. For post-accident testing, the results of controlled substance tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for controlled substance testing and the results are made available to the district.

Deleted: urine

All controlled substance testing will comply with the requirements of the federal regulations (49 CFR Part 40) including procedures for the proper identification, security and custody of the sample, use of certified laboratories, assurance that all drug test results are reviewed and interpreted by a physician, and ensuring confidentiality of employee test records.

Deleted: shall

#### V. Dilute Specimen Testing

If the district receives a controlled substance test result that is negative but dilute and the creatinine concentration is greater than 5mg/dl, the district will require a re-test to be conducted in each of the following cases:

Deleted: shall

- Pre-employment tests
- Return-to-duty tests

- Follow-up tests
- Reasonable suspicion tests
- Random tests

The result of the re-test will become the test of record. If the employee refuses to take the re-test it will be considered the same as a positive test result. If the re-test again provides a result that is negative and dilute as described above, the re-test will be considered the same as a positive test.

Deleted: shall

Deleted: ¶

Formatted: Space After: 0 pt, Pattern: Clear, Tab stops: 0.5", Left

## VI. Training

The Supervisor of Transportation and every other person designated to determine whether reasonable suspicion exists to require a covered employee to undergo reasonable suspicion testing must receive at least one hour of training on alcohol misuse and at least one additional hour of training on controlled substance use, which training and information they will use in making such determinations.

## VII. Federal Drug and Alcohol Clearinghouse Queries

The district will conduct queries of the United States Department of Transportation's Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for all employees covered under federal law: (1) full queries to check if prospective employees are prohibited from performing safety-sensitive functions, such as operating school buses, due to unresolved drug and alcohol program violations, and (2) limited queries annually (once in a 365-day period), for all employees subject to state and federal drug and alcohol testing. The district may conduct queries at other times as needed.

All queries require consent of the covered employee whose information is requested. The district will request consent of the covered employee to conduct limited queries of the Clearinghouse. If a limited query result shows that a record is found in the Clearinghouse, the district will request the consent of the covered employee for a full query.

Full query results will show if a covered employee is prohibited or not prohibited from performing safety-sensitive functions. If a query shows a violation, the district must verify that the covered employee has completed the Substance Abuse Professional's return to duty process before allowing the covered employee to perform any safety-sensitive function. In some cases, when hiring, the district may inherit an ongoing follow-up testing process.

## VIII. Recordkeeping and Reporting

The Supervisor of Transportation will ensure that alcohol and controlled substance testing records are maintained in accordance with applicable federal and New York State regulations and are available, if requested, for submission to the federal government or any State or local officials with regulatory authority over the district or any of its drivers.

Deleted: shall

In accordance with federal regulations, the district shall use recordkeeping and recording forms produced by the United States Department of Transportation only for those covered employees who are subject to testing requirements under the Federal Motor Carrier Safety Act. The district shall maintain testing records for such employees separate from the testing records of covered employees who are not subject to federal testing requirements. Further, for those covered employees who are not subject to federal testing requirements, the district shall, in conformity with

federal regulations, prepare and utilize a different form for recordkeeping and reporting purposes, which shall incorporate all information necessary for the district to meet its obligations.

In conformity with federal law and regulations, the district shall report to the United States Department of Transportation, Federal Motor Carrier Act Safety Administration Drug and Alcohol Clearinghouse, any of the following events concerning a covered employee who is subject to federal testing requirements:

- A verified positive, adulterated or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to any test required of the employee;
- An employer's actual knowledge of on-duty alcohol use, pre-duty alcohol use, alcohol use following an accident, and/or controlled substance use;
- A substance abuse professional's report of the successful completion of the return to duty process for an employee who is required to engage in such process;
- A negative return-to-duty test; and
- The results of follow-up testing of an employee who is subject to such testing.

**IX, Required Notification**

Every covered employee will receive information about the signs, symptoms, and effects of alcohol misuse and controlled substance use as well as a copy of the district's policy and procedures, a statement setting forth the consequences of testing positive, and the identity of the person to contact within the district to seek further information and/or assistance.

Each covered employee is required to sign a statement certifying that the employee has received this information. The district will maintain the original signed certification during the entirety of the employee's employment and for the post-employment period for which employee personnel records are maintained. The district will provide a copy of the certification to the covered employee upon request.

**X, Penalties**

Any covered employee who has engaged in improper use of alcohol or controlled substances or has otherwise violated Board policy and or regulations governing this subject, may be subject to discipline in accordance with any governing collective bargaining agreements and/or applicable laws and/or regulations.

Any employer or driver who violates the requirements of the Omnibus Transportation Employee Testing Act of 1991 and governing regulations may be subject to civil penalties. In addition, in accordance with New York State law, a driver convicted of driving a listed vehicle with one or more student passengers while impaired by the use of drugs or alcohol will have such individual's driver's license revoked for one year and is subject to fines ranging from \$500 to \$5,000 and/or imprisonment. Any driver convicted more than once in 10 years for such unlawful conduct will have such individual's license revoked for three years and is subject to a fine of \$1,000 to \$5,000 and/or imprisonment.

Cross-ref:

8414.1, Bus Driver Qualifications and Training

Deleted: successful completion of

Deleted: by

Deleted: VIII.

Deleted: shall

Deleted: shall

Deleted: IX.



8414.5, Alcohol and Controlled Substance Testing of Bus Drivers and Other Covered Employees

[8414.5-E.1, Alcohol and Controlled Substance Testing of Bus Drivers and Other Covered Employees Exhibit](#)

9320, Drug-Free Workplace

9610, Staff Substance Abuse

Ref:

Omnibus Transportation Employee Testing Act of 1991, [49 U.S.C. §§31136; 31306](#)  
[49 U.S.C. §521\(b\)](#)

49 CFR Part 391 (Qualifications/Disqualifications)

49 CFR Part 382 (Drug Testing Requirements)

[49 CFR Part 40 \(Testing Procedures\)](#)

49 CFR §395.2 (On-duty time defined)

Public Health Law §§571-581

[Vehicle and Traffic Law §§509-g; 509-1; 1192; 1193](#)

*Will v. Frontier CSD Bd. of Educ.*, 97 N.Y.2d 690 (2002)

Adoption date: February 11, 2008

Revised: March 15, 2018

April 4, 2019

---

***FOR FIRST READING 1-9-25 [REVISIONS SHOWN IN TRACK CHANGES]***