

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

The Board of Education recognizes the dangers inherent in alcohol and controlled substance use by employees, especially those in safety-sensitive positions. To ensure the safety of its students and to comply with federal regulations and state law, the Board requires alcohol and controlled substance testing of certain district employees, including “drivers” of motor vehicles as listed in this policy and its accompanying regulation.

Consistent with federal and New York State regulations, the district shall directly, by contract, or through a consortium, implement and conduct a program to provide alcohol and controlled substance testing of employees who operate or may be assigned to operate a commercial motor vehicle, perform in a related safety-sensitive position, and/or are required to hold a commercial driver's license. Such employees are defined as engaging in “safety-sensitive duties” for the purpose of this policy and the accompanying 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 “other school buses” defined as including any vehicle so defined in federal regulations and any other 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 listee vehicle).

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.

The Board of Education recognizes the dangers inherent in alcohol and controlled substance use by employees, especially those in safety-sensitive positions. To ensure the safety of its students and to comply with federal regulations, any company contracting with the district to provide transportation to district students is responsible for conducting alcohol and drug testing required under federal law and regulations.

Testing Responsibilities

Commented [NH1]: This is suggested language from NYSSBA. Even though the district has its own bus fleet, but on occasion the district uses other carriers (for longer field trips like Hershey Park) so this should be included. Most likely, the contractor complies with federal and state testing requirements but it makes sense to include this.

Consistent with federal regulations, the district will directly, by contract, or through a consortium, implement and conduct a program to provide alcohol and controlled substance testing of drivers who operate a commercial motor vehicle, perform in a safety-sensitive position, and are required to hold a commercial driver's license. Controlled substance and alcohol tests will be conducted for operators of all "other school buses" consistent with the procedures applicable to the implementation of federal regulations.

Controlled substance and alcohol testing of a covered employee will be conducted prior to or at the time of commencement of employment or transfer or reassignment to a position subject to this policy, and randomly throughout the school year (including during the summer months for covered employees working during the summer). In addition, a covered employee is subject to additional testing for use of controlled substances and/or alcohol when a supervisor has a reasonable suspicion that such employee has engaged in prohibited alcohol or controlled substance use; after certain accidents; prior to return to duty when the covered employee has been found to violate district policy and federal regulations related to use of alcohol or controlled substances; and after the covered employee's return to duty. Alcohol and substance abuse testing shall be conducted and analyzed by a laboratory licensed or certified by the New York State Department of Health. All employee drug and alcohol testing records shall be kept confidential.

Driving Prohibition

In accordance with federal and state law, a driver will not be permitted to drive and a covered employee will be relieved of responsibility for performing safety-sensitive duties if he or she:

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. uses, is under the influence of, or appears to have used, alcohol or a controlled substance (except those lawfully prescribed) within eight (8) hours or less before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for a controlled substance (except those lawfully prescribed); or
4. refuses to take a required alcohol or controlled substance test.

The determination of whether a covered employee shall be subject to testing because the employee is suspected to have used, is under the influence of, or appears to have used alcohol or a controlled substance shall be based on the person's general appearance, conduct, or other relevant evidence.

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Also, no driver is permitted to use alcohol or a controlled substance (except those lawfully prescribed) after being involved in an accident in which there was a fatality or in which a driver was cited for a moving violation and a vehicle was towed from the scene or an injury was treated away from the scene until such driver has been tested or eight (8) hours have passed, whichever occurs first. A covered employee other than a driver who has been involved in a work accident shall not use alcohol or a controlled substance (except those lawfully prescribed) until such employee has been tested or eight (8) hours have passed, whichever occurs first.

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Enforcement of Driving Prohibitions

The school district will not require or permit drivers of vehicles listed above, as well as operators of all “other school buses” defined above, to be on duty or operate a listed vehicle or other school bus, if it appears that they have consumed a drug/controlled substance (except those lawfully prescribed) or alcohol within the preceding eight hours. This will be based on the person's general appearance, conduct, or other substantiating evidence. Those who maintain, repair, or garage listed vehicles or school buses whose job duties and responsibilities include incidental driving without passengers are exempt from this requirement but are still prohibited from consuming controlled substances and alcohol within eight hours of going on duty.

Response to Positive Testing Results

A covered employee who is tested and found to have an alcohol concentration of at least 0.02, but less than 0.04, will be removed from the position until such employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test. A covered employee found to have violated this requirement may be disciplined in accordance with the provisions of the applicable collective bargaining agreement, district policy, and/or law.

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If a covered employee has an alcohol concentration of 0.04 or greater, or has engaged in prohibited alcohol or controlled substance use, such employee will be removed from duty, and referred to a substance abuse professional. The covered employee may be required to complete a treatment program and/or be disciplined pursuant to district policy and/or collective bargaining agreement. No covered employee who has abused controlled substances and/or alcohol may return to duty unless such employee has successfully passed a required return to duty test. Thereafter, the covered employee will be subject to follow-up testing.

Re-Testing

Should the district receive a dilute test result in which the creatinine concentration found in the test sample of a covered employee is greater than 5mg/dL in the case of any pre-employment, return-to-duty, follow-up, reasonable suspicion, or random test, it is the policy of the district that the individual shall be re-tested and that re-test will become the test of record.

Federal Drug and Alcohol Clearinghouse Queries and Reporting

In addition to the required testing, for employees covered under federal law, the district will also conduct required pre-employment and annual queries of the Department of Transportation's Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for drug and alcohol violations. The district will conduct full queries when limited query results show a record of violations. The district will also report the required information to the Clearinghouse regarding test results and drug and alcohol use.

Policy Distribution

The Superintendent of Schools shall ensure that a copy of this policy, the district's policy on misuse of alcohol and use of controlled substances, information on alcohol and drug abuse and treatment resources and any other information prescribed by federal and New York State regulations is provided to all covered employees and other appropriate personnel and to any individual subsequently hired or transferred to a position subject to this policy, prior to the administration of alcohol and substance abuse testing.

Cross-ref:

[8414.1](#), Bus Driver Qualifications and Training
8414.5-R, Alcohol and Controlled Substance Testing of Bus Drivers and Other Covered Employees Regulation
[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)

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April 4, 2019

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