

Board of Education Policy

ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR DRIVERS REGULATION

Any employee who operates a commercial motor vehicle, or “school transportation vehicle”, or is in a related safety-sensitive function described below shall be subject to alcohol and controlled substance testing in accordance with this Regulation and applicable federal regulations and state law. An employee having any questions concerning the District’s policy or regulation, state law or the applicable federal regulations shall contact the Superintendent of Schools.

I. Definitions

A. Employees Covered Under Federal Law

Employees covered under federal law include District employees who operate a commercial motor vehicle, perform in a related safety-sensitive position, and are required to obtain a commercial driver’s license. Such employees include:

1. drivers of vehicles designed to transport 16 or more passengers, including the driver;
2. drivers of commercial motor vehicles whose manufacturer’s rating is 26,001 lbs. or more;
or
3. any other employee who may drive or service a listed vehicle listed in 1 or 2 above (e.g., a mechanic who performs test drives, repairs, inspects or loads or unloads a listed vehicle).

Such employees include, but are not limited to full time, regularly employed 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.

B. Employees Covered Under State Law

Operators of “school transportation vehicles” are subject to testing as described in section III below. “School transportation vehicles” include both those covered by applicable federal regulations as stated above, and any other motor vehicle owned by the District and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

Certain specified employees will not be considered operators of “school transportation vehicles.” They include:

1. Volunteers who drive a school bus with passengers fewer than 30 days per year; and
2. Employees engaged in the maintenance, repair or garaging of buses, who, in the course of their duties, must incidentally drive a vehicle not covered under federal law without passengers.

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C. Safety Sensitive Function

An employee is performing a safety-sensitive function that is covered by federal regulations 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 the federal regulations pertaining to accidents; and
6. attending to a disabled vehicle.

II. Driver Prohibitions and Consequences

Employees covered under federal law are required to be in compliance with District policy and regulation:

1. when performing any on-duty safety-sensitive functions, including all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility; and
2. during all time spent providing a breath sample, saliva 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.

Employees covered under both federal and state law are prohibited from driving a listed vehicle, operating a “school transportation 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, while on duty;
2. has consumed or is under the influence of alcohol or a controlled substance that is not lawfully prescribed within six hours before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for controlled substances; or
4. refuses to take a required alcohol or controlled substance test. Refusal to submit shall mean the failure to provide adequate breath or urine without a valid medical explanation, receipt of verified adulterated or substituted controlled substance test result, or to engage in conduct that clearly obstructs the testing process, such as a failure to arrive for the controlled substance testing or failure to sign the alcohol testing form prior to specimen collection.

In addition, an employee covered under federal law is prohibited from consuming alcohol within eight hours after being involved in an accident, or before undergoing a post-accident test, if such a test is required. Illegal controlled substance use by drivers is prohibited on or off duty.

Drivers who violated the above prohibitions will be subject to the following enforcement actions:

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1. Employees covered under federal law will be removed from their safety-sensitive functions if they violate the District's policy or regulation or federal regulations pertaining to the possession or consumption of alcohol or controlled substances.
2. The Supervisor of Transportation or his/her designee will not require or permit employees covered under state law to be on duty or operate a listed vehicle or "school transportation vehicle", if it appears that they have consumed a controlled substance (except those lawfully prescribed) or alcohol within the preceding eight hours. This shall be based on the person's general appearance, conduct, or other substantiating evidence. Those who maintain, repair, or garage listed vehicles or "school transportation vehicles" that involves incidental driving without passengers, are exempt from this requirement, but are still prohibited from consuming controlled substances and alcohol within six hours of going on duty.
3. Any 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 24 hours following administration of the test.
4. In the event that any covered employee has a breath alcohol concentration of 0.04 or greater, has tested positive for a controlled substance or has refused to take a test, he or she will, in addition to immediate removal from driving and any other safety-related duties, not be returned to duty until he or she:
 - has been evaluated by a substance abuse professional;
 - has complied with any treatment recommendations; and
 - has received a satisfactory result from a return to duty test.
5. Upon return to duty, the employee will be subject to follow-up testing.

While New York Law permits the use of medical and adult-use marijuana, marijuana is still a controlled substance under federal law. Any driver tested under the federal regulations, who tests positive for marijuana, even if such use is based upon a lawful certification under state law, will be found to have violated the federal regulations (DOT Office of Drug and Alcohol Policy and Compliance, Medical Marijuana Notice (Oct. 2009) at: <https://www.transportation.gov/odapc/medical-marijuana-notice>).

Additionally, employees are cautioned that 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. CBD use is not recognized as a legitimate medical explanation for a positive THC result.

III. Types of Testing

The Superintendent of Schools and the Transportation Supervisor shall ensure that the following alcohol and controlled substance tests are conducted and that any employee who is required to take such a test is notified prior to the test that it is required pursuant to federal regulations. Notice will also be given in the case of pre-employment alcohol testing, that such test is required by state law.

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1. **Pre-employment:** Controlled substance and alcohol tests will be conducted before all applicants are hired or after an offer to hire, but before actually performing safety-sensitive functions for the first time. These tests will also be given when employees covered under federal or state law transfer to a safety-sensitive function.
2. **Post-accident:** Alcohol and controlled substance tests will be conducted if a driver covered under federal law is involved in an accident in which:
 - a. there has been a fatality; OR
 - b. the driver has received a citation for a moving violation in connection with the accident pursuant to the time limitations specified in the regulation 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.
3. **Reasonable Suspicion:** Alcohol and controlled substance tests will be conducted when the Transportation Supervisor or other school official who has completed the minimum two hours of training, has a reasonable suspicion that the driver covered under federal law has violated District policy and/or regulation. 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 employee covered under federal law 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:** For employees covered under federal law, random alcohol tests shall be conducted annually at a minimum rate established annually by the Federal Motor Carrier Safety Administration. Random alcohol tests must be conducted just before, during or just after the employee drives a listed vehicle or performs other safety-sensitive duties. For employees covered under federal law, random controlled substance tests shall be conducted annually at a minimum rate established annually by the Federal Motor Carrier Safety Administration. Random controlled substance tests may be conducted at any time. Random alcohol and controlled substance tests must be unannounced and spread reasonably throughout the calendar year.

New York law requires employees covered by state law to be tested in conformance with federal regulations 49 CFR Part 382. Although federal regulations permit employers to perform random testing beyond what they require, a separate pool must be maintained for those employees covered by state law who do not meet federal requirements. The separate pool for these employees will be subject to testing at the same minimum rate annually established for drivers subject to the Federal Motor Carrier Safety Administration regulations.

5. **Return-to-Duty Testing:** Any covered employee who refused to take a test or has engaged in prohibited alcohol and controlled substance use, except for alcohol concentration of

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between 0.02 and 0.04, shall be 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 it 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.

6. **Follow-Up Testing:** After any covered employee who was found to violate the District's policy and/or regulation against alcohol and controlled substance use returns to duty, he or she will be subject to at least six unannounced tests in the first 12 months following the employee's return to duty. Follow-up testing may be extended for up to 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.

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 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 that meets the requirements of federal regulations.
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 his/her 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,

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quality assurance plans for the EBT devices including calibration, requirements for suitable test location, and protection of employee test records.

B. Controlled Substance Testing Procedures

The employee must provide a urine or oral fluid specimen at a collection site that meets federal requirements which will be analyzed at a laboratory certified and monitored by the U.S. Dept. 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.

1. Regulations require that each specimen be divided into one “primary” specimen and one “split” specimen.
2. All specimens are analyzed for the following controlled substances or controlled substance metabolites (by-products of the body metabolizing a controlled substance):
 - 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 controlled substances, the employee has 72 hours to request that the split specimen be sent to another certified lab for analysis. [Note: The employee must be removed from driving duties at this time--pursuant to federal regulations, the driver’s removal cannot await the result of split sample.]
4. All controlled substance test results will be reviewed and interpreted by a physician (also called a Medical Review Officer) before they are reported to the District.
5. If the laboratory reports a positive result to the Medical Review Officer (MRO), the MRO shall interview the employee to determine if there is an alternative medical explanation for the controlled substances 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 controlled substance, the controlled substance test result is reported as negative.
6. If the MRO reports a positive controlled substance result, the employee must be evaluated by a substance abuse professional and follow his/her recommendations prior to taking a return-to-duty test. Follow-up testing is also required.
7. For post-accident testing, the results of drug and/or alcohol 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.

All controlled substance testing shall 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 controlled substance test results are reviewed and interpreted by a physician, and ensuring confidentiality of employee test records.

V. Dilute Specimen Testing

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

- Pre-employment tests
- Return-to-duty tests
- Follow-up tests
- Reasonable suspicion tests
- Random tests

The result of the re-test shall 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.

VI. Training

The Supervisor of Transportation and every other person designated to determine whether reasonable suspicion exists to require an employee covered by federal law 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 they will use in making their determinations.

VII. Federal Drug and Alcohol Clearinghouse Queries

The District will conduct queries of the 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 due to unresolved drug and alcohol program violations; and
2. Limited queries 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 driver consent. The District will request employee consent to conduct limited queries of the Clearinghouse. If a limited query result shows that a record found in the Clearinghouse, the District will consent the driver's consent for a full query.

Full query results will show if a driver is prohibited or not prohibited from performing safety sensitive functions. If a query shows a violation, the District must verify that the driver has completed the substance abuse professional's return to duty process before allowing the 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 Transportation Supervisor shall ensure that alcohol and controlled substance testing records are maintained pursuant to applicable regulation and are available, if requested, for submission to the federal government or any State or local officials with regulatory authority over the employer or any of its drivers.

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The following personal information must be reported to the Department of Transportation (DOT) Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for employees subject to DOT testing:

- a verified positive, adulterated or substituted controlled substance test result;
- an alcohol confirmation tests with a concentration of 0.04 or higher;
- a refusal to submit to any test required by the regulations;
- an employer's report of actual knowledge of on duty alcohol use, pre-duty alcohol use, alcohol use following an accident, and controlled substance use;
- a substance abuse professional's report of the successful completion of the return-to-duty process; and
- a negative return-to-duty test; and an employer report of completion of follow-up testing.

IX. Required Notification

Every covered employee shall 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, the consequences of testing positive and who to contact within the District to seek further information and/or assistance.

Each covered employee is required to sign a statement certifying that he/she has received this information. The District shall maintain the original signed certification until the employee's employment is discontinued. The District will provide a copy of the certification to the covered employee upon request.

X. Penalties

Any treatment, rehabilitation program or discipline will be provided in accordance with applicable law and regulations, District policy and/or regulation and/or collective bargaining agreements. Any employer or driver who violates the requirements of the federal regulations of the Omnibus Transportation Employee Testing Act of 1991 may be subject to civil penalties.

In addition, in accordance with New York State law, a driver convicted of driving a listed vehicle or "school transportation vehicle" with one or more student passengers while impaired by the use of controlled substances or alcohol will have his/her 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 crimes will have his/her license revoked for three years and is subject to a fine of \$1,000 to \$5,000 and/or imprisonment.

Reference:

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