

DRUG AND ALCOHOL TESTING (TRANSPORTATION)

I. Statement of Policy

It is the policy of the District that no District employee shall operate a District school bus or a District vehicle when the operation of the vehicle requires a Commercial Driver's License (CDL) if that employee is under the influence of drugs or alcohol. To further this policy, the District follows a program of drug and alcohol testing designed to meet the requirements of the New York State Vehicle and Traffic Law (referred to in this Policy as "state law") and the federal Omnibus Transportation Employee Testing Act of 1991, including the implementing regulations adopted by the U.S. Department of Transportation (together referred to in this Policy as "federal law"). No person shall be hired into or assigned to perform the duties of a safety sensitive position (as described below) unless each test administered to that person returns a verified negative result.

II. Scope of Policy

A. Positions to Which This Policy Applies

This Policy applies to employment in any position for which the assigned duties include either the operation of a school bus, as that term is defined in state law, or the operation of a vehicle that requires a CDL, as determined by federal law. These positions are considered "safety sensitive positions", and District employees holding these positions are considered "safety sensitive employees".

B. Persons to Whom This Policy Applies

1. Applicants for employment in safety-sensitive positions who receive a conditional offer of employment are subject to pre-employment testing under this Policy. A person who is employed by the District in a non-safety sensitive position and who seeks to be hired or transferred into a safety sensitive position is considered an applicant relative to that safety sensitive position. When used in this Policy, the term "applicant" refers to these persons.
2. Persons employed by the District in safety sensitive positions are subject to drug and alcohol testing under the circumstances set forth in this Policy and as otherwise required by state or federal law. When used in this Policy, the terms "employee" and "driver" refer to these persons.

III. Communication of Policy

A. Drug and Alcohol Coordinator

The Superintendent shall designate a Drug and Alcohol Coordinator to answer

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questions relative to the procedures and materials relative to this Policy. The Coordinator shall ensure that all affected employees are informed of the Policy and related forms and regulations, including the identity of and contact information for the Coordinator, and are provided with either a paper copy of the Policy or a link to an online copy of the Policy.

B. Distribution of Information

The Coordinator shall provide a copy of this Policy and any accompanying documents outlining additional information, procedures and/or regulations developed by the District to effectuate this Policy, to each person employed in a safety sensitive position, and shall ensure that each applicant for employment in a safety sensitive position receives a copy of this material.

C. Documentation

Each person receiving the Policy material shall be required to sign a statement certifying that they have received this information. The District shall maintain the original signed acknowledgement for the duration of the employee's employment or two (2) years, whichever is longer. The District will provide a copy of the certification to the driver upon request. Representatives of applicable collective bargaining units shall be notified of the availability of this information.

IV. Program Standards and Testing Protocols

A. Contracted Services

The Superintendent is authorized to contract with an appropriately credentialed vendor, board of cooperative educational services, or other municipality for the services necessary to implement the District's drug and alcohol testing program, including sample collection and testing, documenting chain of custody, and ensuring that the correct employee is tested and matched with the correct test results. Such contractor must be in compliance with all state and federal regulations including but not limited to calibration of all devices, laboratory certification by the U.S. Department of Health and Human Services, and proper training of the Breath Alcohol Technician (BAT) and other staff.

B. Notice to the Test Subject

Prior to the administration of the following tests the District or its testing agent will notify the driver that the test is required under state law or federal law.

C. Test Standards

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1. Collection of specimens to be tested will be taken on-site or at the laboratory, in a secure location that affords visual and aural privacy and with the proper safeguards to ensure the integrity of the specimens collected.
2. The prohibited drugs for which specimens will be tested are: Marijuana (THC), Cocaine, Phencyclidine (PCP), Opioids (including heroin, and the synthetic opioids hydrocodone, oxycodone, hydromorphone and oxymorphone), and amphetamines. The cutoff levels for these drugs will be those set forth in federal law.
3. If an initial breath test reveals an alcohol concentration of .02 or greater, a confirmatory test shall be performed. The confirmatory test result is the final test result for the purposes of this Policy.
4. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the technician, shall, if practicable begin a new screening or confirmation test, as applicable, e.g., using a new breath alcohol testing form with a new sequential test number.
5. If a test result is reported as canceled, meaning neither positive nor negative for drugs or alcohol, the test subject shall not be allowed to perform safety sensitive functions if a negative result is required by state or federal law. The District shall order collection of another specimen for the purpose of re-testing in the case of a canceled test result related to pre-employment, return to duty, or follow up testing.

D. Specimens Reported as Dilute

1. If a test result is reported as positive dilute, that shall be considered a positive verified test result and no confirmatory test or retest shall be conducted.
2. If a test result is reported as negative dilute for pre-employment testing, return to duty testing, or follow up testing, then the test subject shall be required to take another test. The result of the second test becomes the test of record.
 - a. Persons to be re-tested must be given the minimum possible advance notice of the time to report to the collection site.
 - b. If a person is directed to take another test and declines to do so, that will be categorized as a test refusal for the purpose of this Policy and the federal drug and alcohol testing regulations.

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V. Pre-Employment Testing

A. General Rule

Pre-employment testing for drugs and alcohol will be administered by the District to all applicants after a conditional offer of employment has been extended and prior to any applicant's performance of a safety-sensitive function.

B. Information Regarding Prior Test Outcomes

1. Each applicant will be asked whether the applicant has tested positive after, or refused to take, any pre-employment drug or alcohol test administered by a potential employer pursuant to federal law during the past two years.
2. Each applicant will be asked to identify all prior employers or potential employers that required the applicant to submit to drug or alcohol testing in fulfillment of state or federal law within the prior two years, and to sign a written document authorizing those entities to release to the District the following information: alcohol tests with a result of 0.04 or higher alcohol concentration, verified positive drug test, the applicant's refusal to be tested, any other violations of federal law drug and alcohol regulations, and, with respect to any employee who violated a federal law drug and alcohol regulation, documentation of the employee's successful completion of federal law return to duty requirements.
3. The above listed information should be obtained and reviewed before the applicant is assigned to perform any safety sensitive functions. However, the District may employ and assign the applicant to perform safety sensitive functions for a period of up to 30 days if the District has made and documented a good faith effort to obtain this information. The District will not allow any employee to continue performing safety sensitive functions after 30 days if the District has not obtained or made and documented a good faith effort to obtain this information.

C. Withdrawal of Conditional Offer of Employment

Where an applicant for a position subject to this Policy has received a conditional offer of employment, that conditional offer will be withdrawn if any of the following circumstances occurs:

1. The applicant's pre-employment drug test returns a positive result;

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2. The applicant reports as part of the District's pre-employment process that within the prior two years the applicant applied for employment in a position governed by either the New York law applicable to school bus drivers or the federal law applicable to CDL holders, and the applicant either refused to submit to the test or tested positive for drugs or alcohol;
3. The applicant reports that they failed to successfully complete a rehabilitation program (return to duty process) established by a substance abuse professional after violation of a prior employer's policy or applicable law; or
4. The applicant fails to provide a release for the District to request information from a former employer of the applicant or a potential employer to which the applicant applied for employment in a safety sensitive position subject to the state or federal drug and alcohol testing requirements.

VI. Drug and Alcohol Tests Administered To Employees

A. Reasonable Suspicion Testing

1. An employee in a safety sensitive position is required to submit to a drug or alcohol test whenever a responsible supervisor or administrator has reasonable suspicion to believe that the employee has engaged in conduct prohibited by this policy. Employees are subject to reasonable suspicion alcohol testing at any time the employee is on duty for the district.
2. Reasonable suspicion must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an employee by a responsible supervisor or administrator who has been trained to recognize alcohol misuse or drug use.
 - a. The observations may include indications of the chronic and withdrawal effects of controlled substances.
 - b. A written record shall be made of the observations leading to reasonable suspicion, signed by the supervisor or administrator who made the observations, within twenty-four (24) hours of the observed behavior or before the results of the drug and/or alcohol test are released, whichever is earlier.
3. The District shall not administer a reasonable suspicion alcohol test more than eight (8) hours following a determination that reasonable suspicion

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exists to believe that the alcohol prohibitions of this policy have been violated.

4. The Superintendent or the Superintendent's designee shall arrange for the training of all supervisors or other individuals who may be utilized to determine whether "reasonable suspicion" exists to test an employee for prohibited conduct involving alcohol or controlled substance use/abuse.

B. Random Testing

1. The District randomly tests employees subject to this Policy for evidence of drug or alcohol consumption. Random tests are not announced and employees are selected for testing in a statistically random manner throughout the year as required by state and federal law. Each covered employee has an equal probability of selection each time a random test is administered.
2. Random drug and/or alcohol testing may be conducted at any time the covered driver is on duty for the district.
3. All employees assigned to drive a school bus as part of their duties are subject to random testing.

C. Post-Accident testing

1. Following an accident involving a commercial motor vehicle, a post-accident test for alcohol and drugs is administered to each surviving covered driver who:
 - a. was performing safety sensitive functions with respect to the vehicle, and the accident involved the loss of human life; or
 - b. receives a citation under state or local law for a moving violation arising from the accident, and the accident either resulted in one or more motor vehicles incurring substantial structural damages as a result of the accident or resulted in bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident.
2. The District will not administer a post-accident alcohol test more than eight hours following the accident and will not administer a post-accident drug test more than 32 hours following the accident.

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3. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the District to have refused to submit to testing. This shall not be construed to require the delay of necessary medical attention for injured individuals following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
4. The results of a breath or blood test for the use of alcohol or a urine test for the use of drugs, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this Policy concerning post-accident testing, provided such tests conform to applicable federal, state, or local requirements and that the results of the test are obtained by the District. If such a test results in an alcohol concentration below 0.02, a 24 hour out-of-service order may be issued by the law enforcement official.

D. Return to Duty Testing

Return to duty testing for alcohol and/or drugs is conducted when a covered driver has engaged in prohibited conduct under this Policy, been removed from performing safety sensitive duties, and is scheduled or seeks to return to the performance of safety sensitive functions. The alcohol test result must indicate alcohol concentration of less than .02 and/or a drug test must indicate a verified negative result for illegal drugs.

E. Follow-up Testing

1. Follow-up tests are given following a determination by a substance abuse professional that a driver is in need of assistance in resolving problems associated with misuses of alcohol and/or drugs.
2. Follow-up tests are unannounced.
3. Follow-up tests are conducted at least six (6) times within twelve (12) months. The actual frequency and number of tests will be determined by the substance abuse professional, but follow-up testing will not continue beyond 60 months from the covered driver's return to duty. The substance abuse professional may terminate the requirement of follow-up testing at any time after the first six (6) tests have been administered if he or she determines that follow-up testing is no longer necessary.
4. Follow-up drug testing may be conducted at any time the covered driver is on duty for the district.

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VII. Conduct Standards For Employees Subject To This Policy

- A. No driver shall report for duty or remain on duty in a position requiring the performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater.
- B. A driver shall not be on duty or operate a commercial motor vehicle while the driver possesses alcohol.
- C. A driver shall not use alcohol while performing safety sensitive functions.
- D. No driver shall operate a school bus within eight (8) hours, or operate a vehicle requiring possession of a CDL within six (6) hours, after having consumed a drug, controlled substance, and/or alcohol.
- E. A driver required to take a post-accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until they undergo a post-accident alcohol test, whichever is first.
- F. A driver shall not report for duty or remain on duty requiring the performance of safety sensitive functions when the driver is using drugs, except when the use is pursuant to the instructions of a physician who has advised the driver that the drug does not affect the driver's ability to safely operate a commercial motor vehicle. The driver must provide written notice from the physician to the Drug and Alcohol Coordinator that the driver is using controlled substances pursuant to the instructions of the physician and that the physician advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.
- G. No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances.
- H. A driver shall not refuse to submit to an alcohol or drug test required under this Policy.

VIII. Consequences Of Non-Compliance By Employees Subject To This Policy

- A. A driver who has an alcohol concentration of at least 0.02 shall be removed immediately from his/her performing safety sensitive position for at least 24 hours and shall not return until they have been evaluated by a substance abuse professional, have completed any other actions required by the SAP and have completed the return to duty testing procedures as required.

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- B. A driver who has a verified positive result on a drug test shall be prohibited from performing safety sensitive functions until the employee is evaluated by a substance abuse professional, completes any other steps required by the SAP, and completes a return to duty test that returns a verified negative result.
 - C. A driver who refuses to submit to a test shall be prohibited from performing safety sensitive functions until the employee is evaluated by a substance abuse professional, completes any other steps required by the SAP, and successfully completes the return to duty testing procedures as required.
 - D. A driver may not perform safety-sensitive functions if there exists a reasonable suspicion that the driver is under the influence of, or impaired by, alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, until an alcohol test is administered and the driver's alcohol concentration measures less than .02 or 24 hours have elapsed following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated.
 - E. A driver may not perform safety-sensitive functions even if his or her alcohol concentration is less than 0.02, or the alcohol concentration is unknown, if the District detects the presence of alcohol in the driver by other means.
 - F. Independent of the requirements of federal law, a driver may not perform safety-sensitive functions, if there exists a reasonable suspicion that the driver is under the influence of, or impaired by, drugs as shown by the behavioral, speech, and performance indicators of drug abuse, until a drug test is administered and there is a verified negative result.
 - G. Independent of the requirements of federal law, drivers who have been found to have engaged in conduct prohibited by this Policy will be immediately suspended from their safety-sensitive function without pay pending a complete review of the test results and what led to the test results, if appropriate. After review, if the driver was found to have an alcohol concentration of 0.04 or greater, a positive drug test, or refused to submit to a test, the employee shall be terminated. If the driver was found to have an alcohol concentration between 0.02 and 0.04, he or she shall be required to be evaluated by a substance abuse professional, complete any other steps required by the SAP and take a return to duty test before returning to work.
 - H. The above actions consequences shall be applied consistent with the provisions of any applicable collective bargaining agreement and statute, such as §75 of the Civil Service Law and §3020-a of Education Law.
- IX. Referral And Evaluation

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- A. Each employee who engages in conduct prohibited by this policy is required to be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug use.
1. The costs associated with this evaluation shall be the responsibility of the employee, unless a collective bargaining agreement provides otherwise.
 2. If the substance abuse professional determines that a rehabilitation program is appropriate before the employee returns to performing safety sensitive functions, the employee is required to complete that program, including any follow-up testing directed by the substance abuse professional. The substance abuse professional shall determine if the driver has properly followed any rehabilitation program prescribed following the evaluation.
 3. Before an employee returns to duty requiring the performance of a safety sensitive function after engaging in conduct prohibited by this policy, the employee shall complete a return to duty test that returns a verified negative result.
- B. The District shall make available to an employee who has violated this Policy information regarding the resources available for evaluating and resolving problems associated with the misuse of alcohol and use of drugs, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. The District shall ensure that the listed substance abuse professionals do not refer the employee to the substance abuse professional's private practice, or to a person or organization from which the substance abuse professional receives remuneration, or in which the substance abuse professional has a financial interest.
- C. The referral and evaluation procedures described in this section do not apply to applicants who refuse to submit to a pre-employment drug and alcohol test or who have a pre-employment drug and alcohol test with a verified positive test result.

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Waterville Central School District

Legal Ref: U.S. Constitution, 4th Amendment
Omnibus Transportation Employee Testing Act of 1991, 49 USC §§31136; 31306
Americans with Disabilities Act, 42 USC §§12111-12117
49 CFR Parts 40, 382 and §§395.20 and 521(b)
New York Vehicle and Traffic Law, §§509-l; 1192; 1193
New York Labor Law, §201-d

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