

Drug and Alcohol Testing Procedures

Description of Tests

1. *Alcohol Test.* Alcohol testing of employees in covered or safety-sensitive positions is required post-offer employment, upon promotion or transfer into a covered or safety-sensitive position, when reasonable suspicion exists, after an accident, at random, and when return-to-duty and/or follow-up testing is required. Alcohol testing of other employees may be required upon reasonable suspicion or when the District has a special need to conduct the test as allowed under law. Alcohol testing is performed using an evidential breath testing device (EBT) approved by the National Traffic Safety Administration. All alcohol breath tests shall be conducted on an approved EBT by a trained breath alcohol technician (BAT). EBTs shall be able to distinguish alcohol from acetone at the 0.02% alcohol concentration level and shall be capable of testing an air blank prior to each collection of breath and performing an external calibration check. In order to be used in either screening or confirmation alcohol testing, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer.
2. *Drug Test.* Drug testing of employees in covered or safety-sensitive positions is required for post-offer employment, upon promotion or transfer into a covered or safety-sensitive position, when reasonable suspicion exists, after an accident, at random, and when return-to-duty and/or follow-up testing is required. Drug testing of other employees may be required upon reasonable suspicion or when the District has a special need to conduct the test as allowed under law. Drug testing is conducted by analyzing a urine specimen for the following drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine. All drug test results are reviewed and interpreted by a Medical Review Officer (MRO) before the results are reported to the District.

Drug and Alcohol Testing Procedures

The following procedures apply anytime a covered or safety-sensitive employee is subject to drug or alcohol tests:

1. Alcohol Testing
 - a. Breath alcohol testing will be conducted at a location that affords visual and aural privacy to the employee being tested sufficient to prevent unauthorized persons from seeing or hearing the test results. In some unusual circumstances, such as when it is essential to conduct a test at the scene of an accident, a test may be conducted at a location that provides visual and aural privacy only to the extent practicable.
 - b. All necessary equipment, personnel, and materials for breath testing shall be provided at the location where testing is conducted.
 - c. The employee shall complete all required paperwork and be required to properly identify themselves. The test administrator shall document any refusal to complete required paperwork.

- d. The employee shall be directed to blow into a breathalyzer and must be shown the results of the test once indicated on the breathalyzer.
- e. If the test is positive, as defined by federal or state standards, the employee may be required to submit to a confirmation test. The employee shall be instructed not to eat, drink, or put any object or substance in their mouth until after the confirmation test. The test administrator shall also explain the test will be conducted even if the employee has disregarded these instructions. Confirmation test results are deemed to be the final results upon which any action under the drug and alcohol testing policy or regulations shall be based.
- f. The test administrator shall transmit all results to the District in a confidential manner.
- g. The test administrator shall also inform the District of any refusal to test.
- h. If the employee attempts and fails to provide an adequate amount of breath, the District designee shall direct the employee to obtain, as soon as practical after the attempted test, an evaluation from a licensed physician acceptable to the District concerning the employee's medical ability or inability to provide an adequate amount of breath. If the physician determines, in their reasonable medical judgment, that a medical condition has, or could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take the test. If a licensed physician is unable to make such a determination, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal.

2. Drug Testing

To ensure the appropriate chain of custody and specimen control are maintained, the collection of urine specimens shall proceed as follows:

- a. Upon the employee's arrival at the designated collection site, the collector shall request the employee to provide identification and complete required paperwork, including listing prescriptions. The collector shall document any refusal to complete paperwork.
- b. The employee shall be required to leave personal belongings including, but not limited to, coats and purses/bags outside the collection area. The employee shall be required to wash and dry their hands before the test is administered. The employee shall then remain in the collection area and not have access to any other material that could be used to adulterate the specimen. Any transfer of the specimen from the collection container to another specimen bottle shall be observed by the employee.
- c. If the test result is positive, the employee may request the MRO direct the split specimen be tested in a different Department of Health and Human Services-certified laboratory. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result. The MRO shall take all steps necessary to ensure the specimen is clearly identified and document the chain of custody when the specimen is transferred to a different lab. The cost of the split specimen testing shall be paid by the employee.

- d. Upon notification by the collection site that an employee has failed to appear for their scheduled collection, the District shall inquire of the employee the reason(s) for failing to appear. If the employee provides a legitimate reason for failing to report, no disciplinary action shall be taken against the employee. If the employee does not provide a legitimate reason for failing to report, disciplinary action, in accordance with policy, may be taken. The Superintendent shall determine whether or not legitimate reasons exist.
- e. In the event an employee refuses to provide a specimen, the collection site and/or the District designee shall advise the employee that refusal to provide a specimen shall result in disciplinary action. In the event the employee still refuses to provide a specimen, the employee shall be subject to disciplinary action in accordance with policy.
- f. In the event an employee fails to provide a sufficient quantity of urine, the collection site and/or the District designee shall meet with the employee to see if they have a legitimate reason and they shall be required to take the drug test within four hours of the meeting. If the employee does not have a legitimate reason, the failure to provide a sufficient quantity of urine shall be treated as a refusal to provide a specimen.
- g. In the event an employee is unable, or alleges they are unable, to provide a sufficient quantity of urine because of a medical condition, the District designee shall direct the employee to obtain, as soon as practical after the attempted test, an evaluation from a licensed physician acceptable to the District concerning the employee's medical ability or inability to provide a sufficient quantity of urine. If the physician determines, in their reasonable medical judgment, that a medical condition has, or could have, precluded the employee from providing a sufficient quantity of urine, the employee's failure to provide a sufficient quantity of urine shall not be deemed a refusal to take the test. If a licensed physician is unable to make such a determination, the employee's failure to provide a sufficient quantity of urine shall be regarded as a refusal.

Pre-Employment/Post-Offer Testing Procedure

1. All job applicants considered a covered or safety-sensitive employee under Policy DBBA Drug and Alcohol Testing for Employees shall receive a copy of this policy and regulation prior to testing.
2. If an applicant's pre-employment/post-offer employment drug test is positive, a confirmation test shall immediately be conducted by the laboratory with the existing sample.
3. An additional confirmation test shall be conducted, at the applicant's expense, if a request is made to the MRO within 72 hours of the applicant having been notified of a verified positive test result. If an additional confirmation test is requested, no action shall be taken on the applicant's employment until the result of the additional confirmation test is available.

4. In the event an applicant's pre-employment drug test is confirmed positive, or, if requested, an applicant's additional confirmation test is positive, the applicant shall not be employed.
5. Upon written request, a copy of the additional confirmation test shall be supplied to the applicant at the applicant's expense.

An applicant may be exempt from the pre-employment/post-offer employment drug test if the applicant has participated in a drug testing program within 30 days prior to the application for employment and while participating in that program was tested for drugs within the last 6 months (from the date of application) or participated in a random drug testing program in the previous 12 months, provided that the District has been able to make all verifications required by law.

Random Testing

1. Pursuant to Department of Transportation regulations, commercial bus drivers must be randomly tested for both drugs and alcohol, and the District requires other school vehicle drivers to submit to random testing. The number of random tests for commercial bus drivers must equal fifty percent (50%) of the number of employees in the random testing pool for drugs and ten percent (10%) of the number of employees in the random testing pool for alcohol.
2. Random testing periods shall be spread reasonably throughout the school year.
3. Any employee selected for random testing shall be assured their selection does not mean the District suspects usage of alcohol and/or drugs.
4. An employee must proceed to the test site immediately upon receiving notice that they have been selected for random testing unless in the process of performing a safety-sensitive function. The employee must complete their safety-sensitive duties or receive direction from a supervisor to cease such duties before proceeding to the test site. In the event an employee is unavailable for testing on the dates selected by the District, at the election of the District they shall be tested within the testing period but may not be notified until available.
5. Employees may only be randomly tested for alcohol just before or just after performing safety-sensitive functions.
6. If the employee's random test is positive for alcohol and/or drugs, the employee is subject to discipline in accordance with policy.
7. Refusal to submit to a random test shall be treated as a positive test result and subjects the employee to discipline in accordance with policy.

Reasonable Suspicion Testing

Employees may be subject to drug and/or alcohol testing when there is reasonable suspicion by the District administrator and supervisor that indicates the employee may have violated District policy and is using or appears to presently be under the influence of drugs and/or alcohol.

Reasonable suspicion testing shall be based on objective facts and articulable observations that are consistent with the signs and symptoms of drug and alcohol abuse; including, but not limited to, appearance, behavior, motor skills, attendance, and/or work performance by the employee. The circumstances under which drug and alcohol testing shall be considered, as outlined above, are strictly limited to time and place of employee conduct while on duty, during work hours, on school property, and/or at a school property-sponsored event or activity.

The District shall take steps to ensure that District administrators and supervisors receive proper training to recognize the signs and symptoms of drug and alcohol misuse prior to making determinations for reasonable suspicion testing.

When the District has a reasonable suspicion that a violation of Policy DEAA Drug- and Alcohol-Free Workplace has occurred, the District shall proceed as described below:

1. The employee's district supervisor, administrator, or individual delegated under the Drug and Alcohol Testing Program for Employees shall complete a Record of Observable Behavior form. The individual shall not diagnose behavior beyond observed and reported behavior.
2. The district supervisor, administrator, or delegated individual shall solicit an explanation from the employee regarding the employee's observed behavior. All conversations had with the employee shall, whenever possible, involve a witness.
3. The District supervisor, administrator, or delegated individual may require the employee to undergo a drug and/or alcohol test if there is a reasonable suspicion district policy has been violated, based on specific factual findings made and rational inferences drawn from those facts.
4. If an alcohol test is not administered within two hours, or if a drug test is not administered within 32 hours, the District shall prepare and maintain a written record explaining why the test wasn't conducted.
5. A written record of observable behavior of the employee shall be made within 24 hours of reasonably suspecting a violation of District policy (or before test results are released [whichever occurs first]).
6. The employee must agree to be tested and complete the District consent form prior to obtaining a drug or alcohol test.

7. If the employee refuses to undergo the test or complete the consent form, they shall be advised that such refusal may subject the employee to disciplinary consequences contained in Policy DEAA. If the employee still refuses to undergo testing or to complete the consent form, they shall be directed to the Superintendent for disciplinary purposes.
8. The District supervisor, administrator, or delegated individual shall arrange an escort or transportation for the employee subject to drug and/or alcohol testing to a designated drug and alcohol testing facility to provide a breath and/or specimen.
9. The District supervisor, administrator, or delegated individual shall schedule a date and time to discuss the results of the test(s). This meeting may include the District supervisor, administrator, delegated individual, human resource officer, union representative (if requested), and/or others deemed necessary.
10. The employee shall return to their position if a positive drug test is not confirmed (and there are no other conduct or policy violations at issue).
11. An employee who tests positive for drugs and/or alcohol may be given an opportunity to discuss and explain the positive test result(s).
12. An employee who tests positive for drugs and/or alcohol may be subject to the disciplinary consequences contained in District policy.
13. A formal chemical dependency diagnostic interview (and treatment, if the report of the diagnostician indicates a need for treatment) may be made a condition of continued employment if the employee's job performance is adversely affected.
14. The District shall make an effort to provide supportive assistance to those employees who return after completing a therapeutic regime.

Employee Post-Accident Testing

The District shall require an employee, subject to the policy and regulations, to undergo drug and alcohol testing after an accident if:

1. There is a fatality.
2. One or more persons require medical treatment either at or away from the accident scene.
3. There is extensive damage to property, disabling a motor vehicle or any accident.
4. The District employee receives a citation arising from the accident.

The procedure set forth in the reasonable suspicion testing shall be followed for post-accident tests, except the employee shall be advised the tests are required as part of the accident investigation.

A covered or safety-sensitive employee involved in an accident shall make themselves readily available for testing, absent the need for immediate medical attention.

If an alcohol test is not administered within two hours, or if a drug test is not administered within 32 hours, the District shall prepare and maintain written records explaining why the tests were not conducted. Tests may not be given if not administered within 8 hours after the accident for alcohol or within 32 hours for drugs.

Tests conducted by authorized federal, state, or local officials will fulfill District post-accident testing requirements provided the tests conform to applicable legal requirements, and the results are obtained by the District. Breath tests shall validate only the alcohol test and cannot be used to fulfill drug testing obligations.

If the employee's drug test is confirmed positive, and the employee makes a request to the MRO within 72 hours of the employee having been notified of a verified positive test result that an additional confirmation test be conducted (which is conducted at the employee's expense), the employee may be placed on paid leave of absence pending the results of the additional confirmation test. If a positive drug test is not confirmed, the employee may be returned to their job.

Return-To-Duty/Follow-Up Testing

In the event the District returns an employee who tested positive for drugs or alcohol in violation of district policy to a covered or safety-sensitive position:

1. The employee must have been evaluated by a substance abuse professional;
2. The employee must have complied with any recommended treatment;
3. The substance abuse professional must have provided a written statement to the District stating the employee has successfully completed the rehabilitation program that was prescribed for them;
4. The employee has taken a return-to-duty alcohol and/or drug test and has a verified negative result for alcohol and controlled substance use; and
5. The employee is subject to unannounced follow-up testing. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional but shall occur a minimum of 6 times in 12 months.

All employees returning to job duties after requesting or being required to go to a rehabilitation program because of a positive confirmed test result, may be subject to follow-up testing as part of a follow-up program or agreement with the District.

Testing Costs

The District shall pay all costs of the employee drug and alcohol testing, unless the test is a retest requested by the employee. District employees shall be compensated at their regular rate of pay for the time during which they are undergoing any drug or alcohol testing, including transportation time.

End of Bismarck Public School District Administrative Rule DBBA-AR

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