

Drug and Alcohol Testing for Employees

Definitions

For the purpose of this policy:

- *Alcohol* means any alcoholic beverage as defined in 23 U.S.C. 158 and NDCC 5-01-01.
- *Drugs or controlled substances* refers to substances covered by the Omnibus Transportation Act, including, but not limited to, marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) (See 21 CFR part 1308).
- *Covered employee/position* means an employee/position subject to the Omnibus Transportation Employee Testing Act.
- *Safety-sensitive position* means a job in which a momentary lapse in the discharge of duties poses a safety threat with potentially severe consequences. In addition to covered positions, the following are recognized as safety-sensitive positions: school vehicle drivers as described in NDCC 15.1-07-20; school personnel that, as part of their job description, are responsible for transporting children in their personal vehicles; mechanics; transportation supervisory personnel; and all other employees performing safety-sensitive functions for the District as outlined in job descriptions.

Statement of Philosophy

The Bismarck School District is committed to the establishment of a drug and alcohol testing program that meets all applicable requirements of the Omnibus Transportation Employee Testing Act and other applicable federal and state laws. All covered and safety-sensitive employees are prohibited from using controlled substances and alcohol as stipulated in this policy.

Prohibitions and Hours of Compliance

Covered and safety-sensitive employees are prohibited from using a controlled substance at all times unless use is at the instruction of a physician and the physician has advised that use will not affect the employee's ability to perform safety-sensitive duties.

Covered and safety-sensitive employees are prohibited from using alcohol while on duty, four hours prior to performing duties, and up to eight hours following an accident or until the employee performs a post-accident test (whichever occurs first).

No supervisor having actual knowledge that an employee covered by this policy has used a controlled substance or alcohol within prohibited hours shall permit the employee to perform or continue to perform safety-sensitive duties.

Notice of Medication Use

Employees covered by this policy shall notify the Human Resources Director any time they are using medication prescribed by a physician that could adversely affect their performance of safety-sensitive duties. Employees shall not drive or perform other safety-sensitive duties at any time they have been advised by a physician that medication may or will adversely affect their ability to safely perform these duties.

Participation in Drug and Alcohol Testing Program Required

Employees serving in positions covered by this policy are required to participate in all applicable drug and alcohol testing as a condition of employment.

Circumstances for Testing

All covered and safety-sensitive employees shall be subject to pre-employment, reasonable suspicion, random, post-accident, return-to-duty, and follow-up alcohol and drug testing pursuant to procedures set out in the federal regulations or as allowed by applicable law. Pre-employment controlled substance testing shall be administered to an applicant offered a covered or safety-sensitive position in the District prior to the first time the employee performs any safety-sensitive duties for the District unless the applicant meets exemption criteria contained in federal regulations. Employment with the District is conditional upon the applicant receiving negative test results.

An individual applying for, transferring to, or being promoted to any safety-sensitive position shall initially be subject to controlled substance testing. Verified positive test results shall prevent an applicant/employee from moving into a covered or safety-sensitive position. School vehicle drivers shall also be subject to post-accident and reasonable suspicion and random testing. Non-transportation safety-sensitive positions shall be subject to post-accident and reasonable suspicion tests.

Transportation contracts approved by the District shall contain assurance that the contractor will establish or join a drug and alcohol testing program that meets the requirements of federal regulations and this policy and will actively enforce the regulations of this policy as well as federal requirements. An independent contractor who drives his/her own bus/vehicle is subject to the same requirements as the District's own employees.

Drug and Alcohol Testing

Any applicant or employee has the right to refuse to undergo testing. However, failure to consent to testing or behavior that prevents meaningful completion of testing will be treated as a failure to comply with the District's policies and may result in discipline, termination of employment, or rescission of a job offer. No test will be sought for the purpose of discriminating against an applicant or employee.

The District has adopted testing practices to identify covered and safety-sensitive position applicants/employees who use illegal drugs or abuse alcohol on or off the school property and/or during working hours. Before requesting or requiring drug and/or alcohol testing, the District

will provide the individual with a copy of this policy and a form on which to acknowledge they have seen the policy. Testing will not be performed unless a signed acknowledgement form has been obtained. It shall be a condition of employment for all covered and safety-sensitive position applicants/employees to submit to testing under the following circumstances:

1. Pre-employment (Covered and Safety-Sensitive Positions Only): Once a conditional job offer has been made to an applicant for a covered or safety-sensitive position, the District will require the applicant to undergo testing, provided the same test is required of all applicants for the position. Any covered or safety-sensitive position applicant with a confirmed positive test result may be denied employment after assessment and review by administration.
2. Promotions/Transfers (Covered and Safety-Sensitive Positions Only): All employees who are promoted or transferred into covered or safety-sensitive positions will be tested at the time of promotion or transfer. In the event of a positive test, an employee may re-apply for another vacant covered or safety-sensitive position at a later date as determined by the District or as outlined in administrative regulations or handbooks.
3. Random (Covered and Safety-Sensitive Positions Only): Random testing may be conducted for employees only in covered or safety-sensitive positions.
4. Reasonable Suspicion – All Employees: The District may require testing when there is reasonable suspicion to believe that an employee (a) is under the influence of alcohol or illegal drugs, (b) has violated this policy or other district policies or regulations prohibiting the use, possession, sale, or transfer of drugs or alcohol, (c) has caused themselves or another employee to sustain a personal injury, or (d) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident. In order for reasonable suspicion to exist, there must be a basis for forming a belief that testing is justified based on specific facts and rational inferences drawn from those facts. Where permitted by law, the occurrence of a work-related accident may be considered reasonable suspicion; however, any testing that is conducted must evaluate the root cause of the incident that “harmed or could have harmed” employees or others and must include all employees who could have contributed to the incident, rather than just the employees who reported injuries.

Reasonable suspicion testing shall be based on objective facts and articulable observations that are consistent with the signs and symptoms of drug and alcohol misuse or abuse and/or a policy violation, including, but not limited to the following: appearance, behavior, motor skills, attendance, and/or work performance by the employee. The circumstances under which reasonable suspicion 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, and/or on school property or at a school-sponsored activity or event. 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.

Reasonable suspicion testing shall be performed in accordance with federal law on Transportation Workplace Drug Testing and testing procedures outlined in administrative regulation.

5. Follow-up Testing – All Employees: The District may require testing as part of a follow-up program to treatment for drug or alcohol abuse when an employee has been requested or required by the District to go to a rehabilitation program because of a positive confirmed test result. The frequency and terms of such testing shall be confirmed under agreement between the District and employee.

Within three (3) working days after receipt of a test result report from the licensed testing laboratory, the District will inform the applicant or employee who has undergone drug or alcohol testing in writing of a positive test result on a confirmatory test or of a negative test result on an initial test. Applicants and employees have a right to request and receive a copy of the test result report on any drug or alcohol test.

Applicants and employees will be given the opportunity to explain or contest a confirmed positive result with the District within three (3) working days after being notified of their test result. An applicant or employee may present verification of enrollment in the cannabis patient registry as part of the explanation. No individual will be discriminated against or penalized due to the individual's status on the patient registry or for the patient's positive drug test result unless the patient used, possessed, or was impaired by medical cannabis on the District's premises or during the hours of employment.

The applicant or employee also has the right to request a confirmatory retest of the original sample at their own expense. This request must be made within five (5) working days after notice of the confirmatory test results in writing.

The first time an employee tests positive for drugs or alcohol after a confirmatory test, they may be given the opportunity to participate in rehabilitation/ substance abuse treatment prior to discipline, up to and including discharge. The District may provide such opportunity unless the employee has refused to participate or has failed to successfully complete the counseling or rehabilitation program. Participation in a drug or alcohol counseling or rehabilitation program is at the employee's own expense or pursuant to coverage under an employee benefit plan. The District reserves the right to take any other disciplinary action, which it deems warranted in the event of an employee's first positive confirmatory test result.

Positive test results may result in administrative leave, pending the outcome of a confirmatory test and, if requested, confirmatory retest if the District believes it is reasonably necessary to protect the health or safety of the employee, co-employees, students, and/or the public.

An employee, who receives a positive result on a confirmatory test for drugs and/or alcohol and who has previously received a positive result on a confirmatory test for drugs and/or alcohol, may be disciplined up to and including discharge.

Testing Procedures

Testing shall be performed in accordance with federal drug and alcohol testing regulations and testing procedures are outlined in administrative rules.

Refusal to Submit

An employee covered by this policy may not refuse to take a required test.

In addition to verbally refusing to undergo testing, an employee or job applicant is considered to have refused testing if they:

1. Fail to appear for, or declines a test within a reasonable time, as determined by the District;
2. Fail to provide an adequate sample or sufficient quantities of the substance being tested without a medical exemption;
3. Fail to immediately report to the collection site as instructed, or fail to remain at the testing site until the testing is completed (unless instructed otherwise by the testing laboratory or facilitators);
4. Tamper with, adulterate, substitute a specimen for testing, or obstruct testing, as determined by the testing laboratory;
5. Interfere with the collection procedure;
6. Do not make themselves readily available for testing following an accident, as defined below. However, nothing in this policy shall be construed to require the delay of necessary medical attention for injured persons following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.

Employees who refuse required testing shall, at a minimum, be prohibited from performing covered and safety-sensitive duties and may be refused employment or disciplined up to and including discharge.

Violations

If the testing confirms prohibited alcohol concentration levels or the presence of a controlled substance, the employee shall be removed immediately from covered and safety-related duties and may be subject to the disciplinary consequences contained in Policy DEAA Drug and Alcohol Free Workplace. Before an employee is reinstated, if at all, the employee shall comply with all applicable return-to-duty requirements, including evaluation, rehabilitation, and drug/alcohol testing requirements. An employee who is prohibited from performing covered or safety-sensitive duties may be assigned to non-covered or non-safety-sensitive duties until such time as the employee complies with the requirements for returning to duty. The District will follow treatment referral procedures contained in federal regulations for covered employees.

Employees with verified alcohol concentrations below prohibited amounts shall be removed from covered and safety-sensitive positions and may be subject to the disciplinary consequences contained in Policy DEAA Drug- and Alcohol-Free Workplace.

The District is not required to provide rehabilitation, pay for substance abuse treatment, or to reinstate the employee. Administration retains the authority consistent with law to discipline or discharge any employee who is an alcoholic or chemically dependent and whose current use of alcohol or drugs affects the qualifications for and performance of his/her job.

Confidentiality of Records

The District shall maintain records in compliance with law. Drug and alcohol testing records are confidential and shall be maintained in a secured location. An employee shall be entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances including information pertaining to alcohol or drug tests. Records shall be made available to a subsequent employer upon receipt of a written request from an employee only as expressly authorized by the terms of the employee's request.

Necessary records and reports shall be maintained and made available to federal and state transportation agencies upon request in accordance with federal regulations.

Records from Former Employers

With the employee's consent and in accordance with 49 CFR 40.25, the District may obtain any information concerning drug and alcohol testing from the employee's previous employer.

Training

The District's Safety Coordinator shall take steps to ensure that supervisors receive proper training to administer the drug and alcohol testing program.

Identity of Contact Person

The Human Resources Director serves as the contact person for questions concerning the drug and alcohol testing program and this policy. This designee may be reached at 701-323-4000 or 128 Soo Line Drive, Bismarck, ND.

Policy Dissemination

The Human Resources Director shall disseminate this policy and other educational material in accordance with federal law. Each employee subject to this policy shall certify in writing that they have received this material upon receipt. The Superintendent or designee serves as the individual responsible for answering questions related to this material.

Effects of Alcohol and Controlled Substances

The BPS website contains information on the effects of alcohol and controlled substance misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; and available methods of intervening when a misuse problem is detected.

Conflict between Administrative Policy and Federal Law and Regulations

In the event of a conflict between the provisions of federal law or regulations concerning alcohol and drug testing and this administrative policy, the federal law or regulations shall control.

Complementary Documents

- DBBA-AR, Drug and Alcohol Testing Procedures
- DBBA-E1, Record of Observable Behavior
- DBBA-E2, Steps to Performing a Reasonable Suspicion Test
- DBBA-E3, Drug and/or Alcohol Testing Consent Form
- DEAA, Drug- and Alcohol-Free Workplace
- DFC, Transfer and Reassignment
- DI, Personnel Records

End of Bismarck Public School District Policy DBBA

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