

ALCOHOL AND DRUG-TESTING OF BUS DRIVERS REGULATION

It is the District's intention to comply fully with the Omnibus Transportation Employee Testing Act of 1991 (P.L. 102-143) (the "Omnibus Act") and U. S. Department of Transportation (the "DOT) regulations governing drug and alcohol use and testing (49 CFR parts 40, 382, 391, 392, and 395), and the requirements of the DOT's regulations are hereby incorporated into this Policy by reference. In the event DOT's regulations are amended, this Regulation and the applicable term(s), condition(s) and/or requirement(s) of the Regulation shall be deemed to have been amended automatically at that time, without the need for redrafting, in order to reflect and be consistent with DOT's regulations, and shall applied as amended.

Any employee who operates a commercial motor vehicle and is in a safety-sensitive function shall be subject to alcohol and controlled substance testing. Where the term "controlled substance test or testing" or "drug test or testing" is used, the following substances will be tested for: amphetamines, cocaine, marijuana, opiates, phencyclidine (PCP) and any additional substances as may be specified from time to time by U.S. Department of Transportation ("DOT") regulations 49 CFR part 40. All of the procedures specified in the DOT regulations (49 CFR part 382) including for example, but not limited to procedures for conducting and having an MRO review the test, the cutoff levels for a positive test, and requirements for testing after an employee returns to work, shall apply. An employee having any questions concerning the District's policy or regulation, state law or the federal regulations shall contact the Superintendent of Schools.

Any treatment, rehabilitation program or discipline will be provided in accordance with District policy and/or collective bargaining agreements. While the District has a zero tolerance policy, the District also wants to encourage any person with a drug or alcohol problem to seek the assistance they may need. Therefore, if an employee voluntarily comes forward to acknowledge a problem and seeks treatment before being in violation of this policy or being sent for a drug test, the District will work proactively with that employee to allow the employee to obtain that treatment. Treatment is not, however, a revolving door to be used by an employee to avoid discipline or termination from employment.

I. Covered Employees

Covered employees include District employees who operate a commercial motor vehicle, perform in a safety-sensitive position, and are required to obtain a commercial driver's license. Such employees include:

1. all bus drivers;
2. drivers of commercial motor vehicles whose manufacturer's rating is 26,001 lbs. or more; or
3. any other employee who may drive a listed vehicle (e.g., a mechanic who performs test drives).

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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.

Drivers will be removed from their safety-sensitive functions if they violate the District's policy or federal regulations pertaining to the possession or consumption of alcohol or controlled substances. A driver is performing a safety-sensitive function 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.

Covered employees are required to be in compliance with District policy and regulation:

- 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
- 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.

II. Prohibitions and Consequences

The Supervisor of Transportation or his designee shall prohibit an employee from driving a school bus or performing other safety-sensitive duty 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 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 or to engage in conduct that clearly obstructs the testing process, such as a failure to arrive for the drug testing or failure to sign the alcohol testing form prior to specimen collection.

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Individuals who test positive for alcohol or drugs or who demonstrate impairment will not be permitted to drive away from the location of the test. Employees who appear impaired will not be permitted to drive off District property and any attempt to do so shall result in law enforcement being informed of the employee's name and the fact of the positive drug or alcohol test or apparent impairment.

An employee 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 drug use by drivers is prohibited on or off duty.

Any 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. Another alcohol test shall be required before the employee returns to safety sensitive duty. The result of this test must be less than 0.02.

In the event that an 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:

1. has been evaluated by a DOT accredited substance abuse professional;
2. has complied with any treatment recommendations;
3. has been released by the SAP to return to safety sensitive duties; and
4. has received a satisfactory result from a return to duty test.

Upon return to duty, the employee will be subject to follow-up testing.

III. Types of Testing

The Superintendent of Schools and the Director of Transportation shall ensure that the following alcohol and drug tests are implemented and that any employee who is required to take an alcohol or controlled substance test shall be notified prior to the test that it is required pursuant to federal regulations or, in the case of pre-employment alcohol testing, District policy.

1. Pre-employment: Controlled substance and alcohol* tests will be conducted before 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 transfer to a safety-sensitive function.

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2. Post-accident: Alcohol and controlled substance tests will be conducted if a driver 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 AND EITHER
 1. there is an injury treated immediately 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 if the Transportation Supervisor or other school official who has completed the minimum two hours of training has a reasonable suspicion that the driver has violated District policy and 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 drives a school bus or performs other safety-sensitive duties. The supervisor who makes the determination of reasonable suspicion cannot do the testing.
4. Random Testing: Random alcohol tests shall be conducted annually at a minimum rate of 10 percent, or such other rate as set by the FMCSA Administrator, of the average number of positions subject to such testing pursuant to federal regulation. Random alcohol tests must be conducted just before, during or just after the employee drives a bus or performs other safety-sensitive duties.

*The District has the option whether to require pre-employment *alcohol* testing as part of District policy. However, pre-employment controlled substance testing is mandatory under federal regulations.

Random controlled substance tests shall be conducted annually at a minimum rate of 50 percent, or such other rate as set by the FMCSA Administrator, of the average number of positions subject to such testing pursuant to federal regulation. 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.

5. Return-to-Duty Testing: An employee who refused to take a test or has engaged in prohibited alcohol and controlled substance use, except for alcohol concentration of 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 all mandates of Section II of this regulation.

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6. Follow-Up Testing: After an employee who was found to violate the District's policy 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 shall be according to the SAP's written follow-up testing plan and 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 prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results.
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 all mandates of Section II of this regulation. 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.

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

B. Drug Testing Procedures

The employee must provide a urine specimen which will be analyzed at a laboratory certified and monitored by the U.S. Dept. of Health and Human Services.

1. Regulations require that each urine specimen be divided into one "primary" specimen and one "split" specimen.
2. All urine specimens are analyzed for the following drugs:
 - a. Marijuana (THC metabolite)
 - b. Cocaine
 - c. Amphetamines
 - d. Opiates (including heroin)
 - e. Phencyclidine (PCP)
 - f. Any other drugs specified in 49 CFR Part 40
3. If the primary specimen confirms the presence of one or more of these drugs or their metabolites, the employee has 72 hours after being notified by the MRO of a positive test result to request that the split specimen be sent to another certified lab for analysis. [Note: The employee must be removed from safety sensitive duties at this time--pursuant to federal regulations, the driver's removal cannot await the result of split sample.]
4. If the screening test has a drug-positive result, a confirmation test will then be performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis.
5. All drug test results will be reviewed and interpreted by a physician (also called a Medical Review Officer) before they are reported to the District.
6. 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 drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of a prohibited drug, the drug test result is reported as negative.
7. If the MRO reports a positive drug result, the employee must be evaluated by a substance abuse professional and follow his recommendations prior to taking a return-to-duty test. Follow-up testing is also required.

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8. For post-accident testing, the results of urine 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, gas chromatography/mass spectrometry analysis testing, assurance that all drug test results are reviewed and interpreted by a physician, and ensuring confidentiality of employee test records.

V. Dilute Specimen Testing

If the District receives a drug test result which is negative but dilute and the creatine 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 Supervisor of Transportation and every other person designated to determine whether reasonable suspicion exists to require an employee 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.

VI. Recordkeeping and Reporting

The Transportation Supervisor shall ensure that alcohol and drug testing records are maintained 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.

VII. Required Notification

Every affected 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.

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Each covered employee is required to sign a statement certifying that he 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.

VIII. Penalties

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 bus driver convicted of driving a school bus with one or more student passengers while impaired by the use of drugs or alcohol will have his license revoked for one year and is subject to fines ranging from \$500 to \$5,000 and/or imprisonment.

Any bus driver convicted more than once in 10 years for such crimes will have his license revoked for three years and is subject to a fine of \$1,000 to \$5,000 and/or imprisonment.