

## ALCOHOL AND DRUG-TESTING OF BUS DRIVERS REGULATION

Any employee of the District or company contracted with the District, who provides transportation to District students through the operation of a commercial motor vehicle or “other school bus” (hereinafter referred to as “Driver”), or who is in a safety-sensitive function shall be subject to alcohol and other substance testing, in accordance with this regulation, applicable federal regulations, and state law. Any Driver having any questions concerning the District’s policy and/or regulation, state law, or the federal regulations shall contact the Superintendent of Schools or designee.

Any treatment, rehabilitation program, or discipline will be provided in accordance with District policy and/or the applicable collective bargaining agreements.

Throughout this regulation, “alcohol and other substance(s)” shall refer to the use of all controlled substances and other drugs, whether or not specifically illegal, including, but not limited to, alcohol, inhalants, marijuana, cocaine, LSD, PCP, amphetamines, heroin, steroids, look-alikes, and any synthetic version thereof (whether or not specifically illegal or labeled for human consumption), commonly referred to as “designer drugs.” Designer drugs are those substances, which have been designed and synthesized to mimic the intended effects and usages of, and which are chemically substantially similar to, substances controlled by federal and/or state law as exemplified above. The inappropriate use of prescription and over-the-counter drugs shall also be prohibited.

### Covered Drivers

“Driver(s)” shall include any person who operates a commercial motor vehicle including, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers, contracted operators of commercial motor vehicles; and/or, 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.

#### A. Drivers Covered Under Federal Law

Drivers covered under this policy by Federal Law include District employees and/or contracted operators of a commercial motor vehicle and/or those that perform in a related safety-sensitive position, and are required to obtain a commercial driver’s license. Such individuals shall include, but are not limited to, the following:

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

#### B. Drivers Covered Under State Law

Drivers covered under by this policy under State Law shall include, but not be limited to operators of “other school buses”. “Other school buses” shall include those covered

by applicable federal regulations including, but not limited to, vehicles designed to transport sixteen (16) or more passengers, including the driver, and those whose manufacturer's rating is 26,001 lbs. or more. It shall also include any other motor vehicle owned either by the District or by a private company, operated to transport students, children of students, teachers, and other supervisory persons to or from school or school activities.

Certain specified individuals will not be considered operators of "other school buses." They include:

1. Volunteers who drive a school bus with passengers fewer than thirty (30) days per year; and
2. District 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.

#### C. Safety Sensitive Function

A Driver 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.

All covered Drivers are required to be in compliance with District policy and regulation as well as federal and State law and regulations at all times including, but not limited to, the following:

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.

#### Prohibitions and Consequences

Drivers are prohibited from driving a commercial vehicle or "other school bus" and/or performing other safety-sensitive duties if the individual:

1. possesses, consumes or is reasonably believed to possess or have consumed alcohol or any other prohibited substance, while on duty;
2. has consumed or is under the influence of alcohol or any other substance that is not lawfully prescribed within six (6) hours before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for any other substance; or
4. refuses to take a required alcohol test or a required test for any other substance.

Refusal to submit shall mean the failure to provide adequate breath or urine without a valid medical explanation, receipt of verified adulterated or substituted drug test result, 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 or other substance testing form prior to specimen collection.

A Driver is prohibited from consuming alcohol within eight (8) 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.

Drivers who violate the prohibitions herein will be subject to the following enforcement actions:

1. Drivers may 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 other substances.
2. The Director of Transportation and/or any person(s) designated by the District will not require or permit Drivers to be on duty or operate a vehicle if it appears that the Driver has consumed alcohol or any other substance (except those lawfully prescribed) within the preceding eight (8) hours. This shall be based on the person's general appearance, conduct, or other substantiating evidence. Those who maintain, repair, or garage vehicles that involves incidental driving without passengers, are exempt from this requirement, but are still prohibited from consuming alcohol or any other substance within six (6) hours of going on duty.
3. An individual who is tested and found to have an alcohol concentration of at least 0.02 or greater, but less than 0.04, or a positive drug test 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 twenty-four (24) hours following administration of the test.
4. In the event that any covered individual has a breath alcohol concentration of 0.04 or greater, has tested positive for any other substance or has refused to take a test, he, she, or they will, in addition to immediate removal from driving and any other safety-related duties, not be returned to duty until he, she, or they:
  - 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 individual will be subject to follow-up testing.

While New York Law permits the use of marijuana, federal law still prohibits its use. 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>).

### Types of Testing

The Superintendent of Schools, the Director of Transportation and/or any person(s) designated by the District shall ensure that the following alcohol and drug tests are implemented

and that any individual who is required to take an alcohol or other 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: Alcohol and other substance 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 individuals transfer to a safety-sensitive function.
2. Post-accident: Alcohol and other substance tests will be conducted if a Driver is involved in an accident in which:
  - a. there has been a fatality; or
  - b. the individual has received a citation for a moving violation in connection with the accident, and either:
    - i. there is an injury treated away from the scene of the accident; or
    - ii. there is a disabled vehicle towed from the scene.
3. Reasonable Suspicion: Alcohol and other substance tests will be conducted when the Director of Transportation and/or any person(s) designated by the District who has/have completed the minimum two hours of training has/have a reasonable suspicion that the Driver 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 alcohol or other substance use. Alcohol tests can only be done just before, during, or just after the individual drives a school bus or performs other safety-sensitive duties. The individual 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 twenty-five percent (25%) 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 individual drives a bus or performs other safety-sensitive duties. Tests of other substances shall be conducted annually at a minimum rate of fifty percent (50%) of the average number of positions subject to such testing pursuant to federal regulation. Random substance tests may be conducted at any time. Random alcohol and other substance tests must be unannounced and spread reasonably throughout the calendar year.

New York law requires individuals 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: A Driver who refused to take a test or has engaged in prohibited alcohol or substance use, except for alcohol concentration of between 0.02 and 0.04, shall be required to take an alcohol or substance test and achieve a satisfactory result before returning to duty in a 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 substance use, a satisfactory result will be one that it is verified as negative. The test will not be administered until the individual has been evaluated by a alcohol and/or substance abuse professional and has complied with any treatment recommendations.
6. Follow-Up Testing: An individual who returns to duty after being found to have violated the District's policy against alcohol and other substance use will be subject to at least six (6) unannounced tests in the first twelve (12) months following return to duty. Follow-up testing may be extended for up to sixty (60) months from the date of the individual's return to duty. Follow-up alcohol testing may only be conducted before, during, or after the driver has performed driving duties.

## 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 Driver 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 individual will be restricted from duty for at least twenty-four (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 individual will be removed from all safety-sensitive duties and no return to duty will be permitted until the individual has successfully passed required return-to-duty tests. The individual must also be reviewed by an Alcohol and/or Substance Abuse Professional and comply with any recommendations made. 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 to 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, quality assurance plans for the EBT devices including calibration, requirements for suitable test location, and protection of individual test records.

**B. Drug Testing Procedures**

The individual 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 (including methamphetamines, MDA, and MDMA)
  - d. Opiates (including natural opiates such as codeine, morphine, and heroin as well as semi-synthetic opioids such as hydrocodone, hydromorphone, oxycodone, and oxycodone)
  - e. Phencyclidine (PCP)
3. If the primary specimen confirms the presence of one or more of these drugs, the individual has seventy-two (72) hours to request that the split specimen be sent to another certified lab for analysis. [Note: Pursuant to federal regulations, the individual must be removed from driving duties at this time. The Driver’s removal cannot await the result of the 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 individual to determine if there is an alternative medical explanation for the drugs found in the person’s urine specimen. If the individual 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 individual must be evaluated by a substance abuse professional and follow any recommendations made prior to taking a return-to-duty test. Follow-up testing is also required.
8. For post-accident testing, the results of urine tests conducted by law enforcement officials will be accepted as long as the testing conforms to federal and state requirements for 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.

#### Dilute Specimen Testing

If the District receives a drug 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 an individual refuses to take the re-test it will be considered the same as a positive test result.

#### Training

The Director of Transportation and every other person designated by the District to determine whether reasonable suspicion exists to require an individual 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 and other substance use that they will use in making their determinations.

#### Recordkeeping and Reporting

The Director of Transportation and/or any person(s) designated by the District 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.

The following personal information must be reported to the Department of Transportation (DOT) Clearinghouse for individuals subject to DOT testing:

1. a verified positive, adulterated or substituted drug test result;
2. an alcohol confirmation tests with a concentration of 0.04 or higher;
3. a refusal to submit to any test required by the regulations;
4. 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;
5. a substance abuse professional's report of the successful completion of the return-to-duty process;
6. a negative return-to-duty test; and
7. an employer report of completion of follow-up testing.

#### Required Notification

Every affected individual shall receive information about the signs, symptoms, and effects of alcohol misuse and substance abuse. Such persons shall also receive a copy of the District's

policies and procedures on the use/abuse of alcohol and other substance(s), information regarding the consequences of testing positive, and contact information for the individual(s) and/or department within the District to seek further information and/or assistance.

Each Driver is required to sign a statement certifying receipt of this information. The District shall maintain the original signed certification until the individual's employment is discontinued. The District will provide a copy of the certification to the Driver upon request.

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 school bus with one or more student passengers while impaired by the use of drugs or alcohol will have his/her/their 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 ten (10) years for such crimes will have his/her/their license revoked for three years and is subject to a fine of \$1,000 to \$5,000 and/or imprisonment.

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