

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

The Board of Education recognizes the dangers inherent in alcohol and controlled substance use by employees especially those in safety-sensitive positions. To maintain the safety of its students and to comply with federal regulations, the Board requires alcohol and controlled substance testing of certain “drivers,” operators of “other school buses,” and any other employee who is subject to such testing in accordance with applicable federal and state law.

Any company contracting with the School District to provide transportation to School District students shall conduct alcohol and drug testing for their employees who qualify as “drivers” and operators of “other school buses” as required under federal and state law. The School District shall ensure any such company with which it contracts performs testing for alcohol and controlled substances in accordance with applicable federal and state law.

Definitions

1. “Driver” includes any person who operates a commercial motor vehicle. This includes, but is not limited to full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.
2. “Other school buses” include those covered by applicable federal regulations and any other motor vehicle either owned by the School 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.

Consistent with federal regulations, the School District shall directly, by contract, or through a consortium, implement and conduct a program to provide alcohol and controlled substance testing of employees who operate a commercial motor vehicle, perform in a safety-sensitive position, and are required to hold a commercial driver’s license. Employees holding such positions include:

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; or
3. any other employee who may drive or service a listed vehicle (e.g. a mechanic who performs test drives, repairs, inspects, or loads or unloads a vehicle listed in 1 or 2 above).

Controlled substance and alcohol tests will be conducted of drivers at the time of employment and randomly throughout the school year consistent with the procedures applicable to the implementation of federal regulations. In addition, testing will be conducted when a supervisor has a reasonable suspicion that a driver has engaged in prohibited alcohol or controlled substance use; after certain accidents; prior to return to duty when the driver has been found to violate School District policy and federal regulations; and after the driver’s return to duty. Volunteers who drive a school bus with passengers for fewer than thirty (30) days per year are not considered operators of “other school buses.”

VALLEY STREAM UNION FREE SCHOOL DISTRICT TWENTY FOUR

ALCOHOL AND DRUG TESTING OF BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

In accordance with federal and state law, a driver will not be permitted to drive if they:

1. possess, consume or is reasonably believed to possess or have consumed alcohol or a controlled substance, while on duty;
2. use or is under the influence of alcohol or a controlled substance within six(6) hours or less before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for a controlled substance; or
4. refuses to take a required alcohol or controlled substance test.

Also, no driver shall use alcohol after being involved in an accident in which there was a fatality or in which the bus driver was cited for a moving violation and a vehicle was towed from the scene or an injury was treated away from the scene until he/she has been tested or eight (8) hours have passed, whichever occurs first.

The School District will not require or permit drivers of vehicles listed above, as well as operators of all "other school buses" defined above, to be on duty or operate a listed vehicle or other school bus, if it appears that they have consumed a drug/controlled substance (except those lawfully prescribed) or alcohol within the preceding eight hours. This will be based on the person's general appearance, conduct, or other substantiating evidence. Those who maintain, repair, or garage listed vehicles or school buses that involves incidental driving without passengers, are exempt from this requirement, but are still prohibited from consuming controlled substances and alcohol within six hours of going on duty.

Any employee who is tested and found to have an alcohol concentration of at least 0.02, but less than 0.04, shall be removed from the position until his or her next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test. Any driver found to have violated this requirement may be disciplined in accordance with the provisions of the applicable collective bargaining agreement, School District policy, and/or law. Operators of "other school buses" subject to random testing pursuant to New York Law will be subject to the same consequences based upon an alcohol concentration of at least 0.02 but less than 0.04 as drivers listed above.

If a driver has an alcohol concentration of 0.04 or greater, or has engaged in prohibited alcohol or controlled substance use, they will be removed from driving duties, and referred to a substance abuse professional. The employee may be required to complete a treatment program and/or be disciplined pursuant to School District policy and/or collective bargaining agreement. No driver who has abused controlled substances and/or alcohol may return to duty unless they have successfully passed a required return to duty test. Thereafter, the driver will be subject to follow-up testing. Operators of "other school buses" subject to random testing pursuant to New York Law will be subject to the same consequences based upon an alcohol concentration of 0.04 or greater or a positive drug test as drivers listed above.

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

Should the School District receive a dilute test result in which the creatinine concentration is greater than 5mg/dL in the case of any pre-employment, return-to-duty, follow-up, reasonable suspicion, or random test, it is the policy of the School District that the individual shall be re-tested and that re-test will become the test of record.

Any employee who operates a commercial motor vehicle and is in a safety-sensitive function shall be subject to alcohol and controlled substance testing in accordance with this policy. An employee having any questions concerning the School 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 School District policy and/or collective bargaining agreements.

I. Covered Employees

Covered employees include School 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. drivers of buses 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; or
3. any other employee who may drive a listed vehicle in 1 or 2 above (e.g., a mechanic who performs test drives).

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 School District.

Drivers of "other school buses" are additionally subject to testing as described in this policy. "Other school buses" include both those covered by applicable federal regulations as stated above, and any other motor vehicle either owned by the School 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.

Drivers will be removed from their safety-sensitive functions if they violate the School 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;

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

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 School 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 Superintendent of Schools or their 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.

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.

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, they will, in addition to immediate removal from driving and any other safety-related duties, not be returned to duty until they:

1. have been evaluated by a substance abuse professional;
2. have complied with any treatment recommendations; and
3. have received a satisfactory result from a return to duty test.

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

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

While New York law permits the use of medical marijuana, federal law 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.

III. Types of Testing

The Superintendent of Schools or their designee shall implement the following alcohol and drug tests and will notify any employee who is required to take an alcohol or controlled substance test prior to the test that it is required pursuant to federal regulations or, in the case of pre-employment alcohol testing, School District policy and state law.

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.
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 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 School 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 established annually by the Federal Motor Carrier Safety Administration. Random alcohol tests must be conducted just before, during or just after the employee drives a bus or performs other safety-sensitive duties.

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

Random controlled substance tests shall be conducted annually at a minimum rate established annually by the Federal Motor Carrier Safety Administration. 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 and shall be performed at a minimum rate established annually by the Federal Motor Carrier Safety Administration.

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 any treatment recommendations.
6. Follow-Up Testing: After an employee who was found to violate the School District's policy against alcohol and controlled substance use returns to duty, they will be subject to at least six unannounced tests in the first 12 months following the employee's return to duty. Follow-up testing 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 their 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 so 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 meets the requirements of federal regulations.
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.

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

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 their recommendations. 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 School District.

All testing procedures will conform to the requirements outlined in federal regulations (49 CFR Part 40) concerning 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 at a collection site that meets federal requirements 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)
3. If the primary specimen confirms the presence of one or more of these drugs, the employee has 72 hours to request that the split specimen be sent to another certified lab for analysis. [Note: The employee must be removed from driving duties at this time--pursuant to federal regulations, the driver's removal cannot await the result of split sample.]
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 School 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.

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

7. If the MRO reports a positive drug result, the employee must be evaluated by a substance abuse professional and follow their recommendations 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 with federal and state requirements for controlled substance testing and the results are made available to the School 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, assurance that all drug test results are reviewed and interpreted by a physician, and maintaining confidentiality of employee test records.

V. Dilute Specimen Testing

If the School District receives a drug test result which is negative but dilute and the creatinine concentration is greater than 5mg/dl, the School 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 the employee refuses to take the re-test it will be considered the same as a positive test result.

VI. Training

The Superintendent of Schools or their designee 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.

VII. Recordkeeping and Reporting

The Superintendent of Schools or their designee shall maintain alcohol and drug testing records in accordance with applicable federal regulations and make 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.

Required Notification

ALCOHOL AND DRUG TESTING OF

BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

Every covered employee shall receive information about the signs, symptoms, and effects of alcohol misuse and controlled substance use as well as a copy of the School District's policy and procedures, the consequences of testing positive and who to contact within the School District to seek further information and/or assistance.

Each covered employee is required to sign a statement certifying that they have received this information. The School District shall maintain the original signed certification until the employee's employment is discontinued. The School District will provide a copy of the certification to the covered employee upon request.

Federal Drug and Alcohol Clearinghouse Queries

The district will conduct queries of the Department of Transportation's Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for all employees covered under federal law: (1) full queries to check if prospective employees are prohibited from performing safety sensitive functions, such as operating school buses, due to unresolved drug and alcohol program violations, and (2) limited queries annually (once in a 365-day period), for all employees subject to state and federal drug and alcohol testing. The district may conduct queries at other times as needed.

All queries require driver consent. The district will request employee consent to conduct limited queries of the Clearinghouse. If a limited query result shows that a record is found in the Clearinghouse, the district will request the driver's consent for a full query.

Full query results will show if a driver is prohibited or not prohibited from performing safety sensitive functions. If a query shows a violation, the district must verify that the driver has completed the Substance Abuse Professional's return to duty process before allowing the employee to perform any safety-sensitive function. In some cases, when hiring, the district may inherit an ongoing follow-up testing process.

The following personal information must be reported to the Department of Transportation (DOT) Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for employees subject to DOT testing:

- A verified positive, adulterated or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to any test required by the regulations;
- 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;
- A substance abuse professional's report of the successful completion of the return-to-duty process;
- A negative return-to-duty test; and
- An employer report of completion of follow-up testing

ALCOHOL AND DRUG TESTING OF
BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

Policy 4500

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 their 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 their license revoked for three years and is subject to a fine of \$1,000 to \$5,000 and/or imprisonment.

The Superintendent of Schools or their designee will provide a copy of this policy, the School District's policy on misuse of alcohol and use of controlled substances, information on alcohol and drug abuse and treatment resources and any other information prescribed by federal regulations to all school bus drivers and other appropriate personnel prior to the initiation of the testing program and to each driver subsequently hired or transferred to a position subject to testing.

Cross-ref: 5131 Code of Conduct

Ref: Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. §§31136; 31306
49 U.S.C. §521(b); 49 CFR Part 391; 49 CFR Part 382; 49 CFR Part 40;
49 CFR §395.2
Vehicle and Traffic Law §§509-L; 1192; 1193; 6 NYCRR 17-3; 8 NYCRR 156.3(h)

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VALLEY STREAM UNION FREE SCHOOL DISTRICT TWENTY FOUR

**ALCOHOL AND DRUG TESTING OF
BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES**

Policy 4500

4500-Exhibit 1

**ALCOHOL AND DRUG TESTING PROGRAM
ACKNOWLEDGMENT FORM**

I, _____, have received, read and understand the Alcohol and Drug Testing Program policy and regulation. I consent to submit to the alcohol and drug testing program as required by law and School District policy and regulation.

I understand that if I am being required to submit to a pre-employment alcohol test or a dilute specimen re-test, such test is required pursuant to School District policy for employment with the School District and not pursuant to federal regulations.

I understand that if I violate School District policy, regulation or the law, I may be subject to discipline up to and including termination or I may be required to successfully participate in a substance abuse evaluation and, if recommended, a substance abuse treatment program. If I am required to and fail to or refuse to successfully participate in a substance abuse evaluation or recommended substance abuse treatment program, I understand I may be subject to discipline up to and including termination.

Signature of Employee

Date