

## **POLICY: DRUG & ALCOHOL TESTING: TRANSPORTATION EMPLOYEES<sup>1</sup>**

### **Policy**

The Brookline and Newfane School Districts will comply with the Omnibus Transportation Employee Testing Act of 1991 and the provisions of Subchapter 11 of Title 21 of the Vermont Statutes Annotated.

### **Administrative Responsibilities**

The superintendent or his or her designee will implement procedures to conduct alcohol and drug tests for all safety sensitive transportation employees as required by the Testing Act, The Superintendent or his or her designee may contract with a qualified service agent to provide testing services, clear and consistent communication with the district Medical Review Officer (MRO), methodology and procedures for conducting random tests for controlled substances and alcohol and preparation and submission of all required reports to the federal or state governments.

### **Specific Categories of Employees Subject to Testing**

This policy applies to safety sensitive employees. Safety sensitive employees are those who hold commercial drivers' licenses or who operate vehicles which may only be operated by holders of commercial drivers' licenses, or those who perform safety sensitive functions as defined in federal regulations.<sup>2</sup>

### **Why an Employee will be Tested**

Employees will be tested for: marijuana, cocaine, opiates, amphetamines, and phencyclidine.<sup>3</sup> Tests will also be conducted for specific prohibited alcohol related conduct while performing in safety sensitive functions as required by federal regulations. Federal regulations presently prohibit the performance of safety sensitive functions while having an alcohol concentration of 0.04%, or grams of alcohol per 100 ml of blood, or greater as indicated by an alcohol test, while using alcohol, or within four hours after using alcohol. The performance of driving functions is prohibited within 24 hours of a test showing alcohol concentrations between 0.02 grams %and 0.04 grams %.<sup>4</sup>

### **When an Employee will be Tested<sup>5</sup>**

Employees will be tested as follows:

- A. Pre-employment 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. Employees will also be tested when transferring from a non-safety sensitive position to a safety-sensitive position.
- B. Post-accident tests will be conducted after accidents (as defined by federal regulation) on employees whose performance could have contributed to the accident.
- C. Reasonable suspicion tests will be conducted when a trained supervisor observes behavior or appearance that is characteristic of alcohol misuse or prohibited drug use.

- D. Random tests will be conducted on an unannounced basis just before, during or just after performance of safety sensitive functions.
- E. Return to duty and follow-up tests will be conducted when an individual who has violated prohibited alcohol or drug conduct standards returns to performing safety sensitive duties. Follow-up tests will be unannounced and at least 6 tests will be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty.

### **Over-the-counter medications**

Over-the-counter medications and other substances may result in a positive test result. A positive test result will subject an employee to the consequences of drug use as provided in paragraph 10 of this policy.<sup>6</sup>

### **Refusal to Take Tests**

Refusal to submit to testing as required by this policy will constitute a verified drug or alcohol test result. An employee who refuses a required test will be subject to the same sanctions as an employee who tests positively for drug or alcohol misuse.

### **Removal from Safety Sensitive Functions Prior to Test Administration or Return of Test Results**

Employees will be immediately removed from safety sensitive functions when a trained supervisor observes behavior or appearance that is characteristic of alcohol misuse or prohibited drug use, or after the occurrence of an accident that requires a post-accident test.<sup>7</sup>

### **Consequences of Alcohol Misuse**

Employees who engage in prohibited alcohol conduct will, at a minimum, be immediately removed from safety sensitive functions. Employees who have engaged in alcohol misuse will not be returned to safety sensitive duties until they have been evaluated by a substance abuse professional designated by the District and have complied with any treatment recommendations to assist them with an alcohol problem. In addition, employees who engage in prohibited alcohol conduct may be subject to further disciplinary action, up to and including dismissal.

### **Consequences of Drug Use**

Employees who test positively for drug use will, at a minimum, be immediately removed from safety sensitive duty when a physician designated as the District's MRO has interviewed the employee and determined that the positive drug test resulted from the unauthorized use of a controlled substance. If the positive test result is determined by the MRO to be caused by the authorized use of a controlled substance or over the counter medication, the employee will not be removed from the safety sensitive position unless the MRO determines that the substance impairs the employee's ability to safely carry out the safety sensitive function. An employee will not be returned to safety sensitive duties until he/she has been evaluated by a substance abuse professional designated by the District or the MRO, has complied with rehabilitation recommendations, and has a negative result on a return to duty test. Follow-up testing will be conducted to monitor the returned employee's continued abstinence from drug use. In addition, employees who engage in the unauthorized use of controlled substances may be subject to disciplinary action up to and including dismissal.

## **Employee Education Programs**

The Superintendent or his or her designee will provide information and educational materials to safety sensitive employees and supervisors of safety sensitive employees on the consequences of drug and alcohol abuse and treatment resources in accord with the requirements of the Testing Act. At a minimum, supervisors of safety sensitive employees will annually be required to attend at least one hour of training on the signs and symptoms of drug use and an additional hour on the signs and symptoms of alcohol abuse.

## **Rehabilitation and Treatment Programs**

The District will not pay for the rehabilitation and treatment of any employee who has tested positive for drug or alcohol use, whether or not such rehabilitation and treatment is made a precondition of that employee's continued employment or return to a safety sensitive position.

## **Cost of Testing**

The District will pay for tests required by the Testing Act or this policy.

## **Dissemination of Policy Procedures**

Each employee covered by this policy, and a representative of a recognized local employee organization designated by an employee, will be provided with written notice of the District's anti-drug and anti-alcohol policies and procedures.

## **D11 Transportation Employee Drug Testing References and Notes**

U.S. DOT web link to employee testing regulations and guidance:

[http://www.dot.gov/ost/dapc/NEW\\_DOCS/part40.html](http://www.dot.gov/ost/dapc/NEW_DOCS/part40.html)

*Date Warned:*

*Date Adopted: 1-5-2010*

*Date Reviewed: 10-9-14*

*Legal Reference(s):* 49 U.S.C. §§ 5331, 31306 (*Omnibus Transportation Employee Testing Act of 1991*)  
49 C.F.R. Parts 40, 382, 391, 392, 395 and 653  
21 V.S.A. 511 *et seq.*

*Cross Reference:*

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<sup>1</sup> 21 V.S.A. 514(2) requires employers who intend to require drug tests of employees to "...provide all persons tested with a written policy that identifies the circumstances under which persons may be required to submit to drug tests, the particular test procedures, the drugs that will be screened, a statement that over-the-counter medications and other substances may result in a positive test and the consequences of a positive test result. The employer's policy shall incorporate all provisions of this section."

The federal requirement for a policy is not as clear. 49 C.F.R. 382.601 is titled "(E)mmployer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances..." The text of the regulation, however, refers only to "informational materials." It appears that the predominate belief is that the federal regulations do require an employer "policy," and models are included in many model policy manuals.

<sup>2</sup> See 49 C.F.R. 382.107 for definition of safety sensitive functions.

<sup>3</sup> These are the drugs listed in the federal "Procedures for Transportation Workplace Drug and Alcohol Programs. 49 C.F.R. Part 40.3. Note that Vermont law allows testing for drugs listed in 21 V.S.A. 511(3).

<sup>4</sup> 49 C.F.R. 40.23(c).

<sup>5</sup> 49 U.S.C. 31306(b).

<sup>6</sup> 21 V.S.A. 514(2).

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<sup>7</sup> Federal Motor Carrier Safety Administration *Procedures for Transportation Workplace Drug and Alcohol Testing Programs*, <http://www.fmcsa.dot.gov/rules-regulations/adminstration/fmcsr/40.htm>.