

## **CHAPTER 6.00 - SCHOOL ADMINISTRATION**

### **6.47\* - Commercial Drivers' License (CDL), Drug and Alcohol Testing**

#### **POLICY**

##### **(1) Policy Intent**

The intent of this policy is to eliminate/deter substance abuse and its effects in the workplace. While the School Board of Levy County has no intention of intruding into the private lives of its employees or future employees, involvement with drugs and alcohol off the job can take its toll on the job performance, employee, and student safety. Our concern is that employees are in a condition to perform their duties safely and efficiently, in the interest of their fellow workers and the public as well as themselves. The presence of drugs and alcohol on the job, and the influence of these substances on the employee during working hours, are inconsistent with this objective.

This policy provides guidelines for the detection and deterrence of alcohol and drug use. To that end, the School Board of Levy County will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the School Board's reputation. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including, termination or not being hired.

In recognition of the public service responsibilities entrusted to the employees of the School Board of Levy County, and that drug and alcohol abuse can hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the School Board of Levy County. This policy applies to all employees that are required to hold a Commercial Drivers' License (CDL) and to all applicants recommended for positions with the School Board that require a CDL. This policy applies to alcohol and to all substances, drugs, or medications, legal or illegal which could impair an employee's ability to effectively and safely perform the functions of the job.

##### **(2) Authorization**

Employers of persons performing safety-sensitive functions and holding commercial drivers' licenses are required to implement a drug and alcohol testing program pursuant to the Omnibus Transportation Employee Testing Act of 1991, regulations of the Federal Highway Administration (FHWA) contained in 49 Code of Federal Regulations (CFR) Parts 40 and 382, et al, Florida Statutes including subsequent revisions or additions.

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The employer may require a driver to inform the employer of any therapeutic drug use.

### **(3) Definitions**

#### **(a) Controlled Substances**

Any illegal drug or substance as identified in Schedules I through V of Section 202 of the Controlled Substance Act and as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine. Illegal use includes use of any illegal drug, misuse of legally prescribed or obtained prescription drugs.

#### **(b) Alcohol Use**

Alcohol use is the consumption of any beverage, mixture, or preparation including any medication or product containing alcohol.

#### **(c) Positive Results**

A positive alcohol or drug test will be defined in accordance with the positive criteria in the Omnibus Transportation Employee Testing Act of 1991, FHWA Regulations, 49 CFR, Parts 40 and 382, et al, and F.S. 440.101 and 440.102 including subsequent revisions or additions. Only specimens confirmed positive shall be reported positive.

#### **(d) Driver (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, lease drivers and independent, owner-operated contractors, substitutes, and paid volunteer bus drivers.

#### **(e) Licensed Medical Practitioner**

A person who is licensed, certified, and/or registered in accordance with applicable Federal, state, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

#### **(f) Substance Abuse Professional (SAP)**

A licensed medical practitioner, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders.

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### **(g) Safety Sensitive Function**

All time in which a driver is actually performing work, begins to work, or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. This includes all time at an employer, facility, or property waiting to be dispatched; all time inspection equipment; all time spent at the driving controls of a commercial motor vehicle in operation; all time, other than driving time in or upon any commercial motor vehicle, except time resting in a sleeper berth (S393.76); all time loading or unloading a vehicle, supervising, assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining, in readiness to operate a vehicle, giving or receiving receipts for shipments loaded or unloaded; and all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

### **(h) Refusal to Submit**

Refusal to submit to alcohol or controlled substances test means that a driver:

1. Fails to provide adequate breath for alcohol testing as required, without a valid medical explanation, after he/she received notice of the requirement for breath testing.
  2. Fails to provide an adequate urine sample for controlled substances testing, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he/she has received notice of the requirement for urine testing.
- (3) Engages in conduct that clearly obstructs the testing process (i.e., uncooperative/adulteration).

### **(i) Canceled or Invalid Test**

A test that has been declared invalid by a medical review officer (MRO) or a test that has been rejected by the laboratory. The canceled or invalid test is neither positive nor negative.

## **(4) Prohibitions**

- (a) An employee must not report to work or be subject to duty while his/her ability to perform job duties is impaired due to on or off duty alcohol or drug use.

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- (b) An employee must not possess or use alcohol impairing drugs (illegal drugs or prescription drugs without a physician verified prescription) during working hours or while subject to duty, on breaks, during meal periods or any time while on School Board property.
  - (c) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner as defined in 382.107, who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.
  - (d) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of BAC.02 or greater. No driver shall use alcohol while performing safety-sensitive functions. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
  - (e) No driver shall report to duty, remain on duty, or perform a safety-sensitive function, if the driver has tested positive for controlled substances.
  - (f) No driver shall use alcohol for eight (8) hours following an accident, or until he/she has undergone a post accident alcohol test, whichever occurs first, if a post accident test is required.
  - (g) No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under 382.303, a random alcohol or controlled substances test required under 382.305, a reasonable suspicion alcohol or controlled substances test required under 382.307, or a follow-up alcohol or controlled substances test required under 382.311. Failure of the employee to submit to any required drug or alcohol test is considered a positive test result in accordance with FHWA Regulations.
- (5) Administrative Responsibilities
- (a) No administrator/supervisor shall permit a driver to perform or continue to perform a safety-sensitive function when the administrator/supervisor has actual knowledge that a driver has an alcohol concentration of 0.02 or greater, has used alcohol within four (4) hours of performing a safety-sensitive function or is using alcohol while performing a safety-sensitive function, has used a controlled substance, has tested positive for controlled substances, or has refused to submit to alcohol and controlled substances testing.

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- (b) Administrative or other personnel not in the bargaining unit are responsible for enforcement of this policy.

### **(6) Testing and Analysis**

It is the intent of the School Board to comply with all alcohol and controlled substance testing procedures contained in 49 Code of Federal Regulations Parts 382, 291, 192, and 395. The School Board recognizes the need to protect individual dignity, privacy and confidentiality in the program. Specimen analysis shall be conducted in a manner to assure a high degree of accuracy and reliability and using laboratory facilities which are certified by the U.S. Department of Health and Human Services and the Florida Agency for Health Care Administration.

The following are conditions under which testing may be conducted as required by Federal regulations or when circumstances warrant.

#### **(a) Pre-Employment Testing**

1. Pre-employment drug and alcohol screening will be required of all applicants recommended for employment whose job requires a CDL prior to being awarded employment with the School Board of Levy County. No administrator shall allow an applicant to perform safety-sensitive functions unless the applicant has been administered an alcohol and controlled substances test with verified negative test results. Alcohol and controlled substances test information about the driver shall be obtained from previous employers. The term "applicant" refers to a person who has applied for a position with the School Board of Levy County and has been offered employment conditional upon successfully passing a drug and alcohol test.
2. Applicants will be referred to a School Board contracted certified collection site. The School Board will not accept results from any laboratory or collection site that is not on its approved contract list.
3. It will be the responsibility of the School Board of Levy County to pay for any and all costs related to these tests.
4. A positive result from a drug or alcohol analysis will result in the applicant not being hired. However, consideration will be given if the applicant can produce verification from the prescribing physician of a valid, current prescription for the drug identified in the drug screen, and that the drug will in no way impair their job function.

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5. Within five (5) working days after receiving notice of a positive confirmed test result, the applicant shall be allowed to submit information explaining or contesting the test results. If the applicant's explanation is unsatisfactory, the Personnel Department shall provide a written explanation as to why, along with a copy of the report of positive results, within fifteen (15) working days of receipt of explanation or challenge. All such documentation shall be kept confidential by the School Board and shall be retained for at least one (1) year.
6. In the absence of a valid current prescription, or the ability to provide evidence to satisfactorily explain the test results, applicants testing positive will not be eligible for employment with the School Board of Levy County for one (1) year from the date the drug screen results are received by the Board.
7. Refusal to submit to a drug and alcohol screening will be grounds to refuse to hire the applicant.

### **(b) Reasonable Suspicion Testing**

A supervisor or designee outside the bargaining unit who has been trained in accordance with the requirements of FHWA Regulations shall require a driver to submit to an alcohol or drug test when the employer has reasonable suspicion to believe that a driver has violated the prohibitions contained in the FHWA Regulations.

1. Reasonable suspicion is a belief based on specific, objective, or observable facts sufficient to lead a reasonably prudent administrator to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.
2. Reasonable suspicion includes, but is not limited to, the following examples:
  - a. Slurred speech
  - b. Alcohol odor on breath
  - c. Unsteady walking and movement
  - d. An accident involving Board property or employees
  - e. Physical altercation

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- f. Verbal altercation
  - g. Unusual behavior
  - h. Possession of alcohol or drugs
  - i. Information obtained from a reliable person with personal knowledge
- 3. Any administrator requesting an employee to submit to a drug or alcohol test shall document in writing the facts constituting reasonable suspicion.
  - 4. Any administrator encountering an employee who refuses an order to submit to a drug or alcohol analysis upon request shall remind the employee of the requirements and disciplinary consequences of this policy. Where there is reasonable suspicion that the employee is under the influence of alcohol or drugs, the administrator should arrange for the employee to be safely transported to a Board approved collection site or home.
  - 5. Administrators shall not physically search the person of employees, nor shall they search the personal possession of employees without the freely given written consent of, and in the presence of, the employee.
  - 6. Administrators shall notify the Superintendent or his/her designee when they have reasonable suspicion to believe that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the School Board. If the Superintendent or his/her designee concurs that there is reasonable suspicion of illegal drug possession, he/she shall notify the appropriate law enforcement agency.
  - 7. The required observations for alcohol and/or controlled substance reasonable suspicion testing shall be made by a supervisor or designee who has been trained for at least sixty (60) minutes on alcohol misuse and an additional sixty (60) minutes on controlled substance misuse in accordance with 382.603.
  - 8. The School Board of Levy County shall be responsible for the cost of reasonable suspicion testing.

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### **(c) Post Accident Testing**

Alcohol and drug testing will be administered following an accident when the driver was performing a safety-sensitive function. Accidents are defined as:

1. A loss of human life
2. The driver receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved:
  - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - b. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Post-accident testing must be conducted within the time limits set forth in the FHWA regulations.

The School Board of Levy County shall be responsible for the cost of post-accident testing.

### **(d) Random Testing**

All covered employees shall be subject to random, unannounced drug and alcohol testing. The annual random rate for alcohol testing shall be 10% of the covered employees. The annual random rate for controlled substance testing shall be 50% of the covered employees.

The employer/administrator shall require that each driver who is notified of selection proceeds to the test site immediately.

The School Board of Levy County shall be responsible for the cost of random testing.

### **(e) Return to Duty Testing**

All employees who previously tested positive on a drug or alcohol test must submit to a return to duty test and test negative prior to returning to duty.

The employee shall be responsible for the cost of the return to duty test.



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### **(f) Follow-Up Testing**

Unannounced follow-up alcohol and/or controlled substance testing, as directed by a substance abuse professional in accordance with FHWA Regulations, will include six (6) tests conducted in the first twelve (12) months after returning to duty. The number and frequency of follow-up testing may be conducted up to sixty (60) months as determined and recommended by the substance abuse professional.

The School Board of Levy County shall be responsible for the cost of follow-up testing.

**NOTE 1:** Any employee who questions the results of a required drug test set forth in this policy may request that a test of the split sample be conducted. This test may be conducted at the same or a different DHHS certified laboratory if the request is made within seventy-two (72) hours of the employee having been notified of a verified positive test result.

When an employee requests a split sample to be tested and the results are confirmed negative, the School Board of Levy County will pay for the cost of the split sampling test. If the results are still positive on a split sample test, the employee shall be responsible for the cost.

**NOTE 2:** When employees are required to travel to a testing site in accordance with this policy, they shall be granted temporary duty.

### **(7) Disciplinary Action as a Result of a Positive Test/Refusal to Test**

#### **(a) Breath Alcohol Concentration (BAC)**

An employee with a confirmed positive result (.02 or greater) shall have a mandatory twenty-four (24) hour step-down from their duties and shall face disciplinary actions as outlined in this policy.

#### **(b) Random**

A positive test (which is a confirmed violation of this policy) will result in the immediate removal from duty and the recommendation for termination of employment.

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### **(c) Post-Accident**

A positive test (which is a confirmed violation of this policy) will result in the immediate removal from duty and the recommendation for termination of employment.

### **(d) Reasonable Suspicion**

A positive test (which is a confirmed violation of this policy) will result in the immediate removal from duty and the recommendation for termination of employment.

### **(e) Refusal to Test**

An actual refusal or reported refusal to test as a result of an adulterated sample will result in the immediate removal from duty and the recommendation for termination of employment.

## **(8) Treatment and Notice Requirements**

### **(a) Notice to Affected Employees**

The School Board will communicate to all covered employees prior to conducting drug and alcohol testing and provide the reasons for conducting said test(s). The School Board shall provide written notice of the required testing to covered employees and shall provide oral notice at the time of the actual testing.

### **(b) Education and Training**

The School Board shall provide educational materials that explain the requirements of the program and its policies and procedures with respect to meeting the requirements.

### **(c) Voluntary Acknowledgment**

If an employee acknowledges that he/she has a drug or alcohol problem, the employee will be removed from duty and given the opportunity to resolve the problem through treatment. The employee shall be evaluated by a substance abuse professional at the employee's expense who shall determine what assistance, if any, the employee needs in resolving problems associated with the use of prohibited drugs or alcohol misuse.

They may use accrued sick or annual leave if available; otherwise, leave is without pay. The employee must provide proof of successful completion of a rehabilitation treatment program within one (1) year of starting their leave.

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Failure to provide proof within one year of successful completion will result in immediate recommendation for termination of employment. The employee will incur all costs for the rehabilitation program.

It shall be the sole responsibility of the employee to pay all costs related to any treatment recommended by a substance abuse professional or as a result of the implementation of this policy.

### **(9) Confidentiality**

Laboratory results or test results shall not appear in an employee's general personnel records. Information of this nature will be contained in a separate confidential medical file that will be appropriately maintained by the Program Manager. The reports or test results may be disclosed to appropriate School Board administrators on a strictly need-to-know basis and to the tested employee upon request. Disclosures without employee consent may also occur when:

- (a) The information is compelled by law or by judicial or administrative process;
- (b) The information has been placed at issue in a formal dispute between the employer and employee;
- (c) The information is to be used in administering an employee benefit plan; or
- (d) The information is needed by medical personnel for the diagnosis or treatment of the employee in the event the employee is unable to authorize disclosure.
- (e) Requested by the Secretary of Transportation, any DOT agency, any state or local officials with regulatory authority over the employer or any of its drivers, the National Transportation Safety Board as part of an accident investigation, and to subsequent employers, upon receipt of a written request from a driver.

STATUTORY AUTHORITY: 1001.41 (2), 1001.42 (17), F.S.

LAWS IMPLEMENTED: 112.0455, 440.102, F.S.; 349 CFR Part 40, DOT, 49 CFR Parts 382 & 391, Federal Highway Administration

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