
LEXINGTON PUBLIC SCHOOLS: DISTRICT REGULATION DG-R

EMPLOYEE ALCOHOL AND/ OR DRUG TESTING: SAFETY SENSITIVE EMPLOYEES

Alcohol and Drug Testing: The District requires employees to undergo testing for drugs and/or alcohol in accordance with District policy and administrative regulations. The District complies with all applicable state and federal laws and regulations. All affected employees will receive a copy of this regulation prior to any drug and/or alcohol testing.

Employee Questions: Any employee who has questions relating to the District's drug and/or alcohol testing policy, or about these regulations, or about other educational materials regarding drug and/or alcohol testing should contact District's Human Resource Director.

Employees Affected: Employees who serve in safety-sensitive positions will be randomly tested for alcohol and/or drugs. A "safety-sensitive position" is a position in which an employee is required to operate a vehicle requiring a commercial driver's license. Employees who hold these positions are "safety-sensitive employees." Safety-sensitive employees are also subject to testing for drugs and/or alcohol upon application for employment, post-accident, and upon reasonable suspicion that the employee has violated these regulations.

Compliance: All employees are prohibited from using, possessing, or being under the influence of illegal drugs at all times. All employees are prohibited from using, possessing, or being under the influence of alcohol on school property or during a school-related activity. Employees are prohibited from using alcohol within four (4) hours of performing their job functions.

Safety-sensitive employees are prohibited from using or being under the influence of legally prescribed drugs which can impair their ability to perform their job functions safely. Safety-sensitive employees who have been prescribed medication containing alcohol should bring a note from their doctor, and discuss their situation with their supervisor or with District's Human Resources Director. *It is the employee's responsibility to discuss the potential effects of all prescription medication with his or her doctor.*

Testing Situations:

- A. **Applicants:** Upon a conditional offer of employment, a job applicant will be required to undergo drug and/or alcohol testing. A refusal to undergo testing or a confirmed positive test result will serve as a basis for refusal to hire, provided that such testing does not violate the provisions of the Americans with Disabilities Act

of 1990, 42 U.S.C., Section 12101 et seq., and provided that such testing is required for all applicants who have received a conditional offer of employment for a particular employment classification. Applicants may be placed in an assignment as a substitute employee until the results of such testing are received by the District. All positive results will be confirmed by an alternative test method. Additionally, any District employee who is transferred from a non-safety-sensitive position into a safety-sensitive position must be tested.

In addition, upon a conditional offer of employment, a safety-sensitive employee shall sign a consent form authorizing the District to check with former employers on his or her drug and/or alcohol testing record. This rule shall only apply to employers from the previous two (2) years who are regulated by the United States Department of Transportation.

- B. Reasonable Suspicion:** The District may require an employee to undergo drug and/or alcohol testing upon a reasonable suspicion to believe that the employee has violated these regulations. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. For controlled substances, the observations may include indications of the chronic and withdrawal effects of controlled substances.
- C. Post Accident Testing for Accidents Involving Vehicles:** In the event of a vehicle accident, safety-sensitive employees shall be tested for drugs and/or alcohol when:
- 1) the accident involves the loss of human life; or
 - 2) the employee receives a citation within eight (8) hours of the accident 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 incur 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.

An employee in an accident must not use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test.

- D. Random Testing:** Safety-sensitive employees are subject to random drug testing. Each employee has an equal chance of being randomly selected from the pool for each round of testing.

Notice: Before performing a drug and/or alcohol test, District will notify the employee that the drug and/or alcohol test for safety-sensitive positions is required by federal law.

Consent: Employees will not be required to sign any consent or waiver prior to drug and/or alcohol testing. All employees recognize that by continuing their employment with the District they have consented to the District's adoption of a drug and/or alcohol testing program.

Refusal: Under this regulation, an employee will be deemed to have refused to be screened if he or she:

1. Fails to appear for a test within a reasonable time after being directed to do so;
2. Fails to remain at the testing site until the test is complete (except in the case of a pre-employment applicant who leaves the testing site prior to the commencement of the test);
3. Fails to provide a urine specimen (except in the case of a pre-employment applicant who leaves the testing site prior to the commencement of the test);
4. In the case of a directly observed or monitored collection, fails to permit observation or monitoring;
5. Fails to provide an adequate amount of urine, despite the lack of a medical explanation for the failure;
6. Fails or declines to take an additional test upon request;
7. Fails to undergo a medical examination or evaluation as part of the verification process (except in the case of a pre-employment applicant, where the employee is deemed to have refused to test on this basis only if the test is conducted following a contingent offer of employment); or
8. Fails to cooperate with any part of the testing process.

Procedure for Alcohol Testing and Confirmation: Safety-sensitive employees may only be tested for alcohol by a qualified Screening Test Technician or Blood Alcohol Technician. These professionals may only collect breath or saliva samples. Tests shall be conducted to afford the employee reasonable privacy, but may depend upon the circumstances of the situation. If an initial test demonstrates an alcohol concentration level of .02 or higher, then a confirmation test will be required. Confirmation tests for alcohol must be conducted at least 15 minutes after the initial test. No disciplinary action will be taken against an employee unless the confirmation test also results in an alcohol concentration of .02 or higher.

Procedure for Drug Testing: The District will use the following procedures to test for the presence of controlled substances, to protect the employee and the integrity of the testing processes, to safeguard the validity of the test results, and to ensure that those results are attributed to the correct employee.

1. With the exception of pre-employment applicants, an employee will not be given advance notice of a test.
2. Samples for safety-sensitive employees will be collected at an off-site location.

- The employee will be provided with the location at the time of testing.
3. If an employee shows overt signs of impairment or intoxication, the District will offer transportation to preclude the employee from driving home or to the collection site. The District may utilize a taxi service or transportation provided by another District employee, a family member of the employee, or law enforcement.
 4. The collection of samples shall be performed under reasonable and sanitary conditions.
 5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. Except in the event that a safety-sensitive employee is required to submit an observed sample, no employer or representative, agent or designee of the District shall directly observe an applicant in the process of producing a urine sample. However, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of a reliable sample.
 6. A sample shall be collected in sufficient quantity for splitting into two separate specimens to provide for any subsequent independent analysis in the event of challenge to the results.
 7. The cutoff levels to be applied in initially determining whether an employee has submitted a positive test are set forth in District Form DH-F1. If the employee undergoes a second test, the District may test for lower levels as provided by state regulations.
 8. The laboratory results of safety-sensitive employees will be reviewed by a medical review officer, who is a licensed physician responsible for reviewing results generated by the District's drug testing program and evaluating medical explanations for certain test results.
 9. The District may direct an immediate collection of a sample from a safety-sensitive employee under direct observation with no advance notice to the employee, if:
 - a. the laboratory reports to the medical review officer that the sample is invalid, and that there is no adequate medical explanation;
 - b. the medical review officer reported that the original positive, adulterated, or substituted result had to be cancelled because the split specimen test could not be performed; or
 - c. the laboratory reported to the medical review officer that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the medical review officer reported the specimen as negative-dilute, and that a second collection must

take place under direct observation.

10. Sample collection shall be documented, and the documentation procedures shall include:
 - a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
 - b. an opportunity for the employee/applicant to provide notification of any information which the employee/applicant considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information.
11. Sample collection storage and transportation to the testing facility shall be performed so as reasonably to preclude the probability of sample contamination or adulteration.
12. Sample testing procedures shall conform to scientifically accepted analytical methods and procedures, and shall include confirmation of any positive test result before the results of any test may be used as the basis for any action.
13. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

Results: If the laboratory makes a finding that the specimen is positive, adulterated, dilute, or refused, then the results will be reviewed by a qualified medical review officer or a qualified review officer. The medical review officer will give the employee an adequate opportunity to confidentially explain the positive result. The medical review officer will then use his or her expertise in determining whether the employee has presented a valid medical explanation for the positive result. If so, the positive result will not be verified, and no adverse action may be taken against the employee. If the medical review officer concludes that there is no valid medical explanation for the result, then the medical review officer will report the verified positive result to the District.

The medical review officer or review officer must make an effort to contact the employee so that he or she may confidentially explain a positive test result. However, the medical review officer or review officer may verify a result without speaking to an employee in certain instances, including but not limited to, when the employee has expressly declined to discuss the result, or has not responded to the medical review officer or review officer's invitation to discussion.

The medical review officer or review officer will report to the District only the metabolite detected. It will not report the quantity or specific substance. The employee is entitled to obtain that information from the medical review officer if he or she wishes to do so.

Confirmation: If an employee believes his or her positive drug test result to be in error,
Adopted: Sept 10, 2012 Page 5 of 7

then he or she may request a confirmation test which will be conducted on the same specimen provided for the initial test. The confirmation test will utilize scientifically accepted methods of equal or greater accuracy than were required for the initial test. Employees should be aware that the cutoff levels necessary to confirm a positive result will be lower than those necessary to verify a positive result in the initial screening. The employee shall bear the expense of the confirmation test. However, in the event that the confirmation test results in a negative finding, the employee will be reimbursed by the District.

The District will not initiate disciplinary action against any employee who has requested a confirmation test until the confirmation results have been returned as positive, adulterated, or dilute, or the employee has refused to provide a sample.

Record Retention: The District will maintain records in accordance with Department of Transportation regulations.

All drug and/or alcohol testing records will be stored separately from an employee's ordinary personnel file.

Records of all drug or alcohol test results and related information maintained by the District is the property of the District and, upon request of the applicant or employee tested, will be made available for inspection or copying to the applicant or employee.

Confidentiality: Records relating to drug and/or alcohol testing will not be released to a third party, unless there is a valid legal reason to do so. Those reasons include, but are not necessarily limited to 1) when an employee authorizes the release in writing, 2) when the records of a safety-sensitive employee are requested by the United States DOT, 3) upon certain legal proceedings including lawsuits, grievances, or administrative proceedings, or 4) upon court order. In the event that a safety-sensitive employee does not consent to the release of confidential records in conjunction with a legal proceeding, the District will release them in accordance with the applicable DOT regulations.

The testing facility will not release information regarding the employee's health, pregnancy status, or physical or mental condition to anyone except the employee. The testing facility will not release information regarding the presence of drugs for which the District does not test.

Consequences for Violation: If the District receives a verified positive drug test and/or alcohol test result showing an alcohol level of .04 or higher, the employee will be immediately removed from safety-sensitive functions. An employee will also be immediately removed from safety-sensitive functions for refusal to test or for other violations set forth in these regulations. The employee will not be permitted to resume safety-sensitive functions until he or she has complied with the steps for returning to duty under this regulation. All employees may be subject to discipline, up to and including termination, in accordance with District policy. All discipline will be determined on a case-by-case basis.

Consequences for Low Concentrations of Alcohol: If the District receives a confirmed alcohol test result that shows an employee's alcohol concentration level to be greater than .02, but less than .04, the District will remove the employee from safety-sensitive functions for 24 hours. The District will take steps to determine whether disciplinary action is appropriate.

Return-to-Duty: In the event that a safety-sensitive employee who is found to be in violation of this policy is not terminated from employment, the employee shall not resume safety-sensitive duties until the employee completes a Substance Abuse Professional (SAP) evaluation, referral, and education/treatment process as set forth by the DOT. The employee shall be responsible for the cost of the program. *Employees should be aware that District is not obligated to provide an opportunity for Return-to-Duty.*

Any employee who is permitted to return to work after a positive test for drugs and/or alcohol, or participation in a treatment program for chemical dependency is subject to testing without notice for a period of two (2) years, beginning with the day the employee returns to work.

Additional Information: Employee in-service training prior to the commencement of each school year will include a review and discussion of: the dangers of drug abuse in the workplace; the District's policy for a drug-free workplace; the penalties for violating the policy; the effects of alcohol and controlled substances use on an individual's health, work, and personal life; the signs and symptoms of an alcohol or a controlled substances problem; available methods of intervening when an alcohol or a controlled substance problem is suspected, including confrontation, referral to a drug assistance program or referral to a supervisor; and available sources of information, counseling, or other assistance regarding drug use.

Certificate of Receipt: Each affected employee is required to sign a statement certifying that he or she has received a copy of District's policy and regulation relating to drug and/or alcohol testing. District will maintain the original signed certificate in the employee's personnel file, and a copy will be provided to employee upon request.