

DRUG TESTING FOR DRIVERS

I. PURPOSE

This policy is intended to prevent accidents and injuries resulting from alcohol or controlled substance use by employees who are required to have a commercial driver's license to perform their duties. In particular, this policy is intended to comply with the School District's obligations under THE OMNIBUS TRANSPORTATION ACT OF 1991 and the regulations issued by the United States Department of Transportation.

II. DEFINITIONS

Certain terms used in this policy have the following meaning unless the context plainly shows otherwise:

- "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.
- "Alcohol concentration" means the number of grams of alcohol (for example: 0.04) in 210 liters of expired deep lung air.
- "Alcohol use" means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- "BAT" means a qualified breath alcohol technician.
- "CDL" means commercial driver's license.
- "Controlled substance" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, "designer" drugs, any substance classified by Oklahoma or federal law as a "controlled substance" or a metabolite of any of the above substances.
- "Driver" means: (i) a School District employee who is required to have a CDL to perform the employee's duties; (ii) employees of independent contractors who are required to have CDLs; (iii) owner-operators; (iv) leased drivers; and (v) occasional drivers.
- "EBT" means an evidential breath testing device on the National Highway Traffic Safety Administration's conforming products list for evidential breath testing devices.
- "Federal Act" means the federal Omnibus Transportation Testing Act of 1991 and the regulations issued by the Department of Transportation pursuant to the Federal Act.

- "Oklahoma Act" means the Standards for Workplace Drug and Alcohol Testing Act, Okla. Stat. tit. 40, § 551 et seq. and the regulations issued by the Oklahoma State Board of Health pursuant to the Oklahoma Act.
- "Safety-sensitive function" means any of the following: time at a facility waiting to be dispatched, unless the driver has been relieved from duty; time inspecting equipment; driving time; all time other than driving time in or upon a vehicle; loading and unloading time; time obtaining assistance or remaining in attendance upon a disabled vehicle; and time spent providing a breath or urine sample, including travel time to and from a collection site.

III. PROHIBITIONS

A driver will not be permitted to report to duty or to remain on duty requiring the performance of a safety-sensitive function if any of the following is present:

A. Alcohol

The driver has an alcohol concentration of 0.02 or more as measured on a breath test.

If the driver (i) has an alcohol concentration of 0.04 or more as measured on a breath test; (ii) possesses alcohol at work; (iii) uses alcohol at work; (iv) reports for duty within four hours after alcohol use; (v) uses alcohol within eight hours after an accident; or (vi) refuses to submit to a required alcohol test, the driver cannot return to a safety-sensitive function until (i) evaluated; and (ii) treated, if required, by a substance abuse professional; and (iii) retested with a result below 0.02.

- After testing from 0.02 to 0.039 concentration during a pre-employment, post-accident, random, reasonable suspicion, return-to-work or follow-up test, until (i) the next scheduled duty period if at least 24 hours have elapsed or (ii) a retest shows the alcohol concentration has fallen below 0.02.
- Displays behavior or appearance characteristic of alcohol misuse.
- Is under the influence of or is impaired by alcohol, as shown by behavioral speech and performance indicators of alcohol misuse.
- Possesses alcohol while on duty.
- Uses alcohol during duty performance.
- Has used alcohol within the four hours previous to performing duties.

- Has had an accident within the last eight hours and has not taken a breath test showing clearance from prohibited alcohol levels.
- Has refused to take a breath test for alcohol use.

B. Controlled Substances

- The driver uses any controlled substance, unless the use is pursuant to a physician's written certification stating that the use does not adversely affect the driver's ability to safely operate a motor vehicle.
- A supervisor or administrative employee has actual knowledge that a driver has used a controlled substance.
- The driver has a positive confirmed test for a controlled substance.
- The driver displays behavior or appearance characteristic of controlled substance use.

C. Medication

- The driver is taking any prescription or non-prescription medication containing alcohol, even if the driver has notified the driver's supervisor of the medication use.

IV. REQUIRED TESTING

The following testing is required of all drivers:

A. Pre-employment Testing

1. Alcohol

A driver must pass a test prior to performing a safety-sensitive function. The test will be made during the hiring process or immediately before the driver first performs a safety-sensitive function. A driver may not commence the driver's duties unless the test shows a concentration of less than 0.04. If the test shows a concentration of between 0.02 and 0.04, no safety-sensitive duties may be performed for at least 24 hours.

A pre-employment alcohol test will not be required if:

- The driver has undergone an alcohol test required by the Federal Act within the previous six weeks and tested under 0.04; and

- The driver provides evidence that no prior employer of the driver has records of alcohol misuse within the previous six months.

2. Controlled Substances

The driver must receive a confirmed negative controlled substance test result from a medical officer, except that no testing is required if:

- The driver has participated within the previous 30 days in a drug testing program meeting the requirements of the Federal Act; and
- While participating in the program, either (i) was tested for controlled substances within six months prior to the date of employment application or (ii) participated in a random controlled substance testing program for the 12 months prior to the date of the employment application; and
- The driver provides evidence that no prior employer of the driver has records of a violation of controlled substance use rules within the previous six months.

B. Post-accident Testing

As soon as practical following an accident, the following tests will be administered:

1. Alcohol

- Each surviving driver who was performing safety-sensitive functions with respect to the vehicle, if the accident involves loss of life, regardless of whether the driver was at fault.
- Each driver who received a moving traffic violation arising from the accident.
- The test is to be administered within two hours of the accident. If the test is not administered within that time, the driver's supervisor shall cease attempts to administer an alcohol test and shall prepare a written report as to why a test was not given.
- Drivers shall remain readily available for testing. A driver leaving the scene of an accident without a valid reason prior to submission to the test may be deemed to have refused to submit to testing.
- A breath or blood alcohol test conducted by a law enforcement agency will be considered to meet these requirements if the test meets the requirements of the Federal Act and the results are obtained by the School District.

2. Controlled Substances

- A test for controlled substances will be administered of those drivers for whom an alcohol test is required within 32 hours following an accident. If no test is made within that time period, then no test will be made and the driver's supervisor will prepare a written report stating the reasons for not administering a prompt test.
- A urine test for controlled substances administered by a law enforcement agency will be considered to meet these requirements if the test meets the requirements of the Federal Act and the results are obtained by the School District.

C. Random Testing

Random testing of drivers will be conducted throughout the year. Selection of the drivers to be tested will be made by a scientifically valid method, such as random-number table or a computer based random-generator matched with drivers' social security numbers, payroll identification numbers or other comparable identifying numbers. Dates for administrating unannounced testing shall be unpredictable and spread reasonably throughout a 12 month period. Drivers are to be tested while performing safety-sensitive functions, just before performing those functions or just after ceasing those functions.

1. Alcohol

The minimum annual percentage rate for random alcohol testing will be 25 percent of the average number of driver positions, subject to adjustment of the percentage by the Federal Highway Administration.

2. Controlled Substances

The minimum annual percentage rate for random testing for controlled substances will be 50 percent of the average number of driver positions.

D. Reasonable Suspicion Testing

Alcohol and controlled substance testing will be conducted when there is reasonable suspicion to believe that a driver has violated the prohibitions in Section III of this policy. Reasonable suspicion shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. Reasonable suspicion for controlled substance use may also include indications of the chronic and withdrawal effects of controlled substances.

- Alcohol testing is authorized only if the observations are made during, just preceding or just after the period of the work day that the driver is performing a safety-sensitive function.

- Persons designated to determine whether reasonable suspicion exists must receive at least 60 minutes of training on performance indicators of probable alcohol misuse.
- The required observations shall be made by a supervisor who has received training in detecting the symptoms of alcohol/controlled substance misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the alcohol test.
- A written record must be made as to why an alcohol test was not made within two hours following a determination of reasonable suspicion of misuse. No test is to be made if eight hours passed after the determination.
- A written record will be made of the observations leading to a controlled substance reasonable suspicion test. The record will be signed by the supervisor who made the observations. The record will be made within 24 hours of the observed behavior or before the test results are received, whichever is earlier.

E. Return to Duty Testing

No one suspected of being under the influence of or impaired by alcohol will be permitted to perform a safety-sensitive function until: (i) an alcohol test shows a concentration of less than 0.02; or (ii) 24 hours have elapsed following a determination that there was reasonable suspicion to believe the driver has violated the rules in this Policy against alcohol use. A driver engaging in conduct prohibited under Section III of this Policy shall not return to a safety-sensitive function without first passing a breath test with a result of alcohol concentration of 0.02 or less.

F. Follow-up Testing

A driver who has been identified by a substance abuse professional as needing assistance in resolving problems with alcohol-controlled substance misuse and who has returned to duty involving the performance of a safety-sensitive function will be subject to a minimum of six unannounced follow-up alcohol/controlled substance tests over the following 12 months. The substance abuse professional can direct additional testing during this period or for an additional period up to a maximum of 60 months.

V. TEST PROCEDURES

Testing methodology will comply with the requirements of the Oklahoma Act, except that the requirements of the Federal Act stated in this Section V supersede the provisions of the Oklahoma Act.

- Alcohol breath testing must be performed by a qualified breath alcohol technician ("BAT") who has completed a course of instruction approved by the federal

Department of Transportation. The School District will establish and retain documentation of the training and proficiency of each BAT. The demonstrated proficiency must be specific as to particular breath testing models. A BAT-qualified supervisor of a driver may conduct an alcohol test for that driver only if another BAT is not available to perform the test in a timely manner.

- Law enforcement officers certified by their agencies to conduct breath alcohol testing are deemed to be qualified as BATs.
- If a non-employee BAT other than a law enforcement officer is used for a breath alcohol test, the non-employee BAT must furnish a certificate that the BAT has completed a course of instruction approved by the federal Department of Transportation for the particular breath testing device.
- EBTs which do not meet the requirements for confirmation tests (sequential numbering and print-out capability) may be used for screening tests. Non-evidential breath screening devices ("breath tubes") may not be used. If an EBT used for screening does not meet all of the requirements for a confirmation EBT device, a log book must be used with the screening EBT.
- EBTs used for confirmation testing must be capable of: providing triplicate copies of each test; assigning a unique and sequential number to each test; capable of being read by the BAT and the employee before each test and the test result being printed out on each copy; printing out on each copy the manufacturer's name for the device, the device's serial number and time of the test. The device must be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level. The EBT must be capable of performing an external calibration check.
- A screening or confirmation EBT must have a quality assurance plan developed by the manufacturer. The School District will comply with the plan. This will involve: external calibration checks; removing the EBT from service if it fails a check; and maintaining records of external calibration. The external calibration must be performed by the manufacturer or a state health agency. If the EBT is owned by a third party, the School District will require a written certification that the third party is familiar with these requirements and will be responsible for compliance. The School District will require that the third party's compliance records will be available for inspection by representatives of the School District.
- Alcohol testing must be conducted in a location that provides visual and aural privacy to the driver, sufficient to prevent unauthorized persons from seeing or hearing the test. When the driver enters the testing location, the BAT will require the driver to provide positive identification. If the driver requests, the BAT will provide positive identification. The BAT will explain the testing procedure. An individually-sealed mouthpiece is opened in the view of the driver and attached to the EBT. The driver will then blow into the mouthpiece for at least six seconds. If the EBT does not

provide a printed result, the BAT will record the test number, date, BAT's name, location and test result in a log book. The driver will initial the log book. If the EBT provides a printed result, the result is either: (i) printed on the testing form; or (ii) affixed to the form with tamper-evident tape. If the test result is less than 0.02, the BAT will transmit the result in a confidential manner to a School District representative designated by the Board of Education or the Superintendent of Schools for the purpose of receiving and handling alcohol test results in a confidential manner.

- Refusal to take a required test has the same consequences as if the employee had tested 0.04 or more. The following also constitute refusal to take a test: failure to provide adequate breath for testing without a valid medical explanation; engaging in conduct that clearly obstructs the testing process; failure to sign the alcohol testing form; leaving the scene of an accident before being tested (except when reasonably necessary to receive medical treatment); or refusal to take a confirmation test after an initial positive screening test.
- If the breath test is 0.02 or more, a confirmation test is required. The confirmation test must be conducted within 20 minutes of the initial test. Before a confirmation test is given, the BAT must conduct a "blank" test on the EBT to obtain a reading of 0.00. confirmation testing for controlled substances will be performed in accordance with the Oklahoma Act, except that gas chromatograph/mass spectrometry is the only acceptable confirmation method for cocaine, marijuana, opiates, amphetamines and phencyclidine.
- Testing of urine samples for controlled substances must be performed by a laboratory certified by the federal Department of Health and Human Services. If the driver requests a test of a split specimen, the first laboratory will ship the unopened split sample to a second DHHS-approved laboratory for testing. If the test of the split sample fails to confirm the presence of a controlled substance, the entire test is canceled.
- A confirmed positive controlled substance test must be reviewed by a medical review officer before the test results are transmitted to the School District. The medical review officer must be a licenses physician (M.D. of D.O.) who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate the test result, the driver's medical history and any other relevant biomedical information, including possible alternative medical explanations.

VI. REFERRAL AND TREATMENT

Drivers testing for more than 0.04 alcohol concentration, possessing alcohol at work, using alcohol at work, working within four hours after alcohol use, using alcohol within eight hours after an accident, refusing to submit to required alcohol or controlled substance tests or showing use of controlled substances shall be advised of the resources

available to the driver in evaluating and resolving problems associated with the misuse of alcohol or controlled substances, including the names, addresses and phone numbers of substance abuse professionals and counseling and treatment programs. These drivers will be evaluated by a substance abuse professional who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol or controlled substance misuse. The driver will not be permitted to return to work until receiving a test result of less than 0.02 alcohol concentration if the conduct involved alcohol, or a controlled substance test with a confirmed negative result if the conduct involved substance abuse. If the driver is identified as needing assistance in resolving problems associated with alcohol misuse or controlled substance use, the driver must be evaluated by a substance abuse professional to determine that the driver has properly followed the prescribed rehabilitation program and the driver must be subject to unannounced follow-up alcohol and controlled substance tests on return to duty as stated above.

These requirements do not apply to drivers refusing to be tested or drivers having a preemployment test of 0.04 or more.

VII. MANAGEMENT INFORMATION SYSTEM

The School District will prepare an annual calendar year summary of its alcohol testing program. The report will be submitted in accordance with the Federal Act by March 15 for the prior year. The report will contain the statistical data required by the Federal Act.

VIII. EDUCATIONAL MATERIALS

Each driver must receive educational materials that explain: the alcohol misuse prevention requirements; the School District's policies and procedures; the identity of a contact person knowledgeable about the materials; factual information on the effects of controlled substance and alcohol misuse on personal life; health and safety; where help can be obtained, including the School District's Employee Assistance Program; categories of employees subject to testing; what functions are covered by the policy; a description of prohibited conduct and the circumstances that trigger testing; testing procedures and safeguards; what constitutes a refusal to submit to testing and the consequences; signs and symbols of an alcohol/controlled substance problem; consequences for drivers with an alcohol test level of 0.02 or more but less than 0.04; and the consequences of violating the rules. The staff will prepare appropriate educational materials.

IX. MAINTENANCE OF RECORDS

The School District shall maintain records of its alcohol/controlled substance misuse prevention program. The period of retention for these records shall be:

A. FIVE YEARS

- Records of driver alcohol/controlled substance tests with confirmed positive results; documentation of refusal to take required tests; calibration tests for EBTs; and driver evaluation and referrals.

B. TWO YEARS

- Records relating to controlled substance collection and training.

C. ONE YEAR

- Records of negative controlled substance test results.

Upon written request, a driver is entitled to obtain copies of any School District records concerning the driver's use of alcohol/controlled substances, including test results.

X. DISCIPLINARY ACTION

Employees who violate the prohibitions in Section III of this policy or have a confirmed alcohol breath test of 0.02 or more while performing safety-sensitive functions or who have a confirmed positive controlled substance test will be subject to disciplinary measures, including employment termination, pursuant to the provisions of the Master Agreement between the Edmond Board of Education and School employees of Edmond (the "Master Agreement") and of state law, Okla. Stat. tit. 70, §§ 6-101.40 et seq.

XI. OTHER POLICIES

This policy does not supersede any other School District policy pertaining to alcohol or controlled substances use by School District employees, except to the extent that this policy is specific to drivers performing safety-sensitive functions. Determination of appropriate disciplinary action will be made as stated in Section X of this policy. Determination of an employee's status during leave to obtain treatment will be made by reference to the provisions of School District policy and state and federal law. Determination of the scope of leave to obtain treatment will be made by reference to the Master Agreement and School District policy. To the extent permitted by federal law, this policy is to be interpreted consistent with the Oklahoma Act.