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## **416 DRUG AND ALCOHOL TESTING**

### **I. PURPOSE**

- A. The school board recognizes the significant problems created by drug and alcohol use in society in general, and the public schools in particular. The school board further recognizes the important contribution that the public schools have in shaping the youth of today into the adults of tomorrow.
- B. It is the belief of the school board that a work environment free of drug and alcohol use will not only be safer, healthier, and more productive, but will also be more conducive to effective learning. Therefore, to provide such an environment, the purpose of this policy is to provide authority so that the school board may require all employees and/or job applicants to submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950 through 181.957.

### **II. GENERAL STATEMENT OF POLICY**

- A. The school district may request or require that any job applicant submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950 through 181.957.
- B. The school district may request or require any employee to undergo drug and alcohol testing pursuant to this policy and as provided in Minn. Stat. §§ 181.950 through 181.957.
- C. All school district employees and job applicants whose position requires a commercial driver's license will be required to undergo drug and alcohol testing in accordance with federal law and the applicable provisions of this policy.
- D. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed is prohibited on school district property (which includes school district vehicles), while operating school district vehicles or equipment, and at any school-sponsored program or event. Use of drugs which are not medically prescribed is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district property. Employees under the influence of drugs which are not medically prescribed are prohibited from entering or remaining on school district property.
- E. Any employee who violates this section shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge.
- F. The use, possession, sale, purchase, transfer, or dispensing of alcohol is prohibited on school district property (which includes school district vehicles), while

operating school district vehicles or equipment, and at any school-sponsored program or event. Use of alcohol is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district property. Employees under the influence of alcohol are prohibited from entering or remaining on school district property.

- G.. Any employee who violates this section shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge.

### **III. DEFINITIONS**

- A. "Drug" means a controlled substance as defined in Minnesota Statutes.
- B. "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, Subd. 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
- C. "Employee" means any person, independent contractor, or person working for an independent contractor who performs services for compensation, either full-time or part-time, in whatever form, for the school district, and includes both professional and nonprofessional personnel.
- D. "Job applicant" means a person, independent contractor, or person working for an independent contractor who applies to become an employee of the school district, and includes a person who has received a job offer made contingent on the person passing drug or alcohol testing.
- E. "Positive test result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
- F. "Random selection basis" means a mechanism for selection of employees that:
1. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected; and
  2. does not give the school district discretion to waive the selection of any employee selected under the mechanism.
- G. "Reasonable suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
- H. "Safety-sensitive position" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

#### IV. DRUG AND ALCOHOL TESTING

The school district may require drug and alcohol testing in accordance with this policy under the following circumstances:

- A. Limitations on Testing.
  - 1. The school district may not request or require an employee or job applicant to undergo drug and alcohol testing, except as authorized in this policy.
  - 2. The school district may not request or require an employee or job applicant to undergo drug or alcohol testing, unless the testing is done pursuant to this drug and alcohol testing policy; and is conducted by a testing laboratory which participates in one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
  - 3. The school district may not request or require an employee or job applicant to undergo drug and alcohol testing on an arbitrary and capricious basis.
- B. Job Applicant Testing. The school district may request or require any job applicant to undergo drug and alcohol testing, provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If a job applicant has received a job offer which is contingent on the applicant passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the event the job offer is subsequently withdrawn, the school district shall notify the job applicant of the reason for its action.
- C. Random Testing. The school district may require only employees in safety-sensitive positions to undergo drug and alcohol testing on a random selection basis.
- D. Reasonable Suspicion Testing. The school district may request or require any employee to undergo drug and alcohol testing if the school district has a reasonable suspicion that the employee:
  - 1. is under the influence of drugs or alcohol;
  - 2. has violated the school district's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the school district's premises or operating the school district's vehicles, machinery, or equipment;
  - 3. has sustained a personal injury, as that term is defined in Minn. Stat. § 176.011, Subd. 16, or has caused another employee to sustain a personal injury; or

4. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.
- E. Treatment Program Testing. The school district may request or require any employee to undergo drug and alcohol testing if the employee has been referred by the school district for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.
- F. No Legal Duty to Test. The school district does not have a legal duty to request or require any employee or job applicant to undergo drug and alcohol testing as authorized in this policy.

**V. RIGHT OF EMPLOYEE OR JOB APPLICANT TO REFUSE DRUG AND ALCOHOL TESTING AND CONSEQUENCES OF SUCH REFUSAL**

- A. Right of Employee or Job Applicant to Refuse Drug and Alcohol Testing. Any employee or job applicant has the right to refuse drug and alcohol testing subject to the provisions contained in paragraphs B and C of this section.
- B. Consequences of an Employee's Refusal to Undergo Drug and Alcohol Testing. Any employee who refuses to undergo drug and alcohol testing in the circumstances set out in the Random Testing, Reasonable Suspicion Testing, and Treatment Program Testing provisions of this policy may be subject to disciplinary action, up to and including immediate discharge.
- C. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing. Any job applicant who refuses to undergo drug and alcohol testing pursuant to the Job Applicant Testing provision of this policy shall not be employed.

**VI. DRUG AND ALCOHOL TESTING PROCEDURES**

- A. Rights of Employees and Job Applicants.
  1. Before requesting an employee or job applicant to undergo drug or alcohol testing, the school district shall provide the employee or job applicant with a Pretest Notice form on which to (1) acknowledge that the employee or job applicant has seen the school district's drug and alcohol testing policy, and (2) indicate any over-the-counter or prescription medications that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.
  2. Within three (3) working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the school district, in addition to any information already submitted, to explain that result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense.

B. Test Results.

1. Notice of Test Results. Within three (3) working days after receipt of a test result report from the testing laboratory, the school district shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of (1) a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test, and (2) the right of the employee or job applicant to request and receive from the school district a copy of the test result on any drug or alcohol test. In the case of a positive test result on a confirmatory test, the school district shall also, at the time of this notice, inform an employee or job applicant in writing of the rights to explain the results, to submit information, to request a confirmatory retest, to participate in treatment or counseling, and other rights provided in this policy, whichever are applicable.
2. Right to Test Result Report. An employee or job applicant has the right to request and receive from the school district a copy of the test result report on any drug or alcohol test.
3. Confirmatory Retests. An employee or job applicant may request a confirmatory retest of the original sample at the employee's or job applicant's own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee or job applicant shall notify the school district in writing of the employee's or job applicant's intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the school district shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or transfer the sample to another laboratory licensed under Minn. Stat. § 181.953, Subd. 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.

## **VII. SCHOOL DISTRICT CHAIN-OF-CUSTODY PROCEDURES**

The school district shall establish its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures must require the following:

- A. possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;
- B. the sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
- C. a sample must be accompanied by a written chain-of-custody record; and

- D. individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

## **VIII. EMPLOYEE DISCHARGE AND DISCIPLINE**

- A. The school district may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.
- B. The school district may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the school district, unless the following conditions have been met:
  - 1. the school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school district after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
  - 2. the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.
- C. Notwithstanding paragraph A, the school district may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the school district believes that it is reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
- D. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information revealed to the school district, unless the employee was under an affirmative duty to provide the information before, upon, or after hire.
- E. An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

## **IX. WITHDRAWAL OF JOB OFFER**

If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the school district may withdraw the job offer.

## **X. PRIVACY, CONFIDENTIALITY AND PRIVILEGE SAFEGUARDS**

- A. Privacy Limitations. A laboratory may only disclose to the school district test result data regarding the presence or absence of drugs, alcohol or their metabolites in a sample tested.
- B. Confidentiality Limitations. Test result reports and other information acquired in the drug or alcohol testing process are, with respect to employees and job applicants, private data on individuals as that phrase is defined in Minn. Stat. Ch. 13, and may not be disclosed by the school district or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested.
- C. Exceptions to Privacy and Confidentiality Disclosure Limitations. Notwithstanding paragraphs A and B, evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minn. Stat. Ch. 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.
- D. Privilege. Positive test results from the school district drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

## **XI. NOTICE**

The school district shall provide written notice of this drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously non-affected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant passing drug and alcohol testing. The school district shall also post notice in an appropriate and conspicuous location on school district premises that the school district has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in the school district's personnel office or other suitable locations.

***Legal References:*** Minn. Stat. § 181.950-181.957 (Drug and Alcohol Testing in the Workplace)  
Minn. Stat. § 221.031 (Motor Carrier Rules)  
49 U.S.C. 31306 (Omnibus Transportation Employee Testing Act of 1991)  
49 C.F.R. Parts 40 and 382 (Department of Transportation Rules Implementing Omnibus Transportation Employee Testing Act of 1991)

***Cross Reference:*** Chisago Lakes Policy 403 (Discipline, Suspension and Dismissal of School District Employees)  
Chisago Lakes Policy 417 (Chemical Use/Abuse)  
Chisago Lakes Policy 418 (Drug-Free Workplace/Drug-Free School)  
Chisago Lakes Policy 416A (Transportation Employees Drug and Alcohol Procedures)

## 416A Transportation Employee Drug and Alcohol Procedures

The abuse of drugs and alcohol is a nation-wide problem which affects persons of every age, race and gender. Independent School District No. 2144 recognizes that safety problems are created when employees use or abuse illegal drugs and/or alcohol. The school district wishes to provide a safe, drug and alcohol-free workplace and learning environment for its employees and students. The school district has established the following procedure on drugs and alcohol to further this goal and to comply with the drug and alcohol testing provisions mandated by the Omnibus Transportation Employee Testing Act of 1991.

### **Procedure Statement**

All employees are strictly prohibited from using, possessing, selling, transferring, or being under the influence of drugs or alcohol while working or performing job duties or while on school district premises or while operating school district vehicles, machinery or equipment. No employee shall perform safety sensitive functions within four hours after using alcohol. Any employee found to be in violation of this policy is subject to discipline up to and including termination of employment.

### **Coverage**

The Omnibus Transportation Employee Testing Act requires that all employees whose job duties include operating a commercial motor vehicle and who are required to hold a commercial driver's license shall be subject to drug and alcohol testing. "Commercial Motor Vehicle" (CMV) means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle meets any one of the following criteria:

1. Has a gross combination rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded.

All applicants, including persons currently employed by the School District, that apply for a position where job duties include operating commercial motor vehicles will be required to take a drug and alcohol test if a job offer is made.

### **Definitions**

1. Accident means an occurrence involving a CMV operating on a public road which results in:
  - a. A fatality; or
  - b. Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

- c. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.
2. Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
3. Breath Alcohol Technician (BAT) means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).
4. Confirmation (or confirmatory) test means: a) In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) b) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.
5. Controlled substances has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules 1-5 as they may be revised from time to time (21 C.F.R. Part 1308).
6. DHHS. The Department of Health and Human Services or any designee of the secretary, Department of Health and Human Services.
7. Drug means any substance (other than alcohol) that is a controlled substance as defined in this section and 49 C.F.R. Part 40.
8. Evidential breath testing device (EBT) means an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath.
9. FHWA. The Federal Highway Administration
10. Medical Review Officer (MRO) means a licensed physician responsible for receiving laboratory results generated by the School District's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
11. Random selection means a mechanism for selection of employees for testing where each employee has an equal chance of being tested each time selections are made.
12. Reasonable suspicion means that the School District believes the appearance, behavior, speech or body odors of an employee are indicative of the use of a

controlled substance or alcohol based on the observation of at least one (1) supervisor or official who has received training in the identification of behaviors indicative of drug and alcohol use.

13. Refuse to submit (to an alcohol or controlled substance test) means that an employee:
  - a. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing;
  - b. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; or
  - c. Engages in conduct that clearly obstructs the testing process.
  
14. Safety sensitive function means all time from the time a driver 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 and includes the following:
  - a. All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;
  - b. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing, or conditioning of CMV at any time;
  - c. All time spent at the driving controls of a CMV;
  - d. All time, other than driving time, in or upon any CMV except time spent resting in a sleeper berth;
  - e. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
  - f. All time spent performing the driver requirements on the Federal Motor Carrier Safety Regulations relating to accidents;
  - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
  
15. Substance Abuse Professional (SAP) means a licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the a 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.

## **Prohibited Drug and Alcohol Related Conduct**

The following alcohol and controlled substance-related activities are prohibited by the FHWA's drug and alcohol rules for drivers of CMVs:

1. Reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
2. Being on duty or operating a CMV while the employee possesses alcohol, unless the alcohol is manifested and transported as a part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken;
3. Using alcohol while performing safety-sensitive functions;
4. Performing safety-sensitive functions within four hours after using alcohol;
5. When required to take a post-accident test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first;
6. Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion, or follow-up testing requirements;
7. Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the driver uses any controlled substance, except when instructed by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV;
- 8.. Reporting for duty, remaining on duty or performing a safety-sensitive function, if the driver tests positive for controlled substances.

Employees who, under a physician's care and prescription, use a controlled substance shall carry the controlled substance in its original container with the attached prescriber's and pharmacist's identification. Employees using a prescription drug which may impair the employee's mental or motor functioning shall inform their supervisor of such drug use. The school district reserves the right to have its MRO determine if a prescription drug produces hazardous effect and to take the appropriate action based upon the report of an employee or the MRO regarding the effects of the prescription medication or controlled substance.

## **Circumstances Under Which Drug and Alcohol Tests Shall Be Required or Requested**

DURING THE APPLICATION PROCESS. All job applicants, including persons currently employed by the school district, applying for a job where duties include operating the school district CMVs are required to undergo testing for alcohol and drugs if a job offer is made. The job offer is contingent upon a negative drug and alcohol test report and the applicant's written agreement authorizing former school districts to release to the school district all information on the applicant's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, and refusals to be testing, within the preceding two years.

**REASONABLE SUSPICION.** A drug test shall be required if the School District has a reasonable suspicion that an employee has violated the provisions of this policy regarding alcohol or controlled substances. Reasonable suspicion alcohol tests should be administered within two (2) hours, the reason shall be documented. If the alcohol test is not administered within eight (8) hours all attempts to conduct the test shall cease and the reasons shall be documented. Notwithstanding the absence of a reasonable suspicion alcohol test, the employee shall not be permitted to perform or continue to perform safety-sensitive functions until twenty-four hours have elapsed following the determination of reasonable suspicion.

**POST-ACCIDENT.** A post-accident alcohol and drug test is required if an employee operating a CMV is involved in an accident, as defined in this procedure, that results in:

1. The death of a person or persons regardless of the amount of vehicle or property damage; or
2. The employee receives a citation for a moving traffic violation arising from the accident.

The employee must provide an alcohol test sample as soon as practicable after the occurrence of the accident. If the employee does not receive the test within 2 hours of the accident, the reasons shall be documented. After 8 hours, all attempts to conduct the alcohol test shall cease and the reasons shall be documented. The employee also must provide a urine sample for controlled substances testing as soon as practicable after the accident. After 32 hours, all attempts to conduct this test shall cease and the reasons shall be documented. An employee subject to post-accident testing must remain available for testing or the employee shall be considered to have refused to submit to testing. The employee is prohibited from using alcohol for 8 hours following the accident or until the employee has undergone a post-accident alcohol test, whichever comes first.

**RETURN TO DUTY TESTING.** An employee found to have violated this procedure shall not return to work until after undergoing return to duty tests indicating an alcohol concentration of less than 0.02 and a verified negative result for controlled substances.

**FOLLOW-UP TESTING.** Following a determination by a substance abuse professional (SAP), that an employee is in need of assistance in resolving problems with alcohol abuse and/or controlled substances use, an employee shall be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty.

**RANDOM TESTING.** The school district will randomly select employees subject to this policy for unannounced alcohol and controlled substances testing using a computer-based random number generator that is matched with an employee's identifying number. Alcohol testing shall be performed just before, during and after an employee's performance of safety-sensitive duties. Employees selected for testing must proceed immediately to the testing site; provided, however, that if an employee is performing the safety-sensitive function at the time of notification, the employee shall cease performing the safety-sensitive function and proceed to the testing site as soon as possible. FHWA rules require the school district to conduct random controlled substances testing on 50% of the average number of employees and random alcohol testing on 25% of the average number of employees during the first year of the program. Employees may be selected for more than one test per year. Tests shall be spread reasonably throughout the year.

## **Testing Procedures**

### 1. Alcohol

The FHWA alcohol test rules require breath testing to be administered by a BAT using an EBT. Two breath tests are required to determine if a person has a prohibited alcohol concentration. Any result less than 0.02 alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. If an employee attempts and fails to provide an adequate amount of breath, the school district will direct the employee to obtain written evaluation from a licensed physician to determine if the employee’s inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the designated school district contact person.

### 2. Drugs

Controlled substances testing is conducted by analyzing an employee’s urine specimen. Split urine samples will be collected according to FHWA regulations. The employee will provide a urine sample at a designated collection site. The collection site person shall pour the urine specimen into two bottles labeled “primary” and “split”, seal the specimens, complete a chain of custody document and prepare the bottles for shipment to the testing laboratory for analysis.

If the employee is unable to provide the appropriate quantity of urine, the collection site person shall instruct the employee to drink not more than 24 ounces of fluids and, after a period of no more than two hours, again attempt to provide a complete sample. If the employee is still unable to provide a complete sample, the testing shall be discontinued and the school district notified. The MRO shall refer the employee for a medical evaluation to determine if the employee’s inability to provide a specimen is genuine or constitutes a refusal to test. For pre-employment testing, the school district may elect not to have the referral made and revoke the employment offer.

Urine specimens are transported for testing to a laboratory which is certified to perform controlled substance testing according to DHHS regulations.

Drug test results are reported directly to the Medical Review Officer (MRO) by the testing laboratory. The MRO reports the results to the school district’s designated contact person. If the results are negative, the school district is informed and no further action is necessary. If the test result is confirmed positive, the MRO shall give the employee an opportunity to discuss the test result. The MRO must review any medical records supplied by an employee to determine if a confirmed positive test is the result of the employee having taken legally prescribed medication. The MRO shall notify each employee that the employee has 72 hours in which to request a test of the split specimen at the employee’s expense. The MRO will contact the employee directly, on a confidential basis, to determine whether the person wishes to discuss the positive test results.

The MRO will review the confirmed positive test result to determine whether there is an acceptable medical reason for the positive result. The MRO shall verify and report the positive test result to the school district when there is no legitimate medical reason for a positive test result as received from the testing laboratory.

If after making reasonable efforts and documenting these efforts, the MRO is unable to reach the employee directly, the MRO must contact the designated school district contact person, who shall direct the employee to contact the MRO. If the school district contact person is unable to contact the employee, the employee will be placed on suspension.

The MRO may verify a test positive without having communicated directly with the employee about the test results under the following circumstances.

- a. The employee expressly declines the opportunity to discuss the test results.
- b. The employee has not contacted the MRO within five days of being instructed to do so by the school district.

### **Employee/Applicant Rights**

All applicants and employees subject to the drug testing provisions of this procedure have the right to request, at employee or applicant expense, a retest of the split urine sample within 72 hours of receiving notice of a confirmed positive test result.

If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If an employee has not contacted the MRO within seventy-two (72) hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely making contact. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact within seventy-two (72) hours, the MRO shall direct the analysis of the split specimen.

If the confirming retest is negative, no adverse action will be taken against the employee and an applicant will be considered for employment.

### **Confidentiality of Test Results**

All alcohol/controlled substances test results and required records are considered confidential information. Any information concerning an individual's test results and records shall not be released without the written permission of the individual except as provided for by regulation or law.

### **Consequences to Employees Engaging in Prohibited Conduct**

Employees who have engaged in prohibited conduct are subject to the following consequences pursuant to FHWA rules and regulations:

1. Employees shall not be permitted to perform safety-sensitive functions;
2. Employees shall be advised by the school district or the resources available to them in evaluating and resolving the problems associated with misuse of alcohol or use of controlled substances;

3. Employees shall be evaluated by a substance abuse professional designated by the school district who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and/or controlled substance use;
4. Before an employee returns to duty requiring performance of a safety-sensitive function, he/she shall undergo a return to duty test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use;
5. In addition, each employee identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by a substance abuse professional by the school district to determine that the employee has followed the rehabilitation program prescribed.
6. The employee shall also be subject to unannounced follow-up alcohol and controlled substance testing.

### **Consequences for Other Alcohol Related Conduct**

FHWA rules require that in the event of an alcohol test result over 0.02 but less than 0.04, an employee shall not be permitted to perform safety-sensitive functions for not less than 24 hours.

### **Refusal to Undergo Testing and Consequences of Refusal**

All applicants and employees have the right to refuse to undergo drug and alcohol testing. If an individual refuses to undergo drug and alcohol testing required by this procedure, no such test shall be given.

An applicant who refuses to take a drug and alcohol test shall be disqualified from further consideration for the conditionally offered position.

An employee refusing to take a drug and alcohol test required by this procedure shall not be permitted to perform safety-sensitive functions and will be considered insubordinate and will be subject to disciplinary action including possible dismissal.

### **Discipline**

Any person found to be in violation of this policy is subject to discipline up to and including discharge. Disciplinary actions taken pursuant to this procedure are appeal able pursuant to the school district's policy and rules or any applicable collective bargaining agreement, but not both.

The school district will not discharge an employee that, for the first time, receives a verified positive drug or alcohol test result unless:

1. The employee refuses to meet with a substance abuse professional for the purpose of an evaluation for alcohol/controlled substance use/abuse and recommendations for an educational, counseling or treatment program; or

2. The employee fails to enter the recommended program, or fails to successfully complete the program; or
3. The employee fails a return to duty alcohol and controlled substance test at the successful completion of the recommended program or subsequent unannounced follow-up alcohol and controlled substance testing.

### **Alcohol and Controlled Substance Contact Person**

Heide Miller, Director of Business Services, is the designated contact person for this procedure. The designated contact person will coordinate the implementation, direction and administration of the school district's alcohol and controlled substances policy. The contact person is the principal contact for the collection site, the testing lab, the MRO, the BAT and the person tested. Employee questions concerning this procedure should be directed to the contact person. Heide Miller, Director of Business Services, can be reached at 13750 Lake Boulevard, Lindstrom, MN 55045, 213-2010.

### **Policy Modification**

The school district retains the right to modify this policy to conform to changes in regulation or law.

## **Acknowledgment of Transportation Employee Drug & Alcohol Policy & Procedure**

I have received a copy of the Independent School District #2144 Transportation Employee Drug and Alcohol Procedure and have been provided information on the following:

1. The person designated by the school district to answer questions about these materials;
2. Who is subject to alcohol misuse and controlled substance requirements;
3. Explanation of a safety-sensitive function;
4. What driver conduct is prohibited;
5. Circumstances for drug and/or alcohol testing;
6. Procedures used to test for the presence of drugs and/or alcohol;
7. The requirement that employees submit to controlled substance and alcohol testing;
8. An explanation of what constitutes a refusal to submit to testing;
9. The consequences for drivers violating the prohibitions of this rule, including the immediate removal of the driver from safety-sensitive functions;
10. The consequences for drivers found to have an alcohol concentration level of 0.02 or greater, but less than 0.04; and
11. Information concerning the effects of alcohol and controlled substances use on an individual's health, work and personal life. Signs and symptoms of an alcohol or controlled substances problem and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please print name: \_\_\_\_\_