

**Alcohol and Controlled Substances Testing**

Federal and state law prohibit alcohol misuse and use of controlled substances that could affect the performance of a safety-sensitive function by employees. This policy implements the requirements of federal and state law and subsequent changes in regard to drug and alcohol testing.

The Office of Education has an interest in and an obligation to provide a safe educational and transportation environment for students and a safe workplace for employees, free from alcohol and/or controlled substance abuse. The Office of Education prohibits the possession or use of alcohol or controlled substances by employees in the workplace and outside of the workplace if this use impacts employee performance while in the workplace. This may be referred to as a “zero tolerance” policy. Employees are required to read the alcohol and controlled-substances policy and attendant procedures in order that they may appreciate: 1) the Office’s insistence on an alcohol and drug-free environment, 2) the Office’s sincere interest in assisting employees who have substance-abuse problems to obtain help before the problems impact job performance or threaten employment, and 3) the serious and immediate consequences of violations of this policy.

This policy shall be applicable to those employees of the Office of Education who operate commercial motor vehicles and are subject to commercial driver’s license requirements. Effective January 1, 2006, this policy shall also be applicable to those employees who are employed to drive a school transportation vehicle as defined below. On an annual basis, the Superintendent shall designate the positions to which this policy applies.

**DEFINITIONS**

1. Alcohol is the intoxicating agent in beverage alcohol, ethyl alcohol or other molecular weight alcohols including methyl and isopropyl alcohol.
2. Alcohol use is the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
3. Breath alcohol technician (BAT) is an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath-testing device (EBT).
4. Commercial motor vehicle is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
  - a. has a gross combination weight of 26,001 or more pounds inclusive of a

towed unit with a gross vehicle weight rating of more than 10,000 pounds.

- b. has a gross vehicle weight rating of 26,001 or more pounds.
  - c. is designed to transport 16 or more passengers, including the driver.
  - d. is of any size and is used in the transportation of hazardous materials requiring placards.
5. School transportation vehicle is a vehicle provided by the Office of Education that is not a school bus, a school pupil activity bus, or youth bus, and is used by the Office of Education for the primary purpose of transporting children.
  6. Confirmation test, for alcohol testing (DOT confirming blood-alcohol test), is a second test that provides quantitative data of alcohol concentration following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath. For controlled-substances testing (DOT 5-panel toxicology), is a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy (see Administrative Regulation).
  7. Covered employee is an employee subject to the requirements of applicable federal and state law and this policy. The Superintendent is the employer.
  8. Driver is any person who operates a commercial motor vehicle or who is employed to drive a school transportation vehicle. For the purposes of pre-employment testing, the term "driver" includes a person applying to drive a commercial motor vehicle or a person applying for a position requiring that person to drive a school transportation vehicle as determined by the employer.
  9. Employer is any person (including the United States, a state, the District of Columbia, or a political subdivision of a state) who owns or leases a commercial motor vehicle or school transportation vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives of the employer.
  10. Evidential breath-testing device (EBT) is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

11. Medical review officer (MRO) is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer'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.
12. On-duty time, as that phrase is defined by federal regulations and this policy, means all of the time from the time a covered employee begins to work or is required to be in readiness to work until the time he or she is relieved for work and all responsibility for performing work.
13. Performing (a safety-sensitive function) is any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.
14. Refusal to submit (to an alcohol or controlled-substance test) is when a driver:
  - a. fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement of 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.
15. Safety-sensitive function, for the purposes of this policy, shall mean any of the functions defined in Title 49 of the Code of Federal Regulations and Section 34520.3 of the California Vehicle Code. More specifically, safety-sensitive functions include all functions performed by a covered employee during on-duty time and include:
  - a. all time at a carrier or shipper plant, terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved from duty by the employer.
  - b. all time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs) or otherwise inspecting, servicing, or conditioning any commercial motor vehicle or school transportation vehicle at any time.
  - c. all time spent at the driving controls of a commercial motor vehicle or

school transportation vehicle.

- d. all time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth) and in a school transportation vehicle.
- e. all time loading or unloading a commercial motor vehicle or school transportation 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 associated with an accident.
- g. all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

On-duty time also includes:

- h. all time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the testing requirements.
16. Screening test (aka initial test) in alcohol testing (breath-alcohol test) is an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled-substance testing, it is an immunoassay screen to eliminate negative urine specimens from further consideration (see Administrative Regulation).
17. Substance-abuse professional is a licensed physician (medical doctor or doctor of osteopathy) 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 a clinical experience in the diagnosis and treatment of alcohol and controlled-substances related disorders.

## EMPLOYEE ASSISTANCE

Employees of the Office of Education are valued members of the educational team. The employer has a sincere interest in helping employees who have substance-abuse problems to resolve their problems before job performance or employment are threatened. To that end, an employee-assistance program will be offered to qualified employees who suspect or believe they have substance-abuse problems. To qualify for the program, an employee must have permanent

status and work in a safety-sensitive position. The employee-assistance program will provide the services of a trained Substance Abuse Professional (SAP), at Office of Education expense, to evaluate the circumstances of any qualified employee who requests an evaluation. The SAP will also recommend to the employee any professional assistance believed to be helpful to resolve the employee's substance-abuse problems. This assistance may be obtained by qualified employees with absolutely no risk of negative employment consequences. On the contrary, the Office of Education positively encourages employees in safety-sensitive positions to take advantage of this service in order to improve the quality of their lives and their value to the Office of Education.

Any qualified employee who wishes to be evaluated by the SAP should request a referral to the SAP from the Personnel Director. This request will be held in strict confidence. No information concerning the request will be given to anyone else, and the request will not be noted in Office of Education records or the employee's personnel file.

If the SAP recommends a substance-abuse treatment program which requires the employee to take time off work (the SAP will notify the Office of Education if this is the case), the time taken off will be treated as a legitimate medical absence. The employee is entitled to use any sick leave, vacation, compensatory time off, catastrophic leave or other appropriate paid leaves of absence during the time off work. If or when appropriate paid leaves of absence are exhausted, the employee is entitled to an unpaid leave of absence under the provisions of state and federal law. If the employee is covered under a group health plan, the plan may pay a portion of the treatment costs. Upon completion of the treatment program the employee will be reinstated to his or her position or to an equivalent position.

#### PROHIBITED CONDUCT

1. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.01 or greater.
2. No covered employee shall remain on duty or operate a commercial motor vehicle or school transportation vehicle while that employee possesses alcohol unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter) unless the packaging seal is unbroken.

## **PERSONNEL**

## **SP 4112.4.2/4212.4.2/4312.4.2(f)**

3. No covered employee shall use alcohol during on-duty time while performing safety-sensitive functions.
4. No covered employee shall perform safety-sensitive functions within four hours after using alcohol.
5. No covered employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident and until he or she undergoes a post-accident alcohol test.
6. No covered employee shall refuse to submit to any test required by law or this policy.
7. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the covered employee uses or possesses any controlled substances, except when the use or possession is pursuant to the instructions of a physician who has advised the driver that the substances do not adversely affect the driver's ability to safely operate a commercial vehicle or school transportation vehicle.
8. Covered employees are required to notify the Employer when they are taking medication with warning labels relating to the operation of a vehicle, heavy equipment, or machinery.

## **OTHER ALCOHOL-RELATED CONDUCT**

An employee who produces a first confirmed positive test of 0.02 or greater, but less than 0.04, or who produces such a test two years or more following an earlier test within these parameters shall, in addition to being removed from all safety-sensitive functions for a period of 24 hours and being subject to return-to-duty testing, receive a suspension from duty without pay of three working days. The employee shall be referred to a Substance Abuse Professional (SAP). If the employee successfully completes a program of rehabilitation recommended by the SAP, if any, as confirmed in writing by the SAP, no further action shall occur. If the SAP recommends a rehabilitation program and the employee fails to successfully complete the program, as confirmed in writing by the SAP, the employee shall be subject to discipline, up to and including dismissal.

An employee who produces a first confirmed positive test of 0.04 or greater, or a confirmed positive test of 0.02 or greater within two years of a previous test of 0.02 or greater, shall be dismissed from employment.

## **TRANSPORTATION AND COMPENSATION**

1. If an applicant or covered employee produces a test result indicating an alcohol concentration equal to or greater than 0.02 or a positive result on a

controlled-substances test, that employee shall be transported to his or her residence by the employer.

2. A covered employee who fails a required test shall not receive his or her normal compensation for hours during which the employee is prohibited by federal law and this policy from performing a safety-sensitive function. Failure is defined as a verified positive result by an MRO for controlled substances and/or an alcohol concentration greater than 0.02.

#### CONSEQUENCES OF PROHIBITED CONDUCT

1. No covered employee shall return to duty or remain on duty to perform safety-sensitive functions if the covered employee has engaged in conduct prohibited by this policy unless the covered employee successfully fulfills the conditions set forth in this policy. An employee who refuses to submit to testing shall be recommended for immediate termination from employment.
2. Any covered employee tested under this policy who is found to have an alcohol concentration equal to or greater than 0.04 or who tests positive on a verified controlled-substances test shall be terminated.
3. Any covered employee discovered to have produced a positive test for alcohol between 0.02 and 0.04 shall be subject to an evaluation by a substance-abuse professional (SAP) to determine what, if any, assistance the employee needs in resolving problems associated with alcohol misuse and controlled-substances use. The SAP shall be a person who is qualified for that position in accordance with applicable federal requirements.
4. If, after an evaluation, a covered employee is diagnosed as needing assistance and directed to an assistance program, that employee may not return to duty unless the SAP determines that the employee has properly followed any rehabilitation program prescribed and shall be subject to follow-up testing.
5. Every covered employee who has engaged in prohibited conduct shall be advised of the resources available to that employee in evaluating and resolving problems associated with the misuse of alcohol and controlled substances.
6. These requirements relating to mandatory referral and evaluation do not apply to applicants who have a controlled-substances test with a verified positive result. Such employees are not eligible for employment under Office of Education policy.
7. The choice of the substance-abuse professional who shall conduct the evaluation is reserved to the employer.

8. The costs of any treatment and/or rehabilitation program prescribed by the SAP shall be borne by the employee. The employee may utilize the benefit component of the Office of Education-provided employee-assistance program (EAP) where applicable

#### TESTING PROCEDURES

All tests conducted pursuant to this policy shall comply with the requirements of applicable federal and state law.

#### PRE-EMPLOYMENT TESTING/INVESTIGATION OF PREVIOUS TESTING

1. As a condition of employment, applicants for safety sensitive positions will be required to authorize previous employers to release specific information regarding previous controlled substances and alcohol tests for all employers in the preceding two years.
2. Prior to the first time a covered employee performs safety-sensitive functions for the employer, the employee shall undergo testing for controlled substances.
3. The employer shall not allow any covered employee to perform safety-sensitive functions unless the covered employee has produced a controlled-substances test result from a medical review officer indicating a verified negative test result.
4. The employer reserves the right not to employ an applicant who has received a controlled substances test indicating a verified positive test result.

#### POST-ACCIDENT TESTING

1. As soon as practicable following an accident involving a commercial motor vehicle or school transportation vehicle, and not later than two (2) hours for alcohol testing and thirty-two (32) hours for controlled substances, the employer shall test the following individuals for alcohol and controlled substances:
  - a. any covered employee who was performing safety-sensitive functions with respect to the vehicle if the accident involved the loss of human life, and/or



- b. any covered employee who receives a citation under state or local law for a moving violation arising from the accident.

For the purposes of this policy, an accident is defined as an incident involving a commercial motor vehicle or a school transportation vehicle.

#### RANDOM TESTING

1. The employer is part of a consortium. Covered employees shall be assigned to a consortium pool for random testing. The consortium shall randomly select covered employees for alcohol and controlled-substances testing during each calendar year in accordance with applicable federal and state law. The minimum annual percentage rate for random alcohol testing shall be ten percent (10%) of the average number of covered employees in the testing pool to which they are assigned until further notification is received from the Federal Department of Transportation or, for employees designated by state law, the State of California. The minimum annual percentage rate for controlled substances testing shall be fifty percent (50%) of the average number of covered employees in the testing pool to which they are assigned until further notification is received from the Federal Department of Transportation or, for employees designated by state law, the State of California.
2. The selection of covered employees for random alcohol and controlled-substances testing shall be made by a scientifically valid method. Under the selection process used, every covered employee within the testing pool shall have an equal chance of being tested each time selections are made.
3. The employer shall ensure that the random tests are unannounced and that the dates for administering the random tests are spread reasonably throughout the calendar year. Every covered employee who is notified of selection for random testing shall cease to perform safety-sensitive functions and shall immediately proceed to the test site.
4. A covered employee shall be subject to random testing at the following times: while the covered employee is performing safety-sensitive functions, just before the covered employee is performing safety-sensitive functions, or just after the covered employee has ceased performing such functions.
5. Substitute employees, if they are also covered employees, are subject to random testing.
6. In the event a covered employee who is selected for a random test is off duty, the employer can either select another driver for testing or test the driver upon his or her return.

**REASONABLE-SUSPICION TESTING**

1. The employer shall require a covered employee to submit to an alcohol or controlled-substances test, as appropriate, when the employer has reasonable suspicion to believe that the employee has engaged in prohibited conduct
2. The employer's determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
3. Reasonable-suspicion testing is permitted only if the required observations are made during, just preceding, or just after the period of the workday that the covered employee is performing a safety-sensitive function or required to be in compliance.
4. The observation and determination that a reasonable suspicion exists will be made by a supervisor trained in detecting the symptoms of alcohol misuse and use of controlled substances as per the regulations. The training shall consist of at least sixty (60) minutes of training on alcohol misuse and at least an additional sixty (60) minutes of training on controlled-substances use.
5. No test for alcohol shall be administered after eight (8) hours of the determination being made that there was a reasonable suspicion of being under the influence of alcohol.

**RETURN-TO-DUTY AND FOLLOW-UP TESTS**

1. Before an employee returns to duty requiring the performance of a safety-sensitive function after producing a positive test for alcohol between 0.02 and 0.04, he or she shall undergo a return-to-duty alcohol test with a result less than 0.02. In addition to a return-to-duty test, the employee is also subject to follow-up testing.
2. In the event a return-to-duty test is required, the employee must also be evaluated by a substance-abuse professional and participate in any assistance program prescribed.
3. Following a determination that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the driver shall be subject to unannounced follow-up alcohol testing. The testing shall consist of a minimum of six (6) follow-up tests

within the first twelve (12) months. The SAP may determine after twelve (12) months that additional testing is necessary. Follow-up testing shall not exceed sixty (60) months following the employee's return to duty.

#### DISCIPLINARY ACTION

1. The employer reserves the right to impose disciplinary action under other policies, rules and regulations of the Office of Education if and when an employee produces a test result indicating an alcohol concentration equal to or greater than 0.01 or if that employee produces a controlled-substances test with a verified positive result or if the employee refuses to submit to a test required by this policy.
2. The employer reserves the right not to employ any applicant who produces a test result indicating a controlled-substances test with a verified positive result or who refuses to submit to a pre-employment test.
3. In the event an employee produces a test for alcohol of 0.04 or greater or produces a controlled-substances test with a verified positive result, the employee shall be terminated.
4. An employee who refuses to submit to testing shall be immediately placed on administrative leave and his/her supervisor shall be required to recommend termination to the Superintendent/designee.

#### EFFECTS OF A DILUTE TEST

1. The employer reserves the right to require that a dilute test be repeated.

#### EFFECTS OF A POSITIVE TEST

1. Employees who test positive under this policy will be relieved of duty under the conditions set forth in this policy. During such time, the employee will not receive his/her normal compensation until the employee meets the requirements of this policy and returns to duty. A positive test is defined as an alcohol concentration greater than 0.02 and/or a verified positive controlled-substance result.
2. Also, if the California Highway Patrol (CHP) makes the determination that a driver must be taken out of service, the driver shall not receive his/her normal pay until they are allowed to return to duty. With respect to alcohol, the CHP may take a driver out of service if the driver's blood content is found to be 0.01% by weight or greater. The driver shall not operate a commercial motor vehicle for a period of twenty-four (24) hours.

**EMPLOYEE INFORMATION**

1. The employer shall distribute this policy to every covered employee on an individual basis prior to the start of alcohol and controlled-substances testing. The employer shall also distribute this policy to every covered employee hired after the adoption of the policy and to every covered employee transferred into a position requiring driving a commercial vehicle or a school transportation vehicle.
2. Employees will be required to sign a statement acknowledging receipt of the policy.
3. The persons responsible for answering employee questions concerning this policy shall be the Personnel Director, Director of Transportation and Assistant Superintendent.

**RECORDS RETENTION**

The employer shall prepare and retain all records in accordance with applicable federal and state law.

*Legal Authority:*

**FEDERAL CODES**

Federal Omnibus Transportation Employee Testing Act of 1991  
 United States Code, Title 49, Part 2717  
 CFR Title 49, Parts 40, 382, 395

**STATE CODES**

**EDUCATION CODE**

1293 Power to contract with certificated employees  
 1311 Employment of persons to positions not requiring certification  
 35160 Authority of governing boards

**VEHICLE CODE**

34520.3 School transportation vehicles: driver drug and alcohol testing  
 Holliday v. City of Modesto (1991) 229  
 CalApp, 3d 528, 540  
 International Brotherhood of Teamsters v. Department of Transportation 932 F.2d 1292 (1991)

Policy

**HUMBOLDT COUNTY OFFICE OF EDUCATION**

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