

INDEPENDENT SCHOOL DISTRICT 199  
Inver Grove Heights Community Schools  
2990 80<sup>th</sup> Street East  
Inver Grove Heights, Minnesota 55076

**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 federal law and Minn. Stat. §§ 181.950-181.957.

**II. General Statement of Policy**

- A. All school district employees and job applicants whose positions require 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. The school district also may request or require that drivers submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- B. The school district may request or require that any school district employee or job applicant, other than an employee or applicant whose position requires a commercial driver's license, submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- C. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed, including medical cannabis, regardless of whether it has been prescribed for the employee, 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, including medical cannabis, regardless of whether it

has been prescribed for the employee, 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.

- D. 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.
- 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.

### **III. Federally Mandated Drug and Alcohol Testing For School Bus Drivers**

#### **A. General Statement of Policy**

All persons subject to commercial driver's license requirements shall be tested for alcohol, marijuana (including medical cannabis), cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP), pursuant to federal law. Drivers who test positive for alcohol or drugs shall be subject to disciplinary action, which may include termination of employment.

#### **B. Definitions**

1. "Actual Knowledge" means actual knowledge by the school district that a driver has used alcohol or controlled substances based on: (a) direct observation of the employee's use (not observation of behavior sufficient to warrant reasonable suspicion testing); (b) information provided by a previous employer; (c) a traffic citation; or (d) an employee's admission, except when made in connection with a qualified employee self-admission program.
2. "Alcohol Screening Device" (ASD) means a breath or saliva device, other than an Evidential Breath Testing Device (EBT), that is approved by the National Highway Traffic Safety Administration and placed on its Conforming Products List for such devices.
3. "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and who operates the Evidential Breath Testing Device (EBT).

4. “Commercial Motor Vehicle” (CMV) includes a vehicle which is designed to transport 16 or more passengers, including the driver.
5. “Designated Employer Representative” (DER) means a designated school district representative authorized to take immediate action to remove employees from safety-sensitive duties, to make required decisions in the testing and evaluation process, and to receive test results and other communications for the school district. The Transportation Coordinator is appointed as DER for the School District.
6. “DOT” means United States Department of Transportation.
7. “Driver” is any person who operates a Commercial Motor Vehicle, including full-time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers, and independent owner-operator contractors.
8. “Evidential Breath Testing Device” (EBT) means a device approved by the National Highway Traffic Safety Administration for the evidentiary testing of breath for alcohol concentration and placed on its Conforming Products List for such devices.
9. “Medical Review Officer” (MRO) means a licensed physician responsible for receiving and reviewing laboratory results generated by the school district’s drug testing program and for evaluating medical explanations for certain drug tests.
10. “Refusal to Submit” (to an alcohol or controlled substances test) means that a driver: (a) fails to appear for any test within a reasonable time, as determined by the school district, consistent with applicable DOT regulations, after being directed to do so; (b) fails to remain at the testing site until the testing process is complete; (c) fails to provide a urine specimen or an adequate amount of saliva or breath for any DOT drug or alcohol test; (d) fails to permit the observation or monitoring of the driver’s provision of a specimen in the case of a directly observed or monitored collection in a drug test; (e) fails to provide a sufficient breath specimen or sufficient amount of urine when directed and it has been determined that there was no adequate medical explanation for the failure; (f) fails or declines to take an additional test as directed; (g) fails to undergo a medical examination or evaluation, as directed by the Medical Review Officer or the Designated Employer Representative; (h) fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to sign the certification on the forms); or (i) is reported by the Medical Review Officer as having a

verified adulterated or substituted test result. An applicant who fails to appear for a pre-employment test, who leaves the testing site before the pre-employment testing process commences, or who does not provide a urine specimen because he or she has left before it commences is not deemed to have refused to submit to testing.

11. “Safety-sensitive functions” are on-duty functions from the time the driver begins work or is required to be in readiness to work until relieved from work, and include such functions as driving, loading and unloading vehicles, or supervising or assisting in the loading or unloading of vehicles, servicing, repairing, obtaining assistance to repair, or remaining in attendance during the repair of a disabled vehicle.
12. “Screening Test Technician” (STT) means anyone who instructs and assists individuals in the alcohol testing process and operates an Alcohol Screening Device.
13. “Stand Down” means to temporarily remove an employee from performing safety-sensitive functions after a laboratory reports a confirmed positive, an adulterated, or a substituted test result but before a Medical Review Officer completes the verification process.
14. “Substance Abuse Professional” (SAP) means a qualified person who evaluates employees who have violated a Department of Transportation drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

C. Policy and Educational Materials

***The federal regulations require that school districts provide materials to bus drivers explaining the school district’s policies and procedures and the federal requirements with respect to the mandatory drug and alcohol testing of bus drivers. 49 C.F.R. § 382.601. Almost all of the required information is contained within this model policy. Additional materials to be provided to employees are described in Paragraph 2. of this Section C.***

1. The school district shall provide a copy of this policy and procedures to each driver prior to the start of its alcohol and drug testing program and to each driver subsequently hired or transferred into a position requiring driving of a Commercial Motor Vehicle.
2. The school district shall provide to each driver 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 drug problem; and available methods of intervening when an alcohol or drug

problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.

3. The school district shall provide written notice to representatives of employee organizations that the information described above is available.
4. The school district shall require each driver to sign a statement certifying that he or she has received a copy of the policy and materials. This statement should be in the form of Attachment A to this policy. The school district will maintain the original signed certificate and will provide a copy to the driver if the driver so requests.

***The federal regulations require a school district to obtain a signed statement from each driver certifying that he or she has received a copy of these materials. 49 C.F.R. § 382.601(d). The original signed certificate must be maintained by the school district and a copy may be provided to the driver.***

D. Alcohol and Controlled Substances Testing Program Manager

*School districts are required by the federal regulations to designate a person to answer driver questions about the policy and the education materials described in Section C. above and to notify the drivers of the designation. 49 C.F.R. § 382.601(b)(1).*

1. The program manager will coordinate the implementation, direction, and administration of the alcohol and controlled substances testing policy for bus drivers. The program manager is the principal contact for the collection site, the testing laboratory, the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional, and the person submitting to the test. Employee questions concerning this policy shall be directed to the program manager.
2. The school district shall designate a program manager and provide written notice of the designation to each driver along with this policy.

E. Specific Prohibitions for Drivers

***The specific prohibitions for drivers are contained, in large part, in 49 C.F.R. §§ 382.201-382.215.***

1. Alcohol Concentration. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers who test greater than 0.04 will be taken out of service and will be subject to evaluation by a professional and retesting at the driver's expense.

2. Alcohol Possession. No driver shall be on duty or operate a Commercial Motor Vehicle while the driver possesses alcohol.
3. On-Duty Use. No driver shall use alcohol while performing safety-sensitive functions.
4. Pre-Duty Use. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. Use Following an Accident. No driver required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
6. Refusal to Submit to a Required Test. No driver shall refuse to submit to an alcohol or controlled substances test required by post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements. A verified adulterated or substituted drug test shall be considered a refusal to test.
7. Use of Controlled Substances. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to instructions (which have been presented to the school district) from a licensed physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a Commercial Motor Vehicle. Controlled substances includes medical cannabis, regardless of whether the driver is enrolled in the state registry program.
8. Positive, Adulterated, or Substituted Test for Controlled Substance. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances, including medical cannabis, or has adulterated or substituted a test specimen for controlled substances.
9. General Prohibition. Drivers are also subject to the general policies and procedures of the school district which prohibit the possession, transfer, sale, exchange, reporting to work under the influence of drugs or alcohol, and consumption of drugs or alcohol while at work or while on school district premises or operating any school district vehicle, machinery, or equipment.

F. Other Alcohol-Related Conduct

*Consequences for drivers engaging in alcohol-related conduct are described in the federal regulations. 49 C.F.R. § 382.505.*

No driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform safety-sensitive functions for at least twenty-four (24) hours following administration of the test. The school district will not take any action under this policy other than removal from safety-sensitive functions based solely on test results showing an alcohol concentration of less than 0.04 but may take action otherwise consistent with law and policy of the school district.

G. Prescription Drugs

A driver shall inform his or her supervisor if at any time the driver is using a controlled substance pursuant to a physician's prescription. The physician's instructions shall be presented to the school district upon request. Use of a prescription drug shall be allowed if the physician has advised the driver that the prescribed drug will not adversely affect the driver's ability to safely operate a Commercial Motor Vehicle. Use of medical cannabis is prohibited notwithstanding the driver's enrollment in the patient registry.

H. Testing Requirements

1. Pre-Employment Testing

***49 C.F.R. § 382.301 details the requirements for pre-employment testing.***

- a. A driver applicant shall undergo testing for [alcohol and] controlled substances, including medical cannabis, before the first time the driver performs safety-sensitive functions for the school district.

***A school district is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If a school district elects to require pre-employment testing for alcohol, it should include the bracketed text in Subparagraph a., above, and test all applicants uniformly.***

- b. Tests shall be conducted only after the applicant has received a conditional offer of employment.
- c. In order to be hired, the applicant must test negative and must sign an agreement in the form of Attachment B to this policy, authorizing former employers to release to the school district all information on the applicant's alcohol tests with results of blood alcohol concentration of 0.04 or higher, or verified positive results for controlled substances, including medical cannabis, or refusals to be tested (including verified adulterated or substituted drug test

results), or any other violations of DOT agency drug and alcohol testing regulations, or, if the applicant violated the testing regulations, documentation of the applicant's successful completion of DOT return-to-duty requirements (including follow-up tests), within the preceding two (2) years.

***The federal regulations require school districts to inquire about, obtain, and review alcohol and controlled substances information from prior employers pursuant to a driver's written authorization, prior to the time a driver performs safety-sensitive functions, if feasible. 49 C.F.R. § 382.413 and 49 C.F.R. § 40.25. If not feasible, school districts must not permit the employee to perform safety-sensitive functions for more than thirty (30) days from the date a safety-sensitive function was performed unless the school districts make good faith efforts to obtain the information and to make a record of those efforts to be retained in the driver's qualification file.***

- d. The applicant also must be asked whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee, during the last two (2) years, applied for, but did not obtain, safety-sensitive transportation work covered by DOT testing rules.

2. Post-Accident Testing

***49 C.F.R. § 382.303 governs post-accident testing of drivers.***

- a. As soon as practicable following an accident involving a Commercial Motor Vehicle, the school district shall test the driver for alcohol and controlled substances, including medical cannabis, if the accident involved the loss of human life or if the driver receives a citation for a moving traffic violation arising from an accident which results in bodily injury or disabling damage to a motor vehicle.
- b. Drivers should be tested for alcohol use within two (2) hours and no later than eight (8) hours after the accident.
- c. Drivers should be tested for controlled substances, including medical cannabis, no later than thirty-two (32) hours after the accident.
- d. A driver subject to post-accident testing must remain available for testing, or shall be considered to have refused to submit to the test.



- e. If a post-accident alcohol test is not administered within two (2) hours following the accident, the school district shall prepare and maintain on file a record stating the reasons the test was not promptly administered and continue to attempt to administer the alcohol test within eight (8) hours.
- f. If a post-accident alcohol test is not administered within eight (8) hours following the accident or a post-accident controlled substances test is not administered within thirty-two (32) hours following the accident, the school district shall cease attempts to administer the test, and prepare and maintain on file a record stating the reasons for not administering the test.

3. Random Testing

***49 C.F.R. § 382.305 governs random testing of drivers.***

- a. The school district shall conduct tests on a random basis at unannounced times throughout the year, as required by the federal regulations.

***The Federal Highway Administration lowered the random alcohol selection and testing rate from 25% of the average number of driver positions to 10% in 1998 and evaluates this minimum percentage each year. School districts can elect to stay at 25% (or a higher percentage) if they do not want to monitor the minimum annual percentage rate set by the FHWA.] The random controlled substances selection and testing rate has remained at 50% each year and has not been lowered to 25% as is possible under the regulations.***

- b. The school district shall test for alcohol at a minimum annual percentage rate of 10% of the average number of driver positions, and for controlled substances, including medical cannabis, at a minimum annual percentage of 50%.
- c. The school district shall adopt a scientifically valid method for selecting drivers for testing, such as random number table or a computer-based random number generator that is matched with identifying numbers of the drivers. Each driver shall have an equal chance of being tested each time selections are made.
- d. Random tests shall be unannounced. Dates for administering random tests shall be spread reasonably throughout the calendar year.

- e. Drivers shall proceed immediately to the collection site upon notification of selection; provided, however, that if the driver is performing a safety-sensitive function, other than driving, at the time of notification, the driver shall cease to perform the function and proceed to the collection site as soon as possible.

4. Reasonable Suspicion Testing

***49 C.F.R. § 382.307 governs reasonable suspicion testing of drivers.***

- a. The school district shall require a driver to submit to an alcohol test and/or controlled substances, including medical cannabis, test when a supervisor or school district official, who has been trained in accordance with the regulations, has reasonable suspicion to believe that the driver has used alcohol and/or controlled substances, including medical cannabis, on duty or within four (4) hours before coming on duty. The test shall be done as soon as practicable following the observation of the behavior indicative of the use of controlled substances or alcohol.
- b. The reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The required observations for reasonable suspicion of a controlled substances violation may include indications of the chronic and withdrawal effects of controlled substances.
- c. Alcohol testing shall be administered within two (2) hours following a determination of reasonable suspicion. If it is not done within two (2) hours, the school district shall prepare and maintain a record explaining why it was not promptly administered and continue to attempt to administer the alcohol test within eight (8) hours. If an alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the school district shall cease attempts to administer the test and state in the record the reasons for not administering the test.
- d. The supervisor or school district official who makes observations leading to a controlled substances reasonable suspicion test shall make and sign a written record of the observations within twenty-four (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

***49 C.F.R. §§ 382.309, 40.23(d), and 40.305 govern return-to-duty testing.***

5. Return-To-Duty Testing. A driver found to have violated this policy shall not return to work until a Substance Abuse Professional has determined the employee has successfully complied with prescribed education and/or treatment and until undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a confirmed negative result for the use of controlled substances.

***49 C.F.R. §§ 382.311, 40.307, and 40.309 govern follow-up testing.***

6. Follow-Up Testing. When a Substance Abuse Professional (SAP) has determined that a driver is in need of assistance in resolving problems with alcohol and/or controlled substances, the driver shall be subject to unannounced follow-up testing as directed by the SAP for up to sixty (60) months after completing a treatment program.

7. Refusal to Submit and Attendant Consequences

***Consequences for refusals to submit to required drug and alcohol tests are addressed generally in 49 C.F.R. §§ 40.191, 40.261, and 382.211. They are more specifically addressed in 49 C.F.R. §§ 382.501-382.507 and in 49 U.S.C. § 521(b).***

- a. A driver or driver applicant may refuse to submit to drug and alcohol testing.
- b. Refusal to submit to a required drug or alcohol test subjects the driver or driver applicant to the consequences specified in federal regulations as well as the civil and/or criminal penalty provisions of 49 U.S.C. § 521(b). In addition, a refusal to submit to testing establishes a presumption that the driver or driver applicant would test positive if a test were conducted and makes the driver or driver applicant subject to discipline or disqualification under this policy.
- c. A driver applicant who refuses to submit to testing shall be disqualified from further consideration for the conditionally offered position.
- d. An employee who refuses to submit to testing shall not be permitted to perform safety-sensitive functions and will be considered insubordinate and subject to disciplinary action, up to and including dismissal. If an employee is offered an opportunity to return to a DOT safety-sensitive duty, the employee will be evaluated by a Substance Abuse Professional and must submit to a

return-to-duty test prior to being considered for reassignment to safety-sensitive functions.

- e. Drivers or driver applicants who refuse to submit to required testing will be required to sign Attachment C to this policy.

I. Testing Procedures

1. Drug Testing

***Effective August 1, 2001, the Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. 49 C.F.R. § 40.45.***

- a. Drug testing is conducted by analyzing a donor's urine specimen. Split urine samples will be collected in accordance with federal regulations. The donor will provide a urine sample at a designated collection site. The collection site personnel will then pour the sample into two sample bottles, labeled "primary" and "split," seal the specimen bottles, complete the chain of custody form, and prepare the specimen bottles for shipment to the testing laboratory for analysis. The specimen preparation shall be conducted in sight of the donor.
- b. If the donor is unable to provide the appropriate quantity of urine, the collection site person shall instruct the individual to drink up to forty (40) ounces of fluid distributed reasonably through a period of up to three (3) hours to attempt to provide a sample. If the individual is still unable to provide a complete sample, the test shall be discontinued and the school district notified. The Designated Employer Representative shall refer the donor for a medical evaluation to determine if the donor's inability to provide a specimen is genuine or constitutes a refusal to test. For pre-employment testing, the school district may elect to not have a referral made, and revoke the employment offer.
- c. Drug test results are reported directly to the Medical Review Officer (MRO) by the testing laboratory. The MRO reports the results to the Designated Employer Representative. If the results are negative, the school district is informed and no further action is necessary. If the test result is confirmed positive, adulterated, substituted, or invalid, the MRO shall give the donor an opportunity to discuss the test result. The MRO will contact the donor directly, on a confidential basis, to determine whether the donor wishes to discuss the test result. The MRO shall notify each

donor that the donor has seventy-two (72) hours from the time of notification in which to request a test of the split specimen at the donor's expense.

- d. If the donor requests an analysis of the split specimen within seventy-two (72) hours of having been informed of a confirmed positive test, the Medical Review Officer (MRO) shall direct, in writing, the laboratory to provide the split specimen to another Department of Health and Human Services – SAMHSA certified laboratory for analysis. If the donor has not contacted the MRO within seventy-two (72) hours, the donor may present the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the confirmed positive test, or other circumstances unavoidably prevented the donor from timely making contact. If the MRO concludes that there is a legitimate explanation for the donor's failure to contact him/her within seventy-two (72) hours, the MRO shall direct the analysis of the split specimen. 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 confirm and report a positive test result to the Designated Employer Representative and the employee when there is no legitimate medical reason for a positive test result as received from the testing laboratory.
- e. If, after making reasonable efforts and documenting those efforts, the Medical Review Officer (MRO) is unable to reach the donor directly, the MRO must contact the Designated Employer Representative (DER) who will direct the donor to contact the MRO. If the DER is unable to contact the donor, the donor will be suspended from performing safety-sensitive functions.
- f. The Medical Review Officer may confirm the test as a positive without having communicated directly with the donor about the test results under the following circumstances:
  - (1) The donor expressly declines the opportunity to discuss the test results;
  - (2) The donor has not contacted the Medical Review Officer within seventy-two (72) hours of being instructed to do so by the Designated Employer Representative; or
  - (3) The Medical Review Officer and the Designated Employer Representative, after making and documenting all reasonable efforts, have not been able to contact the donor

with ten (10) days of the date the confirmed test result was received from the laboratory.

2. Alcohol Testing

***Effective February 1, 2002, the DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. 49 C.F.R. § 40.225***

- a. The federal alcohol testing regulations require testing to be administered by a Breath Alcohol Technician using an Evidential Breath Testing Device (EBT) or a Screening Test Technician using an Alcohol Screening Device (ASD). EBTs and ASDs can be used for screening tests but only EBTs can be used for confirmation tests.
- b. Any test result less than 0.02 alcohol concentration is considered a “negative” test.
- c. If the donor is unable to provide sufficient saliva for an Alcohol Screening Device, the Designated Employer Representative will immediately arrange to use an Evidential Breath Testing Device. If the donor attempts and fails to provide an adequate amount of breath, the school district will direct the donor to obtain a written evaluation from a licensed physician to determine if the donor’s inability to provide a breath sample is genuine or constitutes a refusal to test.
- d. If the screening test results show alcohol concentration of 0.02 or higher, a confirmatory test conducted on an Evidential Breath Testing Device will be required to be performed between 15 and 30 minutes after the completion of the screening test.
- e. Alcohol tests are reported directly to the Designated Employer Representative.

J. Driver/Driver Applicant Rights

1. All drivers and driver applicants subject to the controlled substances testing provisions of this policy who receive a confirmed positive test result for the use of controlled substances have the right to request, at the driver’s or driver applicant’s expense, a confirming retest of the split urine sample. If the confirming retest is negative, no adverse action will be taken against the driver, and a driver applicant will be considered for employment.

*The limitation on discharge in Paragraph 2., below, is contained solely in Minnesota law. State law is preempted by federal laws and regulations as it relates to drivers of commercial motor vehicles (such as bus drivers). See Minn. Stat. § 221.031, Subd. 10. Nevertheless, school districts may decide to comply with the state law requirements for various reasons (such as to treat all school district employees equally since employees subject to testing only under state law are accorded these additional rights). Consultation with the school district's legal counsel is recommended.*

2. The school district will not discharge a driver who, for the first time, receives a confirmed positive drug or alcohol test UNLESS:
  - a. 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 the Substance Abuse Professional; and
  - b. The employee refuses to participate in the recommended program, or fails to successfully complete the program as evidenced by withdrawal before its completion or by a positive test result on a confirmatory test after completion of the program.
  - c. This limitation on employee discharge does not bar discharge of an employee for reasons independent of the first confirmed positive test result.

K. Testing Laboratory

The testing laboratory for controlled substances will be [***name, address, telephone number***], which is a laboratory certified by the Department of Health and Human Services – SAMHSA to perform controlled substances testing pursuant to federal regulations.

L. Confidentiality of Test Results

All alcohol and controlled substances test results and required records of the drug and alcohol testing program are considered confidential information under federal law and private data on individuals as that phrase is defined in Minn. Stat. Ch. 13. Any information concerning the individual's test results and records shall not be released without written permission of the individual, except as provided for by regulation or law.

M. Recordkeeping Requirements and Retention of Records

1. The school district shall keep and maintain records in accordance with the federal regulations in a secure location with controlled access.

*The federal recordkeeping requirements for school districts are detailed in the federal regulations 49 C.F.R. §§ 382.401 et seq. and 40.331. The Federal Department of Transportation (DOT) publishes a guide to the recordkeeping requirements of mandatory drug and alcohol testing for persons with a commercial driver's license as part of its Alcohol & Drugs: DOT Compliance Manual.*

2. The required records shall be retained for the following minimum periods:

Basic records	5 years
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“Basic records” includes records of: (a) alcohol test results with concentration of 0.02 or greater; (b) verified positive drug test results; (c) refusals to submit to required tests (including substituted or adulterated drug test results); (d) SAP reports; (e) all follow-up tests and schedules for follow-up tests; (f) calibration documentation; (g) administration of the testing programs; and (h) each annual calendar year summary.

Information obtained from previous employers	3 years
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Collection records	2 years
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Negative and cancelled drug tests	1 year
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Alcohol tests with less than 0.02 concentration	1 year
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Education and training records	
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Indefinite

“Education and training records” must be maintained while the individuals perform the functions which require training and for the two (2) years after ceasing to perform those functions.

N. Training

The school district shall ensure all persons designated to supervise drivers receive training. The designated employees shall receive at least sixty (60) minutes of training on alcohol misuse and at least sixty (60) minutes of training on controlled substances use. The training shall include physical, behavioral, speech, and performance indicators of probable



misuse of alcohol and use of controlled substances. The training will be used by the supervisors to make determinations of reasonable suspicion.

O. Consequences of Prohibited Conduct and Enforcement

1. Removal. The school district shall remove a driver who has engaged in prohibited conduct from safety-sensitive functions. A driver shall not be permitted to return to safety-sensitive functions until and unless the return-to-duty requirements of federal DOT regulations have been completed.

2. Referral, Evaluation, and Treatment

a. A driver or driver applicant who has engaged in prohibited conduct shall be provided a listing of Substance Abuse Professionals readily available to the driver or applicant and acceptable to the school district.

*Subparagraphs b. and c., below, are based on the provisions of 49 C.F.R. § 40.289.*

b. If the school district offers a driver an opportunity to return to a DOT safety-sensitive duty following a violation, the driver must be evaluated by a Substance Abuse Professional (SAP) and the driver is required to successfully comply with the SAP's evaluation recommendations (education, treatment, follow-up evaluation(s), and/or ongoing services). The school district is not required to provide a SAP evaluation or any subsequent recommended education or treatment.

School districts are not required to comply with state law governing drug and alcohol testing when the individuals are subject to the federal laws and regulations (i.e. bus drivers). If a school district, after consultation with legal counsel, chooses to comply voluntarily with these requirements, Subparagraph b., above, can be modified as follows:

The school district will offer a driver an opportunity to return to a DOT safety-sensitive duty following an employee's first positive test result on a confirmatory test if there are no reasons independent of the first test result for discharge. Otherwise, the school district may choose, but is not required, to provide a Substance Abuse Professional evaluation or any subsequent recommended education or treatment.

- c. Drivers are responsible for payment for Substance Abuse Professional evaluations and services unless a collective bargaining agreement or employee benefit plan provides otherwise.
- d. Drivers who engage in prohibited conduct also are required to comply with follow-up testing requirements.

3. Disciplinary Action

- a. Any driver who refuses to submit to post-accident, random, reasonable suspicion, or follow-up testing not only shall not perform or continue to perform safety-sensitive functions, but also may be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- b. Drivers who test positive with verification of a confirmatory test or are otherwise found to be in violation of this policy or the federal regulations shall be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- c. Nothing in this policy limits or restricts the right of the school district to discipline or discharge a driver for conduct which not only constitutes prohibited conduct under this policy but also violates the school district's other rules or policies.

P. Other Testing

The school district may request or require that drivers submit to drug and alcohol testing other than that required by federal law. For example, drivers may be requested or required to undergo drug and alcohol testing on an annual basis as part of a routine physical examination. Such additional testing of drivers will be conducted only in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957. For purposes of such additional, non-mandatory testing, drivers fall within the definition of "other employees" covered by Section IV. of this policy.

***When the testing of drivers complies with federal testing requirements and procedures, school districts clearly are exempt from the state drug and alcohol testing requirements in Minn. Stat. §§ 181.950-181.957. See Minn. Stat. § 221.031, Subd. 10. When testing beyond the federally mandated requirements, however, school districts still must comply with state law.***

***Legal References:*** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. Ch. 43A (State Personnel Management)  
Minn. Stat. § 152.22 (Medical Cannabis; Definitions)  
Minn. Stat. § 152.23 (Medical Cannabis; Limitations)  
Minn. Stat. § 152.32 (Protections for Registry Program Participation)  
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 U.S.C. § 521(b) (Civil and Criminal Penalties for Violations)  
49 C.F.R. Parts 40 and 382 (Department of Transportation Rules Implementing Omnibus Transportation Employee Testing Act of 1991)

***Cross-References:*** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 417 (Chemical Use and Abuse)  
MSBA/MASA Model Policy 418 (Drug-Free Workplace/Drug-Free School)