

PROCEDURE 416 – DRUG AND ALCOHOL TESTING

I. DEFINITIONS

- A. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
- B. "Alcohol and/or Drug Testing" means analysis of a body component sample according to the standards established under one of the programs authorized under state law to perform the test for employers, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
- C. "CDL" means a commercial driver's license.
- D. "CDL Employee" means an employee in a safety-sensitive position.
- E. "Confirmatory test" or "confirmatory retest" means a drug or alcohol test that uses a method of analysis allowed under state law.
- F. "Drug" means any substance (other than alcohol) that is a controlled substance as defined in Minn. Stat. § 152.01, subd. 4.
- G. "Employee", unless otherwise noted, means an employee of the school district whose job duties do not include safety-sensitive functions or require holding a commercial driver's license (CDL).
- H. "Follow-up Testing" means unannounced testing of a CDL employee after 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 testing directed by the SAP may be for up to sixty (60) months after completing a treatment program.
- I. "Initial screening test" means a drug or alcohol test that uses a method of analysis under one of the programs allowed by state law for alcohol and/or drug testing for employees.
- J. "Medical Review Officer" (MRO) means a physician who reviews all drug tests and reports them back to the employer.
- K. "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 used to conduct an alcohol and/or drug test.
- L. "Post-Accident Testing" means testing is done as soon as practicable following an accident involving a commercial motor vehicle 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. Pursuant to 49 CFR 382.303, alcohol tests shall be administered two hours following the accident. If a test required under this section is not administered within two hours, the district shall maintain a file stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the school district must cease attempts to administer an alcohol test and will prepare a record stating the reasons the test was not promptly administered.
- M. "Random Testing" means tests on a random basis at unannounced times throughout the year, as required by the federal regulations.
- N. "Reasonable suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
- O. "Return to Duty Testing" means testing of a CDL employee found to have violated this policy who has successfully complied with prescribed education and/or treatment conducted prior to the employee's return to duty.
- P. "Safety-sensitive positions" are positions requiring a commercial driver's license (CDL) as a qualification of employment and may include truck drivers, custodian positions of district grounds lead, outside/ice arena, carpenter lead, outside person, maintenance mechanic.

- Q. "Safety-sensitive functions" means any of the following:
1. Driving, operating, or being in physical control of a vehicle; the time spent waiting to be dispatched or remaining in readiness to operate the vehicle; inspecting servicing or conditioning equipment; being in or on a commercial motor vehicle; loading or unloading the vehicle; securing the vehicle and time spent performing the driver requirements associated with an accident; and
 2. Repairing, obtaining assistance for, or attending to a disabled vehicle.

II REQUIRED NOTICES

- A. The school district will provide notice of its drug testing policy for all employees and will post notice of the policy in an appropriate and conspicuous location at each school district site. The notice will notify employees of the availability of Policy and Procedure 416, at each school district site, for inspection and copying. Policy and Procedure 416 are also available on the school district's website.
- B. Before requesting or requiring an employee to undergo alcohol or drug testing, the school district will provide the employee with written notice on which to acknowledge that the employee has seen the district's alcohol and drug testing policy.
- C. Employees subject to testing will receive notice of test results reported to the school district, and a notice of various rights including limitations on employee discharge, discipline, and discrimination within three working days after the school district receives the report from the testing laboratory. This notice must include discussion of the employee's right to a copy of the test results, their right to explain the test result, and their right to request a confirmatory retest.

III EMPLOYEE RIGHTS

- A. Employees who undergo testing have the right to request copies of their test results.
- B. Employees will be given the opportunity to explain any positive confirmatory test result within three working days after receiving notice of such a result.
- C. An employee, whose confirmatory test result is positive, may request a confirmatory retest, at the employee's own expense. Such a request must be made within five working days after the employee was notified of the positive test result.
- D. 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. The school district may temporarily place the employee on administrative leave or transfer the 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 determines that it is reasonably necessary to protect the health or safety of the employee, the employee's coworkers, students or the public.
- E. The school district will reinstate any employee who has been transferred on the basis of an initial screening result if the confirmatory test or requested confirmatory retest is negative.
- F. The school district will provide to employees access to information in their personnel file relating to positive test result reports and other information acquired in the alcohol and drug testing process and conclusions drawn from and actions taken based on the reports or other acquired information.
- G. The school district will maintain test result reports and other information acquired in the drug and alcohol testing process as private data on individuals and will not disclose the reports or other information without the express written consent of the employee tested unless authorized by law in the circumstances set out in III.H. below.
- H. Evidence of a positive test result may be:
 1. Used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minn. Stat. ch. 43A or other 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/or
 3. Disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.
- I. Positive test results may not be used as evidence in a criminal action against the employee tested.

IV PROHIBITIONS

The following employee conduct is prohibited:

- A. Using, being under the influence of, or possessing illegal drugs;
- B. Using, or being under the influence of legal drugs whether or not prescribed for the employee that are being used at a level that adversely affects the employee's job performance;
- C. Reporting for work under the influence of alcohol or being under the influence of alcohol while at work.

V ALCOHOL AND DRUG TESTING OF EMPLOYEES REQUIRED TO HOLD A COMMERCIAL DRIVER'S LICENSE (CDL)

- A. Employees who are in safety-sensitive positions are required to undergo alcohol and drug testing in accordance with rules established by the Federal Highway Administration. The Department of Transportation (DOT) recognizes only urinalysis as a valid means for drug testing.
 1. The employees in safety sensitive positions will be subject to the following required types of alcohol and drug tests: pre-employment, post-accident, reasonable suspicion, random, return-to duty and follow-up.
 2. Employee alcohol and drug testing records are confidential but available to the tested employee. Test results and other confidential information will only be released to the employee's supervisor(s), district human resources officials and the substance abuse professional who is evaluating the employee.
- B. No employee in a safety-sensitive position will:
 1. Use alcohol or be under the influence of alcohol within four hours before going on duty or operating or having physical control of a commercial motor vehicle;
 2. Use alcohol, be under the influence of alcohol or have any measured alcohol concentration or detected presence of alcohol while on duty or operating or in physical control of a commercial motor vehicle;
 3. Be on duty or operate a commercial motor vehicle while in possession of an alcoholic beverage;
 4. Be on duty or operate a commercial motor vehicle if, by his or her general appearance or conduct or by other substantiating evidence, he or she appears to have used alcohol within the preceding four hours; or
 5. Engage in the illicit use of drugs on or off duty.
- C. The school district will provide employees in safety-sensitive positions with education and training on how alcohol and drugs might affect them and training on how to document behavioral changes in employees who might be abusing drugs.

VI TESTING METHODS FOR NON-SAFETY-SENSITIVE AND NON-CDL EMPLOYEES

All testing will be conducted by an approved facility.

A. Alcohol Testing

Alcohol testing will be done by analyzing an employee's bodily fluids through tests administered by the certified laboratory. The employee provides a sample to the school district's collector in a location that affords privacy, and the collector seals and labels the specimen, completes a chain of custody

document, and prepares the specimen and accompanying paperwork for shipment to a drug testing laboratory that is licensed, accredited, or certified pursuant to Minnesota Statutes § 181.953. The specimen must always be in the possession of, in view of, or must be placed in a secure area by the person authorized to handle the sample.

1. The specimen is divided into two bottles and labeled as "primary" and "split" specimen.
2. A screening test will be conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test.
3. A second, or confirmation, test will be conducted if the alcohol concentration in the screening test is 0.02 or greater.
4. Only the primary specimen is opened and used for the analysis by the testing laboratory. The split specimen bottle remains sealed and is stored at the laboratory.
5. If the analysis of the primary specimen confirms the presence of alcohol, the original testing laboratory will conduct a confirmatory test pursuant to the Minnesota Statutes §181.953. The employee will be notified of the positive results in writing within 72 hours and may request an additional confirmatory test and will have 72 hours to request the split specimen to be sent for analysis at the original laboratory or another certified testing laboratory licensed, accredited, or certified pursuant to Minnesota Statutes § 181.952.

B. Drug Testing

Drug testing will be done by analyzing an employee's urine specimen. The employee provides a urine specimen in a location that affords privacy, and the "collector" seals and labels the specimen, completes a chain of custody document, and prepares the specimen and accompanying paperwork for shipment to a drug testing laboratory that is licensed, accredited, or certified pursuant to Minnesota Statutes §181.953. Pursuant to Minnesota Statutes §181.953, the specimen must always be in the possession of, in view of, or must be placed in a secure area by the person authorized to handle the sample.

1. The specimen is divided into two bottles labeled as a "primary" and a "split" specimen.
2. Only the primary specimen is opened and used for the urinalysis by the drug testing laboratory. The split specimen bottle remains sealed and is stored at the laboratory.
3. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the original testing laboratory shall conduct a confirmatory test pursuant to Minnesota Statutes §181.953 subd. 3. The employee will be notified of the positive results in writing within 72 hours and may request an additional confirmatory test of the split specimen at the original laboratory or another drug testing laboratory licensed, accredited, or certified pursuant to Minnesota Statutes §181.952.

C. The refusal by an employee to take a required test will be documented by the employee's supervisor.

VII RESPONSE TO RESULTS OF ALCOHOL AND DRUG TESTS OF EMPLOYEES IN SAFETY-SENSITIVE POSITIONS

A. Alcohol

1. An employee who has any alcohol concentration in their breath when tested just before, during or just after performing a safety-sensitive function will be removed from performing safety-sensitive duties for at least 24 hours.
2. No employee will use alcohol while performing safety-sensitive functions. No employee will perform safety-sensitive functions within four hours after using alcohol. No employee will report for duty or remain on duty requiring the performance of a safety-sensitive function while having an alcohol concentration of 0.02 or greater. An employee with an alcohol concentration of 0.02 or greater will be immediately removed from functions which require a CDL and upon the application of all required testing procedures and rights, will either be reassigned to duties that do not require a commercial driver's license or terminated from employment.

3. The district will advise the employee of the resources available to help evaluate and resolve problems associated with misuse of alcohol, including the names, addresses and telephone numbers of substance abuse professionals, counseling centers and treatment programs.
4. If a breath test cannot be administered to an employee whose behavior or appearance suggests alcohol misuse, the employee will be removed from performing duties which require a CDL for at least 24 hours.

B. Drugs

1. An employee who has a positive drug test result will be removed from duty which requires a CDL after the employee has been interviewed by a medical review officer (MRO) and the MRO has determined that the positive drug test resulted from the unauthorized use of a controlled substance. At the discretion of the school district, the employee may either be reassigned to duties that do not require a CDL or terminated from employment.
2. The district will advise the employee of the resources available to help evaluate and resolve problems associated with misuse of controlled substances, including the names, addresses and telephone numbers of substance abuse professionals, counseling centers and treatment programs.
3. If the employee refuses to take a required test, the employee will be prohibited from performing safety-sensitive functions and will be subject to appropriate disciplinary action up to and including termination.

C. Termination

The employee may be terminated if one or more of the following items apply to that employee.

1. The employee has a confirmed alcohol test result with a concentration of 0.02 or greater;
2. The employee has a positive drug test for the unauthorized use of a controlled substance, and/or
3. The employee is disqualified from driving a commercial motor vehicle as a result of the requirements of state or federal law.

VIII EDUCATIONAL MATERIALS

The school district will provide educational materials to affected employees to meet the requirements of 49 C.F.R. Part 382.601. Each driver employee in a safety-sensitive position will be required to sign a statement certifying receipt of the educational materials. The school district will maintain the statement. Written notice of the availability of the educational materials will also be provided to representatives of employee organizations.

Procedure 416 Revised: 10/20/15

Procedure 416 Adopted: 2/2/99

(formerly Procedure 4255)

Procedure Dated: 2/6/96

Legal References

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)

M. S. 181.950-.957 (Drug and Alcohol Testing in the Workplace)

Law Enforcement labor Services, Inc. v. Sherburne County, et al., 695 N.W.2d 630 (Minn. App. 2005)
Policies 417, 418