

## **Policy Information**

### **Series 5000 - Personnel**

#### **Drug Testing in Safety Sensitive Positions**

Policy # 5162, 1.6.2

## **POLICY**

1995 5162

Personnel

### **SUBJECT: DRUG TESTING IN SAFETY SENSITIVE POSITIONS**

In recognition of the need to protect students, staff, and the community from the operation of district buses and large motor vehicles by those impaired by drugs, the following policy is enacted. The Genesee Valley BOCES in accordance with the Federal Omnibus Transportation Employee Testing Act of 1991, will implement alcohol and controlled substance testing for those who hold a commercial driver's license and who operate or stand ready to operate a commercial motor vehicle. Testing will occur in a variety of situations such as:

1. pre-employment
2. post-accident
3. random
4. reasonable suspicion
5. return to duty
6. follow-up testing

The District Superintendent is directed to enact regulations as needed consistent with the law.

Omnibus Transportation Employee Testing Act of 1991

Board Approved  
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ADMINISTRATIVE REGULATION  
Personnel

### **SUBJECT: ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR SAFETY SENSITIVE EMPLOYEES**

In recognition of the need to protect students, staff, and the community from operation of district buses and large motor vehicles by those impaired by drugs, the following regulation is enacted. The district, in

accordance with the Omnibus transportation Employee Testing Act of 1991, will conduct an alcohol tests and a controlled substance tests on safety sensitive employees. (Hereinafter referred to as "SSE") Alcohol is defined as the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols. A controlled substance includes marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). [49 CFR 382.107; 49 CFR 40.21]

## **EMPLOYEES SUBJECT TO TESTING**

SSE include any/all employees who are full-time, part-time, under contract with the district, or act as a substitute; who hold a commercial driver's license and who operate or stand ready to operate a commercial motor vehicle when used to transport passengers or property when:

- a. The vehicle has a gross combination weight rating of 26,001 or more pounds; or
- b. The vehicle is designed to transport 16 or more passengers including the driver; or
- c. The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding.
- d. The vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.

[49 CFR 382.107]

Generally all bus drivers and drivers of large motor vehicles will be tested.

## **TESTING**

Alcohol testing and controlled substance testing will be performed at a designated collection site, with the exception of certain post-accident tests which may be performed at the scene of the accident. Testing will occur in the following situations:

Pre-employment [controlled substance testing only] Random testing  
Based on reasonable suspicion Post-accident  
Return to duty  
Follow-up testing after an employee has returned to duty

The procedures for both alcohol and controlled substance testing at the collection site will be in compliance with the federal law. [39 CFR Part 40]

## **ALCOHOL AND CONTROLLED SUBSTANCE USE PROHIBITIONS**

No SSE can engage in alcohol use while performing safety sensitive functions. No SSE can remain on duty where his/her alcohol concentration level is 0.04 or greater. No SSE can report for duty where his/her alcohol concentration level is 0.04 or greater. No SSE can perform the safety sensitive function within four hours after using alcohol. No SSE can be on duty or operate a safety sensitive function who is in possession of alcohol unless the alcohol is transported as part of a shipment. No SSE can use alcohol during eight hours following an accident or until he/she undergoes a post accident test. No SSE can refuse to take a required test. [CFR 382.201, 204, 205, 207]

No SSE will remain on duty or report for duty if the SSE has tested positive for a controlled substance. If an SSE is utilizing a controlled substance for therapeutic use, the SSE shall notify the district of the use of such a drug use and include a note from the licensed physician informing the SSE such use would not adversely affect the performance of safety sensitive functions. [49 CFR 382.213(c); 49 CFR 382.213, 215]

## **CONSEQUENCES AND PENALTIES**

The following will result if an employee violates one of the prohibitions of alcohol or drug use:

1. The driver will be prohibited from performing a safety sensitive function.
2. The driver will be advised by the employer of the resources available in evaluating or resolving the problem. This will include the names addresses and telephone numbers of substance abuse professional and counseling and treatment programs.
3. The driver will be evaluated by a substance abuse professional "SAP" who will determine what assistance if any, the employee needs in resolving the problems associated with alcohol and drug use. Before returning to duty the employee must comply with the recommendations of the substance abuse professional.
4. Before returning to duty the driver must undergo a return to duty test for alcohol, if the prohibited conduct involved alcohol or drugs, if the conduct involved drugs. The tests for alcohol must be less than .02 and the controlled substance test must be a verified negative result.
5. In addition, if the driver was identified as needing assistance in resolving the problem, the driver must:
  - \* be evaluated by the SAP to determine that the driver properly followed any prescribed rehabilitation program, and
  - \* be subject to unannounced follow-up alcohol and drug tests administered by the employer following the driver's return to duty. The number and frequency of the tests are to be determined by the SAP, but must consist of at least six tests during the first 12 months following the driver's return to duty. Follow-up testing may be conducted for up to 60 months.
6. Employers and drivers who violate these rules, which do not provide for convictions by enforcement officials or CDL disqualifications, are subject to penalties of up to \$10,000

## **1. Pre-Employment Tests**

A safety sensitive applicant prior to the performance of a safety sensitive function will be required to submit to a controlled substance test through the collection of a urine sample at a designated collection site. If the test yields a positive result the employment offer will be revoked. [39 CFR 382.215] The district will notify the safety sensitive applicant of the test results upon the safety sensitive applicant's request. Such request must be made within 60 calendar days of the notification of disposition of the employment application. [49 CFR 382.411]

No later than 14 calendar days after the SSE applicant performs a safety sensitive function for the district, upon consent of the employee, the district will obtain information from previous employers over the preceding two years related to positive controlled substance test results and any refusal to be tested. The information obtained from the prospective employer may take any form i.e. personal interviews or telephone calls. [49 CFR 382.413(f)] [49 CFR 382.413] The district will not continue to allow the new safety sensitive employee to perform safety sensitive functions where the district obtains information that the applicant had tested positive for a controlled substance, or had refused to submit to a test, without first having the employee evaluated by a substance abuse professional. [49 CFR 382.413].

## **2. Random Testing**

The district shall conduct random controlled substance testing and alcohol testing on an unannounced basis. The SSE will be notified by the Director of Transportation, or her designee, 1 immediately prior to the

time the SSE will be sent to the collection site for testing.

The SSE will be reimbursed for mileage to and from the collection site at the current board approved rate. A SSE will be reimbursed for lost time only. Lost time means that time the SSE would actually be performing functions and receiving pay from the district for those functions.

## **RANDOM ALCOHOL TESTS**

Currently random alcohol tests will be administered at an annual rate of 25% the average number of driver positions. The random selection process will ensure that each employee has an equal chance of being selected. A SSE will be sent for testing immediately before, during or immediately after performing a safety sensitive function. [49 CFR 382.305(1)] With regard to random alcohol tests, the SSE will be tested through administration of a breathalyser. If the breathalyser result registers between .02 to .04, the SSE will be retested in 20 minutes to allow for dissipation of alcohol contained in legal oral products (i.e. mouthwash). If the second breathalyser result registers .02 to .04, the technician will notify the district of a positive result. The SSE will be immediately removed from performing safety sensitive functions on a temporary basis and subject to discipline up to and including termination. The SSE will be evaluated by a substance abuse professional and must comply with any rehabilitation recommended. The SSE will not be permitted to perform safety sensitive functions until completion of the rehabilitation. In addition before the employee is returned to his or her position he/she must undergo return to duty testing. Follow-up testing will also be conducted. No employee will return to work less than 24 hours after a positive confirmation test. [49 CFR 382.505]

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The Assistant Superintendent of Business will be notified should the Director of Transportation's name be chosen for a random test.

If the SSE has a return to work test of greater than .04 the SSE will immediately be suspended from his position without pay pending a §75 Civil Service hearing or with pay pending a 3020A hearing. For those SSE not protected by Civil Service Law §75 or 3020A hearing the employee will be suspended without pay pending board action to terminate the SSE's services.

If the result of the return to duty test registers between .02 and .04 the SSE will be retested in 20 minutes. If the result of the second breathalyser test registers greater than .02 but less than .04 the SSE will be suspended without pay pending a Civil Service Law §75 hearing or with pay pending a 3020A hearing. For SSE not protected by Civil Service Law §75 or 3020A, the SSE services will be suspended without pay pending board action to terminate his services.

## **RANDOM DRUG TESTING**

Random controlled substance testing will be administered at an annual rate of 50% the average number of driver positions. Random testing may be performed anytime the driver is at work for the employer. With regard to controlled substance testing, the SSE will be tested by providing a urine specimen which will be split into two samples. If an initial or confirmation test is negative the lab shall report the result as negative. [49 CFR 40.29 (g)(2)] If an initial test is positive, the technician will perform a subsequent test to determine if the controlled substances are present. If the second test result is positive, the positive result is reported to the medical review officer. (Hereinafter referred to as "MRO")

The MRO shall review all medical records made available by the SSE, examine all alternate medical explanations for a positive result and contact the SSE to discuss the positive result. [49 CFR 40.33(b)(3);(c);(d)] If the MRO determines a legitimate medical explanation exists for the positive result, (legal prescription or non-prescription medication) the MRO shall report the test to the district as negative. However, if the legal prescription or non-prescription medication is being taken in excess, the MRO will report the result as positive. [49 CFR 40.33(b)(3);(c);(d)] At this point, the SSE will be suspended without pay pending a Civil Service Law §75 hearing or with pay pending a 3020A hearing. Those SSE not protected by Civil Service §75 or 3020A will be suspended without pay pending board of education action to terminate his services.

In the event the SSE disputes the positive result, the SSE may request a reanalysis from the split urine sample within 72 hours of receiving notice of a positive result. [49 CFR 40.33(f)] The SSE will be suspended without pay pending the reanalysis. The SSE shall be solely responsible for the cost incurred for the reanalysis. If the results of the reanalysis yields positive the SSE will be suspended without pay pending a Civil Service §75 hearing or with pay pending a 3020A hearing. For those SSE not protected by Civil Service Law §75 or 3020A, the SSE will be suspended without pay pending board of

education action to terminate his services.

If the split specimen for reanalysis is unavailable, inadequate or untestable, the MRO shall cancel the test and report the cancellation and the reasons to the Department of Transportation (hereinafter referred to as "DOT"), employer and employee. [49 CFR 40.33(f)] In this instance the SSE will be suspended without pay until another controlled substance test may be performed.

If the reanalysis confirms positive the SSE will be suspended without pay pending a Civil Service Law §75 hearing or with pay pending a 3020A hearing. If they are not covered by Section 75 or 3020A, they will be suspended without pay pending board action to terminate his/her services. If reanalysis confirms negative, SSE will be restored to his safety sensitive duties.

If the employee has not requested a reanalysis within 72 hours and provides the MRO with documentation of a serious illness, injury, inability to contact MRO, lack of actual notice of a verified positive result or other unavoidable circumstances prevented the employee from timely contacting the MRO within 72 hours, the MRO, if he/she concludes a legitimate explanation exists, may direct a reanalysis from the split specimen. [49 CFR 40.33(g)]

In the event the MRO is unable to contact the SSE to discuss the positive result, the MRO will contact the Director of Transportation who will direct the employee to contact the MRO within 24 hours. [49 CFR 382.411(b)] The Director of Transportation will notify the MRO that he/she contacted the employee and directed him/her to contact the MRO within 24 hours. [49 CFR 382.411(6)] If five days have lapsed since the Director of Transportation directed the employee to contact the MRO and the employee has still not contacted the MRO, the MRO may report the result as positive. [49 CFR 40.33(c)(5)(ii)] The SSE will then be suspended without pay pending a Civil Service Law §75 hearing or with pay pending a 3020A hearing. For those SSE not protected by Civil Service Law §75 or 3020A, the SSE will be suspended without pay pending the board's action to terminate his services. [However, the MRO is authorized to reopen a reported positive result in this instance in accordance with federal law [49 CFR 40.33(c)(6)]]

The MRO may report a positive result where the employee declines the opportunity to discuss the test. [49 CFR 40.33(c)(5)(I)] In this situation the SSE will be immediately suspended without pay pending a Civil Service §75 hearing or with pay pending a 3020A hearing. A SSE not protected by Civil Service Law §75 or 3020A, will be suspended without pay until board action to terminate his services. The MRO may report a positive result under other circumstances provided in the DOT agency regulations. [49 CFR 40.33(c)(5)(iii)]

### **3. Reasonable Suspicion**

Certain district personnel will be required to participate in training programs (two required 60 minute sessions) to recognize the actions, appearance, conduct, odor, speech, and/or behavior of a SSE under the influence of alcohol or a controlled substance. If at least one [supervisor] has reasonable suspicion based on specific, contemporaneous observations to believe the SSE is under the influence the supervisor will require the SSE to submit the appropriate alcohol test or controlled substance test. [49 CFR 382.307(a)] The [supervisor] shall document and sign a statement of his/her observation and basis for reasonable cause within 24- hours of the observation or before the results of the tests are released, whichever is earlier. [49 CFR 382.307(f)] The SSE will be transported by district vehicle or through district arranged means to the collection site. The district will arrange but will not incur the cost of transporting the SSE home. The SSE will be paid for lost time only. The SSE will be suspended without pay pending the results of the alcohol and/or controlled substance test.

The following regulation applies only where the district has been asked to prepare an annual summary by the Department of Labor. If the alcohol test is not administered within two hours, the district shall document the reasons the test was not administered promptly. [49 CFR 382.307(e)(1)] If the alcohol test is not administered within 8 hours of the observation the district shall cease attempts to administer the alcohol test and state the reasons for not administering the test. This document shall be submitted if requested, as part of the Management Information System in accordance with federal law. [49 CFR 382.307(e)(1);(2)]

Alcohol and drug tests under reasonable suspicion testing will be conducted in the same manner as random testing.

### **4. Post Accident**

A SSE involved in an accident shall submit to an alcohol test and a controlled substance test immediately, but not later than 32 hours, under the following conditions:

- a. a fatality was involved; or
- b. SSE receives a moving violation citation under state or local law and any person receives a bodily injury which required immediate medical treatment away from the scene of the accident; or
- c. Where the SSE receives a moving violation citation under state or local law and one or more vehicles incurred disabling damage requiring the vehicle to be transported away from the scene by tow truck or other vehicle.

The district shall cease attempts for the SSE to submit to an alcohol test not administered within eight hours of the accident. If the test is not administered within 2 hours, the district shall maintain a record setting forth the reasons why the test was not promptly administered. [49 CFR 382.303(b)(1)] Where employers are notified to submit an annual summary of drug and alcohol, the employer shall prepare a management information system report documenting the fact a test required by this section was not completed within 8 hours. [49 CFR 382.303(b)(2)]

A SSE shall be readily available for testing after the accident and if he/she is not available the district may construe this action as a positive result. [49 CFR 382.303(c)] A SSE involved in an accident required to undergo alcohol testing may not use alcohol for 8 hours following the accident or until the safety sensitive employee has undergone an alcohol test. [49 CFR 382.209]

The results of an alcohol test or controlled substance test conducted by a federal, state or local agency having independent authority to conduct the test shall fulfill the requirements of this regulation provided the district obtains a copy of that report and the test conforms to the federal regulations in this area. (39 CFR Part 40) [49 CFR 383.303(e)]

A SSE injured at the scene of the accident and, therefore, unable to provide a urine specimen shall provide authorization for the release of hospital records which would indicate if controlled substances were present. [49 CFR 391.113(b)]

Testing will be conducted in the same manner as the random drug testing procedures.

## **5. Return to Duty Testing**

A SSE who violated the alcohol misuse rule or controlled substance misuse rule will be referred by the district to a substance abuse professional "SAP". The SSE will bear the expense incurred connected with rehabilitation. A SSE will not be permitted to return to duty to a safety sensitive function until the SSE tests negative for a controlled substance test or measures .02 or less on a breathalyser for an alcohol test. [49 CFR 382.309] Return to duty tests need not be confined to the substance involved in the violation. Alcohol and drugs may be tested if the substance abuse professional makes such determination.

## **6. Follow Up Testing**

A SSE who returns to duty, subject to part 5 above, is subject to random follow up alcohol tests and controlled substance tests as recommended by a substance abuse professional, but for a minimum of at least 6 unannounced tests within the SSE's first 12 months return to duty up to a maximum of 60 months. [49 CFR 382.311; 382.605(e)(2)(ii)] Return to duty tests need not be confined to the substance involved in the violation. Alcohol and drugs may be tested if the substance abuse professional makes such determination.

## **7. Refusal To Submit**

A refusal to submit to any alcohol or controlled substance test will be construed as a positive result. In that situation the SSE will be suspended without pay pending a Civil Service Law §75 hearing or with pay pending a 3020A hearing, or if the SSE is not protected under Civil Service Law §75 or 3020A, the SSE will be suspended without pay pending board action to terminate the SSE's services. Refusal to submit means: 1) Failure to provide adequate breath for an alcohol test or failure to provide adequate urine for a specimen test without genuine "valid" medical excuse/explanation; or 2) engages in conduct which clearly obstructs the testing process. [49 CFR 382.107] Within two days the employee shall provide the district with documentation furnished by the doctor that the SSE has an ongoing medical inability to provide an adequate amount of breath

or urine. [49 CFR 40.69]

## **8. Notification**

The SSE is entitled to notification of a positive result and what controlled substance(s) was (were) identified as positive. [49 CFR 382.411(a)]

## **9. Confidentiality**

All records related to the administration of an alcohol test or a controlled substance test or other records required to be maintained under this law shall remain confidential unless otherwise allowed by law or unless the employee authorizes such a release. The SSE may by written request receive all records related to his/her alcohol and/or controlled substance tests. [49 CFR 382.405]

## **10. Educational Materials**

All SSE will be provided with educational materials in accordance with federal law related to the above regulations. Each SSE will sign a written statement acknowledging receipt of the educational materials. The statement bearing the SSE original signature will be kept on file by the district. The SSE shall be entitled to a copy of the written statement acknowledging his/her receipt of the educational materials. [CFR 382.601(d)]

## **11. Testing Procedures**

Testing procedures related to the aforementioned tests shall be in compliance with Part 40 of the Code of Federal Regulations.

## **12. Training**

District personnel designated to determine whether reasonable suspicion exists to require an SSE to undergo an alcohol or controlled substance test shall receive at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substance misuse, including physical, behavioral, speech and performance indicators of probable alcohol misuse and/or controlled substance misuse. [49 CFR 382.603]

## **RECORD KEEPING**

### **Required Records**

Sec. 382.401 specifies the records to be kept and the time periods. The records must be kept in a secure location with controlled access. The records will be kept separate from personnel records that have controlled and secure access only by authorized personnel.

#### **1. Records related to the collection process:**

- Collection logbooks (if used)
- Documents related to the random section process
- Calibration documentation for EBTs
- Documentation of Breath Alcohol Technician (BAT) training
- Documentation of reasoning for reasonable suspicion testing
- Documentation of reasoning for post-accident testing
- Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing
- Consolidated annual calendar year summaries

#### **2. Records related to the driver's test results:**

- Employer's copy of the alcohol test form, including results
- Employer's copy of the drug test chain of custody and control form
- Documents sent to the employer by the Medical Review Officer

- Documentation of any driver's refusal to submit to a required alcohol or drug test
- Documents provided by a driver to dispute results of test

**3. Documentation of any other violations of drug use or alcohol misuse rules.**

**4. Records related to evaluations:**

- Records pertaining to substance abuse professional's (SAP's) determination of a driver's need for assistance
- Records concerning a driver's compliance with SAP's recommendations

**5. Records related to education and training:**

- Materials on drug and alcohol awareness, including copy of employer's policy on alcohol and drug use
- Documentation of employee receipt of educational materials (signed by employee)
- Documentation of supervisor training
- Certification that training was conducted under this rule complies with the requirements of the regulation

**6. Records related to drug testing:**

- Any agreements made with collection sites or facilities or other pursuant to the regulations
- Names of employees and their role in the drug testing process
- Monthly statistical analysis of urinalysis received from certified laboratories
- The employer's drug testing policy and procedure

All records should be kept for a minimum of 5 years. An employee is entitled upon request to all records pertaining to testing. A subsequent employer is entitled to employee testing records upon written request of a former employee.

Board Approved  
4/16/96