

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS **AR 4020**
~~-FREE WORKPLACE (All Personnel)~~

The Superintendent shall:

- ~~1. Publish and give to each employee a notification of the Board's policy mandating a drug-free and alcohol-free workplace. Employees shall sign an acknowledgement of receipt of the policy and it will be placed in their personnel file. The notification shall specify the actions that will be taken against employees who violate these prohibitions. It also shall state that as a condition of employment, the employee will abide by the terms of this policy and notify the employer of any criminal drug or alcohol conviction for a violation occurring in the workplace. Such notice by the employee must be made within five (5) days from the date of the conviction.~~
- ~~2. For the purpose of this policy, "conviction" shall mean a finding of guilt by any judicial body charged to determine violations of federal or state criminal drug or alcohol laws, whether such finding is made following a trial or by entry of a plea of guilty or nolo contendere.~~
- ~~3. Establish a drug and alcohol awareness program to inform employees about:~~
 - ~~a. The dangers of drug and alcohol abuse in the workplace;~~
 - ~~b. The district policy of maintaining drug-free and alcohol-free workplaces;~~
 - ~~c. Any available drug and alcohol counseling, rehabilitation, and employee assistance programs known to the district;~~
 - ~~d. The penalties that may be imposed on employees for drug and alcohol abuse violations.~~
- ~~4. Notify the appropriate federal granting or contracting agencies within ten days after receiving notification from an employee, or otherwise, of any conviction for a violation occurring in the workplace.~~
- ~~5. Initiate disciplinary action within 30 days after receiving notice from an employee, or otherwise, of a conviction for a violation in the workplace. Such action shall be consistent with state and federal law, the appropriate employment contract, the applicable collective bargaining agreement, and district policy and practices.~~
- ~~6. Make a good faith effort to maintain a drug and alcohol-free workplace.~~

Purpose

Note: The federal Omnibus Transportation Employee Testing Act of 1991 requires that All persons subject to commercial driver's license requirements must be tested for alcohol, marijuana, cocaine, amphetamines, opiates (including heroin) and phencyclidine (PCP). In AS 14.09.025, the Alaska Legislature enacted its own statutory requirement for testing bus drivers, which is in effect for all Alaska districts that employ bus drivers. This area, especially post-employment testing of drivers, involves constitutional issues. School districts should refer to legal counsel in designing and implementing drug testing procedures. Although the passage AS 17.38 authorizes the use of marijuana under certain conditions, it explicitly recognizes the authority of employers to prohibit the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace. AS 17.38 also does not prevent employers from establishing policies that restrict the use of marijuana by employees. AS 17.38.120(a). In addition, as a recipient of federal funds, the district is obligated to maintain a drug-free workplace consistent with federal law, which

prohibits the manufacture, sale, distribution, possession and sale of marijuana. For purposes of the district's policy and legal obligation, marijuana is prohibited.

Regulations require districts to begin testing programs on January 1, 1995 (for districts that had 50 or more drivers as of March 17, 1994) and on January 1, 1996 (for districts that had fewer than 50 drivers on March 17, 1994). In [AS 14.09.025](#), the Alaska Legislature enacted its own statutory requirement for testing bus drivers, which is in effect for all Alaska districts that employ bus drivers.

The Superintendent or designee shall establish and implement a drug and alcohol testing program for all bus drivers ~~and employees in positions that require a commercial driver's license (CDL)~~ employed by the school district, in accordance with state and federal law. This testing program may be accomplished through a contract or agreement with the district's transportation services contractor. ~~These personnel shall be referred to as "drivers" in this policy and regulation.~~ The purpose of the testing program shall be to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by bus drivers. This program shall test drivers for the improper use of drugs and alcohol, and shall include random testing. Improper use of drugs and alcohol consists of use that constitutes a federal or state criminal offense, or otherwise violates ~~state~~ the regulations of the Department of Education and Early Development.

Prohibited Conduct

No personnel employed by the school district as a drivers of motorized vehicles used to transport students shall report for duty requiring the performance of safety-sensitive functions, or remain on duty, when the driver uses any controlled substance, marijuana or has a prohibited concentration of alcohol in the driver's system. The only exception is when a driver has used a controlled substance pursuant to the instructions of a qualified physician who has advised the driver in writing that the substance does not adversely affect the driver's ability to safely operate a motorized vehicle for the transportation of students. Drivers shall provide a copy of the physician's written advice to the driver's supervisor prior to operating any motor vehicle for the school district.

Required Testing

Drivers shall be subject to pre-employment/pre-duty, reasonable suspicion, random, post-accident, returning to duty and follow-up alcohol and drug testing. Random alcohol testing shall be limited to the time period surrounding the performance of safety-related functions, which includes just before or just after the employee performs the safety-related function for the district. Controlled substance testing may be performed at any time the driver is at work. An employee subject to this testing may not refuse to take a test when required.

Note: Under 49 CFR Part 40, the Department of Transportation has made specimen validity testing (SVT) mandatory within the regulated transportation industries. Making SVT mandatory has become necessary because of the increase in products designed to adulterate specimens, which has made tampering with specimens more prevalent.

Consequences for Failing or Refusing to Take a Required Test

A refusal to take a required test shall be considered in violation of the employee's contractual obligations to the district, and may constitute grounds for the employee's termination from employment with the district. If testing confirms prohibited alcohol concentration levels or the unauthorized presence of a controlled substance or marijuana, the employee shall be removed immediately from safety-related functions in accordance with law. The district may reassign the

employee to non-safety-related functions until such time as the driver complies with the requirements for return to duty.

The Superintendent or Designee ~~School Board~~ retains the authority, consistent with state and federal law, to discipline or discharge any driver who is alcohol or chemically dependent and whose current use of alcohol or drugs impairs the employee's job qualifications or performance. Before a driver may be reinstated, if at all, the driver shall undergo an evaluation by a substance abuse professional, comply with any required rehabilitation and undergo a return-to-duty test with verified results.

Except as required by law or collective bargaining agreement, the district is not required to provide rehabilitation, pay for substance abuse treatment or to reinstate a driver who has failed a required drug or alcohol test. All employment decisions involving reassignment, reinstatement, termination or dismissal from employment shall be made in accordance with applicable district policies and procedures.

Records

The district shall keep and maintain testing records, and shall maintain the confidentiality of those records, in accordance with law. Testing records, and any information about false positive test results, shall not be released without the written consent of the employee. The district shall not retain records of false positive test results in the employee's employment records.

Training

The district shall take steps to ensure that supervisors receive appropriate training to administer the district's drug and alcohol testing program, and that employees receive the notifications required by law.

(cf. 4020 - Drug and Alcohol-Free Workplace)

(cf. 3514 - Environmental Safety)

(cf. 4158/4258/4358 - Employee Security)

(cf. 5144.1 - Suspension and Expulsion)

Legal Reference:

ALASKA STATUTES

14.09.025 Drug testing for school bus drivers

17.38.120 Employers, driving, minors and control of property

FEDERAL LAW

Omnibus Transportation Employee Testing Act of 1991

The Drug-Free Workplace Act of 1989

The Drug-Free Schools and Communities Act of 1986, as amended

COURT DECISIONS

Intl Brotherhood of Teamsters v. Dept. of Transportation, 932 F.2d 1292 (1991)

Revised 2/95 - AASB

Adopted 6/01

Revised /26