

Oregon School Boards Association Selected Sample Policy

Code: **GBEDA** ✓
Adopted:

(version 2)

Drug and Alcohol Testing - Transportation Personnel * (Version 32)

(This policy is required if the district operates their own transportation services, or any district staff that is required to have a commercial driver's license (CDL).) - yes

The district is committed to the establishment of a drug use and alcohol misuse prevention program that meets all applicable requirements of the Omnibus Transportation Employee Testing Act of 1991 (OTETA). The district or its transportation provider shall have an in-house drug and alcohol testing program or be a member of a consortium that provides testing that meets the federal regulations, and shall annually certify this information to the Oregon Department of Education.

Accordingly, all employees subject to commercial driver license (CDL) requirements shall be prohibited from:

1. The use of drugs, unless a written prescription from a licensed doctor or osteopath is provided, including a statement advising that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle;
2. The use of alcohol including:
 - a. While on duty;
 - b. Eight hours before driving, in accordance with Oregon Administrative Rules;
 - c. Eight hours following an accident;
 - d. Consumption resulting in prohibited levels of alcohol in the system.

"Drugs" as used in this policy refer to controlled substances covered by the OTETA, including marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).

All covered individuals offered employment with the district and district employees transferring to positions subject to the OTETA shall be required to submit to pre-employment drug testing. Additionally, covered employees will be subject to reasonable suspicion, random and post-accident alcohol and drug testing. Return-to-duty and follow-up testing may also be required. ~~The~~ The district will also require pre-employment alcohol testing in accordance with the following provisions:

1. All candidates for employment or transfer with the district and subject to the OTETA requirements will be tested;
2. All tests will be conducted using the alcohol testing procedures of 49 C.F.R. Part 40;
3. Such tests must be conducted prior to the new or transferred employee's performance of safety-sensitive functions.

Pre-employment ~~alcohol and~~ drug testing costs will be paid for by the ~~employee~~ [district]. All drug and alcohol testing of employees, including reasonable suspicion, random, post-accident, return-to-duty and

follow-up testing costs, as applicable, will be paid for by the [employee] [district]. The district will comply with collective bargaining agreement provisions.

All offers of employment or transfer to covered positions with the district will be made contingent upon testing results. An individual who tests positive for drugs [or tests with a breath alcohol content level of 0.02 or higher] will not be hired or transferred¹. The offer of employment or transfer will be immediately withdrawn.

An offer of employment or transfer will also be immediately withdrawn from any individual who refuses alcohol and drug testing.

Covered employees who, under the district's reasonable suspicion, random, post-accident, return-to-duty or follow-up testing program, test positive for drugs or test with a breath alcohol content level of 0.02 or higher, will be subject to immediate disciplinary action up to and including dismissal in accordance with Board policy. Employees who refuse to comply with testing requirements will also be regarded as testing positive for drugs or testing with a breath alcohol content level of 0.02 or higher. Notification of available resources for evaluation and treatment will be made as required by law. Additionally, employees may be subject to CDL prohibitions and penalties under the OTETA and applicable Federal Motor Carrier Safety Administration (FMCSA) regulations.

The district may, in its continuing effort to enhance safety, request a waiver of the OTETA prohibitions against standing down an employee before the medical review officer (MRO) has completed the verification process as provided by 49 C.F.R. § 40.21(c). "Stand-down" means the practice of temporarily removing an employee from safety-sensitive functions based solely on a report from a laboratory to the MRO of a confirmed positive test for drugs, an adulterated test or a substituted test before the MRO has completed verification of the test results. The written waiver request will be directed to the appropriate Federal Motor Carrier Safety Administrator.

In accordance with the provisions of 49 C.F.R. § 40.21(c)(2), and in its ongoing effort to protect the interests of employees in fairness and confidentiality, the district will ensure:

1. The district's policy and administrative regulation are distributed to all covered employees;
2. No information about the confirmed positive, adulterated or substituted test results, or the reason for the employee's temporary removal from performing safety-sensitive functions, becomes available, directly or indirectly to others in the district or subsequently to another employer, other than the employee, the MRO and the designated district official;
3. All covered employees in a particular district job category are treated the same way with respect to "stand-down";
4. A covered employee will be subject to "stand-down" only with respect to the actual performance of safety-sensitive duties;

¹The district may elect to allow an individual who tests positive for drugs or tests with a breath alcohol content level of 0.02 or higher to reapply for district employment or transfer to a covered position at a later date. At that time, the individual will again be tested for the presence of drugs [and alcohol], if required by the district. A district employee considered for transfer to an OTETA-covered position who tests positive for drugs or tests with a breath alcohol content level of 0.02 or higher will be subject to all district policies and regulations including the district's Drug-Free Workplace policy.

5. No adverse action affecting the employee's pay and benefits will be taken pending the completion of the MRO's verification process. This includes continuing to pay the employee during the period of the stand-down in the same way the district would have paid him/her had he/she not been stood down;
6. The verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of "stand down" for any employee will not exceed five days, unless the district is informed in writing by the MRO that a longer period is needed to complete the verification process; and
7. In the event that the MRO verifies the test negative or cancels it:
 - a. The district will return the employee immediately to the performance of safety-sensitive duties;
 - b. The employee suffers no adverse personnel or financial consequences as a result; and
 - c. No individually identifiable record that the employee had a confirmed laboratory positive, adulterated or substituted test result is maintained. (The district will maintain a record of the test only as a negative or cancelled test.)

The district will not "stand down" employees in the absence of a waiver, or inconsistent with the terms of the waiver.

The district will establish a voluntary self-identification program consistent with the OTETA requirements. Accordingly, an employee who admits to alcohol misuse or drug use will not be subject to certain referral, evaluation and treatment requirements, provided:

1. The admission is in accordance with the provisions of this policy;
2. The driver does not self-identify in order to avoid testing as required by the OTETA;
3. The driver makes the admission prior to performing a safety-sensitive function (i.e., prior to reporting for duty);
4. The driver does not perform a safety-sensitive function until the district is satisfied that the employee has been evaluated and has successfully completed education or treatment in accordance with the district's self-identification program guidelines.

Adverse action on the part of the district against any employee making a voluntary admission of alcohol misuse or drug use consistent with the provisions of this policy is prohibited. The district is committed to providing sufficient opportunity for the employee to seek evaluation, education or treatment to establish control over his/her drug or alcohol problem.

Following successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert (i.e., employee assistance professional, substance abuse professional or qualified drug and alcohol counselor) the employee will be permitted to return to duty. The district will ensure that prior to the employee participating in a safety-sensitive function, he/she shall be required to undergo a return-to-duty testing with a result indicating a breath alcohol content level of less than 0.02

and/or a verified negative test result for drug use, as appropriate. The district may incorporate employee monitoring and include non-OTETA follow-up testing as part of its return-to-duty procedures under the district's self-identification program.

END OF POLICY

Legal Reference(s):

ORS 657.176
ORS 825.415
ORS 825.418

OAR 581-053-0230(9)(t)
OAR 581-053-0420(4)(b)(B)(ii)
OAR 581-053-0430(13),(14)
OAR 581-053-0531(12),(13)
OAR 581-053-0615(2)(c)(D)(ii)

OAR 581-053-0620(1)(d)
SB 193 (2013)

OAR 581-053-0220(3)(h)

Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. §§ 31301-31317; 49 C.F.R. Parts 40, 382, 391-395 (2006~~17~~).