

## Drug and Alcohol Testing for Bus Drivers

### ***Director of Transportation Collin Uressey's Input***

Our contracts with both First Student and the private transportation companies include provisions requiring compliance with all applicable laws, rules, regulations, and policies of Federal, State, and Local governments. This language effectively covers the vast majority of the content outlined in the CAFE policy.

However, there is one area of potential concern: the following Board policy is not explicitly included in our current contracts.

In addition to the cited federal requirements, the Board of Education expects its school transportation carriers to provide training to all school bus drivers, including instruction on:

Identifying the signs and symptoms of anaphylaxis  
Administering epinephrine via a cartridge injector ("EpiPen")

This expectation could be added to future contracts. However, for immediate implementation, we would need to formally request vendor compliance. The vendor may either agree to the change or agree contingent upon receiving additional funding to support the training requirement.

Currently, school bus drivers are only authorized to administer basic first aid (e.g., providing a bandage) and are instructed to call 911 for all other emergencies.

For your reference, relevant sections from our current contracts are included below:

#### First Student Contract

##### Section III.A – GENERAL

The contractor agrees to meet all regulations of the Connecticut State Statutes and those prescribed by the Commissioner of Motor Vehicles, as well as regulations issued by the Federal Department of Transportation. If any amendments to existing regulations during the term of the contract require major alterations to existing equipment, the associated costs will be subject to negotiation with the Board of Education.

#### Private Transportation Contract

##### LAWS AND BOARD POLICIES

A. The Contractor shall comply with all laws, rules, regulations, and policies of Federal, State, and Local governments. It is the Contractor's responsibility to ensure that all employees are familiar with and follow these requirements, including any transportation manual or additional rules or policies issued by the Board.

B. The Contractor must be familiar with all Board policies and regulations that impact the services.



## **BUS DRIVER DRUG TESTING PROGRAM UPDATE: CLEARINGHOUSE**

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*(Background Information for Policy Review Committee)*

The United States Department of Transportation (USDOT) through the Federal Motor Carrier Safety Administration Agency (FMCSA) amended the rules for the commercial driver's license drug testing program to establish requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse). The Clearinghouse was required to be established by federal law with the intent to improve road safety. (49 CFR Section 382.701 et seq.)

The Clearinghouse is a secure online database that gives employers, the Federal Motor Carrier Safety Administration (FMCSA), State Driver Licensing Agencies (SDLAs), and State law enforcement personnel real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations.

The Clearinghouse contains records of violations of drug and alcohol prohibitions in 49 CFR Part 382, Subpart B, including positive drug or alcohol test results and test refusals. When a driver completes the return-to-duty (RTD) process and follow-up testing plan, this information is also recorded in the Clearinghouse.

The purpose of the Clearinghouse is to maintain records of every violation of the drug and alcohol testing program in a central depository so that employers of CDL holders may have one electronic resource to use in order to determine if potential drivers and current employees have violated the USDOT drug and alcohol testing regulations. The Clearinghouse will identify drivers who move frequently and obtain CDLs in different states and link those CDLs, in order to maintain complete and accurate information on such drivers.

The amended rules require employers to amend their drug and alcohol testing policy to include the use of the Clearinghouse.

The Clearinghouse began its operation in 2020. Every employer who employs CDL drivers must register as employers in the Clearinghouse. The website for the Clearinghouse is <https://clearinghouse.fmcsa.dot.gov/>. The employer is required, as part of the registration process, to name its employees who will have the authority to make an inquiry. For school districts this would be the superintendent and/or the transportation director, business manager or the person overseeing the transportation responsibility for the local district. The designated persons will be allowed to make the inquiries required by the regulations.

The regulations require an employer to make an inquiry to the Clearinghouse for applicants for a CDL driver position, such as school bus drivers. Information will be provided by this initial inquiry as to whether or not the Clearinghouse contains information regarding whether the driver has violated the drug and alcohol regulations which include testing positive on one of the required tests or has been found to violate one of the prohibited activities in the regulations. Prohibited activities include the use of alcohol while performing a safety-sensitive function on the job or consuming alcohol within four hours before performing a safety-sensitive function. A violation indicated in the Clearinghouse requires the employer to do a full inquiry within 24 hours in order to attain the details of the violation.



## **BUS DRIVER DRUG TESTING PROGRAM UPDATE: CLEARINGHOUSE**

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The written consent of the driver is required prior to doing any initial or full inquiry. Failure of the driver to provide consent prohibits the employer from hiring the applicant. The purpose of doing an annual inquiry of current employees is to determine if these employees have committed any violations while working for other covered current employers. Clearinghouse information received by the employer is confidential and cannot be disclosed to another entity or to other employees who do not have the authority to hire or discipline the driver/employee.

The employers of CDL drivers are required to input information on their current employees when such employees have violated the regulations. What must be reported to the Clearinghouse include positive drug and alcohol tests required by the regulations, actual knowledge of the violations of the drug and alcohol regulations such as the use of drugs and/or alcohol prior to performing safety-sensitive functions or while on duty or the driver's refusal to be tested. Information must be posted to the Clearinghouse by the employer within three business days of the violation's occurrence.

The regulations require a prospective employer to get drug and alcohol testing information from prior employers who employed the driver within the last three years, until January 6, 2023. After that date, an employer making an inquiry to the Clearinghouse on the driver/applicant will fulfill this requirement.

Drivers are not required to register for the Clearinghouse. However, a driver will need to be registered to provide electronic consent in the Clearinghouse if a prospective or current employer needs to conduct a full query of the driver's Clearinghouse record – this includes all pre-employment queries. A driver must also be registered to electronically view the information in his or her own Clearinghouse record. Registered drivers will have their Clearinghouse accounts and contact preferences set up, allowing them to quickly respond to query requests from employers.

### **Policy Implications**

The regulations require the employer to state in its policy on the CDL drug and alcohol testing program information on the requirement of the employer to report violations of the program to the Clearinghouse and to include such information in the training and notice materials given to drivers as required by the regulations.

The CABA sample policy pertaining to drug and alcohol testing for school bus drivers has been revised to address the Clearinghouse requirements.

It is important that contracts entered into between the school district and a transportation carrier for bus transportation services, if the district does not run its own buses, include language pertaining to the assurance that the contractor will establish a drug and alcohol-testing program that meets the requirements of federal regulations, state statutes and the district's policy and that the contractor will actively enforce the regulations of the policy as well as state and federal requirements.

Policy #4212.42, "Drug and Alcohol Testing for School Bus Drivers," is a required policy per federal mandate. Several versions are available, including an administrative regulation.



*A required policy per federal mandate.*

## **Personnel Non-Certified**

### **Drug and Alcohol Testing for School Bus Drivers**

The \_\_\_\_\_ Public School 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), as may be amended, and applicable state statutes pertaining to pre-employment and random drug testing of school bus drivers. The District shall adhere to federal and state law and regulations requiring a school bus driver's drug and alcohol testing program.

In addition to the above cited federal requirement, the Board of Education expects its school transportation carrier to provide training to all school bus drivers, including instruction on (1) identifying the signs and symptoms of anaphylaxis, (2) administering epinephrine by a cartridge injector ("EpiPen"), (3) notifying emergency personnel, and (4) reporting an incident involving a student's life-threatening allergic reaction.

Each carrier must provide the training to school bus drivers following the issuance or renewal of a public passenger endorsement to operate a school bus for carrier employees, and upon the hiring of a school bus driver who is not employed by such carrier (e.g., subcontractor), except a driver who received the training after the most recent issuance or renewal of his or her endorsement is not required to repeat it.

### **Drug and Alcohol Clearinghouse Checks for CDL Drivers**

Prior to employment the District/school transportation carrier will conduct a full query of the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse (Clearinghouse) to obtain information about the driver's eligibility under federal rules to perform a safety-sensitive function. The District/school transportation carrier will also contact prior employers where the applicant was a CDL driver for information to determine the driver's eligibility to perform safety-sensitive functions. (Prior employers' inquiries will continue until January 2023.)

The District/school transportation carrier will conduct a limited query of the Clearinghouse for current CDL drivers who are employees on at least an annual basis. If information exists in the Clearinghouse about a driver, the District/school transportation carrier will conduct a full query within 24 hours to determine if the driver is eligible to perform safety-sensitive functions. If the District/school transportation carrier fails to conduct the full query within 24 hours, the driver will not be allowed to perform any safety-sensitive functions until the full query is conducted and it is determined the driver may perform safety-sensitive functions.

The District/school transportation carrier will report the following information collected and maintained on each CDL driver to the Clearinghouse:

1. A verified positive, adulterated, or substituted drug test result;



2. An alcohol confirmation test with a concentration of 0.04 or higher;

**P4212.42(b)**

## **Personnel Non-Certified**

### **Drug and Alcohol Testing for School Bus Drivers**

#### **Drug and Alcohol Clearinghouse Checks for CDL Drivers (continued)**

3. A refusal to submit to any test required by this policy or the CDL drug testing program (49 C.F.R. Part 382, subpart C);
4. An employer's report of actual knowledge of the following:
  - a. On duty alcohol use (pursuant to 49 C.F.R. §382.205);
  - b. Pre-duty alcohol use (pursuant to 49 C.F.R. §382.207);
  - c. Alcohol use following an accident (pursuant to 49 C.F.R. §382.209); and
  - d. Controlled substance use (pursuant to 49 C.F.R. §382.213).
5. A substance abuse professional (SAP) (as defined in 49 C.F.R. §40.3) report of the successful completion of the return-to-duty process;
6. A negative return-to-duty test; and
7. An employer's report of completion of follow-up testing.

#### **Additional language to consider:**

*(School districts contracting with a private service provider must ensure the provider has a drug and alcohol testing program fulfilling federal regulations, and state law pertaining to a required pre-employment and random drug testing program for drivers of school buses and school transportation vehicles (STVs) that carry ten or fewer students.)*

#### **Alternate Version**

In a continuing effort to prevent accidents and injuries resulting from the use of drugs and misuse of alcohol by drivers of commercial motor vehicles, the District shall establish a drug and alcohol misuse prevention program.

The District's program shall meet the requirements of the Omnibus Transportation Employee Testing Act of 1991, as maybe amended, and C.G.S.14-276a.

The Superintendent will develop administrative regulations as needed to implement the District's program including provisions for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up testing as may be necessary. The regulations will also include training, education and other assistance to employees to promote a drug and alcohol-free environment.

Contracts for transportation approved by this District shall contain assurance that the contractor will establish a drug and alcohol-testing program that meets the requirements of federal regulations, state statutes and this policy and will actively enforce the regulations of this policy



as well as federal and state requirements.



## Personnel Non-Certified

### Drug and Alcohol Testing for School Bus Drivers (continued)

Such contract shall also contain the assurance that the school transportation contractor will use the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse (Clearinghouse) database to report information to, and obtain information from, regarding drivers who are subject to the Department of Transportation's controlled substance and alcohol testing regulations.

This policy applies to all drivers and applicants for driver positions for the District who must have a Commercial Driver's License (CDL) to operate school vehicles.

In addition to the above cited federal requirement, the Board of Education expects its school transportation carrier to provide training to all school bus drivers, including instruction on (1) identifying the signs and symptoms of anaphylaxis, (2) administering epinephrine by a cartridge injector ("EpiPen"), (3) notifying emergency personnel, and (4) reporting an incident involving a student's life-threatening allergic reaction.

Each carrier must provide the training to school bus drivers following the issuance or renewal of a public passenger endorsement to operate a school bus for carrier employees, and upon the hiring of a school bus driver who is not employed by such carrier (e.g., subcontractor), except a driver who received the training after the most recent issuance or renewal of his or her endorsement is not required to repeat it.

Legal Reference:      United States Code, Title 49  
                                 2717 Alcohol and controlled substances testing (Omnibus Transportation  
                                 Employee Testing Act of 1991)  
                                 Code of Federal Regulations, Title 49  
                                 40 Procedures for Transportation Workplace Drug and Alcohol Testing  
                                 Programs  
                                 382 Controlled Substance and Alcohol Use and Testing (as amended)  
                                 395 Hours of Service Drivers'  
                                 *Holiday v. City of Modesto* (1991) 229 Cal. App. 3d. 528, 540  
                                 *International Brotherhood of Teamsters v. Department of Transportation*  
                                 932 F. 2d 1292 (1991)  
                                 *American Trucking Association, Inc. v. Federal Highway Administration*,  
                                 (1995) WL 136022 (4th circuit)  
                                 10-212c Life-threatening food allergies and glycogen storage disease:  
                                 Guidelines; district plans. (as amended by PA 18-185)



## **Personnel Non-Certified**

### **Drug and Alcohol Testing for School Bus Drivers**

Legal Reference: Connecticut General Statutes (continued)

14-261b Drug and alcohol testing of drivers of certain vehicles, mechanics and forklift operators

14-276a Regulations re school bus operators and operators of student transportation vehicles; qualifications; training. Pre-employment drug test required for operators

52-557b Immunity from liability for emergency medical assistance first aid or medication by injection. School personnel not required to administer or render. (as amended by PA 05-144, An Act Concerning the Emergency Use of Cartridge Injectors and PA 18-185, An Act Concerning Life-Threatening Food Allergies in Schools)

Policy adopted:

rev 7/07  
rev 5/18  
rev 10/18  
rev 2/20  
rev 1/21

*Another version to consider.*

## **Personnel - Non-Certified**

### **Drug and Alcohol Testing for Bus Drivers**

The \_\_\_\_\_ Board of Education 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 and applicable state statutes pertaining to pre-employment and random drug testing of school bus drivers. The purpose of the testing program shall be to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers performing safety-sensitive functions.

All drivers subject to the commercial driver's license (CDL) requirements and this policy shall be prohibited from:

1. The use of any controlled substance on or off duty, unless a written prescription from a licensed doctor or osteopath is provided along with a written statement from the doctor or osteopath that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle or perform other safety-sensitive functions;
2. The misuse of alcohol that could affect performance on the job including use on the job, use during the four hours before performing a safety-sensitive function, having prohibited concentrations of alcohol in their systems while performing a safety-sensitive function and use during eight hours following an accident.

**"Drugs"** in this policy refers to controlled substances covered by the Omnibus Act, including marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).

All employed drivers or employees transferring to positions subject to OTETA shall be subject to reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and drug testing pursuant to procedures set out in the federal regulations. These procedures use an evidential breath testing device for alcohol testing. For controlled substances testing, urine specimen collection and testing by a laboratory certified by the U.S. Department of Health and Human Services is required. 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.

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 will not be hired or transferred. The offer of employment will be immediately withdrawn from any individual who refuses drug testing.



## **Personnel - Non-Certified**

### **Drug and Alcohol Testing for Bus Drivers (continued)**

[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 OTETA and state regulation requirements will be tested;
2. All tests will be conducted using the alcohol testing procedures of 49 CFR Part 40;
3. Such tests must be conducted prior to the new or transferred employee's performance of safety-sensitive functions.]

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 driver performs the safety-related function. Controlled substances testing may be performed at anytime while the driver is at work.

A driver covered by the federal regulations may not refuse to take a required test. An offer of employment or transfer will be immediately withdrawn from any individual who refuses drug testing.

If the testing confirms prohibited alcohol concentration levels or the presence of a controlled substance, the driver shall be removed immediately from safety-related functions in accordance with federal regulations. Before a driver is 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 test results.

The Board retains the authority consistent with state and federal law to discipline or discharge any driver who is an alcoholic or chemically dependent and whose current use of alcohol or drugs affects the driver's qualifications for and performance of the job.

The District is not required under federal law requiring drug and alcohol testing to provide rehabilitation, pay for substance abuse treatment or to reinstate the employee. Notification of available resources for evaluation and treatment will be made as required by law. All employment decisions involving reinstatement, termination or dismissal shall be made in accordance with applicable state law, district policies and negotiated agreements.

The District shall maintain records in compliance with the federal regulations in a secure location with controlled access. With the driver's consent, the district may obtain any of the information concerning drug and alcohol testing from the driver's previous employer. An employee shall be entitled upon written request to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances including information pertaining to alcohol or drug tests. Statistical records and reports shall be maintained and made available to the Federal Highway Administration for inspection or audit in accordance with federal regulations.



## **Personnel - Non-Certified**

### **Drug and Alcohol Testing for Bus Drivers (continued)**

Records shall be made available to a subsequent employer upon receipt of a written request from an employee only as expressly authorized by the terms of the employee's request.

The District shall take steps to insure that supervisors receive proper training to administer the drug and alcohol testing program and that employees receive the notifications required by federal regulations.

This policy applies to all drivers and applicants for driver positions for the District who must have a Commercial Drivers License (CDL) to operate school vehicles.

[Contracts for transportation approved by this district shall contain assurance that the contractor will establish a drug and alcohol testing program that meets the requirements of federal and state regulations and this policy and will actively enforce the regulations of this policy as well as federal requirements.]

In addition to the above cited federal requirement, the Board of Education expects its school transportation carrier to provide training to all school bus drivers, including instruction on (1) identifying the signs and symptoms of anaphylaxis, (2) administering epinephrine by a cartridge injector ("EpiPen"), (3) notifying emergency personnel, and (4) reporting an incident involving a student's life-threatening allergic reaction.

Each carrier must provide the training to school bus drivers following the issuance or renewal of a public passenger endorsement to operate a school bus for carrier employees, and upon the hiring of a school bus driver who is not employed by such carrier (e.g., subcontractor), except a driver who received the training after the most recent issuance or renewal of his or her endorsement is not required to repeat it.

### **Drug and Alcohol Clearinghouse Checks for CDL Drivers**

Prior to employment the District/school transportation carrier will conduct a full query of the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse (Clearinghouse) to obtain information about the driver's eligibility under federal rules to perform a safety-sensitive function. The District/school transportation carrier will also contact prior employers where the applicant was a CDL driver for information to determine the driver's eligibility to perform safety-sensitive functions. (Prior employers' inquiries will continue until January 2023.)

The District/school transportation carrier will conduct a limited query of the Clearinghouse for current CDL drivers who are employees on at least an annual basis. If information exists in the Clearinghouse about a driver, the District/school transportation carrier will conduct a full query within 24 hours to determine if the driver is eligible to perform safety-sensitive functions. If the District/school transportation carrier fails to conduct the full query within 24 hours, the driver will not be allowed to perform any safety-sensitive functions until the full query is conducted



and it is determined the driver may perform safety-sensitive functions.

## Personnel - Non-Certified

### Drug and Alcohol Testing for Bus Drivers (continued)

### Drug and Alcohol Clearinghouse Checks for CDL Drivers (continued)

The District/school transportation carrier will report the following information collected and maintained on each CDL driver to the Clearinghouse:

1. A verified positive, adulterated, or substituted drug test result;
2. An alcohol confirmation test with a concentration of 0.04 or higher;
3. A refusal to submit to any test required by this policy or the CDL drug testing program (49 C.F.R. Part 382, subpart C);
4. An employer's report of actual knowledge of the following:
  - a. On duty alcohol use (pursuant to 49 C.F.R. §382.205);
  - b. Pre-duty alcohol use (pursuant to 49 C.F.R. §382.207);
  - c. Alcohol use following an accident (pursuant to 49 C.F.R. §382.209); and
  - d. Controlled substance use (pursuant to 49 C.F.R. §382.213).
5. A substance abuse professional (SAP) (as defined in 49 C.F.R. §40.3) report of the successful completion of the return-to-duty process;
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                                  Code of Federal Regulations, Title 49  
                                  40 Procedures for Transportation Workplace Drug and Alcohol Testing  
                                  Programs  
                                  382 Controlled Substance and Alcohol Use and Testing (as amended)  
                                  395 Hours of Service Drivers  
                                  *Holiday v. City of Modesto* (1991) 229 Cal. App. 3d. 528, 540  
                                  *International Brotherhood of Teamsters vs. Department of Transportation*  
                                  932 F. 2d 1292 (1991)  
                                  *American Trucking Association, Inc. v. Federal Highway Administration*,  
                                  (1995) WL 136022 [4th circuit]  
                                  10-212c Life-threatening food allergies and glycogen storage disease:  
                                  Guidelines; district plans. (as amended by and PA 18-185)



## **Personnel - Non-Certified**

### **Drug and Alcohol Testing for Bus Drivers**

Legal References	Connecticut General Statutes (continued)  14-261b Drug and alcohol testing of drivers of certain vehicles, mechanics and forklift operators  14-276a Regulations re school bus operators and operators of student transportation vehicles; qualifications; training. Pre-employment drug test required for operators  52-557b Immunity from liability for emergency medical assistance first aid or medication by injection. School personnel not required to administer or render. (as amended by PA 05-144, An Act Concerning the Emergency Use of Cartridge Injectors and PA 18-185, An Act Concerning the Recommendations of the Task force on Life-Threatening Food Allergies in Schools)
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Policy adopted:

rev 4/02

rev 7/07

rev 11/18

rev 2/20

*A succinct version of this mandated policy to consider.*

## **Personnel Non-Certified**

### **Drug and Alcohol Testing For School Bus Drivers**

Contracts for transportation approved by this District shall contain assurance that the contractor will establish a drug and alcohol testing program that meets the requirements of federal regulations.

In addition, the Board of Education expects its school transportation contractor to train all school bus drivers, with instruction pertaining to the identification, the signs and symptoms of anaphylaxis, and in the administration of epinephrine by a cartridge injector ("EpiPen"), the notification of emergency personnel, and the reporting of an incident involving a student's life-threatening allergic reaction. Such training shall occur following the issuance or renewal of an endorsement to operate a school bus for carrier employees, and upon the hiring of a school bus driver, except a driver who received the training after the most recent issuance or renewal of his or her endorsement is not required to repeat it.

Prior to employment of bus drivers, the Board of Education expects its school transportation carrier to conduct a full query of the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse (Clearinghouse) to obtain information about the driver's eligibility under federal rules to perform a safety-sensitive function. The District/school transportation carrier will also contact prior employers where the applicant was a CDL driver for information to determine the driver's eligibility to perform safety-sensitive functions. (Prior employers' inquiries will continue until January 2023.)

The school transportation carrier will also utilize the Clearinghouse for current CDL drivers who are employees on at least an annual basis. Required personal information that is collected and maintained in connection with the testing program shall also be reported, as required, to the Clearinghouse.

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                                 2717 Alcohol and controlled substances testing (Omnibus Transportation Employee Testing Act of 1991)  
                                 Code of Federal Regulations, Title 49  
                                 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs  
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                                 932 F. 2d 1292 (1991)



**P4212.42(b)**

## **Personnel Non-Certified**

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