

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: First Reading of Policy DHE (LOCAL): Employee Standards of Conduct – Searches and
Alcohol/Drug Testing

SUBMITTED BY: Gloria Rendon **OF** Asst. to the Supt.

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: May 19, 2010

RECOMMENDATION:

It is recommended that the Board of Trustees approve First Reading of Policy DHE (LOCAL): Employee Standards of Conduct – Searches and Alcohol/Drug Testing

RATIONALE:

BUDGETARY INFORMATION:

BOARD POLICY REFERENCE AND COMPLIANCE:

EMPLOYEE STANDARDS OF CONDUCT
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STATEMENT OF
PURPOSE

The District's greatest resource is its children and personnel, whose continued safety and health the Board is dedicated to protect. The Board has determined that there is a compelling need to eliminate illegal and unauthorized drug use, including but not limited to the use and/or effects of alcohol and its deleterious effects in the workplace.

Because of the Board's compelling interest in providing a drug-free school setting and workplace, the objectives of this policy shall be to:

1. Create a safe environment for District students.
2. Create a safe and healthy working environment for District employees, visitors, and members of the public.
3. Reduce the opportunities for accidental injuries.
4. Provide employees with access to confidential counseling and/or rehabilitation programs.
5. Protect the property of the District.
6. Comply with the contractual obligations of applicable city, state, and/or federal grants and regulations.
7. Protect the reputation and credibility of the District and its school system.

REASONABLE
SUSPICION
SEARCHES

The District reserves the right to conduct searches when the District has reasonable cause to believe that a search will uncover evidence of work-related misconduct. Accordingly, employees shall have no expectation of privacy when reasonable suspicion exists. District employees and their personal items, including but not limited to their work areas, lockers, and private vehicles on District premises or worksites used in District business shall be subject to search for prohibited/illegal drugs and/or weapons or other evidence of misconduct when reasonable suspicion of such exists.

LIMITATIONS

Reasonableness of a search shall depend on all circumstances. Except as otherwise authorized by law or policy, any search shall be justified initially by a reasonable suspicion and the scope and conduct of the search shall be reasonably related to the circumstances that give rise to a search. If the employee refuses to allow a search of his or her belongings when there is reasonable suspicion to conduct the search, the District may take appropriate disciplinary measures up to and including termination.

FACTORS

Factors that may affect the reasonableness of the suspicion are:

1. Specific observations of the appearance, behavior, speech, or body odors of an employee;

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2. Impairment of an employee's motor ability, emotional or mental acuity, or equilibrium;
3. The nature of any tip or information;
4. The reliability of an informant;
5. The degree of any corroboration; and
6. Other factors contributing to the suspicion.

OBSERVATIONS
AND REPORTING

Observations taking place immediately preceding, during, or immediately after the period of the workday that the employee is on duty may be given greater weight. As soon as reasonably practical, the employee's supervisor shall prepare a record documenting the observations or the evidence with which the supervisor was presented leading to reasonable suspicion.

TESTING

An employee may be required to submit to a drug or alcohol test if there is individualized reasonable suspicion of drug or alcohol use. An employee shall not be required to undergo a drug or alcohol test without an express directive from an administrator who has received training in the requirements for conducting a warrantless search when there is individualized suspicion to require such a test.

ORDERING

On the occurrence of a condition that authorizes a drug test to be required based on reasonable suspicion, the employee's immediate supervisor, with concurrence of the assistant superintendent of human resources or designee, may order the employee to submit to a drug test. The test may require but is not limited to a breath, urine, blood, or saliva sample. The District shall pay all fees for District-required testing at this stage. If the employee tests positive for alcohol or a prohibited drug, the employee may be suspended with or without pay and/or be subject to termination, subject to any required due process. During the suspension the employee may use any eligible leave.

SEARCHES OF
DISTRICT PROPERTY

District-owned property is subject to search at all times. At least annually, notice shall be given to all employees that District vehicles, lockers for which personal locks have not been authorized, and other District property, including but not limited to classrooms, lockers, desks, computers, work areas, and closets are subject to search at all times.

USE OF DOGS

Notice shall be given to all employees, at least annually, that all District facilities, equipment, and all privately-owned vehicles parked on and around District premises or worksites, or used in District business, shall be subject to inspection by trained drug dogs, which may result in a search upon reasonable suspicion of the presence of any of the prohibited items listed above.

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The District may use trained dogs to sniff out and alert for the presence of concealed prohibited items, including but not limited to:

1. Weapons;
2. Any controlled substance or dangerous drug as defined by law, including but not limited to marijuana, any narcotic drug, hallucinogen, stimulant, depressant, amphetamine, or barbiturate;
3. Alcohol or any alcoholic beverage;
4. Any abusable glue, aerosol paint, or any other volatile chemical substance for inhalation; or
5. Any other intoxicant or mood-changing, mind-altering, or behavior-altering drugs.

If the dog alerts to an employee's motor vehicle or other belongings, reasonable suspicion shall be deemed to exist, and District administrators shall have the authority to search the employee's vehicle or other belongings, as the case may warrant. An administrator may also request a peace officer to conduct the search when the administrator is present for the search.

A peace officer may conduct a search when there is probable cause to do so. This policy is not to be interpreted to imply that probable cause does not exist when a dog alerts.

DRUG SCREENING
FOR SPECIFIED
APPLICANTS / NEW
HIRES / EMPLOYEES

At a time to be determined by the Superintendent or designee, all applicants recommended for employment, new hires, or current employees who request reassignment, as operators of motor vehicles, mechanics for such vehicles, or handlers of hazardous substances that, when not properly operated, maintained, or used, may reasonably result in serious bodily injury or property damage, shall be required to successfully pass a drug-screening test prior to employment or reassignment.

DEFINITIONS

For purposes of this policy, the following definitions shall apply:

OPERATOR

1. Operator: Any District applicant for employment or current employee whose job description ~~description~~ **duties and responsibilities** includes ~~the possibility of~~ operating a motor vehicle **on a frequent basis**, including but not limited to bus drivers, maintenance workers, and support service drivers.

MECHANIC

2. Mechanic: A District applicant or current employee whose job description includes the possibility of serving as a mechanic for motor vehicles in the District's transportation or maintenance departments.

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HANDLER	3. Handler: A District applicant for employment or current employee whose job description includes the possibility, under normal operating conditions or foreseeable emergencies, of handling hazardous chemicals as defined by the Texas Health and Safety Code. It shall not apply to workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances.
SAFETY-SENSITIVE POSITION	Safety-sensitive position: Operator, mechanic, and handler as defined above, as well as positions published annually by the District as being safety sensitive.
ACCIDENTS NOT INVOLVING DOT TESTING	<p>Any operator, mechanic, or handler not covered by Department of Transportation (DOT) drug and alcohol testing regulations shall be required to take a drug or alcohol test following an accident in a motor vehicle or in the performance of another safety-sensitive duty while at work or while conducting District business when the accident results in injury to a person or in damage or loss of property. The test sample shall be taken at the time of any medical treatment or as soon as possible after the accident.</p> <p>The testing shall be conducted by a certified laboratory chosen by the District. The laboratory shall be instructed to perform a second test in the event the first test is positive and to perform only tests relating to the presence of alcohol, prohibited drugs, or controlled substances; under no circumstances shall the laboratory be authorized to perform any additional tests.</p>
CHARGES	An operator or mechanic who is criminally charged with selling drugs, possession of illegal drugs or alcohol, or use of drugs shall be required to take a drug and/or alcohol test.
RANDOM DRUG / ALCOHOL TESTING: SAFETY-SENSITIVE POSITIONS	<p>The District shall conduct random alcohol and/or drug testing of employees in safety-sensitive positions to prevent impaired employees from performing safety-sensitive functions and for the continued health and safety of the District's students. [See DEFINITIONS above]</p> <p>Annually, the District shall notify each employee assigned to a safety-sensitive position of the employee's obligations regarding the random alcohol- and drug-testing program.</p>
SCREENING PROCEDURES	A certified laboratory chosen by the District shall conduct all alcohol and drug screening tests. In the event the first test is positive, the laboratory shall perform a second test on the sample to confirm the first test results. The laboratory shall take all necessary steps to ensure the reliability and confidentiality of the tests, and shall be instructed to perform only tests relating to the presence of alcohol, prohibited drugs, or controlled substances. Under no circum-

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stances shall the laboratory be instructed to perform any additional tests.

Test results shall be placed in a sealed envelope in the applicant's or employee's file. The results of the test shall be made known to the applicant or employee, as the case may be, but shall otherwise be limited to those District employees or officers involved in employment decisions with a need to know and other persons under a court order. The District shall endeavor to maintain the confidentiality of all test results. Such test results may, however, be used as evidence in due process hearings when properly introduced.

Alcohol and drug screening may require, but is not limited to, breath, urine, blood, or saliva samples.

FEES

The District shall pay all fees for any drug test required by the District other than those required by the District's Employee Assistance Program (EAP) or other rehabilitation program.

TEST RESULTS

Test results showing the presence of a prohibited drug or the presence of the same or higher levels of alcohol and/or controlled substance that are prohibited in the District's DOT testing program shall constitute a violation under this policy.

In the event a test result is positive, a second test using gas chromatography/mass spectrometry or a generally accepted scientifically equivalent method shall be conducted within 24 hours. The District shall require the testing laboratory to preserve all positive samples for not less than 90 days to allow accurate retesting.

OPPORTUNITY TO
EXPLAIN

Before action may be taken against any employee who tests positive for alcohol, prohibited drugs, or controlled substances, the employee shall be given the opportunity to explain such results and present medical evidence justifying the use of any therapeutic drugs. An employee shall be allowed, at the employee's expense, to retest any samples yielding a positive result. Any employee whose confirmation test is positive shall be informed within 72 hours of the District's receipt of final confirmation test results.

VIOLATION OF POLICY

An employee is in violation of District policy when he or she:

1. Refuses to submit to a drug/alcohol test under this policy.
2. Has test results that meet or exceed the standards established for Department of Transportation (DOT) testing. DOT standards shall not be limited to cases involving accidents.
3. Possesses, uses, or is under the influence of alcohol, prohibited drugs, or controlled substances in the workplace. An employee need not be "legally intoxicated" to be considered under the influence of alcohol or drugs.

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4. Has a test result showing the presence of any amount of alcohol in his or her system.

Such employees are subject to disciplinary action up to and including termination.

REHABILITATION

Only those employees not subject to DOT regulations who receive a positive test result conducted through random testing and who continue to be employed by the District shall be:

1. Referred to an EAP or shall enroll in another District-approved rehabilitation program, which shall provide counseling and measure treatment progress with further testing and monitoring.
2. Subject to retesting to be scheduled by the physician after 30 days of enrollment in a program.
3. Subject to frequent and unannounced testing for the presence of drug or alcohol in accordance with the EAP or rehabilitation procedures.
4. Subject to random testing as frequently as monthly for a period of one year following successful completion of the rehabilitation program.
5. Be terminated from employment following a second positive test result.

Note: Breath, blood, saliva, or urine may be used for testing related to the rehabilitation program.

SUSPENSION OF
DUTIES

Mandatory participation in the EAP or other District-approved program shall require suspension of safety-sensitive duties as defined by this policy until such time as the employee is cleared to resume such duties, but not sooner than 30 calendar days. During the suspension, other duties may be assigned outside the employee's normal job description. If an employee cannot be reassigned during this period, he or she may be suspended from employment pending the successful completion of the rehabilitation program. Suspension shall be without pay, subject to any required due process, for the initial 30 days. Thereafter, in the interest of supporting necessary rehabilitation extending beyond 30 days, the District may convert the suspension without pay, on a case-by-case basis, to suspension with pay for any or all of the period in which the employee is successfully undergoing necessary and extended rehabilitation.

The cost of participation in a rehabilitation program shall be the responsibility of the employee, and continued employment shall be

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contingent upon participation and successful completion of the program. The District's physician must also clear the employee to resume duties.

DISMISSAL UNDER
REHABILITATION

For any employee not subject to the DOT regulations, the District's Board shall afford the opportunity to undergo rehabilitation without termination of employment following a positive test result conducted through random testing if the employee is successfully participating in a rehabilitation program described above. An employee who refuses to undergo rehabilitation or does not satisfactorily comply with the requirements of the rehabilitation program shall be subject to termination.

CONSEQUENCES
OF POSITIVE TEST
RESULTS

In addition to the consequences established by federal law, a District employee subject to the DOT requirements confirmed to have violated the District's policy pertaining to alcohol or controlled substances shall be subject to termination. [See DF series]

CONSEQUENCES
FOR VIOLATION OF
PROHIBITIONS

An employee subject to the DOT requirements whose conduct is in violation of the alcohol and controlled substances prohibitions of this policy shall be terminated for:

1. Refusing to submit to a required test for alcohol or controlled substances.
2. Providing an adulterated, diluted, or a substituted specimen on an alcohol or drug test.
3. Testing positive for alcohol, at a concentration of 0.02 or above, in a postaccident test.
4. Testing positive for controlled substances in a postaccident test.
5. Testing positive for alcohol, at a concentration of 0.02 or above, in a random test.
6. Testing positive for controlled substances in a random test.
7. Testing positive for alcohol, at a concentration of 0.02 or above, in a required confirmation test.
8. Testing positive for controlled substances in a required confirmation test.
9. Testing positive for alcohol, at a concentration of 0.02 or above, in a reasonable suspicion test.
10. Testing positive for controlled substances in a reasonable suspicion test.

PRIVACY

In all aspects of administering the drug- and alcohol-testing program, the District shall respect the employee's privacy.