

*Existing policy with recommended revision.*

## **Personnel - Non-Certified**

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

The New Fairfield 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 (OTETA). 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 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 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.

“Controlled substance” in this policy refers to those covered by the Omnibus Act, including marijuana, cocaine, opiates, amphetamines and phenocyclidine (PCP).

All employed drivers shall be subjected 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 shall be required.

Pre-employment drug testing for a driver using the same procedures as described above, shall be administered to an applicant offered a position in the District prior to the first time the employee performs any safety-sensitive function for the district. An applicant who tests positive will not be hired for any safety-sensitive position.

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 any time while the driver is at work.

A driver covered by the federal regulations may not refuse to take a required test.

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

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.

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. 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.

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.

[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 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, ~~by June 30, 2019,~~ 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.

~~Beginning July 1, 2019,~~ 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.

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

#### 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;
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.

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

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.  
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)  
Connecticut General Statutes  
PA 95-140 An Act Authorizing Drug Testing of Drivers of Certain Commercial Motor Vehicles.  
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)

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NEW FAIRFIELD PUBLIC SCHOOLS  
New Fairfield, Connecticut

*No change to administrative regulation.*

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

School bus drivers including substitute drivers shall be subject to a drug and alcohol testing program that fulfills the requirements of the Code of Federal Regulations, Title 49, Part 382.

Note: Pursuant to 49 CFR 382.107, a driver subject to drug and alcohol testing is any person who operates a commercial motor vehicle, and a vehicle designed to transport 16 or more passengers, including the driver, is a commercial motor vehicle.

Other persons who drive vehicles designed to transport 16 or more passengers, including the driver, are likewise subject to the drug and alcohol testing program. (49 CFR 382.103).

Note: The DOT's uniform testing procedures are set forth in 49 CFR Part 40. Regulations related to collection and laboratory testing are extremely complex. Because the collection process is the place where errors are most likely to occur, litigation challenging test results often focuses on the collection process. For these reasons, districts should either adopt the testing procedures set forth in federal regulations or contract out (alone or in consortium) with a company that complies with those regulations.

### **Pre-Employment Tests**

Drug and alcohol tests will be administered before a driver performs any safety-sensitive function for the district. (49 CFR 382.301)

Safety-sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. It includes driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents; and performing any other work for the district or paid work for any other entity. (49 CFR 382.107, 395.2)

Note: Because drug testing is expensive, the following optional paragraph defers testing until after a job offer is made.

The drug tests shall be required of an applicant only after he/she has been offered the position. Employment with the District is conditional upon the applicant receiving a negative drug test result.

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

#### **Pre-Employment Tests (continued)**

Exceptions may be made for drivers who have participated in the drug testing program required by law within the previous 30 days, prior to the application for employment and while participating in that program was tested for drugs within the last six months or participated in a random drug testing program in the previous 12 months, provided that the District has been able to make all verifications required by law. (49 CFR 382.301)

#### **Post-Accident Tests**

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any driver who;

1. Was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life; or
2. Received a citation under state or local law for a moving traffic violation arising from the accident. (49 CFR 382.303)

No such driver shall use alcohol for eight hours after the accident, or until after he/she undergoes a post-accident alcohol test, whichever occurs first. (49 CFR 382.209)

If an alcohol test is not administered within two hours or if a drug test is not administered within 32 hours, the district shall prepare and maintain records explaining why the test was not conducted. Tests need not be given if not administered within eight hours after the accident for alcohol or within 32 hours for drugs.

Test conducted by authorized federal, state or local officials will fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the District. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations. (49 CFR 382.303)

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

#### **Random Tests**

Note: Pursuant to 49 CFR 382.305, the number of random alcohol test annually must equal 10% of the average number of driver positions, and the number of random drug tests annually must equal 50% of the average number of driver positions. Dates for administering the test must be spread reasonably throughout the calendar year.

Tests shall be conducted on a random basis at unannounced times throughout the year. Tests for alcohol shall be conducted just before, during or just after the performance of safety-sensitive functions. Random tests for drugs do not have to be conducted in immediate time proximity to performing safety-sensitive functions. Once notified of selection for drug testing, an employee must proceed to a collection site to provide a urine specimen. Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. (49 CFR 382.305)

#### **Reasonable Suspicion Tests**

Note: Pursuant to 49 CFR 382.603, persons designated to determine whether reasonable suspicion exists must receive at least 60 minutes of training that covers the physical, behavioral, speech and performance indicators of alcohol misuse and an additional 60 minutes of training that covers these indicators of controlled substance use.

Tests shall be conducted when a supervisor or district official trained in accordance with law has reasonable suspicion that the driver has violated the district's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. (49 CFR 382.307)

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before or just after the period of the work day when the driver must comply with alcohol prohibitions. An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the district shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after eight hours. (49 CFR 382.307)

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

#### **Reasonable Suspicion Tests** (continued)

A supervisor or district official who makes a finding of reasonable suspicion shall also make a written record of his/her observations leading to a reasonable suspicion drug test within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier. (49 CFR 382.307)

#### **Return-to-Duty Tests**

A drug or alcohol test shall be conducted when a driver who has violated the district's drug or alcohol prohibition returns to performing safety-sensitive duties. (49 CFR 382.309)

Employees whose conduct involved misuse of drugs cannot return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result. (49 CFR 382.605)

Note: Pursuant to 49 CFR 382.605, employees whose conduct involved alcohol cannot return to duty in a safety-sensitive function until they undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. Concentrations lower than 0.02 might still violate district policies related to the maintenance of a drug and alcohol-free workplace.

Employees whose conduct involved alcohol cannot return to duty in a safety-sensitive function until the return-to-duty alcohol test produces a verified result that meets federal and District standards.

#### **Follow-up Tests**

A driver who violates the District's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up alcohol testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions. (49 CFR 382.311)



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

#### **Records**

Note: 49 CFR 382.401 and 382.403 identify detailed records that the district must keep for varying periods of time. 49 CFR 382.405 prohibits the release of this information except as required by law.

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with law. Upon written request, a driver shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. (49 CFR 382.405)

#### **Notifications**

Note: Pursuant to 49 CFR 382.601, the district must provide the information below to all drivers.

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the district's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. The information shall identify:

1. The person designated by the District to answer driver questions about the materials;
2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382;
3. Sufficient information about the safety-sensitive functions performed by driver to make clear what period of the work day the driver is required to comply with Part 382;
4. Specific information concerning driver conduct that is prohibited by Part 382;
5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382;

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### Drug and Alcohol Testing For School Bus Drivers

#### Notifications (continued)

Note: 49 CFR 40 specifies detailed testing procedures that must be used to ensure accuracy, reliability and confidentiality. These procedures include training and proficiency requirements and requirements for a suitable test location. Firms with which the district contracts for collection and laboratory services can be expected to provide information about their procedures for distribution to employees.

6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results and ensure that test results are attributed to the correct driver;
7. The requirement that a driver submit to drug and alcohol test administered in accordance with Part 382;
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences;
9. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment;
10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04; and
11. Information concerning the effects of drugs and alcohol on an individual's health, work and personal life; external and internal signs and symptoms of a drug or alcohol problem (the driver's or a co-worker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management. (49 CFR 382.601)

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

#### **Notifications** (continued)

Note: Pursuant to 49 CFR 382.601 materials supplied to drivers may also include information about other policies and disciplinary consequences based on the district's authority independent of 49 CFR 382 and described as such. The district must ensure that each driver signs a statement certifying that he/she has received a copy of the above materials. The district must maintain this signed statement and may give a copy to the driver.

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. (49 CFR 382.601)

Before any driver operates a commercial motor vehicle, the district shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. (49 CFR 382.303)

Note: 49 CFR 382.113 requires the district to inform the employee, before tests are performed, that the tests are required by 49 CFR 382. 49 CFR 382.113 also states that employers shall not falsely represent that a test administered under their own or other authority is being administered under the authority of the Federal Highway Administration.

When tests are given pursuant to the Code of Federal Regulations, Title 49, Part 382, the district shall so inform drivers before drug and alcohol test are performed. (49 CFR 382.113)

The district shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her employment application. (49 CFR 382.411)

The district shall notify a driver of the results of random, reasonable suspicion and post-accident drug tests if the test results are verified positive. The district shall also tell the driver which controlled substance(s) were verified as positive. (49 CFR 382.411)

Note: Pursuant to 49 CFR 382.213, the district may require a driver to inform the district when using a controlled substance prescribed by physician who has advised to the driver that the substance does not adversely affect the driver's ability to safely operate a motor vehicle.

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

#### **Notifications** (continued)

Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Such a substance may be used only if the physician has advised the driver that it will not adversely affect his/her ability to safely operate a commercial motor vehicle. (49 CFR 382.213)

#### **Enforcement**

Any driver who refuses to submit to a post-accident, random, reasonable suspicion or follow-up tests shall not perform or continue to perform safety-sensitive functions. (49 CFR 382.211)

Note: Under the Code of Federal Regulations, Title 49, Part 382, the district can take action only as provided in the following paragraph when the action is based solely on tests results showing an alcohol concentration of less than 0.04. Pursuant to 49 CFR 382.505, this does not prohibit an employer with authority independent of Part 382 from taking any action otherwise consistent with law.

A driver who is tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform or continue to perform safety-sensitive functions including driving a commercial motor vehicle until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered. (49 CFR 382.505)

Note: 49 CFR 382.605 provides that the choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies.

A driver who in any other way violates District prohibitions related to drugs and alcohol shall receive from the district the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol-related problems. The employee shall be evaluated by a substance abuse professional who shall determine what help, if any, the driver needs in resolving such a problem. Any substance abuse professional who determines that driver needs assistance shall not refer the driver to a private practice, person or organization in which he/she has a financial interest, except under circumstances allowed by law. (49 CFR 382.605)

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### Drug and Alcohol Testing For School Bus Drivers

#### Enforcement (continued)

An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation program and shall be subject to unannounced follow-up tests after returning to duty. (49 CFR 382.605)

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.

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]

Connecticut General Statutes

PA 95-140 An Act Authorizing Drug Testing of Drivers of certain commercial motor vehicles.

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NEW FAIRFIELD PUBLIC SCHOOLS  
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