

Recommended Updates

AASB Policy Reference Manual

BP 4021 - ~~DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS~~

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Purpose

Note: 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

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[DISCARD WHEN FINISHED](#)

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.

The Superintendent or designee shall establish and implement a drug and alcohol testing program for all bus drivers 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.](#) 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 the regulations of the Department of Education and Early Development.

Prohibited conduct

No personnel employed by the school district as 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 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 include 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, 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

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[DISCARD WHEN FINISHED](#)

returning to duty.

The 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, Tobacco, and Alcohol Free Workplace](#))

(cf. 3514 - [Environmental Safety](#))

(cf. 4158/~~4258~~/4358 - [Employee Security](#))

(cf. 5144.1 - [Suspension and Expulsion](#)/~~Due Process~~)

Legal Reference:

ALASKA STATUTES

[AS 14.09.025](#) *Drug Testing for School Bus Drivers*

[AS 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

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

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AR 4021 - DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

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School bus drivers employed by the district are subject to drug and alcohol testing pursuant to a program that complies with state and federal law. These district regulations reflect several requirements of the federal drug testing regulations, but are not intended to modify or limit the procedures for drug and alcohol testing specifically addressed in state or federal law. District personnel will adhere to the detailed provisions of these laws in administering the district's testing program.

Definitions

For purposes of these regulations, the term "tests" includes both drug and alcohol tests, unless specifically stated otherwise, in context.

The terms "drugs" and "controlled substances" have the same meaning and are interchangeable in these regulations.

"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 the driver is relieved from work and all responsibility for performing work as a driver. These functions include by way of example, 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.

Prohibited conduct

Drivers shall be prohibited from any drug or alcohol use that could affect performance on the job, including use during the four hours before driving, during any period of time the employee is driving, and during the eight hours following an accident, should one occur.

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

Any driver required to use a controlled substance during any of these periods shall obtain in advance a written statement from a qualified physician instructing the employee to use the controlled substance and advising the employee that the substance does not adversely affect the employee's ability to safely operate a school bus or other motor vehicle. It is the employee's responsibility to submit this document to the employee's supervisor prior to using the controlled substance during any of the prohibited periods described above, and to use the substance in accordance with the physician's instructions.

REQUIRED TESTING

Pre-employment tests

Drug and alcohol tests will be required of an applicant for a position as a bus driver only after the individual has been offered the position. Pre-employment tests shall be conducted before the first time a driver performs any safety-sensitive function for the district. Employment with the district is conditional upon the applicant successfully passing these tests.

Unless otherwise prohibited by law, exceptions may be made for drivers who have had the alcohol test required by law within the previous six months and participated in the drug testing program required by law within the previous 30 days, provided that the district has been able to make all verifications required by law.

Post-accident tests

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[DISCARD WHEN FINISHED](#)

Before any employee may operate a school bus, the district will provide the employee with information concerning post-accident testing procedures. Alcohol and drug tests will be conducted as soon after an accident as is practicable on any driver who:

1. was performing a safety-sensitive function with respect to the vehicle and the accident involved serious injury or the loss of human life.
2. received a citation under any state or local law for a moving traffic violation arising out of the accident.

Drivers shall make themselves readily available for drug and alcohol testing after an accident, absent the need for immediate medical attention. No driver involved in any accident, whether or not there was serious injury or death, may use alcohol or a controlled substance for eight hours after the accident, or until the employee has undergone a drug and alcohol test, whichever is first. If an alcohol test is not administered within two hours after the accident, or a drug test is not administered within 32 hours after the accident, the district will prepare and maintain records explaining why the test was delayed or not conducted.

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.

Whenever a supervisor or district official has a reasonable suspicion that a bus driver has violated the district's prohibitions against the improper use of alcohol or drugs, the district may conduct a test of that driver. This reasonable suspicion must be based on specific, contemporaneous, articulated observations concerning the driver's appearance, behavior, speech or body odors. These observations also may include indications of chronic use or the withdrawal effects of controlled substances.

Alcohol tests will be 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 these prohibitions. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the district will prepare and maintain a record explaining why a test was not conducted within that time. Attempts to conduct an alcohol test will terminate after eight hours.

A supervisor or district official who makes a finding of reasonable suspicion also must make a written record of the observations made that lead to a reasonable suspicion. This written record must be made within 24 hours of the time the test is given, or before the test results are released, whichever is first. The individual making the reasonable suspicion shall not be the individual conducting the test, unless other persons qualified to administer the test are not reasonably available and there is danger that a proper test will not be conducted.

Random tests

Note: The random tests described below must be conducted throughout the calendar year, not just at one time. Further, they should not be conducted at the same time each calendar year, and employees should be tested the same day as the tests are announced. The Omnibus Transportation Employee Testing Act of 1991 regulations were revised in 2001 to reduce from 25% to 10% the minimum percentage of employees required to be randomly tested for alcohol.

Drug and Alcohol tests of bus drivers shall be conducted on a random basis at unannounced times throughout the year. Tests for alcohol or drugs shall be conducted just before, during or

[WORKSHEETS for the district policy committee:](#)
[DISCARD WHEN FINISHED](#)

just after the performance of safety-sensitive functions. The number of random alcohol tests annually must equal 10% of the average number of driver positions. The number of random drug tests annually must equal 50% of the average number of driver positions. 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.

Return to duty tests

Prior to being permitted to return to performing safety-sensitive functions for the school district, a driver shall be administered a drug or alcohol test, as appropriate. Employees whose conduct involved misuse of drugs or alcohol may not return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result or the return-to-duty alcohol test produces a verified result that meets federal and district standards.

Note: Pursuant to [49 CFR 382.605](#), an employee whose conduct involved alcohol cannot return to duty in a safety-sensitive function until the employee undergoes a return-to-duty alcohol test with an alcohol concentration of less than 0.02. However, more restrictive statutory and regulatory provisions also may apply in addition to the DOT regulations. Under the Drug-Free Workplace Act, for example, a school district employee cannot be under the influence of alcohol on school grounds.

Note: Pursuant to [49 CFR 40.67\(b\)](#), direct observation of follow-up and return-to-duty drug tests are now mandatory rather than discretionary to minimize cheating in drug tests. However, where additional testing methodologies are approved by DHHS and adopted by DOT, DOT intends to make these methods available as an alternative to direct observation urine testing.

Follow-up tests

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

Note: Pursuant to [49 CFR 40.67\(b\)](#), direct observation of follow-up and return-to-duty drug tests are now mandatory rather than discretionary to minimize cheating in drug tests. However, where additional testing methodologies are approved by DHHS and adopted by DOT, DOT intends to make these methods available as an alternative to direct observation urine testing.

Enforcement

Note: [49 CFR Section 382](#) provides that a driver who is tested and found to have an alcohol concentration of 0.02 or greater, but less than 0.04, may 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. Under [49 CFR 382](#), this is the only action the employer can take based solely on an alcohol concentration of 0.02 or greater, but not less than 0.04. However, pursuant to [49 CFR Section 382.505](#), this does not prohibit an employer with authority independent of [Part 382](#) from taking any action otherwise consistent with law.

Any driver who refuses to submit to a post-accident, random, reasonable suspicion or follow-up test shall not perform or continue to perform safety-sensitive functions.

Drivers who test positive for alcohol or drugs in violation of this policy or law shall be subject to disciplinary action up to, and including, dismissal.

[WORKSHEETS for the district policy committee:](#)
[DISCARD WHEN FINISHED](#)

Records

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 the employee's use of drugs or alcohol, including any records pertaining to the employee's drug or alcohol tests.

Records shall be made available to a subsequent employer or other identified persons only as permitted by law and expressly requested, in writing, by the driver.

Note: Where state law requires, employers and third party administrators may disclose drug and alcohol violations of employees holding commercial drivers licenses (CDL) to state CDL authorities. Such disclosure is not permitted in Alaska. Under [Alaska Statute 23.10.660](#), drug testing results may not be disclosed except 1) to the tested employee, 2) individuals designated by an employer to evaluate test results or hear the explanation of the employee, or 3) as ordered by court or governmental agency.

Notifications

Note: Pursuant to [49 CFR 382.601](#), the school district must provide the following information to all drivers. Materials supplied to drivers may also include information about other policies and disciplinary consequences based on the district's authority under state and other law, and described as such. The school district must ensure that each driver signs a statement certifying that the employee has received a copy of these materials.

Each driver shall receive copies of educational materials that explain the requirements of the [Code of Federal Regulations \(CFR\), Title 49, Part 382](#), together with copies of any other required materials and 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 drivers 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 alcohol under [Part 382](#);
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 tests 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 effect of drugs and alcohol on an individual's health, work and personal life; sign and symptoms of a drug or alcohol problem (the driver's or a

[WORKSHEETS for the district policy committee:](#)
[DISCARD WHEN FINISHED](#)

coworker's), and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program or referral to management.

Each driver shall sign a statement certifying that the employee has received a copy of the above materials.

Note: 49 CFR 382.113 requires the school 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. If the school district establishes a testing program before the compliance date required by federal regulations, the following paragraph should be deleted until after the compliance date.

Before any employee operates a commercial motor vehicle for the school district, the district shall provide the employee with post-accident procedures that will make it possible for the employee to comply with post-accident testing requirements.

Prior to performing drug and alcohol tests, the district shall inform drivers that the tests are given pursuant to the [Code of Federal Regulation, Title 49, Part 382](#). This notice shall be provided only after the compliance date specified in law.

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 the employee's employment application.

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 tell the driver which controlled substances were verified as positive.

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AASB Policy Reference Manual

BP 4030 – ALL PERSONNEL - NONDISCRIMINATION IN EMPLOYMENT

Note: Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which became effective November 21, 2009, with implementing regulations effective July 18, 2016, protects applicants and employees from employment discrimination based on genetic information. Employers are prohibited from discriminating in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

[WORKSHEETS for the district policy committee:](#)
[DISCARD WHEN FINISHED](#)

The district and its employees shall not unlawfully discriminate against or harass employees or job applicants on the basis of sex, race, color, religion, national origin, ancestry, age, marital status, changes in marital status, pregnancy, parenthood, physical or mental disability, Vietnam era veteran status, genetic information, or good faith reporting to the board on a matter of public concern.

The district may provide optional wellness programs to seek to improve health or prevent disease. All wellness programs must be in accord with applicable state and federal law. An employee may not be discriminated against in employment because of the medical information they provide as part of participating in the wellness program, nor may they be subject to retaliation for choosing not to participate.

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

(cf. 4161.4/4261.4/4361.4 - Family and Medical Leave)

Note: The Americans with Disabilities Act sets forth an employers' duty to reasonably accommodate persons with disabilities.

Equal opportunity shall be provided to all employees and applicants in every aspect of personnel policy and practice. The district shall not discriminate against persons with physical or mental disabilities who, with or without reasonable accommodation, can perform the essential functions of the job in question.

(cf. 0411 - Service Animals)

(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

Note: Federal Regulations ([45 CFR, Section 86.9](#)) require federal aid recipients to take "continuing steps" to notify applicants for employment that, in compliance with Title IX, they do not discriminate on the basis of sex. Districts employing 15 or more persons also must give "continuing" notification about nondiscrimination on the basis of handicap. (Vocational Rehabilitation Act of 1973)

The Superintendent or designee shall publicize this policy annually throughout the district and the community.

(cf. 1312.3 - Complaints Concerning Discrimination)

Legal Reference:

ALASKA STATUTES

[14.18.010](#) Discrimination based on sex and race prohibited

[14.18.020](#) Discrimination in employment prohibited

[14.18.090](#) Enforcement by state board of education and early development

[18.80.220](#) Unlawful employment practices

[39.90.100](#) Nondiscrimination - Protection for whistleblowers

ALASKA ADMINISTRATIVE CODE

[4 AAC 06.510](#) Discrimination in hiring practices

UNITED STATES CODE

[29 U.S.C. 621-634](#) Age Discrimination In Employment Act

[29 U.S.C. 791 et seq.](#) Vocational Rehabilitation Act of 1973, Sections 503 and 504

[38 U.S.C. 2011 et seq.](#) Vietnam Era Veterans' Act

[42 U.S.C. Ch. 21F](#) Prohibiting Employment Discrimination on the Basis of Genetic Information

[42 U.S.C. 2000d-2000d-7](#) Title VI of the Civil Rights Act

[42 U.S.C. 2000e-2000e-17](#) The Equal Employment Opportunities Act

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