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416 DRUG AND ALCOHOL TESTING

[NOTE: Drug and Alcohol Testing of school bus drivers and applicants is mandatory under federal law. The mandatory testing is described under III of the policy. Testing of other employees or testing of school bus drivers beyond that mandated by federal law is optional but can be done under state law only if a policy containing provisions such as the provisions of IV of this policy are adopted. To preserve the right to request or require non-bus driver school district employees and applicants to undergo drug and/or alcohol testing, or to require bus drivers to submit to testing that is not federally mandated, a school district should adopt IV as part of its drug and alcohol testing policy.]

I. PURPOSE

- A. The school board recognizes the significant problems created by drug and alcohol use in society in general, and the public schools in particular. The school board further recognizes the important contribution that the public schools have in shaping the youth of today into the adults of tomorrow.
- B. It is the belief of the school board that a work environment free of drug and alcohol use will not only be safer, healthier, and more productive, but will also be more conducive to effective learning. Therefore, to provide such an environment, the purpose of this policy is to provide authority so that the school board may require all employees and/or job applicants to submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in federal law and Minn. Stat. §§ 181.950 through 181.957.

II. GENERAL STATEMENT OF POLICY

- A. All school district employees and job applicants whose positions require a commercial driver's license will be required to undergo drug and alcohol testing in accordance with federal law and the applicable provisions of this policy. The school district also may request or require that drivers submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950 through 181.957.
- B. The school district may request or require that any school district employee or job applicant, other than an employee or applicant whose position requires a commercial driver's license, submit to drug and alcohol testing in accordance

with the provisions of this policy and as provided in Minn. Stat. §§ 181.950 through 181.957.

- C. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed, including medical cannabis, regardless of whether it has been prescribed for the employee, is prohibited on school district property (which includes school district vehicles), while operating school district vehicles or equipment, and at any school-sponsored program or event. Use of drugs which are not medically prescribed, including medical cannabis, regardless of whether it has been prescribed for the employee, is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district property. Employees under the influence of drugs which are not medically prescribed are prohibited from entering or remaining on school district property.
- D. The use, possession, sale, purchase, transfer, or dispensing of alcohol is prohibited on school district property (which includes school district vehicles), while operating school district vehicles or equipment, and at any school-sponsored program or event. Use of alcohol is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district property. Employees under the influence of alcohol are prohibited from entering or remaining on school district property.
- E. Any employee who violates this section shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge.

III. DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

A. General Statement of Policy

All persons subject to commercial driver's license requirements shall be tested for alcohol, marijuana (including medical cannabis), cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP), pursuant to federal law. Drivers who test positive for alcohol or drugs shall be subject to disciplinary action, which may include termination of employment.

B. Definitions.

- 1. "Actual Knowledge" means actual knowledge by the school district that a driver has used alcohol or controlled substances based on: (a) direct observation of the employee's use (not observation of behavior sufficient to warrant reasonable suspicion testing); (b) information provided by a previous employer; (c) a traffic citation; or (d) an employee's admission,

except when made in connection with a qualified employee self-admission program.

2. “Alcohol Screening Device” (ASD) means a breath or saliva device, other than an Evidential Breath Testing Device (EBT), that is approved by the National Highway Traffic Safety Administration and placed on its Conforming Products List for such devices.
3. “Breath Alcohol Technician” (BAT) means an individual who instructs and assists individuals in the alcohol testing process and who operates the Evidential Breath Testing Device (EBT).
4. “Commercial motor vehicle” (CMV) includes a vehicle which is designed to transport 16 or more passengers, including the driver.
5. “Designated Employer Representative” (DER) means a designated school district representative authorized to take immediate action to remove employees from safety-sensitive duties, to make required decisions in the testing and evaluation process, and to receive test results and other communications for the school district.
6. “Department of Transportation, (DOT) means United States Department of Transportation.
7. “Driver” is any person who operates a CMV, including full-time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers, and independent owner-operator contractors.
8. “Evidential Breath Testing Device” (EBT) means an EBT approved by the National Highway Traffic Safety Administration for the evidentiary testing of breath for alcohol concentration and placed on its Conforming Products List for such devices.
9. “Medical Review Officer” (MRO) means a licensed physician responsible for receiving and reviewing laboratory results generated by the school district’s drug testing program and for evaluating medical explanations for certain drug tests.
10. “Refusal to Submit” (to an alcohol or controlled substances test) means that a driver: (a) fails to appear for any test within a reasonable time, as determined by the school district, consistent with applicable DOT regulations, after being directed to do so; (b) fails to remain at the testing site until the testing process is complete; (c) fails to provide a urine specimen or an adequate amount of saliva or breath for a DOT drug or alcohol test; (d) fails to permit the observation or monitoring of the

driver's provision of a specimen in the case of a directly observed or monitored collection in a drug test; (e) fails to provide a sufficient breath specimen or sufficient amount of urine when directed and determination has been made that no adequate medical explanation for the failure exists; (f) fails or declines to take an additional test as directed; (g) fails to undergo medical examination or evaluation, as directed by the Medical Review Officer or the Designated Employer Representative; (h) fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to sign the certification on the forms); or (i) is reported by the Medical Review Officer as having verified adulterated or substituted test result. An applicant who fails to appear for a pre-employment test, who leaves the testing site before the pre-employment testing process commences, or who does not provide a urine specimen because he or she has left before it commences is not deemed to have refused to submit to testing.

11. "Safety-sensitive functions" are on-duty functions from the time the driver begins work or is required to be in readiness to work until relieved from work, and include such functions as driving, loading and unloading vehicles, or supervising or assisting in the loading or unloading of vehicles, servicing, repairing, obtaining assistance to repair, or remaining in attendance during the repair of a disabled vehicle.
12. "Screening Test Technician" (STT) means anyone meeting the requirements for a BAT who may act as an STT, provided that the individual has demonstrated proficiency in the operation of non-evidential screening devices (approved for use in lieu of EBTs to perform screening tests).
13. "Substance Abuse Professional" (SAP) means a licensed physician medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or a addition counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

C. Policy and Educational Materials.

[NOTE: The federal regulations require that school districts provide materials to bus drivers explaining the school district's policies and procedures and the federal requirements with respect to the mandatory drug and alcohol testing of bus drivers. 49 C.F.R. § 382.601. Almost all of the required information is contained within this

model policy. Additional materials to be provided to employees are described in paragraph 2 of this Section C.]

1. The school district shall provide a copy of this policy and procedures to each driver prior to the start of its alcohol and drug testing program and to each driver subsequently hired or transferred into a position requiring driving of a CMV.
2. The school district shall provide to each driver information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation, referral to an employee assistant program, and/or referral to management.
3. The school district shall provide written notice to representatives of employee organizations that the information described above is available.
4. The school district shall require each driver to sign a statement in the form of Attachment A certifying that he or she has received a copy of the policy and materials. The school district will maintain the original signed certificate and will provide a copy to the driver if the driver so requests.

[NOTE: The federal regulations require a school district to obtain a signed statement from each driver certifying that he or she has received a copy of these materials. 49 C.F.R. § 382.601(d). The original signed certificate must be maintained by the school district and a copy may be provided to the driver.]

D. Alcohol and Controlled Substances Testing Program Manager

[NOTE: School districts are required by the federal regulations to designate a person to answer driver questions about the policy and the education materials described in Section C above and to notify the drivers of the designation. 49 C.F.R. § 382.601(b)(1).]

1. The program manager will coordinate the implementation, direction, and administration of the alcohol and controlled substances testing policy for bus drivers. The program manager is the principal contact for the collection site, the testing laboratory, the MRO, the BAT, the SAP, and the person submitting to the test. Employee questions concerning this policy shall be directed to the program manager.
2. The school district shall designate a program manager and provide written notice of the designation to each driver along with this policy.

E. Specific Prohibitions for Drivers.

[NOTE: The specific prohibitions for drivers are contained, in large part, in 49 C.F.R. §§ 382.201-382.215.]

1. Alcohol Concentration. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers who test greater than 0.04 will be taken out of service and will be subject to evaluation by a professional and retesting at the driver's expense.
2. Alcohol Possession. No driver shall be on duty or operate a CMV while the driver possesses alcohol.
3. On-Duty Use. No driver shall use alcohol while performing safety-sensitive functions.
4. Pre-Duty Use. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. Use Following an Accident. No driver required to take a post-accident test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
6. Refusal to Submit to a Required Test. No driver shall refuse to submit to an alcohol or controlled substances test required by post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements. A verified adulterated or substituted drug test shall be considered a refusal to test.
7. Use of Controlled Substances. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to instructions (which have been presented to the school district) from a licensed physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a Commercial Motor Vehicle. Controlled substance includes medical cannabis, regardless of whether the driver is enrolled in the state registry program.
8. Positive Test for Controlled Substance. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances, including medical cannabis.
9. General Prohibition. Drivers are also subject to the general policies and procedures of the school district which prohibit the possession, transfer,

sale, exchange, reporting to work under the influence of drugs or alcohol, and consumption of drugs or alcohol while at work or while on school district premises or operating any school district vehicle, machinery, or equipment.

F. Other Alcohol-Related Conduct.

[NOTE: Consequences for drivers engaging in alcohol-related conduct are described in the federal regulations. 49 C.F.R. § 382.505.]

No driver found to have an alcohol concentration of 0.02 or greater but less than .04 shall perform safety-sensitive functions for at least 24 hours. The school district will not take any action under this policy other than removal from safety-sensitive functions based solely on test results showing an alcohol concentration of less than .04, but may take action otherwise consistent with law and policy of the school district.

G. Prescription Drugs.

A driver shall inform his or her supervisor if at any time the driver is using a controlled substance pursuant to a physician's prescription. The physician's instructions shall be presented to the school district upon request. Use of a prescription drug shall be allowed if the physician has advised the driver that the prescribed drug will not adversely affect the driver's ability to safely operate a Commercial Motor Vehicle. Use of medical cannabis is prohibited notwithstanding the driver's enrollment in the patient registry.

H. Testing Requirements.

1. Pre-Employment Testing.

[NOTE: 49 C.F.R. § 382.301 details the requirements for pre-employment testing.]

- a. A driver applicant shall undergo testing for (alcohol and) controlled substances, including medical cannabis, before the first time the driver performs safety-sensitive functions for the school district.

[NOTE: The Federal Highway Administration suspended its pre-employment alcohol testing requirement in May 1995. As part of its alcohol misuse program, a school district is now permitted but not required to conduct pre-employment testing for the use of alcohol. See Proposed Revisions to the federal regulations 61 Fed. Reg. 21149 (1996).]

- b. Tests shall be conducted only after the applicant has received a conditional offer of employment.
- c. In order to be hired, the applicant must test negative and must sign an agreement in the form of Attachment B, authorizing former employers to release to the school district all information on the applicant's alcohol tests with results of blood alcohol concentration of 0.04 or greater, or positive results for controlled substances, including medical cannabis, or refusals to be tested, and any SAP referrals, within the preceding two (2) years.

[NOTE: The federal regulations require school districts to inquire about, obtain, and review alcohol and controlled substances information from prior employers pursuant to a driver's written authorization, prior to the time a driver performs safety sensitive functions, if feasible. 49 C.F.R. § 382.413. If not feasible, school districts must make good faith efforts to obtain the information and to make a record of those efforts to be retained in the driver's qualification file.]

2. Post-Accident Testing.

[NOTE: 49 C.F.R. § 382.303 governs post-accident testing of drivers.]

- a. As soon as practicable following an accident involving a CMV, the school district shall test the driver for alcohol and controlled substances, including medical cannabis, if the accident involved the loss of human life or if the driver receives a citation for a moving traffic violation arising from an accident which results in bodily injury or disabling damage to a motor vehicle.
- b. Drivers should be tested for alcohol use within two (2) hours and no later than eight (8) hours after the accident.
- c. Drivers should be tested for controlled substances, including medical cannabis, no later than thirty- two (32) hours after the accident.
- d. A driver subject to post-accident testing must remain available for testing, or shall be considered to have refused to submit to the test.
- e. If a post-accident alcohol test is not administered within two hours following the accident, the school district shall prepare and maintain on file a record stating the reasons the test was not promptly administered and continue to attempt to administer the alcohol test within eight hours.

- f. If a post-accident alcohol test is not administered within eight hours following the accident or a post-accident controlled substances test is not administered within 32 hours following the accident, the school district shall cease attempts to administer the test, and prepare and maintain on file a record stating the reasons for not administering the test.

3. Random Testing.

[NOTE: 49 C.F.R. § 382.305 governs random testing of drivers.]

- a. The school district shall conduct tests on a random basis at unannounced times throughout the year, as required by the federal regulations.

[NOTE: The Federal Highway Administration lowered the random alcohol selection and testing rate from 25% of the average number of driver positions to 10% in 1998 and evaluates this minimum percentage each year. School districts can elect to stay at 25% (or a higher percentage) if they do not want to monitor the minimum annual percentage rate set by the FHWA. The random controlled substances selection and testing rate has remained at 50% each year and has not been lowered to 25% as is possible under the regulations.]

- b. The school district shall test for alcohol at a minimum annual percentage rate of 25% of the average number of driver positions, and for controlled substances, including medical cannabis, at a minimum annual percentage of 50%.
- c. The school district shall adopt a scientifically valid method for selecting drivers for testing, such as random number table or a computer-based random number generator that is matched with identifying numbers of the drivers. Each driver shall have an equal chance of being tested each time selections are made.
- d. Random tests shall be unannounced. Dates for administering random tests shall be spread reasonably throughout the calendar year.
- e.. Drivers shall proceed immediately to the collection site upon notification of selection; provided, however, that if the driver is performing a safety-sensitive function, other than driving, at the time of notification, the driver shall cease to perform the function and proceed to the collection site as soon as possible.

4. Reasonable Suspicion Testing.

[NOTE: 49 C.F.R. § 382.307 governs reasonable suspicion testing of drivers.]

- a. The school district shall require a driver to submit to an alcohol test and/or controlled substances, including medical cannabis, test when a supervisor or school district official, who has been trained in accordance with the regulations, has reasonable suspicion to believe that the driver has used alcohol and/or controlled substances, including medical cannabis, on duty or within four (4) hours before coming on duty. The test shall be done as soon as practicable following the observation of the behavior indicative of the use of controlled substances or alcohol.
 - b. The reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The required observations for reasonable suspicion of a controlled substances violation may include indications of the chronic and withdrawal effects of controlled substances.
 - c. Alcohol testing shall be administered within two hours following a determination of reasonable suspicion. If it is not done within two hours, the school district shall prepare and maintain a record explaining why it was not promptly administered and continue to attempt to administer the alcohol test within eight hours. If an alcohol test is not administered within eight hours following the determination of reasonable suspicion, the school district shall cease attempts to administer the test, and state in the record the reasons for not administering the test.
 - d. The supervisor or school district official who makes observations leading to a controlled substances reasonable suspicion test shall make and sign a written record of the observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier.
5. Return-To-Duty Testing. A driver found to have violated this policy shall not return to work until undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a confirmed negative result for the use of controlled substances.
 6. Follow-Up Testing. When a SAP has determined that a driver is in need of assistance in resolving problems with alcohol and/or controlled substances, the driver shall be subject to unannounced follow-up testing as

directed by the SAP for up to sixty (60) months after completing a treatment program.

7. Consent to Testing. Each driver and driver applicant tested under this policy will be requested to sign a consent form in the form of Attachment C at the specimen collection site which authorizes the taking of the sample and the release of the results to the proper authority.
8. Right to Refuse and Consequence.
 - a. A driver or driver applicant has the right to refuse to undergo drug and alcohol testing.
 - b. Refusal to submit to testing means the employee or applicant (1) fails to provide adequate breath for testing without a valid medical explanation after he/she received notice to report for the test; (2) fails to provide adequate urine for a controlled substances test without a valid medical explanation after he/she has received notice to report for the test; or (3) engages in conduct that clearly obstructs the testing process.
 - c. Refusal to submit to testing will establish a presumption that the driver or driver applicant would test positive if a test were conducted and, therefore, the driver or driver applicant is subject to discipline or disqualification under this policy.
 - d. A driver applicant who refuses to submit to testing shall be disqualified from further consideration for the conditionally-offered position.
 - e. An employee who refuses to submit to testing shall not be permitted to perform safety-sensitive functions and will be considered insubordinate and subject to disciplinary action, up to and including dismissal. The employee will be evaluated by a SAP and must submit to a return-to-duty test prior to being reassigned to safety-sensitive functions.
 - f. Drivers or driver applicants who refuse to submit to required testing will be required to sign Attachment D.

I. Testing Procedures.

1. Controlled Substances Testing.

- a. Controlled substances testing is conducted by analyzing a donor's urine specimen. Split urine samples will be collected in accordance with federal regulations. The donor will provide a urine sample at a designated collection site. The collection site personnel will then pour the sample into two sample bottles labeled "primary" and "split," seal the specimen bottles, complete the chain of custody form, and prepare the specimen bottles for shipment to the testing laboratory for analysis. The specimen preparation shall be conducted in sight of the donor.
- b. If the donor is unable to provide the appropriate quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluid and, after a period of not more than two (2) hours, again attempt to provide a sample. If the individual is still unable to provide a complete sample, the test shall be discontinued and the school district notified. The MRO shall refer the donor for a medical evaluation to determine if the donor's inability to provide a specimen is genuine or constitutes a refusal to test. For pre-employment testing, the school district may elect to not have a referral made, and revoke the employment offer.
- c. Drug test results are reported directly to the Medical Review Officer (MRO) by the testing laboratory. The MRO reports the results to the school district. If the results are negative, the school district is informed and no further action is necessary. If the test result is confirmed positive, the MRO shall give the donor an opportunity to discuss the test result. The MRO will contact the donor directly, on a confidential basis, to determine whether the donor wishes to discuss the test result. The MRO shall notify each donor that the donor has 72 hours in which to request a test of the split specimen at the donor's expense.
- d. If the donor requests an analysis of the split specimen within 72 hours of having been informed of a confirmed positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another Department of Health and Human Services–SAMHSA certified laboratory for analysis. If the donor has not contacted the MRO within 72 hours, the donor may present the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the confirmed positive test, or other circumstances unavoidably prevented the donor from timely making contact. If the MRO concludes that a legitimate explanation for the donor's failure to contact him/her within 72 hours exists, the MRO shall direct the analysis of the split specimen. The MRO will review the confirmed positive test

result to determine whether an acceptable medical reason for the positive result exists. The MRO shall confirm and report a positive test result to the school district when no legitimate medical reason for a positive test result as received from the testing laboratory exists.

- e. If, after making reasonable efforts and documenting those efforts, the MRO is unable to reach the donor directly, the MRO must contact the school district who will direct the donor to contact the MRO. If the school district is unable to contact the donor, the donor will be suspended from performing safety-sensitive functions.
- f. The MRO may confirm the test as a positive without having communicated directly with the donor about the test results under the following circumstances:
 - (1) The donor expressly declines the opportunity to discuss the test results; or
 - (2) The donor has not contacted the MRO within five (5) days of being instructed to do so by the school district.
 - (3) The MRO and the Designated Employer Representative, after making and documenting all reasonable efforts, have not been able to contact the donor within ten (10) days of the date the confirmed test result was received from the laboratory.

2. Alcohol Testing.

- a. The federal alcohol testing regulations require testing to be administered by a Breath Alcohol Technician using an Evidential Breath Testing Device (EBT) or a Screening Test Technician using an Alcohol Screening Device (ASD). EBT's and ASD's can be used for screening tests but only EBT's can be used for confirmation tests.
- b. Any test result less than 0.02 alcohol concentration is considered a "negative" test.
- c. If the donor is unable to provide sufficient saliva for an Alcohol Screening Device, the Designated Employer Representative will immediately arrange to use an Evidential Breath Testing Device. If the donor attempts and fails to provide an adequate amount of breath, the school district will direct the donor to obtain a written

evaluation from a licensed physician to determine if the donor's inability to provide a breath sample is genuine or constitutes a refusal to test.

- d. If the screening test results show alcohol concentration of 0.02 or higher, a confirmatory test conducted on an Evidential Breath Testing Device will be required to be performed between 15 and 30 minutes after the completion of the screening test.
- e. Alcohol tests are reported directly to the Designated Employer Representative.

J. Driver/Driver Applicant Rights.

- 1. All drivers and driver applicants subject to the controlled substances testing provisions of this policy who receive a confirmed positive test result for the use of controlled substances, have the right to request, at the driver's or driver applicant's expense, a confirming retest of the split urine sample. If the confirming retest is negative, no adverse action will be taken against the driver, and a driver applicant will be considered for employment.

[NOTE: The limitation on discharge in Paragraph 2, below, is contained solely in Minnesota law. State law is preempted by federal laws and regulations as it related to drivers of commercial motor vehicles (such as bus drivers). See Minn Stat. § 221.031, Subd. 10. Nevertheless, school districts may decide to comply with the state law requirements for various reasons (such as to treat all school district employees equally since employees subject to testing only under state law are accorded these additional right. Consultation with the school district's legal counsel is recommended.]

- 2. The school district will not discharge a driver who, for the first time, receives a confirmed positive drug or alcohol test UNLESS:
 - a. the school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school district after consultation with the Substance Abuse Professional; and
 - b. the employee refuses to participate in the recommended program, or fails to successfully complete the program as evidenced by withdrawal before its completion or by a positive test result on a confirmatory test after completion of the program.

- c. this limitation on employee discharge does not bar discharge of an employee for reasons independent of the first confirmed positive test result.

K. Testing Laboratory.

The testing laboratory for controlled substances will be [*name, address, telephone number*], which is a laboratory certified by the Department of Health and Human Services-SAMHSA to perform controlled substances testing pursuant to federal regulations.

L. Confidentiality of Test Results.

All alcohol and controlled substances test results and required records of the drug and alcohol testing program are considered confidential information under federal law and private data on individuals as that phrase is defined in Minn. Stat. Ch. 13. Any information concerning the individual’s test results and records shall not be released without written permission of the individual, except as provided for by regulation or law.

M. Recordkeeping Requirements and Retention of Records.

- 1. The school district shall keep and maintain records in accordance with the federal regulations in a secure location with controlled access.

[NOTE: The federal recordkeeping requirements for school districts are detailed in the federal regulations 49 C.F.R. §§ 382.401 et seq. The Federal Department of Transportation (“DOT”) publishes a guide to the recordkeeping requirements of mandatory drug and alcohol testing for persons with a commercial driver’s license as part of its Alcohol & Drugs: DOT Compliance Manual. This document is available from the St. Paul office of the Federal Highway Administration, DOT, (612) 290-3230.]

- 2. The required records shall be retained for the following minimum periods:

Basic records	5 years
“Basic records” includes records of: (a) alcohol test results with concentration of 0.02 or greater; (b) verified positive drug test results; (c) refusals to submit to required tests (including substituted or adulterated drug test results); (d) SAP reports; € all follow-up tests and schedules for follow-up tests; (f) calibration documentation; (g) administration of the testing programs; and (h) each annual calendar year summary.	
Collection records	2 years
Negative and cancelled tests	1 year
Alcohol tests with less than 0.02 concentration	1 year
Education and training records	indefinite

“Education and training records” must be maintained while the individuals perform the functions which require training and for the two (2) years after ceasing to perform those functions.

N. Training.

The school district shall designate certain employees to make determinations of reasonable suspicion. The designated employees shall receive at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use. The training shall include physical, behavioral, speech, and performance indicators of probable misuse of alcohol and use of controlled substances. The training will be used by the supervisors to make determinations of reasonable suspicion.

O. Consequences of Prohibited Conduct and Enforcement.

1. Removal. The school district shall remove a driver who has engaged in prohibited conduct from safety-sensitive functions. A driver shall not be permitted to return to safety-sensitive functions until and unless the return-to-duty requirements of federal DOT regulations have been completed.

2. Referral, Evaluation, and Treatment.

a. A driver or driver applicant who has engaged in prohibited conduct shall be provided a listing of Substance Abuse Professional readily available to the driver or application and acceptable to the school district.

[Note: Subparagraphs b. and c., below, are based on the provisions of 49 C.F.R. § 40.289.]

b. If the school district offers a driver an opportunity to return to a DOT safety-sensitive duty following a violation, the driver must be evaluated by a Substance Abuse Professional (SAP) and the driver is required to successfully comply with the SAP’s evaluation recommendations (education, treatment, follow-up evaluation(s) and/or ongoing services). The school district is not required to provide a SAP evaluation or any subsequent recommended education or treatment.

[Note: School districts are not required to comply with state law governing drug and alcohol testing when the individuals are subject to the federal laws and regulations (i.e. bus drivers). If a

school district, after consultation with legal counsel, choose to comply voluntarily with these requirements, Subparagraph b., above, can be modified as follows:

- c. The school district will offer a driver an opportunity to return to a DOT safety-sensitive duty following an employee's first positive test result on a confirmatory test if no reasons independent of the first test result for discharge exist. Otherwise, the school district may choose, but is not required, to provide a Substance Abuse Professional evaluation or any subsequent recommended education or treatment
- d. Drivers are responsible for payment for Substance Abuse Professional evaluations and services unless a collective bargaining agreement or employee benefit plan provides otherwise.
- e. Drivers who engage in prohibited conduct also are required to comply with follow-up testing requirements.

3. Disciplinary Action.

- a. Any driver who refuses to submit to post-accident, random, reasonable suspicion, or follow-up testing not only shall not perform or continue to perform safety-sensitive functions, but also may be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- b. Drivers who test positive with verification of a confirmatory test or are otherwise found to be in violation of this policy shall be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- c. Nothing in this policy limits or restricts the right of the school district to discipline or discharge a driver for conduct which not only constitutes prohibited conduct under this policy but also violates the school district's other rules or policies.

P. Other Testing.

The school district may request or require that drivers submit to drug and alcohol testing other than that required by federal law. For example, drivers may be requested or required to undergo drug and alcohol testing on an annual basis as part of a routine physical examination. Such additional testing of drivers will be conducted only in accordance with the provisions of this policy and as provided in

Minn. Stat. §§ 181.950 through 181.957. For purposes of such additional, non-mandatory testing, drivers fall within the definition of “other employees” covered by Section IV of this policy.

[Note: When the testing of drivers complies with federal testing requirements and procedures, school districts clearly are exempt from the state drug and alcohol testing requirements in Minn. Stat. §§ 181.950-181.957. See Minn. Stat § 221.031, Subd. 10 (1997). When testing beyond the federally mandated requirements, however, school districts still must comply with state law.]

IV. DRUG AND ALCOHOL TESTING FOR OTHER EMPLOYEES

The school district may request or require drug and alcohol testing for other school district personnel, i.e., non-school bus drivers, or job applicants for such positions. The school district does not have a legal duty to request or require any employee or job applicant to undergo drug and alcohol testing as authorized in this policy, except for school bus drivers and other drivers of CMVs who are subject to federally mandated testing. (See Section III of this policy.) If a school bus driver is requested or required to submit to drug or alcohol testing beyond that mandated by federal law, the provisions of Section IV of this policy will be applicable to such testing.

A. Circumstances Under Which Drug Or Alcohol Testing May Be Requested or Required:

1. General Limitations.

- a. The school district will not request or require an employee or job applicant whose position does not require a commercial driver’s license to undergo drug or alcohol testing, unless the testing is done pursuant to this drug and alcohol testing policy; and is conducted by a testing laboratory which participates in one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
- b. The school district will not request or require an employee or job applicant whose position does not require a commercial driver’s license to undergo drug and alcohol testing on an arbitrary and capricious basis.

2. Job Applicant Testing.

The school district may request or require any job applicant whose position does not require a commercial driver’s license to undergo drug and alcohol testing, provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If a job applicant has

received a job offer which is contingent on the applicant passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the event the job offer is subsequently withdrawn, the school district shall notify the job applicant of the reason for its action.

3. Random Testing.

The school district may request or require only employees in safety-sensitive positions to undergo drug and alcohol testing on a random selection basis.

4. Reasonable Suspicion Testing.

The school district may request or require any employee to undergo drug and alcohol testing if the school district has a reasonable suspicion that the employee:

- a. is under the influence of drugs or alcohol;
- b. has violated the school district's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the school district's premises or operating the school district's vehicles, machinery, or equipment;
- c. has sustained a personal injury, as that term is defined in Minn. Stat. § 176.011, Subd. 16, or has caused another employee to sustain a personal injury; or
- d. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

5. Treatment Program Testing.

The school district may request or require any employee to undergo drug and alcohol testing if the employee has been referred by the school district for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

6. Routine Physical Examination Testing.

The school district may request or require any employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

B. No Legal Duty to Test.

The school district does not have a legal duty to request or require any employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing.

C. Definitions.

1. "Drug" means a controlled substance as defined in Minnesota Statutes, including medical cannabis, regardless of enrollment in the state registry program.
2. "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, Subd. 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
3. "Other Employees" means any persons, independent contractors, or persons working for an independent contractor who perform services for compensation, either full-time or part-time, in whatever form, except for persons whose positions require a commercial driver's license, for the school district, and includes both professional and nonprofessional personnel. Persons whose positions require a commercial driver's license are primarily governed by the provisions of the school district's drug and alcohol testing policy relating to school bus drivers (Section III). To the extent that the drug and alcohol testing of persons whose positions require a commercial driver's license is not mandated by federal law and regulations, such testing shall be governed by Section IV of this policy and the drivers shall fall within this definition of "other employees".
4. "Job applicant" means a person, independent contractor, or person working for an independent contractor who applies to become an employee of the school district in a position that does not require a commercial driver's license, and includes a person who has received a job

offer made contingent on the person passing drug or alcohol testing. Job applicants for positions requiring a commercial driver's license are governed by the provisions of the school district's drug and alcohol testing policy relating to school bus drivers (Section III).

5. "Positive test result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
6. "Random selection basis" means a mechanism for selection of employees that:
 - a. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected; and
 - b. does not give the school district discretion to waive the selection of any employee selected under the mechanism.
7. "Reasonable suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
8. "Safety-sensitive position" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

D. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing and Consequences of Such Refusal.

1. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing.

Any employee or job applicant whose position does not require a commercial driver's license has the right to refuse drug and alcohol testing subject to the provisions contained in paragraphs 2 and 3 of this section D.

2. Consequences of an Employee's Refusal to Undergo Drug and Alcohol Testing.

Any employee in a position that does not require a commercial driver's license who refuses to undergo drug and alcohol testing in the circumstances set out in the Random Testing, Reasonable Suspicion Testing, and Treatment Program Testing provisions of this policy may be subject to disciplinary action, up to and including immediate discharge.

3. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing.

Any job applicant for a position which does not require a commercial driver's license who refuses to undergo drug and alcohol testing pursuant to the Job Applicant Testing provision of this policy shall not be employed.

E. Reliability and Fairness Safeguards.

1. Pretest Notice.

Before requesting an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, the school district shall provide the employee or job applicant with a Pretest Notice in the form of Attachment E to this policy on which to (1) acknowledge that the employee or job applicant has received the school district's drug and alcohol testing policy.

2. Notice of Test Results.

Within three (3) working days after receipt of a test result report from the testing laboratory, the school district shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test.

3. Notice of and Right to Test Result Report.

- a. If an employee or job applicant has a positive test result on a confirmatory test, the school district shall provide him or her with notice of the test results and at the same time, written notice of the right to explain the results and to submit additional information.
- b. The school district may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.
- c. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee or job applicant may submit information (in addition to any information already submitted) to the school district to explain that result.

4. Notice of and Right to Explain Positive Test Result.

- a. In the case of a positive test result on a confirmatory test, the school district shall also, at the time of providing notice of the test results, provide written notice to inform an employee or job applicant of the right to explain the results and to submit additional information.
- b. The school district may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.
- c. The employee may present verification of enrollment in the medical cannabis patient registry as part of the employee's explanation.
- d. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee or job applicant may submit information (in addition to any information already submitted), to the school district to explain that result.

5. Notice of and Right to Request Confirmatory Retests.

- a. In the case of a positive test result on a confirmatory test, the school district shall also, at the time of providing notice of the test results, provide written notice to inform an employee or job applicant of the right to request a confirmatory retest of the original sample at the employee's or job applicant's own expense.
- b. An employee or job applicant may request a confirmatory retest of the original sample at the employee's or job applicant's own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee or job applicant shall notify the school district in writing of the employee's or job applicant's intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the school district shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minn. Stat. § 181.953, Subd. 1, to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other

laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.

6. In the case of a positive test result on a confirmatory test, the school district shall also, at the time of providing notice of the test results, provide written notice to inform an employee or job applicant of other rights provided under sections F or G below, whichever is applicable.

Attachment F to this policy provides the Notices described in paragraphs 2 through 6 of this section E.

F. Discharge and Discipline of Employees Whose Positions Do Not Require a Commercial Driver's License.

1. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.
2. In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.
3. The school district may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the school district, unless the following conditions have been met:
 - a. The school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school district after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
 - b. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its

completion or by a positive test result on a confirmatory test after completion of the program.

4. Notwithstanding paragraph 1, the school district may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the school district believes that it is reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
5. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information or the employee's status as a patient enrolled in the medical cannabis registry program revealed to the school district, unless the employee was under an affirmative duty to provide the information before, upon, or after hire, or failing to do so would violate federal law or regulations or cause the school district to lose money or licensing-related benefit under federal law or regulations.
6. The school district may not discriminate against any employee in termination, discharge, or any term of condition of employment or otherwise penalize an employee based upon an employee registered patient's positive drug test for cannabis components or metabolites, unless the employee used, possessed, or was impaired by medical cannabis on school district property during the hours of employment.
7. An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

G. Withdrawal of Job Offer for an Applicant for a Position That Does Not Require a Commercial Driver's License.

If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the school district may withdraw the job offer.

H. Chain-of-Custody Procedures.

The school district has established its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures require the following:

1. Possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;
2. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
3. A sample must be accompanied by a written chain-of-custody record; and
4. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

I. Privacy, Confidentiality and Privilege Safeguards.

1. Privacy Limitations.

A laboratory may only disclose to the school district test result data regarding the presence or absence of drugs, alcohol or their metabolites in a sample tested.

2. Confidentiality Limitations.

Test result reports and other information acquired in the drug or alcohol testing process are, with respect to employees and job applicants, private data on individuals as that phrase is defined in Minn. Stat. Ch. 13, and may not be disclosed by the school district or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested.

3. Exceptions to Privacy and Confidentiality Disclosure Limitations.

Notwithstanding paragraphs 1 and 2, evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minn. Stat. Ch. 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation or order, or in

accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

4. Privilege.

Positive test results from the school district drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

J. Notice of Testing Policy to Affected Employees.

The school district shall provide written notice of this drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously non-affected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant passing drug and alcohol testing. Affected employees and applicants will acknowledge receipt of this written notice in the form of Attachment G to this policy.

V. POSTING

The school district shall post notice in an appropriate and conspicuous location on school district premises that the school district has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in the school district's personnel office or other suitable locations.

Legal References: Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. Ch. 43A (State Personnel Management)
Minn. Stat. § 152.22 (Medical Cannabis: Definitions)
Minn. Stat. § 152.23 (Medical Cannabis: Limitations)
Minn. Stat. § 152.32 (Protections for Registry Program Participation)
Minn. Stat. §§ 181.950-181.957 (Drug and Alcohol Testing in the Workplace)
Minn./Stat/ §221.031 (Motor Carrier Rules)
49 U.S.C. § 31306 (Omnibus Transportation Employee Testing Act of 1991)
49 U.S.C. § 521(b) (Civil and Criminal Penalties for Violations)
49 C.F.R. Parts 40 and 382 (Department of Transportation Rules Implementing Omnibus Transportation Employee Testing Act of 1991)

Cross-References: MSBA Model Policy 403 (Discipline, Suspension and Dismissal of School District Employees)

MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
MSBA Model Policy 417 (Chemical Use/Abuse)
MSBA Model Policy 418 (Drug-Free Workplace/Drug-Free Schools)