

SUBJECT: DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES

The BOCES shall adhere to federal law and regulations requiring the implementation of a drug and alcohol testing program for employees in safety-sensitive positions. For the purposes of this policy, safety-sensitive employees (SSEs) shall include any BOCES employees who operate commercial motor vehicles and are subject to the commercial drivers license (CDL) requirements established by the United States Department of Transportation, and to all BOCES applicants who have been extended a conditional offer of employment in such a capacity.

The BOCES shall either establish and manage its own program or shall contract through a consortium for the provision of alcohol and drug testing of employees in safety-sensitive positions.

Federal regulations require that the BOCES test school bus drivers and other SSEs for alcohol and drugs at the following times:

Pre-duty testing:

- a) Pre-duty testing is testing for drugs that the BOCES will administer after a conditional offer of employment has been extended and prior to any covered driver's performance of a safety-sensitive function. The BOCES will not allow any covered driver to commence the performance of any safety-sensitive function unless the drug testing reveals a verified negative test result. In addition, independent of the requirements of the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereunder, if the pre-duty drug testing reveals a presence of drugs, it will result in the revocation of the conditional offer of employment.
- b) The Medical Review Officer will conduct a final review of all positive test results to assess possible alternative medical explanations for the positive test results. (For an in-depth explanation of the drug testing procedures please refer to Department of Transportation 49 CFR Part 40, Subpart B.)
- c) The BOCES may, in its sole discretion, forego pre-duty testing where the exceptions promulgated at Department of Transportation 49 CFR Section 382.30 I (c), relating to drug testing of covered drivers by their previous employers, are satisfied.

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Random testing:

- a) Random testing is unannounced testing for alcohol and drugs administered in a statistically random manner throughout the year to covered drivers employed by the BOCES in ratios as required by the Department of Transportation regulations, so that all covered drivers have an equal probability of selection each time a random test is administered.
- b) Covered drivers are subject to random alcohol testing as follows: immediately prior to performing safety-sensitive functions, or while performing safety-sensitive functions, or immediately following the performance of safety-sensitive functions. Random drug testing may be conducted at any time the covered driver is on duty for the BOCES.

Reasonable suspicion testing:

- a) Reasonable suspicion testing is alcohol and drug testing that the BOCES will conduct when it has reasonable suspicion to believe that a covered driver has engaged in conduct prohibited by this policy. Reasonable suspicion must be based upon specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of a covered driver by a supervisor, as determined by the BOCES, who is specially trained to recognize alcohol misuse or drug use. Observations may include indications of chronic and/or withdrawal effects of controlled substances.
- b) The BOCES shall not administer a reasonable suspicion alcohol test more than eight (8) hours following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated. Notwithstanding the absence of a reasonable suspicion alcohol test, the BOCES will not permit any covered driver to report for duty or remain on duty requiring the performance of a safety-sensitive function while the driver is under the influence of, or impaired by, alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, until an alcohol test is administered and the driver's alcohol concentration measures less than .02 or 24 hours have elapsed following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated.

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Reasonable suspicion testing:

- c) A written record shall be made of observations leading to reasonable suspicion, signed by the specially trained supervisor who made the observations, within twenty-four (24) hours of the observed behavior or before the results of drugs test are released, whichever is earlier.
- d) Covered drivers are subject to reasonable suspicion alcohol testing as follows: immediately prior to performing safety-sensitive functions, while performing safety-sensitive functions, or immediately following the performance of safety-sensitive functions. Reasonable suspicion drug testing may be conducted at any time the covered driver is on duty for the BOCES.

Post-accident testing:

- a) A post-accident test is a test for alcohol and drugs administered following an accident involving a commercial motor vehicle to each surviving covered driver:
 - who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or,
 - who receives a citation under state or local law for a moving violation arising from the accident; and,
 - if the accident resulted in one or more vehicles incurring substantial structural damages as a result of the accident;
 - if the accident resulted in bodily injury to a person who as a result of the injury immediately receives medical treatment away from the scene of the accident.
- b) The BOCES will not administer a post-accident alcohol test more than eight hours following the accident and will not administer a post-accident drug test more than 32 hours following the accident. A covered driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the BOCES to have refused to submit to testing. This shall not be construed to require the delay of necessary medical attention for injured individuals following an accident or to prohibit a covered driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

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Post-accident testing: (Cont'd.)

- c) The results of a breath or blood test for the use of alcohol or a urine test for the use of drugs, conducted by federal, state or local officials having independent authority for the test, shall be considered to meet the requirements of this policy concerning post-accident testing, provided such tests conform to applicable federal, state, or local requirements and that the results of the test are obtained by the BOCES. If such a test results in an alcohol concentration below .02, a 24 hour out-of-service may be issued by the law enforcement official.

Return-to-duty testing:

- a) Return-to-duty testing is alcohol and/or drug testing conducted after a covered driver has engaged in prohibited conduct under this policy and prior to the employee's return to the performance of a safety-sensitive function. The alcohol test must indicate an alcohol concentration of less than .02 and/or a drug test must indicate a verified negative result for illegal drugs.

Follow-up testing:

- a) Follow-up tests are given following a determination by the Substance Abuse Professional (SAP) that a driver is in need of assistance in resolving problems associated with misuse of alcohol and/or drugs. This is an unannounced test, given at least six (6) times within twelve (12) months with the actual frequency and number of tests determined by the substance abuse professional, but in no event may the follow-up testing continue for a period beyond 60 months from the covered driver's return to duty. The substance abuse professional may terminate the requirement of follow-up testing at any time after the first six (6) tests have been administered if the SAP determines that follow-up testing is no longer necessary.
- b) Covered drivers are subject to follow-up alcohol testing as follows: immediately prior to performing safety-sensitive functions, or while performing safety-sensitive functions, or immediately following the performance of safety-sensitive functions. Follow-up drug testing may be conducted at any time the covered driver is on duty for the BOCES.

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Drug & Alcohol Testing Procedures

The BOCES shall retain an approved company to perform collection and testing, to ensure chain of custody requirements, and to ensure the correct employee is tested and matched with the correct test results. Such company will be required to follow the federal regulations to ensure compliance with the blind sample, calibration of the evidential breath testing device (EBT), laboratory certification and proper training of the Breath Alcohol Technician (BAT). Testing for alcohol and/or controlled substances will be taken on site or at the laboratory, in a secure location that affords visual and aural privacy and with the proper safeguards to ensure the integrity of the specimens collected. The Drug and Alcohol Coordinator can be contacted to request the name of the company hired to perform the drug and alcohol testing services.

If the test comes back positive dilute, that shall be considered a positive verified test and the covered driver shall not be allowed to take another test. If the test comes back negative dilute, then the covered driver shall be required to take another test. If the test comes back cancelled, neither positive or negative for drugs or alcohol, the employee shall not be allowed to perform safety-sensitive functions; BOCES shall order a re-collection in the case of a cancelled test for the purpose of retesting.

Alcohol testing:

- a) Alcohol testing will be administered by a trained and qualified Breath Alcohol Technician (BAT). The evidential breath testing device used for testing shall meet the standards promulgated by the Department of Transportation and have a quality assurance plan (QAP) developed by the manufacturer to ensure proper calibration.
- b) If the initial test reveals an alcohol concentration of .02 or greater, a confirmatory test must be performed. The confirmatory test result is the final test result for the purposes of this policy.
- c) If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the Breath Alcohol Technician shall, if practicable, begin a new screening or confirmation test, as applicable, e.g., using a new breath alcohol testing form with a new sequential test number.

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Drug testing:

- a) A Department of Health and Human Services certified laboratory will perform drug testing on urine samples provided by covered drivers. The drugs for which tests will be conducted are: Marijuana (THC), Cocaine, Phencyclidine (PCP), Opiates, and Amphetamines. The cutoff levels for these drugs will be those set forth in the Department of Transportation regulation.

Pre-duty request for prior employment drug and alcohol testing:

- a) In the case of any new safety-sensitive employee, the BOCES shall request the following written information, after obtaining the prospective employee's written consent, from DOT regulated employers who have employed the employee at any time during the two years prior to the date of the employee's application or transfer:
- Alcohol tests with a result of 0.02 or higher alcohol concentration;
 - Verified positive drug test;
 - Refusal to be tested;
 - Other violations of DOT agency drug and alcohol testing; and
 - With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements.
- b) The above listed information should be obtained and reviewed before the prospective employee commences performing any safety-sensitive functions. However, the BOCES has a 30-day grace period from the day the employee starts to perform safety-sensitive functions in which to obtain or make and document a good faith effort to obtain this information. The BOCES must not allow any employee to continue performing safety-sensitive functions after 30 days if BOCES has not obtained or made and documented a good faith effort to obtain this information.
- c) The BOCES must ask the prospective employee whether that prospective employee has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for but did not obtain safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

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Pre-duty request for prior employment drug and alcohol testing: (Cont'd.)

- d) If the prospective employee admits to a positive test or to a refusal to test, then the BOCES may choose not to hire the prospective employee. However, if the BOCES does choose to hire a prospective employee who has admitted to a positive test or to a refusal to test, the BOCES must not use the employee to perform safety-sensitive functions, until and unless the employee documents successful completion of return-to-duty process.

The following alcohol and controlled substance-related activities are prohibited for drivers of commercial motor vehicles and other SSEs:

- a) No covered driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater.
- b) A covered driver shall not be on duty or operate a commercial motor vehicle while the covered driver possesses alcohol.
- c) A covered driver shall not use alcohol while performing safety-sensitive functions.
- d) No covered driver shall perform safety-sensitive functions within six (6) hours after using alcohol.
- e) A covered driver required to take a post accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until he/she undergoes a post accident alcohol test, whichever is first.
- f) A covered driver shall not report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver is using drugs, except when the use is pursuant to the instructions of a physician who has advised the driver that the drug does not affect the driver's ability to safely operate a commercial motor vehicle.
- g) No covered driver shall report for duty, remain on duty, or perform a safety-sensitive function, if the driver tests positive for controlled substances.

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The following alcohol and controlled substance-related activities are prohibited for drivers of commercial motor vehicles and other SSEs: (Cont'd.)

- h) Independent of the requirements of the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereunder, the covered driver must provide written notice from the physician to the Drug and Alcohol Coordinator that the driver is using controlled substances pursuant to the instructions of the physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.
- i) A covered driver shall not refuse to submit to an alcohol or drug test required under this policy.
- j) An applicant for employment, who has been given a conditional offer of employment, may not refuse to sign a release authorizing the BOCES to request from all former employers where the employee was a covered driver, the applicant's drug and alcohol testing records.

Independent of the requirements of the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereunder, any covered driver who is found to have violated the prohibited conduct under this policy will be immediately suspended from any safety-sensitive function without pay, and:

- a) If the covered driver's alcohol concentration, as measured by an alcohol test, is greater than .02, the covered driver shall be advised to seek assistance and/or counseling from a substance abuse professional. Such an infraction shall result in a suspension without pay pending a review of the employee's work record. After a review of all pertinent facts leading to the suspension and a positive test result from the Medical Review Officer, the covered driver shall be subject to disciplinary action up to and including discharge;
- b) If the violation is for the illegal use of drugs in violation of this policy and after a review of all pertinent facts leading to the suspension, the covered driver shall be subject to disciplinary action up to and including termination;

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Independent of the requirements of the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereunder, any covered driver who is found to have violated the prohibited conduct under this policy will be immediately suspended from any safety-sensitive function without pay, and: (Cont'd.)

- c) If the covered driver refuses to submit to a post-accident alcohol test, a reasonable suspicion alcohol test, a random alcohol test or a follow-up alcohol test, the covered driver shall be directed to seek assistance and/or counseling from a substance abuse professional. If a covered driver refuses to submit to alcohol testing under this policy such action shall result in a suspension without pay pending a review of the employee's work record for a determination by the BOCES of the appropriate disciplinary action, up to and including discharge;
- d) A covered driver may not perform safety-sensitive functions if there exists a reasonable suspicion that the driver is under the influence of, or impaired by, alcohol or drugs, as shown by the behavioral, speech, and/or performance indicators of alcohol or drug misuse, until a test is administered and a verified negative result is obtained.
- e) The above actions shall be taken in accordance with the provisions of the employee's collective bargaining agreement, §75 of the Civil Service Law and/or §3020-a of Education Law, whichever is/are applicable.

Independent of the requirements of the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereunder, an applicant for employment as a covered driver who has been extended a conditional offer shall have such conditional offer revoked if that applicant:

- a) Undergoes a drug test which reveals a verified positive test result; or,
- b) Admits, during the pre-duty request for prior employment drug and alcohol testing, to a positive test or a refusal to test on any pre-employment drug or alcohol testing administered by the employer to which the employee applied for but did not obtain safety sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years, and the Board chooses not to hire the prospective employee; or,

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Independent of the requirements of the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereunder, an applicant for employment as a covered driver who has been extended a conditional offer shall have such conditional offer revoked if that applicant: (Cont'd.)

- c) Previously failed to successfully complete a rehabilitation program (return-to-duty process) established by a substance abuse professional; or,
- d) Fails to provide a release for the BOCES to request drug and alcohol test results from a previous employer.

Referral, Evaluation and Treatment

- a) The BOCES shall make available to the covered driver information regarding the resources available for evaluating and resolving problems associated with the misuse of alcohol and use of drugs, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.
- b) The BOCES requires that each covered driver who engages in conduct prohibited by this policy shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug use. The costs associated with this evaluation shall be the responsibility of the covered driver.
- c) Before a covered driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this policy, the covered driver shall undergo a return-to-duty test with a verified negative result, and the substance abuse professional shall determine that any prescribed rehabilitation program has been followed.

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SUBJECT: DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES (Cont'd.)

Definitions

- a) Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.
- b) Alcohol use - The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- c) Breath Alcohol Technician (BAT) - An individual who operates an evidential breath testing device and instructs and assists individuals in the alcohol testing process.
- d) BAC or Alcohol Concentration - Breath Alcohol Concentration (SAC) or alcohol concentration, is the amount of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath indicated by an evidential breath test.
- e) Commercial Motor Vehicle - A motor vehicle or a combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or,
 - has a gross vehicle weight rating of 26,001 or more pounds; or,
 - is designed to transport 16 or more passengers, including the driver; or,
 - is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and is placarded under the Hazardous Material Regulations (49 CFR Part 172, Subpart F).
- f) Confirmation test - In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of a screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test following a screening test with a result of .02 or greater, that provides quantitative data of alcohol concentration.

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SUBJECT: DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES (Cont'd.)

Definitions (Cont'd.)

- g) Covered drivers - BOCES employees who operate commercial motor vehicles and applicants for employment with the BOCES who are applying for positions as drivers of commercial motor vehicles (for the purposes of pre-duty testing only).
- h) Drug and Alcohol Coordinator - The Drug and Alcohol Coordinator is the Jefferson-Lewis BOCES Health and Safety Coordinator, who is located at 20104 NYS Rt. 3, Watertown, NY 13601, and may be reached at (315) 788-0400.
- i) Evidential breath testing device (EBT) - A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's Conforming Products List of Evidential Breath Measurement Devices (CPL).
- j) Medical Review Officer (MRO) - A licensed physician responsible for receiving laboratory results generated by the BOCES alcohol and drug testing program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information.
- k) Refusal to submit (to an alcohol or drug test) - a covered driver has refused to submit to a test if:
- The driver fails to appear for any test within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer; or,
 - The driver fails to remain at the testing site until the testing process is complete; or,
 - The driver fails to provide a urine specimen for any drug test required by this policy or DOT agency regulations; or,
 - the driver fails to provide adequate breath for alcohol testing; or,
 - in the case of a directly observed or monitored collection in a drug test, the driver fails to permit the observation or monitoring of the provision of a specimen; or,

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Definitions (Cont'd.)

- The driver fails to provide a sufficient amount of urine when directed, and it has been determined through a required medical evaluation, that there was no adequate medical explanation for the failure; or,
 - the driver declines to take a second test the employer or collector has directed the individual to take; or,
 - the driver fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process; or,
 - the driver fails to cooperate with any part of the testing process; or,
 - the driver engages in conduct that clearly obstructs the testing process; or,
 - the MRO reports a verified adulterated or substituted test result and the driver refuses to re-take a test.
- l) Safety-sensitive function - Any of those on-duty functions (promulgated at 49 CFR Section 395.2 On-Duty time) listed below:
- All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver had been relieved from duty by the BOCES.
 - All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
 - All time spent at the driving controls of a commercial motor vehicle in operation.
 - All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
 - All time spent loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
 - All time spent performing the driver's requirements associated with an accident promulgated at 49 CFR Sections 392.40 and 392.41.
 - All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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SUBJECT: DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES (Cont'd.)

Definitions (Cont'd.)

- m) Screening test - In alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system; in drug testing, an immunoassay procedure to eliminate “negative” urine specimens from further consideration.
- n) Substance Abuse Professional - A substance abuse professional is a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.

Employee Notification

The BOCES shall provide access to this policy (from the Office of Employer/Employee Relations or via www.sllboces.org) to each covered driver and to the driver’s collective bargaining agent, if applicable. Each covered driver is required to sign a statement certifying receipt of this information. The BOCES shall maintain the original signed certification for a minimum of two (2) years. The BOCES will provide a copy of the certification to the covered driver upon request.

Savings Clause

If any provision of this policy is determined in a tribunal of competent jurisdiction to be inconsistent with any superseding legal requirements, that provision shall be considered modified or deleted so as to comply with the superseding legal requirements, without any effect on the remaining policy provisions.

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Omnibus Transportation Employee Testing Act of 1991
Public Law 102-143)
49 USC Sections 31136, 31306

Americans with Disabilities Act
42 USC Sections 12111-12117

49 CFR Parts 40, 382 and Sections 395.20 and 521(b)

New York Vehicle and Traffic Law
Sections 509-1, 1192, and 1193

New York Labor Law, Section 201-d

Parts 40, 382, 391, 392 and 395

Adopted: 6/9/2005