

Policy

No. 424 (4219)

**Board of Education
Nutley****NONPROFESSIONAL
STAFF**

COMMERCIAL DRIVER CONTROLLED SUBSTANCES AND ALCOHOL USE TESTING

The Board of Education is committed to a safe, efficient and drug-free work place, which protects the district's most valuable resource, its pupils -- as well as the health and safety of its employees and the general public. The Board requires that all drivers performing any safety-sensitive function are free of drugs and alcohol. Safety-sensitive function means any on duty function as defined by 49 C.F.R. 395.2 including:

1. All time at the terminal facility or any public property waiting to be dispatched unless relieved from duty;
2. All time inspecting equipment;
3. All driving time;
4. All time other than driving time in or upon the commercial vehicle except in an area defined as a sleeping berth;
5. All time loading and unloading;
6. All time spent performing driver requirements related to accidents, and
7. All time repairing, obtaining assistance or remaining in attendance with the vehicle.

The Omnibus Transportation Employee Testing Act requires all operators of commercial motor vehicles subject to the Commercial Drivers License requirements to be tested for controlled substances and alcohol. Federal regulations of the U.S. Department of Transportation require that school bus drivers as well as drivers of private carriers of passengers contracted by the Board be required to submit to alcohol and controlled substance testing. The Board designates the Transportation Coordinator as the officer of the Board responsible for the implementation of this policy.

BOARD OF EDUCATION
NUTLEY

Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 2

NONPROFESSIONAL
STAFF

Prohibited Substances

The presence of any of the following controlled substances in the body, as evidenced by the results of the initial screening and subsequent confirmatory analysis provided in the policy, is prohibited for any employee assigned to a classification covered by this policy.

No driver at any work site will possess, manufacture, use, sell, or distribute any quantity of any controlled substance, lawful or unlawful, which in sufficient quantity could result in impaired performance, with the exception of substances administered by or under the instructions of a physician.

Definitions

"Work Site" means any motor vehicle, office, building, yard or other location at which the driver is to perform work.

"Possess" means either in or on the driver's person, personal effects, motor vehicle or areas substantially entrusted to the control of the driver.

Any violation of this policy and its accompanying regulations may result in discipline, up to and including termination.

Prohibited substances include:

- A. marijuana;
- B. cocaine;
- C. opium or opiates (including heroin, morphine and codeine);
- D. phencyclidine (pcp);
- E. amphetamines or methamphetamines;
- F. other controlled substance, or;
- G. alcohol;
- H. a prescription drug for which the employee does not have a current, valid, personal prescription or which is not authorized or approved for use while operating a motor vehicle.

BOARD OF EDUCATION
NUTLEY
Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 3

NONPROFESSIONAL
STAFF

The Board retains the right to add or delete substances from the above list in accordance with law.

Categories of Testing

For the purpose of this policy, the occurrence of the following circumstances/instances shall require an employee to submit to a fitness-for-duty drug/alcohol screening:

A. Pre-Employment -

An individual who has applied for and has been selected to operate a Board vehicle shall, before beginning employment with the Board, submit to a fitness-for-duty drug/alcohol screening in conjunction with the required physical exam, Policy 408 (4160). Such screening shall be conducted in accordance with the procedures set forth in this policy. No individual receiving a positive result from such screening shall be employed by the Board.

An exception to the pre-employment screening may be made if the prospective employee:

1. Has participated in a drug testing program within thirty days prior to date of the application for employment, and;
2. Has participated in a controlled substance testing program within six months prior to the date of the application for employment or participated in a random controlled substances testing program within twelve months of the date of application for employment.

If an individual is so exempted, the Transportation Coordinator shall contact the alcohol and/or controlled substances testing program in which the driver participated and obtain the following information:

1. Name and address of the program.
2. Verification of the driver's participation.
3. Verification that the program conforms to federal guidelines.

**BOARD OF EDUCATION
NUTLEY****Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 4****NONPROFESSIONAL
STAFF**

4. Verification the driver qualified and did not refuse to be tested for either alcohol or controlled substances.
5. The date the driver was last tested for alcohol and controlled substances.
6. The results of any tests taken within the last six months and any other violations.

B. Random Testing

A covered employee shall be subject to submit to a discretionary fitness-for-duty drug/alcohol screening on an unannounced and random basis resulting from the selection by a random generation methodology. Random testing will be spread reasonably throughout any given calendar year. The minimum annual percentage rate for random alcohol testing shall be 25% of the average number of drivers. The minimum rate of random controlled substances testing shall be 50% of the average number of drivers. These rates may be adjusted as determined by the FHWA (Federal Highway Administration) Administrator.

Drivers shall only be random tested when performing safety-sensitive functions or immediately prior to or immediately following the performance of safety-sensitive functions.

C. Post-Accident Testing

The involvement by an employee in a motor vehicle collision while operating a Board vehicle when such accident results in property damage or personal injury, may trigger a post-accident drug and alcohol test. The following occurrences shall require post-accident drug/alcohol screening:

1. An accident by a driver performing safety-sensitive functions with respect to a vehicle, if the accident involves the loss of human life.
2. An accident in which the driver receives a citation under state or local law for a moving violation arising from the accident.

BOARD OF EDUCATION
NUTLEY
Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 5

NONPROFESSIONAL
STAFF

A driver who is subject to post-accident training shall remain readily available for such testing or be deemed to have refused to submit for testing. A driver who is injured in an accident and requires medical care shall submit to post-accident drug and controlled substance testing by the medical care facility providing the treatment or a designee of the Board if the facility is unable to provide the testing. Nothing herein shall be construed to prevent the driver from leaving the scene of the accident for the period required to obtain necessary assistance or to obtain emergency medical care.

When the testing for alcohol and controlled substances has not occurred within a reasonable time frame, the following actions shall be taken:

Time Elapsed	Action Required
2 hours	Preparation of a record stating the reason why the testing was not promptly administered
8 hours	Cease attempts to administer alcohol tests and maintain a record stating reasons testing was not promptly administered
32 hours	Cease attempts to administer controlled substance tests and prepare and maintain a record stating the reasons the testing was not promptly administered

D. Reasonable Suspicion Testing

Observed conduct of an employee which is reasonably determined to be suspicious or extraordinary for that employee while on Board property or while working for the Board shall result in testing for reasonable suspicion. Such observed conduct may be physical symptoms including but not limited to slurred or other than the employee's usual speech, irregular or unsteady gait, flushed or agitated appearance, blood shot eyes, dilated pupils, nonsensical or irrational behavior or the smell of alcohol or marijuana. Such conduct must be observed and documented in writing by a trained supervisor and the documentation should be placed in the employee's file within twenty-four hours of submission to a fitness-for-duty drug/alcohol screening.

BOARD OF EDUCATION
NUTLEY

Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 6

NONPROFESSIONAL
STAFF

Supervisors shall be trained to observe whether reasonable suspicion exists. Such training shall consist of at least 60 minutes of training on alcohol measure and 60 minutes of training on misuse of controlled substances. The training shall cover physical, behavioral, speech and performance indicators of probable misuse of alcohol and controlled substances. In no case shall the training constitute less than 120 minutes.

E. Return to Duty Testing

The Transportation Coordinator shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, the driver shall undergo a return to duty alcohol test indicating a breath alcohol concentration of less than 0.02 and a controlled-substances test with a result indicating a verified negative result for controlled-substances use.

Drivers required to take return-to-duty tests shall be evaluated by a substance abuse professional and participate in any assistance program prescribed by that individual.

This testing applies to an employee who previously tested positive and successfully completed a rehabilitation program and is now returning to duty. Such employees are subject to a minimum of six (6) unannounced, follow-up drug screening and alcohol tests over the following twelve (12) months, but testing shall not exceed sixty (60) months. Alcohol follow-up testing shall be performed only when the driver is performing safety-sensitive functions or immediately prior to performing or immediately after performing safety-sensitive functions.

Medical Review Officer Notifications

The Board shall employ or contract with a medical review officer who is a licensed physician (MD or DO) and shall designate the Medical Review Officer as the individual responsible for receiving laboratory results generated by the testing program. The individual designated as the medical review official shall have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate the individual's confirmed positive test together with his/her medical history and other biomedical data.

BOARD OF EDUCATION
NUTLEY
Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 7

NONPROFESSIONAL
STAFF

A. Employer Notification

The Medical Review Officer may report controlled substances test results to the employer by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the Medical Review Official's evaluation.

The Medical Review Official must report to the employer the following:

. That the controlled substances test being reported was in accordance with 49 CFR Part 40.

. The name of the individual for whom the test results are being reported.

. The type of test indicated on the custody and control form (random, pre-employment, etc.)

. The date and location of the test collection.

. The identification of the persons or entities performing the collection, analysis of the specimens, and serving the Medical Review Official for the specific test.

. The verified results of the controlled substances test (positive or negative), and if positive, the identity of the controlled substance(s) for which the test was verified positive.

. That the Medical Review Official has made every reasonable attempt to contact the driver.

B. Employee Notification

Prior to verifying a "positive" result, the Medical Review Official shall make every reasonable effort to contact the driver (confidentially), and afford him/her the opportunity to discuss the test result. If after making all reasonable efforts and documenting them, the Medical Review Official is unable to reach the driver directly, the Medical Review Official shall contact a designated management

**BOARD OF EDUCATION
NUTLEY****Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 8****NONPROFESSIONAL
STAFF**

official, who shall direct the driver to contact the Medical Review Official as soon as possible (within 24 hours).

Under split-sample collection procedures, the driver has 72 hours following notification of a positive result to request the secondary sample be analyzed. In the event a split-sample was not taken, or was of inadequate quantity, the original test would be voided, and the driver would not be subject to a result.

Designated Collection Facility

The Board shall designate the facility to be used for the collection of the specimen; provided, however, that the designated facility shall possess all required licenses and permits and shall have a written procedure for ensuring employee privacy, health and safety, the security, and the chain-of-custody of fluid samples. Such written procedures shall be available to an affected employee, and the Board shall discontinue use of any facility it learns has materially violated mandated procedures which compromised a screening.

Designated Screening Laboratory

The Board shall designate the laboratory to which collected fluid samples will be forwarded for drug/alcohol screening; provided, however, that such a designated laboratory must be certified by the Department of Health and Human Services as meeting the standards of the Mandatory Guideline for Federal Work Place Drug Programs.

Screening Procedure

The Board's designated screening laboratory shall employ methods of initial screening and confirmatory testing which comply with the standards promulgated by Department of Transportation/Federal Highway Administration. A secondary laboratory may not be used unless authorized.

Specimens

The normal screening methodology for controlled substances shall be urinalysis, collected by a representative of the Board at a designated site. The presence of alcohol will be determined by a breathalyzer, administered by a certified employee.

BOARD OF EDUCATION
NUTLEY
Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 9

NONPROFESSIONAL
STAFF

Report of a Positive Screening Result

Positive results of an initial screening which has subsequently been confirmed shall be reported to the Transportation Coordinator by its designated Medical Review Officer (MRO) as provided in the standards promulgated by the Department of Transportation/Federal Highway Administration.

Refusal to Submit

A driver shall be deemed as refusing to submit when the driver:

- A. Fails to provide adequate breath for testing without a solid medical explanation after notice of the requirement for breath testing and/or
- B. Fails to provide adequate urine for a controlled substances test after notice of the requirement for a controlled substance test.
- C. Engages in conduct that clearly obstructs the testing process.

Employee Status Pending Receipt of Results

An employee who is required to submit to a fitness-for-duty screening shall not be assigned to operate a Board vehicle pending the outcome of such screening. Until said time the employee will be suspended without pay. An employee whose fitness-for-duty screening produces a negative result shall be promptly returned to duty and made whole for any regular wages lost while on suspension.

Record of Negative Screening

An employee required to submit to a fitness-for-duty screening as provided in this policy and whose screening results are negative may, at their option, have their personnel file documented to reflect the negative result.

Prescription Drugs

All bus drivers shall notify the Transportation Coordinator of the use of any prescription drugs. The Board may require certification from the prescribing physician that the use of the prescription drug will not have an adverse effect on the driver's ability to properly perform safety-sensitive functions.

BOARD OF EDUCATION
NUTLEY

Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 10

NONPROFESSIONAL
STAFF

Consequences to Drivers Engaging in Prohibited Conduct

An employee whose fitness-for-duty screening produces a positive result for a prohibited substance:

- A. Shall not be permitted to perform safety-sensitive functions.
- B. Shall be subject to the disciplinary policies and regulations of the Board as defined in Policy 410 (4150) "Disciplinary Actions", Regulation 4100 (4150R) "Infractions of Non-Instructional Employees", Policy 712 (7436) "Drug Free Work Place", up to and including termination of employment.

In the event the employee is not terminated by the Board the employee shall:

- A. be advised by the Transportation Coordinator of resources available to them in evaluating and resolving problems associated with the misuse of alcohol or the use of controlled substances.
- B. be evaluated by a substance abuse professional who shall determine what assistance, if any, is needed to resolve problems with alcohol or controlled substance use.
- C. undergo, before returning to duty, a return-to-duty alcohol test indicating a breath level of less than 0.02 if the conduct involved alcohol or a controlled substance test with a verified negative result.
- D. be evaluated by a substance abuse professional, if assistance was required, to determine that the employee has followed the rehabilitation program prescribed.
- E. be subject to unannounced follow-up alcohol and/or controlled substance abuse testing.

Return-to-Work Agreement

An employee who has returned to work and who fails to comply with any of the terms of the Return-to-Work Agreement shall be subject to termination.

BOARD OF EDUCATION
NUTLEY

Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 11

NONPROFESSIONAL
STAFF

Maintenance and Retention of Records

The Transportation Coordinator shall maintain and retain all records as required by federal regulation. Records shall include at least the following:

- A. Records related to the collection process:
 - 1. Collection logbooks (if used);
 - 2. Documents related to the random selection process;
 - 3. Calibration documentation for EBT's;
 - 4. Documentation of Breath Alcohol Technician (BAT) training;
 - 5. Documentation of reasoning for reasonable suspicion testing;
 - 6. Documentation of reasoning for post-accident testing;
 - 7. Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing; and
 - 8. Consolidated annual calendar year summaries.
- B. Records related to the driver's test results:
 - 1. Employer's copy of the alcohol test form, including results;
 - 2. Employer's copy of the drug test chain of custody and control form;
 - 3. Documents sent to the employer by the Medical Review Officer;
 - 4. Documentation of any driver's refusal to submit to a required alcohol or controlled substance test; and
 - 5. Documents provided by a driver to dispute results of test.
- C. Documentation of any other violations of controlled substance use or alcohol misuse rules
- D. Records related to evaluations and training:
 - 1. Records pertaining to Substance Abuse Professional's (SAP's) determination of driver's need for assistance;
 - 2. Records concerning a driver's compliance with SAP's recommendations, and records related to education and training;
 - 3. Materials on drug and alcohol awareness, including a copy of the employer's policy on drug use and alcohol misuse;
 - 4. Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials;
 - 5. Documentation of supervisor training; and
 - 6. Certification that training conducted under this rule complies with all requirements of the rule.

BOARD OF EDUCATION
NUTLEYCommercial Driver Controlled Substances and
Alcohol Use Testing - pg 12NONPROFESSIONAL
STAFF

E. Records related to drug testing

1. Agreements with collection site facilities, laboratories, Medical Review Officers (MRO's) and consortia;
2. Names and positions of officials and their role in the employer's alcohol and controlled substance testing program;
3. Monthly statistical summaries of urinalysis; and
4. The employer's drug testing policy and procedures.

F. Required period of retention:

Document to be maintained	Period required to be maintained
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 Years
Verified positive controlled substance test results	
Refusals to submit to required alcohol or controlled substance tests	
Required calibration of Evidential Breath Testing Devices (EBT's)	
Substance Abuse Professional's (SAP's) evaluations and referrals	
Annual calendar year summary	
Records related to the collection process (except calibration) and required training	2 years
Negative and canceled controlled substance test results	1 year
Alcohol test results indicating a breath alcohol concentration less than 0.02	

BOARD OF EDUCATION
NUTLEY
Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 13

NONPROFESSIONAL
STAFF

G. Location of Records

All required records shall be maintained in Board of Education office and the office of the Board's MRO. Records shall be made available for inspection at the Board Offices within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

H. Annual Calendar Year Summary

The Transportation Coordinator shall prepare and maintain an annual calendar year summary of the results of its alcohol and substance abuse testing programs. The summary shall be completed no later than March 15 of each year covering the previous calendar year. The Transportation Coordinator, upon request of the Federal Highway Administration (FHWA) will provide the annual summary to that agency in the required format.

Employee Information Program

The Board will provide an employee information program. The Transportation Coordinator will be responsible for implementing the program and shall insure that each driver receives information in the manner specified below:

- A. By receiving a copy of this policy and any subsequent revisions.
- B. Through attendance at a meeting at which a detailed discussion of the following is conducted:
 1. The identity of the person designated by the employer to answer driver questions about the materials.
 2. Which drivers are subject to the alcohol misuse and controlled substance requirements.
 3. Explanation of what constitutes a safety-sensitive function so as to make clear what period of the work day the driver is required to be in compliance.
 4. Specific information concerning driver conduct that is prohibited.
 5. The circumstances under which a driver will be tested for alcohol and/or controlled substances.

BOARD OF EDUCATION
NUTLEY
Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 14

NONPROFESSIONAL
STAFF

6. The procedures that will be used to test for the presence of alcohol and controlled substances.
7. The requirement that a driver submit to alcohol and controlled substance tests.
8. An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test.
9. The consequences for drivers found to have violated the prohibitions of this rule, including the immediate removal of the driver from safety-sensitive functions.
10. The consequences for drivers found to have an alcohol concentration level of 0.02 or greater but less than 0.04.
11. 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 controlled substances problem and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

Omnibus Transportation Act of 1991
49 C.F.R. 40 et seq.
49 C.F.R. 382 et seq.
49 C.F.R. 395.2

Date Adopted:
Date Revised: