

RED HOOK CENTRAL SCHOOL DISTRICT

POLICY # 5401

Driver Alcohol and Drug Testing

I. Purpose

In order to assure the safety of students and staff, and to maintain a workplace free of drugs and alcohol, it is the policy of the Red Hook Central School District that no person who has engaged in conduct involving the use of controlled substances or the misuse of alcohol as prohibited by the Omnibus Transportation Employees Testing Act (“Act”) and in regulations promulgated thereunder by the Federal Highway Administration (49 CFR 382 et seq) shall perform safety sensitive transportation functions as defined by the regulations. The Act and regulations shall be utilized to interpret and govern aspects of drug and alcohol testing not specifically addressed in this policy.

II. Applicability

This policy applies to all District employees who are required to maintain Commercial Drivers Licenses (“CDL”) to perform the duties for which they are employed.

III. Definitions

Alcohol: Alcohol is the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weigh alcohols including methyl and isopropyl alcohol.

Alcohol Use: Alcohol use is the consumption of any beverage, mixture, or preparation, including medication containing alcohol.

Commercial Motor Vehicle: A motor vehicle or a combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. 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
2. Has a gross vehicle weight rating of 26,001 or more pounds; or

3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under Hazardous Material Regulations. (49 CFR part 172, subpart F).

Controlled Substance:

Controlled substance means the NIDA “Five” panel of drugs which includes opiates, marijuana, cocaine, amphetamines and Phenylcyclidine. Therapeutic drug use shall mean the use of therapeutic substance that may adversely affect the driver’s ability to operate a district vehicle or perform other safety sensitive functions.

Covered Driver:

District employees who operate commercial motor vehicles and applicants for employment with the District who are applying for positions as drivers of commercial motor vehicles (for the purposes of pre-duty testing only).

Safety Sensitive Functions:

Any of the on-duty functions, as specified by federal regulations, listed below:

1. All time at a District facility, or other property, waiting to be dispatched, unless the driver has been relieved of duty by the District.
2. All times inspecting equipment as required by the Federal Motor Carrier Safety Regulations or otherwise inspecting, servicing, or conditioning any District vehicle at any time.
3. All time spent at the driving controls of a commercial motor vehicle in operation.
4. All time, other than driving time, spent on or in a commercial motor vehicle.
5. All Time spent loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a CMV being loaded or unloaded, remaining in readiness to operate the CMV, or in giving receipts for shipments loaded or unloaded.

6. All time spent performing the driver requirements associated with an accident.
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
8. All time spent performing the driver requirements associated with an accident.

IV. Testing

There are several instances when an individual will be subject to drug and/or alcohol tests pursuant to this policy and federal regulations. Prior to the administration of such tests, the District will notify the covered individual that such tests are required by federal regulations. The tests which the District shall have administered include:

A. Pre-duty testing

Pre-duty is testing for drugs and alcohol that the District will administer after a conditional offer of employment has been extended and/or prior to any covered driver's performance of a safety sensitive function. The District will not allow any covered driver to commence the performance of any safety sensitive function unless the alcohol testing reveals an alcohol concentration of less than .02 and the drug testing reveals a verified negative test result. In addition independent of the requirements of the Act and the regulations promulgated thereunder, (1) if the pre-duty alcohol test reveals in a revocation of the conditional offer of employment; and (2) if the pre-duty drug test reveals a presence of drugs, it will result in the revocation of the conditional offer of employment.

B. Reasonable Suspicion Testing

Reasonable suspicion testing is alcohol and/or drug testing that the District 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, appearance, behavior, speech or body odors of a covered driver by a District supervisor who is specially trained to recognize alcohol misuse or drug use.

The District 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 District 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.

A written record shall be made of observations leading to reasonable suspicion, signed by the supervisor or person who made the observations, within 24 hours of the observed behavior or before the results of drug tests are received by the District, whichever is earlier.

Covered drivers are subject to reasonable suspicion alcohol testing as follows: immediately prior to performing safety or immediately following, while performing of safety sensitive functions. Reasonable suspicion drug testing may be conducted at any time the covered driver is on duty for the District.

C. Random Testing

Random testing is unannounced testing for alcohol and drugs administered in a statistically random manner throughout the year to covered drivers employed by the District as required by federal regulation.

Covered drivers are subject to random alcohol testing as follows: immediately prior to 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 District.

D. Post Accident Testing

A post accident test is a test for alcohol and drugs administered following an accident involving a CMV to a surviving covered driver:

1. Who was performing safety sensitive functions with respect to the vehicle, if the accident involved the loss of human life;
2. Who receives a citation under state or local law for a moving violation arising from the accident;
3. If the accident resulted in one or more vehicles incurring disabling damages as a result of the accident requiring the vehicle(s) to be transported away from the scene by a tow truck or other vehicle;
4. 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.

The District will not administer a post accident alcohol test more than eight (8) hours following the accident and will not administer a post accident drug test more than thirty-two (32) hours following the accident. A covered driver subject to post accident testing must remain readily available for such testing or may be deemed by the District to have refused to submit to such tests. This provision 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.

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 to authorize the test, shall be accepted as meeting the requirements of the policy concerning post accident testing, provided such tests conform to results of the test are obtained by the District.

E. Return to Duty Testing

Return to duty testing is alcohol and drug testing conducted after a covered driver has engaged in prohibited conduct under this policy, completed counseling prescribed by a substance abuse professional, if any, and prior to his return to the performance of a safety sensitive function. Before a covered driver may return to the performance of a safety sensitive function, (s)he must undergo return to duty testing with an alcohol test result of less than .02 and/or a drug test indicating a verified negative result for illegal drugs.

F. Follow-up Testing

Follow-up tests are given following the determination by a substance abuse professional that a driver is in need of assistance in resolving problems associated with the misuse of alcohol and/or drugs. Follow-up tests are unannounced, given at least six times within twelve 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 of more than 60 months from the covered driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered if (s)he determines that follow-up tests are no longer necessary.

Covered drivers are subject to follow-up 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. Follow-up drug testing may be conducted at any time the covered driver is on duty for the District.

V. Drug and Alcohol Testing Procedures

A. Alcohol

Alcohol testing will be administered by a Breath Alcohol Technical ("BAT") who has completed the equivalent of the Department of Transportation's ("DOT") model course and who is trained in utilizing an evidential breath testing device (EBT) that conforms to the DOT requirements. The EBT used for testing shall meet the standards promulgated by the DOT and have a quality assurance plan ("QAP") developed by the manufacturer to insure proper calibration. Alcohol testing will be conducted in a location that affords visual and aural privacy to individuals being tested. All alcohol testing methods will conform to and be conducted pursuant to the requirements of federal regulation.

If the initial test reveals an alcohol concentration of .02 or greater, a confirmatory test must be performed as soon as possible. The confirmatory test result is the final test result for the purposes of this policy. If the final test result reveals an alcohol concentration greater than .02 or greater, the covered driver will be suspended from the performance of safety sensitive functions during the evaluation by the substance abuse professional and/or pending disciplinary procedures, if any.

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate a test, the Breath Alcohol Technician ("BAT"), shall, if practicable begin a new screening or confirmation test, as applicable.

B. Drugs

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:

1. Marijuana (THC)
2. Cocaine
3. Phencyclidine (PCP)
4. Opiates
5. Amphetamines

The testing levels and methods utilized will conform to and be conducted pursuant to the requirements of federal regulations.

Split sample urine testing will be utilized. This method requires that the urine specimen be divided into two samples providing one sample for preliminary screening and initial confirmation, and a second sample for a second test if needed at a later date.

The District's Medical Review Officer ("MRO") will conduct a final review of all positive test results to assess possible alternative medical explanations for the positive test results.

C. Other Procedures

1. The District will ensure that all alcohol and drug testing information is kept confidential pursuant to applicable state and federal regulations.
2. The District will ensure that all contracts between the District and any other entity involved in the alcohol and drug testing program will comply with federal regulations.

VI. Refusal to Submit to Testing

A covered driver shall not refuse to submit to any drug or alcohol test required under this policy. A refusal to submit to any required test is the equivalent of an alcohol test with a result of .04 or greater or a drug test with a positive result. The District shall not

permit any covered driver to perform safety sensitive functions subsequent to a refusal to submit to a required test until the individual is evaluated by a substance abuse professional and completes a substance abuse program designed by the substance abuse professional, if any, and undergoes a return to duty alcohol test revealing an alcohol concentration of less than .02 and a drug test with a verified negative result. Refusal to submit to testing any also lead to disciplinary action. A refusal to submit to testing shall also include: a refusal to complete and sign the breath alcohol testing form, to complete the drug screening chain of custody form, to provide breath, to provide an adequate amount of breath, to provide urine, to provide an adequate amount of urine or otherwise cooperate with the testing process in a way that prevents the completion of the test. The BAT or specimen collector shall record such refusal in the remarks section of the form. The testing process shall then be terminated and the BAT or specimen collector shall immediately notify the District.

VII. Prohibited Conduct

A. Alcohol

1. No covered driver shall report to duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of .02 or greater. The District shall not permit a covered driver to perform or continue to perform safety sensitive functions if it has actual knowledge that a driver has an alcohol concentration of .02 or greater.
2. A covered driver shall not be on duty or operate a CMV while the covered driver possesses alcohol, unless the alcohol is manifested and transported as a part of a shipment or delivery. The District shall not permit a covered driver to drive or continue to drive a CMV if it has actual knowledge that a driver possesses unmanifested alcohol.
3. A covered driver shall not use alcohol while performing safety sensitive functions. The District shall not permit a driver to perform or continue to perform safety sensitive functions if it has actual knowledge that a covered driver is using alcohol while performing safety sensitive functions.
4. No covered driver shall perform safety sensitive functions within six hours after using alcohol. The District shall not permit a covered driver to perform or continue to perform safety sensitive functions if it has actual knowledge that a covered driver has used alcohol within six hours.
5. A covered driver required to take a post accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until after (s)he undergoes a post accident alcohol test, whichever is first.

B. Drugs

1. 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 CMV. The District shall not permit a covered driver to report for duty or remain on duty requiring the performance of safely sensitive functions if the District has actual knowledge that 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 CMV.

C. New York Vehicle and Traffic Law Sec. 509-1(1) (a)

This policy does not allow covered drivers to act in violation of New York Vehicle and Traffic Law Sec. 509-1 (1) (a), barring the consumption or drugs, controlled substances or alcohol within six (6) hours before going on duty, operating or having physical control of a bus.

VIII. Referral, Evaluation and Treatment

- A. The District shall make available, to each 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. Provision of this information does not bind the District to provide reimbursement or cover the cost of such programs unless otherwise required by separate agreement or provided through health insurance coverage.
- B. The District 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 with the misuse of drugs and alcohol.
- 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 alcohol test with a result indicating an alcohol concentration of less than .02 if the conduct involved alcohol, or a drug test with a verified negative result if the conduct involved drugs.
- D. Each covered driver identified as needing assistance in resolving problems with alcohol misuse or drug use shall:
 - 1. Be evaluated by a substance abuse professional to determine if the covered driver has properly followed any rehabilitation program prescribed under paragraph B of this section;
 - 2. Be subjected to unannounced follow-up alcohol and drug tests administered by the District following the covered driver's return to duty. The number of frequency of the follow-up tests shall be as directed by the

substance abuse professional, and consist of at least six (6) tests in the first twelve months following the covered driver's return to duty. The District may direct the covered driver to undergo return to duty and follow up testing for both drugs and alcohol if the substance abuse professional determines the return to duty and follow up testing for both alcohol and drugs is necessary for that particular covered driver. Such testing shall be in conformance with this policy and federal regulations. Follow-up testing shall not continue more than 60 months from the date of the covered driver's return to duty. The substance abuse professional may terminate the requirements at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

3. The evaluation and rehabilitation may be provided by the District, by a substance abuse professional under contract with the District or by a substance abuse professional not affiliated with the District.
4. The District requires that a substance abuse professional who determines that a covered driver requires assistance in resolving problems with alcohol misuse or drug use does not refer the covered driver to the substance abuse professional's private practice, or to a person or organization from which the substance abuse professional receives remuneration, or in which the substance abuse professional has a financial interest.
5. This policy's requirements regarding referral, evaluation and treatment do not apply to applications who refuse to submit to a pre-duty alcohol or drug test or who have a pre-duty alcohol test with a result indicating an alcohol concentration of .02 or greater or a drug test which a verified positive result.

IX. Discipline of Covered Drivers

A covered driver shall not perform safety sensitive functions, including driving a CMV, if the covered driver has engaged in conduct prohibited by this policy or an alcohol or drug rule of any DOT agency.

The District will not permit any driver to perform safety sensitive functions, including driving a CMV, if the driver has tested positive for drugs and/or alcohol concentration of .02 or a positive drug test result, will be suspended from the performance of safety sensitive functions, and referred to a substance abuse professional. Before a covered driver may resume the performance of safety sensitive functions for the District, a substance abuse professional must certify that the covered driver has been evaluated and completed any substance abuse program prescribed. In addition, the covered driver must pass an alcohol test with an alcohol concentration of less than .02 and/or a drug test prior to return to the performance of safety sensitive functions.

Notwithstanding the provisions of this policy requiring testing and evaluation of employees, any employee who violates this policy may be subject to disciplinary charges, seeking penalties which may include termination of employment.

X. Employee Notification

The District shall provide a copy of this policy to each covered driver and to the President of each collective bargaining unit. Each covered driver is required to sign a statement certifying that (s)he has received this policy. The District shall maintain the original signed certification for a minimum of two years. The District will provide a copy of the certification to the covered driver upon request.

XI. Savings Clause

If any provision of this policy is determined by an arbitrator or court 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 provisions.

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2nd Reading 05/23/96

Approved by B.O.E. 06/13/96