

This district recognizes the federal requirements to establish a “drug-free workplace” and it does not tolerate drug or alcohol abuse by its employees. Employees are prohibited from manufacturing, dispensing, using, possessing, or distributing illegal drugs or alcohol on any school premises or at any school activity. Employees are further prohibited from being under the influence of illegal drugs or alcohol on any school premises or at any school activity.

The drug-free workplace requirements extend to all property owned by the district, all activities sponsored by the district, and include any vehicle owned by this district.

It is the intent of the board of trustees of this district to promote an alcohol and drug-free workplace, thereby enhancing workplace safety and increased productivity. Chapter 17, Title 72, Idaho Code, allows employers, including school districts, to adopt policies to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with 42 U.S.C. 12101 and are constitutionally permitted.

It is the policy of this district to require drug/alcohol testing of any employee reasonably suspected to be under the influence of illegal drugs and/or alcohol while on duty. Illegal drugs include any controlled substances, as defined by Idaho Code Section 37-2701, any other substance that is used to alter or change the individual’s mood, and anabolic steroids. Alcohol includes any alcoholic beverage as defined by Idaho Code Sections 23-105 and 23-1001.

## **DEFINITIONS**

Illegal Drug Use: The use, possession, or distribution of illegal drugs, or the abusive use of other drugs, or the use of alcohol on any school premises or at any school activity.

Illegal Drugs: Any controlled substances defined by Idaho Code Section 37-2701, or any other substance that is used to alter or change the mood of an individual, or anabolic steroids. The term “illegal drugs” does not include over-the-counter drugs or prescription drugs prescribed by a doctor or dentist specifically for the person in possession of those drugs.

Under the Influence: This definition covers not only all well-known and easily recognized conditions and degrees of intoxication but any abnormal mental or physical condition that is the result of indulging to any degree in unlawful alcohol or illegal drugs, and which tends to deprive one of that clearness of intellect and control of himself or herself which he or she would otherwise possess.

Unlawful Alcohol: Any alcoholic beverage as defined by Idaho Code Sections 23-105 and 23-1001.

Unlawful Alcohol Use: The use, possession, or distribution of alcohol on any school premises or at any school activity.

Violations: The commission of an act of illegal drug use or unlawful alcohol use by a district employee.

**DRUG-FREE AWARENESS PROGRAM**

The district will establish a drug-free awareness program to inform employees about: 1) the dangers of drug abuse in the workplace; 2) the district's policy of maintaining a drug-free workplace; 3) any available drug counseling, rehabilitation, and employee assistance programs; and 4) the penalties that may be imposed upon employees for drug use violations.

Upon adoption of this policy or initial employment with the district, all employees will receive a copy of this policy.

**EMPLOYEES WORKING IN FEDERAL GRANT PROGRAMS**

Any employee working in the department or program responsible for the performance of a federal grant will, as a condition of employment, agree to abide by the terms of this policy and to notify the district of any criminal drug statute conviction for a violation occurring in the workplace. The employee must notify the district no later than five (5) days after such conviction.

Pursuant to the Drug-Free Workplace Act, the district will report, in writing, to the federal contracting or granting agency, within ten (10) days of receiving notice, that an employee has been convicted of a criminal drug statute for a violation occurring in the workplace.

A signed statement acknowledging receipt and understanding of, and agreement to abide by, this policy will be placed in the employee's personnel file.

**DISCIPLINARY ACTION**

1. Any employee who violates the terms of the district's drug and alcohol policy may be subject to disciplinary action, including, but not limited to, discharge, suspension, and/or referral for drug and alcohol abuse evaluation and rehabilitation, at the discretion of the board.

2. Notwithstanding the above paragraph, a district bus driver will be suspended from all duties pending investigation when reasonable suspicion exists that the driver may be under the influence of illegal drugs or alcohol. If a bus driver is found to have violated this policy, he or she will be immediately terminated from district employment and the incident will be reported to the State Department of Education. The board or designee will recommend license revocation to the Idaho Department of Transportation.

3. If reasonable suspicion exists that federal, state, or local laws have been violated, the district will notify the appropriate law enforcement agencies.

**DRUG TESTING PROGRAM**

All administrators, supervisors, and coordinators will participate in a voluntary district drug testing program under the following conditions as constitutionally permitted.

Pre-Employment Testing

1. All applicants to whom the district intends to offer employment as an administrator, supervisor, or coordinator will be ask to submit to drug and/or alcohol testing as part of the application process prior to their being offered employment by the district. Applicants for positions as bus drivers are addressed in policy 744.

Reasonable Suspicion Testing

1. The district will require any employee to be tested for the use of alcohol or drugs if their physical appearance or pattern of behavior gives district officials specific reason to suspect or believe that they may be under the influence of alcohol or drugs and, therefore, may endanger their own well being, the safety of students, staff, or the general public.

2. The basis of suspicion indicating drug or alcohol impairment may be a specific contemporaneous event or conduct evidencing impairment observed over a period of time. The district will make arrangements to ensure that any person requested to take a reasonable suspicion test will be transported to a collection clinic to take a drug or alcohol test.

3. Reasonable suspicion testing is outlined in additional detail below.

Random Testing

1. All employees will be subject to random testing. A random test is a test that is unannounced and will result in everyone having an equal chance to be selected for testing at any given time. The random selection method used by the district will be conducted in a manner that ensures that the random testing will be spread throughout the work year.

Post-Accident Testing

1. Any employee who is involved in a work-related accident (as defined below) will be tested for the use of illegal drugs and alcohol as soon as possible after the accident.

2. Examples of an accident that will require an employee to take a drug and alcohol test include, but are not limited to, accidents that involve an employee and result in:

- (a) the death of a person;
- (b) bodily injury to another person who requires medical treatment away from the scene of the accident;
- (c) an injury to the employee that may result in the employee filing a worker's compensation claim and whose lost time will likely exceed one working day; or,

(d) damage to property owned by the district or a third party that may reasonably be estimated to exceed \$500.

3. An employee who is seriously injured and cannot provide a specimen for testing will be required to authorize the release of relevant hospital reports or other documentation that would indicate whether there were drugs or alcohol in their system at the time of the accident.

4. Employees who are involved in a work-related accident requiring medical attention are to inform their supervisor of the accident as soon as possible so that any needed drug or alcohol test may be promptly conducted in conjunction with their medical treatment.

Specimen Collection Procedure

1. When a prospective or present employee is notified that they are to submit to drug or alcohol testing, they will be given instructions regarding where to report for testing. All specimen collections will be conducted by personnel that have been properly instructed and will be done according to approved collection procedures.

Adulteration or Submission of Concealed Specimen

1. If, during the collection procedure, the collection monitor detects an effort by the donor to adulterate or substitute a specimen, a second specimen will be requested. If a second specimen is provided, both will be tested. If the request for a second specimen is refused, the monitor will convey to the district the donor's refusal to submit a true specimen. Such substantiated conduct will be considered equivalent to testing positive and will result in a present employee being terminated from further employment with the district.

Drug Testing and Confirmation

1. All specimens will be tested for the presence of illicit drugs. When an employee is tested for the presence of alcohol, the testing level will be the equivalent of .04 blood alcohol content (BAC). The district reserves the right to test an employee for the presence of the drugs that it has a reason to believe the employee may be abusing.

2. All testing will be conducted by a laboratory that has been properly certified and/or accredited. Any specimen that screens positive for the presence of illicit drugs will be confirmed by an alternate confirmation method. Any employee who tests positive for drugs or alcohol may request the same specimen be retested at the employee's expense. This must be requested in writing within forty-eight (48) hours of the employee being notified of the positive test result.

3. Any employee who refuses to be tested, or fails to release or provide information as directed under the reasonable suspicion or post-accident provisions of this policy, will be terminated from further employment with the district.

Notification of Test Results

1. All results received from the laboratory will be forwarded to the district. In the event a specimen tests positive, the district will be notified of the employee's identity and drug(s) involved. Test results will be reported only to those individuals authorized by the district to receive them.

2. Prospective and present employees who are currently using prescription medication will have an opportunity to make this fact known at the time that their specimen is collected. Any prospective or present employee who is taking a prescription medication that may have been the cause of a positive test result will be asked to provide the name of the medication and the identity of the prescribing physician for verification. If this information is verified, the employee's test result will be reported as negative.

3. The district may afford an employee an opportunity to discuss a positive test result with the servicing agency prior to taking disciplinary action. If necessary, the servicing agency will consult with a medical professional and will follow up on such information as is deemed necessary. If, after consideration of the matter, the servicing agency finds no reason to doubt the validity of the positive test result, they will then report that finding to the district for possible disciplinary action.

4. The servicing agency will communicate a positive result directly to the district if the employee expressly declined the opportunity to discuss the results of the test or fails to contact the servicing agency in a timely manner after being instructed to do so.

Effect of Testing Positive

1. Any present employee who tests positive for the presence of drugs or alcohol may be terminated from employment with the district or subject to the terms and conditions of the district's Employee Assistance Agreement. Any employee, other than a bus driver, who tests positive for the presence of drugs or alcohol in random drug testing shall be referred for evaluation/treatment consistent with the district's Employee Assistance Agreement and shall not be terminated solely on the basis of a random positive test for the presence of drugs or alcohol.

**REASONABLE SUSPICION TESTING**

Whenever the superintendent or designee reasonably suspects that an employee's work performance or on-the-job behavior may have been affected in any way by the use of illegal drugs or alcohol or that an employee has otherwise violated this policy, the employee may be required to undergo drug and/or alcohol testing. The circumstances under which reasonable suspicion testing may be considered are strictly limited to employee conduct on duty or during work hours, on district property, or at district-approved or school-related functions.

Reasonable suspicion is defined as a good faith suspicion, based on objective facts, which is sufficient for a prudent person to conclude that the employee is using and/or appears to be

presently under the influence of alcohol and/or drugs. Factors that may be considered in determining that a reasonable suspicion exists include, but are not limited to, the following:

1. Observed use, possession, or sale of illegal drugs/alcohol or the illegal use or sale of prescription drugs.
2. Marked decrease in work productivity, either in quantity or quality, not reasonably attributable to other causes.
3. Apparent impairment of psychomotor functions, reasoning, judgment, or concentration not reasonably attributable to other causes.
4. Erratic or marked changes in behavior not reasonably attributable to other causes.
5. Involvement in an accident or deviations from safe working practices, whether the incident involves actual or potential injury to person(s) or property.

#### **REQUIREMENTS FOR SAMPLE COLLECTION AND TESTING**

The superintendent or designee shall designate entities to provide the collection and testing services necessary to implement this policy. Prior to such designation, the entities must demonstrate a thorough understanding of, and compliance with, the testing requirements and procedures as set forth in 42 U.S.C. 12101.

The entity that collects the samples may be a medical facility or laboratory. A trained individual will explain the drug and/or alcohol screening procedure to the employee, obtain authorization for the testing, assist the employee in completing any necessary forms, and monitor the sample collection, documentation, and storage for transportation. All employees subject to testing are required to sign any documents necessary to authorize the testing and disclose information to the Medical Review Officer and the superintendent or designee. The collection site will notify the superintendent or designee if the employee refuses to be tested, alters or attempts to alter the sample, or otherwise obstructs the collection of the sample.

The laboratory will be responsible for proper handling of samples and performing the required drug test, including preparation for testing, chain of custody, security, privacy, integrity, and identify of specimen, specimen retention, and any necessary transportation to a laboratory, in accordance with applicable Federal Department of Transportation (DOT) Procedures for Transportation Workplace Testing Programs, 49 C.F.R. Part 40, which are incorporated herein by reference, and this policy. The laboratory must be a Substance Abuse and Mental Health Services Administration (SAMHSA) certified lab approved for DOT drug testing.

Further, the superintendent or designee is responsible for ensuring that all procedures for collection and testing comply with the following requirements:

1. The collection of samples shall be performed under reasonable and sanitary conditions.

2. The individual employed by the collection site or laboratory that is responsible for collecting the sample will be instructed as to the proper methods of collection.
3. Samples shall be collected and tested with due regard to the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.
4. Sample collection shall be documented and the documentation procedure shall include: a) labeling of samples so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided; and b) handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures.
5. Sample collection, storage, and transportation to the testing laboratory shall be performed so as to reasonably preclude the possibility of sample contamination and/or adulteration.
6. Sample testing shall conform to scientifically-accepted analytical methods and procedures.
7. Drug testing shall include a confirmatory test before the result of any test is used as a basis for disciplinary action by the district. A confirmatory test refers to the mandatory second or additional test of the same sample that is conducted by a laboratory utilizing a chromatographic technique such as gas chromatography-mass spectrometry or another comparable reliable analytical method.
8. Positive alcohol tests resulting from the use of an initial screen saliva test must include a confirmatory test that utilizes a different testing methodology meant to demonstrate a higher degree of reliability, such as a gas chromatography test. The test will be considered positive if the BAC results are .04 or more.
9. Positive alcohol tests resulting from the use of a breath test must include a confirmatory breath test conducted no earlier than fifteen (15) minutes after the initial test; or the use of any other confirmatory test meant to demonstrate a higher degree of reliability, such as a gas chromatography test. The test will be considered positive if the BAC results are .04 or more.

#### **DESIGNATION OF MEDICAL REVIEW OFFICER**

The superintendent or designee shall designate a Medical Review Officer (MRO). The MRO is responsible for reviewing the results of drug tests before they are reported to the superintendent; reviewing and interpreting each confirmed positive test to determine if there is an alternative medical explanation for the positive test; conducting interview(s) with the individual testing positive; reviewing the individual's medical history and available medical records to determine if the positive result was caused by legally-prescribed medication; requiring a retest of the original specimen if the MRO deems it necessary; and verifying that the laboratory report and the specimen are correct. The MRO is expected to follow the Medical Review Officer Manual published by the U.S. Department of Health and Human Services for tests conducted under this policy.

If the MRO determines that a particular test is scientifically insufficient or there is a legitimate medical explanation for the positive test other than the use of a prohibited drug, the MRO will conclude that the test is negative and will not take any further action. If the MRO determines that there is no legitimate explanation for the positive test other than the use of a prohibited drug, the MRO will communicate the test results as positive to the superintendent or designee. All negative tests will also be communicated by the MRO to the superintendent or designee.

### **RIGHT TO EXPLAIN POSITIVE TEST RESULT AND REQUEST RETEST**

Any employee who tests positive for drugs or alcohol must be given written notice of that test result, specifically identifying the substance for which he/she tested positive. The employee must be given an opportunity to discuss and explain the positive test result with the MRO.

Any employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be made within seven (7) working days from the date of the first confirmed positive test notification and will be paid for by the employee requesting the test. If the retest results are negative, the district will reimburse the cost of the retest and compensate the employee for lost pay, if suspended without pay. If terminated solely because of the positive test, the employee shall be reinstated with back pay.

### **VIOLATIONS OF THIS POLICY**

An employee is in violation of this policy, and will be subject to disciplinary actions, under the following circumstances:

1. The employee tests positive for illegal drugs, and the positive test is confirmed;
2. The employee tests positive for alcohol, as indicated by a test result of not less than .04 BAC, and the positive test is confirmed;
3. The employee refuses to provide a sample for testing;
4. The employee alters or attempts to alter a test sample by adding a foreign substance for the purpose of making the sample more difficult to analyze;
5. The employee submits a sample that is not his or her own; or
6. The employee otherwise attempts to obstruct the testing process.

### **DISCIPLINARY AND/OR REHABILITATIVE ACTIONS**

If the district determines that an employee has violated this policy, the district may take disciplinary action, up to and including, suspension and/or discharge from employment. The district is not precluded from entering into an agreement with the employee wherein the employee is required to successfully participate in a district-approved rehabilitation, treatment, or counseling program, as a condition of continued employment. The fact that an employee has been referred for assistance and his/her willingness to enroll in a rehabilitation program are appropriate considerations as to what, if any, personnel action will be taken.

For employees enrolled in a formal treatment/rehabilitation program, the district may grant sick and personal leave until the same are exhausted, and then may grant leave without pay for a period not to exceed one (1) year. The district will not pay the cost of medical or rehabilitation services for the employee. Such costs are the sole responsibility of the employee and/or the employee's insurance provider.

**NOTIFICATION OF POLICY**

The district shall provide a copy of this policy to each employee upon its adoption, and to future employees at the time of hire. Employees will be required to sign a statement acknowledging receipt of the policy. Additionally, a copy of the policy shall be available for review at the district office.

**CONFIDENTIALITY**

The district, laboratory, MRO, employee assistance program, drug or alcohol rehabilitation program, and their agents, who receive or have access to information concerning an employee's drug/alcohol test results, shall keep the information confidential. Such information includes, but is not limited to, interviews, reports, statements, memoranda, or test results, written or otherwise.

Such information shall be used only for the purposes of maintaining a drug-free workplace, in a proceeding related to any disciplinary action taken by the district as a result of the drug/alcohol test, in any other dispute between the district and the employee, as required to be disclosed by the United States Department of Transportation law or regulation or other federal law, or as required by service of legal process. The district will not provide information regarding drug/alcohol testing to prospective employers without the written consent of the employee.

All personnel records and information regarding referral, evaluation, substance screen results, and treatment will be maintained in a confidential manner. Only information pertaining to an employee testing positive will be placed in an employee's personnel file.

Records showing an employee tested negative will be kept for at least one (1) year. Records showing that an employee tested positive, including the reason for the test, identification of the substance(s) used by the employee, and the disposition of each employee, will be kept for at least five (5) years. Such records will be kept confidential and will not be considered part of an employee's personnel records.

**TESTING COSTS**

The district will pay all costs of drug and alcohol testing, unless the test is a retest requested by the employee. If the retest establishes a negative test result, the district will reimburse the employee for the cost of such test.

District employees will be compensated at their regular rate of pay for the time during which they are undergoing any drug or alcohol testing, including transportation time.

**UNEMPLOYMENT CLAIMS**

If an employee is found to have violated this policy and is, therefore, terminated from employment, and subsequently applies for unemployment benefits, the district will provide the following information to the Department of Commerce and Labor:

1. The statement signed by employee indicating receipt of this policy.
2. A statement signed by the individual administering the test, certifying compliance with the provisions of this policy, the requirements of Idaho Code Sections 72-1701, *et seq.* The statement will also certify that the results of the test administered to the employee exceeded the threshold stated in the policy requirements for a positive test regarding alcohol (not less than .04 BAC) or the presence of a prohibited drug as defined in this policy.
3. A statement signed by an administrator, specifying whether the test was administered as a random test or as a result of reasonable suspicion.
4. In the event the violation of this policy is based on misconduct other than testing positive (i.e., altering or attempting to alter a test sample), a statement signed by the administrator or other knowledgeable individual specifying the nature of the violation of the policy and the evidence in support thereof.
5. A statement signed by the employee indicating receipt of the testing results.

**SCHOOL BUS DRIVERS**

Testing of school bus drivers employed by the district is addressed in Bus Driver Drug and Alcohol Testing Program, policy 744. The district shall comply with this policy as well as policy 744 regarding bus drivers.



**LEGAL REFERENCE:**

*Idaho Code* Sections 72-1701, *et seq.*, 37-2701, 23-105, 23-1001, 42 U.S.C. 12101, 49 C.F.R. Part 40

**ADOPTED:** February 10, 2004

**AMENDED:** December 14, 2004

**Note:** This policy is optional, insofar as Idaho school districts are not required to adopt a drug and alcohol testing program (with the exception of bus drivers, which is addressed in Policy 744). Random drug testing of employees other than bus drivers and other persons determined to be in "safety sensitive" positions, is voluntary and positive drug test findings may not be used as the sole basis for a disciplinary action by the board. However, if the school district elects to implement a drug and alcohol testing program for other employees, it must adopt a policy that is consistent with the requirements of Idaho Code Section 72-1701, *et seq.* The provisions of Policy 403.50, as adapted here, meet the statutory requirements.