



EMPLOYEE DRUG TESTING

G-36

The Mountain Brook Board of Education recognizes that our employees are our greatest asset. Our employees are the key to our goal of providing the best possible education program for our students. To achieve our goal, and to maximize the skills and talents of our employees, it is important that every employee of our school system understands the dangers of drug and alcohol abuse and is aware of the state and federal requirements concerning substance abuse. This policy statement is offered to clarify our position on employee drug and alcohol use. This policy and procedures should not be construed as contractual in any nature.

Policy Objectives:

1. To create and maintain a safe, drug-free working environment for all employees
2. To encourage any employee with a dependence on, or addiction to, alcohol or other drugs to seek help in overcoming the problem
3. To reduce problems of absenteeism, tardiness, carelessness and/or other unsatisfactory matters related to job performance
4. To reduce the likelihood of incidents of accidental personal injury and/or damage to students, employees, visitors or property
5. To meet the requirements of 49 C.F.R. Part 40, as amended, and the Omnibus Transportation Employee Testing Act of 1991
6. To reduce the likelihood that school property will be used for illicit drug activities
7. To protect the reputation of the school system and its employees within the community

Substance abuse is a serious threat to the school system, its employees and students. Though the percentage of substance abusing employees may be relatively small, practical experience and research indicate that appropriate precautions are necessary. It is the belief of the Board that the benefits derived from the policy objectives outweigh the potential inconvenience to employees.

The Board earnestly solicits the understanding and cooperation of all employees in implementing this policy.

The Board requires that all employees report to work without any alcohol or illegal or mind altering substances in their system. No employee shall report for work or remain on duty requiring the operation of a motor vehicle or other hazardous equipment or performing job duties in a hazardous environment when the employee is using any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's work, the school system's relationship with the government or reflects badly on the school system.

In order to avoid creating safety problems and violating the Drug and Alcohol Policy, employees must inform their supervisor or the school system's Medical Review Officer when they are legitimately taking medication which may affect their ability to work.

The school system also prohibits employees from using, possessing, manufacturing, distributing or making arrangements to distribute illegal drugs while at work or on school system property.

Enforcement

In order to enforce these rules, the school system reserves the right to require all employees (defined as all employees subject to 49 C.F.R. Par 40 and the Omnibus Transportation Employee Testing Act of 1991 as well as other employees subject to testing under the authority of the Board) to submit to drug tests to determine the presence of prohibited substances any time an employee is on duty or at any time an employee may normally be called to be on duty. The School Board is required to and will develop, implement, and enforce a drug and alcohol policy for its employees as a condition of compliance with the Omnibus Transportation Employee Testing Act of 1991.

Pursuant to Board policy and regulations, applicant testing may be required. All current employees may be required to undergo testing at scheduled physical examinations, and/or in circumstances where the Board has reasonable suspicion to believe an employee has violated its Alcohol and Drug Policy, and/or on a random basis without advance notice. Employees are required to report all accidents involving school property or personnel, or accidents that occur during school hours, or on school-related activities. Employees involved in such accidents may be required to submit to alcohol screening within two (2) hours and to drug screening within thirty-two (32) hours of a reportable accident. Employees who return to work following rehabilitation will be required to undergo return-to-duty or follow-up testing in addition to the general school system testing requirements.

The Board also reserves the right to search desks, cabinets, tool boxes, vehicles, including personal vehicles brought on the school system's property, bags or any other property at the school or in vehicles when the Board has reasonable cause to believe an employee has violated its Alcohol and Drug Policy.

Violation of these rules, including testing positive, will subject the employee to discipline, including discharge. Refusal to cooperate with the School Board in any test investigation will result in discipline, including discharge as appropriate under the applicable state and federal laws.

All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by the employer through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings except in accordance with the Policy Consent/Release Form.

Any questions should be directed to the person assigned by the Superintendent and/or School Board as its Drug Testing Program Coordinator.

Rationale and Procedures

I. General Policy

Practical experience and research has proven that even small quantities of narcotics, abused prescription drugs or alcohol can impair judgment and reflexes. Even when not readily apparent, this impairment can have serious results, particularly for employees operating vehicles or potentially dangerous equipment. Drug-using employees are a threat to students, co-workers, and themselves, and may make costly errors. For these reasons, the school system has adopted a policy that all employees must report to work completely free from the effects of alcohol and/or the presence of drugs, unless used as prescribed by a physician.

II. Drug Use/Distribution/Impairment/Possession

All employees are prohibited from using, possessing, distributing, manufacturing, or having controlled substances, abused prescription drugs or any other mind altering or intoxicating substances present in their system while at work or on duty.

III. Alcohol Use/Possession/Impairment

All employees are prohibited from possessing, drinking or being impaired or intoxicated by alcohol while at work or on duty. While employees are prohibited

from having any alcohol present in their system while on duty, a Breath Alcohol Concentration (BAC) of .04 will be accepted as presumptive evidence of intoxication. Additionally, mandated employees (employees subject to provisions of 49 C.F.R. Part 40 and the Omnibus Transportation Employee Testing Act of 1991) with a BAC of .02 - .039 will be placed out-of-service for a period of no less than 24 hours. Evidential breath testing devices (EBTs) on the National Traffic Highway Safety Administration Conforming Products List will normally be used to determine BAC.

IV. Off-Duty Conduct

Off-the-job use of drugs, alcohol or any other prohibited substances which results in impaired work performance, including, but not limited to, absenteeism, tardiness, poor work product, or harm to the school system's image or relationship with the government is prohibited. Employees should realize that these regulations prohibit all illicit drug use—on and off duty.

V. Prescription Drugs

The proper use of medication prescribed by a physician is not prohibited; however, the school system prohibits the misuse of prescribed (or over the counter) medications and requires all employees using drugs at the direction of a physician to notify the School Board's Medical Review Officer (MRO) or their supervisor prior to beginning work when these drugs may affect their job performance, such as by causing drowsiness.

An employee or job applicant (with the exception of mandated employees) shall be allowed to provide notice to the school system of currently or recently used prescription or nonprescription drugs at the time of the taking of the specimen to be tested, and such information shall be placed in writing upon the employer's drug and alcohol testing custody and control form prior to initial testing.

VI. Substance Screening

A. Applicants

Substance screening may be required for all final applicants. Such testing may be required either alone or as part of a pre-employment physical examination. Applicants are required to sign a consent/release form before submitting to screening. Applicants will be disqualified for hire if they test positive, refuse to submit to a test, substitute or dilute their specimen, or refuse to execute the required consent/release form.

B. All Current employees

1. Reasonable Suspicion

All employees may be required to submit to screening whenever a supervisor observes circumstances which provide reasonable suspicion to believe an employee has used a controlled substance or has otherwise violated the substance abuse rules. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol and drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

The required observations for alcohol and/or controlled substance reasonable suspicion testing shall be made by a supervisor or designee who has been trained for at least 60 minutes on alcohol misuse and an additional 60 minutes on controlled substance misuse.

The supervisor or supervisors requesting testing shall prepare and sign written documents explaining the circumstances and evidence upon which they relied within 24 hours of the testing, or before the results of the tests are released, whichever is earlier. While one supervisor may request a reasonable suspicion test, when feasible, supervisors are encouraged to obtain a second supervisor as a witness.

2. Random Testing

The Board may conduct random unannounced screening of all employees. Tests of employees for illicit drugs will be conducted in a number equal to or greater than 50 percent of the affected work force - - without advance notice - - in any given 12 month period. Tests of employees for alcohol will be conducted in a number equal to or greater than 25 percent of the affected work force - - without advance notice - - in any given 12 month period. There will be no maximum number of samples that any one individual will be required to provide during the testing schedule. Subsequent testing will be conducted at levels equal to or greater than the initial testing level. A private testing contractor will provide computerized random sample lists to the Drug Program Coordinator. The list of employees in the random pool will be updated on a monthly basis. Employees will be required to report to the school system's designated collection site for testing immediately following notification. The tests will be spread reasonably over 12 months on an annual basis.

All employees may be tested during the initial implementation of the program.

3. Post Accident Testing

Employees are required to immediately notify the Drug Testing Program Coordinator of any accident resulting in injury or damage to school system property. The Department of Transportation (DOT) requires post accident drug and alcohol testing following any accident which results in the: (1) loss of human life, or (2) receipt of a citation under State or local law for a moving traffic violation arising from the accident.

The school system may require an employee involved in any accident resulting in injury that requires more than simple first aid or results in damage to property, to undergo alcohol screening within 2 hours and drug screening within 32 hours of the occurrence of the accident. The school system will discipline any employee who fails to report an accident or submit to substance screening where required by law or this policy. The Drug Testing Program Coordinator shall complete an Accident Report in compliance with school system policy and applicable laws and regulations.

4. Return to Duty/Follow up Testing

All employees referred to rehabilitation through administrative channels, or suspended for violation of this policy, may be subject to unannounced testing following return to duty for a period of 12 to 60 months. Such employees shall be tested at the frequency stipulated in the abeyance contract or as scheduled by the MRO. The employee will be tested a minimum of six (6) follow up tests during the first twelve months. Testing will be on a daily, weekly, monthly or longer basis at the discretion of the MRO and will be in addition to the other types of tests provided in this policy.

Employees testing at a level of 0.04 BAC for alcohol or positive for drugs must be assessed by a Substance Abuse Professional (SAP), satisfy the recommendations of the assessment, test negative for drugs and below 0.02 BAC for alcohol and be released as drug-free by the Medical Review Officer prior to returning to duty.

5. Recertification Physical Examination

All mandated employees may be required to undergo urinalysis as part of a recertification physical examination.

C. Testing Procedures

1. General Guidelines

The School Board and its lab shall rely, when practical, on the guidelines of the Federal Department of Transportation, Procedures For Transportation Workplace Drug Testing Programs, 49 C.F.R. Parts 40.1 through 40.413, and on the further guidance of the Omnibus Transportation Employee Testing Act provided in 49 C.F.R. Parts 382, 391, 392 and 395.

2. Substances Tested For

All Employees

Employees may regularly be tested for: amphetamines, cannabinoids, cocaine, opiates, phencyclidine and alcohol. Testing for alcohol will also be conducted subject to the final provisions of the Omnibus Transportation Employee Testing Act of 1991. Employees may be tested for other substances without advance notice as part of a separate test performed by the school system for safety purposes. Such tests will be coordinated with the Designated Employer Representative.

3. Testing Procedures

The School Board reserves the right to utilize blood, hair, breath, saliva or urinalysis testing procedures. Only urinalysis and breath tests will be utilized in the pre-employment and random testing. All initial urine specimens will be confirmed by gas chromatography/mass spectrometry (GC/MS).

D. Collection Sites

The school system will designate collection sites in areas where it maintains facilities or job sites where individuals may provide specimens.

E. Collection Procedures

The School Board and the private testing contractor have developed and will maintain a documented procedure for collecting, shipping and accessing urine specimens. The School Board and the private testing contractor will utilize a standard Urine Custody and Control Form for all employee drug testing. The School Board and the private testing contractor will utilize a standard Breath Alcohol Testing Form for all employee alcohol testing. A tamper-proof sealing system, identifying numbers, labels will also be used for urine sample transportation. Alcohol results will use approved tamper evident tape.

Collection sites will maintain instructions and training emphasizing the responsibility of the collection site personnel to protect the integrity of the specimen and maintain as proper a collection procedure as reasonable. All collectors will undergo basic knowledge training, qualification training and an initial proficiency demonstration. A person who collects or takes a specimen for drug test pursuant to this policy shall collect an amount sufficient for two (2) drug tests as defined by the Department of Transportation. Where the school system has an employee collect the specimen, the Board will provide instruction and training to that employee. All alcohol testing will be performed by a certified Breath Alcohol Technician (BAT).

All employees will also be required to execute the school system Applicant/Employee Consent Form.

F. Occasions when the Collection Personnel Should Directly Observe the Specimen Being Provided

The school system has adopted the direct observation procedures as set out in Section 40.67 of the Department of Transportation regulations. An Employer or Medical representative at the collection site may directly observe an employee provide the specimen where there is reason to believe that an individual may alter or substitute the specimen. Section 40.67 sets out the only circumstances where direct observation is appropriate:

1. An employer **MUST** direct an immediate collection under direct observation with no advance notice to the employee if:
 - a. The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to the employer that

- there was not an adequate medical explanation for the result.
- b. The MRO reported to the employer that the original positive, adulterated or substituted test result had to be cancelled because the test of the split specimen could not be performed.
2. An employer MAY direct a under direct collection observation of an employee if the drug test is a return-to-duty test or a follow-up test.
 3. A collector MUST immediately conduct a collection under direct supervision if:
 - a. The Designated Employer Representative directs the collector to do so;
 - b. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
 - c. The temperature on the original specimen was out of range; or
 - d. The original specimen appeared to have been tampered with.

The collector or the employer must explain to the employee the reason for the direct observation.

Where necessary, a school system representative or medical personnel may obtain a specimen outside of a designated collection site (such as, a public restroom at an accident investigation).

G. Evaluations and Return of Results to the school system

The laboratory will transmit (by fax, mail, or computer, but not orally over the telephone) the results of all tests to the school system's MRO. The MRO will be responsible for reviewing the quantified test results of employees and confirming that the individuals testing non-negative have used drugs or adulterated, substituted or diluted the specimen in violation of school system policy. Prior to making a final decision, the MRO shall give the individuals an opportunity to provide a medical explanation for the positive test result either face to face or over the telephone.

The MRO shall then promptly report to the Drug Testing Program Coordinator which employees or applicants test positive for drugs or adulterants, or a substituted or diluted specimen.

H. Request for Retest

All urine collections will include a split specimen. An employee may request a retest of the split specimen within 72 hours of notification of the final test result. Request must be submitted to the MRO.

The employee may be required to pay the associated costs of retest in advance.

I. Release of Test Results

All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by the employer through its drug and alcohol testing program are confidential communications and may not be released except in accordance with the Policy Consent/Release Form. Information may be released without the employees consent in certain legal proceedings, including a lawsuit, grievance, or administrative proceeding brought by, or on behalf of, an employee and resulting from a positive, adulterated or substituted drug test or alcohol test or a refusal to test. Such information may only be released to the decisionmaker in such action and only with a binding stipulation that the decisionmaker will make it available only to parties to the proceeding.

All employees will be required to execute a consent/release form permitting the Board to release test results and related information to the Unemployment Compensation Commission, or other relevant government agencies.

The MRO shall retain the individual non-negative test results for five (5) years and negative test results for one year.

VII. Discipline

The School Board will discipline, including discharge, employees for any violation of the policy, including refusing to submit to screening, to execute a release, or otherwise cooperate with an investigation or search by the school system. Disciplinary measures will be instituted in accordance with state and federal laws.

All employees who test positive in a confirmative substance test will be subject to discipline up to and including discharge. Any applicant or employee specimen that is found by the collection site, laboratory or MRO

to have been adulterated or substituted will be considered equivalent to a positive test. All current employees who test positive for adulterants or for substituting the specimen will be subject to discipline up to and including discharge.

Rehabilitation, at a pre-approved treatment provider, may be available to individuals who violate the policy. However, unless other provisions are available to the affected individual, assistance will be limited to the degree of treatment provided within the school system's Employee Benefits Plan. The Drug Program Coordinator should be contacted for guidance.

No employee may be returned to regular duties after any rehabilitation or testing positive unless released for duty by the school system's MRO. The employee must be seen by a Substance Abuse Professional (SAP) and follow the SAP's recommendation for education and treatment. Prior to returning to work, the employee must have a negative drug or alcohol test. Any employee returned to duty after violating the policy or testing positive will be subjected to aftercare and random testing as set out in a written Probation Agreement.

VIII. Training

Supervisors who are authorized to determine reasonable suspicion testing must receive a minimum of 60 minutes of training on alcohol abuse and an additional 60 minutes of training on controlled substance use and abuse.

The training shall cover the physical, behavioral, speech and performance indicators of probable use and misuse of alcohol and controlled substances. Documentation of training attendance must be maintained.

The Drug Testing Program Coordinator should be contacted for further guidance.

IX. Investigation/Searches

Where a supervisor has reasonable cause to suspect that an employee has violated the substance abuse policy, he or she may inspect vehicles which an employee brings on the School Board's property, lockers, work areas, desks, purses, briefcases, tool boxes or other belongings, and at locations where school related activities are being conducted without prior notice in order to ensure a work environment free of prohibited substances. An employee may be asked to be present and remove a personal lock. Where the employee is not present or refuses to remove a personal lock, the Drug Program Coordinator will do so for him or her. The School Board may release any illegal, or controlled drugs, or paraphernalia to appropriate law enforcement authorities.

All searches should be coordinated with the Drug Testing Program Coordinator.

NOTE

These procedures should not be construed as contractual in any nature. They represent the School Board's current guidelines in dealing with a developing problem under evolving laws and facts, and may be changed in accordance with school system policy and state and federal law.

Mountain Brook Board of Education Policy Consent/Release Form

I have read the above statement of policy and agree to abide by the School Board's drug and alcohol testing rules. I agree to submit to drug or alcohol tests at any time as a condition for my initial or continued employment. I authorize any laboratory or medical provider to release test results to the Mountain Brook Board of Education and its Medical Review Officer (MRO).

I expressly authorize the School Board or its MRO to release any test-related information, including positive results, to the Unemployment Compensation Commission, or any other relevant government agency.

I understand that this agreement in no way limits my right to terminate my employment or be terminated in accordance with federal and state law.

Employee

Date

Witness

Date

Adopted: December 11, 1995
Revised: November 5, 2001