

RSU 16 (Mechanic Falls, Minot, Poland)

Policy Code: EEAEAA-R

Adopted: May 2003

Revised: August 2010; June 2019

DRUG & ALCOHOL TESTING & PHYSICALS OF TRANSPORTATION EMPLOYEES
ADMINISTRATIVE PROCEDURE

PHILOSOPHY:

It is the philosophy of the RSU 16 School Board that the transportation of students dictates a high measure of responsibility and accountability. The RSU 16 School Board establishes this policy to provide oversight into the ability of individuals to safely operate RSU 16 School Department buses and vans to transport students as part of their regular duties.

POLICY:

The RSU 16 School Board is committed to the establishment of an alcohol and controlled substance testing program that meets all applicable requirements of the Federal Omnibus Transportation Employee Testing Act of 1991, in addition to pertinent State laws and regulations. The purpose of the testing program shall be to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers performing safety-sensitive functions. The following administrative procedure represents a summary of the main provisions found in Federal regulations promulgated to effectuate drug and alcohol testing of bus drivers. The following procedure in no way attempts to modify said regulations, which should always be referred to when questions as to implementation of this policy/procedure arise.

I. APPLICABILITY:

All persons operating a commercial motor vehicle in commerce in any state and subject to the commercial driver's license requirements mandated under both Federal and State laws, including the Omnibus Transportation Employee Testing Act of 1991, shall be subject to the drug and alcohol testing provisions herein contained.

II. IMPLEMENTATION:

The Superintendent shall be responsible for implementing a drug and alcohol-testing program which complies with procedures set forth in Title 49 Parts 40, 382, 390 and 395 of the Federal Code of Regulations. Such testing program shall include pre-employment/pre-duty drug testing, post-accident testing, random testing, reasonable suspicion testing, return-to-duty and follow-up testing. This school unit shall provide parties as subject to testing with written notice of materials and information available to them as required by Part 382. Bid specifications and contracts for transportation shall require that the contractor establish a drug and alcohol testing program which complies with Federal regulations and that is acceptable to the RSU 16 School Board.

III. CONTROLLED SUBSTANCES:

Controlled substances in this policy/procedure refer to those covered by the Omnibus Transportation Employee Testing Act of 1991, including marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

IV. SAFETY-SENSITIVE FUNCTION:

Safety-sensitive function(s) in this policy/procedure refer to functions defined in 49 CFR § 382.107 and §395.2 (On-Duty Time, paragraphs (1) through (6)).

V. PROHIBITIONS:

All drivers subject to this policy shall be prohibited from:

- a. Using any alcohol while on duty and four (4) hours prior to going on duty;
- b. Possessing alcohol while on duty;
- c. Reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater;
- d. Using any alcohol for eight (8) hours following an accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first;
- e. Refusing to submit to a required alcohol or controlled substance test(s);
- f. Reporting for duty or remaining on duty when using any controlled substance, except when use is pursuant to the instructions of a physician who advised the driver that the substance does not adversely affect the driver's ability to safely operate the vehicle; and
- g. Reporting for duty, remaining on duty, or performing a safety-sensitive function, if the driver tests positive for a controlled substance.

VI. REQUIRED TESTING:

- a. **Pre-Employment Testing:** Prior to the first time a driver performs a safety-sensitive function for the school unit, the driver shall undergo testing for controlled substances. However, no driver shall be subjected to pre-employment controlled substance testing prior to having been offered a position. Employment is conditioned upon a verified negative controlled substance test result.
- b. **Post-Accident Testing:** As soon as practicable following an accident, each surviving driver will be subject to alcohol and controlled substance testing as follows:
 - Any driver performing safety-sensitive functions with respect to the vehicle if the accident involved loss of human life;
 - Any driver who receives a citation under State or local law for a moving violation arising from the accident; and
 - Causes bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - Should one or more motor vehicles incurring disabling damage as a result of the accident, require a motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
 - In addition, the following provisions will also apply:
 - **Alcohol.** If a test required under this section is not administered within two (2) hours following the accident, the school unit shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the accident, the school unit shall cease attempts to administer the test and shall prepare and maintain the same record. Records shall be submitted to the Federal Highway Administration (FHWA) upon request of the Associate Administrator.
 - **Controlled Substances:** If a test required by this section is not administered within thirty-two (32) hours following the accident, the school unit shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FHWA upon request of the Associate Administrator.

- **Random Testing:** All drivers subject to this policy/procedure will be subject to random and unannounced alcohol and controlled substance testing throughout the year. The minimum annual percentage rate for testing of bus drivers is as follows:
 - Random alcohol testing shall be a minimum of 10 percent of the number of driver positions each selection period; and
 - Random controlled substance testing shall be a minimum of 50 percent of the number of driver positions each selection period. If the school unit conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual school unit or may be based on the total number of drivers covered by the consortium who are subject to random testing at the same minimum annual percentage rate under 49 CFR Part 382 or any Department of Transportation random testing rule].
- **Reasonable Suspicion Testing:** All drivers subject to this policy/procedure shall submit to alcohol and controlled substance testing when the employer has reasonable suspicion to believe that the driver has violated the prohibitions found in Part V. of this procedure, with the exception of part V.B. regarding alcohol possession. The school unit shall base its determination that reasonable suspicion exists requiring the driver to undergo such testing on observations concerning appearance, behavior, speech or body odors of the driver. When controlled substances are at issue, observations may include indications of the chronic and withdrawal effects of controlled substances.
- In addition, the following provisions also apply:
 - **Alcohol:** Alcohol testing will be performed only if the aforementioned observations are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance with this policy/procedure. If a test required under this section is not administered within two (2) hours following the reasonable suspicion determination, the school unit shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required under this section is not administered within eight (8) hours following a determination that reasonable suspicion exists, the school unit shall cease attempts to administer an alcohol test and shall State in the record reasons for not administering the test. The school unit shall submit to the FHWA records of tests required by this section that were not completed within (6-8) hours according to the mandates of 49 CFR § 382.307 (3).
 - **Controlled Substances:** The school unit shall, within twenty-four (24) hours or before the results of the controlled substances test are released, whichever is earlier, create a written record of the observations leading to a controlled substances test which shall be signed by the supervisor or school unit official making said observations.
 - **Return-to-Duty Testing:** Prior to returning to duty requiring the performance of safety-sensitive functions when a driver has engaged in conduct prohibited under this policy/procedure, the driver shall undergo a return-to-duty alcohol and/or controlled substances test(s) as appropriate. Drivers found to have engaged in prohibited conduct under the alcohol provisions of this policy/procedure will not be permitted to return to duty unless the subsequent alcohol test reveals a result less than or consistent with Federal and

State standards. In cases involving controlled substances, a verified negative result is necessary before a driver may return to duty.

- **Follow-up Testing:** In the event that a driver has been found to have been in violation of the prohibitions herein contained and is identified as requiring assistance in resolving problems associated with alcohol and/or controlled substances, the school unit shall require the driver to submit to at least six (6) unannounced follow-up alcohol and/or controlled substances

The first twelve (12) months after returning to duty. Follow-up tests will be unannounced and may continue for up to six (6) months after returning to duty. Follow-up alcohol testing shall be conducted only when the driver is performing, just before, or just after ceasing to perform safety sensitive functions.

VII. REFUSAL TO SUBMIT TO TESTING:

All drivers who are required by Federal regulations to submit to drug/alcohol testing must do so immediately upon being directed to submit to the test(s). A driver's refusal to submit to testing will subject the driver to immediate removal from the performance of safety-sensitive functions. In addition, failure to comply with Federal regulations or this procedure is grounds for disciplinary action up to and including dismissal. Any of the following actions on the part of a driver constitutes a refusal to submit to a test:

- a. Failure to provide adequate specimens/samples of substance(s) undergoing testing, including, but not limited to, breath and urine, without a valid medical reason;
- b. Engaging in conduct which obstructs the testing process; and
- c. Refusal by an employee to complete and sign testing forms.

VIII. TRAINING FOR SUPERVISORS:

This school unit will assign persons who will be designated to determine whether reasonable suspicion exists to require a driver to undergo testing under Part 382, with at least sixty (60) minutes of training on alcohol misuse and receive at least an additional sixty (60) minutes of training on controlled substances. Training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

IX. ENFORCEMENT:

This school unit, in its independent authority as an employer, shall subject any driver who violates this policy/administrative procedure or Federal regulations to potential disciplinary action up to and including dismissal, except to the extent that any State law or collective bargaining agreement requires otherwise. In addition, any driver who refuses to submit to a post-accident, random, reasonable suspicion, return to duty or follow-up test(s) shall not perform or continue to perform safety-sensitive functions. Furthermore, no driver tested and found to have an alcohol concentration of 0.02 or greater, but less than, 0.04 shall perform or continue to perform safety-sensitive functions including driving a commercial motor vehicle until the start of the driver's next regularly scheduled duty period, but no less than twenty-four (24) hours after the test was administered.

X. NOTIFICATIONS:

Each driver shall receive educational materials prior to the school unit's commencement of alcohol and controlled substances testing. Such material will explain the requirements of the Code of Federal Regulations, Title 49 Part 382, and contain a copy of the RSU 16 School Board's policy and administrative procedures for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. The school unit shall also include in the package of informational

material submitted to each driver, a statement certifying that he/she has received the informational material. The school unit shall maintain the original signed copy of the statement on file. In addition to the aforementioned items, the school unit shall also make available to drivers and representatives of employee organizations information, which shall identify:

- a. The person designated by the school unit to answer questions about the materials;
- b. The procedures that will be used to test for the presence of alcohol and controlled substances; protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;
- c. Information concerning the effects of alcohol and controlled substances on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substance(s) problem (the driver's or coworker's); and available methods of intervening where an alcohol or controlled substance problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management, and
- d. Post-accident procedures that will make it possible for a driver to comply with post-accident testing before any driver operates a commercial vehicle.

XI. This school unit shall also make available the following information:

- i. The results of pre-employment controlled substances test(s) if the applicant requests such results within sixty (60) calendar days of being notified of the disposition of the employment application; and
- ii. The results of random, reasonable suspicion and post-accident drug tests if the results are verified positive. The school unit shall also tell the driver which controlled substance(s) was verified as positive.

XII. CONTROLLED SUBSTANCES:

Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Such substance may be used in conjunction with duty only if the physician has advised the driver that it will not adversely affect his/her ability to safely operate a commercial motor vehicle.

XIII. REFERRAL, EVALUATION, AND TREATMENT:

- a. Referral. A driver who has engaged in conduct prohibited by this policy/procedure shall be advised by the school unit of resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances. The information the bus driver receives will include: names, addresses, and telephone numbers of substance abuse professionals, counseling and treatment programs, in addition to information relating to his/her responsibility with regard to payment of such services
- b. Evaluation/Treatment. A driver who engages in such prohibited conduct shall be evaluated by a substance abuse professional who shall determine what assistance or treatment, if any, the employee needs in resolving controlled substance(s) use.

XIV. RETURN TO DUTY:

If a school unit has not discharged a driver due to his/her engagement in prohibited conduct under this policy/procedure, the bus driver must, prior to returning to safety-sensitive duties:

- a. Undergo return-to-duty testing and obtain an alcohol concentration level of less than 0.02 and/or a verified negative test for controlled substances;
- b. Have been evaluated by a substance abuse professional; and

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c. Have followed prescribed and/or recommended treatment

XV. The provisions pertaining to physical examinations, drug and alcohol testing, and motor vehicle records checks apply to any school employee who transports students as part of their regular duties. All provisions of this policy, Sections I, II, III, IV, V, VI, VII, VIII, IX, X XI, XII, XIII, AND XIV inclusive, shall apply with the exception of the following:

- a. A separate pool of non-commercial drivers, who operate vans to transport students as part of their regular duties. shall be established and maintained.
- b. The pool of non-commercial drivers may be administered as part of a multi-carrier consortium, to maximize fairness when executing random testing selection for this relatively small number of employees.
- c. Section XV expressly does not apply to:
 - Occasional van drivers, defined as certified teachers employed by RSU 16, who are not primarily employed on either a full-time or part-time basis as a school bus driver or substitute school bus driver.
 - Volunteer van drivers, defined as every person who occasionally transports passengers to and from educational and/or extracurricular activities sponsored by RSU 16, fewer than 30 days per calendar year and where such driving is incidental to any terms or contract of hire.
 - Volunteer van drivers shall not include an individual who transports passengers in a bus or van as defined in accordance with their contract of hire or terms of employment over a scheduled route which involves the receiving and discharging of passengers on any road, highway, public or private street, or driveway. A volunteer may be a teacher, coach, or parent/guardian, etc.

XVI. PHYSICALS:

- a. Individuals who operate RSU 16 buses and vans to transport students as part of their regular duties will present evidence of good health prior to employment, and then annually, in the form of a United States Department of Transportation (USDOT) bus driver physical examination report unless otherwise required by law. The cost of USDOT physicals shall be paid by RSU 16 and shall be performed at an occupational health provider as designated by RSU 16.
- b. Employees whose physical or mental health, in the judgment of the administration, may be in doubt will submit to additional examinations, when requested to do so, at the expense of the school district.

XVII. OTHER POLICIES/PROCEDURES:

Nothing contained in this administrative procedure shall prevent the RSU 16 from establishing and enforcing independent policies/procedures relating to the possession, being under the influence of, distribution, sale or use of alcohol or controlled substances or any misconduct associated therewith and the penalties for violation of those policies/procedures, up to and including dismissal.

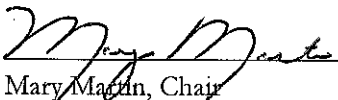
XVIII. DELEGATION OF AUTHORITY:

The RSU 16 School Board delegates the authority to carry out this procedure and policy EEAEAA to the Superintendent of Schools, who may delegate the process on the policy to an administrative designee.

LEGAL REFERENCES: 49 CFR Parts 40, 382, 390, 395; 26 MRSA §§ 681(8)(B); 685(2); 689

SIGNATURE BLOCK:

RSU 16 School Board


Mary Martin, Chair

6/10/19
DATE

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Joe Parent, Vice Chair

DATE

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Travis Ritchie

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