

Harlem School District

PERSONNEL

Drug Free Workplace Policy

Purpose

It is the goal of the Board of Trustees of Harlem School District #12 to create an educational environment that is free from the illegal use of drugs or alcohol. In meeting this goal, it is our policy to assure: (1) employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; (2) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of illegal substances; (3) create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse; (4) recognize drug and alcohol abuse as a treatable illness and encourage employees to seek professional assistance any time alcohol or drug dependency adversely affects their ability to perform their duties; (5) maintain a work environment and promote work habits that foster public confidence; and (6) set a positive example for the school and community we serve.

To reach this goal, the Board adopts this Drug Free Workplace Policy for all school employees. The District's drug and alcohol testing program shall comply with the provisions of Sections 39-2-205 through 211, Montana Code Annotated (MCA) and 49 Code of Federal Regulations (CFR), part 40. Pursuant to state law, the District may randomly test current and prospective employees who are engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position. In addition, the District may test all current and prospective employees based on reasonable suspicion as described below.

This drug and alcohol testing program shall be in addition to the District's drug and alcohol testing program for bus drivers that is mandated by federal law. The application of this policy to the members of collective bargaining units shall be in accordance with the provisions of the collective bargaining agreements with the exclusive representatives of the employees.

Drug Testing

Drug testing may take place at any time during the duty day. Drugs that will be tested for include marijuana, cocaine, opiates, amphetamines and phencyclidine. An initial drug screen will be conducted on each specimen. For those specimens that are positive, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds in 49 CFR, part 40, as amended.

Alcohol Testing

Tests for alcohol concentration may take place at any time during the duty day. Tests will be

conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved EBT operated by a trained breath alcohol technician (BAT). A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test.

Testing for Prohibited Substances

Employees will be subject to the following drug and alcohol tests: pre-employment; random; post-accident; reasonable suspicion; return-to-duty and follow-up. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in 49 CFR, part 40, as amended. A copy of all test reports shall be provided to the employee.

Pre-Employment Tests

Tests shall be conducted for job applicants after the applicant has accepted a conditional offer of employment, but prior to the first day of work. A prospective employee will be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs. Job applicants who test positive may be rejected for employment or required to submit a negative test before beginning employment. The District shall notify a job applicant of the results of a pre-employment drug or alcohol test if the applicant requests such results within sixty (60) calendar days of being notified of the disposition of his/her employment application.

Random Tests

Drug and alcohol tests shall be conducted on a random basis at unannounced times throughout the year. These tests will be conducted on site and if necessary the duties of the tested person will be covered by the building principal. The number of random alcohol tests annually will equal 25% of the total number of employees in positions described above.

The District or its representative may establish a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol tests, or both. The District may manage or contract with a third party to establish and administer a random testing process that must include: (i) an established calendar period for testing; (ii) an established testing rate within the calendar period; (iii) a random selection process that will determine who will be tested on any given date during the calendar period for testing; (iv) all supervisory and managerial employees in the random selection and testing process; and (v) a procedure that requires the District to obtain a signed statement from each employee that confirms that the employee has received a written description of the random selection process and that requires the District to maintain the statement in the employee's personnel file. The selection of employees in a random testing procedure must be made by a scientifically valid method, such as a random number table or a computer-based random

number generator table.

Post-Accident Tests

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any employee who was performing safety-sensitive functions, if the accident involves death, physical injury, or property damage in excess of \$1,500 when there is reason to believe that the tested employee may have caused or contributed to the accident; or where the employee receives a citation under state or local law for a moving traffic violation arising from the accident.

Employees shall make themselves readily available for testing, absent the need for immediate medical attention. No employee shall use alcohol for eight (8) hours after the accident, or until after he/she undergoes a post-accident alcohol test, whichever occurs first. If an alcohol test is not administered within two (2) hours or if a drug test is not administered within thirty-two (32) hours, the District shall prepare and maintain records explaining why the test was not conducted. Tests will not be given if not administered within four (4) hours or the conclusion of the duty day, after the accident for alcohol or within thirty-two (32) hours for drugs.

Tests conducted by authorized federal, state, or local officials will fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the District. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations.

Reasonable Suspicion Tests

Tests shall be conducted when two (2) District officials, trained in accordance with 49 CFR, part 382.603, agree that there is reasonable suspicion that the employee has violated the District's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances.

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before, or just after the period of the work day when the employee must comply with alcohol prohibitions. An alcohol (not other drugs) test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two (2) hours of a determination of reasonable suspicion, the District shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after four (4) hours and will not be conducted off campus unless the tested person is performing an off-campus official school activity (i.e. coaching, field trips, etc.). The person conducting the alcohol test under "reasonable suspicion" will not be an employee of the school district and must be officially trained. The Superintendent and Union Leadership will mutually agree upon an individual or entity to conduct alcohol tests prior to enactment of this policy.

A District official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within twenty-four (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

Return-to-Duty Tests

A drug or alcohol test shall be conducted when an employee who has violated the District's drug or alcohol prohibition returns to work. Employees whose conduct involved drugs cannot return to work until the return-to-duty drug test produces a verified negative result. Employees whose conduct involved alcohol cannot return to duty until the return-to-duty alcohol test produces a verified result that meets federal and District standards.

Follow-Up Tests

An employee who violates the District's drug or alcohol prohibition and is subsequently identified by a substance abuse professional (SAP) as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up testing may be conducted for up to six (6) successive contractual months from the time that the District first requires a follow-up test. Follow-up alcohol testing shall be conducted just before, during, or just after the time when the employee is performing job duties.

Testing Compliance Requirements

Any employee or prospective employee who refuses to sign any required release(s) for release of information relative to test results or required follow-up evaluations by the substance abuse professional, fails to comply with a request for testing, provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution shall be considered as having a positive test.

Refusal includes an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. (Note: If the employee or prospective employee is unable to provide the required amount of urine for drug testing, he/she will be instructed to drink not more than twenty-four (24) ounces of fluids and, after a period of up to two (2) hours, again attempt to provide a complete sample using a fresh collection container with the original insufficient specimen discarded.)

Refusal to submit to testing and not being available for post-accident testing unless injury prevents testing will be considered insubordination and a positive test. Disciplinary action will be taken which could include discharge.

Penalties for the Unlawful Manufacture, Distribution, Possession, or Use of a Controlled Substance

The criminal penalties imposed for the unlawful manufacture, distribution, possession, or use of a controlled substance are set forth in Sections 45-9-101, *et seq.*, MCA and 21 U.S.C. 801, *et seq.*

The District may discipline or discharge any employee who unlawfully manufactures, distributes, possesses, or uses a controlled substance or who refuses to submit to a post-accident, random, reasonable suspicion, return-to-duty or follow-up test. The District may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. The employee may also be required to submit to periodic follow-up testing as a condition of the counseling, treatment, or rehabilitation program.

Employee's Right of Rebuttal

Before the District may take any action based on a positive test result, the test results must be reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs. If requested by the employee, the District must obtain an additional test of the urine split sample by an independent laboratory selected by the employee. The employee must be provided the opportunity to rebut or explain the results of any positive test.

Cost of Testing

The District shall bear the initial cost of testing. Employees will be compensated at their regular rate, including benefits, for time attributable to the testing program. The District shall pay for any additional test of the urine split sample if the additional test results are negative. The employee shall pay for the additional test if the additional test results are positive.

Limitation on Adverse Action

No adverse action, including follow-up testing, may be taken by the District if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.

Confidentiality

All information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except the tested employee, the designated representative of the employer, or in connection with any legal or administrative claim arising out of the District's implementation of this policy. Information may also be provided in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500 when there is reason to believe that the tested employee may have caused or contributed to the accident. However, any information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the District.

Records

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with law. Upon written request, an employee shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the employee. All records pertaining to an employee's drug testing will be maintained separately from the District personnel files and secured in a locked cabinet within the superintendent's office. The designated representative of the employer (School District #12) will be the superintendent. There will not be an alternate Designated Representative unless an emergency arises and then only with the mutual consent of the HEA, HCA, and the School Board.

Drug Education and Assistance

The District shall provide employees with educational programs and information on the health and workplace safety risks associated with the use of controlled substances and alcohol. The District shall provide employees in need of assistance with the names of health care professionals who can provide drug and alcohol counseling, treatment, or rehabilitation programs.

Drug Testing Services

The organization / agency that is selected to provide services for District Drug testing must be officially trained in accordance with the provisions stated in paragraph 2 under "Purpose" and must not be based in the Ft. Belknap or Harlem communities.

Collective Bargaining Agreement Addendum

This policy upon enactment becomes an integral part of the HEA and HCA Collective Bargaining Agreement and cannot be altered, as applied to the members of a bargaining unit, without

negotiation. It will be included as Appendix G in both documents.

Employee Review

A copy of all drug or alcohol policies and procedures adopted by the District shall be available for review by all employees 60 days before the terms are implemented or changed. In addition, all employees shall be given a copy of Sections 39-2-205 through 211, MCA and 49 CFR, part 40. Representatives of employee organizations shall be notified of the availability of this information. Each employee shall sign a statement certifying that he/she has received a copy of the above materials. The District shall provide employees with post-accident procedures that will make it possible to comply with post-accident testing requirements.

Policy History:

Adopted on: January 15, 2003

Revised on: August 11, 2009