

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.

It is the policy of this district to require drug and/or alcohol testing of any employee reasonably suspected of being under the influence of an illegal substance and/or alcohol while on duty or during work hours on district property or at a district-sponsored activity, function, or event, regardless of location.

## **DEFINITIONS**

“Alcohol” means the product of distillation of any fermented liquor, rectified once or more, whatever may be the origin thereof, or synthetic ethyl alcohol. Alcohol includes any alcoholic beverage as defined by Idaho Code Sections 23-105 and 23-1001.

“Controlled substances” include, but are not limited to, opiates; opium derivatives; hallucinogenic substances, including cocaine and cannabis or synthetic equivalents of the substances contained in the plant, any material, compound, mixture, or preparation with substances having a depressant effect on the central nervous system; and stimulants.

“Drugs” include, but are not limited to, any alcohol or malt beverage, any tobacco product, any controlled substance, any illegal substance, any abused substance, any substance which is intended to alter mood, and any medication not prescribed by a physician for the employee in possession of the medication, including those substances identified in Schedules I, II, III, IV, and V of Idaho Code Section 37-2701.

“Reasonable suspicion” means a good faith suspicion, based on objective facts, which is sufficient for a prudent person to conclude that the employee is using or appears to be presently under the influence of alcohol and/or drugs.

## **VIOLATIONS OF THIS POLICY**

An employee is in violation of this policy, and may be subject to disciplinary action up to and including discharge for work-related misconduct, 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 blood alcohol content (BAC) result of \_\_\_\_ [*between .02 and .08*], or more, 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.
6. The employee otherwise attempts to obstruct the testing process.

**REASONABLE SUSPICION TESTING**

All employees in the district are subject to reasonable suspicion drug testing. The district may require any employee to submit to a chemical test of the employee's breath, saliva, or urine if the superintendent or designee has reasonable suspicion to believe that the employee is using or is under the influence of alcohol or an illegal substance while on duty on district property or at a district-sponsored activity, function, or event, regardless of location.

Factors that may be considered in determining that reasonable suspicion exists include, but are not limited to, the following:

1. Observed use, possession, or sale of illegal drugs and/or alcohol.
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.
6. Physical indicators such as a disheveled appearance; odor of drugs or alcohol; blurry or dilated eyes; difficulty walking; or slurred, slow, or erratic speech.

The superintendent or designee may rely on report(s) from persons who report suspected drug or alcohol use by an employee if the individual is determined to be reliable and has based such reports upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

**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. Further, the superintendent or designee is

responsible for ensuring that all procedures for sample 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 who 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 \_\_\_\_ [between .02 and .08] 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 \_\_\_\_ [between .02 and .08] or more.

All employees subject to testing are required to sign any documents necessary to authorize the testing and disclosure of information to the Medical Review Officer (MRO) or other qualified person, and the superintendent or designee. An employee who refuses to be tested, alters or attempts to alter the sample, or otherwise obstructs the collection of the sample will be subject to the consequences of a positive test.

The approved collection site or laboratory will collect the necessary samples from the employee and perform the required drug and/or alcohol test in accordance with the standards specified above. 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.

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

The superintendent or designee shall designate a Medical Review Officer (MRO). The MRO is responsible for 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 the test is negative, communicate the negative test result to the superintendent or designee, and no further action will be taken. 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 conclude the test is positive and communicate the positive test result to the superintendent or designee, who will notify the employee in writing of the positive test result.

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

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

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.

### **REMEDIAL ACTION**

If the district determines that an employee has violated this policy, the district may take disciplinary action up to and including suspension, with or without pay, and/or termination from employment due to misconduct. Termination for work-related misconduct may result in the

denial of unemployment benefits. Additionally, workers' compensation benefits may be reduced by 50% for injury due to intoxicants.

The district may also require the employee to enroll in and successfully complete a district-approved rehabilitation, treatment, or counseling program, which may include additional drug and/or alcohol testing, as a condition of continued employment. An employee's willingness to enroll in a rehabilitation, treatment, or counseling program may be considered when determining what, if any, personnel action will be taken.

The district may grant sick and personal leave for an employee enrolled in a rehabilitation or treatment program until the leave is 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.

### **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.

### **CONFIDENTIALITY**

All information, interviews, reports, statements, memoranda or test results, written or otherwise, received through a substance abuse testing program shall be kept confidential and securely maintained in a file separate from the employee's personnel file. Confidential information will be used or disclosed only on a need-to-know basis and to the extent necessary for the conduct of the district's business, subject the following exceptions: in a proceeding related to any disciplinary action taken by the district as a result of the drug and/or alcohol test; 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 disclose information to third parties regarding drug and alcohol testing without the written consent of the employee.

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 the length of employment plus at least three (3) years. Such records will be kept confidential and will not be considered part of an employee's personnel file.

**NOTICE**

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

**SCHOOL BUS DRIVERS**

District employed school bus drivers operating under a commercial driver’s license (CDL) must meet the U.S. Department of Transportation’s (DOT) drug and alcohol testing requirements, which are 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
  - 23-105
  - 23-1001
  - 37-2701
  - 37-2705 through 2713
  - 72-1701, *et seq.*
- 42 U.S.C. 12101

**ADOPTED:** June 19, 2013

**AMENDED:**

**Note:** This policy is optional, insofar as Idaho school districts are not required to adopt an employee drug and alcohol testing program (with the exception of bus drivers, which is addressed in Policy 744). However, if the school district elects to implement a drug and alcohol testing program for other employees, it must adopt a policy which is consistent with the requirements of Idaho Code Section 72-1701, *et seq.* The provisions of Policy 403.50, as drafted, meet the statutory requirements.