6.2-4.1 TESTING EMPLOYEES AND APPLICANTS FOR EMPLOYMENT (OTHER THAN BUS DRIVERS) WITH REGARD TO THE USE OF ALCOHOL AND ILLEGAL CHEMICAL SUBSTANCES

The board, with the intent that all employees have notice and knowledge of the ramifications concerning alcohol and illegal chemical substance use, possession, purchase, sale or distribution when the employee is on duty or on school property, adopts the following policy on Testing Employees and Applicants for Employment (Other Than Bus Drivers) With Regard to the Use of Alcohol and Illegal Chemical Substances.

Statement of Purpose and Intent

1. The safety of students and employees of the school district is of paramount concern to the board.

2. An employee who is under the influence of alcohol or an illegal chemical substance when the employee is on duty or on school property poses serious safety risks to students and other employees.

3. The use of alcohol and illegal chemical substances has a direct and adverse effect on the safety, personal health, attendance, productivity and quality of work of all employees and the safety of all students.

4. Scientific studies demonstrate that the use of alcohol and illegal chemical substances reduces an employee's ability to perform his job beyond the time period of immediate consumption or use.

5. The board recognizes that all employees have certain personal rights guaranteed by the Constitutions of the United States of America and the State of Oklahoma as well as by the Oklahoma Standards for Workplace Drug and Alcohol Testing Act ("Act"), OKLA. STAT. tit. 40 § 551 *et seq.,* as amended. This policy will not infringe on those rights.

6. Due to the devastating impact that the use of alcohol and illegal chemical substances can have on the safety of students and employees and their adverse effect on an employee's ability to perform the employee's job, the board will not tolerate employees who use, possess, distribute, purchase, sell or are under the influence (as defined in the policy) of alcohol or illegal chemical substances when on duty or while on school property.

7. This policy will apply to all employees of the school district regardless of position, title or seniority except bus drivers. The testing of bus drivers for alcohol or illegal chemical substances is exclusively governed by the school district's policy on Alcohol and Drug Testing for Drivers and the federal Omnibus Transportation Act of 1991. Bus drivers whose job assignment involves duties independent of bus driving shall be subject to this policy as to all non-bus driving duties.

8. Violations of this policy will subject the employee to disciplinary action, including, but not limited to, termination.

Definitions

1. “Applicant” means a person who has applied for a position with an employer and received a conditional offer of employment.

2. "Illegal chemical substance" means any substance which an individual may not sell, possess, use, distribute or purchase under either Federal or Oklahoma law. "Illegal chemical substance" includes, but is not limited to, all scheduled drugs as defined by the Oklahoma Uniform Controlled Dangerous Substances Act, all prescription drugs obtained without authorization and all prescribed drugs and over the counter drugs being used for an abusive purpose. By this policy, applicants and employees are placed on notice that the school district may test individuals for drugs and alcohol.

3. "Alcohol" means ethyl alcohol or ethanol.

4. "Under the influence" means any employee of the school district or applicant for employment with the school district who has any alcohol or illegal chemical substance or the metabolites thereof present in the person's body in any amount which is considered to be "positive" for such alcohol or drug or drug metabolites using any scientifically substantiated alcohol or drug use screen test and alcohol or drug use confirm test.

5. "Positive" when referring to an alcohol or drug use test administered under this policy means a toxicological test result which is considered to demonstrate the presence of alcohol or an illegal chemical substance or the metabolites thereof using the cutoff standards or levels determined by the State Board of Health or in the absence of such State Board cutoff levels, the cutoff levels customarily established by the testing laboratory administering the alcohol or drug use test.

6. "School property" means any property owned, leased or rented by the school district, including but not limited to school buildings, parking lots and motor vehicles.

7. "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily tissue, fluids or products. Adulteration of a specimen or of a drug or alcohol test shall be considered as a refusal to test.

8. “Confirmation test” means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the initial test.

   In instances when a breathalyzer test is used, a confirmation test means a second sample test that confirms the prior result. Where a single use test is utilized, a confirmation test means a second test confirmed by a testing facility.

9. "Employee" means any person who supplies labor for remuneration to his or her employer in this state and shall not include an independent contractor, subcontractor or employees of an independent contractor; provided, however, an independent contractor, subcontractor, or employees of an independent contractor, may be subject to a workplace drug or alcohol

testing policy under the terms of the contractual agreement when the drug or alcohol testing policy applies to other workers at the job site or workers who are in the same or similar classification or group.

10. "On duty" means any time during which an employee is acting in an official capacity for the school district or performing tasks within the employee's job description, including the taking of an annual physical examination.

11. "Bus driver" means:

    A. a school district employee who is required to have a commercial drivers' license ("CDL") to perform the employee's duties;

    B. employees of independent contractors who are required to have a CDL;

    C. owner-operators;

    D. leased drivers; and

    E. occasional drivers.

12. "Direct Child Care" means the following:

    A. Administering to the needs of infants, toddlers, preschool-age children, and school-age children outside of school hours;

    B. By persons other than their parents, guardians, or custodians;

    C. For any part of the twenty-four-hour day;

    D. In a place other than a child's own home, except that an in-home aide provides child care in the child's own home.

13. "Positive test for marijuana components or metabolites" means a result that is at or above the cutoff concentration level established by the United States Department of Transportation or Oklahoma law regarding being under the influence, whichever is lower.

13~~3~~4. To the extent not specifically defined herein, the definition of any term, word or phrase found in this policy shall be as set forth in the Act.

Procedures for Alcohol or Illegal Chemical Substance Testing

1. Any alcohol or drug use test administered under the terms of this policy will be administered by or at the direction of a testing facility licensed by the Oklahoma State Department of Health ("Department") and using scientifically validated toxicological methods that comply with rules promulgated by the Department. Testing facilities shall be required to have detailed written specifications to assure chain of custody of the samples,

proper labeling, proper laboratory control and scientific testing. All aspects of the alcohol and drug use testing program, including the taking of samples, will be conducted so as to safeguard the personal and privacy rights of applicants and employees. The test sample shall be obtained in a manner which minimizes its intrusiveness.

In the case of urine samples, the samples must be collected in a restroom or other private facility behind a closed stall or as otherwise permitted by the Department or its board; a sample shall be collected in sufficient quantity for splitting into two (2) separate samples, pursuant to rules of the State Board of Health, to provide for any subsequent independent analysis in the event of a challenge of the test results of the main sample; the test monitor shall not observe any employee or applicant while the sample is being produced but the test monitor may be present outside the stall to listen for the normal sounds of urination in order to guard against tampered samples and to insure an accurate chain of custody; and the test monitor may verify the normal warmth and appearance of the sample. If at any time during the testing procedure the test monitor has reason to believe or suspect that an employee/applicant is tampering with the sample, the test monitor may stop the procedure and inform the test coordinator.

The test monitor shall give each employee or applicant a form on which the employee or applicant may, but shall not be required to, list any medications he has taken or any other legitimate reasons for his having been in recent contact with alcohol or illegal chemical substances.

2. If the initial drug use test is positive for the presence of an illegal chemical substance or the metabolites thereof, the initial test result will be subject to confirmation by a second and different test of the same sample. The second test will use an equivalent scientifically accepted method of equal or greater accuracy as approved by rules of the State Board of Health, at the cutoff levels determined by board rules. An applicant for employment will not be denied employment or an employee will not be subject to disciplinary procedures unless the second test is positive for the presence of illegal chemical substances or the metabolites thereof.

3. If an initial alcohol use test is positive for the presence of alcohol, the initial test result will be subject to confirmation by a second and different test using any scientifically accepted method approved by rules of the State Board of Health, at the cutoff levels determined by board rules.

4. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

5. Any applicant for employment or employee who is subject to disciplinary action as a result of being under the influence of alcohol or an illegal chemical substance, as and for an appeal procedure, will be given a reasonable opportunity, in confidence, to explain or rebut the alcohol or drug use test results. If the applicant or employee asserts that the positive test results are caused by other than consumption of alcohol or an illegal chemical substance by the applicant or employee, then the applicant or employee will be given an opportunity to present evidence that the positive test result was produced by other than

consumption of alcohol or an illegal chemical substance. The school district will rely on the opinion of the school district's testing facility which performed the tests in determining whether the positive test result was produced by other than consumption of alcohol or an illegal chemical substance.

In the case of drug use testing, the employee or applicant will have a right to have a second test performed on the same test sample at the expense of the employee or applicant. In the case of alcohol testing, the employee or applicant will have a right to have a second test performed on the same test sample using any scientifically accepted method approved by rules of the State Board of Health, at the cutoff levels determined by board rules. The request for the second test must be made within twenty-four (24) hours of receiving notice of a positive test in order to challenge the results of a positive test and subject to the approval by the school district's testing facility that (a) the facility selected by the applicant or employee for the second test meets the qualifications required for a testing facility under the Act and (b) the testing methodology used by the facility selected by the employee or applicant conforms to scientifically accepted analytical methods and procedures, including the cutoff levels, as determined by the State Board of Health. If the re-test reverses the findings of the challenged positive result, then the school district will reimburse the applicant or employee for the costs of the re-test. A proper chain of custody shall be maintained at all times in transmitting the sample to and from a second testing facility.

6. The school district may permit testing for drugs or alcohol by other methods reasonably calculated to detect the presence of drugs or alcohol, including but not limited to breathalyzer testing, testing by use of a single-use test device, known as onsite or quick testing devices, to collect, handle, store, and ship a sample collected for testing.

7. The testing facility reports and results of alcohol and drug use testing will be maintained on a confidential basis except as otherwise required by law. The laboratory performing alcohol or drug use tests for the school district will not report on or disclose to the school district any physical or mental condition affecting an employee or employment applicant which may be discovered in the examination of a sample other than the presence of alcohol or illegal chemical substances or the metabolites thereof. The use of samples to test for any other substances will not be permitted.

8. The records of all drug and alcohol test results and related information retained by the school district shall be the property of the school district unless:

   A. the information will be admissible evidence by an employer or employee in a court case or administrative agency hearing if either the employer or employee is a named party;

   B. the information is required to comply with a valid judicial or administrative order; or

   C. the school district's employees, agents or representative needs to access the records in the administration of the Act.

<u>Employee Alcohol and Drug Use Test Requirements</u>

The school district is authorized to conduct drug and alcohol testing in accordance with the Act. The school district has chosen to conduct drug or alcohol testing under the following circumstances:

1. *Applicant testing*: The school district will require an applicant, as defined above, to undergo drug or alcohol testing and may use a refusal to undergo testing or a positive test result as a basis for refusal to hire or grant a voluntary transfer/reassignment. The district will also test employees and candidates for employees in safety-sensitive positions for medical marijuana. Each case will be reviewed to ensure compliance with current regulations of the Americans with Disabilities Act (ADA).

2. *For-cause testing*: The school district will require an employee to undergo drug or alcohol testing at any time the superintendent, or designee, reasonably believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

   A. drugs or alcohol on or about the employee's person or in the employee's vicinity,

   B. conduct on the employee's part that suggests impairment or influence of drugs or alcohol,

   C. a report of drug or alcohol use while at work or on duty,

   D. information that an employee has tampered with drug or alcohol testing at any time,

   E. negative performance patterns, or

   F. excessive or unexplained absenteeism or tardiness.

3. *Post-accident testing*: The school district may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or property has been damaged while at work, including damage to equipment. The school district may require post-accident drug or alcohol testing if there is a reasonable possibility that employee drug use could have contributed to the reported injury of illness. For purposes of workers' compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by the employer, shall be eligible for such compensation;

4. *Random testing*: As determined appropriate by the board of education, the school district may require an employee or all members of an employment classification or group to undergo drug or alcohol testing at random and may limit its random testing programs to particular employment classifications or groups, except that the school district will require random testing only of employees who:

   A. are police or peace officers, have drug interdiction responsibilities, or are authorized to carry firearms, or

B. are engaged in activities which directly affect the safety of others, including but not limited to school vehicle mechanics and those employees designated as "safety sensitive" pursuant to this policy.

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5. *Scheduled, periodic testing*: The school district will require an employee to undergo drug or alcohol testing as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or in connection with an employee's return to duty from leave of absence, of employees who:

A. are police or peace officers, have drug interdiction responsibilities, or are authorized to carry firearms, or

B. are engaged in activities which directly affect the safety of others, including but not limited to school vehicle mechanics and those employees designated as "safety sensitive" pursuant to this policy.

6. *Post-rehabilitation testing*: The school district may request or require an employee to undergo drug or alcohol testing for a period of up to two (2) years commencing with the employee's return to work, following a positive test or following participation in a drug or alcohol dependency treatment program.

Employee Use, Sale, Possession, Distribution, Purchase or Being Under the Influence of Alcohol or Illegal Chemical Substance

Any employee who possesses, uses, distributes, purchases, sells or is confirmed by alcohol or drug use tests to be under the influence (as defined by this policy) of alcohol or an illegal chemical substance while on duty, while on school property or as a result of alcohol or drug use tests conducted under this policy, or who refuses to submit to an alcohol or drug test permitted under the Act will be subject to disciplinary action, including, but not limited to, termination.

Unemployment Benefit Disqualification

An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a confirmed positive drug or alcohol test conducted in accordance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for unemployment compensation benefits pursuant to 40 O.S. § 2-406A. In order to prove misconduct, the school district need only provide proof of a testing policy and either a refusal to take a drug or alcohol test or a positive test result with chain of custody and opportunity to retest.

Alcohol and Drug Use Tests of Applicants for Employment -- When Required

All applicants for employment will be required to submit to alcohol and/or drug use testing after a conditional offer of employment has been made to the applicant. All applicants will be notified that alcohol and/or drug use testing will occur if they are offered a conditional offer of

employment. Any applicant who refuses to submit to an alcohol or drug use test after a conditional offer of employment will not be hired.

Applicants Under the Influence of Alcohol or An Illegal Chemical Substance

Any applicant who is confirmed by alcohol or drug use tests to be under the influence (as defined by this policy) of alcohol or an illegal chemical substance will not be hired.

Person Authorized to Order Alcohol or Drug Testing

The following persons have the authority to require alcohol or drug use testing of employees under this policy:

1. The superintendent;

2. Any employee designated for such purposes by the superintendent or board.

Release of Information

1. Upon written request, the applicant for employment or the employee will be provided, without charge, a copy of all information and records related to the individuals' testing. All test records and results will be confidential and kept in files separate from the employee or applicant's personnel records.

2. The school district shall not release such records to any person other than the applicant, employee or the school district's review officer unless the applicant or employee, in writing following receipt of the test results, has expressly granted permission for the school district to release such records in order to comply with a valid judicial or administrative order.

3. The testing facility, of any agent, representative or designee of the facility, or any review officer, shall not disclose to any employer, based on the analysis of a sample collected from an applicant or employee for the purpose of testing for the presence of drugs or alcohol, any information relating to the general health, pregnancy, or other physical or mental condition of the applicant or employee.

4. The testing facility shall release the results of the drug or alcohol test, and any analysis and information related thereto, to the individual tested upon request.

5. This policy does not preclude the school district, when contracting with another employer, from sharing drug or alcohol testing results of any tested person who works pursuant to a contractual agreement.

Medical Marijuana

Pursuant to OKLA. STAT. tit. 63, § 420A *et. seq.*, unless failure to do so would cause the school district to imminently lose a monetary or licensing related benefit under federal law or regulations, the school district will not discriminate against an applicant in hiring or take employment action against an employee on the basis of the employee's or applicant's status as a medical marijuana

license holder.

Additionally, the school district shall not refuse to hire, discipline, discharge, or otherwise penalize an applicant or employee solely on the basis of a positive test for marijuana components or metabolites unless:

1. The applicant or employee is not in possession of a valid medical marijuana license;

2. The licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations; or

~~3. The position is one involving safety sensitive job duties, as set out in this policy.~~ Such action is taken pursuant to a written drug and alcohol testing policy adopted and enforced in accordance with the Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. § 551 et seq.

When permitted, adverse action pursuant to this policy may be taken against an employee or applicant for a positive drug test for marijuana components or metabolites.

As used in this section, a determination of whether an applicant or employee is "under the influence of medical marijuana or medical marijuana product" shall be based on the totality of circumstances. Circumstances that may contribute to a determination that the applicant or employee is under the influence may include, but are not limited to:

1. Observation of any of the conduct or phenomenon described below:

   A. the odor of marijuana on or around the individual;
   B. Disorganized thinking;
   C. Paranoia and/or confusion;
   D. Bloodshot eyes;
   E. Increased heart rate;
   F. Increased appetite; or
   G. Loss of Coordination and

2. Any circumstance that would permit the school district to engage in "for cause" drug or alcohol testing of the employee under this policy.

~~The district has determined that the following categories of jobs qualify as having safety sensitive job duties:~~ Notwithstanding any other provision of this policy, an applicant or employee employed in a safety-sensitive position, as defined by 63 O.S. § 427.8, shall be subject to a zero-tolerance drug and alcohol standard. The district will test applicants and employees in safety-sensitive positions for medical marijuana. For purposes of this policy, a "safety-sensitive position" means any position in which the employee performs one or more of the following duties:.

~~1. Police or peace officers, those employees with drug interdiction responsibilities, or who are authorized to carry firearms;~~

~~2. School Bus Mechanics;~~
~~3. Employees whose responsibilities require driving a school vehicle;~~
~~4. School Nurses or Employees who are authorized to administer medicine to Students;~~
~~5. Employees whose responsibilities include direct patient care or direct child care; and~~
~~6. Teachers and Instructors responsible for the following courses: Secondary Science Teachers, Vocational and Industrial Arts.~~

1. The operation of a motor vehicle, other vehicle, equipment, machinery or power tools;
2. The repairing, maintaining, or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage;
3. The carrying of a firearm as a part of employment responsibilities; and
4. Employees who provide direct childcare.

Positions impacted by this language will include, but are not necessarily limited to: Transportation employees, certified staff who have assignments that include driving vehicles or utilizing power tools, janitorial staff, cafeteria employees, school resource officers, and those employees who work within the before- or after-school childcare program of the school district.

Notice of Policy

This policy shall be given broad circulation to all employees of the school district which shall include prominent posting in the school district. Each employee shall be given a copy of this policy and each applicant shall be given a copy of this policy upon the tender of a conditional offer of employment. Delivery of the policy to applicants or employees may be accomplished in any of the following ways:

1. Hand-delivery of a paper copy of or changes to the policy:

2. Mailing a paper copy of the policy or changes to the policy through the U.S. Postal Service or a parcel delivery service to the last address given by the employee or applicant;

3. Electronically transmitting a copy of the policy through an email or by posting on the employer's website or intranet site; or

4. Posting a copy in a prominent employee access area.

The Standards for Workplace Drug and Alcohol Testing Act

This policy is subject to and supplemented by the Act. To the extent that any provision of this policy is in conflict with the Act, then the Act shall control. To the extent that this policy is silent as to any matter covered by the Act, then the Act shall control. This policy shall be interpreted by the board of education of the school district and its employees consistent with the Act.

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