

**NORTH BRANCH INDEPENDENT SCHOOL DISTRICT NO. 138  
NORTH BRANCH AREA EDUCATION CENTER, DO CONFERENCE ROOM  
B122  
38705 GRAND AVENUE  
NORTH BRANCH, MN 55056  
POLICY COMMITTEE MEETING  
FEBRUARY 9, 2023  
4:30 PM**

**AGENDA**

- I. Policies to be Discussed
  - A. Policy 416 - Drug and Alcohol Testing (MSBA changes) 2
  - B. Policy 417 - Chemical Use and Abuse (MSBA changes) 27
  - C. Policy 418 - Drug-Free Workplace/Drug-Free School (MSBA changes) 34

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 416

Orig. 1995

Revised: \_\_\_\_\_

Rev. ~~2015~~2022

## 416 DRUG AND ALCOHOL TESTING

***[Note: Drug and ~~a~~Alcohol ~~t~~Testing of school bus drivers and applicants is mandatory under federal law. The mandatory testing is described under Part III. of the policy. Testing of other employees or testing of school bus drivers beyond that mandated by federal law is optional ~~but~~and can be done under state law only if a policy containing provisions, such as the provisions of Part IV. of this policy, are adopted. To preserve the right to request or require school district employees who are not bus drivers and applicants to undergo drug and/or alcohol testing or to require bus drivers to submit to testing that is not federally mandated, a school district should adopt Part IV. as part of its drug and alcohol testing policy.]***

### I. PURPOSE

- A. The school board recognizes the significant problems created by drug and alcohol use in society in general, and the public schools in particular. The school board further recognizes the important contribution that the public schools have in shaping the youth of today into the adults of tomorrow.
- B. The school board believes that a work environment free of drug and alcohol use will be not only safer, healthier, and more productive but also more conducive to effective learning. ~~Therefore, t~~To provide such an environment, the purpose of this policy is to provide authority so that the school board may require all employees and/or job applicants to submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in federal law and ~~Minn. Stat. §§~~[Minnesota Statutes, sections 181.950-181.957](#).

### II. GENERAL STATEMENT OF POLICY

- A. All school district employees and job applicants whose positions require a commercial driver's license will be required to undergo drug and alcohol testing in accordance with federal law and the applicable provisions of this policy. The school district also may request or require that drivers submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in ~~Minn. Stat. §§~~[Minnesota Statutes, sections 181.950-181.957](#).
- B. The school district may request or require that any school district employee or job applicant, other than an employee or applicant whose position requires a commercial driver's license, submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in ~~Minn. Stat. §§~~[Minnesota Statutes, sections 181.950-181.957](#).
- C. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed, including medical cannabis, ~~regardless of whether or not~~ it has been prescribed for the employee, is prohibited on school district property (which includes school district vehicles), while operating school district vehicles or equipment, and at any school-sponsored program or event. Use of drugs ~~which that~~ are not medically prescribed, including medical cannabis, ~~regardless of whether or not~~ it has been prescribed for the employee, is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district

property. Employees under the influence of drugs ~~which-that~~ are not medically prescribed are prohibited from entering or remaining on school district property.

- D. The use, possession, sale, purchase, transfer, or dispensing of alcohol is prohibited on school district property (which includes school district vehicles), while operating school district vehicles or equipment, and at any school-sponsored program or event. Use of alcohol is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district property. Employees under the influence of alcohol are prohibited from entering or remaining on school district property.
- E. Any employee who violates this section shall be subject to discipline ~~which-that~~ includes, but is not limited to, immediate suspension without pay and immediate discharge.

### III. **FEDERALLY MANDATED DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS**

#### A. General Statement of Policy

All persons subject to commercial driver's license requirements shall be tested for alcohol, marijuana (including medical cannabis), cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP), pursuant to federal law. Drivers who test positive for alcohol or drugs shall be subject to disciplinary action, which may include termination of employment.

#### B. Definitions

1. "Actual Knowledge" means actual knowledge by the school district that a driver has used alcohol or controlled substances based on: (a) direct observation of the employee's use (not observation of behavior sufficient to warrant reasonable suspicion testing); (b) information provided by a previous employer; (c) a traffic citation; or (d) an employee's admission, except when made in connection with a qualified employee self-admission program.
2. "Alcohol Screening Device" (ASD) means a breath or saliva device, other than an Evidential Breath Testing Device (EBT), that is approved by the National Highway Traffic Safety Administration and placed on its Conforming Products List for such devices.
3. "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and who operates the EBT.
4. "Commercial Motor Vehicle" (CMV) includes a vehicle ~~which-that~~ is designed to transport 16 or more passengers, including the driver.
5. "Designated Employer Representative" (DER) means an employee authorized by the school district ~~a designated school district representative authorized~~ to take immediate action to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation process ~~, and to~~ The DER receives test results and other communications for the school district.
6. "Department of Transportation" (DOT) means United States Department of Transportation.
7. "Direct Observation" means observation of alcohol or controlled substances use

and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing.

8. "Driver" is any person who operates a CMV, including full-time, regularly employed drivers, casual, intermittent, or occasional drivers, leased drivers, and independent owner-operator contractors.
9. "Evidential Breath Testing Device" (EBT) means a device approved by the National Highway Traffic Safety Administration for the evidentiary testing of breath for alcohol concentration and placed on its Conforming Products List for such devices.
10. "Licensed Medical Practitioner" means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.
11. "Medical Review Officer" (MRO) means a licensed physician responsible for receiving and reviewing laboratory results generated by the school district's drug testing program and for evaluating medical explanations for certain drug tests.
12. "Refusal to Submit" (to an alcohol or controlled substances test) means that a driver: (a) fails to appear for any test within a reasonable time, as determined by the school district, consistent with applicable DOT regulations, after being directed to do so; (b) fails to remain at the testing site until the testing process is complete; (c) fails to provide a urine specimen or an adequate amount of saliva or breath for any DOT drug or alcohol test; (d) fails to permit the observation or monitoring of the driver's provision of a specimen in the case of a directly observed or monitored collection in a drug test; (e) fails to provide a sufficient breath specimen or sufficient amount of urine when directed and a determination has been made that no adequate medical explanation for the failure exists; (f) fails or declines to take an additional test as directed by the school district or the collector; (g) fails to undergo a medical examination or evaluation, as directed by the MRO or the DER; (h) fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector, fails to sign the certification on the forms); (i) fails to follow the observer's instructions, in an observed collection, to raise the driver's clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the driver has any type of prosthetic or other device that could be used to interfere with the collection process; (j) possesses or wears a prosthetic or other device that could be used to interfere with the collection process; (k) admits to the collector or MRO that the driver adulterated or substituted the specimen; or (l) is reported by the MRO as having a verified adulterated or substituted test result. An applicant who fails to appear for a pre-employment test, who leaves the testing site before the pre-employment testing process commences, or who does not provide a urine specimen because he or she has left before it commences is not deemed to have refused to submit to testing.
13. "Safety-Sensitive Functions" are on-duty functions from the time the driver begins work or is required to be in readiness to work until relieved from work and all responsibility for performing work, and include such functions as driving, loading and unloading vehicles, or supervising or assisting in the loading or unloading of vehicles, servicing, repairing, obtaining assistance to repair, or

remaining in attendance during the repair of a disabled vehicle.

14. "Screening Test Technician" (STT) means anyone who instructs and assists individuals in the alcohol testing process and operates an ASD.
15. "Stand Down" means ~~the practice of~~ temporarily removing an employee from performing safety-sensitive functions ~~after based only upon~~ a laboratory reports ~~to the MRO of~~ a confirmed positive ~~test for a drug or drug metabolite~~, an adulterated ~~test~~, or a substituted test ~~result but~~ before the MRO completes the verification process.
16. "Substance Abuse Professional" (SAP) means a qualified person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

C. Policy and Educational Materials

***[Note: ~~The~~ federal regulations require that school districts provide materials to bus drivers explaining the school district's policies and procedures and the federal requirements with respect to the mandatory drug and alcohol testing of bus drivers. 49 Code of Federal Regulations section ~~C.F.R. §~~ 382.601. ~~Almost all~~ Most of the required information is contained within this model policy. Additional materials to be provided to employees are described in Paragraph 2. of ~~this~~ Section C.]***

1. The school district shall provide a copy of this policy and procedures to each driver prior to the start of its alcohol and drug testing program and to each driver subsequently hired or transferred into a position requiring driving of a CMV.
2. The school district shall provide to each driver information required under Title 49 of the Code of Federal Regulations, including information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or ~~drug-controlled substance~~ problem (the driver's or a coworker's); and available methods of intervening when an alcohol or ~~drug-controlled substance~~ problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.
3. The school district shall provide written notice to representatives of employee organizations that the information described above is available.
4. The school district shall require each driver to sign a statement certifying that the driver~~he or she~~ ~~has~~ received a copy of the policy and materials. This statement should be in the form of Attachment A to this policy. The school district will maintain the original signed certificate and will provide a copy to the driver if the driver so requests.

***[Note: The federal regulations require a school district to obtain a signed statement from each driver certifying that he or she ~~has~~ received a copy of these materials. 49 Code of Federal Regulations section ~~C.F.R. §~~ 382.601(d). The original signed certificate must be maintained by the school district and a copy may be provided to the driver.]***

D. Alcohol and Controlled Substances Testing Program Manager

***[Note: School districts are required by ~~the~~ federal regulations to designate a person to answer driver questions about the policy and the education materials described in Section C. above and to notify the drivers of the designation. 49 Code of Federal Regulations section ~~C.F.R.~~ § 382.601(b)(1).]***

1. The program manager will coordinate the implementation, direction, and administration of the alcohol and controlled substances testing policy for bus drivers. The program manager is the principal contact for the collection site, the testing laboratory, the MRO, the BAT, the SAP, and the person submitting to the test. Employee questions concerning this policy shall be directed to the program manager.
2. The school district shall designate a program manager and provide written notice of the designation to each driver along with this policy.

E. Specific Prohibitions for Drivers

***[Note: The specific prohibitions for drivers are contained, in large part, in 49 Code of Federal Regulations sections ~~C.F.R.~~ §§ 382.201-382.215.]***

1. Alcohol Concentration. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers who test greater than 0.04 will be taken out of service and will be subject to evaluation by a professional and retesting at the driver's expense.
2. Alcohol Possession. No driver shall be on duty or operate a CMV while the driver possesses alcohol.
3. On-Duty Use. No driver shall use alcohol while performing safety-sensitive functions.
4. Pre-Duty Use. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. Use Following an Accident. No driver required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until ~~the driver~~ he or she undergoes a post-accident alcohol test, whichever occurs first.
6. Refusal to Submit to a Required Test. No driver shall refuse to submit to an alcohol or controlled substances test required by post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements. A verified adulterated or substituted drug test shall be considered a refusal to test.
7. Use of Controlled Substances. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to instructions (which have been presented to the school district) from a licensed ~~physician~~ medical practitioner who is familiar with the driver's medical history and has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV. Controlled substance includes medical cannabis, regardless of whether the driver is enrolled in the state registry program.

8. Positive, Adulterated, or Substituted Test for Controlled Substance. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances, including medical cannabis, or has adulterated or substituted a test specimen for controlled substances.
9. General Prohibition. Drivers are also subject to the general policies and procedures of the school district ~~which that~~ prohibit ~~the~~ possession, transfer, sale, exchange, reporting to work under the influence of drugs or alcohol, and consumption of drugs or alcohol while at work or while on school district premises or operating any school district vehicle, machinery, or equipment.

F. Other Alcohol-Related Conduct

***[Note: Consequences for drivers engaging in alcohol-related conduct are described in the federal regulations. 49 Code of Federal Regulations section ~~C.F.R.~~ § 382.505.]***

No driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform safety-sensitive functions for at least twenty-four (24) hours following administration of the test. The school district will not take any action under this policy other than removal from safety-sensitive functions based solely on test results showing an alcohol concentration of less than 0.04 but may take action otherwise consistent with law and ~~the~~ policyies of the school district.

G. Prescription Drugs/Cannabinoid Products

A driver shall inform ~~the driver's~~ his or her supervisor if at any time the driver is using a controlled substance pursuant to a physician's prescription. The physician's instructions shall be presented to the school district upon request. Use of a prescription drug shall be allowed if the physician has advised the driver that the prescribed drug will not adversely affect the driver's ability to safely operate a CMV. Use of medical cannabis is prohibited notwithstanding the driver's enrollment in the patient registry. Use of nonintoxicating cannabinoids or edible cannabinoid products is not a legitimate medical explanation for a confirmed positive test result for marijuana. MROs will verify a drug test confirmed as positive, even if a driver claims to have only used nonintoxicating cannabinoids or edible cannabinoid product.

H. Testing Requirements

***[Note: School districts must utilize the U.S. DOT Drug & Alcohol Clearinghouse ("Clearinghouse") to conduct pre-employment queries, annual queries, and reports regarding CDL holders who operate CMVs on public roads (including school bus drivers) and who are covered by the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Testing Program. In addition to utilizing the Clearinghouse, school districts must continue to comply with the alcohol and controlled substance testing required under Title 49 of the Federal Regulations.]***

1. Pre-Employment Testing

***[Note: 49 Code of Federal Regulations section ~~C.F.R.~~ § 382.301 details the requirements for pre-employment testing.]***

- a. A driver applicant shall undergo testing for [alcohol and] controlled substances, including medical cannabis, before the first time the driver

performs safety-sensitive functions for the school district.

***[Note: A school district is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If a school district elects to require pre-employment testing for alcohol, it should include the bracketed text in Subparagraph a., above, and test all applicants uniformly.]***

- b. Tests shall be conducted only after the applicant has received a conditional offer of employment.
- c. ~~In order to~~ To be hired, the applicant must test negative and must sign an agreement in the form of Attachment B to this policy, authorizing former employers to release to the school district all information on the applicant's alcohol tests with results of blood alcohol concentration of 0.04 or higher, or verified positive results for controlled substances, including medical cannabis, or refusals to be tested (including verified adulterated or substituted drug test results), or any other violations of DOT agency drug and alcohol testing regulations, or, if the applicant violated the testing regulations, documentation of the applicant's successful completion of DOT return-to-duty requirements (including follow-up tests), within the preceding two (2) years.

***[Note: ~~The~~ Federal regulations require school districts to inquire about, obtain, and review alcohol and controlled substances information from prior employers pursuant to a driver's written authorization, prior to the time a driver performs safety-sensitive functions, if feasible. 49 Code of Federal Regulations section ~~C.F.R. § 382.413~~ and 49 Code of Federal Regulations section ~~C.F.R. § 40.25~~. If not feasible, school districts must not permit the employee to perform safety-sensitive functions for more than thirty (30) days from the date a safety-sensitive function was performed unless the school districts make good faith efforts to obtain the information and to make a record of those efforts to be retained in the driver's qualification file.]***

- d. The applicant also must be asked whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee, during the last two (2) years, applied for, but did not obtain, safety-sensitive transportation work covered by DOT testing rules.
- e. Before employing a driver subject to controlled substances and alcohol testing, the school district must conduct a full pre-employment query of the federal Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse ("Clearinghouse") to obtain information about whether the driver (1) has a verified positive, adulterated, or substituted controlled substances test result; (2) has an alcohol confirmation test with a concentration of 0.04 or higher; (3) has refused to submit to a test in violation of federal law; or (4) that an employer has reported actual knowledge that the driver used alcohol on duty, before duty, or following an accident in violation of federal law or used a controlled substance in violation of federal law. The applicant must give specific written or electronic consent for the school district to conduct the Clearinghouse full query. The school district shall retain the consent for three (3) years from the date of the query.

32. Post-Accident Testing

**[Note: 49 [Code of Federal Regulations section C.F.R. § 382.303](#) governs post-accident testing of drivers.]**

- a. As soon as practicable following an accident involving a CMV, the school district shall test the driver for alcohol and controlled substances, including medical cannabis, if the accident involved the loss of human life or if the driver receives a citation for a moving traffic violation arising from an accident which results in bodily injury or disabling damage to a motor vehicle.
- b. Drivers should be tested for alcohol use within two (2) hours and no later than eight (8) hours after the accident.
- c. Drivers should be tested for controlled substances, including medical cannabis, no later than thirty-two (32) hours after the accident.
- d. A driver subject to post-accident testing must remain available for testing, or shall be considered to have refused to submit to the test.
- e. If a post-accident alcohol test is not administered within two (2) hours following the accident, the school district shall prepare and maintain on file a record stating the reasons the test was not promptly administered and continue to attempt to administer the alcohol test within eight (8) hours.
- f. If a post-accident alcohol test is not administered within eight (8) hours following the accident or a post-accident controlled substances test is not administered within thirty-two (32) hours following the accident, the school district shall cease attempts to administer the test, and prepare and maintain on file a record stating the reasons for not administering the test.
- g. [The school district shall report drug and alcohol program violations to the Clearinghouse as required under federal law.](#)

43. Random Testing

**[Note: 49 [Code of Federal Regulations section C.F.R. § 382.305](#) governs random testing of drivers.]**

- a. The school district shall conduct tests on a random basis at unannounced times throughout the year, as required by the federal regulations.

**[Note: The Federal Highway Administration (FHWA) ~~lowered~~ has set the random alcohol selection and testing rate ~~from at~~ 1025% of the average number of driver positions ~~to 10% in 1998~~ and evaluates this minimum percentage each year. School districts can elect to stay at the 1998 level of 25% (or a higher percentage) if they do not want to monitor the minimum annual percentage rate set by the FHWA. The random controlled substances selection and testing rate has remained at 50% each year and has not been lowered to 25% as is possible under**

***the regulations.]***

- b. The school district shall test for alcohol at a minimum annual percentage rate of 10% of the average number of driver positions, and for controlled substances, including medical cannabis, at a minimum annual percentage of 50%.
- c. The school district shall adopt a scientifically valid method for selecting drivers for testing, such as random number table or a computer-based random number generator that is matched with identifying numbers of the drivers. Each driver shall have an equal chance of being tested each time selections are made. Each driver selected for testing shall be tested during the selection period.
- d. Random tests shall be unannounced. Dates for administering random tests shall be spread reasonably throughout the calendar year.
- e. Drivers shall proceed immediately to the collection site upon notification of selection; provided, however, that if the driver is performing a safety-sensitive function, other than driving, at the time of notification, the driver shall cease to perform the function and proceed to the collection site as soon as possible.

**54. Reasonable Suspicion Testing**

***[Note: 49 Code of Federal Regulations section ~~C.F.R. §~~ 382.307 governs reasonable suspicion testing of drivers.]***

- a. The school district shall require a driver to submit to an alcohol test and/or controlled substances, including medical cannabis, test when a supervisor or school district official, who has been trained in accordance with the regulations, has reasonable suspicion to believe that the driver has used alcohol and/or controlled substances, including medical cannabis, on duty ~~or~~ within four (4) hours before coming on duty, or just after the period of the work day. The test shall be done as soon as practicable following the observation of the behavior indicative of the use of controlled substances or alcohol.
- b. The reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The required observations for reasonable suspicion of a controlled substances violation may include indications of the chronic and withdrawal effects of controlled substances.
- c. Alcohol testing shall be administered within two (2) hours following a determination of reasonable suspicion. If it is not done within two (2) hours, the school district shall prepare and maintain a record explaining why it was not promptly administered and continue to attempt to administer the alcohol test within eight (8) hours. If an alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the school district shall cease attempts to administer the test and state in the record the reasons for not administering the test.

- d. The supervisor or school district official who makes observations leading to a controlled substances reasonable suspicion test shall make and sign a written record of the observations within twenty-four (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

**[Note: ~~49 Code of Federal Regulations sections C.F.R. §§ 382.309, 40.23(d), and 40.305 govern return-to-duty testing.~~]**

65. Return-To-Duty Testing. A driver found to have violated this policy shall not return to work until an SAP has determined the employee has successfully complied with prescribed education and/or treatment and until undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a confirmed negative result for the use of controlled substances. The school district is not required to return a driver to safety-sensitive duties because the driver has met these conditions; this is a personnel decision subject to collective bargaining agreements or other legal requirements.

**[Note: ~~49 Code of Federal Regulations sections C.F.R. §§ 382.311, 40.307, and 40.309 govern follow-up testing.~~]**

76. Follow-Up Testing. When an SAP has determined that a driver is in need of assistance in resolving problems with alcohol and/or controlled substances, the driver shall be subject to unannounced follow-up testing as directed by the SAP for up to sixty (60) months after completing a treatment program.

87. Refusal to Submit and Attendant Consequences

**[Note: *Consequences for refusals to submit to required drug and alcohol tests are addressed generally in 49 Code of Federal Regulations sections ~~C.F.R. §§ 40.191, 40.261, and 382.211.~~ They are more specifically addressed in 49 Code of Federal Regulations sections ~~C.F.R. §§ 382.501-382.507 and in 49 United States Code section ~~U.S.C. § 521(b).~~~~*]**

- a. A driver or driver applicant may refuse to submit to drug and alcohol testing.
- b. Refusal to submit to a required drug or alcohol test subjects the driver or driver applicant to the consequences specified in federal regulations as well as the civil and/or criminal penalty provisions of 49 United States Code section ~~U.S.C. § 521(b).~~ In addition, a refusal to submit to testing establishes a presumption that the driver or driver applicant would test positive if a test were conducted and makes the driver or driver applicant subject to discipline or disqualification under this policy.
- c. A driver applicant who refuses to submit to testing shall be disqualified from further consideration for the conditionally offered position.
- d. An employee who refuses to submit to testing shall not be permitted to perform safety-sensitive functions and will be considered insubordinate and subject to disciplinary action, up to and including dismissal. If an employee is offered an opportunity to return to a DOT safety-sensitive duty, the employee will be evaluated by an SAP and must submit to a return-to-duty test prior to being considered for reassignment to safety-

sensitive functions.

- e. Drivers or driver applicants who refuse to submit to required testing will be required to sign Attachment C to this policy.

I. Testing Procedures

1. Drug Testing

***[Note: The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. 49 [Code of Federal Regulations section 40.45.](#)]***

- a. Drug testing is conducted by analyzing a donor's urine specimen. Split urine samples will be collected in accordance with federal regulations. The donor will provide a urine sample at a designated collection site. The collection site personnel will then pour the sample into two sample bottles, labeled "primary" and "split," seal the specimen bottles, complete the chain of custody form, and prepare the specimen bottles for shipment to the testing laboratory for analysis. The specimen preparation shall be conducted in sight of the donor.
- b. If the donor is unable to provide the appropriate quantity of urine, the collection site person shall instruct the individual to drink up to forty (40) ounces of fluid distributed reasonably through a period of up to three (3) hours to attempt to provide a sample. If the individual is still unable to provide a complete sample, the test shall be discontinued and the school district notified. The DER shall refer the donor for a medical evaluation to determine if the donor's inability to provide a specimen is genuine or constitutes a refusal to test. For pre-employment testing, the school district may elect to not have a referral made, and revoke the employment offer.
- c. Drug test results are reported directly to the MRO by the testing laboratory. The MRO reports the results to the DER. If the results are negative, the school district is informed and no further action is necessary. If the test result is confirmed positive, adulterated, substituted, or invalid, the MRO shall give the donor an opportunity to discuss the test result. The MRO will contact the donor directly, on a confidential basis, to determine whether the donor wishes to discuss the test result. The MRO shall notify each donor that the donor has seventy-two (72) hours from the time of notification in which to request a test of the split specimen at the donor's expense. No split specimen testing is done for an invalid result.
- d. If the donor requests an analysis of the split specimen within seventy-two (72) hours of having been informed of a confirmed positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another Department of Health and Human Services – SAMHSA certified laboratory for analysis. If the donor has not contacted the MRO within seventy-two (72) hours, the donor may present the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the confirmed positive test, or other circumstances unavoidably prevented the donor from timely making contact. If the MRO concludes that a legitimate explanation for the

donor's failure to contact him/her within seventy-two (72) hours exists, the MRO shall direct the analysis of the split specimen. The MRO will review the confirmed positive test result to determine whether an acceptable medical reason for the positive result exists. The MRO shall confirm and report a positive test result to the DER and the employee when no legitimate medical reason for a positive test result as received from the testing laboratory exists.

- e. If, after making reasonable efforts and documenting those efforts, the MRO is unable to reach the donor directly, the MRO must contact the DER who will direct the donor to contact the MRO. If the DER is unable to contact the donor, the donor will be suspended from performing safety-sensitive functions.
- f. The MRO may confirm the test as a positive without having communicated directly with the donor about the test results under the following circumstances:
  - (1) The donor expressly declines the opportunity to discuss the test results;
  - (2) The donor has not contacted the MRO within seventy-two (72) hours of being instructed to do so by the DER; or
  - (3) The MRO and the DER, after making and documenting all reasonable efforts, have not been able to contact the donor within ten (10) days of the date the confirmed test result was received from the laboratory.

## 2. Alcohol Testing

***[Note: The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. 49 Code of Federal Regulations section ~~C.F.R. §~~ 40.225.]***

- a. The federal alcohol testing regulations require testing to be administered by a BAT using an EBT or an STT using an ASD. EBTs and ASDs can be used for screening tests but only EBTs can be used for confirmation tests.
- b. Any test result less than 0.02 alcohol concentration is considered a "negative" test.
- c. If the donor is unable to provide sufficient saliva for an ASD, the DER will immediately arrange to use an EBT. If the donor attempts and fails to provide an adequate amount of breath, the school district will direct the donor to obtain a written evaluation from a licensed physician to determine if the donor's inability to provide a breath sample is genuine or constitutes a refusal to test.
- d. If the screening test results show alcohol concentration of 0.02 or higher, a confirmatory test conducted on an EBT will be required to be performed between fifteen (15) and thirty (30) minutes after the completion of the screening test.

- e. Alcohol tests are reported directly to the DER.

J. Driver/Driver Applicant Rights

- 1. All drivers and driver applicants subject to the controlled substances testing provisions of this policy who receive a confirmed positive test result for the use of controlled substances have the right to request, at the driver's or driver applicant's expense, a confirming retest of the split urine sample. If the confirming retest is negative, no adverse action will be taken against the driver, and a driver applicant will be considered for employment.

***[Note: The limitation on discharge in Paragraph 2., below, is contained solely in Minnesota law. State law is preempted by federal laws and regulations as it relates to drivers of commercial motor vehicles (such as bus drivers). See Minnesota Statutes section Minn. Stat. § 221.031, Subd. 10. Nevertheless, school districts may decide to comply with the state law requirements for various reasons (such as to treat all school district employees equally since employees subject to testing only under state law are accorded these additional rights). Consultation with the school district's legal counsel is recommended.]***

- 2. The school district will not discharge a driver who, for the first time, receives a confirmed positive drug or alcohol test UNLESS:
  - a. The school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school district after consultation with the SAP; and
  - b. The employee refuses to participate in the recommended program, or fails to successfully complete the program as evidenced by withdrawal before its completion or by a positive test result on a confirmatory test after completion of the program.
  - c. This limitation on employee discharge does not bar discharge of an employee for reasons independent of the first confirmed positive test result.

K. Testing Laboratory

The testing laboratory for controlled substances will be [***name, address, telephone number***], which is a laboratory certified by the Department of Health and Human Services – SAMHSA to perform controlled substances testing pursuant to federal regulations.

L. Confidentiality of Test Results

All alcohol and controlled substances test results and required records of the drug and alcohol testing program are considered confidential information under federal law and private data on individuals as that phrase is defined in Minnesota Statutes, Chapter 13. Any information concerning the individual's test results and records shall not be released without written permission of the individual, except as provided for by regulation or law.

M. Recordkeeping Requirements and Retention of Records

1. The school district shall keep and maintain records in accordance with the federal regulations in a secure location with controlled access.

***[Note: The federal recordkeeping requirements for school districts are detailed in the federal regulations, 49 Code of Federal Regulations sections C.F.R. §§ 382.401 et seq. and 40.331. The DOT publishes a guide to the recordkeeping requirements of mandatory drug and alcohol testing for persons with a commercial driver's license as part of its Alcohol & Drugs: DOT Compliance Manual.]***

2. The required records shall be retained for the following minimum periods:

Basic records 5 years

"Basic records" includes records of: (a) alcohol test results with concentration of 0.02 or greater; (b) verified positive drug test results; (c) refusals to submit to required tests (including substituted or adulterated drug test results); (d) SAP reports; (e) all follow-up tests and schedules for follow-up tests; (f) calibration documentation; (g) administration of the testing programs; and (h) each annual calendar year summary.

Information obtained from previous employers 3 years

~~Collection records~~ Alcohol and controlled substance collection procedures 2 years

Negative and cancelled ~~drug~~ controlled substance tests 1 year

Alcohol tests with less than 0.02 concentration 1 year

Education and training records indefinite

"Education and training records" must be maintained while the individuals perform the functions which require training and for the two (2) years after ceasing to perform those functions.

3. Personal Information

Personal information about all individuals who undergo any required testing under this policy will be shared with the U.S. DOT Drug & Alcohol Clearinghouse ("Clearinghouse") as required under federal law, including:

a. The name of the person tested;

b. Any verified positive, adulterated, or substituted drug test result;

c. Any alcohol confirmation test with a BAC concentration of 0.04 or higher;

d. Any refusal to submit to any test required hereunder;

e. Any report by a supervisor of actual knowledge of use as follows

i. Any on-duty alcohol use;

ii. Any pre-duty alcohol use;

- iii. [Any alcohol use following an accident; and](#)
- iv. [Any controlled substance use.](#)

f. [Any report from a substance abuse professional certifying successful completion of the return-to-work process;](#)

g. [Any negative return-to-duty test; and](#)

h. [Any employer's report of completion of follow-up testing.](#)

N. Training

The school district shall ensure all persons designated to supervise drivers receive training. The designated employees shall receive at least sixty (60) minutes of training on alcohol misuse and at least sixty (60) minutes of training on controlled substances use. The training shall include physical, behavioral, speech, and performance indicators of probable misuse of alcohol and use of controlled substances. The training will be used by the supervisors to make determinations of reasonable suspicion.

O. Consequences of Prohibited Conduct and Enforcement

1. Removal. The school district shall remove a driver who has engaged in prohibited conduct from safety-sensitive functions. A driver shall not be permitted to return to safety-sensitive functions until and unless the return-to-duty requirements of federal DOT regulations have been completed.

2. Referral, Evaluation, and Treatment

a. A driver or driver applicant who has engaged in prohibited conduct shall be provided a listing of SAPs readily available to the driver or applicant and acceptable to the school district.

***[Note: Subparagraphs b. and c., below, are based on the provisions of 49 Code of Federal Regulations section ~~C.F.R. §~~ 40.289.]***

b. If the school district offers a driver an opportunity to return to a DOT safety-sensitive duty following a violation, the driver must be evaluated by an SAP and the driver is required to successfully comply with the SAP's evaluation recommendations (education, treatment, follow-up evaluation(s), and/or ongoing services). The school district is not required to provide an SAP evaluation or any subsequent recommended education or treatment.

***[Note: School districts are not required to comply with state law governing drug and alcohol testing when the individuals are subject to the federal laws and regulations (i.e., bus drivers). If a school district, after consultation with legal counsel, chooses to comply voluntarily with these requirements, Subparagraph b., above, can be modified as follows:***

***b. The school district will offer a driver an opportunity to return to a DOT safety-sensitive duty following an employee's first positive test result on a confirmatory***

***test if no reasons independent of the first test result for discharge exist. Otherwise, the school district may choose, but is not required, to provide an SAP evaluation or any subsequent recommended education or treatment.***

- c. Drivers are responsible for payment for SAP evaluations and services unless a collective bargaining agreement or employee benefit plan provides otherwise.
- d. Drivers who engage in prohibited conduct also are required to comply with follow-up testing requirements.

3. Disciplinary Action

- a. Any driver who refuses to submit to post-accident, random, reasonable suspicion, or follow-up testing not only shall not perform or continue to perform safety-sensitive functions, but also may be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- b. Drivers who test positive with verification of a confirmatory test or are otherwise found to be in violation of this policy or the federal regulations shall be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- c. Nothing in this policy limits or restricts the right of the school district to discipline or discharge a driver for conduct which not only constitutes prohibited conduct under this policy but also violates the school district's other rules or policies.

P. Other Testing

The school district may request or require that drivers submit to drug and alcohol testing other than that required by federal law. For example, drivers may be requested or required to undergo drug and alcohol testing on an annual basis as part of a routine physical examination. Such additional testing of drivers will be conducted only in accordance with the provisions of this policy and as provided in ~~Minnesota Statutes, §§sections~~ 181.950-181.957. For purposes of such additional, non-mandatory testing, drivers fall within the definition of "other employees" covered by Section IV. of this policy.

***[Note: When the testing of drivers complies with federal testing requirements and procedures, school districts clearly are exempt from the state drug and alcohol testing requirements in ~~Minnesota Statutes, §§sections~~ 181.950-181.957. See Minnesota Statutes section ~~Minn. Stat. § 221.031, subdivision~~ 10. When testing beyond the federally mandated requirements, however, school districts still must comply with state law.***

Q. Report to Clearinghouse

The school district shall promptly submit to the Clearinghouse any record generated of an individual who refuses to take an alcohol or controlled substance test required under Title 49, Code of Federal Regulations, tests positive for alcohol or a controlled substance in violation of federal regulations, or violates subpart B of Part 382 of Title 49, Code of

Federal Regulations (or any subsequent corresponding regulations).

R. Annual Clearinghouse Query

1. The school district must conduct a query of the Clearinghouse record at least once per year for information for all employees subject to controlled substance and alcohol testing related to CMV operation to determine whether information exists in the Clearinghouse about those employees. In lieu of a full query, the school district may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement. The limited query will tell the employer whether there is information about the driver in the Clearinghouse but will not release that information to the employer. If the limited query shows that information exists in the Clearinghouse about the driver, the school district must conduct a full query within twenty-four (24) hours or must not allow the driver to continue to perform any safety-sensitive function until the employee conducts the full query and the results confirm the driver's Clearinghouse record contains no prohibitions showing the driver has a verified positive, adulterated or substitute controlled substance test, no alcohol confirmation test with a concentration of 0.04 or higher, refuses to submit to a test, or was reported to have used alcohol on duty, before duty, following an accident or otherwise used a controlled substance in violation of the regulations except where the driver completed the SAP evaluation, referral and education/treatment process as required by the regulations. The school district shall comply with the query requirements set forth in 49 Code of Federal Regulations § 382.701.
2. The school district may not access an individual's Clearinghouse record unless the school district (1) obtains the individual's prior written or electronic consent for access to the record; and (2) submits proof of the individual's consent to the Clearinghouse. The school district must retain the consent for three (3) years from the date of the last query. The school district shall retain for three (3) years a record of each request for records from the Clearinghouse and the information received pursuant to the request.
3. The school district shall protect the individual's privacy and confidentiality of each Clearinghouse record it receives. The school district shall ensure that information contained in a Clearinghouse record is not divulged to a person or entity not directly involved in assessing and evaluating whether a prohibition applies with respect to the individual to operate a CMV for the school district.
4. The school district may use an individual's Clearinghouse record only to assess and evaluate whether a prohibition applies with respect to the individual to operate a CMV for the school district.

**IV. DRUG AND ALCOHOL TESTING FOR OTHER EMPLOYEES**

The school district may request or require drug and alcohol testing for other school district personnel, i.e., employees who are not school bus drivers, or job applicants for such positions. The school district does not have a legal duty to request or require any employee or job applicant to undergo drug and alcohol testing as authorized in this policy, except for school bus drivers and other drivers of CMVs who are subject to federally mandated testing. (See Section III. of this policy.) If a school bus driver is requested or required to submit to drug or alcohol testing beyond that mandated by federal law, the provisions of Section IV. of this policy will be applicable to such testing.

A. Circumstances Under Which Drug or Alcohol Testing May Be Requested or Required:

1. General Limitations

- a. The school district will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, unless the testing is done pursuant to this drug and alcohol testing policy; and is conducted by a testing laboratory ~~which participates in one of the programs that meets one of the criteria~~ listed in Minnesota Statutes, § 181.953, Ssubd-ivision 1.
- b. The school district will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing on an arbitrary and capricious basis.

2. Job Applicant Testing

The school district may request or require any job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing, provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If a job applicant has received a job offer ~~which that~~ is contingent on the applicant's passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the event the job offer is subsequently withdrawn, the school district shall notify the job applicant of the reason for its action.

3. Random Testing

The school district may request or require employees to undergo drug and alcohol testing on a random selection basis only if they are employed in safety-sensitive positions.

4. Reasonable Suspicion Testing

The school district may request or require any employee to undergo drug and alcohol testing if the school district has a reasonable suspicion that the employee:

- a. is under the influence of drugs or alcohol;
- b. has violated the school district's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the school district's premises or operating the school district's vehicles, machinery, or equipment;
- c. has sustained a personal injury, as that term is defined in Minnesota Statutes, section- § 176.011, Ssubd-ivision- 16, or has caused another employee to sustain a personal injury; or
- d. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

5. Treatment Program Testing

The school district may request or require any employee to undergo drug and alcohol testing if the employee has been referred by the school district for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

6. Routine Physical Examination Testing

The school district may request or require any employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

B. No Legal Duty to Test

The school district does not have a legal duty to request or require any employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing.

C. Definitions

1. "Drug" means a controlled substance as defined in Minnesota Statutes, including medical cannabis, regardless of enrollment in the state registry program.
2. "Drug and Alcohol Testing," "Drug or Alcohol Testing," and "Drug or Alcohol Test" mean analysis of a body component sample ~~according to the standards established under one of the programs by a testing laboratory that meets one of the criteria~~ listed in ~~Minnesota Statutes, § section~~ 181.953, ~~Subdivision~~ 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
3. "Other Employees" means any persons, independent contractors, or persons working for an independent contractor who perform services for the school district for compensation, either full time or part time, in whatever form, except for persons whose positions require a commercial driver's license, and includes both professional and nonprofessional personnel. Persons whose positions require a commercial driver's license are primarily governed by the provisions of the school district's drug and alcohol testing policy relating to school bus drivers (Section III.). To the extent that the drug and alcohol testing of persons whose positions require a commercial driver's license is not mandated by federal law and regulations, such testing shall be governed by Section IV. of this policy and the drivers shall fall within this definition of "other employees."
4. "Job Applicant" means a person, independent contractor, or person working for an independent contractor who applies to become an employee of the school district in a position that does not require a commercial driver's license, and includes a person who has received a job offer made contingent on the person's passing drug or alcohol testing. Job applicants for positions requiring a

commercial driver's license are governed by the provisions of the school district's drug and alcohol testing policy relating to school bus drivers (Section III.).

5. "Positive ~~T~~est ~~R~~esult" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in ~~Minnesota Statutes, Section~~ 181.953, ~~Subdivision~~ 1.
6. "Random ~~S~~election ~~B~~asis" means a mechanism for selection of employees that:
  - a. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected; and
  - b. does not give the school district discretion to waive the selection of any employee selected under the mechanism.
7. "Reasonable ~~S~~suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
8. "Safety-~~S~~sensitive ~~P~~osition" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

D. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing and Consequences of Such Refusal

1. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing

Any employee or job applicant whose position does not require a commercial driver's license has the right to refuse drug and alcohol testing subject to the provisions contained in Paragraphs 2. and 3. of ~~this~~ Section IV.D.

2. Consequences of an Employee's Refusal to Undergo Drug and Alcohol Testing

Any employee in a position that does not require a commercial driver's license who refuses to undergo drug and alcohol testing in the circumstances set out in the Random Testing, Reasonable Suspicion Testing, and Treatment Program Testing provisions of this policy may be subject to disciplinary action, up to and including immediate discharge.

3. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing

Any job applicant for a position which does not require a commercial driver's license who refuses to undergo drug and alcohol testing pursuant to the Job Applicant Testing provision of this policy shall not be employed.

E. Reliability and Fairness Safeguards

1. Pretest Notice

Before requesting an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, the school district shall provide the employee or job applicant with a Pretest Notice in the

form of Attachment D to this policy on which to acknowledge that the employee or job applicant has received the school district's drug and alcohol testing policy.

2. Notice of Test Results

Within three (3) working days after receipt of a test result report from the testing laboratory, the school district shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test.

3. Notice of and Right to Test Result Report

Within three (3) working days after receipt of a test result report from the testing laboratory, the school district shall inform in writing, an employee or job applicant who has undergone drug or alcohol testing of the employee or job applicant's right to request and receive from the school district a copy of the test result report on any drug or alcohol test.

4. Notice of and Right to Explain Positive Test Result

a. If an employee or job applicant has a positive test result on a confirmatory test, the school district shall provide ~~him or her~~ the individual with notice of the test results and, at the same time, written notice of the right to explain the results and to submit additional information.

b. The school district may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.

c. The employee may present verification of enrollment in the medical cannabis patient registry as part of the employee's explanation.

d. Use of nonintoxicating cannabinoids or edible cannabinoid products is not a legitimate medical explanation for a confirmed positive test result for marijuana. MROs will verify a drug test confirmed as positive, even if an employee claims to have only used nonintoxicating cannabinoids or edible cannabinoid product.

~~d~~e. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee or job applicant may submit information (in addition to any information already submitted) to the school district to explain that result.

5. Notice of and Right to Request Confirmatory Retests

a. If an employee or job applicant has a positive test result on a confirmatory test, the school district shall provide ~~him or her~~ the individual with notice of the test results and, at the same time, written notice of the right to request a confirmatory retest of the original sample at his or her expense.

- b. An employee or job applicant may request a confirmatory retest of the original sample at his or her own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee or job applicant shall notify the school district in writing of his or her intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the school district shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minnesota Statutes, §section 181.953, §subdivision 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.
- 6. If an employee or job applicant has a positive test result on a confirmatory test, the school district, at the time of providing notice of the test results, shall also provide written notice to inform ~~him or her~~ the individual of other rights provided under Sections F. or G., below, whichever is applicable.

Attachments E and F to this policy provide the Notices described in Paragraphs 2. through 6. of this Section E.

F. Discharge and Discipline of Employees Whose Positions Do Not Require a Commercial Driver's License

- 1. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.
- 2. In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.
- 3. The school district may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the school district, unless the following conditions have been met:
  - a. The school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school district after consultation with a certified chemical abuse counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
  - b. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its

completion or by a positive test result on a confirmatory test after completion of the program.

4. Notwithstanding Paragraph 1., the school district may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the school district believes that it is reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
5. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information or the employee's status as a patient enrolled in the medical cannabis registry program revealed to the school district, unless the employee was under an affirmative duty to provide the information before, upon, or after hire, or failing to do so would violate federal law or regulations or cause the school district to lose money or licensing-related benefit under federal law or regulations.
6. The school district may not discriminate against any employee in termination, discharge, or any term of condition of employment or otherwise penalize an employee based upon an employee registered patient's positive drug test for cannabis components or metabolites, unless the employee used, possessed, or was impaired by medical cannabis on school district property during the hours of employment.
7. An employee must be given access to information in ~~his or her~~ the individual's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

G. Withdrawal of Job Offer for an Applicant for a Position That Does Not Require a Commercial Driver's License

If a job applicant has received a job offer made contingent on the applicant's passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the school district may withdraw the job offer.

H. Chain-of-Custody Procedures

The school district has established its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures require the following:

1. Possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;
2. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;

3. A sample must be accompanied by a written chain-of-custody record; and
4. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

I. Privacy, Confidentiality and Privilege Safeguards

1. Privacy Limitations

A laboratory may only disclose to the school district test result data regarding the presence or absence of drugs, alcohol or their metabolites in a sample tested.

2. Confidentiality Limitations

With respect to employees and job applicants, test result reports and other information acquired in the drug or alcohol testing process are private data on individuals as that phrase is defined in Minn-~~esota~~ Stat-~~utes~~ Ch-~~apter~~ 13, and may not be disclosed by the school district or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested.

3. Exceptions to Privacy and Confidentiality Disclosure Limitations

Notwithstanding Paragraphs 1. and 2., evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minn-~~esota~~ Stat-~~utes~~, Ch-~~apter~~ 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

4. Privilege

Positive test results from the school district drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

J. Notice of Testing Policy to Affected Employees

The school district shall provide written notice of this drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously non-affected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant's passing drug and alcohol testing. Affected employees and applicants will acknowledge receipt of this written notice in the form of Attachment G to this policy.

**V. POSTING**

The school district shall post notice in an appropriate and conspicuous location on its premises that it has adopted a drug and alcohol testing policy and that copies of the policy are available

for inspection during regular business hours by its employees or job applicants in its personnel office or other suitable locations.

- Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. Ch. 43A (State Personnel Management)  
[Minn. Stat. § 151.72 \(Sale of Certain Cannabinoid Products\)](#)  
[Minn. Stat. § 152.01 \(Definitions\)](#)  
Minn. Stat. § 152.22 (~~Definitions~~; Medical Cannabis; ~~Definitions~~)  
Minn. Stat. § 152.23 (~~Limitations~~; Medical Cannabis; ~~Limitations~~)  
Minn. Stat. § 152.32 (Protections for Registry Program Participation)  
[Minn. Stat. § 176.011, subd. 16 \(Definitions; Personal Injury\)](#)  
Minn. Stat. §§ 181.950-181.957 (Drug and Alcohol Testing in the Workplace)  
Minn. Stat. § 221.031 (Motor Carrier Rules)  
49 U.S.C. § 31306 (Omnibus Transportation Employee Testing Act of 1991)  
[49 U.S.C. 31306a \(National Clearinghouse for Controlled Substance and Alcohol Test Results of Commercial Motor Vehicle Operators\)](#)  
49 U.S.C. § 521(b) (Civil and Criminal Penalties for Violations)  
49 C.F.R. Parts 40 and 382 (Department of Transportation Rules Implementing Omnibus Transportation Employee Testing Act of 1991)
- Cross-References:** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 417 (Chemical Use and Abuse)  
MSBA/MASA Model Policy 418 (Drug-Free Workplace/Drug-Free School)

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 417

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2022-~~15~~

## 417 CHEMICAL USE AND ABUSE

***[Note: This policy reflects mandatory provisions of state and federal law and is not discretionary.]***

### I. PURPOSE

The school board recognizes that chemical use and abuse constitutes a grave threat to the physical and mental well-being of students and employees and significantly impedes the learning process. Chemical use and abuse also creates significant problems for society in general. The school board believes that the public school has a role in education, intervention, and prevention of chemical use and abuse. The purpose of this policy is to assist the school district in its goal to prevent chemical use and abuse by providing procedures for education and intervention.

### II. GENERAL STATEMENT OF POLICY

A. Use or possession of controlled substances, toxic substance, medical cannabis, ~~toxic substances~~, and alcohol before, during, or after school hours, at school or in any other school location, is prohibited in ~~the school setting in~~ accordance with school district policies with respect to a Drug-Free Workplace/Drug-Free School.

B. The ~~policy of this~~ school district shall develop, implement, and evaluate comprehensive programs and activities that foster safe, healthy, supportive, and drug-free environments that support student academic achievement. ~~is to provide an instructional program in every elementary and secondary school in chemical abuse and the prevention of chemical dependency.~~

C. ~~Every~~The school ~~district that participates in a school district chemical abuse program~~ shall establish and maintain in every school a chemical abuse preassessment team. The team is responsible for addressing reports of chemical abuse problems and making recommendations for appropriate responses to the individual reported cases.

~~D. The superintendent, with the advice of the school board, shall be responsible for establishing a school and community advisory team to address chemical abuse problems in the district.~~

ED. The school district shall establish and maintain a drug-free awareness program to for educate and assist its employees, and may establish a students, and others in understanding this policy and the goals of achieving drug-free schools and workplaces.

***[Note: School districts are required to establish a drug-free awareness program for school district employees pursuant to the Drug-Free Workplace Act. In addition, state law requires that the written districtwide school discipline policy must include procedures for detecting and addressing chemical abuse problems of a student while on the school premises. Further, school districts are required to develop, implement, and evaluate comprehensive programs and activities that foster safe, healthy, supportive, and drug-free environments that support student academic achievement if receiving funding under the federal Student Support and Academic Enrichment Grants law. Comprehensive drug prevention programs are required to be adopted and carried out by school districts pursuant to the Safe and Drug-Free Schools and Communities Act. In addition, school districts are required by the Drug-Free Workplace Act to establish drug-free awareness programs for school district employees. Further, state law authorizes school districts to provide instructional programs in chemical abuse and the prevention of chemical dependency.]***

### III. DEFINITIONS

A. "Chemical abuse," as applied to students, means use of any psychoactive or mood-altering chemical substance, without compelling medical reason, in a manner that induces mental, emotional, or physical impairment and causes socially dysfunctional or socially disordering behavior, to the extent that the minor's student's normal function in academic, school, or social activities is chronically impaired.

~~B. "Chemicals" includes, but is not limited to, alcohol, toxic substances, medical cannabis, and controlled substances as defined in the school district's Drug-Free Workplace/Drug-Free School policy.~~

B. "Controlled substances," as applied to the chemical abuse assessment of students, means a drug, substance, or immediate precursor in Schedules I through V of Minnesota Statutes section 152.02 and "marijuana" as defined in Minnesota Statutes section 152.01, subdivision 9- but not distilled spirits, wine, malt beverages, intoxicating liquors or tobacco. As otherwise defined in this policy, "controlled substances" include narcotic drugs, hallucinogenic drugs, amphetamines, barbiturates, marijuana, anabolic steroids, or any other controlled substance as defined in Schedules I through V of the Controlled Substances Act, 21 United States Code section 812, including analogues and look-alike drugs.

C. "Drug prevention" means prevention, early intervention, rehabilitation referral, recovery support services, or education related to the illegal use of drugs, such as raising awareness about the consequences of drug use that are evidence based.

~~C. "Use" includes to sell, buy, manufacture, distribute, dispense, use, or be under the influence of alcohol and/or controlled substances, whether or not for the purpose of receiving remuneration.~~

~~D. "School location" includes any school building or on any school premises; on any school-owned vehicle or in any other school-approved vehicle used to transport students to and from school or school activities; off-school property at any school-sponsored or school-approved activity, event, or function, such as a field trip or athletic event, where students are under the jurisdiction of the school district; or during any period of time such employee is supervising students on behalf of the school district or otherwise engaged in school district business.~~

D. "Teacher" means all persons employed in a public school or education district or by a service cooperative as members of the instructional, supervisory, and support staff including superintendents, principals, supervisors, secondary vocational and other classroom teachers, librarians, counselors, school psychologists, school nurses, school social workers, audio-visual directors and coordinators, recreation personnel, media generalists, media supervisors, and speech therapists.

#### IV. STUDENTS

A. Districtwide School Discipline Policy

Procedures for detecting and addressing chemical abuse problems of a student while on school premises are included in the districtwide school student discipline policy.

AB. Programs and Activities~~Instruction~~

14. ~~Every~~The school district shall develop, implement, and evaluate comprehensive ~~provide~~ an instructional programs and activities that foster safe, healthy, supportive, and drug-free environments that support student academic achievements. The programs and activities may include, among other programs and activities, drug prevention activities and programs that may be evidence based, including programs to educate students against the use of alcohol, tobacco, marijuana, smokeless tobacco products, and electronic cigarettes. ~~in chemical abuse and the prevention of chemical dependency.~~ The school district may involve parents, students, health care professionals, state department staff,

and members of the community in developing the curriculum.

~~*[Note: The Safe and Drug-Free Schools and Communities Act requires school districts to adopt and carry out a comprehensive drug and violence prevention program with funds received. Since a comprehensive drug prevention program is required and a school district is specifically authorized by state law to provide instructional programs in chemical abuse and the prevention of chemical dependency, this should be a component of each school district's mandatory program. In addition, the Safe and Drug-Free Schools and Communities Act specifies additional items which that may be included as part of the mandatory comprehensive drug prevention program. Some of the suggested items relating to instruction or training are detailed in Paragraphs 2. Through 6. Below and a school district may wish to adopt one or all of the listed components as part of its mandatory program.]*~~

~~2. \_\_\_\_\_ As part of its drug-free programs, the school district may implement the drug abuse resistance education program (DARE) that enables peace officers to undergo the training to teach a curriculum on drug abuse resistance in schools.~~

~~2. \_\_\_\_\_ Each school shall have age appropriate and developmentally based activities that:~~

~~a. \_\_\_\_\_ address the consequences of violence and the illegal use of drugs, as appropriate;~~

~~b. \_\_\_\_\_ promote a sense of individual responsibility;~~

~~c. \_\_\_\_\_ teach students that most people do not illegally use drugs;~~

~~d. \_\_\_\_\_ teach students to recognize social and peer pressure to use drugs illegally and the skills for resisting illegal drug use;~~

~~e. \_\_\_\_\_ teach students about the dangers of emerging drugs;~~

~~f. \_\_\_\_\_ engage students in the learning process; and~~

~~g. \_\_\_\_\_ incorporate activities in secondary schools that reinforce prevention activities implemented in elementary schools.~~

~~3. \_\_\_\_\_ Each school shall have activities that involve families, community sectors (which may include appropriately trained seniors), and a variety of drug and violence prevention providers in setting clear expectations against violence and illegal use of drugs and appropriate consequences for violence and illegal use of drugs.~~

~~4. \_\_\_\_\_ Each school shall disseminate drug and violence prevention information within the school and to the community.~~

~~5. \_\_\_\_\_ Each school shall have professional development and training for, and involvement of, school personnel, student services personnel, parents, and interested community members in prevention, education, early identification and intervention, mentoring, or rehabilitation referral, as related to drug and violence prevention.~~

~~6. \_\_\_\_\_ Each school shall have drug and violence prevention activities that may include the following:~~

~~a. \_\_\_\_\_ Community wide planning and organizing activities to reduce violence and illegal drug use, which may include gang activity prevention.~~

~~b. \_\_\_\_\_ The hiring and mandatory training, based on scientific research, of school security personnel who interact with students in support of youth drug and violence prevention activities under this policy that are implemented in the school.~~

~~c. \_\_\_\_\_ Conflict resolution programs, including peer mediation programs that educate and train peer mediators and~~

~~a designated faculty supervisor, and youth anti-crime and anti-drug councils and activities.~~

~~d. Counseling, mentoring, referral services, and other student assistance practices and programs, including assistance provided by qualified school-based mental health services providers and the training of teachers by school-based mental health services providers in appropriate identification and intervention techniques for students at risk of violent behavior and illegal use of drugs.~~

~~e. Programs that encourage students to seek advice from, and to confide in, a trusted adult regarding concerns about violence and illegal drug use.~~

**CB. Reports of Use, Possession, or Transfer of Alcohol or a Controlled Substance~~Chemical Use and Abuse~~**

~~1. In the event that a school district employee knows that a student is abusing, possessing, transferring, distributing, or selling chemicals in a school location:~~

~~a. The employee shall immediately either take the student to an administrator or notify an appropriate administrator of the observation and continue to observe the student until the administrator arrives.~~

~~b. The administrator will notify the student's parents. If there is a medical emergency, the administrator will notify the school nurse and/or outside medical personnel as appropriate.~~

~~c. The administrator will notify law enforcement officials, the student's counselor, and the chemical preassessment team.~~

~~d. The administrator and/or law enforcement officials will confiscate the chemicals and/or conduct a search of the student's person, effects, locker, vehicle, or areas within the student's control. Searches by school district officials shall be in accordance with school board policies regarding search and seizure.~~

~~e. The school district will take appropriate disciplinary action in compliance with the student discipline code. Such discipline may include immediate suspension, initiation of expulsion proceedings, and/or referral to a detoxification center or medical center.~~

~~2. If a school district employee has reason to believe that a student is abusing, possessing, transferring, distributing, or selling chemicals:~~

~~a. The employee shall notify the building administrator or a member of the preassessment team and shall describe the basis for the suspicion. The building administrator and/or team will determine what action should be taken. Action may include conducting an investigation, gathering data, scheduling a conference with the student or parents, or providing a meeting between a single member of the team and the student to discuss the behaviors that have been reported and attempting to ascertain facts regarding chemical abuse.~~

~~b. The team may determine there is no chemical abuse. If the team determines there is chemical abuse, the team will select an appropriate course of action, which may include referral to a school counselor; referral to a treatment program; referral for screening, assessment, and treatment planning; participation in support groups; or other appropriate measures.~~

- ~~1. 1. A teacher in a nonpublic school participating in a school district chemical use program, or a public school teacher, who knows or has reason to believe that a student is using, possessing, or transferring alcohol or a controlled substance while on the school premises or involved in school-related activities, shall immediately notify the school's chemical abuse preassessment team, or staff member assigned duties similar to those of such a team, of this information.~~

**[Note: School districts are not required to participate in a chemical abuse program**

*or establish a chemical abuse preassessment team pursuant to state law. Schools are required to have procedures for detecting student chemical abuse and can obtain federal funding if they establish drug prevention, detection, intervention, and recovery support services. Thus, it is recommended that schools establish these programs and activities. For those schools that do not establish a chemical abuse preassessment team, those obligations could be assigned to a specified staff member such a school counselor or administrator.]*

32. Students involved in the abuse, possession, transfer, distribution, or sale of chemicals ~~shall~~ may be suspended and proposed for expulsion in compliance with the student discipline policy and the Pupil Fair Dismissal Act, Minnesota-Statutes section-§ 121A.40-121A.56, and proposed for expulsion.
43. Searches by school district officials in connection with the ~~abuse, possession, or transfer, distribution, or sale~~ of alcohol or a controlled substance chemicals will be conducted in accordance with school board policies related to search and seizure.
4. Nothing in paragraph IV.B.1. prevents a teacher or any other school employee from reporting to a law enforcement agency any violation of law occurring on school premises or at school sponsored events.

DC. Preassessment Team

1. Every school that participates in a school district chemical abuse program shall ~~establish~~ have a chemical abuse preassessment team designated by the superintendent or designee. The team ~~must~~ will be composed of classroom teachers, administrators, and to the extent they exist in the school, school nurse, school counselor or psychologist, social worker, chemical abuse specialist, and other appropriate professional staff ~~to the extent they exist in each school, such as the school nurse, school counselor or psychologist, social worker, chemical abuse specialist, or others.~~ For schools that do not have a chemical abuse program and team, the superintendent or designee will assign these duties to a designated school district employee.
2. The team is responsible for addressing reports of chemical abuse problems and making recommendations for appropriate responses to the individual reported cases.
3. Within forty-five (45) days after receiving an individual reported case, the team shall make a determination whether to provide the student and, in the case of a minor, the student's parents with information about school and community services in connection with chemical abuse.

ED. Data Practices

1. Student data may be disclosed without consent in health and safety emergencies pursuant to Minnesota Statutes section§ 13.32 and applicable federal law and regulations.
2. Destruction of Records
  - a. If the preassessment team decides not to provide a student and, in the case of a minor, the student's parents with information about school or community services in connection with chemical abuse, records created or maintained by the team about the student shall be destroyed not later than six (6) months after the determination is made.

- b. If the team decides to provide the student and, in the case of a minor or a dependent student, the student's parents with ~~such~~ information about school or community services in connection with chemical abuse, records created or maintained by the team about the student shall be destroyed not later than six (6) months after the student is no longer enrolled in the district.
- c. ~~This section shall govern~~ Destruction of records identifying individual students shall be governed by paragraph IV.E.2. notwithstanding ~~provisions of the Records Management Act, Minnesota Statutes section~~ § 138.163 (Preservation and Disposal of Public Records).

**FE. Consent**

Any minor may give effective consent for medical, mental, and other health services to determine the presence of or to treat conditions associated with alcohol and other drug abuse, and the consent of no other person is required.

**[Note: State law permits schools to provide these services to minor students without the consent of a parent. If, however, a school district provides these or other services pursuant to a grant received under the Student Support and Academic Enrichment Grants law, this funding could be jeopardized if the requirements of federal law, to obtain prior written, informed consent from the parent of each child who is under 18 years of age is not obtained.]**

**F. School and Community Advisory Team**

1. ~~The superintendent, with the advice of the school board, shall establish a school and community advisory team to address chemical abuse problems. The advisory team will be composed of representatives from the school preassessment teams to the extent possible, law enforcement agencies, county attorney's office, social service agencies, chemical abuse treatment programs, parents, and the business community.~~

2. ~~The advisory team shall:~~

a. ~~build awareness of the problem within the community, identify available treatment and counseling programs for students, and develop good working relationships and enhance communication between the schools and other community agencies; and~~

b. ~~develop a written procedure clarifying the notification process to be used by the chemical abuse preassessment team when a student is believed to be in possession of or under the influence of alcohol or a controlled substance. The procedure must include contact with the student and the student's parents or guardian in the case of a minor student.~~

**V. EMPLOYEES**

- A. The ~~school district shall establish~~ superintendent or designee shall undertake and maintain a drug-free awareness ~~and prevention~~ program to inform employees, ~~students, and others~~ about:
  - 1. The dangers ~~and health risks of chemical~~ of drug abuse in the workplace/school.
  - 2. The school district's ~~drug-free workplace/drug-free school~~ policy of maintaining a drug-free workplace.
  - 3. ~~Any available drug or alcohol counseling, treatment, rehabilitation, re-entry, and/or employee assistance programs available to employees and/or students.~~

4. The penalties that may be imposed on employees for drug abuse violations.

- B. The ~~school district superintendent or designee~~ shall notify ~~any~~ federal granting agency required to be notified under the Drug-Free Workplace Act within ten (10) days after receiving notice ~~from the employee or otherwise receiving actual notice~~ of ~~any criminal drug statute~~ conviction ~~of an employee for a criminal drug statute violation~~ occurring in the workplace. ~~To facilitate the giving of such notice, any employee aware of such a conviction shall report the same to the superintendent.~~

~~[Note: Notification to the federal granting agency within ten (10) days is required by the Drug-Free Workplace Act. 41 U.S.C. § 8103.]~~

**Legal References:**

Minn. Stat. § 13.32 (Educational Data)  
Minn. Stat. § 121A.25-121A.29 (Chemical Abuse)  
Minn. Stat. § 121A.40-121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 121A.61 (Discipline and Removal of Students from Class)  
Minn. Stat. § 124D.695 (Approved Recovery Program Funding)  
Minn. Stat. § 126C.44 (Safe Schools Levy)  
Minn. Stat. § 138.163 (Preservation and Disposal of Public Records) ~~Records Management Act)~~  
Minn. Stat. § 144.343 (Pregnancy, Venereal Disease, Alcohol or Drug Abuse, Abortion)  
Minn. Stat. § 152.01 (Definitions)  
Minn. Stat. § 152.02 (Schedules of Controlled Substances; Administration of Chapter)  
Minn. Stat. § 152.22 (~~Medical Cannabis~~; Definitions; Medical Cannabis)  
Minn. Stat. § 152.23 (~~Medical Cannabis~~; Limitations; Medical Cannabis)  
Minn. Stat. § 299A.33 (DARE Program)  
Minn. Stat. § 466.07, subd. 1 (Indemnification Required)  
Minn. Stat. § 609.101, subd. 3(e) (Controlled Substance Offenses; Minimum Fines)  
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)  
20 U.S.C. §§ 7101-716522 (Student Support and Academic Enrichment Grants)~~Safe and Drug-Free Schools and Communities Act)~~  
20 U.S.C. § 5812 (National Education Goals)  
20 U.S.C. § 7175 (Local Activities)  
41 U.S.C. §§ 8101-8106 (Drug-Free Workplace Act)  
34 C.F.R. Part 84 (Government-~~w~~Wide Requirements for Drug-Free Workplace)

**Cross References:**

MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 416 (Drug and Alcohol Testing)  
MSBA/MASA Model Policy 418 (Drug-Free Workplace/Drug Free School)  
MSBA/MASA Model Policy 419 (Tobacco-Free Environment; Possession and Use of Tobacco, Tobacco-Related Devices, and Electronic Delivery Devices; Vaping Awareness and Prevention Instruction)  
MSBA/MASA Model Policy 502 (Search of Student Lockers, Desks, Personal Possessions, and Student's Person)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)  
MSBA/MASA Model Policy 527 (Student Use and Parking of Motor Vehicles; Patrols, Inspections, and Searches)

## 418 DRUG-FREE WORKPLACE/DRUG-FREE SCHOOL

***[Note: School districts are required by statute to have a policy addressing these issues.]***

### I. PURPOSE

The purpose of this policy is to maintain a safe and healthful environment for employees and students by prohibiting the use of alcohol, toxic substances, medical cannabis, ~~and nonintoxicating cannabinoids (including edible cannabinoid products), and~~ controlled substances without a physician's prescription.

### II. GENERAL STATEMENT OF POLICY

- A. Use or possession of ~~alcohol, controlled substances,~~ toxic substances, medical cannabis, nonintoxicating cannabinoids (including edible cannabinoid products), and controlled substances~~alcohol~~ before, during, or after school hours, at school or in any other school location, is prohibited as general policy. Paraphernalia associated with controlled substances is prohibited.
- B. A violation of this policy occurs when any student, teacher, administrator, other school district personnel, or member of the public uses or possesses alcohol, toxic substances, ~~controlled substances, or~~ medical cannabis, nonintoxicating cannabinoids (including edible cannabinoid products), or controlled substances in any school location.
- C. The school district will act to enforce this policy and to discipline or take appropriate action against any student, teacher, administrator, school personnel, or member of the public who violates this policy.

### III. DEFINITIONS

- A. "Alcohol" includes any alcoholic beverage containing more than one-half of one percent alcohol by volume, malt beverage, fortified wine, or other intoxicating liquor.
- B. "Controlled substances" include narcotic drugs, hallucinogenic drugs, amphetamines, barbiturates, marijuana, anabolic steroids, or any other controlled substance as defined in Schedules I through V of the Controlled Substances Act, 21 United States Code section~~U.S.C. §~~ 812, including analogues and look-alike drugs.
- C. "Edible cannabinoid product" means any product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoid in combination with food ingredients, and is not a drug.
- D. "Nonintoxicating cannabinoid" means substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.
- E. "Medical cannabis" means any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins, and is delivered in the form of: (1) liquid, including, but not limited to, oil; (2) pill; (3) vaporized delivery method with use of liquid or oil but which does not require the use of dried leaves or

plant form; ~~or~~ (4) combustion with use of dried raw cannabis; or (5) any other method, excluding smoking, approved by the commissioner.

F. "Possess" means to have on one's person, in one's effects, or in an area subject to one's control.

G. "School location" includes any school building or on any school premises; in any school-owned vehicle or in any other school-approved vehicle used to transport students to and from school or school activities; off school property at any school-sponsored or school-approved activity, event, or function, such as a field trip or athletic event, where students are under the jurisdiction of the school district; or during any period of time such employee is supervising students on behalf of the school district or otherwise engaged in school district business.

H.D. "Toxic substances" includes: (1) glue, cement, aerosol paint, containing toluene, benzene, xylene, amyl nitrate, butyl nitrate, nitrous oxide, or containing other aromatic hydrocarbon solvents, but does not include glue, cement, or paint contained in a packaged kit for the construction of a model automobile, airplane, or similar item; (2) butane or a butane lighter; or (3) any similar substance declared to be toxic to the central nervous system and to have a potential for abuse, by a rule adopted by the commissioner of health, or other substances used or possessed with the intent of inducing intoxication or excitement of the central nervous system.

I.E. "Use" includes to sell, buy, manufacture, distribute, dispense, possess, use, or be under the influence of alcohol, toxic substances, medical cannabis, nonintoxicating cannabinoids (including edible cannabinoid products), and/or controlled substances, whether or not for the purpose of receiving remuneration or consideration.

#### IV. EXCEPTIONS

A. A violation of this policy does not occur when a person brings onto a school location, for such person's own use, a controlled substance, except medical cannabis, which has a currently accepted medical use in treatment in the United States and the person has a physician's prescription for the substance. The person shall comply with the relevant procedures of this policy.

B. A violation of this policy does not occur when a person possesses an alcoholic beverage in a school location when the possession is within the exceptions of ~~Minnesota Statutes, section~~ §624.701, ~~Subdivision~~ 1a (experiments in laboratories; pursuant to a temporary license to sell liquor issued under Minnesota laws or possession after the purchase from such a temporary license holder).

#### V. PROCEDURES

A. Students who have a prescription from a physician for medical treatment with a controlled substance, except medical cannabis, must comply with the school district's student medication policy.

***[Note: School districts are required by ~~Minnesota Statutes, §~~section 121A.22 to develop procedures for the administration of drugs and medicine. If the school district does not have a student medication policy such as MSBA/MASA Model Policy 516, this Paragraph A. can be modified to provide: "Students who have a prescription from a physician for medical treatment with a controlled substance must provide a copy of the prescription and the medication to the school nurse, principal, or other designated staff member. The school district's***

**licensed school nurse, trained health clerk, principal, or teacher will administer the prescribed medication in accordance with school district procedures.”]**

- B. Employees who have a prescription from a physician for medical treatment with a controlled substance, except medical cannabis, are permitted to possess such controlled substance and associated necessary paraphernalia, such as an inhaler or syringe. The employee must inform his or her supervisor. The employee may be required to provide a copy of the prescription.
- C. Each employee shall be provided with written notice of this Drug-Free Workplace/Drug-Free School policy and shall be required to acknowledge that he or she has received the policy.

**[Note: The Drug-Free Workplace Act requires that school district employees be notified by a published statement of the prohibition of the use of controlled substances and actions that will be taken against employees for violations of such prohibition. 41 United States Code section U.S.C. § 8103; 34 C.F.R. Code of Federal Regulations Part 84. An acknowledgment will document satisfaction by the school district of this federal requirement.]**

- D. Employees are subject to the school district’s drug and alcohol testing policies and procedures.
- E. Members of the public are not permitted to possess controlled substances in a school location except with the express permission of the superintendent.
- F. No person is permitted to possess or use medical cannabis on a school bus or van; or on the grounds of any preschool or primary or secondary school; or on the grounds of any child care facility. This prohibition includes (1) vaporizing or combusting medical cannabis on any form of public transportation where the vapor or smoke could be inhaled by a minor child or in any public place, including indoor or outdoor areas used by or open to the general public or place of employment; and (2) operating, navigating, or being in actual physical control of any motor vehicle or working on transportation property, equipment or facilities while under the influence of medical cannabis.
- G. Possession of alcohol on school grounds pursuant to the exceptions of Minn-~~esota~~ Stat-utes §section 624.701, Ssubd-ivision 1a, shall be by permission of the school board only. The applicant shall apply for permission in writing and shall follow the school board procedures for placing an item on the agenda.

## **VI. ENFORCEMENT**

- A. Students
  - 1. Students may be required to participate in programs and activities that provide education against the use of alcohol, tobacco, marijuana, smokeless tobacco products, and electronic cigarettes, and nonintoxicating cannabinoids (including edible cannabinoid products).
  - 2. Students may be referred to drug or alcohol assistance or rehabilitation programs; school based mental health services, mentoring and counseling, including early identification of mental health symptoms, drug use and violence and appropriate referral to direct individual or group counselling service. which may be provided by school based mental health services providers; and/or

referral to law enforcement officials when appropriate.

3. A student who violates the terms of this policy shall be subject to discipline in accordance with the school district's discipline policy. Such discipline may include suspension or expulsion from school.

~~2. The student may be referred to a drug or alcohol assistance or rehabilitation program and/or to law enforcement officials when appropriate.~~

B. Employees

1. As a condition of employment in any federal grant, each employee who is engaged either directly or indirectly in performance of a federal grant shall abide by the terms of this policy and shall notify his or her supervisor in writing of his or her conviction of any criminal drug statute for a violation occurring in any of the places listed above on which work on a school district federal grant is performed, no later than five (5) calendar days after such conviction. Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

2. An employee who violates the terms of this policy is subject to disciplinary action, including nonrenewal, suspension, termination, or discharge as deemed appropriate by the school board.

3. In addition, any employee who violates the terms of this policy may be required to satisfactorily participate in a drug and/or alcohol abuse assistance or rehabilitation program approved by the school district. Any employee who fails to satisfactorily participate in and complete such a program is subject to nonrenewal, suspension, or termination as deemed appropriate by the school board.

4. Sanctions against employees, including nonrenewal, suspension, termination, or discharge shall be pursuant to and in accordance with applicable statutory authority, collective bargaining agreements, and school district policies.

C. The Public

A member of the public who violates this policy shall be informed of the policy and asked to leave. If necessary, law enforcement officials will be notified and asked to provide an escort.

**Legal References:** Minn. Stat. § 121A.22 (Administration of Drugs and Medicine)  
Minn. Stat. § 121A.40-§ 121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 151.72 (Sale of Certain Cannabinoid Products)  
Minn. Stat. § 152.22, subd. 6 (Medical Cannabis; Definitions; Medical Cannabis)  
Minn. Stat. § 152.23 (~~Medical Cannabis; Limitations; Medical Cannabis~~)  
Minn. Stat. § 340A.101 (Definitions; Alcoholic Beverage)  
Minn. Stat. § 340A.403 (3.2 Percent Malt Liquor Licenses)  
Minn. Stat. § 340A.404 (Intoxicating Liquor; On-Sale Licenses)  
Minn. Stat. § 609.684 (~~Sale of Toxic Substances to Children; Abuse of Toxic Substances~~)  
Minn. Stat. § 624.701 (Alcohol in Certain Buildings or Grounds)  
20 U.S.C. § 7101-716522 (~~Safe and Drug-Free Schools and Communities Act~~)  
Student Support and Academic Enrichment Grants)

21 U.S.C. § 812 (Schedules of Controlled Substances)  
41 U.S.C. §§ 8101-8106 (Drug-Free Workplace Act)  
21 C.F.R. §§ 1308.11-1308.15 (Controlled Substances)  
34 C.F.R. Part 84 (Government-~~w~~Wide Requirements for Drug-Free Workplace)

**Cross References:** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 416 (Drug and Alcohol Testing)  
MSBA/MASA Model Policy 417 (Chemical Use and Abuse)  
[MSBA/MASA Model Policy 419 \(Tobacco-Free Environment; Possession and use of Tobacco, Tobacco-Related Devices, and Electronic Delivery Devices; Vaping Awareness and Prevention Instruction\)](#)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 516 (Student Medication)

[TO BE PLACED ON SCHOOL DISTRICT LETTERHEAD]

— ACKNOWLEDGMENT —

**DRUG-FREE WORKPLACE/DRUG-FREE SCHOOL POLICY**

I have received a copy of the Drug-Free Workplace/Drug-Free School Policy of Independent School District No. \_\_\_\_\_, \_\_\_\_\_, Minnesota.

Dated: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Employee/Applicant*

\_\_\_\_\_  
*Typed or Printed Name*