

**ALCOHOL AND DRUG TESTING OF BUS DRIVERS**

The Board of Education recognizes the dangers inherent in alcohol and controlled substance use by employees especially those in safety-sensitive positions. To ensure the safety of its students and to comply with federal regulations, the Board requires alcohol and controlled substance testing of school bus drivers and other covered employees.

The District shall directly, by contract, or through a consortium, implement and conduct a program to provide alcohol and controlled substance testing of employees who operate a commercial motor vehicle, perform in a safety-sensitive position, and are required to hold a commercial driver’s license. Such employees include:

1. Drivers of buses designed to transport 16 or more passengers, including the driver;
2. drivers of commercial motor vehicles whose manufacturer’s rating is 26,001 lbs. or more; or
3. any other employee who may drive a listed vehicle (e.g. a mechanic who performs test drives).

Controlled substance and alcohol tests will be conducted at the time of employment, and randomly throughout the school year. In addition, testing will be conducted when a supervisor has a “reasonable suspicion” that an employee has engaged in prohibited alcohol or controlled substance use; after certain accidents; prior to return to duty when the employee has been found to violate district policy and federal regulations; and after the employee’s return to duty.

In accordance with federal and state law, a bus driver will not be permitted to drive if he or she:

1. possesses, consumes or is reasonably believed to possess or have consumed alcohol or a controlled substance, while on duty;
2. uses or is under the influence of alcohol or a controlled substance within six hours or less before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for a controlled substance; or
4. refuses to take a required alcohol or controlled substance test.

Also, no driver shall use alcohol after being involved in an accident in which there was a fatality or in which the bus driver was cited for a moving violation and a vehicle was towed from the scene or an injury was treated away from the scene until he/she has been tested or 8 hours have passed, whichever occurs first.

Any employee who is tested and found to have an alcohol concentration of at least 0.02, but less than 0.04, shall be removed from the position until his or her next regularly scheduled duty period, but not less than 24 hours following administration of the test. Any employee found

to have violated this requirement may be disciplined in accordance with the provisions of the applicable collective bargaining agreement, district policy, and/or law.

If a driver has an alcohol concentration of 0.04 or greater, or has engaged in prohibited alcohol or controlled substance use, he or she will be removed from driving duties, and referred to a substance abuse professional. The employee may be required to complete a treatment program and/or be disciplined pursuant to district policy and/or collective bargaining agreement. No driver who has abused controlled substances and/or alcohol may return to duty unless he/she has successfully passed a required return to duty test. Thereafter, the driver will be subject to follow-up testing.

Should the district receive a dilute test result in which the creatinine concentration is greater than 5mg/dL in the case of any pre-employment, return-to-duty, follow-up, reasonable suspicion, or random test, it is the policy of the district that the individual shall be re-tested and that re-test will become the test of record.

The Superintendent of Schools shall ensure that a copy of this policy, the district's policy on misuse of alcohol and use of controlled substances, information on alcohol and drug abuse and treatment resources and any other information prescribed by federal regulations is provided to all school bus drivers and other appropriate personnel prior to the initiation of the testing program and to each driver subsequently hired or transferred to a position subject to testing.

Cross-ref: 8414.1 , Bus Driver Qualifications and Training

Ref: Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. §§31136; 31306  
49 U.S.C. §521(b)  
49 CFR Part 391  
49 CFR Part 382  
49 CFR Part 40  
49 CFR §395.2  
Vehicle and Traffic Law §§509-1; 1192; 1193  
Will v. Frontier CSD Bd. of Educ., 97 N.Y.2d 690 (2002)

Effective Date: June 7, 2016

**ALCOHOL AND DRUG-TESTING OF BUS DRIVERS REGULATION**

Any employee who operates a commercial motor vehicle and is in a safety-sensitive function shall be subject to alcohol and controlled substance testing. An employee having any questions concerning the district’s policy or regulation, state law or the federal regulations shall contact the Superintendent of Schools.

Any treatment, rehabilitation program or discipline will be provided in accordance with district policy and/or collective bargaining agreements.

***I. Covered Employees***

Covered employees include district employees who operate a commercial motor vehicle, perform in a safety-sensitive position, and are required to obtain a commercial driver’s license. Such employees include:

1. drivers of buses designed to transport 16 or more passengers, including the driver;
2. drivers of commercial motor vehicles whose manufacturer’s rating is 26,001 lbs. or more; or
3. any other employee who may drive a listed vehicle (e.g., a mechanic who performs test drives).

Such employees include, but are not limited to full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed or under lease to an employer or who operate a commercial motor vehicle at the direction or with the consent of the district.

Drivers will be removed from their safety-sensitive functions if they violate the district’s policy or federal regulations pertaining to the possession or consumption of alcohol or controlled substances. A driver is performing a safety-sensitive function when:

1. waiting to be dispatched, unless the driver has been relieved from duty;
2. inspecting, servicing or conditioning any commercial motor vehicle;
3. driving a commercial motor vehicle;
4. attending a vehicle being loaded or unloaded;
5. performing the driver requirements of the federal regulations pertaining to accidents; and
6. attending to a disabled vehicle.

Covered employees are required to be in compliance with district policy and regulation:

- when performing any on-duty safety-sensitive functions, including all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility; and

- during all time spent providing a breath sample, saliva sample or urine specimen and travel time to and from the collection site in order to comply with random, reasonable suspicion, post-accident, return-to-duty or follow-up testing.

## **II. *Prohibitions and Consequences***

The Supervisor of Transportation or his/her designee shall prohibit an employee from driving a school bus or performing other safety-sensitive duty if the employee:

1. possesses, consumes or is reasonably believed to possess or have consumed alcohol or a controlled substance, while on duty;
2. has consumed or is under the influence of alcohol or a controlled substance within six hours before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for controlled substances;  
or
4. refuses to take a required alcohol or controlled substance test.

Refusal to submit shall mean the failure to provide adequate breath or urine without a valid medical explanation or to engage in conduct that clearly obstructs the testing process, such as a failure to arrive for the drug testing or failure to sign the alcohol testing form prior to specimen collection. An employee is prohibited from consuming alcohol within eight hours after being involved in an accident, or before undergoing a post-accident test, if such a test is required. Illegal drug use by drivers is prohibited on or off duty.

Any employee who tests 0.02 or greater but less than 0.04 will be removed from driving and other safety-sensitive duties until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

In the event that an employee has a breath alcohol concentration of 0.04 or greater, has tested positive for a controlled substance or has refused to take a test, he or she will, in addition to immediate removal from driving and any other safety-related duties, not be returned to duty until he or she:

1. has been evaluated by a substance abuse professional;
2. has complied with any treatment recommendations; and
3. has received a satisfactory result from a return to duty test.

Upon return to duty, the employee will be subject to follow-up testing.

## **III. *Types of Testing***

The Superintendent of Schools and the Director of Transportation shall ensure that the following alcohol and drug tests are implemented: and that any employee who is required to take an alcohol or controlled substance test shall be notified prior to the test that it is required pursuant to federal regulations or, in the case of pre-employment alcohol testing, district policy.

1. *Pre-employment:* Controlled substance and alcohol\* tests will be conducted before applicants are hired or after an offer to hire, but before actually performing safety-sensitive functions for the first time. These tests will also be given when employees transfer to a safety-sensitive function.

2. *Post-accident:* Alcohol and controlled substance tests will be conducted if a driver is involved in an accident in which:
  - a. there has been a fatality;  
OR
  - b. the driver has received a citation for a moving violation in connection with the accident AND EITHER
    1. there is an injury treated away from the scene of the accident; or
    2. there is a disabled vehicle towed from the scene.
3. *Reasonable Suspicion:* Alcohol and controlled substance tests will be conducted if the Transportation Supervisor or other school official who has completed the minimum two hours of training has a reasonable suspicion that the driver has violated district policy and regulation. A “reasonable suspicion” must be based on specific, contemporaneous, articulable observations concerning the driver’s behavior, appearance, speech or body odors that are characteristic of controlled substance or alcohol misuse. Alcohol tests can only be done just before, during or just after the employee drives a school bus or performs other safety-sensitive duties. The supervisor who makes the determination of reasonable suspicion cannot do the testing.
4. *Random Testing:* Random alcohol tests shall be conducted annually at a minimum rate of 25 percent of the average number of positions subject to such testing pursuant to federal regulation. Random alcohol tests must be conducted just before, during or just after the employee drives a bus or performs other safety-sensitive duties. Random controlled substance tests shall be conducted annually at a minimum rate of 50 percent of the average number of positions subject to such testing pursuant to federal regulation. Random controlled substance tests may be conducted at any time. Random alcohol and controlled substance tests must be unannounced and spread reasonably throughout the calendar year.
5. *Return-to-Duty Testing:* An employee who refused to take a test or has engaged in prohibited alcohol and controlled substance use, shall be required to take an alcohol or controlled substance test and achieve a satisfactory result before returning to duty in the safety-sensitive position. If removal was due to alcohol use, a satisfactory result will be less than 0.02 alcohol concentration. If removal was due to controlled substance use, a satisfactory result will be one that it is verified as negative. The test will not be administered until the employee has been, evaluated by a substance abuse professional and has complied with any treatment recommendations.
6. *Follow-Up Testing:* After an employee who was found to violate the district’s policy against alcohol and controlled substance use returns to duty, he or she will be subject to at least six unannounced tests in the first 12 months following the employee’s return to duty. Follow-up testing may be extended for up to 60 months from the date of the employee’s return to duty. Follow-up alcohol testing may only be conducted before, during or after the driver has performed his or her driving duties.

#### ***IV. Testing Procedures***

##### ***A. Alcohol Testing Procedures***

Alcohol testing will be conducted with evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration. An approved non-evidential screening device may be used to perform screening tests but not for confirmation alcohol tests. The employee and the Breath Alcohol Technician conducting the test must complete the alcohol testing form to ensure that the results are properly recorded.

1. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a “negative” test.
2. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. The confirmation test must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results
3. If the confirmation test results indicate an alcohol concentration from 0.02 to 0.03999, the employee will be restricted from duty for at least 24 hours from the time of the test.
4. If the confirmation test results indicate an alcohol concentration equal to or greater than 0.04, the employee will be removed from all safety-sensitive duties and no return to duty will be permitted until the employee has successfully passed required return-to-duty tests. The employee must also be reviewed by a Substance Abuse Professional, and comply with his/her recommendations. Follow-up tests will also be required.
5. For post-accident testing, the results of breath or blood tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for alcohol testing and the results are made available to the district.

All testing procedures will conform to the requirements outlined in federal regulations (49 CFR Part 40) for ensuring the accuracy, reliability and confidentiality of test results. These procedures include training and proficiency requirements for Breath Alcohol Technicians, quality assurance plans for the EBT devices including calibration, requirements for suitable test location, and protection of employee test records.

##### ***B. Drug Testing Procedures***

The employee must provide a urine specimen which will be analyzed at a laboratory certified and monitored by the U.S. Dept. of Health and Human Services.

1. Regulations require that each urine specimen be divided into one “primary” specimen and one “split” specimen.
2. All urine specimens are analyzed for the following drugs:
  - a. Marijuana (THC metabolite)
  - b. Cocaine
  - c. Amphetamines
  - d. Opiates (including heroin)
  - e. Phencyclidine (PCP)

3. If the primary specimen confirms the presence of one or more of these drugs, the employee has 72 hours to request that the split specimen be sent to another certified lab for analysis. (Note: The employee must be removed from driving duties at this time and will be suspended without pay---pursuant to federal regulations, the driver's removal cannot await the result of split sample).
4. If the screening test has a drug-positive result, a confirmation test will then be performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis.
5. All drug test results will be reviewed and interpreted by a physician (also called a Medical Review Officer) before they are reported to the district.
6. If the laboratory reports a positive result to the Medical Review Officer (MRO), the MRO shall interview the employee to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of a prohibited drug, the drug test result is reported as negative.
7. If the MRO reports a positive drug result, the employee must be evaluated by a substance abuse professional and follow his/her recommendations prior to taking a return-to-duty test. Follow-up testing is also required.
8. For post-accident testing, the results of urine tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for controlled substance testing and the results are made available to the district.

All controlled substance testing shall comply with the requirements of the federal regulations (49 CFR Part 40) including procedures for the proper identification, security and custody of the sample, use of certified laboratories, gas chromatography/mass spectrometry analysis testing, assurance that all drug test results are reviewed and interpreted by a physician, and ensuring confidentiality of employee test records.

#### *Refusal to Take Required Alcohol and/or Drug Tests*

An employee's refusal to take a required alcohol and/or drug test will be treated as a positive drug test and/or an alcohol test result of .04 or greater.

#### ***V. Dilute Specimen Testing***

If the district receives a drug test result which is negative but dilute and the creatinine concentration is greater than 5mg/dl, the district shall require a re-test to be conducted in each of the following cases:

- Pre-employment tests
- Return-to-duty tests
- Follow-up tests
- Reasonable suspicion tests
- Random tests

Result of the re-test shall become the test of record. If the employee refuses to take the re-test it will be considered the same as a positive test result.

## ***VI. Pre Duty Request For Prior Employment Drug And Alcohol Testing***

In the case of all new safety sensitive employees, the District shall request the following written information, after obtaining the prospective employee's written consent, from DOT regulated employers who have employed the employee at any time during the two years prior to the date of the employees application or transfer:

1. Alcohol tests with a result of 0.04 or higher alcohol concentration
2. Verified positive drug test
3. Refusal to be tested
4. Other violations of DOT agency drug and alcohol testing; and
5. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employees successful completion of DOT return to duty requirements

The above listed information should be obtained and reviewed before the prospective employee commences performing any safety sensitive functions. However, the District has a 30-day grace period from the day the employee starts to perform safety sensitive functions in which to obtain or make and document a good faith effort to obtain this information. The District must not allow any employee to continue performing safety sensitive functions after 30 days if the District has not obtained or made and documented a good faith effort to obtain this information.

The District must ask the prospective employee whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for but did not obtain safety sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

If the prospective employee admits that he or she had tested positive or a refusal to test then the District may choose not to hire the prospective employee. However, if the District does choose to hire a prospective employee that has admitted that he/she has tested positive or refused to test, the District must not use the employee to perform safety sensitive functions, until and unless the employee documents successful completion of return to duty process

## ***VII. Consequences: District Response to Positive Test Results***

### **A. Self Identification**

Permanent employees who request District assistance will be referred through the District Employee Assistance Program to an appropriate alcohol or drug rehabilitation program. Such employees will be subject to immediate testing and to periodic testing with a minimum of five follow-up tests for a period of one year or until tests are negative, whichever is longer. They will retain a right to a permanent position provided that test results show a continued reduction in levels of prohibited substances and will be permitted to drive once tests prove negative. The cost of any rehabilitation program will be the responsibility of the employee. Employees will not be paid for any time where driving is prohibited due to a positive test result, unless non-driving duties are assignable as a regular part of a particular individual's work schedule.

### **B. Identification through random sampling, suspicion, pre-employment or post-accident testing:**

- Prospective employees who test positive for drugs or who show a tested level of alcohol higher than .02 will not be appointed.
- Prospective employees that admit during the pre-duty request for prior employment drug and alcohol testing, that they had a positive test or refused to test on any pre-employment



drug or alcohol testing, administered by the employer to which the employee applied for but did not obtain safety sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years, must document successful completion of the return-to-duty process to be considered for appointment.

- Prospective employees that previously failed to successfully complete a rehabilitation program (return to duty process) established by a substance abuse professional resulting from a violation of that employer's policy or the Act, will not be appointed.
- Prospective employees that fail to provide a written consent for the school district to request drug and alcohol testing related records from former DOT regulated employers where the individual was a covered driver, will not be appointed.
- Temporary substitute or probationary employees who test positive for drugs or test higher than .02 for alcohol will be terminated.
- Permanent employees who test positive for drugs or test higher than .04 for alcohol will be suspended without pay and subject to disciplinary action under Section 75 of the Civil Service Law with a District recommendation for termination.
- Permanent employees who test between .02 and .04 for alcohol, are found to be in possession of alcohol or drugs while on duty, or who use alcohol after being involved in an accident where a post-accident test is required will be suspended without pay and subject to disciplinary action under Section 75 of the Civil Service Law.
- Individuals who face disciplinary action for any drug or alcohol-related incident will be referred to an appropriate rehabilitation through the District Employee Assistance Program.

#### ***VIII. Training***

The Supervisor of Transportation and every other person designated to determine whether reasonable suspicion exists to require an employee to undergo reasonable suspicion testing, must receive at least one hour of training on alcohol misuse, and at least one additional hour of training on controlled substance use which they will use in making their determinations.

#### ***IX. Recordkeeping and Reporting***

The Transportation Supervisor shall ensure that alcohol and drug testing records are maintained and are available, if requested, for submission to the federal government or any State or local officials with regulatory authority over the employer or any of its drivers.

#### ***X. Required Notification***

Every affected employee shall receive information about the signs, symptoms, and effects of alcohol misuse and controlled substance use as well as a copy of the district's policy and procedures, the consequences of testing positive and who to contact within the district to seek further information and/or assistance.

Each covered employee is required to sign a statement certifying that he/she has received this information. The district shall maintain the original signed certification until the employee's employment is discontinued. The district will provide a copy of the certification to the covered employee upon request.

***XI. Penalties***

Any employer or driver who violates the requirements of the federal regulations of the Omnibus Transportation Employee Testing Act of 1991 may be subject to civil penalties.

In addition, in accordance with New York State law, a bus driver convicted of driving a school bus with one or more student passengers while impaired by the use of drugs or alcohol will have his/her license revoked for one year and is subject to fines ranging from \$500 to \$5,000 and/or imprisonment.

Any bus driver convicted more than once in 10 years for such crimes will have his/her license revoked for three years and is subject to a fine of \$1,000 to \$5,000 and/or imprisonment.

Effective Date: June 7, 2016

**ICHABOD CRANE**

**PROPOSED Exhibit 8414.5-E**

**ALCOHOL AND DRUG TESTING PROGRAM  
ACKNOWLEDGMENT FORM**

I, \_\_\_\_\_, have received, read and understand the Alcohol and Drug Testing Program policy and regulation. I consent to submit to the alcohol and drug testing program as required by law and district policy and regulation.

I understand that if I violate district policy, regulation or the law, I will be subject to discipline up to and including termination or I may be required to successfully participate in a substance abuse evaluation and, if recommended, a substance abuse treatment program. If I am required to and fail to or refuse to successfully participate in a substance abuse evaluation or recommended substance abuse treatment program, I understand I will be subject to discipline up to and including termination.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

Effective Date: June 7, 2016