



TO: BOARD OF DIRECTORS

FROM: Maurene Stanton, Executive Director of Human Resources

SUBJECT: First Reading Policy 5202 Federal Motor Carrier Safety Administration Mandated Drug and Alcohol Testing Program

DATE: April 19, 2022

This is the first reading of updated Personnel Policy 5202 Federal Motor Carrier Safety Administration Mandated Drug and Alcohol Testing Program. Updates on this policy reflect changes recommended by The Washington State School Directors Association (WSSDA). Deleted sections will be reflected in Board Procedure 5202P. It is identified as an encouraged policy by WSSDA.

This policy will come before the Board for second reading on May 3, 2022. If you have any questions regarding this policy, please contact me.

## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION MANDATED DRUG AND ALCOHOL TESTING PROGRAM

The ~~Board of Directors directs the~~ superintendent/~~designee will~~ to establish programs and procedures as mandated by ~~the and in accordance with~~ Federal Motor Carrier Safety Administration (FMCSA) controlled substances, including marijuana (cannabis), and alcohol testing rules.

### Prohibited Alcohol And Controlled Substance-Related Conduct

The following alcohol and controlled substance-related activities are prohibited by the district for drivers required to possess a commercial driver's license (CDL) as part of their job responsibilities: ~~Violations shall result in appropriate corrective action ranging from removal from the performance of safety-sensitive functions up to and including discharge.~~

- A. Reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration in excess of the standard set by the FMCSA, ~~0.02 or greater.~~
- B. Being on duty or operating a vehicle while the driver possesses alcohol or controlled substances in any amount.
- C. Using alcohol while performing safety-sensitive functions.
- D. When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- E. Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion, or follow-up testing requirements.
- F. Reporting for duty or remaining on duty when using any controlled substance, except when instructed by a prescribing authority who has advised the driver and the district that the substance does not adversely affect the driver's ability to safely operate a vehicle. Drivers are required to inform the district of any therapeutic drug use upon It being prescribed, although ~~not~~ the specific medication that has been prescribed does not have to be provided. The use of any medication that could affect a driver's safe job performance is prohibited while working.
- G. Reporting for duty, remaining on duty or driving if the driver tests positive for controlled substances.

No supervisor having actual knowledge of the above violations shall permit a driver to perform or continue to perform safety-sensitive functions.

### Testing Requirements

~~The following identify the occasions on which a driver shall be subject to alcohol or controlled substances testing. The superintendent is responsible for the development and implementation of procedures for conducting the tests and administering the exemptions consistent with the federal rules.~~

- A. **Pre-employment testing:** ~~Prior to the first time a driver performs a safety-sensitive function for the district, the driver shall undergo testing for controlled substances which may include alcohol testing. This testing requirement may be waived under FMCSA rules for CDL drivers recently employed elsewhere for whom testing records are available from their previous employers.~~
- B. **Post-accident testing:** ~~Each surviving driver of an accident, as defined by the FMCSA, shall be tested for alcohol and controlled substances.~~
- C. **Random testing:** ~~Annually the district will arrange for the unannounced random alcohol and controlled substances testing of its drivers. Fifty percent (50%) of the district's drivers must be randomly selected for controlled substances testing each year, and 10% of its drivers for alcohol testing (or whatever level of testing is required in a given year by the FMCSA). Alcohol testing under this program shall take place just prior to, during or immediately after the driver engages in a safety-sensitive function for the district.~~
- D. **Reasonable suspicion testing:** ~~A driver must submit to alcohol or controlled substance testing whenever a trained supervisor has a reasonable suspicion of alcohol misuse or controlled substance use based on specific, contemporaneous and articulable observations concerning the appearance, behavior, speech or bodily odors of the driver. Observations related to using alcohol must be made just prior to, during or immediately after the driver engages in a safety-sensitive function for the district,~~

and the alcohol test must be given within eight hours following the determination of reasonable suspicion.

- E. **Return-to-duty testing:** If a driver is to be returned to performing safety-sensitive functions for the district after violating this policy or the federal regulations, the driver shall be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and use of controlled substances. SAPs must require education and/or treatment in all such cases. If a driver is to be returned to performing safety-sensitive functions for the district following a violation of this policy or the federal regulations, the driver shall first be evaluated by a SAP to determine that the driver has properly followed any rehabilitation proscribed. Before a driver could be returned to performing safety-sensitive functions for the district following a violation of this policy and/or the federal regulations, the driver shall undergo a return-to-duty alcohol and/or controlled substances test resulting in an alcohol concentration below 0.02 alcohol concentration or a negative controlled substances test.
- F. **Follow-up testing:** Any driver that continues performing safety-sensitive functions for the district, following a violation of the alcohol or controlled substances prohibited conduct, shall be subject to follow-up alcohol testing conducted only just prior to, during or immediately after the driver performs safety-sensitive functions or drug testing, as directed by a SAP.

### **Record Retention And Reporting**

The superintendent is responsible for developing procedures for securely retaining records collected under this policy with controlled access and for the time periods established by the federal regulations. The superintendent is also responsible for developing procedures for reporting data collected under this policy as required by the federal regulations.

### **Education, Training And Referral Services**

The superintendent shall adopt educational materials that explain the requirements of this policy and the federal program. The educational materials shall be distributed to each driver prior to the start of the testing program and to each driver subsequently hired or transferred into a position covered by this policy. Each driver after receiving a copy of the materials shall sign a certificate of receipt and the district shall maintain the original of the receipt. The collective bargaining representative of the drivers, if any, shall be notified of the availability of this information. The educational materials shall include:

- A. A copy of this policy and subsequent procedures;
- B. The name of the person designated to answer questions about the materials;
- C. The categories of employees covered by the policy;
- D. A description of safety-sensitive functions, so that drivers will know which part of their tasks will be covered by this policy;
- E. A specific description of conduct prohibited by this policy and the federal program;
- F. The circumstances under which a driver is subject to testing;
- G. The procedures used in the testing program, especially those that protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;
- H. The requirement that drivers must submit to testing required by this policy and the federal program, and a description of what constitutes refusal to submit to required testing and the consequences of refusal;
- I. The consequences for drivers who violate this policy and the federal program, including immediate removal from conducting safety-sensitive functions;
- J. The consequences for drivers found to have alcohol concentrations between 0.02 and 0.04; and
- K. Information about the effects of alcohol and controlled substances on an individual's health, work and personal life and methods of intervening when a problem with alcohol or a controlled substance is suspected, including confrontation, referral to the staff assistance program and referral to management.

~~Supervisors designated to determine if reasonable suspicion exists that a driver is under the influence of alcohol or controlled substances must have at least sixty minutes of training on alcohol misuse and at least sixty minutes of training on use of controlled substances. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.~~

~~The employed driver who violates this policy or the federal regulations shall be informed of resources available for evaluation and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. Costs incurred by the driver for evaluation and/or rehabilitation are the driver's responsibility (other policies may apply).~~

**Violations of this policy will result in appropriate corrective action ranging from removal from the performance of safety-sensitive functions up to and including discharge.**

Cross References:      Board Policy 5201                      Drug-Free Schools, Community and Workplace  
                                 ~~Board Policy 5203~~                      ~~Staff Assistance Program~~  
                                 Board Policy 5281                      Disciplinary Action and Discharge

Legal Reference:      49 CFR §§ 382.~~101-382.60~~ **Controlled substances and alcohol use and testing**  
                                 49 CFR § 40 **Procedures for transportation workplace drug and alcohol testing**  
                                 **programs**

Management Resources:  
                                 *Policy News*, February 1999                      Bus drivers still tested for marijuana  
                                 *Policy News*, December 2002<sup>1</sup>                      Federal Government Amends Bus Driver  
                                 *Policy News*, April 2012                      Drug Testing Rules  
                                 *Policy News*, October 2015

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