

CONTROLLED SUBSTANCES AND ALCOHOL TESTING AND PROHIBITED CONDUCT FOR DISTRICT TRANSPORTATION PROVIDERS

A. Scope:

This regulation applies to any Colorado Springs School District 11 (the District) employee who possesses a commercial driver's license (CDL) and who operates, services or maintains a commercial motor vehicle (CMV) for the District on a full-time, part-time, or occasional basis, as well as applicants for positions which require operating a CMV and holding a CDL.

In addition, some of the procedures herein regarding alcohol and controlled substances shall also apply to any District employee who drives or otherwise operates any vehicle in the performance of employment responsibilities.

B. Definitions:

1. The term "alcohol" includes, but is not limited to fermented malt beverages or malt, vinous, powdered or spirituous liquors. This includes beer or liquor containing an alcohol content greater than zero.
2. Term "commercial motor vehicle" means a motor vehicle or combination of motor vehicles if the motor vehicle:
 - a. Has a gross vehicle weight rating of 26,001 or more pounds; or
 - b. Is designed to transport 16 or more passengers, including the driver; or
 - c. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 - d. Is of any size and is used to transport hazardous materials regulated under federal law.
3. The term "safety sensitive function" is a job or position where the employee holding this position has the responsibility for their own safety or other people's safety. It would be particularly dangerous if such an employee is using controlled substances or alcohol while on job. An employee has to be with clear mind and diligent while occupying such positions. This includes all time from the time an employee begins to work or is required to be in readiness to work until the time the employee is relieved from work and all responsibility for performing work. "

Both federal and state definitions of "controlled substances" include, but are not limited to, opiates, opium derivatives, hallucinogenic substances, methamphetamines, stimulants, depressants and narcotics. Federal law classifies marijuana as a scheduled 1 controlled substance and prohibits the manufacture, sale, distribution, possession and use of marijuana. For the purposes of this regulation, the federal definition of controlled substances applies.

C. General Prohibitions:

1. No employee shall report for duty or remain on duty requiring the performance of a safety sensitive function while having or testing positive for an alcohol concentration of 0.04 or greater.
2. No employee shall use alcohol while performing a safety sensitive function.
3. No employee shall perform a safety sensitive function within four (4) hours after using alcohol.
4. No employee subject to a post-accident alcohol test shall use alcohol for eight (8) hours following an accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first.
5. No employee shall refuse to submit to any test required under this regulation. Refusal to test is the equivalent of a positive result.
6. No employee shall report for duty, or remain on duty, when that duty requires the performance of a safety sensitive function when the employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a motor vehicle.
7. No employee shall report for duty, remain on duty or perform a safety sensitive function, if the employee tests positive or has adulterated or substituted a test specimen for controlled substances.

D. Testing:

Standard controlled substance testing typically detects the presence of marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). Supervisors may, in their discretion, test employees for additional controlled substances as defined in state and/or federal law.

1. Pre-Employment Testing

All persons who apply for positions requiring a CDL must undergo testing for alcohol and controlled substances and the District must receive a verified negative test result prior to commencing work in a safety sensitive function. The pre-employment testing will occur after the contingent offer of employment is made and before the employee starts work for the District. Employees or other persons transferring to a position covered by this regulation for the first time must also undergo testing and the District must receive verified negative test results before commencing any work in the new position.

2. Post-Accident Testing

Post-accident controlled substance and alcohol tests are required of any employee who has survived an accident who was performing a safety-sensitive function, where:

- a. The accident involved the loss of human life; The employee received a citation under state or local law for a moving traffic violation arising from the accident and someone involved in the accident sustained bodily injury and as a result of such injury received immediate medical attention away from the scene of the accident; or
- b. The employee received a citation under state or local law for a moving traffic violation arising from the accident and a vehicle involved in the accident incurred disabling damage requiring the vehicle to be transported from the scene by another motor vehicle. "Disabling" damage includes damage to motor vehicles that could have been driven but would have been further damaged, and excludes damage that could be remedied temporarily at the scene without special tools or parts, tire disablement, headlight and taillight damage, turn signal, horn and windshield wiper damage.

Post-accident tests will not be conducted for an occurrence involving only boarding or alighting from a stationary motor vehicle or the loading or unloading of cargo.

Post-accident alcohol tests should be administered within two hours following the accident. Where an alcohol test is not administered within two hours following the accident, alcohol testing shall be attempted until eight hours have elapsed since the occurrence of the accident. The District shall maintain records documenting the reasons why the test was not performed within the two-hour time limit. If a test has not been performed within eight hours of the accident, attempts to test for alcohol shall cease, but records documenting the reasons for the test's failure shall be maintained by the District.

A controlled substance test following an accident must be administered within 32 hours after the accident. If a controlled substance test is not performed within 32 hours, further attempts to administer a controlled substance test shall cease and the District shall document and maintain records stating the reasons for the failure to test.

Employees who have been involved in an accident must immediately report their whereabouts to their supervisor, and must remain readily available for testing, or they may be deemed to have refused to submit to testing. An employee injured in an accident may seek necessary medical attention but must report their whereabouts and condition to their supervisor as soon as practicable.

3. Random Testing

All employees required to possess a CDL in the performance of their employment responsibilities will be subject to random, unannounced alcohol and controlled substances testing throughout the calendar year.

When an employee is notified of having been selected for random testing, the employee must proceed to the test site immediately, consistent with the given instructions.

4. Reasonable Suspicion Testing

When the District has a reasonable suspicion that an employee has used alcohol or a controlled substance so as to violate any of the General Prohibitions above (except for the prohibition on possession of alcohol), the employee will be required to undergo alcohol and/or controlled substances testing. The District may develop a reasonable suspicion on the basis of the employee' appearance, behavior, speech, performance, body odor and/or other indicators of alcohol or controlled substances misuse. In addition, the District may develop a reasonable suspicion of controlled substance use on the basis of indications of the chronic and withdrawal effects of controlled substances.

5. Positive Test Results

Whether an employee will be permitted to return to duty after violation of any General Prohibition in Section C, or any other part of this regulation, is solely within the discretion of the District. Return to duty testing shall be required for those employees who are authorized to return to work.

The District will provide each employee referred for substance abuse evaluation under this regulation a list of Substance Abuse Professionals (SAPs) available in evaluating and resolving problems associated with the use of alcohol and the use of controlled substances, including the names, addresses, and telephone numbers of these SAPs.

The District has no obligation to provide these materials or the services of a SAP to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.

Any employee who has engaged in any prohibited conduct under Section C of this regulation, who has been referred to a SAP and who has undergone return-to-duty testing, must also be re-evaluated by a SAP to determine that the employee has properly followed any education and/or treatment recommendations prescribed by the SAP, and the SAP's evaluation must be provided in writing to the District.

A SAP who evaluates, prescribes or provides education and/or treatment, re-evaluates, or performs any other service for a District employee under this regulation must be approved by the District and must possess all qualifications required by federal law.

The cost of any evaluation, education and/or treatment, or other service prescribed, required, or provided under this regulation shall be borne entirely by the employee, except that the District shall provide up to three evaluation

sessions with a SAP at no cost to the employee in accordance with the District's Employee Assistance Program (EAP). The cost of subsequent or additional evaluations, education and/or treatment or any other service prescribed, required or provided under this regulation shall be borne entirely by the employee.

At all times, the evaluation services provided at District expense to an employee by a SAP under this regulation shall be in accordance with and shall be restricted to those services offered under the District's EAP then in effect. Should the District modify its EAP for employees, the evaluation services provided to an employee shall be those provided under the modified EAP. Should the District discontinue its EAP for employees, the cost of any evaluation, rehabilitation, counseling, treatment, or other service prescribed, required, or provided under this regulation shall be borne entirely by the employee.

6. Follow-up Testing

Employees testing positive for a Drug and Alcohol test shall be subject to administrative and/or disciplinary action which may include termination. Employees who request further testing of the split specimen shall bear the cost of a second positive test. Final determinations on testing validity will be made by the District's contracted Medical Review Officer (MRO). (In accordance with Federal Motor Carrier Safety Administration (FMCSA) Part 382 and Department of Transportation (DOT) Rule 49 CFR 40 Section 40.21).

E. Access to Records:

An employee is entitled, on presenting a written request to the Human Resources Department, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances, including records relating to test results. Records will be made available to a subsequent employer, or other person, only upon receipt by the District of a specific, written request from the employee.

F. Records from Previous Employers:

When an employee is hired to perform a safety sensitive function(s) covered by this regulation, the District must obtain information from all past employers for the previous three (3) years concerning alcohol and controlled substances testing and whether the employee has engaged in behavior barred by the General Prohibitions above. A written record of each contact will be maintained by the District. The employee must provide a written authorization to the District in order that it can obtain this information within fourteen (14) days after the date the employee began performing safety sensitive functions. An employee may not continue to perform safety sensitive functions after the fourteenth day without this information.

G. Testing Procedures:

Employees subject to testing will be given instructions regarding testing times and testing facility location. Employees will be tested only by a District-authorized method and/or facility. Testing will be considered work time for purposes of compensation.

Employees are expected to cooperate fully with collection site personnel, and to follow all instructions given concerning the testing process by District and collection site personnel.

Employees who are required to maintain a CDL in connection with their position and are subject to this regulation should notify their physician regarding the nature of their commercial driving duties prior to the prescription of any medication that contains a controlled substance and/or alcohol. Because a medication containing alcohol is considered "alcohol" under this regulation, all prohibited conduct in Section C pertaining to alcohol also pertains to such medication, even if it is prescribed by a physician. Before an employee may perform a safety sensitive function after taking a medication which contains a controlled substance, the employee must notify the District that he is taking a controlled substance for medical reasons with a physician's prescription and provide a copy of the physician's prescription with verification that the physician has advised the employee that the substance does not adversely affect the employee's ability to safely perform their safety sensitive duties. A medication containing a controlled substance which has not been prescribed by a physician is considered a "controlled substance" for all purposes under this regulation, and all prohibited conduct in Section C pertaining to controlled substances pertains to such medication.

H. Disciplinary Action/Termination:

Any prospective or transferring employee who fails an alcohol test with a result of 0.02 or greater, or a controlled substance test, or otherwise violates this regulation, shall not be hired into a position covered by this regulation. Further, any prospective or transferring employee who fails to timely provide the authorization required in Section F above, or whose former employer(s) do not provide the information required in Section F, shall not be hired into a position covered by this regulation.

Any current employee subject to this regulation who engages in any of the conduct which follows will be deemed to have engaged in an act or conduct which threatens the safety, health, or well-being of the employee or another person, constituting neglect of duty and shall be disciplined in accordance with applicable District policy and procedure, and state law, up to and including termination:

1. Violation of any of the General Prohibitions;
2. Failure of any test for the presence of a controlled substance required under this regulation;
3. Failure of any test for the presence of alcohol required under this regulation, if the employee test positive at 0.02 or higher;
4. Failure to report as instructed, and in a timely manner, to the collection site;
5. Failure to cooperate with collection site personnel;
6. Any tampering, or attempt to tamper with, a test sample; or
7. Failure to complete a required evaluation by a SAP or to complete a treatment, counseling, rehabilitation or other regimen prescribed by a SAP under this regulation;

8. Failure to comply with any written or oral instruction issued by the District to this regulation;
9. Violation of any section of this regulation.

Exceptions may apply where the administration determines that discipline is not warranted due to extenuating circumstances.

If an employee is not terminated as a result of any of the conduct described above, that employee will be suspended from duty without pay for at least 24 hours, depending on the offense, and will be required to undergo return-to-duty alcohol and/or controlled substance testing with a result of less than 0.02 for an alcohol test or a verified negative for a controlled substance test, before the employee may return to duty. The administration shall determine the length of the suspension, depending upon the offense, and whether the entire suspension is without pay, dependent upon the circumstances and on a case-by-case basis. At least the first 24 hours of the suspension shall be without pay.

In addition, for each violation of a General Prohibition in Section C, the employee will also be required to undergo an initial and at least one follow-up evaluation by a SAP. Under no circumstances, may such an employee return to duty until the employee has completed the initial SAP evaluation and a return-to-duty alcohol test with a result of less than 0.02 and/or a controlled substance test with a verified negative. In addition, the employee must comply fully with all rehabilitation required by a SAP and will be subject to follow-up testing for up to 60 months.

The District will provide each employee referred for substance abuse evaluation under this regulation a list of resources available in evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances, including the names, addresses, and telephone numbers of substances abuse professionals and counseling and treatment programs.

The District has no obligation to provide these materials or the services of a SAP to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.

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LEGAL REFS.: C.R.S. 44-3-103
C.R.S. 44-4-103
C.R.S. 18-18-203 - 207
C.R.S. 42-2-401 - 409 (Commercial Driver's License Act)
1 CCR 301-26, Rules 4204-R-200 through 4204-R-235 (Operation of School Transportation Vehicles)

8 CCR 1507-1 (Minimum Standards for the Operation of Commercial Vehicles)

21 U.S.C. chap.13 §§ 802, et. seq. (Comprehensive Drug Abuse Prevention and Control Act of 1970)

49 C.F.R. Part 40 (Omnibus Transportation Employee Testing Act of 1991 and Procedures for Transportation Workplace Drug and Alcohol Testing Programs)

49 C.F.R. Part 382 Controlled Substance and Alcohol Use and Testing

49 C.F.R. Part 383 Commercial Driver's License Standards; Requirements and Penalties

CROSS REFS.:

EEAEA, Bus Driver Requirements, Training and Responsibilities

EEAEAA, Controlled Substances and Alcohol Testing and Prohibited Conduct for District Transportation Providers

GBEC, Drug- and Alcohol-Free Workplace (Drug and Alcohol Use by Staff Members)