

**MIDDLETON SCHOOL DISTRICT #134
POLICY AND PROCEDURE MANUAL
SECTION 5000 – Personnel**

EMPLOYEE DRUG AND ALCOHOL FREE WORKPLACE.....POLICY 5003

The Middleton School District is committed to a safe working environment, to making adequate provisions for the safety and health of its employees at their place of employment, and to the safety and health of the students we serve as well as the general public.

The District maintains tobacco free buildings and grounds. Use of tobacco will not be allowed in any buildings, grounds, or on any school property, buses, vans, or vehicles that are owned, leased, or controlled by the District. Nor will employees be allowed to use tobacco while on duty. New employees of the District will be hired with the understanding that they will be directed not to use tobacco in school buildings or grounds or on any school property, buses, vans, or vehicles that are owned, leased, or controlled by the District. Limitations or prohibitions on tobacco use are applicable to *all* hours.

The use of illegal drugs, alcohol, and the misuse of prescription drugs is unacceptable. All District workplaces are hereby declared to be drug- and alcohol-free workplaces. A copy of this policy will be available to each employee with materials describing the dangers of drug use in the workplace and information on any drug counseling, rehabilitation, or employee assistance programs.

All employees are prohibited from:

1. Unlawful manufacturing, dispensing, distributing, possessing, being under the influence of a controlled substance, or using illegal drugs or drug paraphernalia, while on District premises, while performing work for the District, or in attendance at District-approved or school-related functions.
2. Distributing, manufacturing, selling, consuming, using, possessing, or being under any degree of intoxication or odor from alcohol while on District premises, while performing work for the District or in attendance at school-approved or school-related functions.
3. Employees on duty shall not use or take prescription drugs above the level recommended by the prescribing physician and shall not use prescribed drugs for purposes other than those for which they are intended. In addition, employees will not distribute a prescribed drug to another employee or student and shall not use or take a prescription drug prescribed for another person.

As a condition of employment, each employee shall:

1. Abide by the terms of the District policies respecting a drug- and alcohol-free workplace; and
2. Notify his or her Superintendent of his or her conviction under any criminal drug statute including but not limited to the use of controlled substances, alcohol,

- prescription drugs, or over-the-counter drugs for a violation occurring on the District premises or while performing work for the District, no later than five (5) days after such a conviction.
3. Notification to Superintendent or his/her designee of any conviction for the delivery, manufacture, or production of a controlled substance or simulated controlled substance within five (5) calendar days.

DEFINITIONS

1. "Illegal Use of Drugs" means the use of drugs, possession or distribution of which is unlawful. Such term does not include the use of a drug taken under the supervision by a licensed health care professional.
2. "Drug" or "illegal drug" means a controlled substance as defined in schedules I through V of Section 202 of the Controlled Substance Act found in Chapter 27, Title 37 Idaho Code.
3. "Tobacco" for the purposes of this policy, tobacco use shall be defined as the use of a cigarette, cigar, pipe, smokeless tobacco in any form, and other smoking products specifically including electronic cigarettes, electronic nicotine delivery systems, or vaporizer smoking devices (regardless of whether or not tobacco or nicotine in any form is utilized in such vaporizer).
4. "Conviction" means a finding of guilt, including a plea of no-contest, or imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal, state, county or municipal criminal drug statutes, including any imposition of a Withheld Judgment or suspended sentence.
5. "Criminal Drug Law" means a federal or non-federal (i.e. state law or county/municipal ordinance) criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
6. Controlled Substance – means any drug or substance that is: 1. not legally obtainable; 2. being used in a manner different than prescribed; 3. legally obtainable, but has not been legally obtained; or 4. referenced in federal or state controlled substance acts.
7. "Substance Abuse" Substance abuse is the misuse or illicit use of alcohol, drugs, or controlled substances, including but not limited to marijuana, heroin, or cocaine.

Confidentiality

Records that pertain to the District's employee required substance screens are recognized to be private and sensitive records. They shall be maintained by the Superintendent or his designee in a secure fashion to insure confidentiality and privacy and be disclosed only to the extent necessary to address any work-related safety risks occasioned by either the drug or alcohol use. Medical records, and information relating directly thereto, shall be maintained in accordance with provisions of Idaho law and used with the highest regard for employee privacy consistent with law and the purpose of achieving and maintaining a drug free workplace. All personnel records and information regarding referral, evaluation, substance screen results, and treatment shall be maintained in a confidential manner and no entries concerning such shall be placed in an employee's personnel file.

Pre-Employment Testing

Applicants being considered for employment positions may/shall be required to submit to a urinalysis test for the detection of the illegal use of drugs. Applicants shall be given a copy of this policy in advance of employment. Applicants must acknowledge having read or had this policy explained to them and should understand that as a condition of employment they are subject to its contents. Applicants shall sign an acknowledgment prior to substance screening, permitting the summary result to be transmitted to the Superintendent or his designee.

An applicant refusing to complete any part of the drug testing procedure shall not be considered a valid candidate for employment with the District, and such will be considered as a withdrawal of the individual's application for employment. If substance screening shows a confirmed positive result for which there is no current physician's prescription, a second confirming test may be requested by the Superintendent or his designee. If the first or any requested second confirming test is positive, any job offer shall be revoked.

Physical Examination/Screening Based Upon Reasonable Suspicion

Whenever the Board, through its authorized designee, and/or the Superintendent, reasonably suspects that an employee's work performance or on-the-job behavior may have been affected in any way by illegal drugs or alcohol or that an employee has otherwise violated the District's Drug-Free Workplace Substance Abuse Policy, the employee may be required to submit a breath, saliva, urine and/or blood sample for drug and alcohol testing. When a supervisor observes or is notified of behaviors or events that lead the supervisor to believe that the employee is in violation of the Drug-Free Workplace Substance Abuse Policy, the supervisor shall notify the Superintendent.

An employee who is required to submit to drug/alcohol testing based upon reasonable suspicion and refuses shall be charged with insubordination, and necessary procedures will be taken to terminate the employee in accordance with Board policy and state law.

An employee who tests positive on a reasonable suspicion test will be in violation of this policy. Violation of this policy shall constitute grounds for termination in accordance with Board policy and state law.

The District's authorized representative of the Superintendent or his/her designee are the only individuals in the District authorized to make the determination that reasonable suspicion or cause exists to order a drug screen and are the only individuals who may order an employee to submit to a drug screen.

Two types of cases for which reasonable suspicion procedures may be invoked are:

1. Chronic Case - Deteriorating job performance or changes in personal traits characteristics where the use of alcohol or drugs may be reasonably suspected as the cause.

2. Acute Case - Appearing to be under the present influence of alcohol and/or drugs or investigation of an accident where the use of alcohol or drugs is reasonably suspected to be a contributing cause in a specific incident or observation.

Circumstances under which substance screening may be considered, in either the chronic or acute cases, include but are not limited to the following:

- (1) Observed use, possession, or sale of illegal drugs and/or use, possession, sale, or abuse of alcohol and/or the illegal use or sale of prescription drugs.
- (2) Apparent physical state of impairment of motor functions.
- (3) Marked changes in personal behavior not attributable to other factors.
- (4) Employee involvement in or contribution to an accident where the use of alcohol or drugs is reasonably suspected or employee involvement in a pattern of repetitive accidents, whether or not they involve actual or potential injury.
- (5) Violations of criminal drug law statutes involving the use of illegal drugs, alcohol, or prescription drugs and/or violations of drug statutes.

The circumstances under which substance screening may be considered, as outlined above, are strictly limited in time and place to employee conduct on duty or during work hours, or on or in District property, or at District-approved or school-related functions.

Post-Accident Testing

Drivers while on school business or operating a school vehicle involved in a motor vehicle accident which involves either a fatality or the issuance of a citation for a moving violation to the District employee may/will be tested for alcohol misuse and controlled substance abuse.

The driver will contact the District at the time of the accident unless he or she is physically impaired as a result of the accident. The District will contact the testing lab. The testing lab will specify where the alcohol and/or controlled substance testing is to be completed.

If a driver is not able to produce enough breath to test for alcohol using a state approved breath analyzer, a blood test may be done for alcohol.

Law enforcement officials may require a driver involved in an accident to submit to tests administered as part of their jurisdiction. For purposes of this policy, only the test results provided by the District testing laboratory will be accepted.

Failure of an employee to submit to testing for either alcohol and/or controlled substance will be considered a positive test and will be determined as cause for disciplinary action.

Testing for alcohol must be done within eight (8) hours of the time of the accident. Testing for controlled substances must be done within thirty-two (32) hours of the time of the accident.

The driver subject to post-accident testing must refrain from consuming alcohol for either eight (8) hours following the accident or until he/she submits to an alcohol test, whichever comes first. Failure to do so will constitute a positive test result and will be determined as cause for disciplinary action.

Opportunity to Contest or Explain Test Results

Employees or job applicants who have a positive confirmed test result may explain or contest the result to the Superintendent or his designee within five (5) working days after the Superintendent or designee contacts the employee or job applicant and shows him/her the positive test result as it was received from the laboratory in writing.

Return to Duty Testing

An employee who has been given the opportunity to undergo rehabilitation for drugs or alcohol will, as a condition of returning to duty, will be required to agree to a reasonable follow-up testing established by the Superintendent or his designee. The extent and duration of the follow-up testing will depend upon the safety or security nature of the employee's position and the nature and extent of the employee's substance abuse problem. The Superintendent or his designee is to review the conditions of continued employment with the employee prior to the employee's returning to work. Any such condition for continued employment shall be given to the employee in writing. This Agreement must be signed by the employee before the employee is allowed to return to the job. Prior to the employee coming back on the job, the employee must complete a drug and/or alcohol test done which shows negative results.

The Superintendent or his designee may consult with the employee's rehabilitation program in determining an appropriate follow-up testing program, including the frequency of any substance screening contained in a follow-up testing program. In no instance shall such screening be ordered by the Superintendent or his designee more than one (1) time within a seventy-two (72) hour period. In the event of positive test results, the Superintendent or his designee will work out disciplinary procedures, if any, in accordance with Board policy and state law.

Any employee subject to return to duty testing that has a confirmed positive drug test shall be in violation of this policy. Violation of this policy shall constitute grounds for immediate termination in accordance with Board policy and state law.

Inspections

Employees may be assigned District-owned offices, vehicles, lockers, desks, cabinets, etc. for the mutual convenience of the District and personnel. Employees have no expectation of privacy in any of these locations or any personal belongings which they may place in such areas.

Whenever the Administration of the District reasonably suspects that an employee's work performance or on-the-job behavior may have been affected in any way by alcohol or drugs or that an employee has sold, purchased, used or possessed alcohol, drugs or drug paraphernalia on District premises, the District's Administration may search the employee, the employee's locker, desk or other District property under the control of the employee.

Inspections under this policy are limited to investigations into work-related misconduct and offenses. Any searches for law enforcement purposes must comply with all applicable state laws.

District Action Upon Violation of Policy

Employees in violation of the provisions of this policy shall be subject to disciplinary action up to and including termination. Alternatively, the Board may require an employee to successfully complete an appropriate drug- or alcohol-abuse, employee-assistance rehabilitation program. The fact that an employee has been referred for assistance and his/her willingness or ability to rehabilitate are appropriate considerations as to what, if any, disciplinary action may be taken.

Should the District employees be engaged in the performance of work under a federal contract or grant, or under a state contract or grant of \$5,000 or more, the Superintendent or his designee shall notify the appropriate state or federal agency from which the District receives contract or grant moneys of the employee's conviction, within ten (10) days after receiving notice of the conviction.

In determining whether and to what extent an employee will be disciplined or discharged in regard to violating this policy, the Board will consider the following factors: the degree to which the nature of the criminal offense reduces the District's ability to maintain a safe working environment; the degree to which the nature of the criminal offense unreasonably endangers the safety of other employees and/or students; the degree to which the conviction unreasonably undermines the public confidence in the District's operations; the nature of the criminal offense; the nature of the employee's job with the District; the existence of any explanatory or mitigating facts or circumstances; whether the employee promptly reports the conviction; and any other

facts relevant to the employee, including but not limited to years of service and record of performance with the District.

Among other possible grounds for discharge pursuant District policies, an employee can be discharged for work-related misconduct as provided in I.C. 72-1366, for the following reasons:

1. A confirmed positive drug and/or alcohol test, with a test result of not less than .02 BAC;
2. The employee refusing to provide a sample for testing purposes;
3. The employee altering or attempting to alter a test sample by adding a foreign substance; or
4. The employee submitted a sample that is not his/her own.

Within thirty (30) days after receiving notice of a conviction, the District will take appropriate disciplinary action and/or refer the employee to an appropriate substance abuse rehabilitation program.

Conduct in violation of this policy may also lead to a mandatory reporting of a possible violation of the Code of Ethics for Idaho Professional Educators and/or violation of Section 33-1208, Idaho Code.

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POLICY & PROCEDURE REFERENCE:

403.5 Employee and Alcohol Testing
403.5-P1 Employee Drug and alcohol Testing Form
442 Code of Ethics
744 Bus Driver Drug and Alcohol Testing Program
476-P2 Classified Employee Handbook
1060 Procedures for School Visitation

LEGAL REFERENCE:

Idaho Code Sections
23-105
23-1001
33-513
33-517
37-2701
41 USC Section 702, *et seq.* BLACK'S LAW DICTIONARY 1527 (6th ed. 1990)
Drug Free Workplace Act of 1988 I.C. 72-1701 through 72-1716
I.C. § 39-5501 *et seq.* Clean Indoor Air Act

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