

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

EMPLOYEE DRUG AND ALCOHOL TESTING..... POLICY 5003.5

It is the intent of the School Board of this District to promote an alcohol and drug-free workplace, thereby enhancing workplace safety and increased productivity. Chapter 17, Title 72, Idaho Code, allows employers, including school districts, to adopt policies to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with 42 U.S.C. 12101.

It is the policy of this District to require drug/alcohol testing of any employee reasonably suspected to be under the influence of illegal drugs and/or alcohol while on duty. Illegal drugs include any controlled substances as defined by Idaho Code Section 37-2701, any other substance, which is used to alter or change the individual's mood, and anabolic steroids. Alcohol includes any alcoholic beverage as defined by Idaho Code Sections 23-105 and 23-1001.

REASONABLE SUSPICION TESTING

Whenever the Superintendent or designee reasonably suspects that an employee's work performance or on-the-job behavior may have been affected in any way by the use of illegal drugs or alcohol or that an employee has otherwise violated the District's Employee Drug and Alcohol Use-Policy 403, the employee may be required to undergo drug and/or alcohol testing. The circumstances under which reasonable suspicion testing may be considered are strictly limited to employee conduct on duty or during work hours, on District property, or at District-approved or school-related functions.

Reasonable suspicion is defined as a good faith suspicion, based on objective facts, which is sufficient for a prudent person to conclude that the employee is using and/or appears to be presently under the influence of alcohol and/or drugs. Factors which may be considered in determining that a reasonable suspicion exists include, but are not limited to, the following:

1. Observed use, possession, or sale of illegal drugs/alcohol or the illegal use or sale of prescription drugs.
2. Marked decrease in work productivity, either in quantity or quality, not reasonably attributable to other causes.
3. Apparent impairment of psychomotor functions, reasoning, judgment or concentration not reasonably attributable to other causes.
4. Erratic or marked changes in behavior not reasonably attributable to other causes.

5. Involvement in an accident or deviations from safe working practices, whether the incident involves actual or potential injury to person(s) or property.

REQUIREMENTS FOR SAMPLE COLLECTION AND TESTING

The Superintendent or designee shall designate entities to provide the collection and testing services necessary to implement this policy. Prior to such designation, the entities must demonstrate a thorough understanding of, and compliance with, the testing requirements and procedures as set forth in 42 U.S.C. 12101.

The entity which collects the samples may be a medical facility or laboratory. A trained individual will explain the drug and/or alcohol screening procedure to the employee, obtain authorization for the testing, assist the employee in completing any necessary forms, and monitor the sample collection, documentation, and storage for transportation. All employees subject to testing are required to sign any documents necessary to authorize the testing and disclose information to the Medical Review Officer and the Superintendent or designee. The collection site will notify the Superintendent or designee if the employee refused to be tested, alters or attempts to alter the sample, or otherwise obstructs the collection of the sample.

The laboratory will be responsible for proper handling of samples and performing the required drug test, including, preparation for testing, chain of custody, security, privacy, integrity, and identify of specimen, specimen retention, and any necessary transportation to a laboratory, in accordance with applicable Federal Department of Transportation (DOT) Procedures for Transportation Workplace Testing Programs, 49 CFR, Part 40, which are incorporated herein by reference, and this policy. The laboratory must be a Substance Abuse and Mental Health Services Administration (SAMHSA) certified lab approved for DOT drug testing.

Further, the Superintendent or designee is responsible for ensuring that all procedures for collection and testing comply with the following requirements:

1. The collection of samples shall be performed under reasonable and sanitary conditions;
2. The individual employed by the collection site or laboratory who is responsible for collecting the sample will be instructed as to the proper methods of collection;
3. Samples shall be collected and tested with due regard to the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
4. Sample collection shall be documented and the documentation procedure shall include:
 - a) labeling of samples so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided; and
 - b) handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures;

5. Sample collection, storage, and transportation to the testing laboratory shall be performed so as to reasonably preclude the possibility of sample contamination and/or adulteration;
6. Sample testing shall conform to scientifically accepted analytical methods and procedures;
7. Drug testing shall include a confirmatory test before the result of any test is used as a basis for disciplinary action by the District. A confirmatory test refers to the mandatory second or additional test of the same sample that is conducted by a laboratory utilizing a chromatographic technique such as gas chromatography-mass spectrometry or another comparable reliable analytical method;
8. Positive alcohol tests resulting from the use of an initial screen saliva test must include a confirmatory test that utilizes a different testing methodology meant to demonstrate a higher degree of reliability, such as a gas chromatography test. The test will be considered positive if the BAC results are .04 or more.
9. Positive alcohol tests resulting from the use of a breath test must include a confirmatory breath test conducted no earlier than fifteen (15) minutes after the initial test; or the use of any other confirmatory test meant to demonstrate a higher degree of reliability, such as a gas chromatography test. The test will be considered positive if the BAC results are .04 or more.

DESIGNATION OF MEDICAL REVIEW OFFICER

The Superintendent or designee shall designate a Medical Review Officer (MRO). The MRO is responsible for reviewing the results of drug tests before they are reported to the Superintendent; reviewing and interpreting each confirmed positive test to determine if there is an alternative medical explanation for the positive test; conducting interview(s) with the individual testing positive; reviewing the individual's medical history and available medical records to determine if the positive result was caused by legally prescribed medication; requiring a retest of the original specimen if the MRO deems it necessary; and verifying that the laboratory report and the specimen are correct. The MRO is expected to follow the Medical Review Officer Manual published by the U.S. Department of Health and Human Services for tests conducted under this Policy.

If the MRO determines that a particular test is scientifically insufficient or there is a legitimate medical explanation for the positive test other than the use of a prohibited drug, the MRO will conclude that the test is negative and will not take any further action. If the MRO determines that there is no legitimate explanation for the positive test other than the use of a prohibited drug, the MRO will communicate the test results as positive to the Superintendent or designee. All negative tests will also be communicated by the MRO to the Superintendent or designee.

OPPORTUNITY TO CONTEST OR EXPLAIN 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.

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.

VIOLATIONS OF THIS POLICY

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;

4. The employee submitting 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.

NOTIFICATION OF POLICY

The District shall provide a copy of this policy to each employee upon its adoption, and to future employees at the time of hire. Employees will be required to sign a statement acknowledging receipt of the policy. Additionally, a copy of the policy shall be available for review at the District Office.

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.

TESTING COSTS

The District will pay all costs of drug and alcohol testing, unless the test is a retest requested by the employee. If the retest establishes a negative test result, the District will reimburse the employee for the cost of such test.

District employees will be compensated at their regular rate of pay for the time during which they are undergoing any drug or alcohol testing, including transportation time.

UNEMPLOYMENT CLAIMS

If an employee is found to have violated this policy and is, therefore, terminated from employment and subsequently applies for unemployment benefits, the District will provide the following information to the Department of Commerce and Labor:

1. The statement signed by employee indicating receipt of this policy.

2. A statement signed by the individual administering the test, certifying compliance with the provisions of this policy, the requirements of Idaho Code Sections 72-1701, et seq. The statement will also certify that the results of the test administered to the employee exceeded the threshold stated in the policy requirements for a positive test regarding alcohol (not less than .04 blood alcohol content (BAC)) or the presence of a prohibited drug as defined in this policy.
3. A statement signed by an administrator, specifying whether the test was administered as a random test or as a result of reasonable suspicion.
4. In the event the violation of this policy is based on misconduct other than testing positive (i.e., altering or attempting to alter a test sample), a statement signed by the administrator or other knowledgeable individual, specifying the nature of the violation of the policy and the evidence in support thereof.
5. A statement signed by the employee indicating receipt of the testing results.

SCHOOL BUS DRIVERS

Testing of school bus drivers employed by the District is addressed in Policy 744 Bus Driver Drug and Alcohol Testing Program. The District shall comply with this policy as well as Policy 744 regarding bus drivers.

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POLICY AND PROCEDURE REFERENCE:

5003.5 Employee and Alcohol Testing
 5003.5-P1 Employee Drug and alcohol Testing Form
 8044 Bus Driver Drug and Alcohol Testing Program

LEGAL REFERENCE:

Idaho Code Sections
 72-1701, et seq.
 37-2701
 23-105
 23-1001
 42 U.S.C. 12101
 49 CFR, Part 40

ADOPTED: 12/14/05
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