

MERCER COUNTY SCHOOLS
Policy Comment(s) / Suggestion(s)

Policy: G-7
Alcohol and Controlled Substance Testing

Individual / Organization: _____
Title: _____
Address: _____

Comment(s) / Suggestion(s)
Please write your comments below in the sections that apply to the policy.
Use additional paper if necessary.

1.0 Purpose	Agree (reason)	Disagree (reason)
This policy is being changed to update and clarify language and to make grammatical changes.		

2.0 Definitions	Agree (reason)	Disagree (reason)

3.0 Procedures	Agree (reason)	Disagree (reason)

General Comments	Agree (reason)	Disagree (reason)

Return comments **NO LATER THAN October 19, 2019** to:
Dr. Kristal Filipek - Director, Human Resources
Mercer County Schools
1403 Honaker Avenue
Princeton, WV 24740

ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Section 1.0 Introduction

The Mercer County Board of Education has a vital interest in maintaining a safe, healthy, and efficient work environment for its employees. Likewise, the Mercer County Board of Education is committed to students, parents and the general public to operate its facilities safely and prudently. Consistent with these interests and according to the regulations promulgated by the United States Department of Transportation, Federal Highway Administration, pursuant to the Omnibus Transportation Employee Testing Act of 1991, the Mercer County Board of Education has adopted and implemented this Alcohol and Controlled Substance Testing Policy. This Policy creates obligations and requirements over and above those articulated by the Mercer County Board of Education Drug-Free Workplace Policy, and does not supersede or nullify any provision of the Mercer County Board of Education Drug-Free Workplace Policy.

Section 2.0 Purposes

- 2.1 The purposes of this Alcohol and Controlled Substance Testing Policy are as follows:
- (A) To establish and maintain a healthy and safe working environment for all of the employees of the Mercer County Board of Education;
 - (B) To ensure the reputation of the Mercer County Board of Education and its employees as good responsible citizens;
 - (C) To reduce the possibility of accidental injury to persons or property; and
 - (D) To reduce absenteeism, tardiness, and indifferent job performance.

Section 3.0 Definitions

- 3.1 "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.
- 3.2 "Alcohol Concentration (or Content)" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
- 3.3 "Alcohol Use" means the consumption of any beverage, mixture or preparation, including any medication containing alcohol.
- 3.4 "Board" means the Mercer County Board of Education.

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- 3.5 "Controlled Substance" has the meaning such term has under section 102(6) of the Controlled Substance Act (21 U.S.C. 806(6)) and includes all substances listed on schedules I through V of 21 C.F.R. part 1308 and West Virginia Code 60A-2-201 through -213, as they may be revised from time to time.
- 3.6 "Commercial Motor Vehicle" has the same meaning such term has under 49 C.F.R. 382.107.
- 3.7 "DOT" means the Department of Transportation.
- 3.8 "Driver" has the same meaning such term has under 49 C.F.R. 382.107, and includes any person employed by the Board who operates a commercial motor vehicle. For the purposes of pre-employment/pre-duty testing only, the term "driver" includes a person applying to the Board to drive a commercial motor vehicle.
- 3.9 "Performing (a safety-sensitive function)" means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately able to perform any safety-sensitive function.
- 3.10 "Safety-sensitive function" has the same meaning such term has under 49 C.F.R. 382.107 and includes time spent waiting to be dispatched, time spent inspecting equipment or otherwise inspecting, servicing or conditioning any commercial motor vehicle, all driving time, all time spent in or upon any commercial vehicle motor vehicle, all time spent loading or unloading a commercial motor vehicle or attending a vehicle being loaded or unloaded, and all time spent repairing, obtaining assistance or remaining in attendance upon a disabled vehicle.
- 3.11 "Substance abuse professional" or "SAP" means a licensed physician or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor with knowledge and/or clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

Section 4.0 Policy

- 4.1 Prohibitions Relating to Alcohol
- (A) All drivers are prohibited from reporting ~~for duty~~ or remaining on duty ~~requiring~~ **that requires** the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater.

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- (B) All drivers are prohibited from being on duty or operating a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a duly authorized shipment.
- (C) All drivers are prohibited from using alcohol while performing safety-sensitive functions.
- (D) All drivers are prohibited from performing safety-sensitive functions within four **(4)** hours after using alcohol.
- (E) All drivers required to take a post-accident alcohol test pursuant to Section 5.2 of this Policy are prohibited from using alcohol for eight **(8)** hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

4.2 Prohibitions Relating to Controlled Substances

- (A) All drivers are prohibited from reporting ~~for duty~~ or remaining on duty **that requires** ~~requiring~~ the performance of safety-sensitive functions when the driver uses any controlled substance, except under the following circumstances:
 - (1) the use is pursuant to the instructions of a physician who has advised the driver that the controlled substance does not adversely affect the operation of a commercial motor vehicle; and
 - (2) the driver has notified the Board, in advance, of any such therapeutic drug use.
- (B) All drivers are prohibited from reporting for duty, remaining on duty or performing a safety-sensitive function, if the driver tests positive for controlled substances.
- (C) Compliance with this Policy is a condition of employment with the Board. Drivers in violation of this policy will have their employment with the Board terminated.

- 4.3 No driver shall refuse to submit to any alcohol or controlled substances test required by Section 5.1 through 5.64 of this Policy. Drivers who refuse to submit to such tests shall have their employment with the Board terminated.

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4.4 Any driver who violates any provision of this Policy or whose required alcohol or controlled substances test precludes them from meeting the requirements of this Policy shall have their employment with the Board terminated.

4.5 Other Alcohol-Related Conduct

(A) Any driver tested under the provisions of Section 5.1 through 5.64 of this Policy who is found to have an alcohol concentration of 0.02 is prohibited from performing or continuing employment.

Section 5.0 Required Alcohol and Controlled Substances Testing

5.1 Pre-Employment Testing

(A) Prior to the first time a driver performs safety-sensitive functions, the driver shall be required to undergo testing for alcohol and controlled substances.

(B) No driver shall be permitted to perform safety-sensitive functions unless the driver had been administered an alcohol test with a result indicating an alcohol concentration less than 0.02 and has received a controlled substance test result from the medical review officer indicating a verified negative test result.

OPTIONAL:

(C) A driver may be excused from pre-employment alcohol testing as set forth above if the following conditions are met:

(1) The driver has undergone an alcohol test required by this Policy or the alcohol abuse policy of another DOT agency within the previous six **(6)** months, with a result indicating an alcohol concentration less than 0.02; and

(2) The Board ensures that no prior employer of the driver of whom the Board has knowledge has records of a violation of this Policy or the alcohol abuse policy of another DOT agency within the previous six **(6)** months.

5.2 Post-Accident Testing

As soon as practical following an accident involving a commercial motor vehicle, each surviving driver shall be tested for alcohol and controlled substances ~~if such surviving driver:~~ **under the requirements as established by one of two (2) identified prongs.**

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- (A) Prong 1: Alcohol and controlled substance testing in compliance with The Department of Transportation and the Federal Motor Carrier Safety Administration as required under 49 CFR Part 382.303

The surviving driver:

- (1) Was performing safety-sensitive functions and if the accident involved the loss of human life; or
- (2) Receives a citation under state or local law for a moving traffic violation arising from the accident and the accident resulted in any bodily injury requiring treatment away from the scene or any vehicle received disabling damage that required the vehicle be towed from the scene.

- (B) Prong 2: Alcohol and controlled substances testing conducted pursuant to and in compliance with MCBOE Policy A-06 Drug-Free Workplace and Employee Testing Policy section(s) 3.5 and 3.6.

The surviving driver:

- (1) Was transporting students and/or other board employees and there was not bodily injury requiring treatment away from the scene; and/or
- (2) Is involved in an accident in which no vehicle received disabling damage that required the vehicle be towed from the scene; however, the accident resulted in property damage estimated to be in excess of one hundred dollars (\$100.00).
- (~~B~~C) If a post-accident alcohol test is not administered within two hours following the accident, the Board shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a post-accident alcohol test is not administered within eight (~~8~~) hours following the accident, the Board shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.
- (~~E~~D) If a post-accident controlled substance test is not administered within thirty-two (32) hours following the accident, the Board shall cease attempts to administer a controlled substance test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

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~~(D)~~ (E) A driver who is subjected to post-accident testing shall remain readily available for such testing or may be deemed by the Board to have refused to submit to testing.

~~(F)~~ ~~(promulgate post accident procedures, or reference them)~~

(F) The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances conducted by federal, state or local officials having independent authority for the test shall be considered to meet the requirements of this Policy regarding post-accident testing, provided that such tests confirm to applicable federal, state or local requirements and that the results of the tests are obtained by the Board.

5.3 Random Testing

(A) Drivers shall be tested for alcohol or controlled substances at various times on an unannounced, random basis.

(B) Consistent with applicable federal regulations (49 C.F.R. 382.305), the minimum annual percentage rate for random alcohol testing shall be **twenty-five (25)** percent of the average number of driver positions.

(C) Consistent with applicable federal regulations (49 C.F.R. 382.305), the minimum annual percentage rate for random controlled substance testing shall be **fifty (50)** percent of the average number of driver positions or such other percentage rate as is published by the DOT Federal Highway Administration in the Federal Register.

(D) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. ~~(select one here)~~

(E) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

5.4 Reasonable Suspicion Testing

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- (A) Drivers shall be required to submit to an alcohol test when the Board has reasonable suspicion to believe that the driver has violated the prohibitions of Sections 4.1(A), 4.1(C), 4.1(D), and/or 4.1(E) set forth above.
- (B) Drivers shall be required to submit to a controlled substances test when the Board has reasonable-suspicion to believe that the driver has violated the prohibitions of Section 4.2(A) and/or 4.1(B) set forth above.
- (C) The Board's determination that reasonable suspicion exists to require a driver to undergo an alcohol test on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations on which they may be based are to include indications of chronic and withdrawal effects of controlled substances.
- (D) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or Board official who is trained in accordance with Section 8.1 of this Policy. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.
- (E) Reasonable suspicion alcohol testing is authorized only if the observations required by Section 5.2(C) are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this Policy. A driver may be directed by the Board to undergo reasonable suspicion alcohol testing only while the driver is performing safety-sensitive functions, or just after the driver has ceased performing such functions.
- (F) If a reasonable suspicion alcohol test is not administered within two (2) hours following the observations required by Section 4.3(D) (3) of this Policy, the Board shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the observations required by Section 4.3(D) (3) of this Policy, the Board shall cease attempts to administer an alcohol test and shall prepare and state in the record the reasons for not administering the test.
- (G) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, all drivers are prohibited from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and

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performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

- (1) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
 - (2) Twenty-four **(24)** hours have elapsed following the determination under Section 4.3(D) (3) of this Policy that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy concerning the use of alcohol.
- (H) Except as provided by Section 4.3(D)(7) of this Policy and/or by any independent authority, the Board shall take no action against a driver based solely on the driver's behavior and appearance, with respect to alcohol use in the absence of an alcohol test.
- (I) A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or Board official who made the observations, within **twenty-four (24)** hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

Section 6.0 Testing Procedures

6.1 All alcohol and controlled substances testing conducted pursuant to this Policy **except under 5.2(B)** shall comply with the procedures promulgated by DOT and set forth in 49 C.F.R., part 40, as they may be revised from time to time.

6.2 Alcohol Testing Procedures

- (A) All alcohol testing conducted pursuant to this Policy shall be conducted by a trained breath alcohol technician (BAT) who shall utilize only an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration.
- (B) A BAT qualified supervisor of a driver may conduct the alcohol test for that driver only if another BAT is unavailable to perform the test in a timely manner.
- (C) Alcohol testing shall be conducted in a location that affords visual and aural privacy to the driver being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

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- (D) The breath alcohol testing form promulgated by DOT shall be used for all alcohol testing without modification.
- (E) Blood alcohol testing shall be conducted only under such circumstances as may be permitted under future DOT regulations.

6.3 Controlled Substance Testing

- (A) Controlled substances testing shall be conducted by way of the split sample methods of urine collection. After the driver being tested has provided a urine sample of at least 45 ml, the sample must be split into two specimen bottles to be shipped in a single shipping container, together with a chain of custody form, to a DHHS-certified laboratory for analysis.
- (B) The Board and the certified laboratory shall develop and maintain clear and well-documented procedure for collection, shipment and assessing of urine specimens, including an appropriate chain of custody form. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures.
- (C) It is recognized that the Board has the right to request that the personnel administering urine collection take such steps as are necessary to detect tampering or substitution while maintaining individual privacy. If it is established that a driver's specimen has been intentionally tampered with or substituted by the driver or someone on his behalf, the driver and the other person(s), if an employee, will be subject to discharge.
- (D) The result of the certified laboratory analysis is reviewed by a medical review officer (MRO), who is a licensed physician responsible for receiving laboratory results generated by this Policy and who has knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and other relevant biomedical information.
- (E) If the test result of the primary specimen is positive, the driver may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within seventy-two (72) hours of the driver having been notified of a verified positive test result. Action required by this Policy as the result of a

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positive drug test (e.g., removal from performing safety-sensitive functions) is not stayed pending the result of the test of the split specimen. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) found in the primary specimen, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the Board and the driver.

6.4 All alcohol and controlled substances testing conducted pursuant to section 5.2(B) shall comply with the procedures promulgated by MCBOE Policy A-06 Drug-Free Workplace and Employee Testing Policy Section(s) 3.5 and 3.6.

Section 7.0 Handling of Test Results, Record Retention and Confidentiality

7.1 The Board shall maintain records of its alcohol misuse and controlled substance use prevention programs as provided below. Such records shall be maintained in a secure location with controlled access.

7.2 Record Retention

- (A) Five-year **(5)** retention. The following records shall be maintained for a minimum of five **(5)** years:
- (1) Records of driver alcohol test results with results indicating an alcohol concentration of 0.02 or greater;
 - (2) Records of driver verified positive controlled substances test results;
 - (3) Documentation of refusals to take required alcohol and/or controlled substances tests;
 - (4) Calibration documentation;
 - (5) Driver evaluation and referrals; and
 - (6) A copy of each annual calendar year summary.
- (B) Two-year **(2)** retention. Records related to the alcohol and controlled substances ~~collected~~ **collection** process and training shall be maintained for a minimum of two **(2)** years.

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- (C) One-year retention. Records of negative and cancelled controlled substances test results and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one **(1)** year.
- 7.3 The Board shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs performed pursuant to this Policy and in accordance with 49 C.F.R. 382.403.
- 7.4 Except as required by law or this Policy, the Board shall not release driver information that is contained in records required to be maintained under Section 7.2 of this Policy. A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests.
- 7.5 The Board must obtain, pursuant to a driver's written consent, any of the information concerning the driver that is maintained under an alcohol and controlled substances testing policy by the driver's previous employer. Such information must be obtained and reviewed by the Board prior to employment. The release of any information under this part may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. The Board shall maintain a written, confidential record with respect to each past employer contacted.

Section 8.0 Training

- 8.1 The Board shall ensure that the person designated to determine whether reasonable suspicion exists to require a driver to undergo testing pursuant to Section 5.2(C) of this Policy shall receive at least **sixty (60)** minutes of training on alcohol misuse and receive an additional **sixty (60)** minutes of training on controlled substance use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

Section 9.0 Disciplinary Action

- 9.1 Any employee covered by this alcohol and controlled substance policy who is determined by testing to be in violation of this policy shall be immediately suspended without pay.
- 9.2 Any employee covered by this alcohol and controlled substance policy who is determined by testing to have violated this policy, after a hearing before the Board of Education, will have their employment with the Board terminated. The hearing will be held within **ten (10)** days unless mutually agreed by both parties.

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Source: Board Minutes

Date(s): 12/20/94; 1/24/95