

DRUG-FREE WORKPLACE AND EMPLOYEE TESTING POLICY

1.0 Purpose

- 1.1 The Mercer County Board of Education is committed to a safe, healthful, productive, and secure working environment and 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 Mercer County Board of Education regards its personnel as individuals as well as employees. Therefore, the Board believes that alcoholism and drug addiction are illnesses and should be treated as such. The Board further believes that employees who develop alcoholism or other drug addictions can be helped to recover and should be offered appropriate assistance. It is in the best interest of the employee and the Board that when alcoholism or drug addiction is present, it should be diagnosed and treated at the earliest possible date. Confidential treatment of the diagnosis and recovery process for alcoholism or drug addiction is essential.
- 1.2 The Mercer County Board of Education recognizes that substance abuse in our nation and our community exacts staggering costs in both human and economic terms. Substance abuse can be reasonably expected to produce impaired job performance, lost productivity, absenteeism, accidents, wasted materials, lowered morale, rising health care costs, and diminished interpersonal relationship skills. It is the Board's obligation to respond to this problem in a manner which ensures the safety and proper instruction and supervision of students attending Mercer County Schools.
- 1.3 The Mercer County Board of Education is responsible for the instruction, supervision, and well-being of the students entrusted to its care. Therefore, the Board has a substantial and compelling interest in ensuring that those who are entrusted with the care of children refrain from being under the influence, abusing, or misusing alcohol, controlled substances, illegal drugs, or inappropriate use of prescription drugs. The Board declares that the use of illegal drugs, the abuse of alcohol, and the misuse of prescription drugs are unacceptable.
- 1.4 Teachers, administrators, and other school employees serve *in loco parentis* to students attending Mercer County Schools. These employees directly influence those students for a prolonged period of time on a consistent and daily basis. It is critical, therefore, that employees remain drug and alcohol free while carrying out their responsibilities to Mercer County's children.
- 1.5 Provisions of the Federal Anti-Drug Act, 41 U.S.C. § 702, require federal grant recipients to establish a drug-free workplace. Contractors and/or grantees of federal contracts or grants amounting to at least twenty-five thousand dollars (\$25,000) are subject to suspension of payments and termination of the contract or grant for violations of any of the requirements of a drug-free workplace if they make a false initial certification or if the

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number of drug-related convictions of employees indicates that the employer has not made a good faith effort to maintain a drug-free workplace. The legislation underlies the Mercer County Board of Education's Drug-Free Workplace and Employee Testing Policy (A-06), the Exclusion/Suspension/Expulsion Policy (J-02), the Drug Testing for Adult Health Science Programs (I-06), the Service Personnel Performance Evaluation Policy (G-04), the Search and Seizure Policy (JFGA), and the Evaluation of Professional Employees and Athletic Coaches Policy (G-22). All prospective employees will be provided with a copy of this policy upon receiving an offer of employment by the Board, and prior to beginning their job responsibilities.

- 1.6 The goals and objectives of the Drug-Free Workplace and Employee Drug Testing Policy are as follows:
 - 1.6.a To establish, promote, and maintain a safe, healthy working and learning environment for employees and students.
 - 1.6.b To aid the affected employee in locating a rehabilitation program for employees with a self-admitted or detected substance-abuse problem.
 - 1.6.c To promote the reputation of the Mercer County School System and its employees as responsible citizens of public trust and employment.
 - 1.6.d To eliminate substance abuse problems in the workplace.
 - 1.6.e To aid in the reduction of absenteeism, tardiness, and apathetic job performance.
 - 1.6.f To provide a clear standard of job performance for Mercer County Schools' employees.
 - 1.6.g To provide a consistent model of substance-free behavior for students.

2.0 Definitions

- 2.1 Alcohol: Alcoholic beverages and any other intoxicating liquid which contains alcohol or any substance containing an intoxicating element.
- 2.2 ATOD: (Alcohol, Tobacco, and Other Drugs) Refers to the use of all substances including, but not limited to, alcohol, tobacco (cigarettes and devices such as e-cigarettes, pipes, and vaporizers), inhalants, marijuana, cocaine, LSD, PCP, amphetamines, heroin, steroids, look-alikes and/or any other of those substances commonly referred to as *designer drugs*.

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- 2.3 Contractor: Any department, division, unit, or any person performing a contractual service requested by the Mercer County Board of Education but not furnished by its employees.
- 2.4 Controlled Substance: A federally-regulated substance listed in Schedules I through V of Section 202 of the Controlled Substance Act, 21 U.S.C. §812, and West Virginia Code Section 60A-2-201 et seq., both of which may be amended from time to time and which, when taken into the body, may impair one's mental faculties and/or physical performance.
- 2.5 Conviction: A finding of guilty, including a plea of *nolo contendere*, or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- 2.6 Criminal Drug Statute: A criminal statute involving the manufacture, distribution, dispensation, use, or possession of any controlled substance.
- 2.7 Distribution: The sale, giving, transfer, delivery, trade, or exchange in any manner of any ATOD.
- 2.8 Drug: Any substance that acts on the central nervous system to alter behavior(s) and/or thought processes.
- 2.9 Drug-Free Workplace: A worksite where work is performed in connection with the employee's job duties with the Mercer County Board of Education. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the Board.
- 2.10 Employee: All school personnel employed by Mercer County Board of Education. Employee shall also include elected officials or contracted positions for the governing body.
- 2.11 Illegal Drug: Any drug which is not legally obtainable and is being used in a manner or for a purpose other than as prescribed.
- 2.12 Legal Drug: Prescribed drugs and over-the-counter drugs which have been legally obtained and are being used solely for the purpose for which they were manufactured or as prescribed by a physician.

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- 2.13 Medical Review Officer (MRO): A licensed physician responsible for receiving and reviewing laboratory results.
- 2.14 Paraphernalia: Drug Paraphernalia as defined by West Virginia Code Section 47-19-3 and any item, thing, or device used for the facilitation or administration of tobacco products or other illegal substances.
- 2.15 Possession: The presence of ATOD or paraphernalia, in any amount, on the person or body, or under the general direction or control, of an individual found in or upon any property owned, leased or operated by the Board or the West Virginia Department of Education, the West Virginia Board of Education, any other county board of education, or an Education Services Cooperative (ESC).
- 2.16 Safety Sensitive Functions:
 - 2.16.a The operation of any Mercer County Schools' vehicle transporting students, employees, or other individuals.
 - 2.16.b The maintenance of buses.
 - 2.16.c Carrying a firearm for security purposes.
 - 2.16.d Other jobs as so designated by the Director of Transportation or Director of Human Resources.
- 2.17 School: Any property owned, leased, or operated by the Board or the West Virginia Department of Education, the West Virginia Board of Education, any other county board of education, or an ESC
- 2.18 Student: Anyone who is enrolled in public school or enrolled in an educational program on any property owned, leased, or operated by the Board or the West Virginia Department of Education, the West Virginia Board of Education, any other county board of education, or an ESC
- 2.19 Tobacco product: Any items containing the leaves of cultivated tobacco plants in any form or amount, dried or processed. Products include, but are not limited to, cigarettes, cigars, snuff, spit tobacco, smokeless tobacco, pipe tobacco, e-cigarettes, pipes, vaporizers, etc.
- 2.20 Use: Ingestion, injection, absorption, or inhalation of an illegal substance or being under the influence of said substance.

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3.0 Procedure

- 3.1 Unlawful manufacture, distribution, possession, or use: The Board prohibits the unlawful manufacture, distribution, possession or use, without medical authorization, of illegal or controlled substances and/or alcohol and non-medically prescribed paraphernalia.
- 3.1.a The Mercer County Board of Education prohibits all employees from the unlawful manufacture, distribution, possession, or use, without medical authorization of illegal or controlled substances and/or alcohol and non-medically prescribed paraphernalia and/or tobacco products. This policy applies to all employees of the Mercer County Board of Education while they are present in or upon any property owned, leased, or operated by the Board or the West Virginia Department of Education, the West Virginia Board of Education, any other county board of education, or an ESC or while they are present at any school-sponsored activity or event, whether the activity or event is held on school grounds, in a building, or other property used or operated by the above-listed agencies.
- 3.1.b Employees who are supervising students off school grounds are prohibited from distributing or using alcohol, tobacco products, or illegal substances in the presence of students and/or at any time while engaged in activities directly involving students.
- 3.1.c Employees should recognize that students and members of the public who are present in or upon any property owned, leased, or operated by Mercer County Schools or the West Virginia Department of Education, the West Virginia Department of Education, the West Virginia Board of Education, any other county board of education, or ESC or while they are present at any school-sponsored activity or event, whether the activity or event is held on school grounds or in a building or property used by the above-listed agencies, are also prohibited from possessing, distributing or using any alcohol product, illegal substance, drug paraphernalia, or possessing or using a tobacco product. Employees are responsible for ensuring students and members of the public are aware of this policy and comply with its provisions.
- 3.2 Violations
- 3.2.a Employees who are in violation of any provisions of this Drug-Free Workplace Policy shall be subject to disciplinary action, up to and including termination of employment and referral to law enforcement agencies.

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- 3.2.b At the administration’s discretion, an employee in violation of this policy may be referred to a conference with his or her supervisor to discuss the violation and any possible drug or alcohol dependency, or referred to an Employee Assistance Program.
- 3.2.c The procedures for an employee who voluntarily requests help because he/she is using or abusing a controlled substance and/or alcohol at times and places not covered by the policy shall be as follows:
 - (1) The employee shall be required to attend a conference with his/her immediate supervisor, the superintendent of Mercer County Schools, or his/her designee(s).
 - (2) The employee shall provide verification that he/she attends the counseling/rehabilitation sessions on a regular basis as specified in the counseling/rehabilitation program. Rehabilitation will be provided according to the guidelines of the Public Employees Insurance Agency for those covered by PEIA. The Board shall have no duty to pay for or defray any costs or expenses associated with rehabilitation, but the Board will cooperate with any group health insurance carrier or rehabilitation facility. All rehabilitation leave not covered under sick leave shall be unpaid leave.
 - (3) The employee shall be required to submit to random drug testing for six (6) months following his/her return to work.
- 3.3 As a condition of employment with the Mercer County Board of Education, all employees shall:
 - 3.3.a Abide by the terms of this policy and acknowledge that compliance is mandatory; and
 - 3.3.b Notify their supervisor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
 - 3.3.c Sign the “Drug-Free Workplace Verification Statement” attached to this policy; and
 - 3.3.d Within ten (10) calendar days after receiving an employee’s notification of any criminal drug statute conviction, the superintendent, or his/her designee(s), shall notify the West Virginia State Department of Education, who in turn may report to the relevant federal agencies of such conviction. A copy of this report shall be

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simultaneously provided to the Mercer County Board of Education. Within thirty (30) calendar days after receiving an employee's notification of conviction, the superintendent shall take appropriate action, including requiring the employee to participate satisfactorily in an approved drug-alcohol rehabilitation program or disciplinary action up to and including termination of employment.

3.4 Drug Testing

3.4.a The Mercer County Board of Education is committed to maintaining a drug-free workplace for its employees and in the public interest of ensuring its students attend school in a safe, healthful, productive, and secure environment. In furtherance of this commitment, the Board has implemented mandatory drug testing in the following situations and circumstances:

- (1) Pre-employment drug testing for all new employees at the point when they are recommended for a position, excluding contracted personnel working on school property (e.g., construction, security);
- (2) Reasonable suspicion drug testing for all employees, and contracted personnel working on school property (e.g., construction, security); and
- (3) Return to duty drug testing.

3.5 Drug and Alcohol Abuse Testing

3.5.a Purpose - The purpose of this policy is to establish guidelines to be followed in the drug/alcohol testing of external applicants for positions with the Mercer County Board of Education as well as for those already employed with Mercer County Schools. These procedures, and those specifically relating to each type of drug testing, may be amended or modified from time to time to facilitate changes in federal or state law. Bus operators are subject to this policy as well as to Policy G-07, *Alcohol and Controlled Substance Testing*.

3.5.b Program Responsibility - The Mercer County Board of Education superintendent or his/her designee(s) has the overall responsibility of this program.

3.5.c Designation of Laboratory - The Mercer County Board of Education will select a qualified local laboratory with a full-time Certified Laboratory Technician and the most specific and reliable screening technology available. To Screen employees covered by Federal Department of Transportation (DOT) Rule 49 CFR Part 40, the lab will have access to - either on- or off-premises - a Medical Review Officer

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and National Laboratory Certification Program (NLCP) certified laboratory that can perform required DOT procedures and protocols.

- 3.5.d Designation of Medical Review Officer - A licensed medical physician will be designated as the Medical Review Officer (MRO). The MRO will be independent of the Board and the laboratory selected to perform the testing on specimens submitted pursuant to this policy. The Medical Review Officer will be responsible for reviewing the results of drug tests submitted by school bus operators and others covered by DOT regulations. Before results are reported to the Mercer County Board of Education's superintendent or his/her designee(s), the MRO will review and interpret each confirmed positive test to determine if there is an alternative medical explanation for the positive result; conduct an interview with the individual testing positive; review the individual's medical history and medical records made available to the individual to determine if the positive result was caused by legally-prescribed medication; require a retest of the original specimen if the MRO deems it necessary; and verify 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.

For employees not covered by DOT testing policies, either an MRO or certified laboratory technician using fully automated chemistry analyzers will interpret findings to determine if there is an alternate medical explanation for the positive.

If the MRO or laboratory technician determines that there is a legitimate medical explanation for the positive test other than the use of a prohibited drug, the MRO or laboratory technician will conclude that the test is negative and will not take any further action. If the MRO or laboratory technician concludes that a particular test is scientifically insufficient, the MRO or laboratory technician will conclude that the test is negative for that individual. If the MRO or laboratory technician determines that there is no legitimate explanation for the positive test other than illegal use or abuse of a drug, the MRO or laboratory technician may request a second confirming test be run on the same specimen batch. Positive results will then be communicated by the MRO or laboratory technician to the superintendent or his/her designee(s). The results of negative tests will be communicated by the MRO or laboratory technician to the laboratory who will then report the results to the superintendent or his/her designee(s).

- 3.5.e Collection Site - the laboratory selected to perform the testing on specimens is the designated collection site for collecting urine specimens. In some circumstances,

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the laboratory may collect the specimens on the premises of the Mercer County Board of Education.

- 3.5.f Authorization for Testing - When the person reports to the collection site, the drug and/or alcohol screening procedure will be explained and the person will be asked to assist completing any necessary forms. All persons subject to testing for any reason shall be asked to sign the necessary authorization forms to allow the test to be performed and to release test results to the MRO, the laboratory, and the superintendent or his/her designee(s).

- 3.5.g Specimen Retention - The retention of specimens for possible future analysis is the responsibility of the laboratory selected to perform testing. The laboratory will retain all specimens for a minimum period of one (1) week. At such time, negative specimens will be discarded. Positive specimens will be resealed and retained in a separate and secure area for a minimum of one (1) year. Within this one (1) year period, the person tested, the MRO or laboratory technician, or the superintendent or his/her designee(s) can request in writing that the laboratory retain the sample for an additional reasonable period specified in the request. If no proper written request is received within the one (1) year period, the sample may be discarded.

Any transfer of the original specimen to another laboratory for reconfirmation of positive results will follow the chain of custody procedures described in the regulations contained in DOT Rule 49 C.F.R. Part 40.

- 3.5.h Notification and Administrative Processing of Positive Results - In the case of employees covered by DOT regulations, all analytical results, negative and positive, will be reported by the laboratory to the MRO within an average of five (5) days after receiving the specimens. The MRO will review the individual's medical history, questionnaire, relevant biomedical information, and interview the person to determine if there is any satisfactory explanation for the positive result. In determining whether there is a satisfactory explanation for a positive result, the MRO may, in his or her discretion, consider the validity of prescriptions. A "valid" prescription is one that was written during the one year preceding the test. The MRO may conduct an additional medical interview with the individual and may require the original specimen to be re-analyzed, if necessary.

The MRO will advise the laboratory, who will then advise the superintendent or his/her designee(s), of any positive test results on external applicants where alcohol and drug testing has been required and where, in the view of the MRO, there is not legitimate medical explanation for the confirmed positive test result

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other than the unauthorized use of an illegal drug. The MRO will advise the laboratory, who will then advise the superintendent or his/her designee(s), of any positive or negative drug or alcohol test results.

In the case of employees not bound by DOT regulations, the above chain of communication will be conducted by the laboratory technician.

In either case, if substance screening shows a confirmed positive test result, a second confirming test on the same specimen batch may be requested by the MRO or laboratory technician.

- 3.5.i Record Retention Confidentiality - Records of drug test results are recognized to be private and sensitive records, which will be maintained in a secure fashion to ensure confidentiality. Records showing an employee passed a drug test will be kept for at least one (1) year. Records showing that an employee failed a drug test, the type of test (e.g., reasonable suspicion), the functions of the employee, the illegal drug(s) used by the employee, and the disposition of each employee will be kept for at least five (5) years. These records will be maintained by the laboratory for at least the minimum length of time required in 3.5.g.

Information regarding an individual's drug testing results is confidential and will be released by the MRO, the laboratory, or the superintendent or his/her designee(s) only upon the written consent of the individual, except that results may be released and relied upon by the Mercer County Board of Education in any administrative court action involving the drug test or any discipline resulting from a violation of this policy, including employment grievances and court proceedings.

3.6 Testing Procedures

- 3.6.a Test Methods and Cutoff Levels - The initial test performed on the urine at the laboratory will be an immunoassay-based screen which will be used to eliminate negative urine samples from further consideration. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed below. Tests will screen for the drugs listed below and their cutoff levels (positive tests) are as follow: (NOTE: These cutoff levels are subject to change, with or without notice, based on the procedures used and/or recommended by the laboratory.)

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	<u>Initial Test</u>	<u>GC/MS</u>
Amphetamines	1000 ng/mL	
Amphetamine		500 ng/mL
Methamphetamine		500 ng/mL
Barbiturates	200 ng/mL	200 ng/mL
Benzodiazepines	200 ng/mL	200 ng/mL
Cocaine Metabolites	300 ng/mL	150 ng/mL
Cannabinoids	50 ng/mL	15 ng/mL
Opiates	300 ng/mL	
Morphine		300 ng/mL
Codeine		300 ng/mL
Hydromorphone		300 ng/mL
Hydrocodone		300 ng/mL
Oxycodone	100 ng/mL	100 ng/mL
Phencyclidine	25 ng/mL	25 ng/mL
Propoxyphene	300 ng/mL	300 ng/mL
Methaqualone	300 ng/mL	300 ng/mL
Methadone	300 ng/mL	300 ng/mL
Creatinine	<20 ng/mL	
Ph	<4.5 OR >=9	
Specific Gravity	< 1.003 OR >=1.035	

- 3.6.b Collections of Specimens - Specimens will be collected in accordance with Department of Transportation (DOT) Procedures for Transportation Workplace Drug Testing Programs 49 C.F.R. Part 40 which are incorporated herein by reference, with the exceptions as noted in this policy. At least 30 (thirty) ML of urine will be required to complete the test, or the test will be rejected and must be re-performed.

The designated collection site shall have an enclosure within which private urination can occur, a toilet for completion of urination, and a source of water for washing hands.

Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen as specified in DOT Rule 49 C.F.R. 40.25. Examples of reasonable cause to believe a specimen will be altered or substituted include: the presentation of a urine specimen that falls outside the normal temperature range (90.0 degrees F - 100.00 degrees F); presentation of a specimen with a specific gravity of

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greater than 1.0001 but less than 1.0035 and a creatinine concentration of <20 ng/mL; presentation of a specimen which contains the presence of adulterants; and/or observation of conduct clearly indicating an attempt to substitute or adulterate the sample.

The laboratory selected to perform testing pursuant to this policy will follow, when applicable, the DOT procedures for preparation for testing, chain of custody, security, privacy, integrity, and identify of specimen, and any necessary transportation to a laboratory. (See DOT Rule 49 C.F.R. part 40.23 and part 40.25.) The person submitting specimens will complete the urine custody and control forms as required by the laboratory.

- 3.6.c General Alcohol Testing Procedure - A Certified Breath Alcohol Technician will be requested to perform and be responsible for administering a breath analysis test. If the breath analysis test is positive, a second breath analysis test will be taken. If a test is to be made for drugs, this specimen will be taken at the same time that the alcohol specimen is taken but will be processed as a separate specimen. Refusal to submit to any breath analysis testing or any subsequent test for drugs constitutes grounds for discipline, up to and including termination.
 - (1) Collection of Specimen - Procedures for taking the urine specimen, in the event of a positive breath analysis for alcohol assay, will follow the same procedures as outlined in Section 3.6.b above for the drug specimen and the specimen will be tightly sealed immediately to avoid loss of volatile constituents.
 - (2) Test Methods and Levels - The breath analysis test level to be considered positive will be .08.

3.7 Post-Recommendation, Pre-Employment Testing

- 3.7.a In the furtherance of achieving the Mercer County Board of Education's goals and objectives as enumerated above, all applicants, once they are recommended for first-time employment with the Mercer County Board of Education, shall be required to submit to a pre-employment drug test for the detection of the illegal use of drugs. At the point of job recommendation, applicants will receive a copy of this policy.
- 3.7.b 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,

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permitting the summary result to be transmitted to the MRO, if necessary, and the superintendent or his/her designee(s). An applicant refusing to complete any part of the drug testing procedure shall not be considered a valid candidate for employment with the Mercer County Board of Education, and such will be considered as a withdrawal of the individual's application for employment. The applicant shall not be permitted to reapply.

If substance screening shows a confirmed positive result for which there is no valid and current physician's prescription, a second confirming test may be requested by the MRO or laboratory. If the first or, when applicable, any requested second confirming test is positive, any job offer shall be revoked.

3.8 Specific Testing Procedures Pre-Employment/Post Job Offer

- 3.8.a Prior to or concurrent with applying for the position, interested individuals will be made aware of the requirements of drug testing for first-time employment with Mercer County Schools. These requirements will be publicized through job postings, the Mercer County Schools' job line and website, and all advertisements for job openings. Any Mercer County employee in a non-safety-sensitive position who applies for and is offered a safety-sensitive position must submit to pre-employment testing.
- 3.8.b Applicants who receive a recommendation for employment will receive a copy of the Drug-Free Workplace and Employee Testing Policy.
- 3.8.c Applicants shall report to the designated collection site within forty-eight (48) hours after receiving a copy of the policy.
- 3.8.d The laboratory selected to perform the testing will gather the medical history of the applicant and take the urine sample(s).
- 3.8.e Applicants will be asked to sign an authorization for the tests which will release the MRO or laboratory technician to disclose the results of the drug and alcohol test to the laboratory, which will then disclose the results to the superintendent or his/her designee(s). In the event an applicant refuses to execute the appropriate authorization or to submit to the drug and alcohol tests, the laboratory will suspend the procedures at that point and refer the applicant to the superintendent or his/her designee(s).
- 3.8.f The MRO or laboratory technician will review the analytical results of the drug and alcohol tests, the individual's medical history questionnaire, and relevant

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biomedical information and interview the applicant, either by phone or in person, to determine whether there is any satisfactory explanation for a positive result. The MRO or laboratory technician may conduct an additional medical interview with the individual and may require the original specimen to be re-analyzed if necessary. The MRO or laboratory technician will advise the laboratory, who will then advise the superintendent or his/her designee(s) of any positive test results where there is not a legitimate explanation for the positive test.

- 3.8.g The MRO will advise the applicant that he/she has tested positive and, if requested, will allow the applicant a reasonable period, not to exceed three (3) days, to provide additional medical evidence of a valid and current prescription for the drug(s) which caused the positive test.
- 3.8.h Nothing herein shall be construed as requiring the MRO, the laboratory, or the superintendent or his/her designee(s) to disclose to the applicant the drug(s) for which the applicant tested positive. Rather, it is the duty of the applicant to disclose to the MRO or laboratory technician and, upon request, to provide the MRO or laboratory technician with evidence of all drugs taken by prescription.
- 3.8.i If the first or, when applicable, any requested second confirming test is positive and there is no valid and current physician's prescription, the job offer shall be revoked and the applicant shall not be permitted to apply for twelve (12) months.

3.9 Physical Examination/Screening Based Upon Reasonable Suspicion

- 3.9.a Whenever the Mercer County Board of Education, through its superintendent or his/her authorized designee(s), and/or the MRO or laboratory technician, 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 Employee Code of Conduct Policy (G-24) or the Drug Free Workplace and Employee Testing Policy (A-06), the employee may be required to submit a breath and/or urine 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 Employee Code of Conduct Policy (G-24) or the Drug Free Workplace and Employee Testing Policy (A-06), the supervisor shall notify the superintendent or his/her designee(s).

Reasonable suspicion of illegal drug or alcohol use and subsequent testing applies to "employees" as defined in this policy and also includes contracted personnel working on school property (e.g., construction, security).

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- 3.9.b The Mercer County Schools superintendent or his/her authorized designee(s) are the only individuals in the Mercer County School system 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.
- 3.9.c 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 state law and Board policy.
- 3.9.d 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 state law and Board policy.
- 3.9.e Two types of cases for which reasonable suspicion procedures may be invoked are:
- (1) Chronic Case - Deteriorating job performance or changes in personal characteristics where the use of alcohol or drugs may be reasonably suspected as the cause.
 - (2) Acute Case - Appearing in a specific incident or observation to then 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.
- 3.9.f 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

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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.
- 3.9.g 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 Mercer County Board of Education property, or at school system-approved or school-related functions.
- 3.9.h Prior to substance screening, employees, including contracted workers must sign an acknowledgment that the summary result will be transmitted to the MRO laboratory and the Mercer County Schools superintendent or his/her designee(s).
- 3.9.i Drug and/or alcohol screening shall be conducted by Board approved independent, certified laboratories utilizing recognized techniques and procedures, more specifically described in the Drug and Alcohol Abuse Testing Procedures contained in this policy at Section 3.6. A breath analysis test will be performed by a certified Breath Alcohol Technician.
- 3.10 Specific Procedures for Reasonable Suspicion Testing
 - 3.10.a This testing will be conducted for any employee whenever the Mercer County Board of Education, through superintendent or his/her designee(s) suspects that there is a violation of Mercer County Board of Education Employee Code of Conduct Policy (G-24) or the Drug-Free Workplace and Employee Testing Policy (A-06). The guidelines for determining reasonable suspicion, as noted above, will be followed.
 - 3.10.b Once the determination has been made that an employee is to be tested based upon reasonable suspicion, the superintendent or his/her designee(s) will then direct the employee to the collection site. The collection site personnel should be notified that the reason for testing is reasonable suspicion.
 - 3.10.c If the superintendent or his/her designee(s) believes that the employee is in no condition to operate a vehicle, then transportation for the employee will be arranged. Under no circumstances shall the employee be allowed to drive, and if the employee insists, the superintendent or his/her designee(s) shall tell the employee that if he/she gets in a vehicle to drive that he/she will call the police or the sheriff's department and give them his/her location, license plate number, etc.

DRUG-FREE WORKPLACE AND EMPLOYEE TESTING POLICY

- 3.10.d Upon arriving at the collection site, the employee will be asked to sign a release for testing and to assist in completing the necessary forms for testing. After the employee has signed the necessary releases for testing, then the standard procedures for drug and alcohol testing should be followed by the collection site personnel.
- 3.10.e If the employee refuses to sign the release or refuses to be tested by the laboratory, the employee should be advised that refusal under Board policy is insubordination. If the employee continues to refuse, he/she will be placed on administrative leave with instructions to call the superintendent's office before the normal reporting time for that employee on the following workday.
- 3.10.f Once the procedure has been completed, the employee will be placed on administrative leave until the results of the tests are available and given instructions to call the superintendent or his/her designee(s) each workday, before the normal reporting time for that employee, for further instructions.
- 3.10.g In the event of positive test results, the MRO or laboratory will contact the superintendent or his/her designee(s). 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 state law and Board policy.
- 3.10.h Contracted personnel working on school property (e.g., construction, security) who test positive on a reasonable suspicion test will be removed from the site and not permitted to return.
- 3.11 Return to Duty Testing
 - 3.11.a This testing will apply when an employee who has been given an opportunity for rehabilitation for drugs and/or alcohol returns to duty. Prior to the employee coming back on the job, the employee must be examined by a pre-approved physician at his/her own expense and pass the drug and/or alcohol screening with negative results. The superintendent or his/her designee(s) may consult with the physician and the rehabilitation program officials to determine an appropriate interval for follow-up screening. An agreement for follow-up screening must be signed by the employee before he/she is permitted to return to work.
 - 3.11.b All testing done as a result of the above conditions will be conducted in accordance with the procedures contained herein for drug testing.

DRUG-FREE WORKPLACE AND EMPLOYEE TESTING POLICY

3.11.c In the event of positive test results, the MRO or laboratory technician will contact the superintendent or his/her designee(s) who will work out disciplinary procedures in accordance with state law and Board policy. A confirmed positive test for illegal drug or alcohol use shall constitute a violation of this policy and grounds for termination in accordance with state law.

3.12 Rehabilitation

3.12.a The Mercer County Board of Education recognizes that chemical dependency is an illness that may be successfully treated. The Mercer County Board of Education strongly encourages employees using illegal drugs or alcohol to voluntarily refer themselves to a treatment program. A voluntary referral is defined as one that occurs prior to any positive test for illegal drugs under this policy or prior to any other violation of this policy, including a criminal conviction of that individual on a drug-related offense. Employees are not subject to disciplinary action for voluntary referral to rehabilitation, even when rehabilitation is for the use of illegal drugs or alcohol. The Board does reserve the right to discipline, up to and including termination of employment, employees who, subsequent to voluntarily requesting help, violate this policy.

3.12.b It is the policy of the Mercer County Board of Education, where possible, in addition to appropriate personnel action, to refer for rehabilitation an employee with a self-admitted or detected drug or alcohol problem.

3.12.c Employees seeking medical attention for chemical dependency shall be entitled to benefits to the extent covered under the Mercer County Board of Education group medical insurance plans, if they have chosen to be covered by said plans.

3.12.d For employees, etc. enrolled in a formal treatment/rehabilitation program, Mercer County Board of Education may grant sick leave and then annual leave until the same are exhausted and then may grant leave without pay not to exceed one (1) year.

3.12.e The cost of the drug rehabilitation or treatment provided shall be borne by the employee and/or the employee's insurance provider.

3.12.f Employees in violation of the provisions of this policy shall be subject to discipline, up to and including termination of employment.

DRUG-FREE WORKPLACE AND EMPLOYEE TESTING POLICY

3.12.g 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.

3.13 Confidentiality

Records that pertain to the Mercer County Board of Education employee-required substance screens are private and sensitive records. They shall be maintained by the MRO and/or laboratory in a secure fashion to ensure confidentiality and privacy and be disclosed to the superintendent or is/her authorized designee(s) only to the extent necessary to address any work-related safety risks occasioned by either the drug or alcohol use. The superintendent or his/her authorized designee(s) shall maintain any such records in a secure fashion to ensure confidentiality and privacy. Medical records and information relating directly thereto shall be maintained in accordance with provisions of federal and state law and used with the highest regard for employee confidentiality 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.

4.0 Severability

If any portion of this policy or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this policy.

Authority: W.Va. Constitution, Article XII, §2, and W.Va. Code §§16-9A-4, 16-9A-9, 17A-1-1, 18-2-7b, 18-2C-1 et seq., 18-5-1, 18A-1-1, 61-7-2, and 60-A-2-201 21 U.S. Code §812.

Source: Board of Education Minutes

Date(s): 3/23/93; 4/22/08, 1/23/18

MERCER COUNTY BOARD OF EDUCATION
DRUG-FREE WORKPLACE VERIFICATION STATEMENT

Name: _____ Social Security No: _____

Address: _____ Telephone: _____

Date employed by the Mercer County Board of Education: _____

I, _____, certify that I have received a copy of the Mercer County Board of Education Drug-Free Workplace Policy.

As an employee of the Mercer County Board of Education, I agree to abide by the Drug-Free Workplace Policy which states that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance and/or alcohol is prohibited in the workplace. Additionally, I understand that no employee shall report for work while under the influence of alcohol and/or an illegal drug.

The workplace shall be defined as a worksite where work is performed in connection with the employee's employment with the Mercer County Board of Education. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the Board.

The policy is applicable while employees are engaged in any work-related activity which includes performance of Board business during regularly-scheduled work days, meal breaks, and/or occasions outside of the employee's regularly-scheduled work hours having any connection with their job or the Board.

In addition, I understand that federal law and as a condition of employment, if I am convicted of any violation of a criminal drug offense in the workplace, I must report this conviction to my supervisor within five (5) days of the conviction.

Employee Signature

Witness

Date

MERCER COUNTY BOARD OF EDUCATION

DRUG-FREE WORKPLACE AND EMPLOYEE DRUG TESTING POLICY

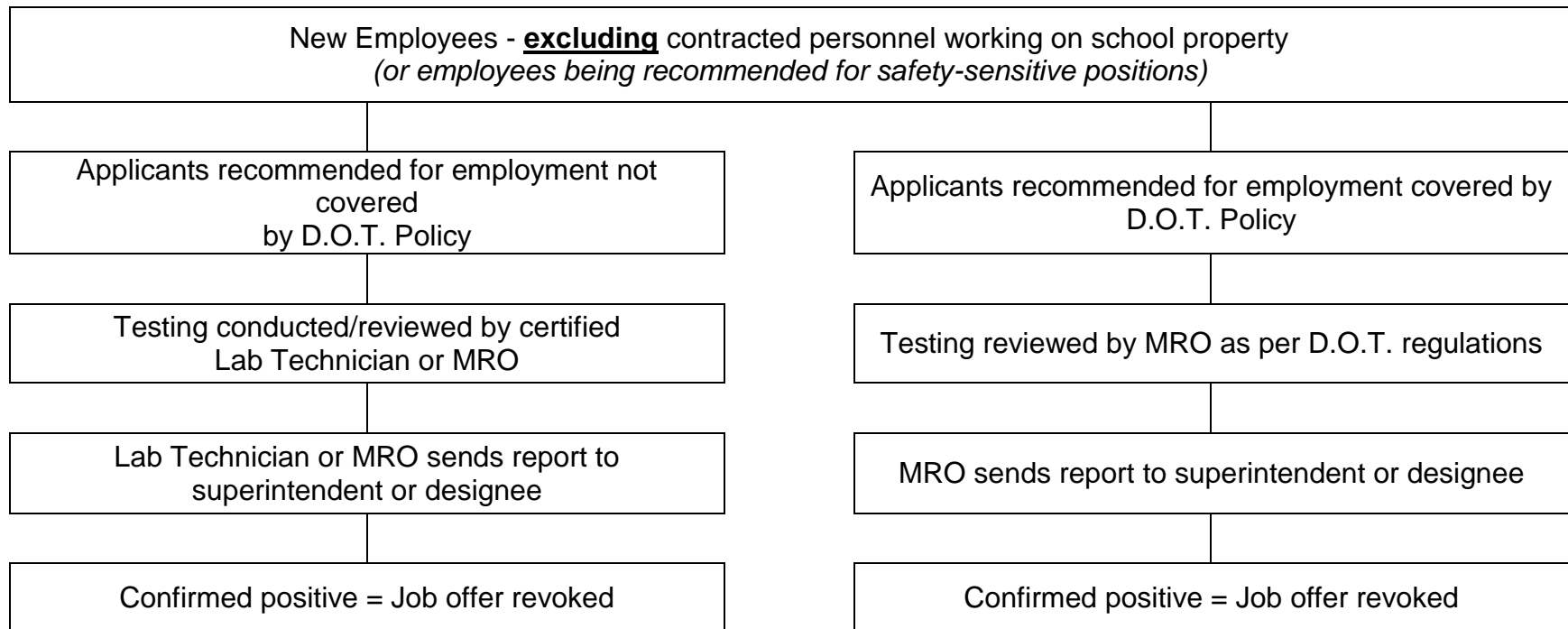
**Individuals who have received a recommendation for first-time employment with Mercer County Schools must report to _____, within
(Name of testing facility)
forty-eight (48) hours of receiving this policy. Failure to submit to drug testing within forty-eight (48) hours shall result in revocation of the recommendation for employment.**

Signature of prospective employee

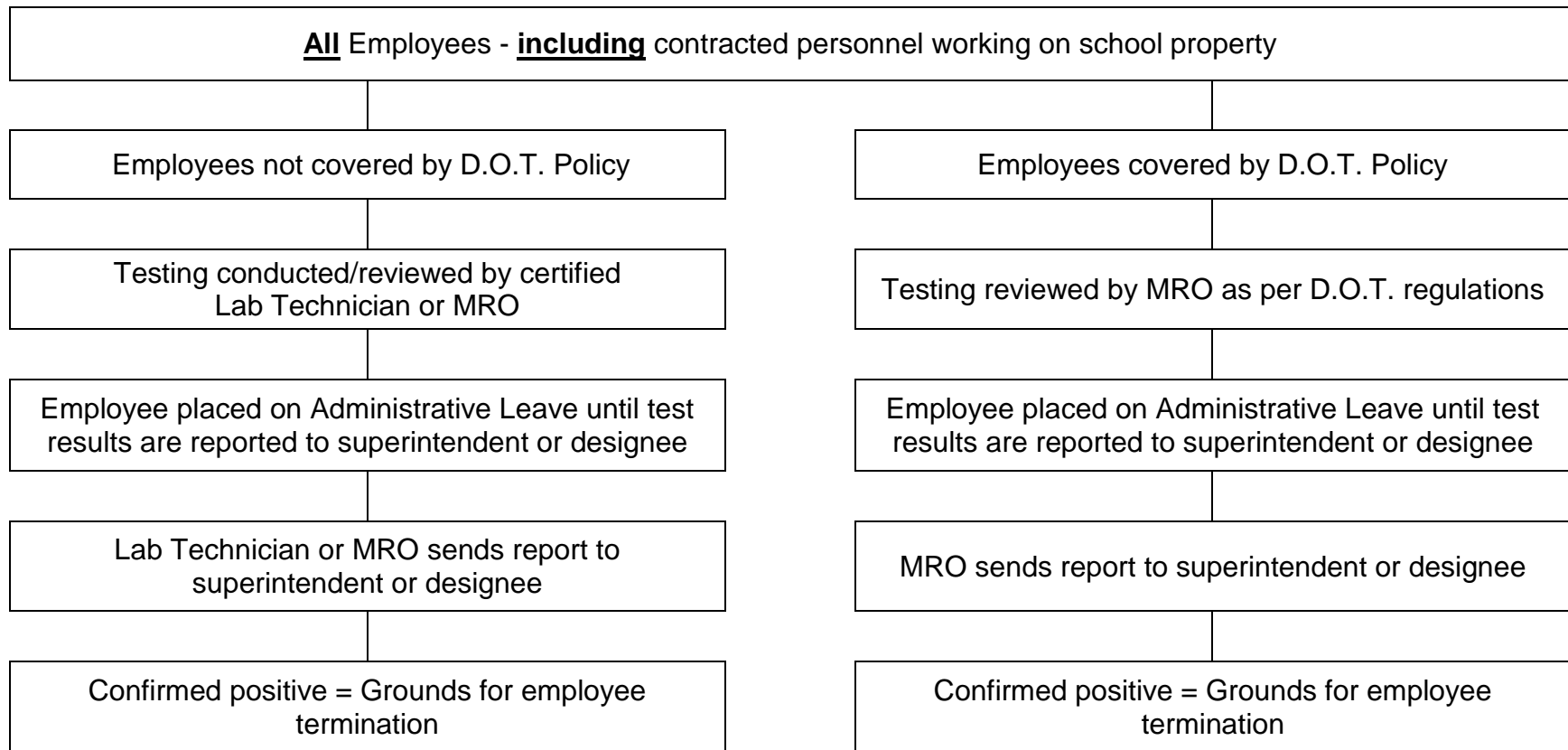
Date and time

**A copy of this signature page
along with a copy of the Drug-Free Workplace and Employee Testing Policy
shall be provided to the prospective employee
at the point he/she is recommended for first-time employment with
Mercer County Schools.**

PRE-EMPLOYMENT DRUG TESTING



REASONABLE SUSPICION DRUG/ALCOHOL TESTING



RETURN TO DUTY DRUG/ALCOHOL TESTING

