

Educational Support Personnel**Administrative Procedure - Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers 1**

The District's drug and alcohol testing program shall apply to all individuals in positions that require a commercial driver's license 2 and those that require an Illinois school bus driver permit. 3 This includes casual, intermittent, or occasional drivers, leased drivers and independent owner-operator contractors, as well as full-time, regularly employed drivers. 4 The Superintendent or designee will identify which positions are covered by the various provisions of this procedure.

Pre-Employment Tests

A pre-employment drug test shall be required of an applicant only after he/she has been offered the position. 5

Drug tests shall be conducted before the first time a driver performs any safety-sensitive function for the District. 6

Safety-sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. 7

Exceptions may be made for drivers who have participated in the drug testing program required by law within the previous 30 days, provided that the District has been able to make all verifications required by law. 8

The footnotes should be retained.

1 State and federal law control this procedure. Before using this procedure, a district should seek legal advice concerning the law's requirements, identifying which employees are covered, and determining any collective bargaining implications or bargaining agreement alignment issues. This procedure should not be used by the district to determine the type of licensure a specific position requires. A district that contracts-out the testing of employees subject to mandatory drug and alcohol testing should replace this sample procedure with the procedure supplied by its contractor, while retaining those portions that apply to the employer of a school bus driver permit holder, where the district is that employer. IASB sponsors a Drug and Alcohol Testing Consortium administered by the Mid-West Truckers Association. See iasb.com/sponsored/datest.cfm for more information.

2 Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle . . . (3) is designed to transport 16 or more passengers, including the driver. 49 C.F.R. §383.5. A commercial driver's license is required of the driver of any vehicle designed to transport 16 or more passengers, including the driver. 49 C.F.R. §383.91(a)(3); 625 ILCS 5/6-500(A)(ii).

3 625 ILCS 5/1-148.3a-5; 5/1-182; 5/1-217; 5/6-104; 5/11-1414(a). See www.isbe.net/funding/html/transportaion.htm for helpful links to ISBE documents.

4 49 C.F.R. §382.107.

5 This optional paragraph defers drug testing until after a job offer is made in order to limit the number of applicants tested.

6 49 C.F.R. §382.301(a)-(c). If desired, the district may also do a pre-employment alcohol test as allowed by 49 C.F.R. 382.301(d).

7 49 C.F.R. §§382.107, 395.2. Safety-sensitive functions include driving; remaining in readiness to operate the vehicle; waiting to be dispatched; all time, other than driving time, in or upon a commercial motor vehicle; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing other requirements related to accidents; and performing any other work for the district or paid work for any other entity.

8 49 C.F.R. §382.301(b).

Pre-employment testing shall also be required of employees returning to work after a layoff period if the employee was removed from the random testing pool. If the employee remains in the random testing pool, additional testing shall not be necessary.

Controlled Substance Use 9

Drivers shall inform their supervisors if at any time they are using a drug which their physician has prescribed for therapeutic purposes. **10** Drivers using a controlled substance may continue to perform safety-sensitive functions only if a licensed medical practitioner has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle. **11** If the District has actual knowledge that a driver has used a controlled substance it shall not permit the driver to perform or continue to perform a safety-sensitive function. **12**

Pre-Duty Use of Alcohol 13

No driver shall perform safety-sensitive functions within 4 hours after using alcohol. If the District has actual knowledge that a driver has used alcohol within 4 hours it shall not permit the driver to perform or continue to perform safety-sensitive functions.

On-Duty Use of Alcohol 14

No driver shall use alcohol while performing safety-sensitive functions. If the District has actual knowledge that a driver is using alcohol while performing safety-sensitive functions it shall not permit the driver to perform or continue to perform safety-sensitive functions.

Post-Accident Tests 15

Alcohol tests shall be conducted as soon after an accident as practicable on any surviving driver:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or **16**
2. Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: **17**
 - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

The footnotes should be retained.

9 49 C.R.R. §382.213.

10 Pursuant to 49 C.F.R. §382.213(c), the district may require a driver to inform the district when using any therapeutic drug.

11 49 C.F.R. §382.213(a).

12 49 C.F.R. §382.213(b).

13 49 C.F.R. §382.207.

14 49 C.F.R. §382.205.

15 A school bus driver operating a school bus at the time of an accident is deemed by the IL implied consent law to have given consent to submit to tests to be administered at the direction of a law enforcement officer of the driver's breath, blood, or urine for the purpose of determining the presence of alcohol, or other drugs, in the person's system (625 ILCS 5/6-516).

16 49 C.F.R. §382.303(a)(1).

17 49 C.F.R. §382.303(a)(2).

- b. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Controlled substance tests shall be conducted as soon after an accident as practicable on any surviving driver:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life; **18**
2. Who receives a citation within 32 hours of occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - b. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. **19**

Drivers shall make themselves readily available for testing, absent the need for immediate medical attention. **20**

No driver required to take a post-accident alcohol test shall use alcohol for 8 hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first. **21**

If an alcohol test is not administered within 2 hours of the accident or if a drug test is not administered within 32 hours, the District shall prepare and maintain records explaining why the test was not conducted. **22** Tests will not be given if not administered within 8 hours after the accident for alcohol or within 32 hours for drugs. **23**

Tests conducted by authorized federal, state, or local officials shall fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the District. Breath and blood tests meet the requirements of alcohol testing. **24** A urine test meets the requirements of a controlled substances test. **25**

Random Tests

Alcohol and drug tests shall be conducted on a random basis at unannounced times throughout the year. The number of random alcohol and drug tests shall be at least equal to those required by federal regulations. Drivers shall be selected by a scientifically valid random process, and each driver shall

The footnotes should be retained.

18 49 C.F.R. §382.303(b)(1).

19 49 C.F.R. §382.303(b)(2).

20 49 C.F.R. §382.303(e).

21 49 C.F.R. §382.209.

22 49 C.F.R. §382.303(d)(1)

23 49 C.F.R. §382.303(d)(2).

24 49 C.F.R. §382.303(g)(1).

25 49 C.F.R. §382.303(g)(2).

have an equal chance of being tested each time selections are made. Tests for alcohol shall be conducted just before, during, or just after the performance of safety-sensitive functions. **26**

Employees off work due to leaves, vacation, and layoffs shall be informed that they remain subject to random testing. Employees drawn for such testing shall be notified and tested as soon as practicable after they return to duty. **27**

Probable Cause Tests (Applicable to School Bus Driver Permit Holders) **28**

A driver who has received a Uniform Traffic Ticket while in control of a school bus or any other vehicle owned or operated by or for the District, when the vehicle is being used over a regularly scheduled route for the transportation of persons enrolled as students in grade 12 or below, in connection with any activity of the District, may be tested for alcohol. To justify an alcohol test, a police officer must have probable cause to believe that the driver has consumed any amount of an alcoholic beverage based upon evidence of the driver's physical condition or other first hand knowledge of the police officer.

Upon receipt of a law enforcement officer's sworn report that the test result was positive or that the driver refused to be tested, the Secretary of State will notify both the permit holder and the District of the sanction (sanction is effective on the 46th day following the date notice was given).

Reasonable Suspicion Tests (Applicable to School Bus Driver Permit Holders) **29**

An alcohol or drug test shall be conducted if a supervisor or District official trained in accordance with law has reasonable suspicion that a driver has violated the District's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. **30**

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before, or just after the period of the work day when the driver must comply with alcohol prohibitions. **31** An alcohol test may not be conducted by the supervisor or District official who determines that reasonable suspicion exists to conduct such a test. **32** If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the District shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after 8 hours. **33**

The footnotes should be retained.

26 49 C.F.R. §382.305. The random tests described above must be conducted throughout the calendar year, not just at one time. Further, they should not be conducted at the same time each calendar year, and employees should be tested the same day as the tests are announced. Pursuant to 49 C.F.R. §382.305, the number of random alcohol tests annually must equal 10 percent of the average number of driver positions and the number of random drug tests annually must equal 50 percent of the average number of driver positions; however, the Federal Motor Carrier Safety Administration Administrator is authorized to modify these percentages annually based on reported industry violation rates.

27 Optional.

28 625 ILCS 6-106.1a.

29 5/6-106.1c. All applicants for a school bus driver permit must consent, in writing, to the release of results of reasonable suspicion drug and alcohol testing by the employer of the applicant to the Secretary of State. 625 ILCS 5/6-106.1(a).

30 Pursuant to 49 C.F.R. §382.603, persons designated to determine whether reasonable suspicion exists must receive at least 60 minutes of training that covers the physical, behavioral, speech, and performance indicators of alcohol misuse and an additional 60 minutes of training covers the indicators of controlled substance use.

31 49 C.F.R. §382.307(d).

32 49 C.F.R. §382.307(c).

33 49 C.F.R. §382.307(e)(1).

A supervisor or District official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier. **34**

The Superintendent or designee shall ensure that an employee under reasonable suspicion is transported to the designated collection or testing site. **35**

The Superintendent or designee shall notify the Secretary of State, in a manner and form prescribed by the Secretary, of the result of a reasonable suspicion test when: (i) the test indicates an alcohol concentration greater than 0.00; (ii) the test indicates a positive result on a National Institute on Drug Abuse five-drug panel utilizing the federal standards set forth in 49 C.F.R. 40.87; or (iii) when a driver refuses testing. The notification to the Secretary must be submitted within 48 hours of the refusal of testing or the employer's receipt of the test results. **36**

Enforcement for Non-School Bus Driver Permit Holders

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If the District has actual knowledge that a driver has an alcohol concentration of 0.04 or greater it shall not permit the driver to perform or continue to perform safety-sensitive functions. **37**

Federal laws require that any driver who refuses to submit to a post-accident, random, reasonable suspicion test, or follow-up test as described below, shall not perform or continue to perform safety-sensitive functions. The District shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. **38**

A driver who is tested and found to have an alcohol concentration of .02 or greater, but less than 0.04, may not perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered. **39**

A driver who tests positive for drugs or an alcohol concentration of 0.04 or greater shall be subject to District disciplinary action up to and including dismissal. **40**

A driver who violates District prohibitions related to drugs and alcohol shall receive from the District the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol-related problems. The employee shall be evaluated by a substance abuse professional who shall determine what help the driver needs in resolving such a problem. Any substance abuse professional who determines that a

The footnotes should be retained.

34 49 C.F.R. §382.307(f).

35 Optional.

36 All provisions in the paragraph are required by 625 ILCS 5/6-106.1c, added by P.A. 97-466. The Substance and Mental Health Services Administration may replace the National Institute on Drug Abuse.

37 49 C.F.R. §382.201.

38 49 C.F.R. §382.211.

39 49 C.F.R. §382.505. Federal law provides that no employer shall take any action under 49 C.F.R. 382, against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

40 Federal law prohibits an employer from taking action against a driver based solely on test results showing an alcohol concentration less than .04. State law prohibits discrimination based on the use of lawful products during non-work hours (820 ILCS 55/5). However, 820 ILCS 55/5 does not apply to the use of those lawful products which impair an employee's ability to perform the employee's assigned duties. In an attempt to find congruity between the state and federal standards this procedure uses an alcohol concentration of 0.04 or greater as the level at which a Non-School Bus Permit Holders duties would be impaired.

driver needs assistance shall not refer the driver to a private practice, person, or organization in which he/she has a financial interest, except under circumstances allowed by law. **41**

An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation program. **42**

Return-to-Duty Tests for Non-School Bus Driver Permit Holders

If a driver who has violated the District's drug or alcohol prohibition is returned to performing safety-sensitive duties, a drug or alcohol test shall be conducted. **43**

The District shall not allow employees whose conduct involved drugs to return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result. The District shall not allow employees whose conduct involved alcohol to return to duty in a safety-sensitive function until the return-to-duty alcohol test indicates an alcohol concentration of 0.02 or less. **44**

Follow-Up Tests for Non-School Bus Driver Permit Holders

A driver who violates the District's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with the law. Follow-up alcohol testing shall be conducted just before, during, or just after the time when the driver is performing safety-sensitive functions. **45**

The District must carry out the substance abuse professional's follow-up testing requirements. **46**

Follow-up testing shall consist of at least 6 tests in the first 12 months following the driver's return to duty. **47** Testing shall not occur beyond 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the follow-up testing if he/she determines that the employee has successfully demonstrated compliance. **48**

Maintenance of Records for Non-School Bus Driver Permit Holders

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with the law. Upon written request, a driver shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her

The footnotes should be retained.

41 The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies. The assignment of costs of the substance abuse professional may be a matter within the scope of negotiations. 49 C.F.R. §40.289(c). As an employer, the district is not required to provide a substance abuse professional's evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation. 49 C.F.R. §289(a).

42 49 C.F.R. §§40.281-40.313; 49 C.F.R. §382.605. If the district offers an employee an opportunity to return to a DOT safety-sensitive duty following a violation, it must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of §40.281 and that the employee successfully complies with the SAP's evaluation recommendations. 49 C.F.R. §40.289(b).

43 49 C.F.R. §40.305; 49 C.F.R. §382.605.

44 49 C.F.R. §382.305(b).

45 49 C.F.R. §40.309; 49 C.F.R. §382.311.

46 49 C.F.R. §40.309; 49 C.F.R. §382.311.

47 49 C.F.R. §40.309; 49 C.F.R. §382.311. The district may schedule follow-up test on dates of its choosing, but must ensure that the tests are unannounced with no discernible pattern as to their timing, and that the employee is given no advance notice.

48 49 C.F.R. §40.301(c)(2); 49 C.F.R. §382.311.

drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. ⁴⁹

Enforcement for School Bus Driver Permit Holders

In Illinois, a person whose privilege to possess a school bus driver permit has been canceled under 625 ILCS 6-106.1a is not eligible for restoration of the privilege until the expiration of 3 years from the effective date of the cancellation if the person has refused or failed to complete a test or tests to determine blood alcohol concentration, or has submitted to testing with a blood alcohol concentration of more than 0.00. ⁵⁰

The Illinois Secretary of State must suspend a school bus driver permit for a period of 3 years upon receiving notice that the holder refused to submit to an alcohol or drug test as required by Section 6-106.1c or has submitted to a test required by that Section that disclosed an alcohol concentration of more than 0.00 or disclosed a positive result on a National Institute on Drug Abuse five-drug panel, utilizing federal standards set forth in 49 C.F.R. 40.87. ⁵¹

A driver who tests positive for drugs or is found to have an alcohol concentration of greater than 0.00 shall have their employment terminated. ⁵²

Notifications

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the District's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. ⁵³ The information shall identify all of the following: ⁵⁴

1. The person designated by the District to answer drivers' questions about the materials;
2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382;
3. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the work day the driver is required to comply with Part 382;
4. Specific information concerning driver conduct that is prohibited by Part 382;
5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382, including post-accident testing under [§382.303\(d\)](#);

The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results, and

The footnotes should be retained.

⁴⁹ 49 C.F.R. §§382.401, 382.403 identifies records that the district must keep for varying periods of time in connection with alcohol misuse and controlled substances use prevention programs. 49 C.F.R. §382.405 prohibits the release of information required to be maintained by 49 C.F.R. §382.401 except as required by law.

⁵⁰ 625 ILCS 5/6-106.1b.

⁵¹ 625 ILCS 5/6-106.1(g)(7), added by P.A. 97-466; proposed Secretary of State rules are at 92 Ill.Admin.Code Part 1053.

⁵² If handled correctly by the district, the incongruity between State and federal law in this area is a non-issue given that a driver who has had his or her license suspended for a 3 year period is no longer able to fulfill the duties of the job for which he or she was hired. The district should consult with the board attorney in order to determine how best to move forward with the termination of the suspended driver.

⁵³ Required by 49 C.F.R. §382.601.

⁵⁴ 49 C.F.R. §382.601.

ensure that test results are attributed to the correct driver, including post-accident information, procedures and instructions required by [§382.303\(d\)](#); ⁵⁵

6. The requirement that a driver submit to drug and alcohol tests administered in accordance with Part 382;
7. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences;
8. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation, and treatment;
9. The consequences for drivers who do not hold a school bus driver permit found to have an alcohol concentration of 0.02 or greater but less than 0.04;
10. The consequences for drivers who hold a school bus driver permit found to have an alcohol concentration over 0.00; ⁵⁶
11. The effects of drugs and alcohol on an individual's health, work, and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a coworker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management; and
12. Other legal requirements, District policies, and disciplinary consequences related to the use of alcohol and drugs. ⁵⁷

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. ⁵⁸

Before any driver operates a commercial motor vehicle, the District shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. ⁵⁹

Before drug and alcohol tests are performed, pursuant to 49 C.F.R. §382, the District shall inform drivers that the tests are required by these regulations. ⁶⁰

The footnotes should be retained.

⁵⁵ 49 C.F.R. §40 specifies detailed testing procedures that must be used to ensure accuracy, reliability, and confidentiality. These procedures include training and proficiency requirements and requirements for a suitable test location. Firms with which the district contracts for collection and laboratory services can be expected to provide information about the procedures they use; these procedures should be distributed to employees and included in the district's regulation.

⁵⁶ While there is no requirement to notify the district and provide information to School Bus Driver Permit holders specifically addressing the legal requirements applicable to them under Illinois law. The district should also inform School Bus Driver Permit holders of the disciplinary consequences for violating any Illinois drug and alcohol laws specifically pertaining to school bus permit holders.

⁵⁷ Pursuant to 49 C.F.R. §382.601(b)(11), materials supplied to drivers may also include information about other policies and disciplinary consequences based on the district's authority independent of 49 C.F.R. §382 and described as such.

⁵⁸ 49 C.F.R. §382.601(d).

⁵⁹ 49 C.F.R. §382.303(f).

⁶⁰ 49 C.F.R. §382.113. 49 C.F.R. §382.113 also states that employers shall not falsely represent that a test was administered under 49 C.F.R. §382.

The District shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her employment application. **61**

The District shall notify a driver of the results of random, reasonable suspicion, and post-accident drug tests if the test results are verified positive. The District shall also tell the driver which controlled substance(s) were verified as positive. **62**

The footnotes should be retained.

61 49 C.F.R. §382.411.

62 49 C.F.R. §382.411.