

## **M.S.A.D. #12 PROCEDURE DRUG AND ALCOHOL TESTING OF SCHOOL BUS DRIVERS**

### **ADMINISTRATIVE PROCEDURE**

The M.S.A.D. #12 School Board, hereinafter referred to as the "Board," is committed to the establishment of an alcohol and controlled substance testing program that meets all applicable requirements of the federal Omnibus Transportation Employee Testing Act of 1991, in addition to pertinent state laws and regulations. The purpose of the testing program shall be to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers performing safety-sensitive functions.

The following administrative procedure represents a summary of the main provisions found in federal regulations promulgated to effectuate drug and alcohol testing of bus drivers. The following procedure in no way attempts to modify said regulations, which should always be referred to when questions as to implementation of this policy/procedure arise. ||

- | | I. | APPLICABILITY |  
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| | | All persons operating a commercial motor vehicle in commerce in any state and |  
| | | subject to the commercial driver's license requirements mandated under both |  
| | | federal and state laws, including the Omnibus Transportation Employee Testing |  
| | | Act of 1991, shall be subject to the drug and alcohol testing provisions |  
| | | herein contained. |
- | | II. | IMPLEMENTATION |  
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| | | The Superintendent shall be responsible for implementing a drug and alcohol |  
| | | testing program which complies with procedures set forth in Title 49 Parts |  
| | | 40, 382, 390 and 395 of the Federal Code of Regulations. Such testing program |  
| | | shall include pre-employment/pre-duty drug testing, post-accident testing, |  
| | | random testing, reasonable suspicion testing, return-to-duty and follow-up |  
| | | testing. This school unit shall provide parties subject to testing with |  
| | | written notice of materials and information available to them as required by |  
| | | Part 382. Bid specifications and contracts for transportation shall require |  
| | | that the contractor establish a drug and alcohol testing program which |  
| | | complies with federal regulations and that is acceptable to the Board. |
- | | III. | CONTROLLED SUBSTANCES |  
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| | | Controlled substances in this policy/procedure refer to those covered by the |  
| | | Omnibus Transportation Employee Testing Act of 1991, including marijuana, |  
| | | cocaine, opiates, amphetamines, and phencyclidine (PCP). |
- | | IV. | SAFETY-SENSITIVE FUNCTION |  
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| | | Safety-sensitive function(s) in this policy/procedure refer to functions |  
| | | defined in 49 CFR §382.107 and §395.2 (On-Duty Time, paragraphs (1) through |  
| | | (6)). |

| |V. |PROHIBITIONS

| | |All drivers subject to this policy shall be prohibited from:

- | |A.|Using any alcohol while on duty and four (4) hours prior to going on duty;
- | |B.|Possessing alcohol while on duty;
- | |C.|Reporting for duty or remaining on duty while having an alcohol |  
| |concentration of 0.02 or greater;
- | |D.|Using any alcohol for eight (8) hours following an accident, or until |  
| |he/she undergoes a post-accident alcohol test, whichever occurs first;
- | |E.|Refusing to submit to a required alcohol or controlled substance test(s);
- | |F.|Reporting for duty or remaining on duty when using any controlled |  
| |substance, except when use is pursuant to the instructions of a physician |  
| |who advised the driver that the substance does not adversely affect the |  
| |driver's ability to safely operate the vehicle; and
- | |G.|Reporting for duty, remaining on duty, or performing a safety-sensitive |  
| |function, if the driver tests positive for a controlled substance.

| |V|REQUIRED TESTING

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	a	Pre-employment Testing. Prior to the first time a driver performs a
	s	safety-sensitive function for the school unit, the driver shall undergo
	s	testing for controlled substances. However, no driver shall be subjected
	to pre-employment controlled substance testing prior to having been	
	offered a position. Employment is conditioned upon a verified negative	
	controlled substance test result.	

| |B|B. Post-Accident Testing. As soon as practicable following an accident, |  
| |each surviving driver will be subject to alcohol and controlled substance |  
| |testing as follows:

- | |1. |Any driver performing safety-sensitive functions with respect |  
| |to the vehicle if the accident involved loss of human life, |  
| |and:
  - | |2. |Any driver who receives a citation under State or local law for |  
| |a moving violation arising from the accident; and | |
| |a|Causes bodily injury to a person who, as a result of the injury, |  
| |.|immediately receives medical treatment away from the scene of the |  
| |accident; or |  
| |Should one or more motor vehicles incurring disabling damage as a |  
| |result of the accident, require a motor vehicle to be transported |  
| |away from the scene by a tow truck or other motor vehicle.
- | |b|
- | |.|

| |3|In addition, the following provisions will also |

| |.|apply:

	a	Alcohol. If a test required under this section is not
	.	administered within two (2)
	hours following the accident, the school unit shall prepare and	
	maintain on	
	file a record stating the reasons the test was not promptly	
	administered. If a test is not administered within eight (8)	
	hours following the accident, the school unit shall	
	cease attempts to administer the test and shall prepare and	

| maintain the same  
| record. Records shall be submitted to the Federal Highway  
| Administration  
| (FHWA) upon request of the Associate Administrator.  
| Controlled Substances. If a test required by this section is not  
| administered within thirty-two (32) hours following the accident,  
| the school unit shall cease attempts to administer the test and  
| shall prepare and maintain on file a record stating the reasons the  
| test was not promptly administered. Records shall be submitted to  
| the FHWA upon request of the Associate Administrator.

| C| Random Testing. All drivers subject to this policy/procedure will  
| be subject to random and unannounced alcohol and controlled  
| substance testing throughout the year. The minimum annual  
| percentage rate for testing of bus drivers is as follows:

- | 1| a. Random alcohol testing shall be a minimum of 10  
| percent of the number of driver positions each  
| selection period; and
- | 2| b. Random controlled substance testing shall be a  
| minimum of 50 percent of the number of driver positions  
| each selection period.

| If the school unit conducts random testing for alcohol  
| and/or controlled substances through a consortium, the  
| number of drivers to be tested may be calculated for  
| each individual school unit or may be based on the  
| total number of drivers covered by the consortium who  
| are subject to random testing at the same minimum  
| annual percentage rate under 49 CFR Part 382 or any  
| Department of Transportation random testing rule.

| D| Reasonable Suspicion Testing. All drivers subject to this  
| policy/procedure shall submit to alcohol and controlled  
| substance testing when the employer has reasonable suspicion to  
| believe that the driver has violated the prohibitions found in  
| Part V. of this procedure, with the exception of Part V. B.  
| regarding alcohol possession. The school unit shall base its  
| determination that reasonable suspicion exists requiring the  
| driver to undergo such testing on observations concerning  
| appearance, behavior, speech or body odors of the driver. When  
| controlled substances are at issue, observations may include  
| indications of the chronic and withdrawal effects of controlled  
| substances.

| In addition, the following provisions also apply:

- | 1| Alcohol. Alcohol testing will be performed only if the  
| aforementioned observations 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/procedure. If a  
| test required under this section is not administered within two  
| (2) hours following the reasonable suspicion determination, the  
| school unit shall prepare and maintain on file a record stating  
| the reasons the test was not promptly administered. If a test  
| required under this section is not administered within eight (8)

	hours following a determination that reasonable suspicion	
	exists, the school unit shall cease attempts to administer an	
	alcohol test and shall state in the record reasons for not	
	administering the test. The school unit shall submit to the FHWA	
	records of tests required by this section that were not	
	completed within eight (8) hours according to the mandates of 49	
	CFR §382.307 (3).	
	2	Controlled Substances. The school unit shall, within twenty-four
	.(24) hours or before the results of the controlled substances	
	test are released, whichever is earlier, create a written record	
	of the observations leading to a controlled substances test	
	which shall be signed by the supervisor or school unit official	
	making said observations.	

	C.	Return-to-Duty Testing. Prior to returning to duty requiring the
	performance of safety-sensitive functions when a driver has engaged	
	in conduct prohibited under this policy/procedure, the driver shall	
	undergo a return-to-duty alcohol and/or controlled substances	
	test(s) as appropriate.	

	Drivers found to have engaged in prohibited conduct under the
	alcohol provisions of this policy/procedure will not be permitted to
	return to duty unless the subsequent alcohol test reveals a result
	less than or consistent with federal and state standards. In cases
	involving controlled substances, a verified negative result is
	necessary before a driver may return to duty.

	D.	Follow-up Testing. In the event that a driver has been found to have
	been in violation of the prohibitions herein contained and is	
	identified as requiring assistance in resolving problems associated	
	with alcohol and/or controlled substances, the school unit shall	
	require the driver to submit to at least six (6) unannounced	
	follow-up alcohol and/or controlled substances tests during the	
	first twelve (12) months after returning to duty. Follow-up tests	
	will be unannounced and may continue for up to sixty (60) months	
	after returning to duty. Follow-up alcohol testing shall be	
	conducted only when the driver is performing, just before, or just	
	after ceasing to perform safety-sensitive functions.	

| |VVII|REFUSAL TO SUBMIT TO TESTING |

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	All drivers who are required by federal regulations to submit to
	drug/alcohol testing must do so immediately upon being directed to submit
	to the test(s). A driver's refusal to submit to testing will subject the
	driver to immediate removal from the performance of safety-sensitive
	functions. In addition, failure to comply with Federal regulations or
	this procedure is grounds for disciplinary action up to and including
	dismissal. Any of the following actions on the part of a driver
	constitutes a refusal to submit to a test:

- | |A. |Failure to provide adequate specimens/samples of substance(s) undergoing |  
| |testing, including but not limited to breath and urine, without a valid |  
| |medical reason;
- | |B. |Engaging in conduct which obstructs the testing process; and |

| C. |Refusal by an employee to complete and sign testing forms. |

| VIII | TRAINING FOR SUPERVISORS |

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	This school unit will assign persons who will be designated to determine
	whether reasonable suspicion exists to require a driver to undergo
	testing under Part 382, with at least sixty (60) minutes of training on
	alcohol misuse and receive at least an additional sixty (60) minutes of
	training on controlled substances. Training shall cover the physical,
	behavioral, speech, and performance indicators of probable alcohol misuse
	and use of controlled substances.

| IX. | ENFORCEMENT |

	This school unit, in its independent authority as an employer, shall
	subject any driver who violates this policy/administrative procedure or
	Federal regulations to potential disciplinary action up to and including
	dismissal, except to the extent that any state law or collective
	bargaining agreement requires otherwise.

	In addition, any driver who refuses to submit to a post-accident, random,
	reasonable suspicion, return-to-duty or follow-up test(s) shall not
	perform or continue to perform safety-sensitive functions.

	Furthermore, no driver tested and found to have an alcohol concentration
	of 0.02 or greater but less than 0.04 shall 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 twenty-four (24) hours after the test was
	administered.

| X. | RECORDS |

	Employee drug and alcohol tests and results shall be maintained under
	strict confidentiality in a secure location with controlled access and
	released only in accordance with law. A driver, upon written request,
	shall receive copies of any records pertaining to his/her use of drugs or
	alcohol, including any records pertaining to his/her drug tests. Records
	shall be made available to subsequent employers or other identified
	persons only when expressly requested in writing by the driver.

| XI. | NOTIFICATIONS |

	Each driver shall receive educational materials prior to the school
	unit's commencement of alcohol and controlled substances testing. Such
	material will explain the requirements of the Code of Federal
	Regulations, Title 49 Part 382, and contain a copy of the Board's policy
	and administrative procedures for meeting these requirements.
	Representatives of employee organizations shall be notified of the
	availability of this information. The school unit shall also include in
	the package of informational material submitted to each driver, a
	statement certifying that he/she has received the informational material.
	The school unit shall maintain the original signed copy of the statement
	on file.

		In addition to the aforementioned items, the school unit shall also make
		available to drivers and representatives of employee organizations
		information which shall identify:

- | | |A|The person designated by the school unit to answer questions about the |  
| | |.|materials;
- | | |B|The procedures that will be used to test for the presence of alcohol |  
| | |.|and controlled substances; protect the driver and the integrity of the |  
| | |testing processes, safeguard the validity of the test results, and |  
| | |ensure that those results are attributed to the correct driver;
- | | |C|Information concerning the effects of alcohol and controlled substances |  
| | |.|on an individual's health, work, and personal life; signs and symptoms |  
| | |of an alcohol or a controlled substance(s) problem (the driver's or |  
| | |co-worker's); and available methods of intervening when an alcohol or |  
| | |controlled substances problem is suspected, including confrontation, |  
| | |referral to any employee assistance program and/or referral to |  
| | |management; and |

| |XXII|CONTROLLED SUBSTANCES |

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		Drivers shall inform their supervisors if at any time they are using a
		controlled substance which their physician has prescribed for therapeutic
		purposes. Such substance may be used in conjunction with duty only if the
		physician has advised the driver that it will not adversely affect
		his/her ability to safely operate a commercial motor vehicle.

| |XIII|REFERRAL, EVALUATION, AND TREATMENT |

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		A.	Referral. A driver who has engaged in conduct prohibited by this
		policy/procedure shall be advised by the school unit of resources	
		available to the driver in evaluating and resolving problems	
		associated with the misuse of alcohol and use of controlled	
		substances. The information the bus driver receives will include:	
		names, addresses, and telephone numbers of substance abuse	
		professionals, counseling and treatment programs, in addition to	
		information relating to his/her responsibility with regard to	
		payment of such services.	

		B.	Evaluation/Treatment. A driver who engages in such prohibited
		conduct shall be evaluated by a substance abuse professional who	
		shall determine what assistance or treatment, if any, the employee	
		needs in resolving controlled substance(s) use.	

| |XIV.|RETURN TO DUTY |

		If a school unit has not discharged a driver due to his/her engagement
		in prohibited conduct under this policy/procedure, the bus driver must,
		prior to returning to safety-sensitive duties:

- | | |A. |Undergo return-to-duty testing and obtain an alcohol concentration |  
| | |level of less than 0.02 and/or a verified negative test for |  
| | |controlled substances;
- | | |B. |Have been evaluated by a substance abuse professional; and |

| |C. |Have followed prescribed and/or recommended treatment. |

| |XV. |OTHER POLICIES/PROCEDURES |

		Nothing contained in this administrative procedure shall prevent the
		Board from establishing and enforcing independent policies/procedures
		relating to the possession, being under the influence of, distribution,
		sale or use of alcohol or controlled substances or any misconduct
		associated therewith and the penalties for violation of those
		policies/procedures, up to and including dismissal.

	Legal References:
	49 CFR Parts 40, 382, 390, 395
	Title 26 MRSA §§ 681(8)(B); 685(2); 689
	Adopted: September 10, 2002