

## **CHAPTER 8**

### **8.10 TRANSPORTATION EMPLOYEES ALCOHOL AND CONTROLLED SUBSTANCE POLICY (Approved 12/06/94)**

#### **8.10.1 Introduction**

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

#### **8.10.2 Purposes**

**8.10.2.1** The purposes of this Transportation Employee Alcohol and Controlled Substance Policy are as follows:

- (A) To establish and maintain a healthy and safe working environment for all of the employees of the Marshall County Board of Education;
- (B) To ensure the reputation of the Marshall County Board of Education and its employees as good, responsible citizens;
- (C) To reduce the possibility of accidental injury to persons or property;
- (D) To reduce absenteeism, tardiness, and indifferent job performance; and
- (E) To allow an affected employee the opportunity at no cost to the Marshall County Board of Education to overcome any addiction to, dependence upon, or problem relating to alcohol or controlled substances in accordance with the Marshall County Board of Education's Drug Free Workplace Policy.

### **8.10.3 Definitions**

**8.10.3.1** "Accident" means, except as provided in section 8.10.3.1 (B) of this policy, as follows:

(A) An occurrence involving a commercial motor vehicle operating on a public road that results in:

- (1) a fatality;
- (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

(B) The term "accident" does not include the following:

- (1) an occurrence involving only boarding and alighting from a stationary motor vehicle; or
- (2) an occurrence involving only the loading or unloading of cargo; or
- (3) an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 C.F.R. § 571.3) by a motor carrier where the motor carrier is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 C.F.R § 177.823.

**8.10.3.2** "Affected Employee" has the same meaning as the term "driver" as defined in 49 C.F.R. § 382.105, and includes any person employed by the Board who operates a commercial motor vehicle. For the purposes of pre-employment/pre-duty testing only, the term "affected employee" includes a person applying to the Board to drive a commercial motor vehicle.

**8.10.3.3** "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

**8.10.3.4** "Alcohol Concentration (or Content)" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters or breath as indicated by an evidential breath test.

- 8.10.3.5** "Alcohol Use" means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- 8.10.3.6** "Board" means the Marshall County Board of Education.
- 8.10.3.7** "Controlled Substance" has the meaning such term has under section 102(6) of the Controlled Substance Act (21 U.S.C. § 802(6)) and includes all substances listed on schedules I through V of 21 C.F.R. part 1308 and West Virginia Code §§ 60A-2-201 through -213, as they may be revised from time to time.
- 8.10.3.8** "Commercial Motor Vehicle" has the same meaning such term has under 49 C.F.R. § 382.107.
- 8.10.3.9** "DOT" means the Department of Transportation.
- 8.10.3.10** "Performing (a safety-sensitive function)" means an affected employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately able to perform any safety-sensitive function.
- 8.10.3.11** "Safety-sensitive function" has the same meaning such term has under 49 C.F.R. § 382.107 and includes time spent waiting to be dispatched, time spent inspecting equipment or otherwise inspecting, servicing or conditioning any commercial motor vehicle, all driving time, all time spent in or upon any commercial motor vehicle, all time spent loading or unloading a commercial motor vehicle or attending a vehicle being loaded or unloaded, and all time spent repairing, obtaining assistance or remaining in attendance upon a disabled vehicle.
- 8.10.3.12** "Substance abuse professional" or "SAP" means a licensed physician or a licensed or certified psychologist, social workers, employee assistance professional or addiction counselor with knowledge or and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

#### **8.10.4 Policy**

##### **8.10.4.1 Prohibitions Relating to Alcohol**

- (A) All affected employees are prohibited from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- (B) All affected employees are prohibited from being on duty or operating a commercial motor vehicle while the affected employee possesses alcohol, unless the alcohol is manifested and transported as part of a shipment.

- (C) All affected employees are prohibited from using alcohol while performing safety-sensitive functions.
- (D) All affected employees are prohibited from performing safety-sensitive functions within four hours after using alcohol.
- (E) All affected employees required to take a post-accident alcohol test pursuant to section 8.10.5.2 of this Policy are prohibited from using alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

#### **8.10.4.2 Prohibitions Relating to Controlled Substances**

- (A) All affected employees are prohibited from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions when the affected employee uses any controlled substance, except under the following circumstances:
  - (1) the use is pursuant to the instructions of a physician who has advised the affected employee that the controlled substance does not adversely affect the affected employee's ability to safely operate a commercial motor vehicle; and
  - (2) prior to therapeutic drug use, the affected employee must provide written verification from a physician to his/her immediate supervisor.
- (B) All affected employees are prohibited from reporting for duty, remaining on duty or performing a safety-sensitive function, if the affected employee tests positive for controlled substances.

**8.10.4.3** No affected employee shall refuse to submit to any alcohol or controlled substances test required by section 8.10.5.1 through 8.10.5.6 of this Policy. Affected employees who refuse to submit to such tests shall be prohibited from performing safety-sensitive functions, and shall be subject to section 8.10.4.4 of this Policy.

**8.10.4.4** Compliance with this Policy is a condition of employment with the Board. Any affected employee who violates any provision of this Policy or whose required alcohol or controlled substances test precludes them from meeting the requirements of this Policy shall be removed from the performance of safety-sensitive functions. In addition, the superintendent shall initiate proceedings to terminate the employment of any affected employee who violates any provision of this Policy or whose required alcohol or controlled substances test precludes him from meeting the requirements of this Policy.

#### **8.10.4.5 Other Alcohol-related Conduct**

- (A) Any affected employee tested under the provisions of section 8.10.5.1 through 8.10.5.6 of this Policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 is prohibited from performing or continuing to perform safety-sensitive functions for the Board until the start of the affected employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test.
- (B) Except as provided in section 8.10.4.5(A) of this Policy, the Board shall take no action under this Policy against an affected employee based solely on test results showing an alcohol concentration less than 0.04.

### **8.10.5 Required Alcohol and Controlled Substances Testing**

#### **8.10.5.1 Pre-employment Testing**

- (A) Prior to the first time an affected employee performs safety-sensitive functions, the affected employee shall be required to undergo testing for alcohol and controlled substances.
- (B) No affected employee shall be permitted to perform safety-sensitive functions unless the affected employee had been administered an alcohol test with a result indicating an alcohol concentration less than 0.04 and has received a controlled substance test result from the medical review officer indicating a verified negative test result.

#### **8.10.5.2 Post-accident Testing**

- (A) As soon as practicable following an accident involving a commercial motor vehicle, each surviving affected employee shall be tested for alcohol and controlled substances if such surviving affected employee:
  - (1) Was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
  - (2) Receives a citation under state or local law for a moving traffic violation arising from the accident.
- (B) If a post-accident alcohol test is not administered within two hours following the accident, the Board shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a post-accident alcohol test is not administered within eight hours following the accident, the Board shall cease

attempts to administer an alcohol test and shall prepare and maintain the same record.

- (C) If a post-accident controlled substance test is not administered within 32 hours following the accident, the Board shall cease attempts to administer a controlled substance test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered.
- (D) An affected employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the Board to have refused to submit to testing.
- (E) All affected employees are subject to and required to comply with the post-accident reporting procedures outlines in the State of West Virginia School Transportation Regulations.
- (F) The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances conducted by federal, state or local officials having independent authority for the test shall be considered to meet the requirements of this Policy regarding post-accident testing, provided that such tests conform to applicable federal, state or local requirements and that the results of the tests are obtained by the Board.

### **8.10.5.3 Random Testing**

- (A) Affected employees shall be tested for alcohol or controlled substances at various times on an unannounced, random basis.
- (B) Consistent with applicable federal regulations (49 C.F.R. § 382.305), the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of affected employee positions
- (C) Consistent with applicable federal regulations (49 C.F.R. § 382.305), the minimum annual percentage rate for random controlled substance testing shall be 50 percent of the average number of affected employee positions or such other percentage rate as is published by the DOT Federal Highway Administration in the Federal Register.
- (D) The selection of affected employees for random alcohol and controlled substances testing shall be made by a scientifically valid method established and maintained by the approved vendor responsible for testing.
- (E) An affected employee shall only be tested for alcohol while the affected employee is performing safety-sensitive functions, just

before the affected employee is to perform safety-sensitive functions, or just after the affected employee has ceased performing such functions.

#### **8.10.5.4 Reasonable Suspicion Testing**

- (A) Affected employees shall be required to submit to an alcohol test when the Board has reasonable suspicion to believe that the affected employee has violated the prohibitions of sections 8.10.4.1(A), 8.10.4.1(C), 8.10.4.1(D) and/or 8.10.4.1(E) set forth above.
- (B) Affected employees shall be required to submit to a controlled substances test when the Board has reasonable suspicion to believe that the affected employee has violated the prohibitions of sections 8.10.4.2(A) and/or 8.10.4.1(B) set forth above.
- (C) The Board's determination that reasonable suspicion exists to require the affected employee to undergo an alcohol or controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the affected employee. The observations include indications of the chronic and withdrawal effects of controlled substances.
- (D) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or Board official who is trained in accordance with section 8.10.8.1 of this Policy. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the affected employee.
- (E) Reasonable suspicion alcohol testing is authorized only if the observations required by section 8.10.5.4(C) are made during, just preceding, or just after the period of the work day that the affected employee is required to be in compliance with this Policy. An affected employee may be directed by the Board to undergo reasonable suspicion alcohol testing only while the affected employee is performing safety-sensitive functions, just before the affected employee is to perform safety-sensitive functions, or just after the affected employee has ceased performing such functions.
- (F) If a reasonable suspicion alcohol test is not administered within two hours following the observations required by section 8.10.5.4(C) of this Policy, the Board shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight hours following the observations required by section 8.10.5.4(C) of this Policy, the Board shall

cease attempt to administer an alcohol test and shall prepare and state in the record the reasons for not administering the test.

(G) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, all affected employees are prohibited from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while the affected employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the affected employee to perform or continue to perform safety-sensitive functions, until:

- (1) An alcohol test is administered and the affected employee's alcohol concentration measures less than 0.02; or
- (2) Twenty-four hours have elapsed following the determination under section 8.10.5.4(C) of this Policy that there is reasonable suspicion to believe that the affected employee has violated the prohibitions in this Policy concerning the use of alcohol.

(H) Except as otherwise provided by this Policy and/or by any independent authority, the Board shall take no action against an affected employee based solely on the affected employee's behavior and appearance, with respect to alcohol use in the absence of an alcohol test.

(I) A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or Board official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

#### **8.10.5.5 Return-to-duty Testing**

(A) Subject to section 8.10.4.4 of this Policy, before an affected employee returns to duty requiring the performance of safety-sensitive functions after engaging in conduct prohibited by section 8.10.4.1 of this Policy, the affected employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(B) Subject to section 8.10.4.4 of this Policy, before an affected employee returns to duty requiring the performance of safety-sensitive functions after engaging in conduct prohibited by section 8.10.4.2 of this Policy, the affected employee shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.



#### **8.10.5.6 Follow-up Testing**

(A) Following a determination under section 8.10.8.3 of this Policy that an affected employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the Board, subject to section 8.10.4.4 of this Policy, shall ensure that the affected employee is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional in accordance with section 8.10.8.4 of this Policy.

(B) Follow-up alcohol testing, if any, shall be conducted only when the affected employee is performing safety-sensitive functions, just before the affected employee is to perform safety-sensitive functions, or just after the affected employee has ceased performing safety-sensitive functions.

#### **8.10.6 Testing Procedures**

**8.10.6.1** All alcohol and controlled substances testing conducted pursuant to this policy shall comply with the procedures promulgated by DOT and set forth in 49 C.F.R. part 40, as they may be revised from time to time.

#### **8.10.6.2 Alcohol Testing Procedures**

(A) All alcohol testing conducted pursuant to this policy shall be conducted by a trained breath alcohol technician (BAT) who shall utilize only an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration.

(B) A BAT-qualified supervisor of an affected employee may conduct the alcohol test for that affected employee only if another BAT is unavailable to perform the test in a timely manner.

(C) Alcohol testing shall be conducted in a location that affords visual and aural privacy to the affected employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

(D) The breath alcohol testing form promulgated by DOT shall be used for all alcohol testing without modification.

(E) Blood alcohol testing shall be conducted only under such circumstances as may be permitted under future DOT regulations.

### **8.10.6.3 Controlled Substances Testing**

- (A) Controlled substances testing shall be conducted by way of the split sample method of urine collection. After the affected employee being tested has provided a urine sample of at least 45 ml, the sample must be split into two specimen bottles to be shipped in a single shipping container, together with the chain of custody form, to a DHHS-certified laboratory for analysis.
- (B) The Board and the certified laboratory shall develop and maintain clear and well-documented procedure for collection, shipment and accessing of urine specimens, including an appropriate chain of custody form. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures.
- (C) It is recognized that the Board has the right to request that the personnel administering urine collection to take such steps as are necessary to detect tampering or substitution while maintaining individual privacy. If it is established that an affected employee's specimen has been intentionally tampered with or substituted by the affected employee or someone on his behalf, the affected employee will be subject to discharge.
- (D) The result of the certified laboratory analysis is reviewed by a medical review officer (MRO), who is a licensed physician responsible for receiving laboratory results generated by this Policy and who has knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and other relevant biomedical information.
- (E) If the test result of the primary specimen is positive, the affected employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the affected employee having been notified of a verified positive test result. Action required by this Policy as the result of a positive drug test (e.g., removal from performing safety-sensitive functions) is not stayed pending the result of the test of the split specimen. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) found in the primary specimen, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the Board and the affected employee.

### **8.10.7 Handling of Test Results, Record Retention and Confidentiality**

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

**8.10.7.2 Record Retention**

(A) The following records shall be maintained for a minimum of five years:

- (1) Records of affected employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater;
- (2) Records of affected employee verified positive controlled substances test results;
- (3) Documentation of refusals to take required alcohol and/or controlled substances tests;
- (4) Calibration documentation;
- (5) Affected employee evaluation and referrals; and
- (6) A copy of each annual calendar year summary.

(B) Records related to the alcohol and controlled substances collection process and training shall be maintained for a minimum of two years.

(C) Records of negative and cancelled controlled substances test results and alcohol test results with a concentration of less than 0.02 shall be maintained for minimum of one year.

**8.10.7.3** The Board shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs performed pursuant to this Policy and in accordance with 49 C.F.R. § 382.403.

**8.10.7.4** Except as required by law or this Policy, the Board shall not release affected employee information that is contained in records required to be maintained under section 8.10.7.2 of this Policy. An affected employee is entitled, upon written request, to obtain copies of any records pertaining to the affected employee's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests.

**8.10.7.5** The Board must obtain, pursuant to an affected employee's written consent, any of the information concerning the affected employee that is maintained under an alcohol and controlled substances testing policy by the affected employee's previous employers.

Such information must be obtained and reviewed by the Board no later than 14 calendar days after the first time an affected employee performs safety-sensitive functions. The release of any information under this part may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. The Board shall maintain a written, confidential record with respect to each past employer contacted.

### **8.10.8 Training, Referral and Return to Duty**

**8.10.8.1** The Board shall ensure that persons designated to determine whether reasonable suspicion exists to require an affected employee to undergo testing pursuant to section 8.10.5.4 of this Policy shall receive at least 60 minutes of training on alcohol misuse and receive an additional 60 minutes of training on controlled substance use. The training shall cover the physical, behavioral, speech, and performance indicators of probably alcohol misuse and use of controlled substances.

**8.10.8.2** Any affected employee who has engaged in conduct prohibited by sections 8.10.4.1 through 8.10.4.3 of this Policy shall be provided information regarding the Board's Drug Free Workplace Policy.

**8.10.8.3** Any affected employee who has engaged in conduct prohibited by sections 8.10.4.1 through 8.10.4.3 of this Policy shall be evaluated at the affected employee's expense by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use.

**8.10.8.4 Returning to Duty**

(A) Subject to section 8.10.4.4 of this Policy, before an affected employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by sections 8.10.4.1 through 8.10.4.3 of this Policy, the affected employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved controlled substances.

(B) In addition, subject to section 8.10.4.4 of this Policy, each affected employee identified as needing assistance in resolving problems with alcohol misuse or controlled substances use shall be evaluated by a SAP to determine that the affected employee has properly followed any rehabilitation program prescribed under section 8.10.8.3 of this Policy and shall be subject to unannounced follow-up alcohol and controlled substances tests following the affected employee's return to duty.

(C) Any cost associated with follow-up or return-to-duty testing as required by law shall be the responsibility of the affected employee.