

GBEC-AR Drug-Free Workplace



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Drug-Free Workplace

A copy of this administrative regulation is available at each building/office site and school media center upon request.

1. Definitions

- a. **Controlled substance:** A controlled substance shall include any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or other controlled substance.
- b. **Alcohol:** Alcohol shall include any form of alcohol for consumption, including beer, wine, wine coolers or liquor.
- c. **Conviction:** A finding of guilt (including a plea of no contest) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- d. **Criminal drug statute:** A federal or state criminal statute involving the manufacture, distribution, dispensation, possession or use of any controlled substance or alcohol.
- e. **Drug-free workplace:** A site for the performance of work at which employees are prohibited from engaging in the manufacture, distribution, dispensation, possession or use of a controlled substance or alcohol.

2. Purpose

The purpose of this administrative regulation is to promote safety, health and efficiency by prohibiting, in the workplace, the manufacture, distribution, dispensation, possession or use of a controlled substance or alcohol.

3. Applicability

This administrative regulation applies to all classified, licensed, administrative and confidential employees, as well as, those exempt, unclassified, management service, classified and temporary employees who are paid directly or indirectly from funds received under a federal grant or contract.

4. Prohibitions

An employee shall not use, manufacture, dispense, distribute, process, or possess a controlled substance or alcohol in the workplace.

5. Compliance with Policy¹

An employee shall, as a condition of employment, abide by the provisions of this regulation.

6. Sanctions and Remedies¹

- a. The district, upon determining that an employee has engaged in the manufacture, distribution, dispensation, use or possession of a controlled substance or alcohol or upon having reasonable suspicion, under Section VII. of this regulation, of employee use of a controlled substance or alcohol in the workplace, shall take action with regard to the employee as is determined to be appropriate. This action may include transfer, granting of leave with or without pay, suspension from duty with or without pay, or dismissal.
- b. Within 30 days of an employee's criminal drug statute conviction for a violation occurring in the workplace, the district shall:

(1) Take action with regard to the employee determined to be appropriate, which may include discipline up to and including dismissal; and/or

(2) Require satisfactory participation by the employee in a drug abuse assistance or rehabilitation program approved for such purpose by a federal, state or local health/law enforcement or other appropriate agency.

7. Basis for Reasonable Suspicion of Employee Use of Controlled Substance or Alcohol Reasonable suspicion of employee use of a controlled substance or alcohol shall be based upon any of the following:

- a. Observed abnormal behavior or impairment in mental or physical performance (such as slurred speech or difficulty walking);
- b. Direct observation of use in the workplace;
- c. A work-related accident in conjunction with a basis for reasonable suspicion as referenced above;
- d. The opinion of a medical professional.

8. Reasonable Suspicion Testing

The district shall conduct reasonable suspicion drug and alcohol testing as follows:

- a. The district will test employees when there is reasonable suspicion to believe that the employee has engaged in drug use or alcohol use in the workplace;
- b. Reasonable suspicion will be based on specific contemporaneous, articulatable observations made by a trained supervisor, concerning appearance, behavior, speech or body odors indicative of drug or alcohol use. Observations of drug use may include indications of chronic and withdrawal effects and noticeable degradation of job performance that may be associated with the misuse of drugs;
- c. A written record shall be made of the observations leading to a reasonable suspicion drug or alcohol test and signed by the administrator/supervisor authorized to make such observations within 24 hours of the observed behaviors or before the results of the test are released, whichever is earlier;
- d. The district will ensure that the employee under reasonable suspicion is transported to a certified collection or testing site;
- e. Hearsay or secondhand information is not sufficient to require an employee to submit to testing;
- f. Alcohol testing may be authorized only if observations resulting in reasonable suspicion are made during, just preceding, or just after, the period of the workday that the employee is required to be in compliance with this policy and administrative regulation.

If alcohol testing is not administered within two hours of incident, the district will prepare and maintain a record stating the reason(s) the test was not promptly administered.

If alcohol testing is not administered within eight hours of incident, the district will cease attempts to administer test and prepare and maintain a record stating the reason(s) the test was not promptly administered.

g. Refusal to submit to alcohol testing (breathalyzer) or drug testing (urinalysis), based on reasonable suspicion, may result in a determination by the district that the employee was under the influence of drugs/alcohol and may result in disciplinary action, up to dismissal.

1Districts directly receiving grants of contracts of \$100,000 or more from the federal government are required to meet this obligation.

9. Referrals, Evaluations and Treatment

The district shall provide information related to referrals, evaluations and treatment as follows:

- a. Covered employees who violate the drug and alcohol prohibitions will be advised of referral services available for evaluating and resolving problems associated with the use of drugs and misuse

of alcohol. Such information will include the names, addresses and telephone numbers of substance abuse professionals (SAP) and counseling and treatment programs;

b. SAPs, as referenced, are defined as:

(1) Licensed physicians with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders;

(2) Licensed or certified psychologists, social workers or employee assistance professionals with like knowledge; and

(3) Alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC). This does not include state-certified counselors.

c. An employee who engages in such prohibited conduct shall be evaluated by a SAP;

d. The SAP will determine what assistance, if any, the employee needs in resolving problems associated with use/misuse of drugs/alcohol;

e. This requirement shall not be interpreted to require the district to provide or pay for any rehabilitation costs, to hold a job open for an employee with or without salary, or to refrain from disciplining or dismissing the employee.

10. Drug and Alcohol Testing Procedures

The district, in cooperation with contracted collection/testing facilities, shall maintain drug and alcohol testing procedures as follows:

a. Drugs:

(1) The employee reports to the designated collection site and provides positive identification;

(2) Employee will provide a urine sample; a "split sample" (a second urine specimen bottle) is collected;

(3) Following completion of a chain of custody form, both specimen bottles are forwarded to the Department of Health and Human Services (DHHS) certified laboratory for analysis. Initial testing is performed only on one specimen bottle; the "split sample" is stored at the laboratory for later testing as may be necessary;

(4) Testing results are reported to the district's designated medical review officer (MRO) by mail or electronic transmission. Results may not be given over the phone;

(5) The MRO will verify both negative and positive testing results;

(6) The MRO will report the verified negative testing results to the district;

(7) The MRO will report verified positive results to the applicant/employee, and discuss the type of illegal substance found and determine whether there is any valid medical reason for the positive testing results;

(8) A verified valid medical reason for a positive result will be reported to the district as a negative testing result;

(9) If no legitimate medical reason exists for a positive drug test, the MRO will report verified positive test result and identity of the substance(s) to the district;

(10) The employee/applicant may request, within 72 hours of a positive test notice, that the second specimen sample be tested. Such retesting costs will be paid for by the applicant/employee;

(11) Unlike the original specimen analyzed for specific levels of controlled substances, the second (split sample) is analyzed only for the presence of drugs;

(12) The MRO will report results of the second screening to the applicant/employee and the district;

(13) The MRO will review the chain-of-custody control form, administrative processing of negative results, verification of positive results and maintenance of confidentiality requirements as may be applicable.

b. Alcohol:

(1) The employee reports to the district-designated testing site and provides positive identification;

(2) The employee submits to breath testing;

(3) Under the alcohol testing rule, an alcohol test result will be considered positive even if over-the-counter or legally prescribed medication is involved;

(4) A certified breath alcohol technician using evidential breath testing devices or a trained saliva-testing technician using nonevidential devices will conduct all alcohol screening tests;

(5) Testing may be conducted at a DHHS-certified laboratory or other location, including mobile facilities equipped for such testing;

(6) District supervisors/administrators should generally not be used as a breath alcohol technician for covered employees. Under certain circumstances, a properly trained/certified supervisor may conduct such testing in the absence of another technician;

(7) If the results of the testing indicates an alcohol concentration rate of 0.02 or greater, a second confirmation breath test is administered at least 15 minutes, but no longer than 30 minutes, after the initial testing;

(8) The breath alcohol technician will report to the district any invalid tests in which the initial positive test and the confirmation test do not match;

(9) An employee's refusal to sign forms as required shall be considered as refusal to be tested;

(10) The breath alcohol or saliva testing technician will meet all legal requirements including Breath Alcohol Testing form and confidentiality.

11. Record Keeping/Reporting

The district shall maintain records of its drug use and alcohol misuse prevention program as required by 49 CFR 382.401, including, but not limited to:

a. Collection

(1) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol testing;

(2) Documents verifying the existence of an explanation of the inability of an employee to provide adequate breath or urine specimen for testing.

b. Test Results

(1) Copy of the alcohol test form and test results;

(2) Copy of the controlled substance test chain-of-custody and control form;

(3) Documents received from MRO;

(4) Documents related to the refusal of any applicant/employee to submit to drug and/or alcohol testing;

(5) Documents presented by employee to dispute the results of a drug and/or alcohol test.

c. Evaluation/Recommendations

(1) Records pertaining to a determination by a SAP concerning an employee's need for assistance;

(2) Records concerning an employee's compliance with recommendations of the SAP.

d. Education/Training

(1) Documentation of training provided to supervisors/designees for the purpose of qualifying individuals to make a determination concerning the need for drug and/or alcohol testing based on reasonable suspicion.

e. Test Sites

(1) Copies of agreements/contracts with collection site facilities, laboratories, MRO or consortia, as applicable.

f. Record Retention

(1) The district will retain the following records for a period of five years:

- (a) Records of employee alcohol testing results with results indicating an alcohol concentration of 0.02 or greater;
- (b) Records of verified positive drug testing results;
- (c) Documentation of refusal to take required drug and/or alcohol tests;
- (d) Drug testing custody and control forms;
- (e) Employee evaluations and referrals.

(2) The district will retain the following records for a period of two years:

- (a) Records related to the drug and alcohol collection process.

(3) The district will retain records of negative and cancelled drug-testing results and alcohol test results with a concentration of less than 0.02 for a period of one year.

(4) Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors and drivers shall be maintained by the district while the individual performs the functions which require training and for two years after ceasing to perform those functions.

g. Confidentiality of Records

Drug and alcohol misuse prevention program records will be maintained at the district office. Records relating to individual applicant/employee drug and/or alcohol testing, evaluation and treatment will be maintained separately from the employee's personnel file.

- (1) Records will be maintained in a secure location and confidentiality will be maintained.
- (2) Employees are entitled, upon written request, to obtain copies.
- (3) The district may disclose information in connection with employee benefit proceedings or in defense of any grievance or dismissal challenge.
- (4) The district shall disclose such information to subsequent employers upon written request from the employee (in accordance with 49 CFR 382.413 (a)(1)).

12. Leave of Absence for Participation in Abuse Assistance or Rehabilitation Program

Upon employee request, the district may grant leave with or without pay to permit an employee to participate in a substance abuse assistance or rehabilitation program. An employee having a substance abuse problem is encouraged to seek assistance.

13. Establishment of Drug-Free Awareness Program

a. The district shall establish a drug-free awareness program to inform employees of the dangers of substance abuse in the workplace;

- b. Existence of and content of this administrative regulation for maintaining a drug-free workplace;
- c. Availability of substance abuse counseling and rehabilitation; and
- d. Penalties that may be imposed for substance abuse violations occurring in the workplace.

14. Notification by Employee of Conviction¹

An employee shall, as a condition of employment, notify the district of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

15. Notification by District of Employee Conviction

The district shall notify the appropriate federal granting or contracting agency of an employee's criminal drug statute conviction for a violation occurring in the workplace no later than 10 days after receiving notice of such conviction.

Notice to Employees Engaged in Work on Federal Grants or Contracts of \$100,000 or More

You are hereby notified while in the workplace that it is a violation of Board policy GBEC - Drug-Free Workplace and accompanying administrative regulation, for any employee to unlawfully manufacture, distribute, dispense, possess or use any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or any other controlled substance, as defined in schedule I through V of the Controlled Substances Act (21 USC Section 812) and as further defined by regulation 21 CFR 1308.11 through 1308.15.

"Workplace is defined as the site for the performance of work done in connection with a federal grant. That includes any place where work on a school district federal grant is performed, including school building or other school premises; any school-owned vehicle or any other school-approved vehicle used to transport students to and from school or school activities; off school property during any school-sponsored or school-approved activity, event or function, such as a field trip or athletic event, where students are under the jurisdiction of the school district.

You are further notified that it is a condition of your continued employment in connection with any direct federal grant or contract of \$100,000 or more that you will comply with this administrative regulation and will notify your supervisor of your conviction of any criminal drug statute based on conduct occurring in the workplace, no later than five days after such conviction.

Any employee who violates the terms of the district's drug-free workplace policy may have his/her employment suspended, his/her contract non-renewed or be dismissed at the discretion of the Board.