

## 4.0 School Services (4.0) Drug Testing Policy

### DRUG AND ALCOHOL TESTING

#### I. PURPOSE

- A. 4.0 School Services recognizes the significant problems created by drug and alcohol use in society in general, and school bus drivers in particular. 4.0 School Services further recognizes the important contribution that schools and the experiences of the students on the school bus have in shaping the youth of today into the adults of tomorrow.
- B. 4.0 School Services believes that a work environment free of drug and alcohol use is safer, healthier, and more productive. Therefore, to provide such an environment, the purpose of this policy is to provide authority so that 4.0 School Services may require all employees and/or job applicants to submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in federal law and Minn. Stat. §§ 181.950-181.957.

#### II. GENERAL STATEMENT OF POLICY

- A. All 4.0 employees and job applicants whose positions require a commercial driver's license will be required to undergo drug and alcohol testing in accordance with federal law and the applicable provisions of this policy. 4.0 School Services also may request or require that drivers submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- B. 4.0 School Services may request or require that any company employee or job applicant, other than an employee or applicant whose position requires a commercial driver's license, submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- C. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed, including medical cannabis, regardless of whether it has been prescribed for the employee, is prohibited on 4.0 School Services property (which includes 4.0 School Services vehicles), and while operating 4.0 School Services vehicles or equipment. Use of drugs which are not medically prescribed, including medical cannabis, regardless of whether it has been prescribed for the employee, is also prohibited throughout the work day, including lunch or other breaks, whether or not the employee is on or off company property. Employees under the influence of drugs which are not medically prescribed are prohibited from entering or remaining on company property.
- D. The use, possession, sale, purchase, transfer, or dispensing of alcohol is prohibited

on school district property, 4.0 vehicles and property, and while operating company vehicles or equipment. Use of alcohol is also prohibited throughout the work day, including lunch or other breaks, whether or not the employee is on or off company or school property. Employees under the influence of alcohol are prohibited from entering or remaining on school district property and 4.0 property.

- E. Any employee who violates this section shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge.

### **III. FEDERALLY MANDATED DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS**

#### **A. General Statement of Policy**

All persons subject to commercial driver's license requirements shall be tested for alcohol, marijuana (including medical cannabis), cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP), pursuant to federal law. Drivers who test positive for alcohol or drugs shall be subject to disciplinary action, which may include termination of employment.

#### **B. Definitions**

1. "Actual Knowledge" means actual knowledge by 4.0 that a driver has used alcohol or controlled substances based on: (a) direct observation of the employee's use (not observation of behavior sufficient to warrant reasonable suspicion testing); (b) information provided by a previous employer; (c) a traffic citation; or (d) an employee's admission, except when made in connection with a qualified employee self-admission program.
2. "Alcohol Screening Device" (ASD) means a breath or saliva device, other than an Evidential Breath Testing Device (EBT), that is approved by the National Highway Traffic Safety Administration and placed on its Conforming Products List for such devices.
3. "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and who operates the EBT.
4. "Commercial Motor Vehicle" (CMV) includes a vehicle which is designed to transport 16 or more passengers, including the driver.
5. "Designated Employer Representative" (DER) means a designated 4.0 School Services representative authorized to take immediate action to remove employees from safety-sensitive duties, to make required decisions in the testing and evaluation process, and to receive test results and other communications for 4.0 School Services.

6. "Department of Transportation" (DOT) means United States Department of Transportation.
7. "Driver" is any person who operates a CMV, including full-time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers, and independent owner-operator contractors. "Driver" also includes any person who is a Type III driver.
8. "Evidential Breath Testing Device" (EBT) means a device approved by the National Highway Traffic Safety Administration for the evidentiary testing of breath for alcohol concentration and placed on its Conforming Products List for such devices.
9. "Medical Review Officer" (MRO) means a licensed physician responsible for receiving and reviewing laboratory results generated by the 4.0's drug testing program and for evaluating medical explanations for certain drug tests.
10. "Refusal to Submit" (to an alcohol or controlled substances test) means that a driver: (a) fails to appear for any test within a reasonable time, as determined by 4.0 School Services, consistent with applicable DOT regulations, after being directed to do so; (b) fails to remain at the testing site until the testing process is complete; (c) fails to provide a urine specimen or an adequate amount of saliva or breath for any DOT drug or alcohol test; (d) fails to permit the observation or monitoring of the driver's provision of a specimen in the case of a directly observed or monitored collection in a drug test; (e) fails to provide a sufficient breath specimen or sufficient amount of urine when directed and a determination has been made that no adequate medical explanation for the failure exists; (f) fails or declines to take an additional test as directed; (g) fails to undergo a medical examination or evaluation, as directed by the MRO or the DER; (h) fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector, fails to sign the certification on the forms); (i) fails to follow the observer's instructions, in an observed collection, to raise the driver's clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the driver has any type of prosthetic or other device that could be used to interfere with the collection process; (j) possesses or wears a prosthetic or other device that could be used to interfere with the collection process; (k) admits to the collector or MRO that the driver adulterated or substituted the specimen; or (l) is reported by the MRO as having a verified adulterated or substituted test result. An applicant who fails to appear for a pre-employment test, who leaves the testing site before the pre-employment testing process commences, or who does not provide a urine specimen because he or she has left before it commences is not deemed to have refused to submit to testing.

11. "Safety-sensitive functions" are on-duty functions from the time the driver begins work or is required to be in readiness to work until relieved from work, and include such functions as driving, loading and unloading vehicles, or supervising or assisting in the loading or unloading of vehicles, servicing, repairing, obtaining assistance to repair, or remaining in attendance during the repair of a disabled vehicle.
12. "Screening Test Technician" (STT) means anyone who instructs and assists individuals in the alcohol testing process and operates an ASD.
13. "Stand Down" means to temporarily remove an employee from performing safety-sensitive functions after a laboratory reports a confirmed positive, an adulterated, or a substituted test result but before the MRO completes the verification process.
14. "Substance Abuse Professional" (SAP) means a qualified person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

C. Policy and Educational Materials

1. 4.0 School Services shall provide a copy of this policy and procedures to each driver prior to the start of its alcohol and drug testing program and to each driver subsequently hired or transferred into a position requiring driving of a CMV and a Type III vehicle.
2. 4.0 School Services shall provide to each driver information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.
3. 4.0 School Services shall provide written notice to representatives of employee organizations that the information described above is available.
4. 4.0 School Services shall require each driver to sign a statement certifying that he or she has received a copy of the policy and materials. 4.0 will maintain the original signed certificate and will provide a copy to the driver if the driver so requests.

D. Alcohol and Controlled Substances Testing Program Manager

1. The program manager will coordinate the implementation, direction, and administration of the alcohol and controlled substances testing policy for bus drivers. The program manager is the principal contact for the collection site, the testing laboratory, the MRO, the BAT, the SAP, and

the person submitting to the test. Employee questions concerning this policy shall be directed to the program manager.

2. 4.0 School Services shall designate the terminal manager as the program manager and provide written notice of the designation to each driver along with this policy.

E. Specific Prohibitions for Drivers

1. Alcohol Concentration. 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. Drivers who test greater than 0.04 will be taken out of service and will be subject to evaluation by a professional and retesting at the driver's expense.
2. Alcohol Possession. No driver shall be on duty or operate a CMV, a 4.0 vehicle or a school district vehicle, while the driver possesses alcohol.
3. On-Duty Use. No driver shall use alcohol while performing safety-sensitive functions.
4. Pre-Duty Use. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. Use Following an Accident. No driver required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
6. Refusal to Submit to a Required Test. No driver shall refuse to submit to an alcohol or controlled substances test required by post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements. A verified adulterated or substituted drug test shall be considered a refusal to test.
7. Use of Controlled Substances. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to instructions (which have been presented to the employer) from a licensed physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV or Type III vehicle. Controlled substance includes medical cannabis, regardless of whether the driver is enrolled in the state registry program.
8. Positive, Adulterated, or Substituted Test for Controlled Substance. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances, including medical cannabis, or has adulterated or substituted a test specimen for controlled substances.

9. General Prohibition. Drivers are also subject to the general policies and procedures of 4.0 which prohibit the possession, transfer, sale, exchange, reporting to work under the influence of drugs or alcohol, and consumption of drugs or alcohol while at work or while on school district premises or property of 4.0 or operating any 4.0 or school district vehicle, machinery, or equipment or vehicles, machinery.

F. Other Alcohol-Related Conduct

No driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform safety-sensitive functions for at least twenty-four (24) hours following administration of the test. 4.0 will not take any action under this policy other than removal from safety-sensitive functions based solely on test results showing an alcohol concentration of less than 0.04 but may take action otherwise consistent with law and policy of 4.0.

G. Prescription Drugs

A driver shall inform his or her supervisor if at any time the driver is using a controlled substance pursuant to a physician's prescription. The physician's instructions shall be presented to 4.0 upon request. Use of a prescription drug shall be allowed if the physician has advised the driver that the prescribed drug will not adversely affect the driver's ability to safely operate a CMV or Type III vehicle. Use of medical cannabis is prohibited notwithstanding the driver's enrollment in the patient registry.

H. Testing Requirements

1. Pre-Employment Testing

- a. A driver applicant shall undergo testing for alcohol and controlled substances, including medical cannabis, before the first time the driver performs safety-sensitive functions for the school district and 4.0.
- b. Tests shall be conducted only after the applicant has received a conditional offer of employment.
- c. In order to be hired, the applicant must test negative and must sign an agreement authorizing former employers to release to 4.0 all information on the applicant's alcohol tests with results of blood alcohol concentration of 0.04 or higher, or verified positive results for controlled substances, including medical cannabis, or refusals to be tested (including verified adulterated or substituted drug test results), or any other violations of DOT agency drug and alcohol testing regulations, or, if the applicant violated the testing regulations, documentation of the applicant's successful completion of DOT return-to-duty requirements (including follow-up tests), within the preceding two (2) years.

- d. The applicant also must be asked whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee, during the last two (2) years, applied for, but did not obtain, safety-sensitive transportation work covered by DOT testing rules.

2. Post-Accident Testing

- a. As soon as practicable following an accident involving a CMV or Type III vehicle, 4.0, and possibly the school district shall test the driver for alcohol and controlled substances, including medical cannabis, if the accident involved the loss of human life or if the driver receives a citation for a moving traffic violation arising from an accident which results in bodily injury or disabling damage to a motor vehicle.
- b. Drivers should be tested for alcohol use within two (2) hours and no later than eight (8) hours after the accident.
- c. Drivers should be tested for controlled substances, including medical cannabis, no later than thirty-two (32) hours after the accident.
- d. A driver subject to post-accident testing must remain available for testing, or shall be considered to have refused to submit to the test.
- e. If a post-accident alcohol test is not administered within two (2) hours following the accident, 4.0 School Services shall prepare and maintain on file a record stating the reasons the test was not promptly administered and continue to attempt to administer the alcohol test within eight (8) hours.
- f. If a post-accident alcohol test is not administered within eight (8) hours following the accident or a post-accident controlled substances test is not administered within thirty-two (32) hours following the accident, 4.0 School Services shall cease attempts to administer the test, and prepare and maintain on file a record stating the reasons for not administering the test.

3. Random Testing

- a. 4.0 shall conduct tests on a random basis at unannounced times throughout the year, as required by the federal regulations.
- b. 4.0 School Services shall test for alcohol at a minimum annual percentage rate of 10% of the average number of driver positions, and for controlled substances, including medical cannabis, at a minimum annual percentage of 50%.

- c. 4.0 School Services shall adopt a scientifically valid method for selecting drivers for testing, such as random number table or a computer-based random number generator that is matched with identifying numbers of the drivers. Each driver shall have an equal chance of being tested each time selections are made.
- d. Random tests shall be unannounced. Dates for administering random tests shall be spread reasonably throughout the calendar year.
- e. Drivers shall proceed immediately to the collection site upon notification of selection; provided, however, that if the driver is performing a safety-sensitive function, other than driving, at the time of notification, the driver shall cease to perform the function and proceed to the collection site as soon as possible.

4. Reasonable Suspicion Testing

- a. 4.0 School Services shall require a driver to submit to an alcohol test and/or controlled substances, including medical cannabis, test when a supervisor or 4.0 manager, who has been trained in accordance with the regulations, has reasonable suspicion to believe that the driver has used alcohol and/or controlled substances, including medical cannabis, on duty or within four (4) hours before coming on duty. The test shall be done as soon as practicable following the observation of the behavior indicative of the use of controlled substances or alcohol.
- b. The reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The required observations for reasonable suspicion of a controlled substances violation may include indications of the chronic and withdrawal effects of controlled substances.
- c. Alcohol testing shall be administered within two (2) hours following a determination of reasonable suspicion. If it is not done within two (2) hours, 4.0 shall prepare and maintain a record explaining why it was not promptly administered and continue to attempt to administer the alcohol test within eight (8) hours. If an alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, 4.0 shall cease attempts to administer the test and state in the record the reasons for not administering the test.
- d. The supervisor or 4.0 manager who makes observations leading to a controlled substances reasonable suspicion test shall make and sign a written record of the observations within twenty-four (24)

hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

5. Return-To-Duty Testing. A driver found to have violated this policy shall not return to work until an SAP has determined the employee has successfully complied with prescribed education and/or treatment and until undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a confirmed negative result for the use of controlled substances.
6. Follow-Up Testing. When an SAP has determined that a driver is in need of assistance in resolving problems with alcohol and/or controlled substances, the driver shall be subject to unannounced follow-up testing as directed by the SAP for up to sixty (60) months after completing a treatment program.
7. Refusal to Submit and Attendant Consequences
  - a. A driver or driver applicant may refuse to submit to drug and alcohol testing.
  - b. Refusal to submit to a required drug or alcohol test subjects the driver or driver applicant to the consequences specified in federal regulations as well as the civil and/or criminal penalty provisions of 49 U.S.C. § 521(b). In addition, a refusal to submit to testing establishes a presumption that the driver or driver applicant would test positive if a test were conducted and makes the driver or driver applicant subject to discipline or disqualification under this policy.
  - c. A driver applicant who refuses to submit to testing shall be disqualified from further consideration for the conditionally offered position.
  - d. An employee who refuses to submit to testing shall not be permitted to perform safety-sensitive functions and will be considered insubordinate and subject to disciplinary action, up to and including dismissal. If an employee is offered an opportunity to return to a DOT safety-sensitive duty, the employee will be evaluated by an SAP and must submit to a return-to-duty test prior to being considered for reassignment to safety-sensitive functions.
  - e. Drivers or driver applicants who refuse to submit to required testing will be required to sign a Refusal to Test form.

#### I. Testing Procedures

##### 1. Drug Testing

- a. Drug testing is conducted by analyzing a donor's urine specimen.

Split urine samples will be collected in accordance with federal regulations. The donor will provide a urine sample at a designated collection site. The collection site personnel will then pour the sample into two sample bottles, labeled "primary" and "split," seal the specimen bottles, complete the chain of custody form, and prepare the specimen bottles for shipment to the testing laboratory for analysis. The specimen preparation shall be conducted in sight of the donor.

- b. If the donor is unable to provide the appropriate quantity of urine, the collection site person shall instruct the individual to drink up to forty (40) ounces of fluid distributed reasonably through a period of up to three (3) hours to attempt to provide a sample. If the individual is still unable to provide a complete sample, the test shall be discontinued and 4.0 School Services notified. The DER shall refer the donor for a medical evaluation to determine if the donor's inability to provide a specimen is genuine or constitutes a refusal to test. For pre-employment testing, 4.0 School Services may elect to not have a referral made, and revoke the employment offer.
- c. Drug test results are reported directly to the MRO by the testing laboratory. The MRO reports the results to the DER. If the results are negative, 4.0 is informed and no further action is necessary. If the test result is confirmed positive, adulterated, substituted, or invalid, the MRO shall give the donor an opportunity to discuss the test result. The MRO will contact the donor directly, on a confidential basis, to determine whether the donor wishes to discuss the test result. The MRO shall notify each donor that the donor has seventy-two (72) hours from the time of notification in which to request a test of the split specimen at the donor's expense. No split specimen testing is done for an invalid result.
- d. If the donor requests an analysis of the split specimen within seventy-two (72) hours of having been informed of a confirmed positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another Department of Health and Human Services – SAMHSA certified laboratory for analysis. If the donor has not contacted the MRO within seventy-two (72) hours, the donor may present the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the confirmed positive test, or other circumstances unavoidably prevented the donor from timely making contact. If the MRO concludes that a legitimate explanation for the donor's failure to contact him/her within seventy-two (72) hours exists, the MRO shall direct the analysis of the split specimen. The MRO will review the confirmed positive test result to determine whether an acceptable medical reason for the positive result exists. The MRO shall confirm and report a positive test result to the DER and

the employee when no legitimate medical reason for a positive test result as received from the testing laboratory exists.

- e. If, after making reasonable efforts and documenting those efforts, the MRO is unable to reach the donor directly, the MRO must contact the DER who will direct the donor to contact the MRO. If the DER is unable to contact the donor, the donor will be suspended from performing safety-sensitive functions.
- f. The MRO may confirm the test as a positive without having communicated directly with the donor about the test results under the following circumstances:
  - (1) The donor expressly declines the opportunity to discuss the test results;
  - (2) The donor has not contacted the MRO within seventy-two (72) hours of being instructed to do so by the DER; or
  - (3) The MRO and the DER, after making and documenting all reasonable efforts, have not been able to contact the donor within ten (10) days of the date the confirmed test result was received from the laboratory.

## 2. Alcohol Testing

- a. The federal alcohol testing regulations require testing to be administered by a BAT using an EBT or an STT using an ASD. EBTs and ASDs can be used for screening tests but only EBTs can be used for confirmation tests.
- b. Any test result less than 0.02 alcohol concentration is considered a "negative" test.
- c. If the donor is unable to provide sufficient saliva for an ASD, the DER will immediately arrange to use an EBT. If the donor attempts and fails to provide an adequate amount of breath, 4.0 School Services will direct the donor to obtain a written evaluation from a licensed physician to determine if the donor's inability to provide a breath sample is genuine or constitutes a refusal to test.
- d. If the screening test results show alcohol concentration of 0.02 or higher, a confirmatory test conducted on an EBT will be required to be performed between fifteen (15) and thirty (30) minutes after the completion of the screening test.
- e. Alcohol tests are reported directly to the DER.

## J. Driver/Driver Applicant Rights

1. All drivers and driver applicants subject to the controlled substances testing provisions of this policy who receive a confirmed positive test result for the use of controlled substances have the right to request, at the driver's or driver applicant's expense, a confirming retest of the split urine sample. If the confirming retest is negative, no adverse action will be taken against the driver, and a driver applicant will be considered for employment.
2. 4.0 School Services will not discharge a driver who, for the first time, receives a confirmed positive drug or alcohol test UNLESS:
  - a. 4.0 School Services has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the 4.0 School Services after consultation with the SAP; and
  - b. The employee refuses to participate in the recommended program, or fails to successfully complete the program as evidenced by withdrawal before its completion or by a positive test result on a confirmatory test after completion of the program.
  - c. This limitation on employee discharge does not bar discharge of an employee for reasons independent of the first confirmed positive test result.

K. Testing Laboratory

The testing laboratory for controlled substances will be a laboratory certified by the Department of Health and Human Services – SAMHSA to perform controlled substances testing pursuant to federal regulations.

L. Confidentiality of Test Results

All alcohol and controlled substances test results and required records of the drug and alcohol testing program are considered confidential information under federal law and private data on individuals as that phrase is defined in Minn. Stat. Ch. 13. Any information concerning the individual's test results and records shall not be released without written permission of the individual, except as provided for by regulation or law.

M. Recordkeeping Requirements and Retention of Records

1. 4.0 School Services shall keep and maintain records in accordance with the federal regulations in a secure location with controlled access.

2. The required records shall be retained for the following minimum periods:

Basic records

5 years

“Basic records” includes records of: (a) alcohol test results with concentration of 0.02 or greater; (b) verified positive drug test results; (c) refusals to submit to required tests (including substituted or adulterated drug test results); (d) SAP reports; (e) all follow-up tests and schedules for follow-up tests; (f) calibration documentation; (g) administration of the testing programs; and (h) each annual calendar year summary.

Information obtained from previous employers

3 years

Collection records

2 years

Negative and cancelled drug tests

1 year

Alcohol tests with less than 0.02 concentration

1 year

Education and training records

indefinite

“Education and training records” must be maintained while the individuals perform the functions which require training and for the two (2) years after ceasing to perform those functions.

N. Training

4.0 School Services shall ensure all persons designated to supervise drivers receive training. The designated employees shall receive at least sixty (60) minutes of training on alcohol misuse and at least sixty (60) minutes of training on controlled substances use. The training shall include physical, behavioral, speech, and performance indicators of probable misuse of alcohol and use of controlled substances. The training will be used by the supervisors to make determinations of reasonable suspicion.

O. Consequences of Prohibited Conduct and Enforcement

1. Removal. 4.0 School Services shall remove a driver who has engaged in prohibited conduct from safety-sensitive functions. A driver shall not be permitted to return to safety-sensitive functions until and unless the return-to-duty requirements of federal DOT regulations have been completed.

2. Referral, Evaluation, and Treatment

- a. A driver or driver applicant who has engaged in prohibited conduct shall be provided a listing of SAPs readily available to the driver or applicant and acceptable to 4.0.
- b. If 4.0 School Services offers a driver an opportunity to return to a DOT safety-sensitive duty following a violation, the driver must be evaluated by an SAP and the driver is required to successfully comply with the SAP's evaluation recommendations (education,

treatment, follow-up evaluation(s), and/or ongoing services). 4.0 is not required to provide an SAP evaluation or any subsequent recommended education or treatment.

- c. Drivers are responsible for payment for SAP evaluations and services unless a collective bargaining agreement or employee benefit plan provides otherwise.
- d. Drivers who engage in prohibited conduct also are required to comply with follow-up testing requirements.

3. Disciplinary Action

- a. Any driver who refuses to submit to post-accident, random, reasonable suspicion, or follow-up testing not only shall not perform or continue to perform safety-sensitive functions, but also may be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- b. Drivers who test positive with verification of a confirmatory test or are otherwise found to be in violation of this policy or the federal regulations shall be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- c. Nothing in this policy limits or restricts the right of 4.0 School Services to discipline or discharge a driver for conduct which not only constitutes prohibited conduct under this policy but also violates 4.0's other rules or policies.

P. Other Testing

4.0 School Services may request or require that drivers submit to drug and alcohol testing other than that required by federal law. For example, drivers may be requested or required to undergo drug and alcohol testing on an annual basis as part of a routine physical examination. Such additional testing of drivers will be conducted only in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957. For purposes of such additional, non-mandatory testing, drivers fall within the definition of "other employees" covered by Section IV. of this policy.

**IV. DRUG AND ALCOHOL TESTING FOR OTHER EMPLOYEES**

4.0 School Services may request or require drug and alcohol testing for other personnel, i.e., employees who are not school bus drivers, or job applicants for such positions. 4.0 School Services does not have a legal duty to request or require any employee or job applicant to undergo drug and alcohol testing as authorized in this policy, except for school bus drivers and other drivers of CMVs who are subject to federally mandated testing. (See Section III. of this policy.) If a school bus driver is requested or required to

submit to drug or alcohol testing beyond that mandated by federal law, the provisions of Section IV. of this policy will be applicable to such testing.

A. Circumstances Under Which Drug or Alcohol Testing May Be Requested or Required:

1. General Limitations

- a. 4.0 School Services will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, unless the testing is done pursuant to this drug and alcohol testing policy; and is conducted by a testing laboratory which participates in one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
- b. 4.0 School Services will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing on an arbitrary and capricious basis.

2. Job Applicant Testing

4.0 School Services may request or require any job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing, provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If a job applicant has received a job offer which is contingent on the applicant's passing drug and alcohol testing, 4.0 School Services may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the event the job offer is subsequently withdrawn; the 4.0 School Services shall notify the job applicant of the reason for its action.

3. Random Testing

4.0 School Services may request or require employees to undergo drug and alcohol testing on a random selection basis only if they are employed in safety-sensitive positions.

4. Reasonable Suspicion Testing

4.0 School Services may request or require any employee to undergo drug and alcohol testing if 4.0 School Services has a reasonable suspicion that the employee:

- a. is under the influence of drugs or alcohol;
- b. has violated the 4.0 School Services written work rules prohibiting

the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the school district's premises or the property of 4.0 or operating 4.0 School Services vehicles, machinery, or equipment; or that of the school district.

- c. has sustained a personal injury, as that term is defined in Minn. Stat. § 176.011, Subd. 16, or has caused another employee to sustain a personal injury; or
- d. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

5. Treatment Program Testing

4.0 School Services may request or require any employee to undergo drug and alcohol testing if the employee has been referred by 4.0 School Services for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

6. Routine Physical Examination Testing

4.0 School Services may request or require any employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

B. No Legal Duty to Test

4.0 School Services does not have a legal duty to request or require any employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing.

C. Definitions

- 1. "Drug" means a controlled substance as defined in Minnesota Statutes, including medical cannabis, regardless of enrollment in the state registry program.
- 2. "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" mean analysis of a body component sample according to the

standards established under one of the programs listed in Minn. Stat. § 181.953, Subd. 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

3. "Other Employees" means any persons, independent contractors, or persons working for an independent contractor who perform services for the 4.0 for compensation, either full time or part time, in whatever form, except for persons whose positions require a commercial driver's license, and includes both professional and nonprofessional personnel. Persons whose positions require a commercial driver's license are primarily governed by the provisions of the school district's drug and alcohol testing policy relating to school bus drivers (Section III.) as well as 4.0's drug and alcohol testing policy. To the extent that the drug and alcohol testing of persons whose positions require a commercial driver's license is not mandated by federal law and regulations, such testing shall be governed by Section IV. of this policy and the drivers shall fall within this definition of "other employees."
4. "Job applicant" means a person, independent contractor, or person working for an independent contractor who applies to become an employee of 4.0 School Services in a position that does not require a commercial driver's license, and includes a person who has received a job offer made contingent on the person's passing drug or alcohol testing. Job applicants for positions requiring a commercial driver's license are governed by the provisions of 4.0 School Services drug and alcohol testing policy relating to school bus drivers (Section III.).
5. "Positive test result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
6. "Random selection basis" means a mechanism for selection of employees that:
  - a. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected; and
  - b. does not give 4.0 School Services discretion to waive the selection of any employee selected under the mechanism.
7. "Reasonable suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
8. "Safety-sensitive position" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

D. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing

and Consequences of Such Refusal

1. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing

Any employee or job applicant whose position does not require a commercial driver's license has the right to refuse drug and alcohol testing subject to the provisions contained in Paragraphs 2. and 3. of this Section D.

2. Consequences of an Employee's Refusal to Undergo Drug and Alcohol Testing

Any employee in a position that does not require a commercial driver's license who refuses to undergo drug and alcohol testing in the circumstances set out in the Random Testing, Reasonable Suspicion Testing, and Treatment Program Testing provisions of this policy may be subject to disciplinary action, up to and including immediate discharge.

3. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing

Any job applicant for a position which does not require a commercial driver's license who refuses to undergo drug and alcohol testing pursuant to the Job Applicant Testing provision of this policy shall not be employed.

E. Reliability and Fairness Safeguards

1. Pretest Notice

Before requesting an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, 4.0 School Services shall provide the employee or job applicant with a Pretest Notice, which acknowledges that the employee or job applicant has received 4.0 School Services drug and alcohol testing policy.

2. Notice of Test Results

Within three (3) working days after receipt of a test result report from the testing laboratory, 4.0 School Services shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test.

3. Notice of and Right to Test Result Report

Within three (3) working days after receipt of a test result report from the testing laboratory, 4.0 School Services shall inform in writing, an

employee or job applicant who has undergone drug or alcohol testing of the employee or job applicant's right to request and receive from 4.0 a copy of the test result report on any drug or alcohol test.

4. Notice of and Right to Explain Positive Test Result

- a. If an employee or job applicant has a positive test result on a confirmatory test, 4.0 School Services shall provide him or her with notice of the test results and, at the same time, written notice of the right to explain the results and to submit additional information.
- b. 4.0 School Services may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.
- c. The employee may present verification of enrollment in the medical cannabis patient registry as part of the employee's explanation.
- d. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee or job applicant may submit information (in addition to any information already submitted) to 4.0 School Services to explain that result.

5. Notice of and Right to Request Confirmatory Retests

- a. If an employee or job applicant has a positive test result on a confirmatory test, 4.0 School Services shall provide him or her with notice of the test results and, at the same time, written notice of the right to request a confirmatory retest of the original sample at his or her expense.
- b. An employee or job applicant may request a confirmatory retest of the original sample at his or her own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee or job applicant shall notify 4.0 School Services in writing of his or her intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, 4.0 School Services shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minn. Stat. § 181.953, Subd. 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same

drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.

6. If an employee or job applicant has a positive test result on a confirmatory test, 4.0, at the time of providing notice of the test results, shall also provide written notice to inform him or her of other rights provided under Sections F. or G., below, whichever is applicable.

F. Discharge and Discipline of Employees Whose Positions Do Not Require a Commercial Driver's License

1. 4.0 School Services may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.
2. In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.
3. 4.0 School Services may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by 4.0, unless the following conditions have been met:
  - a. 4.0 School Services has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by 4.0 after consultation with a certified chemical abuse counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
  - b. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.
4. Notwithstanding Paragraph 1., 4.0 School Services may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided 4.0 School Services believes that it is reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been

suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

5. 4.0 School Services may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information, or the employee's status as a patient enrolled in the medical cannabis registry program revealed to 4.0, unless the employee was under an affirmative duty to provide the information before, upon or after hire, or failing to do so would violate federal law or regulations or cause 4.0 to lose money or licensing- related benefit under federal law or regulations.
6. 4.0 may not discriminate against any employee in termination, discharge, or any term of condition of employment or otherwise penalize an employee based upon an employee registered patient's positive drug test from cannabis components or metabolites, unless the employee used, possessed, or was impaired by medical cannabis on school district or 4.0 property during the hours of employment.
7. An employee must be given access to information in his or her personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

G. Withdrawal of Job Offer for an Applicant for a Position That Does Not Require a Commercial Driver's License

If a job applicant has received a job offer made contingent on the applicant's passing drug and alcohol testing, 4.0 School Services may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, 4.0 may withdraw the job offer.

H. Chain-of-Custody Procedures

4.0 School Services has established its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures require the following:

1. Possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;
2. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
3. A sample must be accompanied by a written chain-of-custody record; and

4. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

I. Privacy, Confidentiality and Privilege Safeguards

1. Privacy Limitations

A laboratory may only disclose to 4.0 School Services test result data regarding the presence or absence of drugs, alcohol or their metabolites in a sample tested.

2. Confidentiality Limitations

With respect to employees and job applicants, test result reports and other information acquired in the drug or alcohol testing process are private data on individuals as that phrase is defined in Minn. Stat. Ch. 13, and may not be disclosed by 4.0 School services or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested.

3. Exceptions to Privacy and Confidentiality Disclosure Limitations

Notwithstanding Paragraphs 1. and 2., evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minn. Stat. Ch. 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

4. Privilege

Positive test results from 4.0 School Services drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

J. Notice of Testing Policy to Affected Employees

4.0 School Services shall provide written notice of this drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously non-affected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant's passing drug and alcohol testing. Affected employees and applicants will acknowledge receipt of this written notice.

## **V. POSTING**

4.0 School Services shall post notice in an appropriate and conspicuous location on its premises that it has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in its personnel office or other suitable locations.

## NOTICE OF THE RESULTS OF DRUG AND ALCOHOL TEST

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DATE:

TO:

FROM:

On \_\_\_\_\_, 20\_\_\_\_ you submitted to a test for the presence of drugs and alcohol, at the request of 4 Point 0 School Services, Inc. ("Company") The results of that test, which was performed in accordance with the Company's Drug and Alcohol Test Policy ("the policy"), were as follows:

Positive/Negative

You have the right to receive from the Human Resources Department of the Company a copy of the test results report from the laboratory which performed the test. In addition, if the results were positive, you now have the following rights under Minnesota law.

- 1) Within three (3) working days from the date of this Notice, you may submit to the Company, any additional information which you consider relevant to explain the positive result, including, for example, a list of over-the-counter or prescription medications which you are currently taking or have taken recently. This information must be submitted in writing to the Director of Human Resources.
  - 2) Within five (5) working days from the date of this notice, you may submit to the Company a request for a confirmatory retest of the original sample, at you own expense. This request must be submitted in writing to the Director of Human Resources. If the confirmatory retest fails to confirm the initial positive results, no adverse action will be taken against you by the Company on the basis of the positive results.
  - 3) The only adverse Personnel actions which may be taken against you by the Company are as set forth in Paragraph 8. of the Policy.
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