

HUMAN RESOURCES

Duties, Responsibilities, and Rights of Employees

Alcohol- and Drug-Free Workplace

This regulation supersedes Regulation 4418.4.

I. PURPOSE

To provide guidelines for establishing an alcohol- and drug-free workplace and for implementing the school system's drug and alcohol testing program.

II. APPLICABILITY

This regulation applies to all employees. The Drug Free Workplace Act of 1988 provides standards for creating a workplace free of illegal drugs. In addition, required standardized tests have been established by the government with the passage of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) for employees who are drivers of commercial motor vehicles. Additional information on the testing requirements imposed under federal law is set out in the appendix to this regulation. Such testing has been endorsed by the Virginia Department of Education (Superintendent's Memo No. 34 of March 4, 1994.)

III. DEFINITIONS

A. Commercial Motor Vehicle

A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
2. Has a gross vehicle weight rating of 26,001 or more pounds.
3. Is designed to transport 16 or more passengers, including the driver.

B. Confirmation Test

A second alcohol test, using an evidential breath testing (EBT) device following a screening test with a result of 0.02 breath alcohol concentration (BAC) or greater of alcohol in an individual's system, that provides quantitative data of alcohol concentration. For controlled substances,

confirmation testing means a second analytical procedure to identify the presence of a specific drug or (drug) metabolite. Confirmatory drug testing is independent of the screening test and uses a different technique and chemical screening test in order to ensure reliability and accuracy.

C. Driver

Any person who operates a commercial motor vehicle requiring a commercial driver's license (CDL) or who is in a position that requires a CDL as an eligibility criterion because the employee must drive or be on call and ready to drive if necessary. This includes full-time, part-time, and temporary personnel. Drivers are subject to drug and alcohol testing under both federal law and Fairfax County Public Schools (FCPS) policy.

D. Medical Review Officer (MRO)

The MRO is a licensed physician responsible for receiving laboratory results generated by an employer's drug-testing program. The physician has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

E. Omnibus Transportation Employees Testing Act of 1991

The Omnibus Transportation Act is the federal law that requires drug and alcohol testing of drivers in various industries. By the authority of this act, the Office of the Secretary of Transportation, U.S. Department of Transportation (DOT), on February 15, 1994, published rules requiring employers to test for the illegal use of alcohol and controlled substances for all drivers whose job functions require them to obtain a CDL.

F. Refusal to Test

Refusal to submit to an alcohol or controlled substance test. A driver has refused to test if he or she:

1. Fails to appear for any test (except a preemployment test) within a reasonable time, as determined by the employer.
2. Fails to remain at the testing site until the testing process is complete.

3. Fails to provide a urine specimen for any drug test as required by management, the collector, or the U.S. Department of Transportation (DOT) agency regulations.
4. Fails to provide a urine specimen because he or she left the testing site before the testing process was complete.
5. Fails to permit the observation or monitoring of the specimen when an observed testing is required.
6. Fails to provide a sufficient amount of urine when directed.
7. Fails or declines to take an additional drug test as instructed by management or the testing site collector.
8. Fails to undergo a medical examination or evaluation, as directed by the medical review officer (MRO) as part of the verification process or as directed by the test administrator.
9. 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.)
10. Alters or substitutes urine test results.

G. Safety-Sensitive Function

Any activity such as engaging in driving a commercial motor vehicle (CDL required) or working in any employment capacity that could affect the safe operation of the vehicle or the safety and welfare of others. This includes any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

H. Screening Test

In alcohol testing, an analytical procedure used to determine whether an individual has a prohibited concentration of alcohol in his or her system; in controlled substance testing, an immunoassay test on urine specimens used to eliminate “negative” specimens from further testing; also known as an initial test.

I. Split Sample Testing

Division of the urine specimen in controlled substances testing into two separate containers. The primary specimen is used for the screening and

confirmatory test, and the split specimen is used if the employee requests a second test after being informed of a verified positive screening test.

IV. PHILOSOPHY

The Fairfax County Public Schools system has a vital interest in maintaining a safe, healthful, and productive environment for its employees and the students under its employees' supervision. The improper use of alcohol or the use of illegal drugs or the unauthorized use of prescription drugs undermines the quality of job performance, endangers coworkers and students, and brings discredit to the school system.

For purposes of this regulation, "illegal drugs" shall mean any controlled substance, or imitation controlled substance, whose unauthorized manufacture, distribution, dispensation, possession, consumption, use, or sale is prohibited by federal or state law. "Unauthorized use of prescription drugs" shall mean use of a drug by anyone other than the person for whom the drug was prescribed, or in any manner that is prohibited by federal or state laws.

The school system will not tolerate the possession of alcohol or illegal drugs or the unlawful use of prescription drugs by its employees on the job or in circumstances that may affect the job, as described in section V. below. The school system in any job-related context is committed to the eradication of such substances from the work-place. In addition, the system will not tolerate the possession, use, or sale of illegal drugs by its employees in any situation, whether in or out of the workplace.

V. GUIDELINES

All employees are expected to adhere to the following guidelines as a condition of their employment with the school system. Any violation of this regulation may subject the employee to discipline, up to and including dismissal from employment even for a first offense.

The manufacture, distribution, dispensation, possession, consumption, use, or sale of alcohol or illegal drugs or the unauthorized use of prescription drugs is strictly prohibited on School Board property, during normal work hours, or at any time that the employee is engaged in school system business in the school community, or at any time the employee is participating in an assigned activity with students. This paragraph does not prohibit employees from consuming alcohol at job-related social events occurring off School Board property and after work hours so long as such consumption does not result in the employee reporting to work with alcohol in his or her system.

The manufacture, distribution, dispensation, possession, consumption, use, or sale of illegal drugs at any time and in any place is strictly prohibited.

No employee shall report to work, perform assigned duties, engage in school system business in the school community, or participate in an activity involving

students while the employee has detectable amounts of alcohol, illegal drugs, unauthorized prescription drugs, or illegal drug metabolites in his or her system. Whether the employee has alcohol, illegal drugs, unauthorized prescription drugs, or illegal drug metabolites in his or her system shall be determined in accordance with medically established standards for measuring detectable amounts of these substances.

The only exception to the foregoing pertains to employees who are not on an official on-call roster or status but who are called in to work outside their normal duty hours to perform emergency or unscheduled work. No such employee shall be disciplined for off-duty consumption of alcohol that results in reporting to duty with alcohol in his or her system so long as the employee first reports that consumption of alcohol to the supervisor making the work request. The supervisor shall ensure that drivers of commercial motor vehicles shall not perform safety-sensitive functions within four hours after ingesting alcohol and that no employee who has consumed alcohol will be performing work functions that may jeopardize the safety of others.

VI. EMPLOYEE ASSISTANCE

Early recognition and treatment of alcohol and drug abuse are essential to successful rehabilitation. The school system maintains an employee assistance program (EAP) to help employees with alcohol and drug abuse problems as well as with other personal problems. The EAP will help employees with these problems and will also make referrals to appropriate treatment programs.

Employees voluntarily seeking assistance for a substance abuse problem through the EAP or a medical source shall not be disciplined as a result of their disclosure of prior drug or alcohol use, and treatment by EAP or another source shall be handled in confidence. An employee may not avoid discipline for violation of this regulation by participating in a treatment program unless he or she does the following:

1. Volunteers for such treatment before the employee's supervisor, MRO, or test administrator notifies the employee of the incident constituting an apparent violation of this regulation.
2. Successfully adheres to requirements of and completes all prescribed treatment programs.
3. Refrains from thereafter engaging in conduct violating this regulation regarding use of alcohol, illegal drugs, and unauthorized prescription drugs.

In the case of any employee voluntarily participating in an EAP-approved program or returning to work after successful completion of a treatment program, the school system reserves the right to test for drug and/or alcohol use randomly or periodically in accordance with procedures for return to duty testing in section IX.B.2. of this regulation.

In addition, for drivers of commercial motor vehicles, voluntary treatment for alcohol and drug abuse shall be in an EAP-approved program. Drivers successfully completing such a program shall return to duty and be subjected to unannounced follow-up testing, consisting of at least six tests for the first 12 months following their return.

VII. ALCOHOL

A. Reporting for Duty--All Employees

No employee shall report for duty or remain on duty while having a detectable amount of alcohol of 0.02 breath alcohol concentration (BAC) or higher in his or her system. FCPS shall test for alcohol using an evidential breath testing (EBT) device approved by the National Highway Traffic Safety Administration (NHTSA). Any supervisor who has actual knowledge that an employee has violated this regulation and permits the employee to work shall be in violation of this regulation except in reference to the fifth paragraph in section V.

B. Testing Procedure--All Employees

Upon entering the test location, the employee shall be asked to provide positive identification with photograph (example--driver's license or employee identification badge) to the breath alcohol technician (BAT). The employee and the BAT shall complete the breath testing form distributed at the test site and follow required testing procedures. Providing incomplete information (except a Social Security number), engaging in conduct that obstructs the testing process, or failing to sign the required certifications may be regarded as a refusal to take the alcohol test and may constitute just cause for dismissal from employment. At the completion of the screening test, the result shall be shown to the employee.

If the result of the screening test shows evidence of detectable alcohol concentration, a confirmation test shall be performed within specified time limits. If detectable amounts of alcohol of 0.02 BAC or higher are verified in the confirmation test, the employee is in violation of this regulation. An individual with a verified positive confirmation test may not leave the test site without approval from the attending physician or his or her designee. Employees shall not be permitted to drive themselves from the test site with alcohol in their systems.

If a screening or confirmation test cannot be completed, or an event occurs that would invalidate the test, the BAT shall conduct a new screening or confirmation test, as applicable. In the event that an employee attempts and fails to provide an adequate amount of breath, the employee shall be required to submit a blood test, in which case chain of custody procedures shall be followed. At the conclusion of testing, copies of the breath alcohol testing form shall be retained by the testing location, provided to the employee, and transmitted confidentially to the Department of Human Resources.

VIII. CONTROLLED SUBSTANCES

A. Reporting for Duty--All Employees

No employee shall report for duty or remain on duty having used controlled substances except when the use is authorized as prescribed medicine by the attending licensed physician who has advised the employee that the substance does not adversely affect the employee's ability to perform assigned duties. Any supervisor who has actual knowledge that an employee has used an illegal drug or unauthorized prescription medication and permits the employee to work will be in violation of this regulation.

An employee is considered to have a positive drug test when both the initial screening test and a confirmation test provide evidence of one or more of the following substances in the system: cocaine, marijuana, opiates, amphetamines, and phencyclidine.

B. Reporting for Duty--Drivers of Commercial Motor Vehicles

In addition to the requirements in section VIII.A., drivers of commercial motor vehicles taking over-the-counter or prescribed medications shall be responsible for knowing the effects of such medication. They shall not drive or perform other duties under the influence of prescription or over-the-counter drugs that could impair the ability to perform assigned duties or operate a commercial motor vehicle safely. Failure to meet this requirement shall constitute a violation of this regulation.

C. Testing Procedure—All Employees

For controlled substance testing, employees report to a specified test location where the employee shall be asked to provide positive identification with photograph, i.e., driver's license or employer identification badge. A urine sample shall then be collected and divided into a primary sample and a split sample. If the employee is unable to provide the specified quantity of urine, the employee shall be instructed to drink not more than 40 ounces of fluid and wait up to three hours to provide another sample.

If a complete sample still cannot be provided, the School Board's medical provider shall evaluate the employee to determine if the inability to provide a specimen is genuine physiological problem (e.g., urinary system dysfunction) or constitutes a refusal to test. The School Board's physician shall provide the results of the evaluation to the MRO. The MRO shall then report the findings in writing to the Department of Human Resources. Strict chain of custody procedures shall be followed as the samples are forwarded to the laboratory. If the primary specimen is verified negative based on a diluted collection, a second unobserved urine test shall be requested of the employee and accepted as the final result.

If the primary specimen is verified positive, the MRO shall notify the employee, who can request that the split specimen be tested at the employee's expense at a different Department of Health and Human Services-certified laboratory. The employee must make the request within 72 hours of notification by the MRO. If the result of the test of the split specimen fails to confirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the original test results, and the cost of the split sample test shall be borne by the School Board.

Upon learning that the MRO is attempting to contact the employee, the employee must respond by calling the MRO within 24 hours of receipt of notification to call or be in violation of this regulation.

If the employee does not contact the MRO within the 72 hours as required to request split-specimen testing, the employee may present information to the MRO documenting a legitimate explanation for the employee's failure to contact the MRO within the 72 hours. The MRO may or may not honor the employee's request to test the split specimen. The MRO's decision to permit further testing is final. Test results shall be confidential and shall be reported directly to the employee, to the designee in the Department of Human Resources, and, upon written request, to the U.S. Department of Transportation in the case of drivers of commercial motor vehicles.

IX. TESTS REQUIRED

Testing shall be conducted by personnel designated by the school system. In general, the school system shall pay the cost of required drug and alcohol testing, including screening and confirmation tests for alcohol and primary specimen tests for drugs. If the employee fails to provide the specified quantity of urine for the drug test, and the initial evaluation by the School Board's medical provider indicates the need for further examinations or consultation, the employee shall pay the cost of the additional tests or examination.

A. For Drivers of Commercial Motor Vehicles

Pursuant to federal law and its own authority, FCPS shall test drivers under the following circumstances:

1. Preemployment or Preduty

Prior to the first time an employee or newly hired employee is placed in a position requiring a CDL, the driver shall be tested for controlled substances and must be found to be in compliance with section VIII. of this regulation.

Applicants offered positions requiring CDLs must give written consent to permit FCPS to contact all previous employers over the past two years to be certain that each applicant's work history is free of substance abuse, alcohol use, positive drug or alcohol test results, and test refusals. Furthermore, applicants offered positions must provide written consent for postaccident testing and release of test results to FCPS.

2. Postaccident

If an employee driving a commercial motor vehicle is involved in an accident while on duty, alcohol and drug testing shall be required if (1) there is a fatality or (2) the driver receives a citation arising from the accident and a vehicle is towed from the scene or any individual requires medical treatment away from the scene. Every equitable effort should be made to administer alcohol tests within two hours of the accident. If an alcohol test has not been performed within eight hours following the accident, efforts to test shall stop. Controlled substance testing shall stop if not performed within 32 hours following the accident. Whenever testing is not administered within the time limits as prescribed, supervisors must provide and forward written documentation to the Department of Human Resources in every case that alcohol testing is not performed within the first two hours or if the alcohol testing is not performed within eight hours and controlled substance testing is not performed within 32 hours. Written documentation should include the amount of time elapsed between the accident and the testing and the reason(s) for the delay. A driver who is subject to postaccident testing shall remain readily available at the accident scene, and, unless this requirement is met, he or she shall be deemed to have refused to submit to testing. The only exception to this requirement applies when the driver leaves temporarily to obtain assistance related to the accident or to obtain necessary medical care. Without supervisor approval, an employee may not ingest food or drink during the period prior to testing.

Testing at the scene of an accident conducted by federal, state, or local officials having independent authority to conduct tests for alcohol and or controlled substances shall meet the requirement for postaccident testing. Employees are required to consent to testing by such officials and to release the results of such tests to FCPS (attachment).

3. Random

Alcohol and controlled substance tests shall be conducted periodically on an unannounced basis throughout the calendar year. Employees shall be randomly identified and notified to report for testing during the work year. Under this selection process, each driver has an equal chance of being tested each time selections are made. Employees identified to be tested shall report directly and immediately to the test site when notified by their supervisors. Otherwise, refusing to report, delaying in reporting immediately and directly, or leaving the test site before the test process is complete shall be considered a refusal to test and grounds for dismissal. Drivers shall be tested just before, during, or just after performing safety-sensitive duties. If a driver is off work due to illness, annual leave, leave of absence, layoff, injury, or for any other reason, for more than 30 calendar days, the preduty testing provision of this regulation shall apply prior to returning to driving.

For random alcohol testing, the minimum annual percentage rate shall be ten percent of all the commercial motor vehicle drivers. This percentage may increase or decrease in any given year.

For random drug testing, the minimum annual percentage rate shall be 50 percent of all the commercial motor vehicle drivers. This rate for controlled substances may change annually as do the alcohol adjustments.

4. Annual Medical Examination (for school bus drivers only)

Bus drivers must pass the mandated state medical examination and the School Board annual medical examination that meets federal DOT standards. Trade employees required to transport hazardous materials must satisfactorily pass a physical examination that meets the DOT and the Virginia Motor Carrier Safety regulations. Both physical examinations require that the examining physician certify that there is no reason to suspect that the employee is using illegal drugs or improperly using alcohol based on a review of the medical history and examination. Drivers shall receive advance notice from the Department of Human Resources of their scheduled medical examinations with school system contract providers.

B. For All Employees

FCPS shall also test all employees in the following situations pursuant to its own authority and, with respect to drivers, the drug and alcohol testing regulations issued by DOT and the Federal Highway Administration (FHWA):

1. Reasonable Suspicion

When reasonable suspicion of a violation of this regulation exists, the employee may be tested for alcohol and drugs. Reasonable suspicion may be based on, but not limited to, the following: specific observation of actual use or possession of alcohol or illegal drugs, performance indicators, and/or physical symptoms of having abused alcohol or illegal drugs.

A principal or other supervisor who has reasonable suspicion of alcohol or drug use in violation of this regulation shall contact the testing administrator in the Department of Human Resources, who shall collaboratively review the information collected, determine whether reasonable suspicion exists, and decide whether testing is needed. Once that determination has been made, the supervisor or testing administrator shall direct the employee to submit to testing and shall arrange for the employee to be transported to the test site. During the period prior to testing, an employee may not ingest food or drink without supervisor approval.

An employee directed to submit to alcohol or drug testing shall be informed of the reason(s) for the test and the fact that refusal to provide the specimen constitutes failure to obey a direct order and is grounds for dismissal. The supervisor and/or human resources representative shall document the information communicated to the employee and the evidence that constituted reasonable suspicion within 24 hours of the observed behavior or report of the incident or before the results of the test are released, whichever is earlier. At the employee's request, a copy of such documentation shall be provided to the employee by the Department of Human Resources. All testing at a designated medical facility shall be administered by an official in accordance with established medical standards, including chain of custody procedures, confirmation testing, and other safeguards as appropriate.

Every equitable effort should be made to administer alcohol tests within two hours of the determined suspicion. If an alcohol test has not been performed within eight hours following the determined suspicion, efforts to test shall stop. Controlled substance testing shall stop if not performed within 32 hours following the determined suspicion. Whenever testing is

not administered within the time limits as prescribed, supervisors must provide and forward written documentation to the Department of Human Resources in every case that alcohol testing was not performed within the first two hours or if the alcohol testing was not performed within eight hours and controlled substance testing was not performed with 32 hours. Written documentation should include the amount of time elapsed between the determined suspicion and the testing and the reason(s) for the delay.

2. Return to Duty and Follow-Up Testing

a. Drivers of Commercial Motor Vehicles

Drivers of commercial motor vehicles in violation of this regulation shall be dismissed even for the first offense. A former FCPS driver of a commercial motor vehicle dismissed for this reason, and who satisfactorily completes a rehabilitation program prescribed, monitored, and certified by a (DOT) substance abuse professional, may reapply for employment and receive fair consideration for all positions applied for except those requiring the performance of safety-sensitive duties, pursuant to the school system's practice of not rehiring employees who have been terminated for conduct that could endanger the safety or welfare of students. Evaluation criteria used to determine if the employee may be rehired for a non-CDL position shall include, but not be limited to, severity of offense, nature of the position held by the employee, level of performance, years of service, previous conduct violations, possession of unique skills, knowledge and training, recommendation of a certified DOT substance abuse professional, if available, and the safety-sensitive nature of the position. If selected for a non-CDL position, the employee shall satisfactorily pass preemployment testing and be subject to random unannounced follow-up tests at School Board expense during the first 12 months after employment or until the substance abuse professional authorizes discontinuance, whichever is longer. Both alcohol and controlled substance testing may be required by the substance abuse professional if they are a part of the prescribed follow-up program.

b. Other Employees

Any other employee who returns to duty after engaging in conduct that violates this regulation, shall be sent to the employee assistance program (EAP) and may be required to be evaluated by a substance abuse professional who shall determine the employee's needs in resolving problems associated with alcohol misuse and/or controlled substance use. Evaluation criteria used to determine if the employee may return to duty shall include, but not be limited to, severity of offense, nature of the position held by the employee, level of performance, years of service, previous conduct violations, possession of unique skills, knowledge and training,

recommendation of a certified DOT substance abuse professional, if available, and the safety-sensitive nature of the position.

If a rehabilitation program is prescribed, the employee must satisfactorily complete the program as prescribed at his or her expense prior to returning to duty. If the prescribed program permits the employee to continue working while receiving treatment, the employee shall be subject to random unannounced tests. In addition, the employee shall be subject to follow-up tests during that first 12 months following the employee's return to duty or until discontinuance is authorized by a substance abuse professional, whichever is the longer period of time. Both tests for alcohol and other controlled substances may be required if they are a part of the follow-up prescribed by the substance abuse professional. The required random and follow-up tests shall be at School Board expense. Referral to the substance abuse professional shall be made through EAP in the Office of Equity and Compliance. All random or follow-up testing shall comply with procedures as set forth in this regulation.

X. REMOVAL FROM DUTY

Employees shall be removed from duty and placed on administrative leave with pay, pending a final decision for disciplinary action. Employees shall be advised of their alleged violations, shall have an opportunity to respond to the charges against them, and shall be notified in writing of the status of their employment. The following circumstances, while not necessarily inclusive, require placing the employee on administrative leave pending a final decision on the status of employment:

- A. Refusal to be tested.
- B. Confirmation of a positive test result.
- C. Evidence such as behavior, speech, or employee admission of alcohol and or drug misuse, even if the employee has not been tested.
- D. Investigation of alleged violation of this regulation.

XI. DISCIPLINARY ACTIONS

Drivers who engage in any of the following conduct shall be terminated:

- A. Violating any of the foregoing rules regarding manufacturing, distributing, dispensing, possessing, consuming, using, or selling drugs or alcohol.
- B. Having the presence of alcohol, illegal drugs, unlawful prescription drugs, or drug metabolites in one's system or noncompliance with the regulations and policies of the School Board, the state Board of Education, or the Code of Virginia in violation of Policy 4293, Dismissal--Definition of Just Cause, or this regulation.
- C. Refusing to submit to or cooperate with drug and or alcohol testing that includes but is not limited to:
 - 1. The actions described in section III. of this regulation.
 - 2. Not accurately signing in and reporting the arrival and departure times at the test site.
 - 3. Leaving the scene of an accident without a valid reason before testing arrangements have been made and or have been concluded.
 - 4. Falsification of the physician certificate or any other medical documentation.
- D. Failing to report consumption of over-the-counter or prescribed medication that could impair the ability to perform assigned duties safely and effectively.
- E. Failing to report any drug or alcohol conviction or charge as required by this regulation.
- F. Other employees may be subject to discipline, up to and including discharge, even for a first offense, if they do violate any of the foregoing rules regarding manufacturing, distributing, dispensing, possessing, consuming, using, or selling drugs or alcohol or otherwise violating this regulation.

This regulation shall be administered consistently with the school system's obligations under federal, state, and local laws, as well as with other school system regulations. Recommendations for disciplinary actions, including dismissal for violation of this regulation, shall be consistent with standard operating procedures to ensure that due process is observed throughout all proceedings. Disciplinary actions affecting employment status shall be reviewed by the assistant superintendent, Department of Human Resources, or his or her designee before the final decision is made.

An employee who is charged with a drug-related felony or convicted of any criminal offense that includes any driving violations or infractions of the law (whether in a school bus or private vehicle) shall notify his or her supervisor, who shall report the information to the assistant superintendent, Department of Human Resources, or his or her designee, by the next working day of the charge or conviction or prior to reporting for duty, whichever is less.

In addition, a commercial motor vehicle driver required to maintain a CDL and an employee whose position responsibilities include the operation of an FCPS vehicle, who is charged with an alcohol-related felony or convicted of any alcohol-related criminal offense, shall notify his or her supervisor, who shall report the information to the assistant superintendent, Department of Human Resources, or his or her designee, by the next working day of the charge or conviction or prior to reporting for duty, whichever is less.

XII. RECORD RETENTION AND CONFIDENTIALITY

All testing records and data relating to violations of this regulation shall be maintained in files separate from employee personnel files in a secure location with controlled access by designated representatives in the Department of Human Resources. Testing records for drivers of commercial motor vehicles shall be maintained in separate files in accordance with rules and regulations of the Federal Highway Administration, U.S. Department of Transportation.

Test results shall be confidential and shall be communicated to individuals other than the employee and the Department of Human Resources staff only on a need-to-know basis and only with the approval of the assistant superintendent, Department of Human Resources, and in appropriate cases, the employee. An employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances. Test results for drivers of commercial motor vehicles may also be provided annually to the Department of Transportation in compliance with federal requirements.

XIII. NOTIFICATION AND TRAINING

Every employee is expected to be aware of this regulation and its requirements and to abide by the requirements. Program managers have the responsibility to ensure that all employees are made aware of this regulation. In addition, program managers should schedule meetings with their respective staffs annually to review the provisions and requirements of this regulation. Every employee in a position requiring a CDL shall be provided a copy of this regulation and shall sign a statement certifying receipt of such, which shall be maintained in the employee's personnel file (Attachment). Regardless of whether an employee signs the attachment, he or she shall be bound by the requirements of this regulation.

Principals, assistant principals, safety assistants, and supervisors of positions requiring CDLs shall complete two training sessions, one on substance abuse and one on alcohol misuse. Other supervisors shall receive such training on request or if HR determines that training is needed. Training shall include the physical, behavioral, and performance indicators of probable alcohol misuse and use of controlled substances.

XIV. APPEAL PROCEDURE

When an employee who is in a position that requires him or her to maintain a valid CDL chooses to appeal a dismissal decision based on a positive drug or alcohol test result (random, postaccident, return to duty, or follow-up test), he or she must appeal steps one, two, and three through the Department of Human Resources. Step one is with the drug and alcohol test administrator, Office of Employment Services; step two is with the director, Office of Employment Services or his or her designee; and step three is with the assistant superintendent, Department of Human Resources, or his or her designee.

All other employees who choose to appeal a dismissal based on a reasonable suspicion test must appeal steps one, two, and three through their offices or departments. Step one is with the immediate supervisor; step two is with the principal or director; and step three is with the assistant superintendent, Department of Human Resources, or his or her designee.

XV. POLICY OR PROCEDURAL INQUIRIES

Requests for additional information and questions related to this regulation should be directed to the following: for substance abuse and alcohol testing procedures, contact the human resources technician or the director, Office of Employment Services; for a referral to a substance abuse professional, contact EAP in the Office of Equity and Compliance.

APPENDIX

The regulations promulgated by the U.S. Department of Transportation and the Federal Highway Administration applicable to drivers contain the following provisions. Note that in some instances the school system has established stricter rules with regard to alcohol and uncontrolled substance testing than the Department of Transportation and the Federal Highway Administration require. Consult the preceding regulation for details. The provisions below are set forth for CDL drivers pursuant to the Department of Transportation 49.CFR.part 382. 101-382-605 and the Federal Highway Administration regulations.

1. Definitions

a. Driver

Any person who operates a commercial motor vehicle. This includes, but is not limited to: full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers; and independent owner-operators.

b. Safety-Sensitive Function

All time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
- (2) All time inspecting equipment as required by section 392.7 and section 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- (3) All time spent at the driving controls of a commercial motor vehicle in operation.
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in the sleeper berth (a berth conforming to the requirements of section 392.76 of this subchapter).
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a vehicle, or giving or receiving receipts for shipments loaded or unloaded.
- (6) All time repairing, obtaining assistance, or remaining in attendance on a disabled vehicle.

c. Accident:

- (1) Except as provided in paragraph (1b) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce that results in one of the following:
 - (a) A fatality.
 - (b) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident.
 - (c) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.
- (2) The term accident does not include:
 - (a) An occurrence involving only boarding and alighting from a stationary motor vehicle.
 - (b) An occurrence involving only the loading or unloading of cargo.

d. Postaccident Testing

- (1) As soon as it is practical following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:
 - (a) If the driver was performing safety-sensitive functions with respect to the vehicle and if the accident involved the loss of human life.
 - (b) If the driver receives a citation within eight hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved bodily injury to any person who, as a result of the injury immediately receives medical treatment away from the scene of the accident, or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- (2) As soon as it is practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers:
 - (a) If the driver was performing safety-sensitive functions with respect to the vehicle and if the accident involved the loss of human life.

- (b) If the driver receives a citation within 32 hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident.
 - (c) If the accident involved one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- (3) The following table notes when a postaccident test is required to be conducted by sections (1)(a), (1)(b), (2)(a), and (2)(b) of this section:

TABLE FOR SECTION 382.303

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

(4) Alcohol tests

If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(5) Controlled substance tests

If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(6) Postaccident testing

A driver who is subject to postaccident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. An employer shall provide drivers with necessary postaccident information, procedures, and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(7) Testing results

(a) The results of a breath or blood test for the use of alcohol, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable federal, state, or local alcohol testing requirements and that the results of the tests are obtained by the employer.

(b) The results of 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 section, provided such tests conform to the applicable federal, state, or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(8) Exception. This section does not apply to:

(a) An occurrence involving only boarding or alighting from a stationary motor vehicle.

(b) An occurrence involving only the loading or unloading of cargo.

(c) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in section 571.3 of this title) by an employer unless the motor vehicle is 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 section 177.823 of this title.

e. Prohibited Alcohol and Controlled Substance-Related Conduct

(a) Purpose

The purpose of this part is to establish procedures designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

(b) On-duty use

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

(c) Other alcohol-related conduct

No driver tested under the provisions of section VIII.C. of this regulation and who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period but not less than 24 hours following administration of the test.

(d) 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. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

(e) Preduty use

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

(f) Use following an accident

No driver required to take a postaccident alcohol test under section 382.303 shall use alcohol for eight hours following the accident or until he or she undergoes a postaccident alcohol test, whichever occurs first.

(g) Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a postaccident alcohol or controlled substances test required under section 382.303, a random alcohol or controlled substances test required under section 382.305, a reasonable suspicion alcohol or controlled substances test required under section 382.307, or a follow-up alcohol or controlled substances test required under section 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

(h) Controlled substances use

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 the instructions of a licensed medical practitioner, as defined in section 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(i) An employer may require a driver to inform the employer of any therapeutic drug use section 382.215 controlled substances testing. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

Legal References: U.S. Department of Transportation, Title 49, Part 40 -
Procedures for Transportation Workplace Drug and Alcohol
Testing Programs: 49 CFR Part 40 in its entirety.

Federal Motor Carrier Safety Administration DOT, regulation,
49 CFR, Subpart A: Controlled Substances and Alcohol Use and
Testing; section 382.101-382.605.

**Attachment
Regulation 4418.5**

FAIRFAX COUNTY PUBLIC SCHOOLS
Applicant and Employee
Commercial Motor Vehicle Driver Consent
Controlled Substances and Alcohol Testing

As a condition of obtaining and maintaining employment with Fairfax County Public Schools in a position that requires the operation of a commercial motor vehicle, I shall submit to controlled substance testing and alcohol testing as required by School Board policy. As a driver of a School Board-owned commercial motor vehicle, I shall comply with all requirements of School Board policy and any federal, state, and local laws, rules, and regulations related to controlled substances and/or alcohol use.

I understand or acknowledge that:

1. The School Board has established a controlled substances and alcohol testing program for drivers of School Board commercial motor vehicles to ensure a safe and drug-free transportation environment, to reduce the potential for accidents and casualties related to accidents involving School Board-owned vehicles, and to participate with the U.S. Department of Transportation and the transportation industry in efforts to eliminate illegal use of alcohol and controlled substances.
2. I must submit to controlled substances testing and alcohol testing as required in the current version of Regulation 4418, Alcohol and Drug-Free Workplace, i.e., postaccident testing, random testing, reasonable suspicion testing, return to duty, and follow-up testing as required. Furthermore, as an applicant, I must submit to preemployment testing before I begin work or be subject to denial of employment.
3. I shall participate in the testing program and authorize the medical review officer designated by the school system to release the results of tests to the assistant superintendent, Department of Human Resources, or his or her designee.
4. I acknowledge receipt of a copy of the current version of Regulation 4418, Alcohol and Drug-Free Workplace, and acknowledge that I am bound by it.
5. If involved in an accident for which I am required or directed to be tested for alcohol and or controlled substances, I shall seek or allow such testing to occur at the site or at an approved clinic or, if not available, at a hospital. Fairfax County Public Schools will pay or reimburse any reasonable cost for such tests.
6. I must release to Fairfax County Public Schools the results of any tests performed pursuant to this regulation.
7. I must report drug- and alcohol-related convictions as provided in this regulation.
8. A copy of this form will be placed in my personnel file.

Signature of Driver

Date

Name of Driver (Print)

Driver's License Number

cc: Personnel File