

DISTRICT POLICY

POLICY SERIES: Employee Rights and Responsibilities
SUBJECT: Drug and Alcohol Testing for Prospective Employees
BOARD APPROVED: May 2014
REVISION DATE: September 2017

ERR 160 Drug and Alcohol Testing for Prospective Employees

I. PURPOSE

- A. The Board recognizes the significant problems that can be created by illegal drug use in society in general, and the public schools in particular. The Board further recognizes the important contribution that the public schools have in shaping the youth of today into the adults of tomorrow. The Board also appreciates the role that adults in schools play as role models for students and is committed to ensuring that District employees are conducting themselves in a manner that is in keeping with this important responsibility.
- B. The Board believes that current illegal drug dependence may impair an employee's judgment and present a grave threat to the physical and mental well-being of students and employees. The Board further believes that a work environment free of illegal drug use will be not only safer, healthier, and more productive but also more conducive to effective learning. Therefore, the purpose of this policy is to provide authority to the District to request or require job applicants to submit to drug testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.

II. GENERAL STATEMENT OF POLICY

- A. Prospective employees will be asked to submit to drug testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- B. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed for the person who is using or possessing them is prohibited on District property (which includes District vehicles), while operating District vehicles or equipment, and at any school-sponsored program or event. Use of drugs which are not medically prescribed for the user is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off District property. Employees under the influence of drugs which are not medically prescribed are prohibited from entering or remaining on District property.
- C. The District may withdraw a job offer made to any prospective employee pursuant to the provisions of this policy and as provided in Minn. Stat. §§181.950-181.957.

III. DRUG TESTING FOR PROSPECTIVE EMPLOYEES

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

1. General Limitations

- a. The District ~~will~~may request or require that a prospective employee undergo drug testing conducted by a testing laboratory which participates in one of the programs listed in Minn. Stat. §181.953, Subd. 1.
- b. The District will not request or require a prospective employee to undergo drug testing on an arbitrary or capricious basis.

2. Prospective Employee Testing

The District shall not withdraw an 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 District shall notify the prospective employee of the reason for its action.

B. No Legal Duty to Test

The District does not have a legal duty to request or require any prospective employee to undergo drug testing.

C. Definitions

1. “Drug” means a controlled substance as defined in Minnesota Statutes.
2. “Drug testing” and “drug 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 or their metabolites in the sample tested.
3. “Prospective employee” means a person who has received a job offer contingent on the person passing drug testing.
4. “Positive test result” means a finding of the presence of drugs 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.

D. Right of Prospective Employee to Refuse Drug Testing and Consequences of Such Refusal

1. Right of Prospective Employee to Refuse Drug Testing

Any prospective employee has the right to refuse drug testing subject to the provision contained in Paragraph 2 of this Section.

2. Consequences of a Prospective Employee’s Refusal to Undergo Drug Testing

Any prospective employee who refuses to undergo drug testing pursuant to the Prospective Employee Testing provision of this policy shall not be employed.

E. Reliability and Fairness Safeguards

1. Pretest Notice

Before requesting or requiring a prospective employee to undergo drug testing, the District shall provide him or her with a Pretest Notice on which to acknowledge that she or he has received or would prefer to access an electronic copy of this policy.

2. Notice of Test Results and Right to Test Result Report

Within three (3) working days after receipt of a test result report from the testing laboratory, the District shall inform a prospective employee, in writing, of a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test. The District shall also inform a prospective employee, in writing, of his or her right to request and receive a copy of the test result report on any drug test from the District.

3. Notice of and Right to Explain Positive Test Result

a. If the District informs a prospective employee of a positive test result on a confirmatory test, at the same time, the District shall provide him or her with written notice of the right to explain the results and to submit additional information.

b. Within three (3) working days after notice of a positive test result on a confirmatory test, a prospective employee may submit information (in addition to any information already submitted) to the District to explain that result.

4. Notice of and Right to Request Confirmatory Retests

a. If the District informs a prospective employee of a positive test result on a confirmatory test, at the same time, the District shall provide him or her with written notice of the right to request a confirmatory retest of the original sample at his or her expense.

b. A prospective employee 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 prospective employee shall notify the District in writing of his or her intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the District shall notify the original testing laboratory that the prospective employee 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 threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse action based on the original confirmatory test will be taken against the prospective employee.

F. Privacy, Confidentiality and Privilege Safeguards

1. Privacy Limitations

A laboratory will only disclose to the District test result data regarding the presence or absence of drugs or their metabolites in a sample tested.

2. Confidentiality Limitations

Test result reports and other information acquired in the drug testing process are private data on individuals as that phrase is defined in Minn. Stat. Ch. 13, and shall not be disclosed by the District to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the prospective employee.

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.

4. Privilege

Positive test results from the District drug testing program shall not be used as evidence in a criminal action against the prospective employee tested.

IV. POSTING

The District shall post notice in an appropriate and conspicuous location on its premises that it has adopted a drug testing policy and that copies of the policy are available for inspection during regular business hours by prospective employees in its human resources department or other suitable locations. Inclusion of this policy on the District's website shall satisfy this posting requirement.

Legal References: [Minn. Stat. §§ 181.950-181.957](#) (Drug and Alcohol Testing in the Workplace)
[Minn. Stat. Chapter 13](#) (Minnesota Government Data Practices Act)
[Minn. Stat. Chapter 152](#) (Drugs; Controlled Substances)

Cross Reference: [Drug-Free Workplace/Drug-Free Schools Policy](#)