

**RYE CITY SCHOOL DISTRICT**  
**RYE, NEW YORK**

**8414.5**

**ALCOHOL AND DRUG TESTING OF DRIVERS AND OTHER  
COVERED EMPLOYEES**

The District recognizes the dangers inherent in alcohol and controlled substance use by employees especially those in safety-sensitive positions (SSPs). To ensure the safety of its students and to comply with federal regulations, the District requires alcohol and controlled substance testing of school vehicle drivers and other SSPs.

The District shall directly, by contract, or through a consortium, implement and conduct a program to provide alcohol and controlled substance testing of employees who operate a commercial motor vehicle, perform in a safety-sensitive position, and are required to hold a commercial driver's license. The District will not contract with any vendors/contract vehicle companies that do not have an established process or manage their own program to provide alcohol and controlled substance testing of employees. Such individuals include:

1. drivers of vehicles designed to transport sixteen (16) or more passengers, including the driver;
2. drivers of commercial motor vehicles whose manufacturer's rating is 26,001 lbs. or more; or
3. any other employee who may drive a listed vehicle (e.g., a mechanic who performs test drives).

Federal regulations require that school drivers and other SSPs be tested for alcohol and drugs at the following times:

- a) Drug testing will be conducted after an offer to hire, but before actually performing safety-sensitive functions for the first time. Such pre-employment testing will also be required when employees transfer to a safety-sensitive position.
- b) Safety-sensitive positions are also subject to a random drug and/or alcohol test on an unannounced basis just before, during or just after performance of safety-sensitive functions.
- c) In addition, testing will be ordered if a trained supervisor has a "reasonable suspicion" that an employee has engaged in prohibited use of drugs and/or alcohol.
- d) There will also be post-accident testing conducted after accidents on employees whose performance could have contributed to the accidents.

e) Finally, return-to-duty and follow-up testing will be conducted when an individual who has violated the prohibited alcohol and/or drug conduct standards returns to performing safety-sensitive duties. Follow-up tests are unannounced and at least six (6) tests must be conducted in the first twelve (12) months after an employee returns to duty. Follow-up testing may be extended for up to sixty (60) months following return-to-duty.

The following alcohol and controlled substance-related activities are prohibited by the Federal Highway Administration's drug use and alcohol misuse rules for drivers of commercial motor vehicles and other SSPs:

- a) Reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If testing shows an alcohol concentration of 0.02 or greater but less than 0.04, the employee must be removed from performing safety-sensitive activities for twenty-four (24) hours, but no punitive action will be taken by the employer.
- b) Being on duty or operating a commercial motor vehicle (CMV) while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken.
- c) Using alcohol while performing safety-sensitive functions.
- d) Using alcohol four (4) hours or less before duty. (New York State law prohibits use six (6) hours or less before duty.)
- e) When required to take a post-accident alcohol test, using alcohol within eight (8) hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- f) Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow-up testing requirements.
- g) Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the SSP uses any controlled substance. This prohibition does not apply when instructed by a physician who has advised the SSP that the substance does not adversely affect the SSP's ability to safely operate a CMV.
- h) Reporting for duty, remaining on duty or performing a safety-sensitive function, if the SSP tests positive for controlled substances.

Drivers and other SSPs who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of controlled substances are subject to disciplinary action and penalties.

SSPs who have engaged in such prohibited behavior shall not be allowed to perform safety-sensitive functions until they are:

- a) Evaluated by a substance abuse professional (SAP).
- b) Complete any requirements for rehabilitation as set by the District and the SAP.
- c) Pass a return-to-duty test with the result below 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use.
- d) The SSP shall also be subject to unannounced follow-up alcohol and controlled substance testing. The number and frequency of such follow-up testing shall be as directed by the SAP, and consist of at least six (6) tests in the first twelve (12) months.

The Superintendent of Schools or her/his designee shall ensure that each SSP receives a copy of District policy, educational materials that explain the requirements of the alcohol and drug testing regulations, and any regulations and/or procedures developed by the District with respect to meeting those requirements. The Superintendent or his/her designee shall ensure that a copy of these materials is distributed to each SSP, who shall sign for receipt of all of the above documents, as well as other appropriate personnel, prior to the start of alcohol and controlled substance testing as well as at the beginning of each school year or at the time of hire for any safety-sensitive employees. Representatives of applicable collective bargaining units shall be notified of the availability of this information.

The Superintendent or his/her designee shall arrange for training of all supervisors who may be utilized to determine whether "reasonable suspicion" exists to test a driver for prohibited conduct involving alcohol or controlled substance use/abuse.

Any violation of this policy and/or District procedures, and applicable federal and state laws by a covered employee shall be grounds for disciplinary action including, but not limited to, fines, suspension, and/or discharge in a manner consistent with District policy, collective bargaining agreements and applicable law.

The Superintendent of Schools or his/her designee shall ensure that each vendor/contract vehicle company complies with all Federal provisions (laws) for drug and alcohol testing and be responsible for any and all fines related thereto. The District reserves the right to apply financial and administrative sanctions against a vendor/contract vehicle company for failure to comply.

Any significant violation of this policy and/or District procedures, and applicable federal and state laws by vendors/contract vehicle companies and other employees shall result in revocation of their

contract for the transportation of students. In accordance with federal and state law, a driver or SSP will not be permitted to drive if he/she:

1. possesses, consumes or is reasonably believed to possess or have consumed alcohol or a controlled substance, while on duty;
2. uses or is under the influence of alcohol or a controlled substance within six hours or less before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for a controlled substance; or
4. refuses to take a required alcohol or controlled substance test.

Also, no driver shall use alcohol after being involved in an accident in which there was a fatality or in which the driver was cited for a moving violation and a vehicle was towed from the scene or an injury was treated away from the scene until he/she has been tested or 8 hours have passed, whichever occurs first.

Any individual who is tested and found to have an alcohol concentration of at least 0.02, but less than 0.04, shall be removed from the position until his or her next regularly scheduled duty period, but not less than 24 hours following administration of the test. Any individual found to have violated this requirement may be disciplined in accordance with the provisions of the applicable employment agreement, district policy, and/or law.

If a driver has an alcohol concentration of 0.04 or greater, or has engaged in prohibited alcohol or controlled substance use, he or she will be removed from driving duties, and referred to a substance abuse professional. The individual may be required to complete a treatment program and/or be disciplined pursuant to district policy and/or employment agreement collective bargaining agreement. No driver who has abused controlled substances and/or alcohol may return to duty unless he/she has successfully passed a required return to duty test. Thereafter, the driver will be subject to follow-up testing.

Should the district receive a dilute test result in which the creatinine concentration is greater than 5mg/dL in the case of any pre-employment, return-to-duty, follow-up, reasonable suspicion, or random test, it is the policy of the district that the individual shall be re-tested and that re-test will become the test of record.

The Superintendent of Schools shall ensure that a copy of this policy, the district's policy on misuse of alcohol and use of controlled substances, information on alcohol and drug abuse and treatment resources and any other information prescribed by federal regulations is provided to all school drivers and other appropriate personnel prior to the initiation of the testing program and to each driver subsequently hired or transferred to a position subject to testing.

Cross-ref:

9320, Drug-Free Workplace  
9610, Staff Substance Abuse

Ref:

Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. §§31136; 31306

49 U.S.C. §521(b)

49 CFR Part 391 (Qualifications/Disqualifications)

49 CFR Part 382 (Drug Testing Requirements)

49 CFR Part 40 (Testing Procedures)

49 CFR §395.2 (On-duty time defined)

Vehicle and Traffic Law §§509-1; 1192; 1193

*Will v. Frontier CSD Bd. of Educ.*, 97 N.Y.2d 690 (2002)

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