

RYE CITY SCHOOL DISTRICT
RYE, NEW YORK

9610-R

STAFF SUBSTANCE ABUSE REGULATIONS

1. If a staff member while in the workplace exhibits a physical condition, conduct or pattern of erratic behavior which indicates that the staff member is under the influence of an intoxicating substance, and the member's supervisor has reasonable cause to believe, based on direct observation of use or based on observation of the staff member's conduct, performance or behavior which indicates that the staff member is under the influence of an intoxicating substance, or if the supervisor is provided with information from a reliable and credible source which is independently corroborated that the staff member is engaging in use of and is under the influence of intoxicating substances while in the workplace or that the member is engaging in illegal use, possession, distribution or sale of a controlled substance or drug in the workplace, the supervisor shall make an oral report to the Superintendent or his/her designee.

The Superintendent shall decide whether there is reason to investigate for purposes of ascertaining if available facts objectively indicate reasonable suspicion exists to pursue the inquiry, which may include meeting with the staff member for purposes of providing the staff member an opportunity to explain the conduct, performance or behavior. In the event such a meeting is held, the staff member may request that an Association representative and/or legal counsel attend the meeting, but in no event shall the meeting be delayed for more than two (2) hours to accommodate the request. The investigation of the staff member's behavior shall be confidential with due consideration for the dignity and privacy of the staff member.

If the Superintendent decides that the staff member should be referred for drug or alcohol testing, the following procedure should be followed:

- a) The staff member shall be ordered to submit to a drug and/or alcohol test and, at the same time, the staff member shall be given a brief verbal statement of the basis for reasonable suspicion. Refusal to submit to the test or to cooperate during the testing procedure shall constitute grounds for disciplinary action. A verbal direction to a member to submit to a drug and/or alcohol test shall be confirmed in writing, but in no event shall the testing process be delayed pending issuance of such written direction. The direction to the staff member shall be given in a confidential manner with due regard for the dignity and privacy of the individual staff member.
- b) If no prior meeting is held with the Superintendent and the staff member is ordered to submit to a test based on reasonable suspicion, the staff member will be advised of the right to have an Association representative present, if applicable, for collection of the sample, but in no event shall collection be delayed for more than two (2) hours to accommodate the presence of an Association official.

- c) Disputes concerning the matter of reasonable suspicion to order a test will be referred to the statutory disciplinary procedure in connection with charges preferred against the staff member and/or the applicable collective bargaining agreement dispute resolution procedures.
- d) The sample collection process shall be confidential with due regard for the dignity and privacy of the staff member and shall be performed in accordance with standards promulgated by The National Institute of Drug Abuse (“NIDA”). During the course of the collection process, the staff member shall cooperate with requests for information concerning use of medications and acknowledgment of giving of the specimen. The details of the sample collection process shall be subject to the evaluation and review by the parties’ designated labor management committee in accordance with the parameters set forth in this policy.
- e) The staff member shall provide a urine sample for purposes of testing for drugs or controlled substances other than alcohol. The member shall provide a sufficient amount of the sample to allow for an initial screening, a confirmatory test, and for later testing if requested by the staff member. In the event an insufficient sample is provided, the staff member’s ability to have a second test performed may be adversely impacted.
- f) In the event the staff member is ordered to submit to a test for the presence of alcohol, the staff member shall submit to a breathalyzer test to be administered by a certified agent designated by the Board. In the event the breathalyzer tests positive for the presence of and under the influence of alcohol, the staff member shall provide a blood sample for the confirmatory test as herein provided.
- g) There shall be no direct observation of giving of a urine sample unless there is reason to believe that the sample may be tampered with, in which event direct observation shall be made by a person of the same gender as the staff member giving the sample.
- h) In the case of urine or blood test, the sample given shall be divided into two aliquots. The sample will be given to a monitor who will mark and seal each sample to preserve the chain of custody of the samples. Thereafter, the samples shall be transported to the testing laboratory in a manner which shall insure the integrity and chain of custody of each sample.
- i) Both samples shall be delivered to a laboratory which shall be duly licensed or certified for drug testing purposes by the NIDA. One sample shall be used for purposes of testing by the laboratory and the second sample shall be maintained by the laboratory in accordance with recognized procedures for purposes hereafter described.
- j) The designated laboratory shall initially perform the enzyme multiplied immunoassay test (“EMIT”) on the sample for the presence of drugs or controlled substances. A sample which tests positive shall be retested by the laboratory using the gas chromatography mass spectroscopy test (“GC-MS”). The laboratory shall perform an appropriate test for the presence of alcohol on the blood sample. A test shall be deemed positive for the presence of drugs and/or alcohol in accordance with standards utilized by the certified laboratory.

The parties' labor management committee may develop other standards to be used for determining the presence of intoxicating substances. In addition, the parties may discuss and agree on, subsequent to the date of the adoption of this policy, the use of tests scientifically equivalent to those stated herein.

k) In the event the confirmatory GC-MS test result is negative, then the sample shall be deemed negative for the presence of intoxicating substances. The Superintendent and the staff member shall, as soon as possible, be informed in writing that the test result is negative. In the event of a negative test result, the existence of the test or its results shall not be used in any manner in any proceeding between the Board and the staff member. The terms of this Subsection k shall be subject to the provisions of Section 4(5) set forth below.

l) If the confirmatory GC-MS test result is positive, the laboratory shall, as soon as possible, provide copies of the test results to the Superintendent, the staff member and the member's representative.

2. Member Request for Retesting

a) After collection and testing, both samples shall be maintained by the Board's designated laboratory in accordance with appropriate procedures for a period of time to be agreed to by the parties.

After the staff member receives notice of a confirmed positive test from the Board's laboratory, the staff member may make written request within five calendar days to the Board's designated laboratory for a test of a second sample. The staff member may request that the second sample be sent to a laboratory selected by the staff member which is duly licensed and certified by the NIDA.

The selected laboratory shall be responsible for pick-up and transport of the sample, and it shall insure chain of custody. The member shall be responsible for all costs associated with the second test and shall make arrangements for payment with the selected lab; however, if the results of the second test are negative, then the Board shall reimburse the employee for all costs associated with the second test.

b) The parties shall negotiate the standards to be used in the second test for confirmation of the first positive results for the presence of intoxicating substances. The results of the second test shall be sent to the Superintendent, the staff member and the staff member's representative.

3. Disciplinary Procedure

If the results of the two tests administered as provided above are positive for the presence of intoxicants or if the Board's test is positive and the employee chooses not to request retesting as provided in Section 2, the employee may be suspended and/or subject to discipline as provided by law. In addition, the employee may also be subject to disciplinary action pursuant to law for the misconduct or incompetency which formed the basis of the reasonable suspicion if the tests were administered pursuant to this policy.

4. Non-Bargaining Unit Employees

All the above regulations are applicable to "at will" and contracted employees. Where reference is made to association representation, employees under this section may designate an advocate or witness in the place of an association representative.

5. Grievance and Arbitration

Disputes regarding the interpretation and/or application of this policy shall be resolved pursuant to the Grievance and Arbitration procedures of the Collective Bargaining Agreement applicable to the staff member aggrieved, or through a hearing before the Board for non-bargaining unit employees.

Ref: Drug-Free Schools and Communities Act U.S.C. §§ 3171 et seq.
Civil Service Law § 75
Education Law § 3020-a
Patchogue-Medford Congress of Teachers v. Board of Education, 70 NY2d 57 (1987)

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