

**EMPLOYEE STANDARDS OF CONDUCT  
SEARCHES AND ALCOHOL/DRUG TESTING**

**DHE**

**SEARCHES—  
GENERAL RULE**

Citizens, including school employees, have a right to be free from unreasonable searches and seizures. *U.S. Const. Amendment IV; Tex. Const. Art. I, Sec. 9*

The School may search an employee or an employee’s property if:

1. There are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct; and
2. The search is reasonably related in scope to the circumstances that justified the interference in the first place.

*O’Connor v. Ortega, 480 U.S. 709 (1987); New Jersey v. T.L.O., 469 U.S. 325 (1985)*

*In addition, TSD may search an employee’s workplace for non-investigatory, work-related purposes, if there are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct. O’Connor v. Ortega, 480 U.S. 709 (1987)*

**DRUG / ALCOHOL  
TESTING**

Blood, urine, and breath tests of public employees to determine drug use are searches under the Fourth Amendment of the U.S. Constitution. *Skinner v. Railway Labor Executives Ass’n, 489 U.S. 602 (1989)*

**RANDOM DRUG  
TESTING**

TSD may conduct drug tests, without a warrant and without individualized suspicion, when the test serves special governmental needs that outweigh the individual’s privacy expectation. *Skinner v. Railway Labor Executives Ass’n, 489 U.S. 602 (1989); National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)*

**REASONABLE  
SUSPICION DRUG  
AND ALCOHOL  
TESTING**

The School may remove an employee from duty and require testing if there is reasonable suspicion that the employee is under the influence of alcohol or drugs used in violation of Board policy. The determination of reasonable suspicion may be based on specific observations of the appearance, behavior, speech, or body odors of the employee whose motor ability, emotional equilibrium, or mental acuity seems to be impaired while on duty or other relevant information. Any employee who is asked to submit to drug or alcohol testing shall be given the opportunity to provide relevant information about prescription or nonprescription medications that may affect the screening.

A School employee who refuses to comply with a directive to submit to testing based upon reasonable suspicion shall be subject to disciplinary action, up to and including termination.

A School employee confirmed to have violated the Board’s policy pertaining to alcohol or drugs may be subject to disciplinary action. [See

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TSD Board policy DF and DH]

SAFETY—  
SENSITIVE  
POSITIONS

Random alcohol and drug testing of employees in “safety-sensitive” positions may be permissible when the intrusiveness of the search is minimal and a board is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students. “Safety-sensitive” positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children. *Aubrey v. Sch. Bd. of LaFayette Parish, 148 F.3d 559 (5th Cir. 1998)*

**Note:** The following testing requirements apply to every TSD employee who operates a commercial motor vehicle and is subject to commercial driver’s license requirements in accordance with federal regulations.

TESTING OF  
DRIVERS

The School shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates law or federal regulation. *49 U.S.C. 31.306; 49 CFR Part 382*

COMMERCIAL  
MOTOR VEHICLE  
DEFINED

A commercial motor vehicle is defined as a motor vehicle used to transport passengers or property that:

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; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver.

49 CFR 382.107

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**DRUG RELATED  
VIOLATIONS**

The following constitute drug-related violations under the DOT rules:0.

1. Refusing to submit to a required test for alcohol or controlled substances.
2. Providing an adulterated, diluted, or a substituted specimen on an alcohol or controlled substances test.
3. Testing positive for alcohol, at a concentration of 0.04 or above, in a post-accident test.
4. Testing positive for controlled substances in a post-accident test.
5. Testing positive for alcohol, at a concentration of 0.04 or above, in a random test.
6. Testing positive for controlled substances in a random test.
7. Testing positive for alcohol, at a concentration of 0.04 or above, in a reasonable suspicion test.
8. Testing positive for controlled substances in a reasonable suspicion test.

**Alcohol Results  
Between 0.02 and  
0.04**

An employee who operates a commercial motor vehicle, including a bus, and commits a drug-related DOT violation as defined above shall not be eligible for reinstatement as a driver.

In accordance with DOT rules, a driver tested under this policy and found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall be suspended from driving duties for at least 24 hours.

[In the event of a subsequent positive test result for alcohol of 0.02 or greater but less than 0.04, see the disciplinary consequences at School-Imposed Consequences, below.]

**Reasonable  
Suspicion DOT  
Testing**

Only supervisors specifically trained in accordance with federal regulations may, based upon reasonable suspicion, remove a driver from a safety-sensitive position and require testing for alcohol and/or controlled substances. The determination of reasonable suspicion shall be based on specific observations of the appearance, behavior, speech, or body odors of the driver whose motor ability, emotional equilibrium, or mental acuity seems to be impaired. Such observations must take place just preceding, during, or just after the period of the workday that the driver is on duty.

The observations may include indication of the chronic and withdrawal effects of controlled substances. Within 24 hours of the observed behavior, the supervisor shall provide a signed, written record documenting the observations leading to a controlled substance reasonable suspicion test.

**SCHOOL IMPOSED  
CONSEQUENCES**

In addition to the consequences established by federal law, a TSD employee confirmed to have violated the School's policy pertaining to alcohol or controlled substances, including a second or subsequent positive test result for alcohol of 0.02 or greater but less than 0.04, shall be

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subject to School-imposed discipline, as determined by his or her supervisor and the Superintendent. Such discipline may include any appropriate action from suspension without pay during the period of removal from safety-sensitive functions, up to and including termination of employment. [See DF series]

In cases where a driver is also employed in a nondriving capacity by the School, disciplinary action imposed for violation of alcohol and controlled substances policies shall apply to the employee's functions and duties that involve driving. Additionally, upon recommendation of the employee's supervisor, disciplinary measures up to and including termination of employment with the School may be considered.

**TESTING OF  
DRIVERS**

The School shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates law or federal regulation. *49 U.S.C. 31306; 49 C.F.R. Part 382*

**Commercial Motor  
Vehicle Defined**

A commercial motor vehicle is defined as a motor vehicle used to transport passengers or property that:

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; or
3. Is designed to transport 16 or more passengers, including the driver.

*49 C.F.R. 382.107*

**Testing Procedures**

The School shall ensure that all alcohol or controlled substances testing conducted under 49 C.F.R. Part 382 complies with the procedures set forth in 49 C.F.R. Part 40. *49 C.F.R. 382.105*

U.S. Department of Transportation (DOT) tests must be completely separate from non-DOT tests in all respects. DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. *49 C.F.R. 40.13*

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**TESTS REQUIRED** Required testing includes pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing. No driver shall refuse to submit to a post-accident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a return-to-duty or follow-up alcohol or controlled substances test. TSD shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. *49 CFR 382.211, 382.309*

**EDUCATION AND TREATMENT** The School is not required to provide an evaluation by a substance abuse professional or any subsequent recommended education or treatment for any employee who violates a drug and alcohol regulation of the U.S. Department of Transportation (DOT)

However, if the School offers an employee an opportunity to return to a safety-sensitive duty following a violation, the School shall, before the employee again performs that duty, ensure that the employee receives an evaluation by a substance abuse professional and that employee successfully complies with the professional's evaluation recommendations

49 C.F.R. 40.289

**RETURN-TO-DUTY TESTING** If the School permits an employee who violated a DOT drug and alcohol regulation to return to a safety-sensitive function, the School shall ensure that the employee takes a return-to-duty test. The test cannot occur until after the substance abuse professional has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

The School is not required to return an employee to safety-sensitive duties because the employee has met the conditions described above. Return-to-duty is a personnel decision that the School has the discretion to make subject to legal requirements.

49 C.F.R. 40.305(a)-(b)

**EDUCATIONAL MATERIALS** The School shall provide educational materials that explain the federal requirements and TSD's policies and procedures with respect to meeting these requirements and shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Written notice to representatives of employee organizations of the availability of this information shall also be provided. The materials shall include detailed discussion of at least the items listed at 49 CFR 382.601. *49 CFR 382.601*

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**REPORTS**

The School shall report the following information to the Department of Public Safety:

1. A valid positive result on an alcohol or drug test and whether the specimen producing the result was a dilute specimen.  
  
     "Valid positive result" means an alcohol concentration of 0.04 or greater on an alcohol confirmation test, or a result at or above the cutoff concentration levels listed in 49 CFR 40.87 on a confirmation drug test.  
  
     "Dilute specimen" means a specimen with creatinine and specific gravity values that are lower than expected for human urine.
2. A refusal to provide a specimen for an alcohol or drug test.
3. An adulterated specimen or substituted specimen, as defined at 49 CFR 40.3, on an alcohol or drug test.

For purposes of this requirement, the term "employee" includes applicants for employment subject to pre-employment testing.

Trans. Code 644.251–644.252; 29 CFR 40.3

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