

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

**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)*

**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.

**EMPLOYEE STANDARDS OF CONDUCT
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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

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

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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*

**EMPLOYEE STANDARDS OF CONDUCT
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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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