

PERSONNEL: Conduct

Drug-Free Workplace

I. Purpose

- A. Consistent with the *Federal Drug-Free Workplace Act of 1988*, the unlawful manufacture, distribution, possession, or use of a controlled substance or alcohol in any quantity in the workplace or at any school-sponsored event is prohibited.
  - 1. Violations of this Rule in the workplace or at any school-sponsored event will result in disciplinary action up to and including termination. Employees who have violated Policy 4101 and who continue employment with Baltimore County Public Schools (BCPS) shall attend a prescribed substance abuse education and/or treatment program, as determined appropriate by the substance abuse professional, as a condition of returning to work or as a condition of continued employment.
  - 2. Failure to comply with the requirements of a prescribed substance abuse education and/or treatment program or a second violation of Policy 4101 will result in a recommendation for termination.
- B. Employees SHALL NOTIFY the Board of Education of Baltimore County (Board) of any criminal drug statute conviction for a violation occurring in the workplace or at a school-sponsored event no later than 5 CALENDAR days after such conviction.
- C. The Superintendent or designee shall provide a copy of this Rule to new employees of the Board. Adherence to this Rule is a condition of employment.

II. Definitions

- A. *Breath Alcohol Technician (BAT)* means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT) or other approved alcohol measurement device.
- B. *Designated Employer Representative (DER)* is the person(s) designated by BCPS to answer questions about the regulations; to exchange information; and, to whom the medical review officer and the breath alcohol technician report a pass/fail test result. The DER is also authorized to take immediate

steps to remove employees from safety sensitive duties, or cause employees to be removed from these covered duties.

- C. *Medical Review Officer* is a licensed physician responsible for receiving laboratory results generated by the BCPS drug testing program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a donor's confirmed positive test result with his/her medical history and any other relevant biomedical information.
- D. *Workplace* is any Board-owned, controlled, or leased property or vehicle.
- E. *School-sponsored event* is one that is planned and/or controlled by school personnel regardless of whether it takes place on or off school property or occurs during normal school hours.
- F. *Trained administrator* is an administrator who has taken and passed the online course for reasonable suspicion provided by the Office of Risk Management.
- G. *Violation* is: (1) a positive drug or alcohol test conducted by an approved medical center by BCPS as a result of reasonable suspicion for drug and/or alcohol use or, (2) the unlawful manufacture, distribution, possession of a controlled substance or alcohol in any quantity in the workplace.

### III. Drug and/or Alcohol Testing

- A. Cause for Testing
  - 1. Employees may be tested for drugs and/or alcohol when a trained administrator who has completed training on reasonable suspicion has reason to believe that an employee may be under the influence of drugs or alcohol at the workplace or at a school-sponsored event.
  - 2. Such reasonable suspicion may be, but will not be limited to, any of the following:
    - a. Physical evidence exists which indicates drug or alcohol use by an employee while on duty or while attending a school-sponsored event;
    - b. Notification that an employee is using or is under the influence of drugs or alcohol is received;
    - c. Observable behaviors of an employee indicative of drug or alcohol use, and which the employee cannot reasonably explain;

- d. An on-duty accident by an employee resulting in personal injury or significant property damage and it is determined that drug or alcohol use by the employee may have contributed to the cause of the accident;
  - e. A documented deterioration of the employee's job performance is determined to be caused, in part or in whole.
3. Upon direction from a trained administrator, the employee shall be transported to a designated laboratory, certified by the Department of Health and Mental Hygiene, for the administration of drug and/or alcohol tests immediately. Refusal to submit to drug and/or alcohol testing after being directed will be considered an act of insubordination, subject to disciplinary action up to and including termination. Failure to adhere to all required drug and/or alcohol testing procedures will be considered insubordination, subject to disciplinary action up to and including termination.

B. Drug Testing Procedure

- 1. At the designated laboratory, the employee will be required to provide a urine sample. The employee's urine sample will be tested for any illegal drug or controlled substance for which testing is possible. Results will be reported to the approved Medical Review Officer (MRO). If the test results are negative, the MRO will report such results to the DER for BCPS and to the employee. If the results are negative and dilute, the employee will be scheduled for another drug test with the provision that the collection of the urine sample will be under "direct observation."
- 2. If the test results are positive, a confirmation test will be performed. In the case of confirmed positive tests, the MRO will contact the employee to determine whether the use of valid prescription or non-prescription drugs or substances is the cause of the positive results. If the MRO's investigation reveals a valid reason for the positive test results, the MRO shall contact the laboratory, and the test results shall be reported as negative to the DER for BCPS. If the MRO's investigation does not reveal a valid reason for the test results, the MRO shall report the test results as positive to the DER for BCPS.

C. Alcohol Testing Procedure

1. EMPLOYEES WHOSE JOB DUTIES REQUIRE A COMMERCIAL DRIVER'S LICENSE (CDL) AND/OR WHO ARE SUBJECT TO THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (DOT)

- a. At the designated laboratory, the employee will be required to give a breath sample to a certified Breath Alcohol Technician (BAT).
- b. If the breath alcohol test records a level of 0.02 or above, it will be considered a positive test, and the employee will be required to remain at the laboratory for a second test within fifteen minutes.
- c. A second breath test result of 0.02 will result in the BAT or approved laboratory personnel reporting a positive test result to the DER for BCPS.
- d. Refusal to submit to alcohol testing, or failure to remain for a second test after being instructed to do so by the BAT, will be reported to the DER for BCPS and considered an act of insubordination resulting in appropriate disciplinary action, up to and including termination.

2. NON-DOT REGULATED EMPLOYEES

- a. AT THE DESIGNATED LABORATORY, THE EMPLOYEE WILL BE REQUIRED TO PROVIDE A SALIVA SPECIMEN.
  - (1) THE EMPLOYEE MUST REMAIN AT THE TESTING CENTER FOR THE TEST RESULT OR AS DIRECTED BY THE TESTING CENTER PERSONNEL.
  - (2) IF THE SALIVA SPECIMEN TEST IS NEGATIVE, NO FURTHER SPECIMEN IS REQUIRED.
- b. IF THE ALCOHOL SCREENING TEST RESULT IS POSITIVE, THE EMPLOYEE WILL BE REQUIRED TO PROVIDE A BLOOD SPECIMEN.
- c. A BLOOD SPECIMEN RESULT OF 0.02 OR HIGHER WILL BE CONSIDERED A POSITIVE TEST.
- d. REFUSAL OF THE EMPLOYEE TO PROVIDE A SALIVA OR BLOOD SPECIMEN SCREENING AND/OR BLOOD TESTING FOR ALCOHOL SCREENING WILL BE REPORTED TO THE DER FOR BCPS AND CONSIDERED AN ACT OF INSUBORDINATION

RESULTING IN APPROPRIATE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION.

D. Positive Test Results

1. Any employee who has a positive drug or alcohol test will receive an initial letter directing the employee to contact the substance abuse professional for the Employee Assistance Program to schedule an initial meeting within 10 [ten (10)] business days.
2. Any employee who has a positive drug or alcohol test result shall be entitled to a copy of the following information within 30 CALENDAR [thirty (30)] days from the date the test was performed. The following information shall be delivered to the employee in person by an administrator or by certified mail.
  - a. A copy of the laboratory test indicating the results.
  - b. A copy of Superintendent's Rule 4101.
  - c. Written notice of any disciplinary action.
  - d. A copy of Section 17-214(d) of the Health General Article of the *Annotated Code of Maryland* (which permits the employee to request independent testing of the sample for verification of the test result.)
  - e. Notification that the employee will be unpaid until the initial evaluation by the employee assistance counselor and will be terminated if contact has not been made with the substance abuse professional within 10 [ten (10)] business days from the date of the letter.
3. Employees are advised that the Superintendent or designee retains the right to seek and impose any discipline, including, but not limited to, the suspension or termination of non-certificated employees or the recommendation to the Board of Education of Baltimore County that certificated employees be suspended or terminated.
4. Upon notification of positive test results for a temporary at-will employee, the Office of Temporary Services will be notified and the employee's services will be terminated. The employee will not be eligible for future employment by BCPS.

E. Employee's Right to Verify Positive Drug Test

Under Section 17-214(d) of the Health General Article of the *Annotated Code of Maryland*, an employee who is required to submit to drug testing under this Rule has the right to obtain independent testing of the same urine sample for verification of the test results at the employee's request at an

approved laboratory. If an employee elects to obtain independent verification of a positive test result, any permanent disciplinary action, e.g., termination, but not suspension with pay, will not be taken pending receipt of the independent test results.

F. Confidentiality

All attempts will be made to maintain the confidentiality of medical information concerning the employee that is revealed during the testing procedures, subsequent investigation, or any related disciplinary procedure. The Superintendent or designee reserves the right to use any drug or alcohol test results, records, or documents that demonstrate the employee's failure to adhere to this Rule.

G. Bus Drivers and Other Commercial Drivers License Holders

The provisions of this Rule with respect to drug and alcohol testing procedures are applicable to all employees. This Rule shall not supersede the requirements for employees who are subject to other federal and state regulations, BOARD POLICIES, SUPERINTENDENT'S RULES, or school system PROCEDURES concerning the drug and alcohol testing of bus drivers and person who hold a Commercial Driver's License (CDL).

H. Drug /Alcohol Assistance and Awareness Services

BCPS supports the concept of making all employees aware of the harmful effects and legal consequences of drug and/or alcohol use. Employees who may have a drug or alcohol problem are strongly encouraged to seek assistance through the Employee Assistance Program.

I. Reservation of Rights

This Rule is not intended to, and shall not, constitute a waiver of any rights possessed by the Board or the Superintendent derived from any source whatsoever. This Rule shall not be construed as limiting the Board's or the Superintendent's or designee's right to take disciplinary action, up to and including suspension or termination, for any involvement with drugs and/or alcohol not specifically addressed in this Rule.

Legal References: 20 U.S.C. §7-101, *Safe and Drug Free Schools and Community Act of 1994*  
41 U.S.C. §701, *Drug-Free Workplace Act of 1988*  
*Annotated Code of Maryland, Health General Article §17-214, Controlled substance testing by employer*

Related Policies: Board of Education Policy 3128, *Board-Owned Vehicles*  
Board of Education Policy 4002, *Obligations of Employees of the Board of Education of Baltimore County*  
Board of Education Policy 4100, *Employee Conduct and Responsibilities*

Rule	Superintendent of Schools
Approved: 06/27/95	
Revised: 01/27/98	
Revised: 07/14/09	
Edited: 07/01/11	
Edited: 04/11/12	
REVISED: _____	

February 15, 2012

Client Contact  
Company  
Address  
City State

**IMPORTANT INFORMATION RE: MARYLAND ALCOHOL TESTING**

Dear \_\_\_\_\_:

As you know, federal and state laws control certain employer drug and alcohol testing procedures. There have been some recent questions about employer actions based on these tests in Maryland. The protocols for these tests that you have provided to Concentra may be in violation of the Maryland laws and Concentra wants to be proactive in addressing these issues with our clients.

All drug and alcohol testing required by the employers of Non-Department of Transportation job-applicants, employees, or contractors must meet comprehensive legal requirements pursuant to Maryland's general drug and alcohol testing statute, MD–Health–General §17-214. Specifically, under §17-214(a)(11) the only permitted test specimens for current employees or contractors are blood, urine, and saliva. Hair is also an allowable specimen for job applicants under the Code of Maryland Regulations 10.10.10.06. The legislative purpose behind limiting the types of permissible specimens is to ensure that the specimen can be preserved for re-testing at a later date, if the test subject requests such action. Under the current Maryland law, an employer cannot require or request that a Non-Department of Transportation job applicant, employee, or contractor submit for a breath alcohol test regardless of the employer's intent for ordering the test.

Effective immediately, Concentra will no longer perform breath alcohol tests (BAT) on Non-Department of Transportation employees in Maryland centers. Concentra will conduct blood alcohol testing in lieu of breath alcohol testing as requested and approved by you in writing. Concentra takes your business very seriously, and we ask that you contact your account executive at your earliest convenience to discuss alternative testing in order to update your protocols and avoid any interruption in our service to you.

[We suggest that you review the applicable law as it pertains to Non-Department of Transportation employees with your legal counsel. For your convenience, Code of Maryland Regulations 10.10.10.06 can be found on the following site:  
<http://www.dsd.state.md.us/comar/getfile.aspx?file=10.10.10.06.htm>

Concentra values you as a client and hopes to avoid any inconvenience to your business and your employees. Therefore, your prompt attention to this matter is very much appreciated.

Sincerely,

W. Tom Fogarty, M.D.  
Executive Vice President  
Chief Medical Officer