

**OFFICE OF CHIEF OPERATIONS OFFICER**  
**Summary of State Board of Education Agenda Items**  
**Consent Agenda**  
**May 18, 2023**

**OFFICE OF HUMAN RESOURCES**

- L. Approval to begin the Administrative Procedures Act process: To revise Mississippi Admin. Code 37-61-9(4). State Board Policy Chapter 3, Rule 31.1 – Drug Testing. State Department of Education Staff

Background Information: The Office of Human Resources revises the rule that acknowledges MDE's establishment of drug and alcohol policies and procedures in compliance with Drug-Free Workplace Act of 1988 and Omnibus Transportation Employee Testing Act

Recommendation: Approval

Back-up material attached

## Part 3 Chapter 31: Drug Testing, State Department of Education Staff

*Rule 31.1 Drug Testing, State Department of Education Staff.* ~~In compliance with the Omnibus Transportation Employee Testing Act of 1991,~~ The State Board of Education has developed the attached drug and alcohol policies and procedures in compliance with Drug-Free Workplace Act of 1988 and Omnibus Transportation Employee Testing Act. These policies and procedures shall be implemented and enforced as outlined in the MS State Personnel Board Employee Handbook and the MDE Employee Policies and Procedures Manual.

~~The Mississippi Department of Education, hereafter referred to as the Department, recognizes that our employees are our greatest asset. Our employees are the key to our goal of providing the best possible education program for our students. To achieve our goal, and to maximize the skills and talents of our employees, it is important that every employee of the Department understand the dangers of drug and alcohol abuse and be aware of the new state and federal requirements concerning substance abuse. This policy statement should clarify our position on employee drug and alcohol use. This policy and procedure should not be construed as contractual in any nature.~~

### ~~1. POLICY OBJECTIVES:~~

- ~~a. To create and maintain a safe, drug-free working environment for all employees.~~
- ~~b. To meet the requirements of the Drug Free Workplace Act of 1988 and the Drug Free Schools and Community Act of 1986, as they relate to the use of alcohol, inhalants, cannabis, controlled substances and similar substances.~~
- ~~c. To encourage any employee with a dependence on, or addiction to, alcohol or other drugs to seek help in overcoming the problem.~~
- ~~d. To reduce problems of absenteeism, tardiness, carelessness and/or other unsatisfactory matters related to job performance.~~
- ~~e. To reduce the likelihood of incidents of accidental personal injury and/or damage to customers, visitors or property.~~
- ~~f. To meet the requirements of 49 C.F.R. part 40 and the Omnibus Transportation Employee Testing Act of 1991.~~
  - ~~i. To reduce the likelihood that department property will be used for illicit drug activities.~~
  - ~~ii. To protect the reputation of the Department and its employees.~~

~~Substance abuse is a serious threat to the Department and its employees. Though the percentage of substance abusing employees may be relatively small, practical experience and research indicate that appropriate precautions are necessary. It is the belief of the Department that the benefits derived from the policy objectives outweigh the potential inconvenience to employees. The Department earnestly solicits the understanding and cooperation of all employees in implementing this policy.~~

~~The Department requires that all employees report to work without any alcohol or illegal or mind altering substances in their systems. No employee shall report for work or remain on duty when using any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to perform in a safe manner. No employee shall use alcohol while on duty. Further, outside conduct of a substance abuse related nature which affects an employee's work, the Department's relationship with the government or reflects badly on the Department is prohibited. Employees must inform their supervisor when they are legitimately taking medication which may affect their ability to work, in order to avoid creating safety problems and violating the Drug and Alcohol Policy.~~

~~The Department also prohibits employees using, possessing, manufacturing, distributing or making arrangements to distribute illegal drugs while at work or on department property.~~

## ~~2. ENFORCEMENT of OMNIBUS TRANSPORTATION ACT~~

~~The following policies are related only to those employees, applicants, and contractual workers subject to 49 C.F. Part 40 and the Omnibus Transportation Employee Testing Act of 1991. In order to enforce these rules, the Department reserves the right to require the above employees to submit, at any time an employee is on duty or at any time an employee may normally be called to be on duty, to drug tests to determine the presence of prohibited substances. The State Board of Education is required to develop, implement and enforce a drug and alcohol policy for their employees as a condition of compliance with the Omnibus Transportation Employee Act of 1991.~~

~~Pursuant to Board policy and regulations, applicant testing may be required. All current employees may be required to undergo testing where the Board has reasonable suspicion to believe an employee has violated its Alcohol and Drug Policy, and/or on a random basis without advance notice. No employee shall perform any job related duties within four hours after using alcohol. Employees are also required to report all injury or damage related accidents involving Department property or personnel or during Department related activities and may be required to submit to alcohol screening within two (2) hours and to drug screening within thirty-two (32) hours of a reportable accident. Employees who return to work following rehabilitation will be required to undergo return to duty/follow up testing in addition to the general Department testing requirements.~~

~~The Department also reserves the right to search desks, cabinets, tool boxes, vehicles, including personal vehicles brought on the Department's property, bags or any other property at the worksite or in vehicles when the Department has reasonable cause to believe an employee has violated its Alcohol and Drug Policy.~~

~~Violation of these rules, including testing positive, will subject the employee to discipline, including discharge. Refusal to cooperate with the Board in any test investigation will result in discipline, including discharge as appropriate under the applicable state and federal laws.~~

~~All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by the employer through its drug and alcohol testing program are~~

~~confidential communications and may not be disclosed except in accordance with the Policy Consent/Release Form and Federal Regulations 49 C.F.R. 40 et seq and 49 C.F.R. 382 et seq.~~

~~Any questions should be directed to the Personnel Officer, who has been assigned by the State Superintendent of Education and/or the State Board of Education as the Drug Program Coordinator.~~

**Mississippi Department of Education**  
**Policy Consent/Release Form for Alcohol and Controlled Substance Use**

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~~I have read the above statement of policy and agree to abide by the State Board of Education's drug and alcohol rules. I agree to submit to drug or alcohol tests at any time as a condition for my initial or continued employment. I authorize any laboratory or medical provider to release test results to the Mississippi Department of Education and its Medical Review Officer, Dr. Howard M. Strickler.~~

~~I expressly authorize the State Board of Education or its MRO to release any test related information, including positive results, to the Unemployment Compensation Commission, or any other relevant government agency.~~

~~I understand that this agreement in no way limits my right to terminate my employment or be terminated in accordance with federal and state law.~~

\_\_\_\_\_  
Employee \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Witness \_\_\_\_\_ Date \_\_\_\_\_

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~~3. Mississippi Department of Education Drug and Alcohol Program Procedures~~

~~a. General Policy~~

~~Practical experience and research has proven that even small quantities of narcotics, abused prescription drugs or alcohol can impair judgment and reflexes. Even when not readily apparent, this impairment can have serious results, particularly for employees operating vehicles or potentially dangerous equipment. Drug using employees are a threat to co-workers and themselves, and may make costly errors. For these reasons, the State Board of Education has adopted a policy that all employees must report to work completely free from the effects of alcohol and/or the presence of drugs, unless used as prescribed by a physician.~~

~~b. Drug Use/Distribution/Impairment/Possession~~

~~All employees are prohibited from using, possessing, distributing, manufacturing, or having controlled substances, abused prescription drugs or any other mind altering or intoxicating substances present in their system while at work or on duty.~~

~~e. Alcohol Use/Possession/Impairment~~

~~All employees are prohibited from possessing, drinking or being impaired or intoxicated by alcohol while at work or on duty. While employees are prohibited from having any alcohol present in their system while on duty, a Breath Alcohol Concentration (BAC) of .04 will be accepted as presumptive evidence of intoxication. Additionally, mandated employees (employee's subject to provisions of 49 C.F.R Part 40 and the Omnibus Transportation Employee Testing Act of 1991) with a BAC of .02-.039 will be placed out of service for a period of no less than 24 hours. Evidential breath testing devices (EBTs) on the National Traffic Highway Safety Administration Conforming Products List will normally be used to determine BAC.~~

~~d. Off Duty Conduct~~

~~Off the job use of drugs, alcohol or any other prohibited substances which results in impaired work performance, including, but not limited to, absenteeism, tardiness, poor work product, or harm to the Department's image or relationship with the government is prohibited. Employees should realize that these regulations prohibit all illicit drug use on and off duty.~~

~~e. Prescription Drugs~~

~~The proper use of medication prescribed by a physician is not prohibited; however, the Department prohibits the misuse of prescribed (or over the counter) medications and requires all employees using drugs at the direction of a physician to notify the State Board of Education's Medical Review Officer (MRO), Dr. Howard M. Strickler, or their supervisor prior to beginning work where these drugs may affect their job performance, such as by causing drowsiness.~~

~~An employee or job applicant (with the exception of mandated employees) shall be allowed to provide notice to the Department of currently or recently used prescription or nonprescription drugs at the time of the taking of the specimen to be tested, and such information shall be placed in writing upon the employer's drug and alcohol testing custody and control form prior to initial testing.~~

~~f. Substance Screening~~

~~i. Applicants~~

~~Substance screening may be required for all final applicants. Applicants are required to sign a consent/release form before submitting to screening. Applicants will be disqualified for hire if they test positive, refuse to submit to a test, or refuse to execute the required consent/release form.~~

ii. — All Current Employees

a) Reasonable Suspicion

All employees may be required to submit to screening whenever a supervisor observes circumstances which provide reasonable suspicion to believe an employee has used a controlled substance or has otherwise violated the substance abuse rules. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol and drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

The required observations for alcohol and/or controlled substance reasonable suspicion testing shall be made by a supervisor or designee who has been trained for at least 60 minutes on alcohol misuse and an additional 60 minutes on controlled substance misuse.

The supervisor or supervisors requesting testing shall prepare and sign written documents explaining the circumstances and evidence upon which they relied within 24 hours of the testing, or before the results of the tests are released, whichever is earlier. While one supervisor may request a reasonable suspicion test, when feasible, supervisors are encouraged to obtain a second supervisor as a witness.

b) Random Testing

The Department may conduct random unannounced screening of all employees. Tests of employees for illicit drugs will be conducted in a number equal to or greater than 50 percent of the affected work force without advance notice in any given 12 month period. Tests of employees for alcohol will be conducted in a number equal to or greater than 25 percent of the affected work force without advance notice in any given 12 month period. There will be no maximum number of samples that any one individual will be required to provide during the testing schedule. Subsequent testing will be conducted at levels equal to or greater than the initial testing level. Employers Drug Program Management, Inc. will provide computerized random sample lists to the Drug Program Coordinator. The list of employees in the random pool will be updated on a monthly basis. Employees will be required to report to the Department's designated collection site for testing immediately following notification. Annually, the tests will be spread reasonable over 12 months.

All employees may be tested during the initial implementation of the program.

c) Post Accident Testing

Employees are required to immediately notify the Drug Program Coordinator of any accident resulting in injury or damage to Department property. The

~~Department of Transportation (DOT) requires post-accident drug and alcohol testing following any accident which results in the: (1) loss of human life, or (2) receipt of a citation under State or local law for a moving traffic violation arising from the accident.~~

~~The Department may require an employee involved in any accident resulting in injury requiring more than simple first aid or resulting in damage to property, to undergo alcohol screening within 2 hours and drug screening within 32 hours of the occurrence of the accident. The Department will discipline any employee who fails to report an accident or submit to substance screening where required by law or this policy. The Drug Program Coordinator shall complete an Accident Report in compliance with Department policy and applicable laws and regulations.~~

~~d) Return to Duty/Follow up Testing~~

~~All employees referred for rehabilitation through administrative channels, or suspended for violation of this policy, may be subject to unannounced testing following return to duty for a period of 12 to 60 months. Such employees shall be tested at the frequency stipulated in the abeyance contract or as scheduled by the MRO. The employee will be tested a minimum of six (6) follow up tests during the first twelve months. Testing will be on a daily, weekly, monthly or longer basis at the discretion of the MRO and will be in addition to the other types of tests provided in this policy.~~

~~Employees testing at a level 0.04 BAC for alcohol or positive for drugs must be assessed by a Substance Abuse Professional (SAP), satisfy the recommendations of the assessment, test negative for drugs and below 0.02 BAC for alcohol and be released as drug free by the Medical Review Officer prior to returning to duty.~~

~~iii. — Testing Procedures~~

~~a) General Guidelines~~

~~The State Board of Education and its lab shall rely, when practical, on the guidance of the federal Department of Transportation, Procedures for Transportation Workplace Drug Testing Programs, 49 C.F.R. parts 40.1 through 40.39 and on the further guidance of the Omnibus Transportation Employee Testing Act provided in 49 C.F.R. Parts 382, 391, 392 and 395.~~

~~b) Substances Tested For All Employees~~

~~Employees may regularly be tested for: amphetamines, cannabinoids, cocaine, opiates, phenylcyclidine and alcohol. Testing for alcohol will also be conducted subject to the final provisions of the Omnibus Transportation Employee Testing Act of 1991. Employees may be tested for other substances without advance notice as part of a separate test performed by the Department for~~

safety purposes. Such tests will be coordinated with the Drug Program Coordinator.

e) Testing Procedure

The State Board of Education reserves the right to utilize blood, hair, breath, saliva or urinalysis testing procedures. Only urinalysis and breath tests will be utilized in the pre-employment and random testing. All initial positive urine specimens will be confirmed by gas chromatography/mass spectrometry (GC/MS).

iv. Collection Sites

The Department will designate collection sites in areas where it maintains facilities or job sites where individuals may provide specimens.

v. Collection Procedures

The State Board of Education, Employers Drug Program Management, and the laboratory, have developed and will maintain a documented procedure for collecting, shipping and accessing urine specimens. The State Board of Education, EDPM and the laboratory will utilize a standard Urine Custody and Control Form for all employee drug testing. The State Board of Education, EDPM and the laboratory will utilize a standard Breath Alcohol Testing Form for all employee alcohol testing. A tamper-proof sealing system, identifying numbers, labels, and sealed shipping containers will also be used for drug sample transportation. Alcohol results will use approved tamper evident tape.

Collection sites will maintain instructions and training emphasizing the responsibility of the collection site personnel to protect the integrity of the specimen and maintain as proper a collection procedure as reasonable. A person who collects or takes a specimen for a drug test pursuant to this policy shall collect an amount sufficient for two (2) drug tests as defined by the Department of Transportation. Where the Department has an employee collect the specimen, the State Board of Education will provide instruction and training to that employee. All alcohol testing will be performed by a certified Breath Alcohol Technician (BAT). All employees will also be required to execute the Department Applicant/Employee Consent Form.

vi. Occasions When the Collection Personnel Should Directly Observe the Specimen Being Provided

The Department has adopted the direct observation procedures as set out in Section 40.25 of the Department of Transportation regulations. An Employer or Medical representative at the collection site may directly observe an employee provide the specimen where there is reason to believe that an individual may



~~alter or substitute the specimen. Section 40.25 (e)(2) sets out the only four circumstances where direct observation is appropriate:~~

- ~~a) The employee has presented a urine specimen that falls outside the normal temperature range, and the employee declines to provide a measurement of oral body temperature by sterile thermometer, as provided in paragraph (f)(23) of this part, or the oral temperature does not equal or exceed that of the specimen.~~
- ~~b) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2 g/L.~~
- ~~c) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).~~
- ~~d) The employee has previously been determined to have used a controlled substance without medical authorization and the particular test is being conducted as a part of a rehabilitation program or on return to service after any required rehabilitation.~~

~~A second specimen should be obtained under direct observation wherever there is reason to believe that the individual may have altered or substituted the specimen.~~

~~Where necessary, a Department representative or medical personnel may obtain a specimen outside of a designated collection site (such as, at a public restroom at an accident investigation).~~

#### ~~vii. — Evaluations and Return of Results to the Department~~

~~The laboratory will transmit (by fax, mail, or computer, but not orally over the telephone) the results of all tests to the Department's MRO, Dr. Howard M. Strickler. The MRO will be responsible for reviewing the quantified test results of employees and confirm that the individuals testing positive have used drugs in violation of Department policy. Prior to making a final decision, the MRO shall give the individuals an opportunity to provide a medical explanation for the positive test result either face to face or over the telephone. The MRO shall then promptly report to the Drug Program Coordinator which employees or applicants test positive.~~

#### ~~viii. — Request for Retest~~

~~Where a split specimen has been collected an employee may request a retest of the split specimen within 72 hours of notification of the final test result. Where~~

~~only one sample is submitted for testing the employee may request a retest of the original sample within 72 hours after notification of the final test result. Requests must be submitted to the Drug Program Coordinator.~~

~~The employee may be required to pay the associated costs of retest in advance.~~

~~g. Release of Test Results~~

~~All information, interviews, reports, statements, memoranda and test results written or otherwise, received by the employer through its drug and alcohol testing program are confidential communications and may not be disclosed except in accordance with the Policy Consent/Release Form and Federal Regulations 49 C.F.R. et seq and 49 C.F.R. 382 et seq.~~

~~With the exception of those entities listed in the Federal Regulations, test results shall not be released by the State Board of Education, beyond the MRO and Department's management without the individual's written authorization. However, all employees will be required to execute a consent/release form permitting the Board to release test results and related information to the Unemployment Compensation Commission, or other relevant government agencies.~~

~~The MRO shall retain the individual test results for five (5) years.~~

~~h. Discipline~~

~~The State Board of Education will discipline, including discharge, employees for any violation of the policy, including refusing to submit to screening, to execute a release, or otherwise cooperate with an investigation or search by the Department. Disciplinary measures will be instituted in accordance with State Personnel Board regulations if applicable and state and federal laws.~~

~~All employees who test positive in a confirmative substance test will be subject to discipline up to and including discharge. Rehabilitation, at a pre-approved treatment provider, may be available to individuals who violate the policy. However, unless other provisions are available to the affected individual, assistance will be limited to the degree of treatment provided within the Department's Employee Benefits Plan. The Drug Program Coordinator should be contacted for guidance.~~

~~No employee may be returned to regular duties after any rehabilitation or testing positive unless released for duty for the Department's MRO. Any employee returned to duty after violating the policy or testing positive will be subject to aftercare and random testing.~~

~~i. Employee Assistance Program (EAP)~~

~~The Board's EAP shall include education and training for supervisors who are authorized to determine reasonable suspicion testing. These supervisors must receive a minimum of~~

~~60 minutes on alcohol abuse and an additional 60 minutes of training on controlled substance use and abuse.~~

~~The training shall cover the physical, behavioral, speech and performance indicators of probable use and misuse of alcohol and controlled substances. Documentation of training attendance must be maintained.~~

~~The Drug Program Coordinator should be contacted for further guidance.~~

~~j. Investigation/Searches~~

~~Where a supervisor has reasonable cause to suspect that an employee has violated the substance abuse policy, he or she may inspect vehicles which an employee brings on the Board's property, lockers, work areas, desks, purses, briefcases, tool boxes or other belongings, and at locations where Department related activities are being conducted without prior notice in order to ensure a work environment free of prohibited substances. An employee may be asked to be present and remove a personal lock. Where the employee is not present or refuses to remove a personal lock, the Drug Program Coordinator will do so for him or her. The Board may release any illegal, or controlled drugs, or paraphernalia to appropriate law enforcement authorities.~~

~~—All searches should be coordinated with the Drug Program Coordinator.~~

~~**NOTE** These procedures should not be construed as contractual in any nature. They represent the State Board of Education's current guidelines in dealing with a developing problem under evolving laws and facts, and may be changed in accordance with Department policy and state and federal law.~~

~~Source: *Miss. Code Ann. § 37-1-3 (Adopted 1/1995)*~~

# **CORRECTED VERSION**

## Part 3 Chapter 31: Drug Testing, State Department of Education Staff

*Rule 31.1 Drug Testing, State Department of Education Staff.* The State Board of Education has developed drug and alcohol policies and procedures in compliance with Drug-Free Workplace Act of 1988 and Omnibus Transportation Employee Testing Act. The policies and procedures shall be implemented and enforced as outlined in the MS State Personnel Board Employee Handbook and the MDE Employee Policies and Procedures Manual.