

## RSU 63

- a. **NEPN/NSBA Code:** **EEAEAA-R**
- b. **Title:** **Drug and Alcohol Testing of School Drivers & Covered Employees – Administrative Procedures**
- c. **Author:**
- d. **Replaces Policy:**
- e. **Date Approved:** **08/22/2016 RSU 63**
- f. **Previously Approved:** **10/28/2013**
- g. **Policy Expiration:** **Review as Needed**
- h. **Responsible for Review:** **Director of Transportation/Facilities, Superintendent, & Policy Committee**
- i. **Date Reviewed:** **08/09/2016 Trans/Facilities Admin.  
08/09/2016 Superintendent  
09/09/2016 Policy Committee**
- j. **Reference:** **49 CFR Parts 40, 382, 390, 395  
26 MRSA §§ 681(8)(B); 685(2);  
689**

### **Policy Reference: EEAEAA-Drug & Alcohol Testing of School School Drivers & Covered Employees**

**k. Narrative:**

The RSU 63 School Board (the Board) is committed to providing a safe, efficient, and productive environment for all students and employees. It is the policy of the Board that its employees perform their jobs safely and responsibly.

The Board is also committed to the establishment of an alcohol and controlled substance testing program that meets all relevant requirements of federal and state laws and regulations. The purpose of the testing program shall be to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers and certain other employees. The Superintendent will be responsible for the implementation of an alcohol and drug testing program consistent with federal regulations, and will implement additional administrative procedures to assist and further the implementation of the federal mandates regarding alcohol and controlled substances testing as he/she deems necessary.

The following administrative procedure represents a summary of the main provisions found in federal regulations promulgated to effectuate drug and alcohol testing of drivers. The following procedure in no way attempts to modify said regulations, which should always be referenced when questions as to implementation of this policy/procedure arise.

## I. APPLICABILITY:

A. Drivers: All persons employed by RSU 63 to operate a commercial motor

vehicle (CMV) subject to the commercial driver's license (CDL) requirements mandated under federal and/or state laws (Drivers) will be subject to controlled substance and alcohol testing as set forth in this procedure. This includes school bus drivers.

B. Covered Employees: All persons employed by RSU 63 as vehicle maintenance mechanics, drivers of any students transported in RSU 63 vans, even if the drivers are not subject to federal and/or state laws requiring a CDL, will be subject to controlled substances and alcohol testing where indicated in this procedure.

## II. IMPLEMENTATION

The Superintendent will be responsible for implementing a drug and alcohol testing program which complies with procedures set forth in Title 49 Parts 40, 382, 390 and 395 of the Federal Code of Regulations. Such testing program will include pre-employment/pre-duty drug testing, post-accident testing, random testing, reasonable suspicion testing, return-to-duty and follow-up testing for those employees identified in Section I above. The results of all testing will be sent by the vendor to the Superintendent for preliminary review. RSU 63 will provide parties subject to testing with written notice of materials and information available to them as required by Title 49 Part 382.

## III. TYPES OF TESTING:

A. Pre-Employment Testing:

1. All Driver applicants and Covered Employee applicants who have been offered a position of employment must submit to controlled substance and alcohol testing. No Driver or Covered Employee will be hired or begin work until the Superintendent has receipt of satisfactory test results and may not be hired if pre-employment testing returns a confirmed positive test result. No Driver or Covered Employee Applicant will be hired or begin work unless their test results indicate an alcohol concentration of less than .02.

2. All Drivers and Covered Employees will be notified at the time of

initial application that they will be tested for controlled substances and alcohol if they are offered a position of employment, and will be advised how they may review policy EEAEAA and this procedure.

B. Random Testing:

1. RSU 63 will conduct random, unannounced controlled substances and alcohol of all Drivers and Covered Employees. All alcohol testing shall be performed on employees just prior to, during, or just after a safety-sensitive function.
2. There will be two random selection systems utilized by RSU 63. All Drivers shall be submitted to one control group and all Covered Employee subject to random testing will be submitted to a second control group. The random selection systems provide an equal chance for each Driver and Covered Employee to be selected each time random selection occurs.
3. Random selections will be reasonably spread throughout the year. Every calendar year, RSU 63 will select, at a minimum, 50% of the average number of Employees in each control group for random testing of controlled substances. Every calendar year, RSU 63 will also select, at a minimum, 10% of the average number of Employees in each control group for random alcohol testing.
4. If an Employee subject to random testing is selected, for either a controlled substance or alcohol test, an RSU 63 official will notify the Employee and inform him/her of when and where he/she will be tested. Once notified, the Employee must immediately proceed to the testing site. If the Employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct will be considered a refusal to test.

C. Reasonable Suspicion Testing:

1. RSU 63 conducts reasonable suspicion controlled substance and alcohol testing with respect to all Drivers and Covered Employees. Reasonable suspicion for requiring an employee to submit to controlled substance and/or alcohol testing will be deemed to exist when such Employee manifests physical symptoms or reactions commonly attributed to the use of a controlled substance or substances and/or alcohol just before, during, or directly after the period of the work day that the Employee is required to be in

compliance with this part. Such conduct must be witnessed by at least one supervisor trained in compliance with 49 C.F.R. Part 382.603 and Section 9.

suspected The Administrator or assigned Supervisor of the Employee of controlled substance abuse will, within 24 hours or before the results of the controlled substances test are released, whichever is earlier, create a written record of the observations leading to a controlled substances test which will be signed by the Supervisor or Administrator making said observations.

2. If an alcohol test required by this section is not administered within two (2) hours following the determination of reasonable suspicion, RSU 63 shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight (8) hours following the determination of reasonable suspicion, RSU 63 will cease attempts to administer an alcohol test and will state in the record the reasons for not administering the test.

D. Post-Accident Testing:

1. RSU 63 will conduct post-accident controlled substances and alcohol testing on all Drivers and Covered Employees following an accident. Drivers and Covered Employees will submit to post-accident substance and alcohol testing if they were:

a. Involved in any accident that resulted in a human fatality. If two employees covered by this section were present or involved in an accident with a fatality, both must be tested.

b. Involved in a recordable accident for which the driver of the vehicle (either a Driver or Covered Employee) received a citation for a moving violation arising from the accident, and the accident resulted in:

(1) Bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or

- (2) One or more motor vehicles incurring disabling damage, and requiring a motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
2. If an alcohol test required by this section is not administered within two (2) hours following the determination of reasonable suspicion, RSU 63 shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight (8) hours following the determination of reasonable suspicion, RSU 63 will cease attempts to administer an alcohol test and will state in the record the reasons for not administering the test.
3. In the event Federal, State, or local officials conduct breath or blood tests for use of alcohol, and/or urine test for the use of controlled substances, following an accident, these tests shall be considered to meet the requirements of this section, provided the tests conform to applicable Federal, State, or local requirements. After being tested, the Employee will sign a release allowing RSU 63 to obtain the test result from Federal, State, or local officials.

E. Return to Duty Testing:

1. RSU 63 will ensure that, before a Driver or Covered Employee returns to duty requiring the performance of a safety-sensitive function after engaging in prohibited conduct concerning alcohol and/or controlled substances, the Employee will:
  - a. Have undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02, and/or return-to-work controlled substance test with a result indicating a verified negative result for controlled substances use; and
  - b. Have completed an alcohol/controlled substance assessment and be in compliance with any ongoing treatment recommendations.

2. Employees identified in this subsection who are subject to controlled substance and/or alcohol who test positive will be placed on unpaid leave until qualified for return-to-duty.

F. Follow-Up Testing:

All Drivers and Covered Employees who have been identified by a substance abuse professional (SAP) as needing assistance in resolving problems with alcohol misuse or controlled substance use and who have returned to performing a safety sensitive function, shall be subject to a minimum of six (6) unannounced follow-up tests administered by RSU 63 over the 12 months following return-to-duty. Follow-up testing may continue to occur for up to 60 months following return-to-duty. Follow-up alcohol testing will be conducted only when the Employee is performing, just before, or just after ceasing to perform safety-sensitive functions.

IV. CONTROLLED SUBSTANCES:

Controlled substance testing will test for the following controlled substances and/or their metabolites:

- A. Marijuana,
- B. Cocaine,
- C. Opiates,
- D. Amphetamines, and
- E. Phencyclidines (PCP), MDMA (Ecstasy), and 6-Acetylmorphone (Heroin).

V. ALCOHOL:

RSU 63 will also test for the presence of alcohol, which includes the intoxicating agent in beverage alcohol, ethyl alcohol, and/or other molecular weight alcohols including methyl/ and isopropyl alcohol. All alcohol tests performed on employees

subject to the requirements of this procedure shall be performed just prior to, during, or just after s safety sensitive function.

VI. TESTING PROCEDURES:

- A. RSU 63 has contracted with Affiliated Drug Testing Services in Bangor as its drug and alcohol program provider and Certified Third Party Administrator. The collection site will be determined by RSU 63.
- B. Once an employee subject to this procedure has been directed to submit to an alcohol and/or controlled substance test, he/she will proceed immediately to the testing area as directed by the Administrator of the Transportation Department or his/her designee. Employees subject to this procedure must comply with the lawful requests of the technician doing the alcohol and/or controlled substance test.
- C. The selected employee will be required to provide a urine specimen for controlled substance testing and/or a breath or saliva sample for analysis of alcohol concentration.
- D. The selected employee will be required to provide photo identification prior to testing. Privacy will be ensured at the facility by means of voiding (urinating) in a private enclosure. A split sample will be procured and both samples will be sent to the testing lab.
- E. Proper chain of custody procedures will be followed to ensure that the specimen submitted is indeed the specimen that belongs to the selected employee. The specimen will be sealed to prevent tampering during transport to the laboratory. Federal certified laboratories utilized for testing (drugs) and two separate methodologies will be performed to verify all specimens as positive prior to controlled substances reporting to the medical review office (MRO).

VII. EMPLOYEES MUST SUBMIT TO TESTS:

All Drivers and Covered Employees must submit to testing when so directed by the contract person named in this policy or a trained supervisor. Failure to comply

with the policy or the applicable regulations will be grounds for disciplinary action up to and including dismissal from employment.

#### VIII. REFUSAL TO SUBMIT TO TESTING:

Refusal to submit to the types of controlled substances and alcohol tests required by RSU 63 will be grounds for refusal to hire Driver applicants and Covered Employee applicants under section III.A. Pre-employment Testing. Drivers and Covered Employees who refuse to submit to a test will be subject to immediate removal from the performance of safety sensitive functions. The failure to comply with this procedure or federal regulations is grounds for disciplinary action up to and including termination from employment.

Any of the following actions constitutes a refusal to submit to a test:

- A. Failure to appear for any test (except pre-employment) within a reasonable period of time (as determined by RSU 63) after being directed to do so by RSU 63;
- B. Failure to remain at the testing site until the test is complete;
- C. Failure to provide a urine specimen;
- D. Failure to provide adequate specimens/samples of substance(s) undergoing testing, including but not limited to breath and urine, without a valid medical reason;
- E. Failure, in the case of a directly observed or monitored collection, to permit the observation or monitoring of the provision of a specimen;
- F. Failure or declination to take a second test RSU 63 or the collector has directed the Employee to take;
- G. Failure to cooperate with any part of the testing process, including but not limited to refusal to empty pockets when directed to do so and/or behaving in a confrontational way that disrupts the collection process;
- H. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the Designated Employer Representative (DER) under 49 C.F.R. § 40.193(d);
- I. Verified adulteration or substitution of a test result (as reported by a Medical Review Officer (MRO)).



## IX. CONSEQUENCES OF POLICY VIOLATION/ENFORCEMENT

- A. Any Driver or Covered Employee who engages in prohibited conduct as set forth herein shall be immediately removed from positions involving safety-sensitive functions, and will be subject to discipline, up to and including termination from employment.
- B. In the event that an employee, on the basis of a test, has a blood-alcohol content of more than 0.02 but less than 0.04, the employee will be removed from duty for 24 hours or until their next scheduled on-duty time, whichever is longer. Tests indicating a blood-alcohol concentration of 0.04 or over are considered prohibited conduct which will result in termination.

## X. PROHIBITED CONDUCT

- A. During the time that Drivers and Covered Employees are performing safety-sensitive functions, they will not engage in the following conduct (all of which will be considered “prohibited conduct” for the purposes of this policy):
  1. Reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater.
  2. Possessing or using any alcohol while on duty or within four (4) hours of performing safety-sensitive functions.
  3. Reporting for duty or remaining on duty when using, having used, or having tested positive for any controlled substance, except when such use is pursuant to the instructions of a physician who has advised that the substance does not adversely affect the Driver or Covered Employee’s ability to operate a CMV or perform the functions of their safety-sensitive positions.
  4. Using any alcohol for eight (8) hours after an accident which will require the Employee to be tested for alcohol (or until tested, whichever occurs first).
  5. Refusing to submit to a required controlled substance and/or alcohol test.

- B. Drivers and Covered Employees found to have engaged in prohibited conduct under the alcohol provisions of this policy/procedure will not be permitted to return to duty unless the subsequent alcohol test reveals a result of 0.02 or less. In cases involving controlled substances, a verified negative result is necessary before a Driver or Covered Employee may return to duty.
- C. If a Driver engages in prohibited conduct, the Driver is not qualified to drive a CMV and will be immediately removed from service and terminated. If a Covered Employee engages in prohibited conduct, the Covered Employee will be immediately removed from performing any services related to the maintenance of a CMV or RSU 63 transportation vehicle and/or provide student transportation of any kind.

#### XI. SAFETY-SENSITIVE FUNCTIONS FOR DRIVERS

Drivers perform a number of safety-sensitive functions. A Driver is deemed to be performing a safety-sensitive function from the time the Driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing. Safety-sensitive functions include but are not limited to:

- A. All time at any RSU 63 facility or grounds or on any public property waiting to be dispatched, unless the Driver has been relieved from duty by RSU 63;
- B. All time inspecting equipment as required by federal regulation or otherwise inspecting, servicing, or conditioning any CMV or RSU 63 vehicle at any time;
- C. All time spent at the driving controls of a CMV at any time;
- D. All time, other than driving time, in or upon any CMV;
- E. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- F. All the time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

## XII. SAFETY-SENSITIVE FUNCTIONS FOR COVERED EMPLOYEES

Covered Employees perform a number of safety-sensitive functions related to the transportation of students and RSU 63 personnel. Covered Employees are deemed to be performing a safety-sensitive function from the time they begin to work or are required to be in readiness to work until the time they are relieved from work and all responsibility for performing work. Safety-sensitive functions include but are not limited to:

- A. Maintenance, repair, and conditioning of RSU 63 vehicles which include, but are not limited to school buses, vans, trucks, and lawn mowers.
- B. Transporting students in RSU 63 vans which do not qualify as CMVs.

## XIII. TRAINING FOR SUPERVISORS

RSU 63 will assign a person designated to determine whether reasonable suspicion exists to require a Driver and/or Covered Employee to undergo testing under Part 382. This designated person will be provided with at least 60 minutes of training on alcohol misuse and another 60 minutes of training on controlled substances. Training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

## XIV. NOTIFICATIONS

- A. Each Employee subject to the requirements of this policy will receive educational materials prior to RSU 63's commencement of alcohol and controlled substances testing. Such material will explain the requirements of the Code of Federal Regulations, Title 49 Part 382, and contain a copy of the Board's policy and administrative procedures for meeting these requirements. RSU 63 will also include in the package of educational material a statement to be signed certifying the employee has received the material. RSU 63 will maintain the original signed copy of the statement in the employee's personnel file.
- B. In addition to the aforementioned items, RSU 63 will also make available to Drivers and Covered Employees information, which will identify:
  - 1. The person designated by RSU 63 to answer questions about the materials;

2. The procedures that will be used to test for the presence of alcohol and controlled substances; protect the driver and the integrity of the testing processes; safeguard the validity of the test results; and ensure that those results are attributed to the correct Driver and/or Covered Employee;
3. Information concerning the effects of alcohol and controlled substances on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substance(s) problem (the Driver's, Covered Employees, or co-worker's); and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

#### XV. PRESCRIBED CONTROLLED SUBSTANCES

All Drivers and Controlled Employees will inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Such substance may be used in conjunction with duty only if the physician has advised the employee that it will not adversely affect his/her ability to safely operate and/or service a CMV or RSU 63 vehicle.

#### XVI. REFERRAL, EVALUATION, AND TREATMENT

- A. Referral: An Employee who has engaged in conduct prohibited by this policy will be advised by RSU 63 of resources available to the Employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances. The information the Employee receives will include: names, addresses, and telephone numbers of substance abuse professionals, counseling, and treatment programs. Employees are responsible for payment of such services to the extent they are not covered by insurance.
- B. Evaluation/Treatment: An Employee who engages in such prohibited conduct will be evaluated by a substance abuse professional who will determine what assistance or treatment, if any, the Employee needs in resolving controlled substance(s).

#### XVII. OTHER POLICIES/PROCEDURES

- A. Nothing contained in this procedure will prevent RSU 63 from establishing and enforcing independent policies relating to alcohol or controlled substances or any misconduct associated therewith and the penalties for violation of those policies/procedures, up to and including termination from employment.
- B. This procedure is not intended nor should it be construed as a contract between RSU 63 and Applicants, Drivers, or Covered Employees. This procedure may be changed at any time at the sole discretion of RSU 63.

## XVIII. CONTACT PERSON

Any questions regarding this controlled substance and alcohol testing procedure should be addressed to the Superintendent of Schools or Administrator of Transportation/Facilities.

## XIX. ENFORCEMENT

RSU 63, in its independent authority as an employer, shall subject any Driver or Covered Employee who violates this policy/administrative procedure or Federal regulations to potential disciplinary action up to and including dismissal, except to the extent that any state law requires otherwise.

In addition, any Driver or Covered Employee who refuses to submit to a post-accident, random, reasonable suspicion, return-to-duty and/or follow-up test(s) shall not perform or continue to perform safety-sensitive functions as defined in Sections XI and XII or this policy.

Furthermore, no Driver or Covered Employee tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 will perform or continue to perform safety-sensitive functions as defined in Sections XI and XII of this policy, or return-to-duty until in compliance with Section X.B. of this policy.

## XX. RECORDS

Employee drug and alcohol tests and their results will be maintained under strict confidentiality in a secure location with controlled access and released only in accordance with law. A Driver or Covered Employee, upon written request, will receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug tests. Records will be made available to subsequent employers or other identified persons only when expressly requested in writing by the Driver or Covered Employee.

## XXI. CONTROLLED SUBSTANCES

Drivers and Covered Employees will inform their supervisors if, at any time, they are using a controlled substance that their physician has prescribed for therapeutic purposes. Such substance may be used in conjunction with duty **only** if the physician has advised the Driver or Covered Employee that it will not adversely affect his/her ability to safely operate a motor vehicle.

## XXII. RETURN TO DUTY

If RSU 63 has not discharged a Driver or Covered Employee due to his/her engagement in prohibited conduct under this policy/procedure, the Driver or Covered Employee must, prior to returning to safety-sensitive duties:

- A. Undergo return-to-duty testing and obtain an alcohol concentration level of less than 0.02 and/or a verified negative test for controlled substances;
- B. Have been evaluated by a substance abuse professional; and
- C. Have followed prescribed and/or recommended treatment.

## ACKNOWLEDGEMENT

I certify that I have received a copy of the RSU 63 Drug and Alcohol Testing of School Drivers & Covered Employees - Administrative Procedures and other printed material explaining the effects of an alcohol and/or controlled substances problem.

(Signature of Employee):

\_\_\_\_\_ Date: \_\_\_\_\_

Received by (Signature of Administrator):

\_\_\_\_\_ Date: \_\_\_\_\_