



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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September 12, 1996

WINDHAM BOARD POLICY

SUBJECT: DRUG-FREE WORKPLACE

AUTHORITY: *Drug-Free Workplace Requirements for Federal Grant Recipients*, 41 U.S.C. § 8103; 49 C.F.R. pts. 40, 382; Tex. Gov't Code §§ 493.001, 493.006(b), 493.007

APPLICABILITY: Windham School District (WSD)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The WSD reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the superintendent's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the WSD and **do not** create any legally enforceable interest or limit the superintendent's authority to terminate an employee at will.

POLICY:

The WSD shall maintain a drug-free workplace through the implementation of the provisions within this policy. All unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance or illicit drug is prohibited, and corrective action shall be taken against employees for violations of such prohibitions. In addition, to ensure the safety and security of campuses, units, employees, students, and the general public, the WSD shall administer drug and alcohol testing programs in accordance with the provisions of this policy. The WSD promotes equal employment opportunity through administering the provisions in this directive without regard to race, color, religion, sex (gender), national origin, age, disability, or genetic information. The WSD has zero tolerance for all forms of employment discrimination, and harassment or retaliation is prohibited. No employee will be subjected to harassment or retaliation for opposing or reporting employment discrimination.

DEFINITIONS:

The following terms are defined for the purpose of this policy and are not intended to be applicable to other policies or procedures.

“Adequate Urine Specimen” is at least 45 milliliters of urine produced by and collected from an applicant or employee.

“Alcohol” is the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

“Alcohol Test” is an alcohol screening test only or may also include an alcohol confirmation test.

- a. “Alcohol Screening Test” is an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- b. “Alcohol Confirmation Test” is a subsequent test, using an evidential breath testing device, that:

- (1) is conducted not less than 15 and not more than 30 minutes after completion of a reasonable suspicion, return to duty, or follow-up alcohol screening test with a result of an alcohol concentration of 0.02 or greater; and

- (2) provides quantitative data of alcohol concentration.

“Alcohol Use” is swallowing or inhaling any substance, including medication, containing alcohol.

“Alternate Specimen” is a blood draw, hair specimen, or saliva specimen as deemed appropriate for medically verifiable reasons.

“Breath Alcohol Technician” (BAT) is an individual who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

“Collection Site” is a place designated by the TDCJ where applicants or employees provide a specimen to be analyzed for the presence of alcohol or drugs.

“Collector” is an individual who instructs and assists applicants or employees at a collection site, receives and makes an initial inspection of the specimen provided by those applicants or employees, and initiates and completes the custody and control form.

“Commercial Driver” is an employee who has a commercial driver license (CDL) and operates a commercial motor vehicle (CMV) for the WSD on any occasion.

“Contracted Vendor” is an outside service agent meeting the requirements of title 49, Code of Federal Regulations, part 40 who is contracted by the TDCJ to be responsible for:

- a. collecting specimens;
- b. preserving the integrity of the collection and transfer process; and
- c. analyzing the specimens for the presence of alcohol or drug(s).

“Drug(s)” is:

- a. Marijuana;
- b. Cocaine;
- c. Opiates;
- d. Phencyclidine (PCP);
- e. Amphetamines;
- f. Methadone;
- g. Propoxyphene;
- h. Barbiturates;
- i. Benzodiazepines; and
- j. Methaqualone.

“Drug Test” consists of a drug screening test only or may also include a drug confirmation test.

- a. “Drug Screening Test” is an analytical procedure to eliminate “negative” specimens from further analysis or to identify a specimen requiring additional testing for the presence of drugs.
- b. “Drug Confirmation Test” is a subsequent analytical procedure performed on the urine or blood specimen provided for the drug screening test, or a subsequent hair or saliva specimen, to identify and quantify the presence of a specific drug or metabolite.

“Employee” is any person employed by the WSD on a full-time, part-time, or temporary basis.

“Employee Assistance Program” (EAP) is an outside company contracted by the TDCJ to provide information and referral services to employees of the WSD and their family members. This information may be related to the promotion of general wellness programs; identification of

and treatment for alcoholism, drug dependency, or psychological disorders; resources for financial or legal problems; and other personal problems affecting an employee's job performance. The EAP refers employees or family members to proper treatment or assistance.

"Evidential Breath Testing Device" is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

"Hair Specimen" is a head or body hair, not including hair from the genital area.

"Health Care Provider" is a doctor of medicine or osteopathy, who is authorized to practice medicine or surgery (as appropriate) in the state in which the doctor practices, or a clinical psychologist.

"Health Care Provider's Statement" is a written statement from an attending health care provider that identifies:

- a. the medical fact(s) associated with the inability to produce a urine specimen; and
- b. the expected duration of inability to produce the specimen.

"Illicit Drug" includes any:

- a. illegally made, sold, or used chemical or organic substance that causes addiction or a marked change in consciousness or mood, including marijuana, cocaine, amphetamines, heroin, natural and synthetic hallucinogens, and synthetically produced substances;
- b. non-prescribed or misused medication, such as using sleeping or pain pills to alter consciousness or mood, or using someone else's prescribed medication; and
- c. misused household substance, such as sniffing glue or huffing an inhalant.

"Inhalant" is any substance inhaled contrary to the substance's intended use.

"Medical Fact" is a description of a condition that identifies the cause or nature of the injury or illness, such as infection or kidney disorder. A procedure that identifies the injury or illness, for example dialysis, is sufficient information to serve as a "medical fact." Terms such as "under my care," "surgery," or "stress" are not acceptable as a medical fact. A medical fact does not require a diagnosis.

"Medical Review Officer" (MRO) is a licensed physician under contract pursuant to the TDCJ's contracted vendor agreement who receives and reviews laboratory results generated by the TDCJ's drug testing program and evaluates medical explanations for certain drug test results.

“Negative Alcohol Test Result” is a test result revealing an alcohol concentration less than 0.02.

“Negative Drug Test Result” is a test result revealing no presence of drug(s), other than the presence of a drug for which the MRO has determined that a legitimate medical explanation exists.

“Outside Applicant” is any applicant not currently employed by the WSD. Former WSD employees are included in this definition.

“Positive Alcohol Test Result,” for the purpose of this directive, is a test result revealing an alcohol concentration of 0.02 or greater.

“Split Specimen” is a part of the urine specimen sent to a first laboratory and retained unopened, and then transported to a second laboratory in the event the applicant or employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result of the primary specimen.

“Substance Use” is the abuse or misuse of alcohol, prescription medication, inhalants, or the use of drug(s) without a legitimate medical explanation.

“Substance Control Officer” (SCO) is a TDCJ employee in Employee Relations, Human Resources Division, who coordinates the TDCJ’s Alcohol and Drug Testing Programs. Such coordination includes:

- a. taking immediate action to report the need to remove WSD employees from duty or causing WSD employees to be removed from duty;
- b. making required decisions in the testing and evaluation processes; and
- c. receiving test results and other communications on behalf of the WSD. The SCO is also known as the TDCJ’s designated employer representative.

“Supervisor” is an employee who directs and oversees the work of other employees as indicated in the job description, completes subordinate employees’ performance evaluations, approves subordinate employees’ leave requests, and performs other supervisory duties.

“Trainee” is an employee attending a training academy, or still in a trainee status.

“Verified Positive Drug Test Result” is a test result revealing the presence of drug(s) after all the following:

- a. A drug confirmation test by gas chromatography/mass spectrometry; and
- b. A determination by the TDCJ designated MRO that no legitimate medical explanation exists for the positive test.

“Workday” is Monday through Friday, excluding state and national holidays for which WSD campuses and offices are closed, and days when offices are closed at the direction of the superintendent, such as for adverse weather.

DISCUSSION:

I. Dangers of Substance Use

In a criminal justice environment, it is especially important to maintain a workplace free of substance use. Substance use can impair the ability of an employee to effectively perform duties and may endanger the employee, coworkers, students, and the public, as well as property.

II. Maintaining a Workplace Free of Substance Use

The WSD addresses substance use in the workplace through the following:

- A. Implementation of an alcohol and drug testing program that includes:
 - 1. Pre-employment or pre-assignment drug testing;
 - 2. Reasonable suspicion alcohol or drug testing;
 - 3. Return to duty and follow-up alcohol or drug testing as part of an eligible employee’s rehabilitation program; and
 - 4. Random drug testing of employees in safety sensitive positions.
- B. Referrals to the EAP in accordance with the procedures in this directive; and
- C. Disciplinary action in accordance with WBP-07.44, “Professional Standards of Conduct and Disciplinary Guidelines.”

PROCEDURES:

I. Dissemination of WBP-07.45, “Drug-Free Workplace”

This policy shall be published in the WSD *Policy Manual*, which is available on the WSD website. In addition, an employee performing job duties arising from a federal grant shall receive a copy of this directive before beginning job duties in connection with the federal grant.

II. Prescription Drugs

A. Reporting Requirements

If an employee is taking a drug prescribed by the employee's health care provider and the employee believes the prescription drug's side effects, such as drowsiness or hallucinatory effects, may interfere with the performance of the employee's assigned duties, the employee shall provide WSD Human Resources with the drug information sheet received with the prescription(s) or a written statement from the health care provider containing the name of the prescribed drug, name of the prescribing health care provider, possible side effects, and approximate length of time the employee is required to take the drug. Such notification prevents side effects from being misinterpreted as substance use.

The employee shall provide the written notification to Human Resources prior to commencing work while taking such medication. All such information shall be kept confidential; however, the employee's supervisor shall be notified of the employee's availability to work. The written notification shall be maintained in the employee's medical file.

B. Effect on Job Performance

If a supervisor or manager suspects an employee's job performance is being affected as a result of taking a prescription drug, a supervisor or manager shall contact the WSD human resources administrator. After consultation with the human resources administrator, the supervisor or manager shall make a determination as to whether the employee may remain at work. The supervisor or manager shall document the conversation with the human resources administrator, and such documentation shall be maintained in the employee's medical file.

C. Safety Measures

While on TDCJ or WSD premises, an employee is required to keep all prescription drugs in the original container in a location secure from TDCJ residents. The container shall contain no more than the label indicates.

III. Alcohol and Drug Testing General Provisions

A. Specimens

A urine specimen is the primary means used to test for drugs and breath is the primary means used to test for alcohol. Alternate specimens may be taken for drug and alcohol testing as deemed appropriate for medically verifiable reasons.

B. Testing Sites

All alcohol and drug tests required by the WSD shall be conducted by a TDCJ contracted vendor. Applicants and employees shall normally report to collection sites not located on WSD or TDCJ property.

C. Time Reporting for Alcohol and Drug Testing

1. A current employee shall report the time required for travel to and from the collection site and the testing duration as time worked if:
 - a. The employee is required to submit to an alcohol or drug test other than a return to duty or follow-up test; or
 - b. The employee is transporting another employee to a testing site for a random or reasonable suspicion alcohol or drug test.
2. Overtime may be accrued by an employee required to report for random drug testing after an employee's normal work schedule.

D. Travel for Random Drug Testing

1. Efforts shall be made to supply a WSD vehicle to an employee required to submit to random drug testing.
2. An employee required to submit to random drug testing shall receive reimbursement in accordance with the standard rules governing mileage if a state vehicle is not available and the employee's personal vehicle is used.

E. Confidentiality

Alcohol and drug test results and medical information are confidential and may not be released without the applicant's or employee's specific written consent, except in connection with a legal or administrative proceeding involving the information; for example, a lawsuit, unemployment compensation hearing, disciplinary, or grievance process.

An employee who willfully discloses or releases information in violation of the procedures within this policy shall be subject to corrective or disciplinary action in accordance with WBP-07.44, as well as any other applicable penalties or liabilities under law.

IV. Alcohol and Drug Testing Occasions Not Related to a Substance Use Treatment Agreement

A. Pre-Employment and Pre-Assignment Drug Testing

1. General Provisions

- a. All outside applicants shall be required to submit to a pre-employment or pre-assignment drug test as a condition of employment. Acknowledgment of the pre-employment or pre-assignment drug test requirement shall be included in the WSD online Application Supplement.
- b. An employee in a leave without pay (LWOP) status shall not be required to submit to a pre-employment or pre-assignment drug test upon returning to work.
- c. An employee who separates from employment and who is rehired by the WSD shall be required to submit to a pre-employment or pre-assignment drug test, except for an employee who is reinstated through a settlement agreement or other action resulting in employment reinstatement.
- d. An applicant who is a current TDCJ employee shall not be required to submit to a pre-employment or pre-assignment drug test upon selection for a WSD posted position.
- e. An applicant who is required to maintain a commercial driver license or operate a commercial vehicle as a marginal duty will be subject to random drug testing in accordance with this policy.
- f. An outside applicant who indicates at the beginning of the conditional offer of employment that the applicant is still interested in the position being offered shall be informed of the following:
 - (1) The location of the nearest testing site; and
 - (2) Pre-employment drug testing shall take place within 48 hours, excluding weekends and holidays, from the time the conditional offer of employment is extended for the applicant to remain eligible for the position being offered. This requirement applies even if the applicant declines the position after being notified of the pre-employment drug test requirement; otherwise, the applicant shall be ineligible for employment consideration due to a refusal to test.

- g. The SCO shall coordinate receipt of all pre-employment or pre-assignment drug test results with the contracted vendor.

2. Failure to Have a Negative Drug Test Result

- a. Failure to have a negative drug test result may be due to a refusal to test, including inability to provide an adequate specimen, specimen tampering, or a verified positive drug test result. See alcohol and drug testing processes in Section VI.
- b. If an outside applicant fails to have a negative drug screening result, the SCO shall:
 - (1) Notify the WSD Human Resources Selection Section representative who made the conditional offer of employment that the applicant failed to have a negative drug test result; and
 - (2) Advise WSD Human Resources Selection Section representative that due to a refusal to test, specimen tampering, or a verified positive drug test result, the applicant is ineligible for employment consideration.

B. Reasonable Suspicion Alcohol and Drug Testing

An employee who is reasonably suspected of using alcohol or drugs in the workplace or performing official duties while under the influence of alcohol or drugs shall be required to submit to a reasonable suspicion alcohol or drug test.

1. Conditions Required for Reasonable Suspicion Testing

Reasonable suspicion testing shall be conducted only when one of the following occurs:

- a. The supervisor observes current and specific conduct or symptoms concerning the employee's appearance, behavior, speech, body odors, or performance indicators of probable alcohol or drug use. The observations regarding suspected drug use may include indications of the chronic and withdrawal effects of controlled substances;
- b. It is determined alcohol or drugs may be a contributing factor in a work-related accident. An employee who is involved in a work-related accident shall immediately notify the employee's supervisor of the accident. The employee shall remain readily

available for reasonable suspicion testing for a maximum period of 32 hours after the accident. Failure to remain readily available for reasonable suspicion testing shall be treated as a refusal to test. These procedures are not intended to delay necessary medical attention for an injured employee following a work-related accident or to prohibit an employee from leaving the employee's assignment to obtain assistance or necessary medical care;

- c. There is a positive reading from electronic drug detection equipment; or
- d. There is a positive reaction from a narcotic detection canine to an employee's property.

2. Supervisor and Human Resources Administrator Responsibilities

- a. When one of the incidents listed in Section IV.B.1 occurs, the supervisor shall immediately:
 - (1) Contact the human resources administrator by telephone to discuss the incident;
 - (2) In consultation with the human resources administrator, relieve the employee from duty due to a reasonable suspicion testing condition;
 - (3) Obtain a copy of the Reasonable Suspicion Determination Checklist (Attachment A);
 - (4) Complete the Reasonable Suspicion Determination Checklist; and
 - (5) Fax or email the completed Reasonable Suspicion Determination Checklist to the human resources administrator as soon as possible after the telephone contact.
- b. The decision to recommend reasonable suspicion testing shall be made by the human resources administrator based on the supervisor's observations. The human resources administrator, in conjunction with the appropriate division director, shall have final authorization for reasonable suspicion testing to be conducted.
- c. If it is determined that a reasonable suspicion test shall be conducted, the supervisor or designee, and another employee of the

same gender as the employee being tested, shall take the employee to the testing site.

3. Timeframes for Conducting Reasonable Suspicion Alcohol and Drug Tests

a. Alcohol Tests

Alcohol testing shall be administered as soon as practicable following the observable incident.

If the test is not administered within eight hours following the incident, attempts to administer the alcohol test shall cease. The human resources administrator shall prepare and maintain in the employee's personnel file a record documenting the reason the test was not administered within the eight-hour time limit.

b. Drug Tests

Drug testing based on a reasonable suspicion determination shall be administered as soon as practicable following the observable incident. A drug test shall be administered no later than 32 hours following the observable incident or such notification. If a drug test is not administered within the 32-hour time limit, attempts to administer the drug test shall cease. The human resources administrator shall prepare and maintain in the employee's personnel file a record documenting the reason the drug test was not administered within the 32-hour time limit.

4. Use of Leave and Providing Employee with Transportation Home

If an employee has a positive alcohol test result or has been administered a reasonable suspicion drug test, the employee shall be removed from duty and placed in a leave status once the employee has been returned from the test site. The employee shall be required to use the employee's accrued leave or be placed in an LWOP status in accordance with WSD leave policies.

The supervisor or designee shall make every effort to ensure the employee does not drive home. The supervisor or designee shall attempt to contact someone outside the WSD, such as the employee's relative or friend, to provide the employee with a ride home from work. After all possibilities of contacting someone have been exhausted, the supervisor or designee shall offer to take the employee home in a state vehicle. If an employee refuses assistance, local law enforcement shall be immediately notified of

the situation. The supervisor shall document any refusal of assistance and forward the documentation to the human resources administrator.

C. Random Drug Testing

1. General Provisions

- a. Random drug testing shall be conducted on employees who are required to maintain a commercial driver license or who operate a commercial vehicle as a marginal duty.
- b. A random drug testing list (RDTL) shall be distributed to the human resources administrator by the SCO.
- c. The testing frequency and selection process is such that an employee's chance of selection continues to exist throughout employment with the WSD.

2. Status Pending Random Test Results

Employees shall not be removed from duty pending the random drug test results, or pending a rescheduled test.

3. Employee Notification

- a. The human resources administrator shall be responsible for maintaining the integrity and intended purpose of random drug testing and shall not distribute the RDTL. The human resources administrator may delegate the employee notification function to appropriate human resources staff.
- b. Drug testing shall occur within seven days of the RDTL being received by the human resources administrator. The human resources administrator or designee shall notify selected employees and their supervisor of the drug testing requirement.

4. Employee Compliance

- a. An employee on the RDTL whose normal work schedule allows access to the testing site during normal business hours shall:
 - (1) proceed to the testing site immediately upon notification;
 - (2) provide an adequate specimen; and

- (3) return to the employee's unit of assignment or work location.
 - b. An employee whose normal work schedule does not allow access to the testing site during normal business hours shall be required to report for testing at the end of the employee's assigned work schedule during the normal business hours of the site. Time reporting shall be in accordance with Section III.C of this policy.
 - c. The only acceptable reasons for employee non-compliance with random drug testing shall be:
 - (1) An emergency verifiable with documentation; or
 - (2) Approved leave granted prior to receipt of the RDTL by the human resources administrator.
- V. Employee Voluntary Participation in Substance Use Treatment Agreement and Related Alcohol and Drug Testing

The WSD encourages an employee who needs substance use counseling or rehabilitation to inform the employee's supervisor or Human Resources of such a need before the employee's job performance is affected. Rehabilitation is the responsibility of the employee.

An employee who admits to the employee's supervisor or Human Resources that the employee has a substance use problem and who is seeking treatment for the problem may request leave in accordance with WSD leave policies to receive such treatment.

- A. A supervisor shall immediately notify the human resources administrator upon being informed by an employee of the employee's need for substance use counseling or rehabilitation. In addition, the supervisor shall immediately relieve the employee from duty.
- B. The human resources administrator shall refer the employee to the EAP and notify the employee's supervisor of such referral.
- C. The employee shall not be subject to any disciplinary action based exclusively on the employee's admission of a need or based exclusively on using leave to receive treatment. However, the WSD may still subject the employee to:
 1. A reasonable suspicion alcohol or drug test if one of the incidents listed in Section IV.B.1 of this policy has occurred; or
 2. Disciplinary action in accordance with WBP-07.44 if the employee has allegedly committed a rule violation.

VI. Alcohol and Drug Testing Processes

A. Alcohol Test

All breath tests are conducted by a certified BAT and shall be conducted in a location allowing visual and auditory privacy sufficient to prevent unauthorized persons from seeing or hearing test results.

1. The employee shall be required to provide photo identification or be identified by a WSD supervisor. The employee may request the BAT to provide positive identification to the employee.
2. Prior to an alcohol test, the employee shall sign the certification on the breath alcohol testing form provided by the BAT.
3. If the quantified test result of a reasonable suspicion, return to duty, or follow-up alcohol test is an alcohol concentration of 0.02 or greater, the BAT will conduct an alcohol confirmation test not less than 15 and no more than 30 minutes after the completion of the screening test. The result of the alcohol confirmation test is final.
4. The BAT will transmit the alcohol test result directly to the SCO in a manner that:
 - a. Ensures the result is immediately received by the SCO; and
 - b. Is confidential.
5. The SCO shall notify the human resources administrator of the result.

B. Drug Test

Drug tests shall screen for marijuana, cocaine, opiates, PCP, amphetamines, methadone, propoxyphene, barbiturates, benzodiazepines, and methaqualone.

1. The applicant or employee shall be required to provide photo identification or be identified by a WSD supervisor. The applicant or employee may request the collector to provide positive identification to the applicant or employee.
2. The applicant or employee shall receive a securely wrapped specimen bottle that subdivides into a primary specimen and a split specimen. The bottle shall be identified with a unique identification number identical to

the number on the custody and control form provided by the collector. The applicant or employee shall be asked to sign or initial the custody and control form indicating it is the applicant's or employee's specimen.

3. An applicant or employee shall be allowed to produce the urine specimen in private, unless the specimen shall be collected under direct observation of a same gender observer because one of the following occurs:
 - a. The employee is being required to submit to a reasonable suspicion test.
 - b. A subsequent specimen is required because:
 - (1) The collector determined that the first provided urine specimen was outside the normal temperature range, 32-38C or 90-100F; or
 - (2) It was apparent the applicant or employee had tampered with the specimen upon the collector's inspection of the first provided specimen for unusual color, presence of foreign objects or material, or other signs of tampering, such as an unusual odor.
 - c. The collector observed materials brought to the collection site or the conduct of the applicant or employee clearly indicated an attempt to tamper with the specimen.
4. The collector shall immediately notify the SCO of any evidence of specimen tampering. The SCO shall notify the human resources administrator of specimen tampering.
5. Alternate specimens may be used in accordance with this policy.

C. Refusal to Test for Alcohol or Drugs

The BAT or collector shall immediately notify the SCO if an outside applicant or employee refuses to test. The SCO shall notify the human resources administrator if an outside applicant or employee refuses to test.

1. Outside Applicant

An applicant shall be considered as refusing to test if one of the following occurs:

- a. The applicant fails to arrive at the collection site on time, unless documentation is provided regarding a verifiable reason for a delay

in pre-employment drug testing, such as a health care provider's statement, jury summons, or death notice for a family member;

- b. The applicant fails to remain at the test facility until the testing process is complete;
- c. The applicant fails to provide an adequate urine specimen for pre-employment drug testing and does not provide a valid medical explanation after receiving notice of such requirement as explained in Section VI.D.1;
- d. The applicant refuses to sign the custody and control form for drug tests; or
- e. The applicant fails to cooperate with the collector to the extent the behavior prevents completion of the test.

2. Current Employee

An employee shall be considered as refusing to test if one of the following occurs:

- a. The employee fails to report for random drug testing upon notification, unless an acceptable reason for non-compliance exists as explained in Section IV.C.4.c;
- b. The employee refuses to sign the certification on the breath alcohol testing form for alcohol tests or refuses to sign the custody and control form for drug testing;
- c. The employee refuses to submit to or fails to provide an adequate amount of breath or adequate urine for reasonable suspicion testing, regardless of whether there is a valid medical explanation for such failure as explained in Section VI.D.2;
- d. The employee fails to provide an adequate amount of breath or adequate urine or alternate specimen for random, return to duty, or follow-up drug or alcohol testing, and does not provide a valid medical explanation after receiving notice of such requirement as explained in Sections VI.D.1 and 3;
- e. The employee fails to cooperate with the collector to the extent the behavior prevents the completion of the test; or
- f. The employee fails to remain readily available for alcohol or drug testing for a maximum period of 32 hours after a work-related

accident, if reasonably suspected that alcohol or drugs may be a contributing factor in the accident.

D. Inability to Provide an Adequate Specimen

1. Pre-Employment, Pre-Assignment, and Random Drug Tests

If an outside applicant or employee is unable to provide an adequate urine specimen, the applicant or employee may remain at the collection site for up to three hours or until the time limit for testing expires, whichever is less, and drink up to 40 ounces of fluid and then attempt to provide an adequate urine specimen. If the applicant or employee is still unable to provide an adequate specimen, testing shall be discontinued. If the applicant or employee refuses to make the attempt or attempts but fails to provide an adequate amount of urine, the collector shall immediately inform the SCO. The SCO shall notify the human resources administrator if an applicant or employee is unable to provide an adequate specimen.

The human resources administrator or designee shall inform an outside applicant or employee who is unable to provide an adequate specimen for a drug test that the applicant or employee shall furnish a signed and dated written statement from a health care provider, at the individual's own expense. Employees shall not be removed from duty pending the furnishing of a statement from a health care provider. The statement shall include a valid medical explanation for the inability to provide an adequate specimen. A trainee or an employee shall take accrued leave or be placed in an LWOP status, if necessary, in accordance with WSD leave policies for the visit to the health care provider.

a. If such a statement is provided within five workdays from the date of the attempted drug test, the human resources administrator or designee shall immediately work with the SCO to reschedule a drug test, based on the duration of inability to produce a specimen. An alternate specimen may be taken as deemed appropriate for the rescheduled test.

(1) An outside applicant shall be required to have a negative pre-employment drug test result before being hired by the WSD.

(3) An employee shall be required to have a negative random drug test result to maintain employment. The employee shall not be removed from duty pending the random drug test results, or pending a rescheduled test.

- b. If such a statement is not provided to the human resources administrator within five workdays from the date of an attempted drug test, such inaction shall be considered a refusal to test.

2. Reasonable Suspicion Tests

If an employee is unable to provide an adequate specimen for a reasonable suspicion test, the employee shall not have the option to provide a valid medical explanation for such failure.

a. Alcohol Test

If an employee is unable to provide an adequate amount of breath for a reasonable suspicion alcohol test, the BAT shall instruct the employee to make another attempt to provide an adequate amount of breath. If the employee refuses to make the attempt or attempts but fails to provide an adequate amount of breath, it is considered refusal to test, and the BAT shall immediately inform the SCO. The SCO shall notify the human resources administrator that an employee has been unable to provide an adequate amount of breath for a reasonable suspicion alcohol test.

b. Drug Test

If an employee is unable to provide an adequate urine specimen for a reasonable suspicion drug test, the employee may remain at the collection site for up to three hours and drink up to 40 ounces of fluid and then attempt to provide an adequate urine specimen. If the employee refuses to make the attempt or attempts but fails to provide an adequate urine specimen, it is considered a refusal to test, and the collector shall immediately inform the SCO. The SCO shall notify the human resources administrator that an employee has been unable to provide an adequate urine specimen for a reasonable suspicion drug test.

E. Medical Review Officer (MRO) Review of Drug Test Results

Prior to notifying the SCO that a test has been verified as positive or as a refusal to test because of adulteration or substitution, the MRO shall attempt to contact the outside applicant or employee. The applicant or employee may provide information or records to the MRO to assist the MRO in reviewing the test.

1. If the MRO is unable to reach the applicant or employee directly:
 - a. The MRO shall contact the SCO. The SCO shall contact the human resources administrator and instruct the human resources

- administrator to contact the outside applicant or employee and request the applicant or employee to contact the MRO immediately.
- b. The human resources administrator or designee shall inform the applicant or employee of the consequences of failing to contact the MRO within the following 72 hours.
2. If the human resources administrator or designee is unable to contact the applicant or employee within 24 hours after the MRO's request:
 - a. The human resources administrator or designee shall leave a message for the applicant or employee by any available means, such as voicemail, email, or letter stating the applicant or employee shall contact the MRO within 72 hours and the consequences of failing to contact the MRO.
 - b. The human resources administrator or designee shall continue attempts to contact the applicant or employee for five workdays after the date the SCO instructs the human resources administrator to contact the applicant or employee.
 3. The MRO may advise the SCO of a verified positive drug test result without communicating directly with the applicant or employee regarding the test results if:
 - a. The applicant or employee expressly declines the opportunity to discuss the test results with the MRO;
 - b. The SCO has successfully made contact with the applicant or employee and more than 72 hours have passed since the time the SCO contacted the applicant or employee; or
 - c. After making all reasonable efforts, the human resources administrator or designee has not been able to contact the applicant or employee within five workdays of the date the MRO instructed the SCO to contact the applicant or employee.
 4. If the MRO has verified a drug test as positive without communicating directly with the applicant or employee, or the MRO has spoken with the applicant or employee and is waiting to receive information from the applicant or employee:
 - a. The applicant or employee has 21 calendar days to present information to the human resources administrator documenting that serious injury, illness, or other circumstances unavoidably

prevented the applicant or employee from contacting the MRO, or to provide documentation to the human resources administrator that the requested information was provided to the MRO within the timeframe given by the MRO.

- b. The human resources administrator or designee shall coordinate with the SCO to provide the information to the MRO.
- c. On the basis of such information, the MRO may reopen the verification, and allow the applicant or employee to present information concerning a legitimate explanation for the verified positive drug test result. If the MRO determines there is a legitimate medical explanation for the presence of drugs, the MRO will report the test result to the SCO as negative. The SCO shall notify the human resources administrator of the determination made by the MRO.
- d. The employee may be subject to disciplinary action for failing to contact the MRO as directed or provide information to the MRO within the timeframe given without circumstances unavoidably preventing the employee from doing so.

F. Retesting

Within 24 hours of notification from the MRO of a verified positive drug test result, the outside applicant or employee may contact the human resources administrator and request the laboratory retest the specimen or request to provide a subsequent hair specimen to be taken and tested. If the applicant or employee has not made the request within 24 hours of such notification, the applicant or employee may present information to the human resources administrator documenting that serious injury, illness, or other circumstances unavoidably prevented the applicant or employee from making a timely request. The human resources administrator will coordinate retesting with the SCO.

All costs related to the retest shall be at the expense of the applicant or employee. The applicant or employee shall remit a certified check or money order within 24 hours of contact with the human resources administrator.

VII. Impact on Future Employment Eligibility

Failure to Have a Negative Alcohol or Drug Test Result

The WSD has zero tolerance for substance use by outside applicants or current employees.

A. Outside Applicant

An outside applicant who fails to have a negative drug test result through a refusal to test, tampers with a specimen, or has a verified positive drug test result shall be ineligible for employment consideration with the WSD.

B. Current Employee

A current employee who fails to have a negative alcohol or drug test result through a refusal to test, tampers with a specimen, or has a positive alcohol or a verified positive drug test result may be subject to disciplinary action, and if separated, shall be ineligible for employment consideration with the WSD.

Patrick L. O'Daniel, Chairman
Windham School District Board of Trustees

Windham School District
Reasonable Suspicion Determination Checklist
(Confidential)

Date/Time of Incident or Work-Related Accident: _____

Employee's Name: _____
Please Print: Last First MI

Employee ID: _____

Unit or Department: _____

Work Phone #: (____) _____
(Area Code)

Observing Supervisor's Name: _____
Please Print: Last First MI

Observing Supervisor's Employee ID: _____

Second Observing Supervisor's Name: _____
(if applicable) Please Print: Last First MI

Second Observing Supervisor's Employee ID: _____
(if applicable)

This checklist shall be completed whenever an incident or a work-related accident has occurred and there is reasonable suspicion that an employee is under the influence of alcohol or a prohibited drug substance. The employee's supervisor shall note all pertinent behavior and physical signs or symptoms that lead the supervisor to reasonably believe the employee has recently used or is under the influence of alcohol or a prohibited drug substance. The supervisor shall mark each applicable item on this form and describe any additional facts or circumstances that the supervisor noted.

	Questions	Yes	No
1.	Has the employee exhibited behavior that indicated the employee was under the influence of alcohol or drugs? If yes, mark applicable items in Sections A, B, and C and describe behavior in Section D.	<input type="checkbox"/>	<input type="checkbox"/>
2.	Was the employee the subject of a positive reading from electronic drug detection equipment?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Was there a positive reaction from a narcotic detection canine to the employee's property?	<input type="checkbox"/>	<input type="checkbox"/>

Time Limits: Alcohol or drug tests shall be administered as soon as practicable following the accident or incident.

- a. Alcohol Tests: If an alcohol test is not administered within eight hours following the accident or incident, attempts to administer an alcohol test shall cease and the human resources administrator shall document the reasons the test was not administered.
- b. Drug Tests: If a drug test is not administered within 32 hours following the accident or incident, attempts to administer a drug test shall cease, and the human resources administrator shall document the reasons the test was not administered.

REASONABLE SUSPICION OBSERVATIONS

A. NATURE OF THE ACCIDENT OR INCIDENT OR CAUSE FOR SUSPICION

- | | |
|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1. Observed or reported possession or use of a controlled substance | <input type="checkbox"/> 5. Other,* such as flagrant violation of safety regulations, serious fighting, argumentative or abusive language, refusal of supervisor instruction, unauthorized absence on the job |
| <input type="checkbox"/> 2. Observed or reported possession or consumption of alcohol while on the job | |
| <input type="checkbox"/> 3. Observed or reported to work under the influence of alcohol as outlined in the policy | <input type="checkbox"/> 6. A positive reading from electronic drug detection equipment |
| <input type="checkbox"/> 4. Observed abnormal or erratic behavior | <input type="checkbox"/> 7. A positive reaction from a narcotic detection canine to an employee's property |

*Specify exact other behavior:

B. UNUSUAL BEHAVIOR

- | | |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1. Verbal abusiveness | <input type="checkbox"/> 4. Withdrawal, depression, mood changes, or unresponsiveness |
| <input type="checkbox"/> 2. Physical abusiveness | <input type="checkbox"/> 5. Inappropriate verbal response to questioning or instructions |
| <input type="checkbox"/> 3. Extreme aggressiveness or agitation | <input type="checkbox"/> 6. Other erratic or inappropriate behavior,* such as hallucinations, disorientation, excessive euphoria, confusion |

*Specify exact other behavior:

C. PHYSICAL SIGNS OR SYMPTOMS

- | | |
|------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1. Possessing, dispensing, or using controlled substance | <input type="checkbox"/> 11. Odor of alcohol |
| <input type="checkbox"/> 2. Slurred or incoherent speech | <input type="checkbox"/> 12. Odor of marijuana |
| <input type="checkbox"/> 3. Unsteady gait or other loss of physical control; poor coordination | <input type="checkbox"/> 13. Dry mouth, such as frequent swallowing or lip wetting |
| <input type="checkbox"/> 4. Dilated or constricted pupils or unusual eye movement | <input type="checkbox"/> 14. Dizziness or fainting |
| <input type="checkbox"/> 5. Bloodshot or watery eyes | <input type="checkbox"/> 15. Shaking hands, body tremors, or twitching |
| <input type="checkbox"/> 6. Extreme fatigue or sleeping on the job | <input type="checkbox"/> 16. Irregular or difficult breathing |
| <input type="checkbox"/> 7. Excessive sweating or clamminess to the skin | <input type="checkbox"/> 17. Runny nose or sores around nostrils |
| <input type="checkbox"/> 8. Flushed or very pale face | <input type="checkbox"/> 18. Inappropriate wearing of sunglasses |
| <input type="checkbox"/> 9. Highly excited or nervous | <input type="checkbox"/> 19. Puncture marks or "tracks" |
| <input type="checkbox"/> 10. Nausea or vomiting | <input type="checkbox"/> 20. Other* |

*Specify other physical signs or symptoms:

D. WRITTEN SUMMARY

Summarize the facts and circumstances of the accident or incident, employee response, supervisor actions, and any other pertinent information not previously noted on this form. Attach additional sheets as needed.

Signature of Observing Supervisor: _____ Date: _____
(MM/DD/YYYY)

Signature of Second Observing Supervisor: _____ Date: _____
(if applicable) (MM/DD/YYYY)

Title	Date	Initials	Statement	Yes	No
Observing Supervisor			Based upon my observations as noted on this checklist, I recommend that an alcohol or drug test be administered in accordance with WBP-07.45, "Drug-Free Workplace."	<input type="checkbox"/>	<input type="checkbox"/>
Second Observing Supervisor (if applicable)			Based upon my observations as noted on this checklist, I recommend that an alcohol or drug test be administered in accordance with WBP-07.45, "Drug-Free Workplace."	<input type="checkbox"/>	<input type="checkbox"/>
Human Resources Administrator			Based upon the observations as noted on this checklist and upon my discussion with the observing supervisor(s), I recommend that an alcohol or drug test be administered in accordance with WBP-07.45, "Drug-Free Workplace."	<input type="checkbox"/>	<input type="checkbox"/>
Division Director			Based upon my discussion with the human resources administrator on _____, I verbally authorized an alcohol or drug test be administered in accordance with WBP-07.45, "Drug-Free Workplace." <small>(MM/DD/YYYY)</small>	<input type="checkbox"/>	<input type="checkbox"/>

Supervisor Instructions:

1. After contacting the human resources administrator via telephone or in person, immediately fax, email, or hand carry a copy of this checklist to the human resources administrator.
2. Mail the original checklist with all applicable documentation to the human resources administrator within 48 hours after the incident or accident. Do not retain a copy.

TO BE COMPLETED BY THE Human Resources Administrator
Employee underwent <input type="checkbox"/> alcohol test <input type="checkbox"/> drug test at _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m. on _____ <small>(MM/DD/YYYY)</small>
Test was conducted at the following location: _____
Employee refused to test: <input type="checkbox"/> Yes <input type="checkbox"/> No

