DRUG AND ALCOHOL TESTING (TRANSPORTATION)

The testing occasions shall include:

1. **Pre-duty testing**

   a. Pre-duty testing is testing for drugs that the District will administer after a conditional offer of employment has been extended and prior to any covered driver's performance of a safety-sensitive function. The District will not allow any covered driver to commence the performance of any safety-sensitive function unless the drug testing reveals a verified negative test result.

   b. The District may, in its sole discretion, forego pre-duty testing where the exceptions promulgated by the regulations relating to drug and alcohol testing of covered drivers by their previous employers, are satisfied.

2. **Reasonable Suspicion testing**

   a. Reasonable suspicion testing is alcohol and drug testing that the District will conduct when it has reasonable suspicion to believe that a covered driver has engaged in conduct prohibited by this policy. Reasonable suspicion must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of a covered driver by the Director of Special Education, Occupational Education, Assistant Directors of such programs or any other supervisor as determined by the District who is specially trained to recognize alcohol misuse or drug use. The observations may include indications of the chronic and withdrawal effects of controlled substances.

   b. A written record shall be made of observations leading to reasonable suspicion, signed by the supervisor or person who made the observations, within twenty-four (24) hours of the observed behavior or before the results of drugs test are released, whichever is earlier.

   c. The District shall not administer a reasonable suspicion alcohol test more than eight (8) hours following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated. Covered drivers are subject to reasonable suspicion alcohol testing as follows: Immediately prior to performing safety sensitive functions, while performing safety sensitive functions, or immediately following the performance of safety sensitive functions. Reasonable suspicion drug testing may be conducted at any time the covered driver is on duty for the district.

DRUG AND ALCOHOL TESTING (TRANSPORTATION)

3. **Random testing**

a. Random testing is unannounced testing for alcohol and drugs administered in a statistically random manner throughout the year to covered drivers employed by the District in ratios as required by the DOT regulations, so that all covered drivers have an equal probability of selection each time a random test is administered.

b. Covered drivers are subject to random alcohol testing as follows: immediately prior to performing safety sensitive functions, or while performing safety sensitive functions, or immediately following the performance of safety sensitive functions. Random drug testing may be conducted at any time the covered driver is on duty for the district.

4. **Post Accident testing**

a. A post-accident test is a test for alcohol and drugs administered following an accident involving a commercial motor vehicle to each surviving covered driver:

1. who was performing safety sensitive functions with respect to the vehicle, if the accident involved the loss of human life; OR

2. who receives a citation under state or local law for a moving violation arising from the accident; AND

i. if the accident resulted in one or more motor vehicles incurring substantial structural damages as a result of the accident; OR

ii. if the accident resulted in bodily injury to a person who as a result of the injury immediately receives medical treatment away from the scene of the accident.

b. The District will not administer a post-accident alcohol test more than eight hours following the accident and will not administer a post-accident drug test more than 32 hours following the accident. A covered driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the District to have refused to submit to testing. This shall not be construed to require the delay of necessary medical attention for injured individuals following an accident or to prohibit a covered driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to

obtain necessary emergency medical care.

c. The results of a breath or blood test for the use of alcohol or a urine test for the use of drugs, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of the policy concerning post-accident testing, provided such tests conform to applicable federal, state, or local requirements and that the results of the test are obtained by the District. If such a test results in an alcohol concentration below 0.02, a 24 hour out-of-service order may be issued by the law enforcement official.

5. **Return to duty testing**

Return to duty testing is alcohol and/or drug testing conducted after a covered driver has engaged in prohibited conduct under this policy prior to the employee's return to the performance of a safety-sensitive function. The alcohol test result must indicate an alcohol concentration of less than .02 and/or a drug test must indicate a verified negative result for illegal drugs.

6. **Follow-up testing**

Follow-up tests are given following a determination by the Substance Abuse Professional (SAP) that a driver is in need of assistance in resolving problems associated with misuses of alcohol and/or drugs. This is an unannounced test, given at least six (6) times within twelve (12) months with the actual frequency and number of tests determined by the substance abuse professional (SAP), but in no event may the follow up testing continue for a period beyond 60 months from the covered driver's return to duty. The substance abuse professional may terminate the requirement of follow-up testing at any time after the first six (6) tests have been administered if he or she determines that follow-up testing is no longer necessary.

Covered drivers are subject to follow-up alcohol testing as follows: immediately prior to performing safety sensitive functions, or while performing safety sensitive functions, or immediately following the performance of safety sensitive functions. Follow-up drug testing may be conducted at any time the covered driver is on duty for the district.

V. Testing Procedures

The District shall retain an approved company to perform collection and testing, to ensure chain of custody requirements, and to ensure the correct employee is tested and matched with the correct test results. Such company will be required to be in compliance with

federal regulations including ~~follow the federal regulations to ensure compliance with the blind sample~~, calibration of the EBT, laboratory certification and proper training of the Breath Alcohol Technician (BAT). Testing for alcohol and/or controlled substances will be taken on-site or at the laboratory, in a secure location that affords visual and aural privacy and with the proper safeguards to ensure the integrity of the specimens collected. The Drug and Alcohol Coordinator (see appendix) can be contacted to request the name of the company hired to perform the drug and alcohol testing services.

If the test comes back positive dilute, that shall be considered a positive verified test and the covered driver shall not be allowed to take another test.

If the test comes back negative dilute for then the covered driver shall be required to take another test. If re-tested, there will be a fee for the second test. Employees to be re-tested must be given the minimum possible advance notice that he or she must go to the collection site. The result of the second test becomes the test of record. If an employee is directed to take another test, and the employee declines to do so, the employee has refused the test for the purpose of this policy and the federal drug and alcohol testing regulations. If the test comes back canceled, neither positive nor negative for drugs or alcohol, the employee shall not be allowed to perform safety sensitive functions if a negative result is required by the regulations. District shall order a recollection in the case of a canceled test for the purpose of re-testing in the case of pre-employment, return to duty or follow up testing.

1. **Alcohol**

   Alcohol testing will be administered by a trained and qualified BAT. The evidential breath testing device (EBT) used for testing shall meet the standards promulgated by the DOT and have a quality assurance plan developed by the manufacturer to insure proper calibration.

   If the initial test reveals an alcohol concentration of .02 or greater, a confirmatory test must be performed. The confirmatory test result is the final test result for the purposes of this policy.

2. **Drugs**

   A Department of Health and Human Services certified laboratory will perform drug testing on urine samples provided by covered drivers. The drugs for which tests will be conducted are: Marijuana (THC), Cocaine, Phencyclidine (PCP), ~~Opiates~~ Opioids (including the synthetic opioids hydrocodone, oxycodone, hydromorphone and oxymorphone), and Amphetamines. The cutoff levels for these drugs will be those set forth in the DOT regulation.

3. **Uncompleted testing**

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT, shall, if practicable begin a new screening or confirmation test, as applicable, e.g., using a new breath alcohol testing form with a new sequential test number.

VI. Requirements Prior to Commencing Safety Sensitive Position

1. **Pre-duty request for prior employment drug and alcohol testing**

In the case of all new safety sensitive employees, the District shall request the following written information, after obtaining the prospective employee's written consent, from DOT regulated employers who have employed the employee at any time during the two years prior to the date of the employee's application or transfer:

a. Alcohol tests with a result of 0.04 or higher alcohol concentration
b. Verified positive drug test
c. Refusal to be tested
d. Other violations of DOT agency drug and alcohol testing; and
e. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return to duty requirements.

The above listed information should be obtained and reviewed before the prospective employee commences performing any safety sensitive functions. However, the District has a 30 day grace period from the day the employee starts to perform safety sensitive functions in which to obtain or make and document a good faith effort to obtain this information. The District must not allow any employee to continue performing safety sensitive functions after 30 days if District has not obtained or made and documented a good faith effort to obtain this information.

The District must ask the prospective employee whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for but did not obtain safety sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

If the prospective employee admits that he/she has tested positive or a refusal to test then the District may choose not to hire the prospective employee. However, if the District does choose to hire a prospective employee that has admitted that

he/she has tested positive or refused to test, the District must not use the employee to perform safety sensitive functions, until and unless the employee documents successful completion of return to duty process.

VII. Prohibited Conduct

1. No covered driver shall report for duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater.
2. A covered driver shall not be on duty or operate a commercial motor vehicle while the covered driver possesses alcohol.
3. A covered driver shall not use alcohol while performing safety sensitive functions.
4. No covered driver shall perform safety-sensitive functions within six (6) hours after using alcohol.
5. A covered driver required to take a post accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until he/she undergoes a post accident alcohol test, whichever is first.
6. A covered driver shall not report for duty or remain on duty requiring the performance of safety sensitive functions when the driver is using drugs, except when the use is pursuant to the instructions of a physician who has advised the driver that the drug does not affect the driver's ability to safely operate a commercial motor vehicle.
7. No driver shall report for duty, remain on duty or perform a safetysensitive function, if the driver tests positive for controlled substances.
8. Independent of the requirements of the Act and the regulations promulgated thereunder, the covered driver must provide written notice from the physician to the Drug and Alcohol Coordinator that he or she is using controlled substances pursuant to the instructions of the physician and that he or she advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.
9. A covered driver shall not refuse to submit to an alcohol or drug test required under this policy.
10. An applicant for employment, who has been given a conditional offer of employment may not refuse to sign a release authorizing the District to request from all former employer's, where the employee was a covered driver, his or her drug and alcohol testing records.

VIII. Consequences for covered drivers

Pursuant to the Act and the regulations:

1. A covered driver who has an alcohol concentration of at least 0.02 shall be

removed immediately from his/her performing safety sensitive position for at least 24 hours and shall not return until he/she is evaluated by a substance abuse professional, completes any other steps required by the SAP and takes a return to duty test.

2. A covered driver who has an alcohol concentration of at least 0.04 shall be removed immediately from his/her safety sensitive position and may not return until he or she is evaluated by a substance abuse professional, completes any other steps required by the SAP and takes a return to duty test.
3. A covered driver who has a verified positive result on a drug test shall be prohibited from performing safety sensitive functions until the employee is evaluated by a substance abuse professional, completes any other steps required by the SAP and takes a return to duty test.
4. A covered driver who refuses to submit to a test shall be prohibited from performing safety sensitive functions until the employee is evaluated by substance abuse professional, completes any other steps required by the SAP and takes a return to duty test.
5. A covered driver may not perform safety-sensitive functions, if there exists a reasonable suspicion that the driver is under the influence of, or impaired by, alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, until an alcohol test is administered and the driver's alcohol concentration measures less than .02 or 24 hours have elapsed following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated.
6. A covered driver may not perform safety-sensitive functions even if his or her alcohol concentration is less than 0.02, or the alcohol concentration is unknown, if the employer detects the presence of alcohol in the driver by other means.

Independent of the requirements of the Act and the regulations promulgated thereunder, a covered driver may not perform safety-sensitive functions, if there exists a reasonable suspicion that the driver is under the influence of, or impaired by, drugs as shown by the behavioral, speech, and performance indicators of drug abuse, until a drug test is administered and there is a verified negative result.

Independent of the requirements of the Act and the regulations promulgated thereunder, covered drivers who have been found to have violated the prohibited conduct under this policy will be immediately suspended from their safety-sensitive function without pay pending a complete review of the test results and what led to the test results, if appropriate. After review, if the covered driver was found to have an alcohol concentration of 0.04 or greater, a positive drug test, or refused to submit to a test, the employee shall be terminated. If the covered driver was found to have an alcohol concentration between 0.02 and 0.04, he or she shall be required to be evaluated by a substance abuse professional, complete any other steps required by the SAP and take a return to duty test before returning to work.

DRUG AND ALCOHOL TESTING (TRANSPORTATION)

A covered driver who is an applicant for employment who has been extended a conditional offer of employment shall have such conditional offer revoked if:

1. He/she undergoes a drug test which reveals a verified positive test result, or

2. He/she admits, during the pre-duty request for prior employment drug and alcohol testing, they had a positive test or refused to test on any pre-employment drug or alcohol testing administered by the employer to which the employee applied for, but did not obtain safety sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years and the Board chooses not to hire the prospective employee, or

3. He/she previously failed to successfully complete a rehabilitation program (return to duty process) established by a substance abuse professional resulting from a violation of that employer's policy or the Act, or

4. He/she fails to provide a release for the District to request from former employer's where the individual was a covered driver.

5. The above actions shall be taken in accordance with the provisions of the employee's collective bargaining agreement, §75 of the Civil Service Law and/or §3020-a of Education Law, whichever is applicable.

IX. Referral, evaluation, and treatment

The requirements of this section do not apply to applicants who refuse to submit to a pre-duty drug test or who have a pre-duty drug test with a verified positive test result.

1. The District shall make available to a covered driver who has violated this policy, information regarding the resources available for evaluating and resolving problems associated with the misuse of alcohol and use of drugs, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. The District shall ensure that the listed substance abuse professionals do not refer the covered driver to the substance abuse professional's private practice, or to a person or organization from which the substance abuse professional receives remuneration, or in which the substance abuse professional has a financial interest.

2. The District requires that each covered driver who engages in conduct prohibited by this policy shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug use. The substance abuse professional shall also determine if follow up testing is necessary and if so, the number and

frequency of such testing. The costs associated with this evaluation shall be the responsibility of the covered driver.

3. Before a covered driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this policy, the covered driver shall undergo a return to duty test.

4. The substance abuse professional will determine if the covered driver has properly followed any rehabilitation program prescribed following the evaluation.

X. Employee Notification

The District shall provide a copy of this policy to each covered driver and to his/her collective bargaining agent. Each covered driver is required to sign a statement certifying that (s)he has received this information. The District shall maintain the original signed certification for the duration of the employee's employment or two (2) years, whichever is longer. The District will provide a copy of the certification to the covered driver upon request.

XI. Savings Clause

If any provision of this policy is, or shall at any time be contrary to the law, then such policy provision shall be considered modified or deleted so as to comply with the superseding legal requirements, without any effect on the remaining policy provisions.

DRUG AND ALCOHOL TESTING (TRANSPORTATION)

Appendix A
Drug and Alcohol Testing Definitions

***Alcohol*:** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular Weight alcohol's, including methyl and isopropyl alcohol.

***Alcohol use*:** The consumption of any beverage, mixture, or preparation, including any Medication containing alcohol.

***Breath Alcohol Technician* (BAT):** An individual who operates an evidential breath testing device and instructs and assists individuals in the alcohol testing process.

***BAC or Alcohol Concentration*:** Breath Alcohol Concentration (BAC), or alcohol concentration, is the amount of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

Commercial Motor Vehicle: A motor vehicle or a combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. has a gross vehicle weight rating of 26,001 or more pounds; or
3. is designed to transport 16 or more passengers, including the driver; or
4. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Material Regulations.

***Confirmation test*:** In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of a screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test following a screening test with a result of .02 or greater, that provides quantitative data of alcohol concentration.

***Covered driver*:** District employees who operate commercial motor vehicles and applicants for employment with the district who are applying for positions as drivers of commercial motor vehicles (for the purposes of pre-duty testing only).

***Drug and Alcohol Coordinator*:** The Drug and Alcohol Coordinator shall be the Jefferson - Lewis DISTRICT Health and Safety Coordinator who is located at 20104 NYS Rt. 3, Watertown, NEW YORK 13601, and may be reached at 779-7000.

***Evidential breath testing device* (EBT):** A device approved by the National Highway Traffic

Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's Conforming Product's List of Evidential Breath Measurement Devices."(CPL)

***Medical Review Officer* (MRO):** A licensed physician responsible for receiving laboratory results generated by the District's drug test program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

***Refuse to submit* (to an alcohol or drug test):** Means that a covered driver refused to take a drug test if they:

1. fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer,
2. fail to remain at the testing site until the testing process is complete, provided that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test,
3. fail to provide a urine specimen for any drug test required by this policy or DOT agency regulations,
4. in the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen,
5. fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure,
6. fail or decline to take a second test the employer or collector has directed the individual to take,
7. fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process,
8. fail to cooperate with any part of the testing process, or
9. if the MRO reports that you have a verified adulterated or substituted test result or you refuse to take a drug test.

Screening test: In alcohol testing, means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In drug testing, an immunoassay procedure to eliminate "negative" urine specimens from further consideration.

Safety sensitive function: Any of those on-duty functions (promulgated at 49 CFR §395.2 On-Duty time) as listed below:

1. All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver had been relieved from duty by the District.
2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR'S), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
3. All time spent at the driving controls of a commercial motor vehicle in operation.

4. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth.)
5. All time spent loading or unloading a commercial motor 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.
6. All time spent performing the driver's requirements associated with an accident promulgated at 49 CFR §§392.40 and 392.41.
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Substance Abuse Professional: A substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drugs-related disorders.

Madison Central School District

Legal Ref: U.S. Constitution, 4th Amendment
Omnibus Transportation Employee Testing Act of 1991, 49 USC §§31136; 31306
Americans with Disabilities Act, 42 USC §§1211112117
49 CFR Parts 40, 172, 382, 391, 392 and 395.20
New York Vehicle and Traffic Law, §§509l; 1192; 1193
New York Labor Law, §201d

Adopted: 03/18/99

Revised: 06/10/04, 06/16/15, _____