

**Separation**

**Reduction In Force: Certificated Staff**

**Procedures**

1. The Board and the Superintendent acting to maintain the highest quality education program will determine which positions need to be reduced or eliminated. In making this decision, the focus will be on the position and not upon the person filling the position.
2. Once it has been determined which positions are to be reduced or eliminated, the identity of the teacher to be placed on involuntary leave of absence will be decided. In identifying teachers, the following rules will be applied:
  - a. Probationary teachers will be the first teachers to be placed on leave within each area of specialization to be reduced. The selection of a specific probationary teacher will be made in the best interests of the instructional program.
  - b. If no probationary teachers, or an insufficient number of probationary teachers, are employed in the area to be reduced, permanent teachers will be considered for placement on involuntary leave. Permanent teachers will be selected on the basis of performance-based evaluations and seniority. However, seniority will not be controlling unless the performance-based evaluations are equal. In comparing the performance-based evaluations of permanent teachers, each teacher's three most recent summative evaluations will be considered.
  - c. In no case will a permanent teacher be placed on a leave of absence while probationary teachers are retained in positions for which the permanent teacher is qualified.

**Reinstatement**

1. Permanent teachers will be recalled in the inverse order of their placement on leave of absence - the last laid off, first recalled.
2. The District will not employ new teachers while there are District teachers on leave under this regulation who are properly qualified to fill such positions.
3. Probationary teachers will be recalled in the order best determined by the Board based upon the instructional needs of the students.
4. Failure to report to duty on the reinstatement date, without Board approval, will constitute a breach of contract and will terminate the employment of the teacher.

5. Leaves of absence under this regulation will continue for a period of up to three (3) years unless extended by the Board. If a teacher has not been recalled during this period, the teacher's employment will automatically terminate.

**Additional Consideration**

1. The tenure status of teachers placed on leave under this regulation will not be impaired because of such leave.
2. Teachers placed on leave under this regulation may engage in teaching or another occupation during such leave.

**Due Process**

1. Permanent teachers will be given a written statement of the reasons for the selection for involuntary leave under this regulation.
2. Upon request, the permanent teacher will also be provided with the following:
  - a. Description of the procedure used to implement the reduction in force.
  - b. The information relied upon by the Board and the administration in making reduction- in-force decisions.
3. Permanent teachers, upon written request, will also be provided with an opportunity to appear before the Board and to convince the Board that they were erroneously selected for involuntary leave under this regulation.

**PERSONNEL SERVICES**

**Regulation 4741**

**Separation**

**Reduction in Force: Support Staff**

1. Support staff placed on unrequested leave of absence because of a reduction in force (RIF) shall receive consideration for other District jobs for which they qualify. The unrequested leave of absence shall extend for a period of one (1) year.
2. Each support person while on unrequested leave shall keep the Personnel Office informed, in writing, of his/her current address and telephone number.

3. During the leave period the employee shall retain his/her seniority and accumulated sick leave for consideration and use upon recall.

**PERSONNEL SERVICES**

**Regulation 4810**  
**(Form 4810)**

**Staff Welfare**

**Sexual Harassment/Title IX**

The Board of Education is committed to maintaining a work environment for its employees that is free from sexual harassment. Furthermore, the Board of Education strongly believes that no person in the School District shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity.

**DEFINITION OF SEXUAL HARASSMENT**

**In Employment**

Sexual harassment in employment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of sexual nature when:

1. Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment.
2. Submission to or rejection of such conduct by an individual is the basis for employment decisions affecting that individual.
3. Such conduct creates an intimidating, hostile, or offensive work environment.
4. Qualified employees are denied employment opportunities or benefits because the opportunities or benefits are given to another employee who submitted to an employer's sexual advances or requests for sexual favors.

**Under Title IX (applies to students and employees)**

Title IX forbids discrimination on the basis of sex in any educational program or activity that receives federal funds. This includes a prohibition on sexual harassment. The Office for Civil Rights of the U.S. Department of Education defines sexual harassment under Title IX as follows:

"Verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provisions of aid, benefits, services or treatment protected under Title IX."

Sexual harassment under Title IX includes, but is not limited to, unwelcome<sup>1</sup> sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's academic status or progress, or employment.
2. Submission to or rejection of such conduct by an individual is the basis for educational or employment decisions affecting that individual.
3. Such conduct creates an intimidating, hostile, or offensive educational or work environment.
4. Qualified students or employees are denied educational or employment opportunities or benefits because the opportunities or benefits are given to another student or employee who submitted to sexual advances or requests for sexual favors.

## **EXAMPLES OF SEXUAL HARASSMENT**

### **Unwelcome Sexual Advances**

Whether the advance is "unwelcome" is determined on a case-by-case basis. Unwelcome advances may include, but are not limited to, the following:

1. Any invitation (even subtle) intended to result in a sexual liaison.
2. Invitations to dinner or social events, when refusal results in the loss of a promotion or in other adverse employment action.
3. Propositioning an employee.

### **Unwelcome Verbal Conduct of a Sexual Nature**

This may include, but is not limited to, the following:

1. Sexually provocative or explicit speech.

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<sup>1</sup> Sexual harassment of students by adults who otherwise come within this Policy is absolutely prohibited regardless of whether the conduct is "welcome."

2. Publicly expressed sexual fantasies.
3. Jokes of a sexual or crude nature.
4. Derogatory comments directed to males or females as a class (language directed toward a specific employee is more likely to be viewed as sexual harassment).
5. Demeaning comments.
6. Threats for not agreeing to submit to sexual advances.
7. Writing sexually explicit memos.

### **Unwelcome Physical Conduct of a Sexual Nature**

This may include, but is not limited to, the following:

1. Grabbing or twisting an individual's arm.
2. Any unwarranted touching.
3. Sexually offensive pranks.
4. Drawing sexually explicit cartoons, other drawings, or graffiti.
5. Gestures indicating sexual behavior.
6. Suggestive winks.
7. Kissing.

### **Conduct Toward Students**

In addition to the foregoing examples, students may experience harassment that is unique to their situation, some of which may not be immediately recognized as sexual harassment, but which may support a potential claim against the District and/or its employees if not remedied. Such harassment may include, but is not limited to, the following:

1. Unwanted sexual behavior, such as touching, oral comments, sexual name calling, spreading sexual rumors, jokes, pictures, leers, overly personal conversation, cornering or blocking a student's movement, pulling at clothes, students "making out" on school premises.

2. A student in a predominantly single-gender class who is subjected to sexual remarks by a teacher or students who regard the comments as joking and part of the usual class environment.
3. Interfering with a student's achievement in a predominantly or historically single-gender class by hiding tools or equipment, questioning the student's ability to handle the work, or suggesting that the student is "abnormal" for enrolling in the class.
4. Purposefully limiting or denying students access to educational resources because of their gender.
5. Teasing a student about the student's enrollment in a predominantly or historically single-gender class.

### **Nature of Sexual Harassment**

Sexual harassment is not limited to conduct by males toward females. Sexual harassment may occur between any or all of the following:

1. Student to student.
2. Staff to student.
3. Student to staff.
4. Male to male.
5. Female to female.
6. Male to female.
7. Female to male.

## **INVESTIGATION OF SEXUAL HARASSMENT COMPLAINTS**

### **Complaints Involving Employees**

1. If an employee believes that he/she is being sexually harassed, the employee is encouraged to bring the concern to the attention of the employee's supervisor.

2. If the employee feels that such contact with the supervisor would be inappropriate, if the situation is not satisfactorily resolved by the supervisor, or if the employee simply feels more comfortable speaking with someone other than the supervisor, the employee should contact the Title IX compliance coordinator for the School District.
3. If neither the employee's supervisor nor the Title IX compliance coordinator is of the same sex as the employee, or the employee for any other reason would prefer to report the employee's concern to another supervisor/administrator within the District, the employee may do so. However, it is essential that the report be made to someone with the authority and obligation to act upon the concern.
4. Any supervisor/administrator who receives a report, orally or in writing, from any employee regarding sexual harassment of that employee by another employee, non-employee doing business with the District, or student must notify the Title IX compliance officer within twenty-four (24) hours or within a reasonable time thereafter.
5. Oral complaints of sexual harassment will be put in writing by the complainant or by the person who receives the complaint, and should be signed by the complainant. However, the complainant's refusal to sign a complaint does not relieve the District of the obligation to investigate the complaint.
6. An employee who believes that he/she has been subjected to sexual harassment shall not be required to confront the alleged harasser prior to making the report.
7. Following receipt of the report, District personnel will promptly and fully investigate the complaint and will notify the employee and the alleged harasser of the results of the investigation. Investigations will be conducted with full recognition of the rights of all parties involved.
8. Upon receipt of the report, the Title IX officer will appoint an investigator to investigate the complaint. The investigation shall commence within forty-eight (48) hours after such appointment.
9. The District will maintain the confidentiality of the complaint and the details of the investigation to the fullest extent possible.
10. The investigator will put his/her findings in writing and will forward a copy to the Title IX compliance officer within one (1) week after concluding the investigation, or within a reasonable extension of time thereafter, for good cause shown.
11. If the investigation substantiates the complaint, the District will take appropriate disciplinary action against the offender(s), commensurate to the severity of the

harassment (up to and including termination of employment). If the offender is a student, disciplinary action will be taken in accordance with Board established Policy 2610. If the offender is not an employee of the District, the District will take appropriate action within the scope of its authority to eliminate and redress the harassment.

12. If the investigation is indeterminate, the matter will be designated as unresolved, and the investigation file will be maintained by the Title IX compliance officer in a file separate and apart from any student or personnel file.
13. There will be no retaliation against or adverse treatment of any employee who uses this procedure to resolve a concern when such complaint has been brought in the good faith belief that the complainant has been subjected to sexual harassment.
14. The responsible administrator shall follow up regularly with the complaining employee to ensure that the harassment has stopped and that no retaliation has occurred.

## **ENFORCEMENT**

### **Employees**

Each supervisor and administrator is responsible for maintaining an educational and work environment free from sexual harassment. In accordance with that responsibility, each site manager, or his/her designee, shall take appropriate actions to enforce the School District's sexual harassment policy, including but not limited to the following:

1. The supervisor/administrator shall provide an inservice training regarding sexual harassment to all staff by the end of the first full calendar week of each school year.
2. The supervisor/administrator shall provide a copy of the policy to all new employees of the District prior to the commencement of the employee's duties.
3. The supervisor/administrator shall further instruct employees regarding the procedures for reporting sexual harassment in the educational setting on an as-needed basis.
4. The supervisor/administrator shall take prompt action to investigate all complaints of sexual harassment.
5. The supervisor/administrator shall take appropriate disciplinary action, as necessary.

### **Students**

Each building administrator is responsible for maintaining an educational and work environment free from sexual harassment. In accordance with that responsibility, each building administrator, or his/her designee, shall take appropriate actions to enforce the School District's sexual harassment policy, including but not limited to the following:

1. All vulgar or sexually offensive graffiti shall be removed from the premises.
2. The building administrator shall provide an inservice training regarding sexual harassment (including sexual harassment involving students) to all staff by the end of the first full calendar week of school.
3. Student instruction regarding sexual harassment shall be provided annually by the end of September to all students in grades six through twelve. Age appropriate instruction will also be presented to pre-kindergarten through fifth grade students.
4. All homeroom teachers shall discuss this policy with their students within one month after its adoption by the Board and during the first week of the school year thereafter. Written copies of the policy shall be given to each student in grades six through twelve (and in lower grades as may be appropriate) as part of these discussions. Discussion shall be conducted in an age appropriate manner and should assure students they need not tolerate any form of sexual harassment.
5. All teachers, counselors, and administrators shall instruct students on the procedures for reporting sexual harassment within the educational setting on an as needed basis.
6. The building administrator shall take prompt action to investigate all complaints of sexual harassment.
7. The building administrator shall take appropriate disciplinary action, as needed.

#### **NOTIFICATIONS**

A copy of the School District's sexual harassment policy shall:

1. Be displayed in a prominent location at each work site.
2. Be provided to each current employee, and to each new employee prior to commencement of their duties.
3. Appear in any School District newsletter or work site publication that sets forth the School District's comprehensive rules, regulations, procedures, and standards of conduct for employees.

The District's Title IX compliance officer will be available to answer all questions regarding this policy or its implementation.

## **DISCIPLINE/CONSEQUENCES**

### **Complaints Involving Employees**

1. Any employee who engages in the sexual harassment of anyone while on school property, or while in the employ of the District off school property will be subject to disciplinary action, up to and including dismissal.
2. Any employee who permits or engages in the sexual harassment of a student will be subject to disciplinary action up to and including dismissal.
3. Any employee who receives a complaint of sexual harassment from a student and who does not act promptly to forward that complaint to the principal and the District's Title IX coordinator shall be disciplined appropriately.
4. Any employee who retaliates, or engages in conduct that could be interpreted as retaliation, against any person who has made a complaint of sexual harassment or who has participated in the investigation of a complaint of sexual harassment will be subject to discipline, up to and including dismissal.
5. Any nonemployee doing business with the District who engages in sexual harassment, or who retaliates against any person who has made a complaint of sexual harassment or who has participated in the investigation of a complaint of sexual harassment, will be subject to discipline to the extent that the District has control over the nonemployee and his/her employer.
6. Any employee who brings a false charge of sexual harassment shall receive appropriate discipline. The term "false charge" means a charge brought in bad faith, that is, without the good faith belief that one has been subjected to sexual harassment. The term "false charge" does not include a charge that was brought in good faith, but which the District was unable to substantiate.

### **Complaints Involving Students**

1. Any student who engages in the sexual harassment while on school property or while participating in school activities, will be subject to disciplinary action, up to and including expulsion.
2. Any employee who permits or engages in the sexual harassment of a student will be subject to disciplinary action, up to and including dismissal.
3. Any employee who receives a complaint of sexual harassment from a student and who does not act promptly to forward that complaint to the principal and the District's Title IX coordinator, shall be disciplined appropriately.
4. Any student who brings a false charge of sexual harassment shall receive appropriate discipline. The term "false charge" means charges brought in bad faith, that is, without the good faith belief that one has been subjected to sexual harassment. The term "false charge" does not include a charge that was brought in good faith, but which the District was unable to substantiate.

**TITLE IX GRIEVANCE PROCEDURE**  
**(Sexual Harassment)**

**Level 1:       Principal or Immediate Supervisor** (Informal and optional-may be bypassed by grievant)

Many problems can be solved by an informal meeting with the parties and the principal or coordinator. A student who believes that he/she has been subjected to sexual harassment is encouraged to first discuss it with the teacher, counselor, or building administrator involved with the objective of resolving the matter promptly and informally. Employees with a sexual harassment complaint are encouraged to first discuss it with their principal or immediate supervisor with the same objective. If the individual's teacher/supervisor is the person alleged to have engaged in sexual harassment, the grievant should skip Level 1 and go directly to Level 2.

**Level 2:       Title IX Coordinator**

If the complaint or issue is not resolved at Level 1 or if the grievant chooses to skip Level 1, the grievant may file a signed, written grievance stating: 1) the nature of the grievance; 2) the remedy requested; and 3) the date the grievance was submitted. The Level 2 written grievance should be filed with the Title IX Coordinator within fifteen (15) days of the event or incident, or from the date the grievant could reasonably become aware of such occurrence.

The Coordinator has authority to investigate all written grievances. If possible, the Coordinator will resolve the grievance. If the parties cannot agree on a resolution, the Coordinator will prepare a written report of the investigation which shall include the following:

1. A clear statement of the allegations of the grievance and remedy sought by the grievant.
2. A statement of the facts as contended by each of the parties.
3. A statement of the facts as found by the Coordinator and identification of evidence to support each fact.
4. A list of all witnesses interviewed and documents reviewed during the investigation.
5. A narrative describing attempts to resolve the grievance.
6. The Coordinator's conclusion as to whether the allegations in the grievance are meritorious.

If the Coordinator believes the grievance is valid, the Coordinator will recommend appropriate action to the Superintendent.

The Coordinator will complete the investigation and file the report with the Superintendent within fifteen (15) days after receipt of the written grievance. The Coordinator will send a copy of the report to the grievant.

If the Superintendent agrees with the recommendation of the Coordinator, the recommendations will be implemented.

The Coordinator and Superintendent may appoint an outside investigator once a written grievance is filed if the Coordinator or Superintendent is the alleged violator.

**Level 3: The Board of Education**

If the Superintendent rejects the recommendations of the Coordinator, and/or either party is not satisfied with the recommendations from Level 2, either party may make a written appeal within ten (10) days of receiving the report of the Coordinator to the Board of Education. On receipt of the written appeal, the matter shall be placed on the agenda of the Board of Education for consideration not later than their next regularly scheduled meeting. A decision shall be made and reported in writing to all parties within thirty (30) days of that meeting. The decision of the Board of Education will be final.

## **Other Options for Grievant**

At any time during this process, a grievant may file a complaint with the Missouri Human Rights Commission or with the U.S. Department of Education, Office for Civil Rights.

## **PERSONNEL SERVICES**

## **Regulation 4820**

### **Staff Welfare**

#### **Employees with Communicable Diseases**

If an employee has, or has been exposed to, an infectious or contagious disease or is reasonably believed to have an infectious or contagious disease the following guidelines apply:

1. The employee may be required to undergo a medical examination at District's cost by a physician of the District's choosing.
2. While a determination is made concerning the status of an employee, that employee may be placed on a paid leave of absence. Except in unusual circumstances such leaves will not exceed ten (10) days.
3. If the employee is determined to be infectious or contagious, he/she will be required to take such leave as provided by Board policy until it is medically determined that the employee is no longer able to transmit the disease.
4. Where a question exists concerning an employee's status, an individual assessment of the employee will be completed by a review team comprised of the employee's physician, a school nurse, a physician selected by the District, a county health official, the Superintendent and the employee's supervisor. Other individuals may be included, as is reasonably necessary and as designated by the Superintendent.
5. The review team will consider all available medical evidence and will determine the employee's medical condition, the employee's ability to return to work and whether the employee's infectious status requires any restrictions on the employee's work assignment. Normally the team will be convened within seventy-two (72) hours of notice of the employee's contagious status. The employee's status will be reviewed thereafter as appropriate.
6. The written determination of the review team is subject to an appeal to the Board of Education where determination shall be final.

**PERSONNEL SERVICES**

**Regulation 4830**

**Staff Welfare**

**Board/Staff Communications**

**Staff Communications to the Board**

Communication to the Board from District employees concerning personnel matters or personal complaints shall be filed in writing with the Superintendent. However, this procedure will not be construed as denying the right of any employee to appeal to the Board (regarding alleged misapplication of policy or administrative decisions) provided that the Superintendent shall have been notified of the forthcoming appeal and that it is processed in accordance with Board policies and regulations on staff complaints and grievances. Moreover, this policy will not be construed to preclude resident staff members from exercising their rights to discuss matters of public concern in the same manner as other District residents.

All regular meetings of the Board are open for the public to attend. As such, they provide an excellent opportunity to observe the Board's deliberations on problems of staff concern. Staff members may participate in Board meetings in accordance with the policies and regulations regarding public participation at such meetings. Further, at times and with the knowledge of the Superintendent, the Board may invite staff members to speak at Board meetings or to serve on advisory committees to the Board.

**Board Communications to Staff**

All official communications, policies, and directives of staff interest and concern will be communicated to staff members through the Superintendent, and the Superintendent will employ such media as are appropriate to keep the staff fully informed of the Board's concerns and actions.

**PERSONNEL SERVICES**

**Regulation 4840**

**Staff Welfare**

**Conflict of Interest**

The prohibition against conflicts and apparent conflicts of interest includes but is not limited to:

1. Employees shall not engage in or have a substantial interest in furnishing of real or personal property, commodity, equipment, supplies or services to the District either directly or through an outside representative, except as provided in this paragraph. A substantial interest includes ownership by the employee, the employee's spouse or a member of the employee's household of 10% or more of a business entity or annual receipt by the employee, employee's spouse, or member of the employee's household of \$1,000 or more in salary or other remuneration from a business entity. A business entity in which a District employee has a substantial interest may do business with the District provided competitive bids are obtained and the lowest bid is accepted.
2. Employees shall not make use of mailing lists or other information gained solely as a result of the employee's position with the District to either sell directly or indirectly services or merchandise to students or their parents who reside within the District. As provided by Board policy, this prohibition does not apply to student tutoring.
3. Employees shall not solicit or receive any payment or thing of value which might influence performance of the employee's duties.
4. Employees shall not disclose to any person, not otherwise entitled, information gained by virtue of the employee's duties or otherwise use such information for personal gain.
5. Employees shall not engage in outside employment which interferes with performance of the employee's duties. This prohibition includes outside employment which is performed during school hours or involves the use of school resources.

If an employee is in doubt concerning whether certain acts violate this regulation, the employee must seek an opinion from the Superintendent.

## **PERSONNEL SERVICES**

## **Regulation 4850**

### **Staff Welfare**

### **Staff Dispute Resolution (Grievance Procedure)**

#### **Definitions**

*Grievance* - A claim by a nonsupervisory employee or employees that a written Board policy or administrative regulation has been violated or misapplied. This policy is not applicable to the content of performance evaluations nor to decisions for which state statute may provide a means of resolving disputes, including but not limited to nonrenewal, termination and reduction in force.

*Day* - When the dispute resolution policy requires certain action to be taken within a specific number of days, days means working days and specifically excludes weekends and school holidays. In counting days, the day on which the event initiating the time limit is not counted.

### **Informal Resolution**

Employees who believe that a written Board policy or administrative regulation has been violated must meet with their immediate supervisor within ten (10) days of the alleged violation. The purpose of this informal conference is to attempt to provide clarification of the issue and, where possible, resolve the dispute.

If the dispute is not resolved within four (4) working days of the informal conference, the employee may initiate the formal procedure by completing an appropriate District dispute form and submitting this form to the employee's immediate supervisor. A completed grievance form must be submitted to the employee's immediate supervisor within ten (10) days of the informal conference.

### **Step One: Immediate Supervisor**

Within four (4) days of receipt of the completed dispute form, the immediate supervisor will schedule a meeting with the employee and the employee's employee representative, if desired. Within ten (10) days of this conference, the immediate supervisor will provide the employee with a written response to the dispute.

### **Step Two: Superintendent's Designee**

If the employee is not satisfied with the resolution at Step One, the employee may refer the dispute in writing to the Superintendent. To proceed to Step Two, the written dispute referral must be submitted to the Superintendent within four (4) days of receipt of the Step One decision. Upon receipt of the referral, the Superintendent shall designate a District employee to hear the Step Two dispute. Within four (4) days of receipt of the Step Two referral, the Superintendent's designee shall schedule a conference with the employee and his/her employee representative if desired. Within ten (10) days of the conference the Superintendent's designee will provide the employee with a written response to the dispute.

### **Step Three: Review by the Superintendent**

If the employee is not satisfied with the resolution of Step Two, the employee may refer the dispute in writing for the Superintendent's direct review. To proceed to Step Three, the written dispute referral must be submitted to the Superintendent within four (4) days of receipt of the Step Two decision. Within four (4) days of receipt of the written referral, the Superintendent

shall schedule a conference with the employee and his/her employee representative, if desired. Within ten (10) days of this conference, the Superintendent will provide the employee with a written response to the dispute.

#### **Step Four: Board of Education Review**

If the employee is not satisfied with the resolution at Step Three, the employee may refer the dispute in writing for the Board's consideration. To proceed to Step Four, the written dispute referral must be submitted to the Superintendent within four (4) days of receipt of the Step Three decision. At the next regular Board meeting following submission of the Step Four referral, the Board will consider the dispute and determine whether to conduct a formal review of the dispute. If the Board determines that its formal review is not necessary, the decision at Step Three becomes final.

If the Board determines that its formal review is warranted by the dispute, the Board will set a date for formal review. At formal review both parties are entitled to be represented by legal counsel. Procedures for formal presentations of the dispute are determined by the Board in its discretion. Within ten ( 10) days of the formal review, the Board will provide the employee with its written decision. The decision of the Board is final and binding on all parties.

#### **Miscellaneous Provisions**

1. Failure of an employee to comply with the timelines provided in the procedures above will result in final rejection of the dispute.
2. Failure of the administrator to comply with the timelines provided in the procedures above will result in the dispute being advanced to the next step.
3. Neither party to a dispute will be permitted to add witnesses or documentation that were not provided at preceding steps.
4. No employee will be retaliated against for the good faith submission and processing of a dispute under these regulations

#### **PERSONNEL SERVICES**

**Regulation 4871**  
**(Form 4871)**

#### **Staff Welfare**

#### **Driver Drug Testing**

#### **Definitions**

For purposes of this Regulation, the following terms are defined:

1. *Alcohol* - the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.
2. *Driver* - any person who operates a commercial motor vehicle (CMV) or is required by the District to hold a commercial drivers license (CDL). *Driver* includes, but is not limited to, full-time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers and independent, owner-operated contractors. For purposes of pre-employment/pre-duty testing, *driver* includes a person applying to the District for a position that involves the driving of a commercial motor vehicle.
3. *Employee* - an individual subject to drug urine and breath alcohol testing. For purposes of pre-employment testing, *employee* includes an applicant for employment.
4. *Medical Review Officer (MRO)* - a licensed physician responsible for receiving laboratory results generated by the District's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant medical information.
5. *Safety-Sensitive Function* - a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, is ready to perform or is immediately available to perform any safety-sensitive function. *Safety-sensitive functions* include the following on-duty functions: all time at a facility waiting to be dispatched; all time inspecting or servicing a commercial motor vehicle; all time spent at the driving controls of a commercial motor vehicle; all time, other than driving time, spent on or in a commercial motor vehicle (except sleeping time); all time loading or unloading a commercial motor vehicle, assisting in 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; all time spent performing the driver requirements associated with an accident; and all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
6. *Substance Abuse Professional* - a person who evaluates employees who have violated a Department of Transportation (DOT) drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing and aftercare.

### **Covered Employees**

Those District employees who are subject to the prohibitions and mandatory testing requirements of this regulation include all transportation workers, including, but not limited to, bus drivers and maintenance workers, who:

1. Hold commercial drivers licenses; and
2. Who perform safety-sensitive functions at any time during the course of their employment.

### **Program Coordinator**

The Board designates the District's Manager of Transportation to be the Program Coordinator to ensure that the District's employee alcohol and drug program is implemented in accordance with federal regulations and District policy and regulations. The Coordinator will also be responsible for collecting and maintaining all records required by federal law. The Coordinator's name, address and telephone number will be provided to all covered employees.

### **Testing Program and Policy Information**

Before beginning the testing program authorized by Policy 4871, the District will distribute to all covered employees educational materials that explain the requirements of the federal alcohol and drug testing regulations, and the District's policies and procedures with respect to meeting those requirements. The materials will include all information required by federal law. Each covered employee must sign a receipt indicating that he/she has received these materials prior to the beginning of alcohol and drug testing.

## **ALCOHOL MISUSE PREVENTION AND TESTING PROGRAM**

### **Prohibitions**

1. No driver shall use or possess, and the District shall prohibit a driver from using or possessing, alcohol while on duty or while performing a safety-sensitive function.
2. No driver shall use, and the District shall not permit a driver to use, alcohol for a minimum of four (4) hours before performing a safety-related function.
3. No driver shall perform, and the District shall not permit a driver to perform, safety-sensitive functions, where the driver is found, through testing conducted in conformity with federal rules, to have an alcohol concentration of 0.04 or greater until the driver has been evaluated by a substance abuse professional, completed any rehabilitation required by the substance abuse professional, and undergoes a return-to-duty test in which the driver tests at less than 0.02 for the presence of alcohol.
4. A driver who tests, through testing conducted in conformity with federal rules, at levels of 0.02 to 0.039 for the presence of alcohol shall be prohibited from performing, and shall

be removed by the District from performing, safety-sensitive functions until the start of the driver's next regularly scheduled duty, but not less than 24 hours after the test was administered, and until he/she tests below 0.02.

5. A driver who exhibits behavior and/or the appearance characteristic of alcohol misuse will be prohibited from performing, and will be removed from performing, safety-sensitive functions until the driver tests at less than 0.02 for the presence of alcohol.
6. No driver required by federal law, or independent District policy, to take a post-accident alcohol test shall use alcohol for eight hours following the accident or until the driver undergoes a post-accident alcohol test, whichever comes first.

### **Administration of Alcohol Tests**

Alcohol testing will be conducted through the use of a federally approved evidential breath testing device (EBTD), and by a trained breath alcohol technician (BAT), in accordance with federal regulations. The District will contract with an outside agency or organization to provide alcohol testing in accordance with federal regulations. The contract will provide that the alcohol testing site (1) must afford aural and visual privacy to the person being tested, and (2) must be secured while the testing is taking place.

## **DRUG MISUSE PREVENTION AND TESTING PROGRAM**

### **Prohibitions**

1. The District prohibits the unauthorized use of controlled substances. Illicit use of drugs by safety-sensitive employees is prohibited on or off duty.
2. No driver shall report for duty or remain on duty, and the District shall prohibit a driver from reporting for duty or remaining on duty, when the driver uses any drug, unless the drug is taken pursuant to the instructions of a physician who has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle.
3. The District may require a driver to notify it or the medical review officer of any therapeutic drug use if the driver tests positive, through testing conducted in conformity with federal law, for any controlled substance.
4. Following a determination through testing conducted in conformity with federal law, that a driver has engaged in prohibited use of drugs, the District will remove the driver from performing safety-sensitive functions and will refer the driver to a substance abuse

professional. The District will not permit the driver to return to the performance of safety-sensitive functions until the driver submits a verified negative test result and completes any rehabilitation required by a substance abuse professional.

### **Administration of Drug Tests**

1. **Collection Site** - The District will contract with an outside agency or organization to serve as a collection site for the collection of urine samples for laboratory drug testing. The District will ensure that collection site personnel follow federally prescribed rules for the collection of urine samples. The District will ensure that the collection site generally ensures aural and visual privacy for the person giving the sample. The collection site person will be required to split the sample into two bottles (the primary specimen and the split specimen). Following completion of a chain of custody form, the collection site person will seal and ship both bottles to a laboratory certified by the Department of Health and Human Services for analysis.
2. **Laboratory Analysis** - The District will separately contract with a certified laboratory to perform the required drug analysis. If the primary specimen tests negative for drugs, the laboratory will dispose of the split specimen. If the laboratory confirms that the primary specimen tests positive, the laboratory will retain the split specimen to ensure that it remains available for testing.
3. **Medical Review Officer** - The District will contract with a Medical Review Officer (MRO) who possesses the qualifications required by federal regulations. The MRO will receive and review all laboratory results generated by the District's drug testing program and will report the results to the District's designee as required by federal regulations. In the event the MRO receives a confirmed positive test result from the laboratory, the MRO will make every reasonable effort to confidentially contact the driver and give him/her the opportunity to provide a legitimate, alternative medical explanation for the positive result. If the MRO is unable to reach the driver directly, the MRO shall, in accordance with federal regulations, contact the District's designee who shall direct the driver to contact the MRO immediately. The District's designee shall inform the employee of the consequences of failing to contact the MRO within the next seventy-two (72) hours. The designated management official shall employ procedures that ensure, to the maximum extent practicable, that the requirement that the employee contact the MRO is held in confidence. If the MRO determines that there is a legitimate alternative medical explanation for the positive result, the MRO will report the drug test as being negative. If the employee expressly declines the opportunity to discuss the test, the MRO may verify the test as positive. If the employee is contacted by the designated employer representative but does not contact the MRO within seventy-two (72) hours, the MRO may verify the test as positive. If neither the MRO nor the designated employer representative has been able to contact the employee within ten (10) days after making all

reasonable efforts, the MRO may verify the test as positive. If the MRO verifies the presence of illegal, controlled substances, the MRO shall inform the covered employee that he or she has seventy-two (72) hours to request that the split specimen retained by the laboratory be sent to another certified laboratory for analysis. If the split specimen fails to confirm the presence of illegal, controlled substances, the employee's test will be reported as negative.

## **REQUIRED TESTS**

Pursuant to federal law, the District will require that all covered employees submit to the following tests:

### **Pre-Employment Testing**

1. Before any driver can perform a safety-sensitive function, the driver must take a controlled substances test with a verified negative result.
2. This testing is required of applicants and of employees transferring to a covered position. Testing for newly hired drivers shall be conducted prior to the employment offer, but in any event before commencing safety-sensitive functions. If an applicant refuses to submit to pre-employment drug testing, the District will remove the applicant from employment consideration.
3. After obtaining an applicant or employee's written consent, the District shall request information regarding the drug and alcohol testing record of employees it is intending to use to perform safety sensitive duties, pursuant to federal regulations.

### **Post-Accident Testing**

1. Pursuant to federal law, all drivers will be required to submit to drug and alcohol testing as soon as practicable after any accident (a) involving the loss of life or (b) after any accident in which the driver receives a citation for a moving violation, if the accident involved either (1) bodily injury to any person who, as a result of the accident, immediately receives medical treatment away from the scene of the accident, or (2) disabling damage to one or more motor vehicles which requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. Pursuant to its independent authority, the District requires all drivers to submit to drug and alcohol testing after any accident in which the driver was performing safety-sensitive functions.
2. All post-accident testing shall be conducted within the federally prescribed time periods. If a test is not conducted within the required time periods, then the District will not require the driver to submit to a test and the Program Coordinator, in accordance with

federal regulations, will prepare and maintain on file a report and submit it to the Department of Transportation (DOT) documenting the reason(s) why the test was not promptly given.

3. Prior to performing safety-sensitive functions, all drivers will be instructed on the necessity for post-accident testing and the procedures to be followed for post-accident testing so that the drivers can comply with federal regulations.

### **Random Testing**

1. The District will conduct random, unannounced testing for drugs and alcohol for covered employees. The District's designee will establish a scientifically valid random selection method and will select covered employees using this method at unpredictable dates and frequencies throughout the testing year. Under the selection method, each covered employee will have an equal chance of being selected for each testing date.
2. Each year, the number of random alcohol tests conducted by the District will equal at least 25% of the average number of covered employees. Each year, the number of random drug tests conducted by the District will equal at least 50% of the average number of covered employees.
3. Random alcohol testing will be conducted just before, during, or just after a covered employee's performance of safety-sensitive duties. Random testing for drugs does not have to be conducted in immediate time proximity to the performance of safety-sensitive functions.
4. Once notified of selection for testing, the covered employee must proceed immediately (or as soon as possible) to the collection site for testing.

### **Reasonable Suspicion Testing**

1. The District will require covered employees to be tested for drugs and/or alcohol when the driver's supervisor and/or other properly trained District officials determine that there is reasonable suspicion to believe that the driver has violated the provisions of this Policy.
2. All determinations that reasonable suspicion exists will be only by trained individuals and will be made solely on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the covered employee. Possession of alcohol, standing alone, will not lead to reasonable suspicion testing.

3. Covered employees will be required to submit to reasonable suspicion testing only if the required observations are made by a trained supervisor or District official during, just preceding, or just after the period of the workday that the covered employee is performing a safety-sensitive function.
4. The District designates the Program Coordinator as the District official who will receive the requisite training to determine whether reasonable suspicion exists to require a drug test and/or an alcohol concentration test.
5. The District designee will be responsible for making and signing a written record of the observations leading to reasonable suspicion testing for drugs and/or alcohol. With respect to drug testing, the District designee will ensure that this written record is completed within twenty four (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

### **Return-to-Duty Testing**

1. When a driver is determined, by testing in conformity with federal regulations, to have an alcohol concentration of 0.04 or greater and/or a verified positive test result for drugs, the District will refer that driver to a substance abuse professional. The substance abuse professional will determine what assistance, if any, the driver needs in resolving problems related to drug or alcohol abuse.
2. Before a driver can return to the performance of safety-sensitive functions, the driver must be evaluated by a substance abuse professional to ensure that he/she has completed any necessary rehabilitation. The driver must also submit the results of (1) an alcohol concentration test showing an alcohol concentration of less than 0.02 and (2) a verified negative drug test.

### **Follow-Up Testing**

1. When a covered employee who has violated prohibited alcohol and/or drug standards returns to the performance of safety-sensitive functions, he/she will be required to submit to follow-up testing.
2. Follow-up tests are unannounced and at least six (6) tests must be conducted in the first 12 months after the employee returns to duty. Follow-up testing may be extended for a period not to exceed 60 months following return to duty.

### **Refusal to Submit to Testing**

1. Federal regulations require covered employees to submit to required testing. When a covered employee refuses to submit to testing, or engages in conduct that obstructs the testing process, the test will be considered to be positive and the driver will, in accordance with federal regulations, be prohibited from performing safety-sensitive functions until all preconditions are satisfied.
2. Refusal to submit or to provide a specimen has the same sanctions under the federal regulations as a positive test. Any employee who fails to provide adequate breath or urine for testing must obtain, as soon as possible after the attempted test, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's inability to provide a sufficient specimen. If the physician determines, in his/her reasonable medical judgment, that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient quantity, the employer's failure shall not be deemed a refusal to take a test. The physician shall provide the District a written statement of the basis for his/her conclusion. If the licensed physician, in his/her reasonable medical judgment, is unable to make such a determination, the employee's failure to provide an adequate specimen shall be regarded as a refusal to take a test and a violation of this Policy.

## **TEST RESULTS, CONFIDENTIALITY AND RECORD RETENTION**

### **Employee Records**

1. All employee testing records are confidential and the District will ensure that all testing records are maintained in a secure location with controlled access. Test results and other confidential information may be released by the laboratory, the breath alcohol technician or the MRO only to designated District officials and/or the substance abuse professional. Any other release of confidential information is only pursuant to federal regulations or with the employee's written consent.
2. Covered employees are entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances, including records of tests and test results.

### **District Record Keeping and Retention**

The District will comply with all federal record keeping and retention requirements. In addition, the Program Coordinator will maintain and compile all required statistics and reports and submit those reports to the necessary federal agencies. The District will notify the Director of the Department of Revenue within ten (10) days of notice that a District driver has failed a drug, alcohol or chemical test administered pursuant to this regulation.

### **Evaluation, Referral and Rehabilitation**

Employees who violate the alcohol and drug misuse rules will be referred to a substance abuse professional for evaluation and will be advised of the available resources for evaluation and treatment. Any treatment or rehabilitation will be provided in accordance with the health insurance, medical or other benefit plan, or under applicable labor or collective bargaining agreements. The District is not required to provide rehabilitation or pay for treatment. In addition, the District is not required to hold the employee's position or to reinstate the employee to a safety-sensitive position.

### **Consequences for Violations**

Pursuant to federal regulations, the District will remove from the performance of safety-sensitive functions any covered employee determined to have violated the provisions of this Policy and will refer to a substance abuse professional those drivers who, based on testing conducted in conformity with federal regulations, have an alcohol concentration of 0.04 or greater and/or are determined to have a verified positive test result for drugs.

Based on its independent authority, the District reserves the right to impose additional consequences for violation of the provisions of this Regulation, including, but not limited to, placing the covered employee on indefinite unpaid leave or termination.