



PERSONNEL: Conduct

Drug-Free Workplace

I. Purpose

To implement Board of Education of Baltimore County (Board) Policy 4101 by establishing guidelines for employees regarding the drug-free workplace policy.

II. Definitions

- A. *Breath Alcohol Technician (BAT)* - means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT) or other approved alcohol measurement device.
- B. *Controlled Substances* – A drug or chemical whose manufacture, possession, distribution, dispensation, possession, or use is a violation of a federal, state, and/or local law.
  - 1. For the purposes of this Rule, a controlled substance also includes:
    - a. Synthetic drugs and substances;
    - b. Prescription drugs for which the employee does not possess a current and valid prescription for his/her use;
    - c. Prescription or over-the-counter drugs used for any purpose other than the purpose for which the drug was prescribed or sold; or
    - d. Prescription or over-the-counter drugs that interfere with the safe and efficient performance of the employee’s job responsibilities.
- C. *Conviction* - A finding of guilty (including a plea of *nolo contendere*) or imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal, state, or local drug laws.
- D. *Designated Employer Representative (DER)* – The employee designated by BCPS to answer questions about the drug and alcohol testing process, to exchange information, and to whom the medical review officer and the breath alcohol technician report a pass/fail test result. The DER is also authorized to take immediate steps to remove employees from safety sensitive duties or cause employees to be removed from these covered

duties.

- E. *Follow-Up Test* – Drug and/or alcohol testing required by BCPS after an employee has been compliant with the drug and/or alcohol treatment conditions of his/her return to work plan.
- F. *Medical Review Officer (MRO)* – A licensed physician responsible for receiving and evaluating laboratory test results generated by the BCPS drug testing program.
- G. *School Property* – Any Board-owned, controlled, or leased property or vehicle regardless of whether students are present.
- H. *School-sponsored Activity* – An activity that is sponsored, approved, conducted, planned, and/or supervised by school personnel regardless of whether the activity takes place on or off school property or occurs during regular instructional hours.
- I. *Trained administrator* – A school or office administrator who has taken and passed the online course for reasonable suspicion provided by the Office of Risk Management.
- J. *Violation* – One or more of the following:
  - 1. A positive drug or alcohol test result following drug or alcohol testing; or
  - 2. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or alcohol in any quantity on school property; or
  - 3. A conviction resulting from a criminal drug offense occurring on Board property.

### III. Guidelines

- A. In accordance with the Federal Drug-free Workplace Act, the Board prohibits the unlawful manufacture, distribution, dispensation, possession, or use of any controlled substance or alcohol in any quantity by its employees on Board property or when attending or participating in any school-sponsored activity.
- B. The Department of Human Resources shall provide to each new employee a

copy of the Board's drug-free workplace policy and this Rule during new hire orientation. Employees shall be required to acknowledge, in writing, receipt of the policy and rule.

- C. Any employee who is convicted under any federal, state, or local criminal drug statute resulting from a violation that occurred on Board property shall notify the investigations office of the Office of Investigations and Records Management no later than five days after the conviction.
  - 1. The Department of Human Resources shall notify the appropriate federal agency within ten days after receiving notice of such conviction if there is a relationship between federal funds received by BCPS and the convicted employee's work site.
  
- D. Compliance with Policy 4101 and this Rule are a condition of employment. A violation shall subject the employee to appropriate disciplinary action up to and including termination.
  - 1. If disciplinary action does not result in termination, as a condition of continued employment, the employee shall be required to satisfactorily participate in a substance abuse treatment program approved by BCPS and provide BCPS with a signed statement attesting to the employee's successful participation and completion of the BCPS-approved substance abuse education and/or treatment program.
  - 2. The substance abuse education and/or treatment program shall be at the employee's expense.
  - 3. An employee may be immediately recommended for termination if the employee:
    - a. Refuses to submit to drug and/or alcohol testing after being directed to do so;
    - b. Fails to adhere to the drug testing procedures at the test site;
    - c. Fails to comply with the requirements of the prescribed substance abuse education and/or treatment program;
    - d. Has a positive test result during any follow-up test; or
    - e. Has a second violation.

#### IV. Type of Drug and/or Alcohol Testing

- A. All employees will be subject to drug and alcohol testing at the discretion of BCPS.

- B. Reasonable Suspicion Testing
  - 1. Employees may be tested for drugs and/or alcohol when a trained administrator who has completed training on reasonable suspicion has reason to believe that an employee may be under the influence of drugs or alcohol at the workplace or at a school-sponsored event.
  - 2. Such reasonable suspicion may be, but will not be limited to, any of the following:
    - a. Physical evidence exists which indicates drug or alcohol use by an employee while on duty or while attending a school-sponsored event;
    - b. Notification that an employee is using or is under the influence of drugs or alcohol is received;
    - c. Observable behaviors of an employee indicative of drug or alcohol use, and which the employee cannot reasonably explain;
    - d. An on-duty accident by an employee resulting in personal injury or significant property damage and it is determined that drug or alcohol use by the employee may have contributed to the cause of the accident;
    - e. A documented deterioration of the employee's job performance is determined to be caused, in part or in whole;
    - f. A post-employment, drug-related arrest; or
    - g. Testing required by BCPS following a Board-mandated independent medical or psychological evaluation.
  - 3. Upon direction from a trained administrator, the employee shall be immediately transported by a BCPS supervisor to a Board-designated laboratory for the administration of drug and/or alcohol test.
    - a. Refusal to submit to drug and/or alcohol testing after being directed will be considered an act of insubordination, subject to disciplinary action up to and including termination.
    - b. Failure to adhere to all required drug and/or alcohol testing procedures will be considered insubordination, subject to disciplinary action up to and including termination.
- C. Random Selection Testing
  - 1. Employees in specified job classifications may be required to undergo drug testing on a random selection basis.
- D. Post-Rehabilitation Testing

1. Employees who return to work after verification of compliance with the requirements of the prescribed substance abuse program will be subject to random follow-up drug and alcohol testing.
  - a. Department of Transportation (DOT) regulated employees will be subject to random follow-up testing for a period of five or more years.
  - b. All non-DOT regulated employees will be subject to random follow-up testing for a period of two or more years.
2. The employee assistance program substance abuse professional will determine the follow-up testing time period and the number of tests to be conducted within the designated time period.

V. Collection of Samples

A. Drug Testing Procedure

1. At the designated laboratory, the employee will be required to provide a urine sample. A saliva and/or blood sample may also be required at the direction of the designated employer representative (hereinafter, "DER").
2. The employee's urine, saliva, and/or blood sample will be tested for any illegal drug or controlled substance for which testing is possible.
3. Results will be reported to the approved Medical Review Officer (MRO).
  - a. If the test results are negative, the MRO will report such results to the DER for BCPS and to the employee.
    - (1) If the urine drug screen results are negative and dilute, the employee will be scheduled for another drug test with the provision that the collection of the urine sample will be under "direct observation."
  - b. If the test results are positive, a confirmation test will be performed.
    - (1) In the case of confirmed positive tests, the MRO will contact the employee to determine whether the use of valid prescription or non-prescription drugs or substances is the cause of the positive results.
      - (a) If the MRO's investigation reveals a valid reason for the positive test results, the MRO shall contact the laboratory, and the test results shall be reported as negative to the DER for BCPS.

- (b) If the MRO's investigation does not reveal a valid reason for the test results, the MRO shall report the test results as positive to the DER for BCPS.

B. Alcohol Testing Procedure

1. At the designated laboratory, the employee will be required to give a breath sample to a certified Breath Alcohol Technician (BAT). A saliva sample may also be required by the DER for BCPS.
  - a. The employee must remain at the testing center for the test result or as directed by testing center personnel.
2. If the breath alcohol test records a level of 0.02 or above, it will be considered a positive test, and the employee will be required to remain at the laboratory for a second test to be given within fifteen minutes.
  - a. A second breath test result of 0.02 will result in the BAT or approved laboratory personnel reporting a positive test result to the DER for BCPS.
  - b. Refusal to submit a second breath sample after being instructed to do so by the BAT, will be reported to the DER for BCPS and considered an act of insubordination resulting in appropriate disciplinary action, up to and including termination.

VI. Notice of Positive Test Results

A. Regular Employees

1. The appropriate assistant superintendent, executive director, or director shall, within seven days after receipt of the confirmed positive test, provide to the employee written notice of the confirmed positive test result. The written notice will be delivered to the employee in person or by certified mail and will include:
  - a. A copy of the laboratory test indicating the test results;
  - b. A copy of Board Policy and Superintendent's Rule 4101;
  - c. A directive to immediately contact the substance abuse professional of the employee assistance program to schedule and attend an initial meeting within ten calendar days;
  - d. Notice that the employee will be placed on personal illness leave (if available) as of the date that the drug and/or alcohol testing occurred and that the employee's absence will be

monitored by the integrated disability management program of the Office of Risk Management;

- e. Notice that failure to attend appointments, comply with treatment conditions, sign the authorization for the release of information to the substance abuse professional of the employee assistance program, or any second violation of Board Policy 4101 will result in a recommendation for termination;
- f. Notice of the intent to take disciplinary action or recommend a change in the conditions of continued employment; and
- g. A copy of Section 17-214(d) of the Health General Article of the *Annotated Code of Maryland* permitting an employee to request independent testing of the same sample for verification of the test result.

B. Temporary Employees

- 1. Upon notification of positive test results for an employee hired under a temporary employment agreement, the Department of Human Resources will be notified and the employee's services will be terminated.
- 2. A temporary employee who is terminated as a result of a positive test result will not be eligible for rehire by BCPS.

C. Employee's Right to Verify Positive Drug Test

- 1. After notification of a confirmed positive test result, the employee has the right to obtain a split-sample retest of the employee's original specimen.
- 2. The employee shall pay all costs of independent testing including any costs associated with specimen handling and transport.
- 3. If an employee elects to obtain independent verification of a positive test result, any disciplinary hearing that has been scheduled will be stayed until the test results are received.

VII. Confidentiality

- A. All attempts will be made to maintain the confidentiality of medical information concerning the employee that is revealed during the testing procedures, subsequent investigation, or any related disciplinary action.
- B. The Superintendent or designee reserves the right to use any drug or

alcohol test results, records, or documents that demonstrate the employee's failure to adhere to Board Policy 4101 and this Rule.

VIII. Bus Drivers and Other Commercial Drivers License Holders

The provisions of this Rule with respect to drug and alcohol testing procedures are applicable to all employees. This Rule shall not supersede the requirements for employees who are subject to other federal and state regulations, Board policies, Superintendent's rules, or school system procedures concerning the drug and alcohol testing of bus drivers and person who hold a Commercial Driver's License (CDL).

IX. Drug /Alcohol Assistance and Awareness Services

A. BCPS supports the concept of making all employees aware of the harmful effects and legal consequences of drug and/or alcohol use. Employees who may have a drug or alcohol problem are strongly encouraged to seek assistance through the Employee Assistance Program.

B. The Department of Human Resources is responsible for establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The requirements of the Board's drug-free workplace policy and this Rule;
3. Available drug counseling, rehabilitation, and employee assistance programs; and
4. The penalties that may be imposed for drug abuse violations occurring in the workplace.

X. Reservation of Rights

This Rule is not intended to, and shall not, constitute a waiver of any rights possessed by the Board or the Superintendent derived from any source whatsoever. This Rule shall not be construed as limiting the Board's or the Superintendent's or designee's right to take disciplinary action, up to and including suspension or termination, for any involvement with drugs and/or alcohol not specifically addressed in this Rule.



RULE 4101

Legal References: 41 U.S.C. §8104, *Et. Seq., Drug-free Workplace Act*  
*Annotated Code of Maryland*, Health General Article §17-214,  
*Controlled substance testing by employer*  
*Baltimore County Code*, Miscellaneous Provisions and Offenses  
Article §17-1-118, *Spice*

Related Policies: Board of Education Policy 2372, *Tobacco*  
Board of Education Policy 3128, *Board-Owned Vehicles*  
Board of Education Policy 4002, *Obligations of Employees of the*  
*Board of Education of Baltimore County*  
Board of Education Policy 4006, *Medical Evaluations*  
Board of Education Policy 4100, *Employee Conduct and*  
*Responsibilities*  
Board of Education Policy 4402, *Termination from Employment*

Rule

Superintendent of Schools

Approved: 06/27/95  
Revised: 01/27/98  
Revised: 07/14/09  
Edited: 07/01/11  
Edited: 04/11/12  
Revised: 07/10/12  
Revised: 07/08/14