

PARK COUNTY SCHOOL DISTRICT 6
BOARD OF EDUCATION POLICY

CODE: EEAEB

DRUG AND ALCOHOL CLEARINGHOUSE

The District, in accordance with the Omnibus Transportation Employee Testing Act, requires alcohol and drug testing of safety sensitive employees and adheres to the regulations of the Federal Motor Carriers Safety Administration (FMCSA). All applicants and employees requiring drug testing shall be submitted for query to the FMCSA data base (Clearinghouse) and be subject to this policy and regulations.

Pre-employment Inquiry Required

Pursuant to 49 CFR Subpart G § 382.701(a), the District shall not employ a driver subject to controlled substances and alcohol testing to perform a safety-sensitive function, including driving a commercial vehicle, without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213. The District must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

Annual Query Required

Pursuant to 49 CFR Subpart G § 382.701(b), the District must conduct a query of the Clearinghouse at least once per year 4 - for information for all employees subject to controlled substance and alcohol testing to determine whether information exists in the Clearinghouse about those employees. In lieu of a full query, the District may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year. If the limited query shows that information exists in the Clearinghouse about the individual driver, the District must conduct a full query within 24 hours of conducting the limited query. If the District fails to conduct a full query within 24 hours, the District must not allow the driver to continue to perform any safety-sensitive function, including driving commercial vehicles, until the District conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in Section 3 below.

Prohibition on Drivers with Clearinghouse Violations

The District may not allow a driver to perform any safety-sensitive function, including driving commercial vehicles, if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

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1. That the driver has successfully completed the Substance Abuse Professional (SAP) evaluation, referral, and education/treatment process; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP. The SAP regulations are set forth in 49 CFR Part 40, Subpart O.
2. That, if the driver has not completed all follow-up tests as prescribed by the SAP, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in 49 CFR Part 40, Subpart O, and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

Recordkeeping Required

The District must retain for three (3) years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

Driver Consent Required

Pursuant to 49 CFR Subpart G § 382.703, the District may not query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The District must retain the consent for three (3) years from the date of the last query. Before the District may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the District access to the following specific records:

1. A verified positive, adulterated, or substituted controlled substances test result;
2. An alcohol confirmation test with a concentration of 0.04 or higher;
3. A refusal to submit to a test in violation of § 382.211;
4. An employer's report of actual knowledge, as defined at § 382.107, of:
 - a. On duty alcohol use pursuant to § 382.205;
 - b. Pre-duty alcohol use pursuant to § 382.207;
 - c. Alcohol use following an accident pursuant to § 382.209;
 - d. Controlled substance use pursuant to § 382.213;
5. A SAP report of the successful completion of the return-to-duty process;
6. A negative return-to-duty test; and
7. An employer's report of completion of follow-up testing.

The District may not permit a driver to perform a safety-sensitive function, including driving a commercial vehicle, if the driver refuses to grant the consent required above. A driver granting consent must provide consent electronically through the Clearinghouse prior to release of information to the District.

Reporting to Clearinghouse

Pursuant to 49 CFR Subpart G § 382.705(b), the District must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that

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information:

1. An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
2. A negative return-to-duty test result;
3. A refusal to take an alcohol test pursuant to 49 CFR 40.261;
4. A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
5. A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311.

The information required to be reported must include, as applicable:

1. Reason for the test;
2. Driver's name, date of birth, and CDL number and State of issuance;
3. Employer name, address, and USDOT number;
4. Date of the test;
5. Date the result was reported; and
6. Test result. The test result must be one of the following:
 - a. Negative (only required for return-to-duty tests administered in accordance with § 382.309);
 - b. Positive; or
 - c. Refusal to take a test.

For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the District must report the following information:

1. Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
2. Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
3. Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that a third party administrator reporting the violation was designated as a service agent for the District who employs a driver; and
4. Documentation, including a certificate of service or other evidence, showing that the District provided the employee with all documentation required in the applicable federal regulations outlined in this policy.

For each violation of drug and alcohol policy, the District must report the following information:

1. Driver's name, date of birth, CDL number and State of issuance;
2. District's name, address, and USDOT number, if applicable;
3. Date the District obtained actual knowledge of the violation;
4. Witnesses to the violation, if any, including contact information;

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5. Description of the violation;
6. Evidence supporting each fact alleged in the description of the violation which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and
7. A certificate of service or other evidence showing that the District provided the employee with all information reported.

Consortia/Third Party Administrators

The District may designate a Consortia/Third Party Administrator ("C/TPA") to perform the District requirements outlined in this policy and in the federal regulations referenced herein. Regardless of whether it uses a C/TPA to perform its requirements, the District retains ultimate responsibility for compliance with these federal regulations. Exception: The District does not retain responsibility where the C/TPA is designated to comply with district/employer requirements as described in paragraph (b)(6) of 49 CFR Subpart G § 382.705.

Clearinghouse Registration Required

Pursuant to 49 CFR Subpart G § 382.711, the District or their service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse. District/Agent Clearinghouse registration must include:

1. Name, address, and telephone number;
2. USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity;
3. Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information needed to validate their identity. The District must verify the names of the person(s) authorized under this policy annually; and
4. Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. The District must update any changes to this information within ten (10) days.

Reference:

U.S. Code of Federal Regulations

Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Date Adopted: 5/19/21

Revised: 11/13/2023