

Effective Date: 7/9/13	400-12 Drug and Alcohol Policy
Revision Date: 11/26/19	Approved by: DPSA Board

The Duluth Public Schools Academy, Charter School District 4020-07, has adopted the following written Drug and Alcohol Policy describing the types of testing and procedures used in drug and alcohol testing as well as the consequences of a positive result. All employees who may be required to pass a drug test will be provided with a copy of this policy. A copy of this policy also will be posted in a prominent location at the work site, and is available for inspection during regular working hours upon request.

I. Employees Subject to Testing Under This Policy

Any DPSA employee may be subject to drug-and-alcohol-testing based on reasonable suspicion or if the employee's dependency treatment is within the scope of Minn. Stat. § 181.951, subd. 6 (see below for more information concerning which employees are subject to testing). Unless otherwise required by state or federal law or regulation, applicants are not subject to testing.

II. Circumstances Under Which Drug or Alcohol Testing May be Required

DPSA may request or require any employee to undergo drug and alcohol testing based upon a reasonable suspicion that the employee: (a) is under the influence of drugs or alcohol; (b) has violated DPSA's written work rules, set forth in this policy, including in section IX below, prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on school premises or operating DPSA's vehicles, machinery, or equipment; (c) has sustained a personal injury, as that term is defined in Minn. Stat. § 176.011, subd. 16, or has caused another employee to sustain a personal injury; or (d) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

DPSA may also request or require an employee to undergo drug and alcohol testing if the employee's dependency treatment is within the scope of Minn. Stat. § 181.951, subd. 6.

III. Notice to Affected Employees

Unless otherwise provided for by state or federal law or regulations, written notice of this Drug and Alcohol Policy will be provided to all affected employees, and any previously unaffected employee who has been placed in a position affected by this policy before any testing under this policy occurs.

IV. Employee's Right to Refuse to Undergo Drug and Alcohol Testing and the Consequences of Refusal

Unless otherwise specified by state or federal law or regulation, an employee may refuse to undergo drug or alcohol testing. The consequences for refusal to comply with testing requested in accordance with this policy may include withdrawal of a job offer, or discipline up to and including termination.

V. Notice of Test Results

Within three (3) working days after receipt of a test result report from the testing laboratory, DPSA shall give written notification to the employee who has undergone drug or alcohol testing of: (1) a negative test result on an initial screening test or a negative or positive test result on a confirmatory test, and (2) that the employee has the right to request and receive from DPSA a copy of the test result report on any drug or alcohol test. In the case of a positive test result on a confirmatory test, DPSA shall also, at the time of this notice, notify the employee in writing of the rights provided in section VI (A) and (B), below.

VI. Rights Upon a Positive Test Result

If an employee has a positive test result on a confirmatory test, DPSA shall provide the employee with notice of the test results and, at the same time, written notice of the right to explain the results and to submit additional information.

- A. DPSA may request that the employee indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.
- B. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee may submit information (in addition to any information already submitted) to DPSA to explain that result.
- C. If an employee has a positive test result on a confirmatory test, DPSA shall provide the employee with notice of the test results and, at the same time, written notice of the right to request a confirmatory retest of the original sample at the employee's expense.
- D. An employee may request a confirmatory retest of the original sample at their own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee shall notify DPSA in writing of their intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, DPSA shall notify the original testing laboratory that the employee has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minn. Stat. §

181.953, subd. 1, to conduct the confirmatory retest.

VII. Disciplinary or Other Adverse Action that May Be Taken

DPSA will take no adverse action against an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the employee may be subject to adverse action including withdrawal of an offer of employment, or discipline up to and including termination of employment, subject to the limitations provided for in Minn. Stat. § 181.953, subd. 10, which provides:

a. An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

b. In addition to the limitation under paragraph (a), an employer may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the employer unless the following conditions have been met:

1. the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
2. the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

c. Notwithstanding paragraph (a), an employer may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the employer believes that it is reasonably necessary to protect the health or safety of the employee, coemployees, or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

d. An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to subdivision 6 unless the employee was under an affirmative duty to provide the information before, upon, or after hire.

e. An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

VIII. Counseling and Rehabilitation

Employees who voluntarily seek help for substance abuse (self-referral) by contacting DPSA will be provided an opportunity to pursue counseling and rehabilitation. DPSA will make available to these employees information about counseling and rehabilitation services. An employee who is receiving counseling and/or treatment for substance abuse may use available vacation time, sick time or, if eligible, FMLA leave. Health insurance often covers the costs of such services, but costs not covered must be paid by the employee. The employee cannot return to work until released by a treatment provider and they receive a negative result on a return-to-work drug and/or alcohol test (as appropriate for the specific employee). In addition, the employee may be asked to submit to follow-up testing for a period of two (2) years following their return to work.

An employee's decision to seek help voluntarily will not be used as a basis for disciplinary action, although the individual may be transferred, given work restrictions or placed on leave, as appropriate. A request for help is considered voluntary only if it is made before the employee is asked to submit to a drug or alcohol test or is discovered to have otherwise violated this policy.

Similarly, an employee who tests positive for the first time based on a confirmatory test result will be offered the opportunity to seek assistance in lieu of termination from employment. Following a first positive test result, employees who submit to an evaluation for substance abuse dependence and complete any recommended course of education and/or treatment will be permitted to return to work when certified as safe to do so by a substance abuse professional familiar with the employee's work responsibilities. Following the return to work, the individual will be subject to frequent unannounced tests for a period of up to two (2) years. A second positive test may result in discipline up to and including termination, provided that imposition of discipline is legally appropriate under the circumstances.