



POLICY 3.96

4-C I recommend that the Board adopt the proposed new Policy 3.96, entitled “Drug- and Alcohol-Free Workplace.”

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Adoption

CONSENT ITEM

- This proposed new Policy 3.96 will apply to employees, job applicants, and volunteers, except those persons covered by School Board Policy 3.961, and is intended to be consistent with the program set forth in Fla. Stat. § 440.102 and Fla. Admin. Code Rules 59A-24.003 – 59A-24.008, requiring a workplace free of drugs including alcohol.

- Some clarifications were added after the February Policy meeting, such as at lines 251-254: volunteers generally will not be (but in some cases may be) subject to applicant screening; they will be subject to other types of substance screening such as “reasonable suspicion” testing; and at lines 403-416, statutory requirements have been included concerning the employee's/ applicant's/volunteer's right to submit information explaining or contesting a positive test result.

- Through the implementation of this Policy, the Board intends to comply with and be subject to the current and future requirements of Fla. Stat. §§ 440.101 and 440.102.

- The standards and procedures contained in this Policy are separate from tests and procedures under Policy 3.961 (addressing holders of safety-sensitive positions and holders of commercial drivers' licenses) because, under federal regulations in 49 C.F.R. part 40, drug tests for purposes of Department of Transportation policies must be completely separate from non-DOT tests in all respects.

POLICY 3.96

DRUG- AND ALCOHOL-FREE WORKPLACE1. **Purpose and Scope**

- a. The School District of Palm Beach County hereby affirms its commitment to maintaining a drug-free workplace. The term "drug-free" includes "alcohol-free."
- b. A drug-free awareness program is hereby established and will be implemented by the Superintendent by implementation of this Policy and the provisions of Fla. Stat. §§ 440.101 and 440.102 and rules of the Agency for Health Care Administration (the Drug-Free Workplace Standards set forth in Fla. Admin. Code rules 59A-24.003 – 59A-24.008).
- i. Before testing is initiated under this Policy, each current employee, applicant, and volunteer will be provided a copy of a policy statement/notice, which is incorporated in this Policy by reference in compliance with Fla. Stat. § 440.102(3)(a).
- ii. Pursuant to Fla. Stat. § 440.102(3)(b), there will be a 60-day period between the notice to employees, applicants, and volunteers that a drug-testing program is being implemented, and the beginning of actual drug testing. For good measure, the District will issue a second notice to employees during that 60-day period.
- iii. This Policy shall apply to all District employees, job applicants, and volunteers, as defined in section (2) below, except those subject to Policy 3.961. All job applicants will be provided a copy of drug-free workplace notice with a conditional offer of employment and all volunteers will be provided a copy of the notice before any volunteer activities are performed. Each employee will sign an acknowledgment of receipt and understanding of the drug-free workplace policy statement/notice, and that acknowledgment will be retained in the employee's personnel file. Copies of a drug-free workplace notice shall be posted in prominent locations in District buildings.
- c. Through the establishment of a standard drug-testing program, all employees, job applicants, and volunteers shall be subject to drug testing as a condition of employment or may be a condition of commencing volunteer activities under the terms and circumstances described in this Policy. Employees who violate this Policy shall be subject to disciplinary action, up to and including termination of employment, consistent with the applicable collective-bargaining agreement, if any. Job applicants who violate this Policy will not be hired; and volunteers who violate this Policy will not be allowed to perform further volunteer service.
- d. Prohibited under this Policy are the unlawful manufacture, distribution, dispensation, possession, or use of drugs (including alcohol or controlled

- 39 substances), as listed in Fla. Stat. § 440.102 or defined by Fla. Stat. Chapter
40 893), on District property or while on duty.
- 41 e. Reporting for duty or remaining on duty under the influence of drugs (alcohol or a
42 controlled substance) is prohibited, except when the use of a controlled substance
43 is pursuant to the prescribed instructions of a licensed medical practitioner who
44 has advised the individual that the substance will not adversely affect the
45 individual's ability to safely perform all assigned duties.
- 46 f. Off-the-job use or involvement with illegal drugs, alcohol, or other controlled
47 substances may also subject an employee to disciplinary action under applicable
48 Board Policies such as 3.12 and 3.13; applicable State Board of Education Rules
49 such as 6B-4.009(2), (5); and the applicable collective-bargaining agreement, if
50 any.
- 51 g. Through the implementation of this Policy, the Board intends to comply with and
52 be subject to current and future requirements contained in the Drug-Free
53 Workplace Act of 1988 and Fla. Stat. §§ 440.101 and 440.102. The standards
54 and procedures contained in this Policy are separate from all tests and
55 procedures contained in Policy 3.961 (addressing holders of safety-sensitive
56 positions and commercial drivers' licenses) because, under federal regulations in
57 49 C.F.R. part 40, drug tests for purposes of Department of Transportation
58 policies must be separate from non-DOT tests in all respects.
- 59 2. **Definitions.**-- For the purpose of this Policy, the following terms shall be defined as
60 **indicated:**
- 61 a. **Alcohol.**-- Any beverage, prescription, over-the-counter medication, or other
62 product containing any form of alcohol, including, but not limited to, ethanol,
63 methanol, propanol, and isopropanol.
- 64 b. **Alcohol Use.**-- The drinking or swallowing of any beverage, liquid mixture, or
65 preparation (including any medication) containing alcohol.
- 66 c. **Alcohol Test.**-- Analysis of a blood sample to determine the blood alcohol level
67 (BAL), as distinguished from the more general term "drug test."
- 68 d. **Applicant.**-- Any individual who has applied for a position with the District and
69 has been offered employment conditioned upon successfully passing a drug test.
- 70 e. **Blood Alcohol Level.**-- The alcohol level as expressed in terms of milligrams of
71 alcohol per 100 milliliters of blood; "0.04" indicates four tenths of a percent of the
72 blood serum in the sample is alcohol. Blood samples will be used for both initial
73 and confirmation testing for BAL under this Policy. (BAL testing under policy 3.961
74 shall be as prescribed in that Policy.)
75

- 76 f. **Chain of Custody.**-- The procedure used to account for the integrity of each urine
77 specimen by tracking its handling and storage from point of specimen collection to
78 final disposition for all specimens by an appropriate drug testing custody form that
79 documents custody of the specimen from collection to receipt by the laboratory
80 and handling of the sample or sample aliquots (a portion of a specimen used for
81 testing) within the laboratory.
- 82 g. **Confirmation Test for Alcohol.**-- A second test (following an initial alcohol test
83 with a result of four one-hundredths BAL (0.04) or greater) that provides specific
84 quantitative data for alcohol.
- 85 h. **Confirmation Test for Drugs (Other than Alcohol).**-- A second analytical
86 procedure, following an initial drug test, used to confirm the presence of a
87 specified drug or metabolite in a specimen through a different technique and
88 chemical principle from that of the screen test to ensure specificity, sensitivity,
89 reliability, and quantitative accuracy. Gas chromatography/mass spectrometry
90 ("GC/MS") is the only authorized confirmation test for cocaine, marijuana, opiates,
91 amphetamines, and phencyclidine.
- 92 i. **Confirmed Test or Confirmed Drug Test.**-- A screening result confirmed by a
93 second analytical procedure used to confirm the presence of a specified drug or
94 metabolite in a specimen through a different technique and chemical principle
95 from that of the screen test to ensure specificity, sensitivity, reliability, and
96 quantitative accuracy. Gas chromatography/mass spectrometry ("GC/MS") is the
97 authorized confirmation test for cocaine, marijuana, opiates, amphetamines, and
98 phencyclidine.
- 99 j. **Drug Rehabilitation Program.**-- A service vendor that provides confidential,
100 timely, and expert identification, assessment, and resolution of employee drug
101 abuse through the District's Employee Assistance Program ("EAP").
- 102 k. **Drug Test.**-- A chemical, biological, or physical instrumental analysis
103 administered, by a laboratory certified by the United States Department of Health
104 and Human Services or licensed by the Florida Agency for Health Care
105 Administration, for the purpose of determining the presence or absence of a drug
106 (including alcohol) or its metabolites. The District shall pay for all drug tests, initial
107 and confirmation, that it requires of employees. Employees must pay for any
108 additional tests not required by the District. A urine sample will be used for the
109 initial and confirmation tests for all drugs and substances (except alcohol, for
110 which blood samples are used).
- 111 l. **Drug (hereinafter, Drugs or Controlled Substance(s)).**-- Alcohol, including a
112 distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a
113 cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an
114 opiate or narcotic; a barbiturate; a benzodiazepine; a synthetic narcotic; a
115 designer drug; or a metabolite of any of the substances listed in this subsection.
116 The District may test an individual for any or all such drugs.

- 117 m. **Employee**-- The term “employee” means any person who works for the District
118 for salary, wages, or other remuneration.
- 119 n. **Employee Assistance Program (“EAP”)**-- An established program capable of
120 providing expert assessment of an employee’s personal concerns; confidential
121 and timely identification services for employee drug or alcohol abuse; referrals of
122 employees for appropriate diagnosis, treatment, and assistance; and follow-up
123 services for employees who participate in the program or require monitoring after
124 returning to work.
- 125 o. **First Offense**-- An initial violation of this drug-free workplace Policy whether it
126 involves drugs or alcohol.
- 127 p. **Fitness for Duty**-- As Fla. Stat. § 440.101(2) requires that “an employee [shall]
128 refrain from reporting to work or working with the presence of drugs or alcohol in
129 his or her body,” for purpose of this Policy “fitness for duty” means being in a
130 mental and physical condition appropriate for work, including but not limited to
131 being sober in accordance with this Policy. The term also applies to applicants
132 (meaning fitness to begin working for the District) and volunteers (fitness to
133 continue serving in volunteer functions).
- 134 q. **Initial Drug Test**-- A sensitive, rapid, and reliable procedure to identify negative
135 and presumptive positive specimens, using a scientifically-accepted method
136 approved by the U.S. FDA or the Florida Agency for Health Care Administration.
- 137 r. **Medical Review Officer (MRO)**-- A licensed physician, employed with or
138 contracted by the District, who has knowledge of substance abuse disorders,
139 laboratory testing procedures, and chain of custody collection procedures; who
140 verifies positive, confirmed test results; and who has the necessary medical
141 training to interpret and evaluate an employee’s positive test result in relation to
142 the employee’s medical history or any other relevant biomedical information.
- 143 s. **Positive Breath Test**-- A test showing a concentration of four one-hundredths
144 (0.04) BAC or above.
- 145 t. **Reasonable-Suspicion Drug Testing**-- Drug testing based on a belief that an
146 employee, applicant, or volunteer is using or has used drugs in violation of this
147 Policy, drawn from specific objective and articulable facts and reasonable
148 inferences drawn from those facts in light of experience.
- 149 u. **Screening Test** (also known as an **Initial Test** or **Initial Drug Test**)-- In alcohol
150 testing, an analytical procedure to determine whether an employee, job applicant,
151 or volunteer may have a prohibited concentration of alcohol in his/her system. In
152 controlled substance testing, an immunoassay screen to eliminate “negative”
153 urine specimens from further consideration.
- 154 v. **Second Offense**-- Any violation of this drug-free workplace Policy (whether by

- 155 alcohol or other drugs) following the initial violation, whether either violation
156 involves alcohol or other drugs, constitutes the second offense.
- 157 w. **Specimen**-- Tissue, hair, or a product of the human body capable of revealing
158 the presence of drugs or their metabolites, as approved by the U.S. FDA or the
159 Florida Agency for Health Care Administration.
- 160 x. **Substance Abuse Professional ("SAP")** -- A person with knowledge of and
161 clinical experience in the diagnosis and treatment of drug-related disorders who
162 evaluates employees and makes recommendations concerning education,
163 treatment, follow-up testing, and aftercare.
- 164 y. **Volunteer**-- An individual who offers services to the District without
165 remuneration.
- 167 3. **Notice of Conviction**-- In addition to any separate requirements of Policy 3.13 ("Self-
168 Reporting of Arrests and Convictions by School District Employees"), an employee
169 convicted of a violation of any criminal drug statute for conduct that occurred on District
170 property shall notify the Professional Standards office within five (5) working days after
171 the conviction. Within ten (10) working days of receipt of such a notification, the
172 Superintendent will notify the U.S. Department of Education of the conviction, as
173 prescribed in 41 U.S.C. § 702.
- 174 4. **Prohibited Conduct**-- The following types of conduct are expressly prohibited for all
175 employees, applicants, and volunteers and shall result in disciplinary action up to and
176 including termination of employment (or termination of volunteer services), consistent
177 with the applicable collective-bargaining agreement, if any.
- 178 a. **On-Duty**-- No employee, applicant, or volunteer shall use drugs, including
179 alcohol, while performing their duties. The manufacture, distribution, dispensation,
180 possession or use of drugs (including alcohol) on District property or while on duty
181 is prohibited, except as otherwise permitted in this Policy under medical
182 prescription under Section (4)(c), above.
- 183 b. **Off-the-Job**-- Off-the-job use or involvement with illegal drugs, alcohol, or other
184 controlled substances may subject an employee to disciplinary action under
185 applicable Board Policies such as 3.12 and 3.13; applicable State Board of
186 Education Rules such as 6B-4.009(2), (5); and the applicable collective-
187 bargaining agreement, if any.
- 188 c. **Controlled Substance(s)/ Drug/Alcohol Use or Abuse**-- No employee or
189 volunteer shall report for duty or remain on duty while under the influence of, or
190 impaired by, drugs (including alcohol)--as may be shown by the behavioral,
191 speech, or performance indications of use or abuse--or any controlled substance
192 except when the use is pursuant to prescribed instructions of a licensed medical
193 practitioner who has advised the individual that the substance will not adversely

194 affect the individual's ability to safely perform all work duties. As a condition of
195 employment, employees are required to remain away from the place of duty and
196 off District property if under the influence of drugs.

197 d. **Alcohol Concentration.**-- No employee shall report for duty or remain on duty
198 while having an blood alcohol concentration of four one-hundredths (0.04) or
199 more.

200 e. **Use Following an Accident.**-- No employee or volunteer involved in an on-the-
201 job vehicular or other work-related accident shall use alcohol for eight (8) hours
202 following the accident, or until after undergoing a post-accident alcohol test,
203 whichever occurs first. This subsection shall be construed consistent with
204 subsections (4)(b) and (c).

205 f. **Refusal to Submit to a Required Drug Test.**-- Following an on-the-job vehicular
206 or other work-related accident, no employee shall refuse to submit to a post-
207 accident drug (alcohol or controlled substances) test; nor shall an employee
208 refuse to submit to a reasonable suspicion drug test, a fitness for duty drug test,
209 or a follow-up drug test. Failure to complete and sign testing form(s), to provide
210 an adequate specimen, or other failure to cooperate with the testing process in a
211 way that prevents the completion of the test shall be considered a refusal to test
212 and shall be deemed a positive test result. Any attempt to adulterate a specimen
213 or provide a specimen that is adulterated shall also be considered a refusal to test
214 and will be deemed a positive test result. Any obstruction to and lack of
215 cooperation with the testing process shall be considered a refusal to test and
216 deemed a positive test result.

217 g. **Testing Positive.**-- No employee or volunteer shall report for duty or remain on
218 duty after testing positive for alcohol or other drugs, until cleared to return. While
219 waiting for clearance, the employee shall be placed in a non-duty status. From the
220 time the test is confirmed positive, the non-duty status shall be unpaid; but the
221 employee shall be given the option of using any accumulated annual or sick leave
222 credits before the leave is ordered to be without pay (unless the employee is
223 incarcerated, in which case annual or sick leave is not an option), and the District
224 will restore the leave hours taken (or the unpaid wages if leave hours were not
225 used) if an appeal under Section (10) shows the confirmed positive test was due
226 to another reason such as prescription or nonprescription medication lawfully
227 taken.

228 5. **Testing Procedures.**-- All drug testing will be conducted by a District-designated
229 laboratory that is licensed and approved by the Agency for Health Care Administration
230 (AHCA) or is certified by the U.S. Department of Health and Human Services. The
231 testing will be conducted with appropriate chain of custody procedures as specified by
232 AHCA to ensure accuracy and continuity in specimen collection, handling, transfer,
233 and storage.

- 234 6. Referral for Testing.-- Appropriate notification and testing forms will be provided to
235 employees, job applicants, and volunteers before drug testing.
- 236 7. Voluntary Self-Referral/Rehabilitation.-- At any time before notification of a required
237 test, an employee is encouraged to contact the District's EAP for voluntary treatment of
238 a substance problem. Such employees may be required to submit to compliance
239 testing as part of the treatment program. Voluntary self-referral made at the time of
240 notification shall not excuse an employee from required drug/alcohol testing, nor shall
241 it negate a positive result from such test. An employee will not be subject to discharge
242 or disciplinary action solely on the basis of voluntary self-referral for treatment.
- 243 8. Kinds of Testing.-- Random testing of employees shall not be conducted, except for
244 those employees subject to Policy 3.961. To maintain a drug-free work environment,
245 the District will test for the presence of drugs, including alcohol, in the following
246 circumstances:
- 247 a. Pre-Employment Screening.-- Pre-employment screening will be required of all
248 applicants before employment with the District. Any applicant who tests positive
249 in the pre-employment screening for a drug as defined in this Policy will not be
250 hired and is not eligible to re-apply for employment with the District for one year
251 following the confirmed positive test. Similarly, a person applying to be a
252 volunteer may be subject to pre-service screening in some cases, based upon
253 whether the volunteer applicant has a known history of substance abuse, alcohol,
254 or other drug-related problems.
- 255 b. Reasonable Suspicion
- 256 i. All employees/applicants/volunteers who are determined to be under
257 reasonable suspicion of drug use are required to take a drug test. Reasonable suspicion shall be determined by a supervisor at least one level
258 above the individual to be tested. The circumstances supporting that
259 determination must be drawn from specific objective and articulable facts
260 that shall be documented in writing. Reasonable suspicion may include, but
261 is not necessarily limited to, the following examples:
262
- 263 A. observable phenomena while at work, such as direct observation of
264 drug use or of the physical symptoms or manifestations of being under
265 the influence of a drug. Physical symptoms or manifestations may
266 include, but are not limited to, slurred speech, alcohol odor on breath,
267 unsteady walking and movement, poor coordination and/or reflexes,
268 glassy or bloodshot eyes, physical altercations, verbal altercations, or
269 unusual behavior;
- 270 B. abnormal conduct or erratic behavior while at work or a significant
271 deterioration in work performance;

- 272 C. credible documented evidence that an individual has tampered with a
273 drug test during the term of employment;
- 274 D. credible documented information that an employee has caused, or
275 contributed to, an accident while at work; or
- 276 E. credible documented evidence that an employee has used, possessed,
277 sold, solicited, or transferred drugs while working or while on District
278 premises or while operating the District's vehicle, machinery, or
279 equipment.
- 280 ii. Where testing is based on reasonable suspicion, the supervisor will detail in
281 writing the circumstances that formed the basis of the reasonable suspicion
282 determination. A copy of this written description shall be given to the
283 employee/applicant/volunteer upon request and the original documentation
284 shall be kept confidential and exempt from the provisions of Fla. Stat. §
285 119.07(1), as provided in Fla. Stat. § 440.102(8), and retained for at least
286 one year.
- 287 c. **Post-Accident Reasonable-Suspicion Test**
- 288 i. As soon as practicable under the following circumstances, post-accident
289 reasonable-suspicion testing will be done on all
290 employees/applicants/volunteers who are involved as a driver in any
291 vehicular accident while performing their duties:
- 292 A. on a surviving employee/applicant/volunteer when an accident results in
293 loss of human life. The employee/applicant/volunteer need not have
294 been cited for a moving traffic violation or deemed at fault to be subject
295 to testing under this paragraph;
- 296 B. when an employee/applicant/volunteer receives a citation for a moving
297 violation(s) and one (1) or more of the vehicles involved in the accident
298 is towed from the scene of the accident; or
- 299 C. when an employee/applicant/volunteer receives a citation for a moving
300 violation(s) and one (1) or more persons involved in the accident
301 received medical treatment away from the scene of the accident.
- 302 ii. An employee, applicant, or volunteer who is subject to reasonable suspicion
303 post-accident testing shall remain readily available for such testing. Failure
304 or refusal to be available for testing may be deemed by the District as a
305 refusal to submit to testing. As stated in Fla. Stat. § 440.101(2), "... it is a
306 condition of employment for an employee to refrain from reporting to work or
307 working with the presence of drugs or alcohol in his or her body and, if an
308 injured employee refuses to submit to a test for drugs or alcohol, the

- 309 employee forfeits eligibility for medical and indemnity [workers
310 compensation] benefits.” This provision shall not be construed as requiring
311 the delay of necessary medical attention for injured persons following an
312 accident or impeding an employee/applicant/volunteer from leaving the
313 scene of an accident to obtain necessary assistance in responding to the
314 accident or to obtain necessary emergency care.
- 315 iii. If alcohol testing is not administered within eight (8) hours following an
316 accident, the District may not conduct alcohol testing based on the accident
317 provision. Likewise, if other drug testing is not administered within thirty-two
318 (32) hours following the accident, the District may not conduct controlled
319 substance testing based on the accident provision. The District is required to
320 document those instances when testing is not timely conducted according to
321 the time frames noted above.
- 322 iv. Following an accident, the District will provide the employee, applicant, or
323 volunteer transportation to a testing facility by a person designated for that
324 purpose. After testing, the employee/applicant/volunteer will be transported
325 to the place of residence.
- 326 v. An employee pending results of a post-accident drug test shall be placed in a
327 non-duty status and required to use annual or sick leave (the non-duty status
328 shall be unpaid if the employee does not have such leave hours available).
329 If an alcohol test yields a result of less than four one-hundredths (0.04) BAL
330 or a controlled substances test yields a negative result, the District will
331 restore the leave hours taken (or the unpaid wages if leave hours were not
332 used). A volunteer pending post-accident test results will be placed in a non-
333 duty status on a similar basis.
- 334 vi. Notwithstanding the absence of a reasonable suspicion alcohol test under
335 this section, the District shall not permit an employee or volunteer involved in
336 an accident described above to perform or continue to perform duties until:
- 337 A. an alcohol test is administered and the employee’s alcohol
338 concentration measures less than four one-hundredths (0.04) BAL; or
- 339 B. twenty-four (24) hours have elapsed following the determination that
340 there is reasonable suspicion to believe that the employee has violated
341 the prohibitions of this Policy concerning the use of alcohol.
- 342 vii. The results of a post-accident drug test administered by federal, state, or
343 local officials having independent authority for the test may be used to satisfy
344 this section, provided the test complies with applicable federal, state, or local
345 requirements and the results of the test are timely obtained by the District.
- 346 d. **Fitness for Duty.--** For purposes of this Policy, all employees or volunteers who
347 are subject to a fitness-for-duty medical examination may be required to take a

348 drug test (including a blood alcohol level test) as part of their medical
349 examination.

350 e. Follow-up Testing.-- All employees who have successfully completed an
351 employee assistance program or a drug or alcohol rehabilitation program and
352 return to duty must submit to unannounced drug and alcohol tests at least once a
353 year for a two-year (2-year) period after completion of the program. Advance
354 notice of a follow-up testing date must not be given to the employee to be tested.

355 9. Results Reporting

356 a. The MRO shall contact the tested employee, applicant, or volunteer directly on a
357 confidential basis before confirming a positive initial test result.

358 b. The MRO shall give the employee/applicant/volunteer an opportunity to discuss
359 the initial test result. If the MRO makes reasonable, documented efforts to reach
360 the employee/applicant/volunteer and is unable to do so, the MRO shall inform
361 the District's designated representative, who shall then direct the tested
362 employee/applicant/volunteer to contact the MRO as soon as possible.

363 c. If, after making all reasonable efforts, the District's designated representative is
364 unable to contact the employee/applicant/volunteer, the District may place the
365 employee on temporary medically-unqualified status or medical leave. leave (or
366 may place an applicant or volunteer on similar temporary status).

367 d. The MRO's communication with the tested employee/applicant/volunteer is
368 important to the confirmation of a positive test result; however, in three (3)
369 circumstances the MRO will report a confirmation test result as positive to the
370 District without having communicated directly with the
371 employee/applicant/volunteer:

372 i. the employee/applicant/volunteer declines the opportunity to discuss the test
373 with the MRO;

374 ii. the District representative has successfully contacted the tested
375 employee/applicant/volunteer and provided specific notice to communicate
376 with the MRO and more than five (5) working days have passed since the
377 contact and notice by the District; or

378 iii. neither the MRO nor the District representative, after making all reasonable
379 efforts, has been able to contact the individual within fourteen (14) calendar
380 days of the date on which the MRO receives the confirmed positive test
381 result

382 e. Following the confirmation of a positive test result, the MRO shall refer the case to
383 the District's Professional Standards department pursuant to Fla. Stat. §
384 440.102(5)(h).

- 385 f. After the MRO's reporting of a confirmed positive test result to the District, the
386 tested employee/applicant/volunteer may contact the MRO and present
387 information documenting the reasons (serious illness, injury or other
388 circumstances) that prevented the employee/applicant/volunteer from
389 communicating with either the MRO or the District representative regarding the
390 initial test and the need for a confirmation test. The MRO may, in such cases,
391 reopen the confirmation determination and allow the individual to present
392 information concerning a legitimate explanation for the confirmed positive test. If
393 the MRO concludes that there is a legitimate explanation, the MRO will revise the
394 previous positive determination and declare the test to be negative.
- 395 g. The District shall provide, upon request, a copy of the test results to the tested
396 employee, volunteer, or job applicant.

397 10. **Challenges to Test Results**

- 398 a. A positive test result does not automatically identify an
399 employee/applicant/volunteer as having used drugs in violation of this Policy;
400 therefore, providing the MRO (through, or on behalf of, the District) with detailed
401 knowledge of possible alternative explanations is important to the review of
402 results and is the responsibility of the employee/applicant/volunteer.
- 403 b. Pursuant to Fla. Stat. § 440.102(5)(h), within five (5) working days after receipt of
404 a positive confirmed test result from the MRO, the District shall inform the
405 employee/applicant/volunteer in writing of such positive test result, the
406 consequences of such results, and the options available to the
407 employee/applicant/applicant. One of those options is that within five (5) working
408 days after receiving notice of a positive confirmed test result, the
409 employee/applicant/volunteer may submit information to the District (or MRO in
410 the District's stead) explaining or contesting the test result, and explaining why the
411 result does not constitute a violation of this Policy. If the
412 employee's/applicant's/volunteer's explanation or challenge of the positive test
413 result is unsatisfactory to the District, or MRO on the District's behalf, a written
414 explanation as to why the explanation is unsatisfactory, along with the report of
415 positive result, shall be provided by the District to the
416 employee/applicant/volunteer.
- 417 c. Additionally, consistent with Fla. Stat. § 440.102(5)(h) and (6)(d), the MRO, on
418 behalf of the District, shall notify an employee/applicant/volunteer whose test
419 result has been confirmed as positive of the right to request an independent
420 analysis within seventy-two (72) hours. If the employee requests the independent
421 analysis within seventy-two (72) hours, the MRO shall take appropriate action to
422 direct the analysis. Such independent analysis shall be conducted by "split
423 specimen," at the employee's/applicant's/volunteer's expense, with sufficient
424 specimen being retained for later verification testing. If the
425 employee/applicant/volunteer fails to contact the MRO within seventy-two (72)

426 hours but later contacts the MRO and presents information documenting the
427 reasons (serious illness, injury, inability to contact the MRO, lack of actual notice
428 of a confirmed positive test result or other circumstances) that prevented the
429 individual from timely contacting the MRO, the MRO may conclude that there is a
430 legitimate explanation for the employee's/applicant's/volunteer's failure to contact
431 the MRO within seventy-two (72) hours and may direct the analysis of the split
432 specimen.

433 d. The tested employee/applicant/volunteer shall bear the expense of any testing of
434 a specimen requested by that individual.

435 e. All aspects of the testing process, including any challenge to the testing process,
436 will be kept confidential to the extent allowed by law, except as stated below in
437 Section (12) of this Policy.

438 11. **Disciplinary Action for Positive Test Results.**-- A positive test result shall require
439 the employee's or volunteer's immediate removal from duty.

440 a. No employee or volunteer shall perform duties after testing positive for drugs until
441 the terms specified in this Policy have been satisfied.

442 b. Employees whose test is confirmed positive for an unlawful controlled substance
443 (including a prohibited blood alcohol level) shall be subject to disciplinary action
444 up to and including termination of employment, consistent with the applicable
445 collective bargaining agreement, if any. Refusal to submit to a drug test shall be
446 treated as a positive test result.

447 c. Applicants who test positive for drugs will not be hired; and volunteers who test
448 positive will not be allowed to perform further volunteer functions.

449 d. Pursuant to Fla. Stat. § 440.101(2), "if a drug or alcohol is found to be present in
450 the employee's system at a level prescribed by rule adopted pursuant to this act,
451 the employee may be terminated and forfeits his or her eligibility for medical and
452 indemnity benefits [under Chapter 440]" consistent with Fla. Stat. §§ 440.102(12)
453 and 440.102(5)(p).

454 12. **Confidentiality**

455 a. All information, interviews, reports, statements, memoranda, and test results
456 received or produced under the programs established by this Policy are
457 confidential and exempt from the provision of Fla. Stat. § 119.07(1) and Fla.
458 Const. Art. I, § 24(a). This information may not be used or received in evidence,
459 obtained in discovery, or disclosed in any public or private proceedings, except as
460 specified below or as required by law:

461 i. upon written consent of the employee/applicant/volunteer tested (such a

- 462 consent must include the name of the person to receive the information; the
463 purpose of the disclosure; the precise information to be disclosed; the
464 duration of the consent; and the signature of the person authorizing release);
- 465 ii. when ordered by an administrative law judge, a hearing officer, a court of
466 competent jurisdiction, or a professional or occupational licensing board in a
467 related disciplinary proceeding;
- 468 iii. the information has been placed at issue in a formal dispute or any discipline
469 proceedings between the employer and the employee;
- 470 iv. the information is to be used as necessary in administering an employee
471 assistance program;
- 472 v. the information is needed by medical personnel for the diagnosis or
473 treatment of the employee or volunteer in the event the employee or
474 volunteer is unable to authorize disclosure; or
- 475 vi. within various District departments when consulting with legal counsel in
476 connection with actions related to the information or when the information is
477 relevant to defense of a civil or administrative matter.
- 478 13. **District Designated Representative.-- All questions concerning this Policy should be**
479 directed to the Director of Professional Standards or to such other District official as
480 the Superintendent may designate.
- 481 14. **Notice to Employees.-- The Superintendent or designee has prepared a notice,**
482 referenced above in paragraph (1)(b)(i), satisfying the requirements of Fla. Stat. §
483 440.102(3)(a), as to be distributed to all District employees, applicants, and volunteers
484 prior to testing.
- 485 15. **Interpretation.-- This Policy shall be interpreted and applied consistent with Fla. Stat.**
486 §§ 440.101 and 440.102 and applicable State rules and federal law.
- 487 16. **Required Training.-- Any supervisor or other employee who is assigned the**
488 responsibility for making a reasonable-suspicion determination shall complete a
489 training program of at least sixty (60) minutes on alcohol misuse and sixty (60) minutes
490 on controlled substance abuse. The training should include, but not be limited to:
- 491 a. the dangers of drug (including alcohol) abuse;
- 492 b. the prohibition of drug (including alcohol) use or introduction into the workplace;
- 493 c. the Board's Policy of maintaining a drug-free workplace and the types of testing
494 that will be conducted;

- 495 d. contact information for available drug (including alcohol) counseling and
- 496 rehabilitation;
- 497 e. contact information for the Employee Assistance program;
- 498 f. the consequences of refusing to submit to testing;
- 499 g. all drugs included in testing under this Policy;
- 500 h. the procedures for challenging a positive confirmed test result;
- 501 i. the confidentiality provisions of this Policy; and
- 502 j. penalties to be imposed for violations of this Policy.

STATUTORY AUTHORITY: § 1001.41(1), (2); 1001.43(11); 440.102(7)(d), Fla. Stat.

LAWS IMPLEMENTED: §§ 440.101; 440.102, Fla. Stat.; 41 U.S.C. § 701, et
seq.; 34 C.F.R. Part 85.

HISTORY: _____ / ____/05

Legal Signoff:

The Legal Department has reviewed proposed Policy 3.96 and finds it legally sufficient for adoption by the Board.

Attorney

Date