

**POLICY 3.961**

**4-E** I recommend the Board adopt the proposed new Policy 3.961, entitled "Drug and Alcohol-Free Workplace Policy for Employees Performing Safety Sensitive Functions and Holders of Commercial Drivers Licenses."

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**Adoption**

**CONSENT ITEM**

- The Board approved development of this Policy on March 1, 2004.
- This proposed new Policy 3.961 applies to employees working in safety-sensitive functions and is similar to current practice.

1 PROPOSED NEW POLICY 3.961

2 DRUG AND ALCOHOL-FREE WORKPLACE POLICY FOR EMPLOYEES  
3 PERFORMING SAFETY SENSITIVE FUNCTIONS AND HOLDERS OF  
4 COMMERCIAL DRIVERS LICENSES

5 1. Employees Performing Safety-Sensitive Functions Holders of Commercial  
6 Drivers License

7 a. The School District of Palm Beach County hereby affirms its commitment to  
8 maintaining a drug and alcohol-free workplace.

9 b. This Policy shall apply to all District employees, job applicants and volunteers  
10 who are required by their job descriptions to perform safety sensitive functions  
11 and are required to maintain a valid (Florida) Commercial Drivers License  
12 ("CDL").

13 c. This Policy implements the Omnibus Transportation Employee Testing Act  
14 (OTETA), Pub. L. 102-143, codified at 49 U.S.C. § 701, et seq.

15 d. Through the establishment of a standard drug and alcohol testing program, all  
16 employees performing safety sensitive functions and holding commercial  
17 drivers licenses shall be subject to drug and alcohol testing as described in  
18 this policy.

19 a. A drug and alcohol-free awareness program is hereby established and will be  
20 implemented by the Superintendent. Before testing is initiated under this  
21 policy, each current employee will be provided a copy of the "Notice of Drug-  
22 Free Workplace" attached to and incorporated by reference into this policy. All  
23 job applicants will be provided a copy of the notice with a conditional offer of  
24 employment and all volunteers will be provided a copy of the notice before any  
25 volunteer activities are performed. Each employee will sign an  
26 acknowledgment of receipt and understanding of the Drug-Free Workplace  
27 policy and that acknowledgment will be retained in the employee's personnel  
28 file. Copies of the Notice shall also be posted in prominent locations in District  
29 buildings.

30 b. Off-the-job use or involvement with illegal drugs, alcohol, or other controlled  
31 substances is prohibited when the use or involvement: results in impaired work  
32 performance including, but not limited to, absenteeism, tardiness or poor work  
33 product(s); or can be expected to cause harm to, or otherwise adversely  
34 affect, the employee or District's image or relationship with students, other  
35 employees, or the public.

36 e. Reporting for duty or remaining on duty under the influence of alcohol or a  
37 controlled substance is prohibited, except when the use of a controlled  
38 substance is pursuant to prescribed instructions of a licensed medical  
39 practitioner who has advised the individual that the substance will not  
40 adversely affect the individual's ability to safely perform all assigned duties.

41 f. Prohibited under this policy are the unlawful manufacture, distribution,  
42 dispensation, possession, or use of alcohol or controlled substances, as  
43 defined by Chapter 893, Fla. Stat., on District property or while on duty.

44 g. Through implementation of this Policy, the Board intends to comply with and  
45 be subject to current and future requirements set forth in the OTETA and  
46 regulations of the Federal Highway Administration (FHWA) contained in Title  
47 49 of the Code of Federal Regulations (C.F.R.), parts 40 and 382. The  
48 policies and procedures contained in this policy are separate from all tests and  
49 procedures contained in policy 3.96 addressing Drug and Alcohol Free  
50 Workplace. Under federal regulations in 49 C.F.R. part 40, drug and alcohol  
51 tests for purposes of Department of Transportation policies "must be  
52 completely separate from non-DOT tests in all respects."

53 2. Definitions.-- For the purpose of this Policy, the following terms shall be defined as  
54 indicated:

55 a. **Alcohol**-- Any beverage, prescription, over-the-counter medication, or other  
56 product containing any form of alcohol, including, but not limited to, ethanol,  
57 methanol, propanol, and isopropanol.

58 b. **Alcohol Use**-- The drinking or swallowing of any beverage, liquid mixture, or  
59 preparation (including any medication) containing alcohol.

60 c. **Alcohol Concentration (or content)**-- The alcohol level in a volume of  
61 breath expressed in terms of grams of alcohol per 210 liters of breath as

- 62 indicated by a breath test required by this policy. Breath tests will be used for  
63 both initial and confirmation testing for alcohol content under this policy.  
64
- 65 d. **Chain of Custody.**-- The procedure used to account for the integrity of each  
66 urine specimen by tracking its handling and storage from point of specimen  
67 collection to final disposition for all specimens by an appropriate drug testing  
68 custody form that documents custody of the specimen from collection to  
69 receipt by the laboratory and handling of the sample or sample aliquots (a  
70 portion of a specimen used for testing) within the laboratory.
- 71 e. **Confirmation Test, Confirmed Test, or Confirmed Drug Test.**-- A second  
72 analytical procedure used to confirm the presence of a specified drug or  
73 metabolite in a specimen through a different technique and chemical principle  
74 from that of the screen test to ensure specificity, sensitivity, reliability, and  
75 quantitative accuracy. Gas chromatography/mass spectrometry ("GC/MS") is  
76 the only authorized confirmation test for cocaine, marijuana, opiates,  
77 amphetamines, and phencyclidine.
- 78 f. **Confirmation Test for Alcohol.**-- A second test (following a screening test  
79 with a result of two one-hundredths BAL (.02) or greater) that provides specific  
80 quantitative data for alcohol, conducted by a certified operator of an evidential  
81 breath testing (EBT) device.
- 82 g. **Covered Employees/Covered Position.**-- Employees or positions that  
83 require a commercial drivers' license as a condition of employment and  
84 operation of any of the following:
- 85 i. A vehicle designed to carry 16 or more passengers;
- 86 ii. A vehicle that weighs more than 26,000 pounds; or
- 87 iii. A vehicle that carries hazardous cargo or a placard indicating hazardous  
88 cargo.
- 89 h. **Drug Rehabilitation Program.**-- A service vendor that provides confidential,  
90 timely, and expert identification, assessment, and resolution of employee drug  
91 abuse through the District's Employee Assistance Program ("EAP").
- 92 i. **Drug Test.**-- Any chemical, biological, or physical instrumental analysis  
93 administered for the purpose of determining the presence or absence of a

94 drug or its metabolites. The District shall pay for all drug tests, initial and  
95 confirmation, that it requires of employees. Employees must pay for any  
96 additional tests not required by the District. A urine sample will be used for the  
97 initial and confirmation tests for all drugs and substances except alcohol.

98 i. **Drugs (hereinafter, Drugs or Controlled Substance(s)).--** Alcohol, including  
99 distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines;  
100 cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone;  
101 opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or  
102 a metabolite of any of these substances.

103 k. **Employee.--** The term “employee” means any person who works for the  
104 District for salary, wages, or other remuneration. As used in this policy,  
105 “employee” also means applicants for employment and volunteers, unless  
106 otherwise stated.

107 l. **Employee Assistance Program (“EAP”).--** An established program capable  
108 of providing expert assessment of employee personal concerns; confidential  
109 and timely identification services for employee drug or alcohol abuse; referrals  
110 of employees for appropriate diagnosis, treatment, and assistance; and follow-  
111 up services for employees who participate in the program or require  
112 monitoring after returning to work.

113 m. **First Offense.--** An initial violation of the drug and alcohol-free workplace  
114 Policy whether it involves drugs or alcohol.

115 n. **Medical Review Officer (“MRO”).--** A licensed physician responsible for  
116 receiving laboratory results generated by the District’s drug testing program  
117 who has knowledge of substance abuse disorders, laboratory testing  
118 procedures, and chain of custody collection procedures; who verifies positive,  
119 confirmed test results; and who has the necessary medical training to interpret  
120 and evaluate an employee’s positive test result in relation to the employee’s  
121 medical history or any other relevant biomedical information.

122 o. **Positive Breath Test.--** A concentration of two one-hundredths (0.02) alcohol  
123 content or above.

124 h. **Safety Sensitive Function(s).--** The term “safety sensitive function” means  
125 all time from the time a covered employee begins work or is required to be in

126 readiness to work until the time relieved from work and responsibility for  
127 performing work. An individual is considered to be performing a safety  
128 sensitive function during any period in which he/she is actually performing,  
129 ready to perform, or immediately available to perform any safety sensitive  
130 function. Safety sensitive functions include:

131 i. All time waiting at an employer or shipper, plant, terminal, facility, or other  
132 property, to be dispatched unless the covered employee has been  
133 relieved from duty by the District;

134 ii. All time inspecting equipment or otherwise inspecting, servicing or  
135 conditioning any commercial vehicle at any time;

136 iii. All time spent at the driving controls of a commercial motor vehicle;

137 iv. All time other than driving time, in or upon any commercial motor vehicle  
138 except time spent resting in a sleeping berth;

139 v. All time loading or unloading a vehicle, supervising, or assisting in the  
140 loading or unloading, attending a vehicle being loaded or unloaded,  
141 remaining in readiness to operate the vehicle or in giving or receiving  
142 receipts for shipments loaded or unloaded; and

143 vi. All time repairing, obtaining assistance, or remaining in attendance upon  
144 a disabled commercial vehicle.

145 p. **Screening Test (also known as Initial Test).**-- In alcohol testing, an  
146 analytical procedure to determine whether an employee, job applicant, or  
147 volunteer may have a prohibited concentration of alcohol in his/her system. In  
148 controlled substance testing, an immunoassay screen to eliminate "negative"  
149 urine specimens from further consideration.

150 q. **Second Offense.**-- Constitutes any violation of the drug and alcohol-free  
151 workplace Policy following the initial violation, whether either violation involves  
152 drugs or alcohol.

153 r. **Specimen.**-- Tissue, hair, or product of the body capable of revealing the  
154 presence of drugs or their metabolites.

155 s. **Substance Abuse Professional ("SAP").**-- A person with knowledge of and

156 clinical experience in the diagnosis and treatment of alcohol/controlled  
157 substance related disorders who evaluates employees who have violated a  
158 DOT drug and alcohol regulation and makes recommendations concerning  
159 education, treatment, follow-up testing, and aftercare.

160  
161 t. **Volunteer (hereinafter, Volunteer or Employee).**-- An individual who offers  
162 services to the District without remuneration.

163 3. **Prohibited Conduct.**-- The following types of conduct are expressly prohibited by  
164 a covered employee:

165 a. **Off-the-Job.**-- Use or involvement with illegal drugs, alcohol, or other  
166 controlled substances that results in impaired work performance including, but  
167 not limited to, absenteeism, tardiness or poor work product(s), or which can be  
168 expected to cause harm to or otherwise adversely affect the employee or the  
169 District's image or relationship with students, other employees, or the public.

170 b. **Alcohol Concentration.**-- No covered employee shall report for duty or  
171 remain on duty while having an alcohol concentration of two one-hundredths  
172 (.02) or greater. No covered employee with an alcohol concentration of two  
173 one-hundredths (.02) or greater can drive a commercial motor vehicle.

174 c. **Alcohol Use/Misuse in General.**-- No covered employee shall report for duty  
175 or remain on duty requiring the performance of his/her duties while the  
176 covered employee is under the influence of or impaired by alcohol, as shown  
177 by the behavioral, speech and performance indicators of alcohol misuse.

178 d. **On-Duty Use.**-- No employee shall report for duty or remain on duty requiring  
179 the performance of safety sensitive functions within four hours after using  
180 alcohol or while the employee is under the influence of or impaired by drugs or  
181 alcohol, as shown by the behavioral, speech, and performance indications of  
182 drug or alcohol misuse. As a condition of employment, employees are  
183 required to remain away from the place of duty and off District property while  
184 under the influence of drugs or alcohol. Covered employees will notify their  
185 supervisors of any prescription, therapeutic drug use that might impair  
186 performance of safety sensitive functions.

187 e. **Use Following an Accident.**-- No covered employee involved in an accident  
188 shall use alcohol for eight (8) hours following an accident, or until undergoing a

189 post-accident alcohol test, whichever occurs first.

190 **f. Refusal to Submit to a Required Alcohol or Controlled Substances Test.-**  
191 - No covered employee shall refuse to submit to a post-accident alcohol or  
192 controlled substances test, a reasonable suspicion alcohol or controlled  
193 substances test, a fitness for duty alcohol or controlled substances test, or a  
194 follow-up alcohol or controlled substances test. Failure to complete and sign  
195 testing form(s), to provide an adequate specimen, or otherwise to cooperate  
196 with the testing process in a way that prevents the completion of the test shall  
197 be considered a refusal to test and shall be deemed a positive test result. Any  
198 attempt to adulterate a specimen or provide a specimen that is adulterated  
199 shall also be considered a refusal to test and deemed a positive test result.  
200 Any obstruction to and lack of cooperation with the testing process shall be  
201 considered a refusal to test and deemed a positive test result.

202 **g. Controlled Substances Use.--** No covered employee shall report for duty or  
203 remain on duty while under the influence of any controlled substance, except  
204 when the use is pursuant to instructions of a licensed medical practitioner, who  
205 has advised the individual that the substance will not adversely affect the  
206 individual's ability to safely perform work duties.

207 **h. Controlled Substances Testing.--** No covered employee shall report for duty  
208 or remain on duty after testing positive for controlled substances; the  
209 employee shall be placed in an unpaid, non-duty status, or on annual or sick  
210 leave, at the employee's option (unless the employee is incarcerated, in which  
211 case annual or sick leave is not an option).

212 **4. Verification of Records of Past Employers.--** The District is required to inquire  
213 about drug and alcohol test results of covered employees hired after January 1,  
214 1995, from previous regulated employers. The District is mandated to:

215 **a.** Inquire, pursuant to the covered employee's written consent, and obtain  
216 information generated within the preceding two (2) years on the driver's  
217 alcohol tests with an alcohol concentration of four one-hundredths (0.04) or  
218 greater, verified positive controlled substance test results, and refusals to be  
219 tested.

220 **i.** If feasible, the District must obtain and review the information before the



221 first time the individual performs duties for the District. If that is not  
222 feasible, the District must obtain and review the information as soon as  
223 possible, but not later than fourteen (14) calendar days after the first time  
224 a covered employee performs duties for the District.

225 ii. After fourteen (14) days has passed without receipt of this information,  
226 the District may not permit a covered employee to perform duties,  
227 provided the District has tried in good faith effort to obtain the necessary  
228 information as soon as possible.

229 iii. Even if the covered employee hired by the District ceases to perform  
230 duties, either before expiration of the fourteen (14) day period or before  
231 the District has obtained the information, the District must still try in good  
232 faith to obtain the information.

233 b. Provide to each of the covered employee's employers within the preceding two  
234 (2) years the individual's specific written authorization to release this  
235 information to the District.

236 c. Maintain a written, confidential record of each past employer contacted. Even  
237 if efforts to obtain the necessary information prove futile, the District must  
238 make and retain a record of its good faith efforts.

239 d. Prohibit the covered employee from performing duties if the employer obtains  
240 information that the individual has either refused to take a controlled  
241 substances and/or alcohol test, had a positive controlled substances test, or  
242 an alcohol test result of two one-hundredths (0.04) or greater without first  
243 obtaining information on subsequent compliance with the referral and  
244 rehabilitation requirements.

245 5. Referral for Testing.-- Appropriate notification and testing forms will be provided  
246 to employees, volunteers, and job applicants before drug testing.

247 6. Voluntary Self-Referral/Rehabilitation.-- At any time before notification of a  
248 required test, an employee is encouraged to contact the District's EAP for voluntary  
249 treatment of a drug or alcohol problem. Such employees may be required to  
250 submit to compliance testing as part of the treatment program. Voluntary self-  
251 referral made at the time of notification shall not excuse an employee from required  
252 drug and/or alcohol testing, nor shall it negate a positive result from such test. An

253 employee will not be subject to discharge or disciplinary action solely based on  
254 voluntary self-referral for treatment.

255 **7. Required Testing.--** Before performing an alcohol or controlled substances test  
256 under this Policy, the District shall notify the covered employee that the test is  
257 being administered pursuant to OTETA and the regulations of the FHWA. The  
258 District shall not falsely represent that a test is being administered under this  
259 Policy. The District shall provide educational materials to all covered employees  
260 before the start of alcohol and controlled substances testing under 49 Code of  
261 Federal Regulations Parts 40 and 382. A notice of the requirements for drug and  
262 alcohol testing will be included in the vacancy announcements for all covered  
263 positions. The District shall also provide written notice to representatives of  
264 employee organizations of the availability of the information contained in this  
265 Policy.

266 **a. Pre-employment Testing.--** All applicants for employment in any covered  
267 position safety-sensitive position requiring a CDL license shall undergo drug  
268 and alcohol testing as a condition precedent to employment, except as  
269 otherwise specified by Title 40, Code of Federal Regulations, § 382.301(c).  
270 Any applicant who tests positive in the pre-employment screening for a drug  
271 as defined in this policy is not eligible for employment with the District.

272 **b. Reasonable Suspicion Testing**

273 **i.** All employees who are determined to be under reasonable suspicion of  
274 drug and/or alcohol use are required to take a drug and alcohol test.  
275 Reasonable suspicion shall be determined by a supervisor at least one  
276 level above the employee to be tested. The circumstances supporting  
277 that determination must be drawn from specific objective and articulable  
278 facts that shall be documented in writing. Reasonable suspicion may  
279 include, but is not necessarily limited to, the following examples:

280 **1.** Observable phenomena while at work, such as direct observation of  
281 alcohol or drug use or of the physical symptoms or manifestations of  
282 being under the influence of alcohol or a drug. Physical symptoms  
283 or manifestations include, but are not limited to, slurred speech,  
284 alcohol odor on breath, unsteady walking and movement, poor  
285 coordination and/or reflexes, glassy or bloodshot eyes, physical

- 286                   altercations, verbal altercations, or unusual behavior.
- 287                   2. Abnormal conduct or erratic behavior while at work or a significant  
288                   deterioration in work performance.
- 289                   3. A report of alcohol or drug use by a reliable and credible source.
- 290                   4. Evidence that an individual has tampered with a drug test during the  
291                   term of employment.
- 292                   5. Information that an employee has caused, or contributed to, an  
293                   accident while at work.
- 294                   6. Evidence that an employee has used, possessed, sold, solicited, or  
295                   transferred drugs while working or while on the employer's premises  
296                   or while operating the employer's vehicle, machinery, or equipment.
- 297                   ii. Where testing is based on reasonable suspicion, the supervisor will detail  
298                   in writing the circumstances that formed the basis of the reasonable  
299                   suspicion determination. A copy of this written description shall be given  
300                   to the employee upon request and the original documentation shall be  
301                   kept confidential and exempt from the provisions of § 119.07(1), Fla.  
302                   Stat., as provided in § 440.102 (8), Fla. Stat., and retained for at least one  
303                   year.
- 304                   iii. Reasonable suspicion post-accident testing will be done on all employees  
305                   who are involved as a driver in any vehicular accident while performing  
306                   their duties as soon as practicable under the following circumstances:
- 307                   1. On a surviving employee when an accident results in loss of human  
308                   life. The employee need not have been cited for a moving traffic  
309                   violation or deemed at fault to be subject to testing under this  
310                   paragraph.
- 311                   2. When a covered employee receives a citation for a moving  
312                   violation(s) and one (1) or more of the vehicles involved in the  
313                   accident is towed from the scene of the accident; or
- 314                   3. A covered employee receives a citation for a moving violation(s) and  
315                   one (1) or more persons involved in the accident received medical

- 316                   treatment away from the scene of the accident.
- 317           iv. A covered employee who is subject to reasonable suspicion post-accident  
318           testing shall remain readily available for such testing. Failure or refusal to  
319           be available for testing may be deemed by the District as a refusal to  
320           submit to testing. A covered employee who refuses to submit to a post-  
321           accident drug test forfeits eligibility for employee medical and indemnity  
322           benefits. This provision shall not be construed as requiring the delay of  
323           necessary medical attention for injured persons following an accident or  
324           impeding an employee from leaving the scene of an accident to obtain  
325           necessary assistance in responding to the accident or to obtain  
326           necessary emergency care.
- 327           v. If alcohol testing is not administered within eight (8) hours following an  
328           accident, the District may not conduct alcohol testing based on the  
329           accident provision. Likewise, if controlled substance testing is not  
330           administered within thirty-two (32) hours following the accident, the  
331           District may not conduct controlled substance testing based on the  
332           accident provision. The District is required to document those instances  
333           when testing is not timely conducted according to the time frames noted  
334           above.
- 335           vi. Following an accident, the District will provide the employee  
336           transportation to a testing facility by a person designated for that purpose.  
337           After testing, the employee will be transported to the place of residence.
- 338           vii. A covered employee pending results of post-accident drug test shall be  
339           placed in a non-duty status and required to use annual or advanced  
340           leave. If an alcohol test yield a result of less than two one-hundredths  
341           (0.02) BAL and a controlled substances test yields a negative result, the  
342           District will restore the leave hours taken.
- 343           viii. Notwithstanding the absence of a reasonable suspicion alcohol test under  
344           this section, the District shall not permit a covered employee involved in  
345           an accident described above to perform or continue to perform safety  
346           sensitive duties until:
- 347           1. An alcohol test is administered and the employee's alcohol

348 concentration measures less than two one-hundredths (0.02) BAL; or

349 2. Twenty-four (24) hours have elapsed following the determination that  
350 there is reasonable suspicion to believe that the employee has  
351 violated the prohibitions of this Policy concerning the use of alcohol.

352 **c. Random Testing**

353 i. Every covered employee shall submit to random, unannounced drug  
354 testing, as per 49 C.F.R. § 382.305. The dates for administering the tests  
355 will be spread reasonably throughout the calendar year. Upon being  
356 notified of selection for random testing, the covered employee shall  
357 immediately report to the designated collection site.

358 ii. The District shall select covered employees for random alcohol and  
359 controlled substances testing by means of a scientifically valid method,  
360 such as a random number table or a computer-based random number  
361 generator that is matched with the covered employee's Social Security  
362 numbers, payroll identification numbers, or other comparable identifying  
363 numbers. Under the selection process used, each covered employee  
364 shall have an equal chance of being tested each time random selections  
365 are made. A minimum of 10% of all covered employees will be annually  
366 tested randomly for alcohol; a minimum of 50% of all covered employees  
367 will be tested annually at random for controlled substances. The testing  
368 percentage will be adjusted as required by the Administrator of the  
369 Federal Motor Carrier Safety Administration.

370 iii. For random alcohol testing only, a covered employee shall only be  
371 subject to such testing while the individual is performing safety sensitive  
372 functions, just before the covered employee is to perform safety sensitive  
373 functions, or just after the covered employee has ceased performing such  
374 functions.

375 **d. Return-to-Duty Testing.--** A covered employee who previously tested positive  
376 and was not dismissed shall not be returned to duty until the individual  
377 undergoes a subsequent controlled substances test indicating a verified  
378 negative result and/or subsequent alcohol test indicating a BAC of less than  
379 two one-hundredths (0.02). The employee may be required to pay for the

380 return-to-duty test.

381 e. **Follow-Up Testing.**-- All employees who are allowed to return to duty after  
382 successfully completing a return-to-duty test, including those who have  
383 successfully completed an employee assistance program or a drug or alcohol  
384 rehabilitation program and returned to duty, must submit to unannounced  
385 follow-up drug and alcohol after return to duty. Follow-up testing shall be  
386 conducted only when the covered employee is performing duties, just before  
387 the covered employee is to perform duties, or just after the covered employee  
388 has ceased performing duties.

389 8. **General Procedures after Positive Random Testing.**-- The following general  
390 procedures apply to covered employees who have tested positive for drugs or  
391 alcohol during random testing. (Disciplinary consequences and more specific  
392 procedures follow in Section 9, below).

393 a. A covered employee will not be permitted to perform safety sensitive functions  
394 until the covered employee has:

395 i. Been advised of the availability of and provided with the names,  
396 addresses, and telephone numbers of SAPs and counseling and  
397 treatment programs; and

398 ii. Been evaluated by a SAP who shall determine what assistance, if any,  
399 the individual needs to resolve problems associated with alcohol misuse  
400 and controlled substance use; and

401 iii. Successfully completed the SAP-recommended treatment program and  
402 completed a return-to-duty alcohol test (with a result indicating an alcohol  
403 concentration of less than two one-hundredths (0.02) if the conduct  
404 involved alcohol) or a controlled substances test with a verified negative  
405 result if the conduct involved a controlled substance.

406 b. The covered employee will be subject to follow-up testing as directed by the  
407 SAP, which at a minimum must consist of at least six (6) tests in the twelve  
408 (12) months following the covered employee's return to duty. The District will  
409 direct the covered employee to undergo return-to-duty and follow-up testing for  
410 both alcohol and controlled substances, if the SAP determines that return-to-  
411 duty and follow-up testing for both alcohol and controlled substances is

412 necessary for that particular individual.

413 9. **Disciplinary Action.**-- Employees who violate this Policy will be subject to  
414 disciplinary action, up to and including termination of employment. The  
415 consequences for a positive drug or controlled substances test shall begin with the  
416 employee's immediate removal from safety-sensitive duties. No covered employee  
417 shall report for duty or remain on duty while the employee is under the influence of,  
418 or impaired by, drugs or alcohol.

419 a. Testing positive for drugs or alcohol during a reasonable suspicion test is a  
420 terminable offense.

421 b. Testing positive for drugs or alcohol during a random test will be subject to the  
422 following:

423 i. **Alcohol Use, BAC Less than 0.04.**-- Alcohol content of two one-  
424 hundredths through thirty-nine one-thousandths (0.02 - 0.039)

425 1. The employee will be immediately removed from safety sensitive  
426 duties.

427 2. A covered employee may not function or continue to perform safety  
428 sensitive duties, including driving a commercial motor vehicle, until  
429 the start of the covered employee's next regularly scheduled duty  
430 period, but not less than twenty-four (24) hours after the test is  
431 administered.

432 3. The covered employee shall be subject to disciplinary action, up to  
433 and including termination.

434 ii. **Alcohol Use, BAC 0.04 or More.**-- Alcohol content of four one-  
435 hundredths (0.04) or greater

436 1. **First Offense**

437 A. The employee will be removed immediately from all duties.

438 B. An alcohol content of four one-hundredths (0.04) or greater is a  
439 terminable offense; however, a covered employee who wishes  
440 to continue employment with the District and has not otherwise

441 engaged in conduct that could result in termination must  
442 successfully participate in a treatment or rehabilitation program  
443 as directed by an SAP through the District's EAP, which will  
444 include unannounced follow-up testing as directed by the SAP.  
445 If the employee is unable to participate in outpatient  
446 rehabilitation, the employee may be placed on leave status  
447 while participating in an EAP or an alcohol and drug  
448 rehabilitation program. If placed on a leave-without-pay status,  
449 the employee shall be permitted to use any accumulated leave  
450 before being placed on leave without pay.

451 C. A covered employee who successfully completes a required  
452 EAP or an alcohol or drug rehabilitation program will be returned  
453 to duty in the same or an equivalent position. Before returning  
454 to duty, the covered employee must undergo a return-to-duty  
455 alcohol test with a result indicating an alcohol concentration of  
456 less than two one-hundredths (0.02). The employee will also be  
457 subject to unannounced follow-up testing for a twenty-four (24)  
458 month period as directed by the SAP.

459 D. Refusal to participate in the EAP or the alcohol and drug  
460 rehabilitation or failure to successfully complete such program  
461 will result in termination of employment.

462 E. Failure or refusal to sign a written consent form allowing the  
463 District to obtain information regarding the progress and  
464 successful completion of an EAP or an alcohol and drug  
465 rehabilitation program will result in termination of employment.

## 466 2. Second Offense

467 A. A second positive test with an alcohol content of four one-  
468 hundredths (.04) or greater on an alcohol test will result in  
469 termination of employment.

470 B. The individual shall be ineligible for future employment in any  
471 capacity with the District.

472 C. Refusal to submit to an alcohol test will be deemed a positive



473 test result of alcohol content of over four one-hundredths (0.04).

474 **iii. Controlled Substances Use**

475 **1. First Offense**

476 **A. The employee will be immediately removed from all duties.**

477 **B. A verified positive controlled substances test is a terminable**  
478 **offense; however, a covered employee who wishes to continue**  
479 **employment with the District and has not otherwise engaged in**  
480 **conduct that could result in termination must successfully**  
481 **participate in a treatment or rehabilitation program as directed**  
482 **by an SAP through the District's EAP, which will include**  
483 **unannounced follow-up testing as directed by the SAP. If the**  
484 **employee is unable to participate in outpatient rehabilitation, the**  
485 **employee may be placed on leave status while participating in**  
486 **an EAP or an alcohol and drug rehabilitation program. If placed**  
487 **on a leave-without-pay status, the employee shall be permitted**  
488 **to use any accumulated leave before being placed on leave**  
489 **without pay.**

490 **C. A covered employee who successfully completes a required**  
491 **EAP or an alcohol or drug rehabilitation program will be returned**  
492 **to duty in the same or an equivalent position. Before returning**  
493 **to duty, a covered employee must undergo a return-to-duty**  
494 **controlled substance test with a negative result for all controlled**  
495 **substances. The employee will also be subject to unannounced**  
496 **follow-up testing for a twenty-four (24) month period.**

497 **D. Refusal to participate in the EAP or the alcohol and drug**  
498 **rehabilitation or failure to successfully complete such program**  
499 **will result in termination of employment.**

500 **E. Failure or refusal to sign a written consent form allowing the**  
501 **District to obtain information regarding the progress and**  
502 **successful completion of an EAP or an alcohol and drug**  
503 **rehabilitation program will result in termination of employment.**

504 **2. Second Offense**

505 A. A second verified positive test will result in termination of  
506 employment.

507 B. The individual shall be ineligible for future employment in any  
508 capacity with the District.

509 C. Refusal to submit to a controlled substances test will be deemed  
510 a positive test result for controlled substances.

511 **10. Refusal to Submit to Testing**

512 a. No covered employee shall refuse to submit to a post-accident alcohol or  
513 controlled substances test; a random alcohol or controlled substances test; a  
514 reasonable suspicion alcohol or controlled substances test, or follow-up  
515 alcohol or controlled substances tests. Refusal to submit to testing includes  
516 obstruction to and lack of cooperation with the testing process.

517 b. Refusal to submit to required testing will result in immediate removal from  
518 safety-sensitive functions and disciplinary action up to and including  
519 termination.

520 **11. Testing Procedures**

521 a. Covered employees subject to testing for the presence of alcohol and  
522 controlled substances will be subject to the testing procedures detailed in Title  
523 49, CFR, Parts 40 and 382, entitled Procedures for Transportation Workplace  
524 Drug Testing Programs.

525 b. The District will comply with all procedures specified by Title 49, CFR, Parts 40  
526 and 382, to protect the covered employee and the integrity of the testing  
527 processes. In no event will any testing be conducted that might in any way  
528 endanger the life of the covered employee.

529 c. The District will comply with all procedures specified by Title 49, CFR, Parts 40  
530 and 382, to safeguard the validity of the results and to ensure that those  
531 results are attributed to the correct covered employee, including post-accident  
532 information, procedures, and instructions.

533 **12. Results Reporting**

534 a. The MRO shall contact the tested covered employee directly, on a confidential  
535 basis, before verifying a positive test result.

536 b. The MRO shall allow the covered employee an opportunity to discuss the test  
537 result. If the MRO makes reasonable, documented efforts but is unable to  
538 reach the covered employee within five (5) working days of a verified positive  
539 result, the MRO shall inform the District's designated representative, who shall  
540 then direct the tested covered employee to contact the MRO as soon as  
541 possible.

542 c. If, after making all reasonable efforts, the District's designated representative  
543 is unable to contact the covered employee, the District may place the covered  
544 employee on temporary medically unqualified status or medical leave.

545 d. The MRO's communication with the tested covered employee is important to  
546 verification of a positive test result; however, the MRO will verify a test result  
547 as positive to the District without having communicated directly with the  
548 covered employee in three (3) circumstances:

549 i. The tested covered employee declines the opportunity to discuss the test  
550 with the MRO;

551 ii. Neither the MRO nor the District representative, after making all  
552 reasonable efforts, has been able to contact the individual within fourteen  
553 (14) days of the date on which the MRO receives the confirmed positive  
554 test result; or

555 iii. The District representative has successfully made and documented a  
556 contact with the tested covered employee and instructed the covered  
557 employee to communicate with the MRO and more than five (5) days  
558 have passed since the date the covered employee was successfully  
559 contacted by the District.

560 e. Following the verification of a positive test result, the MRO shall refer the case  
561 to the District's designated representative empowered to recommend or take  
562 administrative action.

563 f. After the MRO has verified a positive test result to the District, the tested  
564 covered employee may contact the MRO and present information  
565 documenting the reasons (serious illness, injury or other circumstances) that  
566 prevented the individual from communicating with either the MRO or the  
567 District representative. The MRO, may, upon review of the reasons, reopen  
568 the verification and allow the covered employee to present information  
569 concerning a legitimate explanation for the confirmed positive test. If the MRO  
570 concludes that there is a legitimate explanation, the MRO will declare the test  
571 to be negative.

572 g. The District shall provide upon request to the tested individual—covered  
573 employee, volunteer, or job applicant—a copy of the test results.

### 574 13. Challenges to Test Results

575 a. A positive test result does not automatically identify an employee as having  
576 used drugs in violation of this Policy; therefore, providing the MRO with  
577 detailed knowledge of possible alternative explanations is important to the  
578 review of results and is the responsibility of the employee/applicant/volunteer.

579 b. The MRO shall notify an employee whose test result has been confirmed as  
580 positive of the right to request an independent analysis within seventy-two (72)  
581 hours. If the employee requests the independent analysis within seventy-two  
582 (72) hours, the MRO shall take appropriate action to direct the analysis. Such  
583 independent analysis shall be conducted by “split specimen,” at the  
584 employee’s expense, with sufficient specimen being retained for later  
585 verification testing.

586 c. If the employee fails to contact the MRO within seventy-two (72) hours but  
587 later contacts the MRO and presents information documenting the reasons  
588 (serious illness, injury, inability to contact the MRO, lack of actual notice of a  
589 verified positive test result or other circumstances) that prevented the  
590 employee from timely contacting the MRO, the MRO may conclude that there  
591 is a legitimate explanation for the employee’s failure to contact the MRO within  
592 seventy-two (72) hours and may direct the analysis of the split specimen.

593 d. The tested employee shall bear the expense of any employee-requested  
594 testing of a specimen.

595 e. All aspects of the testing process, including any challenge to the testing  
596 process, will be kept confidential except as stated below and as required by  
597 law.

598 **14. Record Retention, Confidentiality and Disclosure Requirements**

599 a. The District shall maintain records of its alcohol misuse and controlled  
600 substances use prevention program as provided for in accordance with Title  
601 49 CFR, Parts 40 and 382. The records shall be maintained in a secure  
602 location with controlled access.

603 b. The District must maintain the following specific types of records and all other  
604 documents generated by the District in accordance with Title 49, CFR, Parts  
605 40 and 382:

606 i. Records related to the collection process;

607 ii. Records related to a covered employee's test results, including refusals to  
608 be tested;

609 iii. Records related to violations of these regulations;

610 iv. Records related to evaluations by a SAP;

611 v. Records related to education and training, including the driver's signed  
612 receipt of the educational materials; and

613 vi. Administrative records related to alcohol and controlled substance testing.

614 c. The District will maintain the types of records described above separate from  
615 an applicant's or covered employee's personnel file.

616 d. Except as expressly required or authorized by law and this Policy, the District  
617 shall not release any information that is contained within these records.

618 e. An individual is entitled, upon written request, to obtain copies of personal  
619 records, including test results. The District shall promptly provide the records  
620 requested. The requesting person (current or formerly covered employee/  
621 volunteer) is not required to pay for access to personal records, but may be  
622 required to reimburse the District for photocopies of the records.

623 f. These records of covered employees may be made available to a subsequent  
624 or prospective employer only upon receipt by the District of a written request  
625 from the former or current covered employee. Disclosure by the District will be  
626 limited to that expressly authorized by the requesting covered employee.

627 g. The District may disclose information pertaining to a covered employee to the  
628 decision maker in a lawsuit, grievance, or other proceeding initiated by or on  
629 behalf of the covered employee and arising from alcohol and controlled  
630 substances testing or the District's own determination that the covered  
631 employee engaged in prohibited conduct.

632 15. Required Training.-- Any supervisor or other employee who is assigned the  
633 responsibility for making a reasonable suspicion determination shall complete a  
634 training program of at least sixty (60) minutes on alcohol misuse and sixty (60)  
635 minutes on controlled substance abuse.

636 16. District Designated Representative.-- The District designates the director of  
637 professional standards as the person to whom all covered employees should direct  
638 questions about this Policy.

639 17. Information Available.-- All covered employees are entitled to information  
640 concerning the effects of alcohol and controlled substances. The District shall  
641 make available information and may include prepared pamphlets. The District shall  
642 also make available information about its EAP.

643 18. Certificate of Receipt.-- A certificate of receipt will be used and shall have content  
644 substantially as follows:

645 CERTIFICATE OF RECEIPT

646 By signing this statement, I certify that I have received a copy of the Palm Beach  
647 County School Board Policy 3.961, Drug and Alcohol Policy for Employees Performing  
648 Safety Sensitive Functions and Holders of Commercial Drivers Licenses in accordance  
649 with the Omnibus Transportation Employee Testing Act ("OTETA") and the regulations  
650 of the Federal Highway Administration ("FHWA") contained in 49 CFR Parts 40 and  
651 382. The Policy is separate from and in addition to any other District drug and/or  
652 alcohol testing policies.

653 \_\_\_\_\_  
654 Employee Full Name – PRINT OR TYPE                      Department Number

655 \_\_\_\_\_  
656 Employee Signature    Date

657 \_\_\_\_\_  
658 Supervisor Signature    Date

659

660 STATUTORY AUTHORITY §§ 1001.41(1), (2); 1001.43(11), Fla. Stat.

661 LAWS IMPLEMENTED: § 440.102, Fla. Stat; Omnibus Transportation  
662 Employee Testing Act of 1991, Pub. L. 102-143; 49  
663 U.S.C. Chapter 53; Regulations of Federal Motor  
664 Carrier Safety Administration; Title 49 Code of  
665 Federal Regulations, Parts 40 and 382.

666 HISTORY: \_\_\_\_\_ / \_\_\_\_\_ /04

Legal Signoff:

The Legal Department has reviewed proposed Policy 3.961 and finds it legally sufficient for development by the Board.

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date