

CHAPTER 4

4.1.26 DRUG-FREE WORKPLACE (Revised 1/10/95) Revised 11/24/15)

The Marshall County Board of Education adopts this policy to establish and maintain a drug-free workplace as explained herein. The use, misuse and abuse of alcohol and drugs in the workplace present a clear danger to the health, welfare, and safety of the Board's students and employees. All employees shall be made aware of this policy and its requirements as explained herein.

4.1.26.1 DEFINITIONS:

Alcohol – ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

Contractor – any department, division, unit, or any person responsible for the performance or work under a contract with the Board.

Conviction – a finding of guilt (including a plea of nolo contendere) or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal Drug Statute – a criminal statute involving the manufacture, distribution, dispersion, use, or possession of any controlled substance.

Drug-Free Workplace – a work site where work is performed in connection with the employee's contract with the Board of Education. This workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the Board of Education as well as any other place at which the employee is being compensated by the Board to perform any work.

Drug – (1) articles/substances recognized as drugs for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or other animals as recognized by the United States Pharmacopeia Convention, and/or as noted by the American Society of Health-System Pharmacists-Facts and Comparisons, the American Society of Health-System Pharmacists drug information database, the Physicians' Desk Reference, and/or any similar recognized authoritative text; (2) articles, other than food, intended to affect the structure or any function of the body of a human or animal; and (3) articles intended for use as a component of any articles specified in subsection (1) or (2) or this definition.

Employee – any person who works under any contract with the Board of Education for compensation of any kind.

Federal Agency – any agency as that term is defined in Section 552 (f) of Title IV, United States Code.

Grantee – any department, division unit, or person responsible for the performance of work under the provisions of a Federal grant.

Illegal Drug – any drug which is not legally obtainable and/or is being used in a manner or for a purpose other than as prescribed.

Intoxicants – any intoxicating substance.

Legal Drug – nonprescription medication (medication that may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this State and Federal government) and prescription medication (medication, including any controlled substance under State or Federal law, that is required prior to being dispensed or delivered, to be labeled with any of the following statements: (1) “Caution: Federal law prohibits dispensing without prescription” or “Rx only” ; (2) “Caution: Federal law restricts this drug to use by, or on the order of a licensed veterinarian”; as well as any drug which is required by any applicable Federal or State law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

Look-Alike Drugs – tablets or capsules or other substances that are made to look like authentic drugs and are intended to imitate their effects.

Prohibited substance – means alcohol, intoxicants, look-alike drugs, illegal drugs and/or legal drugs/controlled substances which have not been lawfully prescribed or which have been lawfully prescribed but are being used in a manner that is not consistent with that prescription.

Work Day – the work day includes all time when an employee is engaged in any activity related to his/her employment with the Board and shall include but not be limited to all times from the moment the employee is required to report to work until the employee is permitted to end his/her work day. The work day includes but is not necessarily limited to any day on which the employee reports to work, all meal breaks or rest periods taken during any day on which the employee reports to work and any time the employee is being compensated by the Board of Education to perform any kind of work at any Board-sponsored/related events as well as all times when the employee is on/in any board-owned or leased properties, buildings, and/or vehicles.

4.1.26.2 APPLICATION AND GOALS OF POLICY

- A. It is the policy of the Marshall County Board of Education to ensure that its workplaces are free of alcohol, intoxicants, look-alike drugs, illegal drugs and legal drugs/controlled substances which have not been lawfully prescribed, and drug paraphernalia by prohibiting; a) the unlawful manufacture, distribution, possession and/or use of the same at its workplaces; b) employees being under the influence of the same during the work day and/or while on/in property, buildings, and/or vehicles owned or leased by the Board.

- B. This policy is applicable while employees are engaged in any work-related activity which includes performing any work during regularly-scheduled working hours, meal breaks, rest periods, and/or other occasions having a rational connection with the Board of Education and its mission. In addition, this policy is applicable at any and all times when employees are on Board property, in attendance at any school or school board activity/function. It is further applicable during the performance of any and all job-related activities, and/or while traveling in any vehicle owned, leased, or rented by the Board of Education.
- C. This policy's primary goal is to ensure that the Board's workplaces are safe, healthful, and secure for the Board's employees, students and visitors by keeping these workplaces free of alcohol, intoxicants, look-alike drugs, illegal drugs and/or legal drugs/controlled substances which have not been lawfully prescribed and drug paraphernalia as well as employees who are under the influence of the same.
- D. This policy applies to all Board of Education employees including transportation-related employees who are required to comply with United States Department of Transportation drug testing guidelines.

4.1.26.3 PROHIBITED AND REQUIRED EMPLOYEE CONDUCT

- A. No employee shall unlawfully manufacture, distribute, possess or use alcohol, intoxicants, look-alike drugs, illegal drugs and/or legal drugs/controlled substances which have not been lawfully prescribed, and/or paraphernalia at any time or place subject to this policy.
- B. No employee shall report to work or remain on duty while under the influence of intoxicants, look-alike drugs, illegal drugs and/or legal drugs/controlled substances which have not been lawfully prescribed, regardless of the amount of the same in the employee's bodily systems.
- C. No employee shall report to work or remain on duty while having a blood alcohol concentration of .04 or greater.
- D. No employee shall report for duty or remain on duty while under the influence of any amount of any intoxicants, look-alike drugs, illegal drugs and/or legal drugs/controlled substances which have not been lawfully prescribed.
- E. No employee shall consume or possess open containers of alcohol on Board of Education property, in a Board of Education vehicle or vehicles rented by the Board of Education.
- F. No employee shall refuse to submit to a post-accident, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test, as applicable. Any such refusal shall be treated as a positive drug test and the employee will be subject to discipline up to suspension without pay and/or termination.

- G. No employee shall report for duty or remain on duty when the employee uses any legal drug/controlled substance, except when its use is pursuant to the instructions of a physician who has prescribed the same advised the employee that the substance will not adversely affect the employee's ability to perform his/her duties.
- H. Employees suspected of engaging in conduct prohibited by this policy shall be deemed unqualified to perform his/her assigned duties and shall be immediately removed from his/her assignment in order to protect the health, safety, and welfare of students and others in the workplace.
- I. Employees who violate any portion of a drug testing facility's protocol for obtaining a sample from the employee, which protocol has been explained to the employee orally or otherwise, are subject to disciplinary action up to and including suspension without pay and termination of their employment with the Board.
- J. No employee shall commit a Criminal Drug Statute offense in the workplace.
- K. Every employee shall notify his/her immediate supervisor if he/she is convicted (including pleading no contest) of violating a criminal drug statute which violation occurred in the workplace, no later than five (5) calendar days after such conviction.

4.1.26.4 CONSEQUENCES OF POLICY VIOLATION(S)

Any employee who engages in conduct prohibited by this policy shall be subject to one or more of the following actions depending upon the circumstances of the violation:

- A. Notification of law enforcement agency.
- B. Notification of the West Virginia Department of Education.
- C. Suspension with and/or without pay.
- D. Termination of employment.
- E. Under appropriate circumstances, as determined by the Superintendent, required enrollment in and successful completion of a substance abuse/counseling program at the employees' own expense as a condition of continued employment with the Board of Education.
- F. Upon receiving notice of any employee's **conviction** of a criminal drug statute occurring in the workplace, the Board must take appropriate action within 30 calendar days which may include: (1) taking appropriate personnel action against employee up to and including termination of his/her contract of employment (consistent with requirements of the Rehabilitation Act of 1973 and the Americans with Disabilities Act), or (2) requiring the employee's satisfactory participation in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement or other appropriate agency. The Board shall apply all consequences fairly and consistently as required by law.

- G. Upon receiving notice of an employee's conviction of a criminal drug statute occurring in the workplace, the Board shall notify the federal department of education or other federal grantor agency as required by the Drug-Free Workplace Act of 1988. (At the time this policy was drafted, the law requires that written notification be issued within 10 calendar days of learning of the employee's conviction.)

4.1.26.5 RETURN TO DUTY AFTER A VIOLATION OF POLICY

- A. At the discretion of the Superintendent, those employees who have been suspended with or without pay for a violation of this policy may be required to do any or all of the following as a condition of the employee being permitted to return to duty:
1. The employee must furnish a written verification of his/her successful completion of a substance abuse/counseling program; and/or
 2. The employee must furnish a physician's statement verifying that the employee is drug/alcohol free; and/or
 3. The employee must furnish proof of restoration and/or maintenance of any certification or license required for employee to legally perform his or her job duties for the Board of Education; and/or
 4. The employee must consent to and complete a pre-return-to-work urine or blood drug test that demonstrates that the employee is free from drugs and alcohol (other than prescription drugs which have been prescribed for the employee in an amount consistent with the prescription).
- B. Failure of any employee to meet any of the forgoing conditions as required by the Superintendent may and likely shall result in a denial of the employee's request to return to work as well as further disciplinary action up to and including termination of the employee's contract with the Board.

4.1.26.6 MANDATORY REPORTING REQUIREMENTS

- A. Any employee who has a good faith belief that another employee has violated or is violating any portion of this policy other than being under the influence of a prohibited substance while at work shall contact his/her supervisor within 24 hours and report all of the following:
1. the name of the suspected employee, and
 2. the reasons and circumstances that led the reporting employee to believe that suspected employee has or is violating this policy.
- B. Any employee who has a good faith belief that another employee in the workplace is under the influence of a prohibited substance shall immediately contact his/her supervisor and report all of the following:

1. the name of the suspected employee, and
2. the reasons and circumstances that led the reporting employee to believe that the suspected employee is under the influence of a prohibited substance.

4.1.26.7 REASONABLE SUSPICION DOCUMENTATION & ALCOHOL AND DRUG TESTING

A supervisor administrator who receives a report of an employee being under the influence of a prohibited substance shall, if he/she has received the training required by this section, personally interact with and observe the suspected employee and document his/her observations. If the supervisor or administrator who received said report has not received the training required by this section, he/she shall immediately provide this report to an administrator who has received said training.

Reasonable suspicion for requiring an employee to submit to drug and/or alcohol testing to determine whether the employee has violated this policy by being under the influence of alcohol or other prohibited substance shall be deemed to exist when an employee manifests physical or behavioral symptoms or reactions commonly attributed to the use and/or misuse of alcohol or other prohibited substance as documented **by an administrator who has received at least one (1) hour of training¹ on recognizing and documenting such physical and/or behavioral symptoms and/or reactions and the requirements of this policy.**

When the administrator determines that he/she has the necessary reasonable suspicion to require that the employee submit to alcohol and drug testing, he/she shall demand of the employee that the employee submit to drug/alcohol testing.

The administrator or his/her designee shall provide transportation for the employee and accompany him/her to a drug and alcohol testing facility that meets reasonable industry standards for conducting and verifying the results of alcohol and drug testing, and shall remain there with him/her until the initial test result is completed, except as otherwise provided herein.

If initial test results will not be available within 60 minutes of providing a sample for testing, the employee shall be instructed not to report to work until 1) the results are provided to the administration, and 2) he/she is instructed to do so by the Superintendent or his/her designee.

¹NOTE: The "one hour of training" is not a requirement of WV Law or the Drug-Free Workplace Act of 1988. Two hours of reasonable suspicion training is required under DOT regulations. But the Drug-Free Workplace Act does not contain such minimums. In any case though, it is wise to set some kind of minimum number of minutes of training to avoid claims by employees that administrators failed to meet any kind of training standard.

4.1.26.8 REFUSAL TO SUBMIT TO REASONABLE SUSPICION OR OTHER LAWFUL ALCOHOL AND DRUG TESTING

Refusal of any employee to submit to the types of drug and alcohol tests used by the Board of Education and its selected testing facilities shall be deemed a positive drug test result and shall be sufficient grounds to terminate the employment of such employee.

A refusal to test includes any behavior which is intended to obstruct the proper administration of a test. An employee's intentional and unreasonable delay in providing urine, breath, blood, or other specimen shall be considered a refusal to submit to testing and may result in the termination of the employee's contract with the Board of Education.

In the event that an employee cannot provide a sufficient urine specimen, the testing facility shall start a shy bladder log or similar procedure, and the Board of Education may avail itself of other drug testing protocols and/or have the employee examined by a physician immediately. If the examining physician cannot, to a reasonable degree of medical certainty, determine a legitimate medical explanation for the employee's inability to provide a specimen the same may be considered a refusal to test.

Except as otherwise provided herein, an employee shall NOT leave any alcohol and drug testing facility for any reason before the facility is able to obtain a sample from the employee, unless the employee is authorized and instructed to do so by the school administrator handling the matter or his/her designee.

If an employee violates any portion of a testing facility's protocol for obtaining a sample from the employee, which protocol has been explained to the employee orally or otherwise, the same shall constitute a refusal to submit to testing.

4.1.26.9 CONDITIONS OF EMPLOYMENT

As a condition of employment with the Board of Education, each employee shall: (a) strictly abide by the terms of this policy; employee compliance is mandatory and cannot be waived or modified by any person; (b) notify his/her immediate supervisor if he/she is convicted (including pleading no contest) of violating a criminal drug statute conviction which violation occurred in the workplace, no later than five (5) calendar days after such conviction; and (c) read and sign a statement evidencing that the employee is aware of this policy, has been given a copy of this policy, and agrees to abide by the terms of this policy.

4.1.26.10 EDUCATION & AWARENESS

It shall be the responsibility of the Board of Education to establish a drug-free awareness program for Board of Education employees to provide information on the following: (a) alcohol and drug abuse referral/treatment services available through PEIA; (b) the establishment and maintenance of a drug-free workplace as outlined in this policy; and (c) literature about the health risks and dangers of drug and alcohol abuse.

4.1.26.11 ADMINISTRATIVE GUIDELINES

The Board authorizes the Superintendent to establish written administrative guidelines to facilitate enforcement of and compliance with this policy.