



May 2019

# Pre-Employment Mandatory Drug Testing Policy

This Pre-Employment Drug Testing Policy rescinds and supersedes all previous policy, memoranda, and/or guidance promulgated by DCPS on this subject matter including, but not limited to, the previous DCPS Pre-Employment Mandatory Drug Testing Policy (February 2018).

Chancellor Approval:

Effective: May 31, 2019

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## Section 1 - Authority

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The District of Columbia Public Schools (DCPS) is committed to protecting the safety, health, and welfare of the young people in its charge as well as that of its employees. Towards that end – and by the authority provided by Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (D.C. Law 15-353, D.C. Official Code § 1-620.31 et seq.), DCPS hereby revises and updates the requirements of the DCPS pre-employment drug testing program (hereinafter referred to as the “Pre-Employment MDT Program”). This document sets forth the policy for said program.

## Section 2 - Affected Individuals

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Individuals seeking employment in “safety-sensitive” positions shall be subject to drug testing. Per the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (D.C. Law 15-353, D.C. Official Code § 1-620.31 *et seq.*), a “safety-sensitive” position is defined as “employment in which the District employee has direct contact with children or youth; is entrusted with the direct care and custody of children or youth; and whose performance of his or her duties in the normal course of employment may affect the health, welfare, or safety of children or youth.”

## Section 3 - Notification

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Vacancy announcements for safety-sensitive positions within DCPS shall clearly state that:

1. The position has been designated as a safety-sensitive position subject to mandatory drug testing.
2. If tentatively selected for hire into a safety-sensitive position, a candidate shall be required to submit to testing for illegal drug use within fifteen (15) calendar days of being selected for hire (prior to employment), and that employment shall be contingent upon negative test results.
3. Failure to test within the required fifteen (15)-calendar day window shall result in the Applicant's hire request being canceled.
4. Once hired into a safety-sensitive position, the candidate shall be subject to the Employee DCPS Mandatory Drug and Alcohol Testing policy.

## Section 4 - Testing Procedures

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### 4.1 Testing Method and Substances Tested

Urine specimens obtained for drug tests shall be subject to an initial Enzyme-Multiplied-Immunoassay Test (EMIT) for illegal drugs, as defined by the Controlled Substances Act (D.C. Official Code § 48-901 *et seq.*), including, but not limited to, the following substances:

1. Marijuana (THC)
2. Cocaine
3. Opiates
4. Amphetamines
5. Phencyclidine (PCP)

If the specimen tests positive for illegal drugs on the initial test, the positive result will be confirmed using the Gas Chromatography/Mass Spectrometry (GC/MS) testing method.

### 4.2 Certified Laboratory

All MDT program testing shall be performed by a DCPS-selected external laboratory certified by the United States Department of Health and Human Services (HHS) to perform job-related drug forensic testing. Applicants traveling outside of the country during their fifteen (15) calendar day window are addressed in section 5.2.

### 4.3 Collection Procedures

- 4.3.1 Each covered candidate shall submit to breath and urine specimen collection at his/her scheduled test date, time, and place.
- 4.3.2 Prior to specimen collection, the covered candidate shall present a government-issued picture identification to the collector.
- 4.3.3 Candidates are not entitled to representation during the collection or testing processes, and collection shall not be delayed to permit a candidate to obtain representation.
- 4.3.4 Specimen collection shall be done at a site that affords visual and aural privacy to the candidate being tested.
- 4.3.5 The covered candidate shall provide a urine specimen in the privacy of a stall/toilet area, except where a direct observation is required for reasons listed elsewhere in this Policy.

### 4.4 Drug Testing

#### 4.4.1 Initial Testing

Initial testing for drugs including, but not limited to, Marijuana, Cocaine, Opiates, Amphetamines, and Phencyclidine shall be conducted using the Enzyme-Multiplied-Immunoassay Test (EMIT). If the result of this initial screening test is negative, no

additional testing for the presence of drugs or drug metabolites shall be done, unless adulteration is suspected.

#### 4.4.2 Confirmation Test

If the initial test is positive for the presence of drugs or drug metabolites, the positive result shall be confirmed using the Gas Chromatography/Mass Spectrometry (GC/MS) testing method.

### 4.5 Medical Review Officer Verification

#### 4.5.1 Medical Review Officer (MRO)

The certified laboratory shall send results of all drug tests to a certified, external Medical Review Officer (MRO), who shall determine whether results are positive or negative.4.2.2.6 If a confirmation test is positive for the presence of drugs or drug metabolites, a medical review officer (MRO), (an external, licensed physician trained to interpret drug test results), shall consult with the donor to determine whether the confirmed test result could be a false positive or whether the candidate has a legitimate medical reason for testing positive (e.g., the candidate is using an otherwise prohibited drug in accordance with a prescription). If a positive test result is determined to be a false result, or the MRO determines a legitimate medical reason exists for the positive result, the MRO shall certify the test as negative.

#### 4.5.2 Split Sample Test

If the test is verified as positive by the MRO, the donor may make a request within 72 hours of his/her positive result that the MRO send the split sample specimen to an HHS-certified laboratory of his/her choice for testing. Testing of the split sample shall be at the donor's expense.

If the test result of the split sample specimen is negative, the test shall be considered negative, regardless of the results of the initial test, and DCPS shall rescind adverse actions taken against the donor, if any.

### 4.6 Specimen Integrity

The certified collector shall take every precaution to ensure that a urine specimen is not adulterated or diluted during the collection process.

All of the following steps shall be taken:

1. The covered candidate to be tested shall remove unnecessary outer garments such as coats or jackets that might conceal items or substances that could be used to tamper or adulterate a sample.
2. Personal belongings such as purses or briefcases shall remain outside the testing area.
3. The covered candidate shall be instructed to wash and dry his/her hands.
4. The covered candidate shall not have access to any adulterating agents.
5. Where practicable, there shall be no other source of water in the enclosure where urination occurs.
6. The certified collector shall make note of any unusual behavior by the covered candidate.

## 4.7 Direct Observation Collections

- 4.7.1 In a direct observation collection, a same-sex collector or observer accompanies the donor into the stall/toilet area and observes the act of urination. Direct observation collections are required under the following circumstances:
1. The specimen temperature of the original specimen is outside the acceptable range;
  2. The donor presents a specimen that appears to be adulterated, such as the specimen is of unusual smell or color, or is foaming, other liquids have been added to the specimen, among other things;
  3. The collector observes materials brought into the collection site to be used for adulteration, or the donor's conduct clearly indicates an attempt to tamper with his or her specimen; or
  4. DCPS was required to direct the donor to have an immediate, direct observation collection (with no advance notice) because: 1) the laboratory reported to the MRO that the specimen was invalid and the MRO reported to the employer that there was not an adequate medical reason for this; or 2) the MRO reported that an original positive, adulterated, or substituted test result had to be cancelled because the test of the split could not be performed.
- 4.7.2 Should a donor be required to submit a urine sample under direct observation, he or she must submit that sample before leaving the testing site.
- 4.7.3 It is the responsibility of the Mandatory Drug and Alcohol Testing Team (MDAT) Team to notify the collector when a direct observation collection is required for issues which are not outlined above.

## 4.8 "Shy Bladder" Protocol

If the donor being tested is unable to provide the minimum amount of urine necessary to permit drug testing, the collection site personnel shall adhere to the following protocol:

1. Instruct the donor to drink no more than 40 ounces of fluid within a three-hour period, and then attempt to provide a complete sample using a fresh collection container.
2. If the next sample is of a sufficient quantity, the collection shall be properly packaged and forwarded to the laboratory. However, if the sample is of an inadequate quantity, the donor shall be given an opportunity to submit a doctor's statement to the MRO and MDAT Team that adequately explains the donor's inability to provide adequate urine. The donor must submit the doctor's statement to the MRO within three business days for it to be considered.
3. The statement, if accepted by the MRO, shall remain on file and shall be updated as determined by the MRO. In the event that the donor fails to provide a doctor's statement or should the doctor's statement provided be rendered unacceptable by the MRO, the donor will have failed to provide adequate urine or a valid medical explanation for the controlled substance test.
4. Failure to provide adequate urine for controlled substances testing without a valid medical explanation (as verified by the MRO) shall be considered a refusal to submit to a test.



## 4.9 Controlled Substance Test Results

### 4.9.1 Initial Negative Test

If the result of an initial test is negative, the testing laboratory shall inform the MRO. No additional testing for the presence of drug or drug metabolites shall be done, unless adulteration is suspected.

### 4.9.2 Initial Positive Test

If the result of the initial test is positive, a "confirmation test" (second test) shall be performed using the GC/MS methodology.

### 4.9.3 Confirmed Positive Test

MRO will consult with the donor to determine whether a confirmed positive test result could be a false positive. If a positive test is determined to be a false result (or the MRO determines a legitimate reason exists for the positive result), the MRO will certify the test as negative. The confirmation test result shall be the official test result and the basis for any further action.

If a candidate has been prescribed to use narcotics for medical treatment, s/he shall submit proof of prescription to the MDAT Team. Failure to submit this evidence to the MDAT Team prior to testing positive for drugs shall be a basis for denial of employment with DCPS.

### 4.9.4 Positive Marijuana Test

Initiative 71 changed the laws of the District of Columbia to make it lawful under District of Columbia law for a person 21 years of age or older to possess marijuana in certain situations.

However, DCPS employees are not permitted to use, possess, or be under the influence of marijuana during their tour of duty. Confirmed use or possession shall be grounds for discipline up to and including termination.

If a candidate is legally registered for a medical marijuana card, s/he shall submit proof of registration to the MDAT Team prior to being tested. Failure to submit this evidence to the MDAT Team prior to testing positive for marijuana shall be grounds for denial of employment with DCPS.

### 4.9.5 Split Sample Request

If the test is confirmed as positive, the donor may make a request within 72 hours of his or her positive result that the MRO send the split sample specimen to an HHS-certified laboratory of his or her choice for testing. Testing of the split sample will be at the donor's expense.

### 4.9.6 Split Sample Result

If the test result of the split sample specimen is negative, the test shall be considered negative, regardless of the results of the initial test.

## 4.10 Dilute Specimens

If the MRO informs DCPS that a negative test was dilute, DCPS shall take the following action, in accordance with guidance provided by the MRO:

1. If the MRO directs that a recollection take place under direct observation (i.e., because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL), DCPS shall do so as soon as possible.
2. If the creatinine concentration of the dilute specimen is greater than 5 mg/dL, DCPS shall also require an applicant to retest. This collection shall not be required to take place under direct observation.
3. If retesting is required, the donor shall be given the minimum possible advance notice that he or she must submit another sample. The result of the retest shall be considered the final result, not the result from the initial test.
4. Applicants with a second negative dilute urine test result shall not be eligible for hire.
5. If an applicant declines to take a retest required because of a dilute specimen, he or she shall be considered to have refused testing and shall be denied employment.
6. If the MRO informs DCPS that a positive test was dilute, the test shall be treated as a verified positive test.

## Section 5 - Consequences

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### 5.1 Grounds for Denial of Employment

DCPS shall deny employment to an applicant to a safety-sensitive position if he or she has committed a violation of this policy and including the following, but not limited to:

1. Confirmed positive test for a substance covered by this policy;
2. Failure to remain at the collection site for a required test;
3. Failure to permit direct observation when required by DCPS or the collector;
4. Failure to provide sufficient urine for a drug test without valid medical evidence and explanation of the inability;
5. Failure to take a second test at a drug testing facility when required;
6. Failure to undergo a medical exam related to drug testing when required;
7. Tampering with or attempting to alter any part of the testing process; or
8. Failure to cooperate with any part of the testing process.

### 5.2 Candidates traveling abroad

Candidates who will be traveling outside of the US during their testing window, must notify the MDAT Team prior to the expiration of their fifteen (15)-calendar day testing window to reschedule their testing window for when s/he returns to the US. Candidates must send dates of travel with proof of confirmed flight itinerary/ticket. The MDAT Team will select new test dates based on flight plans. Candidates traveling abroad shall not be hired into a safety sensitive position prior to testing negative for drugs.

### 5.3 Future Employment

Candidates who are denied employment for reasons outlined in 5.1 above shall be ineligible for hire for a period of one year from the date of the candidate's positive test result.

Hire requests will be canceled for candidates who fail to appear for a required pre-employment drug test by the specified expiration date. If the candidate's hire request is canceled for failing to test by their specified expiration date they must reapply for a position and be selected for hire before being given the opportunity to test again. All candidates must test negative for drugs prior to starting work in any DCPS safety sensitive position.

## Section 6 - Recordkeeping and Confidentiality

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### 6.1 Recordkeeping

DCPS shall keep a record showing the type of test, date of collection, name of the entity performing the collection, name of the laboratory performing the test, name of the MRO evaluating the test, and results of the test for each covered candidate.

### 6.2 Confidentiality

All matters relating to test results for covered candidates shall be confidential. All records relating to drug and alcohol testing shall be kept by the MDAT Team separate from the candidate's official personnel folders.

The results of a drug or alcohol test shall not be turned over to any law enforcement agency without the subject's written consent unless required by law (e.g. a court order or lawfully-issued subpoena).

## Section 7 - Savings Clause

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If any provision of the Pre-Employment MDT Policy is determined to be contrary to law or otherwise invalidated by a court of law, all other provisions shall continue in effect.

## Section 8 - Definitions

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### Children

Persons 12 years of age and under.

### Confirmation Test

A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial screening test and which uses a different technique and chemical principle from that of the screening test to ensure reliability and accuracy.

### Controlled Substances

Drugs whose general availability is restricted or outlawed because of their potential for abuse or addiction, as defined by the Controlled Substances Act (D.C. Official Code § 48-901 *et seq.*).

### Dilute Specimen

A urine specimen with a creatinine level of less than 20 g/dl and a specific gravity of 1.003 or less. When a urine specimen is “dilute”, it is possible that drugs in one’s system may not be detected.

### Enzyme-Multiplied Immunoassay Technique (EMIT)

The methodology used for initial urine sample drug tests.

### Gas Chromatography/Mass Spectrometry (GC/MS) Testing Method

The methodology used for all confirmation urine sample drug tests.

### Mandatory Drug and Alcohol Testing (MDAT) Team

The DCPS team responsible for planning, directing, implementing, evaluating, and coordinating activities pertaining to this Policy.

### Medical Review Officer (MRO)

A licensed physician, who is: 1) responsible for receiving, reviewing, and evaluating laboratory test results; 2) knowledgeable about substance abuse disorders; 3) appropriately trained to interpret and evaluate an individual’s confirmed positive drug test result together with his or her medical history and any other relevant biomedical information.

### Safety-Sensitive Position

A position in which the employee has direct contact with children or youth; is entrusted with the direct care and custody of children or youth; and whose performance of his or her duties in the normal course of employment may affect the health, welfare, or safety of children or youth.

### Split Sample Testing

The process of separating the urine specimen in drug testing into two separate containers – The primary (first) specimen is used for the immunoassay test and gas chromatography/mass spectrometry test. The split (second) specimen is used if the candidate being tested requests a confirmation test after being informed of an initial confirmed positive drug test. When tested, the split specimen is the test of record for the candidate.

## Youth

Persons between 13 and 17 years of age.