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Consistent with School District policy, it is the goal of these regulations to ensure that the School District employs and retains those persons of the highest quality, character and credentials who have the skills and other qualifications necessary to implement Board policies and the District's curriculum and programs.

3101-AR Organization of Administration**3101.1-AR Organization of Administration**

The Superintendent shall determine the overall structure and staffing level of the School District's administration with review and approval by the Board of Education.

3200-AR Terms and Conditions Applicable to All Personnel**3201 Responsibility to District Students****3201.1-AR Recruiting**

All job postings will be published online. Job postings will provide a description of the job, necessary qualifications of the job, and the time period and methodology for submitting an application for the job. Job postings will be available on the School District website and the Oakland Human Resources Consortium website. If a collective bargaining agreement or employment contract requires notice of posting, the School District must act accordingly. Otherwise, the posting of the position on the School District's website shall provide notice.

The School District may choose to use an outside agency or other methods to recruit employees. This will be done when believed to be necessary at the discretion of the superintendent, or the Board of Education in the case of the hiring a new superintendent.

3201.2-AR Applications

All job postings and application materials will be posted online and submitted as described in the applicable job posting.

3201.3-AR Job Descriptions

The human resources office must maintain updated job descriptions for each classification of employment within the School District. Job descriptions should include a list of essential job functions; required and/or preferred skills; academic and experience credentials; and if applicable, required pre-employment position testing.

3201.4-AR Hiring and Recommendations for Hiring

Hiring decisions regarding teachers and administrators are made by the Board of Education at the recommendation of the Superintendent or his/her designee. The Superintendent or his/her designee is authorized to make hiring decisions related to all other employees. Recommendations or decision to hire will be made only after the criminal history and background check required by law has been completed. When determined to be necessary by the Superintendent, an applicant may begin working, under conditional status, pending approval by the Board of Education.

3201.5-AR Employment Contracts and Collective Bargaining Agreements

The wages, terms, and working conditions of all employees will be set forth within a collective bargaining agreement, an individual employment contract or through applicable employee guidelines/manuals.

If the employee is part of a collective bargaining unit, the applicable collective bargaining agreement will be deemed sufficient and an individual contract is not necessary unless otherwise required by law. All individuals not in a collective bargaining agreement will have an individual employment contract that sets out their terms of employment. Individual contracts shall not be for a term greater than three years.

All probationary teachers shall be provided individual contracts on a yearly basis in conjunction with the terms of District policy and the applicable collective bargaining agreement. When a teacher has attained tenure status with the School District, that teacher will be provided a continuing contract that incorporates the terms set forth in District policy and the applicable collective bargaining agreement. The continuing contract will only apply to that individual so long as he/she remains "certificated" as that term is used within the Teachers' Tenure Act and remains employed in a role requiring teacher certification by Michigan law or regulation.

The Superintendent, or his/her designee(s), is authorized to negotiate employment contracts or collective bargaining agreements on behalf of the School District consistent with terms and expectations set forth by the Board of Education. Employment contracts or collective bargaining agreements are not fully binding unless and until they are approved by the Board of Education.

3201.6-AR Conditions of Employment

The basic terms and conditions of employment for each individual employed by the School District shall generally be set out by their employment contract, manual or relevant collective bargaining agreement. These regulations are meant to supplement those specified conditions and should not be read to conflict with terms and conditions set forth in a relevant contract. If a term or condition is not addressed by contract or these regulations, it would be applicable to the sole discretion and decision-making of the Superintendent with approval by the Board of Education where necessary.

3203-AR Illegal Discrimination and Harassment

3203.1-AR Illegal Discrimination and Harassment

The Board of Education has adopted a Discrimination and Harassment policy, which prohibits illegal harassment and other forms of illegal discrimination within the District. The Board of Education's policy prohibits illegal harassment and discrimination by, among others, board members, school district employees and students.

Any employee who believes that s/he has been the victim of illegal discrimination or harassment may seek resolution of his/her complaint through the procedure set forth in Administrative Regulation 10003.1.

3205.1-AR Criminal Background Checks (New 11.30.2018)

Criminal Background Checks The School District will have the Michigan State Police (MSP) obtain criminal history record information (CHRI) from both the state and the Federal Bureau of

Investigation (FBI) for all individuals listed in Board Policy 4002 (Criminal Background Checks) and MCL 380.1230(1) and (2) of the Revised School Code. Employees who fail to comply with this regulation and related policy will be subject to discipline, upon review and approval by the Superintendent. The School District agrees to enter into any agreements as required by the MSP necessary to access CHRI information and maintain the School District's legal obligation to perform such checks.

Local Agency Security Officer (LASO). The School District will appoint the Chief Human Resource Officer as its LASO. The LASO will be designated on the appropriate form as provided by MSP and the School District will submit an updated form for each newly-appointed LASO. The LASO will be responsible for ensuring compliance with these regulations and relevant laws. The LASO will also be responsible for ensuring personnel security screening procedures are being followed, appropriate security measures are in place for the protection of CHRI, MSP is informed of any security breaches, and only approved School District personnel have access to and are using the CHRI in a manner compliant with the law.

Access to CHRI.

Background Checks. The School District will conduct a state and national fingerprint-based criminal history record check within 30 days of hiring or assignment of personnel that require access to CHRI, or are involved in the configuration or maintenance of computer systems and networks with access to CHRI. Additional background checks should be performed once every five years. A felony conviction of any kind will disqualify a person from access to CHRI. If results other than a felony conviction are returned, the LASO will review the results and determine whether appointment is nevertheless appropriate. If approved personnel are subsequently arrested or convicted, the LASO or, in the event the LASO is arrested or convicted after appointment, the Superintendent, shall suspend approval until he or she reviews the arrest and/or conviction and determines whether continued approval is appropriate.

The School District will provide consent forms, such as the Livescan form (RI-030) found on the MSP website, to all personnel requested to undergo fingerprint-based criminal background checks. School District personnel should be provided the opportunity to contest or appeal their CHRI results.

This procedure should also be used for information technology contractors and vendors with the exception that approval should not be granted to contractors and vendors with outstanding arrest warrants. Non-information technology contractors or vendors will not have access to CHRI.

Incidental Personnel. Any persons, such as janitorial staff or remote IT personnel, who may, by function of their job duties, be around CHRI information or computer systems used to access CHRI information will be physically or virtually escorted by approved personnel.

List of Approved Personnel. The LASO will maintain a list of all personnel approved to access CHRI. The list will also include the reason each person was approved. The LASO will provide the list to the MSP upon request. In the event of termination, re-assignment, or transfer of approved personnel to a position that does not require access to CHRI, the LASO will take whatever measures are necessary to block such personnel from continued access.

Access to Digital CHRI. If the School District maintains CHRI digitally, the LASO will provide a unique password to each approved personnel with access to computer or networks from which CHRI is obtained. This provision does not apply to districts that maintain physical or e-mail-only

copies of CHRI. Pursuant to AG 8321, the password must be at least eight characters long, not be a proper name or word found in the dictionary, not be the same as the username/user identification, must expire and be changed every 90 days, and must not be the same as any 10 prior passwords for each user.

Security Awareness Training. In accordance with the MSP template located on its website, the School District will provide all approved personnel with basic security awareness training within six months of approval and every two years thereafter. The LASO will maintain records of all personnel who have completed training.

Dissemination of CHRI. In the event the School District disseminates CHRI to another authorized agency, as defined in the Revised School Code, the School District will maintain a record of such disseminations. The record must include the date of release, the records released, the method of sharing, the School District personnel who disseminated the CHRI, whether authorization for dissemination was obtained, and the agency and agency personnel to whom the CHRI was disseminated. If CHRI is received from another school district or outside agency, the School District will perform an additional background check using MSP's Internet Criminal History Access Tool (ICHAT) to ensure the information received is accurate.

Media Containing CHRI. Only School District personnel involved in hiring decisions may be approved to access digital and physical media containing CHRI. The School District will ensure all media is stored in a physically secure location which can only be accessed by approved persons. In the event such security cannot be guaranteed, all CHRI data must be encrypted and stored on a server only accessible to the School District. Cloud storage is not permitted.

Transportation of Media. CHRI media will not be transported without approval by the LASO. The LASO will not grant approval unless transportation is reasonably justified. Physical media must be transported in sealed, locked, or secured containers and/or envelopes and, to the extent possible, digital media must be encrypted and/or password-protected prior to and during transportation.

Destruction of Media. Upon approval in writing by the LASO and the Superintendent, CHRI media no longer needed by the School District will be destroyed as follows: digital media will be deleted by either overwriting the media at least three times or by degaussing (demagnetizing), prior to disposal or reuse of the media. Physical media must be cross-cut shred or incinerated by approved personnel only. The LASO will maintain records of all CHRI media approved for destruction for five years and written documentation of the steps taken to destroy any media for 10 years. Such records must include the date the media was destroyed and the signatures of the approved personnel performing and/or witnessing the media's destruction.

Incident Handling Capabilities. The following table describes the various means by which the School District is required to handle storage and breaches of CHRI information.

	Physical/Hard Copy CHRI	Digital CHRI
Preparation	The container in which the CHRI is stored will be locked at all times in the [department] office. The office will be locked when staff is not present.	Firewalls, virus protection, and malware/spyware will be maintained.
Detection	Physical intrusions into the building will be monitored by means of a building alarm and by ensuring the building is locked at night.	Electronic intrusions will be monitored by virus and malware/spyware protections.
Analysis	The LASO will work with local law enforcement officers to determine how the subject incident occurred and the data affected.	The IT Department will determine what systems were compromised and what data was affected.
Containment	The LASO will lock uncompromised CHRI information in a secure container or transport CHRI to a secure location.	The IT Department will stop the spread of any intrusion to prevent further damage.

3207-AR Health Insurance Portability and Accountability Act of 1996 (HIPAA)

3207.1-AR HIPAA

The School District is committed to compliance with the health information privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The School District currently offers its employees Blue Cross & Blue Shield PPO Medical plans. These are considered “health plans” within the meaning of HIPAA and the School District is the “Plan Sponsor.” In order to assure compliance with HIPAA, the following Administrative Safeguards have been established.

Administrative Safeguards

The following safeguards will be implemented to ensure the confidentiality of protected health information, whether created, received, maintained, or transmitted by the Plan. This includes information in electronic form, whether it is being stored or transmitted.

1. Authorization: Only School District employees designated by the Privacy and Security Officer as requiring access to protected health information for Plan administration purposes will be given such access. These employees may view protected health information necessary to perform their duties for the Plan without express authorization from the Plan member.
2. Training: School District employees authorized to have access to protected health information will receive training on an annual basis. Each such employee will be provided with a copy of the privacy policy and required to affirm, annually, in writing, that they have received the policy.
3. Security Incidents: Suspected or known security incidents will be identified, responded to, and documented in writing. The harmful effects of such security incidents, known to the Plan, will be mitigated to the extent practicable.

4. **Physical Safeguards:** Plan members' protected health information shall be stored in a locked file cabinet used solely for this purpose. Paper documents containing protected health information shall be shredded before being discarded. Electronic files containing protected health information, if any, shall be password protected. A facsimile machine used to transmit and receive protected health information shall be in a secure location.
5. **Technical Safeguards:** To the extent protected health information is maintained electronically, access to electronic information systems or software programs will be provided to only those persons who have been granted access rights. Procedures for controlling and tracking the handling of hardware and software, and for data backup, storage, and disposal, shall be implemented. This includes the receipt, handling, and disposal of health information. Employees will be required to close files when leaving their work stations to protect confidentiality.

The District shall have a contingency plan to maintain the continuity of operations in an emergency or disaster, and to enable recovery of data following disaster. An annual internal audit of data security will be conducted, including the evaluation of security measures to protect data and review of personnel compliance with the Policy and procedures.

3208-AR Leaves of Absence

3208.1-AR Leaves of Absence - Generally

Employees may be granted a leave of absence pursuant to Board Policy 3208. If an employee is subject to a collective bargaining agreement, that agreement determines the ability to take a leave and the procedure for doing so. Employees not covered by a collective bargaining agreement may request an Unpaid Leave of Absence by submitting a written request to the Department of Human Resources.

Any employee granted a leave of absence by the Board of Education will be considered to have terminated all work activity with the Board of Education until the completion of said leave. Exception may be made by the Superintendent in those cases where the best interest of the Rochester Community Schools might be served.

3208.2-AR Benefits While on Leave of Absence or Upon Termination

Employer-provided benefit coverage for employees on an extended leave of absence will cease in accordance with the negotiated Master Agreement for that employee. For employees on a leave of absence covered by the Family and Medical Leave Act of 1993, Health Benefits, including Life and Disability Insurance, will continue as stipulated in negotiated Master Agreements, or for twelve weeks as specified in the Act, whichever is longer.

Upon termination of employment, employer-provided benefit coverage will cease as stipulated in the negotiated Master Agreement for the terminated employee.

Employees on an Unpaid Leave of Absence are not eligible for employer-provided benefit coverage and shall be given the opportunity to continue coverage at their own expense in accordance with the provisions of COBRA.

3209-AR Family and Medical Leave Act (FMLA)

3209.1-AR Eligibility

School District employees may be eligible for up to 12 weeks of unpaid leave under the Family and Medical Leave Act (FMLA). Employees are eligible if they:

- have at least 12 months of service with the School District, and
- have worked for the School District for at least 1,250 hours within the preceding 12-month period. The 12-month period will be calculated separately for each employee. It will be determined based on a rolling calendar, looking backward from the commencement of the FMLA leave.

Qualifying Events:

Eligible employees may take up to twelve (12) weeks of FMLA leave in a 12-month period for the following qualifying reasons:

- a. for the birth of a child and to care for a newborn child;
- b. for the placement of a child with the employee for adoption or foster care;
- c. to care for a child, spouse, or parent of the employee who has a serious health condition;
- d. for the employee's own serious health condition which causes the employee to be unable to perform the essential functions of his or her job;
- e. where the employee experiences a qualifying exigency arising out of the fact that the employee's spouse, parent, or child is a covered military member on active duty or has been called to or on covered active duty status in the National Guard or Reserves; or
- f. to care for an armed forces member or qualified veteran who is a spouse, parent, child, or next of kin of the employee and who is injured while on covered active duty, including an injury that manifests itself after completion of active duty.

Serious Health Conditions

A "serious health condition" for purposes of this Administrative Regulation is an illness, injury, impairment, or physical or mental condition that involves:

- a. an overnight stay in a hospital, hospice, or residential medical care facility;
- b. a period of incapacity for more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition or supervision by a health care provider;

- c. a period of incapacity due to pregnancy or for prenatal care;
- d. a period of incapacity due to treatment for a chronic serious health condition;
- e. a period of incapacity that is permanent or long term; or
- f. a period of absence during which the employee will receive multiple treatments from a health care provider for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) full calendar days in the absence of medical treatment (e.g. chemotherapy, physical therapy or radiation).

Applying for a Leave under the FMLA

An employee who plans to take FMLA leave must provide the School District (HR/Benefits Coordinator) with written notice at least thirty (30) days in advance, if foreseeable. If the FMLA leave is not foreseeable, and thirty (30) days' notice cannot be given, the employee must submit the request for leave as soon as possible (within two (2) working days of learning of the need for leave, absent extenuating circumstances). Where an employee fails, or is unable to provide thirty (30) days' notice of a foreseeable leave, the School District may delay the commencement of the leave for up to thirty (30) days after the employee provides the required notice.

The School District will provide employees requesting FMLA leave with a written Rights and Responsibilities Notice specifying the expectations and obligations of the employee while on leave and explaining the consequences of failure to meet those obligations.

Other Important Information

- a. Intermittent Leave or Reduced Schedule Leave
 - (i) FMLA leave taken to care for a family member with a serious health condition or due to the employee's own serious health condition may be taken intermittently or on a reduced schedule, when medically necessary.
 - (ii) FMLA leave requested for the birth of a child, to care for a newborn child or for the placement of a child with the employee for purposes of adoption or foster care, may not be taken intermittently or on a reduced leave schedule unless the employee and School District agree.
 - (iii) Instructional employees who request intermittent leave or a reduced schedule FMLA leave which constitutes more than twenty percent (20%) of the working days in the period during which the leave would extend may be required to choose either to: (a) take FMLA leave for all or part of the FMLA leave period, or (b) transfer temporarily to an alternative position with equivalent pay and benefits that better accommodates the School District's needs during the leave.

- b. Instructional employees who request FMLA leave that will end near the conclusion of an academic term may be required to continue the leave until the end of the term.
- c. Group health plan benefits will be maintained for the employee during the FMLA leave and the School District will contribute the same portion of the premium as it did while the employee was working. If the employee fails to make timely payment of his/her portion of the premium, the School District reserves the right to cease to maintain the employee's health benefits, provided the School District notifies the employee in writing at least fifteen (15) days before health coverage will lapse. If the employee fails to return from leave, the employee may be required to reimburse the School District for all premiums paid by the School District during the leave.
- d. FMLA leave is generally unpaid. The School District may require, that any of the employee's available accrued paid vacation or personal leave be substituted for any part of the twelve (12) week FMLA leave period. The School District may require, that an employee's available sick leave be substituted for any part of the FMLA leave if the employee or a family member of the employee has a serious health condition for which sick leave is otherwise available. FMLA leave may run concurrently with workers' compensation or disability insurance coverage for a serious health condition.
- e. The School District requires that any FMLA leave request be supported by certification (and, in appropriate cases, by periodic re-certifications) from a health care provider. The certification should be provided before the leave begins, if foreseeable, and must, in any event, be provided within fifteen (15) calendar days of a request made by the School District. The failure to provide a required medical certification in timely fashion may result in denial of the leave until the certification is provided.
- f. An employee is not entitled to the accrual of any seniority or employment benefits that would have otherwise accrued during the period of leave unless specifically provided by the applicable collective bargaining agreement or an individual contract of employment.
- g. The School District is prohibited from terminating or in any other manner discriminating against an employee for exercising rights under the FMLA.

Return from Leave

The School District may require that an employee returning from FMLA leave due to a serious health condition obtain certification from his/her health care provider that the employee is able to resume his/her duties and responsibilities.

Upon returning from FMLA leave, the employee may be returned to the same position he/she previously held or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. However, an employee on FMLA leave has no greater right to reinstatement or other benefits than if he or she had been continuously employed during the leave period. An employee on FMLA leave remains subject to legitimate job changes and reductions in

force that occur during the leave, and such changes may result in the employee being denied reinstatement. The School District may, after notice, deny reinstatement to the highest paid ten percent (10%) of all employees (“key employees”) where necessary to prevent substantial and grievous economic injury to the School District.

3212-AR Whistleblower Protection

3212.1-AR Whistleblower Protection

An employee of the School District who becomes aware of conduct on the part of another employee of the School District that is thought to be in violation of law, Board of Education policy or administrative regulation may seek resolution of his/her complaint through the procedure set forth in Administrative Regulation 10003.1.

3300-AR Terms and Conditions of Employment Applicable to Administration and Teachers

3301.1-AR Evaluation of the Superintendent of Schools

The Board will evaluate the Superintendent annually or biennially as allowed by law. Superintendent evaluations will be compliant with Michigan law in a format determined by the Board of Education.

3302.1-AR and 3303.1-AR Evaluation of Teachers and Administrators

Teachers and administrators will be evaluated pursuant to the evaluation system developed and implemented by the School District. The evaluation systems can be found on the District’s transparency page at the following web address: [LINK](#)

3304.1-AR Assignment and Transfer

The District is committed to the employment of a qualified and competent staff for the successful functioning of the District. The Board reserves the right to determine the number and types of employees, including teachers, to be assigned to any position, department, or project which it has created.

The Superintendent/designee shall determine teacher placement based on qualifications (as defined by the district, which shall include but not be limited to the academic needs and best interest of district students, state and federal requirements such as certification, highly qualified requirements, endorsements, etc.), teacher effectiveness, and the district’s educational programs. Teacher preference(s) may also be considered. The district shall strive to place the most effective and qualified teachers in assignments aligned with student and district needs.

Teacher placement decisions, and the impact of such decisions on the individual teacher or the bargaining unit, shall not be the subject of any terms or conditions within a collective bargaining agreement between the district and a collective bargaining representative of such teachers.

The Superintendent/designee shall assign duties, transfer, or alter duties or responsibilities of any member of the professional staff. Employees may also be required to perform tasks in addition to those pertaining to the position for which they are employed.

3306-AR Discipline and Discharge

3306.1-AR Retirement and Resignation

An employee may retire or resign at any time in conformity with any applicable collective bargaining agreement or employment contract. Resignations or retirements must be submitted in writing to the Chief Human Resource Officer or the Superintendent. The Superintendent has the authority to accept the resignation on behalf of the Board of Education. The superintendent will provide written notification of the acceptance of the resignation to the resigning or retiring employee.

3306.2-AR Involuntary Termination

Involuntary termination of an employee shall occur by recommendation of the Superintendent or Chief Human Resource Officer and approval by a majority of the Board of Education. When deemed appropriate at his/her discretion, the Superintendent may effectuate the termination of an employee pending approval by the Board of Education.

Termination of an employee whose employment is regulated by the Michigan Teachers' Tenure Act may only be terminated in accordance with that Act.

3306.3-AR Due Process

Prior to termination, an employee working under an individual employment contract or subject to a collective bargaining agreement shall be given oral or written notice of the charges against him/her and have an opportunity to respond. The employee will be provided written notice of termination stating the basis for the termination prior to the termination being effectuated by the Board of Education.

3306.4-AR Voluntary Termination in Lieu of Involuntary Termination

Subject to the discretion of the Superintendent, the School District will accept an employee's resignation in lieu of involuntary termination. Acceptance of resignation in lieu of termination may only be done in compliance with federal and state law, including but not limited to Public Act 189 of 1996.

3307-AR Layoff and Recall

3307.1-AR Layoff and Recall

For the purpose of this regulation, "teachers" includes individuals whose employment is regulated by the Teachers' Tenure Act. No teacher shall be reduced pursuant to a necessary reduction in personnel for any school year or portion thereof except under applicable state law.

In the event of a reduction or recall of teachers, the District will make such decisions based on retaining effective teachers. In the event of a reduction or recall, the District will reduce the least effective teachers first and recall the most effective of those who were reduced. The District retains full discretion and authority as to whether to fill positions or vacancies by way of recall, reassignment, or new hire. The District may also consider building, grade, and subject assignment; certification; qualifications; and recency of relevant teaching assignments when identifying the group of teachers subject to reduction and/or recall.

Performance evaluations shall be consistent with section 1249 of the Revised School Code, as amended. Teacher effectiveness shall include, but not necessarily be limited to, an assessment of the teacher's:

1. Individual performance, which shall be the majority factor used in making such decisions. Individual performance shall be measured by a composite of the teacher's ratings on the annual year-end evaluation.
2. Significant, relevant accomplishments and contributions above normal expectations of the teacher's peer group and having a demonstrated record of exceptional performance; and
3. Relevant special training (other than District or state requirements) and the demonstrated integration of that training into instruction in a meaningful way.

Reductions in staff shall occur in the following order, provided there are qualified, certified teachers rated effective or highly effective to assume the remaining positions/assignments, without creating an undue disruption to other teaching assignments or educational continuity, in the opinion of the Superintendent/Designee:

1. Teachers rated as ineffective on their most recent final year-end evaluation.
2. Teachers rated minimally effective on their most recent final year-end evaluation.
3. Teachers rated effective on their most recent final year-end evaluation
4. Teachers rated highly effective on their most recent final year-end evaluation.

Probationary teachers rated as effective or highly effective shall not be displaced by a teacher on continuing tenure solely because the other teacher has continuing tenure.

In the event that a personnel decision within the scope of this regulation involves two or more teachers and all of the above factors, as well as any other job related factors, (such as overall individual performance, considering the best interest of the students, staff and the district, as well as the nature of the particular vacancy at issue) are identical, length of service, seniority and/or tenure status shall be the tiebreaker.

The Superintendent/Designee, after making a final determination, will submit his/her recommendations for reduction and recall to the Board of Education.

Length of Eligibility of Recall

A teacher's eligibility for recall shall terminate if the teacher:

1. Resigned or employment by the Board otherwise terminates;

2. Fails to respond to the recall notice within ten (10) calendar days of receipt of such notice or fails to report, effective the first working day, to the teaching assignment to which recalled.
3. Lacks tenure status when becomes effective and is not recalled by June 30 of the ensuing school year.
4. Has tenure status when reduction becomes effective, and is not recalled during the first two years of reduction.
5. Does not have a valid Michigan teaching certificate for the assignment at the date of recall.
6. Received rating of “minimally effective” on the two most recent annual year-end performance evaluations.
7. Received rating of “ineffective” on the most recent annual year-end performance evaluation.

3400-AR Omnibus Transportation Employees

3400.1-AR Omnibus Transportation Employees

School District employees who operate commercial motor vehicles and/or are otherwise required to hold a commercial driver’s license (CDL) in connection with their job duties are subject to the School District’s alcohol and controlled substances testing program in compliance with the Omnibus Transportation Employee Testing Act of 1991. Prospective employees for positions that require a CDL are subject to pre-employment testing.

The district will require random, just cause and post-accident alcohol and controlled substances testing in accordance with the Omnibus Transportation Employee Testing Act.

Testing Requirements

A. Pre-Employment Testing

1. Alcohol and controlled substances testing is required prior to the first time a driver begins to work for the School District in a position requiring a CDL. Both prospective employees who have been offered employment in positions involving the operation of a commercial motor vehicle and current employees reassigned to such positions are subject to pre-employment testing. Employment or promotion offers for driver positions will be conditioned on completing an alcohol and controlled substances test with negative results.
2. A person hired by the School District for a position requiring a CDL, or newly assigned to a position requiring a CDL, shall not report for work unless he/she has received a verified negative controlled substances test result.

3. The School District may, at its discretion, choose not to require pre-employment controlled substances testing where the applicant has recently undergone drug testing for another employer or prospective employer. Any such decisions not to require testing will be made in strict compliance with Federal Highway Administration (FHWA) regulations.
4. The School District is required to, and will, obtain and review information on prior FHWA-mandated alcohol and controlled substances testing from any employer for which the driver performed safety-sensitive functions in the previous two years. Information concerning positive controlled substance tests, alcohol tests with results of 0.04 or higher, and refusals to test must be obtained and reviewed no later than fourteen (14) days after the first time a driver performs work requiring a CDL. Prospective drivers are required, as a condition of employment, to provide the School District with a release for such information.

B. Random Testing

1. The School District will conduct random alcohol testing at an annual rate that is equal to at least 10% of the number of School District driver positions. Random controlled substances testing will be conducted at an annual rate equal to at least 50% of the number of driver positions. These required random testing rates are set by the FHWA and are subject to change.
2. Drivers will be randomly selected for testing so that each driver will have an equal chance of being tested each time selections are made. Random tests will not be announced in advance and will be reasonably spaced throughout the calendar year.
3. Drivers selected for random testing must proceed immediately to the testing site upon notification of being selected.
4. Drivers will only be randomly tested for the presence of alcohol when they are driving or preparing to drive a commercial motor vehicle for the School District, or immediately prior to or immediately after such activity.
5. In the event a driver who is selected for a random alcohol and/or controlled substances test is absent from work, the School District may select another driver for testing. The School District may choose to keep the original selection confidential until the driver returns, if the driver is expected to be available for testing during the current designated testing period.

C. Reasonable Suspicion Testing

1. The School District will require a driver to submit to an alcohol or controlled substances test where the School District has reasonable suspicion that the driver has violated alcohol or controlled substances prohibitions. The reasonable suspicion determination must be made by a supervisor or School District administrator who has received mandated training. The determination must be based on specific,

contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.

2. A written record will be made of the observations leading to a reasonable suspicion test and signed by the supervisor or School District administrator who made the observations. In the case of controlled substances tests, such a record will be made within twenty-four (24) hours of the observations, or before the results of the test are released, whichever is earlier.

(a) Reasonable Suspicion Alcohol Testing

- (i) A driver will be required to submit to an alcohol test when the School District supervisor or administrator has reasonable suspicion that the driver has violated alcohol prohibitions. Mere possession of alcohol will not be considered reasonable suspicion for testing.
- (ii) In order to warrant reasonable suspicion alcohol testing, the observations must be made during, just before, or just after the period of the work day in which the driver is subject to alcohol prohibitions.
- (iii) The test should be administered as soon as practicable following the observations. The School District will not attempt to test if the testing is not to be administered within eight (8) hours of the observation.
- (iv) If reasonable suspicion exists, the driver may not, under any circumstances, drive for the School District until an alcohol test is administered and the driver's alcohol concentration measures less than 0.02, or not less than twenty-four (24) hours have elapsed following the reasonable suspicion determination.

(b) Reasonable Suspicion Controlled Substances Testing

- (i) A driver will be required to submit to a controlled substances test when the School District supervisor or administrator has reasonable suspicion that the driver has violated controlled substances prohibitions.
- (ii) The School District will remove the driver from driving functions at least until the verified test results are reported.
- (iii) The test should be administered as soon as practicable in the particular circumstances.

D. Post-Accident Testing

1. Where a commercial motor vehicle being operated for the School District is involved in an accident, the School District shall, as soon as reasonably practicable under the circumstances, test for alcohol and controlled substances any driver (a) who was driving, if the accident involved the loss of human life; or (b) who receives a citation for a moving traffic violation arising from the accident.
2. Immediately following an accident, the driver must contact his/her supervisor or a School District administrator. The driver must remain available for testing. This requirement should not be construed to require the delay of necessary medical attention for injured persons following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
3. Alcohol and controlled substances testing will be conducted as soon as reasonably possible under the circumstances. If an alcohol test is not administered within eight (8) hours following the accident, or a controlled substances test is not administered within thirty-two (32) hours following an accident, the School District will not attempt to administer the test.
4. The results of a breath or blood test for the use of alcohol, or a urine test for the use of controlled substances which is administered by federal, state, and/or local officials having independent authority to conduct the test, shall be considered to meet the requirements of this procedure, if the results are released to the School District.

E. Return to Duty and Follow-up Testing

1. If the School District continues to employ a driver who has tested positive for alcohol or controlled substances, or has otherwise violated this Administrative Regulation, the driver will be subject to testing before he or she can again drive for the School District. The driver may also be subject to follow up testing following the return to duty.
 - (a) Return to Duty Testing
 - (i) A driver who has engaged in prohibited alcohol use must undergo a return to duty alcohol test indicating a breath alcohol concentration of less than 0.02 before returning to duty as a driver.
 - (ii) A driver who has engaged in the use of prohibited controlled substances must undergo a return to duty controlled substances test with a verified negative result before returning to duty as a driver.
 - (iv) The driver must also be evaluated by a substance abuse professional ("SAP") and participate in any assistance program that is prescribed. The School District must be provided with a written statement from

the SAP that the employee has been evaluated and has complied with any prescribed rehabilitation before the employee will be permitted to return to work.

(b) Follow-up testing

- (i) Following a determination by a SAP that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the School District will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP. At least six (6) tests shall be conducted during the first twelve (12) months following the driver's return to duty.
- (ii) Follow-up alcohol testing will be conducted only when the employee is driving or preparing to drive a commercial motor vehicle for the School District, or immediately prior to or immediately after such activity.