



## **4173.3: DRUG-FREE WORKPLACE: DRUGS**

I. The purpose of this Rule is to establish standards of conduct for employees as to the use and possession of illegal drugs while in the course of their employment or in the discharge of their duties and eliminate the unlawful use or distribution of illegal drugs, or the misuse of prescription drugs, on District property. This Rule also applies to acts or any conduct which is illegal under federal, state, or local law. All District employees are covered by this Rule. Violation of this Rule shall result in disciplinary action up to and including termination of employment.

II. This Rule shall be administered in accordance with and subject to all applicable District grievance policies and procedures contained either in collective bargaining agreements or policies and rules of the District, and pursuant to all constitutional rights, state and federal, to which employees are entitled.

III. The name of any employee violating this Rule shall not be released to the public unless the employee requests an open hearing with the Board; provided, however, that the Superintendent may notify law enforcement authorities of any suspected violation of criminal statutes or ordinances.

IV. The following definitions shall apply for purposes of this Rule:

A. Illegal drugs shall mean all controlled substances as defined in Neb. Rev. Stat. §§ 28-401, 28-404, 28-405 and 28-419 including but not limited to “uppers”, “downers”, barbiturates, marijuana, amphetamines, LSD, heroin, hashish, hallucinogens, cocaine, anabolic steroids, and any metabolite or conjugated form thereof, and any other substance, except legal non-prescription drugs or legal beverages, which alters the mood or behavior and which is not taken for medical purposes under a prescription by a licensed physician. Illegal drugs shall also include any prescription drugs that an employee possesses that are not prescribed to the employee unless such prescription is current, and temporarily possessed for an immediate family member.

B. Distribution shall mean any delivery, sale, transfer, handling, transmitting, administering, giving, or otherwise making available, illegal drugs.

C. Drug paraphernalia shall mean all equipment, products, and materials of any kind which are used,

intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing illegal drugs into the human body, as defined in Neb. Rev. Stat. § 28-439.

D. "Look-alike" drugs shall mean any substance which is believed to be or represented to others to be an illegal drug, or possessed with the belief or understanding that the substance is an illegal drug.

E. "Intoxication" and/or "Under the influence" shall mean for the purposes of this Rule that the employee is impaired and/or affected by an illegal drug, or the combination of an illegal drug and alcohol, in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior or to obvious impairment of physical or mental ability such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by professional opinion, a scientifically valid test or by a lay person's opinion.

F. Possession shall mean on the employee's person, in the employee's personal belongings, or under the employee's reasonable control. A District employee shall be deemed in possession of illegal drugs, look-alike drugs, or drug paraphernalia if he or she has illegal drugs, look-alike drugs, or drug paraphernalia on his or her person, or under his or her control.

G. Employee Assistance Program (E.A.P.) shall mean an Employee Assistance Program provided by the District for the benefit of its employees.

V. The following conduct is prohibited.

A. Reporting to work, performing job duties or conducting any District business while under the influence of any illegal drug is strictly prohibited and shall subject the District employee to immediate discipline actions as hereinafter provided. Conduct of an employee giving rise to a reasonable suspicion that employee is under the influence shall be reported to the employee's immediate supervisor or Human Resources.

B. The possession, use or distribution of any illegal drug or "look-alike" drug while on District property, performing job duties, or while in the course of the employees' employment, at a District-sponsored

student event, or at a student activity in which the District or other school districts participate, is strictly prohibited and shall subject the District employee to immediate discipline actions as hereinafter provided.

VI. In cases of suspected violations of this Rule, the following actions and procedures shall be implemented.

A. Any employee suspected of being in violation of this Rule shall be interviewed by his or her immediate supervisor or an administrator as soon as possible to determine whether the employee is in violation of this Rule. If necessary, the immediate supervisor or administrator may summon a second supervisor or administrator to be present at the interview and to assist in the determination. If the supervisor or administrator determines that there is a reasonable suspicion that the employee may be in violation of any provision of this Rule, the supervisor or administrator shall immediately refer the employee to the Associate Superintendent of Human Resources or his/her designee for further investigation.

B. If, upon further investigation, the Associate Superintendent of Human Resources or his/her designee has a reasonable suspicion that the employee has violated this Rule, he/she shall immediately suspend the employee with pay from his or her duties, and if the employee is being suspected of being under the influence of illegal drugs, may direct that the employee be tested for illegal drugs. Employees are required to submit to drug testing upon directive from the Associate Superintendent of Human Resources or his/her designee. The employee shall be advised of the required drug testing by the Associate Superintendent of Human Resources, or his/her designee, and be transported to a location for the administration of such required test.

C. The results of the drug test may be used to provide the employee an opportunity to exonerate himself/herself. If the employee tests negative for drugs, the employee will not be subject to disciplinary measures related to violation of the District's drug policy and may be returned to duty. If a test of an employee positively detects the presence of illegal drugs, the results shall be confirmed in accordance with Neb. Rev. Stat. § 48-1903 prior to being used against an employee in any disciplinary or administrative action.

D. An employee who refuses to undergo testing based upon reasonable suspicion that the employee is

intoxicated and/or under the influence of illegal drugs shall be subject to immediate disciplinary actions up to and including termination of employment and such refusal may be offered in evidence in any grievance proceeding and/or termination hearing.

E. Any employee who is subject to disciplinary action under this Rule shall, within a reasonable time, be provided a written statement setting forth the reasons for such disciplinary action. The written statement shall contain an acknowledgment of receipt signed by the employee. Should the employee refuse to sign the acknowledgment of receipt, the refusal shall be so noted on the receipt by the supervisor or administrator.

F. The Associate Superintendent of Human Resources or his/her designee shall undertake such additional investigation as may be necessary, and shall provide the employee with such written statement within a reasonable time specifically stating:

1. What additional action, other than being suspended from duties, if any, will be taken in accordance with this Rule; and
2. The date and/or the conditions under which the employee may return to his or her regular duties, if applicable; and

3. The employee's due process rights and time limits to appeal by reference to the District's grievance procedures or, if applicable, the provision of the collective bargaining agreement.

VII. At all times, each District employee shall make every reasonable effort to ensure that any employee who, in the course of their employment or in the discharge of duties, is under the influence of illegal drugs, does not operate a motor vehicle. Should an employee refuse to cooperate and attempt to operate a motor vehicle when such employee is under the influence of illegal drugs, law enforcement officials shall be immediately notified and the employee shall be subject to immediate disciplinary action up to and including termination of employment.

VIII. District employees who violate this Rule shall be subject to the following penalties.

A. Reporting to work under the influence of illegal drugs.

1. First offense: Employee will be issued a written reprimand, will be subject a minimum suspension of twenty days without pay, and a maximum of termination of employment. Mandatory referral to E.A.P. in the event the employee is not terminated.

2. Second offense: Employee shall be terminated from employment.

B. Illegal possession, use or distribution of illegal drugs, look-alike drugs or drug paraphernalia while on District property, or while in the course of the employee's employment or in the discharge of his or her duties thereunder, at a District- sponsored student event, or at a student activity in which the District or other school districts participate.

1. First offense: Employee shall be terminated from employment.

C. Refusal to undergo further testing based on a reasonable suspicion of intoxication and/or under the influence of illegal drugs.

1. First offense: Employee shall be subject to immediate disciplinary action up to and including termination of employment and such refusal may be offered in evidence in any grievance proceeding and/or termination hearing.

IX. Employees of the District shall fully comply with and successfully complete the treatment directed by the District's E.A.P. when the employee is being disciplined for violation of this Rule. Failure to do so shall result in termination of employment.

X. The Superintendent or his/her designee may impose a lesser or alternative penalty than those provided for herein if the Superintendent or his/her designee deems that a lesser or alternative disposition is in the best interests of the District and the employee.

XI. Any employee convicted of violating a criminal drug statute must notify the Associate Superintendent of Human Resources or his/her designee no later than one (1) business day after the conviction. Failure to timely notify is grounds for termination of employment.

XII. The District will utilize the following counseling and education services:

A. Employees are encouraged to participate in the District's substance abuse programs. Additionally, employees are encouraged to voluntarily utilize the E.A.P. services provided by the District in seeking assistance with substance abuse problems. An employee's private use of these services on the employee's own initiative will not jeopardize job security or promotional opportunity. When such use is private and voluntary, no identifying report of any kind will be made by the E.A.P. to the District unless the employee so chooses.

B. Any employee who is disciplined for drug use and not terminated shall be referred to the District's E.A.P. for assessment, counseling, treatment and rehabilitation. This shall be a management referral and, as such, the employee shall be required to execute the necessary releases so that the E.A.P. may inform the District whether such employee is in compliance with directed treatment.

C. The District will provide training for its administrators and supervisors to recognize typical symptoms

of drug use and abuse.

**Date of Adoption**

February 5, 2007

**Date of Revision**

December 2, 2013

June 6, 2022

**Reaffirmed**

June 3, 2019

**Related Policies and Rules**

[4173: Drug-Free Workplace](#)

[4173.1: Drug-Free Workplace](#)

[4173.2: Drug-Free Workplace: Alcohol](#)

**Legal Reference**

Neb. Rev. Stat. §§ 48-1903, 48-1910