



BOARD OF EDUCATION
POLICY 7050
DRUG USE BY EMPLOYEES:
ILLEGAL DRUGS, DRUG
PARAPHERNALIA, AND
CONTROLLED SUBSTANCES

Effective: July 1, 2010

I. Policy Statement

The Board of Education is committed to ensuring a safe and nurturing environment for its employees. The Board values a work environment free of illegal drugs and the abuse of controlled substances, recognizing that such conduct compromises the well being of students and staff and impairs performance.

All employees are to be respectful of this environment and are expected to abstain from the use of illegal drugs and/or drug paraphernalia and the abuse of controlled substances.

II. Purpose

The purpose of this policy is to establish standards and procedures for employees and service providers regarding the possession, use, or distribution of illegal drugs and the abuse or distribution of controlled substances.

III. Definitions

Within the context of this policy, the following definitions apply:

- A. Abuse – The ingestion, inhalation, injection, or absorption of a controlled substance in a manner or degree at any time that compromises workplace safety, job performance, and/or the work environment.
- B. Constructive Possession – Having knowledge of the presence of illegal drugs or controlled substances and the ability to control/use them, without having actual possession. More than one person may have constructive possession at the same time.
- C. Controlled Substance – Those drugs/medications, including prescription drugs/medications and over-the-counter drugs/medications, as listed in Sections 5-101 (f) (1) and Sections 5-403 through 5-406 of the Criminal Law Article of the Annotated Code of Maryland. Controlled substances also include any substance represented as a controlled drug/medication.
- D. Distribution – The sale, transfer, trade, giving, exchange, and/or dispensing in any manner of any illegal drug, drug paraphernalia, or controlled substance, or any substance that is represented as an illegal drug/controlled substance.

- E. Drug Conviction –The final judgment by a court of competent jurisdiction that an employee has been found guilty of an illegal drug/controlled substance and/or a drug paraphernalia criminal offense.
- F. Illegal Drug – Those illegal substances, as listed in Sections 5-101 (f) (1) and Section 5-402 of the Criminal Law Article of the Annotated Code of Maryland. Illegal drugs also include any substance that is represented as an illegal drug.
- G. Intent to Distribute – Possession of illegal drugs, drug paraphernalia, or controlled substances, in or on any item or belonging under the control of the employee or owned by the employee, in such quantity and under such circumstances, observed or discovered, indicating the strong likelihood of distribution.
- H. Over-The-Counter Drugs/Medications – Over-the-counter medicines, homeopathic and herbal products, and dietary supplements.
- I. Paraphernalia/Drug Paraphernalia – Any equipment or material of any kind that is used or intended for use in manufacturing, packaging, storing, concealing, and/or introducing into the human body an illegal drug. Drug paraphernalia will also include those items listed in Section 5-101(o) of the Criminal Law Article of the Annotated Code of Maryland.
- J. Possession – The presence of illegal drugs or drug paraphernalia, however small the amount, on an employee or in or on any item under the control of the employee or owned by the employee.
- K. Prescription Drugs/Medications – Substances that under federal law may not be dispensed without a prescription written by a person licensed by the state to do so.
- L. Service Provider – An individual who provides services to the Howard County Public School System (HCPSS) through contract or volunteer service, including student teachers and interns.
- M. Use – The ingestion, injection, inhalation, absorption, and/or other introduction into the human body of any illegal drug; a condition or state of being of an employee indicating that the employee is under the influence of an illegal drug.

IV. Standards

- A. Compliance with this policy is a condition of continued employment, and violations of this policy will constitute grounds for disciplinary action, up to and including termination.

- B. An employee or service provider may not possess or use illegal drugs or drug paraphernalia or be under the influence of illegal drugs.
- C. HCPSS will not hire anyone who is known to currently use illegal drugs or drug paraphernalia and/or abuse controlled substances.
- D. An employee or service provider may not abuse controlled substances on school system property, at an HCPSS-sponsored event, or while engaged in HCPSS duties.
- E. An employee or service provider may not possess, distribute, or intend to distribute illegal drugs.
- F. An employee or service provider may not be in constructive possession of illegal drugs.
- G. An employee or service provider may not distribute controlled substances to students except when specified by job description and parent/guardian consent, as provided in Policy 9230 Alcohol, Other Drugs, Prescription Medication and Over the Counter Products, and as outlined in the Health Services Requirements and Procedures, Medication Administration Procedure.
- H. An employee or service provider may not distribute or intend to distribute controlled substances on school system property or at an HCPSS-sponsored event.
- I. An employee or service provider may not engage in conduct that is a violation of any federal or state law concerning the possession, use, distribution, or intent to distribute illegal drugs or drug paraphernalia or the abuse, distribution, or intent to distribute controlled substances.
- J. An employee or service provider is required to report any illegal drug, drug paraphernalia, or controlled substance-related charge to their immediate supervisor prior to the start of their next work day following the charge.
- K. An employee who is convicted of illegal drug, drug paraphernalia, or controlled substance-related offenses will be subject to disciplinary action, up to and including termination.
- L. Employees or service providers must report as soon as possible to their supervisor or principal any violation or suspected violation of this policy. Failure to report violations or suspected violations may result in disciplinary action.
- M. Every supervisor and/or principal must report immediately any violations or alleged violations of this policy to the Superintendent/Designee for investigation.

- N. Any employee who aids, abets, and/or conspires with any person to violate this policy may be subject to disciplinary action.
- O. Any employee who knowingly gives false information, fails to cooperate, or in any way impedes an investigation conducted by the Superintendent/Designee may be subject to disciplinary action.
- P. An employee may be required to participate in a treatment program designed to address illegal drug use or controlled substance abuse and related problems.
- Q. Conduct constituting a potential criminal violation regarding illegal drugs or controlled substances will be reported to the police by the Superintendent/Designee.

V. Compliance

- A. The Office of Human Resources is responsible for providing new employees a copy of this policy.
- B. The Superintendent/Designee will ensure that all service providers receive a copy of this policy.
- C. All employees will report any suspected violations of this policy or implementation procedures to their immediate supervisor.
- D. Supervisors and principals are responsible for reporting alleged violations of this policy to the Superintendent/Designee.
- E. The Superintendent/Designee will investigate all reports of violations or alleged violations of this policy.

VI. Delegation of Authority

The Superintendent is authorized to develop appropriate procedures to implement this policy.

VII. References

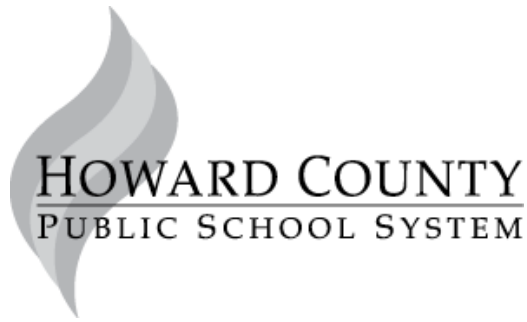
- A. Legal
Controlled Substances Act, 21 U.S.C. Section 812
The Americans With Disabilities Act, 42 U.S.C. Section 12114

The Drug-Free Workplace Act of 1988, 41 U.S.C. Sections 702-707
34 C.F.R. 84.100-115
34 C.F.R. 84.200-230
34 C.F.R. 84.605-670
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (f)
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (l)
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (o)
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (s)
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (u)
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (v)
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (y-z)
The Annotated Code of Maryland, Criminal Law Article, Section 5-101 (aa-cc)
The Annotated Code of Maryland, Criminal Law Article, Sections 5-402 through
5-406
The Annotated Code of Maryland, Criminal Law Article, Section 10-111
The Annotated Code of Maryland, Education Article, Section 4-205
The Annotated Code of Maryland, Education Article, Section 6-202
The Annotated Code of Maryland, Health General Article, Section 17-214
COMAR 10.10.10.01-.10
COMAR 13A.12.05.02
COMAR 13A.12.05.03

- B. Other Board Policies
 - Policy 5100 School Health Services
 - Policy 7030 Employee Discipline
 - Policy 7040 Alcohol and Noncontrolled Substance Abuse by Employees
 - Policy 9230 Alcohol, Other Drugs, Prescription Medication and Over the Counter Products

- C. Other
 - Employee Assistance Program (EAP) brochure

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POLICY 7050-PR
IMPLEMENTATION PROCEDURES
DRUG USE BY EMPLOYEES:
ILLEGAL DRUGS, DRUG
PARAPHERNALIA, AND
CONTROLLED SUBSTANCES

Effective: July 1, 2010

I. Definitions

Within the context of this policy, the following definitions apply:

- A. Currently Engaged – Using illegal drugs or abusing controlled substances recently enough to justify the Superintendent/Designee’s reasonable suspicion that involvement with illegal drugs or controlled substances is an ongoing problem. Current engagement is not limited to the day of use or recent week or days in terms of an employment action.
- B. Employee Assistance Program (EAP) – A program designed to identify employee needs and provide subsequent referral recommendations, services, and/or resources in areas including, but not limited to, drug and substance abuse, alcoholism, and interpersonal, financial, or legal concerns.
- C. Reasonable Suspicion – A belief based on facts or on the rational inferences that may be drawn from such facts.
- D. Rehabilitation – The method used (including medical and psychological) to address the treatment and/or regression of any aspect connected with the use of illegal drugs or the abuse of a controlled substance.

II. Investigation of Alleged Violations

- A. When the Superintendent/Designee receives notice of an alleged violation of the provisions of Policy 7050, the following actions will be taken:

The Superintendent/Designee will conduct an investigation into the alleged violation and make a determination regarding the employee’s involvement in the alleged violation.

- 1. The investigation will be conducted promptly.
- 2. The employee may be placed on administrative leave with or without pay while the investigation is being conducted.
- 3. Physical evidence will be preserved for later use during the investigation and/or by the proper authorities.

4. Circumstantial evidence may be used to prove a violation of this policy, including a violation based on constructive possession.
 5. Due process will be utilized during the investigation. Due process includes the following steps:
 - a. The Superintendent/Designee will specify, to the employee, the portion(s) of the policy allegedly violated, the date(s) of the alleged violation(s), and the specific action(s) that constitutes the alleged violation.
 - b. The employee will be notified of the date, time, and place to respond to the charges of the alleged violation.
 6. An employee has the right to respond to the allegations; however, failure to respond does not preclude the Superintendent/Designee from taking disciplinary action.
- B. At the conclusion of the investigation, which will include a conference with the employee, the Superintendent/Designee will provide the employee a written decision containing:
1. A brief finding of facts
 2. A determination as to whether there has been a policy violation, including the part of policy violated if applicable
 3. Any disciplinary action to be taken and the effective date of such action. Such disciplinary action may include, but is not limited to:
 - a. Verbal and/or written reprimand
 - b. Suspension from employment with or without pay
 - c. Termination from employment.
- C. If an employee has been placed on administrative leave without pay during the course of the investigation and it is determined that no policy violation occurred, the employee will be awarded all back pay lost during the period of administrative leave without pay.
- D. The Superintendent will comply with the State Board of Education, the Maryland Board of Nursing regulations, and any other licensing boards regarding the suspension and revocation of teaching certificates and/or licenses in applicable cases.

III. Drug or Alcohol Testing

- A. The Howard County Public School System (HCPSS) has the right to conduct drug or alcohol testing on any employee based on reasonable suspicion of a policy violation and/or to ensure compliance with any aspect of a disciplinary action. Failure to comply with a drug or alcohol test notification or the alteration of a sample may result in disciplinary action, up to and including termination.
- B. All drug testing of employees shall comply with Section 17-214 of the Health General Article of the Annotated Code of Maryland and COMAR 10.10.10.01-.10 regarding the certification of any laboratory testing specimen.
- C. If the employee has tested positive for the use of any illegal drug and/or the abuse of any controlled substance, the HCPSS will, after confirmation of the test results, supply the employee with:
 - 1. A copy of the test result
 - 2. A copy of the Howard County Public School System's written policy and implementation procedures on drug abuse
 - 3. If applicable, written notice of the Howard County Public School System's intention to take disciplinary action, and
 - 4. A statement or copy of the Annotated Code, Health General Article, Section 17-214 (e), which permits an employee to request independent testing of the same sample for verification of the test result.

This statement will be delivered to the employee in person or by certified mail and within seven (7) days from the date the test was performed.
(COMAR 10.10.10.08)

IV. Referral/Treatment for Employees

- A. An employee may be required to participate in a fitness for duty evaluation and any resulting treatment recommendations designed to address illegal drug use or controlled substance abuse and related problems.
 - 1. This participation may be required as a condition of returning to employment, continued employment, or as associated with disciplinary action.
 - 2. The employee may be required to provide the Superintendent/Designee with evidence of participation and compliance with recommendations as a condition of continued employment or returning to employment.

- B. Participation in a treatment program will be treated in a confidential manner. Treatment programs may include, but are not limited to, the following:
1. Individual and/or group counseling with an individual and/or agency approved by the Superintendent/Designee or through the Employee Assistance Program
 2. Medical treatment prescribed by or through a licensed health care provider or medical program
 3. Treatment programs available through and/or prescribed by an approved health maintenance organization or health insurance provider
 4. Group programs such as Narcotics Anonymous.
- C. Participation in a treatment program does not exempt an employee from performing their assigned job responsibilities in a satisfactory manner.

V. Non-Discrimination Against Prior Users

- A. HCPSS will not take disciplinary action against an employee who has used illegal drugs or abused controlled substances if they meet the following conditions:

The employee:

1. Voluntarily admits that they have used illegal drugs or abused controlled substances prior to being identified through other means
2. Is not currently engaged in the use of illegal drugs or the abuse of controlled substances
3. Has completed, or is in the process of completing, a treatment or rehabilitation program
4. Did not endanger any student or other employee through his/her use of illegal drugs or abuse of controlled substances
5. Did not use illegal drugs or abuse controlled substances on school system property or at a school-sponsored event
6. Thereafter refrains from using illegal drugs or abusing noncontrolled substances.

- a. The Superintendent/Designee will set terms and conditions for continued employment.
 - b. Such terms and conditions may include participation in a treatment program as outlined in Section IV.
- B. Any employee who meets the criteria set forth above in V.A will not be subject to disciplinary action, unless the employee fails to comply with the terms and conditions for continued employment.
- 1. In the event the employee is charged with failure to comply with the terms and conditions of continued employment, the employee shall be afforded due process as outlined in Section II.A.4.
 - 2. If it is determined that the employee violated the terms and conditions for continued employment, then the employee will be subject to disciplinary action, up to and including termination.

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