

POLICY 3.961

4-E I recommend the Board adopt the proposed new Policy 3.961, entitled "Drug and Alcohol-Free Workplace Policy for Employees Performing Safety Sensitive Functions and Holders of Commercial Drivers Licenses."

[Contacts: Walter Burns, 434-8350; Bob Riley, 688-7595]

Adoption

CONSENT ITEM

- The Board approved development of this Policy on March 1, 2004.
- This proposed new Policy 3.961 applies to employees working in safety-sensitive functions and is similar to current practice.

1 PROPOSED NEW POLICY 3.961

2 DRUG AND ALCOHOL-FREE WORKPLACE POLICY FOR EMPLOYEES
3 PERFORMING SAFETY SENSITIVE FUNCTIONS AND HOLDERS OF
4 COMMERCIAL DRIVERS LICENSES

5 1. Employees Performing Safety-Sensitive Functions Holders of Commercial
6 Drivers License

7 a. The School District of Palm Beach County hereby affirms its commitment to
8 maintaining a drug and alcohol-free workplace.

9 b. This Policy shall apply to all District employees, job applicants and volunteers
10 who are required by their job descriptions to perform safety sensitive functions
11 and are required to maintain a valid (Florida) Commercial Drivers License
12 ("CDL").

13 c. This Policy implements the Omnibus Transportation Employee Testing Act
14 (OTETA), Pub. L. 102-143, codified at 49 U.S.C. § 701, et seq.

15 d. Through the establishment of a standard drug and alcohol testing program, all
16 employees performing safety sensitive functions and holding commercial
17 drivers licenses shall be subject to drug and alcohol testing as described in
18 this policy.

19 a. A drug and alcohol-free awareness program is hereby established and will be
20 implemented by the Superintendent. Before testing is initiated under this
21 policy, each current employee will be provided a copy of the "Notice of Drug-
22 Free Workplace" attached to and incorporated by reference into this policy. All
23 job applicants will be provided a copy of the notice with a conditional offer of
24 employment and all volunteers will be provided a copy of the notice before any
25 volunteer activities are performed. Each employee will sign an
26 acknowledgment of receipt and understanding of the Drug-Free Workplace
27 policy and that acknowledgment will be retained in the employee's personnel
28 file. Copies of the Notice shall also be posted in prominent locations in District
29 buildings.

30 b. Off-the-job use or involvement with illegal drugs, alcohol, or other controlled
31 substances is prohibited when the use or involvement: results in impaired work
32 performance including, but not limited to, absenteeism, tardiness or poor work
33 product(s); or can be expected to cause harm to, or otherwise adversely
34 affect, the employee or District's image or relationship with students, other
35 employees, or the public.

36 e. Reporting for duty or remaining on duty under the influence of alcohol or a
37 controlled substance is prohibited, except when the use of a controlled
38 substance is pursuant to prescribed instructions of a licensed medical
39 practitioner who has advised the individual that the substance will not
40 adversely affect the individual's ability to safely perform all assigned duties.

41 f. Prohibited under this policy are the unlawful manufacture, distribution,
42 dispensation, possession, or use of alcohol or controlled substances, as
43 defined by Chapter 893, Fla. Stat., on District property or while on duty.

44 g. Through implementation of this Policy, the Board intends to comply with and
45 be subject to current and future requirements set forth in the OTETA and
46 regulations of the Federal Highway Administration (FHWA) contained in Title
47 49 of the Code of Federal Regulations (C.F.R.), parts 40 and 382. The
48 policies and procedures contained in this policy are separate from all tests and
49 procedures contained in policy 3.96 addressing Drug and Alcohol Free
50 Workplace. Under federal regulations in 49 C.F.R. part 40, drug and alcohol
51 tests for purposes of Department of Transportation policies "must be
52 completely separate from non-DOT tests in all respects."

53 2. Definitions.-- For the purpose of this Policy, the following terms shall be defined as
54 indicated:

55 a. **Alcohol.**-- Any beverage, prescription, over-the-counter medication, or other
56 product containing any form of alcohol, including, but not limited to, ethanol,
57 methanol, propanol, and isopropanol.

58 b. **Alcohol Use.**-- The drinking or swallowing of any beverage, liquid mixture, or
59 preparation (including any medication) containing alcohol.

60 c. **Alcohol Concentration (or content).**-- The alcohol level in a volume of
61 breath expressed in terms of grams of alcohol per 210 liters of breath as

- 62 indicated by a breath test required by this policy. Breath tests will be used for
63 both initial and confirmation testing for alcohol content under this policy.
64
- 65 d. **Chain of Custody.**-- The procedure used to account for the integrity of each
66 urine specimen by tracking its handling and storage from point of specimen
67 collection to final disposition for all specimens by an appropriate drug testing
68 custody form that documents custody of the specimen from collection to
69 receipt by the laboratory and handling of the sample or sample aliquots (a
70 portion of a specimen used for testing) within the laboratory.
- 71 e. **Confirmation Test, Confirmed Test, or Confirmed Drug Test.**-- A second
72 analytical procedure used to confirm the presence of a specified drug or
73 metabolite in a specimen through a different technique and chemical principle
74 from that of the screen test to ensure specificity, sensitivity, reliability, and
75 quantitative accuracy. Gas chromatography/mass spectrometry ("GC/MS") is
76 the only authorized confirmation test for cocaine, marijuana, opiates,
77 amphetamines, and phencyclidine.
- 78 f. **Confirmation Test for Alcohol.**-- A second test (following a screening test
79 with a result of two one-hundredths BAL (.02) or greater) that provides specific
80 quantitative data for alcohol, conducted by a certified operator of an evidential
81 breath testing (EBT) device.
- 82 g. **Covered Employees/Covered Position.**-- Employees or positions that
83 require a commercial drivers' license as a condition of employment and
84 operation of any of the following:
- 85 i. A vehicle designed to carry 16 or more passengers;
- 86 ii. A vehicle that weighs more than 26,000 pounds; or
- 87 iii. A vehicle that carries hazardous cargo or a placard indicating hazardous
88 cargo.
- 89 h. **Drug Rehabilitation Program.**-- A service vendor that provides confidential,
90 timely, and expert identification, assessment, and resolution of employee drug
91 abuse through the District's Employee Assistance Program ("EAP").
- 92 i. **Drug Test.**-- Any chemical, biological, or physical instrumental analysis
93 administered for the purpose of determining the presence or absence of a

94 drug or its metabolites. The District shall pay for all drug tests, initial and
95 confirmation, that it requires of employees. Employees must pay for any
96 additional tests not required by the District. A urine sample will be used for the
97 initial and confirmation tests for all drugs and substances except alcohol.

98 i. **Drugs (hereinafter, Drugs or Controlled Substance(s)).--** Alcohol, including
99 distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines;
100 cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone;
101 opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or
102 a metabolite of any of these substances.

103 k. **Employee.--** The term “employee” means any person who works for the
104 District for salary, wages, or other remuneration. As used in this policy,
105 “employee” also means applicants for employment and volunteers, unless
106 otherwise stated.

107 l. **Employee Assistance Program (“EAP”).--** An established program capable
108 of providing expert assessment of employee personal concerns; confidential
109 and timely identification services for employee drug or alcohol abuse; referrals
110 of employees for appropriate diagnosis, treatment, and assistance; and follow-
111 up services for employees who participate in the program or require
112 monitoring after returning to work.

113 m. **First Offense.--** An initial violation of the drug and alcohol-free workplace
114 Policy whether it involves drugs or alcohol.

115 n. **Medical Review Officer (“MRO”).--** A licensed physician responsible for
116 receiving laboratory results generated by the District’s drug testing program
117 who has knowledge of substance abuse disorders, laboratory testing
118 procedures, and chain of custody collection procedures; who verifies positive,
119 confirmed test results; and who has the necessary medical training to interpret
120 and evaluate an employee’s positive test result in relation to the employee’s
121 medical history or any other relevant biomedical information.

122 o. **Positive Breath Test.--** A concentration of two one-hundredths (0.02) alcohol
123 content or above.

124 h. **Safety Sensitive Function(s).--** The term “safety sensitive function” means
125 all time from the time a covered employee begins work or is required to be in

126 readiness to work until the time relieved from work and responsibility for
127 performing work. An individual is considered to be performing a safety
128 sensitive function during any period in which he/she is actually performing,
129 ready to perform, or immediately available to perform any safety sensitive
130 function. Safety sensitive functions include:

131 i. All time waiting at an employer or shipper, plant, terminal, facility, or other
132 property, to be dispatched unless the covered employee has been
133 relieved from duty by the District;

134 ii. All time inspecting equipment or otherwise inspecting, servicing or
135 conditioning any commercial vehicle at any time;

136 iii. All time spent at the driving controls of a commercial motor vehicle;

137 iv. All time other than driving time, in or upon any commercial motor vehicle
138 except time spent resting in a sleeping berth;

139 v. All time loading or unloading a vehicle, supervising, or assisting in the
140 loading or unloading, attending a vehicle being loaded or unloaded,
141 remaining in readiness to operate the vehicle or in giving or receiving
142 receipts for shipments loaded or unloaded; and

143 vi. All time repairing, obtaining assistance, or remaining in attendance upon
144 a disabled commercial vehicle.

145 p. **Screening Test (also known as Initial Test).**-- In alcohol testing, an
146 analytical procedure to determine whether an employee, job applicant, or
147 volunteer may have a prohibited concentration of alcohol in his/her system. In
148 controlled substance testing, an immunoassay screen to eliminate "negative"
149 urine specimens from further consideration.

150 q. **Second Offense.**-- Constitutes any violation of the drug and alcohol-free
151 workplace Policy following the initial violation, whether either violation involves
152 drugs or alcohol.

153 r. **Specimen.**-- Tissue, hair, or product of the body capable of revealing the
154 presence of drugs or their metabolites.

155 s. **Substance Abuse Professional ("SAP").**-- A person with knowledge of and

156 clinical experience in the diagnosis and treatment of alcohol/controlled
157 substance related disorders who evaluates employees who have violated a
158 DOT drug and alcohol regulation and makes recommendations concerning
159 education, treatment, follow-up testing, and aftercare.

160
161 t. **Volunteer (hereinafter, Volunteer or Employee).**-- An individual who offers
162 services to the District without remuneration.

163 3. **Prohibited Conduct.**-- The following types of conduct are expressly prohibited by
164 a covered employee:

165 a. **Off-the-Job.**-- Use or involvement with illegal drugs, alcohol, or other
166 controlled substances that results in impaired work performance including, but
167 not limited to, absenteeism, tardiness or poor work product(s), or which can be
168 expected to cause harm to or otherwise adversely affect the employee or the
169 District's image or relationship with students, other employees, or the public.

170 b. **Alcohol Concentration.**-- No covered employee shall report for duty or
171 remain on duty while having an alcohol concentration of two one-hundredths
172 (.02) or greater. No covered employee with an alcohol concentration of two
173 one-hundredths (.02) or greater can drive a commercial motor vehicle.

174 c. **Alcohol Use/Misuse in General.**-- No covered employee shall report for duty
175 or remain on duty requiring the performance of his/her duties while the
176 covered employee is under the influence of or impaired by alcohol, as shown
177 by the behavioral, speech and performance indicators of alcohol misuse.

178 d. **On-Duty Use.**-- No employee shall report for duty or remain on duty requiring
179 the performance of safety sensitive functions within four hours after using
180 alcohol or while the employee is under the influence of or impaired by drugs or
181 alcohol, as shown by the behavioral, speech, and performance indications of
182 drug or alcohol misuse. As a condition of employment, employees are
183 required to remain away from the place of duty and off District property while
184 under the influence of drugs or alcohol. Covered employees will notify their
185 supervisors of any prescription, therapeutic drug use that might impair
186 performance of safety sensitive functions.

187 e. **Use Following an Accident.**-- No covered employee involved in an accident
188 shall use alcohol for eight (8) hours following an accident, or until undergoing a

189 post-accident alcohol test, whichever occurs first.

190 **f. Refusal to Submit to a Required Alcohol or Controlled Substances Test.-**
191 - No covered employee shall refuse to submit to a post-accident alcohol or
192 controlled substances test, a reasonable suspicion alcohol or controlled
193 substances test, a fitness for duty alcohol or controlled substances test, or a
194 follow-up alcohol or controlled substances test. Failure to complete and sign
195 testing form(s), to provide an adequate specimen, or otherwise to cooperate
196 with the testing process in a way that prevents the completion of the test shall
197 be considered a refusal to test and shall be deemed a positive test result. Any
198 attempt to adulterate a specimen or provide a specimen that is adulterated
199 shall also be considered a refusal to test and deemed a positive test result.
200 Any obstruction to and lack of cooperation with the testing process shall be
201 considered a refusal to test and deemed a positive test result.

202 **g. Controlled Substances Use.--** No covered employee shall report for duty or
203 remain on duty while under the influence of any controlled substance, except
204 when the use is pursuant to instructions of a licensed medical practitioner, who
205 has advised the individual that the substance will not adversely affect the
206 individual's ability to safely perform work duties.

207 **h. Controlled Substances Testing.--** No covered employee shall report for duty
208 or remain on duty after testing positive for controlled substances; the
209 employee shall be placed in an unpaid, non-duty status, or on annual or sick
210 leave, at the employee's option (unless the employee is incarcerated, in which
211 case annual or sick leave is not an option).

212 **4. Verification of Records of Past Employers.--** The District is required to inquire
213 about drug and alcohol test results of covered employees hired after January 1,
214 1995, from previous regulated employers. The District is mandated to:

215 **a.** Inquire, pursuant to the covered employee's written consent, and obtain
216 information generated within the preceding two (2) years on the driver's
217 alcohol tests with an alcohol concentration of four one-hundredths (0.04) or
218 greater, verified positive controlled substance test results, and refusals to be
219 tested.

220 **i.** If feasible, the District must obtain and review the information before the

221 first time the individual performs duties for the District. If that is not
222 feasible, the District must obtain and review the information as soon as
223 possible, but not later than fourteen (14) calendar days after the first time
224 a covered employee performs duties for the District.

225 ii. After fourteen (14) days has passed without receipt of this information,
226 the District may not permit a covered employee to perform duties,
227 provided the District has tried in good faith effort to obtain the necessary
228 information as soon as possible.

229 iii. Even if the covered employee hired by the District ceases to perform
230 duties, either before expiration of the fourteen (14) day period or before
231 the District has obtained the information, the District must still try in good
232 faith to obtain the information.

233 b. Provide to each of the covered employee's employers within the preceding two
234 (2) years the individual's specific written authorization to release this
235 information to the District.

236 c. Maintain a written, confidential record of each past employer contacted. Even
237 if efforts to obtain the necessary information prove futile, the District must
238 make and retain a record of its good faith efforts.

239 d. Prohibit the covered employee from performing duties if the employer obtains
240 information that the individual has either refused to take a controlled
241 substances and/or alcohol test, had a positive controlled substances test, or
242 an alcohol test result of two one-hundredths (0.04) or greater without first
243 obtaining information on subsequent compliance with the referral and
244 rehabilitation requirements.

245 5. Referral for Testing.-- Appropriate notification and testing forms will be provided
246 to employees, volunteers, and job applicants before drug testing.

247 6. Voluntary Self-Referral/Rehabilitation.-- At any time before notification of a
248 required test, an employee is encouraged to contact the District's EAP for voluntary
249 treatment of a drug or alcohol problem. Such employees may be required to
250 submit to compliance testing as part of the treatment program. Voluntary self-
251 referral made at the time of notification shall not excuse an employee from required
252 drug and/or alcohol testing, nor shall it negate a positive result from such test. An

253 employee will not be subject to discharge or disciplinary action solely based on
254 voluntary self-referral for treatment.

255 **7. Required Testing.--** Before performing an alcohol or controlled substances test
256 under this Policy, the District shall notify the covered employee that the test is
257 being administered pursuant to OTETA and the regulations of the FHWA. The
258 District shall not falsely represent that a test is being administered under this
259 Policy. The District shall provide educational materials to all covered employees
260 before the start of alcohol and controlled substances testing under 49 Code of
261 Federal Regulations Parts 40 and 382. A notice of the requirements for drug and
262 alcohol testing will be included in the vacancy announcements for all covered
263 positions. The District shall also provide written notice to representatives of
264 employee organizations of the availability of the information contained in this
265 Policy.

266 **a. Pre-employment Testing.--** All applicants for employment in any covered
267 position safety-sensitive position requiring a CDL license shall undergo drug
268 and alcohol testing as a condition precedent to employment, except as
269 otherwise specified by Title 40, Code of Federal Regulations, § 382.301(c).
270 Any applicant who tests positive in the pre-employment screening for a drug
271 as defined in this policy is not eligible for employment with the District.

272 **b. Reasonable Suspicion Testing**

273 **i.** All employees who are determined to be under reasonable suspicion of
274 drug and/or alcohol use are required to take a drug and alcohol test.
275 Reasonable suspicion shall be determined by a supervisor at least one
276 level above the employee to be tested. The circumstances supporting
277 that determination must be drawn from specific objective and articulable
278 facts that shall be documented in writing. Reasonable suspicion may
279 include, but is not necessarily limited to, the following examples:

280 **1.** Observable phenomena while at work, such as direct observation of
281 alcohol or drug use or of the physical symptoms or manifestations of
282 being under the influence of alcohol or a drug. Physical symptoms
283 or manifestations include, but are not limited to, slurred speech,
284 alcohol odor on breath, unsteady walking and movement, poor
285 coordination and/or reflexes, glassy or bloodshot eyes, physical

- 286 altercations, verbal altercations, or unusual behavior.
- 287 2. Abnormal conduct or erratic behavior while at work or a significant
288 deterioration in work performance.
- 289 3. A report of alcohol or drug use by a reliable and credible source.
- 290 4. Evidence that an individual has tampered with a drug test during the
291 term of employment.
- 292 5. Information that an employee has caused, or contributed to, an
293 accident while at work.
- 294 6. Evidence that an employee has used, possessed, sold, solicited, or
295 transferred drugs while working or while on the employer's premises
296 or while operating the employer's vehicle, machinery, or equipment.
- 297 ii. Where testing is based on reasonable suspicion, the supervisor will detail
298 in writing the circumstances that formed the basis of the reasonable
299 suspicion determination. A copy of this written description shall be given
300 to the employee upon request and the original documentation shall be
301 kept confidential and exempt from the provisions of § 119.07(1), Fla.
302 Stat., as provided in § 440.102 (8), Fla. Stat., and retained for at least one
303 year.
- 304 iii. Reasonable suspicion post-accident testing will be done on all employees
305 who are involved as a driver in any vehicular accident while performing
306 their duties as soon as practicable under the following circumstances:
- 307 1. On a surviving employee when an accident results in loss of human
308 life. The employee need not have been cited for a moving traffic
309 violation or deemed at fault to be subject to testing under this
310 paragraph.
- 311 2. When a covered employee receives a citation for a moving
312 violation(s) and one (1) or more of the vehicles involved in the
313 accident is towed from the scene of the accident; or
- 314 3. A covered employee receives a citation for a moving violation(s) and
315 one (1) or more persons involved in the accident received medical

316 treatment away from the scene of the accident.

317 iv. A covered employee who is subject to reasonable suspicion post-accident
318 testing shall remain readily available for such testing. Failure or refusal to
319 be available for testing may be deemed by the District as a refusal to
320 submit to testing. A covered employee who refuses to submit to a post-
321 accident drug test forfeits eligibility for employee medical and indemnity
322 benefits. This provision shall not be construed as requiring the delay of
323 necessary medical attention for injured persons following an accident or
324 impeding an employee from leaving the scene of an accident to obtain
325 necessary assistance in responding to the accident or to obtain
326 necessary emergency care.

327 v. If alcohol testing is not administered within eight (8) hours following an
328 accident, the District may not conduct alcohol testing based on the
329 accident provision. Likewise, if controlled substance testing is not
330 administered within thirty-two (32) hours following the accident, the
331 District may not conduct controlled substance testing based on the
332 accident provision. The District is required to document those instances
333 when testing is not timely conducted according to the time frames noted
334 above.

335 vi. Following an accident, the District will provide the employee
336 transportation to a testing facility by a person designated for that purpose.
337 After testing, the employee will be transported to the place of residence.

338 vii. A covered employee pending results of post-accident drug test shall be
339 placed in a non-duty status and required to use annual or advanced
340 leave. If an alcohol test yield a result of less than two one-hundredths
341 (0.02) BAL and a controlled substances test yields a negative result, the
342 District will restore the leave hours taken.

343 viii. Notwithstanding the absence of a reasonable suspicion alcohol test under
344 this section, the District shall not permit a covered employee involved in
345 an accident described above to perform or continue to perform safety
346 sensitive duties until:

347 1. An alcohol test is administered and the employee's alcohol

348 concentration measures less than two one-hundredths (0.02) BAL; or

349 2. Twenty-four (24) hours have elapsed following the determination that
350 there is reasonable suspicion to believe that the employee has
351 violated the prohibitions of this Policy concerning the use of alcohol.

352 **c. Random Testing**

353 i. Every covered employee shall submit to random, unannounced drug
354 testing, as per 49 C.F.R. § 382.305. The dates for administering the tests
355 will be spread reasonably throughout the calendar year. Upon being
356 notified of selection for random testing, the covered employee shall
357 immediately report to the designated collection site.

358 ii. The District shall select covered employees for random alcohol and
359 controlled substances testing by means of a scientifically valid method,
360 such as a random number table or a computer-based random number
361 generator that is matched with the covered employee's Social Security
362 numbers, payroll identification numbers, or other comparable identifying
363 numbers. Under the selection process used, each covered employee
364 shall have an equal chance of being tested each time random selections
365 are made. A minimum of 10% of all covered employees will be annually
366 tested randomly for alcohol; a minimum of 50% of all covered employees
367 will be tested annually at random for controlled substances. The testing
368 percentage will be adjusted as required by the Administrator of the
369 Federal Motor Carrier Safety Administration.

370 iii. For random alcohol testing only, a covered employee shall only be
371 subject to such testing while the individual is performing safety sensitive
372 functions, just before the covered employee is to perform safety sensitive
373 functions, or just after the covered employee has ceased performing such
374 functions.

375 **d. Return-to-Duty Testing.--** A covered employee who previously tested positive
376 and was not dismissed shall not be returned to duty until the individual
377 undergoes a subsequent controlled substances test indicating a verified
378 negative result and/or subsequent alcohol test indicating a BAC of less than
379 two one-hundredths (0.02). The employee may be required to pay for the

380 return-to-duty test.

381 e. **Follow-Up Testing.**-- All employees who are allowed to return to duty after
382 successfully completing a return-to-duty test, including those who have
383 successfully completed an employee assistance program or a drug or alcohol
384 rehabilitation program and returned to duty, must submit to unannounced
385 follow-up drug and alcohol after return to duty. Follow-up testing shall be
386 conducted only when the covered employee is performing duties, just before
387 the covered employee is to perform duties, or just after the covered employee
388 has ceased performing duties.

389 8. **General Procedures after Positive Random Testing.**-- The following general
390 procedures apply to covered employees who have tested positive for drugs or
391 alcohol during random testing. (Disciplinary consequences and more specific
392 procedures follow in Section 9, below).

393 a. A covered employee will not be permitted to perform safety sensitive functions
394 until the covered employee has:

395 i. Been advised of the availability of and provided with the names,
396 addresses, and telephone numbers of SAPs and counseling and
397 treatment programs; and

398 ii. Been evaluated by a SAP who shall determine what assistance, if any,
399 the individual needs to resolve problems associated with alcohol misuse
400 and controlled substance use; and

401 iii. Successfully completed the SAP-recommended treatment program and
402 completed a return-to-duty alcohol test (with a result indicating an alcohol
403 concentration of less than two one-hundredths (0.02) if the conduct
404 involved alcohol) or a controlled substances test with a verified negative
405 result if the conduct involved a controlled substance.

406 b. The covered employee will be subject to follow-up testing as directed by the
407 SAP, which at a minimum must consist of at least six (6) tests in the twelve
408 (12) months following the covered employee's return to duty. The District will
409 direct the covered employee to undergo return-to-duty and follow-up testing for
410 both alcohol and controlled substances, if the SAP determines that return-to-
411 duty and follow-up testing for both alcohol and controlled substances is

412 necessary for that particular individual.

413 9. **Disciplinary Action.**-- Employees who violate this Policy will be subject to
414 disciplinary action, up to and including termination of employment. The
415 consequences for a positive drug or controlled substances test shall begin with the
416 employee's immediate removal from safety-sensitive duties. No covered employee
417 shall report for duty or remain on duty while the employee is under the influence of,
418 or impaired by, drugs or alcohol.

419 a. Testing positive for drugs or alcohol during a reasonable suspicion test is a
420 terminable offense.

421 b. Testing positive for drugs or alcohol during a random test will be subject to the
422 following:

423 i. **Alcohol Use, BAC Less than 0.04.**-- Alcohol content of two one-
424 hundredths through thirty-nine one-thousandths (0.02 - 0.039)

425 1. The employee will be immediately removed from safety sensitive
426 duties.

427 2. A covered employee may not function or continue to perform safety
428 sensitive duties, including driving a commercial motor vehicle, until
429 the start of the covered employee's next regularly scheduled duty
430 period, but not less than twenty-four (24) hours after the test is
431 administered.

432 3. The covered employee shall be subject to disciplinary action, up to
433 and including termination.

434 ii. **Alcohol Use, BAC 0.04 or More.**-- Alcohol content of four one-
435 hundredths (0.04) or greater

436 1. **First Offense**

437 A. The employee will be removed immediately from all duties.

438 B. An alcohol content of four one-hundredths (0.04) or greater is a
439 terminable offense; however, a covered employee who wishes
440 to continue employment with the District and has not otherwise

441 engaged in conduct that could result in termination must
442 successfully participate in a treatment or rehabilitation program
443 as directed by an SAP through the District's EAP, which will
444 include unannounced follow-up testing as directed by the SAP.
445 If the employee is unable to participate in outpatient
446 rehabilitation, the employee may be placed on leave status
447 while participating in an EAP or an alcohol and drug
448 rehabilitation program. If placed on a leave-without-pay status,
449 the employee shall be permitted to use any accumulated leave
450 before being placed on leave without pay.

451 C. A covered employee who successfully completes a required
452 EAP or an alcohol or drug rehabilitation program will be returned
453 to duty in the same or an equivalent position. Before returning
454 to duty, the covered employee must undergo a return-to-duty
455 alcohol test with a result indicating an alcohol concentration of
456 less than two one-hundredths (0.02). The employee will also be
457 subject to unannounced follow-up testing for a twenty-four (24)
458 month period as directed by the SAP.

459 D. Refusal to participate in the EAP or the alcohol and drug
460 rehabilitation or failure to successfully complete such program
461 will result in termination of employment.

462 E. Failure or refusal to sign a written consent form allowing the
463 District to obtain information regarding the progress and
464 successful completion of an EAP or an alcohol and drug
465 rehabilitation program will result in termination of employment.

466 2. Second Offense

467 A. A second positive test with an alcohol content of four one-
468 hundredths (.04) or greater on an alcohol test will result in
469 termination of employment.

470 B. The individual shall be ineligible for future employment in any
471 capacity with the District.

472 C. Refusal to submit to an alcohol test will be deemed a positive

473 test result of alcohol content of over four one-hundredths (0.04).

474 **iii. Controlled Substances Use**

475 **1. First Offense**

476 A. The employee will be immediately removed from all duties.

477 B. A verified positive controlled substances test is a terminable
478 offense; however, a covered employee who wishes to continue
479 employment with the District and has not otherwise engaged in
480 conduct that could result in termination must successfully
481 participate in a treatment or rehabilitation program as directed
482 by an SAP through the District's EAP, which will include
483 unannounced follow-up testing as directed by the SAP. If the
484 employee is unable to participate in outpatient rehabilitation, the
485 employee may be placed on leave status while participating in
486 an EAP or an alcohol and drug rehabilitation program. If placed
487 on a leave-without-pay status, the employee shall be permitted
488 to use any accumulated leave before being placed on leave
489 without pay.

490 C. A covered employee who successfully completes a required
491 EAP or an alcohol or drug rehabilitation program will be returned
492 to duty in the same or an equivalent position. Before returning
493 to duty, a covered employee must undergo a return-to-duty
494 controlled substance test with a negative result for all controlled
495 substances. The employee will also be subject to unannounced
496 follow-up testing for a twenty-four (24) month period.

497 D. Refusal to participate in the EAP or the alcohol and drug
498 rehabilitation or failure to successfully complete such program
499 will result in termination of employment.

500 E. Failure or refusal to sign a written consent form allowing the
501 District to obtain information regarding the progress and
502 successful completion of an EAP or an alcohol and drug
503 rehabilitation program will result in termination of employment.

504 **2. Second Offense**

505 A. A second verified positive test will result in termination of
506 employment.

507 B. The individual shall be ineligible for future employment in any
508 capacity with the District.

509 C. Refusal to submit to a controlled substances test will be deemed
510 a positive test result for controlled substances.

511 **10. Refusal to Submit to Testing**

512 a. No covered employee shall refuse to submit to a post-accident alcohol or
513 controlled substances test; a random alcohol or controlled substances test; a
514 reasonable suspicion alcohol or controlled substances test, or follow-up
515 alcohol or controlled substances tests. Refusal to submit to testing includes
516 obstruction to and lack of cooperation with the testing process.

517 b. Refusal to submit to required testing will result in immediate removal from
518 safety-sensitive functions and disciplinary action up to and including
519 termination.

520 **11. Testing Procedures**

521 a. Covered employees subject to testing for the presence of alcohol and
522 controlled substances will be subject to the testing procedures detailed in Title
523 49, CFR, Parts 40 and 382, entitled Procedures for Transportation Workplace
524 Drug Testing Programs.

525 b. The District will comply with all procedures specified by Title 49, CFR, Parts 40
526 and 382, to protect the covered employee and the integrity of the testing
527 processes. In no event will any testing be conducted that might in any way
528 endanger the life of the covered employee.

529 c. The District will comply with all procedures specified by Title 49, CFR, Parts 40
530 and 382, to safeguard the validity of the results and to ensure that those
531 results are attributed to the correct covered employee, including post-accident
532 information, procedures, and instructions.

533 **12. Results Reporting**

534 a. The MRO shall contact the tested covered employee directly, on a confidential
535 basis, before verifying a positive test result.

536 b. The MRO shall allow the covered employee an opportunity to discuss the test
537 result. If the MRO makes reasonable, documented efforts but is unable to
538 reach the covered employee within five (5) working days of a verified positive
539 result, the MRO shall inform the District's designated representative, who shall
540 then direct the tested covered employee to contact the MRO as soon as
541 possible.

542 c. If, after making all reasonable efforts, the District's designated representative
543 is unable to contact the covered employee, the District may place the covered
544 employee on temporary medically unqualified status or medical leave.

545 d. The MRO's communication with the tested covered employee is important to
546 verification of a positive test result; however, the MRO will verify a test result
547 as positive to the District without having communicated directly with the
548 covered employee in three (3) circumstances:

549 i. The tested covered employee declines the opportunity to discuss the test
550 with the MRO;

551 ii. Neither the MRO nor the District representative, after making all
552 reasonable efforts, has been able to contact the individual within fourteen
553 (14) days of the date on which the MRO receives the confirmed positive
554 test result; or

555 iii. The District representative has successfully made and documented a
556 contact with the tested covered employee and instructed the covered
557 employee to communicate with the MRO and more than five (5) days
558 have passed since the date the covered employee was successfully
559 contacted by the District.

560 e. Following the verification of a positive test result, the MRO shall refer the case
561 to the District's designated representative empowered to recommend or take
562 administrative action.

563 f. After the MRO has verified a positive test result to the District, the tested
564 covered employee may contact the MRO and present information
565 documenting the reasons (serious illness, injury or other circumstances) that
566 prevented the individual from communicating with either the MRO or the
567 District representative. The MRO, may, upon review of the reasons, reopen
568 the verification and allow the covered employee to present information
569 concerning a legitimate explanation for the confirmed positive test. If the MRO
570 concludes that there is a legitimate explanation, the MRO will declare the test
571 to be negative.

572 g. The District shall provide upon request to the tested individual—covered
573 employee, volunteer, or job applicant—a copy of the test results.

574 13. Challenges to Test Results

575 a. A positive test result does not automatically identify an employee as having
576 used drugs in violation of this Policy; therefore, providing the MRO with
577 detailed knowledge of possible alternative explanations is important to the
578 review of results and is the responsibility of the employee/applicant/volunteer.

579 b. The MRO shall notify an employee whose test result has been confirmed as
580 positive of the right to request an independent analysis within seventy-two (72)
581 hours. If the employee requests the independent analysis within seventy-two
582 (72) hours, the MRO shall take appropriate action to direct the analysis. Such
583 independent analysis shall be conducted by “split specimen,” at the
584 employee’s expense, with sufficient specimen being retained for later
585 verification testing.

586 c. If the employee fails to contact the MRO within seventy-two (72) hours but
587 later contacts the MRO and presents information documenting the reasons
588 (serious illness, injury, inability to contact the MRO, lack of actual notice of a
589 verified positive test result or other circumstances) that prevented the
590 employee from timely contacting the MRO, the MRO may conclude that there
591 is a legitimate explanation for the employee’s failure to contact the MRO within
592 seventy-two (72) hours and may direct the analysis of the split specimen.

593 d. The tested employee shall bear the expense of any employee-requested
594 testing of a specimen.

595 e. All aspects of the testing process, including any challenge to the testing
596 process, will be kept confidential except as stated below and as required by
597 law.

598 **14. Record Retention, Confidentiality and Disclosure Requirements**

599 a. The District shall maintain records of its alcohol misuse and controlled
600 substances use prevention program as provided for in accordance with Title
601 49 CFR, Parts 40 and 382. The records shall be maintained in a secure
602 location with controlled access.

603 b. The District must maintain the following specific types of records and all other
604 documents generated by the District in accordance with Title 49, CFR, Parts
605 40 and 382:

606 i. Records related to the collection process;

607 ii. Records related to a covered employee's test results, including refusals to
608 be tested;

609 iii. Records related to violations of these regulations;

610 iv. Records related to evaluations by a SAP;

611 v. Records related to education and training, including the driver's signed
612 receipt of the educational materials; and

613 vi. Administrative records related to alcohol and controlled substance testing.

614 c. The District will maintain the types of records described above separate from
615 an applicant's or covered employee's personnel file.

616 d. Except as expressly required or authorized by law and this Policy, the District
617 shall not release any information that is contained within these records.

618 e. An individual is entitled, upon written request, to obtain copies of personal
619 records, including test results. The District shall promptly provide the records
620 requested. The requesting person (current or formerly covered employee/
621 volunteer) is not required to pay for access to personal records, but may be
622 required to reimburse the District for photocopies of the records.

623 f. These records of covered employees may be made available to a subsequent
624 or prospective employer only upon receipt by the District of a written request
625 from the former or current covered employee. Disclosure by the District will be
626 limited to that expressly authorized by the requesting covered employee.

627 g. The District may disclose information pertaining to a covered employee to the
628 decision maker in a lawsuit, grievance, or other proceeding initiated by or on
629 behalf of the covered employee and arising from alcohol and controlled
630 substances testing or the District's own determination that the covered
631 employee engaged in prohibited conduct.

632 15. Required Training.-- Any supervisor or other employee who is assigned the
633 responsibility for making a reasonable suspicion determination shall complete a
634 training program of at least sixty (60) minutes on alcohol misuse and sixty (60)
635 minutes on controlled substance abuse.

636 16. District Designated Representative.-- The District designates the director of
637 professional standards as the person to whom all covered employees should direct
638 questions about this Policy.

639 17. Information Available.-- All covered employees are entitled to information
640 concerning the effects of alcohol and controlled substances. The District shall
641 make available information and may include prepared pamphlets. The District shall
642 also make available information about its EAP.

643 18. Certificate of Receipt.-- A certificate of receipt will be used and shall have content
644 substantially as follows:

645 CERTIFICATE OF RECEIPT

646 By signing this statement, I certify that I have received a copy of the Palm Beach
647 County School Board Policy 3.961, Drug and Alcohol Policy for Employees Performing
648 Safety Sensitive Functions and Holders of Commercial Drivers Licenses in accordance
649 with the Omnibus Transportation Employee Testing Act ("OTETA") and the regulations
650 of the Federal Highway Administration ("FHWA") contained in 49 CFR Parts 40 and
651 382. The Policy is separate from and in addition to any other District drug and/or
652 alcohol testing policies.

653 _____
654 Employee Full Name – PRINT OR TYPE Department Number

655 _____
656 Employee Signature Date

657 _____
658 Supervisor Signature Date

659

660 STATUTORY AUTHORITY §§ 1001.41(1), (2); 1001.43(11), Fla. Stat.

661 LAWS IMPLEMENTED: § 440.102, Fla. Stat; Omnibus Transportation
662 Employee Testing Act of 1991, Pub. L. 102-143; 49
663 U.S.C. Chapter 53; Regulations of Federal Motor
664 Carrier Safety Administration; Title 49 Code of
665 Federal Regulations, Parts 40 and 382.

666 HISTORY: _____ / _____ /04

Legal Signoff:

The Legal Department has reviewed proposed Policy 3.961 and finds it legally sufficient for development by the Board.

Attorney

Date