

## SYSTEM REGULATION

### **34.02.01 Drug and Alcohol Abuse and Rehabilitation Programs**

July 14, 2000

#### ***Supplements System Policy 34.02***

#### 1. ADMINISTRATION

The provisions of this regulation are based on requirements of federal and state law. Administrators should exercise caution in all matters relating to this regulation, ensuring that procedures are carefully followed and that substantial evidence from reliable sources supports a decision to counsel or test a student or an employee for drug use. The System Office of General Counsel (OGC) must be informed by the appropriate administrator of possible violations of this regulation and advice of an OGC attorney must be secured before testing anyone due to reasonable suspicion of drug or alcohol use or abuse. Advice of the OGC is not needed for required testing as described in Section 6, and the general counsel may waive the requirement to seek OGC's advice for reasonable suspicion testing when a System component shows documented evidence of training for administrators and supervisors in alcohol and drug awareness.

#### 2. DEFINITIONS

As used in this regulation, the following definitions apply.

2.1 "Drugs or other controlled substances" means any substance, including alcohol, capable of altering an individual's mood, perception, pain level or judgment.

2.1.1 A "prescribed drug" is any substance prescribed for individual consumption by a licensed medical practitioner. It includes only drugs that have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.

2.1.2 An "illicit drug" or chemical substance is: (a) any drug or chemical substance, the use, sale or possession of which is illegal under any state or federal law, or (b) one that is legally obtainable but has not been legally obtained. The term includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes.

2.1.3 "Controlled substance" means a substance listed in schedules I through V of section 202 of the Controlled Substance Act (21 U.S.C.S. 812) or whose possession, sale or delivery results in criminal sanctions under the Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481). In general, controlled substances include all prescription drugs, as well as those substances for which there is no generally accepted medicinal use (e.g., heroin, LSD, marijuana, etc.), and substances that

possess a chemical structure similar to that of a controlled substance (e.g., designer drugs). The term does not include alcohol.

- 2.2 "Alcohol" refers to any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
- 2.3 "Alcohol abuse" means the excessive use of alcohol in a manner that interferes with: (1) physical or psychological functioning; (2) social adaptation; (3) educational performance; or (4) occupational functioning.
- 2.4 "Reasonable suspicion" shall be established by: (1) observation of the actions/behaviors of the individual; (2) supervisor or other reliable individual witnessing possession or use; or (3) any other legal measure used for alcohol or drug detection.
- 2.5 "Sanctions" may include completion of an appropriate rehabilitation or assistance program, suspension or expulsion from school, suspension or termination from employment, other disciplinary action, or referral to authorities for prosecution. If an employee has been convicted of a criminal drug statute, sanctions must be imposed within 30 days.

### 3. COMPONENT RULES

The chief executive officer of each System component shall establish a rule and procedures for the implementation of Policy 34.02 and this regulation. Such rules and procedures cannot be less stringent than the policy and regulation and shall be approved by the System General Counsel's office before being released. Requirements of the Department of Defense, the Department of Transportation, or other regulatory bodies and applicable state and federal laws must be included when applicable for the students or employees in the System component.

### 4. ALCOHOL AND DRUG-FREE AWARENESS AND PREVENTION PROGRAM

- 4.1 Each System component will provide an alcohol and drug-free awareness and prevention program for students and/or employees. Programs must conform with System policies and regulations as well as related federal and state laws.
- 4.2. As a part of its program, all System components must distribute annually to each employee and to each student, if applicable:
  - (1) standards of conduct that prohibit the unlawful manufacture, possession, use, and distribution of illicit drugs and alcohol by students and employees on the System's property or as part of any System activity;

- (2) a description of the applicable legal sanctions under local, state, or federal law for the unlawful manufacture, possession or distribution of illicit drugs or alcohol;
  - (3) a description of the health risks associated with the use of illicit drugs and the abuse of alcohol;
  - (4) a description of drug or alcohol counseling, treatment, rehabilitation or re-entry programs that are available to students or employees;
  - (5) a clear statement that the System component, consistent with local, state, or federal law, will impose sanctions against a student or employee who violates the standards of conduct. The statement must describe the possible sanctions as stated in Section 2.5; and
  - (6) a description of the institution's drug/alcohol abuse awareness, prevention and intervention program, if applicable, including alternative support, education and re-entry programs for students who are expelled as a result of violating standards required by these minimum requirements.
- 4.3 As required by federal law, each System component must conduct a biennial review of its drug and alcohol abuse awareness and prevention program. It will determine and put in report format: (1) the effectiveness of the program, and (2) the consistency of the enforcement of sanctions imposed pursuant to the program. It will also evaluate whether any changes are needed and will implement any such changes.
- 4.4 Each System component shall have available for review by the U.S. Secretary of Education, or designee, other applicable governmental agencies, and the general public, if requested, copies of all documents distributed to students and employees under the drug and alcohol abuse prevention program, and copies of the biennial review.
- 4.5 Academic institutions must certify the accessibility of a drug abuse prevention program for officers, employees and students of the institution, as required under 20 USC, Section 1094.

## 5. STUDENT DRUG TESTING

Procedures related to students suspected of alcohol or drug abuse and testing of students shall be developed by the individual System universities and approved by the System General Counsel.

## 6. EMPLOYEE REQUIRED DRUG TESTING

### 6.1 Department of Defense

6.1.1 The Drug-Free Workplace Act of 1988 and Department of Defense (DOD) regulations mandate that government contractors establish a program for testing for the use of illicit drugs by an employee in a sensitive position under a DOD contract. System components that have such contracts must also be in compliance with the DOD regulations for maintaining a program for achieving a drug-free workplace.

6.1.2 "Employee in a sensitive position" means an employee who has been granted access to classified information or an employee in another position determined by appropriate administrative personnel to involve national security, health or safety concerns, or functions requiring a high degree of trust and confidence.

6.1.3 Testing of an employee in a DOD-funded sensitive position will be undertaken under the following circumstances: (1) there is reasonable suspicion that the employee's job performance has been affected by the use of illicit drugs, and (2) there is a reasonable belief that such impairment will affect national security, health or safety concerns, or functions requiring a high degree of trust and confidence.

### 6.2 Department of Transportation

Testing of employees required to have commercial driver's licenses must comply with Federal Highway Administration and Department of Transportation regulations and will be done in the following situations: (1) pre-employment, (2) post-accident, (3) reasonable suspicion, (4) random, and (5) return-to-duty and follow-up.

## 7. REASONABLE SUSPICION OF EMPLOYEE DRUG OR ALCOHOL ABUSE

7.1 If a supervisor reasonably suspects that use of a controlled substance or alcohol has resulted in absenteeism, tardiness, or impairment of work performance or is the cause of workplace accidents, the supervisor shall immediately notify the appropriate department head or other designated administrator. Upon direction from the department head or designated administrator, the supervisor or other

designated administrator shall discuss with the employee the suspected alcohol or drug-related problems. The employee should be advised of any available alcohol and drug counseling, rehabilitation, or employee assistance programs, and the terms of any applicable disciplinary sanctions. The employee may be required to participate in an assistance program and be subject to discipline (up to and including termination of employment) if he or she rejects participation in the program. All meetings between the employee and the supervisor or other administrator to address the suspected alcohol or drug-related problem and/or its resolution shall be documented in a memorandum to the record and filed in the employee's personnel file.

- 7.2 If discussion and/or participation in any available alcohol or drug counseling, rehabilitation, or employee assistance program fails to resolve the suspected alcohol or drug-related problems or if the employee fails to meet the terms of any applicable disciplinary sanctions, the employee may be subject to disciplinary action up to and including termination.
- 7.3 Any disciplinary action will be governed by System policies on discipline and dismissal and academic freedom, responsibility and tenure. A record of the action will be placed in the employee's personnel file.
- 7.4 Testing of employees other than those occupying DOD-funded sensitive positions or those required to have a commercial driver's license may be undertaken only when there is reasonable suspicion that the employee is under the influence of alcohol or illicit drugs while on the job, the employee's job performance has been affected by the use of alcohol or illicit drugs, and such impairment presents a risk to the physical safety of the employee or another person. The decision to test an employee in these circumstances will be made by the appropriate chief executive officer or designee with the advice of the Office of General Counsel (advice of General Counsel may be waived as discussed in paragraph 1). The employee should be informed that a refusal to submit to a test, combined with a reasonable suspicion of usage, may be sufficient basis for termination.

## 8. TESTING PROCEDURES

The expense of the screening and any retest will be borne by the System component. The screening will be kept confidential, with the results being reported to the employee and the appropriate senior-level administrator as soon as they are available. Any written documentation will be kept in the employee's confidential medical file.

## 8.1 Drug Testing

- 8.1.1 Prior to the administration of a drug test, the appropriate administrator or supervisor must explain the drug testing procedures to the employee and arrange for component employee(s) to transport and accompany the employee to a hospital or clinic for the taking of a specimen for screening purposes. Except as provided in paragraph 8.1.3 below, if the System component has laboratory or medical facilities with personnel trained for such testing, those facilities may be used if there are adequate chain-of-custody procedures established for the samples and precautions are taken to guarantee the integrity of the testing against tampering or substitution.
- 8.1.2 Before the specimen is taken, the employee should be asked to sign a consent form agreeing to the taking of a specimen for testing purposes. The signed form will be required by the hospital or clinic. The employee may be asked to list any medications being taken. The employee will have a reasonable opportunity to rebut or explain a positive test result, including an independent retest of the sample.
- 8.1.3 Drug testing under the Federal Highway Administration and Department of Transportation regulations must be done by a laboratory that is certified by the Department of Health and Human Services (DHHS) pursuant to the DHHS “Mandatory Guidelines for Federal Workplace Drug Testing Programs.”

## 8.2 Alcohol Testing

Alcohol testing shall be done using an Evidential Breath Testing Device (EBT). Testing required by Department of Transportation regulations must be done using an EBT that has been approved by the National Highway Traffic Safety Administration.

## 9. DISCLOSURE

- 9.1 As a condition of employment, employees on government grants or contracts must abide by the required notification statement and must report any criminal drug statute conviction for a violation occurring in the workplace or on System business to their employer no later than five days after the conviction. The employer, in turn, must notify the contracting federal agency within 10 days after receiving notice from an employee or otherwise receiving actual notice of such conviction, and within 30 days must impose sanctions on the employee involved. Sanctions may take the form of personnel actions against the employee, up to and including termination, or requiring the employee to satisfactorily participate in an approved drug abuse assistance or rehabilitation program.

9.2 Criminal drug statute means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance. Criminal drug statute conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

HISTORY: New Regulation

CONTACT OFFICE: The System Human Resources Office

[Section 34 Rules](#)