

PP-12 DRUG-FREE WORK PLACE GENERAL POLICY-Revised 4/19/2021

Brevard Innovative Charter Schools ("BICS") recognizes that substance abuse in our nation and our community exacts staggering costs in both human and economic terms. Substance abuse causes impaired job performance, lost productivity, absenteeism, accidents, wasted materials, lowered morale, higher health care costs, and diminished interpersonal relationship skills. BICS commits to solve this problem and to create and maintain a drug-free work place. The use of illegal drugs, the abuse of alcohol, and the misuse of prescription and over-the-counter drugs is unacceptable, and the BICS intends to clearly communicate this message to its employees.

1) DEFINITIONS

- a. Accident: An unexpected happening without intention or design resulting in injury, delay, property loss, or damage.
- b. Alcohol: Any liquor intended for use as a beverage or capable of consumption which contains alcohol, either through fermentation or distillation, so as to have the effect of producing intoxication.
- c. Alcohol Testing: Testing for blood alcohol content by a breathalyzer instrument device or drawing or collecting a blood or whole blood sample and laboratory analysis thereon.
- d. Appeal: The ability of an employee to request a review of any decision regarding the employee's continued existence of employment.
- e. Breathalyzer Test: A test to determine the content of alcohol or other drug via a breath sample analyzed by an intoxilyzer, intoximeter, or similar device.
- f. Breath Specimen: A sample of one's breath used in testing of alcohol content.
- g. Chain of Custody: The methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, storing specimens, and reporting of test results.
- h. Commercial Motor Vehicle: A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - i. Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit a gross weight rating of more than 10,000 pounds; or,
 - ii. Has a gross vehicle weight rating of 26,001 or more pounds; or,
 - iii. Is designated to transport sixteen (16) or more passengers, including the driver; or,
 - iv. Is of any size and is used in transportation of hazardous materials requiring placards.
- i. Confirmation Test: A subsequent analytical procedure used to identify presence of a specific drug or metabolite in a specimen. The confirmation test must use Gas Chromatography/Mass Spectrometry (GC/MS) methods and procedures, or the most



current and appropriate technology which is different in scientific principle from that of the initial test procedure.

- j. **Controlled Substance:** Any substance for which its availability is restricted by federal or state law. Medical marijuana is a controlled substance.
- k. **Driver:** Any person who operates a motor vehicle, including a person applying to drive a commercial motor vehicle.
- l. **Drug(s):** Any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease means alcohol, including distilled spirits, wine, malt beverages and intoxicating liquors, amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogen, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein. Any other substances defined in Schedules I through V of the Controlled Substances Act.
- m. **Drug Abuse:** State of chronic or periodic intoxication detrimental to the individual, the employers, and to society produced by repeated consumption of or exposure to a drug.
- n. **Employee:** A person in the service of BICS under any contract of hire, whether express or implied, oral or written, who works under the direction and control of the employer and receives compensation for said employment.
- o. **Employee Assistance Program:** An established program for employee assessment, counseling, and possible referral to an alcohol and/or drug rehabilitation program.
- p. **Employer:** Brevard Innovative Charter Schools, including those persons acting with supervisory authority from the School Board of Brevard County.
- q. **Evidential Breath Testing Device (EBT):** A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on the NHTSA's conforming products list of evidential breath measurement devices (CPL).
- r. **Follow-up Testing:** Following a determination of the need for proper problem resolving assistance, the employer may require that the employee be subject to unannounced follow-up alcohol and/or controlled substance testing as directed by the substance abuse professional (SAP), medical reviews officer (MRO), or other agent of BICS.
- s. **Follow-Up Testing For Commercial Motor Vehicle Drivers:** Commercial motor vehicle drivers shall be subject to a minimum of six (6) follow-up controlled substances and/or alcohol tests in the first twelve (12) months. Alcohol follow-up testing shall be performed only before, during, or after the performance of a safety-sensitive function.
- t. **Illegal Drug:** An article consumed or integrated into the human body that affects the normal function of the body, where the article is prohibited by state/federal statute, state/federal regulation, or employer policy.
- u. **Initial Drug Test:** The collection of a urine specimen, blood specimen, or breath specimen by medical or supervisory personnel and a laboratory analysis of the specimen by a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens.
- v. **Intoxication:** Condition caused by consumption of intoxicants, including legal and illegal drugs and/or alcohol where an individual does not have the normal use of his physical or mental faculties and is thereby impaired and incapable of acting in the manner in which

an ordinary prudent and cautious person, using reasonable care, would act under similar conditions.

- w. Job Applicant: For the purpose of pre-employment drug screening, a person who has applied for a position with the BICS and has been offered employment conditioned upon successful completion of a drug test.
- x. Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by the BICS's drug testing program. The MRO will be knowledgeable in the treatment of substance abuse and the treatment and diagnosis of substance abuse disorders and have appropriate medical training to interpret and evaluate an individual's confirmed positive test result, including relevant medical history and other available information.
- y. Post-Accident Testing: Testing of an employee for a controlled substance, following an incident causing a death or the driver to the BICS vehicle is cited. Testing of an employee for a controlled substance, following an incident involving said employee which resulted in either physical injury or property damage/loss.
- z. Pre-Employment Testing: Testing procedures to identify the existence of any drug or controlled substance in the job applicant before hiring by BICS.
 - aa. Random Testing: Implementation of testing methods, in a random, undetermined fashion, to monitor the existence of drug abuse and/or controlled substance abuse, if any, pursuant to applicable state or federal laws or regulation(s).
 - bb. Reasonable Suspicion: The reasonable belief that an employee is using or has used drugs in violation of this policy drawn from those specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion drug testing shall not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question. Among other things, such facts and inferences may be based upon:
 - i. Observable phenomena while at work, including, but not limited to, direct observation of drug use; physical symptoms or manifestations of being under the influence of a drug;
 - ii. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
 - iii. Evidence that an individual has tampered with a drug test during his employment with BICS;
 - iv. Information that an employee has caused, or contributed to, an accident while at work, or,
 - v. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working for BICS or while on BICS's premises or while operating BICS's vehicles, machinery, or equipment.

- cc. Rehabilitation: A program, regimen, or system, duly authorized and licensed by a governing authority in the field of practice, designed to assist a person(s) with life-style practices that have a debilitating and/or detrimental effect on one's person.
- dd. Return-To-Duty Testing: After engaging in prohibited conduct regarding the misuse of alcohol, drugs, or other controlled substances, a BICS employee or agent shall undergo a return-to-duty alcohol test which indicates a breath alcohol concentration of less than 0.02 on substance abuse test indicating a negative result.
 - i. After a commercial motor vehicle driver engages in prohibited conduct regarding controlled substance use/abuse, the commercial motor vehicle driver shall undergo a return-to-duty controlled substance test with a result indicating a verified negative result for controlled substances use. Commercial motor vehicle drivers required to submit to a return-to-duty test must be evaluated by a substance abuse professional (SAP) and participate in the prescribed assistance program.
- ee. Safety-Sensitive Function: Any of those on-duty functions set forth in Section 395.2, Federal Motor Carrier Safety Regulations On-Duty Time, paragraphs (1) through (7) as listed below:
 - i. All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
 - ii. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR) or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
 - iii. All time spent at the driving controls of a commercial motor vehicle;
 - iv. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth);
 - v. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in a readiness to operate the vehicle, or in giving or receiving receipts for shipment loaded or unloaded;
 - vi. All time spent performing the driver requirements associated with an accident; and,
 - vii. All time preparing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- ff. Substance Abuse Professional (SAP): A licensed physician, medical doctor, or doctor of osteopathy, or certified psychologist, social worker, employee assistance professional, or addiction counselor (as certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or other BICS approved care provider) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.
- gg. Termination: The cessation, close and/or conclusion of employment without affecting a person(s) right to appeal the termination.

2) OBJECTIVES

By enacting the BICS drug-free work place policy, BICS endeavors to:

- a. Promote a healthy, safe working environment;
- b. Facilitate the rehabilitation of employees with substance abuse problems;
- c. Eliminate substance abuse problems in the work place;
- d. Provide a consistent model of behavior without substance abuse;
- e. Provide a clear standard of conduct for the employees of BICS; and,
- f. Fire and retain drug-free employees

3) ILLEGAL DRUGS

Because drug abuse by employees interferes with the educational and work process and compromises the safety and well-being of staff and students, employees are expected to conduct themselves in a manner consistent with the following provisions:

- a. BICS employees on duty or on School property will not manufacture, distribute, dispense, possess, or use illegal drugs. BICS employees are prohibited from working on School property while under the influence of illegal drugs, or under influence from improper use of legal drugs; Medical marijuana is considered an illegal drug per federal law.
- b. Employees on or off duty will not promote student use of illegal drugs, or the improper use of legal drugs;
- c. Any BICS employee convicted of any criminal drug statute violation which occurred in the work place shall notify the BICS Program Director no later than five (5) days after such a conviction.

4) LEGAL DRUGS/SUBSTANCES

Alcohol, prescription, and over-the-counter drugs are generally safe and acceptable when use according to proper instruction. Abuse of legal drugs over time or used in combination with another substance can result in chemical dependency or poly-drug addiction.

- a. BICS employees will be free of alcoholic or drug intoxication then on duty or on School property. BICS employees are prohibited from the manufacture or use of alcoholic beverages while on School property or while on duty with BICS.
- b. Employees on duty will not use or take prescription drugs above the level recommended by the prescribing physician and are prohibited from using prescribed drugs for purposes other than the intended purpose. BICS employees will not distribute or dispense drugs, except as provided in School Board Rule 6GX5-4.17 Administration of Medication by School District Personnel.

5) EMPLOYEE PHYSICAL EXAMINATIONS/SCREENINGS/HEALTH SERVICES

To facilitate and give effect to the BICS's drug-free workplace policy, BICS requires:

- a. That mandatory drug screening may be included in all physical examinations required under statutes, Board Rules, and the Omnibus Transportation Employee Testing Act of 1991.
- b. Circumstances under which drug testing may be required include, but are not limited to:
 - i. Pre-employment physical exams,
 - ii. Observed use of illegal drugs and/or abuse of alcohol during work hours;

- iii. Apparent physical state of impairment of motor functions;
 - iv. Marked changes in personal behavior on the job not attributable to other factors;
 - v. An employee who is injured on the job and requires medical attention will be required to submit to a drug screening when he/she reports to the medical facility for treatment. Refusal to submit to the drug screening is considered a positive test. It may result in forfeiting Workers' Compensation Benefits and will be grounds for immediate dismissal.
- c. Drug and/or alcohol screening shall be conducted by BICS approved independent, certified laboratories utilizing recognized techniques and procedures. The protocol for drug screening shall include a split sample and chemical immunoassay screening procedure. In the event initial test results are screened positive, such results will be confirmed and verified by the Gas Chromatography Mass Spectrometry (GC/MS) tests.
- i. BICS employees and/or job applicants who lawfully operate a commercial motor vehicle in the course of employment will be subject to scheduled and/or unannounced alcohol testing as mandated by the Omnibus Transportation Employee Testing Act of 1991, the BICS Drug-Free Work Place Technical Guide herein, and/or any governing State or Federal statute.

6) REHABILITATION

BICS recognizes that chemical dependency is an illness that may be successfully treated. BICS may choose to direct an employee to a rehabilitation program.

7) PRE-EMPLOYMENT DRUG SCREENING

- a. BICS will require pre-employment drug screening of applicants.
- b. Applicants will be referred to Board approved, independent, certified laboratories utilizing techniques and procedures.
- c. Specimens collected will not be used to conduct any other analysis or test unless otherwise authorized by law.
- d. Applicants will be informed in advance of the requirement of a negative drug screen as a condition of employment. Applicants testing positive will not be eligible again for employment by BICS for one (1) year from the date of the test.

8) CONFIDENTIALITY

- a. Medical records, and information obtained in the implementation of the drug-free workplace policy will be maintained in strict confidentiality. Laboratory contracts shall provide that the contractor's records are to be kept confidential under provisions of the Omnibus Transportation Employee Testing Act of 1991 and applicable Federal and Florida laws. BICS shall establish and maintain a system of records to include both the school's and the contractor's record of applicant and employee urinalysis, blood alcohol, and/or breathalyzer test results.
- b. The record maintenance system will retain records in such a way that employee records are maintained and used with the highest regard for employee privacy consistent with Florida's Public Records Act and the purpose of achieving and maintain a drug-free work place.

9) DISCIPLINARY SANCTIONS

a. Failure to pass drug screening

- i. Job Applicants: Any job applicant found to test positive for illegal drug(s) or abuse of legal drug(s) will not be considered for employment by BICS. Job applicants may appeal a positive test for drugs pursuant to the applicable statute or regulation as indicated within BICS drug-free workplace policy.
- ii. BICS Employees: Any BICS employee found to test positive for illegal drug(s) or abuse of legal drug(s) will be immediately subject to disciplinary procedures. Employees who test positive for illegal drugs and/or abuse of legal drugs may be:
 1. Suspended from employment, with or without pay;
 2. Terminated from employment;
 3. Required to submit to further testing; or,
 4. Other administrative procedures necessary to the enforcement of the BICS drug-free workplace policy. Any and all actions will be in accord with the controlling, applicable statute.

b. Disability

- i. Pursuant to the Americans with Disabilities Act ("ADA"), persons found to be currently using illegal drugs are not defined as an "individual with a disability" and are not covered entities under the ADA. Persons who are participating in a supervised rehabilitation program and who no longer use illegal drugs, and/or those erroneously accused of illegal drug use are protected by the ADA. ADA 104.510.

10) IMPLEMENTATION

This policy shall be implemented in a manner consistent with F.S 112.0455, the Drug-Free Workplace Act, the Omnibus Transportation Employee Testing Act of 1991, and Florida Statute 440.102 (1993).

11) RESERVATION OF AUTHORITY

The authority to issue and/or revise this policy is reserved to BICS.

12) SAVINGS CLAUSE

The BICS Drug-Free Work Place General Policy is intended to be a lawful statement concerning the rights, duties, and liabilities of the BICS, its agents, and employees regarding the use of drugs and/or alcohol in the work place. Any part of this policy which is determined to be unlawful is not intended, and the remainder of this policy is to be interpreted so as to comply with all state, federal laws, and administrative regulations.

13) EMPLOYEES SUBJECT TO DEPARTMENT OF TRANSPORTATION REGULATIONS

All eligible drivers defined in 49 CFR, Parts 40 and 382, will be required to submit to controlled substance and alcohol testing when an employee is required to operate a commercial motor vehicle in the course of employment. Employees of BICS are strictly prohibited from operating any vehicle while under the influence of a controlled substance, drug and/or alcohol.

- a. Commercial motor vehicle drivers in the employ of BICS are prohibited from operating a commercial motor vehicle while under the influence of alcohol and/or controlled substances under the following conditions:
 - i. Reporting for duty or remaining on duty to perform safety sensitive functions with an alcohol concentration of 0.02 or greater;
 - ii. Operating a commercial motor vehicle while the driver possesses alcohol, other than alcohol transported for shipment, including possession of over-the-counter medicines containing alcohol, unless the packaging seal on the medicine is unbroken;
 - iii. Using alcohol while performing safety-sensitive functions;
 - iv. Using alcohol within eight (8) hours following an accident or prior to undergoing a post-accident alcohol test whenever required to take a post-accident alcohol test;
 - v. Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion, or follow-up testing requirements;
 - vi. Reporting for duty and/or remaining on duty when the driver uses any controlled substance, except as prescribed by a licensed physician and in accord with the proper instruction; and,
 - vii. Reporting for duty, having consumed alcohol within four (4) hours prior to performing a safety-sensitive function.

b. Disciplinary Procedures

Drivers in the employ of BICS or its agents, who are known to have participated in prohibited/illegal behavior concerning the use of alcohol or the use/misuse of controlled substances are subject to the following:

- i. Drivers will not be permitted to perform safety-sensitive functions;
- ii. Drivers shall be advised by the Employer of available resources to the Employee for evaluating and assisting with problems related to the use and misuse of alcohol to the use and misuse of controlled substances;
- iii. Drivers will be evaluated by a substance abuse professional (SAP) to determine the level of assistance, if any, needed by the employee in resolving any problem associated with alcohol misuse and controlled substance use;
- iv. Drivers returning to duty to perform a safety-sensitive function will be required to undergo a return-to-duty alcohol test resulting in a finding of a breath alcohol level less than 0.02, if previous conduct involved alcohol, or a controlled substance test with a verified negative result, if the conduct involved controlled substance use;
- v. Drivers identified as requiring assistance in resolving problems associated with alcohol or controlled substance abuse shall be evaluated by a SAP to evaluate the driver's participation in the prescribed rehabilitation program, and,
- vi. Drivers are required to be subject to unannounced follow-up alcohol and controlled substance testing, as directed by the SAP, consisting of at least six (6) tests in the first twelve (12) months.

vii. Any and all other methods of testing and/or discipline as authorized by the Omnibus Transportation Employee Testing Act of 1991, the Florida Drug-Free Work Place Act, applicable State and Federal statutes.

c. Methods of Testing

The Omnibus Transportation Employee Testing Act of 1991 requires commercial motor vehicle drivers to be tested for use of controlled substances and the misuse of alcohol in the following methods:

- i. Pre-employment testing;
- ii. Random testing;
- iii. Reasonable suspicion testing;
- iv. Post-accident testing;
- v. Return-to-duty testing; and,
- vi. Follow-up testing

d. Controlled Substance testing

A commercial motor vehicle driver whose urine sample has tested positive for a controlled substance may, within 72 hours of notice from the medical review officer (MRO), have the other portion of the split sample tested at another laboratory. A second positive sample test finding mandates that a commercial motor vehicle driver should be disciplined according to the appropriate regulation. If the test of the second portion produces a negative result, or if the second portion of the split sample test is not available, the test will be considered negative and sanctions will not apply.

14) PRE-EMPLOYMENT CONTROLLED SUBSTANCE TESTING FOR COMMERCIAL MOTOR VEHICLE DRIVERS

Before any driver performs a safety-sensitive function as defined in the Federal Motor Carrier Safety Regulations, 395.2, while on-duty time, the driver must submit to testing for controlled substances.

a. EXCEPTION: BICS is not required to administer a pre-employment controlled substance test if:

- i. The driver has participated in a drug testing program meeting the requirements of the federal motor carrier safety regulations within the previous thirty (30) days; and, during participation in the drug testing program, the commercial motor vehicle driver must have been tested for controlled substances in the previous six (6) months, or participated in a random drug testing program for the previous twelve (12) months; and,
- ii. BICS must ensure that no prior employer of the commercial motor vehicle driver has a record of violations of any DOT controlled substance use rules in the previous six (6) months.

15) POST-ACCIDENT ALCOHOL AND CONTROLLED SUBSTANCE TESTING

- a. As soon as practicable following an injury, BICS shall require the injured employee to undergo testing for drug and/or alcohol. Refusal to submit to drug and/or alcohol testing shall result in the loss of worker's compensation benefits as provided by Florida Statute.

- b. As soon as practicable following an accident involving a commercial motor vehicle, BICS shall test for alcohol and/or controlled substances for each surviving driver when:
 - i. The accident involved a fatality; or,
 - ii. the driver receives a citation under State or local law for a moving traffic violation arriving from the accident; or,
 - iii. There was an injury that required the injured person to leave the scene of the accident for immediate medical treatment; or,
 - iv. There was a vehicle that received damage causing the vehicle to be towed away from the accident by a tow truck or another type of vehicle.

The employee of BICS operating the commercial motor vehicle must remain available to the BICS, or its agents, following the accident for a reasonable time or BICS may consider the commercial motor vehicle driver to have refused to submit to testing.

16) RETENTION OF RECORDS

The records of testing for controlled substance, legal/illegal drugs, and/or alcohol will be completed and maintained by BICS pursuant to the applicable State and federal regulations. All records will be maintained in a secure location with controlled access.

- a. The following records will be maintained by BICS for five (5) years:
 - i. Alcohol test results indicating a breath alcohol concentration of 0.02 or greater;
 - ii. Verified positive controlled substance test results;
 - iii. Refusal to submit to required alcohol or controlled substance or drug tests;
 - iv. Required calibration of evidential breath testing devices (EBT's);
 - v. Substance abuse professional's (SAP) evaluations and referrals; and,
 - vi. Calendar year summaries
- b. BICS will maintain the following records for two (2) years:
 - i. Records related to the collection process and required training
- c. BICS will maintain the following records for one (1) year:
 - i. Negative and canceled controlled substance test results; and,
 - ii. Alcohol test results indicating a breath alcohol concentration of less than 0.02Records will be made available for inspection at the BICS's Program Director place of business within two (2) business days after a written request has been made by an authorized representative of the Federal Highway Administration

17) EMPLOYEE NOTIFICATION BY THE MRO

Before verifying a positive test result, the medical review officer (MRO) shall make every reasonable effort to confidentially contact the employee to afford an opportunity to discuss drug test results. If the MRO is unable to reach employee after reasonable efforts, the MRO will contact the appropriate management official, who will direct the employee to contact the MRO as soon as possible, but no later than twenty-four (24) hours after notification.

18) REFUSAL TO SUBMIT TO TESTING

An employee who refuses to submit to an alcohol or controlled substance test does so by:

- a. Failing to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing;
- b. Fails to provide adequate urine for controlled substance testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; or,
- c. Engages in conduct that clearly obstructs the testing process. Refusal to submit to drug testing will be treated as an automatic positive test result and will preclude any further employment.

19) DRUG TESTING PROCEDURES

Job applicants and/or employees of BICS will not be required to submit to testing procedures other than as defined in the Drug-Free Work Place Technical Procedure Guide. Applicants and/or employees may have certain rights disclosed in the Procedure Guide. Copies are available through BICS for review. Contact the Human Resources office of BICS to review the Technical Procedure Guide.

Specific Authority: 230.22(2) F.S. Law Implemented, Interpreted, or Made Specific: 41 USC 701-706; 34 CFR 86.201 and 49 CFR, Omnibus Transportation Employee Testing Act of 1991.

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