



**Title of Procedure:**

**Drug and Alcohol Free Workplace Procedure**

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**Applies to (check all that apply):**

Faculty \_\_\_\_\_ Staff \_\_\_\_\_ Students \_\_\_\_\_  
Division/Department \_\_\_\_\_ College   x  

**Topic/Issue:**

Baltimore City Community College is responsible for establishing policies and procedures that prohibit illegal use of drugs and alcohol. By doing so, loyal employees will be protected, services improved, and faculty, staff and students will be encouraged to live healthier lives.

Substance abuse is now recognized as the number one public health problem in the United States. Approximately 30% of all admissions to general hospitals and 50% to psychiatric hospitals have detectable substance abuse. Substance abuse accounts for approximately 150,000 deaths annually. This includes deaths from stroke, diseases of the heart and liver, and all alcohol and drug related suicides, homicides and accidents. Early detection can minimize or prevent the devastating consequences of substance abuse.

**Background to issue/Rationale for Procedure:**

The College recognizes that an individual with alcoholism has a disability which is protected under the American Disability Act, (ADA). While people with alcoholism may be individuals with disabilities, the ADA still allows employers to hold them to the same performance and conduct standards as all other employees. Current illegal use of drugs is not protected by the ADA.

The College encourages employees who are experiencing substance abuse problems to seek treatment through the College, the State's Employee Assistance Program, or self-referral to a certified rehabilitation program. Employees are encouraged to voluntarily do so in advance of, and ideally to avert, any adverse impact on work-related performance and behavior issues that substance use may lead to. The College will not terminate the employment of an employee who, in advance of any workplace

incident, accident, injury or performance issue leading to discipline, voluntarily seeks assistance for a substance abuse program.

**State/Federal Regulatory Requirements:**

- Drug Free Schools and Communities Act Amendment of 1989,
- Public Law 101-226,
- Maryland Annotated Code, Article 27, section 286 (1989)
- Maryland Annotated Code, Article 27, sections 400 to 403B
- Maryland Annotated Code, Article 2B, section 211
- Schedule I through V in Article 27, part 279 of the Annotated Code of Maryland.
- MHEC Policies Concerning Drug and Alcohol Abuse Control.
- Legal Sanctions Under Federal, State and Local Laws
- State Personnel and Pensions, Title 2, section 306
- Federal law, 21 USCA, sections 841 and 844 to 845a (1990)
- In Baltimore City, under Article 19, section 58C of the City Code,
- Memorandum of Understanding – MOU Article 34. Sections 1-7 Drug and Alcohol Abuse

[http://mlis.state.md.us/asp/web\\_statutes.asp](http://mlis.state.md.us/asp/web_statutes.asp)

**Procedural Language:**

In order to inform employees of their responsibilities under the Drug Free Workplace Policy and to meet the College's responsibilities as set forth in the Drug Free Schools and Communities Act Amendment of 1989, Public Law 101-226, and the MHEC Policies Concerning Drug and Alcohol Abuse Control, the following information is provided.

**A. Prohibited Conduct**

The following rules are consistent with those mandated under the Federal Drug Free Workplace Act of 1988, Public Law 100-690, and the State of Maryland Substance Abuse Policy, Executive Order .01.01.1989.05.

1. Employees are prohibited from unlawfully possessing, manufacturing, distributing, dispensing, or using a controlled substance in the workplace.
2. All employees must report to work in a fit condition to perform their duties. Reporting to work under the influence of drugs or alcohol is a violation of this policy and subjects the employee to disciplinary action.
3. All employees on official business, on or off campus, are prohibited from purchasing, transferring, using, or possessing illegal drugs, or from abusing alcohol or prescription drugs in any way that is illegal.

4. Where justified by reliable information and/or observation, criminal violations shall be referred to the appropriate law enforcement authority for further investigation and prosecution.
5. All employees must cooperate fully with appropriate law enforcement authorities in the investigation and prosecution of illegal drugs, or alcohol use.
6. All employees being convicted of violating a criminal drug statute shall notify their supervisor within five (5) working days thereafter. The supervisor shall report the conviction immediately to the Director of Personnel. If the employee was employed in the performance of a federal contract or grant, the Director of Sponsored Programs shall notify the sponsoring federal agency within ten (10) days of receiving notice from the employee.
7. All employees convicted of off-the-job drug or alcohol offenses will be in violation of this policy.

## **B. Drug and Alcohol Use or Abuse**

1. Reporting to work or performing work duties after having ingested illegal drugs or un-prescribed prescription drugs, or while under the influence of alcohol, is strictly prohibited. Under the influence of alcohol means having more than a trace of alcohol in the system.
2. An employee shall not report to work or perform his or her duties while taking prescribed drugs or over-the-counter medications which the employee knows or reasonably should know adversely affect the employee's ability to safely and effectively perform his or her job duties.
3. An employee should consider his or her consumption of alcohol within the previous six (6) hours, and any drug or over the counter medication that would interfere with his or her ability to travel safely to work and/or perform safely and efficiently his or her job duties.
4. An employee who is found guilty, accepts a plea of nolo contendere, or receives probation before judgment of an alcohol driving offense or a controlled dangerous substance offense shall report as such to the Executive Director of Human Resources within five (5) work days.

## **C. Testing**

1. Types

The College may require testing for illegal use of drugs, or alcohol level. The College will not ask that the samples provided for this purpose be used for other purposes.

Testing may take place only under the following circumstances:

- a. Pre-Employment -- Applicants for employment who have received an offer of a job contingent on passing the substance abuse test.
- b. Behavior Indicated (Reasonable Suspicion) Testing -- When the Executive Director of Human Resources has reasonable and specific grounds to believe that the actions appearance and/or conduct of an employee are indicative of using alcohol or drugs, other than authorized and reported prescription or non-prescription drugs and that a test of the employee shall produce evidence of the illegal use of drugs or evidence of use of alcohol.
- c. Post-Accident Testing -- An employee who was involved in an accident, or incident that resulted in injury to the employee or to another employee, student or visitor, shall be tested as soon as possible after the accident or injury, an employee, who is unable to submit to testing at the time of an accident due to the seriousness of his/her injuries, is required to provide the necessary authorization for obtaining hospital reports and other documentation that would indicate whether there were any drugs or alcohol in his/her body system
- d. Periodic Testing -- A sensitive employee may be required to submit to drug/alcohol testing during a fixed time frame, such as a return from leave.
- e. Random Testing -- A sensitive employee will be required to submit to unannounced drug/alcohol testing when selected pursuant to a random selection process. Random testing requires that statistically significant samples of employees in sensitive classifications or in sensitive positions be tested on a periodic basis.

If, during the duration of this MOU, the College becomes the administrator of its drug and alcohol testing program the College shall have a written system for random testing which shall include an identification of the specific system used to arrive at who will be tested, what the statistically significant numbers are, what random sampling techniques are going to be used, etc. The College shall provide the union with a copy of this written system and any revisions of it at the time that it is developed.

- f. The College may arrange for testing of an employee in a position or classification that has been designated as sensitive when the employee's participation in a Substance Abuse Rehabilitation -Program is not the result of having tested positive for drugs or alcohol such testing may be administered at any time during the employee's participation in the Program and the one-year period following the employee's successful completion of the program.

## 2. Certified Laboratory; Chain of Custody

When drug or alcohol testing in any of the above circumstances is required, all testing will be conducted by a College-designated, State-certified medical testing laboratory with appropriate chain of custody procedures in place to ensure accuracy and continuity in specimen collection, handling, transfer, and storage, as required by applicable law and regulation.

## 3. Cooperation In Testing

Employees are expected to cooperate fully in order to properly implement the testing procedure, including providing the necessary consent, written authorization, information and specimens for testing. Failure to provide specimens, any attempt to contaminate a specimen, or any other interference with the collection procedures are grounds for disciplinary action, up to and including discharge, pursuant to the Article on Discipline in this MOU.

## 4. Positive Test Results

- a. All specimens identified as positive on the initial test will be verified by a confirmatory test. Gas chromatography/mass spectrometry (GC/MS) or an equivalent or better confirmation test shall be used in urine samples.
- b. There shall be a split sample, in the event of a positive test result, the employee may request independent testing at his/her own expense, of a portion of the tested specimen for verification of the test results. If the independent test result is negative, the College will re-test the original sample.
- c. Any sensitive employee whose test results are confirmed positive for illegal drugs or use of alcohol shall be subject to disciplinary action up to and including termination.
- d. The college recognizes that there is a possibility of a false positive result. If the employee's retest and the College's re-test show that the original positive result was false, then the employee shall not be disciplined on the basis of the false positive test result, and shall not experience any loss in pay or benefits.

## **D. Searches**

The college retains the right to conduct searches and inspections of an employee while the employee is on college property, including its building, grounds, and parking lot or garage. Such searches will be conducted with respect for the employee and if the employee requests, with the presence of a job steward. Such searches may be conducted of their lockers, desks, college provided toolboxes and

college vehicles. The College may also request that an employee permit inspection of his or her baggage, brief case, or person. Any employee who refuses to submit to a search and/or inspection may be subject to disciplinary action up to and including termination.

#### **E. Rehabilitation Required for Continued Employment**

1. An employee's continued employment may be conditioned on the employee's enrollment in and satisfactory completion of a substance abuse rehabilitation program. If an employee is, in lieu of termination, required to enroll in a substance abuse rehabilitation program, the employee shall participate in a Program appropriate, length given the employee's circumstances that is at least six (6) months in duration. The employee shall be subject to periodic testing throughout the Program's duration. If an employee fails to enroll in the Program or does not successfully participate in and complete the Program or if the employee tests positive during the program or the one year following completion of the Program, the employee shall be terminated.
2. A current employee who applies for a sensitive position and tests positive on a drug test or illegal use of drugs shall be suspended without pay for fifteen (15) days. As a condition of returning to work, the employee shall enroll in a treatment program of at least six (6) months, be subject to periodic testing throughout this time, and submit a certification from an attending physician or other licensed professional associated with the rehabilitation program. The certification shall be made under oath to confirm that the employee has successfully participated in the program for at least six (6) months and has not tested positive.
3. At the conclusion of a Rehabilitation Program, the employee shall be required to submit to the Executive Director of Human Resources, a certification from the attending physician, certified chemical dependency counselor, licensed certified social worker or licensed psychologist associated with the Program, certifying under oath that the employee has successfully participated in the Program and has not tested positive for use of illegal drugs or alcohol use at any point during the Program.
4. An employee who fails to enroll in a substance abuse program during the suspension period or who fails to successfully participate in a program for at least six (6) months shall be terminated. An employee who submits the proper certification and remains drug-free for 18 months may reapply for a sensitive position.

#### **F. Sensitive Employees**

1. The College may designate certain positions as "sensitive." Applicants for sensitive positions shall be tested for the illegal use of drugs as part of the

selection process. The College shall provide the Union a list of classifications and positions designated as sensitive.

2. A refusal to submit to testing required as part of the selection process for a sensitive position shall result in disqualification and removal from list maintained to track eligible candidates.
3. A sensitive employee:
  - a. Convicted of any controlled dangerous substance offense while employed by the College shall be terminated;
  - b. Who tests positive for a controlled dangerous substance as a result of a random drug test shall be suspended for fifteen (15) work days and shall be required to successfully participate in a drug treatment program designated by an employee assistance program;
  - c. Who abuses prescription drugs provided to the employee or an over-the-counter drug shall, on a first offense, be suspended for five (5) workdays and be required to participate in a drug treatment program designated by the Employee Assistance Program;
  - d. who for the first time, is convicted of alcohol driving offense bases upon activity that occurred during the employee's work time or is found to be under the influence of alcohol while at work shall be suspended for fifteen (15) days and shall be required to successfully participate in an alcohol treatment program designated by the Employee Assistance Program.

## **G. Alcohol Driving Offenses**

A sensitive employee convicted of an off-duty alcohol driving offense, and a non-sensitive employee convicted of any alcohol driving offense shall:

1. On the first conviction, be referred to an Employee Assistance Program and, in addition, be subject to appropriate discipline;
2. On the second conviction, be suspended for a minimum of five days, be referred to an Employee Assistance Program, be required to participate successfully in the designated treatment program, and be subject to any appropriate disciplinary action, up to and including termination;
3. On the third conviction, be terminated.

## **H. Records**

Testing records shall be treated as confidential and shall be kept in employees' separate medical files.

## **I. Institutional Sanctions**

Violations of the aforementioned prohibitions will be subject to discipline up to and including termination.

1. Employees will not be terminated for voluntarily seeking assistance for a substance abuse problem. Continued unacceptable job performance, attendance and/or behavior problems shall result in disciplinary action up to and including termination.
2. Employees found in violation of the provisions of this policy shall be subject to disciplinary action under the BCCC personnel policies and the State of Maryland personnel policies contained in Article 64A of the Annotated Code of Maryland. If an employee wishes to continue employment, the College may require successful participation in a drug abuse assistance or rehabilitation program.
3. Those employees who are assigned to designated sensitive classes will be terminated if they are found to be in violation of this policy.
4. All supervisors are responsible for the adherence, implementation, enforcement, and monitoring of this policy.

## **J. Available Drug and Alcohol Programs**

1. The Employee Assistance Program (EAP), State of Maryland, Department of Personnel, offers initial assessment and referral interviews for state employees who are encountering alcohol and drug problems. Participation in an EAP is purely voluntary. Except as provided in Section III, job security and promotional opportunities will not be jeopardized by an employee's participation in the EAP. The College shall treat documents received from the program as confidential and shall not release them without the express written consent of the employee or as otherwise provided by law. The Employee Assistance Program is free and confidential. Services are provided 24 hours a day, 7 days a week. For further information, call 410-767-3800.
2. If the College and an employee enter into an agreement which includes the college's agreement to defer or reduce an otherwise immediate disciplinary action contingent upon the employee's successful participation in a treatment program, the employee shall be required to waive confidentiality in order to permit the College to verify the employee's successful participation in a treatment program. The employee shall be required to sign a release so that the program



will provide the College with reports regarding the employee's successful participation (but without details on the employee's medical condition or history), and, if appropriate, the employee's ability to perform his or her job safely and effectively and/or whether the employee needs to continue to participate in a program beyond the time period initially indicated. These reports shall be maintained by Human Resources. The reports shall be treated as confidential and shall not be maintained in the employee's regular personnel file.

3. Office of Human Resources and Student Life will sponsor workshops for students and staff on various alcohol and drug topics. Announcement of these workshops will be posted campus-wide in prominent places.

#### **K. Responsible Administrative Offices**

The Human Resources Office shall be responsible for overseeing all actions relating to this policy. The Executive Director of Human Resources shall conduct a biennial review of the policy and its implementation to determine its effectiveness, make necessary changes and see that disciplinary sanctions are enforced.

**Implementation Date:** October 1, 2007

**Originator/Division:** Human Resources

**Approved by the Board of Trustees: September 19, 2007**