

Legal *focus*

Positive Drug Tests: SAP Program and Return to Duty

When a school bus driver fails a drug or alcohol test, refuses to submit to required testing, or otherwise violates U.S. Department of Transportation (DOT) drug testing regulations, a specific regulatory framework governs driver and employer obligations. Federal regulations require such drivers participate in the Substance Abuse Professional (SAP) program before they return to safety-sensitive duties. 49 C.F.R. §40.285(a). For school bus operators, understanding how this process works, and what is required along the way, is essential for maintaining compliance and protecting student safety. Because school bus drivers operate passenger-carrying commercial motor vehicles and perform safety-sensitive functions as defined in 49 C.F.R. §40.382.107, the consequences of a violation are immediate and mandatory. A driver may not perform any safety-sensitive function, including operating a school bus, until each regulatory step has been completed in full. 49 C.F.R. §40.382.501(a).

Responding to a Positive Drug Test Result

When a school bus operator receives a verified positive drug or alcohol test result regarding one of its school bus drivers, there are certain regulatory requirements that are triggered for the employer. Employers must immediately remove the driver from performing any safety-sensitive function. 49 C.F.R. §382.501(b). This removal is not discretionary and applies whether the violation arises from a random, post-accident, reasonable suspicion, return-to-duty, or follow-up test. In addition, by the close of the third business day following the date on which the employer received the verified positive drug test, the employer must report the verified positive drug test, including specific details and documentation regarding the drug test, to the FMCSA Drug and Alcohol Clearinghouse. 49 CFR 382.705(b).



Employers must also report alcohol confirmation results of 0.04 or greater, certain refusals to test, and actual knowledge violations as defined under 49 C.F.R. §382.107. Employers are responsible for providing the school bus driver that tested positive with a list of SAPs who are readily available to the employee and acceptable to the employer, along with the SAPs contact info. 49 C.F.R. §40.287.

Substance Abuse Professional Program

Employees that test positive and want to return to a safety-sensitive position must contact a SAP to enroll in a SAP program. A SAP program is not

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disciplinary in nature. Instead, it is a structured process intended to evaluate whether a driver can safely return to duty after completing SAP-mandated education or treatment. A qualified SAP conducts an initial evaluation and identifies the specific steps that must be completed before any return to safety-sensitive work may be considered. 49 C.F.R. §§40.281(c)(vi); 40.291(a). SAPs are also responsible for developing a follow-up drug testing plan and making recommendations for continuing education. 49 C.F.R. §40.291(a)(4). In summary, the SAP's role is to protect the public interest in safety by professionally evaluating the employee and determining appropriate education, treatment, and follow-up testing requirements. 49 C.F.R. §40.291(b).

Return to Duty

One of the most commonly misunderstood aspects of the SAP program is the return-to-duty (RTD) process. Completion of treatment or education alone does not authorize a driver's return. Before resuming safety-sensitive duties, the driver must undergo a follow-up evaluation by the SAP, who will then determine if the employee is eligible for return-to-duty testing. 49 C.F.R. §§40.291(a)(3); 40.301. The driver must then successfully complete a directly

observed return-to-duty test. 49 C.F.R. §40.67(b); §40.305(a). The result must be negative before the driver may perform any safety-sensitive function and, in alcohol cases, the return-to-duty test must result in a concentration of less than 0.02. 49 C.F.R. §40.305(a). The employer must report the negative return-to-duty test result to the Clearinghouse. 49 C.F.R. §382.705(b)(1)(ii). In addition, the driver must comply with a follow-up testing plan that may remain in place for several years, as prescribed by the SAP and implemented by the employer. 49 CFR §40.307. Clearinghouse records must reflect successful completion of the return-to-duty process before the driver may lawfully perform safety-sensitive functions for any employer. 49 C.F.R. §382.701(d).

What Should Contractors Do?

School bus contractors are responsible for ensuring that no safety-sensitive work is performed until SAP is complete, and should ensure compliance with any follow-up testing plan. Even a single misstep can result in regulatory penalties, Clearinghouse prohibitions, or operational disruptions, including drivers being removed from service. Careful documentation, timely reporting, and coordination with qualified service agents are essential

to maintaining compliance.

Contractors are also reminded that school bus drivers are subject to the maximum driving time rules applicable to passenger-carrying commercial motor vehicles under 49 C.F.R. §395.5. Accordingly, contractors must account for testing, evaluations, and related compliance activities when managing driver schedules, and be mindful that time spent complying with required testing, including providing a specimen when directed, is considered on-duty time under 49 C.F.R. §395.2. If you have any specific questions related to the SAP program or return-to-duty requirements for school bus drivers, contact us at 215-896-3846 or email help@rckelly.com.



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