

# SCIOTO COUNTY BOARD OF DEVELOPMENTAL DISABILITIES

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## **POLICY 3.02.13 DRUG-FREE WORKPLACE**

### Scioto County's Drug-Free Workplace Policy Outline

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## POLICY 3.02.03 DRUG-FREE WORKPLACE

Level 1<sup>1</sup>

### I. Statement of Policy

It is very important to provide a safe workplace for all County employees<sup>2</sup>; therefore, steps are being taken to address the problem of substance abuse that negatively affects every workplace, including ours. Scioto County<sup>3</sup> is concerned with the health and well-being of all employees. Behaviors related to substance use can endanger all employees<sup>4</sup>, not just substance users. Behaviors such as use of illegal drugs, misuse of alcohol, the sale or purchase, transfer, trafficking, use or possession of any illegal drugs, or the arrival or return to work under the influence of any drug (legal or illegal) or alcohol to the extent that job performance is affected will not be condoned or tolerated.<sup>5</sup>

Scioto County<sup>6</sup> is fully committed to its Drug-Free Workplace Policy which establishes clear guidelines for acceptable and unacceptable employee behavior for everyone in the workplace. Substance use in violation of this Policy will not be tolerated and everyone shall be held reasonably responsible for supporting<sup>7</sup> the Policy.

This document (Policy) describes Scioto County's<sup>8</sup> Drug-Free Workplace Program and every employee is expected to read and understand it. The Policy applies to every county<sup>9</sup> employee, and also applies to contractors and subcontractors the County<sup>10</sup> may use.<sup>11</sup> The consequences stated in this Drug-Free Policy will apply to anyone who violates the Policy.<sup>12</sup>

The County<sup>13</sup> holds all employees accountable in terms of substance use, but also supports getting help for its employees. Employees who come forward

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<sup>1</sup> There are no other 'Levels' in this Policy.

<sup>2</sup> All references to 'County employees' should be interpreted to read "Scioto County Board of Developmental Disabilities Employees."

<sup>3</sup> All references to "Scioto County" should be interpreted to read "Scioto County Board of Developmental Disabilities."

<sup>4</sup> Such behaviors could also pose a danger to the people served by the Board.

<sup>5</sup> The Board will also not tolerate the manufacture of illegal substances on Board property or during work hours.

<sup>6</sup> See Note 3.

<sup>7</sup> All employees shall be held reasonably responsible for abiding by this Policy.

<sup>8</sup> See Note 3.

<sup>9</sup> See Note 2.

<sup>10</sup> See Note 3.

<sup>11</sup> The definition of 'employee' also includes, for the purpose of this policy, substitute employees, volunteers and interns.

<sup>12</sup> See also Policy 3.04.01 Standards for Conduct & Policy 3.04.02 Progressive Discipline

<sup>13</sup> See Note 3.

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voluntarily to identify that they have a substance problem may receive County<sup>14</sup> assistance<sup>15</sup>, at the discretion of the office holder<sup>16</sup> under whom they are employed. However, if an employee has a substance problem and does not come forward, and the employee then tests positive for drug or alcohol use in violation of this Policy, the County<sup>17</sup> reserves the right to terminate employment for violation of this work rule. Employees whose jobs are subject to any special law or regulation may face additional requirements in terms of substance use. Other consequences that apply to all employees who violate this Policy are spelled out within this document.<sup>18</sup>

This program will go into effect June 2, 2007<sup>19</sup> and with the announcement of our Drug-Free Workplace Program and this new Policy<sup>20</sup> that describes our program. Our Policy covers five key parts of the County's<sup>21</sup> program. The five parts are:

1. A written policy that clearly spells out the program rules and how everyone benefits.
2. Annual substance awareness education for all employees.
3. Training for supervisors regarding their responsibilities.
4. Drug and alcohol testing, the most effective way to change harmful behaviors related to substance use.
5. Employee assistance

Employees will have the opportunity to receive information about how substance use is a problem affecting the workplace.<sup>22</sup> You will learn the signs and symptoms, dangers of use and how and where to get help for yourselves and your families.<sup>23</sup> Loss Control Coordinator will be our

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<sup>14</sup> See Note 3.

<sup>15</sup> Employee Assistance is limited to the benefits of the employee's insurance plan, Family Medical Leave Act stipulations, private-pay services, etc. and is not actually a program provided by the Scioto County Board of Developmental Disabilities or the Scioto County Board of Commissioners.

<sup>16</sup> The Superintendent of the Scioto County Board Developmental Disabilities or his/her designee

<sup>17</sup> See Note 3.

<sup>18</sup> See Note 12.

<sup>19</sup> June 2, 2007 is the date when the County Commissioners initiated a drug-free workplace (DFW) program. Scioto County Developmental Disabilities introduced the Commissioners' program to staff later that year.

<sup>20</sup> All policies, and subsequent amendments, must be adopted by the Scioto County Board of Developmental Disabilities before implementation. A previous DFW policy was adopted by the Board in 2001. The 2001 policy was replaced by the County Commissioners' policy in 2007.

<sup>21</sup> See Note 3.

<sup>22</sup> This information is part of the annual DFW training for all employees.

<sup>23</sup> See Note 22.

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Drug-Free Coordinator so everyone knows who to go to for information or help.<sup>24</sup> He/she will be responsible for arranging drug and alcohol testing<sup>25</sup>, as needed and will have a list of places that employees can turn to for help for themselves and/or their families. He/she will also arrange to get knowledgeable presenters to educate our employees about substance use.

## Protections for Employees

This program is designed to protect employees from the behaviors of substance users. Some of the protections built into the program are:

1. Employee records, such as testing results and referrals for help, will be kept confidential.<sup>26</sup> Information will be on a need-to-know basis and any violation of confidentiality rights is subject to disciplinary action up to and including termination of employment.
2. Scioto County<sup>27</sup> is committed to employees, who have a substance problem, to obtain assistance. Each situation will be reviewed individually. Employee assistance is available for employees and their families<sup>28</sup> and a list of resources available through our Drug-Free Coordinator and posted on the bulletin board in the basement of the courthouse. You are encouraged to come forward if you have a substance problem. If you test positive, you risk losing your job.
3. All persons in supervisory positions will be trained in their duties related to testing before this program begins.
4. All employees will receive awareness education every year to help identify problems and learn where employees can go for help.
5. Collection of urine specimens and breath testing will be done at a local collection site<sup>29</sup>, and urine drug test specimens will be analyzed by a laboratory certified by the federal government. These labs use the highest level of care in ensuring that results are accurate, and the process that's

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<sup>24</sup> Many functions of the DWF program have been delegated to the County Board Personnel Office.

<sup>25</sup> This function is coordinated through the County Board Personnel Office.

<sup>26</sup> The personnel office is required to keep employee medical information in a separate file that is not considered public record as defined by Ohio Revised Code (ORC) 149.43. The privacy of drug testing results is protected by federal law.

<sup>27</sup> See Note 3.

<sup>28</sup> Assistance may be available through the County Board's health insurance program, if the employee has chosen to participate, and through community resources unrelated to the County Board.

<sup>29</sup> For the location of the local collection site, contact the County Board Personnel Office.

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used is 100% accurate in detecting that the substances that the County<sup>30</sup> is concerned about are present in the employee in sufficient quantity to lead to behaviors that may hurt the person or other employees<sup>31</sup>. The lab will work closely with out local designated collection site to ensure fairness and accuracy of every test, and we also have a Medical Review Officer<sup>32</sup> (called an MRO), a trained physician responsible for checking whether there's a valid reason for the presence of the substance in the employee's system. The MRO is an expert in drugs and alcohol. When the MRO receives positive test results, the MRO will contact the employee and any appropriate health care provider<sup>33</sup> to determine whether there is a valid reason for the presence of the drug in the person's system.

6. The testing program consists of an initial screening test. If the initial results are positive, then a second test is used. Cut-off levels for each drug and for alcohol are established for what will be considered a positive test.<sup>34</sup> These levels show that the employee didn't just have a little of the substance in his or her system, but enough to affect workplace safety and the ability to do the job. These cut-off levels come from federal guidelines and are fair for all employees.

## Employee Awareness Education:

Every employee will attend a session in which this policy is discussed. Each employee will have a chance to ask questions and will be given a copy<sup>35</sup> of the County's<sup>36</sup> written Policy. It will be expected of each employee to sign an acknowledgment that the employee has received it.<sup>37</sup> Employees will also be expected to sign the consent and release form. A qualified person will explain why and how substance use is a workplace problem, the effects, signs/symptoms of use, effects of commonly used drugs in the workplace, and how to get help. There will be a minimum of two hours of substance education annually for all employees. New employees will learn about the program during orientation and will receive substance education as soon as possible thereafter.<sup>38</sup>

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<sup>30</sup> See Note 3.

<sup>31</sup> Employee drug use also puts the safety of the people we serve at risk.

<sup>32</sup> This individual is employed by the testing site, not the county or the County Board.

<sup>33</sup> "appropriate health care provider" means someone who has provided care to the employee and can shed light on his/her medical condition.

<sup>34</sup> These cut-off levels are determined by the federal government.

<sup>35</sup> Scioto County of Developmental Disabilities employees will be given a copy or be given access to a copy.

<sup>36</sup> See Note 3.

<sup>37</sup> This will only be necessary upon hire and upon significant changes to the policy thereafter.

<sup>38</sup> The Board adds the following additional stipulations regarding the legitimate use of medications: The use of legitimately prescribed drugs can cause temporary side effects which can adversely affect job performance. Any employee who is experiencing such side effects from taking prescribed medication

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## Supervisor Training:

Supervisors will be trained to recognize substance abuse problems that may endanger the employee and others, as well as violate this Policy. This training is in addition to the employee education session. Supervisors will be trained about testing responsibilities, how to recognize behaviors that demonstrate an alcohol/drug problem and how to make referrals for help.

## Drug and Alcohol Testing:

Testing will be used to detect problems, get employees not to use substances in a way that they violate our Policy and then allow us to take appropriate action to correct the situation. In addition to alcohol, the drugs that we're testing for are:

- Amphetamines (speed, uppers)
- Cocaine (including crack cocaine)
- Marijuana
- Opiates (codeine, heroin, morphine)
- Phencyclidine (PCP, "angel dust")

Scioto County<sup>39</sup> reserves the right to test for the following substances, if needed:

- Barbiturates
- Benzodiazepines (Valium, Librium, etc.)
- Methadone
- Propoxyphene (Darvon, Darvocet, etc.)
- Oxycodone

## Employee Assistance

The County believes in offering assistance to employees with a substance problem. Treatment options will be offered through the employee medical healthcare coverage program. These are offered to each and every employee.<sup>40</sup> The County<sup>41</sup> is supportive of employees taking action on their own behalf to address a substance problem. A list of local community resources will be given to employees who come forward voluntarily to seek help. The list is of places to go for an assessment and for treatment. When an employee has a substance problem, we'll meet with the employee to discuss the problem and any violation of this policy. The County reserves the right to terminate based on a positive test.

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should inform his/her supervisor of the situation. If the prescription drug use could cause productivity or safety problems, a supervisor may grant the employee sick leave.

<sup>39</sup> See Note 3

<sup>40</sup> In accordance with Scioto County Board policy, only full-time permanent employees may participate in the agency's health insurance program.

<sup>41</sup> See Note 3.

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This policy is not a guarantee that disciplinary action will not be taken against an employee who comes forward. Because of the nature of some positions in county employment, the individual office holders<sup>42</sup> will retain the right to deal accordingly with an individual employee.

## II. When Will a Test Occur?<sup>43</sup>

Employees will be tested for the presence of drugs in the urine and/or alcohol on the breath under any and/or all of the conditions outlined below:

### A. Post-Offer, Pre-Employment Drug Testing<sup>44</sup>

As part of the County's employment procedures, all applicants in safety-sensitive or in unique positions will be required to undergo a post-offer, pre-employment drug screen/test that is conducted by a contractor designated by the County<sup>45</sup>. Any offer of employment depends upon satisfactory completion of this screening, and the determination by the County<sup>46</sup> and its examining physician<sup>47</sup> that the person is drug free.

### B. Reasonable Suspicion Testing

Reasonable suspicion testing will occur when management has reason to suspect that an employee may be in violation of this Policy. The suspicion will be documented in writing prior to the release of the test findings. A reasonable suspicion test may occur based on:

1. Observed behavior, such as direct observation of drug/alcohol use or possession and/or physical symptoms of drug and/or alcohol use;
2. A pattern of abnormal conduct or erratic behavior;
3. Arrest or conviction for a drug-related offense, or identification of an employee as the focus of a criminal investigation into illegal

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<sup>42</sup> The office holder in this case is the Superintendent.

<sup>43</sup> It should be noted that Commercial Drivers License (CDL) holders, such as school bus drivers, are subject to additional drug and alcohol testing under federal and state regulations. These include random drug and alcohol testing. All bus drivers, whether they are employed directly by the Board, or through a contract with the Board, must adhere to these additional requirements.

<sup>44</sup> All applicants tentatively selected for positions at the Scioto County Board of DD must undergo a post-offer, pre-employment drug screen test. The Board does not single out "safety-sensitive and unique positions", so this phrase does not apply.

<sup>45</sup> See Note 3.

<sup>46</sup> See Note 3.

<sup>47</sup> This would be the MRO employed by the contractor.

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drug possession, use or trafficking.<sup>48</sup> The employee is responsible for notification of the County<sup>49</sup>, within five (5) working days of any drug-related conviction;

4. Information provided either by reliable and credible sources or independently corroborated regarding an employee's substance use; or
5. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

Reasonable suspicion testing does not require certainty, but mere "hunches" are not sufficient to justify testing. To prevent this, all managers/supervisors will be trained to recognize drug and alcohol-related signs and symptoms. Testing may be for drugs or alcohol or both.

## C. Post-Accident Testing

Post-accident testing will be conducted whenever an accident occurs, regardless of whether there's an injury.

We consider an accident an unplanned, unexpected or unintended event that occurs on our property<sup>50</sup>, during the conduct of our business, or during working hours, or which involves one of our motor vehicles or motor vehicles that are used in conducting county business, or is within the scope of employment, and which results in any of the following:

1. A fatality of any one involved in the accident;
2. Bodily injury to the employee and/or another person that requires off-site medical attention away from the County's place of employment;
3. Vehicular damage in apparent excess of \$500; or

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<sup>48</sup> The Board includes "manufacturing" in this list.

<sup>49</sup> Notify the Scioto County Board of DD Personnel Office or immediate supervisor.

<sup>50</sup> The Scioto County Board of DD, for the purpose of this Policy, defines an accident as an unplanned, unexpected, or unintended event that occurs during the conduct of Board business on Board property or off, or which involves one of the Board's vehicles, or a motor vehicle being used in conducting Board business, or in the scope of employment, which results in any of the following:

1. A fatality of anyone involved in the accident;
2. Bodily injury to the employee and/or another person that requires medical attention away from the scene of the accident;
3. Vehicular damage in apparent excess of \$500.00; or
4. Non-vehicular damage in apparent excess of \$500.00.

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4. Non-vehicular damage in apparent excess of \$500.

## Drug and /or Alcohol Testing after an Accident

Urine specimen collection (for drugs) or breath/saliva (for alcohol) is to occur as quickly as possible after a need to test has been determined. At no time will a urine specimen be collected after 32 hours from the time of an employment-related incident. Breath or saliva alcohol testing will be performed as quickly as possible; but no later than 8 hours after the incident, or it will be documented but not performed.<sup>51</sup> If the employee responsible for an employment-related accident is injured, it is a condition of employment that the employee grants the County<sup>52</sup> the right to request that attending medical personnel obtain appropriate specimens (breath, urine and/or blood) for the purpose of conducting alcohol and/or drug testing. Further, all employees shall grant the County<sup>53</sup> access to any and all other medical information that may be relevant in conducting a complete and thorough investigation of the work-related accident including a full medical report from the examining physician(s) or other health care provider. A signed consent to testing for is considered a condition of employment.<sup>54</sup> Scioto County<sup>55</sup> reserves the right to determine who may have caused or contributed to a work-related accident.

### D. Follow-up Testing after Return-to-Duty from Assessment or Treatment

This test occurs when an employee has previously tested positive and the decision is made to not terminate the employee. A negative return-to-duty test is required before the employee will be allowed to return to work. If the employee fails this test, this will lead to termination of employment. Once an employee passes the drug and/or alcohol test and returns to work, management may choose to do additional unannounced tests for as long as we deem necessary and subject to constitutional limitations affecting public employers.

## III. Substances to be Tested for and Methods of Testing

The procedure to be employed is identified as systems presence testing. This procedure enables qualified testing professionals to identify the presence of one or more of prohibited controlled substances or alcohol that may be present in the employee. There is an initial screening test. If it's negative, then a negative test is

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<sup>51</sup> The Board requires that it be documented as to why the test was not performed.

<sup>52</sup> See Note 3.

<sup>53</sup> See Note 3.

<sup>54</sup> The County has provided a form for this.

<sup>55</sup> See Note 3.

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declared. If the initial test is positive (comes in at or higher than the cut-off level), a second test called a “confirmatory” test is done. This is a different test and is considered 100% accurate by experts and in court. Cut-off levels are standards that have been established for each of the tested drugs after years of research. These levels will be used to interpret all drug screens/tests, whether for a pre-employment examination, reasonable suspicion test, post-accident test or follow up test.

Breath alcohol testing will be conducted by a medical clinic that uses only certified equipment and personnel. Breath alcohol concentrations exceeding .04<sup>56</sup> will be considered a verified positive result. In the event of an accident where an employee has “whole blood” alcohol drawn at a medical treatment facility, a result equal to or greater than .04<sup>57</sup> shall be considered to be a verified positive result. An Evidentiary Breath Test (EBT) will typically be used to confirm any initial positive test result. The County<sup>58</sup> also reserves the right to add or delete substances on the list above, especially if mandated by changes in existing Federal, State, or local regulations or laws.

An employee who adulterates, attempts to adulterate or substitutes a specimen or otherwise manipulates the testing process will be terminated. A refusal to produce/provide a specimen is considered a positive test unless there’s a verifiable medical reason that the specimen could not be produced.

## IV. Specimen Collection Procedure

Urine specimens and breath testing will be conducted by trained collection personnel who meet standards for urine collection and breath alcohol testing. Confidentiality is required from our collection sites and labs. Employees are permitted to provide urine specimens in private, but subject to strict scrutiny by collection personnel so as to avoid any alteration or substitution of the specimen.

Breath alcohol testing will likewise be done in an area that affords the individual privacy. In all cases, there will be only one individual tested at a time. Failure to appear for testing when scheduled shall be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to cancellation of an offer of employment.<sup>59</sup> An observed voiding will only occur if there is grounds for suspecting manipulation of the testing process.

## V. Review of Test Results

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<sup>56</sup> This number may vary depending on superseding laws and regulations.

<sup>57</sup> See Note 57.

<sup>58</sup> See Note 3.

<sup>59</sup> The County Board administration reserves the right to consider mitigating circumstances before initiating disciplinary procedures.

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To ensure that every employee who is tested is treated fairly, a Medical Review Officer (MRO) has been hired.<sup>60</sup> The MRO is a doctor with a specialized knowledge of substance abuse disorders and will be able to determine whether there are any valid reasons for the presence in the employee's system of the substances that was tested positive.

## VI. Employees' Rights When There's a Positive Test Result

An employee who tests positive under this Policy will be given an opportunity to explain the findings to the MRO prior to the issuance of a positive test result to the County.<sup>61</sup> Upon receipt of a confirmed positive finding, the MRO will attempt to contact the employee by telephone or in person. If contact is made by the MRO, the employee will be informed of the positive finding and given an opportunity to rebut or explain the findings. The MRO can request information on recent medical history and on medications taken within the last thirty days by the employee. If the MRO finds support in the explanation offered by the employee, the employee may be asked to provide documentary evidence to support the employee's position (for example, the names of treating physicians, pharmacies where prescriptions have been filled, etc.) A failure on the part of the employee to provide such documentary evidence will result in the issuance of a positive report by the MRO with no attendant medical explanation. A medical disqualification of the employee will result. If the employee fails to contact the MRO as instructed, the MRO will issue a positive report to the County.<sup>62</sup>

## VII. Reporting of Results

All test results will be reported to the MRO prior to the results being issued to the County.<sup>63</sup> The MRO will receive a detailed report of the findings of the analysis from the testing laboratory. Each substance tested for will be listed along with the results of the testing. The County<sup>64</sup> will receive a summary report, and this report will indicate that the employee passed or failed the test. All of these procedures are intended to be consistent with the most current guidelines for Medical Review Officers, published by the federal Department of Health and Human Services.

## VIII. Storage of Test Results and Right to Review Test Results

All records of drug/alcohol testing will be stored separately and apart from the employee's general personnel documents. These records shall be maintained under lock and key at all times. Access is limited to designated County<sup>65</sup>

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<sup>60</sup> The services of an MRO may be obtained through contracting.

<sup>61</sup> See Note 3.

<sup>62</sup> See Note 3.

<sup>63</sup> See Note 3.

<sup>64</sup> See Note 3.

<sup>65</sup> See Note 3.

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officials. The information contained in these files shall be utilized only to properly administer this Policy and to provide to certifying agencies for review as required by law. Designated county officials [who] shall have access to these records are charged with the responsibility of maintaining the confidentiality of these records. Any breach of confidentiality with regard to these records may be an offense resulting in termination of employment, excepting office holders.<sup>66</sup>

Any employees tested under this Policy have the right to review and/or receive a copy of their own test results. An employee may request from the Drug-Free Coordinator<sup>67</sup>, in writing, presenting a duly notarized Employee Request for Release of Drug Tests Results form<sup>68</sup>, requesting that a copy of the test be provided. The County will use its best efforts to promptly comply with this request and will issue to the employee a copy of the results personally or by U.S. Certified Mail, Return Receipt Requested.

## IX. Positive Test Results

Employees who are found to have a confirmed<sup>69</sup> positive drug or alcohol test will be immediately taken off safety-sensitive duties<sup>70</sup> and are subject to discipline up to and including termination.

## X. Rebuttable Presumption<sup>71</sup>

Rebuttable Presumption House Bill 223 Effective October 14, 2004 is a notice that places the burden of proof onto the employee to dispute or prove untrue the presumption or belief that alcohol or a controlled substance not prescribed by the employee's physician is the proximate cause (main reason) of the work-related injury.

The burden of proof is on the employee to prove that the presence of alcohol or a controlled substance was not the proximate cause of the work-related injury. An employee who tests positive or refuses to submit to chemical<sup>72</sup> testing may be

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<sup>66</sup> The Superintendent is the office holder, but in this instance, the Superintendent is not immune from disciplinary action as an election official might be.

<sup>67</sup> County Board employees may contact the County Board Personnel Office.

<sup>68</sup> This form may be obtained from the County Board Personnel Office-.

<sup>69</sup> This term is used here in the same sense that "verified" was used earlier in the Policy.

<sup>70</sup> See Note 44.

<sup>71</sup> Ref.: ORC 4123.54.

<sup>72</sup> The word 'chemical' is being used here in the same sense that substance or drug and/or alcohol are being used throughout the Policy.

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disqualified for compensation and benefits under the Workers' Compensation Act.

## XI. Termination Notices

In those cases where substance testing results in the termination of employment, all termination notices will list "misconduct" as the reason. Termination shall be deemed "for cause."