



# Administrative Procedure 418 DRUGS AND ALCOHOL - EMPLOYEES

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## Background

Northern Lights School Division (the "Division") is committed to ensuring the health and safety of its employees, students, contractors and the public at large. The Division recognizes and accepts the responsibility to provide its employees with a safe, healthy, and productive work environment. Employees have the responsibility to report to work capable of performing their tasks productively and safely. The use of drugs, including illegal drugs, the improper use of prescription or non-prescription medication, and the use of alcohol, cannabis, or other intoxicants can have serious adverse effects on the safety of the workplace for employees, students, contractors and the public.

## Purpose

The purpose of this Administrative Procedure is to establish the Division's expectations for appropriate behaviour, the consequences for non-compliance, to provide consistent guidelines for all employees, and to clearly communicate to employees suffering from drug or alcohol dependency the accommodation and supports available.

### 1. Definitions

- 1.1. "Drugs" means any substance, inclusive of illicit drugs, restricted drugs, and medication, as defined by this Administrative Procedure, the use of which has the potential to cause impairment or intoxication, changing or affecting the way a person thinks, feels, or acts. For the purposes of this Administrative Procedure, drugs of concern are those that inhibit a worker's ability to perform his or her job safely and productively.
  - 1.1.1. "Illicit Drug" means any drug or substance that is not legally obtainable and whose use, sale, possession, purchase or transfer is prohibited by law (for example, street drugs such as heroin and cocaine).
  - 1.1.2. "Restricted Drug" means any drug or substance capable of causing intoxication or impairment which is legally obtainable for recreational use and whose sale, purchase, possession, or transfer are restricted by law (such as cannabis, if and when legalized).
  - 1.1.3. "Medication" refers to a drug obtained legally by an employee and used as indicated or directed, including but not limited to those obtained by the employee with a doctor's prescription or medical document, as contemplated by the *Access to Cannabis for Medical Purposes Regulation* (as amended, repealed and replaced from time to time), and non-prescription or over-the-counter products.
- 1.2. "Under the influence" of Drugs, alcohol, intoxicants or any controlled or uncontrolled substance for the purpose of this Administrative Procedure is defined as the use of one or more of these substances to an extent that an employee is:
  - 1.2.1. Unable to perform in a productive manner;
  - 1.2.2. In a physical or mental condition that creates a risk to the safety and well-being of the individual, other employees, or the property of the Division or any member

of the public; or

- 1.2.3. Displaying signs or symptoms of impairing substance use, including but not limited to the smell of alcohol or drugs, slurred speech, and/or atypical behaviour.
- 1.3. “Drug or alcohol dependence”: A mental, physical, or psychological dependence on Drugs, alcohol, or other impairing substances which is considered by a physician to be a medical condition/disability as contemplated by Human Rights law.
- 1.4. “Recreational Drug/alcohol or other substance use”: With recreational use of Drugs, alcohol, or other impairing substances, there is no mental, physical or psychological dependence; therefore, this is not considered a medical condition or mental, physical, or psychological disability as contemplated by Human Rights law.
- 1.5. “Safety-sensitive positions” shall include any position where the performance of duties with impaired physical or mental abilities creates a reasonably foreseeable risk of injury, physical harm, or danger, including, but not limited to those employees who are required or permitted to operate the Division’s vehicles or their own personal vehicles for employment-related purposes and maintenance staff.

## 2. Treatment and Accommodation

- 2.1. Any employee actively suffering from a Drug or alcohol dependence is **required** to disclose the dependence to the Associate Superintendent (HR). The Division recognizes its responsibility to assist and accommodate employees suffering from a Drug or alcohol dependence to the point of undue hardship, including providing access to our Employee Assistance Program (“EAP”) and sick leave as with any other illness. The Division will take appropriate precautions to protect the employee’s confidentiality given the sensitive nature of the issue.
- 2.2. Employees who are concerned that a fellow employee may be suffering from a Drug or alcohol dependence are strongly encouraged to report their concerns to the employee’s immediate supervisor or the Associate Superintendent (HR) as well as encouraging the fellow employee to disclose and seek assistance through the EAP. Teachers need to be mindful of their ATA Code of Conduct in this regard. While the Division will make its best efforts to protect employees’ confidentiality when a concern is reported, it may be necessary for the Division to disclose certain information, including but not limited to the identity of the reporting employee, to the employee in question in order to properly investigate concerns.

## 3. Prohibitions

- 3.1. During an employee’s working hours, whether on the Division’s premises or while conducting employment-related activities off the Division’s premises, and if including during meal periods, scheduled breaks, on field trips, and on-call shifts, no employee shall:
  - 3.1.1. use, consume, possess, distribute, sell or be under the influence of Illicit Drugs;
  - 3.1.2. use, consume, possess, distribute, sell or be under the influence of Restricted Drugs;

- 3.1.3. use, consume, possess, distribute, sell or be under the influence of alcohol, unless authorized by the Division for a specific limited purpose (while the Division expects that all of its employees will comply with this rule on a day to day basis, it is recognized that for some Division employees approved and appropriate social functions within the course and scope of their work hours will occur at which reasonably limited consumption of alcohol is customary and appropriate. Some common examples for illustration purposes would include: professional conference cocktail reception, external work related teaching conferences, Division approved social dinner, or a promotional activity or event such as a Christmas party. However it is critically important that all employees understand that even at these events where alcohol consumption is permitted, alcohol should only be consumed on a social basis to reasonable levels which ensure professional and responsible behavior by Division employees at all times.); or
- 3.1.4. use, consume, possess, distribute, sell or be under the influence of any other intoxicants, whether a controlled or uncontrolled substance.
- 3.2. An employee shall not, under any circumstances, consume alcohol or use, consume, ingest, or inhale Illicit Drugs, Restricted Drugs or other intoxicants while in care and control of or responsible for any Division vehicle or equipment, or while using the employee's personal vehicle for work-related purposes.
- 3.3. If an employee is called back after regular working hours to perform work-related duties and has been consuming alcohol or using Drugs or other intoxicants, it is the employee's responsibility to:
  - 3.3.1. Ensure that he or she does not perform any employment duties, including operate a motor vehicle, while under the influence of alcohol, Illicit Drugs, Restricted Drugs, Medication or any other intoxicant or substance, if impairment has resulted; and
  - 3.3.2. Notify the Employer Representative who is attempting to call them in that they are unable to perform their duties at that time.
- 3.4. The legal use of Medication in compliance with physician directions is permitted at work only if it does not impair the employee's ability to perform his or her work effectively and in a safe manner. Employees are required to disclose to the Associate Superintendent (HR), the use of Medication which may reasonably be expected to affect their work performance or the safe execution of their duties. The Division is committed to accommodating an employee's necessary use of Medication to the extent reasonably possible without suffering undue hardship. When prescribed medications are on Division or Division's property due to an employee's needs and following the above rules, such Medication must be monitored vigilantly and kept in a secure place that is out of harms reach and inaccessible to students (e.g. the Employee's pocket, or locked cabinet, etc.)

#### **4. Testing**

##### **4.1. Reasonable Cause Testing**

- 4.1.1. The Division may conduct testing for the presence of alcohol, or Drugs when it has reasonable grounds to believe that the actions, appearance or conduct of an employee while on duty (including while on-call) indicates that the employee is under the influence of Restricted or Illicit Drugs or alcohol. While the Division

reserves this right for all of its employees, employees should understand that the necessary threshold to establish reasonable cause in the eyes of the Division will be lower for employees in safety-sensitive positions given the potential consequences involved.

- 4.1.2. The basis for the decision to test will be documented as soon as possible after the action has taken place and identified to the employee prior to the test being conducted. The employee will be invited and have the opportunity to speak to or refute the basis for the decision to test and the Division shall consider the employee's position prior to proceeding with the test. For any employees represented by a Union, the employee shall be advised of their right and the opportunity to contact and seek Union / Association representation prior to and for attendance at the test so long as such contact, or representation does not unreasonably delay the testing process which is important to have performed in a timely fashion. The referral for the test will be based on specific, personal observations resulting from, but not limited to:
  - 4.1.2.1. Observed use or evidence of use of Restricted or Illicit Drugs or alcohol (e.g. smell of alcohol or cannabis);
  - 4.1.2.2. Erratic or atypical behaviour of the employee;
  - 4.1.2.3. Changes in physical appearance of the employee;
  - 4.1.2.4. Changes in behaviour of the employee;
  - 4.1.2.5. Changes in speech patterns of the employee;
  - 4.1.2.6. Discovery of Drugs, inclusive of Medication capable of causing impairment, alcohol, intoxicants or related paraphernalia found in locations to which an employee has sole or primary access, including employees' lockers or assigned vehicles; or
  - 4.1.2.7. Following a serious incident or accident where the possibility of Drug or alcohol impairment cannot be easily ruled out from review of the circumstances, including a "significant incident" as defined by Occupational Health & Safety legislation, and a situation which created significant potential or risk for an incident or accident, even if an incident or accident did not ultimately result (a "near miss").
- 4.1.3. In addition, the Division may conduct reasonable cause testing upon receipt of a complaint or concern by a co-worker or third party that an employee may be using Drugs, alcohol or other substances contrary to this Administrative Procedure. In such circumstances, the Division shall record the name and contact information of the complainant as well as the details of the concern or complaint. The Division shall provide the details of the concern or complaint to the accused employee and, in appropriate circumstances, shall also provide the complainant's identity to the accused employee to allow him/her the opportunity to provide a full and complete response to the allegations. The Division shall also reasonably consider the surrounding circumstances, and the presence or absence of any other evidence or indicators of drug or Alcohol impairment prior to making a final decision on reasonable cause to test in these circumstances.

4.1.4. In all situations where the Division believes an employee is unfit to be at the workplace, a responsible escort will be used to escort the employee home.

4.2. *Return to Work Testing*

4.2.1. When an employee returns to work following a disclosure that the employee suffers from a drug/alcohol dependency and subsequent treatment, the Division may require the employee to undergo a return to work test. Further random, unannounced testing may be required for up to one year after the employee returns to work.

4.2.2. Prior to implementing return to work testing pursuant to Section 4.2(a) above, the Division will consider all the surrounding facts and circumstances on a case by case basis, and provide the opportunity for discussion and input on this decision for return to work testing by the Employee and Employee Union / Association Representative if applicable.

4.3. *Testing Procedures*

4.3.1. Any testing undertaken pursuant to this Administrative Procedure, including analysis of results, shall be performed by a qualified professional. Where appropriate, results shall be confirmed by laboratory testing, which shall be performed at an accredited laboratory.

4.3.2. Where reasonably possible, all testing conducted pursuant to this Administrative Procedure shall be conducted respectfully and in a manner to minimize the intrusive nature of the tests. The Associate Superintendent (HR) will contact the alcohol and drug testing provider to schedule a test. The process is to be completed as soon as possible after the incident or observation which is deemed within the guidelines of this Administrative Procedure. The drug testing will be performed in compliance with the testing procedures as defined by the drug and/or alcohol testing facility.

4.3.3. The employee shall be notified of the result of the test, and given an opportunity to address those results, including by providing them to and discussing them with the employee's own physician. For employees with positive test results the Division shall consider on a case by case basis all of the surrounding facts and circumstances, including input from the Employee and if applicable the Employee's Union / Association Representative and make a determination of further steps, requirements, or recommendations that may be necessary to refer the Employee to of their own or independent physician to assess whether a drug or Alcohol dependency exists.

4.3.4. The Division will store test results in a secure location with access restricted to the Division's Senior Administration, the Division Safety Officer, or employees with a demonstrable need for access to test results, in order to preserve employee privacy. Test results will not be disclosed to third parties without prior written consent of the employee, subject only to a legal requirement for the Division to produce employee test results.

## 5. Discipline

- 5.1. The Division views the rules contained in this Administrative Procedure to be of the utmost importance. This is a zero-tolerance Administrative Procedure; any deviation from the above terms will result in disciplinary action that may include immediate termination. All employees will be provided with a copy of this Administrative Procedure as notification that any resulting dismissal will be considered as “dismissal for just cause” and not subject to notice or pay in lieu of notice.
- 5.2. As indicated above, any employee suffering from a Drug or alcohol dependence is required to disclose the addiction, and the Division recognizes its responsibility to assist and accommodate employees suffering from such a condition. However, if an employee neglects or refuses to disclose a Drug or alcohol dependence to the Division, in violation of this Administrative Procedure, the Division may, where warranted in the circumstances, deal with breaches of this Administrative Procedure based on the understanding that the employee is not suffering from a Drug or alcohol dependence, but has simply disregarded this Administrative Procedure, in which case immediate and strict disciplinary action will be taken. Further, failure to disclose a Drug or alcohol dependence which may potentially interfere with the diligent and safe performance of an employee’s duties in the workplace, is itself a violation of this Administrative Procedure.
- 5.3. Notwithstanding the foregoing, any and all disciplinary action under this Administrative Procedure that is taken by the Division against an employee will comply with the *Education Act* and the terms of any applicable collective agreement then in place.

## 6. Post-Violation Return to Work

- 6.1. Seeking voluntary assistance for Drug or alcohol dependence will not jeopardize an employee's employment with the Division, so long as the employee continues to cooperate and seek appropriate treatment for his or her disclosed problem and is able to treat and control the problem to facilitate a return to work within the reasonably foreseeable future.
- 6.2. Any employee violating this Administrative Procedure who is subsequently authorized and accepted by the Division to return to the workplace shall (after the Division has allowed reasonable opportunity for input and discussion by the Employee, and any applicable Employee Union Representative and / or the Employee’s physician) receive a Return to Work Letter outlining conditions of the return to the workplace which will normally include, but is not limited to, the following:
  - 6.2.1. Requirement to continue treatment, counselling and assistance programs or procedures recommended by the employee’s advising physician or addiction counsellor;
  - 6.2.2. Express obligation to immediately cease performance of duties and notify a supervisor in the event the employee finds themselves under the influence at any time during work hours following a return to the workplace;
  - 6.2.3. Requirement to provide written medical confirmation that the employee has any condition under control and is able to safely return to the workplace without danger to the employee or others;

- 6.2.4. Requirement to provide reasonably regular updates from the employee's physician or addiction counsellor confirming that the employee continues to follow recommended treatment programs and continues to be fit for performance of duties without danger to themselves or others; and
  - 6.2.5. An express warning to the employee that future violations of the Administrative Procedure will lead to further discipline and serious consideration of immediate termination for just cause.
- 6.3. Employees suffering from Drug or alcohol dependence who fail to co-operate with assistance or treatment programs or engage in repeated infractions of this Administrative Procedure, will be subject to the normal disciplinary sanctions, up to and including immediate termination for just cause.