

WASHINGTON-SARA TOGA-WARREN-HAMIL TON-ESSEX  
BOARD OF COOPERATIVE EDUCATIONAL SERVICES

ADMINISTRATIVE REGULATION

ALCOHOL AND OTHER DRUG TESTING

This regulation applies only to those individuals assigned to a position requiring a commercial drivers license.

DEFINITIONS

The following definitions are provided to clarify the Washington-Saratoga-Warren-Hamilton-Essex BOCES policy and administrative regulation on Drug and Alcohol Testing.

Alcohol	The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
Alcohol Use	The consumption of any beverage, mixture, or preparation containing alcohol, including any medication.
Breath Alcohol Technician (BAT)	An individual who instructs and assists individuals in the testing process and operates an evidential breath testing device.
Breath Alcohol Concentration (BAC)	Breath alcohol concentration level as determined by an evidential breath testing device and reported as milligrams per 210 liters of breath.
Confirming Test	For alcohol testing - confirming test means a second test, following a screening test with a result of .02 or greater, that provides quantitative data of alcohol concentration.  For controlled substances - confirming test means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas Chromatography/Mass Spectrometry GC/MS is the only authorized confirmation for cocaine, marijuana, opiates, amphetamines and phencyclidine.)
Confidant	Individual who acts as a liaison between tested individuals, the Medical Review Officer and the district.
Controlled Substance	Controlled substance means the National Institute on Drug Abuse (NIDA) "five" panel of drugs, which includes opiates, marijuana, cocaine, amphetamines and phencyclidine. Therapeutic drug use shall mean the use of a therapeutic substance that may adversely affect the employee's ability to operate a district vehicle or perform other safety sensitive functions.
Evidential Breath-Testing Device (EBT)	An EBT is a device approved by the National Highway Traffic Safety Administration for the evidential testing of breath and placed on NHTSA's conforming products list of Evidential Breath Measurement Devices.

Follow-up Testing	Follow-up tests are unannounced chemical testing for alcohol and controlled substances administered at intervals to ensure that an employee in a safety sensitive function is maintaining abstinence from the misuse of alcohol and the use of controlled substances. The tests are administered following a determination by a Substance Abuse Professional (SAP) that a driver is in need of assistance in resolving problems associated with the misuse of alcohol or the use of controlled substances. These are unannounced tests. given at least six (6) times within twelve (12) months following the employee's return to duty.
Medical Review Officer	A licensed physician responsible for receiving laboratory results generated by the BOCES drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.
Post-Accident Testing	A chemical test for alcohol and controlled substances administered by appropriately trained individuals to each surviving driver at the scene of an accident where there is a fatality or personal injury, or after an accident where the driver has been issued a citation for a moving violation, or after an accident in which a vehicle is required to be towed away.
Re-Employment Testing	Testing for alcohol and controlled substances prior to returning to the performance of a safety sensitive function after a prolonged absence of six (6) months or more.
Pre-Employment/ Pre-Duty Testing	BAC testing of employees for alcohol and urine testing for controlled substances prior to their assuming a safety sensitive function with BOCES to ensure employees are free of illegal drugs and alcohol.
Random Drug/ Alcohol Test	A system of unannounced testing for alcohol and controlled substances administered in a statistically random manner throughout the year to a group employed by BOCES in a safety sensitive function so that all persons within that group have an equal probability of selection each time said random pool is created for selection.
Reasonable Suspicion Testing	Testing which will be conducted only after a trained individual has observed an employee whose conduct, behavior, appearance, speech, body odors, or other specific, contemporaneous, articulable, observations concerning such conduct warrant such a test.
Refusal to Submit	An employee who (1) fails to provide adequate breath for testing without a valid medical explanation after he/she has received a notice of the requirement for the breath testing; (2) fails to provide adequate urine for controlled substance testing without a valid medical explanation after he/she has received notice of the requirement for urine testing; (3) engages in conduct that clearly obstructs the testing process; or (4) refuses to submit, will be classified as having refused to submit to an alcohol or controlled substances test.
Return to Duty Test	A test required after a positive alcohol test is confirmed and before the employee's return to duty that results in a finding of alcohol concentration of less than .02. The return to duty test administered following confirmation of a positive controlled substances test must result in a verified negative result for controlled substances.

Screening Test	In alcohol testing, screening test means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his/her system. In controlled substances testing it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.
Safety Sensitive Functions	For this policy, BOCES defines a safety sensitive function as any of these on-duty functions listed below: <ol style="list-style-type: none"><li>1. All time at a BOCES facility, or other property, waiting to be dispatched, unless relieved of duty by BOCES.</li><li>2. All times inspecting equipment as required by the Federal Motor Carrier Safety Regulations or otherwise inspecting, servicing, or conditioning any BOCES vehicle at any time.</li><li>3. All time spent at the driving controls of a BOCES vehicle.</li><li>4. All time, other than driving time, spent in a BOCES vehicle.</li></ol>
Safety Sensitive Functions (cont'd)	<ol style="list-style-type: none"><li>5. All time spent loading or unloading a BOCES vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving receipts for shipments loaded or unloaded.</li><li>6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.</li><li>7. All time spent performing the driver requirements associated with an accident.</li></ol> <p>Performing any work in the employ or service of a common or private motor carrier, providing contract transportation services for BOCES.</p>
Substance Abuse Professional (SAP)	A substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission - NAADAC) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
Vehicle	The Federal Highway administration defines a commercial motor vehicle as having a gross vehicle weight rating of more than 26,000 pounds or designed to transport sixteen (16) or more passengers. BOCES considers any motor vehicle used to transport students as a vehicle.

## **ADMINISTRATIVE PROCEDURES**

### **1. Person designated to answer employee questions about the program**

The Employee Alcohol and Drug Testing Program is administered by the Assistant Superintendent for Administrative Services. This person is designated by the District Superintendent of Schools to answer questions concerning materials or other information provided to employees about this program.

**2. The following classes of employees are subject to the requirements of the program:**

All regular and substitute employees who perform safety sensitive functions shall be considered covered employees for the purposes of these procedures.

All applicants for positions with BOCES as a driver or mechanic will be notified of the BOCES Drug and Alcohol Testing Policy at the time they apply. No covered employee shall be allowed to perform a Safety Sensitive function upon initial employment, transfer or re-employment who has not had a confirmed negative drug or alcohol test within the last six (6) months.

BOCES employees not otherwise covered may volunteer to participate in the Alcohol and Other Drug Testing Program subject to the same prohibitions and consequences as a covered employee.

**3. The following is considered conduct prohibited by the BOCES:**

***Alcohol Use***

No covered employee shall report for duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of .04 or greater.

No supervisor, employee or school official who knows that an employee has an alcohol concentration of greater than .02 shall permit the employee to perform safety sensitive functions.

No covered employee shall report for duty or operate a BOCES vehicle while the employee possesses alcohol.

No covered employee shall ingest alcohol while performing safety sensitive functions.

No supervisor, employee or school official who knows that an employee is ingesting alcohol, shall permit the employee to perform safety sensitive functions.

No covered employee shall perform safety sensitive functions within six (6) hours of ingesting alcohol.

No supervisor, employee or school official having actual knowledge that an employee has ingested alcohol within six (6) hours shall permit the employee to perform safety sensitive functions.

No covered employee, required to take a post-accident alcohol test, shall ingest alcohol for eight (8) hours following the accident, or until a post-accident alcohol test, whichever is first.

No covered employee shall refuse to submit to any post-accident, random, reasonable suspicion, or a follow- up alcohol test required under this policy.

No supervisor, employee or school official shall permit an employee who refuses to submit to such tests to perform or continue to perform safety sensitive functions.

***Controlled Substances***

No covered employee shall report for duty, remain on duty requiring the performance of safety sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate district motor vehicle. It is the employee's responsibility to notify BOCES if this situation is applicable. BOCES may request this information in writing at the discretion of the supervisor.

No supervisor, employee, or school official having actual knowledge that an employee has used a controlled substance shall permit the employee to perform safety sensitive functions.

No covered employee shall report for duty if he/she is using any therapeutic drugs whether or not they have been prescribed by a physician, unless the employee has been advised by a physician that the substance does not adversely affect the employee's ability to perform safety sensitive functions.

No covered employee shall report for duty, remain on duty, or perform a safety sensitive function, if the employee tests positive for a controlled substance.

No covered employee shall fail to inform the BOCES, consistent with existing BOCES rules that may require such notification, that the employee is using drugs other than therapeutic drugs.

No covered employee shall refuse to submit to any post-accident, random, reasonable suspicion, or a follow-up controlled substance test required under this policy.

#### **4. Violation of rules**

Any violation of the Omnibus Act, the Regulations, the BOCES Policy regarding Controlled Substance and Alcohol Testing, this Administrative Procedure and the District's Drug and Alcohol Testing Educational Material is also considered prohibited conduct.

#### **5. Consequences of prohibited conduct**

Covered employees who violate the prohibitions set forth in Sections 3 and 4 of this administrative procedure will be subject to the following consequences:

##### Removal From Safety Sensitive Functions

BOCES has determined that no covered employee who has engaged in prohibited conduct under these rules may continue to perform safety sensitive functions in the area of pupil and staff transportation.

##### Suspension Without Pay

Insofar as the performance of such functions is a condition of continued employment, the employee will be considered suspended without pay until the outcome of any proceeding undertaken to investigate the incident, discipline or discharge the employee, or appeal the findings of such proceedings.

##### SAP Evaluation

BOCES shall assist the employee to arrange for an evaluation by a SAP. The SAP determines if he/she has a problem with substance abuse and will recommend an appropriate treatment program that the employee shall have followed if he/she is allowed to return to duty.

##### Information and Referral

BOCES shall provide the employee with information concerning community resources available for treatment of individuals with substance abuse problems.

Discharge Proceedings

After a review of all pertinent facts leading to the suspension, proceedings may be initiated under section 75 of the Civil Service Law to discharge the employee.

**6. Consequences for employees having BAC above 0.02 but not over 0.039**

Suspension Without Pay

No covered employee will be permitted to perform safety sensitive functions for a minimum of twenty-four (24) hours or until the start of the next regularly scheduled on-duty period after twenty-four (24) hours has elapsed. The employee will be considered on leave without pay until then. Such individuals have not engaged in prohibited conduct.

Second Result of over 0.02 May Be Considered Prohibited Conduct

No covered employee who, for the second time, has a BAC above 0.02 but not over 0.039, shall be permitted to perform safety sensitive functions until a review of the employees work record and other pertinent facts has been conducted to determine appropriate disciplinary action.

**7. The employees will be tested for alcohol and other drugs under the following circumstances:**

Pre-Employment/Pre-Duty Testing

All covered employees hired after December 31, 1995, are subject to a pre-employment/pre-duty screening for the presence of alcohol and/or other drugs in his/her system. Detection of a concentration of 0.02 of alcohol or detection of a controlled substance will be sufficient cause for disqualification from employment at BOCES.

Post-Accident Alcohol and Controlled Substance Testing

BOCES requires that following an accident a driver, who is able, notify his/her supervisor immediately. Testing must be administered as quickly as possible, and shall be performed by a qualified individual. If no testing occurs at the accident scene, as soon as it is safe to do so, the driver should proceed to the designated testing laboratory to submit to testing for controlled substances and alcohol concentration.

A driver shall submit to controlled substance and alcohol testing, whether or not the accident is the driver's fault, if the following occurs:

- There is a human fatality.
- There is an injury requiring medical attention away from the scene, as determined by the School Nurse or other medical professional in attendance at the scene of the accident.
- One or more vehicles require towing from the accident scene.
- The driver receives a traffic citation under state or local law for a moving violation, regardless of whether or not the citation is subsequently dismissed.

If the accident occurs further than thirty-five (35) miles from the BOCES facility, the driver's supervisor will contact the Assistant Superintendent for Administrative Services, or designee, for the purpose of arranging for the administration of the appropriate testing.

### Time Frame for Post-Accident Testing

Post-accident testing shall be conducted as soon as it is practical after BOCES has been notified of the accident. If breath alcohol testing has not occurred within two (2) hours of the time of the accident BOCES shall document in writing the reason the test was not administered. After eight (8) hours have elapsed BOCES shall cease its attempts to administer the alcohol test. After thirty-two (32) hours BOCES shall cease any attempt to administer a urine test for other drugs.

Employees shall remain available for alcohol testing until the test has been administered or for eight (8) hours, whichever is shorter. Employees shall remain available for testing for other drugs for thirty-two (32) hours. Employees shall not act to interfere with the administration of such tests by failing to notify BOCES of the accident, departing the scene before being instructed to do so, refusing to submit to an authorized test or any other behavior which causes unnecessary delay in the administration of either test.

Testing shall not interfere with the delivery of any routine or emergency medical procedure or safety related post-accident duty required of the driver.

### Random Testing

BOCES will arrange for random testing of individuals assuring the following:

- A consortium shall be established including other neighboring school districts whose employees will be combined into a pool from which random selections will be made.
- Individuals will be randomly selected by the drug testing contractor.
- A minimum of 50% of the number covered employees shall be tested for controlled substances during the calendar year.
- A minimum of 50% of the number of covered employees shall be tested for alcohol during the calendar year.
- Both tests for alcohol and controlled substances may be administered to the same individual based on a single selection.
- Testing will be unannounced and administered throughout the calendar year.
- At no time during the year shall any covered employee who may report for duty be ineligible for testing regardless of the number of tests the individual may have had during the last twelve (12) months.
- Employees who do not report for duty on a day when they have been selected for testing shall not be considered to have refused a test and their names shall be returned to the pool for future selection.
- Employees selected for testing shall proceed immediately, upon being informed, to a collection facility established by BOCES.
- An employee will only be tested for alcohol while on duty in the performance of safety sensitive functions (see definition).

### Reasonable Suspicion

The Assistant Superintendent for Administrative Services and the School Bus Driver and Safety Coordinator have received special training and are eligible to refer any individual for testing based on reasonable suspicion that the individual may be working under the influence of alcohol or other controlled substances. Reasonable suspicion shall be based upon observations of the employee's appearance, behavior, speech, or body odor. A written record will be made of the observations leading to an alcohol and/or controlled substance test, and signed by the person who made the observations. The written record shall be made within twenty-four (24) hours of the observed behavior, before the results of the alcohol test are known or before the results of controlled substances testing are released to the BOCES, whichever is earlier.

Within two (2) hours of the determination of reasonable suspicion for alcohol misuse, the test shall be administered or the BOCES will prepare and maintain a file report stating the reasons why the test was not administered. If this test is not administered within eight (8) hours of the determination BOCES will not administer the test and will prepare a report documenting the failure to test. BOCES has thirty-two (32) hours from the time of determination to conduct reasonable suspicion testing for controlled substances. BOCES shall not allow a suspected employee to perform safety sensitive functions until a test showing less than 0.02 BAC has been administered or twenty-four (24) hours have elapsed from the time of the determination. BOCES shall not allow the employee to perform safety sensitive functions until a confirmed negative test result for controlled substances has been obtained.

## **8. Procedures for testing**

### Methods of Testing

Employees covered by this policy will be tested for alcohol by a BAT using an evidential breath testing device. Split sample urine testing will be the method used for testing for controlled substances.

### Quality Control

The services of the National Medical Review Officer (NMRO) have been retained to perform the collection, testing, and chain of custody for BOCES. This will ensure that the correct employee is tested and matched with the correct results. The drug testing contractor will designate the Medical Review Officer (MRO). The MRO will follow the federal regulations to ensure the compliance with the blind sample, calibration of the Evidential Breath Testing machine, laboratory certification and the proper training for the Breath Analysis Technician. Testing for alcohol and/or controlled substances will be taken at a location determined by contractor and the BOCES in a secure location and with the proper safeguards to ensure the integrity of the specimens taken.

### Pre-test Instruction

To facilitate the integrity and accuracy of each test, BOCES, or its designee, will provide covered employees with written and/or oral instructions regarding the conduct of the specific test before each testing event. BOCES considers all such instructions to be a part of the BOCES policy and administrative procedures. Covered employees, who refuse or otherwise fail to comply with all such instructions, will be subject to disciplinary, action, up to and including discharge, in a manner consistent with pre-existing policies, practices and any applicable laws and the collective bargaining agreement.

### Employee Notification

If a specimen tests positive, the employee will be contacted by the MRO who will discuss his/her findings with the employee. If the MRO is not convinced that there is reasonable cause for the positive finding, the result will be reported to the employee as a "confirmed positive result." Within seventy-two (72) hours, the employee has the right to request that the MRO order the second or "split" specimen analyzed. Samples may be retested at the original laboratory or at another certified lab at the employee's request. Samples so tested may be at a minimal additional cost. This cost will be the employee's responsibility.

The BAT will notify the employee immediately of the breath alcohol test results.

Refusal to Submit to Testing

No covered employee shall refuse to submit to any testing outlined in this policy. No supervisor, employee, or BOCES official shall permit an employee who refuses to submit to such tests to perform or continue to perform safety sensitive functions.

The drug testing contractor's designated technician will note any refusals, terminate the test and immediately notify BOCES. An employee who refuses to be tested for alcohol or controlled substances pursuant to this policy shall be suspended without pay and an immediate review shall be undertaken to determine the degree of discipline to be administered.

Uncompleted Testing

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT, shall, if practical, begin a new screening or confirmation.

**9. Reading and acknowledging the BOCES policy and procedures regarding alcohol and controlled substances testing.**

Any covered employee or applicant for a covered position who refuses or fails to execute the acknowledgment that he/she has received and read the BOCES Drug and Alcohol Testing Educational Material, who refuses or fails to submit to a pre-employment/pre-duty drug and alcohol test as directed, or whose result is positive for either test, will not be considered eligible to work in a covered position for BOCES.

**10. Procedures for handling employees who have engaged in prohibited conduct or violation of rules**

Procedures for Prohibited Conduct

When the BOCES has determined that an employee has engaged in prohibited conduct, the following steps shall be taken:

- 1) The employee shall be advised of his/her right to have the split specimen tested within seventy-two (72) hours of his/her notification by the MRO of a positive drug test result;
- 2) The employee shall be advised of the names, addresses and telephone numbers of substance abuse counseling services in the community;
- 3) The employee shall be advised of the name, address and phone number of the SAP who will provide evaluation of his/her substance abuse problem and recommend treatment;
- 4) The employee shall be advised that he/she is suspended without pay and prohibited from performing safety sensitive functions (pending the outcome of the split sample testing, if applicable); and
- 5) The employee shall be advised that (pending the outcome of the split sample testing, if applicable) BOCES will commence proceedings in accordance with its established practices and the collective bargaining agreement to discharge him/her.

Procedures for Results of BAC Between 0.02 and 0.039

When BOCES has been notified that an individual has tested between 0.02 and 0.039 BAC, the following steps shall be taken:

- 1) The employee shall be notified that he/she is suspended without pay until the start of the next duty period after twenty-four (24) hours has elapsed.

- 2) The employee shall be advised to seek assistance and/or counseling through a service agency qualified to evaluate and treat individuals who have substance abuse problems.
- 3) The employee shall be advised that a second violation for the misuse of alcohol in a safety sensitive function in accordance with this policy will result in an indefinite suspension without pay pending review of the employee's work record for disciplinary action, up to and including discharge.

Procedures for a Second Result of 0.02-0.039 BAC

When BOCES has been notified that an individual has tested over 0.02 for the second time, the following steps shall be taken:

- 1) The employee shall be advised that he/she is on indefinite suspension pending the outcome of a review of his/her work record and other pertinent facts.
- 2) The employee shall be advised to seek further assistance for substance abuse.
- 3) The employee shall be advised within seventy-two (72) hours of BOCES intentions concerning disciplinary action up to and including discharge.

Appeal Procedures

Upon notification of a positive alcohol or controlled substances test, a covered employee may file an appeal with the District Superintendent of Schools, or designee, by submitting written notice of the grounds for the appeal within five (5) days after the notification. Pending the resolution, the employee shall remain suspended without pay pending the outcome of the appeal. Upon receipt of the notice of appeal the following steps shall be taken:

- 1) Superintendent, or designee, offers the covered employee an opportunity to be heard in an informal meeting rather than evidentiary hearing.
- 2) The employee has the right to be accompanied by an attorney or union representative.
- 3) The Superintendent, or designee, shall provide the employee and any representative who may appear on his/her behalf a written decision on the appeal. Such decision shall take into account the original test results, the results of the split sample test or any other testing done by the employee at his/her own expense, and any other pertinent information that the employee or BOCES may provide.

**11. Return to duty conditioned on successful completion of treatment**

No BOCES employee will be permitted to perform safety sensitive functions if the employee has engaged in prohibited conduct as outlined in this policy until such time as he/she tests below .02 for alcohol and receives a verified negative for a controlled substance test, and has been evaluated by a SAP who has prescribed a program of treatment and has provided the following:

- 1) Certified that the prescribed program of treatment has been followed;
- 2) Determined that the individual has recovered sufficiently to perform safety sensitive functions; and
- 3) Prescribed a follow-up testing program that includes at least six (6) more random tests and identifies the substances for which the employee is to be tested to assure his/her continued recovery.

Notwithstanding the provision of this policy requiring testing and evaluation of employees, any employee who violates this policy may be subject to disciplinary charges seeking penalties which may include termination of employment.

## **12. Opportunity for rehabilitation: referral, evaluation and treatment**

### Resources

BOCES has prepared a list of resources available to its employees to evaluate and resolve problems associated with the misuse of alcohol and use of controlled substances. This list includes names, addresses and telephone numbers of SAPs, counseling and treatment programs. This list is available to all employees.

### Evaluation

Persons who engage in prohibited conduct as indicated in this policy will be evaluated by a SAP who will determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and the use of controlled substances. The costs associated with this evaluation may be covered by the employee's health insurance to the extent possible.

### Referral to Treatment

BOCES will assist employees in obtaining referral to an appropriate treatment facility or service. The cost of such treatment may be covered by the employee's health insurance to the extent that the coverage is currently available to the employee or remains available to the employee after discharge.

### Return to Duty

In the event that a covered employee returns to work requiring the performance of a safety sensitive function after engaging in prohibited conduct as outlined in this policy, the employee shall undergo a return to duty test for alcohol with a result indicating an alcohol concentration of less than .02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved a controlled substance.

### Treatment Follow-up

In the event that an employee, terminated for a positive test result, should be considered for re-employment, the employee shall be evaluated by a SAP to determine that the employee has properly followed the rehabilitation program prescribed.

In addition, unannounced follow-up alcohol and/or controlled substances tests shall be administered by BOCES after the employee's return to duty. The number and frequency of such follow-up tests will be directed by the SAP, and consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. If the SAP determines that return-to-duty and follow-up testing for alcohol or controlled substances is necessary for an individual employee, such testing will be in conformance with this policy and statutes. Follow-up testing may continue for a period not to exceed sixty (60) months from the date of the employee's return to duty. The SAP may terminate the requirement any time after the first six (6) tests have been administered.

### Pre-Employment Exclusion

The requirements of this section with respect to referral, evaluation, and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of .02 or greater or a controlled substances test with a verified positive result.

**13. SAP conflict of interest prohibited**

The SAP who determines that an employee requires assistance in resolving problems associated with alcohol misuse and/or the use of controlled substances may not refer the employee to his/her own private practice or to a person or organization from which the SAP receives payment or in which the SAP has a financial interest.