

## Substance Abuse/Drug Free Work Environment (Policy)

### I. Policy Objective

The Oglala Lakota College (OLC) is committed to providing a safe environment that fosters excellence in learning for its students and in work performance for all its employees. OLC recognizes that drug and/or alcohol dependence is an illness which under most circumstances can be successfully treated. OLC wants to encourage and assist any employee with controlled substance and/or alcohol dependency to voluntarily enter a rehabilitation program.

### II. Policy

The misuse, illegal use, possession, transportation, distribution, manufacture, dispensation of alcohol or controlled substances by OLC employees and local Board/Board of Trustees (BOT) members is not permitted on property owned or controlled by OLC, or while representing OLC on business or in other college-sponsored activities.

Employees and local Board/BOT members who possess, use, attempt to possess or use, participate in the transfer, sale, offering or possession of illegal controlled substances while on the job or on property owned or controlled by OLC (including parking lots) are in violation of this policy and are subject to disciplinary action up to and including termination. Further, the Oglala Sioux Tribe under Section 88.01 of the Penal Code prohibits the possession, transportation, or manufacture of beer, wine, whiskey or any other article which produces alcoholic intoxication. Any criminal violation under Federal, Tribal, or State law by an employee, local Board/BOT member will result in action by law enforcement officials.

### III. Applicability

This policy applies to all part-time, temporary, and full-time employees of OLC (including adjunct faculty), applicants OLC may hire in the future, student interns, BOT members, and local college center Board members.

### IV. Definitions

- A. "Controlled substance" means any controlled substance, dangerous drug(s) or intoxicating compounds as defined under federal, tribal or state law and includes, but is not limited to, narcotics, opiates, hallucinogens, stimulants, marijuana, and so-called "designer drugs."
- B. "Illegal drug" or "illegal controlled substance" means any drug(s) or controlled substance(s) which is not legally obtainable or is being used in a manner inconsistent

with the prescribed dosage or by an individual other than the person the medication was originally intended.

- C. "Impaired" means an alcohol concentration established by a properly administered breath alcohol test to be equal to or greater than 0.02.
- D. "Legal drug" means any prescribed drug(s), over-the-counter drug(s), or prescribed controlled substance(s), which has been legally obtained and is being used in the dosage prescribed according to the manufacturer's and/or physician's instructions.
- E. "Randomly selected" means a computer generated random selection of employees for drug testing, and may acquire a different definition over time based on case law and legal opinions, but at no time shall any employee be chosen for a "random" test by a method that could arguably have been prejudiced to include a particular employee.
- F. "Safety Sensitive and High Risk Positions" mean those College positions in which the impaired performance of an employee and/or faculty member would present a substantial risk of injury to self or others and includes positions that require one or more of the following activities: (i) driving or maintenance of powered vehicles; (ii) the operation or maintenance of boilers, elevators, construction equipment or similar dangerous machinery; (iii) dispensing controlled substances or prescription medication; (iv) providing clinical services to students; and (v) being in a setting with minor children.

#### V. Criminal Convictions

Any OLC employee, local Board/BOT member convicted of a criminal controlled substance and/or alcohol-related offense under Federal, Tribal, or State law either on or off duty must notify the President or their immediate supervisor in writing within five (5) days of the conviction. Employees who fail to notify his/her supervisor within five (5) days are subject to immediate termination. Within thirty (30) days after OLC receives notice of such violation, OLC will require the employee, local Board member/BOT member to participate in a controlled substance and/or alcohol abuse assistance or rehabilitation program through a referral process. Failure to comply with directed participation in a controlled substance and/or alcohol abuse assistance or rehabilitation program may result in termination.

#### VI. Prescription Medication and Over the Counter Medication:

When a positive result occurs, it is the responsibility of the employee to notify the Medical Review Officer (MRO) if the employee is taking ANY prescription or over-the-counter medication that may create impairment or result in a false-positive drug test.

If an employee tests positive and cannot produce a prescription, the Medical Review Officer (MRO) will report a positive result to the employer. Consequences for a positive test will then apply. If an employee tests positive and has a valid prescription the MRO will report the results as negative.

## VII. Required Testing Circumstances

### Pre-Employment Testing:

Pre-Employment Testing applies to any job applicant who has received a contingent offer of employment. Current employees applying for different positions within OLC are subject to Pre-Employment Testing. OLC will withdraw an offer of employment if Applicant fails to pass the controlled substance and/or alcohol test. Applicant may re-apply after forty five days (45) after the date of the pre-employment screen.

### BOT Testing:

Each local Board Member and member of the Board of Trustees prior to taking office on the College's Board of Trustees/Local Board shall submit to a controlled substance test. If an elected or appointed member of either the Local Board or the Board of Trustees tests positive, the Board of Trustees will not seat the individual.

### Random Testing:

Unannounced Random Testing is mandatory for all Safety Sensitive and High Risk Positions. With the exception of those employees subject to DOT standards, OLC will test these employees on an annual basis for controlled substances and/or alcohol. Once notified of random selection, the employee must proceed immediately to the collection site.

### Reasonable Suspicion Testing:

Employees are required to submit to alcohol and/or controlled substance testing whenever there is reasonable suspicion that this policy has been violated or conduct that results in property damages in the amount of \$1,000 or greater. Reasonable suspicion may arise based, for example, on a supervisor's assessments of the employee's work performance, excessive employee tardiness and/or absenteeism, the detection of suspicious odors on or about the employee's person, slurred speech, stumbling/staggering not attributable to a medical condition, and other indicators typical of alcohol or controlled substance use. Reasonable Suspicion Testing shall occur as soon as possible.

In order to limit accidental and liability exposure, supervisors will NOT allow employees who are unable to perform their assigned duties due to controlled substance and/or alcohol related impairment to leave the work premises without an escort.

## VIII. Consequences for Employees:

In a case of controlled substance testing, an employee is in violation of this policy if he/she has tested positive for drug metabolite. Under such circumstances, the employee must be evaluated by a substance abuse professional (SAP) within 5 working days. Employees must utilize their personal or sick leave during this time.

In a case of alcohol testing, employee is in violation of this policy if he/she has a blood alcohol concentration of equal to or greater than .02. Under such circumstances, the employee must be evaluated by a substance abuse professional (SAP) within 5 working days. Employees must utilize their personal or sick leave during this time.

An employee will be required to satisfactorily complete all recommendations of the SAP. Failure to comply with directed participation in a controlled substance and/or alcohol abuse assistance or rehabilitation program may result in termination.

An employee may utilize their sick leave, annual leave, or donated sick leave for lost-time due to treatment recommended by the SAP.

Consequences for Local Board/Board of Trustees:

If a Local Board member or Board of Trustee member tests positive for drug metabolite and/or blood alcohol concentration of equal or greater than .02 then the member must be evaluated by a substance abuse professional (SAP) within 5 working days. Failure to comply with directed participation in a controlled substance and/or alcohol abuse assistance or rehabilitation program may result in removal. A Local Board member or Board of Trustee member must pay for their treatment at their own expense.

Return to Duty:

After completing treatment and/or the recommendation of the SAP, employee must take a return-to-duty alcohol and/or controlled substance test by the designated OLC personnel. If the test is negative, employee will be fully reinstated to his/her job position. Follow up tests will be conducted after employee has completed recommendations of SAP. The President in consultation with the EAP can set testing schedules. If Employee tests positive during follow up testing this is cause for immediate dismissal.

Employee is responsible for payment of all rehabilitation/treatment costs not covered by any applicable Employee Assistance Program (EAP) or employee's health insurance, and may be responsible for return-to-duty and follow up testing for controlled substance and/or alcohol.

## IX. Testing Procedures

Testing shall be conducted in a manner to ensure adherence to approved standards of confidentiality, privacy, accuracy, and reliability and shall be administered by certified testing professionals.

Testing will take place at a local location to be determined at the time of testing.

A. Controlled Substance Testing – All employees selected for testing will be given a DOT/Non DOT Testing Notice, by the Personnel Office staff which indicates where and when to report to the required test site.

1. Urine will be collected in a single cup and labeled thoroughly so as to reasonably preclude the likelihood of erroneous identification of lab result.
2. Specimens undergo testing by an initial screening procedure, which is followed by GC-MS (Gas Chromatography/Mass Spectrometry) confirmation testing, if necessary.
3. The Medical Review Officer (MRO) will contact the employee if there is a positive result.
4. The MRO will report the results to the employer or program supervisor.
5. The MRO will give the employee the option of a single testing of any remaining specimen at his/her laboratory of choice at the employer's expense.

B. Alcohol Testing

1. A breath test shall be conducted by a certified Breath Alcohol Technician.
2. The initial test must give results of less than 0.02 or a restart (confirmation) test must be done following a fifteen (15) minute wait.
3. If the confirmation reveals a concentration of equal to or greater than 0.02 the employee is in violation of this policy.

X. Refusal to Submit to Testing

An employee refusal constitutes a positive test result and is therefore subject to the consequences of this policy. An employee is determined to have refused to submit to testing if:

- A. He/She outright refuses to take the test.
- B. If there is an inability to produce the required urine specimen after forty (40) ounces of fluid and three (3) hours are allowed, and there is no valid medical explanation.
- C. He/She fails to report to the testing location within the required time limit.

XI. Other Prohibitions

A. Hemp

The Oglala Sioux Tribe distinguishes Industrial Hemp from marijuana according to the amount of tetrahydrocannabinol concentration. Specifically, Section 106 of the Oglala Sioux Tribe's Penal Code holds that any part or variety of the plant Cannabis Sativa, or marijuana, containing a tetrahydrocannabinol concentration of one (1) percent or less by weight is not subject to criminal penalties. OLC will not accept the ingestion of hemp-based products, regardless of the amount of tetrahydrocannabinol, as an excuse for testing positive for the marijuana metabolite.

## B. Adulterants

Adulteration is a tampering of a urine specimen in an attempt to mask any drug that may otherwise be detected. OLC will have all specimens tested for adulteration. Adulteration and substitution are considered pre-meditated actions to deceive the employer, and therefore, are treated as a more severe violation of this policy than a positive test result. The consequences for adulteration, substitution, or refusal will be termination.

## C. Diluted Specimens

If a specimen falls outside of the normal ranges for a validly concentrated urine specimen, it is classified as a diluted specimen. After the first diluted specimen, the employee will pay for any subsequent testing until a determinative result can be obtained. There will be no more than a forty-eight (48) hour span between any tests given. After three (3) tests showing dilution, the employee will be placed on suspension without pay for up to two (2) weeks until a determinative test is completed. If no determinative test is completed within two (2) weeks from the date of the first test, the employee will be terminated.

Any time an employee is determined to have a positive test result (either through an actual positive or a refusal; and a adulterated test or diluted specimen, the EAP and the college President will be notified.

## ACCESS TO RECORDS

The employee is entitled to copy of his/her records on file. Subsequent employers or others may have a copy of employee records only upon receipt by OLC Personnel Office of specific written release of information duly executed by employee.

## TRAINING

- A. Those designated to determine if reasonable suspicion exists must receive sixty (60) minutes of alcohol training and (60) minutes of controlled substance detection training, which covers the physical, speech and performance indicators of controlled substance and alcohol abuse.
- B. OLC will provide each covered employee with a copy of the Substance Abuse policy.
- C. Each employee must sign a certificate of receipt of the materials.

## ACKNOWLEDGMENT OF SUBSTANCE ABUSE POLICY

I understand and agree to comply with the OLC Substance Abuse Policy, which calls for Mandatory Pre-Employment Testing and Random Testing as a condition of employment. I further understand that since this is a mandatory policy my failure to comply with it may be grounds for dismissal from employment.

I understand that I may volunteer for controlled substance and/or alcohol testing at any time. I understand a positive result will be subject to the consequences enumerated within this policy.

I understand that with regard for Random Testing I am responsible for any required treatment/rehabilitation under this policy not covered by the Employee Assistance Program (EAP) and/or my health insurance policy.

I understand that OLC is responsible for paying for Mandatory Pre-Employment Testing, Random Testing, post-accident testing and reasonable suspicion testing.

\_\_\_\_\_  
Employee/Applicant Signature  
(Please circle or underline appropriate designation)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name