



**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**BUREAU OF INDIAN AFFAIRS**  
Office of Indian Education Programs  
Human Resources Office  
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IN REPLY REFER TO:  
Employee/Labor Relations  
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**OIEP Human Resources Bulletin: 03-07**

Memorandum

To: All Office of Indian Education Program Employees

From: Human Resources Officer *Jeanne F. Deere*

Subject: **Drug Free Workplace Policy**

**References:** Public Law 100-690; Drug-Free Workplace Act of 1988; Drug Free Schools and Communities Act, as amended in 1989; National Institute of Alcohol Abuse and Alcoholism; 5 CFR 792.101; 42 U.S.C. 290dd-1 and 290ee-1; and OIEP/IEF Labor Contract, Article 10, Section 15.

**Coverage:**

All OIEP employees.

**Description:**

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a drug-free Federal workplace. In accordance with EO 12564, the Bureau of Indian Affairs and the Office of Indian Education Programs (OIEP) has adopted a Drug-Free Workplace Policy. This means the unlawful possession, dispensing, distribution, manufacture, sale or use of controlled substances and alcohol in the workplace by an OIEP employee is prohibited on the school premises, affiliated offices, during any OIEP activity, or off duty.

To that end, the Department of the Interior set up a drug testing program whereby employees occupying designated sensitive positions [and applicants applying for those positions] are tested for use of illegal drugs and may undergo random drug testing under certain conditions. For detailed information on the procedures involved in the Drug Testing Program for contract bargaining unit employees, refer to the OIEP/IEF Labor Contract, Article 10, Section 15.

### **Obligation to Accommodate Alcohol and Drug Abusers:**

In 1996, Merit System Protection System (MSPB) and Equal Employment Opportunity Commission (EEOC) precedent case decisions changed management's obligation mandating a "firm choice" as a reasonable accommodation to the handicapping conditions of alcoholism or drug abuse. The "firm choice" was previously a choice between embarking on a rehabilitation program or the agency proceeding with an adverse action. According to the MSPB decision, the "firm choice" requirement of the Rehabilitation Act of 1973 does not exist under the Americans with Disabilities Act (ADA), whose standards were incorporated into the Rehabilitation Act by amendments enacted in 1992. If a "firm choice" agreement is offered, it is solely at management's discretion.

Specifically, employees with alcohol/substance abuse-related problems will be held to the same standards as other employees. That is, that the same progressive discipline and/or performance-based actions would be used with employees whose problems are not related to alcohol and/or substance abuse. However, if the employee confronts his/her debilitation and advises the agency that he/she has alcohol and/or drug addictions, proper medical documentation must be provided. This step is referred to as "Safe Harbor". The agency must then continue to provide other types of reasonable accommodations, such as flexible schedules, leave or leave without pay. If assistance of this nature does not correct the problem, then the supervisor is obligated to continue with whatever action he/she is taking. Management is obligated to uniformly apply said rules regardless of the employee's status.

### **Condition of Employment:**

As a condition of employment, Federal employees are required to notify their respective supervisors within five (5) days if they are convicted of a criminal controlled-drug statute violation occurring in the workplace. Failure by an employee to report such a conviction may be grounds for disciplinary action. Likewise, supervisors who become aware of a conviction of an employee for a criminal controlled-drug statute violation occurring in the workplace should immediately notify the Human Resource Office-OIEP, Employee/Labor Relations Unit, Albuquerque, NM. The HR Office is responsible for ensuring bureau-wide compliance in accordance with applicable laws, rules, and regulations.

### **Correlation to OIEP's Mission:**

OIEP's mission focuses on providing educational excellence to our Indian children. Therefore, every OIEP employee that works in a school environment and/or affects educational decisions serves as a role model to these children. Any violation of this policy will be considered an egregious matter and regarded as vehemently inconsistent with OIEP employment practices. Drug and/or alcohol usage will result in prompt disciplinary action, which may include up to termination of employment and referral to law enforcement.

### **Employee Assistance Program (EAP):**

OIEP has implemented the Employee Assistance Program (EAP) to assist in maintaining a Drug-Free Awareness Program. It informs employees about the dangers and risks of drug abuse in the workplace; OIEP's Drug-Free Policy; availability of Indian Health Services (IHS) counseling or referral services; and penalties involved in drug violation convictions. EAP also provides supervisory training to assist managers and supervisors deal with illegal drug and alcohol use in the workplace. If an employee is suspected of having a personal problem, the supervisor should make the employee aware of the counseling and referral services provided by the Employee Assistance Program (EAP). EAP's toll-free telephone number is **1-800-222-0364**.

### **Covered Positions:**

Public Safety positions, responsible for driving or maintaining school transportation vehicles consistent with the U.S. Department of Transportation guidelines, will be subject to random testing. Reasonable suspicion testing is applicable to all positions in the test designated pool with the concurrence of higher-level management officials, when applicable. If the testing reveals that a probationary contract employee has used illegal drugs, they will be immediately terminated.

### **Achieving a Drug-Free Workplace:**

If the testing reveals that a Title V, Status Quo, or non-probationary contract employee has used illegal drugs, the Agency is required to: (1) refer the employee to the Employee Assistance Program (EAP) for assessment, counseling, and referral for treatment or rehabilitation, and to remove all sensitive duties from the employee's position; (2) to immediately initiate disciplinary action against the employee, except in some cases where the employee has voluntarily admitted drug use, and (3) to initiate removal of an employee from the Federal service for failing to obtain counseling or rehabilitation after the first finding of illegal drug use, or for second determination of illegal drug use.

### **Reasonable Suspicion:**

If the supervisor suspects that the employee is using illegal drugs, the following should be followed:

1. If the determination is made that the employee is NOT ready, willing, and able to work, first call the Human Resource Office-OIEP, Employee/Labor Relations Unit, Albuquerque, NM, for guidance and advice.
2. Consider requesting a reasonable suspicion drug test through the DOI Drug Testing Program. To request a test, promptly document, in detail, the facts and circumstances that gave rise to the reasons to suspect drug usage. Immediately notify the second level supervisor as well as the Supervisory ER/LR Specialist, Human Resource Office-OIEP, Employee/Labor Relations Unit, Albuquerque, NM

at (505) 248-6359 , to seek advice. To determine if a “reasonable suspicion” drug test is warranted, authority must be gained through the appropriate DOI channels. DOI will only grant approval of reasonable suspicion tests for employees who are in test designated pool, i.e. positions encumbered by employees that require a commercial driver’s license (CLD). Approval for the test must be obtained in sufficient time so that the employee can be tested within 24 hours of the time drug usage is suspected.

3. If there is good reason to believe that an employee is involved in criminal conduct, such as selling drugs or stealing to support a drug habit, you should also consult with the second level supervisor and/or the Supervisory ER/LR Specialist, Human Resource Office-OIEP, Employee/Labor Relations Unit, Albuquerque, NM at (505) 248-6359 and then report the facts to the appropriate law enforcement authorities.

### **What to do when an employee is not ready, willing, and able to work:**

If an employee does not appear to be in full control of his or her faculties, and/or exhibiting bizarre or strange behavior, you should first call the Human Resource Office-OIEP, Employee/Labor Relations Unit, Albuquerque, NM. Generally, the supervisor should do the following:

1. Ask the employee about his/her physical condition, being aware that the appearance of symptoms that are usually associated with alcohol or illegal drug use can apply to other health problems as well (i.e. allergic reactions to food or prescription drugs, diabetic insulin reactions, etc.)
2. If there is a health unit in the facility, relay information regarding the symptoms to the medical staff of the health unit, and refer the employee to the health unit for emergency treatment. If there is no health unit and/or if the symptoms persist, refer the employee to a private physician or community health services. Important: If the employee is incapable of safely driving, arrange for someone to drive the employee home or to the doctor. If deemed appropriate to return to the workplace by the health provider, the employee must request and submit a return-to-duty release form attesting to their ability to return to work.
3. If unable to return to work and it is determined that it is a valid medical condition, management should encourage the employee to voluntarily take sick or annual leave. If the employee refuses to use his/her sick or annual leave, or if he/she is incapable of responding, you may place the employee in a non-duty pay status, enforced leave, and arrange for someone to drive the employee home. If it is determined that it is not a medical condition, the local law enforcement authorities and the Human Resource Office-OIEP, Employee/Labor Relations Unit, Albuquerque, NM should be immediately notified.