
FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**Personnel****DRUG, ALCOHOL, TOBACCO AND NICOTINE-FREE WORKPLACE**Policy Statement

The office of the Fresno County Superintendent of Schools ("FCSS") has a duty to ensure the safety, health and well-being of all employees, students and visitors. The maintenance of a drug, alcohol, tobacco and nicotine-free workplace is essential to staff and student safety, helps maintain a productive, safe work and learning environment, and is essential to FCSS operations.

This policy shall be included in the **New Hire Orientation** process. The FCSS or designee will notify employees of these prohibitions and the actions that will be taken by administration for violation of these prohibitions. In addition, this policy will be integrated into the **Annual Employee Notifications** packet, which is provided to all FCSS employees via email on an annual basis.

Drug and Alcohol-Free

An employee shall not unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in United States Code, Title 21, 812 at any FCSS workplace, facility, or FCSS-sponsored event. These prohibitions apply before, during, and after work hours. A workplace is defined as any place where FCSS work is performed; any FCSS-owned or approved vehicle used to transport students or used to conduct FCSS business/activity; any non-FCSS site(s) of an FCSS sponsored or approved activity or function where students are under FCSS jurisdiction; or during any period of time when an employee is supervising students on behalf of FCSS or otherwise engaged in FCSS business.

Employees are prohibited from being under the influence of controlled substances or alcohol while on duty. For purposes of this policy, on duty means while an employee is on duty during both instructional and non-instructional time in the classroom or workplace, at extracurricular or co-curricular activities, or while transporting students or otherwise supervising them. Under the influence means that an employee's capabilities are adversely or negatively affected, impaired or diminished to an extent that impacts the employee's ability to safely and effectively perform his/her job.

Although the enactment of Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), legalizes recreational use of marijuana in California, marijuana still remains an illegal Schedule I substance under the Federal Controlled Substances Act. In light of that and specific language in Proposition 64, the legalization of recreational use marijuana under the AUMA does not impact this Drug, Alcohol, Tobacco and Nicotine-Free Workplace policy, nor does it require the FCSS to accommodate recreational or medical marijuana use. Therefore, the FCSS is obligated and will continue to prohibit marijuana use, possession, and impairment at any FCSS workplace.

In accordance with law, the FCSS or designee shall maintain a drug and alcohol-free awareness workplace and inform employees about:

1. The dangers of drug and alcohol abuse in the workplace;
2. The FCSS policy of maintaining a drug and alcohol-free workplace;
3. Any available drug and alcohol counseling, rehabilitation and employee assistance

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

- programs; and
4. The penalties that may be imposed on employees for drug and alcohol abuse violations occurring in the workplace.

Coverage under the Employee Assistance Program (EAP), which can provide the counseling, guidance and assistance needed to address alcohol and/or drug abuse may be available. Any employee who believes they are in need of this assistance is encouraged to contact EAP by phone at 1-800-999-7222 or access via the website at anthemEAP.com.

Drug and Alcohol Abuse Violations, Penalties

The FCSS or designee will take appropriate disciplinary action, up to and including termination, against employees who use, distribute, possess, dispense or under the influence of controlled substances or alcohol on the job, in FCSS facilities, or during FCSS sponsored events or otherwise violate FCSS rules in reference to possession of alcohol on the job. Employees who use or distribute drugs or alcohol on the job are subject to discharge and any drugs or alcohol confiscated will be turned over to local law enforcement. The FCSS or designee may require employees to satisfactorily participate in and complete an alcohol and/or drug assistance or rehabilitation program approved by a federal, state or local health, law enforcement or other appropriate agency as a condition of continuing employment with FCSS.

Employees visibly impaired due to the use of alcohol and/or drugs or involved in an on-the-job accident or who sustain an on-the-job injury due, in part, to alcohol and/or drug use, will be subject to administrative review and appropriate disciplinary action.

Symptoms of alcohol impairment may include:

1. Frequent tardies;
2. Frequent absences;
3. Abnormally thick, slurred or loud speech;
4. Flushed face;
5. Red, watery eyes; heavy eyelids; fixed pupils;
6. Foul, distinctive odor of alcohol or liquor on breath;
7. Unsteady walk, stoop, walking too deliberately or carefully or swaying and weaving; and/or
8. Excessive, silly or boisterous behavior.

Symptoms of drug impairment may include:

1. Frequent tardies;
2. Frequent absences;
3. Inconsistent work quality;
4. Significant or recurring errors in judgment;
5. Measurable mood swings; and/or
6. Erratic or irrational behavior.

Within thirty (30) days of receiving notice that an employee has violated the terms of this policy, the FCSS shall take appropriate disciplinary action against such an employee, up to and including termination, and/or require the employee to participate satisfactorily in an alcohol and/or drug

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

abuse, assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement or other appropriate agency.

Employees under medical treatment who have been prescribed a drug that can alter their ability to perform the essential functions of their position are subject to temporary or permanent reassignment.

If an employee is arrested off the job for drug involvement or alcohol-related offenses, FCSS will consider the circumstances surrounding the arrest before taking administrative action.

The FCSS is required to notify employees of these prohibitions and the actions that will be taken for violation of such prohibitions. (Government Code 8355; 41 USC 8103)

An employee shall abide by the terms of this policy and notify the FCSS or designee within five (5) days of any criminal drug and/or alcohol-related conviction.

The FCSS shall notify the appropriate federal granting or contracting agencies within ten (10) days after receiving notification from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 8103)

Alcoholism and drug abuse may be recognized as an illness, and FCSS may provide access to appropriate assistance networks and make available the locations of drug counseling, rehabilitation and employee assistance programs in the community. However, it is ultimately the employee's responsibility to seek help. Such referrals or offers of assistance shall not preclude the FCSS from imposing appropriate disciplinary action upon employees who violate this policy.

Tobacco and Nicotine-Free Work and Educational Environment

FCSS recognizes the health hazards associated with smoking and the use of tobacco and nicotine products, including the breathing of second-hand smoke. FCSS desires to provide a healthy environment for employees, students, and visitors.

Therefore, FCSS prohibits the use of tobacco products at any time in FCSS-owned or leased buildings, on FCSS property or in FCSS vehicles. This prohibition applies to all employees, students and visitors at any instructional program, activity or athletic event.

Prohibited products include any product containing tobacco or nicotine, including, but not limited to, cigarettes, cigars, miniature cigars, pipes, smokeless tobacco, snuff, chew, clove cigarettes, betel, and electronic cigarettes or other vaping devices that can deliver nicotine, non-nicotine vaporized solutions or other prohibited products. Exceptions may be made for the use or possession of prescription nicotine products.

Smoking means inhaling, exhaling, burning, or carrying of any lighted or heated cigar, cigarette, pipe, tobacco, or plant product intended for inhalation, whether natural or synthetic, in any manner or form, and includes the use of an electronic smoking and/or vaping device that creates aerosol or vapor or of any oral smoking device for the purpose of circumventing the prohibition of smoking.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

Smoking or use of any tobacco and/or nicotine related products and disposal of any tobacco and/or nicotine related waste is prohibited within 25 feet of any playground except on a public sidewalk located within 25 feet of the playground. In addition, any form of intimidation, threat, or retaliation against a person for attempting to enforce this policy is prohibited.

Notifications

Information about FCSS Drug, Alcohol, Tobacco and Nicotine Free Workplace policy and enforcement procedures shall be communicated clearly to employees, parents/guardians, students, and the community.

Signs stating Tobacco Use is Prohibited shall be prominently displayed at all entrances to FCSS-owned and operated property.

Enforcement/Discipline

Any employee or student who violates the FCSS Drug, Alcohol, Tobacco and Nicotine-Free Workplace policy shall be asked to refrain from smoking and shall be subject to disciplinary action as appropriate.

Any other person who violates the FCSS Drug, Alcohol, Tobacco and Nicotine-Free Workplace policy shall be informed of the policy and asked to refrain from using tobacco and/or nicotine. If the person fails to comply with this request, the FCSS or designee may:

1. Direct the person to leave the FCSS property;
2. Request local law enforcement assistance in removing the person from FCSS premises; and/or
3. If the person repeatedly violates the FCSS Drug, Alcohol, Tobacco and Nicotine-Free Workplace policy, prohibit him/her from entering FCSS property for a specified period of time.

Adopted: 05/31/2011

Amended: 11/01/2017; 07/25/2024

Legal References**Education Code**

44011 Controlled Substance Offenses
44940-44940.5 Compulsory Leave of Absence
48900 Grounds for suspension/expulsion
48901 Prohibition against tobacco use by students

Business and Professions Code

22950.5 Stop Tobacco Access to Kids Enforcement Act; definitions
25608 Alcohol Prohibition in Educational Facilities

Government Code

8350-8357 Drug Free Workplace

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

Health and Safety Code

39002 Control of air pollution from non-vehicular sources
104350-104495 Tobacco use prevention, especially:
104495 Prohibition of smoking and tobacco waste on playgrounds
104559 Tobacco use prohibition
119405 Unlawful to sell or furnish electronic cigarettes to minors

Labor Code

3300 Employer, definition
6304 Safe and healthful workplace
6404.5 Occupational safety and health; use of tobacco products

United States Code, Title 20

6083 Nonsmoking policy for children's services
7111-7117 Safe and Drug Free Schools and Communities Act

United States Code, Title 21

812-Schedule of Controlled Substances

United States Code, Title 41

8101-8106 Drug Free Workplace Act

Code of Federal Regulations, Title 21

1140.1-1140.34 Unlawful sale of cigarettes and smokeless tobacco to minors
1308.01-1308.49-Schedule of Controlled Substances

Public Employment and Relations Board (PERB) Rulings

Eureka Teachers Assn. v. Eureka City School District (1992) PERB Order #955 (16 PERC 23168)
CSEA #506 and Associated Teachers of Metropolitan Riverside v. Riverside Unified School District (1989) PERB Order #750 (13 PERC 20147)

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