

<p>U.S. DEPARTMENT OF EDUCATION</p> <p>PERSONNEL MANUAL INSTRUCTION</p>	<p>PMI <u>792-2</u></p> <p>DATE: <u>January 12, 1989</u></p> <p>APPROVED:</p> <p><u>Veronica D. Trietsch</u> Director of Personnel</p> <p style="text-align: right;">5/20/02</p>
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*Annotated to include changes from all amendments through August, 1997

SUBJECT: U.S. Department of Education Drug-Free Workplace Plan

I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564; establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off-duty. In a letter to all Executive Branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all Federal workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the nation, the Federal Government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Department of Education (ED) is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with Federal service.

On July 11, 1987, Congress passed legislation affecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. ss7301 note (1987), (hereafter, the “Act”), in an attempt to establish uniformity among Federal agency drug testing, employee access to drug testing records, confidentiality of test results, and centralized oversight of the Federal Government’s drug testing program.

The Secretary of Health and Human Services (HHS) has certified to Congress on April 27, 1988, that this plan for achieving a drug-free workplace is in accord with the Executive Order and applicable provisions of law, including applicable provisions of the Act.

The purpose of the Department of Education's Drug-Free Workplace Plan is to set forth objectives, policies, procedures, and implementation guidelines to achieve a drug-free Federal workplace, consistent with the Executive Order and Section 503 of the Act.

B. Statement of Policy

The mission of the Department of Education is to ensure equal educational opportunities for all individuals; strengthen Federal support of State and local efforts to meet education needs; encourage increased involvement of parents, students, and the general public in Federal education programs; enhance the quality of education through research, information-sharing, and program evaluations; and improve coordination, management, and accountability in the administration of Federal education programs.

In both schools and the workplace, drugs detract from performance. Currently, the Department is leading a campaign to get drugs out of schools. In calling on others to act decisively against the threat of drugs, the Department can ask no less of each of its employees. Each employee has a particular obligation to set an example for the students, parents, teachers and school administrators of America.

In addition, the Department of Education is expected by the taxpayer to maintain a productive workforce, as well as to provide a safe and secure workplace. The use of illegal drugs by any ED employee is totally incompatible with the conduct and performance that the American people expect from employees of this Department.

This Plan establishes for the Department of Education a comprehensive program to ensure a drug-free workforce. The thrust of the Plan is to provide information and assistance to ED employees and, where feasible, to their families. The drug-testing component is designed to act as a deterrent to employees considering using illegal drugs and to identify employees in sensitive positions who are using illegal drugs so that they may be offered assistance and rehabilitation.

The mark of a successful drug-free workplace program also depends on how well the Department can inform its employees of the hazards of drug use, and on how much assistance it can provide drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in

reaching the goal of a drug-free workplace. Therefore, this plan includes policies and procedures for: (1) employee assistance; (2) supervisory training; (3) employee education; and (4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

C. Nature, Frequency, and Type of Drug Testing to be Instituted

Section 503 of the Act requires the Department's plan to specify the nature, frequency, and type of drug testing to be instituted. ED's Plan includes the following types of drug testing: (1) Random testing of sensitive employees in testing designated positions (2) Reasonable suspicion testing; (3) Accident or unsafe practice testing; (4) Voluntary testing; and (5) Testing as part of or as a follow-up to counseling or rehabilitation; and (6) Testing for selectees for testing designated positions.

The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at Appendix A, Section XII.B., and Section XII.C, respectively. The Secretary reserves the right to increase or decrease the frequency of testing based on the agency's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under the Executive Order.

D. Drugs for which Individuals Are Tested

Section 503 of the Act requires the Department Plan to specify the drugs for which individuals shall be tested. These are listed in Appendix B.

E. Scope

When each Executive Branch agency as specified in Section 503 (a) (2) of the Act has complied with the provisions of Section 503 (a) of the Act, this Instruction shall be effective immediately for all components of the Department.

F. Union Cooperation

The active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached, will include union representatives in general orientation programs, and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

G. References

1. Authorities

- a. Executive Order 12564;
- b. Executive Order 10450;
- c. Section 503 of the Supplemental Appropriations Act of 1978, Pub. L. 100-71, 101 Stat. 391, 468-471 (1987), codified at 5 U.S.C. Section 7301, note;
- d. **Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes Scientific and Technical Requirement and Certification of Laboratories Engaged in Urine Testing, 53 FR 11970, as revised (1994) (HHS Regulations);**
- e. Civil Service Reform Act of 1978, P.L. 95-454, **92 Stat. 1111 (1978);**
- f. 42 CFR Part 2, establishing requirements for assuring the confidentiality of alcohol and drug abuse patient treatment records;
- g. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access of these records by the individual(s) to whom they pertain;
- h. 49 CFR Part 10, implementing the Privacy Act of 1974 within the Department of Education;
- i. Federal Employees Substance Abuse Education and Treatment Act of 1986, P.L. 99-570;

2. Guidance ***

- a. Personnel Manual Instruction 792-1, The U.S. Department of Education Alcoholism and Drug Abuse Program, dated April 25, 1983.

II. DEFINITIONS

- A. Applicant means any individual tentatively selected for employment for a testing designated position and includes any individual in ED who has tentatively been selected for a testing designated position and who has not, immediately prior to the selection, been subject to random testing.

- B. Employee Assistance Program (EAP) means the Department counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.
- C. Employee Assistance Program Administrator means the individual responsible for ensuring the development, implementation and review of the agency AEP.
- D. Employee Assistance Program Coordinator means the individual designated by the Employee Assistance Program Administrator responsible for implementing and operating the EAP within ED by providing counseling, treatment, and education services to employees and supervisors regarding the EAP.
- E. Medical Review Official (MRO) means the individual responsible for receiving laboratory results generated from the Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.
- F. Illegal Drugs means a controlled substance included in Schedule I or II, as defined by section 802 (6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- G. Management Official means an employee required or authorized by the Department to formulate, determine, or influence the policies of the Department. 5 U.S.C. 7103 (a) (11).
- H. Random Testing means a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing in the Department of Education will be a statistically random sampling of employees occupying testing designated positions based on a neutral criterion, such as social security numbers.
- I. Employees in Sensitive Positions means:
 - 1. Employees in positions designated by the Secretary as Special-Sensitive, Critical-Sensitive, or Non Critical-Sensitive *** or employees in positions designated by the Secretary as sensitive in accordance with Executive Order No 10450, as amended;
 - 2. Employees granted access to classified information pursuant to a determination of trustworthiness by the Secretary under Section 4 of Executive Order No.12356;
 - 3. Individuals serving under Presidential appointments;

- 4. Law Enforcement officers as defined in 5 U.S.C. **Sections** 8331 (20) and 8401 (17); or
- 5. Other positions that the Secretary has determined involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.
- J. Secretary means the Secretary of Education or, except as used in Appendix A, an official or employee of the Department of Education acting for the Secretary under a delegation of authority.
- K. Supervisor means an employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment. 5 U.S.C. **Section** 7103 (a) (10).
- L. Testing-Designated Positions (TDP's) means employment positions within the Department which have been designated for random testing under Section IX B. of this plan.
- M. Verified Positive Test Result means a test result that has been screened positive by an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by HHS), evaluated by the Medical Review Official and determined by the MRO to be unjustified under Section **XIII.D** of this plan.

III. EMPLOYEE ASSISTANCE PROGRAMS

A. Function

ED's EAP plays an important role in preventing and resolving employee drug use by: demonstrating the Department's commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisor and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitation facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the EAP shall --

1. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employee's progress through treatment and rehabilitation;
2. Provide needed education and training on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, the relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues; and
3. Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained in accordance with Section **XIV**.

B. Referral and Availability

Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to ED employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems.

In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more of the above factors in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave Allowance

Employees shall be allowed up to one hour of excused absence for each session plus travel time, as necessary, up to a maximum of six sessions, during the referral phase of rehabilitation. Absence during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records and Confidentiality

All EAP operations shall be confidential in accordance with Section XIV of the Plan relating to records and confidentiality.

E. Structure

The Director, **Human Resources Group**, shall be responsible for oversight and implementation of the EAP, and will provide, with the support of the Secretary, high level direction and promotion of the EAP.

The Department of Education operates Employee Assistance Programs through consortiums of local Federal agencies. The consortium under which the EAP is operated is managed by the Public Health Service.

The following services are provided under the Department's EAP:

1. Short term counseling and referral services are offered to employees either on site or at mutually agreeable, easily accessible locations within the defined area.
2. Referrals are made to the EAP by employees themselves, supervisors, health units, drug testing program officials or other appropriate sources.
3. Referrals are made by EAP counselors to appropriate community treatment or rehabilitation facilities.
4. Supervisory training is conducted for supervisors and managers on how to refer employees to the EAP; drug awareness information; and roles and responsibilities of drug program officials.
5. Employee programs are presented covering such topics as: health promotions; drug awareness; and use of the EAP.

IV. SUPERVISORY TRAINING

A. Objectives

As supervisors have a key role in establishing and monitoring a drug-free workplace, ED shall provide training to assist in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand—

1. Departmental policies relevant to work performance problems, drug use, and the EAP;
2. The responsibilities of offering EAP services;
3. How employee performance and behavioral changes should be recognized and documented;

4. The roles of the medical staff, supervisors, personnel, and EAP personnel;
5. The ways to use ED's EAP;
6. How the EAP is linked to the performance appraisal and the disciplinary process;
and
7. The process of reintegrating employees into the workforce.

B. Implementation

The **Training and Development Group**, in conjunction with the Employee Services **Team**, shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the Department of Education's Drug-Free Workplace Plan.

C. Training Package

Supervisory training shall be required and may be presented as a separate course, or be included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include—

1. Overall Departmental policy;
2. The prevalence of various employee problems with respect to drugs and alcohol;
3. The EAP approach to handling problems;
4. How to recognize employees with possible problems;
5. Documentation of employee performance or behavior;
6. How to approach the employee;
7. How to use the EAP;
8. Disciplinary action as required by Section 5 *** of the Executive Order;
9. Reintegration of employees into the workforce; and
10. Written materials which the supervisor can use at the work site.

V. EMPLOYEE EDUCATION

A. Objectives

The EAP Administrator shall offer drug education to all Departmental employees. Drug education should include education and training on—

1. Types of effects of drugs;
2. Symptoms of drug use, and the effects on performance and conduct;
3. The relationship of the EAP to the drug testing program; and
4. Other relevant treatment, rehabilitation, and confidentiality issues.

B. Means of Education

Drug education activities may include:

1. Distribution of written materials;
2. Videotapes;
3. Lunchtime employee forums; and
4. Employee drug awareness days.

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator

The Department shall have a Drug Program Coordinator (DPC) assigned to carry out the purposes of this plan. The DPC shall be responsible for implementing, directing, administering, and maintaining the drug program within the Department. The DPC shall serve as the principal contact with the laboratory in assuring the effective operation of the testing portion of the program. In carrying out this responsibility, the DPC shall, among other duties:

1. Arrange for all testing authorized under this Instruction;
2. **Ensure** that all employees subject to random testing receive individual notice as described in Section VII B. of this Plan, prior to implementation of the program, and that such employees return a signed acknowledgement of receipt form;

3. Document, through written inspection reports, all results of laboratory inspections conducted;
4. Coordinate with and report to the Secretary on DPC activities and findings that may affect the reliability or accuracy of laboratory results;
5. In coordination with the EAP Administrator, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation; and
6. Coordinate all DPC duties in regional offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.

B. Employee Assistance Program Administrator

The EAP Administrator shall:

1. Upon receipt of a verified positive test result from the MRO, transmit the test result to the appropriate **supervisory or** management officials empowered to initiate disciplinary action;
2. Assume the lead role in the development, implementation, and evaluation of the EAP.
3. Supervise and designate the EAP Coordinator and counselors, and assist them in establishing regional office EAP's.
4. Advise regional components on the submission of annual statistical reports, and prepare consolidated reports on the Department's EAP activity.

C. Employee Assistance Program Coordinator

The Employee Assistance Program Coordinator shall:

1. Implement and operate the EAP;
2. Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;
3. Coordinate with the EAP Administrator, the MRO, and supervisors as appropriate:

4. Work with the DPC to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;
5. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
6. Monitor the progress of referred employees during and after the rehabilitation period;
7. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;
8. Maintain a list of rehabilitative or treatment organizations which provide counseling and rehabilitative programs, and include the following information on each such organization:
 - a. Name, address, and phone number;
 - b. Types of services provided;
 - c. Hours of operation, including emergency hours;
 - d. The contact person's name and phone number;
 - e. Fee structure, including insurance coverage;
 - f. Client specialization; and
 - g. Other pertinent information.
9. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

D. Employee Assistance Counselors

The Employee Assistance Counselors shall—

1. Serve as the initial point of contact for employees who ask or are referred for counseling;
2. Be familiar with all applicable law and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;

3. Be qualified by the EAP Administrator and be trained in counseling employees in the occupational setting, and identifying drug use;
4. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and
5. In making referrals, consider the—
 - a. Nature and severity of the problem;
 - b. Location of the treatment;
 - c. Cost of the treatment;
 - d. Intensity of the treatment environment;
 - e. Availability of inpatient/outpatient care; and
 - f. Other special needs, such as transportation and child care; and
 - g. The preferences of the employee.

E. Medical Review Official

The Department shall have access to an MRO assigned to carry out the purposes of this **Plan**. The MRO shall, among other duties:

1. Receive all laboratory test results;
2. Assure that an individual who has tested positive has been afforded an opportunity to justify the test result in accordance with Section XIII. D. of this Plan;
3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator, including a positive drug test result form indicating that the positive result is "unjustified" together with all relevant documentation and summary of findings;
4. Confirm with the appropriate personnel official whether an individual who has been tentatively selected for employment in a testing designated position with the Department has obtained a verified positive test result;
5. Coordinate with and report to the Secretary on all activities and findings on a regular basis; and

6. Coordinate all DPC duties in regional offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.

F. Supervisors

Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the Secretary to suit specific program responsibilities, first-line supervisors shall:

1. Attend training sessions on illegal drug-use in the workplace;
2. Initiate a reasonable suspicion test, after first making appropriate factual observations and documenting those observations and obtaining documenting those observations and obtaining approval from the higher-level supervisor;
3. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;
4. Initiate appropriate disciplinary action upon a finding of illegal drug use, and upon consulting, consistent with the provisions of Section 503 of the Act, with appropriate officials; and
5. In conjunction with personnel specialists, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and or personnel problems that may be related to illegal drug use.

A higher-level supervisor shall review and concur, in advance, with all reasonable suspicion tests ordered under his/her supervision. A decision to initiate a reasonable suspicion test must be concurred in by the **Director, Labor Relations Group**. If appropriate, the Office of the General Counsel will be consulted.

G. Implementation

At the direction of the **Director, Office of Management**, each Senior Officer shall implement the Drug-Free Workplace Plan within his or her organization, and ensure that the Plan is efficiently and effectively accomplished in accordance with this Directive and all other applicable regulations.

H. General Program/Structural Provisions

The **Director, office of Management** shall develop implementation procedures to enable regional offices to efficiently and swiftly implement all aspects of this **plan**,

taking into account the unique geographical, personnel, budgetary and other relevant factors of the regional offices. Such procedures will permit regional office implementation to proceed independently of headquarters implementation. Testing may proceed under this **plan** as soon as any regional office is prepared to commence testing, and without regard to whether any other regional office or headquarters is prepared to commence with testing.

I. Government Contractors

Where existing facilities are inadequate to implement this Instruction the **Director, office of Management** shall:

1. Act as Contracting Officer for the administration of all related contracts;
2. Ensure that contractors chosen to perform the drug screening tests are duly certified pursuant to the HHS guidelines and that all contracts conform to the technical specifications of the HHS guidelines; and
3. Establish, by contract or with ED employees as deemed appropriate, the positions and specific responsibilities of the DPC and the MRO as required by the HHS guidelines.

VII. NOTICE

A. General Notice

A general notice from the Secretary announcing the testing program, as required by Executive Order 12564, Section 4 (a), will be provided to all employees no later than sixty (60) days prior to the implementation date of the plan. The notices shall be provided after completion of the congressional certification procedures pursuant to Sections 503(a) (1) (A), 503 (a) (1) (B), and 503 (a) (i) (c) of the Act, and shall explain:

1. The purpose of the Drug-Free Workplace Plan;
2. That the plan will include both voluntary and mandatory testing;
3. That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a testing designated position;
4. The availability of a procedures necessary to obtain counseling and rehabilitation through the EAP;
5. The circumstances under which testing may occur;

6. That opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;
7. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;
8. That positive test results verify by the MRO may only be disclosed to the employee, the appropriate EAP administrator, supervisors **or managers** having authority to take adverse action against the employee, or a court of law in an adverse personnel action; and
9. That all medical and rehabilitation records **maintained** in EAP **files** will be deemed confidential “patient” records and may not be disclosed without the prior written consent of the patient.

B. Individual Notice

In addition to the general notice, an individual notice will be distributed to all employees in testing designated positions explaining, in addition to the information provided above:

1. That the employee’s position has been designated a “testing designated position;”
2. That the employee will have the opportunity to voluntarily identify himself as a user of illegal drugs and to receive counseling or rehabilitation, in which case, subject to the requirements of Section VIII F., the employee shall not be subject to disciplinary action; and
3. That the employee’s position will be subject to random testing no sooner than thirty days from the date of the individual notice.

C. Signed Acknowledgement

Each employee in a testing designated position shall be asked to acknowledge in writing that –

The employee has received and read the notice which states that the employee’s position has been designated for random drug testing; and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal.

If the employee refuses to sign the acknowledgement, the employee’s supervisor shall note on the acknowledgement form that the employee received the notice. This acknowledgement shall be centrally collected for easy retrieval by the Employee Relations **Team** and is advisory only. An employee’s failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this

plan since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug-free.

D. Administrative Relief

If an employee believes his or her position has been wrongly designated a testing designated position (TDP), that employee may file an administrative appeal to the designated official who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the designated official within 15 days of notification, setting forth all relevant information. The designated official shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The official's decision is final and is not subject to further administrative review.

VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but limited to:

1. Direct observation;
2. Evidence obtained from an arrest or criminal conviction;
3. A verified positive test result; or
4. An employee's voluntary admission.

B. Mandatory Administrative Actions

The Department shall refer an employee found to use illegal drugs to the EAP, and if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a testing designated position. At the discretion of the Secretary, however, and as part of an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

The severity of the disciplinary action taken against an employee found to use illegal drugs will depend on the circumstances of each case, and will be consistent with the Executive Order, and includes the full range of disciplinary actions, including removal. The Department shall initiate disciplinary action against any employee found to use illegal drugs, but shall not discipline an employee who voluntarily admits to illegal drug use in accordance with subsection VIII. F of this Plan. Such

disciplinary action, consistent with the Civil Service Reform Act and other statutes, Department policies, and regulations, may include any of the following measures, but some disciplinary action must be initiated:

1. Reprimanding the employee in writing;
2. Placing the employee in an enforced leave status;
3. Suspending the employee for 14 days or less;
4. Suspending the employee for 15 days or more;
5. Suspending the employee until the employee successfully completes the EAP or until the Department determines that action other than suspension is more appropriate; or
6. Removing the employee from service.
7. **Reducing the employee in pay or grade.**

D. Initiation of Mandatory Removal From Service

The Department shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an Employee Assistance Program as required by the Executive Order after having been found to use illegal drugs; or
2. Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

All letters to propose and decide on a separation action should be worked out in consultation with the Employee Relations **Team**.

E. Refusal to Take Drug Test When Required

1. An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal.
2. No applicant who refuses to be tested shall be extended an offer of employment.
3. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

E. Voluntary Referral

Under Executive Order 12564, the Department is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except one. If an employee (1) voluntarily admits his or her drug use; (2) completes counseling or an EAP; and (3) and thereafter refrains from drug use, such discipline “ is not required.”

1. Because the Order permits an agency to create a “safe harbor” for an employee who meets all three of these conditions, the Department of Education has decided to create such a “safe harbor” and will not initiate disciplinary action against employees who satisfy the provisions of this section.
2. A fundamental purpose of ED’s drug testing Plan is to assist employees who themselves are seeking treatment for drug use. For this reason, the Department will not initiate disciplinary action against any employee who meets all three of these conditions:
 - a. Voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means;
 - b. Obtains counseling or rehabilitation through an Employee Assistance Program; and
 - c. Thereafter refrains from using illegal drugs.

This self-referral option allows any employee to step forward and identify him/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP. In stepping forward, and consistent with Section XIIB, and employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall not subject the employee to discipline assuming the three safe harbor requirements are met.

3. Since the key to this provision’s rehabilitative effectiveness is an employee’s willingness to admit his or her problem, this provision will not be available to an employee who is asked to provide a urine sample when required, or who is found to have used illegal drugs pursuant to Sections VIII (a) (1) or VIII (A) (2) and who thereafter requests protection under this provision.

IX. RANDOM TESTING

A. Position Titles Designated for Random Drug Testing

The position titles designated for random drug testing are listed in Appendix A.

B. Sensitive Employees in Testing Designated Positions

The Executive Order requires random testing for “employees in sensitive positions” that have been designated testing designated positions. As further specified in Appendix A, the Secretary has determined that these positions are testing designated positions that will be randomly tested. Accompanying the list of testing designated positions are the criteria used in designating such positions, pursuant to the Act including the justification for such criteria.

C. Determining The Testing Designated Position

Among the factors the Secretary has considered in determining a testing designated position are; the extent to which the Department –

1. Considers its mission inconsistent with illegal drug use;
2. Is engaged in law enforcement;
3. Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;
4. Has national security responsibilities; or
5. Has drug interdiction responsibilities.

The extent to which the position considered –

1. Authorizes employees to carry firearms;
2. Gives employees access to sensitive information;
3. Authorizes employees to engage in law enforcement;
4. Requires employees to engage in activities affecting public health or safety; or
5. **Gives employees access to top secret or secret documents.**

These positions are characterized by critical safety or security responsibilities as related to the mission of the Department. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence.

The Secretary reserves the right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the Executive Order and this plan. Moreover, pursuant to 42 U.S.C. 290ee-1(b) (2), *** the Secretary has determined that all positions which have been or will be designated as testing

designated positions under this plan are “sensitive positions,” and are therefore exempted from coverage under 42 U.S.C. 290ee-1(b) (1) which provides that no person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the basis of prior drug abuse.

D. Implementing Random Testing

In implementing the program of random testing the Drug Program Coordinator shall—

1. Ensure that the means of random selection remains confidential; and
2. Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the Department’s duty to achieve a drug-free work force.

The number of sensitive employees occupying testing designated positions is specified in Appendix A.

E. Notification of Selection

An individual selected for random testing, and the individual’s first-line supervisor, shall be notified the same day the test is scheduled, preferably, within two hours of the scheduled testing. The Supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee’s name was selected randomly.

F. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the employee’s first-line an second-line supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave Status (sick, annual, administrative or leave without pay); or
2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

X. REASONABLE SUSPICION TESTING

A. Grounds

Reasonable suspicion testing may be required of any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position where there is a reasonable suspicion of on-duty or on-duty impairment.

Reasonable suspicion testing may be based upon, among other things;

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
2. A pattern of abnormal conduct or erratic behavior;
3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
4. Information provided either by reliable and credible sources or independently corroborated or
5. Newly discovered evidence that the employee has tampered with an previous drug test.

Although reasonable suspicion testing does not require certainty, mere “hunches” are not sufficient to meet this standard.

B. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. Approval for reasonable suspicion testing must be secured from the second level supervisor with the concurrence of the **ED Leader, Employee Relations Team**. If appropriate, the Office of the General Counsel will be consulted.

When reasonable suspicion has been established, the appropriate supervisor will promptly detail for the record and in writing, the circumstances which formed the basis to warrant the testing. A written report will be prepared to include, at a minimum, the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, findings of the test, and the action taken.

C. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XIII B.

D. Supervisory Training

In accordance with Section IV, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

XI. APPLICANT TESTING

A. Objectives

To maintain the high professional standards of the Department's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed in testing designated positions. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within ED and will provide for a safer work environment.

B. Extent of Testing

Drug testing shall be required of all individuals selected for employment with ED in a testing designated position.

C. Vacancy Announcements

Every vacancy announcement for testing designated positions shall state:

“All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment.”

In addition, the applicant will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided applicants in some other manner.

D. Procedures

The DPC shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be

reviewed only by the MRO to determine whether the individual is licitly using an otherwise illegal drug.

E. Personnel Officials

Upon notification that an individual has been tentatively selected for employment in a TDP, the Director, **Human Resources Group** assures, after consultation with the MRO, that a drug test has been conducted on that individual and determines whether the test result is a verified positive result.

F. Consequences

The Department will decline to extend a final offer of employment to any applicant with a verified positive test result and such applicant may not reapply to the Department for six months. The Personnel specialist working on the applicant's certificate shall be directed to object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment, or failure to support the goals of the Department of Education. The Department shall inform such applicant that a confirmed presence of drug in the applicant's urine precludes the Department from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TESTING

A. **Injury, Illness, Unsafe, or Unhealthful Practice Testing**

The Department of Education is committed to providing a safe and secure working environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:

- 1. The accident results in a death or personal injury requiring immediate hospitalization; or**
- 2. The accident results in damage to government or private property estimated to be in excess of \$10,000.00**

If an employee is suspected of having caused or contributed to an accident meeting the above criteria, the appropriate supervisor will present the facts leading to this suspicion. Approval for post-accident testing must be secured from the second level supervisor with the approval of the Leader, Employee Relations Team. If appropriate, the office of the General Counsel will be consulted. Once approval has been obtained and arrangements made for

testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the testing.

B. Voluntary Testing

In order to demonstrate their commitment to the Department's goal of a drug-free workplace and to set an example for other federal employees, employees may volunteer for unannounced random testing by notifying the DPC. These employees will then be subject to the provisions of Section VIII (F).

Volunteers shall be subject to random testing for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the DPC of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing

All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at the amount stipulated in the abeyance contract, or, in the alternative, at an increased frequency of once a month. Such testing is distinct from testing which may be imposed as a component of the EAP.

XIII. TEST PROCEDURES IN GENERAL

A. Technical Guidelines for Drug Testing

The Department of Education shall adhere to all scientific and technical guidelines for drug testing programs promulgated by HHS consistent with the authority granted by Executive Order 12564, and to the requirements of Section 503 of the Act. ED's drug testing program shall have trained collection personnel, a laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

Any individual subject to testing under this Instruction shall be permitted to provide urine specimens in private, and in a rest room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when -- ***

1. Facts and circumstances suggest that the individual is an illegal drug user;
2. Facts and circumstances suggest that the individual is under the influence of drugs at the time of the test;
3. The individual has previously found by the Department to be an illegal drug user;
4. Facts and circumstances suggest that the individual has equipment or implements capable of tampering with or altering urine samples; or
5. The individual has previously tampered with a sample.

C. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPC to obtain guidance on action to be taken.

D. Opportunity to Justify a Positive Test Result

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the **Mandatory Guidelines for Federal Workplace Drug Testing Programs**. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to:

1. A valid prescription; or
2. A verification from the individual's physician of a valid prescription.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the EAP Administrator, upon obtaining a verified positive test result.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random testing designated position pool for a period not to exceed sixty days or, for a time period specified in an abeyance contract or rehabilitation plan. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII C.

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose confirmed laboratory test results only to the MRO. Any positive result which the MRO justifies by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. 552a, *et seq.*, and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO may maintain only those records necessary for compliance with this Instruction. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include personally identifying information on any employee.

In order to comply with Section 503 (e) of the Act, the results of a drug test of an employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be—

1. To the MRO;
2. To the EAP Administrator if the employee is receiving counseling or treatment or is otherwise participating in the EAP;
3. To any supervisory or management official having authority to take adverse personnel action against such employee; or
4. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge to any adverse personnel action.

For purposes of this Section, “management official” includes any management or government official whose duties necessitate review of the test results in order to process an adverse personnel action against the employee.

Test results with all identifying information removed shall also be made available to Management personnel, including the DPC, for data collection and other activities necessary to comply with Section 503 (f) of the Act.

B. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to—

1. Such employee’s drug test; and
2. The results of any relevant certification, review or revocation of proceedings, as referred to in Section 503 (a) (1) (A) (ii) (III) of the Act.

An applicant **who is not a federal employee** who is the subject of a drug test, however, shall not be entitled to this information.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this Instruction and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this Instruction.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the **Employee Relations Team**. Such records and information shall remain confidential, locked in a combination safe, with only authorized individuals who have a “need-to-know” having access to them.

D. Employee Assistance Program Records

The EAP Administrator shall maintain only those record necessary to comply with this Instruction. After an employee has been referred to an EAP, the EAP will maintain all records necessary to carry out its duties. All medical and/or rehabilitation records concerning the employee’s drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment, are confidential and may be disclosed only as authorized by 42 C.F.R. Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient’s employer for verification of treatment or

for a general evaluation of treatment progress. (42C.F.R. 2.1 et seq. (1986), revised regulation promulgated at 52 F.R. **21809**, June 9, 1987).

E. Maintenance of Records

The Department shall establish or amend a recordkeeping system to maintain the records of ED's Drug Free Workplace Program consistent with the Department of Education's Privacy Act System of Records and with all applicable federal laws, rules and regulations regarding confidentiality of records including the privacy act, 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Secretary. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this Instruction, and include:

1. Notices of verified positive test results referred by the MRO;
2. Written materials justifying reasonable suspicion evidence that an individual may have altered or tampered with a specimen;
3. Anonymous statistical reports; and
4. Other documents the DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this Instruction.

F. Records Maintained by Government Contractors

Any contractor hired to satisfy any part of this Instruction shall comply with the confidentiality requirements of this Instruction, and all applicable federal laws, rules, regulations, and guidelines.

G. Statistical Information

The DPC shall collect and compile anonymous statistical data for reporting the number of

1. Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered.
2. Verified positive test results;
3. Voluntary drug counseling referrals;
4. Involuntary drug counseling referrals;
5. Terminations or denial of employment offers resulting from refusal to submit to testing;

6. Terminations or denial of employment offers resulting from alteration of specimens;
7. Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program; and
8. Employees who successfully complete EAP.

These data, along with other pertinent information, shall be compiled for inclusion in ED's annual report to Congress required by Section 503 (f) of the Act. These data shall also be provided to the Department of Health and Human Services semi-annually to assist in overall program evaluation and to determine whether changes to the Mandatory Guidelines may be required.

DRUG-FREE WORKPLACE PLAN

Positions Subject to Random Testing

The following types of positions are subject to random testing in the Department of Education:

- ❖ Positions authorizing an employee to carry firearms,
- ❖ Positions involving law enforcement,
- ❖ Positions involving the operations of motor vehicles,
- ❖ Presidentially appointed positions, and
- ❖ all positions where the incumbents have access to Top Secret and/or Secret information.

Employees occupying these testing designated positions will be subject to random testing. Twelve percent of the number of these positions will be randomly tested annually.

The current testing designated positions in each category above are listed on the following pages. These position lists are kept up-to-date, and they are consolidated when needed for the random testing selection procedure.

Occasionally, the same position will appear on more than one of the following categorical lists. These categorical lists, however, are combined to form the single list of employee names for random testing. There is no duplication of names or other individual identifiers in the combined list of testing designated positions that is used for the random selection process.

PRESIDENTIAL APPOINTEES

<u>POSITION</u>	<u>POSITION NUMBER</u>
Secretary	EX-0001
Deputy Secretary	EX-0019
Assistant Secretary for Civil Rights	EX-0011
Under Secretary	EX-0026
Inspector General	EX-0013
General Counsel	EX-0012
Assistant Secretary for Special Education and Rehabilitative Services	EX-0006
Commissioner, Rehabilitation Services Administration	EX-0007
Assistant Secretary for Legislation And Congressional Affairs	EX-0015
Assistant Secretary for Intergovernmental And Interagency Affairs	EX-0024
Chief Financial Officer	EX-0023
Assistant Secretary for Management	EX-0021
Assistant Secretary for Postsecondary Education	EX-0004
Assistant Secretary for Elementary and Secondary Education	EX-0003
Assistant Secretary for Educational Educational Research and Improvement	EX-0009
Commissioner of Education Statistics	EX-0025
Assistant Secretary for Vocational and	EX-0005

Adult Education

RATIONAL FOR COVERAGE

Positions identified above are critical-sensitive and are intimately involved in the management, operation and direction of the Department of Education. The incumbents were recommended for these positions by the President and approved by the Congress. Incumbents are responsible for the control and management of billions of dollars in public funds. Use of illegal drugs would seriously damage and/or jeopardize the effective operation of this Department.

TOP SECRET POSITIONS*

<u>POSITION</u>	<u>POSITION NUMBER</u>	<u>ALLOCATION</u>
<u>OFFICE OF THE SECRETARY</u>		
Motor Vehicle Operator	AP148	WG-5703-8
Chief of Staff	ES0253	ES-301-00
Deputy Chief of Staff	ES0288	ES-301-00
Director, Public Affairs	ES0131	ES-1035-00
Director, Executive Secretariat	ES0269	ES-301-00
Communication Control Manager	AP149	GS-301-13
Management Analyst	50120	GS-343-13
Management Analyst	AP121	GS-343-12
Senior Executive Officer	29800	GS-301-15
<u>OFFICE OF THE DEPUTY SECRETARY</u>		
Motor Vehicle Operator	BP024	WG-5703-8
Chief of Staff	EDU-74	ES-301-00
<u>OFFICE OF INSPECTOR GENERAL</u>		
Deputy Inspector General	ES0037	ES-301-00
Assistant Inspector General for Operations	DBES0341	ES-511-00
Assistant Inspector General for Operations	DBES0340	ES-511-00
Assistant Inspector General for Audit	DBES0345	ES-511-00
Assistant Inspector General for Investigation Services	DBES 0344	ES-1811-00

Counsel to the Inspector	ES0325	ES-905-00
Attorney-Advisor	FO-336T	GS-905-14
Secretary (Office Automation)	FP191	GS-318-9
Security Officer	FP236	GS-080-14
Security Specialist	FP237	GS-080-13
Security Assistant	F0396A/F0396B/F0396T	GS-086-6/7/8

OFFICE OF THE GENERAL COUNSEL

Deputy General Counsel For Program Service	ES105	ES-905-00
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OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Rehabilitation Program Specialist	50380	GS-101-15
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OFFICE OF MANAGEMENT

Director for Management	ES0333	ES-301-00
Director, Information Resources Group	ES0158	ES-334-00
Supervisory Computer Specialist	09011	GS-334-15
Management Analyst	80950	GS-343-12
Computer Specialist	21960	GS-334-14

OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGAGES AFFAIRS
(OBEMLA)

Director, OBEMLA	ES0046	ES-301-00
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RATIONALE FOR COVERAGE

The positions identified above are critical-sensitive and require that the incumbents have access to Top Secret information that may have national security implications. Use of illegal drugs could seriously damage and/or jeopardize the effective operation of this Department.

* Presidential Appointees are listed separately.

SECRET POSITIONS

<u>POSITION</u>	<u>POSITION NUMBER</u>	<u>ALLOCATION</u>
<u>OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES</u>		
Director, NIDRR	ES0307	ES-101-00
Deputy Director, NIDRR	ES0076	ES-101-00
<u>OFFICE OF INTERGOVERNMENTAL AND INTERAGENCY AFFAIRS</u>		
International Education Affairs Officer	KP080	GS-1701-15
Secretary (Office Automation)	26313	GS-318-6
Policy Specialist	KP068	GS-1701-14
Policy Specialist	KP069	GS-1701-14
International Management and Research Specialist	KP0152A	GS-301-12
<u>OFFICE OF MANAGEMENT</u>		
Motor Vehicle Operator	56980	WG-5703-5
Motor Vehicle Operator	58840	WG-5703-5
Motor Vehicle Operator Foreman	50100	WS-5703-4
Telecommunications Specialist	81217	GS-391-14
<u>OFFICE OF POSTSECONDARY EDUCATION</u>		
Executive Officer	17242	GS-341-15
Deputy Assistant Secretary for Higher Education Programs	ES0126	ES-1720-00
Supervisory Education Program Specialist	95531	GS-1720-15
Director, Fund for the Improvement of Postsecondary Education	ES0082	ES-1720-00

Supervisory Education Program Specialist	85413	GS-1720-14
Supervisory Education Program Spec.	PO841N	GM-1720-14
Supervisory Education Program Specialist	85407	GS-1720-13
Education Program Specialist	PT122	GS-1720-13
Education Program Specialist	85433	GS-1720-13

RATIONALE FOR COVERAGE

The positions identified above require that the incumbents have access to Secret information that may have national security implications. Use of illegal drugs could seriously damage and/or jeopardize the effective operation of this Department.

MOTOR VEHICLE OPERATORS

<u>POSITION</u>	<u>PAY PLAN AND SERIES</u>
<u>OFFICE OF THE SECRETARY</u>	
Motor Vehicle Operator	WG-5703
<u>OFFICE OF THE DEPUTY SECRETARY</u>	
Motor Vehicle Operator	WG-5703
<u>OFFICE OF MANAGEMENT</u>	
<u>QUALITY WORKPLACE GROUP</u>	
<u>CUSTOMER SERVICE TEAM II</u>	
Motor Vehicle Operator (All positions)	WG-5703
Motor Vehicle Operator Foreman	WS-5703

RATIONALE FOR COVERAGE

The incumbents of these positions function as Motor Vehicle Operators and are responsible for the safe operation of motor vehicles in providing motor vehicle services to the Department and its employees. The effective and safe performance of their daily operator duties impacts on the safety of Departmental employees and the public as a whole. The use of illegal drugs by the incumbents could impair their judgement and result in a public safety hazard, equipment damage, potential passenger injury and significant costs to the Department.

CRIMINAL INVESTIGATORS

OFFICE OF INSPECTOR GENERAL (OIG)

<u>POSITION</u>	<u>OFFICE</u>	<u>PAY PLAN AND SERIES*</u>
Assistant Inspector General	Investigation Services, OIG	ES-1811
Area Manager		
Supervisory Criminal Investigator	Headquarters operations Division, OIG	GS-1811
Criminal Investigator (All positions)	Headquarters Operations Division, OIG	GS-1811
Supervisory Criminal Investigator	Field Operations Division, OIG	GS-1811
Criminal Investigator (All positions)	Field Operations	GS-1811

REGION I

Supervisory Criminal Investigator	Boston Regional Office	GS-1811
Criminal Investigator (All positions)	Boston Regional Office	GS-1811

REGION II

Supervisory Criminal Investigator	New York Regional Office	GS-1811
Criminal Investigator (All positions)	New York Regional Office	GS-1811
Criminal Investigator (All positions)	San Juan, P.R	GS-1811

REGION III

Supervisory Criminal Investigator	Philadelphia Regional Office	GS-1811
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*TDP includes all GS-1811-00 series positions.

PMI 792-2

Criminal Investigator (All positions)	Philadelphia Regional Office	GS-1811
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Criminal Investigator (All positions)	Pittsburgh, PA	GS-1811
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REGION IV

Supervisory Criminal Investigator	Atlanta Regional Office	GS-1811
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Criminal Investigator (All positions)	Atlanta Regional Office	GS-1811
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Criminal Investigator	Nashville, TN	GS-1811
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Criminal Investigator (All positions)	Ft. Lauderdale, FL	GS-1811
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REGION V

Supervisory Criminal Investigator	Chicago Regional Office	GS-1811
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Criminal Investigator (All positions)	Chicago Regional Office	GS-1811
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Criminal Investigator (All positions)	St. Paul, MN	GS-1811
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REGION VI

Supervisory Criminal Investigator	Dallas Regional Office	GS-1811
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Criminal Investigator (All positions)	Dallas Regional Office	GS-1811
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Criminal Investigator (All positions)	Kansas City, MO	GS-1811
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REGION IX

Supervisory Criminal Investigator	San Francisco Regional Office	GS-1811
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Criminal Investigator (All positions)	San Francisco Regional Office	GS-1811
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PMI 792-2

Criminal Investigator (All positions)	Los Angeles, CA	GS-1811
Criminal Investigator (All positions)	Sacramento, CA	GS-1811
Criminal Investigator	Seattle, WA	GS-1811

RATIONALE FOR COVERAGE

The Criminal Investigator positions identified above are involved in planning and conducting investigations related to alleged violations of law. The Office of Inspector General (OIG), where these positions are located, is also responsible for referral of alleged or suspected criminal violations to the Department of Justice (DOJ), and for continuing liaison with DOJ on all criminal matters referred by OIG. Due to the law enforcement aspects of these positions, the investigators may be required to carry firearms. The use of illegal drugs would seriously impair the investigators' effectiveness and would be a threat to public safety.

APPENDIX B

DRUG-FREE WORKPLACE PROGRAM

The Department of Education will test for the following drugs:

- (1) Marijuana
- (2) Cocaine
- (3) Opiates
- (4) Amphetamines
- (5) Phencyclidine (PCP)

APPENDIX C

AMENDMENTS TO U.S. DEPARTMENT OF EDUCATION DRUG-FREE
WORKFORCE PLAN

1. The Department of Education hereby adopts the following amendments, effective December 30, 1988, to the Drug-Free Workplace plan referenced and attached. The plan was certified to Congress April 27, 1988.

- a. The following language is adopted as a free standing paragraph at the end of the section in the plan entitled or “statement of policy”:

It is Department of Education policy that its workplace be free from the illegal use, possession, or distribution of controlled substances, (as specified in Schedules I through V, as defined in 21 U.S.C. 802 (6) and listed in Part B, Subchapter 13 of that Title) by the officers and employees of the Department of Education. The possession and distribution of controlled substances will be dealt with promptly in accordance with legal and administrative disciplinary procedures. However, the policy’s primary goal is to ensure that illegal drug use is eliminated and that the Department of Education workplace be safe, healthful, productive, and secure.

- b. In any references to grounds for “reasonable suspicion testing,” the term “trafficking” shall also mean “distribution.”
- c. In addition to all grounds contained in this plan, there shall be grounds for reasonable suspicion testing of an employee if the employee is the focus of a criminal investigation into the illegal use, possession, or distribution of controlled substances.
- d. Where authorities and guidance are cited in the plan as references, the following authority and guidance are added:
 - (i) Authority: Section 628 of the Treasury, Postal Service, and General Government Appropriations Act of 1989, Pub. 100-440, as amended.
 - (ii) Guidance: Office of Personnel Management (OPM) Federal Personnel Manual (FPM) Letter 792-18, December 30, 1988, setting forth guidelines to agencies, departments, and instrumentalities in establishing a drug-free workplace pursuant to Pub. L. 100-440.