

**LAKE COUNTY BOARD OF DD/DEEPWOOD**

**BOARD POLICY**

Reviewed and Approved by the Board:

Date: August 19, 2019

Signature on File

Elfriede Roman, Superintendent

**I. SUBJECT: ALCOHOL AND CONTROLLED SUBSTANCES TESTING**

**II. PURPOSE:**

To establish a policy consistent with statutory and regulatory requirements for the alcohol and controlled substances testing and monitoring of all Board employees holding commercial driver's licenses who may operate or inspect, repair and/or maintain commercial motor vehicles, as well as Residence Workers and Residential Nurses

**III. REFERENCES:**

49 CFR Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs

49 CFR Part 382 Controlled Substances and Alcohol Use Testing

45 CFR Sections 160 and 164 Health Insurance Portability and Accountability Act

LCBDD Policy B-10, Drug Free Workplace

**IV. POLICY:**

The Lake County Board of Developmental Disabilities/Deepwood is dedicated to the provision of efficient transportation of services to consumers consistent with all applicable federal, state and local mandates. To ensure compliance with the alcohol and controlled substance testing and program requirements of the Omnibus Employee Testing Act of 1991 (Act), 49 USC 31306, and its implementing regulations (regulations), 49 CFR Part 382, the Board hereby directs, through its policy-making authority, that the Superintendent establish procedures to govern and guide the Agency's administration of an alcohol and controlled substance program for holders of commercial drivers licenses who may operate or inspect, repair and/or maintain commercial motor vehicles in accordance with the requirements of the Act and regulations. This policy also applies to the classification of Resident Worker and Residential Nurse. *It is prohibited to report to work under the influence of controlled substances or alcohol, and such conduct will be subject to appropriate disciplinary action in accordance with the Collective Bargaining Agreement. Nothing in this policy is intended to suggest otherwise.*

**V. AGREEMENT ON ALCOHOL AND CONTROLLED SUBSTANCES PROGRAM PROCEDURES:**

LEADD and the Board agree that alcohol and drug usage is a serious societal problem. We believe it to be in the best interest of consumers and employees that alcohol and drug usage not be condoned by - or for - the employees of the Board. Therefore, to protect the safety and welfare of consumers and employees and to deter the use of alcohol and drugs by the employees performing safety-sensitive functions who are covered by this Policy, LEADD and the Board agree to the following alcohol and controlled substances program. This policy functions in addition to Board Policy B-10.

**VI. ALCOHOL AND CONTROLLED SUBSTANCES PROGRAM PROCEDURES:**

A. Designated Management Official: The Board's Director of Human Resources is the Designated Management Official (DMO) for answering any questions regarding *Policy B-17: Alcohol & Control Substance Testing*.

B. Covered Employees: All employees who operate a commercial motor vehicle (CMV), who are required to obtain a Commercial Driver's License (CDL) for driving purposes, or who inspect, repair and maintain CMV and specific classifications assigned to the Residence listed below are subject to this Policy (collectively referred to as "employee"). This includes:

- 1) a) Persons employed by the Board in the positions of Transportation Director, Transportation Operations Supervisor, Bus Driver and Mechanic; persons employed by the Board in other positions who wish to be employed as substitute Bus Drivers or Mechanics; and
- b) Persons employed by the Board in other positions such as Recreation Specialist where the person volunteers to operate a CMV, in accordance with Article IX, Section C.2. of the 1994-96 LEADD -Board Collective Bargaining Agreement and any amendments ("CBA") thereto, other Board Policy and with the consent of the Board.
- c) Persons employed by the Board in other non-bargaining unit positions where the person may be required to obtain and/or maintain a CDL.
- 2) Persons applying to the Board for a position identified in Sections B.1. above shall be required to submit to and successfully complete the pre-employment testing requirements of this Policy.
- 3) Persons employed by the Board who are promoted or transferred into a position identified in Section B.1. above shall be treated as new hires for the purposes of this Policy and the application of its pre-employment testing requirements
- 4) Resident Worker
- 5) Residential Nurse

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- C. Safety-Sensitive Functions: For purposes of this Policy, safety-sensitive functions include:
- 1) All time at a garage, depot, terminal, fueling station, facility, or other property, or on any public property, waiting to be dispatched, unless the employee has been expressly relieved from duty by the Board;
  - 2) All time inspecting equipment as required; or otherwise inspecting, maintaining, or repairing any CMV at any time;
  - 3) All time spent at the driving controls of a CMV in operation; all time, other than driving time, in or upon any CMV;
  - 4) All time loading or unloading a CMV; supervising or assisting in the loading or unloading of a CMV; attending to a CMV being loaded or unloaded; remaining in readiness to operate the CMV; giving or receiving instructions for loading, unloading or routing tile CMV; or recording or reporting bus attendance;
  - 5) All time spent by the employee performing functions relating to accidents;
  - 6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled CMV;
  - 7) All time providing direct care, medical care or supervision of individuals served by the Board.
  - 8) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident or follow-up testing required in this policy, whichever is applicable, when directed by the Board.
- D. Prohibited Conduct: Persons covered by this Policy are prohibited from engaging in any of the following:
- 1) Reporting to duty or remaining on duty, including the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
  - 2) Using alcohol while performing safety-sensitive functions;
  - 3) Possessing alcohol while on duty or operating a CMV (including the possession of medicines containing alcohol);
  - 4) Performing safety-sensitive functions within four (4) hours after using alcohol;
  - 5) Using alcohol for eight- (8) hours following an accident in which the employee is required to take a post-accident alcohol test or until the employee undergoes a post-accident alcohol test, whichever occurs first; Reporting to duty or remaining on duty requiring the performance of a safety-sensitive function while using a controlled substance, including prescription drugs, except when the use is pursuant to instructions of an employee's physician who has advised the employee that the substance does not adversely affect his/her ability to operate a CMV;

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- 6) Reporting to duty or remaining on duty requiring the performance of a safety-sensitive function if the employee tests positive for controlled substances; or,
- 7) Refusing to submit to a post-accident, random, reasonable suspicion or follow-up alcohol or controlled substance test required under the Act or its implementing regulations.

E. Consequences for Violations: If any employee covered by this Policy engages in any prohibited conduct listed in Section D above, the following consequences shall result:

- 1) The individual may receive appropriate disciplinary action. For bargaining unit employees, such disciplinary action shall be consistent and in accordance with the terms of the CBA.
- 2) The individual shall be immediately removed from the safety-sensitive functions and relieved from duty if his/her position requires the performance of safety-sensitive functions. If the employee's regular position is not a classification covered under Section B.l.a. or B.l.c., the employee shall be returned to his/her regular position but will not be permitted to volunteer or be eligible for any work involving the performance of safety-sensitive functions without satisfaction of the return-to-duty requirements of Section M of this Policy.
- 3) The individual shall be provided with information regarding the services available for alcohol and substance abuse.
- 4) The individual shall be evaluated by a substance abuse professional (SAP), who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. As a part of the rehabilitation program, a SAP may require that the employee regularly attend and participate in meetings (and report on that attendance) of an appropriate agency/organization support group such as Cocaine Anonymous, Narcotics Anonymous or Alcoholics Anonymous following or as a required part of his/her treatment. The individual may not return to work, without satisfaction of the return-to-duty requirements of Section M of this Policy.
- 5) The individual shall be required to undergo and pass a return-to-duty test prior to returning to a position requiring the performance of safety-sensitive functions.

If the individual was identified by an SAP as needing assistance in resolving problems associated with alcohol misuse or controlled substances use, he/she shall be required: (i) to enroll, participate and complete the SAP program of assistance; (ii) to be re-evaluated by the SAP who shall determine that the individual has properly followed any prescribed rehabilitation program; and (iii) to undergo and pass unannounced follow-up testing.

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- F. Required Testing: An employee covered by this Policy will be required to submit to testing for alcohol and/or controlled substances under the following circumstances:
- 1) Pre-Employment Testing: Prior to the first time an individual performs a safety sensitive function, the individual will be tested for controlled substances and alcohol. The individual shall not be determined qualified to assume a position requiring the performance of safety-sensitive functions unless the controlled substance test results are negative and the alcohol test result indicates an alcohol concentration of less than 0.04.
  - 2) Post-Accident Testing: As soon as practicable following (a) an accident in which a fatality occurs or, (b) an accident in which the employee performing a safety-sensitive function receives a citation under federal or state law for a moving traffic violation arising from the accident, the employee performing a safety-sensitive function shall be tested for alcohol and controlled substances. Under no circumstances will the employee be allowed to drive himself or herself to the testing facility. A manager/supervisor will escort the employee; arrangements will be made to transport the employee home. The Board shall cease attempts to have the test administered eight (8) hours following the accident for alcohol and thirty-two (32) hours following the accident for controlled substances. The individual may receive appropriate disciplinary action for a verified positive test result. For bargaining unit employees, such disciplinary action shall be consistent and accordant with the terms of the CBA.
  - 3) Random Testing:
    - a) A minimum annual number of employees as required by law (a 10% average for alcohol and a 50% average for controlled substances as of 4-7-15) will be randomly selected using a scientifically valid method in which each employee will have an equal chance of being tested each time selections are made. Random alcohol tests shall be administered concurrently with the controlled substance tests. When an employee is notified of his/her selection for testing, he/she shall cease performing the safety-sensitive function and proceed to the designated test site immediately.
    - b) Random selection of employees and dates and the administration of drug screenings and breath alcohol tests shall be made independently by the entity operating the collection site, which is currently Occupational Health Plan, Inc. The dates for testing shall be announced and spread throughout the calendar year.

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c) No disciplinary action shall be taken against an employee as a consequence of a verified positive test result from his/her random selection for testing unless the employee previously has received a verified positive test result for pre-employment/pre-duty, post-accident, random, reasonable suspicion or follow-up alcohol or controlled substance test required under the Act or its implementing regulations within the prior three (3) year period or it is clearly established the employee was under the influence while at work.

4) Reasonable Suspicion Testing:

a) A trained supervisor or Board official may require an employee to undergo testing for alcohol or controlled substances based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. If an employee is required to undergo testing hereunder, the employee must immediately cease performing the safety-sensitive function and may not continue it until the employee's alcohol concentration measures less than 0.02 or twenty-four (24) hours have elapsed since the observation was made. The Board shall cease attempts to have the test administered eight (8) hours after the observation was made. Under no circumstances will the employee be allowed to drive himself or herself to the testing facility. A manager/supervisor will escort the employee; arrangements will be made to transport the employee home.

b) A written record shall be made of the observations leading to controlled substance or alcohol reasonable suspicion test within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier. The observations shall be recorded on an *Observed Behavior – Reasonable Cause Record Form*. (See attached A Form). If completed, the employee, or union representative at the employee's request, shall be provided with a copy of the Form to or at the time of the administration of the alcohol and/or controlled substance test. In any event, the employee shall be provided with a complete copy of the Form within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier.

No employee shall be subject to disciplinary action based upon a verified positive test result without the proper and timely completion of the *Observed Behavior – Reasonable Cause Record Form* (See attached A Form). Any disciplinary action initiated without the proper and timely completion of the form shall be null and void. Even with the proper and timely completion of the Form, the Board may take no action against an employee under this Policy based solely on (i) test results showing an alcohol concentration of less than 0.04, or (ii) behavior and appearance with respect to alcohol use in the absence of an alcohol test. This does not

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prohibit the Board from taking appropriate disciplinary action against an employee under Board authority independent of this Policy – provided such disciplinary action is consistent with law and the CBA, where applicable – based upon the acts or conduct of the employee that formed the basis for the required testing.

- 5) Return-To-Duty Testing: Before an employee who has been found to be in violation of Section D: above may return-to-duty in a position requiring the performance of safety-sensitive functions, he/she must undergo observed return-to-duty testing for alcohol and controlled substances. The results of the alcohol test must show less than 0.02 concentration if the offense involved alcohol and the results of the controlled substance test must be negative if the offense involved controlled substances. Successful completion of such testing is a specific condition of an employee's return-to-duty and a verified positive return-to-duty test result does not constitute in and of itself a basis for disciplinary action.
- 6) Follow-up Testing: When an employee has been found to be in violation of Section D: above, and the SAP has determined that the employee needs assistance in resolving problems associated with alcohol misuse or substance abuse, he/she will be subject to a minimum of six (6) observed, unannounced follow-up tests within the first twelve (12) months as directed by the SAP. The individual may receive appropriate disciplinary action for a verified positive test result. For bargaining unit employees, such disciplinary action shall be consistent and accordant with the terms of the CBA.
- 7) Cost of Testing: The cost of pre-employment/pre-duty, post-accident, random, reasonable suspicion, return-to-duty and follow-up testing as required under Sections F.1.6 of this Policy shall be borne by the Board. Included in the cost of testing shall be the required services of the Medical Review Officer (MRO), random selection of employees and dates, collection site and controlled substances laboratory testing fees. The cost of an employee-requested split specimen confirmatory controlled substances test shall be governed by the provisions of Section F.8., below.
- 8) Dispute of Positive Controlled Substance Test Result: If the test result of the primary controlled substance specimen is positive, the employee may request the MRO to direct that the split specimen be tested in a different DHHS-certified laboratory for presence for the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such request if it is made within seventy-two (72) hours of the employee having been notified of a verified positive test result. The action(s) set forth in this Policy as a result of the employee's positive test

result is not stayed or delayed pending the result of the test of the split specimen. If the result of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test and report the cancellation and reasons for it to the Board and employee. The Employee shall be responsible for the entire cost of the split specimen testing unless the testing fails to reconfirm the primary specimen and the MRO cancels the test in which case the Board shall pay the entire cost of the split specimen testing.

- G. Alcohol Test Results of 0.02 or Greater but less than 0.04: Employees who have been tested for alcohol with the results showing a concentration of 0.02 or greater but less than 0.04 will not be permitted to perform any safety-sensitive functions for twenty-four (24) hours following administration of the test.
- H. Post Accident and Reasonable Suspicion Testing Procedures: Before any employee covered by this policy operates a commercial motor vehicle, the Board will provide him/her with post-accident and reasonable suspicion testing procedures that will make it possible to comply with testing requirements.

On all post-accident screenings for drugs and alcohol, a supervisory employee of the Board shall accompany and transport the employee to the medical facility and/or testing site. In no instance shall necessary medical attention for an injured covered employee be delayed in order to collect a test sample. If any test is positive, the employee shall arrange transportation home after being returned to the Board facility.

- I. Refusal to Submit to Testing: Refusal to submit to any of the alcohol or controlled substance tests required by the Policy will result in the employee's immediate removal from the safety-sensitive functions and may result in disciplinary action. An employee's refusal shall be treated as a positive test and the employee will be referred to a counseling program and subject to return-to-duty and follow-up testing. Actions constituting a refusal to submit to a test include, but are not limited to:
- 1) Failing to provide adequate breath for alcohol testing;
  - 2) Failing to provide adequate urine for controlled substance testing;
  - 3) Engaging in conduct which clearly obstructs the testing procedure;
  - 4) Failing to remain readily available for a post-accident test.
- J. Paid Time for Testing: A covered employee shall be provided with a total of one hour paid time inclusive of travel time for any testing required under this Policy when and if scheduled and/or required immediately before or immediately after the employee's

regularly schedule work time. An employee shall contact his/her supervisor if additional time is required for the employee to provide a sample at the testing/collection site. The supervisor shall confirm the need for additional time with a testing/collection site official and provide the employee with the necessary additional paid time, if any. Any employee who refuses to undergo the pre-employment/pre-duty, random, post-accident, or reasonable suspicion alcohol and/or controlled substances testing will be subject to appropriate disciplinary action up to and including termination.

K. Paid Time Pending:

An employee covered by this Policy who is required to undergo reasonable suspicion controlled substances testing shall be immediately removed from his/her safety-sensitive function and may be relieved from duty until the results of the controlled substance test are known. If relieved from duty pending the results of the testing, the employee shall be considered on administrative leave with pay pursuant to the employee's regular work schedule.

L. Medical Leaves of Absence for Completion of Rehabilitation Programs

If the nature of the medical problem and/or the rehabilitation program necessitates an employee's absence from work, the Board, upon the employee's request, will grant a leave of absence to employees covered by this Policy who test positive for alcohol and/or drug use. The medical leave of absence shall be granted as either paid sick leave or unpaid medical leave due to disability/illness and shall be contingent upon the employee's participation in and completion of the rehabilitation program prescribed by an approved SAP. An employee granted a leave of absence who does not participate in or complete the SAP prescribed rehabilitation program shall be ineligible to continue on approved medical leave status. The leave of absence will be paid or unpaid, dependent upon the employee's availability of accrued sick leave. An employee shall be required to exhaust all sick leave benefits prior to requesting an unpaid medical leave of absence. The granting of leave shall not apply to covered employees convicted of a criminal drug or alcohol offense. Any sick leave or unpaid medical leave must be consistent with the terms of the collective bargaining agreement between the Board and LEADD, and federal and state law governing leaves of absence.

M. Return-To-Duty

Notwithstanding the application of discipline to an employee, he/she shall be eligible to return-to-duty upon satisfaction of the return-to-duty requirements of Section F.4., above. In addition; if the individual was identified by an SAP needing assistance in resolving problems associated with alcohol misuse or controlled substances use, he/she shall be required: (i) to enroll, participate and complete the SAP program of assistance; (ii) to be re-evaluated by the SAP who shall determine

that the individual has properly followed any prescribed rehabilitation program; and (iii) to undergo and pass unannounced follow-up testing as a condition of his/her return-to-duty.

Upon the employee's agreement to enroll and participate to completion in the SAP – directed rehabilitation program and upon the recommendation of the SAP, whether as a result of a positive test result or voluntary request for assistance, the employee will be eligible to return to duty in the same position. If a leave of absence was requested and granted, the employee's return-to-duty shall be subject to and in accordance with the terms of the CBA and federal and state law governing leaves of absence. If the employee fails to enroll, participate or thereafter complete the prescribed rehabilitation program, he/she shall be ineligible for return to duty and maybe terminated from employment at the discretion of the Board.

An employee granted a medical leave of absence for alcohol or drug related treatment will be allowed to return to work when the Board receives written notification that the employee has successfully completed the course of treatment which necessitated the absence from work, satisfactorily passes an alcohol and/or controlled substance test, whichever is applicable, and secures a return-to-work clearance from the SAP.

- N. Standards for Drug Screening and Alcohol Breath Tests
- 1) All drug screening and confirmation tests shall be conducted by a laboratory certified under the DHHS "*Mandatory Guidelines for Federal Work Place Drug Testing Programs.*" The Board and the laboratory shall have a clear and well-documented procedure for collection, shipment, and accessing of urine specimens. The procedures utilized by the Board and the laboratory shall include an evidentiary chain of custody and control and split sample collection and testing. The collection site person is responsible for maintaining the integrity of the specimen collection and transfer process. All procedures shall be outlined in writing by the laboratory and provided to the Board, LEADD and affected employees.
  - 2) All alcohol breath tests shall be administered independently by a trained breath alcohol technician (BAT) employed by or under contract with the entity operating the collection site or by a law enforcement officer certified to conduct such tests. Only evidential breath testing (EBT) devices shall be used along with the prescribed breath alcohol testing form
  - 3) Neither the conduct of the drug screenings, alcohol breath tests, confirmation tests, specimen collection/transfer process, nor chain-of-custody process of the independent entity operating the collection site and

the certified testing laboratory shall be subject to the grievance procedure of the CBA for bargaining unit exempt staff.

- O. Test Result Records and Access: Records pertaining to the rehabilitation and treatment of any covered employee under an alcohol or drug treatment program shall not be released without the employee's written authorization. For this purpose, the Board shall not accept generic or blanket consent forms, rather only specialized consent forms from one named party to another named party may be used. Test results will be treated by the Board as confidential medical records, maintained apart from the employee's personnel file and the disclosure of such information will be restricted in accordance with the Health Insurance Portability and Accountability Act (HIPAA). A copy of any calendar year summary of test results shall be provided to the LEADD President when and if completed by the Board.
- P. Employee Assistance Plan: The Board shall provide at its cost an Employee Assistance Plan (EAP) for all employees covered under this Policy, which is currently the Center of Families and Children's Employee Assistance Service Program ("EASE"). Included in the cost of the EAP shall be the services of an SAP as may be required in an employee's initial assessment, re-evaluation and counseling but not including any separate and/or additional services of rehabilitation program providers(s) (RPP).
- Q. EAP Information on Drug and Alcohol Use: Information regarding the effects of alcohol and controlled substance use on an individual's health, work and personal life, and information about drug and alcohol counseling, rehabilitation, and employee assistance program is available through the EAP, and will be periodically provided to employees covered under this Policy.
- R. Voluntary Request for Assistance: Covered employees who recognize that they have an alcohol or drug abuse problem and who voluntarily request assistance of the Board may receive such assistance without fear of immediate and appropriate disciplinary action; provided, however, that such a request must be made prior to notification that a test is being administered in accordance with this Policy and that such assistance shall be limited to the counseling/rehabilitation programs as directed/referred by the Board's EAP.

Sick leave or unpaid leaves of absence to correct an alcohol or drug abuse problem may be granted in conjunction with a voluntary request for assistance. Such sick leave or unpaid leave must be consistent with the terms of the CBA and federal and state law governing leaves of absence.

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Any such requests for assistance shall be made to the Superintendent or her designee and shall be treated as part of the employees' confidential medical records and following his/her request for assistance; the matter will be handled as any other instance of unsatisfactory job performance.

An employee's decision to voluntarily seek professional help will not be used as a basis for disciplinary action nor will it be used against the employee in any disciplinary action. However, requesting and/or receiving professional assistance will not exempt an employee from the requirements of this policy or potential disciplinary action result from violations of these requirements, and it may not be used to shield employees from appropriate disciplinary action due to other policy or rule violations. A request for assistance cannot be used as an "after-the-fact" action to counteract potential disciplinary action as a result of violations of this Policy or violations of other Board policies and rules.

- S. Application of Insured Medical Benefits: Insurance coverage for treatment under SAP-directed rehabilitation program may be available to an employee based upon and up to the allowable coverage in the applicable insured medical plans. Any costs associated with the rehabilitation program and follow up not covered by the applicable insured medical plans shall be the responsibility of the employee. There shall be an open enrollment period immediately following the initial adoption of this policy.
- T. Notification to Employees: Each covered employee shall sign a form that acknowledges receipt of the following:
- 1) Receipt of required educational materials;
  - 2) Notice that testing can occur periodically and without notice;
  - 3) Notice that reasonable cause and post-accident testing will occur; and
  - 4) Pre-employment/pre-duty urinalysis consent.

Each employee will also sign the Driver's Release Form

The MRO will notify an employee of the results of pre-employment/pre-duty, random, reasonable-suspicion and post-accident drug tests if the test results are verified as positive. The MRO will notify the employee which controlled substances were verified as positive.

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- U. Notice to Association: The Board shall notify LEADD prior to any change in the entity operating the collection site, the controlled substances testing laboratory, the EAP service provider, or SAPs/RPPs. The Association shall be provided with the opportunity to meet and confer with the Board in the selection of the approved MROs and SAPs/RPPs.
  
- V. Applicable Policies and Procedures: All employees covered by this Policy remain subject to all other policies, procedures, rules, regulations of the Board and the provisions of its collective bargaining agreement with LEADD, wherein applicable. All employees covered by this Policy also remain subject to all other relevant federal, state, and local laws and regulations pertaining to the subject matter of this policy.

**VII. DISTRIBUTION:**

All Board Members  
All Management Staff  
All Staff (via Department Managers)  
LEADD President

**VIII. REVIEWED:**

08/19, 11/17, 11/16, 11/15, 5/15, 5/14, 5/13, 5/11, 6/10, 8/08, 5/06, 5/04, 5/02, 9/99, 1/96