

### **Medical Examinations/Drug Testing \***

The ESD may require medical examinations after an employment offer has been made to a job applicant and before the applicant begins their employment duties. Any such requirement will ensure that all entering employees in the same job category will complete a medical examination regardless of disability.

All offers of employment may be made contingent on medical examination results.

Medical examinations will be conducted by a health-care professional selected by the ESD. ESD-required medical examination expenses will be paid by the ESD.

The successful applicant must be qualified and must be able to perform the essential functions of a position with or without reasonable accommodations. The ESD may withdraw an offer of employment should the medical examination reveal that the individual does not satisfy certain employment criteria under the following conditions:

1. The exclusionary criteria are job related and consistent with business necessity;
2. There is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job;
3. The medical condition poses a direct threat to the health or safety of others in the workplace and cannot be eliminated or reduced to an acceptable level by a reasonable modification of policies, practices, procedures or by the provision of auxiliary aids or services;
4. The requested or necessary accommodation would impose an undue hardship on the ESD, unless funding is available through other sources. Individuals with a disability may be offered an opportunity of paying for a portion of the costs that constitutes an undue hardship or of personally providing the accommodation.

Offers of employment for certain positions shall be contingent upon successful passage of a ESD-required drug test. The ESD will require drug tests for safety-sensitive positions (e.g. bus drivers, heavy machinery operators) and positions in which the person is responsible for students' safety and security.<sup>1</sup> The ESD will designate when and where such testing will be conducted. The cost of the drug test shall be paid by the candidate and reimbursed by the ESD upon receipt of negative drug test results. The ESD will not reimburse individuals who test positive for drugs. The offer of employment will be withdrawn from candidates who test positive for drugs. Information the ESD receives regarding medical examinations and drug testing will be collected and maintained on separate forms and in separate files apart from personnel

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<sup>1</sup>Based on Lanier – "Safety sensitive" may also include positions that have heavy student contact and in loco parentis responsibility (e.g. teachers, administrators, paraprofessionals).

files. All such records will be kept confidential, maintained for a minimum of one year and released only in accordance with provisions of the Americans with Disabilities Act or other applicable laws.

END OF POLICY

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**Legal Reference(s):**

ORS 334.125(7)

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213; 29 C.F.R. Part 1630 (2006); 28 C.F.R. Part 35 (2006).  
Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. §§ 31301-31317; 49 C.F.R. Parts 40, 382, 391-395 (2006).  
Lanier v. City of Woodburn, 518 F3d. 1147 (9th Cir. 2008).