

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF PUBLIC SAFETY
OFFICE OF DRIVER EDUCATION

In the Matter of:

The License Suspension of
Betty Rae Birkholz
Instructor License No. 9354

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 10:30 a.m. on Friday, October 29, 1999, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota.

Michael R. Pahl, Assistant Attorney General, Suite 200, 525 Park Street, St. Paul, Minnesota 55103, represented the Office of Driver Education. The Petitioner, Betty Rae Birkholz, did not appear at the hearing, nor did anyone appear on her behalf. The record closed at the conclusion of the hearing on October 29, 1999.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Public Safety will make the final decision after reviewing the hearing record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota law¹¹, the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument. Parties should contact the offices of Charles Weaver, Commissioner, Department of Public Safety, 1000 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, to find out how to file objections or present argument.

STATEMENT OF THE ISSUE

The rules of the Office of Driver Education provide that the license of an instructor may be suspended if the instructor "has conducted business in a way that substantially departs from commonly accepted practices as used by other driver education programs and instructors" or if the instructor "has engaged in conduct . . . in the conduct of employment, that is likely to harm the public or student or that demonstrates a willful or careless disregard for the health or safety of other persons or students." The issue in this case is whether the Commissioner of Public Safety should

suspend Ms. Birkholz's driver education instructor license because she has violated these rules based on allegations that she forced a student to wait in the driver education vehicle during a lesson while she ran personal errands, required the student to accompany her to a soup kitchen and halfway house, and detained the student for three hours when the lesson was supposed to last no more than two hours.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 29, 1999, the Department served Ms. Birkholz with the Notice and Order for Hearing that began this contested case proceeding by sending it by U.S. Mail to the address that she had most recently provided to the Department, which was: 2610 Cutter's Grove Avenue, Apartment 302, Anoka, Minnesota 55303.^[2] The U. S. Postal Service has never returned that particular Notice to the Department as undeliverable.

2. That Notice and Order for Hearing contained the following statements:

ALL PARTIES ARE ADVISED that if a party intends to appear at the hearing scheduled for October 29, 1999 at 10:30 a.m., the Notice of Appearance form enclosed with this Order must be completed and filed with the Office of Administrative Hearings within twenty (20) days of the date of service of this Notice and Order for Hearing. **Should a party fail to appear at the hearing, the allegations contained in this notice and order for hearing will be deemed as fact and the license revocation will remain in effect.**

[Emphasis in the original.]

3. Ms. Birkholz has never filed a Notice of Appearance, as the Notice and Order Hearing instructed her to do. Furthermore, she did not appear at the October 29, 1999, contested case hearing, nor did she make a request to the Administrative Law Judge before the hearing to be excused from appearing at that hearing.

4. Because of Ms. Birkholz's failure to appear at the scheduled contested case hearing, she is deemed to be in default in this matter. Accordingly, the facts alleged in the Notice and Order for Hearing are taken as true, and the Administrative Law Judge incorporates those facts into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law^[3] gives the Administrative Law Judge and the Department of Public Safety authority to conduct this proceeding and to make findings, conclusions, and orders.

2. The Department has complied with all of the law's substantive and procedural requirements.

3. The Department gave Ms. Birkholz proper and timely notice of the contested case hearing that was scheduled in this proceeding.

4. Under the Office of Administrative Hearings' rules,^[4] Ms. Birkholz is in default because she failed to appear at the scheduled contested case hearing without being excused by the Administrative Law Judge.

5. Under those rules, when a party defaults, an Administrative Law Judge may take the facts alleged in the Notice and Order for Hearing as true and no longer in dispute.

6. Based upon the facts alleged in the Notice and Order for Hearing, which the Administrative Law Judge has taken as true, Ms. Birkholz has violated the Department's driver education instructor licensing rules.^[5] The law^[6] therefore allows the Department to revoke his driver education instructor license.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner affirm the suspension of Ms. Birkholz's driver education instructor license.

Dated this _____ day of October 1999.

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minnesota law,^[7] the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

^[1] Minn. Stat. § 14.61 (1998).

^[2] Affidavit of Service by U. S. Mail of Stacy Hass.

^[3] Minnesota Rules, part 7411.0800 (1999); Minn. Stat. § 14.50 (1998).

^[4] Minnesota Rules, part 1400.6000 (1999).

^[5] Minnesota Rules, part 7411.0800, subparts 8(G) and (K) (1999).

^[6] Minnesota Rules, part 7411.0800, subpart 8 (1999).

^[7] Minn. Stat. § 14.62, subd. 1 (1998).