

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF PUBLIC SAFETY

In the Matter of William S. Collins
d/b/a Interstate Truck Driving School
of Minnesota

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Eric L. Lipman on February 28, March 1, and March 8, 2007, at Office of Administrative Hearings. The record closed following the receipt of post-hearing submission on March 29, 2007.

Eric A. Johnson, 700 St. Paul Building, 6 West Fifth Street, St. Paul, MN 55102, appeared on behalf of William S. Collins (Licensee). James E. Haase, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota, 55101-2134, appeared on behalf of the Minnesota Department of Public Safety (Department).

STATEMENT OF THE ISSUES

1. Did the licensee, while serving as a driving instructor, commit repeated violations of the requirements of a statute, rule or correction order?
2. Should the Commissioner affirm, modify or withdraw the proposed 30-day suspension of Mr. Collins' Instructor License – License No. 5337?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. William S. Collins is a licensed driving instructor doing business as Interstate Truck Driving School of Minnesota, LLC.^[1]

2. For more than two decades, Mr. Collins has been involved in professional trucking and the education of students for various classes of licenses. Mr. Collins currently holds licenses entitling him to provide instruction to commercial driver's license (CDL) students who are seeking a class A, B or C license. Moreover, Mr. Collins is separately licensed to provide instruction for students seeking a class D license. During this time, Mr. Collins has also been

an active participant in the process to develop state statutes and rules relating to driver education.^[2]

3. As part of his instruction practice, Mr. Collins frequently meets CDL students at the Eagan Exam Station – a state-owned facility used for the administration of road and skills tests – prior to the administration of the students' CDL skills test. Included in Mr. Collins' instruction of students is an explanation of various driving maneuvers that the applicant can expect on the skills test, with reference to particular features of the Eagan Exam Station so as to make these points clear. Specifically, Mr. Collins uses exam station roadways to illustrate the requirements for turning and the exam station's simulated docking area to demonstrate what will be required to successfully complete an "alley docking" maneuver with a commercial vehicle.^[3]

4. Mr. Collins undertakes this instruction during the Eagan Exam Station's normal business hours and while road tests, for various classes of driving licenses, are being administered to other members of the public.^[4]

5. The Eagan Exam Station property is owned by the Minnesota Department of Transportation,^[5] but following a transfer of testing authority from the Department of Transportation to the Department of Public Safety, the latter now manages day-to-day operations at the Exam Station.^[6]

6. The perimeter of the Exam Station is ringed by a chain link fence. The Exam Station also has a series of interior gates which permit officials to provide access to a public parking area while at the same time securing the remainder of the Exam Station course.^[7] The roadways within the Exam Station are designed to simulate various road conditions and driving situations that licensed drivers might encounter on the public roadways.^[8]

7. At the entrance to the Exam Station the Department has posted a sign stating: "No practice driving. No Training. No Soliciting. No Advertising on Premises."^[9]

8. This signage is a necessary warning. The hearing record details that during the 18 months preceding the evidentiary hearing in this matter, Driver and Vehicle Services Regional Director Karen Allen specifically directed instructors from the Transportation Center for Excellence,^[10] the Midway Driving School,^[11] Dakota County Technical College^[12] and Century College,^[13] not to provide instruction to their students while at the Eagan Exam Station. Similarly, on September 23, 2005, Ms. Allen notified Marcia Jenson, the Driver Education Coordinator for the Red Wing Public Schools, that the District's driver education instructors were not to set parallel parking flags in the precise locations at the Hastings Exam Station that the state examiners had placed their flags for the State Class D Road Test.^[14]

9. After having been admonished in these ways, none of those driving instruction programs continued the practice of providing instruction at the exam site or replicating the contours of the Exam Station.^[15]

10. Not finding text in the Department's regulations which authorized a prohibition of on-site instruction, however, Mr. Collins did not yield when he was admonished not to undertake instruction at the Eagan Exam Station.^[16] A detailed exchange of correspondence followed his refusal to follow this directive.^[17]

11. On September 15, 2006, a Correction Order was issued to William S. Collins of Interstate Truck Driving School of Minnesota. In the Correction Order, Mr. Collins was directed to respond in writing as to the corrective action that would be taken by Interstate Truck Driving School and its instructors to address the issue of providing training on the exam routes at the Eagan Examination Station.^[18]

12. On October 19, 2006, Mr. Collins replied to the Department with a detailed explanation of his reading of the regulations and how his instruction methods did not violate Department rules.^[19]

13. On November 14, 2006, Driver and Vehicle Services issued a Notice of Proposed 180-Day Instructor License Suspension to Mr. Collins. Mr. Collins promptly requested an agency review of the proposed license suspension and a review hearing was held on December 6, 2006. At this hearing, Mr. Collins further detailed the basis for his claim that his instruction methods do not violate Department rules.^[20]

14. Following the internal administrative review, the Department determined that Mr. Collins:

- a. was in violation of Minn. R. 7411.0435, because his use of the state test range and routes, "duplicated" those routes;
- b. was in violation of Minn. R. 7411.0355 by providing laboratory instruction on actual test routes; and,
- c. was in violation of Minn. R. 7411.1850 because his practice of familiarizing his students with the test range, Mr. Collins' adversely affected public safety.^[21]

15. On December 18, 2006, Mr. Collins was notified that the Department of Vehicle Services intended to proceed with a 30-day suspension of his CDL instructor license.^[22] Mr. Collins timely appealed that determination.^[23]

16. As of the hearing date, Mr. Collins was continuing his earlier practice of providing instruction to students at the site of the Eagan Exam Station.^[24]

17. To the extent that the Memorandum that follows below includes matters that are more appropriately characterized as Findings of Fact, those items are incorporated by reference.

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

CONCLUSIONS

1. The Commissioner and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 171.35.

2. The Department gave proper notice of the hearing and all relevant procedural requirements of law or rule have been fulfilled.

3. The Commissioner may issue a correction order to a licensed instructor requiring violations cited in the order to be corrected within 30 calendar days from the date the order is received.^[25]

4. By regulation, the Commissioner of Public Safety determines whether the violation has been corrected and is obliged to notify the instructor of the Commissioner's determination.^[26]

5. Mr. Collins' practice of meeting his student-customers on the course of the Eagan Exam Station, and detailing what items state examiners will evaluate at particular locations of the course route, amounts to duplicating a state road test, test range or route, in violation of Minn. R. 7411.0435.

6. Mr. Collins' practices do not violate the ban on providing "laboratory instruction on the actual routes used for state driver's license road tests,"^[27] because he does not provide: "behind-the wheel instruction" to his students; "instruction astride a motorcycle or motorized bike;" use of a driving "simulator;" or range instruction to Class D students at the Eagan facility.^[28]

7. Because the hearing record is inadequate to establish that Mr. Collins instruction practices "substantially depart from commonly accepted practices as used by other driver education programs and instructors,"^[29] sanctioning Mr. Collins under Rule 7411.1850 (F) is not appropriate.

8. The Department is legally entitled to prohibit driver education training from occurring on the grounds of the Eagan Exam Station without undertaking formal rulemaking. Moreover, the Department may enforce such restrictions against licensed instructors through the Correction Order process.^[30]

9. The Department does not engage in discriminatory enforcement of its rules and policies in cases where only one individual refuses to abide by a lawful direction.^[31]

10. The license of an instructor may be revoked, suspended, or not renewed if the instructor has committed serious or repeated violations of the requirements of a statute, rule or correction order.^[32]

11. To the extent that the Memorandum that follows below includes matters that are more appropriately characterized as Conclusions, those items are incorporated by reference.

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that the:

1. The Licensee, William S. Collins, be sanctioned for repeated violations of the requirements of a Department rule and a validly issued Correction Order; and,
2. The Commissioner MODIFY the proposed 30-day suspension of Mr. Collins' Instructor License — License No. 5337 — so as to provide for a term of suspension of fourteen (14) calendar days.

Dated: May 1, 2007.

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Taped, 10 tapes
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Public Safety (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Michael Campion, Commissioner of Public Safety, 444 Cedar Street, Saint Paul, Minnesota 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minnesota Statutes § 14.62 (2a). The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon

expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota Statutes § 14.62 (1), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

As detailed below, the Administrative Law Judge undertook a three-part analysis in assessing the Licensee's claim for relief – namely: (a) Whether the Department's regulations prohibited the Licensee's instruction practices? (b) Whether the Department unfairly or arbitrarily applied the cited regulations to the Licensee? (c) What, if any, licensing sanction should be applied in this case?

Comparing Part 7411 with the Licensee's Practice of Instruction

Minn. Stat. § 171.35 confers upon the Commissioner of Public Safety the power to "adopt rules governing the requirements for an instructor's license, which may include ... safety principles and practices ... and such other matters as the commissioner may prescribe," so long as these driving instructors are not required by the regulations "to have qualified for a teacher's certificate as required in the public school system."^[33] The regulations promulgated by the Department under this delegation of authority are found in Part 7411 of Minnesota Rules.

Among the regulations adopted by the Department are substantive restrictions on the content of pre-examination driving instruction. Minn. R. 7411.0435 reads:

Knowledge tests, curriculum used by a program, and instruction must not substantially duplicate any part of a Minnesota driver's knowledge examination and must not duplicate the road or skills test administered to students or instructor applicants, including state test ranges and routes.^[34]

In an earlier regulation, the Commissioner broadly defines "instruction" as "lecture, tutoring, practice driving, lessons, or other teaching method approved by the commissioner to teach the proper operation of a motor vehicle."^[35]

The Commissioner announced three bases for the proposed suspension of Mr. Collins' license^[36] – complaining that his methods of instruction: (a) duplicated the state test range and routes in violation of Minn. R. 7411.0435; (b) amounted to "laboratory instruction" on actual test routes in violation of Minn. R. 7411.0355, subp. 5;^[37] and were contrary to public safety in violation of Minn. R. 7411.1800, subp. 1.F.^[38]

A. Duplication of the road test, state test ranges or routes.

Mr. Collins argues that his practice of meeting his student-customers on the course of the Eagan Exam Station, and detailing what items state examiners will be evaluating at particular locations of the course route, does not “duplicate” a state road test, test range or route. Central to the Licensee’s argument is that his use of the Eagan Exam Station does not involve either driving the course with the student or use of the entire course route.

This argument fails. When “duplicate” is used as a verb – as it is used in Rule 7411.0435 – it is commonly and plainly understood to mean “to double,” or “corresponding to something else.”^[39] As a verb, duplicate encompasses more than exact, mirror images of the original.

Before resorting to other interpretative devices, tribunals in Minnesota construe words according to their common usage^[40] – particularly when such usages reflect the obvious purposes behind the rule.^[41] Rule 7411.0435 can be plainly read to prohibit partial replications or simulations of the conditions at the Eagan Exam Station, and this is the obvious purpose behind the rule. For that reason, special techniques of regulatory construction are not needed to discern the meaning of this rule.

Because Mr. Collins’ practice of meeting his student-customers on the course of the Eagan Exam Station, and detailing what items state examiners will be evaluating at particular locations of the course route, his instruction practice violates the prohibition in Part 7411.0435 of “duplicating” a state road test, test range or route. As detailed below, therefore, application of a licensing sanction is appropriate.

B. Prohibited Laboratory Instruction.

In confronting the Department’s alternate basis for discipline, Mr. Collins asserts that his teaching methods do not run afoul of the regulatory prohibition on providing “laboratory instruction on the actual routes used for state driver’s license road tests”^[42] because he does not provide: “behind-the wheel instruction” to his students; “instruction astride a motorcycle or motorized bike”; use of a driving “simulator”; or range instruction to Class D students at the Eagan facility.^[43]

On each score, Mr. Collins is correct – the prohibitions set forth in Part 7411.0355 simply do not reach his conduct. In Part 7411.0100, subp. 19, the Department has given a precise definition to “laboratory instruction” and the Licensee’s conduct, however objectionable it may be to the agency, does not meet that regulatory definition.

The Department argues that any reading of 7411.0355 which does not include Mr. Collins' conduct, would lead to the nonsensical results – specifically, that “range instruction” would be permitted for Class A, B and C students but forbidden for Class D students.^[44] This argument, however, falls short. First, while one might imagine a reasonable basis for a range-driving rule that distinguishes among different classes of drivers,^[45] the more important point is that when the text of a rule is plain and unambiguous, state tribunals will not ordinarily read limitations into the text that are not there.^[46] Because the imposition of a regulatory sanction under Rule 7411.0355 would first require the Department to shoe-horn words into the regulation that are not present, the Commissioner should not claim this rule as a basis for disciplining Mr. Collins.

Second, and likewise important, any fear that such a conclusion might prompt Class A, B or C students and instructors to undertake pre-test practice driving at the Eagan Exam Station, is more than adequately guarded against by the anti-duplication provisions of Rule 7411.0435 – and, as explained further below, the Correction Order process. The Department need not choose between sanctioning Mr. Collins under Rule 7411.0355 and suffering pre-test range driving.

C. An Instruction Method that Adversely Affects Public Safety and Substantially Departs from Commonly Accepted Practices

A further ground for the Department's proposed licensing sanction is that Mr. Collins' teaching practice violates the provisions of Minn. R. 1711.1850, subp. F. Under that provision, the Commissioner may revoke, suspend or not renew an instructor license when the instructor has provided instruction in a way that “adversely affects the student's education or public safety,” and that “substantially departs from commonly accepted practices as used by other driver education programs and instructors.”^[47]

Even if the Department could establish the first prong of the regulatory requirement (namely, that Mr. Collins' practice of lecturing students at the side of the roadways in the Eagan Exam Station adversely affects public safety – and there is much to support that view^[48]) the hearing record is simply inadequate to establish the second element of the test; specifically, that this teaching method substantially departs from commonly accepted practices used by other driver education instructors.

Indeed, as part of the Department's rebuttal to the Licensee's dual claims that he is being unfairly singled out for harsh treatment, and that the public safety risks of his teaching practice are very modest, government officials testified persuasively as to their many efforts to warn off other driving instructors from using similar methods at state exam stations.^[49] Moreover, these officials testified credibly that if the testing site roadways were dotted with groups of private instructors and students, the results could be very hazardous.^[50] Yet, in

another sense, this evidence proves too much. Driving instruction at the state exam site cannot simultaneously be an advantage that other instructors would eagerly claim (thus creating roadside crowds), and also be a practice that the community of driving instructors, in the main, rejects. Because the underlying record does not provide a sufficient basis for sanctioning Mr. Collins under Rule 7411.1850, subp. F, the Commissioner should not claim this as a basis for any later discipline.

D. The Correction Order Process

While it is not addressed squarely in the parties' briefs, Mr. Collins' appeal proceeds under an assumption that the Department of Public Safety may not restrict or impede his activities on government property unless those restrictions are separately detailed in state regulations. Yet, this is not our law.

As the U.S. Supreme Court has remarked often, the "Government, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated."^[51] In this case, the State of Minnesota obtained and established the Eagan Exam Station site in order to administer driving tests,^[52] and has secured these premises so as to impede license applicants from either practicing on, or becoming familiar with, the features of the testing site in advance of those tests.^[53] Moreover, shielding the features of the testing site is a use of government property that is consistent with the lawful purposes assigned to the Department by the Minnesota Legislature.^[54]

This point is made with sharper clarity through the lens of Mr. Collins' own testimony. The Licensee is eager to continue his practice of providing instruction to students at the Eagan Exam Station because if he can eliminate the travel time from the place where he delivers the instruction, to location of the test, he is able to lower the cost of his services to students.^[55] Further, Mr. Collins' separate inquiries have made it clear to him that obtaining the use of an alternate site close to the exam station, while possible, would be "cost-prohibitive."^[56]

Neither the Department of Public Safety nor the Minnesota Department of Transportation, however, may be forced to lend Mr. Collins' its property against its will, or pressed into becoming a co-venturer in his driving school, so as to reduce Mr. Collins' cost of doing business. The Licensee can no more demand that state agencies lend him their property than he could insist that any of the other property owners along Cliff Road (and adjacent to the Eagan Exam Station^[57]) do so. In this context, the state is a property owner with rights that are similar to those held by its Eagan neighbors.

Second, and likewise important, Mr. Collins assumes that the only sources of the Department's property management powers are those which can be found in Part 7411 of the Minnesota Rules. This also is not the law. Minn. Stat. § 14.03, subd. 3(1), includes a complete exemption from the requirements of

state rulemaking for “rules concerning only the internal management of the agency or other agencies that do not directly affect the rights or procedures available to the public.”^[58] At the core of the matters that concern the internal management of the Department of Public Safety are the methods by which it administers the property under its control, and its testing regimes, in furtherance of the purposes assigned to it by the Legislature.^[59]

To this point, the case of *In re Leisure Hills Health Care Center* is very instructive. In that case, Leisure Hills, a nursing care facility licensed by the Minnesota Department of Health, complained that the agency’s methods of carrying out nursing home inspections should be subject to the rulemaking requirements of the Minnesota Administrative Procedures Act. Disagreeing, the appellate panel held that the methods by which the agency inspected a licensee’s performance were exempt from rulemaking under Minn. Stat. § 14.03, subd. 3(1). As the panel observed:

First, the Department's procedures do not directly affect the rights of the public. The Department has promulgated its substantive standards in accordance with the Minnesota APA. Because failure to comply with these substantive standards may result in assessments and other penalties, these substantive rules directly affect Leisure Hills' rights. The inspection procedures by which the Department enforces the substantive standards, however, do not directly affect Leisure Hills' rights. Although Leisure Hills may have an interest in the inspection procedures used by the Department, Leisure Hills has no right to require certain inspection procedures....

Second, the Department's inspection procedures do not directly affect the procedures available to the public. Rather, the Department's inspection procedures involve only the internal management of the agency, which are committed to the Department's broad discretion....

....

Because the Department's inspection procedures do not contain substantive standards, they do not directly affect the rights of or procedures available to the public. We conclude that the Department need not promulgate its inspection procedures pursuant to the rulemaking requirements of Minnesota APA.^[60]

Similarly, in this case, while Mr. Collins undoubtedly has a professional interest in the testing methods that are used by the Department of Public Safety at the Eagan Exam Station^[61] – and, specifically whether license applicants may receive training at the site before a test – he has no legal right to insist that these test procedures be established through rulemaking. As in *Leisure Hills*, the methods by which an agency tests performance to standards that are found elsewhere in the law “involve only the internal management of the agency,” and are “committed to the Department's broad discretion.”^[62]

The import of *Leisure Hills* for the Department is that even in the absence of Rule 7411.0355 (or any other provision of Part 7411 for that matter) the Commissioner of Public Safety is entitled to place reasonable restrictions on the activities that occur at testing sites under state control. Further, these restrictions may be set and adjusted without undertaking rulemaking. As happened in this case, the Commissioner may lawfully plant a road sign at the entrance to the facility declaring “No Training,” and enforce this restriction against licensed instructors through the Correction Order process.^[63]

The Licensee’s Claims of Disparate Treatment

Mr. Collins asserts that he was selectively singled out for regulatory sanction because of his earlier challenges to Department policies and proposed rules.^[64] The Equal Protection Clause of the 14th Amendment protects citizens against the intentional, discriminatory enforcement of nondiscriminatory laws.^[65]

To prove discriminatory enforcement, however,

a defendant bears the heavy burden of establishing, at least *prima facie*, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of a constitutional right. The defendant must prove discriminatory enforcement by a clear preponderance of the evidence.^[66]

The hearing record does not bear out either of the required elements of this claim. The record is clear that the Department sought to enforce the "no training" policy at various exam stations and against a variety of instructors and student groups – not just against Mr. Collins – but that only the Licensee refused to comply.^[67] The Department has not engaged in discriminatory enforcement of its rules and policies in cases where only one individual refuses to abide by a lawful direction.^[68]

Moreover, beyond the mere allegation that he was selected for sanction as a reprisal for his earlier efforts to hold agency officials to account, there is no evidence in the record to support this claim. The fact that a regulatory sanction followed in time to some constitutionally protected activity, without more, does not amount to retaliation for that activity.^[69] Under these circumstances, the licensee's claim of selective and discriminatory enforcement fails.^[70]

Propriety of the Sanction

While the application of an administrative sanction is later reviewed by the state courts under a deferential “abuse of discretion” standard, these courts have also reminded agency officials that the severity of any sanctions must be proportionate to the seriousness of the underlying violation.^[71] The call for close proportionality has importance in this case and a few points deserve emphasis.

First, notwithstanding his very blunt, and at times, combative personal style, Mr. Collins has won the esteem of officials who work at the Eagan Exam Station.^[72] Indeed, both in their hearing testimony, and the Department’s later papers, agency officials remark upon “Mr. Collins’ passion and personal commitment to traffic safety and quality driver education,” his leadership in the driving instruction field, and their “hope that he might set the example in this area.”^[73] In this respect, Mr. Collins’ status as an industry leader and would-be role model make him an atypical candidate for licensing sanctions.

Second, while the Administrative Law Judge recommends that a licensing sanction be imposed, this recommendation is grounded only in part on the rationale set forth in the Notice of proposed suspension. As to other claimed violations, the Administrative Law Judge maintains that Mr. Collins has the better reading of the regulations. Likewise significant, Department officials testified forthrightly that it was not free from doubt whether the provisions of Part 7411 that they relied upon covered the practices that they wanted to ban at the Eagan Exam Station.^[74] Yet, in order for Mr. Collins to be able to present his reading of the applicable law to a neutral arbiter, outside of the agency, he first had to refuse to abide by the Department’s reading of the regulations.^[75]

In the view of the Administrative Law Judge, these facts provide an important context to Mr. Collins’ regulatory violation and insight into what sanction would be proportional to his breach.

Conclusion

In summary, and for the reasons detailed above, the Administrative Law Judge respectfully recommends that:

- (a) a licensing sanction be imposed for the Licensee’s violations of Minn. R. 7411.0435 and 7411.1850, subp. K;
- (b) any licensing sanction should not be separately grounded upon claimed violations of Minn. R. 7411.0355 or 7411.1850, subp. F; and,
- (c) the suspension period be reduced from 30 days to 14 days.

E. L. L.

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- [1] See, Exhibit 20; Testimony of W. Collins; Testimony of K. Allen.
- [2] See, Exs. E, 15 and 20; Test of W. Collins.
- [3] See, e.g., Exs. D and 3.
- [4] See, Test of K. Allen; Ex. D.
- [5] See, Test. of K. Allen.
- [6] *Id.* and Minn. Stat. § 171.015 (2) (2006).
- [7] See, Exs. 1 and 3; Test. of K. Allen.
- [8] See, Ex. A; Test. of K. Allen.
- [9] See, Ex. B; Test. of K. Allen.
- [10] See, Ex. 8; Test. of K. Allen.
- [11] *Id.*
- [12] *Id.*
- [13] *Id.*
- [14] *Id.*
- [15] See, Test. of K. Allen; Testimony of J. Kopcinski.
- [16] See, Ex. C; Test. of K. Allen.
- [17] See, Ex. F and Ex. 8.
- [18] *Id.*
- [19] *Id.*
- [20] See, Exs. 8 and 10.
- [21] See, Ex. F.
- [22] *Id.*
- [23] *Id.*
- [24] See, Test. of W. Collins.
- [25] Compare, Ex. 13 with Minn. R. 7411.1875 (2005).
- [26] See, Minn. R. 7411.1875 (B) (2005).
- [27] See, Minn. R. 7411.0355 (5) (2005) (“Instruction Locations”).
- [28] Compare, Minn. R. 7411.0100 (19) (2005) with Test. of W. Collins.
- [29] See, Minn. R. 7411.1850 (F) (2005).
- [30] See, Minn. R. 7411.1875 (2005).
- [31] Compare, *Thul v. State*, 657 N.W.2d 611, 618 (Minn. App.) *review denied* (Minn. 2003).
- [32] See, Minn. R. 7411.1850 (J) (2005).
- [33] See, Minn. Stat. § 171.35 (2a) (b) (2006).

- [34] See, Minn. R. 7411.0435 (2005) (emphasis added).
- [35] See, Minn. R. 7411.0100 (17) (2005) (“Definitions”).
- [36] See, Ex. F at 3-4.
- [37] See, Minn. R. 7411.0355 (5) (2005) (“A program must not provide laboratory instruction on the actual routes used for state driver’s license road tests, except when unavoidable due to the lack of alternative routes.”).
- [38] See, Minn. R. 7411.1800 (1) (F) (2005) (“The license of a program may be revoked, suspended, or not renewed ... [if the] program or an instructor has conducted business in a way that adversely affects the student’s education or public safety and that substantially departs from commonly accepted practices as used by other driver education programs and instructors.”).
- [39] See, e.g., *Random House Unabridged Dictionary*, at 607 (2d ed. 1993).
- [40] Compare, Minn. Stat. § 645.08 (1) (2006); *Lucas v. Am. Family Mut. Ins. Co.*, 403 N.W.2d 646, 650-51 (Minn. 1987); *Comm’r of Revenue v. Richardson*, 302 N.W.2d 23, 26 (Minn. 1981) (“No room for judicial construction exists when the statute speaks for itself.”).
- [41] See, e.g., *Lennartson v. Anoka-Hennepin Indep. Sch. Dist.*, 662 N.W.2d 125, 131 (Minn. 2003) (“We are properly reluctant to interpret the rule as contradictory to its plain meaning, especially when the plain meaning is consistent with the purpose behind the rule.”).
- [42] See, Minn. R. 7411.0355 (5) (2005) (“Instruction Locations”).
- [43] Compare, Minn. R. 7411.0100 (19) (2005) with Test. of W. Collins.
- [44] See, Department’s Post-Hearing Brief at 7-8.
- [45] Compare generally, Minn. R. 7411.0325 (2005) (“Student Age, Qualifications; Enrollment Requirements”).
- [46] See, generally, *Rubey v. Vannett*, 714 N.W.2d 417, 422 n.2 (Minn. 2006) (The Minnesota Supreme Court declined to read into rules of Civil Procedure additional standards that “the rule’s drafters left out”); *Vandenheuvel v. Wagner*, 690 N.W.2d 753, 757 (Minn. 2005) (where the language of the rule was “plain and unambiguous” the Supreme Court will not read new limitations into the rule).
- [47] See, Minn. R. 7411.1850, subp. F (2005).
- [48] See, Ex. D and Test. of R. Aguirre; K. Allen; J. Kopcinski; and R. Christiansen.
- [49] See, Ex. 8; Test. of K. Allen; J. Kopcinski; and R. Christiansen.
- [50] See, Test. of K. Allen and J. Kopcinski.
- [51] See, *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 800 (1985); see also, *Ed. Assn. of Perry v. Perry Local Educators’ Assn.*, 460 U.S. 37, 46 (1983) (“[t]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated”); *Adderley v. Florida*, 385 U.S. 39, 47-48 (1966) ([the law] “does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose”).
- [52] See, Test. of K. Allen.
- [53] See, Test. of K. Allen; J. Kopcinski; and R. Christiansen.
- [54] Compare, Minn. Stat. §§ 171.015, subd. 5 and 171.13, subd. 1 (2006) with Minn. R. 7411.1875 (2005).
- [55] See, Test. of W. Collins.
- [56] *Id.*

- [57] See, Ex. 1.
- [58] See, Minn. Stat. § 14.03 (3) (1) (2006).
- [59] Compare, Minn. Stat. §§ 171.015, 171.13 (2006).
- [60] *In re Leisure Hills Health Care Center*, 518 N.W.2d 71, 74-75 (Minn. App.) *review denied* (Minn. 1994) (citations omitted and emphasis added).
- [61] See, Ex. 11 at 1-3; Ex. 12.
- [62] See, *In re Leisure Hills Health Care Center*, 518 N.W.2d at 74.
- [63] Compare, Ex. 13 with Minn. R. 7411.1875 (2005).
- [64] See, e.g., Exs. 8, 11, 12; Test. of W. Collins.
- [65] See, *City of Minneapolis v. Buschette*, 240 N.W.2d 500, 502 (Minn. 1976).
- [66] See, *State v. Hyland*, 431 N.W.2d 868, 872-73 (Minn. App. 1988) (quoting *State v. Russell*, 343 N.W.2d 36, 37 (Minn. 1984)).
- [67] See, Ex. 8; Test. of K. Allen and J. Kopcinski.
- [68] Compare, *Thul v. State*, 657 N.W.2d 611, 618 (Minn. App.) *review denied* (Minn. 2003).
- [69] Compare generally, *Perry v Sinderman*, 408 U.S. 593, 598 (1972) (While dismissing a university professor for public criticism of the Board of Regents may be “an impermissible basis for termination of his employment,” on remand the employee was obliged to establish that his dismissal was in “reprisal for the exercise of constitutionally protected rights”).
- [70] Mr. Collins also challenges the propriety of barring him from undertaking instruction at the Eagan Exam Station when students at a separately authorized program of the Minnesota State Colleges and University are permitted to train on the very course upon which they will later be tested. Compare, Exs. D and 16. While this asymmetry may raise policy questions for the State Legislature, the Department – which neither operates nor controls this collegiate program – has not treated Mr. Collins unfairly.
- [71] See, e.g., *in re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. App. 2003); *In re Ins. Licenses of Kane*, 473 N.W.2d 869, 877-78 (Minn. App.) *review denied* (Minn. 1991).
- [72] See, e.g., Test. of Christiansen.
- [73] See, Department’s Post-Hearing Brief at 11.
- [74] See, Test. of K. Allen; J. Kopcinski; and R. Christiansen.
- [75] See, Minn. R. 7411.1925 (D) (2005).