

**PROCEDURES FOR SUSPENSION, REVOCATION, AND REFUSAL TO
ISSUE OR RENEW A SCHOOL BUS INSPECTION CERTIFICATE, SCHOOL
BUS DRIVER'S CERTIFICATE, OR SCHOOL BUS DRIVER
INSTRUCTOR/TESTER CERTIFICATE**

Code **EDF** Issued **10/13/10**

Revised

Constitutional and Statutory Provisions:

S.C. Code Ann. Sections:

1-23-310 <i>et seq.</i>	Administrative procedures
59-5-60	General powers of [State] Board
59-5-70	Hearing officer may be designated
59-67-270	Inspection of School Buses
59-67-108	School Bus Driver's Certification
59-67-470	Bus Drivers Selection, Eligibility, Training and Certificates
5-43-80	Transportation Regulations A, N, T, EE
59-67-280	Penalties

State Board Rule:

Procedures for Taking Action on Certificates

- I. Application of S.C. Code Ann. § 1-23-310 *et seq.*, Administrative Procedures Act (APA)

The APA will govern all proceedings conducted in accordance with this Rule of Governance.

- II. Grounds for Taking Action on an Inspector Certificate, School Bus Driver's Certification, and School Bus Driver Instructor/Tester Certification

The State Board of Education, through its appointed Hearing Panel, has the legal authority to take action on the certificate of an inspector, school bus driver, or school bus driver instructor/tester when one or more of the following grounds exist:

- A. An inspector, school bus driver, school bus driver instructor (classroom, in-service and behind-the-wheel) or school bus driver tester (physical performance and safety-officer/road skills) is convicted of any crime, including but not limited to, crimes involving dishonesty, drugs, deceit, physical violence, violence against children, sexual acts, or moral turpitude.

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- B. An inspector makes a material false finding or statement, signs a false form or affidavit, or conceals a material fact in connection with a school bus inspection or in connection with the application for or renewal of an inspection certificate.
- C. A school bus driver instructor/tester makes a material false finding or statement, signs a false testing form or affidavit, or conceals a material fact in connection with a school bus instructor/tester or in connection with the application for or renewal of a school bus driver's certification.
- D. A school bus driver makes a material false finding or statement on a form or affidavit or conceals a material fact in connection with the delivery of school bus driving services or in connection with the application for or renewal of their school bus driver's certification.
- E. A school bus driver operates a school bus in violation of established written operating practices in a manner that is found by the Hearing Panel to be grossly negligent and causing injury to an individual, endangering a student passenger, or damaging a state-owned school bus.
- F. An inspector, school bus driver, or school bus driver instructor/tester fails to comply with or violates any statute in Title 59 relating to obtaining a school bus inspection, a school bus driver's certification, or a school bus driver instructor/tester certification.
- G. An inspector engages in fraud or fraudulent practices in relation to securing a school bus inspection for any person ("fraudulent practice," as used herein, includes, but is not limited to, any conduct or representation on the part of the inspector which gives the impression that a school bus inspection certificate to operate a school bus may be obtained by any means other than those required by the SCDE in compliance with Title 59 of the South Carolina Code of Laws).
- H. A school bus driver instructor/tester engages in fraud or fraudulent practices in relation to issuing a Commercial Driver's License and/or a school bus driver's certification for any person ("fraudulent practice," as used herein, includes, but is not limited to, any conduct or representation on the part of the instructor/tester which gives the impression that a school bus driver's certificate to operate a school bus may be obtained by any

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means other than those required by the SCDE in compliance with Title 59 of the South Carolina Code of Laws).

- I. A school bus driver instructor/tester fails to comply with the conditions of his or her related SCDE agreement.
- J. A school bus driver that refuses to be retested, when selected under the SCDE random school bus driver's certification examination/inspection recall program.
- K. A school bus driver or school bus driver instructor/tester refuses to test or tests positive for any substance covered under the federal commercial driver random drug and alcohol testing requirements as defined in Federal Motor Carrier Safety Regulations Part 40 (49 C.F.R. 40).
- L. An inspector, school bus driver, or school bus driver instructor/tester is under the influence of alcohol or narcotics or becomes incompetent to carry out their duties as described in Title 59 of the South Carolina Code and the related SCDE school bus manual, policies, or procedures.

III. Initiation of Certificate Action Procedures

A. Notice to the Department

The Department may learn of possible grounds for suspension or revocation of a person holding a certificate from a school district, agency staff, the police, and other sources.

B. Notice of Pending Action and Right to a Hearing

Upon determination that cause exists for the suspension, revocation, and refusal to issue or renew certifications of a school bus inspector certification or a school bus inspection certificate, a school bus driver's certification, or a school bus driver instructor/tester certificate, the SCDE Office of Transportation will notify the individual of his or her right to a hearing.

The notice will be sent by certified mail and must state the following:

- 1. the grounds for the pending action on the certificate;
- 2. the right of the inspector, driver, or instructor/tester to a hearing;
and

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3. the requirement that a request for a hearing be submitted in writing within 30 days of the receipt of the notice.

C. Request for Hearing

If the inspector, driver, or instructor/tester requests a hearing, the Office of Transportation will notify the inspector, driver, or instructor/tester of the date, time, and location of the hearing and will provide him or her with the name and the contact information for the individuals assigned to the Hearing Panel. The hearing date shall be no later than 30 days after receiving the request for a hearing, unless the parties agree to a later hearing date.

If the inspector, driver, or instructor/tester fails to make a written request for a hearing within 30 days, the inspector, driver, or instructor/tester will have waived the right to a hearing and shall forfeit his or her certificate.

D. Conduct of the Hearing

If requested, a hearing will be conducted by a three-member Hearing Panel. Members of the Panel will be appointed by the State Board of Education. The Board may approve a pool of Hearing Panel members. From that pool, one representative from the SCDE, one representative from a school district, and one other individual will serve on each Hearing Panel.

The inspector, driver, or instructor/tester may request a closed or open proceeding. The hearing will be recorded. The inspector, driver, or instructor/tester may present evidence, including, but not limited to, documents and witnesses to support his or her case.

E. Hearing Panel Conflict of Interest

In the event that a member of the Hearing Panel has a conflict of interest, he or she must recuse him- or herself. If any party believes that a member of the Panel has a conflict of interest, a written statement describing the nature of the conflict and requesting the member's recusal from the case should be submitted to the chair of the Panel within 48 hours of the party's receipt of the hearing notice.

F. Hearing Panel's Decision

Following the hearing, the Panel will issue a written decision on the case within 15 days. This decision is the final action of the agency.

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IV. Appeals Process

Either party may appeal a decision of the Hearing Panel in any of the above proceedings by filing a petition with the Administrative Law court within 30 days of the receipt of the final order, pursuant to S.C. Code Ann. § 1-23-310 (Supp. 2010). The party requesting the appeal is responsible for the cost of having the recording of the hearing transcribed.