

PROCEDURES FOR DISCIPLINARY ACTION OF TRANSPORTATION CERTIFICATIONS

Code EDA

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Constitutional and Statutory Provisions:

S.C. Code Ann. Sections:

1-23-310 <i>et seq.</i>	Administrative Procedures
59-5-60	General Powers of the State Board
59-67-20	Regulations of State Board Governing School Buses
59-67-108	Training and Certification of Drivers
59-67-150	Qualifications of Bus Driver; Drinking or Smoking on Bus
59-67-270	Inspection of School Buses
59-67-410	Control by State Board of School Bus Transportation
59-67-470	Bus Driver Selection, Eligibility, Training and Certificates
59-67-570	Rules and Regulations

24 S.C. Code Ann. Regulations:

R. 43-80	Operation of Public Pupil Transportation Services
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State Board Rule:

Procedures for Disciplinary Action of Transportation Certificates

I. Application of the Administrative Procedures Act (APA)

The Administrative Procedures Act (APA), S.C. Code Ann. § 1-23-310 *et seq.* (2020), will govern all proceedings conducted in accordance with this Rule of Governance.

II. Definitions for This Governance

- A. Certificate – Includes all certificates issued by the South Carolina Department of Education (SCDE) in relation to school buses and student transportation.
- B. Certified individual – Includes anyone certified by the SCDE for transportation purposes. This includes but is not limited to School Bus Classroom Training Instructors, School Bus Safety Officers, Behind-the-Wheel Training Instructors, School Bus Physical Performance Tests Administrators, bus inspectors, and bus drivers.

III. Grounds for Taking Action on a Certificate

The State Board of Education (State Board), through its appointed Hearing Officer, may take action against an individual's certificate if the individual:

- A. Is convicted of any crime against the laws of South Carolina or the United States.
- B. Is under the influence of controlled substances and/or alcohol during working hours or while operating a school bus.
- C. Makes a false statement in connection with their certified duties, including statements on the application for or renewal of their certification.
- D. Operates a school bus in violation of established operating practices and procedures in a manner that is found to be grossly negligent, endangering human life or causing injury to an individual or damaging a state-owned school bus.
- E. Fails to comply with the conditions of his or her related SCDE agreement.
- F. Refuses to be tested when selected under the SCDE random school bus driver's certification examination/inspection recall program.
- G. 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).

IV. Summary Suspension of a Certificate

S.C. Code Ann. § 1-23-370 (2020) authorizes the SCDE to summarily suspend an individual's certificate if it finds that public health, safety, or welfare requires emergency action. Summary suspensions will be temporary, pending proceedings for revocation or other action.

V. Disciplinary Action Procedures

A. Notice to the SCDE

The SCDE may learn of possible grounds for action against an individual's certification from a school district, SCDE staff, law enforcement, technological monitoring, or other sources.

B. Notice of Pending Action and Right to a Hearing

Upon determination that cause exists for the suspension, revocation, or refusal to issue or renew a certificate, the SCDE will notify the individual of their right to a hearing before an appointed hearing officer.

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

01. the grounds for the pending action on the certificate;
02. the right of the certified individual to be represented by counsel;
03. the right of the individual to a hearing; and
04. 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 certified individual requests a hearing, the Office of General Counsel will notify them of the date, time, and location of the hearing and the name and the contact information for the Hearing Officer.

If the certified individual fails to make a written request for a hearing within 30 days, they will have waived the right to a hearing. If the certified individual requests a hearing but does not appear, the Hearing Officer may make a determination based solely on information presented by the SCDE.

D. Hearing Officer Conflict of Interest

In the event that a Hearing Officer has a conflict of interest, they must recuse themselves. If any party believes that a Hearing Officer has a conflict of interest, a written statement describing the nature of the conflict and requesting recusal from the case should be submitted to the Hearing Officer within 48 hours of the party's receipt of the hearing notice.

E. Prehearing Statement

At least 10 days prior to the hearing, each party must deliver a prehearing statement to the Hearing Officer and the opposing party. The prehearing statement must include:

1. The certified individual's name;
2. a brief description of the facts of the case;
3. a list of proposed witnesses and brief descriptions of their testimony;
4. and an attachment of all exhibits to be introduced at the hearing.

Any witness or exhibit not included in the prehearing statement may be added through the filing of an amended prehearing statement at least 48 hours prior to the hearing. Otherwise, those witnesses and exhibits may not be presented at the hearing, absent a showing of exceptional circumstance, as determined by the Hearing Officer.

F. Conduct of the Hearing

If requested, a hearing will be conducted by a Hearing Officer appointed by the State Board. Each party will have the opportunity to present an opening and closing statement. All witnesses must be sworn and must testify under oath. The certified individual may have up to three character witnesses testify at the hearing.

The same evidentiary rules that apply to civil cases tried in the Court of Common Pleas will apply to certificate action hearings, pursuant to S.C. Code Ann. § 1-23-330 (2020). All testimony will be preserved for the record by an audio recording. In the event of an appeal, the appealing party must pay for the transcript of the hearing, if one is available.

G. Hearing Officer's Decision

Following the hearing, the Hearing Officer will issue a written decision on the case within 15 days. The decision will include separate sections for findings of fact and conclusions of law. This decision is the final action of the agency.

The Hearing Officer may order a revocation, suspension, or a dismissal of the action. Revocations are permanent and suspensions shall not exceed 3 years.

VI. Alternate Resolutions

If a certified individual enters into a consent agreement negotiated with the Office of General Counsel, the State Board may delegate the review and acceptance of that agreement to a Hearing Officer. By entering into a consent agreement and having that agreement accepted by a Hearing Officer, the certified individual is waiving his or her right to a hearing before a Hearing Officer.

VII. Appeals

Either party may appeal a decision of a Hearing Officer 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. § 1-23-600 (2020).