



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Appeal of Advanced Driver  
Training Regarding the Investigation by the  
Department of Transportation

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Case No.: TR-14-0024

FINAL DECISION

On April 9, 2014, the Department of Transportation (Department) conducted an investigation, including a program audit of Advanced Driver Training (Advanced). By letter dated August 7, 2014, the Department advised Advanced of its determinations. By letter dated September 5, 2014, Kris M. Engebretson, on behalf of Advanced Driver Training requested a hearing to contest the assessment of points under Trans 105.11(4)(b)10. Pursuant to due notice, the Division of Hearings and Appeals held a hearing on December 9, 2014, in Madison, Wisconsin. Mark F. Kaiser, Administrative Law Judge, presided.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Advanced Driver Training, by

Kris M. Engebretson  
Advanced Driver Training  
1540 Capitol Drive, #207  
Green Bay, WI 54303

Wisconsin Department of Transportation (Department), by

Attorney Daniel Graff  
Department of Transportation  
P. O. Box 7910  
Madison, WI 53707-7910

The Administrative Law Judge issued a Proposed Decision in this matter on January 15, 2015. No objections to the Proposed Decision were received. On January 28, 2015, the Department submitted a letter identifying three typographical errors and requesting minor clarification of two findings of fact. Other than correcting the typographical errors and including the clarifications requested by the Department, the Proposed Decision is adopted as the final decision in this matter.

## Findings of Fact

The Administrator finds:

1. Kris Engebretson is the owner of Advanced Driver Training (Advanced). Advanced provides classroom and behind the wheel driver education for new drivers and training for driving instructors.
2. Advanced participates in the Cooperative Driver Testing Program (CDTP). Driving schools participating in the CDTP may administer the knowledge and highway signs tests to students enrolled in driver education. Driving schools participating in the CDTP may also administer the knowledge and highway signs tests required for driving instructors.
3. Driving schools participating in the CDTP are required to execute an Intent to Participate in Class "D" Knowledge and Signs Testing agreement with the Department of Transportation (Department). Kris Engebretson entered into such an agreement on behalf of Advanced on December 12, 2006 (exh. R-1). By executing the agreement, Kris Engebretson agreed to comply with the Department's conditions for the CDTP. These conditions include several requiring test materials be kept confidential.
4. Kris Engebretson served on work groups and committees for the Department's Division of Motor Vehicles (DMV). In conjunction with this service he believes he was given a copy of the test materials around eighteen years ago. Kris Engebretson used much of the test materials he received in a manual he developed for students at Advanced. These materials were also used in a manual for training driving instructors for other driving schools. After executing the Intent to Participate in Class "D" Knowledge and Signs Testing agreement Kris Engebretson continued to use the test materials in the manuals including questions developed more recently.
5. The Department discovered Kris Engebretson's use of the test material in Advanced's manual when the child of a DMV employee brought home a workbook from a driving school in Crivitz that included questions from the Department's Knowledge and Highway Signs test. The DMV investigated and determined the source of the material was Advanced. On June 20, 2014, DMV employees Amber Cunningham and Alison Lebwohl interviewed Kris Engebretson regarding Advanced's use of questions from the Department's Knowledge and Highway Signs test in its manuals. Kris Engebretson did not deny that he had used the questions from the Department's Knowledge and Highway Signs test in Advanced's manuals.
6. By letter dated August 7, 2014, the Department issued a decision imposing the assessment of two points as a sanction against Advanced and Kris Engebretson for using questions from the Department's Knowledge and Highway Signs test in Advanced's manuals. The consequences of the recording of two points are:
  - 1) Advanced's bond will need to be increased from \$5,000 to \$10,000 for at least 24 months;
  - 2) Advanced will lose the ability to participate in the CDTP for at least 24 months; and,

- 3) Advanced will be put on an accelerated audit schedule for the next 24 months.

7. The written test students take to get their driving test is a subset of fifty questions from a test bank of approximately 170 questions. Kris Engebretson's and Advanced's use of questions from the Department's Knowledge and Highway Signs test in Advanced's manuals gave Advanced an unfair advantage over other driving schools because Advanced's students have seen the questions on the written driving test before taking it.

8. Through Kris Engebretson many of the questions in the Department's test bank have become widely disseminated to the students of Advanced and other driving schools. The Department has concluded that it will be necessary to develop a new bank of questions. The Department estimated that the cost of developing new test questions, preparing test materials, and translating those materials into other languages in which the test is available will be up to \$120,000 (testimony of Todd Erstad).

### Discussion

Kris Engebretson does not dispute that he used test materials in the manuals he prepared for Advanced. This is a violation of the agreement he made with the Department when he was allowed to participate in CDPT. Kris Engebretson discounted the seriousness of using the test questions in Advanced's manuals because he had the test materials prior to entering into the agreement to participate in the CDTP. He believes he originally received the test materials through his participation in work groups and committees with the DMV eighteen years ago. Kris Engebretson sees no problem in using the test questions as a teaching aid.

The Department's witnesses testified that providing the test questions to driving school students as part of the teaching materials will make it easier for those students to pass the test. As word spreads that Advanced's manual included the actual test questions that will be on the Class "D" Knowledge and Highway Signs test, Advanced will have an unfair advantage in enrolling driving school students. To prevent this unfair advantage for driving schools participating in CDPT and to ensure that future drivers study all of the Department's driving manual and not just learning the answers to questions that might be on the Class "D" Knowledge and Highway Signs test, the DMV requires that driving schools participating in the CDPT keep test materials confidential. The Department has a legitimate interest in keeping the test materials confidential and took steps to maintain confidentiality by making that a condition of participating in the CDTP.

The Department believes the breach of confidentiality of the test material by Kris Engebretson and Advanced will necessitate the development of a new bank of test questions at an estimated cost of over \$100,000. To his credit as soon as it was brought to his attention Kris Engebretson stopped using the manuals with the test material. The Department took this into consideration in assessing two penalty points, rather than the maximum of four, against Kris Engebretson and Advanced. However, from the time Kris Engebretson executed the Intent to Participate in Class "D" Knowledge and Signs Testing agreement, he should have known that he was required to keep the testing material confidential. Kris Engebretson and Advanced failed to do so. That failure is a violation of the Department's standards and justifies the assessment of two points against Kris Engebretson and Advanced.

### Conclusions of Law

The Administrator concludes:

1. Kris Engebretson's and Advanced's use of questions from the Department's Knowledge and Highway Signs test in Advanced's manuals gave Advanced an unfair advantage and violates provisions of the agreement Kris Engebretson executed in order to participate in the DMV's CDPT.

2. An action that violates a provision of the Intent to Participate in Class "D" Knowledge and Signs Testing agreement is, in turn, a violation of Wis. Stat. § 343.61(5m). Pursuant to Wis. Admin Code § Trans 105.11(4)(b)10, a violation of Wis. Stat. § 343.61(5m) that results in an unfair advantage to a driver school can result in the assessment of up to four points.

3. Pursuant to Wis. Stat. §§ 343.69(1) and 227.43(1)(bg), the Division of Hearings and Appeals has the authority to issue the following order.

### Order

The Administrator orders:

The Department's recording of two points against Kris Engebretson and Advanced for the use of questions from the Department's Knowledge and Highway Signs test in Advanced's manuals is a reasonable sanction and is AFFIRMED.

Dated at Madison, Wisconsin on February 5, 2015.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
Brian Hayes  
Administrator

## NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.