



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

In the Matter of the Appeal by Hands-On Driving,
Inc.

DHA Case No. DOT-24-0033

FINAL DECISION

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

Hands-On Driving, Incorporated, by

[REDACTED]
27415 281st Street, Suite B
Holcombe, WI 54745
handsondriving@gmail.com

Wisconsin Department of Transportation, by

Attorney Christian Hanson
P.O. Box 7910
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PRELIMINARY RECITALS

On December 10, 2024, the Divisions of Hearings and Appeals (DHA), by Administrative Law Judge Angela Chaput Foy, issued a Proposed Decision which affirmed the Wisconsin Department of Transportation's (Department) August 14, 2024 suspension of Hands-On Driving, Inc.'s driver school license for 12 months. Pursuant to the process described in Wis. Stat. § 227.46(2m), the parties were advised of the right to file objections to the Proposed Decision. No objections were filed.

Accordingly, the Administrator hereby adopts the Proposed Decision as DHA's Final Decision, as follows:

PROCEDURAL HISTORY

By letter dated August 14, 2024, the Wisconsin Department of Transportation (Department) suspended Hands-On Driving, Inc.'s driver school license for 12 months. On August 18, 2024, Hands-On Driving, Inc. filed an appeal of this suspension. Administrative Law Judge (ALJ) Angela Chaput Foy was assigned to preside over the matter. A telephone prehearing conference was held on September 6, 2024, at which time the issue for hearing was confirmed and the hearing was scheduled.

Pursuant to due notice, the hearing was held via Teams videoconference on October 22, 2024. The hearing was digitally recorded. Testimony was heard from [REDACTED] Zachary Schmitt, [REDACTED] [REDACTED] [REDACTED] and Keith [REDACTED]. The record includes the hearing recording and exhibits 1 through 22, 100 through 105, 108, and 109.

ISSUE FOR HEARING

The issue for hearing is whether the Department properly suspended Hands-On Driving Inc.'s driver school license pursuant to Wis. Stat. § 343.66 and Wis. Admin. Code Ch. Trans 105.

FINDINGS OF FACT

1. Hands-On Driving, Inc. (Hands-On) provides instruction for enrolled students to earn their commercial driver's license (CDL). Students participate in classroom, pre-trip, trailer backing, and driving instruction. For each student, the school maintains a student record, which records the number of hours the student has received of each type of instruction. A trainer initials the student record for each day the student receives instruction. Additionally, an instructor signs the student record when instruction is complete, and the student is ready to take the driving test for the CDL license with a third-party test provider. Hands-On also marks the student record with a star when the driving instruction occurs with another student also in the truck, instead of individually, for billing purposes. ([REDACTED] testimony, Exs. 3, 4)
2. In 2016 and 2018, the Wisconsin Department of Transportation (Department) audited Hands-On. In 2016, the Department found that Hands-On had violated Wis. Admin. Code §§ Trans 105.06(1)¹ and 105.05(2)(a)(1).² In 2018, the Department found that Hands-On had violated Wis. Stat. § 343.71(1m).³ Following each audit, the Department notified Hands-On by letter that corrective action was required to bring Hands-On into compliance. No points were assessed against Hands-On, but the Department notified

¹ Schools are required to issue receipts for all fees collected.

² Student records are required to contain the student's last name, first name, and middle initial.

³ Schools are required to include the fees charged, the contract number, the type of instruction, and the signature of a representative of the school in the customer contract.

Hands-On that the Department may record full points in the future if it identified the same violations. (Ex. 19 and 20)

3. [REDACTED] is a truck driver. He worked for Hands-On from March 4 to April 11, 2024. He is not licensed as a driver instructor. (Ex. 1, [REDACTED] testimony)
4. [REDACTED]
[REDACTED]
were students enrolled at Hands-On Driving in the spring of 2024 when [REDACTED] was an employee. Each of these students received driving instruction from [REDACTED] and [REDACTED] initialed these students' records for the days that he provided instruction. On certain days, more than one student would be in the truck for instruction, but no other instructor was present. ([REDACTED] [REDACTED] and [REDACTED] testimony)
 - a. For [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] the student records reflect that [REDACTED] was the only instructor; only [REDACTED] initials are on the student record for that day's instruction. (Ex. 3, 4, 5, 11, and 12)
 - b. For [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] another instructor's initials are also on the student record, next to [REDACTED] initials. (Ex. 6, 7, 8, 9, and 13)
5. When students are ready for testing, an instructor takes or accompanies the student in the truck to an off-site licensed test site. [REDACTED] at times, accompanied students to the test during his employment with Hands-On. ([REDACTED] testimony)
6. On Thursday, April 11, 2024, [REDACTED] got into a disagreement with an examiner at a test site. [REDACTED] did not agree with the way the examiner had set up the course, which the Department approved. [REDACTED] ridiculed the examiner and his course, and the conversation was heated. ([REDACTED] and [REDACTED] testimony)
7. On the evening of April 11, 2024, after the argument with the examiner, [REDACTED] talked to Keith [REDACTED] of Hands-On who told [REDACTED] not to come into work the next day, Friday, April 12, 2024. ([REDACTED] testimony)
8. On Friday, April 12, 2024, [REDACTED] called [REDACTED] (formerly known as [REDACTED] [REDACTED] a CDL auditor with the Department to report that he had been instructing students without a license at Hands-On. ([REDACTED] and [REDACTED] testimony)
9. On Monday, April 15, 2024, Hands-On terminated [REDACTED] employment in a phone call. Following the call, [REDACTED] drove to Hands-On, entered the office, and retrieved documentation. He did not tell anyone from Hands-On that he would be there or that he was taking documentation. He went to the office in the morning before it was open for business, and no one else was there. ([REDACTED] testimony, Ex. 1, 108)
10. After taking the documents, [REDACTED] contacted [REDACTED] at the Department again, by phone and email. He reported his termination. He provided his calendar and information about the students that he taught. ([REDACTED] testimony)

11. That same day, [REDACTED] forwarded [REDACTED] email to Edgar Rosado and [REDACTED] her supervisors at the Department. On April 16, 2024, [REDACTED] reviewed the Department's Commercial Skills Test Information System to see if any of the students identified by [REDACTED] had tested for a CDL license. (Ex. 14)
12. On or about April 18, 2024, [REDACTED] who at the time was a supervisor in the Driver Training and Records Unit in the Bureau of Driver Services at the Department of Motor Vehicles, spoke with two students: [REDACTED] and [REDACTED]. The students informed [REDACTED] that [REDACTED] was one of their instructors and that they did not have more than one instructor present at a time. (Ex. 14, [REDACTED] [REDACTED] and [REDACTED] testimony)
13. On April 18, 2024, [REDACTED] conducted an in-person audit of Hands-On without any prior notice to Hands-On. While she was there, she observed a tall cabinet with a locking device, but the cabinet was not locked nor were all of the student records in the cabinet. [REDACTED] asked for some student records that Hands-On was not able to immediately locate. These records were for students that [REDACTED] identified as students he taught. ([REDACTED] testimony, [REDACTED] testimony, Ex. 15)
14. On April 19, 2024, at approximately 8:30am, Hands-On notified [REDACTED] that they located the student records that [REDACTED] had requested the day before, and they emailed the student records to [REDACTED] later that day. ([REDACTED] testimony)
15. [REDACTED] Motor Vehicle Program Specialist, Driving Training School Coordinator for the Department, reviewed the information [REDACTED] received from Hands-On. She wrote an audit report, signed on August 14, 2024. The Department found Hands-On practice unsatisfactory for the following: unlicensed instruction, unsecured documentation, and issues with student record cards and contracts. (Ex. 16, [REDACTED] testimony)
16. On August 14, 2024, the Department issued Hands-On a letter summarizing its findings from the April 18, 2024 audit.
 - a. The Department found several violations of Wis. Stat. § 343.71(1m)(a) and Wis. Admin. Code §§ Trans 105.05(1), (3), and (4), including that some of the student record cards audited did not contain the customers' date of birth, home address, the fees charged, the contract number of the vehicle ID for the vehicle driven during lessons. The Department determined that zero points would be issued for these violations.
 - b. The Department found that Hands-On employee [REDACTED] an unlicensed instructor, gave lessons to customers in violation of Wis. Stat. § 343.62(1) and Wis. Admin. Code § Trans 105.11(4)(a)9. The Department assessed six points for this violation.
 - c. Additionally, the Department found that Hands-On falsified documents that it provided to the Department on a regulated matter which contained a false

statement on a material matter in violation of Wis. Admin. Code § Trans 105.11(4)(a)(3). The Department assessed six points for this violation.

This letter also suspended Hands-On's driver school license for 12 months, until August 15, 2025.

17. On August 18, 2024, Hands-On Driving, Inc. appealed the Department's suspension of its license.

DISCUSSION

The Department of Transportation may assess points against a driver school if they violate the statutes or administrative code based on the severity of the infraction. Wis. Admin. Code § Trans 105.11(1). The most significant violations accumulate six points. Wis. Admin. Code § Trans 105.11(4)(a). If a school receives six points or more, the Department is required to revoke the school's license or suspend it for a period of four months to one year. Wis. Admin. Code § Trans 105.12(2)(d).

In this case, the Department alleges that Hands-On committed two significant infractions, each incurring a six-point assessment for a total of 12 points, and as a result, the Department suspended Hands-On's license for one year. Specifically, the Department alleges that Hands-On had an employee, [REDACTED] instructing at the school without the proper licensure. *See* Wis. Admin. Code § Trans 105.11(4)(a)9. Additionally, the Department alleges that Hands-On falsified documentation to make it appear as though another licensed instructor was present with Mr. [REDACTED] during this instruction. *See* Wis. Admin. Code § Trans 105.11(4)(a)3.

In addition to contesting the violations and points, Hands-On also asserts that the Department improperly issued the suspension. Hands-On received a letter on August 14, 2024, indicating that its license was suspended. The letter did not provide the required notice and opportunity to respond before the points were assessed. *See* Wis. Admin. Code § Trans 105.12(1). Without the required notice, Hands-On was not permitted to respond to the Department about the facts that the Department determined were infractions.

The two violations for which the Department assessed points to Hands-On, and the process by which it issued the suspension shall each be addressed in turn.

1. Unlicensed Instructor

"No driver school may employ any person as an instructor unless the person holds a valid instructor's license." Wis. Stat. § 343.62. The Department shall assess six points against a driver school license if it finds "[i]nstructing at a driver training school without the proper license." Wis. Admin. Code § Trans 105.11(4)(a)9.

The record clearly supports a finding that Hands-On had an unlicensed instructor teach students. [REDACTED] an unlicensed instructor, testified to his teaching. Two students, [REDACTED] and [REDACTED] also testified that [REDACTED] was their sole instructor some days. Additionally, multiple

student records support this finding because only [REDACTED] is listed as the instructor for certain days' instruction. (Ex. 3, 4, 5, 11, and 12) The Department properly assessed Hands-On six points for violation of Wis. Stat. § 343.62(1) and Wis. Admin. Code § Trans 105.11(4)(a)9.

2. Falsification of Documents

The Department is required to assess six points against a driver school license if it finds that the school was "[p]roviding documentation or information to the department on any matter regulated by subch. VI of ch. 343, Stats., or this chapter which contains a false statement as to any material matter." Wis. Admin. Code § Trans 105.11(4)(a)3.

The Department alleges that [REDACTED] an auditor, asked for several student records while she was at Hands-On for the audit on April 18, 2024. Hands-On could not locate the records that day but found and produced them to the Department the next day, on April 19, 2024. The Department believes that Hands-On had not lost the records but waited until the auditor left and then added initials to some of the records so that it would look as though another instructor was present with [REDACTED]. Hands-On then produced the modified, falsified records the next day. It was unclear from [REDACTED] testimony exactly which records were provided the day of the audit and which were produced the next day.

Hands-On asserts instead that the records it was unable to produce on April 18, 2024 were missing and blames [REDACTED] for taking records when he went into Hands-On's office after his termination on April 15, 2024. Hands-On alleges that it discovered other information, including [REDACTED] job application, missing. Hands-On posits that [REDACTED] must have returned the other student records after it reported information missing and the sheriff intervened.

The record is insufficient to determine which of these scenarios occurred, but it also is not determinative of the alleged violation. Hands-On keeps student records, and it has the trainer initial each date of student training. Five student records, specifically the records for [REDACTED], [REDACTED], [REDACTED], and [REDACTED] had both [REDACTED] initials and another instructor's initials on the student record. However, both [REDACTED] and [REDACTED] testified that when [REDACTED] taught, no other instructor was present. Hands-On did not provide another credible explanation for the second set of initials. Therefore, the preponderance of the evidence in the record supports a finding that Hands-On falsified documents regarding who was instructing students and provided them to the Department. The Department properly assessed Hands-On six points for violation of Wis. Admin. Code § Trans 105.11(4)(a)3.

3. Process for Issuing the Suspension

The Department is required to provide a licensee with written notice of a point assessment that specifies the reasons for the point assessment. Wis. Admin. Code § Trans 105.11(1). The written notice may include the issuance of a complaint seeking to suspend a license. Wis. Admin. Code § Trans 105.11(3). Before recording the points, the Department must notify the school of the reason for the proposed action and allow the school 10 days to respond. Wis. Admin. Code § Trans 105.12(1). Then, after due consideration, the Department may record the points assessed to the school and based on the points assessed in the past 24 months, the Department may take progressive enforcement actions. Wis. Admin. Code §§ Trans 105.12(1)

and (2). If the Department assesses six or more points, it shall revoke or suspend the license for four months to one year. Wis. Admin. Code § Trans 105.12(2)(d).

In this case, the Department skipped required steps. The first written notice of the points assessment that Hands-On received was the Department's August 14, 2024 letter, which included the reasons for the points assessment. However, Hands-On was not allowed ten days to respond, and the Department was not able to consider this response before the suspension went into effect. The Department either could have issued a complaint instead of the August 14, 2024 letter, or it could have allowed Hands-On to respond before recording points and taking progressive enforcement action to comply with the requirements of the administrative code.

Although the Department's process was incomplete, the suspension is not dismissed for several reasons. First, the procedural issue was raised and discussed at the prehearing conference in this matter. The Department offered to cure and issue a notice letter at that time and provide Hands-On ten days to respond. Hands-On declined at that time. Additionally, while this case has been pending, Hands-On had the opportunity to present information for the Department's consideration both prior to and at the hearing in this matter. Most significantly, if the August 14, 2024 suspension was dismissed, the Department could initiate the process again. Hands-On's license has been suspended since August 14, 2024. If the Department gave notice and then issued a new one-year suspension, the result could require Hands-On's suspension to last much longer than August 14, 2025.

Because the one-year suspension to be appropriate and because it would not be appropriate for the suspension to last longer than August 14, 2025, the Department's order for suspension on procedural grounds is not dismissed.

CONCLUSIONS OF LAW

1. The Department bears the burden of proving by a preponderance of the evidence that Hands-On violated the law warranting an assessment of points and suspension. Wis. Admin. Code § HA 1.12(3)(a).
2. Hands-On violated Wis. Stat. § 343.62(1) and Wis. Admin. Code § Trans 105.11(4)(a)9 when it had its unlicensed employee, [REDACTED] give lessons to customers. Accordingly, the Department properly assessed six points for this violation.
3. Hands-On violated Wis. Admin. Code § Trans 105.11(4)(a)3 when it provided the Department with documents that falsely indicated that another instructor was present with [REDACTED] when he taught customers. Accordingly, the Department also properly assessed six points for this violation.
4. Because the Department assessed 12 points against Hands-On, a one-year suspension is appropriate pursuant to Wis. Admin. Code § Trans 105.12(2)d.

5. The Division of Hearings and Appeals has the authority to hear contested cases and issue decisions on behalf of the Department of Transportation pursuant to Wis. Stat. § 343.69 and Wis. Stat. ch. 227.

ORDER

NOW THEREFORE, based on the findings of fact and the conclusions of law, it is ORDERED that:

The Department's one-year suspension of the Hands-On's driver school license beginning August 14, 2024 is affirmed.

Dated at Madison, Wisconsin on January 13, 2025.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Brian K. Hayes
Division 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 served and 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
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705

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.