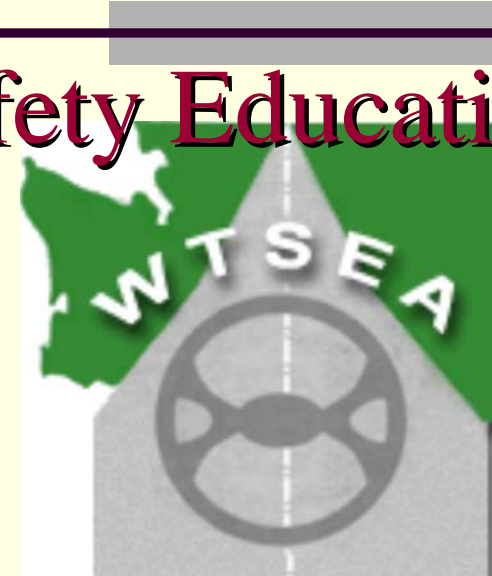


Washington State

Traffic Safety Education



CENTRAL WASHINGTON UNIVERSITY

Your future is Central.

Washington State

Teacher
Preparation

Program
Responsibility

Litigation

Witness Issues



Office of Superintendent of
Public Instruction

Central Washington University

Washington Traffic Safety Education Association

Scott Calahan

Traffic Safety
Coordinator

Professor, CWU

Alex Hansen

Traffic Safety Teacher
Trainer and Consultant

David E. Kinnunen

Program Supervisor,
Traffic Safety Education
and Pupil Transportation

Washington State

Program Information

- Teacher Training (Scott Calahan)
 - Issues of Liability and Teacher Responsibility

- Program Responsibility and Litigation (Alex Hansen and Dave Kinnunen)
 - In the matter of CDS Driving school Traffic Safety Cause No. 2001-TS-0001

- Issues of Being an Expert Witness (Alex Hansen)

Washington State

Program Information

In School Year 2001

- Public Schools 244
- Commercial Schools 96
- Teacher Training CWU nearly 100
- 30% of all programs were beginning to be inspected in person each year.
- State TSE Staff
 - Program Supervisor (1.0 FTE support staff)
 - 2 Regional Coordinators (.5 FTE staff each)

Information Gathering

- Formal TSE training which included a liability component...

Teacher Preparation

Scott Calahan



CENTRAL WASHINGTON UNIVERSITY

Your future is Central.

- CWU's Traffic Safety Endorsement
 - How do we prepare our teachers?
 - Code of Professional Conduct
 - Define legal terms
 - Liability
 - Tort
 - Negligence
 - Feasance issues
 - Make aware of liability laws & best practices of the state
 - Highest level of care

CWU's TSE Teacher Preparation

Scott Calahan



CENTRAL WASHINGTON UNIVERSITY

Your future is Central.

- How do we prepare our teachers?
- Teach, stress, and provide practical examples for the following:
 - Safety instruction
 - Inspections
 - Exercise reasonable care in supervising
 - Make sure equipment is working
 - Give detailed instruction, evaluate, and keep records

CWU's TSE Teacher Preparation

Scott Calahan



CENTRAL WASHINGTON UNIVERSITY

Your future is Central.

- How do we prepare our teachers?

- Suggest:
 - Council
 - Liability Insurance
 - Compile a Liability Portfolio

Program Responsibility

David Kinnunen and Alex Hansen

- State v. Driving School in Matter of Non-compliance
 - The appellant requested an administrative hearing concerning a letter issued by OSPI. The letter alleged non-compliance with Chapter 392-153-WAC and revoked approval of the appellant's TSE program for students under the age of eighteen.
 - A pre-hearing conference was conducted:
 - Limit testimony and discovery
 - Limit the evidence to a twelve month period

Program Responsibility

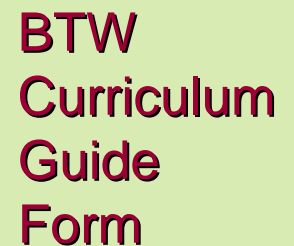
David Kinnunen and Alex Hansen

➤ Inspections

- Creation of the Compliance Review Form
- Examples of record keeping (BTW)
- Computers and scanners became relevant due to records being changed after site inspections



Compliance
Review
Form



BTW
Curriculum
Guide
Form

Program Responsibility

David Kinnunen and Alex Hansen

➤ Discussion

- The ALJ has determined that the **testimony of the supervisor and the coordinator is credible** despite the evidence of a potential bias against commercial driving schools. The ALJ has considered the demeanor and motivation of the witnesses, has conducted a personal review of the documentary evidence, and has considered the logical persuasiveness of the parties' positions. **As shown in the Findings of Fact, the Appellant's records reveal inconsistencies corroborative of the challenged testimony. The number and nature of the inconsistencies also reflect a pattern of disregard for compliance with the requirements of WAC 392-153. Records were produced by the appellant when he was aware of their importance for future inspections, yet there was no measurable change.**

Litigation

David Kinnunen and Alex Hansen

➤ Depositions and Hearing

- Syd Muzzy and Dave Kinnunen both underwent 8+ hour depositions.

Only once during the hearing was the deposition pulled out and reviewed for comparison.

➤ Our Disclosure (to name two)

- Syd's brief-case
 - WDTSEA or WTSEA

- My emails (300+)

- Needle in a hay stack (if there was a needle)



Public
Disclosure

Litigation

David Kinnunen and Alex Hansen

➤ Burden of Proof

- WAC 392-153-045 Burdon and Standard of Proof
 - If an application of a new program approval or a program under new ownership has been denied...evidence submitted by the **applicant** must prove by **preponderance of the evidence**.
 - In all other program approvals and proceedings, including denials, reprimands, suspensions, and revocations, **OSPI must prove by a preponderance of the evidence that the program in question fails to meet approval standards.**

Findings of Fact

Conclusions David Kinnunen and Alex Hansen

➤ Conclusions of Law

- OSPI standard upheld
- The interest of the appellant is less significant with respect to his investment and impact of the decision. Revocation of approval impacts only one segment of the appellant's business. (adults)
- Below standard of instruction of driving skills does not, per se, have a potentially life threatening consequence. A student's driving skills are not completely dependent of the TSE instruction since the education program is supplemented by experience outside of the classroom.

Findings of Fact

Conclusions David Kinnunen and Alex Hansen

- ...the standards for approval are not subjective. The requirements of approval are objectively defined by administrative regulation
- The ALJ concludes that, consistent with WAC 392-153-045, OSPI bears the burden of proving that the appellant's program fails to meet approval standards by a preponderance of the evidence.

Findings of Fact

Conclusions David Kinnunen and Alex Hansen

- Standards of Approval
 - OSPI is responsible for establishing a level of driving competency required of each student to successfully complete the course.
 - Ensuring that an effective state-wide program is implemented and sustained.
 - Administering, supervising, and developing the TSE program.
 - Authorized to define a “realistic level of effort” required to provide an effective traffic safety education course.
 - WAC’s defines the elements of a realistic level of effort.

Findings of Fact

Conclusions David Kinnunen and Alex Hansen

- Appellant's Program
 - OSPI has shown that implementation of the appellant's program has not met its standards for approval: concurrence/integration, contact time, and student achievement
 - Students also complete all of the academic activities before they have completed their scheduled sessions. (lack of evidence of completing the 30 hours)

Findings of Fact

Conclusions David Kinnunen and Alex Hansen

- **The lack of care shown in review of student material impeaches the credibility of the certificate of completion.** The appellant has approved student records indicating that a student performed more work than could be logistically achieved. The Findings of Fact reveal at least two records in which the student allegedly watched more than 120 minutes of video during a two hour period. The date of review for one module was prior to the date shown for completion of the work. **For purposes of curriculum evaluation, record keeping is more than a ministerial exercise. These records become the objective evidence of achievement.** The number and nature of the errors, committed over a one year period of time, indicate a pattern of conduct, not an occasional lapse. **Falsification or carelessness in the records indicates that the student is not required to meet the competencies and objectives as a condition of successful completion of the course.**

The Order

David Kinnunen and Alex Hansen

➤ Order

- OSPI has established by a preponderance of the evidence that the appellant's program, as implemented, has failed to meet the standards for approval identified in Chapter 392-153 WAC. The program should be approved subject to conditions to ensure proper implementation.

The Order

David Kinnunen and Alex Hansen

- May continue to accept students for participation in his program. Certificates of completion will not be issued directly to the appellant for distribution to successful candidates.
- When the appellant is ready to issue a certificate, he shall submit the student's record card, attendance sheets, study guides, worksheets, quizzes, BTW record, and track sheet to **an auditor**. The auditor shall review all of the materials and ensure that the evidence of completion meets the standards of the curriculum and the regulations.
- The auditor shall not issue a certificate of completion if the records and materials do not reflect compliance with the minimum standards. Auditor shall maintain copies.

The Order

David Kinnunen and Alex Hansen

- The parties shall confer regarding appointment of a third party to conduct the audit. Costs for the auditor's services shall be borne by the appellant. In the event of an irreconcilable disagreement in the selection process, OSPI shall choose the auditor. It shall notify the appellant by letter of its choice and the associated fees. The appellant may request an administrative hearing if he disagrees with the decision.
- OSPI shall review the records and determine whether...it may approve the program, continue the conditions, deny approval, or limit its approval to a period of less than one year.

Issues of being an Expert Witness

Alex Hansen

➤ Lyle vs. Roth

- Mrs. Lyle sues son for her substantial injuries caused by rollover collision when he leaves the roadway (right shoulder) and overcorrects.
- John Roth was 16, had an instruction permit, and had completed TSE at the local high school program.
- John was driving a Ford Taurus; There were five passengers: Mom in the right front seat, 5-year-old Riley between John and Mrs. Lyle, two teenaged siblings in the back seat, and a 4-year old brother (Alex) between the sisters. All were belted.

Issues of being an Expert Witness

Alex Hansen

➤ Lyle vs. Roth (continue)

- They were on their way to school in the morning in a small rural town in eastern Washington.
- John lost control while attempting to re-fasten Riley's safety belt after he had unfastened it. At this time, Mrs. Lyle was turned around, talking with Alex and Anna in the back seat.
- Mrs. Lyle took no action, either verbally or physically, to address the issues of Riley unfastening the safety belt, of John's decision to attempt to refasten it, or of his subsequent drifting towards the right edge of the roadway. She was unaware of the loss of control until the tires had left the roadway.

Issues of being an Expert Witness

Alex Hansen

- The applicable RCW 46.20.055 is vague. The issue must be decided upon interpretation of *intent* of the law.
- “A driver’s instruction permit entitles the permittee...to drive a motor vehicle upon the public highways...when accompanied by a licensed driver who has had at least five years of driving experience and is occupying a seat beside the driver.”

Issues of being an Expert Witness

Alex Hansen

- The statute does not specify two important issues:
 - Who is “legally” responsible for the operation of the vehicle?
 - What is the role and what are the expected responsibilities of the accompanying licensed driver?

Issues of being an Expert Witness

Alex Hansen

- Alex Hansen, was retained by the defendant, after being asked his opinion on the question of responsibility.
- Chuck Filippini was retained by the plaintiff.
- Two TSE teachers (east vs. west) taking opposite positions on a case----How can that be?!

Issues of being an Expert Witness

Alex Hansen

- What laws, guidelines, codes, definitions, or best practices exist within our profession that give us clarification on these matters?
- What standards have we created in TSE to provide students and parents guidance for conducting safe practice driving sessions?
- Should such guidelines be part of parent involvement programs in TSE?

Issues of being an Expert Witness

Alex Hansen

- Suggested considerations on how to conduct safe practice driving sessions:
 - Matters of responsibility and the role of supervision
 - Guidelines on carrying passengers.
 - Guidelines on distractions
 - Guidelines on vehicle choice
 - Guidelines on brain theory and young learner capabilities in assessing risk and making decisions/responses

Washington State

3 x 3 Key Points

Minimizing Liability Exposure

1

2

3

Organization and Administration

1

2

3

Guidelines for Practice

1

2

3

Thank You

www.k12.wa.us/trafficsafety

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