

First Supplement to Memorandum 2000-48

Separation of Functions in DMV Hearings (Comments of CSEA)

Attached to this memorandum is a letter from the California School Employees Association (CSEA) concerning separation of functions in Department of Motor Vehicles schoolbus driver certificate proceedings. CSEA indicates that during the past year it represented drivers in approximately a dozen of these hearings.

CSEA reports that both its advocates and the drivers represented by them believe the current DMV hearing procedure — which requires separation of functions — is fairer than the old system. They prefer the current system. For a detailed explanation of the reasons for their preference, please refer to the attached letter.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



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(NACSE), representing
independent public
employees throughout
the nation*



July 11, 2000

By Facsimile (650) 494-1827

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Re: DMV School Bus Driver Certificate Hearings

Dear Mr. Sterling:

The California School Employees Association (CSEA) appreciates this opportunity to provide input regarding its experience with the separation of functions in school bus driver certificate hearings instituted in 1995. Overall, CSEA advocates and the bus drivers represented by them, consider the existing procedure to be fairer.

CSEA has been involved in approximately a dozen such hearings in the past year. At issue in these proceedings was the revocation or suspension of the school bus driver's certificate. The drivers were represented by either a CSEA Labor Relations Representative (LRR) or a CSEA Staff Attorney. Many of these advocates also represented school bus drivers in hearings before the 1995 reforms.

Most CSEA advocates prefer the current system. The reason most commonly expressed for this preference is that separation of the advocate/investigative function from the adjudicative function fosters a greater perception of fairness.

Additional reasons given by CSEA advocates to support separation of functions include:

- Bus drivers are more comfortable and at ease during the hearing;
- Bus drivers are more ready to participate because they understand that the decision-maker is not aligned with the DMV's initial adverse action;

- The pre-reform procedure was paradoxical in that hearing officers were required to, in essence, rule against themselves;
- The reasoning quality of hearing officers' decisions has improved since the 1995 reforms;
- Both advocate and school bus driver feel the hearing is a worthwhile use of their time since they can argue the case to a person who is independent of the initial adverse action;
- Separation of functions reduces skepticism about the ultimate decision in the case.

I hope this information is useful to you. Please call me if you have additional questions.

Yours truly,


MADALYN J. FRAZZINI
DEPUTY CHIEF COUNSEL

cc: Marjorie Ott, Director Field Operations