

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
ARIZONA CODE OF JUDICIAL	)	Administrative Order
ADMINISTRATION § 7-205:	)	<u>No. 2006- 73</u>
DEFENSIVE DRIVING SCHOOLS	)	(Repealing and Replacing Administrative
AND INSTRUCTORS	)	Orders No. 2000-84 and 2002-106)
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WHEREAS the 2006 Arizona State Legislature enacted changes to the statutes specifying that a Defensive Driving course cannot exceed a maximum of four and one-half hours and these changes were signed into law by the Governor as Laws 2006, Chapter 23 with an effective date of September 21, 2006 and, though the Legislature did not specify a minimum class time, it is advisable for the Court to establish a minimum time needed for Defensive Driving courses to meet the minimum standards specified in the Arizona Code of Judicial Administration § 7-205, and

WHEREAS on June 19, 2006 the Arizona Judicial Council approved and recommended the attached version of § 7-205, for adoption, and

WHEREAS a January 1, 2007 general effective date is advisable, and

WHEREAS new members of the Defensive Driving Board (“Board”) must be appointed and trained before they begin service, and

WHEREAS an effective date of September 16, 2006 for the new provisions regarding maximum and minimum class time and course curriculum criteria is permissible and advisable because it will allow for effective and efficient implementation of these changes, and

WHEREAS the 2006 Legislature enacted statutory amendments that require changes to bond cards, including references to amended statutes, and it is advisable to allow courts to make changes in diversion fees effective October 1, 2006 and January 1, 2007.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Arizona Code of Judicial Administration § 7-205 is repealed and replaced by the attached document effective January 1, 2007 except as otherwise ordered below.

IT IS FURTHER ORDERED that members of the Board shall be appointed and receive training regarding the provisions of §§ 7-201 and 7-205, as adopted, before the January 1, 2007 effective date of their service on the Board.

IT IS FURTHER ORDERED that the provisions of subsection (F)(19)(b)(3) of § 7-205, as adopted, regarding the maximum and minimum class time and subsection (E)(1)(j) of § 7-205, as adopted, regarding the course curriculum criteria are effective September 16, 2006.

IT IS FURTHER ORDERED that a court may make changes in its diversion fee effective on October 1, 2006 and January 1, 2007, pursuant to the provisions of subsection (D)(5)(d)(1) of § 7-205, as adopted.

Dated this 6th day of September, 2006.

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RUTH V. MCGREGOR  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing Programs**  
**§ 7-205: Defensive Driving**

**A. Definitions.** In addition to the definitions contained in ACJA § 7-201(A), the following definitions apply:

“Affidavit of eligibility” means a form an offender signs affirming the offender’s eligibility to attend a defensive driving course.

“Alternative delivery method (ADM)” means a defensive driving course other than a live classroom presentation by an instructor.

“Attend” means to participate in a defensive driving course, whether at a classroom site, or using the materials for an ADM course.

“Batch processing” means the method by which multiple student records are transmitted to the defensive driving database as one group.

“Class schedule directory” means a complete listing of a certified school’s defensive driving courses for a specified advance period of time including instructor name, time of courses, date and location.

“Combined course” means a course including students attending a defensive driving course and another course, such as the Motor Vehicle Division Traffic Survival School Program.

“Complete” means to begin and successfully fulfill all requirements of a defensive driving course and receive a certificate from a certified school as evidence of the completion.

“Completion certificate” means a document approved by division staff and issued by a school to an individual who has successfully completed a defensive driving course.

“Course demonstration” means a presentation of an applicant school’s complete curriculum including all ADM options.

“Defensive driving course” means an educational and behavior modification presentation designed to teach safe driving practices and attitudes used for the purpose of court diversion or as an element of a sentence.

“Defensive driving database” means the database instituted pursuant to A.R.S. § 28-3395(B)(3) for the purpose of recording all individual completions of defensive driving courses for court diversion programs and court orders.

“Diversion” means a procedure allowing a person cited for certain designated minor moving traffic violations to complete a defensive driving course in lieu of payment of a court fine.

“Eligible offender” is an individual cited for a moving traffic violation, pursuant to A.R.S. § 28-3392(A)(1) or (A)(2), where the statute does not designate the offense as a misdemeanor or a felony, the Motor Vehicle Division of the Arizona Department of Transportation does not assign points to the offense and the violation is not issued as the result of a collision causing death or serious physical injury; and therefore, the offender is eligible to attend a defensive driving course for diversion.

“Instructional time” means the time spent presenting the certificate holder's approved curriculum. Instructional time does not include breaks, registration, audiovisual set-up or time devoted to other administrative functions.

“Instructor” means a person who is certified pursuant to ACJA § 7-201(E) and this section to conduct defensive driving courses for a certified school; or in the case of alternative delivery methods, where an instructor is not present, who serves as the certified school’s point of contact to answer student questions by telephone or electronic means.

“Instructor seminar” means the course of study a certified school presents to an applicant for certification as an instructor prior to the submission of the individual’s application for certification.

“Multi-purpose agency” means an entity which conducts other traffic related classes, or conducts other activities, services or sales in addition to and apart from its court diversion business.

“Negative state fee report” means a standard form submitted in lieu of payment of state fees and completion reports when no students completed a school’s defensive driving course during a reporting period and therefore, no state fees are due.

“On-line processing” means a school submits student records to the defensive driving database through direct access, one record at a time.

“Primary provider” means a school which has entered into a contract with a court or courts to provide defensive driving courses for court diversion and its related activities.

“Remittance report” means a detailed statement of individual student’s court diversion or state fees attached to the disbursement check for any court or the AOC.

“Restricted certificate” means permission granted to a school owner or principal to present defensive driving courses.

“School” means an entity certified pursuant to ACJA § 7-201(E) and this section to provide an educational defensive driving course designed to teach safe driving practices and attitudes.

“School fee” means the amount charged to each student by a school for attending a defensive driving course and retained by the school for its services.

“Serious physical injury” means “physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb” as provided by A.R.S. § 13-105(34).

“State fee” means the amount mandated by A.R.S. §§ 28-3397(A) and 12-114(A) collected by a school from each individual who begins a defensive driving course for diversion, or by an order of a court.

“State fiscal year” means the state business year set from July 1 to June 30.

**B. Applicability.** This section applies to the certification of schools and instructors and the use of schools by the courts, pursuant to A.R.S. §§ 28-3391 through -3399. This section is read in conjunction with ACJA § 7-201: General Requirements. In the event of a conflict between this section and ACJA § 7-201, the provisions of this section shall govern. This section does not apply to educational providers established pursuant to other statutes mandating or governing educational programs administered by other agencies except where these providers also maintain certification as a school.

**C. Purpose.** This section is intended to result in the effective administration of the defensive driving program and in certification of schools and instructors for performance of responsibilities in a professional and competent manner, for the protection of the public in accordance with all applicable statutes, ACJA § 7-201 and this section.

**D. Administration.** In addition to the requirements of ACJA § 7-201(D), the following requirements apply:

1. Pursuant to A.R.S. 28-3395(B), the supreme court shall:
  1. Supervise the use of defensive driving schools by the courts in this state.
  2. Make public the amount of the court diversion fee assessed by each court in this state . . . and the total cost to attend a defensive driving school in each court.
  3. Establish an automated statewide data base for keeping a record of persons who attend a defensive driving school.
  4. Adopt rules that establish criteria for the certification of qualified defensive driving schools and instructors used by the courts.
  5. Establish procedures for courts and schools to remit reports that are required by the supreme court.

6. Certify and monitor instructors and defensive driving schools that serve as a court authorized diversion program.
2. Role and Responsibilities of the Director. In addition to the requirements of ACJA § 7-201(D), the director may:
    - a. Require the inclusion of specific provisions in any contracts written between courts and providers of defensive driving courses to ensure compliance with ACJA § 7-201 and this section.
    - b. Approve or disapprove specific insurers.
    - c. Require a school to post a bond to guarantee payment of diversion and state fees.
  3. Role and Responsibilities of Division Staff. In addition to the requirements of ACJA § 7-201(D), division staff shall:
    - a. Review and make written recommendations to an applicant school and the Defensive Driving Board (“Board”) regarding the affidavit of eligibility, refund of fees policy, defensive driving course evaluation form, completion certificate and instructor training seminar submitted by a new applicant for certification as a school.
    - b. Review and make written recommendations to a school and the Board regarding any change or revision in a school’s affidavit of eligibility, refund of fees policy, evaluation form, completion certificate and instructor training seminar. Division staff shall provide the school with a written response noting any changes or revisions not in compliance with statutes, court rules, ACJA § 7-201 or this section.
    - c. Review and make written recommendations to an applicant school and the Board regarding the written defensive driving course curriculum provided by the applicant for initial certification as a school. Division staff shall base the review on whether the curriculum meets the requirements of ACJA §§ 7-201 and -205, applicable law and court rules. The applicant school may provide the curriculum by electronic means such as a disc, but division staff shall provide the response to the applicant in writing.
    - d. Require a school to update its approved curriculum upon changes or revisions to statutes and court requirements to maintain the currency of the curriculum. Division staff shall provide a written evaluation and approval of changes or revisions to a previously approved curriculum within 30 days of receipt of the changes or revisions.
    - e. Conduct a complete review of an applicant school including:

- (1) Set a time and location for an applicant school to present its defensive driving course in its entirety with all elements and intended delivery formats as proposed in the curriculum;
  - (2) Review and make recommendations to the applicant school and the Board regarding the curriculum as presented in the demonstration by the applicant school, noting deficiencies in complying with minimum standards;
  - (3) Provide a copy of the evaluation of the curriculum presentation to the applicant school;
  - (4) Inform the applicant school in writing of any deficiencies in the curriculum; and
  - (5) Set a time and location for a second demonstration if the final determination concludes the applicant school's deficiencies were notable.
- f. Review and make recommendations to the applicant school and the Board regarding the applicant's operational and financial procedures manual, detailing whether the applicant's processes are compliant with all statutory requirements, ACJA § 7-201, this section and court or local rules. In the review process division staff shall use the supreme court's minimum accounting standards as a basis for compliance.
- g. Review and make recommendations to the applicant school and the Board regarding any third party contracts between the applicant school and another entity involving direct delivery of defensive driving services to the public or where the contractor is performing elements of the required duties normally performed by a certified school.
- h. Conduct tests of the applicant's hardware and software to verify the applicant school has the necessary equipment and expertise to access the defensive driving database and maintain the connection for remittance of information.
- i. Conduct training on the defensive driving database at the state courts building for the applicant school's designees for initial certification and test the designees for understanding of the system's operations.
- j. Conduct training on the defensive driving database if requested by a school for its new employees.
- k. Provide the following training sessions:
- (1) A session on the role and responsibilities of a certified school prior to certifying the school and providing access to the defensive driving database;
  - (2) A session on the role and responsibilities of a certified instructor prior to certifying the instructor and providing access to the defensive driving database; and
  - (3) In conjunction with the schools, provide six hours of continuing education training annually through December 31, 2006, and six hours from January 1, 2007 through October 31, 2007. From and after November 1, 2007, the division staff, in conjunction with the schools shall provide twelve hours of continuing education training every two years.

- l. Administer the examination required pursuant to ACJA § 7-201(E) and subsection (E)(2)(e). In addition to the provisions listed in ACJA § 7-201(E), in administering the examination division staff shall offer the examination a minimum of four times per calendar year, no less than once every three months after November 1, 2007.
  - m. Implement a monitoring program and monitor each instructor at least once every two years to evaluate compliance with applicable statutes, court orders and rules, ACJA § 7-201 and this section.
4. Role and Responsibilities of the Board. In addition to the requirements of ACJA § 7-201(D), the following requirements apply:
- a. The Defensive Driving Board is established pursuant to ACJA § 7-201(D), comprised of the following eleven members:
    - (1) Two certified instructors who have worked as a certified instructor for at least five years;
    - (2) One judge from a limited jurisdiction court;
    - (3) Two court administrators from limited jurisdiction courts;
    - (4) Three owners, principal officers or administrators of a classroom or ADM school who have owned the school or been a business partner in Arizona for at least two years;
    - (5) Two public members; and
    - (6) One additional member appointed by the chief justice.
  - b. Duties of the Board. In addition to the responsibilities contained in ACJA § 7-201(D), the Board may authorize restoration of eligibility for a student pursuant to subsection (F)(24)(g).
5. Role and Responsibilities of the Superior and Limited Jurisdiction Courts.
- a. The presiding judge of the superior court:
    - (1) May require any or all justice, juvenile and municipal courts in the county to select one or more schools to provide defensive driving courses through a joint procurement process and may impose additional requirements for delivery of service, including additional or distinct insurance coverage separate from the requirements of this section; and
    - (2) Shall supervise the selection process of schools through a competitive procurement process. The presiding judge shall ensure the procurement process is conducted according to the procurement rules for the judicial branch adopted by the supreme court, county procurement process approved by the board of supervisors or the city procurement process approved by the city or town council; and that it includes competitive bidding and the approval of the final written contract with the providers.



- b. The presiding judge of the superior court shall not permit any court official or employee to accept, either directly or indirectly, any compensation or incentive to select a specific certified school as a primary provider.
- c. The presiding judge of the justice, juvenile or municipal court shall:
  - (1) Subject to the approval of the presiding judge of the superior court, set a single diversion fee for an eligible offender attending a defensive driving course;
  - (2) Assess a diversion fee in lieu of a civil penalty or order a fine, but not both;
  - (3) Notify the supreme court in writing of any changes in the total cost to attend a defensive driving course pursuant to subsection (D)(5)(c)(1);
  - (4) Allow the eligible offender to attend any certified school, if there is no selected primary provider;
  - (5) Allow an eligible offender, if attendance at a primary provider causes a hardship, to attend any school including attendance at a similar diversion course in the offender's home state;
  - (6) Not order any ineligible offender to attend a diversion program for dismissal of a violation;
  - (7) Provide a person with a written court order specifying the violation date, citation and any special conditions if a judge orders a person to attend a school other than as diversion. The order shall include the fine if the court fines a person for the violation;
  - (8) Accept notification of the eligible offender's completion of a defensive driving course only from a certified school;
  - (9) Not permit any court official or employee to accept, either directly or indirectly, any compensation or incentive to enroll any person in any school;
  - (10) Not permit school personnel to perform any judicial or court staff functions;
  - (11) Not permit school personnel direct access to court records other than read only access to electronic records;
  - (12) Not permit school personnel access to areas within the court not normally accessible to the public; and
  - (13) Pursuant to ACJA § 7-201(H)(1), notify division staff regarding any acts of misconduct or violations of the statutes, ACJA § 7-201, this section or court rules by a certified school or instructor.
- d. The presiding judge of each justice, juvenile and municipal court, subject to the approval of the presiding judge of the superior court, may:
  - (1) Change the court diversion fee up to two times each year, effective either on April 1 or October 1, or on both dates. A court shall notify division staff 30 days prior to the effective date of the change, using the form provided by division staff. Citations and violations issued prior to the effective date of the change in the diversion fee shall be charged under the amount in effect on the date of violation; and

- (2) Waive the court diversion fee assessed an individual attending a defensive driving course.
- e. Selection of a school. A court:
  - (1) Shall contract with or have services provided only by a school certified by the supreme court;
  - (2) May select one or more primary providers of defensive driving courses; and
  - (3) Shall have a written contract with each primary provider.
- 6. Fund. A.R.S. § 28-3398(A) establishes the defensive driving school fund consisting of the monies collected from the fee established by the supreme court pursuant to A.R.S. § 28-3397(A). Pursuant to A.R.S. § 28-3398(B), one of the purposes of the fund is “subject to legislative appropriation, to supervise the use of defensive driving schools by the courts in this state and to expedite the processing of all offenses prescribed in chapters 3 and 4 of this title.” Further, A.R.S. § 28-3398(C) provides: “The fund established in this section is not subject to reversion. On notice from the supreme court, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.”

**E. Initial Certification.** In addition to the requirements of ACJA § 7-201(E), the following requirements apply:

- 1. Eligibility for Certification as a School. An applicant for a business entity certification, whether a corporation, limited liability company or partnership shall:
  - a. Provide an indemnification statement and conflict of interest statement signed by an owner or officer with the appropriate authority on behalf of the applicant.
  - b. Provide an affidavit of eligibility, evaluation form and completion certificate for review by division staff and approval by the Board.
  - c. Fully disclose all relationships to any parent company or organization and currently paid or unpaid officers, directors, owners and boards of directors.
  - d. Maintain a business office and telephone number in the state of Arizona through which the applicant’s Arizona business is transacted.
  - e. Obtain any necessary federal and state tax identification numbers as required by law.
  - f. Disclose any third party contracts regarding any operational or financial proceedings such as data entry or on-site testing. Incidental operations such as telephone, copying, or Internet services are not subject to this requirement.
  - g. Purchase and maintain general liability insurance that meets the following conditions:

- (1) Incidental malpractice with a minimum combined single limit of \$1,000,000 per occurrence;
  - (2) The policy shall name the state of Arizona, the supreme court and, if applicable, each court with which the applicant holds a primary provider contract, as additional parties;
  - (3) The insurer shall hold a valid license to do business in the state of Arizona with minimum ratings as specified by the Arizona Department of Administration; and
  - (4) If the applicant is part of a self-insured government entity, the applicant shall submit documentation from the government entity stating the applicant's coverage.
- h. Designate a principal with whom division staff may communicate on any procedural or operational concern or problem and who will have certain responsibilities pursuant to subsection (F).
- i. Provide articles of incorporation and letters of good standing from the Arizona Corporation Commission or the Secretary of State, or if the applicant uses ADM, from comparable entities of the state where the business is located.
- j. File at least one defensive driving course curriculum in writing and by electronic means if the applicant chooses. Classroom defensive driving courses are limited to a maximum of fifteen percent audiovisual material. All applicants for certification shall include, at a minimum, the following Arizona specific educational and behavioral modifications:
- (1) Collision prevention, including:
    - (a) Vehicle maintenance; and
    - (b) Recognition of physical and mental limitations and disabilities, including:
      - (i) Fatigue;
      - (ii) Stress;
      - (iii) Attitude and road rage;
      - (iv) Inattention;
      - (v) Distractions; and
      - (vi) Awareness of sensory and other physical limitations or disabilities.
  - (2) Practical defensive driving techniques:
    - (a) Reaction time and following distances;
    - (b) The importance of driving safely in adverse conditions; and
    - (c) Proper vision techniques, including:
      - (i) Scanning;
      - (ii) High aim; and
      - (iii) Blind spots.
  - (3) Use and importance of safety systems including:
    - (a) Seat belt law and usage;
    - (b) Crash forces and fallacies of not wearing seat belts;
    - (c) Child restraint law and proper usage;

- (d) Air bags; and
    - (e) Anti-lock braking systems.
  - (4) Alcohol and drug use including:
    - (a) DUI laws and penalties;
    - (b) Implied consent law;
    - (c) Degree of impairment;
    - (d) Zero tolerance; and
    - (e) Underage drinking and driving.
  - (5) Review of the major traffic laws of Arizona and local ordinances, including:
    - (a) Speeding;
    - (b) Obeying traffic control devices;
    - (c) Passing;
    - (d) Intersections, lane changes and turning;
    - (e) Stopping and yielding;
    - (f) School zones and crossings;
    - (g) School buses and emergency vehicles;
    - (h) Pedestrians and crosswalks, marked or unmarked;
    - (i) Major criminal traffic violations; and
    - (j) Local ordinances.
- k. File an operational and financial procedures manual detailing the applicant's processes for compliance with all Arizona statutes, ACJA § 7-201, this section and court or local rules.
- l. Have at least one individual become certified as an instructor of the applicant school's curriculum.
- m. Develop and maintain an instructor training seminar.
- n. Require any potential applicant for certification as an instructor to attend at least two defensive driving courses and teach one course, under the supervision of a certified instructor pursuant to subsection (E)(2)(i), prior to the submission of the individual's application and maintain the original applicant's record of attendance.
- o. Present a demonstration of the defensive driving course curriculum by the applicant's owner, principal or instructor to division staff. The demonstration shall:
  - (1) Include all elements and intended delivery formats as proposed in the applicant's curriculum program, including an ADM defensive driving course;
  - (2) Make evident the owner, principal or chief instructor understands the curriculum and the curriculum is accurate and created for the state of Arizona's traffic laws; and
  - (3) If the curriculum contains materials that are not original to the applicant or in the public domain, the applicant shall provide written authorization for the use of the materials.

- p. Correct any deficiencies noted by the division staff in the curriculum or authorization of use of materials and present a second demonstration if requested by division staff in order to qualify for certification.
  - q. Designate at least one individual to receive training from division staff on the operational requirements of the defensive driving database.
  - r. Provide a copy of the refund policy to division staff for approval to ensure compliance with refund policies of this section.
2. Eligibility for Certification as an Instructor. In addition to the requirements of ACJA § 7-201(E), for qualification as an instructor, an individual shall meet the following conditions:
- a. At least 21 years old.
  - b. Have a high school diploma or general equivalency diploma.
  - c. A legal resident or citizen of the United States.
  - d. Hold a valid Arizona driver license if teaching within the state; or a valid driver license from the state where the ADM school is located.
  - e. From and after November 1, 2007, pass a certification examination testing the applicant's knowledge, skills and abilities as an instructor.
  - f. Attach a certified current 60 month motor vehicle record to the application.
  - g. Provide a motor vehicle record from any another jurisdiction for the most recent 60 months, if the applicant does not have a 60 month history with the Arizona Motor Vehicle Division.
  - h. Attend and successfully complete the instructor training seminar provided by the employing or contracting school and provide proof of completion with the application.
  - i. Attend and observe for the entire course length at least two defensive driving courses and, if a classroom instructor applicant, instruct at least one defensive driving course under the supervision of an instructor who holds a certificate and attach proof of attendance to the application.
  - j. If the applicant is currently serving as an active law enforcement officer with authority to issue citations, the applicant may submit a completed application only if the applicant has obtained a waiver from the presiding judge of the superior court in the county where the school is located, allowing the officer to serve as an instructor.

3. Decision Regarding Certification for Schools or Instructors. In addition to the requirements of § 7-201(E) the following requirements apply:
  - a. The Board shall deny certification of an applicant for certification as an instructor if the applicant has received:
    - (1) A suspension or revocation of the applicant's driver license in any jurisdiction, within the 60 months preceding the date the applicant files for certification;
    - (2) A criminal conviction involving vehicle operation in any jurisdiction, within the 60 months preceding the date the applicant files for certification; or
    - (3) More than one civil traffic moving violation of the applicant's driver license in any jurisdiction, within the 24 months preceding the date the applicant files for certification.
  - b. The Board may refuse to certify any applicant for certification as a school if:
    - (1) The applicant conducts business under a trade name which implies a course content other than the teaching of defensive driving course;
    - (2) The applicant offers a premium, prize, food, lifestyle, entertainment or other inducement for selecting the school, other than the legal diversion or mitigation of a traffic citation; or
    - (3) The applicant fails to resolve a conflict of interest, as described in this subsection:
      - (a) Certification as, or operation of, a school by a public agency or an employee of a public agency, which has within the regular scope of duties the power to cite individuals for minor moving violations, to influence the resolution of citations for minor traffic violations, or otherwise control, advise, solicit, or order the attendance, or potential attendance of individuals in a school. This limitation on certification or operation of a school by public agencies or employees of public agencies does not preclude law enforcement officers from acting solely as employed or contracted instructors for schools provided the provisions of subsection (E)(2)(j) are met;
      - (b) Certification as, or operation of, a school by a public agency or an employee of a public agency which or who is in a position to derive a profit or fund the agency's or person's own activities from the use of its facilities or employees in the presentation of a defensive driving course;
      - (c) Employment by a school, either for pay or as a volunteer, of any employee of a public agency who has within the regular scope of the employee's duties the power or ability to control, advise, solicit, or order the attendance of individuals in a school, or who is in a position to derive a profit or fund the public agency's activities from the use of the public agency's facilities and employees to further the presentation of a school's defensive driving course;
      - (d) Compensation of, or offering incentives to, a court employee, either directly or indirectly, to enroll students in a school or for selection of a specific school as a primary provider;

- (e) Employment as a volunteer or paid employee, or compensation of any court officer or employee, to operate, instruct or provide any service to a school; or
- (f) Any other apparent or actual conflict of interest.

c. Denial of Certification. These requirements are contained in ACJA § 7-201(E).

d. Eligibility for Application after Denial. These requirements are contained in ACJA § 7-201(E).

**F. Role and Responsibilities of Certificate Holders.** In addition to the requirements of ACJA § 7-201(F), each school shall:

1. Adhere to the standards in the code of conduct in subsection (J).
2. Assume responsibility for all operational aspects of a school including any elements or functions performed by third party contractors. Any actions by non-certified third-party contractors constituting allegations of acts of misconduct or violations of ACJA § 7-201, this section, or any other court policy or rule are the responsibility of the school. The certified school is subject to disciplinary action as provided in ACJA § 7-201(H) and this section for any acts of misconduct or violations by third party contractors.
3. Maintain a business office and local or toll-free telephone number in the state of Arizona through which the school's Arizona business is transacted. The Arizona office shall maintain and keep copies of all operational records including all Arizona student records required by this section.
4. Notify division staff of any change in the telephone number, business address, mailing address or home address of principals, officers and owners of the school or any other required database information within three business days of the change.
5. Designate a principal within the state of Arizona who holds contracting authority for the school, with whom division staff can immediately make contact concerning any process or procedure of the school or court operation. The principal:
  - a. Shall prepare and submit, with the initial school application, a list of all instructors or applicants for certification and staff members requiring access and training for the defensive driving database.
  - b. Shall actively and directly supervise all certified instructors, instructors in training and staff who have access to the defensive driving database to ensure compliance to all Arizona statutes, ACJA § 7-201 and this section.
  - c. Shall file with division staff, by December 1st of each year, a list of all certified instructors and staff of the school who have access to the defensive driving database, as

of October 31st of that year.

- d. Shall notify division staff within seven days if a certified instructor or staff member with access to the defensive driving database leaves the employment of the school.
  - e. May represent the school entity, at the discretion of the school, in any proceeding under Arizona statutes, ACJA § 7-201 and this section.
6. File any report with the state of Arizona as required by law.
  7. Allow only certified instructors to present defensive driving courses, except an instructor-in-training may present a course or portions of a course under the direct and present supervision of an instructor with certification.
  8. Use only the curriculum and materials approved by the Board in presenting defensive driving courses. The curriculum includes any detailed written outline of the defensive driving course or lesson plan, films or audiovisual materials and any written materials the school intends to use to supplement the presentation.
  9. Develop and prepare to offer a version of the curriculum, as approved by the Board, in response to a request for accommodations under the Americans with Disability Act.
  10. Establish and follow detailed written operational and financial procedures. If the school is a multi-purpose agency, it shall establish separate records and procedures for the reporting of revenue receipts, disbursement of funds and any other financial transactions for the school portion of the agency.
  11. Not co-mingle any defensive driving diversion or state fees with any school or business operating fees or accounts.
  12. Ensure procedures and records conform to generally accepted accounting principles and the minimum accounting standards adopted by the supreme court.
  13. Collect the court diversion fee, defensive driving and judicial collection enhancement fund fee, plus any fee charged by the school for the defensive driving course, before an individual begins any type of defensive driving course.
  14. Issue a completion certificate only to a student who has provided proper identification, signed the eligibility affidavit and refund policy, provided a copy of the citation and court order, if required, paid all fees and completed the defensive driving course.
  15. Collect and remit all court diversion fees to each court as required by A.R.S. § 28-3396(C) and this section, with all required reports and data concerning the student and traffic ticket



for which the fees are collected. The school shall hold the diversion fees in trust for the courts until disbursed.

16. Collect and remit all state fees and the required reports concerning the student and traffic ticket for which the fees were collected, or a “negative state fee report” if no state fees were collected. The school shall hold the state fees in trust for the supreme court until disbursed.
17. Submit the school's schedule of future defensive driving courses within two weeks of the date of the scheduled defensive driving course. The schedule shall include the date, start and end time, instructor name and location of each defensive driving course. The school shall submit the schedule as often as necessary to ensure division staff has accurate and current information.
18. Provide a list of sites where the defensive driving course is made available and disclose if the defensive driving course is provided in an ADM format. The school offering ADM shall provide division staff with a schedule of instructors available to answer any student questions, within the allowable time frames of the defensive driving course presentation. The school shall also provide the schedule of instructors in a specified electronic or other format and update it as often as necessary to ensure accuracy.
19. Comply with the following requirements:
  - a. Access the defensive driving database correctly and accurately and:
    - (1) Maintain the proper hardware and software and the ability to connect and interface with the defensive driving database and update these as often as required by division staff to maintain efficient system function;
    - (2) Assume responsibility for all costs of equipment, telephone lines, contractor fees incurred to meet these requirements and maintain the system as is necessary to comply with all statutory and ACJA requirements; and
    - (3) Ensure the required data for state fees and defensive driving course completion is entered and all errors corrected, or an error correction requested, within the time frames specified in this section.
  - b. Conduct defensive driving courses and:
    - (1) Maintain class schedule directories as required pursuant to subsection (F)(17) on the same physical computer system that accesses the defensive driving database;
    - (2) Comply with all the requirements of this section in the same manner for students attending an out-of-state defensive driving class; except the completion date for an out-of-state student is the date the completion certificate, required fees and documentation are received by the coordinating Arizona school;
    - (3) Ensure each student receives a minimum of four hours (240 minutes) and a maximum of four and one half hours (270 minutes) of instructional time. Pursuant to

A.R.S. § 28-3395: “. . . a defensive driving school class shall not exceed a total of four and one-half hours, including any testing, reviewing and grading related to the defensive driving school class”;

- (4) Present only the material contained in the school’s curriculum pre-approved by the Board;
- (5) Not use a defensive driving course as a forum for any purpose except the presentation of the approved course curriculum;
- (6) Schedule adequate breaks in compliance with the Americans with Disabilities Act;
- (7) Require the instructor remain in the classroom with the students during the full 240 minutes of defensive driving course instruction time; or when an AMD format is used, to be directly available at all times to answer student questions;
- (8) Limit attendance to only the number commensurate with student comfort in the classroom. This shall include adequate space and seating capacity for all students registered for the defensive driving course, heating and cooling and immediate access to drinking water and restroom facilities. In no case shall the number of students exceed 60 attendees per class.
- (9) Ensure all classrooms meet all federal, state, county and local health, safety and building requirements, including Americans with Disabilities Act; and are consistent with a learning and instructional environment in keeping with judicial decorum;
- (10) Provide classrooms with adequate audiovisual equipment allowing all students to see and hear the presentation clearly, if audiovisual presentations are a part of the approved curriculum;
- (11) Expel students from the class who do not comply with the classroom standards and the reasonable instructions of the school’s staff. When a school expels a student from the classroom, the school shall make and retain a report explaining the circumstances and reasons for expulsion and copy the court of jurisdiction;
- (12) Require students to complete an evaluation form in either a classroom setting or ADM format and forward the completed evaluations to division staff within five days of the request. The Board shall specify the format and content of the evaluation form, pursuant to subsection (D)(3)(b);
- (13) Submit, for approval by the Board, changes to any element of the school’s currently approved defensive driving course presentation. This applies to classroom and ADM defensive driving courses and the submitted information shall include any materials or additions the certificate holder is proposing to the format or delivery of the course. The school shall obtain board approval for the changes prior to presentation to students; and
- (14) Not combine a defensive driving course for diversion of individuals who are cited for a civil traffic moving violation with a remedial course for individuals who are attending to avoid or mitigate a driver license suspension. Division staff may waive this prohibition in limited market areas where it would have the effect of prohibiting use of a defensive driving course for diversion purposes as provided by A.R.S. §§ 28-3391 to -3399. A school may apply in writing to division staff for written authorization to provide combined courses in specific locations. Division staff may approve the request based on the following criteria:

- (a) There is a limited number of students in the area (class sizes are frequently less than twenty students); and
- (b) No other school is conducting non-combined defensive driving classes in that area.

c. Eligibility, Registration and Attendance of Students.

- (1) Upon initial contact from an individual requesting to attend any defensive driving course, the school shall:
  - (a) Determine whether the individual is eligible to attend a defensive driving course for diversion of a traffic violation by querying the defensive driving database; and
  - (b) Ensure the violation for which the individual is requesting attendance at a defensive driving class is:
    - (i) an eligible moving violation as specified by A.R.S. § 28-3392(A);
    - (ii) permitted by the court for diversion if an eligible misdemeanor; and
    - (iii) not a violation resulting from a collision causing the death or serious physical injury of any person as defined in A.R.S. § 28-3392(C)(1);
- (2) The classroom school shall:
  - (a) Require each student to show official identification prior to beginning a class and verify the registration information for accuracy against the official information by direct comparison. Acceptable forms of identification are limited to an official government-issued driver license or an official federal or state photo identification card. Division staff may require a school to retain a photo copy of each driver license;
  - (b) Require individuals who are court-ordered to attend a defensive driving class to provide the court order requiring attendance at the time of class attendance. The school shall retain a copy of each court order;
  - (c) Collect and retain a copy of the individual's citation to permit verification of data and eligibility and furnish the citation on request to division staff;
  - (d) Provide an explanation to each individual enrolling in a defensive driving course of the provisions and implications of signing the affidavit of eligibility and require the individual to read and sign the affidavit of eligibility prior to beginning any defensive driving course for dismissal of a traffic citation;
  - (e) Provide students who complete a defensive driving course with a completion certificate including the following:
    - (i) name of the student;
    - (ii) date of the class;
    - (iii) court of jurisdiction;
    - (iv) citation or docket number for dismissal;
    - (v) name of the school; and
    - (vi) the school's authorized signature;
  - (f) Complete all required information on each certificate prior to delivery to the student; and

- (g) Not issue a completion certificate to any student who has not signed the affidavit of eligibility;
- (3) The ADM school shall:
  - (a) Use the same methods for determining individual and citation eligibility pursuant to subsection (F)(19)(c);
  - (b) Make a positive identification of the individual enrolled in the defensive driving course, at the time of delivery of the course materials, by demonstrating the individual registered for the course is the actual participant during the time the course is taken and completed; and
  - (c) Follow all other requirements of this subsection.

20. Out-of-State Courses.

- a. A school shall coordinate the defensive driving attendance and completion of eligible offenders who receive an Arizona violation and are authorized by a court to attend an out-of-state program. Coordination shall include:
  - (1) Verification of the individual's eligibility prior to attendance;
  - (2) Collection and retention of all student data and a notarized affidavit of eligibility;
  - (3) Collection and disbursement of court diversion fees and state fees as required by this section;
  - (4) Reporting of required data to the defensive driving database for an out-of-state student who completes a defensive driving course;
  - (5) Notification to the jurisdictional court of the student's completion and any other reports required by that court in connection with a student attendance; and
  - (6) Providing each out-of-state student with information regarding the student's responsibilities regarding attendance requirements.
- b. A student shall provide satisfactory evidence of course completion within the time allowed by the Arizona court of jurisdiction and shall comply with all applicable requirements and policies of statutes, this section and court or local rules.
- c. The completion date for an out-of-state attendee is the date a valid completion certificate and all required fees are received by a school.
- d. A school shall require and retain reasonable evidence the individual taking the out-of-state course is the same individual named on the Arizona violation for diversion. The school shall make a positive check of the individual's driver license at the time of the defensive driving course in a classroom setting or if an ADM course, upon delivery of materials to the individual, and notarization by jurat of the required documents.

21. Accounting Systems. A school shall comply with the following accounting and recording requirements:

- a. Establish an accounting and recording system ensuring accurate reporting of all transactions relative to the receipt of court diversion and state fees providing sufficient documentation for audit purposes.
- b. Establish a cash receipts procedure including use of pre-printed, consecutively numbered receipts or receipts consecutively numbered by an automated system and issued to each student from whom a defensive driving fee is collected. Receipts shall provide the following information:
  - (1) Student's name;
  - (2) Receipt date;
  - (3) Amount received;
  - (4) Name of the individual making the payment;
  - (5) Identification of the individual receiving the payment;
  - (6) Method of payment;
  - (7) Sequential receipt number; and
  - (8) Name of the school.
- c. Maintain a cumulative record of each individual who has prepaid for a defensive driving course but has not attended. A school shall handle all prepaid fees in accordance with this section and hold them in trust for the courts until disbursement on the prescribed schedule or until an approved refund is issued to the individual pursuant to this section.
- d. Not enter student completion records in the defensive driving database in advance, nor enter a student record for any individual who has not actually completed an approved defensive driving course.
- e. Retain all records related to a student's attendance or otherwise required by this section a minimum of three years. Each student record shall include the following information:
  - (1) Receipt number;
  - (2) Student's complete name, address, date of birth, and license number;
  - (3) Citation information, including the number, charge number, court code, violation code and violation date;
  - (4) Receipt date;
  - (5) Amount received;
  - (6) Method of payment;
  - (7) Identification of the individual accepting the payment;
  - (8) Date and location of class assignment;
  - (9) Date the student completed the defensive driving course;
  - (10) Program code;
  - (11) Violation type;
  - (12) Location of class (in state or out of state);

(13) Copies of any applicable court order and other information significant to the record;  
and

(14) Type of defensive driving course, if not a classroom course.

- f. Enter all required completion information on the defensive driving database no later than three business days after the date of each defensive driving course for each student who completed a course.
- g. Enter a state fee record on the defensive driving database for any student who pays for a defensive driving course but does not complete the course within that payment period.
- h. Enter a state fee record for any student who did not complete a defensive driving course no later than seven days after the end of either of the payment periods in which the fee was collected.
- i. Correct, or request division staff to correct, a state fee or completion record within five days of system notice or discovery.
- j. Maintain a checking account for court diversion and state fees for the sole purpose of preventing any co-mingling of school operating monies, fees from any court diversion and state fees until disbursed to the appropriate court.
- k. Establish procedures resulting in compliance for the timely disbursement of all court diversion and state fees pursuant to subsection (F)(22).

22. Remittance and Reporting of Court Diversion and State Fees. A school shall comply with the following requirements regarding remittance of fees to the appropriate court and reporting requirements:

- a. Establish a remitting and reporting system ensuring accurate transmission of court diversion and state fees providing sufficient documentation for audit purposes. Division staff shall pre-approve any change in the remitting or reporting system.
- b. Deliver electronic state fee remittance reports to division staff on or before the payment due date pursuant to subsection (F)(22)(e) in the required format. If a diskette is used, the school shall mail the diskette and a hard copy of the data with the report to division staff. The school shall retain electronic or diskette reports in an accessible format until the school receives confirmation from division staff the information is usable, complete, accurate and reconciled.
- c. Deliver manually prepared state fee remittance reports to division staff on or before the payment due date pursuant to subsection (F)(22) in the required format.

- d. Report general student and payment information and defensive driving course completion data directly to the defensive driving database in either an on-line or batch basis. Division staff shall determine whether the school will operate by batch processing or on-line processing, based on the needs of the court and the school.
- e. State fee remittance reports shall provide detailed records on each student the school is reporting; aggregate numbers are not acceptable. The report shall ensure a state fee is remitted for each student whose name appears on the remittance report. A school shall remit all state fees in compliance with the following:
  - (1) "Pay Period A" fees shall be received between the first through the fifteenth of the month by the 22<sup>nd</sup> day of that month;
  - (2) "Pay Period B" fees shall be received between the sixteenth through the 31<sup>st</sup> of the month by the seventh day of the following month;
  - (3) Submit a separate remittance report for each of the following categories:
    - (a) Individuals who completed the defensive driving course and the state fees are remitted for the pay period;
    - (b) Individuals who registered but did not complete a defensive driving course and the state fee was collected in the pay period;
    - (c) Individuals who completed the defensive driving course and the state fee was paid in a prior pay period; or
    - (d) If no payment is due to the supreme court, the school shall prepare and submit a negative state fee report;
  - (4) Each category listed in subsection (F)(22)(e)(3) shall include the following:
    - (a) Complete name;
    - (b) Birth date;
    - (c) Driver license number;
    - (d) Citation number;
    - (e) Violation;
    - (f) Court; and
    - (g) Date of defensive driving course completion, if applicable.
- f. Court diversion fee remittance reports shall conform to the format agreed upon between the court and school. If the school has a contract as a primary provider with a court, the primary provider contract shall state the format. The reporting period and remittance of diversion fees may be the same as provided in subsections (F)(22)(e)(1) and (2) or more often if required by the terms of a contract. A school shall transmit all diversion fees to the appropriate court in compliance with the following:
  - (1) Name of each court to which a payment is made;
  - (2) Payment date;
  - (3) Amount of the payment; and
  - (4) Check number.

- g. A school shall submit diversion fee information to division staff, but may submit copies of checks or receipts instead of the court remittance diversion fee report pursuant to subsection (F)(22)(f).
- h. Notify division staff and the court of jurisdiction of any student who completes a class but was not eligible for diversion and include in the notification the reasons the school failed to prevent the attendance. This requirement does not apply to students who are court-ordered pursuant to statute, when the court order is issued prior to the defensive driving course attendance.
- i. Within three business days, replace any checks disbursed to any court returned by the bank for insufficient funds and add all returned check charges incurred by the school to the replacement check.

23. Reconciliation System. A school shall comply with the following financial and reporting requirements:

- a. Reconcile and balance all collected fees on a daily basis and account for the remainder in the account at all times.
- b. Reconcile the monthly bank statement for the court diversion and state fee checking account including:
  - (1) Aggregate receipts for the month shall match the aggregate deposits; and
  - (2) The month-end checking account balance shall match the unpaid amounts owed to the courts.
- c. Investigate on a monthly basis all disbursement checks outstanding for more than six months.
  - (1) If the payee is a court, the school shall notify the court of the outstanding check, cancel the outstanding check and reissue a new check, if necessary.
  - (2) If the payee is a student to whom a refund is owed, the school shall send a letter to the payee's last known address advising the payee the check has not been cashed.
  - (3) If the student payee responds the check is lost, the school shall cancel the outstanding check and issue a new check.
  - (4) If the student payee does not respond within 30 days or cannot be located, the school shall cancel the outstanding check and issue a check to the supreme court. The supreme court shall process the unclaimed refund according to state law.
- d. A batch school shall correct errors to state fee and completion records or submit a request for correction to division staff within five days of receiving notice from the system of the error or five days after discovery.



- e. Reconcile any insufficient fund checks and charges to the replacement check.

#### 24. Refunds.

- a. Once a person begins a defensive driving course, the state fee and court diversion fee are non-refundable except as pursuant to this subsection. A school may refund other registration fees pursuant to its own guidelines, or at the direction of a court. A school shall provide a student with its refund policy prior to accepting the fees from the student.
- b. A school may provide a refund of court diversion and state fees when:
  - (1) A student pre-pays for a defensive driving course, does not begin the course and does not contact the school to reschedule for a future course. The school shall refund both the court diversion fee and the state fee 30 days after the scheduled defensive driving course date or upon notification from the student the student will not attend a course, whichever is first;
  - (2) An officer fails to file a citation with a court and the cited person attends a defensive driving course for that citation. Upon notification by the jurisdictional court, the school shall notify division staff a refund is requested. Upon written approval by division staff, the school shall refund the court diversion and state fee to the student; or
  - (3) A citation is dismissed by a jurisdictional court on its own motion, for technical problems not correctable under civil traffic rules of court.
- c. Refund of court diversion or state fees shall result in restoration of the student's eligibility for a defensive driving course.
- d. Refund of state fees to a school or a student is not permitted for an ineligible violation or an ineligible student who attends a defensive driving course, whether by fault of the student or school.
- e. At its discretion, a court may direct refund of a court diversion fee to a student, or may direct the school to forward the fee to the court for a bond or other amount due the court, up to the amount of the default for the citation.
- f. A school shall maintain complete and accurate records of all refunds and shall attach supporting documentation to each refund disbursement.
- g. In cases where refunds cannot be authorized under this section, the Board may authorize, pursuant to subsection (D)(4)(b), restoration of eligibility for a student who attends a defensive driving course but cannot have the violation dismissed because the violation was ineligible for diversion. An ineligible violation is any violation not included in A.R.S. § 28-3392(A).

25. Assumed Business Name. These requirements are contained in ACJA § 7-201(F)(3).
26. Instructors. In addition to the requirements of ACJA § 7-201(F), the following requirements apply:
  - a. An instructor may exercise the privileges of certification only under the auspices of a school.
  - b. An instructor shall notify division staff of any change in mailing address within five days.

**G. Renewal of Certification.** In addition to the requirements of ACJA § 7-201(G), the following requirements apply:

1. Expiration Date. All school and instructor certifications expire at midnight December 31, 2006. Beginning January 1, 2007, there is a one time renewal cycle for ten months and all certificates shall expire October 31, 2007. Beginning November 1, 2007 and continuing thereafter, all certificates shall expire at midnight, October 31<sup>st</sup> of odd numbered years.
2. Schools. Each certified school seeking renewal of certification shall pay the specified renewal fee in subsection K, calculated by division staff based on the total number of students completing a defensive driving course during the prior state fiscal year.
3. Instructors. All instructors shall:
  - a. Apply for renewal by submitting a current original motor vehicle record from any jurisdiction where the applicant instructor has held a driver license in the twelve months preceding the date the applicant instructor files the renewal application with division staff.
  - b. For traditional classroom instructors, teach a minimum of six classes for a school during the preceding twelve months and, for ADM instructors, demonstrate 192 hours on duty to answer call-in or email questions from students, pursuant to subsection (M)(12), for the renewal period ending December 31, 2006.
  - c. For traditional classroom instructors, teach a minimum of four classes for a school and, for ADM instructors, demonstrate 128 hours on duty to answer call-in or email questions from students, pursuant to subsection (M)(12), for the renewal period from January 1, 2007 through October 31, 2007.
  - d. For traditional classroom instructors, teach a minimum of eight classes for a school and, for ADM instructors, demonstrate 256 hours on duty to answer call-in or email questions from students, pursuant to subsection (M)(12), beginning with the renewal cycle November 1, 2007 and all future renewal cycles. The employing school shall maintain

records of classes taught or on duty hours for each employed or contracted instructor and shall provide them on request.

- e. Complete at least six hours of continuing education training through December 31, 2006 and an additional six hours from January 1, 2007 through October 31, 2007. Beginning with the renewal cycle of November 1, 2007 and thereafter, complete twelve hours of continuing education during the renewal cycle, unless the Board grants an extension.
- f. Pass the examination for certification required pursuant to subsection (E)(2)(e) by September 1, 2009 to qualify for renewal of certification.

4. Restricted Certification.

- a. In order for a school to cover their scheduled defensive driving courses in the event of an emergency where a certified instructor is not available to teach a course, an owner or principal of a school may apply for, and the Board may grant a restricted certificate under the following conditions:
  - (1) The owner or principal shall apply for the restricted certificate on a form approved by the Board;
  - (2) The owner or principal holds a valid certificate as an instructor and meets all renewal requirements, except the requirement for the number of classes taught; and
  - (3) The owner or principal has not had a certificate that has been revoked or suspended.
- b. To remain eligible to renew a restricted certificate, owners and principals shall complete all renewal requirements each renewal cycle except the number of defensive driving courses taught or hours on duty, pursuant to subsection (G)(3).

5. Denial of Renewal. In addition to the requirements in ACJA § 7-201(G), the following requirements apply:

- a. The Board may refuse to renew the certificate of any instructor who fails to meet the standards of this section and ACJA § 7-201 on two or more successive classroom monitoring sessions, completed more than 30 days apart.
- b. If an instructor's certification lapses or is denied due to failure to meet renewal requirements, the instructor is not eligible to apply for subsequent certification for six months.

**H. Complaints, Investigation, Disciplinary Actions and Hearings.** These requirements are contained in ACJA § 7-201(H).

**I. Policies and Procedures for Board Members.** These requirements are contained in ACJA § 7-201(I).

## **J. Codes of Conduct.**

1. Schools. This code of conduct is adopted by the supreme court to apply to all schools in the state of Arizona, pursuant to A.R.S. § 28-3395. The purpose of this code of conduct is to establish minimum standards of performance for schools.
  - a. Curriculum. A school shall exercise extreme care and diligence and ensure all materials used in the instruction of defensive driving courses, whether in a classroom or in an ADM format, are in the public domain or original and not copied without the appropriate written permission.
    - (1) A school shall make all reasonable efforts to secure accurate and current information in its presentations in defensive driving courses.
    - (2) A school shall not use any curriculum material or teaching methods not approved by the Board.
  - b. Ethics. A school shall not operate in a manner reflecting adversely on the judiciary, board, courts, division staff or other agencies involved in the administration of justice including law enforcement agencies and attorneys.
    - (1) A school shall maintain the confidentiality of all defensive driving student records and shall not disclose defensive driving database information to any third party. A school may disclose information only upon presentation of reasonable evidence the individual seeking the information is the same individual who is the subject of the record. A school shall refer all third party requests for information to division staff.
    - (2) A school shall not perform nor permit its employees, representatives or third party contractors to perform judicial functions or functions for court staff. School employees, representative or third party contractors shall not volunteer assistance to court staff in their official duties.
  - c. Classrooms. A school shall maintain the appropriate decorum in the classroom to promote an atmosphere of learning for students. A school shall:
    - (1) Direct the instructors to require students to be punctual and attentive;
    - (2) Direct the instructors to prevent or control disruptions by students interfering with the conduct of the defensive driving course or distressing other students;
    - (3) Direct the instructors to prohibit students from sleeping or engaging in other activities that are not a part of the school's approved defensive driving course during the 240 minutes of classroom instruction;
    - (4) Direct the instructors to forbid the use of electronic devices or laptop computers by students causing inattention or distractions from the learning of the student of other students in the defensive driving course; and

- (5) Not use a facility for a classroom presentation which may create distractions prior, during or after the presentation.
  - d. Compliance. A school shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, court orders, administrative orders, ACJA § 7-201 and this section.
2. Instructors. This code of conduct is adopted by the supreme court to apply to all instructors. The purpose of this code of conduct is to establish minimum standards of conduct for all instructors.
- a. Responsibilities. The fundamental responsibilities of an instructor is to ensure the instruction of all students in the approved curriculum and to meet the mandatory 240 minutes of instruction time, in a professional manner encouraging student learning.
  - b. Ethics. An instructor shall exhibit the highest degree of ethical conduct and maintain the confidentiality of information provided by students.
    - (1) An instructor shall be aware at all times the instructor represents the supreme court and the instructor's employing school.
    - (2) An instructor shall not act disagreeably or permit personal feelings, prejudices, animosities, or friendships to influence the student, classroom conduct or delivery of the defensive driving course.
    - (3) An instructor shall not accept any gratuities or favors from a student, other classroom participant or court employee.
    - (4) An instructor shall avoid the appearance of a conflict of interest or self-dealing. A conflict of interest or self-dealing arises where the instructor has a personal or agency interest other individuals may perceive as self-serving or adverse to the position of the student, school or court.
    - (5) An instructor shall exhibit the highest degree of professional conduct. An instructor shall:
      - (a) Act in a professional manner, prior, during and after the delivery of a defensive driving course;
      - (b) Dress in business casual attire, when teaching in a classroom setting;
      - (c) Not use a classroom presentation as a forum for any purpose except the presentation of the approved curriculum;
      - (d) Respond to questions or comments in a constructive manner, to encourage student questions and participation. This requirement applies to a classroom presentation and when an instructor is answering an on-line question;
      - (e) Respond in a constructive and professional manner to any disruptive activity in a classroom;
      - (f) Not make any derogatory comments concerning the courts, board, court employees, law enforcement or other professionals associated with the judicial system; and

- (g) Not advise or provide interpretation on any traffic law or the legality of a traffic law or citation issued to a student.
- (6) Knowledge and Training. An instructor shall:
  - (a) Understand the approved curriculum and have the knowledge and training to present the information to the students through an understandable adult learning technique;
  - (b) Present only the material contained in the school's curriculum;
  - (c) Respond to students' questions with clear and correct answers. If the instructor does not know the answer, the instructor shall advise the student, research the question and obtain the correct answer. The instructor shall provide the answer to the student, if possible, before the end of the classroom presentation or on-line defensive driving course. If the instructor cannot locate the answer before the end of the presentation or course, the instructor shall follow-up with the information for the student as soon as possible; and
  - (d) Take the necessary steps to become informed of any statutory or local ordinances changes in the traffic laws.
- 7. Compliance. An instructor shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, court orders, administrative orders, ACJA § 7-201 and this section.

**K. Fee Schedule.**

Fees through October 31, 2007

	Fee
1. Initial School Certification.	\$ 500.00
2. School Renewal Certification Fees.	

(Renewal fees are based on the number of student completions in the prior fiscal year, or portion of fiscal year the school was conducting business as an Arizona-certified school.)

Number of Completions:

0 - 2500	\$ 80.00
2,501 - 5,000	\$ 165.00
5,001 - 10,000	\$ 190.00
More than 10,000	\$ 225.00

- 3. Late Renewal Fee.
  - a. School \$ 50.00
  - b. Instructor \$ 50.00
- 4. Miscellaneous Fees.
  - a. Replacement of Certificate or Name Change \$ 25.00
  - b. Public Record Request per Page Copy \$ 00.50
  - c. Certificate of Correctness of Copy of Record \$ 18.00
- 5. Reinstatement Application. \$ 100.00

(Application for reinstatement to certification after suspension or revocation of certification.)

Fees Effective November 1, 2007

- 1. Initial School Certification Fees for Two Year Period. Fee
  - a. Certification expiring more than one year after application date \$ 1000.00
  - b. Certification expiring less than one year after application date \$ 500.00
- 2. Examination Fees for Individuals.
  - a. Applicants for Initial Certification \$ 50.00
  - b. Re-examinations \$ 50.00

(For any applicant who did not pass the examination on the first attempt. The \$50.00 fee applies to each re-examination.)

  - c. Reregistration for Examination \$ 50.00

(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)
- 3. Renewal Certification Fees for Two Year Period.
  - a. School Renewal.

(Renewal fees are based on the number of student completions in the prior two fiscal years, or portion of fiscal years the school was conducting business as an Arizona-certified school.)

Number of Completions:	Fee
0 - 5000	\$ 150.00
5001 - 10,000	\$ 300.00
10,001 - 20,000	\$ 350.00
More than 20,000	\$ 400.00

b. Late Renewal Fees

(1) School	\$ 50.00
(2) Instructor	\$ 50.00

4. Miscellaneous Fees.

a. Replacement of Certificate or Name Change	\$ 25.00
b. Public Record Request per Page Copy	\$ 00.50
c. Certificate of Correctness of Copy of Record	\$ 18.00
d. Reinstatement Application	\$ 100.00

(Application for reinstatement to certification after suspension or revocation of certification.)

**M. Alternative Delivery Method Policies.**

1. A school, including a school proposing to present or presenting a defensive driving course via an ADM shall meet the standards for schools and instructors, as specified in ACJA § 7-201 and this section. These policies address the specific requirements for ADM formats where they differ from classroom delivery format.
2. Alternative Proposals. Division staff and the Board shall consider alternative proposals submitted by a school; these policies are not intended to limit innovative methods of providing service other than as required by the existing standards contained in this section.
3. Content Knowledge Testing. One purpose of a defensive driving course is to provide a sanction and deterrent to continued offenses by the course participant. By its nature, a home-delivered ADM format is a more convenient process for the participant and manifests an inherent reduction in sanction and deterrent effect. To restore an equitable standard of sanction and



deterrent to classroom attendance, a school offering an ADM format shall require students to complete and pass content knowledge testing pursuant to this subsection.

4. **Temporary Waiver of Specific Requirements.** The Board, upon application and receipt of fees by an applicant school, may waive the requirement for an applicant school to have an Arizona office and obtain commercial general liability insurance until the certification process is complete to a point a certification date can be definitively projected. The school shall then fulfill these requirements before the Board issues certification.
5. **Local Business Office and Local Telephone Service.** Each school shall maintain a business office and a local or toll-free telephone number in the state of Arizona through which the school's Arizona business is transacted. A school may conduct certain specified functions through other offices if approved in the business plan prior to implementation; and provided the functions are performed in compliance with all applicable provisions of this section. For example, a school may conduct registration through a national office, or center, provided the records are then duplicated for retention at the Arizona office, or are available to the Arizona office in an on-line format. A school shall retain student records specific to Arizona in this state for inspection as required, including eligibility affidavits, court orders, citations, student evaluations, registration and defensive driving course completion information. A school shall make any and all records available for inspection upon demand, without notice.
6. **Management Representation.** Each school shall maintain a management level employee or representative within the state who has contracting and decision making authority on behalf of the school.
7. **License to Conduct Business in Arizona.** Each school shall maintain all licensing required to legally conduct business in Arizona and shall operate in full compliance with all Arizona rules, statutes and ordinances. Division staff and the Board do not provide advice or information on legal matters. A school may obtain information from, among others, the Arizona Corporation Commission and the Arizona Department of Insurance.
8. **Curriculum and Updates to Curriculum.** Each school shall maintain an approved Arizona specific curriculum and program that meets all requirements and monitoring standards pursuant to ACJA § 7-201 and this section. A script of the proposed defensive driving course for initial review shall accompany an application for a school proposing to present classes via an ADM format. A school shall design curriculum specifically for Arizona, accurate in all points of Arizona laws as required, and in defensive driving techniques. After a script has been approved, the applicant school shall produce and submit the actual defensive driving course to division staff for review. The defensive driving course shall match the approved script. The Board is the final authority for matters of defensive driving course material accuracy.
9. **Changes to Lesson Plan or Program.** After approval and acceptance, a school may not change the lesson plan and defensive driving course in any way without prior approval. The Board may require a school to make changes to any curriculum or defensive driving course at any time, if

determined necessary for compliance with ACJA §§ 7-201, -205 and applicable statutes and court rules. Once notified, a school shall complete required changes and replace all obsolete product or coursework within 30 days for written or Internet-based materials, and within 60 days for video materials.

10. Operational, Financial and Administrative Processes. A school shall obtain written pre-approval of its operational procedures and processes from the Board. Once approved, the school may not change the procedures and processes in any way until the school obtains written approval of the changes from the Board.
11. Instructors and Training. An ADM school shall maintain a sufficient staff of certified instructors to provide prompt answers to student questions and shall ensure the instructors are available from 8:00 a.m. through 9:00 p.m., local time for the student, on each day the defensive driving course is available for student work. The instructors shall meet all initial and renewal certification requirements of ACJA § 7-201 and this section regarding training and experience, prior to instructing or assisting any Arizona student in an ADM defensive driving course. The Board may require content knowledge in lieu of, or in addition to required training, and may authorize an out-of-state school to plan and conduct its own training if the training meets the requirements of ACJA § 7-201 and this section. Materials provided to students shall include phone numbers and e-mail addresses of the available instructors to allow students to receive answers to their questions quickly and efficiently. A school shall encourage students to call or e-mail with questions and the school's process for a student to make direct contact with an instructor shall not create an impediment to a student desiring to do so.
12. Instructor Experience Requirements. Each classroom instructor is required to teach a minimum number of classes each renewal period for eligibility to renew the instructor's certificate, pursuant to subsection (G)(3). An instructor who does not instruct concentrated material in the classroom (an instructor who is only on duty to answer called in or e-mailed questions) does not obtain a comparable level of experience from the same amount of hours on duty. Each instructor who does not present Arizona-specific defensive driving course material in a classroom setting may substitute the required hours at the rate of eight to one, as specified in subsection (G)(3), each instructor renewal cycle.
13. Instructor On-Duty Schedules. A school shall provide accurate schedules of on-duty instructors for monitoring purposes. Division staff monitors may call on-duty instructors at any time and ask questions on defensive driving course material. Failure to answer questions correctly may result in the filing of a complaint regarding the instructor and school. The questions asked by division staff may include specific questions on Arizona traffic laws and defensive driving topics. A school shall provide instructor schedules to division staff once each month and shall correct the schedules as necessary to maintain them in an accurate and current condition.
14. Validations Required.
  - a. A school shall demonstrate adequate security measures are in place to prevent circumvention

by the general public and to validate:

- (1) student identity at registration and throughout the defensive driving course;
- (2) participation throughout the defensive driving course;
- (3) time requirements are met; and
- (4) successful completion of the defensive driving course.

- b. A school shall obtain and keep on file a copy of the student's citation prior to the student beginning an ADM course. A school may accept citations by fax, mail, or via electronic means.

#### 15. On-Site Testing.

- a. On-site testing is the standard for purposes of validation of student identity and participation in the defensive driving course. Within seven days after completion of the course, and within the time allowed by the court for completion, a school shall ensure each student is physically identified in person through a comparison of the student's driver license or identification card in compliance with this section. The school shall immediately test each student to assure definitively the student is the person who completed the course.
- b. Each test shall contain a minimum of 50 questions. Each student shall pass 25 content questions with at least an 80% correct score. In addition, each student shall answer 25 course environment questions with at least a score of 90% correct. One retest of content questions only is permitted provided the student completes the retest within the time allowed by the court; and provided the student has reviewed those sections of the course where test failure occurred prior to retest. A school shall refer any student who fails the test after the first or second attempt back to the court or to a classroom defensive driving course if time permits. No retest is permitted on course environment questions. A school shall not refund state fees for any student failing the required test but shall forward the state fees to the supreme court. The testing proctor shall ensure the person taking the test is both the person who was cited and the person who completed the defensive driving course.

#### 16. Alternatives to On-site Testing: In-Course Validation Questions.

- a. A school may propose an alternative method of ensuring student identity validation and participation if the defensive driving course meets the standards of ACJA § 7-201 and this section. The Board may approve alternative methods if the school can demonstrate the proposed method meets the requirements of this section and provides the same standard of identity and participation assurance as the standard method outlined in this section. A school shall positively ensure the person taking the defensive driving course is the person cited. While engaged in the defensive driving course, and if on-site testing for identity and participation validation is not used, each student shall answer validation questions correctly in at least the following categories:

- (1) identity verification questions;
    - (2) course environment verification questions; and
    - (3) course content questions.
  - b. Identity verification questions are personal information questions only the student should be able to answer. Course environment questions are questions about the course only someone who has viewed the defensive driving course can answer. Course content questions are questions developed to establish the student has learned the material presented.
  - c. During the defensive driving course, a school shall use at least fifteen questions in each category to ensure the student has participated in the course completely and has learned the material. A student shall correctly answer identity verification questions at 100% and course environment questions at 90% on the student's first attempt. A school shall not allow a student who does not meet these requirements to continue to the final exam phase of the course.
17. Method for Validation Questions. A school shall disclose the method used to compile and assign validation questions. A school shall draw the information compiled for validation questions from several independent databases, and shall not obtain this information from the student, court of jurisdiction, or the supreme court.
18. Time Limits for Validation Questions. A school shall limit the time available for a student to respond correctly to each validation question to no more than 30 seconds for each question.
19. Prior Approval for Test Questions. A school shall submit all test questions and identity verification processes to the Board for pre-approval. Once approved, a school shall submit any proposed changes to the Board for pre-approval.
20. Test Failure by Students. A school shall not issue a completion certificate to a student or report a student as completed to any court or entity if the student fails to pass any of the required tests at the specified scoring levels.
21. Defensive Driving Course Completion Requirements. Each student shall participate in completion of a defensive driving course for a minimum time of 240 minutes or four hours and a maximum of 270 minutes or four and one half hours. Each student shall be actively engaged in the curriculum or defensive driving course during the four hours. This time shall include the time used to test the student's knowledge and retention of the material, but does not include time spent for identity or participation validation processes, nor for travel to and from a testing site. All alternative formats shall have approved processes in place to ensure the time in the course is at, or in excess of the active minimum time required but does not exceed the maximum time of four and one half hours, or 270 minutes. For example, an Internet delivery method shall have programming that tracks the time each student actively spends in the defensive driving course, and shall not permit any student to complete the course in less than the required time. A school

shall not issue a completion certificate to a student or report the student as completed to a court unless the student has been actively involved in approved course work for a minimum of four hours or 240 minutes. A student shall correctly answer the required number of validation and course content questions as required by these policies and pass the final examination before receiving a certificate of completion from the school.

22. Final Testing. If a school proposes or uses a method other than the standard method on-site testing as specified in these policies, the school shall administer a content knowledge test to each student before completion of the defensive driving course. The test shall include 50 questions including 25 course content questions and 25 course environment verification questions as described in subsection (M)(16). The Board may waive the requirement for environmental questions if the school can demonstrate it can effectively validate the student's identity and participation without environmental questions. A school may allow a student who does not pass the final test to review sections missed or repeat the defensive driving course one time, and may retest the student on content questions only one time. No retest is permitted for environmental questions. A school shall not issue a completion certificate to a student who fails the final examination a second time.
23. School Accounting Procedures. A school shall follow all accounting requirements pursuant to ACJA § 7-201 and this section. A school that offers programs for non-Arizona courts national programs shall establish a separate account for public funds. A school shall deposit all Arizona court fees in this separate account until the fees become payable to the courts, or are refunded with the approval of the courts. A school shall record and account separately all fees collected on behalf of Arizona courts from other funds contained in the public funds account required by this policy. A school shall not co-mingle school funds with public funds.
24. Class Start Time. For self-paced alternative delivery options, for example, Internet or correspondence courses, the student has begun the defensive driving course at the time registration is completed and the program's lesson plan content has been accessed for the first time.
25. Student Requirements and Notifications. A school shall notify each prospective student of all requirements, policies and procedures for participation in the defensive driving course, including hardware and software requirements, costs, payment method, privacy and confidentiality policies, requirements for successful completion and the criteria for failing the defensive driving course, and penalties for fraud. The eligibility affidavit shall be presented and accepted. The school shall specifically include notice of the requirement a final failure in testing results in no credit for the on-line course. The school shall also notify the prospective student acceptance of the terms means no refund is possible after beginning the defensive driving course, except in cases where technical problems exist with the citation that cannot be corrected under Arizona Rules of Court. The school shall give the prospective student the option to stop the process without a fee at any time before beginning the defensive driving course. A school shall permit a student to begin the defensive driving course only after the student has accepted the required terms and conditions.

26. **Student Fee Payment.** A school shall collect all fees before students are allowed to begin a defensive driving course. Once a student begins a defensive driving course with a school, the school is responsible for payment of fees regardless of whether the fee has been collected from the student.
27. **Completion of Out-of-State Students.** The completion date for each on-line student is the date of actual completion. Pursuant to subsection (F)(21), a school shall enter the completion date for an out-of-state classroom student as the date the school receives the required completion documentation for that student, a person residing in a state other than Arizona who has received an Arizona citation while traveling through the state. This requirement places the responsibility for timeliness upon the student. This is not necessary for an on-line school and therefore does not apply.
28. **Students Caught Cheating or Failing to Pass Tests.** A school shall actively seek to identify dishonesty or cheating by the students of ADM defensive driving courses and shall record and disclose its processes to do so. A school shall not allow a student who has been identified as cheating to continue or complete the defensive driving course and shall report the student to the court of jurisdiction for action as determined necessary by the court of jurisdiction. A school shall refuse completion to a student who does not pass content knowledge or course environment portions of tests or both, and shall refer the student to the court of jurisdiction and report the student to division staff.
29. **Certification Process Defensive Driving Course Demonstrations.** Division staff shall modify the course demonstration process for ADM applicants to satisfy the intent of the course demonstration process, to insure the course as presented meets the standards for defensive driving courses in Arizona. For example, for an Internet defensive driving course, division staff shall take the Arizona defensive driving course to evaluate the content and the security and validations included. During the evaluation, division staff shall participate in the course and attempt to cheat or “break” the validations of the course.
30. **Security of Facilities.** A school shall house technical facilities (ISP-host, data storage and support systems) in secure facilities, and shall ensure all information is inaccessible to unauthorized parties. The information contained in the defensive driving database is not a public record and is confidential.
31. **Technical Assistance.** Instructors shall possess and maintain adequate knowledge of the technical aspects of the defensive driving course to effectively deal with students’ technical difficulties as well as content questions. If the instructor does not have sufficient technical knowledge, the school shall provide technical staff that are knowledgeable and available at all times the defensive driving course is available to students. A school shall ensure instructors and technical staff, as utilized, are available telephonically at all times as required by these policies.
32. **System Availability.** Maintenance, upgrades and repairs to a server or system shall not interrupt students who are on-line taking the defensive driving course. A school shall notify students

immediately of technical difficulties as they arise, including an estimate of the length of time the system may be down.

33. **System Reliability.** A school shall ensure delivery of Internet-based defensive driving courses is reliable to allow students to complete their course of study within the time allowed by the court. A school shall immediately correct excessive technical problems or downtime which results in completion problems for students. Failure to provide access at a reliable and reasonable level may result in disciplinary action against the school. A school shall correct technical problems and make systems available for use by students after technical problems or maintenance within 24 hours of system problems or shut-down.
34. **Access to Assistance and Support Functions.** A school shall ensure students are able to obtain access to a certified instructor or a technical staff member within five minutes during those times required by this subsection.
35. **Correction of Problems.** A school shall address problems and solutions implemented to maintain the quality of the defensive driving course and responsiveness to student and court needs. Failure to comply is cause for disciplinary action pursuant to ACJA § 7-201(H) and this section.
36. **Confidentiality.** A school shall protect confidential student information and defensive driving course records, including testing and validation questions to ensure the security of the records is not compromised. A school shall ensure the security of all student data and school records, both physically and electronically, to prevent inadvertent or unauthorized disclosure of any confidential data or information.
37. **Records Retention.** A school shall retain student records as required by ACJA § 7-201 and this section. Student records shall include all facts pertinent to ensure these standards are met for each student, including a record of validation and course content questions used, including dates and times, and which were answered correctly or incorrectly, the complete electronic “footprint” of each student’s participation in the defensive driving course, including log-in and log-out times and evidence the student’s time engaged was in active participation, and a record of each student’s performance on final testing and retest if required. A school shall retain final disposition of each student, pass or fail, and the reason for any failure or suspension. A school shall retain a copy of a student’s final exam for at least three years from the date a defensive driving course was completed.
38. **Student Failure Disclosure.** A school shall disclose the procedure used to handle students who fail validation or course content questions or tests.
39. **Self-review.** A school shall establish, follow and disclose procedures for self-review or audit of the school's validation processes as required pursuant to this subsection.
40. **Completion Certificates.** A school shall provide an original copy of a completion certificate to the student upon successful completion of the defensive driving course. An electronic, faxed or

“.pdf” file copy of a certificate sent to a student in lieu of providing an original hard copy is not permissible. However, upon request, a school may provide a duplicate copy of a certificate to the student’s court of jurisdiction by mail, fax, or electronic means. A school shall complete and issue defensive driving course completion certificates and shall not allow a third party to complete or issue the certificates.

41. Required Fees and Documents. A school shall secure payment of all fees and have all required documents physically “in-hand” prior to the student beginning the defensive driving course. The student shall indicate acknowledgment and acceptance of all terms and conditions.
42. Advertisements. Commercial advertisements are not permitted during the defensive driving course.
43. No Refunds for Failure to Complete. A school shall notify each student that once the defensive driving course has begun, regardless of technical or other difficulties encountered, the student is required to complete the course and required testing within the time allowed by the court of jurisdiction, Arizona laws and this section. Regardless of circumstance, no refund is permitted for state fees if the student fails to successfully complete the defensive driving course during the time allowed absent another valid reason for refund as provided by subsection (F)(24).
44. Collection of Student Data. A school shall obtain prior approval from each student for any third-party data the school will collect concerning the student and the student’s participation in a defensive driving course.