

THEODORE MCKINNEY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY DEPARTMENT OF : DECISION
 EDUCATION, OFFICE OF CRIMINAL, :
 HISTORY REVIEW UNIT, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – a school bus driver – appealed the Department’s determination to suspend his school bus endorsement pursuant to *N.J.S.A.* 18A:39-29 after an alleged incident in which a child was left on the school bus in June 2011. Petitioner asserted that he performed the mandated visual check of the bus at the end of the route, but failed to find the student because he intentionally hid from petitioner. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: on June 17, 2011, petitioner failed to discover that a child remained on his bus, notwithstanding his obligation under *N.J.S.A.* 18A:39-29 to properly inspect the bus at the end of his route; there is no genuine issue as to the fact that the student remained undetected on petitioner’s bus when he left after discharging the other students; the adequacy of the bus driver’s inspection or how it came to be that a child was left behind on the school bus after a visual inspection are insufficient to raise a material issue of fact warranting an evidentiary hearing; and the penalty of suspension of the school bus endorsement is mandatory under *N.J.S.A.* 18A:39-29. Accordingly, the ALJ concluded that the respondent is entitled to summary decision as a matter of law, dismissed the petition, and ordered that petitioner’s “S” endorsement be suspended for six months.

Upon full review and consideration of the record, Commissioner concurred with the findings and determinations of the ALJ. Accordingly, the petition was dismissed and the respondent was directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner’s school bus endorsement pursuant to *N.J.S.A.* 18A:39-28 et seq., and to notify petitioner’s employer that he is ineligible for the period of suspension for continued employment as a school bus driver.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

February 5, 2013

OAL DKT. NO. EDU 9833-11
AGENCY DKT. NO. 209-7/11

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Theodore McKinney, and the Criminal History Review Unit's reply thereto.

The petitioner's exceptions substantially reiterate the substance of his submission at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously found that the petitioner violated the School Bus Safety Act, *N.J.S.A. 18A:39-26 et seq.*, in connection with an incident where a student on his bus went undetected at the end of the route. The petitioner contends that he should not be penalized under the circumstances in this case because he did conduct an inspection as required by *N.J.S.A. 18A:39-29* and, thus, he did not violate the Act. As a result, the petitioner argues that the ALJ erred in granting summary decision in favor of the Criminal History Review Unit and imposing a suspension upon the petitioner.

In reply, the Criminal History Review Unit urges the adoption of the Initial Decision, maintaining that the ALJ properly determined that it was entitled to summary

decision. The Criminal History Review Unit also reiterates its arguments advanced below and emphasizes the fact that a child was left on the bus despite the petitioner's assertion that he conducted an inspection at the end of his route, and that is the only fact determinative of whether a bus driver is in violation of *N.J.S.A. 18A:39-29(a)*.

Upon such review, the Commissioner concurs with the ALJ – for the reasons stated in the Initial Decision – that the Office of Criminal History Review Unit is entitled to summary decision. The petitioner's exceptions do not raise any new arguments, but instead restate the arguments made by the petitioner below that were fully considered by the ALJ.

Accordingly, the petition of appeal is dismissed. Respondent is directed to notify the Motor Vehicle Commission of its obligation pursuant to *N.J.S.A. 18A:39-28 et seq.* to suspend petitioner's school bus endorsement and to notify petitioner's employer that he is ineligible for the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2013

Date of Mailing: February 5, 2013

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.