

New Jersey Commissioner of Education**Final Decision**

Ana David-Pedi,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner – a school bus driver – appealed the Department’s determination to suspend her school bus endorsement pursuant to *N.J.S.A. 18A:39-28 et seq.* after an incident in which a Central Jersey Prep student was left on petitioner’s school bus at the end of one of her assigned bus routes on February 24, 2021. Petitioner did not dispute that the child was left on the bus but contended that the student was never left alone. Petitioner conceded that she had only conducted a visual “turn around” inspection of the bus, not a full visual walk-through, asserting that she had nowhere to pull over safely to walk through of the bus before continuing to her next route. Petitioner did conduct the required walk-through after her next stop and found the student asleep in a seat, after which she returned the unharmed child Central Jersey Prep. The respondent Department filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner has admitted that on February 24, 2021, she did not conduct a full visual inspection of her school bus when she dropped off students at the Central Jersey Prep in Franklin Township, before proceeding to her next assigned stop in South Brunswick; pursuant to *N.J.S.A. 18A:39-28*, petitioner had an affirmative duty to visually inspect the school bus at the end of the transportation route to determine that no pupil had been left on the bus, and her argument that at no point was the student left unattended since petitioner never stepped off the bus before finding the child is without merit; in accordance with *N.J.S.A. 18A:39-29*, if a school bus driver is found to have left a pupil on the bus at the end of a route, the driver’s school bus endorsement shall be suspended for six months for the first offense. Accordingly, the ALJ granted summary decision to the respondent and affirmed the petitioner’s six month suspension for leaving a child on the school bus at the end of a route.

Upon full review, the Commissioner concurred with the ALJ that the respondent is entitled to summary decision. Accordingly, the petition was dismissed; 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:39-26 et seq.*, and to notify petitioner’s employer that she 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.

290-21

OAL Dkt. No. EDU 04317-21

Agency Dkt. No. 41-3/21

New Jersey Commissioner of Education

Final Decision

Ana David-Pedi,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner violated *N.J.S.A. 18A:39-28* when she failed to conduct a visual inspection of her school bus at the end of her route and, as a result, a child was left on the bus while petitioner continued on to her next route.

Accordingly, respondent's motion for summary decision is granted and the petition of appeal is dismissed. Petitioner's "S" endorsement is hereby suspended for six months from the date of this decision. Respondent is directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement pursuant to

N.J.S.A.18A:39-26et seq., and to notify petitioner's employer that she is ineligible for the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 18, 2021
Date of Mailing: November 18, 2021

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MOTION FOR SUMMARY DECISION

OAL DKT. NO. EDU 04317-21

AGENCY DKT. NO. 41-3/21

ANA DAVID-PEDI,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

OFFICE OF STUDENT PROTECTION,

Respondent.

Michael Policastro, Esq., for petitioner (The Policastro Law Firm, attorneys)

Sydney Finkelstein, Deputy Attorney General, for respondent Andrew J.
Bruck, Acting Attorney General, attorney)

Record Closed: October 11, 2021

Decided: October 13, 2021

BEFORE JUDITH LIEBERMAN, ALJ:

STATEMENT OF THE CASE

Petitioner appeals the six-month suspension of her "S" endorsement to operate a school bus, based on the determination by respondent New Jersey Department of

Education, Office of Student Protection, (DOE) that a child was left on the school bus to which petitioner was assigned.

PROCEDURAL HISTORY

Petitioner was notified of the DOE's determination on or about March 1, 2021. She filed a timely appeal on or about March 10, 2021. The DOE Office of Controversies and Disputes transmitted the matter to the Office of Administrative Law (OAL), where it was filed on May 14, 2021, as a contested case. N.J.S.A. 52:14B-1 to-15; N.J.S.A. 52:14F-1 to-13. The matter was assigned to me on June 4, 2021, and the first prehearing status conference was conducted on August 2, 2021. During the status conference, respondent advised that it submitted to DOE a motion to dismiss the appeal in lieu of an answer and sought leave to proceed with the motion before the OAL. Because petitioner advised that she had retained counsel, the prehearing conference was rescheduled to August 13, 2021, to permit counsel's appearance. The motion was discussed during the August 13, 2021, prehearing conference. It was determined that the motion would be treated as a motion for summary decision and petitioner would file a brief in opposition to the motion no later than September 13, 2021. Oral argument would be permitted if either party requested.

On September 15, 2021, petitioner asked respondent for a one-week extension of time to respond to the motion. The request was not presented to the OAL until September 20, 2021, which was one week after the September 13, 2021, deadline. At that time, petitioner did not specify the length of the requested extension. On October 7, 2021, because petitioner did not respond to my legal assistant's inquiries concerning the length of the requested extension, petitioner was advised in writing that she must submit her response to the pending motion for summary decision no later than October 11, 2021. She was further advised that if the response was not received by that date, the motion would be decided without petitioner's response. As of the date of this opinion, petitioner did not submit a response to respondent's motion. Accordingly, the motion was deemed unopposed.

FACTUAL DISCUSSION

The following facts are undisputed and, therefore, I **FIND** the following as **FACT**:

Petitioner possessed an "S" endorsement to operate school buses. On February 24, 2021, petitioner worked as a school bus driver. That day, she dropped off the children on her bus at Central Jersey Prep in Franklin Township, New Jersey. At that time, she observed, "from a turnaround view, [that] there were no children left on the bus." March 10, 2021, Petition. She was unable to stop the vehicle to "perform a full child check" because her "routes are too close in time gap" and, thus, she had "nowhere to pull over safely[.]" Ibid. Petitioner left Central Jersey Prep at 7:43 a.m. and proceeded to South Brunswick, where her first stop was at 7:53 a.m. "Upon [her] drop off to the next school in South Brunswick, [she] conducted a walk through and noticed that a child . . . was slouched over asleep in one of the seats." Ibid. Petitioner alerted her dispatcher that she would return to Central Jersey Prep to drop off the child and asked that another bus driver take over the rest of her route. Petitioner returned to Central Jersey Prep and walked the child into the school. Petitioner asserted, "At no point during this time was the child left unattended as I never stepped off the bus." Ibid.

The dispatcher, Robert Wojciechowicz, wrote a letter in which he described his interaction with petitioner. He asked her if she exited the bus at any time. P-1. Petitioner told him she "never exited the bus at all[.]" Ibid. Wojciechowicz wrote that he knew petitioner was "telling the truth because all her routes run together. So there is no time for [her] to stop[.]" Ibid.

DOE determined that petitioner's "S" endorsement to operate a school bus must be suspended because a child was left on the school bus to which she was assigned. It proposed a six-month suspension because it was petitioner's first offense.

LEGAL ANALYSIS AND CONCLUSION

Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). Summary decision may be granted when

the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 540 (1995)(quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)).

See also R. 4:46-2(c)("An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact"). Here, the facts are not in dispute and, therefore, the matter is ripe for summary decision.

N.J.S.A. 18A:39-28 addresses school bus drivers' obligation to ensure that children are not left on their busses. It provides:

A school bus driver shall visually inspect the school bus to which he is assigned at the end of the transportation route to determine that no pupil has been left on the bus. For the purposes of this act, "school bus" means every motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation for the transportation of children to or from school for secular or

religious education, which complies with the regulations of the Department of Education affecting school buses, including "School Vehicle Type I" and "School Vehicle Type II" as defined pursuant to R.S.39:1-1.

A penalty must be imposed if a bus driver is found to have violated the statute:

In the event that, after notice and opportunity to be heard, a school bus driver is found to have left a pupil on the school bus at the end of his route, his school bus endorsement shall be:

- a. suspended for six months, for a first offense; or
- b. permanently revoked, for a second offense.

[N.J.S.A. 18A:39-29.]

The statute does not require that the child must suffer an injury before a penalty may be imposed. See Garner v. New Jersey State Department of Education, Criminal History Review Unit, OAL Dkt. No. EDU 06655-08, adopted, Comm'r, Final Decision (May 1, 2009)(bus driver who exited the bus without first conducting mandatory visual inspection to determine that no children were left on the bus was subject to a six-month suspension for first offense, regardless of past employment record or absence of harm to the child who was left on the bus).

In Arcos v. New Jersey Department of Education, Office of Criminal History Review Unit, OAL Dkt. No. 01752-18, adopted, Comm'r, Final Decision (September 20, 2018), the bus driver failed to observe that a student remained on her bus after she dropped students off at their school. The bus driver did not leave the school bus and relied upon the representations of a teacher who was on the bus that all students had exited the bus. The Commissioner affirmed the decision of the Administrative Law Judge (ALJ), who granted summary decision in favor of the Department. The ALJ found that the driver had an "affirmative duty" to visually inspect the bus at the end of the transportation route. Initial Decision at *4 In examining when the end of the transportation route occurred, the ALJ referenced Klein v. New Jersey Department of Education, Criminal History Review Unit, Agency Dkt. No. 713-12/10, Final Decision (February 21, 2012) at *2, in which it was

determined that the "end of the transportation route" was the "point where all of the children in that group leave the bus to enter their school and the bus is empty of riders, and before the driver moves on to her next route." Thus, the end of the transportation route was not synonymous with the end of the driver's entire shift and the driver was obligated to inspect the bus for remaining children each time she reached a destination at which children departed the bus. Arcos at *5-6.

Here, it is undisputed that petitioner intended to drop off all students at Central Jersey Prep. She had thus reached the end of her route with respect to Central Jersey Prep. It is also undisputed that a Central Jersey Prep student remained on the school bus after the end of the route and when petitioner began her next route. Accepting petitioner's assertion in her petition that she inspected the bus by way of a "turnaround view," and that she did not have time to stop the bus, it is clear that she merely turned around while in the driver's seat, and did not walk through the bus, in an effort to ensure that all children had exited the vehicle. As discussed in Arcos v. New Jersey Department of Education, Office of Criminal History Review Unit, it is of no moment that petitioner did not exit the vehicle. Rather, the fundamental inquiry is whether petitioner conducted a full visual inspection of the vehicle. She did not discover the child until she conducted an inspection at the end of her next transportation route. While petitioner and her dispatcher assert that there was not time to stop the bus to conduct an inspection, it is undisputed that a full inspection was not conducted. The controlling statute does not permit exceptions under circumstances such as this. I, therefore, **CONCLUDE** that respondent properly determined that petitioner violated N.J.S.A. 18A:39-28

The penalty for a first offense of failing to comply with the mandatory inspection statute is a six-month suspension. The penalty may not be waived or compromised. Having found that petitioner violated the controlling statute, I **CONCLUDE** that she is properly subject to a six-month suspension of her endorsement to operate a school bus.

ORDER


I **ORDER** that respondent's motion for summary decision is **GRANTED** and its six-month suspension of petitioner's "S" endorsement is **AFFIRMED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 13, 2021
DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency: October 13, 2021

Date Mailed to Parties: October 13, 2021

mph

APPENDIX

List of Exhibits

For petitioner:

March 10, 2021, Petition

P-1 Undated letter from Robert Wojciechowicz

For respondent:

May 12, 2021, Brief