

New Jersey Commissioner of Education**Final Decision**

Linda Mitchell,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner – a school bus driver employed by the Mount Laurel Board of Education – appealed the Department’s determination to suspend her school bus endorsement pursuant to *N.J.S.A. 18A:39-28 et seq.* after a March 2021 incident in which she failed to visually check her bus for students before leaving the bus unattended while she dropped off paperwork at the transportation center building. Petitioner did not dispute that she failed to conduct the required visual inspection before exiting the bus, and that a child was therefore left unattended on the bus for a brief period of time; however, petitioner contended that she had “not yet parked the bus” when she left it to enter the transportation center. Further, petitioner pointed out, *inter alia*, that two staff members were standing near the bus when she exited, and that the student on the bus was quickly returned home without incident. The Department argued that petitioner violated the requirements of *N.J.S.A. 18A:39-28*, and that such violation carries a mandatory penalty pursuant to *N.J.S.A. 18A:39-29*. The Department filed a motion to dismiss, which was converted to 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 March 4, 2021, she did not conduct a full visual inspection of her school bus when she stopped at the transportation center building to drop off paperwork; 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; petitioner failed to conduct the required visual inspection; a violation of *N.J.S.A. 18A:39-28* carries a mandatory penalty; 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.

Upon full review, the Commissioner concurred with the ALJ that the respondent is entitled to summary decision. Accordingly, 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:39-26 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. The petition was dismissed.

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.

298-21

OAL Dkt. No. EDU 04117-21

Agency Dkt. No. 42-3/21

New Jersey Commissioner of Education

Final Decision

Linda Mitchell,

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.

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


ANGELINA ALLEN-McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 29, 2021

Date of Mailing: November 30, 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

SUMMARY DECISION

OAL DKT. NO. EDU 04117-21

AGENCY DKT. NO. 42-3/21

LINDA MITCHELL,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION, OFFICE OF STUDENT
PROTECTION ,**

Respondent.

Linda Mitchell, pro se

**Colin Klika, Deputy Attorney General for respondent (Andrew J. Bruck, Acting
Attorney General of New Jersey, attorneys)**

Record Closed: September 30, 2021

Decided: October 18, 2021

BEFORE **EDWARD J. DELANOY, JR.**, Deputy Director and ALAJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Linda Mitchell (Mitchell), seeks a determination that the respondent, New Jersey Department of Education, Office of Student Protection (Department), erred in its decision to suspend Mitchell's "S" endorsement to operate a school bus for six

months, due to Mitchell's alleged violation of N.J.S.A. 18A:39-28, et seq., in leaving a child on a school bus assigned to her on March 4, 2021.

Mitchell filed her Petition of Appeal with the Department on March 18, 2021. On or about May 5, 2021, the Department filed a motion to dismiss in lieu of an answer ("Motion"), pursuant to N.J.A.C. 6A:3-1.10¹. The matter was transferred to the Office of Administrative Law (OAL), where it was filed on May 7, 2021, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A telephone status conference was held on July 26, 2021, where the parties agreed that the facts were not in dispute, that the Department had filed a motion to dismiss in lieu of answer, and that Mitchell had not yet filed her opposition to the same. It was agreed that the Department would not need to re-file a motion for summary decision, and Mitchell would file her opposition to the Department's motion on or before August 31, 2021.

Having not received Mitchell's response to the Department's motion, on September 7, 2021, this tribunal forwarded an e-mail to Mitchell advising her that no response had been received from her as agreed, and that she would need to request an extension of time to file her response. Having not received any response to that e-mail, on September 17, 2021, this tribunal forwarded another e-mail to Mitchell advising her that no response had been received from her as agreed, and that her response was due no later than September 30, 2021. That second e-mail also advised Mitchell that if her response was not received by September 30, 2021, the record would close, and a decision would be issued on the unopposed motion. Mitchell failed to respond to that e-mail, nor did she file her response on or before September 30, 2021. As a result, the record closed on September 30, 2021.

¹ The Department had initially filed a Motion to Dismiss in Lieu of an Answer with the Commissioner of Education under N.J.A.C. 6A:3-1.10. The Department requested in its motion that once the matter was transferred to the Office of Administrative Law (OAL), that the Department's motion be converted to a summary decision motion under N.J.A.C. 1:1-12.5, as no material facts are in dispute.

The Department's Motion, containing the facts of this case as set forth by petitioner in her petition of appeal of March 18, 2021, are undisputed by the Department, and I therefore **FIND** them to be the **FACTS** of this case. Those facts are as follows:

1. Petitioner, as of the date of her appeal, had been driving a school bus for over seven years with the Mount Laurel Board of Education, and during that time had an unblemished record. (See, Petition at 1-2; Department brief at 3).
2. The student was on petitioner's bus for less than five minutes. Ibid.
3. Two staff members were standing next to the bus the entire time. Ibid.
4. The student was home within five minutes of discovery. Ibid.
5. The student was not injured or harmed and was in no danger. Ibid.
6. Petitioner had not parked the bus. Petitioner had simply stopped at the office door to drop off paperwork. Ibid.
7. The student's parent was notified, and the parent was content with how the situation was handled. Ibid. at 3-4.

DISCUSSION

To succeed in the suspension of Mitchell' "S" endorsement to operate a school bus vehicle, the Department must establish that Mitchell violated N.J.S.A. 18A:39-28. This statute specifies an affirmative duty that the school bus driver "shall visually inspect the school bus to which (s)he is assigned at the end of the transportation route to determine that no pupil has been left on the bus." N.J.S.A. 18A:39-28.

A violation of 18A:39-28 results in a mandatory penalty. N.J.S.A. 18A: 39-29. The statute dictates "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.

Mitchell filed a Petition of Appeal under N.J.A.C. 6A:3-1.3(i)(3) that was both timely and compliant.² This regulation holds that:

A petition seeking to be heard as to why his or her endorsement to operate a school bus should not be suspended or revoked pursuant to 18A:39-28 et seq., because a child was found to have been left on the school bus to which he or she was assigned, shall file a petition within 10 business days of the date of the Department's written notice to petitioner of such finding. Ibid.

Mitchell's request for a hearing is subject to N.J.A.C. 6A:3-12.1.³ This regulation holds that the petitioner can contest the suspension or revocation brought under N.J.S.A. 18A:39-28 et seq. by filing a petition within ten business days. N.J.A.C. 6A:3-12.1(a).

Mitchell can contest the following aspects of the Department's determination: (1) That pupil was left on the bus at the end of the driver's route; (2) That the incident in question was the driver's second offense; (3) That pupil was harmed as a result of foreseeable danger; and (4) That the driver acted with gross negligence. N.J.A.C. 6A:3-12.1(b).

If the petitioner does not file on time or fails to demonstrate that the Department made an error, the Motor Vehicle Commission ("MVC") is then notified that the driver's "S" endorsement has been suspended and that the Department will notify the driver's employer that the driver is no longer eligible to continue employment effective immediately from the time of suspension. N.J.A.C. 6A:3-12.1(c).

In the within matter, the criteria for contesting the Department's determination set forth in N.J.A.C. 6A:3-12.1(b) 2 through 4 above are not applicable. The Department does not assert that the incident was a second offense or that the child was harmed as a result of a foreseeable danger or that Mitchell acted with gross negligence. The issue in

² Mitchell filed her petition within four business days of receipt of the notification from the Office of Student Protection, having received an e-mail notification on March 15, 2021 and filed a petition on March 18, 2021. Brief in support of Department.

³ N.J.A.C. 6A:3-12.1 was recodified from N.J.A.C. 6A:3-13.1

this case is whether Mitchell complied with the statutory requirement that she "shall visually inspect the school bus to which (s)he is assigned at the end of the transportation route to determine that no pupil has been left on the bus." N.J.S.A. 18A:39-28.

There is no affirmative defense to the violation that the Department alleges against Mitchell by statute. See N.J.S.A. 18A:39-28, N.J.S.A. 18A: 39-29. The only defense available to Mitchell is the Department's failure to establish that she failed to visually inspect the school bus to which she was assigned at the end of the transportation route to determine that no pupil has been left on the bus. (Emphasis supplied).

The School Bus Safety Act imposes an affirmative duty on school bus drivers to visually inspect the school bus at the end of every route to insure no child has been left on the school bus. N.J.S.A. 18A:39-28. If a school bus driver is found to have left a pupil on his bus at the end of a route, his school bus endorsement shall be suspended for six months for a first offense. N.J.S.A. 18A:39-29.

Mitchell has not disputed the Department's findings that petitioner left her bus unattended when she dropped off documents at the transportation center building. Mitchell does not dispute that a student was left on her bus. Petitioner did not state in her petition that she did visually inspect the bus when she dropped off the documents. Mitchell argues in her Petition that she had "not yet parked the bus," and that she had simply, "stopped at the office door to drop off paperwork" (Petition, at 3-4), implying that her route ends at the end of her workday when all children have been dropped off. Mitchell also impliedly argues that the child was never left alone and was with her at all times. The question that must be answered is when did Mitchell's bus route end?

The legal determination rests on the meaning of the phrase "the end of the transportation route." This phrase is not defined in the "School Bus Safety Act." Herman v. N.J. Dept. of Ed., Crim. Hist. Rev. Unit, EDU10473-14, Initial Decision (June 25,2018) http://njlaw.rutgers.edu/collections/oal/html/initial/edu10473-14_1.html. The Department, in its motion to dismiss, cites Klein v. N.J. Dept. of Ed., Crim. Hist. Rev. Unit, Agency Dkt. No. 713-12/10, Final Decision at 2 (February 21, 2012), which determined that the "end

of the route” pursuant to N.J.S.A 18A:39-26 “terminates at 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.” Final Decision 3 (February 21, 2012).⁴ Further, Klein holds that this is the point at which the driver should conduct the visual inspection of the vehicle for any remaining students. Id.

The OAL came to a conflicting conclusion in an initial decision. Herman Initial Decision. In Herman, a bus driver did not conduct a visual inspection of the bus at the drop-off point of the first group of children, and a child remained on the bus. Id. at 2. The bus driver left the bus for one minute to deliver a forgotten backpack and promptly returned to the bus. Id. The ALJ applied N.J.A.C. 6A:27-12.3(a)(1), reasoning that the bus driver remained in the vicinity of the child at all times. Id. at 8-9. The ALJ’s initial decision, like in Klein’s initial decision, was not adopted and the Commissioner stated that the ALJ relied wrongly on N.J.A.C. 6A:27-12.3(a)(1). Herman v. N.J. Dept. of Ed., Crim. Hist. Rev. Uni., Final Decision 7 (July 30, 2015).⁵

Based upon these decisions, whether Mitchell did or did not remain in the vicinity of the child is therefore not relevant to her claim that the child was never left alone. The critical analysis is did the Department fail to establish by a preponderance of the credible evidence that Mitchell failed to visually inspect the school bus to which she was assigned at the end of the transportation route to determine that no pupil has been left on the bus. (Emphasis supplied).

In her Petition, Mitchell does not deny or dispute the fact that she failed to visually inspect her bus when she left her bus unattended and dropped off documents at the transportation center building. She seeks to mitigate her failure to inspect the school bus in arguing that 1) two staff members were standing by the bus the entire time (Petition at 3-4); and 2) the student was on petitioner’s bus for less than five minutes; and 3) that the student was home within five minutes of discovery. (Id.)

⁴ This decision is not available through Lexis or the Rutgers Law School website. However, the decision is available on the N.J. DOE’s website, <http://www.nj.gov/education/legal/commissioner/2012/feb/68-12.pdf/>.

⁵ This decision is not available through Lexis or the Rutgers Law School website. However, the decision is available on the SADC’s website, <http://www.nj.gov/agriculture/sadc/>.

As the School Bus Safety Act does not provide a definition for "end of the transportation route", the undersigned is left to find a meaning from a "discriminating search" of the record, consisting as it may of documentary exhibits and any other evidence filed by the movant, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion, and the arguments made by the parties in their respective motions for summary decision. Brill v. The Guardian Life Insurance Company of America, et al., 142 N.J. 520, 530 (1995).

I **CONCLUDE** that Mitchell's painstaking explanation in her Petition of the individuals who did and did not conduct the school bus inspection for children on the bus at the time the children were dropped off serves to underscore the conclusion that the meaning of "end of the transportation route" under N.J.S.A. 18A:39-28 occurs when the children are dropped off. In essence, Mitchell provides a common-sense definition to "end of the transportation route" in acknowledging that the school bus should be inspected when the children are dropped off and not upon completion of her transportation route at the end of the day.

I **CONCLUDE** further that Mitchell's attempt to mitigate her failure to check the school bus for children serves only to strengthen the Department's argument that "the end of the transportation route" triggering the school bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28 occurs when Mitchell left her bus unattended when she dropped off documents at the transportation center building and not when the bus driver completes all of her assigned routes for the day.

The Department seek relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "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." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary judgment requires the judge to consider whether 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. Our courts have held that 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 Ins. Co. of Am., 142 N.J. 520, 540 (1995), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Anderson, 477 U.S. at 252. Conversely, it is critical that a favorable ruling on a summary judgment motion not “shut a deserving litigant from his [or her] trial.” Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 77 (1954).

I **CONCLUDE** that the evidence presented by the parties does not establish any facts in material dispute. Given the limited facts that must be established to support a violation of the duty imposed by the Legislature on a school bus driver to properly inspect the bus at the end of a route to assure that no child is left on the bus, the arguments offered by the Department amply support summary decision in its favor. And given the mandatory nature of the penalty for a first-time violator of the mandate, the six-month suspension is the only outcome where the violation is proven. N.J.S.A. 18A:39-29a. The Department’s motion for summary decision is hereby **GRANTED**.

ORDER

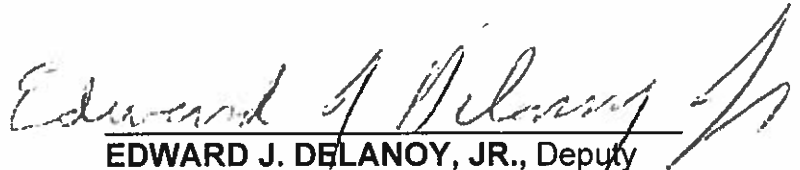
It is hereby **ORDERED** that the Department’s motion for summary decision is hereby **GRANTED** and it is further **ORDERED** that the petitioner’s “S” endorsement shall be suspended for six months.

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 18, 2021
DATE


**EDWARD J. DELANOY, JR., Deputy
Director and ALAJ**

Date Received at Agency:

Oct 18, 2021

Date Mailed to Parties:

Oct 18, 2021

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