

New Jersey Commissioner of Education

Final Decision

Arlene Garcia,

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 for six months pursuant to *N.J.S.A. 18A:39-28 et seq.* after an incident on December 22, 2022 in which a Franklin Township School District student was left on petitioner’s school bus at the end of one of her assigned bus routes. Petitioner did not dispute that a child remained on the bus but contended that the student was never left alone, as she noticed the child as she was proceeding to the bus parking lot. The Department filed a motion to dismiss in lieu of an answer, requesting that the motion be converted to a summary decision motion upon transmittal of the matter to the Office of Administrative Law (OAL).

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 admitted that while completing her bus route on December 22, 2022, she noticed that a child remained on the bus after her final stop; 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; “end of the transportation route” under *N.J.S.A. 18A:39-28* means when the children are dropped off at the assigned destination, or the last bus stop; in accordance with *N.J.S.A. 18A:39-29*, if a school bus driver is found to have left a child 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*, 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.

202-24
OAL Dkt. No. EDU 05358-23
Agency Dkt. No. 111-4/23

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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, the Initial Decision is adopted as the final decision in this matter 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:39-26 et seq., and to notify petitioner's employer that she is ineligible during the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024

Date of Mailing: May 28, 2024

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 05358-23

AGENCY DKT. NO. 111-4/23

ARLENE GARCIA,

Petitioner,

v.

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

Respondent.

Arlene Garcia, petitioner pro se

David Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: February 28, 2024

Decided: April 11, 2024

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Arlene Garcia (Garcia), challenges the suspension of her bus driver “S” endorsement. The six-month suspension is due to petitioner’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 November 16, 2020. The Office of Student Protection (OSP) determined that this was petitioner's first offense of this kind, and accordingly imposed a penalty of a six-month suspension of her "S" endorsement to operate a school bus.

Petitioner filed her Petition of Appeal with the Department on March 2, 2023. On June 14, 2023, the Department filed a motion to dismiss in lieu of an answer, pursuant to N.J.A.C. 6A:3-1.10.¹ The matter was transferred to the Office of Administrative Law (OAL), where it was filed on June 15, 2023, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Petitioner relied on her statement in the Petition of Appeal. On February 28, 2024, the Department filed its supplemental brief, and on that date the record closed.

FINDINGS OF FACT

On Thursday, December 22, 2022, around 3:30 p.m., Garcia was completing her normal route for Mary School Bus Transportation in the Franklin Township School District. After completing her last stop off Route 27, she proceeded to the bus yard to finish off her day. As she approached the traffic light on Route 27, she made a left-hand turn and went two blocks up when a child stood up, yawning and stretching their arms. She realized that a child was still on the bus. As she approached the bus yard, she parked the bus and immediately called her dispatcher. The dispatcher advised Garcia to remain with the child on the bus while he dispatched another bus driver to transport the child home. Garcia was instructed to write down the address for the other bus driver. Fifteen minutes after Garcia made the phone call, the other bus driver arrived at the bus yard. When the bus driver arrived, he came to the bus Garcia was assigned to and took the student home.

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, 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.

LEGAL ANALYSIS

The School Bus Safety Act, N.J.S.A. 18A:39-26 to -33, requires that the 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.” N.J.S.A. 18A:39-28. A violation of N.J.S.A. 18A:39-28 results in a mandatory penalty. N.J.S.A. 18A:39-29. The statute dictates that “[i]n 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” N.J.S.A. 18A:39-29(a).

The issue in this case is whether the Department established by a preponderance of the credible evidence that Garcia failed to comply with the statutory requirement that the 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.” N.J.S.A. 18A:39-28. Garcia has admitted that she did not visually inspect the bus when she dropped off the children at the last stop before proceeding to the bus lot. However, Garcia did discover the child was on her bus before she reached the bus depot. Therefore, the heart of the instant controversy lies in the interpretation of the “end of transportation route” phrase, which is not defined in the statute.

In Klein v. Department of Education, Criminal History Review Unit, EDU 00852-11, the Commissioner of Education (Commissioner) concluded that the “end of the route” as used in N.J.S.A. 18A:39-26 “terminates at the point where all of the children in that group leave the bus . . . and the bus is empty of riders, and before the driver moves on to her next route. At that point, the driver shall inspect the bus for any remaining students.” Klein, Comm’r decision (February 21, 2012), <<http://njlaw.rutgers.edu/collections/oal/>>, at 2. The Commissioner explained that

[t]he record show[ed] that the driver by walking to the back of the bus on that day, turning off the “Child Minder” button, taking the keys out of the ignition, letting the children out, and locking the doors, fulfilled all indicia of “end of the route” activities save one: She did not inspect the bus. Accepting

[the driver's] argument that the inspection did not have to take place until the bus returned to the depot at the end of the day defies reason and eviscerates the fundamental purpose of the statute – to protect our children and ensure their safety.

[Id. at 2-3.]

In 2015, in Herman v. Department of Education Criminal History Review Unit, EDU 10473-14, Initial Decision (June 23, 2015), <<http://njlaw.rutgers.edu/collections/oal/>>, rev'd, Comm'r (July 30, 2015), <<https://www.nj.gov/education/legal/decisions/>>, the Commissioner again rejected the argument that the “end of transportation route” means at the end of the workday, once the bus is dropped off at the bus depot lot. The Administrative Law Judge (ALJ) concluded that N.J.S.A. 18A:39-28's requirement of a visual inspection at the end of the route did not apply. The ALJ determined that the route had not ended as long as the bus driver had not left the vicinity of the bus; and that the visual inspection would be performed when she did depart the vicinity of the bus at the bus depot. Herman, Initial Decision, <<https://www.nj.gov/education/legal/decisions/>>. Upon review, the Commissioner rejected the ALJ's initial decision. Citing Klein, the Commissioner reiterated that the bus driver violated the School Bus Safety Act when she failed to visually inspect the school bus at the end of her route – that is, following the departure of the students from the bus, and before returning to the depot. Herman, Comm'r Decision, <<https://www.nj.gov/education/legal/decisions/>>, at 5. Concurring with what he described as the “well-reasoned definition” of “end of the transportation route” provided by the Commissioner in Klein, the Commissioner declared the ALJ's rejection of the Commissioner's holding in Klein “undermines the purpose and intent of the School Bus Safety Act.” Id. at 7. He explained

[a]s the Commissioner stated in Klein, “Accepting petitioner's argument that the inspection did not have to take place until the bus returned to the depot at the end of the day defies reason and eviscerates the fundamental purpose of the statute – to protect our children and ensure their safety.” Klein, supra, at 2. To hold otherwise would excuse – if not promote – inefficiency (by endorsing needless rides to the bus depot for our students) and place children at unnecessary risk of harm. It is nonsensical to delay visual inspection of the school bus until arrival at the bus depot when, in fact, any heightened safety risk to the children can be avoided

altogether if they are discovered on the bus while still present on school grounds or prior to leaving the route. While it may be true that [the student] was never left unattended, and it is not known from the present record whether he suffered any harm or distress, the visual inspection required by N.J.S.A. 18A:39-28 should have occurred prior to departing the [school] at the end of the transportation route – when all of the other children had exited the bus.

[Id. at 7-8.]

In his decision, the Commissioner also cited Vickery v. Department of Education Criminal History Review Unit, EDU 00083-15, Initial Decision (June 2, 2015), <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm’r (July 9, 2015), <<https://www.nj.gov/education/legal/decisions/>>, which he stated “reinforces the Act’s requirement that the visual inspection of the school bus should have occurred before departing the [school] at the end of the transportation route – when all of the other children had exited the bus.” Herman, Comm’r Decision, <<https://www.nj.gov/education/legal/decisions/>> at 6.

In Vickery, a school bus driver similarly failed to complete the required visual inspection of the school bus following his departure at the last bus stop on route and consequently found a sixteen-year-old student, who had fallen asleep and failed to exit the bus, at the bus yard. The driver averred he had not violated the Act because he did not leave the child alone on the bus and conducted a visual inspection upon his return to the bus yard, which was the end of his route. The ALJ determined that pursuant to Klein the Act requires that an inspection be conducted when the last child is dropped off during the route, and not after the vehicle has finished its drop-offs and has returned to its garage or depot. Vickery, Initial Decision, <<https://www.nj.gov/education/legal/decisions/>>. On review, the Commissioner adopted the findings and determinations of the ALJ. Vickery, Comm’r Decision, <<https://www.nj.gov/education/legal/decisions/>>.

Following Klein, Herman and Vickery, the Commissioner has consistently held that the “end of the transportation route” means at the end of a student drop-off point. See Arcos v. Dep’t of Educ., Crim. Hist. Rev. Unit, EDU 01752-18, Initial Decision, (November 7, 2018), adopted, Comm’r (September 20, 2018),

<http://njlaw.rutgers.edu/collections/oal/> (“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 the driver drops off the children at the assigned destination and not when the bus driver completes all of her assigned routes for the day.); Mitchell v. Dept. of Educ., Office of Student Protection, EDU 04117-21, Initial Decision, (October 18, 2021), adopted, Comm’r (November 29, 2021), <http://njlaw.rutgers.edu/collections/oal/> (“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 occurred when the driver 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.); Pedi v. Dept. of Educ., Office of Student Protection, EDU 04317-21, Initial Decision (October 13, 2021), adopted, Comm’r (November 18, 2021), (bus driver violated N.J.S.A. 18A:39-28 when she merely conducted a “turnaround view” and not a full visual inspection of the bus after her first student drop off, continued onto her second route, and subsequently found a child from her first route.); and Severe v. Dept. of Educ., Office of Student Protection, EDU 01502-21, Initial Decision (September 19, 2022), 2022 N.J. AGEN LEXIS 794, adopted, Comm’r (October 31, 2022), <http://njlaw.rutgers.edu/collections/oal/> (the “end of the transportation route” under N.J.S.A. 18A:39-28 is when the children are dropped off at the assigned destination, that triggers the school-bus driver’s affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28, not when the bus driver completes all of her assigned routes for the day.)

Here, Garcia does not mention in her Petition of Appeal that she did visually inspect the bus. As a result, she found a child on the bus as she was proceeding to the bus parking lot. Garcia needed to visually inspect the bus for children when she dropped the children off at their designated location. And as noted in Klein, it does not matter that she remained with the child until the other bus driver arrived to take the child home.

The statute is unambiguous in its requirement that the driver visually inspect the bus, and Garcia did not do so, in violation of N.J.S.A. 18A:39-28. Since Garcia failed to do so, she violated N.J.S.A. 18A: 39-28. Because of the safety implication of such a violation, a mandatory penalty exists in the event that the OSP determines that a child was indeed left behind. Garner v. N.J. Dep’t of Educ., Crim. Hist. Rev. Unit, 2009 N.J.

AGEN LEXIS 173 (April 3, 2009), adopted, Comm'r (May 1, 2009), <https://www.nj.gov/education/legal/>. Thus, “[i]n the event that . . . a school bus driver is found to have left a pupil on the school bus . . . , his school bus endorsement shall be: (a) suspended for six months, for a first offense” N.J.S.A. 18A:39-29(a). Here, since Garcia was in clear violation of the statute, the penalty imposed is mandatory, and there is no discretion to impose anything less than a six-month suspension of her “S” endorsement. Where the violation has been established, no circumstances of the event or of the driver may be considered in determining the penalty. Garner, 2009 N.J. AGEN LEXIS 173 at *5–6.

I **CONCLUDE** that as the “end of the transportation route” under N.J.S.A. 18A:39-28 is when the children are dropped off at the assigned destination, or the last bus stop, that triggers the school-bus driver’s affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28, not when the bus driver completes all of her assigned routes for the day. The “end of the transportation route” does not mean at the end of the workday, which would imply the time the bus is dropped off at the bus parking lot.

The Department seeks relief pursuant to N.J.A.C. 1:1-12.5(b), 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.” This provision mirrors the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules. The motion judge must “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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). 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.” Ibid. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. at 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. Ibid. (quoting Liberty Lobby, 477 U.S. at 252).

I **CONCLUDE** that the evidence presented by the parties does not establish any material facts in 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:39-29(a). The Department's motion for summary decision must be **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**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

April 11, 2024

DATE


EDWARD J. DELANOY, JR. ALAJ

Date Received at Agency:

Date Mailed to Parties:

EJD/cb