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OAL Dkt. No. EDU 10466-26
Agency Dkt. No. 233-06-26

# New Jersey Commissioner of Education

## Final Decision

Kevin Heller,

Petitioner,

v.

New Jersey Department of Education, Office of School Bus Safety,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner Kevin Heller pursuant to *N.J.A.C.* 1:1-18.4, and the reply filed by respondent New Jersey Department of Education, Office of School Bus Safety (OSBS), have been reviewed and considered.

In this matter, OSBS took action to suspend petitioner's "S" endorsement to operate a school bus for six months following an incident during which a child, who had fallen asleep, remained on petitioner's school bus after he departed from a middle school at the end of the transportation route. The child was unharmed and never left unattended. When petitioner discovered the sleeping child, he reported the incident and drove the child back to school.

Although he acknowledges that the sleeping child remained on the bus after he departed from the middle school, petitioner challenges the suspension of his "S" endorsement primarily because he looked in his rearview mirror to visually inspect the bus (but did not notice the

sleeping child) before departing from the middle school. OSBS filed a motion to dismiss the petition, claiming that petitioner has failed to state a claim for which relief may be granted because *N.J.S.A.* 18A:39-29(a) requires a mandatory six-month suspension of a bus driver's "S" endorsement when a child is left on the bus.

The Administrative Law Judge (ALJ) granted OSBS's motion to dismiss the petition upon concluding that the six-month suspension of his "S" endorsement was mandatory given the circumstances, and that the statute does not allow consideration of mitigating factors.

In his exceptions, petitioner argues: (1) the Initial Decision incorrectly found that petitioner failed to check the bus prior to departing from the school, but the evidence shows that he performed a proper visual safety check of the bus interior by utilizing the rearview mirror prior to departure; (2) the Initial Decision incorrectly concludes that petitioner committed a safety violation by failing to execute a required bus inspection before leaving the school, thereby committing legal error by equating a visual check via mirrors with a total failure to inspect the school bus; and (3) the hardship letter he provided offers additional support for dismissal of the disciplinary action against him.

In response, OSBS maintains that the ALJ correctly determined that petitioner violated *N.J.S.A.* 18A:39-28 and issued the appropriate penalty, as it is undisputed that petitioner discovered a student remained on his bus after he completed his transportation route. Additionally, OSBS asserts that petitioner is making the same arguments in his exceptions that were already addressed and rejected by the ALJ, and that he is misreading the controlling statute. OSBS contends that looking in the rearview mirror is not a proper inspection of the bus under the

law since a child might not be visible if they are crouched down or laying on a seat. Furthermore, the statute does not allow for consideration of mitigating factors such as financial hardship.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. *N.J.S.A.* 18A:39-28 requires a school bus driver to "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." The "end of the transportation route" means "the point where all of the children . . . leave the bus to enter their school and the bus is empty of riders, and before the driver moves on to h[is] next route." *Herman v. N.J. State Dep't of Educ., Crim. History Review Unit*, Commissioner Decision No. 248-15 at 2, 6 (July 30, 2015).

Petitioner's exceptions are unavailing. His use of his mirror to visually inspect the school bus was ineffective and inconsistent with the clear purpose of the visual inspection as expressed in the statute's plain language, *i.e.*, "to determine that no pupil has been left on the bus" in the interest of student safety. Use of the mirror alone does not allow for a thorough visual inspection of the school bus as contemplated by the statute because the entire school bus cannot be viewed from the mirror. The undisputed facts in this case prove that point, since petitioner's mirror check did not reveal the sleeping child who remained on the bus at the end of the transportation route. *See, e.g., Burseth v. N.J. Dep't of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 00518-25, Initial Decision at 2-3 (June 9, 2025), *adopted*, Comm'r. Decision No. 349-25 (July 11, 2025) (imposing six-month suspension of bus driver's "S" endorsement after she utilized only her mirror to visually inspect the bus and did not see a student "laying flat on the seat sleeping" who remained on the bus at the end of her transportation route).

With respect to penalty, *N.J.S.A.* 18A:39-29(a) "mandates a six month suspension of a school bus driver's endorsement if a driver has left a pupil on a school bus at the end of the driver's route." *N.J. Dep't of Children & Families v. R.R.*, 436 *N.J. Super.* 53, 56-57 (App. Div. 2014). The statute does not permit consideration of mitigating circumstances, nor does it permit consideration of the fact that the child was unharmed and never left unattended. *Herman*, at 7. Here, petitioner admits that a sleeping child remained on the bus at the end of his transportation route. Thus, a six-month suspension of his "S" endorsement is mandatory. The Commissioner is not permitted to consider mitigating circumstances such as financial hardship when imposing the penalty.

Accordingly, the petition of appeal is dismissed. Pursuant to *N.J.S.A.* 18A:39-29(a), petitioner's "S" endorsement shall be 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 "S" endorsement, and to notify petitioner's employer that he is ineligible during the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.[1]



COMMISSIONER OF EDUCATION

Date of Decision: October 22, 2026
Date of Mailing: October 23, 2026

[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**
OAL DKT. NO. EDU 10466-26
AGENCY DKT. NO. 233-06-26

**KEVIN HELLER,**
Petitioner,
v.
**NEW JERSEY DEPARTMENT OF EDUCATION,**
**OFFICE OF SCHOOL BUS SAFETY,**
Respondent.

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**Kevin Heller**, petitioner, pro se

**Jeremy Koepf**, Deputy Attorney General, for respondent (Jennifer Davenport, Attorney General of New Jersey, attorney)

Record Closed: August 25, 2026 Decided: September 16, 2026

BEFORE **ADVIA KNIGHT FOSTER**, ALJ:

## STATEMENT OF THE CASE

Petitioner Kevin Heller, a school bus driver, left a student on the bus at the end of the route but claims that the student was unharmed and not left alone, and that his school bus endorsement must not be suspended. Must petitioner's endorsement be suspended? Yes. If a school bus driver leaves a child behind on the school bus at the

end of the route, the driver's school bus endorsement must be suspended for six months. N.J.S.A. 18A:39-29(a).

## PROCEDURAL HISTORY

On May 27, 2026, respondent New Jersey Department of Education, Office of School Bus Safety, sent Heller a notice that it was instituting a six-month suspension of his "S" endorsement to operate a school bus because did not conduct a visual inspection at the end of his route and left a child on the school bus. On June 4, 2026, Heller filed a petition of appeal with the Commissioner of Education, Office of Controversies and Disputes, appealing the six-month suspension of his "S" endorsement to operate a school bus. On June 25, 2026, respondent filed a motion to dismiss in lieu of an answer, contending that the petition failed to state a claim upon which relief may be granted. On June 29, 2026, the case was transmitted to the Office of Administrative Law, where it was filed as a contested case under N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to -23. On August 18, 2026, petitioner filed opposition to respondent's motion. On August 25, 2026, respondent filed a reply and I closed the record regarding the motion.

## FINDINGS OF FACT

On May 20, 2026, at 7:57 a.m., Kevin Heller, a school bus driver, dropped off students at Stone Bridge Middle School. (R-1.)

Heller looked in his rearview mirror to inspect the bus for students. Petition of Appeal dated June 4, 2026.

Before starting his next route, he parked his bus around 8:15 a.m. and went to turn off the child-finder alarm and discovered a child in the back of the bus sleeping. The child was unharmed. Heller never left the child unattended. (R-1.)

Heller called dispatch to report the incident and drove the student back to Stone Bridge Middle School at 8:30 a.m. (R-1.)

## CONCLUSIONS OF LAW

The Uniform Procedure Rules, N.J.A.C. 1:1-1.1 et seq., do not provide for motions to dismiss. However, N.J.A.C. 1:1-1.3 states that, in the absence of a rule, an administrative law judge may proceed in accordance with the New Jersey Court Rules. Under R. 4:6-2(e), a judge may grant dismissal when a party fails to state a claim upon which relief can be granted. The inquiry is limited to "a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." See Rieder v. State of N.J. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (citation omitted). In other words, the court considers whether the complaint states a cognizable cause of action. Ibid. In ruling on the motion, "all facts alleged in the complaint and the legitimate inferences drawn therefrom are deemed admitted." Smith v. City of Newark, 136 N.J. Super. 107, 112 (App. Div. 1975).

Under N.J.S.A. 18A:39-28, "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." The "end of the transportation route" is when all students are dropped off at their assigned destinations, or the last stop. Severe v. Dep't of Educ., Office of Student Protection, 2022 N.J. AGEN LEXIS 794, Initial Decision (September 19, 2022), adopted, 2022 N.J. AGEN LEXIS 850, Acting Comm'r (October 31, 2022). Under N.J.S.A. 18A:39-29(a), if a school bus driver leaves a child behind on the school bus at the end of a route, the driver's school bus endorsement shall be suspended for six months for the first offense.

On February 11, 2025, the New Jersey School Board Association issued an advisory reminding school bus drivers to inspect their school buses at the end of the school bus route. School Board Notes, Vol. XLVIII No. 27, https://www.njsba.org/news-information/school-board-notes/school-board-notes-feb-11-2025/ (last visited September 14, 2026). The advisory emphasized that a school bus driver has an affirmative duty to inspect the bus at the end of a route to ensure that no student is inadvertently left behind, thereby safeguarding the well-being of the students. Further, the school bus driver must also inspect to see if any personal belongings or any contraband is left behind that could pose a safety risk to future passengers. Ibid.

Here, Heller contends that he "conducted a visual inspection of the bus . . . by using his rear-view mirror and visually scanning the bus." See Petition of Appeal. He also contends that the child was never left alone and was unharmed. However, the Office of School Bus Safety's determination and subsequent suspension were not based on a finding that a student was harmed, but on a finding that a child was left on the bus. Therefore, I **CONCLUDE** that harm is not an issue in this case. Heller also contends that if his student endorsement were suspended it would create a financial hardship, as he is the sole income for his household and his wife suffers from several health impairments. Notably, there is no dispute that Heller did not discover the student until after he dropped the other students off at their assigned destination. N.J.S.A. 18A:39-28 requires that the driver visually inspect the bus at the end of his transportation route or their assigned destination. Heller further contends that the statute does not define what is meant by visually inspect and that it is left to the school bus driver's interpretation. The February 11, 2025, advisory and the statute make it clear that the driver must visually inspect the entire bus not only for children, ensuring that no child is left behind, but also for personal belongings or contraband that could pose a safety risk to future passengers. Accepting Heller's argument that a visual inspection is subject to interpretation and that his scanning of the bus in the rearview mirror satisfies that requirement defies the fundamental purpose of the statute, which is to protect students and ensure their safety. Klein v. Dep't of Educ., Criminal History Review Unit, 2012 N.J. AGEN LEXIS 781, Comm'r Decision (February 21, 2012). Therefore, I **CONCLUDE** that Heller failed to conduct a visual inspection at the end of his transportation route and discovered the student after leaving the assigned destination in violation of N.J.S.A. 18A:39-28. I further **CONCLUDE** that since Heller violated the statute, the penalty of a six-month suspension of his "S" endorsement under N.J.S.A. 18A:39-29(a) is mandatory, and there is no discretion to consider mitigating factors.

## ORDER

I **ORDER** that petitioner's Petition of Appeal fails to state a claim upon which relief can be granted and that it is **DISMISSED**.

I **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 case. 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 becomes a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date 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.

September 16, 2026
DATE

**ADVIA KNIGHT FOSTER**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

AKF/mg/tc

# APPENDIX

## Exhibits

For petitioner:

P-1 Email dated August 19, 2026

For respondent:

R-1 Letter brief dated June 25, 2026

R-2 Letter reply brief dated August 21, 2026