

#132-09 (OAL Decision: Not yet available online)

JOANNE H. GARNER, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : DECISION
OF EDUCATION, CRIMINAL HISTORY :
REVIEW UNIT, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner, a veteran school bus driver, appealed the Department’s determination to suspend her school bus endorsement pursuant to *N.J.S.A. 18A:39-28* after a child was left on her bus because of her failure to conduct the mandatory visual inspection at the end of the route.

The ALJ found that: petitioner completed an assigned school bus route on January 2, 2008 and left the bus without first conducting the mandated visual inspection to determine that no child had been left on the bus; an eleven year old child was in fact left on the bus, and was later discovered on the bus, unharmed; and, under the terms set by the Legislature, the penalty for such offense is mandatory. Accordingly, the ALJ ordered a six-month suspension of the petitioner’s school bus endorsement, which is the mandatory penalty for a first offense pursuant to *N.J.S.A. 18A:39-28*.

Upon full review and consideration of the record, the Commissioner concurred with the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter. The Department was directed to notify the Motor Vehicle Commission of its obligation to suspend the petitioner’s school bus endorsement for six months, and to notify the petitioner’s employer that she is ineligible for continued employment as a school bus driver during the period of suspension.

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.

May 1, 2009

OAL DKT. NO. EDU 6655-08
AGENCY DKT. NO. 236-8/08

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon review, the Commissioner concurs with the Administrative Law Judge that – since petitioner does not dispute that she failed to conduct the visual inspection required by law and completed her route without realizing that a child had been left on the bus, and since the child was not harmed and the offense was petitioner’s first – a six-month suspension of petitioner’s school bus endorsement is mandated by *N.J.S.A. 18A:39-28 et seq.*

Accordingly, for the reasons expressed therein,¹ the Initial Decision of the OAL is adopted as the final decision in this matter. The Department is directed to notify the

¹ Additional support for the conclusion that the statute allows no discretion as to penalty once an offense is found may be gleaned from the legislative history of the bill (Senate Bill 328/Assembly Bill 2728) ultimately enacted as P.L. 2007, c. 77. Specifically, the Assembly Education Committee Statement of January 22, 2007 noted that the committee was releasing the bill – which did not at that point, in either its Senate or Assembly version, include any reference to notice or opportunity for hearing – with the understanding that a school bus driver would “have access to any available due process procedures prior to the revocation of the driver’s endorsement” (http://www.njleg.state.nj.us/2006/Bills/S0500/328_S2.HTM). On February 22, 2007, the full Assembly amended the bill (http://www.njleg.state.nj.us/2006/Bills/S0500/328_R1.HTM) to make the Legislature’s intent explicit, adding the present references to notice and opportunity for hearing – placing them specifically in relation to determination of the offense, not in relation to penalty – and issuing a statement

Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement for the requisite period, and to notify petitioner's employer that she is ineligible for continued employment as a school bus driver during the period of suspension.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 1, 2009

Date of Mailing: May 1, 2009

(http://www.njleg.state.nj.us/2006/Bills/S0500/328_S3.HTM) indicating that it was seeking to provide “that *prior to a determination* that a school bus driver has left a pupil on the school bus at the end of his route or that the driver acted with gross negligence, the driver will be provided notice and an opportunity to be heard *on the issue*” (*emphasis supplied*).

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.