

#68-12 (OAL Decision: Not yet available online)

YOLANDA KLEIN, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE DEPARTMENT OF EDUCATION, CRIMINAL HISTORY REVIEW UNIT, : DECISION

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 after an incident in which a child was left on her bus in December 2010 when petitioner failed to conduct the mandated visual inspection at the end of her route. Petitioner acknowledged that she had mistakenly left a child on the school bus unattended, but contended that she had not completed the end of her transportation route as she had two more school runs for which she was responsible. Petitioner further asserted that she left the school bus for only three minutes, and – by going into the school – did not leave the vicinity of the bus.

The ALJ found, *inter alia*, that: on December 1, 2010, petitioner drove a school bus carrying kindergarten students for a 12:15 drop-off at an elementary school; petitioner exited the bus after the students without doing a full visual inspection, locked the bus, and went into the school building for approximately 3 minutes; upon returning to complete her afternoon routes, petitioner found that one child had not exited, but instead was standing inside the locked bus, crying; petitioner acknowledged that she had improperly left a child on the bus, albeit mistakenly; petitioner was suspended as a school bus driver two days later, and subsequently resigned in lieu of termination; the rules by which petitioner’s conduct must be judged are ambiguous, as the statutes do not define “end of transportation route” nor “vicinity of the school bus”; the school district’s policy manual implicitly defines the end of the transportation route as the depot where the bus is parked after all school runs are completed; petitioner had been a school bus driver for more than 14 years, had a prior unblemished record; and was visibly distraught and remorseful during her testimony. The ALJ concluded that respondent did not prove by a preponderance of the evidence that petitioner failed to conduct a visual inspection of her bus at the end of her transportation route or that she left the vicinity of the school bus in violation of state law; accordingly, the ALJ reversed respondent’s decision to suspend petitioner’s school bus endorsement.

Upon full review and consideration, the Commissioner rejected the Initial Decision of the OAL, concluding *inter alia* that “end of route” pursuant to *N.J.S.A.* 18A:39-26 terminates at the point where all of the children in a particular group leave the bus to enter their school and before the driver moves on to her next route; petitioner failed to inspect the bus before exiting and locking it; petitioner’s distress and remorse over the incident cannot mitigate the severity of her breach of duty and the concomitant imposition of the mandated 6-month penalty for the first infraction. Accordingly, the decision of the respondent Office of Criminal History Review was affirmed, and the petition was dismissed. 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:39-28 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.

February 2, 2012

OAL DKT. NO. EDU 00852-11
AGENCY DKT. NO. 713-12/10

YOLANDA KLEIN, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE DEPARTMENT : DECISION
 OF EDUCATION, CRIMINAL HISTORY :
 REVIEW UNIT, :
 :
 RESPONDENT. :

The record of this matter¹ and the Initial Decision of the Office of Administrative Law have been reviewed as have the respondent's exceptions, filed pursuant to *N.J.A.C.* 1:1-18.4. The petitioner did not file a reply thereto.

In its exceptions, the respondent agrees with the findings of the Administrative Law Judge (ALJ) that the petitioner left a child unattended on a school bus, and that the child was left alone for a period of approximately three minutes. The petitioner admits to having done so. However, the respondent asserts that the ALJ erred in his reasoning and conclusions, requiring reversal of the Initial Decision. Respondent argues that in reaching his decision, the ALJ relied heavily on the Wayne "Driver's Handbook," which it maintains is a private policy not relevant to determine statutory intent or language. The respondent further challenges the conclusions of the ALJ that the term "vicinity" is ambiguous because it is undefined in the statute and that "end of the route" is similarly ambiguous since the term is unclear. The respondent correctly points out that the term "vicinity" is nowhere

¹ The record contains no transcripts from the hearing conducted at the OAL on August 11, 2011.

mentioned in the relevant statute, the “School Bus Safety Act”, and that a visual inspection at “end of the route,” based on case law and a common sense application of the intent of the statute must certainly mean an inspection after each distinct, discernible route where the group of children is dropped off at the final destination and the bus is no longer in use for that group.

Upon review of the record of this matter and the Initial Decision of the Office of Administrative Law, the Commissioner agrees with the exceptions advanced by the respondent and rejects the Initial Decision of the ALJ. In his assessment, the Commissioner concludes that the “end of the route” pursuant to *N.J.S.A. 18A:39-26* of the “School Bus Safety Act” 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. At that point, the driver shall inspect the bus for any remaining students. That did not happen here. The record shows that petitioner, 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 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. Additionally, petitioner’s argument that she never left the vicinity of the bus is contradicted by the fact that she had entered two sets of glass doors, walked behind an interior cement wall, and entered the Ladies’ Room – almost 122 feet away from her bus. Certainly, petitioner could not see her vehicle from that vantage point as it was out of her line of sight.

Contrary to the ALJ’s finding, the Commissioner determines that the Wayne Board of Education did not misinterpret the meaning of “end of the route” and took this breach of duty very

seriously. The Board has a policy to have their drivers inspect the bus at the conclusion of midday and afternoon routes. The petitioner did not notify the Transportation Office on the day of the incident. Her supervisor was contacted by the child's mother. Upon learning of her failure to inspect, petitioner's supervisor placed her on administrative leave the next day. Within six days of the incident, the Board recommended petitioner's termination. The petitioner elected to resign rather than be terminated.

Finally, the Commissioner determines that the ALJ erred by allowing the petitioner's distress and remorse over her inspection failure to mitigate the severity of her breach of duty and the concomitant imposition of the penalty. Here, the petitioner admitted that she left a child on the bus unattended. The "School Safety Bus Act" clearly mandates a 6-month penalty for the first infraction. There are no mitigating circumstances.

Accordingly, the decision of the Criminal History Review Unit is hereby affirmed, and the petition is dismissed. Respondent is directed to notify the Motor Vehicle Commission of its obligation, pursuant to *N.J.S.A. 18A:39-28 et seq.*, to suspend petitioner's school bus "S" endorsement on her driver's license for six months and to notify petitioner's employer that she is ineligible – for the period of suspension – to continue employment as a school bus driver.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 21, 2012

Date of Mailing: February 22, 2012

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36. (N.J.S.A. 18A:6-9.1)*