

MOHAMMAD AHAD,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY DEPARTMENT OF	:	DECISION
EDUCATION, OFFICE OF CRIMINAL	:	
HISTORY REVIEW UNIT, AND	:	
STATE-OPERATED SCHOOL DISTRICT	:	
OF PATERSON, PASSAIC COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner – a school bus driver – appealed the Department’s determination to suspend his school bus endorsement pursuant to *N.J.S.A. 18A:39-26 et seq.* after an incident in which a sleeping student, B.O., remained on the bus following her drop off point at the Dale Avenue School. Petitioner did not complete a visual inspection of the bus prior to leaving the drop off point, and was unaware of the student’s presence until he was contacted by a school administrator who requested that he inspect the bus after discovering that B.O. was not in school. Petitioner contended that because he was still driving when the student was discovered, B.O. was never left alone on the bus. The parties filed cross motions 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; on September 8, 2017, petitioner picked up B.O. for transport to the Dale Avenue School; petitioner failed to complete a visual inspection of the bus prior to leaving the drop off point at Dale Avenue School; B.O. remained on the bus, sleeping, beyond her drop off point, and was not discovered until a school administrator telephoned petitioner to request that he inspect the bus; a visual inspection of the school bus at the end of the transportation route is required under *N.J.S.A. 18A:39-28*; it is undisputed that petitioner left a student on his bus after dropping all other students off at school; pursuant to *N.J.S.A. 18A:39-29*, a school bus driver found to have left a pupil on the school bus at the end of a route shall have his school bus endorsement suspended for six months for the first offense. Accordingly, the ALJ granted respondent’s motion for summary decision, denied petitioner’s cross motion for summary decision, and dismissed the appeal with prejudice.

Upon full review and consideration of the record, Commissioner concurred with the findings and determinations of the ALJ. Accordingly, the petition was dismissed and 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 he 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.

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 :
 RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge that the Office of Criminal History Review Unit (CHRU) is entitled to summary decision. Accordingly, CHRU's motion for summary decision is granted, petitioner's cross-motion for summary decision is denied, and the petition of appeal is hereby dismissed with prejudice. CHRU is directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement for the mandatory six-month period pursuant to *N.J.S.A. 18A:39-29*, and to notify petitioner's employer that he is ineligible for the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2018

Date of Mailing: July 26, 2018

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 18146-17

AGENCY REF. NO. 228-9/17

MOHAMMAD AHAD,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF EDUCATION,
CRIMINAL HISTORY REVIEW UNIT and
STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF PATERSON, PASSAIC COUNTY,**
Respondents.

Gary R. Matano, Esq., for Petitioner

James M. Esposito, Deputy Attorney General, for Respondent (Gurbir S. Grewal, Attorney General of New Jersey, attorneys)

Robert E. Murray, Esq. for Respondent State-Operated School District of the City of Paterson, Passaic County

Record Closed: June 14, 2018

Decided: June 28, 2018

BEFORE **THOMAS R. BETANCOURT, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner challenges the suspension of his “S” endorsement on his driver’s license.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on December 12, 2017, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held on January 29, 2018, and a prehearing order was entered on February 2, 2018.

Respondent, State-Operated School District of the City of Paterson, filed a motion to dismiss petitioner’s appeal for failure to supply discovery. Said motion was filed on April 13, 2018. Petitioner filed a response thereto on April 22, 2018. Said motion was held in abeyance pending the outcome of a subsequent motion for summary decision filed by respondent New Jersey Department of Education, Criminal History Review Unit (CHRU).

Respondent, New Jersey Department of Education, Criminal History Review Unit, filed a motion for summary decision on May 15, 2018. Petitioner filed his response in opposition to the motion and a cross-motion for summary decision on June 3, 2018. Respondent, New Jersey Department of Education, Criminal History Review Unit, filed its sur-reply on June 13, 2018. Respondent State-Operated School District of the City of Paterson filed a letter dated June 4, 2018, in support of respondent’s New Jersey Department of Education, Criminal History Review Unit motion for summary decision.

FACTUAL DISCUSSION

The following **FACTS** are not in dispute:

1. Petitioner is a school bus driver.

2. On September 8, 2017, petitioner picked up student B.O. while on his transportation route.
3. Petitioner completed his transportation route when he dropped off the students at the Dale Avenue School.
4. Petitioner did not complete a visual inspection of the bus prior to leaving the drop off point.
5. B.O. was left on the bus.
6. A school administrator, after discovering that B.O. was not in school, contacted petitioner and requested he inspect his bus.
7. Petitioner, upon inspecting his bus, found B.O. sleeping on the bus.
8. Petitioner returned to the school and dropped of B.O.
9. B.O. was not left alone on the bus, although petitioner was unaware of her presence until he inspected the bus at the request of the school administrator.

LEGAL ANALYSIS AND CONCLUSION

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror 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 fact finder 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, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must

grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

It is not disputed that petitioner is a school bus driver. It is also undisputed that on September 8, 2017, petitioner left a child on his bus after dropping all other students off at school. There are no issues as to material fact and the matter is ripe for summary decision.

The School Bus Safety Act

The School Bus Safety Act imposes an affirmative duty on school bus driver to visually inspect the school bus upon completion of every route to ensure that no child has been left on the school bus.

N.J.S.A. 18A:39-28 states in pertinent part:

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.

N.J.S.A. 18A:39-29 states part:

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.A.C. 6A:3-12.1 states in pertinent part:

(a) Where a school bus driver has been notified by the Department’s Criminal History Review Unit that a determination has been made that suspension or revocation, as the case may be, of the driver’s school bus endorsement is warranted pursuant to N.J.S.A. 18A:39-28 et seq., because a child was left on the school bus to which the driver was assigned notwithstanding the driver’s obligation to

conduct a visual inspection at the end of the transportation route to assure that no pupil is left on the bus, the driver may contest such determination through the filing of a petition of appeal according to the procedures set forth in N.J.A.C. 6A:3-1.

1. Such petition shall be filed within 10 business days of the date of the Department's written notice to petitioner of such determination.

2. In addition to the service requirements of N.J.A.C. 6A:3-1.3(a) and (j), such petition shall additionally be served on the Department c/o Manager, Criminal History Review Unit, New Jersey Department of Education, PO Box 500, Trenton, New Jersey 08625-0500.

(b) The following aspects of the Department's determination may be contested:

1. That a 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 the pupil was harmed as a result of foreseeable danger; and

4. That the driver acted with gross negligence.

It is clear that CHRU has determined that petitioner's school bus endorsement should be suspended pursuant to N.J.S.A. 18A:39-28. It is also clear that petitioner appealed that determination as the matter is presently before the undersigned. All that remains to be determined is whether or not petitioner left a student on his bus at the end of his route. That fact is not in dispute. Accordingly the determination by CHRU should be affirmed.

There is no assertion by CHRU that this constitutes a second offense, or that B.O. was harmed, or that petitioner acted with gross negligence.

Petitioner's asserts that the critical issue is what constitutes "left on the bus." Frankly, this assertion is without merit. Left on the bus means exactly that. B.O. was not discovered until a school administrator telephoned petitioner to request he do what he was supposed to do at the end of his route: inspect the bus.

A court's task in statutory interpretation is to determine and effectuate the New Jersey Legislature's intent. In carrying out that important role, a court looks first to the plain language of the statute, seeking further guidance only to the extent that the Legislature's intent cannot be derived from the words that it has chosen. A court will, in that effort, read the words selected by the Legislature in accordance with their ordinary meaning, unless the Legislature has used technical terms, or terms of art, which are construed in accordance with those meanings.

[See Bosland v. Warnock Dodge, 197 N.J. 543 (2009).]

Based upon the foregoing I **CONCLUDE** that respondent's, New Jersey Department of Education, Criminal History Review Unit, motion for summary decision be granted and that petitioner's cross-motion for summary decision be denied.

ORDER

It is hereby **ORDERED** as follows:

1. Respondent's, New Jersey Department of Education, Criminal History Review Unit, motion for summary decision is **GRANTED**; and,
2. Petitioner's cross-motion for summary decision is **DENIED**; and
3. Petitioner's appeal is **DISMISSED WITH PREJUDICE**.

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, P.O. 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.



June 28, 2018 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

List of Moving Papers

For Petitioner:

Letter brief in opposition to Motion for Summary Decision and in support of Petitioner's Cross-Motion for Summary Decision

For Respondent New Jersey Department of Education, Criminal History Review Unit:

Notice of Motion for Summary Decision

Brief in support of Motion for Summary Decision

Certification of James M. Esposito, DAG, with Exhibits A and B

Reply brief to Petitioner's brief

For Respondent State-Operated School District of the City of Paterson:

Letter in support of Respondent New Jersey Department of Education, Criminal History Review Unit Motion for Summary Decision