

New Jersey Commissioner of Education

Final Decision

James Wandling,

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 his school bus endorsement pursuant to *N.J.S.A. 18A:39-28 et seq.* following an incident in which a Howell Township Middle School student was left on petitioner’s school bus at the end of one of his assigned bus routes. Petitioner admitted his mistake in leaving a student on his school bus at the conclusion of the route, but also submitted that his employer, Jay’s Bus Service (JBS), suspended him from driving school buses immediately following the March 2, 2023, incident. Petitioner contended that he attended retraining and accepted responsibility for his actions, and that the six-month suspension of his school bus endorsement should be mitigated in length or not imposed based on the time which has elapsed since he was suspended by JBS from driving school buses. The respondent Department filed a motion to dismiss, which was converted to a motion 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; petitioner admitted that on March 2, 2023, he did not conduct a full visual inspection of his school bus when he dropped off students at the Howell Township Middle School, before proceeding to his next assigned stop; he did not realize that a student remained on the bus until several stops later, when the Howell Township student tapped him on the shoulder; 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; and although petitioner had a number of reasons why his school bus endorsement suspension should be offset in full or in part, none of these are sufficient as the penalty imposed under *N.J.S.A. 18A:39-29(a)* is mandatory and not subject to mitigation. Accordingly, the ALJ concluded that there is no factual dispute and as a matter of law, the S endorsement on petitioner’s New Jersey driver’s license must be suspended for six months.

Upon full review, the Commissioner concurred with the ALJ that the respondent is entitled to summary decision. Accordingly, the petition was dismissed, and 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.

360-23
OAL Dkt. No. EDU 03264-23
Agency Dkt. No. 72-3/23

New Jersey Commissioner of Education
Final Decision

James Wandling,

Petitioner,

v.

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 adopts the comprehensive Initial Decision as the final decision in this matter. The Commissioner concurs with the Administrative Law Judge (ALJ) that the facts are undisputed, and that respondent is entitled to summary decision. On March 2, 2023, petitioner failed to conduct a visual inspection of his school bus, in violation of *N.J.S.A. 18A:39-28*, and a student remained on the bus at the conclusion of his route. For a first offense, *N.J.S.A. 18A:39-29(a)* mandates a six-month suspension of petitioner's school bus "S" endorsement on his driver's license.

Accordingly, respondent's motion for summary decision is granted and the petition of appeal is hereby dismissed. Respondent is directed to notify the New Jersey Motor Vehicle Commission (MVC) of its obligation, pursuant to *N.J.S.A. 18A:39-29(a)*, to suspend petitioner's

school bus "S" endorsement on his driver's license for six months beginning on the date of issuance of this final decision. Respondent shall also notify petitioner's employer that, for the period of suspension, he is ineligible for continued employment as a school bus driver.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2023

Date of Mailing: December 6, 2023

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 03264-23

AGENCY DKT. NO. 72-3/23

JAMES WANDLING,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

OFFICE OF STUDENT PROTECTION,

Respondent.

James Wandling, petitioner, pro se

Sadia Ahsanuddin, Deputy Attorney General, for New Jersey Department of Education (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: September 12, 2023

Decided: October 27, 2023

BEFORE **ROBERT D. HERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner, James Wandling, is a school bus driver employed with a private company which services Howell Township public schools. When dropping students off at the Howell Middle School, petitioner failed to perform a check of his bus. Three stops into his next route, a middle school student was found on the bus. As a result, the New Jersey Department of Education (DOE), Office of Student Protection (OSP), seeks to impose a six-month suspension of petitioner's "school bus endorsement" on his motor

vehicle license pursuant to N.J.S.A. 18A:39-29(a). The facts as to the incident are not in dispute. Petitioner seeks to avoid or reduce the six-month suspension set forth in the statute.

PROCEDURAL HISTORY

On March 2, 2023, a student was left on petitioner's bus. (DOC 1 at 1.)¹ On March 3, 2023, the DOE notified petitioner via email of the alleged violation of N.J.S.A. 18A:39-28 et seq. and stated that "the referenced statute [sic] involves a 6-month suspension of [his] 'S' endorsement to operate a school bus." (DOC 2 at 1.) On March 15, 2023, petitioner filed an online "Pro Se Petition of Appeal" with the DOE. (DOC 3 at 1.) In conjunction with the appeal, petitioner submitted a letter detailing what transpired. (DOC 5 at 5.)

On April 13, 2023, the DOE filed a motion to dismiss the petition of appeal pursuant to N.J.A.C. 6A:3-1.10, claiming petitioner "failed to set forth a contested matter under N.J.A.C. 6A:3-12.1." (DOC 4 at 1.) The same date, this matter was transmitted to the Office of Administrative Law (OAL), where it was filed, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13. (DOC 5 at 1-2.)

An initial case conference was scheduled for May 31, 2023. (DOC 6 at 1.) Due to party availability, the initial case conference occurred on June 8, 2023. (DOC 7 at 1.) A subsequent case conference failed to bear fruit and, because of the narrow issues present in the matter, a final case conference was scheduled for July 11, 2023. (DOC 8 at 1; DOC 10 at 1.) In the interim, on or about June 21, 2023, petitioner provided the DOE with a letter from his employer. (DOC 9 at 1.) Again due to party availability, the final case conference was rescheduled to July 25, 2023. (DOC 11 at 1.)

¹The rolling submissions of the parties as well as documents produced by the OAL form the whole of the record in this matter. For purposes of legibility and review, the documents will be referred to as "Document" or "DOC" along with a reference number.

At the July 25, 2023, case conference, both parties were directed to provide certain information by August 11, 2023. On August 7, 2023, the DOE provided supplemental submissions. (DOC 12; and DOC 13.) On August 9, 2023, petitioner also provided supplemental submissions. (DOC 14, DOC 15; and DOC 16.) On August 10, 2023, a request was made for petitioner to provide additional information. (DOC 17 at 1.) This was followed by a more specific request on August 11, 2023, to further enunciate the information sought. (DOC 18 at 1.) On August 22, 2023, a request was also made for DOE's initial, formal finding against petitioner and whether the DOE stated that penalties or sanctions were imposed as against petitioner. (DOC 20 at 1.) In response, the DOE provided the requested information on August 30, 2023. (DOC 21 at 1-2.)

The last case conference occurred on September 7, 2023. (DOC 22 at 1.) There, the information contained in the March 3, 2023, DOE email was confirmed with both parties. The record was kept open to permit the parties to provide final submissions. On September 8, 2023 (printed September 11, 2023), the final submission was received. (DOC 23 at 1-6.) The matter was converted sua sponte from a motion to dismiss the petition of appeal pursuant to N.J.A.C. 6A:3-1.10 to a motion for summary decision pursuant to N.J.A.C. 1:1-12.5.

On September 12, 2023, the record closed and this decision now follows.

FACTUAL DISCUSSION AND FINDINGS

The following undisputed facts were gleaned from the written submissions of the parties, or otherwise confirmed by the parties, which I adopt and **FIND** as **FACTS**:

1. On March 2, 2023, petitioner was actively employed and working as a school bus driver for a private company, Jay's Bus Service (JBS). (DOC 1 at 1; DOC 5 at 5.)
2. Petitioner has an "S" endorsement on his New Jersey motor vehicle driver's license. The "S" endorsement permits petitioner to drive school buses in New Jersey. (DOC 2 at 1.)

3. In the morning of March 2, 2023, petitioner was involved in his usual activity of picking up and dropping students off at the Howell Township Middle School. (DOC 5 at 5.)
4. After dropping students off at the Howell Township Middle School, petitioner failed to conduct a sweep of his school bus to ensure that all students had disembarked. (DOC 5 at 5.)
5. Approximately three stops into his next school route, petitioner became aware that a student failed to disembark at the middle school drop-off and had remained on the school bus. (DOC 5 at 5.)
6. As a result of failing to perform a “visual inspection” before departing the middle school after student drop-off, and because a child remained on the school bus following departure from the Howell Township Middle School, on March 3, 2023, the DOE sought to impose a six-month suspension of petitioner’s New Jersey Motor Vehicle Commission (MVC) “S” endorsement. (DOC 2 at 1.)
7. In the March 3, 2023, DOE email from Investigator Scaringelli, petitioner was advised that he had ten business days “to request, through the filing of a Petition of Appeal. . . , an opportunity to be heard as why OPS should not so notify [MVC].” (DOC 2 at 1-2.)
8. In the March 3, 2023, DOE email from Investigator Scaringelli, petitioner was also advised that, “if a Petition of Appeal is not filed with the Commissioner and copied to the OSP within the aforementioned 10 business days, OPS will promptly notify the MVC that your “S” endorsement is to be suspended without further proceedings.” (DOC 2 at 2.)
9. On March 9, 2023, JBS suspended petitioner from driving school buses based on the March 2, 2023, incident, because they “knew right away that a suspension was going to be handed down by the State attorney general office [sic] so. . . his suspension needed to start right away.” (DOC 9 at 1.)

10. On March 15, 2023, petitioner filed a petition of appeal online with the DOE. (DOC 3 at 1-2.)
11. As part of petitioner's March 15, 2023, petition of appeal, petitioner provided a letter on JBS letterhead admitting, among other things, that he failed to conduct a "child check" after students disembarked at the Howell Township Middle School and that the student who was accidentally left on the bus tapped him on the shoulder at his third stop into the next school pick-up run. (DOC 5 at 5.)
12. On August 9, 2023, Janice Kennedy, Safety Supervisor with JBS, submitted a letter on behalf of petitioner. In it, Ms. Kennedy stated that petitioner has been through retraining, which includes watching videos "on the process of a posted trip and child check." Ms. Kennedy further advised that petitioner "has been suspended for a long time[.], . that he has learned from his mistakes[.], and this issue shouldn't happen again." (DOC 16 at 2.)
13. In her August 9, 2023, letter, Ms. Kennedy also advised that petitioner felt remorse for his mistake and stated, "I hope that he can be credited for the time served and that we could have him behind the wheel again. We both know that he will not be able to drive in Howell, but that doesn't change what happened and he [won't] let it happen again." (DOC 16 at 2.)
14. In his August 9, 2023, letter, petitioner noted that he had "learned [his] lesson and it is a lesson [he] will never forget[.]" Further, petitioner believes he should receive "credit for the time that [he was suspended]." (DOC 16 at 4.)
15. On August 10, 2023, petitioner was instructed to provide a writing from JBS "stating the nature, substance, and length of [his] suspension from driving a school bus (if any), along with an affirmation that [petitioner] did not drive a school bus during whatever time period is listed." (DOC 17 at 1.)
16. Because of certain confusion and for completion of the record, more specific instructions were provided to petitioner on August 11, 2023. In the letter to petitioner, petitioner was requested to provide a letter from JBS addressing the following:

1. Stating if you were suspended from driving a school bus;
2. The date your suspension from driving a school bus with students/children in it started (if you were suspended);
3. The date your suspension from driving a school bus with students/children in it ended (if you were suspended);
4. Stating whether the suspension was continuous or stopped at some point;
5. Stating what the suspension imposed by your employer—if any—covered (i.e., just school buses, school buses for a particular township, other school districts, etc.);
6. Whether the suspension—if any—was imposed by any local Board(s) of Education; and that it is
7. Signed by someone authorized by your employer to sign such a letter, and who understands that there may be a penalty if it is found to be inaccurate or untruthful.

[DOC 18 at 1.]

17. On August 22, 2023, and also for a complete record, the DOE was asked to provide the following:

- A. The document(s) from the Agency making a formal finding as against Mr. Wandling; and
- B. Copies of documents from the Agency stating the penalty(ies) or sanction(s) imposed, if any, by the Agency.

[DOC 20 at 1.]

18. On August 30, 2023, the DOE responded and provided the March 2, 2023, DOE email to petitioner advising of the charge and penalty. (DOC 21 at 1-2.)

19. Based on petitioner's failure to provide the information sought on August 10, 2023, and August 11, 2023, a final conference was scheduled for September 7, 2023. (DOC 22 at 1.)

20. On or about September 8, 2023, JBS provided a supplemental submission. In a letter dated September 7, 2023, JBS stated:

To whom it may concern,

I'm writing this letter to inform you of what took place after the incident on March 3rd, 2023. Mr. Wandling was suspended for leaving the student on the bus. [Mr. Wandling's] suspension started on March 7th, 2023. [Mr. Wandling's] suspension is still on going [sic] because today[,] on September 7, 2023, which is the 6 month date, he had a phone call with you and I thought the matter will be resolved and he would be on a bus starting next week. We never heard from Howell [S]chool [D]istrict other than to tell me to remove him from their routes and he was[. He] is still on suspension and it never stopped for any reason.

[I'm] hoping that Mr. Wandling will get credit for the time that he has served so he can go back to driving the bus again.

[DOC 23 at 4.]

21. Petitioner has not provided proof of suspension by any governmental agency or body from March 2, 2023, to present.

22. JBS is a private company and is not a government or public entity.

23. Petitioner was notified that, in the absence of an appeal, MVC would be notified and his "S" endorsement would be "suspended without further proceedings."
(DOC 2 at 2.)

24. Petitioner did not request that his "S" endorsement be suspended during the pendency of the appeal process.

25. Other than what may be attributed as a result of filing this appeal, petitioner has not requested a stay of any sanctions which may be imposed, including but not limited to the suspension of the S endorsement on his driver's license.

POSITIONS OF THE PARTIES

DOE contends that N.J.S.A. 18A:39-29 mandates a six-month suspension for a first offense where a school bus driver left a student on the school bus at the conclusion of the school bus driver's route. DOE further asserts that it is a strict liability offense and one which does not permit mitigation of the six-month suspension sanction. Because the facts in this matter are established, it is ripe for summary disposition.

Petitioner agrees that he erred by leaving a student on his school bus at the conclusion of the route and accepts responsibility for what occurred. Petitioner submits that JBS suspended him from driving school buses immediately following the March 2, 2023, incident, that he has attended retraining, he is contrite in his views and actions, and that the six-month suspension should be mitigated in length or not imposed based on the time which lapsed between JBS's suspension and the present date.

LEGAL ANALYSIS AND CONCLUSIONS

I have had some difficulty with this matter. On one hand, the law is clear: petitioner failed to conduct a visual inspection and a student remained on his school bus at the conclusion of his route. See 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."); and N.J.A.C. 6A:3-12.1(a) (setting forth the procedure where "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. . . ."). See also Herman v. N.J. Dept. of Educ., Crim. Hist. Rev. Unit, Final Decision 5 (July 20, 2015) (providing

definitive explanation of the phrase “end of the transportation route” as set forth at N.J.A.C.).² Likewise, the sanction for leaving a student on a school bus at the conclusion of a school bus driver’s route could not be any more clear:

In the even 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.S.A. 18A:39-29.]

Add to this, the six-month first-offense sanction set forth at N.J.S.A. 18A:39-29(a) is not subject to mitigation. See, e.g., Vickery v. N.J. Dept. of Educ., Crim. Hist. Rev. Unit, OAL Docket No. EDU 00083-15 (June 2, 2015) *10-11, adopted, Final Decision (July 9, 2015).³

On the other hand, JBS “suspended” petitioner from driving a school bus immediately following the incident on March 2, 2023, and has since precluded him from returning to his school bus driving duties while this appeal was pending. As of the date of this Initial Decision, almost eight months have passed during which petitioner was not driving a school bus for JBS. Granted that there is no law expressly permitting an

²In Herman v. N.J. Dept. of Educ., Crim. Hist. Rev. Unit, Final Decision 5 (July 20, 2015), the Commissioner stated:

The Commissioner concludes that petitioner violated the School Bus Safety Act when she admittedly failed to visually inspect the school bus at the end of her route—*i.e.*, following the departure of the “PM” Kindergarten students from the bus, and before returning to the depot. As a result of petitioner’s failure to perform the required visual inspections, [the student] was left on the bus as petitioner departed the Drew School and traveled to the bus depot.

³In Vickery, the ALJ observed:

[T]he statute does not permit me to consider mitigating circumstances, or to consider the fact that, gratefully, this student was unharmed. The statute speaks in the imperative. For this reason, Vickery’s reliance on N.J. Department of Children and Families v. M.H., 2014 N.J. Super. Unpub. LEXIS 1778 (App. Div. 2014), is misplaced. There, the driver left a four-year-old child on the bus, after having done no visual inspection at all. Here, the failure to inspect here took place only too late, rather than not at all; and the child left behind was not of tender years, and thus mature enough to advocate for himself, notwithstanding a language barrier. Notwithstanding these differences from the facts in M.H., **the law does not permit me to alter the penalty expressly required by law.**

[Vickery v. N.J. Dept. of Educ., Crim. Hist. Rev. Unit, OAL Docket No. EDU 00083-15 (June 2, 2015) *10-11, adopted, Final Decision (July 9, 2015) (emphasis added).]

employer's private suspension to take the place of the statutory penalty set forth in N.J.S.A. 18A:39-29(a); quite the contrary, actually. There is a question of what is fair, though, under the circumstances. It is with this in mind that the proverbial "rabbit hole" is opened.

To gain a better understanding of the suspension, and more particularly whether it was part of a governmental action—such as a school board—a request was made that petitioner provide the following information:

1. Stating if you were suspended from driving a school bus;
2. The date your suspension from driving a school bus with students/children in it started (if you were suspended);
3. The date your suspension from driving a school bus with students/children in it ended (if you were suspended);
4. Stating whether the suspension was continuous or stopped at some point;
5. Stating what the suspension imposed by your employer—if any—covered (i.e. just school buses, school buses for a particular township, other school districts, etc.);
6. Whether the suspension—if any—was imposed by any local Board(s) of Education; and that it is
7. Signed by someone authorized by your employer to sign such a letter, and who understands that there may be a penalty if it is found to be inaccurate or untruthful.

[DOC 18 at 1.]

For lack of better terms, petitioner's response was anemic.

This is a circumstance where, if there were unitary power or authority, one could easily justify a reduction of the sanction. Here, petitioner's employer, JBS, acted in a way it apparently believed the law required—imposing an immediate suspension. This suspension at least appears to be continuous and far exceeded the mandatory six-month loss of school bus driving privileges. Moreover, petitioner readily acknowledged his

mistake and acted with appropriate contrition. Petitioner was retrained and has anxiously awaited the outcome of this determination, all-the-while maintaining employment with JBS.

With administrative law matters, a “party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Generally speaking, the components of a summary disposition motion involve a certain level of formality. See N.J.A.C. 1:1-12.5(b) (requirements relating to briefs and affidavits). Within the administrative code, though, the procedural rules “shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.” N.J.A.C. 1:1-13(a). Further and other than the burden of proof, “[the] procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice.” N.J.A.C. 1:1-13(b). Provided the circumstances in this matter, I **CONCLUDE** that a more fair and just result warrants a relaxation of the procedural rules, permitting the original motion for dismissal pursuant to N.J.A.C. 6A:3-1.10 to be converted into a motion for summary disposition pursuant to N.J.A.C. 1:1-13, that the motion record be based on the submissions of the parties, and that the motion may proceed in the absence of stipulations and affidavits.

A motion for summary disposition pursuant to N.J.A.C. 1:1-12.5 is essentially the equivalent of a motion for summary judgment pursuant to R. 4:46-2. As set forth in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the preeminent case involving summary judgment motions, the deciding judge must determine whether a genuine issue of material fact exists and, in doing so, 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 Insurance Co. of America, 142 N.J. 520, 540 (1995). In so doing, “[t]he ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540 (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)). The preeminent question presented here is not the conduct but rather the sanction.

There are a number of reasons, all sounding in equity, why petitioner's school bus endorsement suspension should offset in full or in part. In effect, he was suspended from driving a school bus. Petitioner accepted responsibility and demonstrated contrition. Further, petitioner has undergone retraining and is clearly dedicated to his chosen vocation. These are all valid; unfortunately, none are sufficient.

As noted above, the penalty to be imposed pursuant to N.J.S.A. 18A:39-29(a) is mandatory and not subject to mitigation. No governmental action occurred regarding petitioner's ability to drive a school bus. Rather, all actions pertaining to petitioner's ability to drive a school bus were the result of private conduct, to wit, petitioner's employer, JBS. Further, the March 3, 2023, DOE email specifically states that "if a Petition of Appeal is not filed with the Commissioner and copied to OSP within the aforementioned 10 business days, OSP will promptly notify the MVC that your "S" endorsement is to be suspended without further proceedings." (DOC 2 at 2.) Further, N.J.A.C. 6A:3-12.1 (Request for Hearing Upon Notice of Impending Suspension or Revocation) states:

- 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:39-26 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.
- c. Where no petition is filed within the requisite time frame, or where a petitioner does not prevail before the Commissioner in demonstrating that the Department's determination was in error, the Department's Criminal History Review Unit will:
1. Notify the Motor Vehicle Commission of its obligation pursuant to N.J.S.A. 18A:39-26 et seq., to suspend or revoke, as the case may be, the driver's school bus endorsement; and
 2. Notify the driver's employer that the driver is ineligible, for the period of suspension or permanently, as the case may be, for continued employment as a school bus driver.

[N.J.A.C. 6A:3-12.1. Emphasis added.]

Put simply, the March 2, 2023, DOE email and N.J.A.C. 6A:3-12.1(c) both state that while the appeal is pending, the suspension pursuant to N.J.S.A. 18A:39-29a does not run. Last, while an argument may be made by petitioner that the matter was improvidently transferred pursuant to N.J.A.C. 6A:3-12.1(b) (jurisdictional limits), and as such, the suspension should have been entered at the time, no such argument or analysis was made.

Based on the foregoing, I **CONCLUDE** that, with no factual dispute, summary disposition is appropriate. I further **CONCLUDE** that, based on the facts and circumstances set forth above, the DOE is entitled to a decision as a matter of law and that its motion for summary disposition is **GRANTED**. As such, I thus **CONCLUDE** that,

with no factual dispute and as a matter of law, the S endorsement on petitioner's New Jersey MVC driver's license shall be suspended for six months from the date of Final Decision pursuant to N.J.S.A. 18A:39-29a. I further **CONCLUDE** that petitioner is not entitled to any reduction of that six-month suspension and that petitioner's appeal must be **DISMISSED**

ORDER

It is **ORDERED** that the DOE's motion for summary decision is **GRANTED**. It is further **ORDERED** that the appeal of this matter be **DISMISSED**.

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, PO 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.



October 27, 2023

DATE

ROBERT D. HERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

RDH/tat

APPENDIX
WITNESSES

For petitioner:

None

For respondent:

None

LIST OF EXHIBITS

- DOC 1 Certification of James Caringelli (undated) (2 pages)
- DOC 2 E-mail from Investigator Scaringelli to petitioner (March 3, 2023) (2 pages)
- DOC 3 March 15, 2023, Pro Se Petition of Appeal (2 pages)
- DOC 4 DOE letter brief (April 13, 2023) (15 pages)
- DOC 5 OAL transmittal (April 13, 2023) (6 pages)
- DOC 6 May 31, 2023, notice of hearing (1 page)
- DOC 7 June 8, 2023, notice of hearing (1 page)
- DOC 8 June 20, 2023, notice of hearing (1 page)
- DOC 9 Letter from JBC (June 21, 2023) (1 page)
- DOC 10 July 11, 2023, notice of hearing (1 page)
- DOC 11 July 25, 2023, notice of hearing (1 page)
- DOC 12 DOE supplemental letter brief (2 pages)
- DOC 13 Certification of James Caringelli (undated, submitted August 7, 2023) (2 pages)
- DOC 14 Pro Se Petition of Appeal (March 15, 2023) (submitted August 9, 2023) (two pages)
- DOC 15 Letter from JBC (June 21, 2023, resubmitted on August 9, 2023) (one page)

- DOC 16 Email from DOE (August 9, 2023); email JBS (August 9, 2023); letter from JBS (August 9, 2023); letter from petitioner (August 9, 2023); letter from petitioner (undated; received August 9, 2023) (6 pages)
- DOC 17 Email to petitioner (August 10, 2023) (1 page)
- DOC 18 Email to petitioner (August 11, 2023) (1 page)
- DOC 19 Email from petitioner (August 11, 2023) (2 pages)
- DOC 20 Email to petitioner (August 22, 2023) (1 page)
- DOC 21 DOE email (August 30, 2023) (3 pages)
- DOC 22 September 7, 2023, notice of hearing (1 page)
- DOC 23 DOE email (September 8, 2023); letter from JBS (September 7, 2023); letter from petitioner (September 7, 2023) (6 pages)