

CARMEN ARCOS,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY DEPARTMENT OF	:	DECISION
EDUCATION, OFFICE OF CRIMINAL	:	
HISTORY REVIEW UNIT,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner Carmen Arcos (Arcos) – a school bus driver – appealed the Department’s determination to suspend her school bus endorsement pursuant to *N.J.S.A. 18A:39-28 et seq.* after an incident in which a student was left on petitioner’s school bus at the end of one of her assigned bus routes on December 11, 2017. Petitioner did not dispute that the child was in fact left on the bus, but contended that the student was “never left alone.” Arcos argued that before reaching her next stop, she received a phone call informing her that she had a student onboard who should have been dropped off at the previous stop, but had fallen asleep; the student was then returned to the proper bus stop. Petitioner contended that she had “not yet completed her transportation route,” and therefore did not violate *N.J.S.A. 18A:39-28*. The parties filed opposing 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; petitioner has admitted that on December 11, 2017, she did not visually inspect her school bus when she dropped off children at a designated bus stop on Union Avenue in Paterson, NJ, before proceeding to her next assigned student pickup stop on 11th Avenue; 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; in accordance with *N.J.S.A. 18A:39-29*, if a school bus driver is found to have left a pupil on the bus at the end of a route, the driver’s school bus endorsement shall be suspended for six months for the first offense; and petitioner’s argument that she had “not yet completed her transportation route” when she continued on beyond the Union Avenue bus stop with a sleeping student still onboard is without merit. Accordingly, the ALJ granted summary decision to the respondent Department and denied the petitioner’s cross motion. The petitioner’s six month suspension for leaving a child on the school bus was affirmed.

Upon full review, the Commissioner concurred with the ALJ that the respondent Department is entitled to summary decision. 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 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.

September 20, 2018

OAL DKT. NO. EDU 01752-18
AGENCY DKT. NO. 291-12/17

CARMEN ARCOS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY DEPARTMENT OF : DECISION
EDUCATION, OFFICE OF CRIMINAL :
HISTORY REVIEW UNIT, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions to the Initial Decision, and respondent’s reply thereto, were also considered by the Commissioner.¹ 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.

The exceptions – while reflecting petitioner’s obvious disagreement with the findings and conclusions contained within the Initial Decision – are unpersuasive, and fail to address specific legal or factual issues with the Administrative Law Judge’s (ALJ) determination. Petitioner further misapplies the legal standard by which such matters are considered. Pursuant to *N.J.S.A.* 18A:39-28, school bus drivers have an affirmative duty to visually inspect the bus at the end of the transportation route to determine that no pupil remains on the bus. *N.J.S.A.* 18A:39-29 provides that if a pupil is found to have been left of the bus at the end of the transportation route, the bus driver’s endorsement shall be suspended for six months for the first offense, and permanently revoked in the event of a second offense. In this matter, it

¹ Petitioner’s sur-reply was also considered.

is undisputed that petitioner did not visually inspect the school bus following the conclusion of her route and prior to starting her next route. It is further undisputed that a student remained on the bus from petitioner's previous route. No further inquiry is required, as petitioner clearly failed to fulfill her duty under *N.J.S.A.* 18A:39-28.

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. Furthermore, 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 she is ineligible for the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 20, 2018

Date of Mailing: September 21, 2018

² 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 01752-18

AGENCY DKT. NO. 291/12/17

CARMEN ARCOS,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION, CRIMINAL HISTORY
REVIEW,**

Respondent.

Emilio Santiago, Esq., for Arcos (Law Offices of Emilio Santiago, LLC,
attorneys)

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

Record Closed: June 19, 2018

Decided: November 8, 2018

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Carmen Arcos (Arcos), seeks a determination that the respondent, New Jersey Department of Education, Criminal History Review (Department), erred in

its decision to suspend Arcos' "S" endorsement to operate a school bus for six-months, due to Arcos' alleged violation of N.J.S.A. 18A:39-28, et seq., in leaving a child on a school bus assigned to her on December 11, 2017.

Arcos filed her Petition of Appeal with the Department on December 21, 2017. On January 30, 2018, the Department filed a motion to dismiss in lieu of an answer, pursuant to N.J.A.C. 6A:3-1.10³. The matter was transferred to the Office of Administrative Law (OAL), where it was filed on January 31, 2018, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A telephone status conference was held on March 15, 2018, where the parties agreed that the facts were not in dispute and that Arcos would proceed under N.J.A.C. 1:1:12.5 and file a motion for summary decision. As the Department had filed a motion to dismiss in lieu of answer on January 30, 2018, and Arcos had not filed her opposition to the same, it was agreed that the Department would not need to re-file a motion for summary decision and Arcos would file her opposition to the Department's motion along with a motion for summary decision.

On May 4, 2018, Arcos filed her motion for summary decision to dismiss the Department's decision to suspend her "S" endorsement on December 14, 2017, and in opposition to the Department's motion to dismiss in lieu of answer. On June 19, 2018, the Department filed its opposition to Arcos' motion to dismiss the Department's motion to dismiss in lieu of answer, and her motion for summary decision. The record closed on June 19, 2018.

Arcos' Petition filed December 21, 2017, containing the facts of this case are not disputed by the Department and I therefore **FIND** them to be the **FACTS** of this case. A brief discussion of the facts are as follows:

³ The Department had initially filed a Motion to Dismiss in Lieu of an Answer with the Commissioner of Education under N.J.A.C. 6A:3-1.10. The Department requested in its motion that once the matter was transferred to the Office of Administrative Law (OAL), that the Department's motion be converted to a summary decision motion under N.J.A.C. 1:1:12.5, as no material facts are in dispute.

1. On December 11, 2017, Arcos picked up a group of students from 94 Dale Avenue, Paterson, New Jersey, (94 Dale Avenue) at 2:37 PM (See, Petition at 1).
2. Arcos transported the students to School 14 located at 534 Union Avenue, Paterson, New Jersey, (534 Union Avenue) and dropped the children off at 2:44 PM. Ibid.
3. The teacher onboard the bus with Arcos informed her that it was his job to check for students, and since he had completed his head count Arcos was okay to leave the school. Ibid.
4. Arcos' assistant and the school security guard at School 14 did not check the school bus after the children had been dropped off. Ibid.
5. Arcos does not state that she completed her own visual inspection of the bus. Ibid.
6. At the completion of her initial transportation route, Arcos continued to her next stop. Id. at 2.
7. Arcos arrived at 772 11th Avenue, Paterson, New Jersey, (772 11th Avenue) her next stop, at 3:01 PM to pick up the next group of children. Id. at 3.
8. It was at this time that Arcos reports receiving a phone call informing her that she had a student onboard left behind from the prior stop who had fallen asleep. Id. at 4.
9. After dropping off the new group of students, Arcos returned to 534 Union Avenue, to drop off the child. Id. at 5.
10. Arcos alleges that the child on board was "never left alone" as she was advised that the child was on board before arriving at her next stop at 772 11th Avenue, and she returned the child to 534 Union Avenue, where the child was to have originally been dropped off. Id. at 6.
11. Arcos alleges that she had "not yet completed her transportation route." Id. at 7.

DISCUSSION

To succeed in the suspension of Arcos' "S" endorsement to operate a school bus vehicle, the Department must establish that Arcos violated N.J.S.A. 18A:39-28. This statute specifies an affirmative duty that the 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:39-28.

A violation of 18A:39-28 results in a mandatory penalty. N.J.S.A. 18A: 39-29. The statute dictates "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.S.A. 18A: 39-29.

Arcos filed a Petition of Appeal under N.J.A.C. 6A:3-1.3(i)(3) that was both timely and compliant.⁴ This regulation holds that:

"A petition seeking to be heard as to why his or her endorsement to operate a school bus should not be suspended or revoked pursuant to 18A:39-28 et seq., because a child was found to have been left on the school bus to which he or she was assigned, shall file a petition within 10 business days of the date of the Department's written notice to petitioner of such finding." Ibid.

Arcos' request for a hearing is subject to N.J.A.C. 6A:3-12.1.⁵ This regulation holds that the petitioner can contest the suspension or revocation brought under N.J.S.A. 18A:39-28 et seq. by filing a petition within ten business days. N.J.A.C. 6A:3-12.1(a).

⁴ Arcos filed her petition within 4 business days of receipt of the notification from the Criminal History Review Unit, having received the letter on December 14, 2017 and filed a petition on December 20, 2017. Brief in support of Arcos.

⁵ N.J.A.C. 6A:3-12.1 was recodified from N.J.A.C. 6A:3-13.1 (cited in the Department's motion to dismiss brief, January 26, 2018).

Arcos can contest the following aspects of the Department's determination: (1) That 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 pupil was harmed as a result of foreseeable danger; and (4) That the driver acted with gross negligence. N.J.A.C. 6A:3-12.1(b).

If the petitioner does not file on time or fails to demonstrate that the Department made an error, the Motor Vehicle Commission ("MVC") is then notified that the driver's "S" endorsement has been suspended and that the Department will notify the driver's employer that the driver is no longer eligible to continue employment effective immediately from the time of suspension. N.J.A.C. 6A:3-12.1(c).

In the within matter, the criteria for contesting the Department's determination set forth in N.J.A.C. 6A:3-12.1(b) 2 through 4 above are not applicable. The Department does not assert that the incident was a second offense or that the child was harmed as a result of a foreseeable danger or that Arcos acted with gross negligence. The issue in this case is whether Arcos complied with the statutory requirement that she "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:39-28.

There is no affirmative defense to the violation that the Department alleges against Arcos by statute. See N.J.S.A. 18A:39-28, N.J.S.A. 18A: 39-29. The only defense available to Arcos is the Department's failure to establish that she failed to visually inspect the school bus to which she was assigned at the end of the transportation route to determine that no pupil has been left on the bus. (emphasis supplied).

The School Bus Safety Act imposes an affirmative duty on school bus drivers to visually inspect the school bus at the end of every route to insure no child has been left on the school bus. N.J.S.A. 18A:39-28. If a school bus driver is found to have left a

pupil on his bus at the end of a route, his school bus endorsement shall be suspended for six months for a first offense. N.J.S.A. 18A:39-29.

Arcos has admitted that she did not visually inspect the bus when she dropped off the children at 534 Union Avenue before proceeding to her next assigned stop at 772 11th Avenue to pick up children. Arcos argues in her Petition that she had “not yet completed her transportation route” (Petition, at 7), implying that her route ends at the end of her work day when all children have been dropped off. Arcos also argues that the child was “never left alone and was with her at all times.” (Id., at 6). The question that must be answered is when did Arcos’ bus route end?

The legal determination rests on the meaning of the phrase “the end of the transportation route.” This phrase is not defined in the “School Bus Safety Act.” Herman v. N.J. Dept. of Ed., Crim. Hist. Rev. Unit, EDU10473-14, Initial Decision (June 25, 2018) http://njlaw.rutgers.edu/collections/oal/html/initial/edu10473-14_1.html. The Department, in its motion to dismiss, cites Klein v. N.J. Dept. of Ed., Crim. Hist. Rev. Unit, Agency Dkt. No. 713-12/10, Final Decision at 2 (February 21, 2012), which determined that the “end of the route’ pursuant to N.J.S.A 18A:39-26 “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.” Final Decision 3 (February 21, 2012).⁶ Further, Klein holds that this is the point at which the driver should conduct the visual inspection of the vehicle for any remaining students. Id.

The OAL came to a conflicting conclusion in an initial decision. Herman Initial Decision. In Herman, a bus driver did not conduct a visual inspection of the bus at the drop-off point of the first group of children, and a child remained on the bus. Id. at 2. The bus driver left the bus for one minute to deliver a forgotten backpack and promptly returned to the bus. Id. The ALJ applied N.J.A.C. 6A:27-12.3(a)(1), reasoning that the bus driver remained in the vicinity of the child at all times. Id. at 8-9. The ALJ’s initial

⁶ This decision is not available through Lexis or the Rutgers Law School website. However, the decision is available on the N.J. DOE’s website, <http://www.nj.gov/education/legal/commissioner/2012/feb/68-12.pdf/>.

decision, like in Klein's initial decision, was not adopted and the commissioner stated that the ALJ relied wrongly on N.J.A.C. 6A:27-12.3(a)(1). Herman v. N.J. Dept. of Ed., Crim. Hist. Rev. Unit, Final Decision 7 (July 30, 2015).⁷

Based upon these decisions, whether Arcos did or did not remain in the vicinity of the child is therefore not relevant to her claim that the child “was never left alone”. The critical analysis is did the Department fail to establish by a preponderance of the credible evidence that Arcos failed to visually inspect the school bus to which she was assigned at the end of the transportation route to determine that no pupil has been left on the bus. (emphasis supplied).

In her Petition, Arcos does not deny or dispute the fact that she failed to visually inspect her bus when she dropped of the children at 534 Union Avenue after picking them up at 94 Dale Avenue. She seeks to mitigate her failure to inspect the school bus in arguing that 1) the teacher who was on the bus took a “head count” and told her there were no children on the bus and she could leave. (Petition at 1); 2), the said teacher told her that it was “his job and that the Petitioner (Arcos) did not have to check for students”, and did not “allow the Petitioner’s assistant to check the bus for students” (ibid.), and 3) “the security guard of the school did not check either, nor did he board the bus the check.” (ibid.)

As the School Bus Safety Act does not provide a definition for “end of the transportation route”, the undersigned is left to find a meaning from a “discriminating search” of the record, consisting as it may of affidavits, certifications, documentary exhibits and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion” and the arguments made by the parties in their respective motions for summary decision. Brill v. The Guardian Life Insurance Company of America, et al., 142 N.J. 520, 530 (1995).

⁷ This decision is not available through Lexis or the Rutgers Law School website. However, the decision is available on the SADC’s website, <http://www.nj.gov/agriculture/sadc/>.

I **CONCLUDE** that Arcos' painstaking explanation in her Petition of the individuals who did and did not conduct the school bus inspection for children on the bus at the time the children were dropped off serves to underscore the conclusion that the meaning of "end of the transportation route" under N.J.S.A. 18A:39-28 occurs when the children are dropped off. In essence, Arcos provides a common-sense definition to "end of the transportation route" in acknowledging that the school bus should be inspected when the children are dropped off and not when upon completion of her transportation route at the end of the day.

I **CONCLUDE** further that Arcos attempt to mitigate her failure to check the school bus for children serves only to strengthen the Department's argument that "the end of the transportation route" triggering the school bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28 occurs when Arcos dropped off the children at the assigned destination and not when the bus driver completes all of her assigned routes for the day.

Arcos and the Department seek relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary judgment requires the judge to 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. Our courts have held that the "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). When the

evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Anderson, 477 U.S. at 252. Conversely, it is critical that a favorable ruling on a summary judgment motion not "shut a deserving litigant from his [or her] trial." Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 77 (1954).

I **CONCLUDE** that the evidence presented by the parties does not establish any facts in material dispute. Given the limited facts that must be established to support a violation of the duty imposed by the Legislature on a school bus driver to properly inspect the bus at the end of a route to assure that no child is left on the bus, the arguments offered by the Department amply support summary decision in its favor. And given the mandatory nature of the penalty for a first-time violator of the mandate, the six-month suspension is the only outcome where the violation is proven. N.J.S.A. 18A:39-29a. The Department's motion for summary decision is hereby **GRANTED**.

Accordingly, for the reasons stated herein, Arcos's motion in opposition to the Department's motion for dismissal in lieu of answer/summary decision and her motion for summary decision is **DENIED**.

ORDER

It is hereby **ORDERED** that the Department's motion for summary decision is hereby **GRANTED** and it is further **ORDERED** that the petitioner's "S" endorsement shall be suspended for six months.


It is hereby **ORDERED** that Arcos' motion in opposition to the Department's motion for dismissal in lieu of answer/summary decision and her motion for summary decision is **DENIED**.

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.

August 16, 2018
DATE



JULIO C. MOREJON, ALJ

Date Received at Agency: August 16, 2018

Date Mailed to Parties: _____

lr