



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

April 22, 2019

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. First Student, Inc.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-190152

Dear Mr. Johnson:

On March 28, 2019, the Washington Utilities and Transportation Commission (commission) issued a penalty assessment against First Student, Inc. (First Student or company) in the amount of \$23,700 for violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 382 – Controlled Substances and Alcohol Use and Testing; Title 49 CFR Part 390 – Federal Motor Carrier Safety Regulations; Title 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation; and Title 49 CFR Part 396 – Inspection, Repair, and Maintenance, as follows:

- **Forty-four violations of Title 49 CFR 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** First Student allowed 44 drivers to operate a commercial motor vehicle before receiving a negative drug test result. The drivers in violation were: Brendan Nadayag, Michele M. Daniel, Daniel Jacobs, Sawn Woodard, Sarah Mattheis, Viktor Alexander, Richard Anderson, Bobby Beavers, Angela Campbell, Gayle Carrington, Chi-Ming Chan, Jacquely Davis Gray, Francine Dias Ximenes, Loretta Faualo, Lynn Fazio, Lorgia Gomez, Michal Gosser, Inez Hazel, Ludovic Hien, Susan Hobbs, Mark Hollinger, Tia Kennebrew, Darryld Kovach, Abiyu Lugo, Jennifer Mendoza, Jeffrey Meyer, Jeffery Mitchell, Jamal Nakkour, Raymond Naranjo, Tod Oliver, Deleion Patterson, Catherine Perkins, Jorge Reyes, Esperanza Rivas, Kristi Rude, Sarah Struble, Him Teferi Afewerki, Sherieka Trotter, Tina Turner, William Uhl, Ladonna Werdal, Jimmy Williams Sr., Petro Woldemichael, and Nicole Allen.

- **Thirteen violations of Title 49 CFR 390.35 – Making or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** First Student employees responsible for safety oversight signed documents attesting that 13 annual driver reviews were complete prior to receiving driver annual motor vehicle reports.
- **One violation of Title 49 CFR 393.48(a) – Inoperative/defective brakes.** Commission staff (staff) discovered a commercial motor vehicle with the front and right side rear brakes out of adjustment, and placed this vehicle out of service.¹ Staff inspected 80 vehicles, a sample of the company's entire Washington fleet.
- **Ninety-nine violations of Title 49 CFR 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** First Student failed to require its drivers to prepare a driver vehicle inspection report on 99 separate occasions. Staff reviewed 810 driver vehicle inspection reports, a sample of the company's overall records.
- **Two violations of Title 49 CFR 396.5(b) – Oil and/or grease leaking from wheel hub.** Staff discovered two commercial motor vehicles with leaking wheel hubs and placed these two vehicles out of service.² Staff inspected 80 vehicles, a sample of the company's entire Washington fleet.

On April 9, 2019, First Student filed with the commission its application for mitigation of penalties. In the request for mitigation, Lance Lackey, regional safety manager for First Student, admitted the violations, stated the company has implemented new procedures to correct the violations, and asked that the penalties be reduced for reasons set out in the company's corrective action safety plan. Staff's response to the mitigation request is below.

- **Mitigation Request: Title 49 CFR 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** First Student stated the violations happened because its personnel lacked understanding of the process to add its drivers to the random pool. The company assigned and trained new staff on the correct process to add and update drivers in the pool. In addition, First Student stated that each location will implement verification procedures to ensure future compliance with the random pool and pre-employment drug and alcohol testing requirements.

Staff response: It is First Student's responsibility to ensure its drivers receive negative pre-employment drug test results prior to allowing its drivers to operate commercial motor vehicles. These are critical violations that could result in permitting drivers with positive drug test results to operate commercial motor vehicles carrying students and other passengers. Non-compliance with critical regulations are quantitatively linked to

¹ Equipment Identification Number 208928.

² Equipment Identification Numbers 60273 and 366488.

inadequate safety management controls and usually higher than average accident rates.³ Staff recommends no mitigation of this \$22,000 penalty.

- **Mitigation Request: Title 49 CFR 390.35 – Making or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** First Student stated that the violations occurred because new company employees were not properly trained on the correct process. The company stated it has since trained its employees, and correctly completed the 13 annual driver reviews that were in violation. The company stated each location now has sample files to illustrate how every document should be completed and new verification procedures are in place to prevent future occurrences of this violation.

Staff response: First Student employees responsible for safety oversight signed 13 documents attesting that annual driver reviews were complete prior to receiving motor vehicle reports from the Department of Licensing. These are acute violations that could allow a disqualified driver to operate a commercial motor vehicle carrying students and other passengers. Acute regulations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier, and are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.⁴ Staff recommends no mitigation of this \$1,300 penalty.

- **Mitigation Request: Title 49 CFR 393.48(a) – Inoperative/defective brakes.** First Student failed to address this violation in its request for mitigation and its corrective action safety plan.

Staff response: It is First Student's responsibility to ensure that its vehicles are free of defects that may potentially put the traveling public at risk. The company did not address this violation in its response. Staff recommends no mitigation of this \$100 penalty.

- **Mitigation Request: Title 49 CFR 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** First Student stated that at the time of inspection it did not have procedures in place to check driver vehicle inspection reports for accuracy and completeness at the location where staff identified the violations. The company stated that most of its busses at the location in question have electronic tracking systems installed, and the busses without electronic tracking systems installed will be swapped out before the end of the year. The company stated that drivers operating busses without electronic tracking systems installed will be required to have the dispatcher collect and review the driver vehicle inspection reports prior to the driver operating a commercial motor vehicle.

³ Appendix B to CFR Part 385—Explanation of Safety Rating Process.

⁴ *Id.*

Staff response: First Student has implemented new procedures to manually review driver vehicle inspection reports until its entire fleet has been updated with electronic tracking systems. The company has also established a new verification process to prevent future occurrences of this violation. Because the commission assessed a “per category” penalty of \$100 for 99 occurrences of this violation, staff recommends no mitigation of this \$100 penalty.

- **Mitigation Request: Title 49 CFR 396.5(b) – Oil and/or grease leaking from wheel hub.** The company failed to address this violation in both its request for mitigation and its corrective action safety plan.

Staff response: It is the company’s responsibility to ensure that its vehicles are free of defects that may potentially put the traveling public at risk. The company did not address this violation in its response to the commission. Staff recommends no mitigation of this \$200 penalty.

First Student is a large company that operated 582 commercial motor vehicles, employed 543 commercial drivers and reported gross revenue of \$2,300,000,000 in 2017.

Staff takes into consideration that First Student provided an acceptable corrective safety action plan that addressed all violations; however, staff recommends no mitigation of the \$23,700 penalty due to the severity of the violations. In addition, staff recommends that \$10,000 of the penalty be suspended for a period of two years before being waived, on the following conditions:

- 1) Staff conducts a follow-up safety investigation in two years or as soon thereafter as practicable to review the company’s safety management practices;
- 2) The company not incur any repeat acute or critical violations;
- 3) Within one year from the date of the commission Order, First Student provides staff with the results of its internal site safety reviews and safety wellness checks identified in the company’s corrective action safety plan; and
- 4) First Student pays \$13,700, the portion of the penalty that is not suspended.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Consumer Protection, at (360) 664-1320, or by email at jason.hoxit@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection