

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

FIRST STUDENT, INC.

in the amount of \$23,700

DOCKET TE-190152

ORDER 01

DENYING MITIGATION; IMPOSING
AND PARTIALLY SUSPENDING
PENALTY

BACKGROUND

1 On March 28, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$23,700 penalty (Penalty Assessment) against First Student, Inc., (First Student or Company) for violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- a \$22,000 penalty for 44 violations of 49 C.F.R. § 382.301(a) for allowing 44 drivers to operate a motor vehicle used to provide regulated passenger transportation service before receiving a negative pre-employment controlled substance test result;
- a \$1,300 penalty for 13 violations of 49 C.F.R. § 390.35 for making or causing to make fraudulent or intentionally false statements by falsely attesting that 13 annual driver reviews were complete prior to receiving driver annual motor vehicle reports;
- a \$100 penalty for one violation of 49 C.F.R. § 393.48(a) for having inoperative or defective front and right side rear brakes on one of the Company's motor vehicles used to provide regulated passenger transportation service;
- a \$100 penalty for 99 violations of 49 C.F.R. § 396.11(a) for failing to require drivers to prepare a driver vehicle inspection report on 99 occasions; and

¹ This Order refers to Commission safety regulations that adopt federal rules only by the applicable section of Title 49 C.F.R.

- a \$200 penalty for two violations of 49 C.F.R. § 396.5(b) for oil or grease leaking from wheel hubs on two of the Company's motor vehicles used to provide regulated passenger transportation service.

2 On April 9, 2019, First Student filed a response to the Penalty Assessment admitting the violations and requesting mitigation of the penalty amount (Mitigation Request). In its Mitigation Request, the Company stated that it has taken swift action to correct the violations, including establishing a safety plan for each type of violation to ensure that they do not recur.

3 On April 22, 2019, Commission staff (Staff) filed a response recommending the Commission deny the Company's Mitigation Request. Because First Student provided an acceptable corrective safety action plan that addressed all of the violations, Staff recommends that the Commission suspend \$10,000 of the penalty for a period of two years, and then waive the suspended amount, subject to the conditions that (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable; (2) the Company must not incur any repeat violations of critical regulations during those two years; (3) within one year of the date of this Order, First Student must provide Staff with the results of the Company's internal site safety reviews and safety wellness checks identified in the Company's corrective action safety plan; and (4) the Company must pay the \$13,700 portion of the penalty that is not suspended.

4 Commission records indicate that on April 23, 2019, First Student paid \$13,700 of the assessed penalty.

DISCUSSION AND DECISION

5 Washington law requires passenger transportation companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission

² See RCW 81.04.405.

will issue penalties for first-time violations.³ Violations defined by federal law as “critical” meet this standard.⁴

- 6 The Commission considers several factors when entertaining a request for mitigation, including whether a company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring a company’s compliance.⁵ We address each violation category below.
- 7 **49 C.F.R. § 382.301(a).** The Penalty Assessment includes a \$22,000 penalty for 44 violations of 49 C.F.R. § 382.301(a) because First Student allowed 44 drivers to operate motor vehicles used to provide regulated passenger transportation service before receiving a negative pre-employment controlled substance test result. The Company contends that these violations occurred because its personnel lacked understanding of the process for adding drivers to its random pool. First Student has assigned and trained new staff on the correct process and stated that the Company has implemented verification procedures.⁶
- 8 Staff recommends that the Commission deny the Company’s request to mitigate this penalty. Staff states that these are critical violations that could result in permitting persons with positive drug test results to drive motor vehicles transporting students and other passengers. Non-compliance with such critical regulations, according to Staff, is quantitatively linked to inadequate safety management controls and usually higher than average accident rates.
- 9 We agree with Staff’s recommendation. Allowing persons to transport passengers without a negative pre-employment controlled substance test result poses a serious safety risk. Impaired drivers imperil the general public as well as the passengers they are transporting. Company personnel’s alleged lack of understanding of proper procedures is

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶ 19.

⁶ In its Response, Staff summarized the Company’s position as described in its corrective action safety plan, which First Student provided to Staff but did not include in its Mitigation Request.

neither a reasonable excuse nor grounds for mitigation. The Company's remedial actions are welcome but they do not support a reduction in the assessed penalty. We deny First Student's request to mitigate this penalty.

10 **49 C.F.R. § 390.35.** The Penalty Assessment includes a \$1,300 penalty for 13 violations of 49 C.F.R. § 390.35 for making or causing to make fraudulent or intentionally false statements by falsely attesting that 13 annual driver reviews were complete prior to receiving driver annual motor vehicle reports. First Student claims that these violations occurred because new Company employees were not properly trained on the correct process, which the Company has since remedied, completed accurate reports, and implemented verification procedures.

11 Staff recommends no mitigation of this penalty. Staff states that these are acute violations requiring immediate corrective action that could allow a disqualified driver to operate a commercial motor vehicle carrying students and other passengers. Such violations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. We agree, not only because of the reasons Staff explains but because making intentionally false attestations is wholly unacceptable conduct that we will not condone. We deny First Student's request to mitigate this penalty.

12 **49 C.F.R. § 393.48(a).** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. § 393.48(a) for having inoperative or defective front and right side rear brakes on one of the Company's motor vehicles used to provide regulated passenger transportation service. First Student did not address this violation in its Mitigation Request or its corrective action safety plan.

13 Because ensuring the safety of its vehicles is the Company's responsibility and First Student provided no basis for mitigating this penalty, Staff recommends no mitigation. We agree and deny First Student's request to mitigate this penalty.

14 **49 C.F.R. § 396.11(a).** The Penalty Assessment includes a \$100 penalty for 99 violations of 49 C.F.R. § 396.11(a) for failing to require drivers to prepare a driver vehicle inspection report on 99 occasions. First Service explained that at the time of Staff's inspection, the Company did not have procedures in place to check driver vehicle inspection reports on buses without electronic tracking systems for accuracy and completeness at the locations where Staff found the violations. Pending installation of electronic tracking systems on all of its buses the Company will require dispatchers to

collect and review driver vehicle inspection reports before the driver can operate the vehicle.

- 15 Staff acknowledges the measures the Company has taken to address these violations but recommends no mitigation of this portion of the penalty because the Commission assessed only a “per category” penalty of \$100 for 99 violations. We agree that no further leniency is warranted and deny First Student’s request to mitigate this penalty.
- 16 **49 C.F.R. § 396.5(b).** The Penalty Assessment includes a \$200 penalty for two violations of 49 C.F.R. § 396.5(b) for oil or grease leaking from wheel hubs on two of the Company’s motor vehicles used to provide regulated passenger transportation service. First Student did not address this violation in its Mitigation Request or its corrective action safety plan.
- 17 Staff recommends no mitigation of this portion of the penalty on the same basis that Staff recommends no mitigation of the Company’s violation of 49 C.F.R. § 393.48(a) for having inoperative or defective front and right side rear brakes on one of its vehicles. We agree and deny First Student’s request to mitigate this penalty.
- 18 **Partial Suspension.** While we find that the penalty should not be mitigated, we also agree with Staff that suspending a portion of the penalty is appropriate in light of the Company’s prompt efforts to remedy the violations and prevent their future recurrence. Our goal here, as in any enforcement proceeding, is to increase compliance, not create a financial burden for a regulated company. Accordingly, we suspend a \$10,000 portion of the penalty for a period of two years and will waive that portion if the Company complies with the following conditions: (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, with which the Company must fully cooperate; (2) the Company must not incur any repeat violations of critical regulations during those two years; and (3) within one year of the date of this Order, First Student must provide Staff with the results of the Company’s internal site safety reviews and safety wellness checks identified in the Company’s corrective action safety plan.⁷ If First Student fails to comply with any of these conditions, the suspended portion of the penalty will become immediately due and payable.

⁷ Staff’s fourth proposed condition of payment of the \$13,700 portion of the penalty that the Commission has not suspended is moot because the Company has paid that amount.

FINDINGS AND CONCLUSIONS

- 19 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including passenger transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 20 (2) First Student is a passenger transportation company subject to Commission regulation.
- 21 (3) First Student committed 44 violations of 49 C.F.R. § 382.301(a) by allowing 44 drivers to operate a motor vehicle used to provide regulated passenger transportation service before receiving a negative pre-employment controlled substance test result.
- 22 (4) The Commission should penalize First Student \$22,000 for 44 violations of 49 C.F.R. § 382.301(a).
- 23 (5) First Student committed 13 violations of 49 C.F.R. § 390.35 by falsely attesting that 13 annual driver reviews were complete prior to receiving driver annual motor vehicle reports.
- 24 (6) The Commission should penalize First Student \$1,300 for 13 violations of 49 C.F.R. § 390.35.
- 25 (7) First Student committed one violation of 49 C.F.R. § 393.48(a) by having inoperative or defective front and right side rear brakes on one of the Company's motor vehicles used to provide regulated passenger transportation service.
- 26 (8) The Commission should penalize First Student \$100 for one violation of 49 C.F.R. § 393.48(a).
- 27 (9) First Student committed 99 violations of 49 C.F.R. § 396.11(a) by failing to require drivers to prepare a driver vehicle inspection report on 99 occasions.
- 28 (10) The Commission should penalize First Student \$100 for 99 violations of 49 C.F.R. § 396.11(a).

- 29 (11) First Student committed two violations of 49 C.F.R. § 396.5(b) by having oil or grease leaking from wheel hubs on two of the Company's motor vehicles used to provide regulated passenger transportation service.
- 30 (12) The Commission should penalize First Student \$200 for two violations of 49 C.F.R. § 396.5(b).
- 31 (13) The Commission should suspend a \$10,000 portion of the total assessed penalty for a period of two years, and then waive that portion if the Company complies with the conditions listed in paragraph 18 above. If First Student fails to comply with any of these conditions, the suspended portion of the penalty should become immediately due and payable.

ORDER

THE COMMISSION ORDERS:

- 32 (1) The Commission denies the request of First Student, Inc., to mitigate the \$23,700 penalty.
- 33 (2) The Commission suspends a \$10,000 portion of the penalty for a period of two years and will waive the suspended portion if First Student, Inc., complies with the conditions listed in paragraph 18 above. If First Student, Inc., fails to comply with any of these conditions, the suspended portion of the penalty will become immediately due and payable.
- 34 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective May 7, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.