

**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 (<i>consolidated</i>) ORDER 02
In the Matter of the Investigation of First Student, Inc., For Compliance with WAC 480-30-221.	DOCKETS TE-210904 (<i>consolidated</i>) ORDER 01 COMPLAINT SEEKING TO IMPOSE SUSPENDED PENALTIES; ORDER OF CONSOLIDATION and NOTICE OF BRIEF ADJUDICATIVE PROCEEDING; SETTING TIME FOR ORAL STATEMENTS (Set for March 22, 2022, at 9:30 a.m.)

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

I. PARTIES

2 The Commission is an agency of Washington state authorized by state law to regulate the rates, services, facilities, and practices of public service companies, include charter party carriers and excursion service carriers pursuant to Chapter 81.70 Revised Code of Washington (RCW).

3 First Student, Inc., (First Student or Company) is a charter party carrier subject to Commission regulation and operates under Commission-issued certificate number CH-000029.

II. BACKGROUND

4 The Commission has information from which it believes and therefore alleges that First Student has violated the Commission's safety regulations, namely, Washington Administrative Code (WAC) 480-30-221, which adopts, among other provisions, Title 49 of

the Code of Federal Regulations (C.F.R.), Parts 382, 390, 391, 393, and 395 either in part or in whole.

5 RCW 81.04.110 authorizes the Commission to file a complaint on its own motion, setting forth any act or omission by a company subject to its regulation that violates any law, or any order or rule of the Commission. Under RCW 81.04.380, the Commission may impose financial penalties of up to \$1,000 for each violation.

6 The following facts, as set forth in Commission staff's (Staff) Second Amended Investigation Report and related Driver/Vehicle Examination Reports regarding First Student conducted by the Washington State Patrol (WSP), establish probable cause for the Commission to complain against First Student and to seek penalties in accordance with applicable law.

7 **FACTUAL ALLEGATIONS.** On March 28, 2019, the Commission assessed penalties against First Student in Docket TE-190152 for several violations of Commission regulations pertaining to charter party carrier service. Specifically, the Commission assessed a penalty of \$23,700 based on 44 critical violations of Title 49 C.F.R. Part 382.301(a),¹ 13 acute violations of Title 49 C.F.R. Part 390.35,² one violation of Title 49 C.F.R. Part 393.48(a), 99 violations of Title 49 C.F.R. Part 396.11(a), and two violations of Title 49 C.F.R. Part 396.5(b). On April 4, the Company filed a request for mitigation of the penalty. On April 26, the Company paid a \$13,700 portion of the penalty, as described below in Paragraph 8.

8 On May 7, 2019, the Commission issued Order 01 in Docket TE-190152.³ In Order 01, the Commission denied the Company's request for mitigation of the penalty, imposed \$13,700 of the penalty, and suspended \$10,000 of the penalty subject to 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. If First Student fails to comply with any of

¹ A critical violation is a violation of a regulation where "noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls." 49 C.F.R. Part 385, Appendix B.II.c; WAC 480-30-221; WAC 480-30-999.

² An acute violation is a violation of a regulation where "noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier." 49 C.F.R. Part 385, Appendix B.II.b; WAC 480-30-221; WAC 480-30-999.

³ *In re Penalty Assessment Against First Student, Inc.*, Docket TE-190152, Order 01 (May 7, 2019) (Order 01).

these conditions, the suspended portion of the penalty will become immediately due and payable.⁴

- 9 In March 2021, Staff initiated a compliance review of First Student's operations consistent with the Commission's direction in Order 01. The initial site visit was set for April 14, and was subsequently extended to April 28 in order to provide the Company additional time to gather information requested by the Staff investigator.
- 10 Between April and November 2021, Staff reviewed First Student's compliance with the requirements of Washington Administrative Code (WAC) 480-30-221, which adopts, among other provisions, Title 49 C.F.R. Parts 382, 390, 391, 393, and 395 either in part or in whole.
- 11 In November 2021, Staff completed its investigation.
- 12 At the conclusion of the investigation, Staff proposed an unsatisfactory safety rating for the Company. On November 4, 2021, Staff notified First Student that the investigation resulted in a proposed unsatisfactory safety rating for the Company based on the accident ratio and acute and critical violations discovered and provided the Company a copy of the Investigation Report.
- 13 On November 9, 2021, First Student petitioned Staff to administratively review Staff's Investigation Report. On November 18, Staff responded to the Company's petition for administrative review, asking the Company to provide additional information. On November 24, the Company replied to Staff's communication and provided additional information.
- 14 On December 9, 2021, Staff concluded its administrative review of the Investigation Report and issued an Amended Investigation Report based on the additional information provided by First Student. As part of the administrative review, Staff removed the violations of 49 C.F.R. Part 382.215 and 49 C.F.R. Part 382.305(b)(1), as well as the accident ratio (Factor 6). Based on the acute and critical violations found in the Amended Investigation Report, Staff issued a proposed conditional safety rating to First Student. Staff provided the Company with the outcome of the administrative review, Staff's Amended Investigation Report, and the proposed conditional safety rating on December 9.
- 15 On January 4, 2022, First Student submitted a safety management plan to Staff regarding the violations identified in the Amended Investigation Report. During Staff's review of the

⁴ Order 01 at 5, ¶ 18. *See also*, Order 01 at 7, ¶ 33 ("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.").

Company's safety management plan, Staff identified violations in the Amended Investigation Report that had been improperly cited. On January 28, Staff issued a Second Amended Investigation Report to First Student, removing 45 of the 46 violations of 49 C.F.R. 382.701(b)(1), as well as 13 violations of 49 C.F.R. 391.45(a).

- 16 Based on the Second Amended Investigation Report and related Driver/Vehicle Examination Reports from WSP, Staff determined that First Student committed 634 violations of Commission rules and requirements, including the 396 violations listed below:⁵
- 17 First Student violated Title 49 C.F.R. Part 390.35 on three occasions by making, or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, or reproducing records for fraudulent purposes. These are repeat acute violations.
- 18 First Student violated Title 49 C.F.R. Part 382.301(a) on 38 occasions by using a driver before the motor carrier received a negative pre-employment controlled substance test result for that driver. These are repeat critical violations.
- 19 First Student violated Title 49 C.F.R. Part 382.305(b)(2) on 209 occasions by failing to conduct random controlled substances testing at an annual rate of not less than 50 percent of the average number of driver positions. These are critical violations.
- 20 First Student violated Title 49 C.F.R. Part 391.51(b)(2) on 12 occasions by failing to include a copy of the motor vehicle record received from each State record in each driver's qualification file. These are critical violations.
- 21 First Student violated Title 49 C.F.R. Part 382.305(i)(2) on 15 occasions by failing to ensure that each driver subject to random alcohol and controlled substances testing has an equal chance of being selected under the selection process each time selections are made. These are repeat violations.
- 22 First Student violated Title 49 C.F.R. Part 382.601(b) on one occasion by failing to provide employees with a written policy on misuse of alcohol and controlled substances as required by Title 49 C.F.R. Part §382.601(b)(1)-(11), specifically (b)(1), (b)(3), and (b)(10). This is a repeat violation.
- 23 First Student violated Title 49 C.F.R. Part 390.29(b) on one occasion by failing to make records available for inspection upon request within 48 hours. This is a repeat violation.

⁵ As noted in ¶ 37 below, the Commission is seeking penalties related only to 396 of the violations that were critical, acute, or repeat violations.

- 24 First Student violated Title 49 C.F.R. Part 391.21(a) on 35 occasions by failing to require a driver to complete an application for employment prior to driving a commercial motor vehicle. These are repeat violations.
- 25 First Student violated Title 49 C.F.R. Part 391.23(a)(1) on 15 occasions by failing to obtain a motor vehicle report within 30 days of the date a driver's employment begins. These are repeat violations.
- 26 First Student violated Title 49 C.F.R. Part 391.51(b)(9) on 59 occasions by failing to place a note related to verification of the medical examiner listing on the National Registry of Certified Medical Examiners required by 49 C.F.R. Part 391.23(m)(2) in a driver's qualification file. These are repeat violations.
- 27 First Student violated Title 49 C.F.R. Part 391.51(d) on five occasions by failing to maintain CDLIS motor vehicle records in a driver's qualification file for a period of three years. These are repeat violations.
- 28 First Student violated Title 49 C.F.R. Part 395.5(b)(2) on one occasion by requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty for 70 hours in 8 consecutive days. This is a repeat violation.
- 29 First Student violated 49 C.F.R. Part 393.91 on two occasions by operating a bus with a seat that was not securely fastened to the vehicle. These are repeat violations.
- 30 Based on the acute and critical violations found in the Second Amended Investigation Report, Staff issued a proposed Conditional safety rating to First Student. Staff provided the Company with Staff's Second Amended Investigation Report and the proposed conditional safety rating on January 28, 2022.

III. JURISDICTION

- 31 The Commission has jurisdiction over the subject matter of this complaint under RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.160, RCW 81.04.380, chapter 81.70 RCW, and chapter 34.05 RCW.

IV. APPLICABLE LAWS AND REGULATIONS

- 32 Charter party and excursion service carriers are common carriers subject to regulation by the Commission. RCW 81.04.010(11); Chapter 81.70 RCW. All common carriers are considered public service companies. RCW 81.04.010(16).
- 33 The Commission may adopt rules and regulations regarding the services provided by public service companies that are subject to its regulation. RCW 81.04.160. Additionally, the Commission is authorized to adopt rules pertaining to the safety of equipment, driver

qualifications, and safety of operations regarding charter party and excursion service carriers. RCW 81.70.270.

34 WAC 480-30-036 defines a “passenger transportation company” as “an auto transportation company or charter and excursion carrier.” The Commission has adopted several vehicle and driver safety requirements that apply to passenger transportation companies. WAC 480-30-221. The Commission has also adopted by reference specific safety regulations found in Title 49 C.F.R. regarding the safety of motor carrier operations, including 49 C.F.R. Parts 382, 390, 391, 393 and 395, either in part or entirely. WAC 480-30-221; WAC 480-30-999.

35 The general penalty provisions in chapter 81.04 RCW apply to violations committed by charter party and excursion service carriers unless those provisions conflict with the provisions of chapter 81.70 RCW. RCW 81.70.310. The Commission has the authority to impose a penalty of up to \$1,000 for each violation of a Commission order or rule by a public service company. RCW 81.04.380.

V. COMPLAINT

36 The Commission, through its Staff, realleges the allegations contained in paragraphs 7 to 30 above.

VI. REQUEST FOR RELIEF

37 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380 and RCW 81.70.310, impose up to a \$1,000 penalty for each of the 396 violations listed above in paragraphs 17 to 29.

38 Staff further requests that the Commission impose the \$10,000 penalty suspended in Docket TE-190152 based on the Company’s repeat critical violations of 49 C.F.R. Part 382.301(a) that occurred during the two-year suspension period.⁶

39 Staff also requests that the Commission order such other or additional relief as is appropriate under the circumstances.

⁶ Order 01 at 5, ¶ 18 (“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 a 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 . . .**”) (Emphasis added).

VII. PROBABLE CAUSE

40 Based on a review of the factual allegations above, and consistent with RCW 80.01.060, RCW 81.01.010, and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

VIII. ORDER OF CONSOLIDATION

41 **CONSOLIDATION.** Because the issues raised by Staff's Motion to Impose Suspended Penalties and Staff's Complaint to Impose Penalties are based on related facts and principles of law, the Commission exercises its discretion to consolidate Dockets TE-190152 and TE-210904 pursuant to WAC 480-07-320 and hear all matters concurrently.

IX. NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

42 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission schedules a hearing on its own initiative and determines that a brief adjudicative proceeding is appropriate to determine whether the Commission should impose penalties, including the penalties suspended in Docket TE-190152, on First Student as a result of Staff's findings in its Second Amended Investigation Report.

43 **THE COMMISSION GIVES FURTHER NOTICE That it will hold a virtual brief adjudicative proceeding in this matter on March 22, 2022, at 9:30 a.m. To attend the hearing by telephone, please call (253) 215-8782 and enter the Meeting ID: 929 2208 0324# and Passcode: 782234#. To attend via Zoom, please use the following link: [click here to join meeting](#).**

44 The record in this case will consist of any documents regarding the matter that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.

45 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Lacey, Washington, copies of documents in the current record for use by the parties or others who may want to review them.

46 Parties wishing to submit any documents for consideration at the brief adjudicative proceeding must file with the Commission a list enumerating and describing any such documents **no later than 5 p.m. on March 15, 2022**, and provide any such documents to Staff counsel and the presiding officer by email **by 5 p.m. on March 15, 2022**.

47 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

48 The names and mailing addresses of all parties and their known representatives are shown as follows:

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49 Administrative Law Judge Rayne Pearson, from the Commission's Administrative Law Division, will preside during this proceeding.⁷

DATED at Lacey, Washington and effective February 17, 2022

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
Executive Director and Secretary

⁷ Judge Pearson can be reached by email at rayne.pearson@utc.wa.gov or by phone at (360) 664-1136.

Inquiries may be addressed to:

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NOTICE

Hearing facilities are accessible to persons with disabilities and persons who do not speak English as a first language. If limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please provide the information requested below via email to Paige Doyle, paralegal, at paige.doyle@utc.wa.gov.

(PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____