

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-190152 (Consolidated)
First Student, Inc.,	ORDER 03
In the amount of \$23,700	
In the Matter of the Investigation of	DOCKET TE-210904 (Consolidated)
First Student, Inc.,	ORDER 02
For Compliance with WAC 480-30-221	APPROVING SETTLEMENT AGREEMENT

**BACKGROUND**

- 1 On March 28, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$23,700 penalty against First Student, Inc., (First Student or Company) in Docket TE-190152 for 44 critical violations of Commission safety rules. The Company requested mitigation of the penalty, which the Commission denied by Order 01 on May 7, 2021. Order 01 imposed the full penalty but suspended a \$10,000 for a period two years subject to certain conditions, including, *inter alia*, that the Company does not incur repeat violations of critical or acute regulations.
- 2 Between April and November 2021, Commission staff (Staff) conducted a compliance review consistent with the Commission’s direction in Order 01. Staff determined that First Student committed 634 violations of Commission rules and regulations and issued a proposed conditional safety rating to the Company on January 28, 2022. Because Staff discovered repeat violations, Staff initiated an enforcement action in Docket TE-210904.
- 3 On February 17, 2022, the Commission entered Order 01/02, Complaint Seeking to Impose Suspended Penalties; Order of Consolidation and Notice of Brief Adjudicative Proceeding set for March 22, 2022, (Complaint) in the above-referenced dockets, initiating this matter on its own motion. The Complaint consolidated Dockets TE-190152 and TE-210904 and alleged that First Student violated Commission safety regulations applicable to charter party carriers found in 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,

**Pursuant to RCW 80.01.060(3)  
This packet is the final  
Order in this docket.**

390, 391, 393, and 395 either in part or in whole.<sup>1</sup> Specifically, the Complaint alleges that First Student:

- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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 49 C.F.R. § 382.601(b)(1)-(11), specifically (b)(1), (b)(3), and (b)(10). This is a repeat violation.
- Violated 49 C.F.R. § 390.29(b) on one occasion by failing to make records available for inspection upon request within 48 hours. This is a repeat violation.
- Violated 49 C.F.R. § 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.

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<sup>1</sup> WAC 480-30-221 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 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.
- Violated 49 C.F.R. § 393.91 on two occasions by operating a bus with a seat that was not securely fastened to the vehicle. These are repeat violations.

4 Commission Staff, through the Complaint, requested that the Commission impose a penalty of up to \$1,000 for each of the 396 violations described above and further requested the Commission impose the \$10,000 suspended penalty in Docket TE-190152 based on the Company's repeat violations that occurred during the two-year suspension period.

5 Also on February 17, 2022, First Student was properly served with the Complaint.

6 On March 7, 2022, counsel for Staff notified the presiding officer via email that the parties had reached a settlement in principle and requested additional time to memorialize their agreement.

7 On March 14, 2022, the Commission issued a Notice Suspending Procedural Schedule and Notice Requiring Filing of Settlement Documents by April 12, 2022.

8 On April 12, 2022, Staff filed the Settlement Agreement and Joint Narrative Supporting Settlement Agreement (Settlement) on behalf of the parties.

9 Harry Fukano, Assistant Attorney General, Lacey, Washington, represents Staff.<sup>2</sup> Rebecca S. Trenner and Timothy W. Wiseman, Scopelitis, Garvin, Light, Hanson & Feary, P.C., Indianapolis, Indiana, represent First Student.

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<sup>2</sup> In adjudications, the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the

## DISCUSSION

10 **Applicable Law.** WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed Settlement without condition.
- Approve the proposed Settlement subject to conditions.
- Reject the proposed Settlement.

11 **Settlement.** As part of the Settlement, First Student admits that it committed each of the violations described in the Complaint. The parties agree that the Commission should assess a total penalty of \$198,000, which includes the \$10,000 penalty suspended by Order 01 in Docket TE-190152. The parties further agree that the Commission should suspend a \$120,000 portion of the total penalty for a period of three years from the effective date of this Order, and then waive it, provided the Company does not commit any repeat violations of the acute and critical regulations identified in the Complaint. The parties further agree that First Student will pay the \$78,000 portion of the penalty that is not suspended no later than the effective date of this Order.

12 The parties agree that Staff will conduct a follow-up investigation within three years of the effective date of this Order or as soon thereafter as practicable. If First Student commits a repeat critical or acute violation, the \$120,000 suspended penalty will become immediately due and payable. The parties also agree that imposing the suspended penalty in no way limits the Commission’s authority to impose additional penalties for new violations

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Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

discovered in any follow-up review, including violations discovered as part of the consent reporting process, described below.

- 13 Finally, First Student agrees to provide quarterly reports to staff for a period of 18 months detailing its compliance with its corrective action plan as described on page 4 of the Settlement.
- 14 **Decision.** The Commission approves the Settlement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. First Student admits that its conduct violated Commission statutes and rules and has agreed to adhere to a corrective action plan. The Company also agrees to provide detailed quarterly reports demonstrating, among other things, its compliance with random drug and alcohol testing. Staff agrees to closely monitor the Company's compliance for a period of 18 months and will conduct a follow up investigation within approximately three years. Overall, we find that these terms support the Commission's goal of compliance and are consistent with the public interest.
- 15 The Settlement further supports the Commission's compliance goals by permitting the Company to pay a reduced penalty of \$78,000 and suspending, then waiving, the \$120,000 remainder of the penalty conditioned on the Company complying with the terms of this Order and timely paying the \$78,000 portion of the penalty that is not suspended.
- 16 The terms of the Settlement are not contrary to law or public policy and reasonably resolve all the issues in this proceeding. Accordingly, we find that the Settlement is consistent with the public interest and should be approved as filed.

#### FINDINGS AND CONCLUSIONS

- 17 (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 charter party service carriers.
- 18 (2) The Commission has jurisdiction over the subject matter of this proceeding and over First Student.
- 19 (3) The Settlement proposed by the parties is not complex and is unopposed.
- 20 (4) The Settlement is not contrary to law or public policy, and it reasonably resolves all issues in this proceeding.
- 21 (5) The Settlement is consistent with the public interest.

- 22 (6) The Commission should approve the Settlement without condition and order the penalty amount, conditions, and other terms as proposed by the parties in the Settlement.

**ORDER**

THE COMMISSION ORDERS THAT:

- 23 (1) The Settlement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of all issues in this proceeding.
- 24 (2) First Student, Inc., is assessed a penalty of \$198,000. A \$120,000 portion of the penalty is suspended for a period of three years from the date of this Order, and waived thereafter, provided that First Student, Inc., complies with the terms of the Settlement and this Order and pays the \$78,000 portion of the penalty that is not suspended no later than the effective date of this Order.
- 25 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective April 13, 2022.

RAYNE PEARSON  
Administrative Law Judge

**NOTICE TO PARTIES**

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

**APPENDIX A**