

Service Date: March 28, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-190152
PENALTY AMOUNT: \$23,700

First Student, Inc.
201 NE Park Plaza Drive, Suite 246
Vancouver, WA 98684

The Washington Utilities and Transportation Commission (Commission) believes that First Student, Inc., (First Student or Company) violated 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; CFR Part 390 – Federal Motor Carrier Safety Regulations; General, Part 393 – Parts and Accessories Necessary for Safe Operation; and Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. RCW 81.04.530 allows penalties of \$500 for each motor vehicle driver that is out of compliance with the motor vehicle driver testing requirements. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On February 25, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of First Student and documented the following violations:

- **44 violations of Title 49 CFR Part 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 are: 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, Shericka Trotter, Tina Turner, William Uhl, Ladonna Werdal, Jimmy Williams Sr., Petro Woldemichael, and Nicole Allen.
- **13 violations of Title 49 CFR Part 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 Part 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.¹ This commercial motor vehicle was placed out of service. Staff inspected 80 vehicles, a sample size of the Company's entire Washington fleet.
- **99 violations of Title 49 CFR Part 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 size of the Company's overall records.
- **Two violations of Title 49 CFR Part 396.5(b) – Oil and/or grease leaking from wheel hub.** Staff discovered two commercial motor vehicles with leaking wheel hubs.² These two commercial motor vehicles were placed out of service. Staff inspected 80 vehicles, a sample size of the Company's entire Washington fleet.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are very serious and potentially harmful to the public. Companies that: 1) make false statements or entries on driver records, 2) allow drivers to operate commercial motor vehicles prior to receiving negative pre-employment controlled substance test results, 3) fail to prepare vehicle inspection reports, and 4) operate commercial motor vehicles in need of repair put the traveling public at risk. A driver with an unknown pre-employment controlled substance test result, a potential commercial motor vehicle defect, and a commercial motor vehicle operated in a condition likely to cause an accident or a breakdown present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the company ignored staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

On February 19, 2014, Commission Motor Carrier Investigator John Foster completed a routine safety investigation of First Student, which resulted in a satisfactory safety rating. Staff provided technical assistance to the Company during this investigation.

On December 17, 2015, Commission Motor Carrier Investigator Wayne Gilbert completed a focused safety review of First Student after receiving a complaint alleging defects with the Company's commercial motor vehicle. No vehicle defects or violations were found during this safety review, and the Company was informed of the findings.

¹ Equipment Identification Number 208928.

² Equipment Identification Numbers 60273 and 366488.

On June 21, 2016, Commission Motor Carrier Investigator Francine Gagne completed a focused safety review of the Company after receiving a complaint alleging violations of driver hours of service. Staff documented violations of CFR Part 395 – Hours of Service of Drivers, and provided technical assistance to the Company during this safety review.

On March 27, 2018, Commission Motor Carrier Investigator Jason Sharp completed a focused safety review of First Student after receiving a complaint alleging that the main passenger door of the Company's bus fell off while transporting students to an event. Staff did not document any violations during this safety review, and instead recommended that the Commission complete a routine safety investigation of First Student.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** The Company did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** First Student had difficulty producing the requested information. The Company runs each of its locations independently, and maintains its records at the individual locations instead of at First Student's primary place of business in Tacoma. This required Staff to make several attempts to contact numerous Company employees to obtain information, and the information received was often incomplete and required additional follow-up. Stacy Roberts, Manager at First Student's Tacoma location, was confrontational and failed to return emails and provide information requested by Staff. Greg Newman, General Manager Alaska/Washington Operations, who replaced Ms. Roberts as the point of contact during the investigation, was much more cooperative. With great effort, Mr. Newman was able to produce the records that the Company had in its possession.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has not corrected any of the violations.
6. **The number of violations.** Staff identified 28 violation types with a total of 650 occurrences.
7. **The number of customers affected.** The Company reported 535,000,000 miles traveled in 2017. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if First Student is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** On March 6, 2008, First Student was penalized \$100 in Docket TE-080342 for failing to file its 2007 annual report and pay 2008 regulatory fees by the due date.

On June 16, 2010, the Company was penalized \$100 in Docket TE-101063 for using a driver without valid medical certification.

On March 4, 2013, First Student was penalized \$200 in Docket TE-130199 for failing to file its 2012 annual report and pay 2013 regulatory fees by the due date.

On June 9, 2015, the Company was penalized \$1,000 in Docket TE-151023 for failing to file its 2014 annual report and pay 2015 regulatory fees by the due date.

On June 21, 2016, First Student was penalized \$1,000 in Docket TE-160699 for failing to file its 2015 annual report and pay 2016 regulatory fees by the due date.

On June 20, 2017, First Student was penalized \$1,000 in Docket TE-170618 for failing to file its 2016 annual report and pay 2017 regulatory fees by the due date.

10. **The Company's existing compliance program.** Stacy Roberts, Manager at First Student's Tacoma location, is responsible for the Company's safety compliance program.
11. **The size of the Company.** First Student is a large company, operating 582 commercial motor vehicles, and employing 543 commercial drivers. The Company reported \$2,300,000,000 in gross revenue in 2017.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.³ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize First Student \$23,700 for violations of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 382, 390, 393, and 396, calculated as follows:

- 44 violations of Title 49 CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. These are first-time violations of a fundamental safety requirement. The Commission assesses penalties in the amount of \$500 per occurrence, for a total of \$22,000.
- 13 violations of Title 49 CFR Part 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. These are first-time violations of a

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

fundamental safety requirement. The Commission assesses penalties in the amount of \$100 per occurrence, for a total of \$1,300.

- One violation of Title 49 CFR Part 393.48(a) – Inoperative/defective brakes. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty in the amount of \$100 per occurrence, for a total of \$100.
- 99 violations of Title 49 CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report. These are first-time violations. The Commission assesses a penalty in the amount of \$100 per violation type, for a total of \$100.
- Two violations of Title 49 CFR Part 396.5(b) – Oil and/or grease leaking from wheel hub. These are first-time violations of a fundamental safety requirement. The Commission assesses penalties in the amount of \$100 per occurrence, for a total of \$200.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide

regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective March 28, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190152

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$23,700 in payment of the penalty.

2. **Contest the violations.** I believe that some or all of the alleged violations did not occur for the reasons I describe below (if you do not include reasons supporting your contest here, your request will be denied):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below (if you do not include reasons supporting your application here, your request will be denied):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 04-09-89 [month/day/year], at VANCOUVER, WA [city, state]

LANCE J. LACEY
Name of Respondent (Company) - please print

[Signature]
Signature of Applicant

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class

201 NE Park Plaza Drive
Suite 246
Vancouver, WA 98684
Tel: 360 896 9500 X743
Fax: 360-896-6013

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

U.S. DOT #: 354406

This letter is to inform the Utilities and Transportation Commission that First Student would like to apply for mitigation to reduce the levied fine of \$23,700.

First Student is not challenging the violations mentioned in the report. First Student has taken swift actions to correct the violations in questions and have supplied a letter for each violation and have provided supporting documents of tools to ensure the violation don't occur again. A safety plan was established for each violation.

Kind Regard
Lance J. Lackey
Regional Safety Manager

