

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: NXXXX XXXXX 12572
OAL DOCKET NUMBER: MVH 05139-17**

IN THE MATTER OF :
DARIO G. NAUTA : **FINAL DECISION**

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed suspension of the New Jersey Commercial Driver License (CDL) **passenger-carrying endorsement** of **DARIO G. NAUTA**, respondent, pursuant to N.J.S.A. 39:3-10 et seq., 39:5-30, and N.J.A.C. 13:21-14.5(a) and (c), because he has a criminal record which may be disqualifying, specifically his criminal conviction of abuse, abandonment, cruelty and neglect of child in contravention of N.J.S.A. 9:6-1 and cruelty and neglect of children in contravention of N.J.S.A. 9:6-3.

Prior to issuing this final agency determination, I reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ), the letter of exceptions to the Initial Decision, which was filed on behalf of the MVC, as well as the reply to exceptions, which was filed by respondent's counsel and which stated that Mr. Nauta (improperly identified as "Petitioner") "relies on the May 24, 2018 decision of the Hon. Julio C. Morejon, ALJ." Based upon a de novo review of the record presented, I shall reject in part the findings and conclusions contained in the Initial Decision, and shall reject the recommendation of the ALJ, thereby indefinitely suspending respondent **DARIO G. NAUTA's** New Jersey Commercial Driver License (CDL) **passenger-carrying endorsement** (passenger endorsement).

Disqualifying Offenses

In his Initial Decision, the ALJ ordered the scheduled suspension of respondent's "passenger endorsement on his Commercial Driver License" to be "dismissed." Initial Decision at 8. He concluded that there was no proof before him that would allow him to "conclude that respondent is morally unfit or lacking good character to hold a CDL passenger endorsement." Initial Decision at 7. He further concluded that "the MVC has failed to provide by a preponderance of the evidence that Nauta's criminal conviction of N.J.S.A. 9:6-1 and N.J.A.C. [sic] 9:6-3¹ is a criminal conviction that would disqualify Nauta from holding a commercial driver's license passenger endorsement." Initial Decision at 7.

While I agree with certain of the ALJ's factual findings I find it necessary to reject the ALJ's recommendation, analysis and conclusions that led to that recommendation, and to modify certain of his findings.

The ALJ states that respondent "stipulated that he will no longer transport children due to his guilty plea on November 7, 2016," Initial Decision at 3, and "that he surrendered his school bus endorsement and that he would never transport minor children as a result of his conviction." Initial Decision at 7. However, the evidence in the record, Exhibit P-16, confirms that respondent was also ordered by the court not to transport children; he did not have the choice to agree to this provision.

The ALJ found as a fact that, "as a condition of probation. . . respondent is barred from any employment involving the transportation of minors." Initial Decision at 4. The evidence in the record, Exhibit P-16, confirms that respondent's sentence, and not a

¹ Respondent was criminally convicted of N.J.S.A. 9:6-1 and N.J.S.A. 9:6-3. There is no administrative code provision codified as N.J.A.C. 9:6-3.

condition of his probation, is what bars him from “any employment involving the transportation of minors.”

The ALJ found as facts that respondent admitted that he kissed the minor child who was under his charge as a passenger on the school bus he was operating, that he pled guilty to the criminal charges of N.J.S.A. 9:6-1 and 9:6-3 (abuse, abandonment, cruelty and neglect of child, and cruelty and neglect of children), that respondent no longer has an S endorsement² on his CDL, and that “Nauta no longer transports children in a school bus.” Initial Decision at 3-4.

What the ALJ failed to find as fact is that respondent did not surrender, but still holds his passenger endorsement. The passenger endorsement issued pursuant to N.J.A.C. 13:21-14.5, does not limit the respondent to the transportation of adults. Rather, it allows the respondent to transport passengers of all ages, including minors and children. Transportation of minors by respondent is in contravention of the Judgment of Conviction, Exhibit P-16, which provides that respondent “shall be barred from any employment involving the transportation of minors.” Id. The ALJ failed to find the critical fact that respondent’s passenger endorsement allows him to continue to transport minors, including children.

Issues

The issues in this case are whether respondent’s conviction of N.J.S.A. 9:6-1 (abuse, abandonment, cruelty and neglect of child) and 9:6-3 (cruelty and neglect of children), is a criminal record that is disqualifying under N.J.A.C. 13:21-14.5, and if so, whether respondent has demonstrated rehabilitation pursuant to the Rehabilitated

² An S endorsement, needed for all school bus drivers, is an endorsement which allows the holder to operate a school bus with children as passengers.

Convicted Offenders Act (RCOA), N.J.S.A. 2A:168a-1 et seq., sufficient to justify a waiver under N.J.A.C. 13:21-14.5. The ALJ found there was insufficient proof that respondent's criminal conviction rendered him morally unfit or lacking in good character, to disqualify him from retaining his passenger endorsement. Because of this finding, the ALJ did not reach the issue of rehabilitation.

Disqualifying Criminal Conviction

Under the police authority of the State, the MVC has the right to impose reasonable restrictions on the issuance of licenses for various occupations in order to protect health and safety. Sanders v. Division of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). It further has been said that the primary objective of administrative proceedings is "to foster safety on the highway." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). In an administrative enforcement case such as this, where the agency claims that a license endorsement should be revoked, the agency bears the burden of proof, by a preponderance of the competent and credible evidence, of facts essential to its claim. Atkinson, 37 N.J. at 149; Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331 (App. Div. 1987).

In 1986, the federal Commercial Motor Vehicle Safety Act was enacted at 49 U.S.C. §§ 2701 to 2718. Section 2708 of the federal act required the states to adopt commercial driver licensing laws in compliance with federal standards or have their highway funds withheld. In response, the legislature enacted the New Jersey Commercial Driver License Act in 1990. N.J.S.A. 39:3-10.9 to 10.31. Under rules promulgated by the MVC, the MVC's obligation to withhold, revoke or suspend a passenger endorsement are set forth at N.J.A.C. 13:21-14.5, which provides in pertinent part as follows:

. . . (c) **The Chief Administrator of the Motor Vehicle Commission** may not issue a passenger endorsement, or **may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such passenger endorsement has:**

12. A criminal record that is disqualifying. The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. **A driver has a disqualifying record if:**

i. He or she has been convicted of, or forfeited bond or collateral upon, any of the following:

(4) Any crime or other offense indicative of bad moral character. . .

(emphasis added)

On May 12, 2017, based on his guilty plea, respondent was convicted of N.J.S.A. 9:6-1 (abuse, abandonment, cruelty and neglect of child) and 9:6-3 (cruelty and neglect of children). Respondent's conviction of these crimes, combined with his testimony at the hearing before the ALJ, constitute proof, by a preponderance of the competent and credible evidence, of facts essential to MVC's claim that respondent is of bad moral character and has a criminal record that is disqualifying under N.J.A.C. 13:21-14.5.

Respondent's Judgment of Conviction for abuse, abandonment, cruelty and neglect of a child under N.J.S.A. 9:6-1, and cruelty and neglect of children under N.J.S.A. 9:6-3 was submitted into evidence by the MVC as Exhibit P-16. Under N.J.S.A. 9:6-1(e), abuse of a child consists of "the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child." Based on this conviction and respondent's testimony at the hearing, which included an admission that he kissed a minor child who was under his charge as a passenger on the school bus he was operating, each of the elements of N.J.S.A. 9:6-1(e)

have been established. The conviction is based on a finding of an indecent, immoral or unlawful act, *to wit*, the kissing of a minor child who was a student passenger on the bus he was operating and was therefore under his charge, that may debauch, endanger or degrade the morals of the minor school bus passenger, and is a crime that supports a finding of bad moral character under N.J.A.C. 13:21-14.5.

Respondent's May 12, 2017 conviction also included a conviction on the charge of N.J.S.A. 9:6-3. That statutory provision states in pertinent part: "Any parent, guardian or person having the care, custody or control of any child, who shall abuse, abandon, be cruel to or neglectful of such child, or any person who shall abuse, be cruel to or neglectful of any child shall be deemed to be guilty of a crime of the fourth degree." Respondent pled guilty and was convicted of this crime for kissing a minor child who was a passenger on the school bus he was operating, which also supports a finding of bad moral character under N.J.A.C. 13:21-14.5.

In short, respondent's own testimony along with the Judgment of Conviction is the evidence of respondent's disqualifying criminal conviction that demonstrates he is unfit to hold a passenger endorsement that allows him to transport, *inter alia*, minors, including children. Respondent was convicted of these very serious crimes entailing danger to minors, including children, just over one year ago. I find by a preponderance of the competent and credible evidence that the respondent's criminal conviction for abuse, abandonment, cruelty and neglect of a child under N.J.S.A. 9:6-1, and cruelty and neglect of children under N.J.S.A. 9:6-3 constitutes a conviction for a crime "indicative of bad moral character" within the definition of N.J.A.C. 13:21-14.5(c)(12)(i)(4), which is disqualifying.

The Rehabilitated Convicted Offenders Act

Having determined that respondent is disqualified from holding a passenger endorsement pursuant to N.J.A.C. 13:21-14.5, I next turn to an analysis of whether respondent has established rehabilitation sufficient to justify a waiver of the disqualifying condition under the RCOA. In his Initial Decision, the ALJ did not reach the issue of rehabilitation under the RCOA, because he concluded that respondent's conviction was not disqualifying. Because I have determined that respondent's criminal conviction is, in fact, disqualifying, as concluded above, it is necessary to provide an analysis of rehabilitation under the RCOA.

The RCOA provides that a licensing authority may not disqualify an applicant or licensee because of a criminal conviction, unless the conviction relates adversely to the occupation for which the license is sought. Id. at N.J.S.A. 2A:168A-1.

The RCOA provides, at N.J.S.A. 2A:168A-2, that in determining whether a conviction for a crime relates adversely to a particular occupation, the licensing authority must consider the following factors (RCOA factors):

- a.** The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b.** Nature and seriousness of the crime;
- c.** Circumstances under which the crime occurred;
- d.** Date of the crime;
- e.** Age of the person when the crime was committed;
- f.** Whether the crime was an isolated or repeated incident;
- g.** Social conditions which may have contributed to the crime;
- h.** Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

An analysis of the RCOA factors reveals that respondent has not demonstrated grounds sufficient for the Chief Administrator to waive the regulation. Importantly, the conviction implicates public safety, specifically the safety of one of New Jersey's most vulnerable populations, its children. It is impossible to lose sight of two essential facts: (1) respondent was convicted for and admitted at his hearing before the ALJ, that he kissed a minor child who was a student riding in the bus he was operating and was therefore under his charge; and (2) if respondent is permitted to maintain his passenger endorsement, he will be able to transport all ages of passengers, including minors and children.

The RCOA Factors

(a) The nature and duties of the respondent's occupation. Respondent is a commercial driver and was operating a school bus at the time the crime was committed. Even if he never drives a school bus again, if allowed to retain his passenger endorsement, he will be able to drive other buses and vehicles, which are likely to include minors and children as passengers.

(b) The nature and seriousness of the crime. Respondent's conviction is for acts against one of society's most vulnerable victims, a child. The nature of the crime is indecent and immoral behavior towards a child then in the respondent's charge. The crime can hardly be more serious.

(c) The circumstances under which the crime was committed. Respondent was entrusted with the safe transport of a child, and it was under that circumstance that he abused and debauched that child.

(d) The age of the person when the crime was committed. Respondent was almost sixty years old when he committed this crime, and was therefore sufficiently mature to know, or he should have known, that what he was doing was highly inappropriate, illegal, and certainly outside the proper scope of his duties as a school bus driver.

(e) Whether the crime was an isolated or repeated incident. Although this is respondent's only reported incident, it is of such a serious nature that the number of incidents does not mitigate the behavior.

(f) The social conditions which may have contributed to the crime. There is no evidence that weighs on this factor in one direction or the other.

(g) Evidence of rehabilitation. Respondent presented five uncertified letters. The authors of the letters reported alternately that respondent was a valued employee, and that respondent was responding positively to treatment, but all fall short of reliable evidence that respondent was rehabilitated and therefore could be entrusted to transport minors and children. Exhibit P-8 is a letter from Nadia Kadri, Operations Manager for Golden Eagle Shuttle Service. She opines that respondent is a commendable employee and an asset to the company, but it is unknown whether or not she knew of the conviction, and further there is no professional opinion regarding respondent's ability to safely transport children. Exhibit R-1 is a letter from Arturo Marrero-Figarella, MD, who states respondent was psychiatrically evaluated by him and "there are no concerns [sic] in getting back his full driver commercial license and the school bus driver license." The letter, however, contains no discussion of rehabilitation or the basis for the doctor's net opinion. Exhibit R-2 is a letter from Juan Nunez, LPC at Bergen Evaluation and Counseling Associates. In the progress letter, Mr. Nunez states in pertinent part, "Since the intake

session Mr. Nauta has attended four sex offender specific group treatment sessions conducted in Spanish. His attendance has been excellent, and his level of participation is positive. It is expected that Mr. Nauta will continue to participate in weekly group therapy until the end of his probational period.” This interim report is not sufficient to establish rehabilitation since the treatment was at that time still ongoing, and the letter never mentions, let alone evaluates rehabilitation. Exhibit R-3 is a letter from Oscar Sandoval, MD, which indicates respondent had been attending the Sexual Deviance Program at his office for almost two months. The letter states, “He will continue with treatment until the end of his probation.” There is no opinion rendered regarding the frequency of treatment or rehabilitation. The final exhibit, Exhibit R-4 is also from Dr. Sandoval. In it he states “Mr. Dario Nauta is a low risk factor for re-offense, however he needs to continue psychotherapy treatment until June 1, 2018. I have no reservations regarding Mr. Nauta obtaining his CDL driving privilege.” The letter, which is dated February 8, 2018, is notable for the absence of any discussion of rehabilitation, and by use of “CDL” as opposed to “passenger endorsement,” it does not support respondent transporting passengers, especially minors and children. Further, where the transport of minors and children is involved, public safety and security demands that no risk is acceptable.

Respondent testified that he would never transport minor children because of his conviction. However, as noted above, since respondent seeks to retain his passenger endorsement under N.J.S.A. 39:3-10.1, respondent can transport public passengers of any age, including minors and children. Thus, even if respondent has retired his school bus endorsement, with a passenger endorsement he would still be eligible to drive camp

buses carrying children, little league buses, limousines, or even vans where he could be entrusted with the care of a child or children.

Although respondent said he would not transport children, neither the ALJ nor the MVC can monitor his activities to ensure that he is not transporting children. The only way to ensure that the respondent will not transport children, as ordered by the criminal court in the Judgment of Conviction, is to suspend indefinitely his passenger endorsement. There is simply no current mechanism in place to ensure public safety and eliminate the risk to the public, especially to children, while respondent retains his passenger endorsement. This, coupled with respondent's failure to establish rehabilitation requires respondent's passenger endorsement to be indefinitely suspended.

Conclusion

In view of the totality of the circumstances presented, I hereby find by a preponderance of the competent and credible evidence that respondent **DARIO G. NAUTA's** criminal conviction for abuse, abandonment, cruelty and neglect of a child under N.J.S.A. 9:6-1, and cruelty and neglect of children under N.J.S.A. 9:6-3 constitutes a conviction of a crime "indicative of bad moral character" within the definition of N.J.A.C. 13:21-14.5(c)(12)(i)(4), and that respondent has failed to present sufficient evidence of his subsequent rehabilitation to justify waiving the imposition of an indefinite suspension of his passenger endorsement. This conclusion is consistent with the requirements of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1, which provides that "a person shall not be disqualified or discriminated against by any licensing authority because of a conviction for a crime. . . unless the conviction relates adversely to the occupation. . . for which the license or certificate is sought." A driver with a passenger

endorsement is first and foremost entrusted with the duty to safely transport members of the public, which may involve minors, including children. The seriousness of respondent's criminal conduct, and the direct nexus this conduct has with the potential responsibilities he may undertake if given the privilege to operate as a passenger carrying commercial driver in this State places the safety of those potentially entrusted to him at an unreasonable risk. I am therefore acting within my statutory authority to exercise my discretion to suspend indefinitely the respondent's passenger endorsement pursuant to N.J.A.C. 13:21-14.5(c)(12)(i)(4).

It is, therefore, on this 14th day of August 2018, **ORDERED** that the passenger endorsement on **DARIO G. NAUTA's** Commercial Driver License be and hereby is suspended indefinitely.

NOTE: The **effective date** of this suspension is set forth in the enclosed "Order of Suspension."



B. Sue Fulton
Chair and Chief Administrator

BSF/JS
Encl.

cc: John D. Lynch, Esq. (w/encl.)
Cassandra E. Berry, Esq. (w/encl.)