



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Appeals Division

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Appeal No. 2301575

DEP v. Target Security Systems

January 25, 2024

APPEAL DECISION

The appeal of Petitioner, Department of Environmental Protection (DEP), is denied.

Petitioner appeals from a hearing decision by Judicial Hearing Officer (JHO) C. Corrado, dated August 4, 2023, dismissing a summons charging Respondent with a violation of § 24-163(f) of the Administrative Code of the City of New York (Code) for idling a motor vehicle adjacent to a school for longer than one minute. After a full review of the record, the Board finds as follows:

Table with 5 columns: Summons, Law Charged, Hearing Determination, Appeal Determination, Penalty. Row 1: 00753193J, Code § 24-163(f), Dismissed, Affirmed - Dismissed, \$0

In the summons, the issuing officer (IO) affirmed, as verified through a review of DEP records, that on January 19, 2023, a citizen complainant witnessed Respondent’s vehicle idling for longer than one minute at 304 Greenwich Street, Manhattan, a location that the IO characterized as being adjacent to the Tribeca KinderCare School.

At the telephonic hearing, held on July 26, 2023, the representative for Petitioner relied on the affirmed statements of the IO in the summons, photographs of the cited vehicle, the redacted idling complaint form, and a video showing the idling. Respondent’s representative did not dispute that the vehicle was idling as stated in the summons but argued that the vehicle was not “adjacent” to the Tribeca KinderCare School, because Reade Street separated the block face where the idling occurred from the school, which was located at 311 Greenwich Street.

In the decision dismissing the violation, the JHO stated that Petitioner failed to prove that the idling vehicle was adjacent to a school.

On appeal, Petitioner argues that pursuant to § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), it was Respondent’s burden to prove that the location of the cited idling was not adjacent to a school. In reply, counsel for Respondent argues that Respondent offered proof at the hearing that Reade Street separated the block where the idling occurred from the block where the school was located.

For the following reasons, the Board affirms the JHO’s decision.

Code § 24-163(f) provides in pertinent part that it is unlawful “to cause or permit the engine of a motor vehicle . . . to idle for longer than one minute if such motor vehicle is adjacent, as determined by rule, to any . . . school.” 15 RCNY § 39-02 defines the term “adjacent” in this context as “on each and every street on which a school is located and has entrances and/or exits to such street.” 15 RCNY § 39-01 defines “Street” by reference to Code § 1-112, which in relevant part defines the term as including “any public street, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place.”

Pursuant to 48 RCNY § 6-12(b), the allegations set forth in the summons established a prima facie case of a violation of Code § 24-163(f). Respondent then had the burden to either rebut

those allegations or establish an affirmative defense. For the following reasons, the Board concludes that Respondent successfully rebutted the allegation in the summons that its idling vehicle was adjacent to a school.

If the definition of “adjacent” in 15 RCNY § 39-02 were to be read literally and without reference to the purpose and structure of Code § 24-163(f), then an idling vehicle could be cited as being “adjacent” to a school even if it were many blocks or even miles away, as long as it were on a street on which the school has an entrance or an exit. The idling limit for a vehicle on Broadway in lower Manhattan might depend on whether a school happened to have an entrance or exit on Broadway in the Bronx. Therefore, the Board reasonably limits “street” as used in 15 RCNY § 39-02 to the block face on which the school in question is located.¹ Thus, when an idling vehicle is on a block face on which a school has an entrance or an exit, it is “adjacent” to the school.

Location on such a block face is not limited to the side of the street where the school has its entrance or exit. *See* Code § 1-112(13); *DEP v. Prevost Car US Inc.*, Appeal No. 2200907 (November 17, 2022). Accordingly, where there is a T-junction, as here, dividing one side of the street into two blocks but not the opposite side, the side that is not divided by the cross-street is nonetheless deemed to comprise two corresponding block faces. *Cf. Rossi v. NYC Dept. of Parks & Recreation*, 127 A.D.3d 463, 466 (1st Dep’t 2015) (finding the west side of Fifth Avenue in front of the Metropolitan Museum of Art to comprise five distinct block faces corresponding to those on the east side of Fifth Avenue, where East 79th Street through East 84th Street form T-junctions).

Here, as shown by the Google Map referenced by Respondent at the hearing, Greenwich Street, a north-south thoroughfare, forms a T-junction with Reade Street, which commences at Greenwich Street and proceeds east from there. 304 Greenwich Street is on the west side of Greenwich Street, north of where Reade Street begins, and 311 Greenwich Street is on the east side of Greenwich Street, south of the corner with Reade Street. The bus in front of 304 Greenwich Street was thus on the northerly block face formed by the T-junction with Reade Street while the school at 311 Greenwich Street was on the southerly block face. Because it was on a different block face from the school, the Board finds that the bus was not adjacent to it when idling for longer than one minute and consequently was not in violation of Code § 24-163(f).

Accordingly, the Board affirms the JHO’s dismissal.

By: OATH Appeals Division

¹ The Board notes that such a limitation is consistent with the purpose of the rule, which is to give special protection to the air breathed by students at the school. Furthermore, it is in keeping with the affirmative defense that Code § 24-163(f) provides when the “school was not easily identifiable as a school by signage or otherwise at the time [the] violation.” This affirmative defense assumes that a driver would have a practical way to determine whether a school is “adjacent” to a particular location.