

248-01R

H.A. DEHART & SONS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE :
 SALEM COUNTY SPECIAL SERVICES : DECISION ON REMAND
 SCHOOL DISTRICT, WOLFINGTON :
 BODY COMPANY, AND SHEPPARD :
 BUS SERVICE, INC., :
 :
 RESPONDENTS. :
 _____ :

SYNOPSIS

Petitioner, unsuccessful bidder for a busing contract, claimed it was the lowest bidder and contended the District's awarding of the contract to Wolfington was illegal and in contravention of the Public Schools Contracts Law, *N.J.S.A.* 18A:18A-1 to -49.2. The Commissioner found that the central issue in the ALJ's determination as to whether the contract should be re-bid was his finding that petitioner's CAT 3126B engine was not equivalent to the DT 466 engine which the District preferred. Finding that the parties did not have the opportunity to brief or introduce technical evidence on the issue of whether the two engines were equivalent, the Commissioner remanded the matter for further proceedings as necessary so that the question of equivalency could be determined based on a complete record.

On remand, the ALJ granted respondents' Motion to Dismiss the petition and denied petitioner's cross-motion to hold the District and its business administrator in contempt for their failure to comply with a June 7, 2000 restraining order.

On remand, Commissioner agreed with the ALJ that the District's Motion to Dismiss was properly granted. In that the available grant expired in February 2001 and all four of the local school districts withdrew from the partnership which the grant supported and purchased the needed buses individually, there was no basis on which the relief petitioner sought in this litigation could be granted and the petition was dismissed as moot. Further, the Commissioner concurred with the ALJ that the cross-motion to hold the District and its business administrator in contempt must be denied as petitioner failed to demonstrate, and the record did not support, a finding that either the District or its business administrator willfully or purposely disobeyed such order. Petition was dismissed.

August 8, 2001

OAL DKT. NOS. EDU 8438-00 AND EDU 4012-00 (ON REMAND)
AGENCY DKT. NO. 156-5/00

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions.

Upon his full and independent review, the Commissioner agrees with the Administrative Law Judge (ALJ) that the District's Motion to Dismiss the within petition is properly granted. As recognized by petitioner, in that the grant made available through the Consolidation of Services Grant Program expired on February 28, 2001, and since, prior to this time, all four of the local school districts had withdrawn from the partnership which the grant supported and subsequently individually issued specifications, advertised for bids, and ultimately purchased the buses they needed, there is no basis on which the relief petitioner sought in this litigation can be granted, and the instant petition must be dismissed as moot. The Commissioner, likewise, concurs with the ALJ that petitioner's cross-motion to hold the District and its business administrator in contempt for their failure to comply with the June 7, 2000 restraining order must

be denied as petitioner has failed to demonstrate, and the record does not support, a finding that either the District or its business administrator willfully and purposely disobeyed such order.

Accordingly, the Initial Decision of the OAL is affirmed for the reasons stated therein and the within Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 8, 2001

Date of Mailing: August 8, 2001

* This decision, as the Commissioner's final determination may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:2-1.1 et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.