

#230-15 (OAL Decision: Not yet available online)

AAA SCHOOL LLC / EL ELDESOUKY, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
PASSAIC COUNTY EDUCATIONAL :  
SERVICES COMMISSION, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner AAA School, LLC (AAA) – a company that provides transportation services to public schools – owns six (6) seven-passenger minivans. On July 31, 2014 it was awarded a contract by respondent Passaic County Educational Services Commission (PCEC) for one transportation route which required this type of vehicle. On August 11, 2014, petitioner filed a challenge to respondent’s determination that it did not qualify to receive contracts for four other routes for which it submitted the lowest bid, along with an application for emergent relief. On September 5, 2014, the ALJ denied the motion and dismissed the petition in its entirety. Subsequently, in a decision dated October 16, 2014, the Commissioner remanded the matter to the OAL after finding that there were factual issues in the instant controversy that required resolution, and that petitioner had not been afforded a hearing on the merits. In so doing, the Commissioner outlined the factual disputes to be resolved and instructed that the issues that remained be settled by fact-finding based on witness testimony or certifications.

On remand, the ALJ once again found, *inter alia*, that: there are no genuine issues of material fact, and the matter is ripe for summary decision; petitioner has failed to state a claim upon which relief can be granted; petitioner has filed three emergent applications addressing the same issue, and has been denied relief in all three; the Commissioner issued a final decision in this matter on July 10, 2014, affirming the denial of emergent relief and reasoning that the petitioner cannot be successful in his appeal. As to the Commissioner’s order on remand to address the merits, the ALJ found that policy determinations by local boards of education are entitled to a presumption of correctness; the respondent’s requirement of sixteen passenger buses for the four bus routes at issue was not arbitrary, capricious or unreasonable; and petitioner’s contention that respondent has not followed State rules, and has discriminated against bus operators who own seven passenger minivans, is without merit. Accordingly, the ALJ once again granted respondent’s motion for summary decision, and ordered the petition dismissed with prejudice.

Upon comprehensive review, the Commissioner – while concurring with the ALJ’s determination that petitioner has not met the standards for a grant of emergent relief – found that the factual issues in dispute in this specific case still have not been fully adjudicated, and petitioner remains entitled to a hearing and a decision on the merits regarding the disputed material facts. Further, the Commissioner’s prior decision in this specific matter – dated October 16, 2014 – was not a final decision on the merits, but rather was limited to a finding that petitioner had not satisfied the four-prong criteria for emergent relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982). Accordingly, the ALJ’s Initial Decision was rejected in its entirety and the matter was again remanded to the OAL for a hearing and decision on the merits that includes a determination on the disputed factual issues that were previously outlined in the Commissioner’s October 16, 2014 decision.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

July 7, 2015

OAL DKT. NO. EDU 13493-14  
(EDU 10510-14 ON REMAND)  
AGENCY DKT. NO. 222-8/14

AAA SCHOOL LLC/ EL ELDESOUKY, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
PASSAIC COUNTY EDUCATIONAL :  
SERVICES COMMISSION, :  
RESPONDENT. :  
\_\_\_\_\_ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner and the Passaic County Educational Services Commission's (Commission) reply thereto. Upon careful review of the record and proposed Initial Decision of the OAL, and for the reasons that follow, the Commissioner again remands the matter to the OAL for further proceedings.

On June 18, 2014, respondent solicited bids for transportation services for the 2014-2015 school year. The bids were opened on July 31, 2014, and petitioner won a contract for one of the routes. By way of a petition to the Commissioner – filed on August 11, 2014 and transmitted to the OAL on August 18, 2014 – petitioner challenged four of the other contract awards. The petitioner maintained that as low bidder he should have won those contracts – notwithstanding that they called for sixteen-passenger yellow school buses, which he does not own or operate. An application for emergent relief accompanied the August 11, 2014 petition. On September 5, 2014, the Administrative Law Judge (ALJ) heard argument on the emergent

relief motion. The decision issued by the ALJ on the same date both denied the motion and dismissed the petition in its entirety.

In a decision dated October 16, 2014, the Commissioner adopted the ALJ's determination that the petitioner was not entitled to emergent relief. At the same time, the Commissioner expressly rejected the ALJ's summary dismissal of the petition of appeal. Instead, the Commissioner remanded the matter to the OAL for a hearing and a determination of the merits based upon the fact that there were factual issues in dispute that were not fully resolved at the OAL. Moreover, in the October 16, 2014 decision, the Commissioner outlined the factual disputes that require a hearing on the merits, and instructed that the issues that remain "should be settled by fact-finding based upon witness testimony, or at the least, certifications." Yet, the petitioner was not afforded an opportunity on remand to have a hearing before the OAL, and the petition of appeal was again dismissed via summary decision. Notably, the Initial Decision failed to include a determination with respect to the factual disputes as directed by the Commissioner.

The Commissioner is mindful that the parties have been involved in a series of cases that at times appear to be an attempt by the petitioner to revisit legal issues that have already been decided in prior litigation between the same parties. However, the factual issues in dispute that have been alleged by the petitioner in this specific case have not been fully adjudicated, and the petitioner remains entitled to a hearing and a decision on the merits regarding the disputed material facts and the legal conclusions which the factual findings implicate.

It is also important to recognize that simply because a petitioner does not establish a likelihood of success during an emergent relief application, it does not deprive a petitioner of

the opportunity for a full plenary hearing on the merits where he or she may attempt to prove entitlement for the relief sought. Despite the ALJ's assertion to the contrary, the Commissioner's decision in this matter with respect to the application for emergent relief was not a final decision on the merits. Instead the decision was limited to a finding that the petitioner did not satisfy the four-pronged criteria for emergent relief under *Crowe v. DeGioia*, 90 N.J. 126 (1982).

Accordingly, the recommended decision of the ALJ is rejected in its entirety. The Commissioner hereby remands this matter to the OAL for a hearing and a decision on the merits that includes a determination on the disputed factual issues that were previously outlined in the October 16, 2014 decision.

IT IS SO ORDERED. <sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: July 7, 2015

Date of Mailing: July 7, 2015

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<sup>1</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36, *N.J.S.A.* 18A:6-9.1