

AAA SCHOOL, LLC, :  
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. Petitioner has bid a number of times for business from the respondent, Passaic County Educational Services Commission (Commission), and has filed several appeals before the Commissioner prior to the instant case, which was remanded for a hearing on the merits. Petitioner challenged the award of bids on four school bus routes, claiming that AAA School was the lowest bidder and had the appropriate vehicles to handle the routes in question. A hearing was held on May 11, 2016, on which date the record closed. The Commission presented the testimony of four witnesses; petitioner was present at the hearing, but did not testify, nor did it provide any witnesses.

The ALJ found, *inter alia*, that: most of the facts in this matter are not in dispute; the Commission presented the testimony of four credible witnesses; in June 2014, petitioner submitted a bid specification and challenged the Commission’s sixteen-passenger bus routes, even though he did not own sixteen-passenger buses; petitioner requested that those routes be modified to allow the use of a seven-passenger minivan, which he does own; however, the routes in question involved two school districts and the sixteen-passenger yellow bus was not optional; although petitioner was the low bidder, it did not conform to the bid requirements; the sixteen-passenger yellow school bus is the default vehicle for the Commission’s bus routes for safety and reliability reasons; the fact that the vehicle is yellow and clearly marked as a school bus enhances its safety over that of an unmarked minivan; the selection of a yellow sixteen-passenger school bus is at the discretion of the district; such a vehicle is considered the safest for transporting students; and petitioner’s allegations that the bid requirements are against the law – as it should be up to taxpayers to determine the form of transportation used by the Commission – are without merit. The ALJ determined that the petitioner has not proven by a preponderance of any credible evidence that the action of the Commission in awarding the bids to operators who conformed to the requirement of a sixteen-passenger yellow school bus for the four bus routes was arbitrary, capricious or unreasonable. Accordingly, the ALJ ordered the within petition dismissed with prejudice.

Upon comprehensive review, the Commissioner concurred with the ALJ – for the reasons set forth in the Initial Decision – that the Commission’s decision to require the sixteen-passenger yellow school bus for the bus routes in question was not arbitrary, capricious or unreasonable. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

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.

OAL DKT. NO. EDU 9967-15  
(EDU 13493-14 ON REMAND)  
AGENCY DKT. NO. 222-8/14

AAA SCHOOL, LLC, :  
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PASSAIC COUNTY EDUCATIONAL :  
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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, the AAA School, LLC.<sup>1</sup> This case is one of a series of petitions filed by the petitioner in which it is alleged that the Passaic County Educational Services Commission (Commission) improperly denied it a contract after it submitted bids for transportation services that require a sixteen-passenger yellow school bus. In this matter, the petitioner claims that he was the lowest bidder and had the appropriate vehicles (seven-passenger minivans) for school bus routes 8029, 8038, 8039 and 8106. After a hearing on the merits,<sup>2</sup> the Administrative Law Judge (ALJ) found that the Commission’s decision to require sixteen-passenger yellow school buses for routes 8029, 8038, 8039 and 8106 was not arbitrary capricious or unreasonable.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons set forth in the Initial Decision – that the Commission’s decision to require a sixteen-passenger yellow school bus for the bus routes in question was not

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<sup>1</sup> The record does not include a transcript from the hearing that was conducted at the OAL on May 11, 2016.

<sup>2</sup> This matter was remanded to the OAL to afford the petitioner the opportunity to have a hearing on the merits based on the disputed factual issues.

arbitrary, capricious or unreasonable, and that the petitioner should not be awarded the transportation routes. The Commissioner also finds no basis in the record to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ found that the testimony of the Commission's witnesses was "compelling and credible" and "[t]hey were forthright and detailed in their testimony concerning the safety and choosing of the sixteen-passenger yellow school bus." (Initial Decision at 4) On the other hand, the petitioner did not present any witness testimony at the hearing, but rather simply provided a summation at the end of the hearing. The ALJ had the opportunity to assess the credibility of the witnesses who appeared before her, and made findings of fact based upon their testimony. It is well established that the Commissioner must defer to the credibility findings of the ALJ unless these prove to be arbitrary, capricious or unreasonable, or are not supported by sufficient, competent and credible evidence in the record. *N.J.S.A. 52:14B-10(c)*.

It is undisputed that the petitioner does not own a sixteen-passenger yellow school bus; however, it fervently argues that sixteen-passenger yellow school buses are not necessary for certain routes, and that the Commission cannot require them in the bid specifications. Despite the petitioner's assertions, based on the testimony provided at the hearing, the ALJ found that it is the individual school districts that have the discretion to determine whether a sixteen-passenger yellow school bus is used for their transportation routes, not the Commission.<sup>3</sup> If a school district does not request the type of vehicle to be used on the Student Transportation Information Sheet, the Commission automatically provides a sixteen-passenger yellow school bus. Ultimately it is the decision of the school district to accept the type of vehicle before contracting and paying for the transportation service. The record in this matter is devoid of any evidence to the contrary or any evidence to suggest that the Commission's decision to reject the

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<sup>3</sup> The Commission provides coordinated transportation services to various school districts.

petitioner's bid was arbitrary, capricious or unreasonable. The Commissioner also finds the exceptions submitted by the petitioner to be unpersuasive. The petitioner's exceptions largely replicate the arguments advanced at the OAL that were fully considered and appropriately addressed by the ALJ in the Initial Decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: June 30, 2016

Date of Mailing: June 30, 2016

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<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).