

April 16, 2003

Dennis J. Cummins, Jr., Esq.
24-07 Broadway
Fair Lawn, NJ 07410

John H. Watson, Jr., Esq.
63 Washington Street
Suite 200
East Orange, NJ 07017

Dear Counsel:

NEW JERSEY LUCKY TOURS, ET AL. V. ESSEX COUNTY EDUCATIONAL SERVICES COMMISSION, ESSEX COUNTY, STATE BOARD DOCKET #10-03

This matter is before the State Board of Education by virtue of an application for emergent relief filed by the petitioners on April 9, 2003. Petitioners, transportation contractors who have been providing student transportation services for the Essex County Educational Services Commission ("Commission") for varying lengths of time since 1998 pursuant to contracts with the Commission, had initiated this matter in Superior Court following termination of their contracts by the Commission. On February 28, 2003, the Court transferred the matter to the Commissioner of Education, but imposed restraints on the Commission to prevent termination of the contracts until the petitioners could make their application to the Commissioner.

The Commissioner transmitted the application to the Office of Administrative Law for an initial determination, and, on April 2, 2003, the Administrative Law Judge ("ALJ") recommended the denial of the emergent relief sought by the petitioners.

The Commissioner adopted the ALJ's recommendation on April 9, 2003, concurring with her that the petitioners had not satisfied the standards set forth in Crowe v. De Gioia, 90 N.J. 126 (1982), and therefore were not entitled to emergent relief. The Commissioner also found that the fact that the petitioners had obtained a performance bond retroactive to September 2002 subsequent to the ALJ's determination did nothing to alter the result since they had not had such a bond, as required by the Commission, when their contracts were terminated. The petitioners then applied to the State Board of Education seeking to extend the restraints that had been imposed by the Superior Court until the merits of the matter are resolved.

On April 14, 2003, the petitioners applied to the Commissioner for a stay of his decision of April 9 so as to reinstate the restraints that had been lifted as the result of that decision until the State Board of Education made its decision with respect to their application for emergent relief. By letter decision of April 16, 2003, the Commissioner declined to stay his determination of April 9.

We are considering the petitioners' application today on an emergent basis pursuant to N.J.A.C. 6A:4-3.3, which authorizes the President of the State Board and the Chairperson of the Legal Committee to decide applications for emergent relief on behalf of the State Board unless the determination would constitute the final decision with respect to the underlying controversy. After reviewing the arguments of counsel and the record that has been developed thus far, we have determined that the issues being raised are such that the petitioners' application for emergent relief should be considered by the full State Board. However, given the circumstances, we have determined to stay the Commissioner's decision of April 9, 2003 until the State Board renders its decision with respect to the application. The effect of our determination is to reinstate the restraints initially imposed on the Commission by the Superior Court until that time. In making this determination, we find that the interests of the Commission's students are best served by allowing the petitioners to continue to provide transportation as they have since the beginning of the school year. In this respect, we stress that the students involved are special needs children, and the need for stability in the provision of transportation services is heightened in the case of such students. Allowing the petitioners to continue to provide transportation services until the State Board can act on the petitioners' application minimizes the impact of this controversy on these students.

Sincerely,

Maud Dahme, President
State Board of Education

Ronald K. Butcher, Chairperson
Legal Committee of the State Board

c: Members, State Board of Education
Anthony P. Marino, County Superintendent
Jacqueline Young, Board Secretary