

EDU #3247-03
C's # 164-03E
C's # 193-03L
SB # 10-03

NEW JERSEY LUCKY TOURS, ET AL., :
PETITIONERS-APPELLANTS, : STATE BOARD OF EDUCATION
V. : DECISION ON MOTION
ESSEX COUNTY EDUCATIONAL SERVICES :
COMMISSION, ESSEX COUNTY, :
RESPONDENT-RESPONDENT. :
_____ :

Decision on motion by the Commissioner of Education, April 9, 2003

Decision on motion by the Commissioner of Education, April 16, 2003

Decision on motion on behalf of the State Board of Education, April 16,
2003

For the Petitioners-Appellants, Dennis J. Cummins, Jr., Esq.

For the Respondent-Respondent, John H. Watson, Jr., Esq.

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 denying 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 seeking to extend the restraints that had been imposed by the Superior Court until the merits of the matter were 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 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.

On April 16, 2003, the President of the State Board and the Chairperson of the Legal Committee considered the petitioners’ application on an emergent basis pursuant to N.J.A.C. 6A:4-3.3, which authorizes them 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, the President and the Chairperson of the Legal Committee determined that the issues being raised were such that the petitioners' application for emergent relief should be considered by the full State Board. However, given the circumstances, they determined to stay the Commissioner's decision of April 9, 2003 until the State Board rendered its decision with respect to the application. The effect of that determination was to reinstate the restraints initially imposed on the Commission by the Superior Court until the State Board could consider the application.

In making that determination, the President and the Chairperson of the Legal Committee found that the interests of the Commission's students were best served by allowing the petitioners to continue to provide transportation as they had since the beginning of the school year. In this respect, they stressed that the students involved were special needs children and that the need for stability in the provision of transportation services is heightened in the case of such students. They concluded that allowing the petitioners to continue to provide transportation services until the State Board could act on the petitioners' application would minimize the impact of the controversy on these students.

After reviewing the petitioners' application and the Commission's response thereto, we have determined that petitioners should be permitted to continue to provide transportation services to the Commission's students. In this respect, we agree with our President and the Chairperson of our Legal Committee that the need for stability is heightened in the case of special needs students. Given that the school year is almost

over, we find that it would be contrary to the best interests of the students to disrupt their transportation arrangements at this point. Hence, we grant petitioners' application in order to permit them to continue to provide transportation to the Commission's students until the end of the school year, at which point any controversy between these providers and the Commission relating to the cancellation of the contracts for the 2002-03 school year will be moot. To the extent that there are any outstanding issues between the parties, we remand the matter to the Commissioner for their resolution.

June 4, 2003

Date of mailing _____