

#89-16 (OAL Decision: Not yet available online)

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 several 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. Petitioner submitted a bid in March 2015 for one of the respondent’s student transportation routes – Route 8213 – but was not awarded same because it was not able to meet the requirement in the specifications that a sixteen-passenger yellow school bus be provided. Petitioner filed the within appeal on May 25, 2015. Respondent filed a motion to dismiss in lieu of an answer, and requested reimbursement of attorney fees as well as an order that petitioner be barred from filing repetitive petitions.

The ALJ found, *inter alia*, that: the respondent’s motion to dismiss in lieu of an answer was accompanied by documents and certification in addition to the pleadings, and was therefore converted to a motion for summary decision pursuant to *N.J.A.C. 1:1-12.5*; there were no genuine issues of material fact, and the matter was ripe for summary decision; AAA’s petition fails to state a claim upon which relief can be granted, as petitioner admits that AAA does not possess the type of vehicle that is required by the bids specifications; AAA has filed six previous petitions, all of which argue that he should be awarded a sixteen-passenger vehicle route even though he does not own a sixteen-passenger yellow bus; petitioner owns only white minivans; petitioner is not legally capable of performing the service required by the bid specifications; petitioner’s position that he should not be required to own or lease a sixteen-passenger yellow bus because it is an unnecessary extravagance is without merit; the Commission’s bid specifications were approved by the Department of Education through the Passaic County Executive Superintendent’s Office and are both appropriate and legal; a yellow bus is clearly needed to make other drivers aware to use caution around the vehicle; AAA’s appeal is barred by the doctrine of *res judicata*; the actions of the *pro se* petitioner do not at this time rise to the level of being in bad faith and solely for the purpose of harassment, delay or malicious injury as required by *N.J.S.A. 2A:15-59.1(b)*; and petitioner was cautioned regarding the filing of another petition in this same issue. The ALJ granted the respondent’s order to dismiss, but denied the Commission’s request for attorney fees and costs, as well as its request to bar petitioner from filing repetitive petitions.

Upon comprehensive review, the Commissioner concurred with the ALJ that the Commission is entitled to summary decision. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed. In so doing, the Commissioner emphasized that the petitioner is not legally capable of performing the services required by the bid specifications for Route 8213 because AAA does not own or operate the required vehicle.

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 8740-15
AGENCY DKT. NO. 117-5/15

AAA SCHOOL, LLC, :
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, AAA School, LLC, and the Passaic County Educational Services Commission’s (Commission) reply thereto.¹ This case is one of a series of appeals filed by the petitioner, in which it is alleged that the Commission improperly denied it a contract after it submitted bids for transportation services that require a sixteen-passenger yellow school bus. The specifics of this case involve the March 2015 bid for Route 8213.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge that the Commission is entitled to summary decision for the reasons thoroughly set forth in the Initial Decision. The objections raised in the exceptions filed by the petitioner mimic the arguments previously raised before the ALJ and were clearly taken into account by him in determining that the Commission was entitled to summary decision. Notably the petitioner admits that he does not own a sixteen-passenger yellow school bus, which was expressly required in the bid specifications for Route 8213.

¹ The petitioner also submitted a reply to the Commission’s reply exceptions. *N.J.A.C.* 1:1-18.4 makes no provision for replies to reply exceptions; therefore, the petitioner’s submission was not considered.

Moreover, the Commissioner is not persuaded that the bid specification is unlawful simply because the petitioner believes the Commission's expressed bid requirement of a sixteen-passenger yellow school bus is illogical and a "ridiculous extravagance." (Petitioner's Exceptions at 9) There is simply no doubt that the petitioner is not legally capable of performing the services required by the bid specifications for Route 8213 because AAA School does not own or operate the requisite vehicle. For this reason, the petitioner cannot be awarded the transportation route.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: February 26, 2016
Date of Mailing: February 29, 2016

² The Commissioner is also in accord with the ALJ's determination that the Commission is not entitled to attorney's fees and costs pursuant to the Frivolous Litigation Statute, *N.J.S.A. 2A:15-59.1*. Neither the Commissioner nor the OAL have the authority to award the monetary judgment sought by the Commission. The Commissioner does, however, reiterate the sentiment of the ALJ in that the petitioner should be mindful going forward that a bid specification that requires the use of a sixteen-passenger yellow school bus is not unlawful on its face, and there is no requirement that the Commission's transportation bids must be altered to specifically fit the vehicles possessed by the petitioner.

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.