

BOARD OF EDUCATION OF THE LAKELAND	:	
REGIONAL HIGH SCHOOL DISTRICT,	:	
PASSAIC COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY STATE DEPARTMENT OF	:	DECISION
EDUCATION, OFFICE OF COMPLIANCE,	:	
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioning Board sought reversal of the determination of the Department of Education, Office of Compliance (Department), that the Board had transportation contract violations. The Board sought restoration of \$53,777.79 in state aid entitlements.

Since the facts in this case were not in dispute, the ALJ found the matter ripe for summary judgment. ALJ concluded that the correct interpretation of *N.J.S.A.* 18 A:39-1.1 and 39-3 can only be that the transportation of pupils to and from school for *any purpose whatsoever* including, but not limited to, athletic and extracurricular activities requires a school district to obtain bids for contracts for that transportation. Moreover, *N.J.S.A.* 18A:18A-4 requires a school district to obtain bids for all contracts over \$7,500. Thus, the ALJ concluded the Board was required to obtain bids for the contracts herein. ALJ also concluded that the doctrine of equitable estoppel did not apply herein as the reviews conducted in 1983 and 1989 of the Board's pupil transportation practices did not include practices for transportation of pupils to and from athletic and extracurricular activities and those reviews had been conducted by the County Superintendent, not the Department. The County Superintendent never requested the Department to conduct a review and the Department never conducted an audit of the transportation services of the two other school districts mentioned by the Board. Finally, the ALJ found that the Department is not restricted by the requirements of *N.J.A.C.* 6:21-19 *et seq.* when auditing a school district's transportation contracts and procedures; the Department may audit a school district's transportation records and accounts regardless of whether the County Superintendent requested an audit or provided a school district an opportunity to correct its transportation procedures. ALJ denied Board's motion for summary decision and granted Department's cross-motion for summary decision.

Commissioner adopted findings and determination in initial decision as his own. In light of statutory authorization and the Department's certification that it conducts audits of transportation contracts and records of school districts that are *not* requested pursuant to *N.J.A.C.* 6:21-19.5, the Commissioner concurred with the ALJ that the Board failed to demonstrate that the Department's actions were arbitrary and capricious or were otherwise contravened by State law. Petition was dismissed.

SEPTEMBER 22, 1997

OAL DKT. NO. EDU 11005-96
AGENCY DKT. NO. 380-9/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions and the Department’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the initial decision of the ALJ. In so doing, he notes that the Board’s exception arguments essentially recast its position as argued before the ALJ, challenging, *inter alia*, that the ALJ “summarily” concluded that equitable estoppel was not appropriately applied in this matter. (Board’s Exceptions at p. 3) In this regard, the Commissioner underscores the ALJ’s discussion on page nine of the initial decision, and finds, contrary to the Board’s assertions, that said decision adequately informs “*** the interested parties and any reviewing tribunal of the basis on which the final decision was reached so that it may be readily determined whether the result is sufficiently and soundly grounded or derives from arbitrary, capricious or

extra-legal considerations.” *State Department of Health v. Tegnazian*, 194 N.J. Super. 435, 443 (App. Div. 1984), citing *Application of Howard Savings Institution of Newark*, 32 N.J. 29, 52 (1960). The Board points to no legal authority which compels the hearing tribunal to do more.

Moreover, even if the Board is correct in asserting that the Department, through the County Superintendent as its agent, “***repeatedly approved its practices relating to transportation to and from athletic and extra-curricular activities” in its prior audits (Board’s Exceptions at p. 4) and the Board, was, therefore entitled to rely upon that review, as the Department notes, it

may still properly enforce the law and recover the money at issue. Where a government agency realizes that it may have allowed its designee to act in contravention of applicable laws, it is not only permitted, but is compelled, to immediately rectify the fault. *Mathesius v. Mercer County Improvement Authority*, 177 N.J. Super. 626 (App. Div. 1981). (Department’s Reply at p. 4)

Additionally, as to the “retroactive penalty” which the Board repeatedly refers to as being unjustly applied in this matter, as the Department argued below, it is not assessing a penalty but is attempting to recover State aid which the Board was not entitled to receive. (Board’s Exceptions at p. 9) The Department adds,

N.J.S.A. 18A:4-35 provides the authority to the Department [to] review and audit the books and records of local school districts. *N.J.A.C.* 6:5-1.28 gives the Commissioner the authority to withhold State aid from districts who fail to comply with school laws or State Board of Education regulations. In this case, the Department, as in all such cases, may withhold State aid to recover the amount due based on the audit at issue. Such withholding of aid is clearly within the authority provided by the above cited statutes and regulations. (Department’s Reply at p. 9)

In view of this statutory authorization, and further noting the Department’s certification that it conduct audits of transportation contracts and records of school districts that are *not* requested

pursuant to *N.J.A.C. 6:21-19.5*,* the Commissioner concurs with the ALJ that the Board has failed to demonstrate that the Department's actions in this matter were arbitrary and capricious or were otherwise contravened by State law.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. The Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 22, 1997

* Affidavit of Tom King, Director, Office of Compliance, New Jersey State Department of Education, at p. 2.