

EDU #3103-99
C # 43-99L
SB # 45-00

BOARD OF EDUCATION OF THE
RAMAPO-INDIAN HILLS REGIONAL
SCHOOL DISTRICT, BERGEN
COUNTY,

PETITIONER-APPELLANT,

V.

BOARD OF EDUCATION OF THE
BERGEN COUNTY VOCATIONAL
TECHNICAL SCHOOL DISTRICT,
BERGEN COUNTY,

RESPONDENT-RESPONDENT.

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, July 10, 2000

For the Petitioner-Appellant, Schwartz, Simon, Edelstein, Celso & Kessler
(Nicholas Celso, III, Esq. and Mark H. Zitomer, Esq., of Counsel)

For the Respondent-Respondent, Nowell, Amoroso, Klein, Bierman, P.A.
(Henry J. Amoroso, Esq. and William C. Soukas, Esq., of Counsel)

In this case, the Board of Education of the Ramapo-Indian Hills Regional School District (hereinafter "Board") sought a determination from the Commissioner of Education that it was not obligated by N.J.S.A. 18A:54-20 to pay tuition for students from the district who were enrolled in the "academies" operated by the Board of Education of the Bergen County Vocational Technical School District (hereinafter "Bergen County Vo-Tech").¹ The Board contended that it had no obligation to pay

¹ N.J.S.A. 18A:54-20.1(a) provides:

tuition for these students because although the programs offered by the “academies” had been approved as vocational programs, the “academies” themselves had not been approved by the Commissioner of Education. The Board further claimed that the operation of the “academies” was contrary to the Carl D. Perkins Vocational and Applied Technology Act (“Perkins Act”). It also asserted that it was not obligated to pay tuition because it operates a program that is comparable to that offered through the “academies.”

Following transmittal to the Office of Administrative Law, both the Board and Bergen County Vo-Tech filed motions for summary decision. Acting on those motions, the Administrative Law Judge (“ALJ”) concluded that the program approval given to the programs offered by the “academies” complied with the requirements of New Jersey law and that the “administrative structure,” i.e., the “academies,” under which Bergen County Vo-Tech offered those programs did not require separate approval. The ALJ rejected any attack on the underlying validity of the approval given in this case, stressing that in contrast to K.B. v. Bd. of Ed. of Rancocas Valley Reg. High School District, remanded by the State Board of Education, March 1, 2000, the regulatory approval process that had resulted in the inclusion of the programs offered by Bergen

The board of education of each school district or regional school district in any county in which there is a county vocational school district shall send to any of the schools of the county vocational school district each pupil who resides in the school district or regional school district and who has applied for admission to and has been accepted for attendance at any of the schools of the county vocational school district. The board of education shall pay tuition for each of these pupils to the county vocational school district pursuant to subsection c. of this section. The provisions of this section shall not apply to the board of education of a school district or regional school district maintaining a vocational school or schools pursuant to article 2 of chapter 54 of Title 18A of the New Jersey Statutes.

County Vo-Tech in the New Jersey Department of Education's Directory of Verified Occupational Educational Programs was part of the record.

The ALJ also determined that the programs offered by the "academies" were not inconsistent with the Perkins Act, finding that the language of 20 U.S.C.A. §2302(29) did not limit the provision of academic and technical knowledge needed for further education so as to preclude programs that did so from being approved as vocational programs. Initial Decision, slip op. at 12. The ALJ stressed that by requiring funds for secondary school programs to be utilized for programs that link secondary and post-secondary vocational and technical education, the Perkins Act showed an awareness by Congress of the importance of continuing education after graduation from high school. In addition, the ALJ emphasized that New Jersey's State Plan for Vocational-Technical Education FY 2000-2004 ("State Plan"), which must comply with the Perkins Act and be approved by the United States Department of Education, expressly provides for developing competencies for further education and provides for funding programs that will prepare students for opportunities in post-secondary education. Thus, the ALJ concluded that the fact that the "academies" prepare students for college is not in conflict with the Perkins Act.

Finally, the ALJ rejected the Board's claim that it was not obligated to pay tuition for students enrolled in the "academies" because N.J.A.C. 6:43-3.11(a) limited the requirement that students be admitted to county vocational programs to situations in which the resident district did not offer a "comparable type of program."² In making this

² N.J.A.C. 6:43-3.11(a) provided that:

Pupils shall be permitted to enroll in programs of vocational instruction offered by district boards of education other than their resident district so

determination, the ALJ found that this regulation conflicted with N.J.S.A. 18A:54-20.1(a), which does not recognize any such exception to the statutory requirement that district boards send any student who has been admitted to the county vocational school.

Accepting the ALJ's factual determinations, the Commissioner adopted the ALJ's conclusions that the programs offered through the "academies" were properly approved and that the structure of the "academies" was not required to be approved separately. The Commissioner also agreed with the ALJ that the programs offered by the "academies" were consistent with State and federal definitions of "vocational education." The Commissioner, however, rejected the ALJ's determination that N.J.A.C. 6:43-3.11(a) contravened N.J.S.A. 18A:54-20.1(a). Instead, he found that when read together, the statute and regulation established a state-wide delivery system for vocational education that assured access to such education through a "tiered structure" that first directs students to their resident district and permits them to attend the county vocational school only if their district does not have a comparable program. Nonetheless, in a footnote, the Commissioner rejected the Board's assertion that it offered a comparable program because, in contrast to the programs offered through the "academies," the Board's program was not included in the Department of Education's Directory of Verified Occupational Educational Programs.

We have carefully considered the issues that have been raised in this case and, substantially for the reasons expressed by the ALJ and the Commissioner, we affirm the

long as the resident district board of education does not offer a comparable type of program and space is available for additional enrollees in the programs offered by the receiving district board of education.

We note that the exception created by N.J.A.C. 6:43-3.11(a) was eliminated from our Administrative Code when we acted in December 2001 to adopt new regulations to govern the provision of vocational programs. N.J.A.C. 6A:19-1 et seq.

Commissioner's determination that approval of the programs offered through the "academies" is consistent with New Jersey law and that separate approval of the structure of the "academies" is not required. We also concur with the ALJ and the Commissioner that the "academies" are in conformity with the Perkins Act. In affirming these determinations, we stress, as did the ALJ, that New Jersey law defines vocational education as:

...any education the controlling purpose of which is: (a) to fit for profitable employment; (b) to provide training which is supplemental to the daily employment; or (c) to fit for homemaking, according to the state plan for vocational education adopted by the state board. (Emphasis added.)

N.J.S.A. 18A:54-1

The State Plan which we have approved reflects our vision for vocational education.³ As pointed out by the ALJ, the State Plan proposes to use funds awarded under the Perkins Act to improve the skills of vocational students by "integration of academics with vocational and technical education programs." State Plan, at 24. This goal is central to the State Plan and is to be achieved through a variety of approaches, including the creation of linkages that will enable vocational students to progress easily from secondary to post-secondary education. In this regard, the State Plan highlights specific examples of successful methods of creating such linkages, including:

...high-technology high schools, magnet schools, and career academies where students engage in a variety of educational programs that lead to college credits and entrance into degree and/or certificate programs with advanced standing.

Id. at 53.

³ The State Board of Education also functions as the State Board of Vocational Education.

Hence, review of the State Plan eliminates any doubt that programs offered by the “academies” may properly be categorized as vocational under New Jersey law, notwithstanding that they prepare students for entry into college. In this respect, even cursory review of the State Plan shows that, in addition to the State Plan’s specific endorsement of career academies, New Jersey is an enthusiastic participant in the United States Department of Education’s Tech-Prep Initiative. E.g., State Plan, at 42-43 and 52.

Furthermore, as the ALJ pointed out, our State Plan is required to conform to the Perkins Act. Approval of the State Plan by the United States Department of Education demonstrates such conformity. In this regard, we stress that as required by the Perkins Act, the State Plan provides for the inclusion of special populations and requires assessment of how the needs of special populations are being met. Id. at 22. In the absence of any showing that any individual who is a member of a special population has been excluded from the programs offered by the “academies,” we reject the Board’s claim that that Bergen County Vo-Tech has excluded special populations.

Although we concur with the Commissioner’s decision in most respects, we reverse his determination that N.J.A.C. 6:43-3.11(a) represented a proper implementation of N.J.S.A. 18A:54-20.1(a) and was consistent with that statute. As the ALJ found, by creating an exception to the clear statutory mandate, the regulation exceeded the authority conferred by the statute and impermissibly contravened the statute that it purported to implement. Hence, this regulation could not be applied so as to enable the Board in this case to avoid its obligation to pay tuition for the students

from the district who had applied and been admitted to Bergen County Vo-Tech, regardless of whether or not the Board operated a comparable program.

We deny the Board's request for oral argument as not necessary for a fair determination of this matter. N.J.A.C. 6A:4-3.2.

Debra Casha recused herself.

February 6, 2002

Date of mailing _____