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|---------------------------------------|---|---------------------------|
| M.R., by his guardian ad litem, J.N., | : | |
| AND K.K., by his guardian | : | |
| ad litem, F.K., | : | |
| PETITIONERS, | : | COMMISSIONER OF EDUCATION |
| V. | : | DECISION |
| BOARD OF EDUCATION OF THE | : | |
| BOROUGH OF POMPTON LAKES, | : | |
| PASSAIC COUNTY, | : | |
| RESPONDENT. | : | |
| _____ | : | |

SYNOPSIS

Petitioning students, residents of respondent Passaic County school district who had applied and been accepted for admission into academies operated by the Bergen County Vocational District, appealed respondent Board's refusal to pay tuition and transportation costs. Board contended petitioners were only entitled to attend Passaic County vocational schools, that the academies petitioners sought to attend were quasi-private magnet schools rather than vocational schools, and that appropriate offerings were available within the district and county.

Commissioner found that, as a matter of law, students who are accepted into county vocational schools outside their county of residence are entitled to attend such schools at no cost to themselves or their parents when a comparable type of program is not offered by their district or county of residence; Commissioner further found that such entitlement extends to provision of transportation. Commissioner rejected Board's contention that academies of the type at issue herein are outside the scope of vocational training, finding instead that they offer advanced preparation for technical careers and related postsecondary schooling, as clearly contemplated by laws governing provision of vocational education. Commissioner found that, notwithstanding availability of a precollege curriculum within respondent district and availability within Passaic County of vocational instruction in same general area sought by petitioners, there was no discrete, coherent program comparable to the type offered by the Bergen County academies available to petitioners within Passaic County. Accordingly, respondent Board was directed to remit tuition costs and nonresident fees, if any, to the Bergen County Vocational District on behalf of petitioners and to arrange for their transportation to and from their schools of attendance.

JULY 29, 1997

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For Petitioners, Jeffer, Hopkinson, Vogel & Peiffer (Reginald F. Hopkinson, Esq.)

For Respondent, Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
(Derlys Maria Gutierrez, Esq.)

This matter was opened before the Commissioner of Education on June 11, 1997, by way of a Petition of Appeal with Motion for Emergent Relief filed on behalf of two Passaic County students whose district of residence, the respondent Board of Education herein, has denied their request for payment of tuition and transportation to attend academies operated by the Bergen County Vocational School District, where they have applied and been accepted.

On June 20, 1997, the Board of Education (Board) filed its Answer to the Petition and Reply to the Motion, to which petitioners filed a responsive submission on June 27, 1997.

Upon review of these filings, the Commissioner has determined that the issues raised are appropriately decided through an expedited ruling on the merits, and, further, that they can be decided on the basis of the existing record. Accordingly, the Commissioner proceeds to determination as set forth below.

POSITIONS OF THE PARTIES

Petitioners are students residing in the Passaic County municipality of Pompton Lakes, who graduated from the eighth grade in respondent's school district in June 1997. They have applied and been accepted to, respectively, the Academy for Engineering and Design Technologies and the Academy for Business and Computer Technologies, both magnet schools operated by the Bergen County Vocational School District and both employing a rigorous and highly competitive admissions process. When advising petitioners of their acceptance, the academies informed them that, as nonresidents of Bergen County, they were responsible for making arrangements to satisfy the academies' tuition requirement of approximately \$17,950 per pupil and to provide for transportation to and from the academies, prior to commencement of their course of study on August 11, 1997. Petitioners' parents requested that the respondent Board arrange for such payment of tuition and provision of transportation, claiming entitlement under *N.J.S.A. 18A:54-20.1*; this request was denied. Petitioners contend that the laws of this State require a local board of education to provide tuition on behalf of resident students who apply, and are accepted, for admission into out-of-county vocational education schools. Thus, the Board's denial herein was not within its discretionary authority, and, moreover, effectively bars petitioners from an education which they have properly and lawfully met the criteria to obtain and now have the statutory right to receive.

The Board denies that it has any such obligation. According to the Board, petitioners seek tuition and transportation for what they describe as vocational education, when in reality the schools they seek to attend do not fall anywhere within the purview of vocational education as described by *N.J.S.A. 18A:54-1*. Instead, they are, in fact and by their own description, academically rigorous magnet high schools. As such, they effectively function as private schools within a public school setting, and petitioners' request is nothing more than an attempt to obtain a private education at public expense. Moreover, even if the academies at issue are considered vocational in nature, petitioners would still not be entitled to the relief they seek. Attendance at out-of-county vocational schools is mandated by *N.J.S.A. 18A:54-20.1* only where there is no county vocational school within the county, whereas Passaic County has its own County Technical Institute to which the Board regularly sends students wishing to pursue courses of study in state-of-the-art computer systems and other advanced technologies to equip them for the demands of a technology driven workforce. (The 1996-97 per pupil cost for this Institute was \$14,504, of which the respondent Board paid \$9,564.) Additionally, the district itself offers a

rigorous academic program, suitable for exceptionally talented students who seek to prepare for college in the manner offered by the Bergen County academies. Finally, the Board contends that if petitioners succeed in their claim, the County of Passaic, which petitioners should have joined as a necessary party, is required pursuant to *N.J.S.A. 18A:54-23.4* to pay for a substantial portion of the attendant costs, as they do for Passaic County students attending the County Technical Institute. The Board does not have funds budgeted to meet the expenses petitioners' request would generate.

Petitioners respond to these arguments by rejecting as altogether misguided the notion that high academic standards and preparation for college education are incompatible with vocational education and cannot occur in a vocational school setting. To the contrary, the special magnet schools at issue herein, and others like them in select counties throughout the state, are clearly vocational schools; however, they are schools of a particular kind offering a uniquely intensive, high-level experience not available to students attending the Passaic County vocational school. This being so, the general scheme for provision of vocational education, which mandates attendance outside a pupil's district or county of residence when no comparable program is available therein, dictates that petitioners are entitled to the relief they seek. With regard to the Board's contentions regarding assessment of certain costs to Passaic County, petitioners allege that the statute cited by the Board has been repealed as of July 1, 1990, and that it is not petitioners' obligation, but the Board's, to seek any applicable relief from the county.

ANALYSIS AND DETERMINATION

The entitlement of New Jersey students to attend county vocational schools is initially established by *N.J.S.A. 18A:54-20.1*, which provides as follows:

18A:54-20.1. Enrollment of pupils in county vocational schools; funding; tuition

a. 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.

b. The board of education of a county vocational school district shall receive pupils from districts without the county so far as their facilities may permit.

c. The board of education of a county vocational school district shall receive such funds as may be appropriated by the county pursuant to *N.J.S. 18A:54-29.2* and shall be entitled to collect and receive from the sending districts in which each pupil attending the vocational school resides, for the tuition of that pupil, except for a post-secondary vocational education pupil, a sum not to exceed the actual cost per pupil as determined for each vocational program classification, according to rules prescribed by the commissioner and approved by the State board. Whenever funds have been appropriated by the county, the county vocational school district may charge a fee in addition to tuition for any pupils who are not residents of the county. The fee shall not exceed the amount of the county's per pupil appropriation to the county vocational school district.

d. The tuition and nonresident fee, if any, shall be established not later than January 15 in advance of the school year by the board of education. The tuition for each program category shall be at the same rate per pupil for each sending district whether within or without the county, and 10% of the tuition amount and nonresident fee, if any, shall be paid on the first of each month from September to June by or on behalf of the board of education of each sending district.

Such entitlement is further elaborated through State Board of Education regulation at *N.J.A.C. 6:43-3.11*, which provides as follows:

6:43-3.11 Access to vocational instruction offered

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

(b) To the extent that space is available, each type of program of vocational instruction offered by the State Board [pursuant to *N.J.A.C. 6:43-2.1(a)*, the State Plan for Vocational Education] shall be made available to all pupils residing in the State, and each program of instruction offered by a district board of education shall be made available to all pupils residing in the district or community served by the district board of education offering such instruction.

(c) Pupils shall be admitted for enrollment in classes and provided instruction on the basis of their potential for achieving the occupational or other objective of such instruction.

Taken together, these enactments clearly establish a statewide delivery system for vocational education that ensures pupil access to such education through a tiered structure that first directs pupils to the local or regional district, then to the county district if the local district does not offer a comparable type of program, and then to schools statewide, to the extent that

facilities permit and students qualify, if a comparable type of program is unavailable within the county district. The terms of both the statute and rule are plain in their directive that county districts *shall* admit nonresident students to the extent space is available and students qualify, and that they *shall* be entitled to collect tuition from the sending districts in which their pupils reside, together with a nonresident fee to the extent permitted by law. Indeed, the mechanism established for setting and collection of county district tuition is, by its own terms, applicable to sending districts both within and without the county. There can, therefore, be no question, that students are entitled to attend, without cost to the student or parent, vocational schools outside their district and county of residence when comparable types of programs are not available within the county.

Such right of access of necessity entails a concomitant right to transportation. Thus, *N.J.S.A.* 18A:39-1, which generally requires districts to provide transportation for resident students living remote from the public school they attend, cannot be construed as inapplicable to students whose public school of attendance is a vocational school located outside the county. Nothing in the language of the statute, which excludes no categories of public school pupils and sets no limitations on the distance of the public schools of attendance, supports such a reading, nor would this be consistent with the laws establishing entitlement to access.

Next to be addressed is the Board's contention that academies of the type at issue herein are not vocational schools, but rather elite, quasi-private academic institutions not falling within the scope of vocational education as defined by *N.J.S.A.* 18A:1, which reads:

18A:54-1. Definitions. As used in this chapter, "vocational education" means 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.

By its own terms, this statute is informed by rules and policies of the State Board of Education, set forth at *N.J.A.C.* 6:43-1.1 *et seq.* Of particular relevance herein are regulations which expressly contemplate preparation for enrollment in advanced or highly skilled postsecondary vocational or technical education programs, including college preparatory work:

6:43-3.3 Advanced, skilled vocational and technical education

(a) Vocational instruction shall be primarily designed to prepare individuals for employment in a specific occupation. It may also prepare individuals for enrollment in advanced or highly skilled postsecondary vocational and/or technical education programs.

(b) An approved secondary technical education program includes three years of college preparatory mathematics, two one-year laboratory science courses and a technical laboratory course which is conducted a minimum of 400 minutes per week for a period of not less than two years.

It is clear from this regulation, and the larger context in which it appears, that the State Board's view of vocational education encompasses a range of levels from rudimentary to highly advanced. Thus, there can be no support for the Board's contention that schools espousing rigorous academic standards and offering high-level preparation for advanced postsecondary education are, inherently, incompatible with the concept of vocational education, and, thus, outside the scope of entitlement otherwise provided by Chapter 54 of Title 18A. Such a view ignores the changing and ever more sophisticated needs of today's workplace, as well as the wisdom of the Legislature in recognizing that the State plan for vocational education must remain fluid in response to this continual evolution.

The undisputed facts in the present matter establish that the schools at issue herein are, in actuality, advanced-level vocational schools falling well within the purview of the State's vocational education delivery system. Within that system, they effectively function as career academies, magnet schools offering rigorous, highly structured programs linking college-level academics to advanced preparation in specified vocational/technical fields (in this instance, Engineering and Design Technology, and Business and Computer Technology). There is no basis, either in law or sound educational policy, for excluding schools of this type from the scope of a student's access to vocational education as contemplated by Chapter 54 and its implementing rules.

Given that the law requires access to out-of-county vocational programs under specified circumstances, and that career academies of the type at issue herein are not to be excluded from the scope of such access, the question with regard to petitioners' claim must now become whether a comparable type of program exists within Passaic County so as to preclude petitioners' entitlement to attend their schools of choice in Bergen County. Initially, the Commissioner rejects the notion that the existence of a vocational/technical school within the

county of residence automatically acts to preclude access to schools outside the county. The language of the laws governing access clearly speaks to a *comparable type of program*, not to the mere existence of a vocational/technical school within the resident district or county. Moreover, even the availability of some level of instruction in the same general area sought by the student will not necessarily constitute a comparable type of program. Although the Board herein claims, without dispute from petitioners, that it offers within its own district a rigorous precollege academic program and that there exists within Passaic County a vocational/technical school offering instruction in computers and advanced technologies, to which the district normally sends vocational students, no claim is ever made that the Board can provide petitioners with a discrete, coherent *program* comparable to the type available in the Bergen County district. To the contrary, it is plain from the undisputed facts that this type of program is *not* available to petitioners within respondent's school district or the Passaic County Vocational District. Therefore, having duly applied and been admitted to the Bergen County academies, petitioners are entitled to attend these schools at no cost to themselves, or their parents, for tuition or transportation.

ORDER

Accordingly, pursuant to *N.J.S.A.* 18A:54-20.1 (c) and (d), the Pompton Lakes Board of Education is directed to remit the established tuition and nonresident fee, if any, to the Bergen County Vocational School District on behalf of petitioners, and to provide for their transportation to and from their schools of attendance pursuant to *N.J.S.A.* 18A:39-1.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JULY 29, 1997

* The Commissioner notes that *N.J.S.A.* 18A: 54-23.4 has not, as claimed by petitioners, been repealed by *P.L.* 1990, c. 52, that law having repealed 18A:54-23, but not the subsequent sections (18A:54-23.1 through 18A:54-23.5). However, neither does 18A:54-23.4, which is part of an enactment (*P.L.* 1973, c. 333) dealing solely with postsecondary students, apply to the matter herein, as claimed by respondent, so as to establish a county obligation to pay all or part of the cost of petitioners' education.