

201-99

JACK JACOBS, :  
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 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 NORTHERN VALLEY REGIONAL :  
 SCHOOL DISTRICT, BERGEN :  
 COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner challenged the Board's refusal to pay the tuition and transportation costs for his son, D.J., a home-schooled student, to attend Bergen County Vocational Technical School (BCVTS).

The ALJ determined that the Board was obligated to pay the tuition and transportation costs for D.J.'s attendance at BCVTS for the 1997-98 school year.

The Commissioner affirmed the initial decision of the ALJ, noting that all New Jersey pupils, not just those enrolled in the public schools, are entitled to a vocational education and underscoring that a student attending a public vocational school by statutory right is entitled to transportation services from the responsible local district if the student resides in the district and lives remote from the public school of attendance. The Commissioner directed the Board to reimburse petitioner \$2,125 for transportation costs from September 1997 through January 1998 and tuition costs for D.J.'s attendance at BCVTS for the 1997-98 school year.

June 24, 1999

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions<sup>1</sup> and the Board’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in making his determination.<sup>2</sup>

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that respondent was obligated to pay the tuition and transportation costs for D.J.’s attendance at the Bergen County Vocational Technical School (BCVTS) for the 1997-98 school year. In so concluding, the Commissioner

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<sup>1</sup> Petitioner “excepts” solely to the ALJ’s recitation of facts on page three of the initial decision, noting that her statement, “[A]fter December, 1997, D.J. did not attend BCVTS” is incorrect. However, petitioner indicates that the next sentence, although it contradicts the former, is an accurate account of the facts. That is, “[F]rom September 1997 through June 1998, D.J. attended BCVTS in the afternoons.” (Initial Decision at p. 3)

<sup>2</sup> The Board submitted a reply which included cross-exceptions, as per *N.J.A.C.* 1:1-18.4(d). The arguments advanced in the cross-exceptions, however, are a reiteration of those raised before the ALJ. Since the Commissioner finds that the ALJ fully and fairly considered the Board’s arguments, they are not summarized herein.

finds the express language of *N.J.S.A.* 18A:54-20.1 and *N.J.S.A.* 18A:39-1 to be determinative.<sup>3</sup>

As the ALJ observes:

Pursuant to *N.J.S.A.* 18A:54-20.1a and *N.J.A.C.* 6:43-3.11 all New Jersey pupils have an independent entitlement to a vocational education which is not limited to the pupils enrolled in the public schools. Therefore, the attendance of homeschoolers who have been accepted by their local district's own county vocational school should not be restricted by those public school students attending the same vocational school.\*\*\* (Initial Decision at p. 9)

To the extent the Board points to contradictory evidence which has “neither the effect of a statute [nor] a duly promulgated regulation,” (Initial Decision at p. 8) the Commissioner, like the ALJ, finds that such evidence cannot, given the language in the pertinent statutes and regulations, be dispositive of the issues herein.<sup>4</sup>

Finally, with respect to transportation costs, the Commissioner underscores:

[W]here a student is attending a public vocational school by statutory right, with tuition paid by the local district of residence, the pupil transportation statute does *not* require that the student be “enrolled” in the responsible local district in order to be entitled to transportation services from that district. Instead, the statute merely requires that the student reside in the district and live remote from the “public school of attendance.” *Jack Jacobs v. Board of Education of the Northern Valley Regional School District, Bergen County*, Commissioner Decision on Motion, November 5, 1997, slip. op. at p. 6 (emphasis in original).

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<sup>3</sup> The Commissioner herein notes that, after issuing his final decision in *M.R., supra*, on July 29, 1997, the decision was appealed to the State Board of Education. There, the respondent Board contended for the first time that the Commissioner's determination violated the Carl D. Perkins Vocational and Applied Technology Act, 20 *U.S.C.* Section 2301 *et seq.* (*M.R., supra*, State Board of Education, December 3, 1997, slip op. at p. 3) Upon request of the Commissioner, the State Board remanded this matter on December 3, 1997 to the Commissioner with direction that it be transmitted to the OAL “for hearing and determination of all the issues raised [in the] appeal, including the factual question of whether the Board can offer a comparable program to petitioners in Passaic County.” (*Id.* at pp. 3-4) While at the OAL, the parties settled the matter.

<sup>4</sup> To the extent that the informational booklet “Home Schooling in New Jersey” is not grounded in applicable law, it cannot be considered authoritative and the Commissioner will forthwith direct its revision or withdrawal as necessary.

Accordingly, the initial decision of the ALJ is affirmed, as clarified herein.<sup>5</sup> The Board is directed to reimburse petitioner \$2,125 for transportation costs from September 1997 through January 1998<sup>6</sup> and tuition costs for D.J.'s attendance at the Bergen County Vocational Technical School for the 1997-98 school year.<sup>7</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

June 24, 1999

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<sup>5</sup> The Commissioner concurs with petitioner's "exception" that the stipulated facts on record show that D.J. attended the BCVTS in the afternoons from September 1997 through June 1998. (Stipulation of Facts at p. 2, paragraph 15)

<sup>6</sup> Although the Board objects to the amount of petitioner's transportation costs, as presented, the basis for its objection is that the amount sought by petitioner is not in accordance with *N.J.S.A.* 18A:39-1, which provides, in part, that where a local board transports students to and from any remote school other than a public school, it does so at an annual per pupil rate not to exceed \$675. (Board's Reply/Cross-Exceptions at p. 6) However, the Commissioner finds that this provision of *N.J.S.A.* 18A:39-1 is not applicable to the instant matter, since the BCVTS is a public school. Petitioner has submitted an invoice indicating that Valley Kids, Inc. transported D.J. to the BCVTS from late October 1997 through January 1998 at a total cost of \$1,419. The Board did not specifically object to the amount of this invoice. (Board's Brief of January 11, 1999 at p. 1, affirming that "[W]hile Northern Valley contends that it should not be responsible for any costs of transportation, it does not contest the amount of the invoice from Valley Kids, Inc. for those months.") Additionally, petitioner asserts that his costs for transporting his son to and from the BCVTS on a daily basis for the months of September 1997 through October 23, 1997 total \$706. Although the Board contends this amount is "excessive," (Board's Reply/Cross-Exceptions at p. 6) where it provides no basis for such a contention, other than that already dismissed as inapplicable, and where the amount, on its face, appears reasonable, in light of the mileage traversed, the Commissioner has no reason to reject petitioner's claim.

<sup>7</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.