

D.F., on behalf of minor child, E.F.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
BOROUGH OF ROSELLE PARK,	:	
UNION COUNTY,	:	
	:	
RESPONDENT,	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
UNION COUNTY VOCATIONAL-	:	
TECHNICAL SCHOOLS, UNION	:	
COUNTY,	:	
	:	
INTERVENOR,	:	
	:	
J.S. AND E.S., on behalf of minor	:	
child, C.S.; K.K. AND E.K., on behalf of	:	
minor child, C.K.; J.N. AND M.N.,	:	
on behalf of minor child, C.N.;	:	
AND A.C. AND J.C., on behalf of	:	
minor child, A.C.,	:	
	:	
INTERVENORS.	:	
	:	
_____	:	

SYNOPSIS

Petitioning parent alleged respondent Board of Education of the Borough of Roselle Park (Roselle Park) improperly refused to provide or pay for transportation and tuition costs for her minor child to attend the Union County Magnet High School for Science, Mathematics and Technology (Union County Magnet High School). Union County Vocational-Technical Schools Board of Education (UCVTS), which operates the Union County Vocational-Technical Schools, including the Union County Magnet High School, and other parents, on behalf of their respective children who attend the Union County Magnet High School, were permitted to intervene.

At the OAL, intervenor UCVTS moved for summary decision, asserting that *N.J.S.A. 18A:54-20.1(a)* requires respondent Roselle Park to pay the cost of tuition and school transportation for its pupils attending the Union County Magnet High School. The ALJ granted summary decision to UCVTS, concluding that Roselle Park does not maintain a vocational school and *N.J.S.A. 18A: 54-20.1(a)* requires that county pupils who attend a school of their county vocational school district shall have their tuition and transportation costs paid by their home school district unless that district maintains its own vocational school.

The Commissioner concurred with the ALJ that UCVTS is entitled to summary judgment, finding no evidence that Roselle Park offered a program comparable to that of Union County Magnet High School. Taking judicial notice of the New Jersey Department of Education's *Directory of Verified Occupational Educational Programs*, the Commissioner found that of the three vocational programs offered by Roselle Park, only one overlapped with the menu of approved vocational programs offered by UCVTS and that program was not the subject of the within controversy. Thus, the Commissioner ordered respondent Roselle Park to pay the tuition and transportation costs for petitioner's child and intervenors' minor children for the respective dates of their attendance.

July 12, 1999

OAL DKT. NO. EDU 5903-98
(Formerly EDU 11035-97)
AGENCY DKT. NO. 407-10/97

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minor child, C.K.; J.N. AND M.N.,	:	
on behalf of minor child, C.N.;	:	
AND A.C. AND J.C., on behalf of	:	
minor child, A.C.,	:	
	:	
INTERVENORS.	:	
	:	
_____	:	

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions and a reply submitted on behalf of Intervenor Board of Education of the Union County Vocational-Technical Schools (UCVTS) are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

Respondent maintains that the UCVTS failed to meet the standards necessary to support a motion for summary decision, pursuant to *N.J.A.C.* 1:1-12.5, contending, *inter alia*, that there is a disputed issue of material fact as to whether it is mandated by law to pay tuition and transportation costs for its students attending the magnet school. (Respondent’s Brief in Support of Exceptions at pp. 4, 5) In this regard, respondent posits that the Administrative Law Judge (ALJ) failed to consider the factual disputes set forth in its prior argument raised before the OAL: namely, the UCVTS Magnet High School program does not fall within the definition of “vocational education,” in accordance with *N.J.S.A.* 18A:54-1, and, therefore, neither *N.J.S.A.* 18A:54-20.1(a) nor *N.J.A.C.* 6:43-3.11 is applicable. Further, since the ALJ did not determine whether the UCVTS Magnet High School program falls within the statutory definition of “vocational education,” respondent reasons that the ALJ improperly applied *N.J.S.A.* 18A:54-20.1(a), “since [the] statute requires payment for students attending a vocational program.” (*Id.* at p. 5) Here, respondent

readily admits that Magnet Schools are not “inherently” outside of the definition of vocational education. Likewise, Respondent submits that Magnet Schools are not automatically found to be within the statutory definition of vocational education. In the present case, there is at least a factual dispute as to whether Intervenor *** has properly linked its program to “advance preparation in specified vocational-technical fields.” Respondent will present, and presently submits through the attached Affidavit of William Clarke, *** testimony and documentary evidence indicating that Intervenor’s Magnet School has represented itself as providing a program “that will prepare the graduate for a four-year baccalaureate degree program,” without reference to “advance preparation in specified vocational/technical fields.” (Respondent’s Exceptions, Tab 1 at pp. 11-12, citing to portions of *M.R., by his guardian ad litem, J.N., AND K.K., by his guardian ad litem, F.K. v. Board of Education of the Borough of Pompton Lakes, Passaic County*, Commissioner Decision, July 29, 1997, remanded State Board of Education December 3, 1997)

Respondent additionally contends that its curriculum provides “more than a comparable program to that provided by the Magnet School and therefore, according to law, the Roselle Park School District does not have to send its students to the Magnet School.” (Affidavit of William Clarke, Superintendent of Schools for the Roselle Park School District (Clarke Affidavit), Respondent’s Exceptions, Tab 2 at p.2) That this issue remains a disputed material fact, is, according to respondent, reason to dismiss Intervenor UCVTS’s Motion for Summary Decision. (Respondent’s Brief in Support of Exceptions at p. 7)

In reply, the UCVTS asserts that the ALJ’s decision was both straightforward and correct. The UCVTS reasons that, since it operates, as one of its schools, a Magnet High School for Science, Mathematics and Technology, *N.J.S.A.* 18A:54-20.1(a) mandates that respondent bear the tuition and transportation costs for those students who are accepted into its programs. The UCVTS recognizes that “[t]he sole exception would be if the sending District had its own Vocational School, which Roselle Park indisputably does not.” (Intervenor’s Reply at p. 1) The UCVTS urges, therefore, that the initial decision be affirmed in all respects.

Upon careful and independent review, the Commissioner concurs that Intervenor UCVTS is entitled to summary decision. As the parties note, petitioner’s entitlement to attend the magnet school in question would be prohibited if the respondent Board offered “a comparable type of program***.” (*N.J.A.C.* 6:43-3.11(a)) In this analysis, the Commissioner takes judicial notice of the New Jersey Department of Education’s *Directory of Verified Occupational Education Programs*, as revised for 1995, PTM No. 1123.00, which indicates, at page 38, that the respondent Board offers three vocational programs, approved in accordance with *N.J.A.C.* 6:43-8.1 *et seq.* Only *one* of those programs, Office Systems Technology,

overlaps with the menu of approved vocational programs offered by the UCVTS.¹ Clearly, as the record herein indicates, the program in Office Systems Technology is *not* the program which is the subject of the within controversy, as offered through the Union County Magnet High School for Science, Mathematics and Technology.² Thus, notwithstanding respondent's assertion that it offers a "comparable program" to that of the magnet high school, there is no evidence that such a program has been so approved. Respondent cannot, therefore, invoke *N.J.A.C.* 6:43-3.11(a) to prevent petitioner from attending the Union County Magnet High School for Science, Mathematics and Technology,³ and summary judgment, therefore, is properly granted to Intervenor UCVTS.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein and amplified above. Respondent is hereby ordered to pay the tuition and transportation costs for E.F., petitioner's minor child, as well as the minor children of the Intervenor parents for the respective periods of their attendance.⁴

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

July 12, 1999

¹ Although the UCVTS identifies its program as "Word Processing," both the UCVTS program and the vocational program offered by the Roselle Park Borough School District carry the same Classification of Instructional Programs (CIP) code, 520401, and are, therefore, "comparable."

² It is noted that petitioner refers to the program as "Engineering and Design Technology." (Petition of Appeal at p. 2) Additionally, in the appendix to the Clarke Affidavit, the magnet high school's program is identified as including four years of laboratory science, four years of mathematics and four years of technology offerings, referenced as "Computer Aided Drafting and Design." (Clarke Affidavit, Appendix, at pp. 1, 4)

³ However, respondent may arguably pre-empt a student's entitlement to attend the vocational program in Word Processing operated by the UCVTS.

⁴ 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.

