222-00

BOARD OF EDUCATION OF THE RAMAPO-INDIAN HILLS REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
BOARD OF EDUCATION OF THE BERGEN COUNTY VOCATIONAL TECHNICAL SCHOOL DISTRICT, BERGEN COUNTY,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner, Board of Education of the Ramapo-Indian Hills Regional High School District, challenges the legal basis for the operation of certain magnet schools (designated Academies) by the Bergen County Vocational Technical School District. Petitioner seeks a determination that it is not legally obligated to pay tuition for its resident students enrolled in the Academies operated by respondent because the Academies are not approved by the Commissioner of Education, and because operation of the Academies is contrary to the Carl D. Perkins Vocational & Applied Technology Act. Alternatively, petitioner seeks a determination that it is not liable for tuition because it operates a program that is at least comparable to that offered by respondent.

The ALJ, in granting respondent's motion for summary decision, determined that petitioner is responsible to pay tuition for its students attending respondent's Academies. The ALJ rejected the argument that the Academies were not approved by the Department and concluded that the programs offered therein are vocational within the meaning of the Perkins Act. Finally, the ALJ rejected petitioner's argument that it is not liable for tuition for resident students because it operates a comparable program in its schools.

The Commissioner affirmed in part and modified in part the decision of the ALJ. The Commissioner affirmed the determination that the Academies are approved pursuant to *N.J.A.C.* 6:43-8.2. The Commissioner also affirmed the determination that the Academies conform with State and Federal definitions of "vocational education." In addition, the Commissioner reversed the determination of the ALJ that the "comparable program" threshold requirement in the regulations, which permits boards of education to decline to pay tuition for students to attend a program in another district that is identical or comparable to a program offered in the resident district, is contrary to the enabling statute. Finally, the Commissioner determined that petitioner's programs were not comparable to the programs provided in respondent's Academies and affirmed the ALJ's grant of summary decision.

JULY 10, 2000

OAL DKT. NO. EDU 3130-00
AGENCY DKT. NO. 13-1/99

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RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner's exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4. No reply exceptions were timely filed.

Petitioner excepts to the ALJ's finding that respondent's Academy programs are, in fact, approved programs because these Academies were "founded upon" other approved vocational programs. Petitioner maintains that both statute and regulation require that "each and every course of study offered in a vocational school must be approved by the Commissioner *and* the State Board of Education ***." (emphasis in text) (Petitioner's Exceptions at 5) In this connection, petitioner contends that the ALJ failed to conduct a "proper inquiry" into whether the respondent's academy programs satisfy the requirements of *N.J.S.A.* 18A:54-1 *et seq.*; that is, petitioner seeks "a factual hearing to determine whether the Academies' programs have been approved and, if so, the standard that was applied in reaching that determination." (*Id.* at 9) Petitioner asserts that the ALJ's conclusion in this regard does not satisfy the State Board's

recent remand decision in *K.B. & G.C.I.T. v. Bd. of Ed. of Rancocas Valley Reg. H.S. District, supra*. (Petitioner's Exceptions at 10)

Petitioner further challenges the ALJ's legal conclusion that the Academies are "vocational," within the meaning of both State and Federal law. For the reasons expressed in its prior submissions before the ALJ, petitioner maintains that the curricula and course offerings available in the Academies do not reflect vocational programs. While petitioner does not dispute that the definition of vocational education must remain flexible, "it does dispute that the concept of vocational education should be read so expansively that there is essentially no difference between a vocational education and a 'regular' educational program." (*Id*. at 13)

Finally, petitioner excepts to the ALJ's finding that *N.J.A.C.* 6:43-3.11 contravenes the plain meaning of *N.J.S.A.* 18A:54-20.1, thereby rendering the regulation null and void. (*Id.* at 20) Rather, petitioner argues that the regulation in question is a "logical extension of *N.J.S.A.* 18A:54-20.1 and the two enactments must be read *in pari materia*." (*Ibid.*) Petitioner acknowledges the Supreme Court's substantial deference to regulations adopted by administrative agencies, based on the Court's recognition that:

> the "basic purpose of establishing agencies to consider and promulgate rules is to delegate the primary authority of implementing policy in a specialized area to governmental bodies with staff, resources and expertise to understand and solve those specialized problems." (*Id.*, citing *In re Amendment of N.J.A.C. 8:31B-3.31*, 119 *N.J.* 531, 543-44 (1990) (which cites to *Bergen Pines Hosp. v. Department of Human Servs.*, 96 *N.J.* 456, 474 (1984))

Moreover, petitioner asserts that the ALJ overlooked *M.R. v. Pompton Lakes, supra*, wherein the Commissioner read the pertinent statute and code together, as establishing a statewide procedure for providing vocational education to students. (Petitioner's Exceptions at 21)

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm in part, and reverse in part, the Initial Decision of the ALJ. At the outset, the Commissioner concurs that this matter is ripe for summary decision and, accordingly, accepts the factual findings of the ALJ. (Initial Decision at 3-5)

The Commissioner next affirms, for the reasons expressed in the Initial Decision, that the programs operated by respondent's academies have been approved, pursuant to *N.J.A.C.* 6:43-8.2. In so doing, the Commissioner finds that the ALJ's discussion satisfies the State Board's directive in *K.B.*, *supra*, to bring to the record "information regarding the procedure for inclusion of a program in the Directory [of Verified Occupational Educational Programs] ***." (*Id.* at 9)

Additionally, for the reasons well-articulated by the ALJ, the Commissioner finds that the Academy programs at issue herein satisfy State and Federal definitions of "vocational education,"[1] and do not contravene either the expressed language or the intent of current vocational education mandates. Specifically, with respect to Federal enactments, as the ALJ aptly notes:

> The primary purpose of the Perkins Act is "to make the United States more competitive in the work economy by developing more fully the academic and occupational skills of all segments of the population." To achieve that purpose, the Act envisions "concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society." 20 *U.S.C.A.* section 2301. (Initial Decision at 12)

Finally, the Commissioner rejects the ALJ's finding that *N.J.A.C.* 6:43-3.11(a) contravenes its enabling statute, *N.J.S.A.* 18A:54-20.1(a). In this connection, the Commissioner underscores that, read together,

[1] See also *M.R. v. Pompton Lakes, supra*, for discussion regarding State vocational education law and regulations.

> 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. *M.R. v. Pompton Lakes, supra,* slip op. at 5.

The Commissioner finds that the "comparable program" threshold requirement, as adopted by the State Board of Education, provides a framework which strikes a workable balance between a student's right to access vocational education and the State's legitimate interest in avoiding duplication of programs and costs. As petitioner notes, it would be illogical to compel a local board "to pay for its students' enrollment in an academy or magnet school program, irrespective of whether the school district offers a comparable program, or even an identical program." (Petitioner's Exceptions at 22)[2]

Accordingly, the Initial Decision of the ALJ is affirmed in part, and reversed in part, as set forth herein. Respondent's Motion for Summary Decision is granted. Petitioner is directed to remit tuition costs to respondent for its resident students attending the Academies.

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: July 10, 2000

Date of Mailing: July 10, 2000

[2] Having so found, the Commissioner further notes that the within record contains the Department's *Directory of Verified Occupational Educational Programs, revised 1995* (Initial Decision at 3, footnote 2) which does not include petitioner's University Programs. (*Ibid.*) As such, petitioner's assertion that it offers a "comparable program" to that of the respondent must be rejected, and it cannot invoke *N.J.A.C.* 6:43-3.11(a) to prevent its otherwise qualified and eligible students from attending respondent's Academies.

[3] This decision, as the Commissioner's final determination, 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.