

276-02R

K.B., on behalf of minor child, :
H.B., :

PETITIONER, :
AND :

GLOUCESTER COUNTY INSTITUTE :
OF TECHNOLOGY, :

INTERVENOR, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION ON REMAND
RANOCAS VALLEY REGIONAL :
HIGH SCHOOL DISTRICT, :
BURLINGTON COUNTY, :

RESPONDENT. :

AND

BOARD OF EDUCATION OF THE :
GLOUCESTER COUNTY INSTITUTE :
OF TECHNOLOGY, GLOUCESTER :
COUNTY, :

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE :
RANOCAS VALLEY REGIONAL :
HIGH SCHOOL DISTRICT, :
BURLINGTON COUNTY, :

RESPONDENT. :

_____ :

SYNOPSIS

In proceedings on remand directed by the State Board of Education, together with consolidated new petition, ALJ held, on summary basis, that performing arts program at Gloucester County Institute of Technology (GCIT) was not vocational within intendment of controlling statute and that GCIT had not followed proper steps for vocational program approval. ALJ concluded GCIT was therefore not entitled to tuition or transportation payments from Board for three students who attended the GCIT program.

Commissioner set aside the ALJ's findings and conclusions with respect to the characterization and approval status of the GCIT performing arts program, holding instead that it was, and is, an approved county vocational program within the intendment of applicable law. Commissioner directed Board to remit tuition and transportation costs for three students at issue.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

July 18, 2002

OAL DKT. NO. EDU 2190-00 (EDU 6974-97 on remand)
AGENCY DKT. NO. 314-9/97
OAL DKT. NO. EDU 6096-00
AGENCY DKT. NO. 160-5/00

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COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE
RANCOCAS VALLEY REGIONAL
HIGH SCHOOL DISTRICT,
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RESPONDENT.

DECISION ON REMAND

AND

BOARD OF EDUCATION OF THE
GLOUCESTER COUNTY INSTITUTE
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BOARD OF EDUCATION OF THE
RANCOCAS VALLEY REGIONAL
HIGH SCHOOL DISTRICT,
BURLINGTON COUNTY,
RESPONDENT.

The record of this consolidated matter and the Initial Decision of the Office of Administrative Law have been reviewed. In accordance with *N.J.A.C.* 1:1-18.4, the

Commissioner has considered exceptions to the Initial Decision filed by Intervenor-Petitioner Gloucester County Institute of Technology (“GCIT”) and replies thereto by Respondent Board of Education (“Board”), as well as the Board’s primary exceptions to those portions of the Initial Decision dealing with the timeliness of the GCIT’s appeal and the entire controversy doctrine.

In its exceptions, GCIT challenges the major holdings of the Initial Decision on both substantive and procedural grounds. Substantively, on the threshold issue of whether GCIT’s performing arts program is “vocational” within the intentment of applicable law, GCIT objects to

the Administrative Law Judge’s subjective impression, with no facts in the record to substantiate the claim, that training in the performing arts has not resulted in a majority of students in general and GCIT graduates in particular obtaining steady, gainful employment. Rather than a fluid, expansive, open minded vision of vocational education that is consistent with the State Plan on Vocational and Technical Education (*citation omitted*), [the ALJ] has adopted a stagnate, inert, narrow minded view from the 1950’s era reminiscent of the stereotypical vocational student who is an academic underachiever that only works on automobile engines. Rather than treating vocational education as “continually evolving,” [the ALJ] construed the concept as limited solely to the areas specifically mentioned in statutory language that was never meant to be an all-inclusive list. Rather than recognizing the real world in which fully endorsed and approved vocational programs across the State (*footnote omitted*) have already trained hundreds if not thousands of students in dance, drama, music and theater within the vocational education model, [the ALJ] simply dismisses the entire field of the performing arts as an occupation worthy of vocational education. In so doing, the ALJ has not only ignored the thousands of members in screen actor guilds and technical stage employee unions across the state and country who are engaged in gainful employment in the performing arts field, but has also reduced the efforts of the scores of professionals who have devoted their lives to preparing students for either careers in the performing arts or post secondary school studies to a “hobby” level similar to a high school chess club advisor.

More importantly, [the ALJ’s] conclusion that instruction in the performing arts is incompatible with vocational education is contrary to the long standing official policy of the New Jersey Department of Education and the U.S. Department of Education that performing arts is indeed part of the vocational education matrix. (*citations omitted*) (Intervenor-Petitioner’s Brief in Support of Exceptions at 1-3)

GCIT further objects to the ALJ's "draconian requirements of documentary proof of internal steps in an approval process undergone eight (8) years ago from county and state agencies within the New Jersey Department of Education, in the face of unrefuted proof that the initial and final stages of the process were fulfilled." (*Id.* at 4-5) Because the ALJ did not "see the work," he simply assumed that the required reviews were not undertaken and that the final approvals from the Office of School to Career were invalid as a result. (*Ibid.*)

Procedurally, GCIT urges that if the ALJ was not satisfied with its proofs on motion for summary decision, the appropriate action would have been for him to deny the motion and proceed to plenary hearing, rather than outright granting summary decision to the Board based on its opposition to GCIT's motion. (*Id.* at 5) Had this occurred, GCIT avers, it might have brought forth additional elaboration and evidence, including but not limited to a number of documents it appends to its exceptions and asks the Commissioner to consider under authority of *N.J.A.C.* 1:1-15.2(a) and (b) and *N.J.R.* Evidence Rule 201. (*Ibid.*)

In response to GCIT's substantive objections, the Board essentially reiterates arguments which were largely adopted by the ALJ. (Respondent's Reply to Intervenor-Petitioner's Exceptions at 2-6) Procedurally, it strenuously objects to any consideration by the Commissioner of documents submitted as appendices to GCIT's exceptions, citing *N.J.A.C.* 1:1-18.4(c). (*Id.* at 1) Finally, the Board urges the Commissioner, if he does not adopt the Initial Decision, either to reverse the ALJ and hold that GCIT's appeal must be dismissed as filed out of time and precluded by the entire controversy doctrine, or to remand the matter for an initial ruling on the Board's position, not addressed since the ALJ resolved the matter on a different basis, that the Board is not responsible for tuition or transportation costs because GCIT is more akin to a private vocational school than to a county vocational program, or alternatively, because

GCIT is not a vocational school at all but rather a program of interdistrict public school choice.
(*Id.* at 7-9)

Upon review of the Initial Decision, supporting record and arguments of the parties on exception, the Commissioner determines to affirm in part, and reverse in part, the Initial Decision of the ALJ.

As a threshold matter, the Commissioner affirms, for the reasons expressed in the Initial Decision, the ALJ's conclusion that GCIT's appeal was timely filed and not precluded by the entire controversy doctrine.

However, for the reasons expressed below, the Commissioner sets aside the ALJ's findings and conclusions with respect to the characterization and approval status of the GCIT performing arts program, holding instead that it was during the period at issue, and remains, an approved vocational program within the intendment of law.

The State Board of Education, in remanding this matter for further proceedings, rejected the Commissioner's prior reliance on inclusion of GCIT's performing arts program in the Department of Education's Directory of Verified Occupational Educational Programs (Directory) as "conclusive proof that the program satisfied the requirements of N.J.S.A. 18A:54-1 et seq." Instead, the State Board held that "[t]he record [was] devoid of any information regarding the procedure for inclusion of a program in the Directory during the period relevant to this matter," and that there was "[no] indication of the basis for the determination to include the GCIT performing arts program or the standard applied in determining to include that program" in the Directory, so as to enable the State Board to review "factfinding or legal analysis concerning whether the program was vocational within the intendment of the statute." (Slip Opinion at 8-9)

The ALJ sought to fulfill the State Board's remand directive through a two-prong analysis, the first prong being a review of then-applicable statute and rule so as to identify the criteria against which GCIT's program should be measured for purposes of ascertaining whether it was "vocational" in nature, and the second being an inquiry as to whether GCIT complied with the approval procedure set forth in then-applicable rule so as to qualify as an "approved" vocational program.

Turning to the first prong of the ALJ's analysis, the Commissioner does not take issue with the ALJ's selection of rules and identification of criteria to be applied, as set forth in the Initial Decision at 9-12. However, the Commissioner must concur with GCIT that the ALJ, in his findings and conclusions on this issue, Initial Decision at 11-12, substituted unsupported, generalized perceptions about the performing arts and occupations related to them for the analysis envisioned by the State Board. Indeed, the ALJ framed his discussion in terms that applied not only to the GCIT program, but also to performing arts programs in general, thereby raising statewide implications. (*Ibid.*)

At the outset, the Commissioner rejects, as a matter of both educational policy and law, any suggestion that a program in the performing arts *cannot*, by its very nature, be "vocational" within the intendment of law. Rather, he finds the appropriate analysis to be whether a particular performing arts program meets the specific criteria established for vocational, as opposed to comprehensive secondary, education programs.

According to regulation in effect at the time,¹ adopted by the State Board of Education to implement the State's system of vocational and technical education pursuant to *N.J.S.A.* 18A:54-1 *et seq.* and other applicable State and federal law, "vocational education" means:

¹ Although recodified as *N.J.A.C.* 6A:19-1.2, identical language remains in current regulation.

organized educational programs offering a sequence of courses which are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations in such fields as agriculture/agribusiness, business occupations, health occupations, home economics, marketing occupations, technical occupations, and trade and industrial occupations or for additional preparation for a career in such fields and in other occupations requiring less than a baccalaureate or advanced degree. Vocational education programs include competency-based applied learning which contributes to a pupil's academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills and the occupationally-specific skills necessary for economic independence as a productive and contributing member of society. Vocational student organization activities are an integral part of the programs. (*N.J.A.C.* 6:43-1.2)

The ALJ correctly found that, in order to be considered “vocational,” the GCIT program must be designed to “prepare individuals for paid or unpaid employment, as semi-skilled or skilled workers or technicians or semiprofessionals in recognized occupations and in new or emerging occupations; prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs; assist individuals in the making of informed and meaningful occupational choices; or achieve any combination of the above objectives.” (Initial Decision at 10, citing *N.J.A.C.* 6:43-3.1) The program must also include: instruction related to paid or unpaid employment in the occupation or the occupations for which the pupils are being trained; classroom-related academic and technical instruction, field, shop, laboratory, cooperative vocational education, apprenticeship or other occupational experiences; instruction provided for entry level employment or instruction designed to upgrade or update workers in occupational skills and knowledge in order to enhance stability or upward mobility in employment; and remedial or other instruction designed to correct educational deficiencies or handicaps which prevent pupils from benefiting from instruction designed to teach competence in occupations. (Initial Decision at 10-11, citing *N.J.A.C.* 6:43-3.2) Its instruction must be primarily designed to prepare individuals for employment in a specific occupation or for

enrollment in highly skilled post-secondary vocational and/or technical education programs, (Initial Decision at 11, citing *N.J.A.C.* 6:43-3.3(a)), and must meet the content requirements of *N.J.A.C.* 6:43-3.12, including currency, sufficiency, development in consultation with employers and other suitable advisory entities, and delivery by appropriately certified instructors.

With respect to whether GCIT's performing arts program meets these criteria, the Commissioner finds the record clear and persuasive. Included within it are documents² and the transcript of uncontroverted testimony³ unequivocally establishing that the program is *in every respect* designed to prepare students for professional careers in the performing arts, directly upon graduation, or after further college-level preparation, or both, and that it amply meets the specific regulatory requirements for vocational education set forth above. Indeed, in his Initial Decision in EDU 6974-97 (Commissioner Decision #660-97), the underlying contested matter remanded by the State Board, the same ALJ as decided the within matter on remand found as follows based upon the referenced testimony and evidence:

I **FIND** that the GCIT Academy of the Performing Arts offers a completely integrated program of specialized training in the area of drama, speech, dance and the performing arts leading to advance preparation for either employment or college level courses. I **FIND** that GCIT is a full-time career academy and it is a school within a school which teaches students who are focused in a particular area of the performing arts. There is extensive training in dance and drama courses and the traditional academic courses are integrated into, focused on and applied towards various aspects of the performing arts. I **FIND** that this program of studies prepares individuals for future employment and occupations in the performing arts, and specifically prepares students for entering into the career fields of dance, drama and radio and television production. Of the 157 credits required for graduation from the Academy (as compared to the State requirement of 110 credits for graduation from high school) 60 credits of courses in the performing arts are required for graduation. All of the teachers are fully vocational certified which requires seven years of work in a particular career field, visiting professional artists are brought in on a regular basis to teach in specialized areas, and the Academy has a paid consultant, with extensive

² Most notably, the *Program of Studies* booklet for the 1997-98 school year, Exhibit I-1.

³ Testimony of Meredith Flynn, Assistant Superintendent at GCIT, Transcript of Hearing of October 31, 1997 at 24-58. Summarized in Initial Decision EDU 6974-97 at 4-7.

experience in the performing arts, and an advisory committee made up of professionals in the field of the performing arts. I **FIND** that the Academy provides both career and personal counseling. (Initial Decision EDU 6974-97 at 15)

There is no doubt that the facts underlying this assessment, which was affirmed by the Commissioner, are not in dispute. Indeed, in excepting to this Initial Decision at the time of its issuance, the Board at no time impugned these findings, or the factual recitation underlying them. Rather, the Board excepted only to the ALJ's "comparable program" analysis vis-à-vis the Board's own offerings in fine and performing arts. (Board's Exceptions to Initial Decision EDU 6974-97, dated December 1, 1997)

Neither can the two other "deficits" cited by the ALJ serve to alter the fundamental nature of the GCIT program. With regard to the absence of a Department-developed competency test for the performing arts during the period at issue, such absence does not mean that vocational programs in this area could not exist or that competencies could not be developed to assess students preparing for careers in the performing arts. While the then-effective rule cited by the ALJ (*N.J.A.C.* 6:43-3.13) required the Department to establish competencies in the specified "major vocational education program areas," it certainly did not preclude, directly or by implication, the existence of approved, or approvable, program areas beyond those listed. Indeed, this section of rule remained limited in scope until 2001, when it was expanded to require that industry-endorsed occupational standards be developed for the entire list of career clusters recognized by the U.S. Department of Education, including "arts and communication services." (*N.J.A.C.* 6A:19-6.9, referencing 6A:19-6.5)

With regard to job placement standards, the ALJ concluded that the existence of such standards, found at *N.J.A.C.* 6:43-7.3(a), "reaffirms the idea that the main purpose of [a vocational] program is to train for employment in a specific field, something that will most likely

not be achieved by the same majority of students completing GCIT's program, as with the more technical programs.” (Initial Decision at 12) The Commissioner can find no basis in the record for such speculation, and, indeed, even the Board recognizes that the GCIT performing arts program is too new to have accumulated any meaningful placement data by which to evaluate its program in the manner envisioned by the rule. (Respondent’s Reply to Intervenor-Petitioner’s Exceptions at 4)

Turning to the second prong of the ALJ’s analysis, the question of whether GCIT complied with the approval procedure set forth in the then-applicable rule so as to qualify as an “approved” vocational program, the Commissioner once again cannot concur with the conclusions reached in the Initial Decision.

In its remand, the State Board sought development of a record on the procedures and standards by which the GCIT program came to be included in the Directory, rather than accepting such inclusion, as did the Commissioner, as a *per se* indication of approved vocational program status. (Slip Opinion at 8-9) In response, the ALJ set forth in detail the regulatory process leading to such inclusion and effectively placed upon GCIT the burden of demonstrating compliance with each step. Initial Decision at 12-15. In so doing, the ALJ concluded:

I **FIND** that there is no evidence that GCIT ever requested planning recommendations from the Workforce Investment Board or that such recommendations were submitted to County Superintendent, Dr. John M. Sherry (in fact GCIT was told notification was sufficient); I **FIND** that there is no evidence that Gloucester County Superintendent Sherry reviewed a request or recommendations of the Workforce Investment Board, and submitted a recommendation to VERP; I **FIND** that there is no evidence that VERP reviewed the Superintendent's recommendation based upon a review of the occupational supply and demand needs and local or regional availability of the proposed courses or program, nor that the panel recommended approval or disapproval of the recommendation; and I **FIND** that there is no evidence that the director, Office of School to Career and College Initiatives reviewed VERP's recommendations.

In fact, I **FIND** that there is no evidence that anyone ever fully considered the need for this type of program, taking into consideration the occupational supply and demand and availability in the region, as was required by the relevant regulations or that any of the necessary recommendations were made. Therefore, I **CONCLUDE** that there is clearly insufficient proof that GCIT complied with the procedures set forth in *N.J.A.C. 6:43-8.2(a)*, and that the program is in fact an approved county vocational school.*** (Initial Decision at 16)

The record, however, demonstrates otherwise. In response to GCIT's request to the Department for information about the Department's approval of the program at issue, Dr. Thomas Henry, the Director of the Office of School-to-Career and College Initiatives stated:

[W}e have reviewed our files and found the following information:

- Four applications for program approval were submitted to the department on June 29, 1994. The applications were for programs in: Dance/Drama; Electronic Media Technology; Technical Theater; and Wellness and Fitness Technology.⁴
- The applications included an endorsement of the programs by the Gloucester County WIB dated June 1, 1994.
- A letter from the Office of School-to-Career and College Initiatives granting approval for the Dance/Drama application was mailed to you on September 1, 1994. This approval was based on a new program title, Dance and Performing Arts, with an assigned CIP number of 50.0301.
- A letter from the Office of School-to-Career and College Initiatives granting approval for the Technical Theater/Theater Design program with an assigned CIP number of 50.0502 was mailed to you on September 7, 1994.

Please note that this information has been extracted from our summary files. When the department was relocated to our present location, space considerations made it necessary for us to reduce our file capacity by approximately 50 percent. Since federal and state regulations require the maintenance of grant program records, the bulk of our records on program approvals and routine correspondence was destroyed. Aside from the summary information listed above, we do not have any additional records pertaining to your program requests.

⁴ Intervenor-Petitioner's Brief in Support of Motion for Summary Judgment includes a copy of the Dance/Drama application as Exhibit H, the form of which provides an indication of the criteria considered in review of such applications.

The Dance and Performing Arts Program and the Technical Theater/Theater Design Program are approved occupational programs in accordance with N.J.A.C. 6:43. Should you have any additional questions, please contact me. (Intervenor-Petitioner's Brief in Support of Motion for Summary Judgment, Exhibit I; *footnote supplied*)

Additionally, Meredith Flynn testified in the prior OAL proceeding as to the process of development undertaken by GCIT for its performing arts programs, and although she was not testifying for the purpose of demonstrating compliance with program approval rules,⁵ one can ascertain even from her brief remarks that GCIT engaged in the local level planning and discussion vis-à-vis the labor market and program duplication envisioned by rule prior to submitting an approval request to the Department. (Transcript of Hearing of October 31, 1997 at 26-28)

Moreover, the Commissioner does not agree that the 1996 letters to and from then-County Superintendent John Sherry, submitted as Exhibits F and G with Intervenor-Petitioner's Brief in Support of Motion for Summary Judgment, constitute proof that the regulatory process was not followed because they show that GCIT simply concluded its proposed programs were necessary and both GCIT and the County Superintendent behaved as though mere notification of GCIT's intentions was all that was required. Rather, it is clear that the Department, in implementing its own rules, did not view the expansion of an already-approved shared-time program to full-time as a "new" course or program requiring repetition of the approval process previously undertaken, so that notification was all that was deemed necessary under the circumstances. While the Board may not agree with this view, neither GCIT nor the County Superintendent can be said to have acted contrary to the rules as interpreted and implemented by the regulating agency.

⁵ Testimony was being elicited for the purpose of describing the program so as to assess its comparability to that offered by the respondent Board.

Finally, the ALJ concludes that there is no evidence that “internal” steps were followed between the time GCIT submitted its application to the Department and the Department’s final approval. Here, the Commissioner agrees with GCIT that, in the absence of records which GCIT attempted in good faith to obtain from the Department and discovered no longer exist, it would be difficult, if not impossible, for GCIT to “prove” that its application was reviewed internally by the Department in 1994 in strict accordance with the process set out in rule. Certainly, the Board has brought forward no affirmative evidence to show that it was not, and GCIT was entitled to rely on the Department’s final approval once given in September 1994.

Thus, the Commissioner finds, with respect to the second prong of the ALJ’s inquiry, that GCIT substantively complied with its responsibilities under the regulatory approval process, and there is no evidence on record to suggest that the Department did not. Under these circumstances, the Commissioner cannot agree with the ALJ that GCIT’s performing arts program is not an “approved” vocational program notwithstanding its inclusion in the Directory. Rather, the Commissioner finds that the program was, indeed, approved during the period at issue, and has been so since September 1, 1994.⁶

Having found that the GCIT performing arts program is vocational within the intendment of the law and that it was approved by the Department through the process established for that purpose, the Commissioner must now turn to the Board’s arguments that GCIT should not be entitled to collect tuition or transportation costs for its performing arts program because, if the program is considered “vocational,” then the school is a “private vocational school” to which districts are not obliged to pay to send accepted students; or if it is not considered “vocational,” then it is a “choice” program subject to the laws and funding

⁶ There is no allegation that the original approval was ever at any time rescinded by the Department.

arrangements governing such schools. Although not addressed by the ALJ, the Commissioner believes these arguments can be disposed of without further proceedings.

The latter argument is, on its face, defeated by the Commissioner's holding that the disputed program is, in fact, vocational in nature. The former argument is based on the Board's contention that GCIT fits the regulatory description of a private vocational school in that it is "a business enterprise operated either for profit or not-for-profit which maintains a place of business within the State of New Jersey and which (1) Solicits students from the general public; (2) Charges tuition and/or other fees; (3) Offers instruction to a group of four or more pupils at one time; and (4) Offers preparatory instruction to pupils for entry level employment or for upgrading in a specific occupational field..." *N.J.A.C. 6:43-1.2.* (Respondent's Reply to Intervenor-Petitioner's Exceptions at 7-8, reiterating arguments made in its Brief in Opposition to Petitioner's Motion for Summary Judgment)

The Board argues that GCIT solicits students from the general public by advertisement and uses an audition process to accept students, taking those that are most talented rather than accommodating all interested Gloucester County students before considering students from out of county. Thus, GCIT is acting like a private vocational school, but taking advantage of the benefits accorded to county vocational schools by State law. The Board asserts that GCIT charges excessive tuition, passing its costs on to local school districts while advertising itself to parents and students as "free." (*Ibid.*)

The Commissioner rejects this argument as meritless. GCIT is clearly not a business soliciting students from the general public on a tuition basis. Like other approved county vocational programs, it is a public education program operating within the parameters established by statute and rule, drawing students from school districts in the county and

surrounding region based upon their demonstrated interest in, and ability to benefit from, the particular program it offers. Like all public education, it is supported by public funds; and like all public education, it is “free” to the individual students entitled to its benefits by law. The Commissioner finds no basis in this argument to conclude that local district boards of education should not be responsible for paying GCIT in accordance with statute for district students attending its programs.

Finally, there remains the question of any extent to which the former rule at *N.J.A.C. 6:43-3.11(a)*,⁷ which established a “tiered” system limiting access to county vocational education based on availability of a comparable program within a student’s resident district, might still be considered applicable in light of the State Board of Education’s recent decision finding that rule to be an improper implementation of its authorizing statute. *Board of Education of the Ramapo-Indian Hills Regional School District, Bergen County, v. Board of Education of the Bergen County Vocational Technical School District, Bergen County*, decided February 6, 2002. In this regard, the Commissioner observes that, in the December 29, 1997 decision in this matter, it was already determined that the Board does not offer a program comparable to that of GCIT, and the Commissioner reaffirms that conclusion herein based on his re-review of the record in accordance with the State Board’s directive on remand.

Accordingly, for the reasons expressed herein, the Commissioner affirms in part and reverses in part the Initial Decision of the Office of Administrative Law. The Commissioner holds that the performing arts program of the Gloucester County Institute of Technology is, and was during the period at issue herein, an approved county vocational program within the intendment of law, and he consequently directs the Rancocas Valley Regional Board of

⁷ In effect during the period at issue, this rule was repealed in December 2001 as part of the State Board’s revision of its Administrative Code governing vocational education. *N.J.A.C. 6A:19-1 et seq.*

Education to remit to GCIT the sum of \$82,295.02 in payment for the tuition and transportation costs of students H.B., K.W. and R.H. as set forth in GCIT's amended petition.^{8 9}

This matter is hereby forwarded to the State Board of Education, which has retained jurisdiction.

IT IS SO ORDERED.¹⁰

COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2002

Date of Mailing: July 19, 2002

⁸ It is noted that the Board did not dispute the *amount* of tuition calculated by GCIT for the students in question.

⁹ In rendering the within decision, the Commissioner did not consider, or in any way rely upon, the documents appended to GCIT's Exceptions except to the extent that they had already been submitted to the record before the ALJ. (Contrary to the Board's assertion, not all of the documents appended to GCIT's exceptions were new submissions.)

¹⁰ 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.