

BOARD OF EDUCATION OF THE :
VOCATIONAL SCHOOL OF THE :
COUNTY OF PASSAIC, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
MANCHESTER REGIONAL HIGH :
SCHOOL DISTRICT, :

RESPONDENT. :

SYNOPSIS

The petitioning Board of the Passaic County Technical Institute (PCTI) seeks tuition payment from the respondent Board of the Manchester Regional High School District (Manchester), alleging that Manchester's refusal to remit tuition for its resident students attending the PCTI for the 2004-2005 school year is in violation of *N.J.S.A. 18A:54-20.1* and *N.J.A.C. 6A:19-3.1*. Both parties filed motions for summary decision, submitting a joint stipulation of facts which was adopted by the ALJ as her factual findings.

The ALJ found, as a matter of law, that the language of both the statute and the implementing regulation at issue here is clear and unambiguous, and therefore not subject to judicial interpretation. Furthermore, the respondent's reliance on a regulatory summary to support the position that Manchester is not obligated to pay sending tuition to the PCTI because it offers certain programs which are similar to programs offered by the vocational school, is misplaced and inappropriate. The plain language of the statute is mandatory: a district or regional board of education must send and pay tuition for any student who has applied for and has been granted admission to a vocational school operated by a county vocational school district. The ALJ granted summary decision in favor of the PCTI and ordered Manchester to pay tuition for its students who attend the vocational school.

The Commissioner concurs with the conclusions of the ALJ as set forth in the initial decision, that the respondent's contention that it is not required to pay tuition for academic instruction received by students enrolled at the vocational school because such courses are available in the Manchester district, is unsupported in statute and regulation. The Commissioner adds that respondent's argument was raised and rejected in prior cases, and respondent's assertion that withholding tuition from petitioner advances the cost-cutting goals of Public Law 2004, Chapter 73 is spurious. Furthermore, Manchester's suggestion that students are better off socially and culturally attending school in their district of residence is unsupported by facts, and the benefit to Manchester's vocational students of a strategy that requires shuttling them back and forth each day between two districts is unclear, even assuming such scheduling were logistically possible. Accordingly, the initial decision of the OAL is adopted as the final decision in this matter, and the ALJ's recommended orders for relief shall be implemented forthwith.

<p>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.</p>

OAL DKT. NO. EDU 5964-04
AGENCY DKT. NO. 157-4/04

BOARD OF EDUCATION OF THE :
VOCATIONAL SCHOOL OF THE :
COUNTY OF PASSAIC, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
MANCHESTER REGIONAL HIGH :
SCHOOL DISTRICT, :
RESPONDENT. :
_____ :

The record in this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed. Upon review, the Commissioner concurs with the conclusions of the Administrative Law Judge (ALJ) as set forth in the initial decision.

The following pertinent facts have been stipulated by and between the parties.

The Passaic County Technical Institute (PCTI), located in the Township of Wayne, Passaic County, is a duly authorized county vocational school operated by the petitioner. Admission is open to all Passaic County high school students, and both full-time and part-time or shared-time vocational and technical educational programs are offered. Pursuant to *N.J.S.A. 18A:54-20.1*, petitioner charges tuition on a per student basis to the sending districts. Petitioner charges \$9,564 for regular full-time students,

\$14,529 for full-time special needs students, and \$3,500 for half-share or shared-time students.

Respondent operates Manchester Regional High School, a comprehensive high school that serves the boroughs of Haledon, North Haledon and Prospect Park, providing a full range of academic classes. Respondent Board does not maintain a vocational school, pursuant to Article 2 of Chapter 54 of Title 18A of the New Jersey Statutes, but does offer four Classification of Instructional Program (CIP) approved occupational programs. Three of these programs are also offered by PCTI: business education / accounting technician; business education / general office; and technology and communications / CISCO Networking Academy.

On January 29, 2004, the Manchester Regional High School District Board of Education (respondent) passed a resolution directing that “starting with the 2004-2005 Freshman class, payment of full-time tuition payments not be paid to Passaic County Technology Institute (PCTI)” and “the Board of Education will not pay tuition to PCTI for students taking the same vocations courses that are offered at Manchester Regional High School for which MRHS has a CIP number.”

In a February 4, 2004, letter to PCTI, Superintendent Kwak of the Manchester Regional High School District (Manchester District) advised that for the 2004-2005 school year the Manchester District would only pay the PCTI District for “‘Shared Time’ (the instructional time allocated only for vocational instruction – not academic instruction) services.” The Superintendent also informed PCTI that it was “the Board’s intent not to be financially responsible for any vocational instruction given to

students who could otherwise attend Manchester in comparable CIP approved course [sic].”

On February 12, 2004 the PCTI District responded to the Manchester District, directing its attention to *N.J.S.A. 18A:54-20.1(a)*, *Board of Ed. of the Union County Vocational-Technical School v. Board of Ed. of the City of Linden*, Dkt. No. EDU 11819-99, decided October 18, 2002, and *N.J.A.C. 6A:19-3.1*, contending that those authorities preclude the action contemplated by respondent. While the Manchester Superintendent wrote to PCTI on March 26, 2004, advising that he had brought the statutory and case law to the attention of respondent, there was ultimately no reversal in respondent’s position. However, respondent did defer taking any action on its resolution until the 2005-2006 school year.

On April 29, 2004, the PCTI Board (petitioner) submitted to the Department of Education a petition seeking an order directing respondent to pay tuition for PCTI students from the Manchester Regional High School (Manchester RHS), sending district pursuant to *N.J.S.A. 18A:54-20.1*. In Charge No. 1, petitioner alleged that respondent’s intended withholding of tuition would violate *N.J.S.A. 18A:53-20.1*. In Charge No. 2, petitioner claimed that respondent’s intended withholding of tuition would also violate *N.J.A.C. 6A:19-3.1*.

Respondent answered on June 1, 2004, denying the charges.

At any time after a case is determined to be contested, a party may move for summary decision upon all or any of the substantive issues therein. *N.J.A.C. 1:1-12.5(a)*. A summary decision may be rendered if the submissions show that there is no genuine issue of material fact, and the moving party is entitled to prevail as a

matter of law. Both parties here have moved for summary decision and, by virtue of their submission of a joint stipulation of facts, there is no genuine issue of fact to be resolved.

Thus, a summary determination on the law is appropriate.

As to the protocol for student attendance at county vocational schools,

N.J.S.A. 18A:54-20.1(a) provides:

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 who has been accepted for attendance at any of the schools of the county vocational 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. (Emphasis added.)

N.J.S.A. 18A:54-20.1(c) provides, in pertinent part:

The board of education of a county vocational school district *** 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 *** 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 ***. (Emphasis added.)

Respondent concedes that it does not maintain a vocational school. Thus, by virtue of the mandatory language in *N.J.S.A.* 18A:54-20.1(a), it must pay the tuition of the students in its district that attend PCTI.

Further, one of the regulations implementing *N.J.S.A.* 18A:54-20.1, namely, *N.J.A.C.* 6A:19-3.1(a), also directs sending districts to pay the tuition of its students who attend county vocational schools:

All students shall be guaranteed the right to apply to and, if accepted, to attend a county vocational school. The sending district shall be responsible for the tuition and transportation costs for students admitted to a county vocational school. (Emphasis added.)

As the ALJ noted, the mandate in the statute and regulation is not qualified in any way (p.8). There is no exemption allowing sending districts to decline to pay tuition for county vocational school students taking occupational courses that are also offered by the sending district. There is similarly no provision allowing tuition reductions for the academic portions of the vocational students' programs.

Respondent urged the ALJ to ignore the plain language of the statute, *N.J.S.A.* 18A:54-20.1, and the above referenced implementing regulation, *N.J.A.C.* 6A:19-3.1(a), and rely instead on language in two regulatory summaries. One summary, specifically of *N.J.A.C.* 6A:19-3.1, appeared in the New Jersey Register before the regulation was enacted. The other one is a broad brush summary, published by the Department of Education, of all the provisions in *N.J.A.C.* 6A:19. The language which is the focus of respondent's arguments states:

The section includes new language which guarantees qualified students the right to attend a county vocational school, and further requires that the sending district board of education pay the associated tuition and transportation costs, as long as the resident district does not offer an approved, identical type of program. (Emphasis added.)

The Commissioner agrees with the ALJ that this argument has no merit. First, the language in the summary is inconsistent with the language of the regulation. The discrepancy can be understood when the language of *N.J.A.C.* 6A:19-3.1(a) is compared with *N.J.A.C.* 6A:19-3.1(b). In *N.J.A.C.* 6A:19-3.1(a), quoted above, sending districts are unconditionally required to pay tuition for qualified resident students who

attend county vocational schools. *N.J.A.C. 6A:19-3.1(b)*, addresses a different set of students, i.e., those who wish to go to a vocational program in another local district. It provides:

Students shall be permitted to enroll in programs of vocational instruction offered by local district boards of education other than their resident district so long as the resident local district board of education agrees to pay the tuition and transportation costs and does not offer an identical type of program, which is approved and meets or exceeds current program performance standards, with the same Classification of Instructional Programs (CIP) code, and as long as space is available for additional enrollees in the programs offered by the receiving district board of education.

Clearly, it is the latter set of students -- i.e., students who wish to take occupational courses in another local school district -- that may not receive tuition from the sending district if the sending district offers the same vocational programs as the student's intended receiving district.

It is unfortunate that the summary is misleading, since it is intended to facilitate understanding of the regulation. There is no question, however, that explanatory materials may not be relied upon where they contradict the plain language of a regulation. *See, e.g., Aetna Insurance Company v. Trans American Trucking Service*, 261 *N.J. Super.* 316, 328 (App. Div. 1993), where the court held that the content of the *New Jersey Workers' Compensation and Employers' Liability Insurance Manual*, compiled by the Compensation Rating and Inspection Bureau, which bureau is presided over by a special deputy commissioner of banking and insurance, did not have the force of law, because it had not been adopted as a regulation under the Administrative Procedure Act, *N.J.S.A. 52:14b-1 et seq.* Thus, the content of the manual could not be elevated above the legal definition of independent contractor. *Ibid.*

Second, even if respondent's interpretation of the regulation were correct, the regulation could not trump the plain meaning of the statute. *I.M.O. Appeal of Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats for Threatened and Endangered Species" and "Swale")*, 7:7A-2.5(b)(2), and 7:7A-2.7(f), 240 N.J. Super. 224, 230 (App. Div. 1989) ("If the regulation is plainly at odds with the statute, it is *ultra vires*."). And where the language of a statute is clear and unambiguous, there is no room for judicial interpretation. *Macysyn v. Hensler*, 329 N.J. Super. 476, 485 (App. Div. 2000).

Third, petitioner's argument was raised and squarely rejected in prior cases. In *Board of Education of the Bergen County Vocational and Technical School District, Bergen County v. Board of Education of the Ramapo-Indian Hills Regional School District, Bergen County*, OAL Dkt. No. EDU 7891-03, Agency Dkt. No. 201-6/03 (August 25, 2004), *adopted* (Comm. Ed. October 13, 2004), the Board of Education of the Bergen County Vocational and Technical School District (Bergen County VTS District) sought tuition and transportation costs from the Ramapo-Indian Hills Regional School District (Ramapo-Indian Hills District). The Ramapo-Indian Hills District offered some vocational programs that were allegedly identical to programs at Bergen County VTS, but did not operate a vocational school *per se*. Some of its resident students chose to attend Bergen County VTS.

The Commissioner in that case determined that, where a sending district does not operate its own vocational school, the sending district must pay tuition and transportation costs for its resident students who attend the county vocational school, even if vocational programs offered by the sending school district are CIP approved and

identical to those offered by the county vocational school. (Commissioner’s Decision at 5.) Thus, the Ramapo-Indian Hills District was ordered to pay tuition and transportation costs. *Ibid.*¹

Separate and apart from the issue of statutory intent, respondent argues that withholding tuition from petitioner would help respondent’s district advance the cost-cutting goals of Public Law 2004, Chapter 73, “An Act concerning school district budget caps and amending and supplementing parts of the statutory law.” But, as the ALJ determined, the legislature, via *N.J.S.A.* 18A:54-20.1, has mandated that local districts must pay county vocational districts for the costs associated with educating students from the local districts. Obviously, respondent may not advance the purposes of one law by violating another. Moreover, there is no basis to believe that in passing Public Law 2004, Chapter 73, the legislature contemplated that local districts could cut costs by defaulting on their obligations to county vocational school districts. It is unlikely that the legislature anticipated that a rob-Peter-to-pay-Paul approach could achieve state-wide stability in education funding.

Finally, respondent contends that even where its resident students attend PCTI and take courses not offered in the Manchester District, respondent should not be required to pay tuition for academic instruction received by those students. Respondent argues that such courses are offered in the Manchester District, and students are better off

¹ Respondent interprets footnote 2 in the Bergen County VTS – Ramapo-Indian Hills decision as an acknowledgment of the relevance of a district’s offering of CIP approved vocational programs. The footnote states: “It is assumed for purposes of this analysis that Ramapo’s programs do, in fact, operate under valid CIP codes, since, in the absence of such approval, there could be no arguable basis whatsoever for a claim of the type Ramapo attempts to make herein.”

As a threshold matter, the footnote is dictum and has no precedential value. Additionally, the Commissioner was referring to a factual basis for a claim. Obviously, if the facts had not supported the allegation that the Ramapo-Indian Hills’ vocational courses were approved in the designated CIP categories, there would have been no need to reach the legal issues.

socially and culturally attending school in their district of residence. As the ALJ recognized, there is no support in the statute or regulation for this position. (Initial opinion at 8.) Further, respondent offers no facts to support its assertions, and it is not at all clear how students can benefit from having to shuttle back and forth each day between two districts, assuming such scheduling to be logistically possible.

Accordingly, for the reasons expressed by the ALJ and herein, petitioner is entitled to a summary decision in its favor, granting it tuition and transportation costs as a matter of law. Respondent's cross motion for summary decision is dismissed with prejudice. The initial decision of the OAL is adopted as the final decision in this matter, and the ALJ's recommended orders for relief are to be implemented forthwith.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of decision: June 27, 2005

Date of mailing: June 27, 2005

² This decision 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.*