

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of Deptford,
Gloucester County,

Petitioner,

v.

Board of Education of the Gloucester County
Vocational School District, Gloucester County,

Respondent.

Synopsis

Petitioning school district (Deptford) sought an order relieving it of the obligation to pay the tuition and transportation costs for its students to attend the Gloucester County Institute of Technology (GCIT), which is operated by the Gloucester County Vocational-Technical School District (GCV-TSD). Petitioner contended that it offers Career and Technical Education (CTE) programs that are equivalent to those offered at GCIT and is therefore the functional equivalent of an approved vocational school; accordingly, petitioner argued that it is exempt from paying tuition and transportation costs for its resident students to attend GCIT when the same or similar courses are offered in the Deptford School District. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case and the matter is ripe for summary decision; Deptford has created three CTE programs (Academy of Biomedical Science and Nursing/Allied Health; Academy of Engineering and Computer Science; and Spartan School of Carpentry) and received CTE program approval from the NJDOE; the Commissioner previously decided the issue of whether operating approved CTE programs is the same as operating a vocational school (*see, Board of Education of the Delaware Valley Regional High School District, Hunterdon County v. Board of Education of the Hunterdon County Vocational School District, Hunterdon County, et al.*, Commissioner's Decision No. 124-20, decided June 8, 2020, affirmed 2021 *N.J. Super Unpub.* 3090 (App. Div. 2021)) and determined that approved CTE programs are not the equivalent of a vocational school; establishment of a vocational school requires a separate application and approval process; there is no evidence in the record that Deptford has applied for approval to establish a vocational school; accordingly, Deptford is not exempt from paying the tuition and transportation costs for its students who apply and are accepted to attend GCIT under *N.J.S.A.* 18A:54-20.1 and *N.J.A.C.* 6A:19-2.3. The ALJ granted GCV-TSD's motion for summary decision and dismissed Deptford's petition.

Upon review the Commissioner, *inter alia*, concurred with the ALJ's findings and conclusion in this case. Accordingly, the Commissioner adopted the Initial Decision as the final decision in this matter and dismissed the petition.

<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>

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of Deptford,
Gloucester County,

Petitioner,

v.

Board of Education of the Gloucester County
Vocational-Technical School District, Gloucester
County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Petitioner Deptford Township Board of Education (Deptford) seeks an order declaring that it is not required to pay the tuition or transportation costs for its students to attend the Gloucester County Institute of Technology (GCIT), which is operated by the Gloucester County Vocational-Technical School District. Deptford argues that because it offers Career and Technical Education (CTE) programs that are equivalent to those offered at GCIT, it is the functional equivalent of an approved vocational school, and it is therefore exempt from paying tuition and transportation costs.

The Administrative Law Judge (ALJ) found that Deptford's CTE programs are not the equivalent of a vocational school, and Deptford is not exempt from paying the tuition and transportation costs for its students who attend GCIT under *N.J.S.A. 18A:54-20.1* and *N.J.A.C. 6A:19-2.3*. The ALJ cited to *Board of Education of the Delaware Valley Regional High School District,*

Hunterdon County v. Board of Education of the Hunterdon County Vocational School District, Hunterdon County, et al., Commissioner’s Decision No. 124-20, decided June 8, 2020, affirmed 2021 *N.J. Super Unpub.* 3090 (App. Div. 2021), in which the Commissioner decided the same issue and determined that operating approved CTE programs is not the same as operating a vocational school, the establishment of which requires a separate application and approval process. The ALJ found that the record does not reflect any correspondence between Deptford and the Department seeking approval and establishment of a vocational school.

The Commissioner agrees with the ALJ that Deptford is required to pay the tuition and transportation costs for its students to attend GCIT. *N.J.S.A.* 18A:54-20.1 and *N.J.A.C.* 6A:19-2.3 establish that boards of education shall send and pay tuition for its resident students who are accepted to attend a county vocational school district, unless the board of education maintains an approved vocational school. The Commissioner is in accord with the ALJ’s determination that Deptford does not have approval to operate a vocational school, nor is its CTE program the same as a vocational school, so it is not exempt from the tuition and transportation requirement.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 9, 2023
Date of Mailing: March 10, 2023

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING SUMMARY DECISION

OAL DKT. NO. EDU 05269-22

AGENCY REF. NO. 102/5-22

**BOARD OF EDUCATION OF THE
TOWNSHIP OF DEPTFORD,
GLOUCESTER COUNTY,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
GLOUCESTER COUNTY VOCATIONAL
SCHOOL DISTRICT,
GLOUCESTER COUNTY,**

Respondent.

Albert K. Marmero, Esq., for petitioner (Long, Marmero & Associates, LLP,
attorneys)

Caitlin Pletcher, Esq., for respondent (Florio, Perrucci, Steinhardt, Capelli, Tipton
& Taylor, LLC, attorneys)

Record Closed: November 8, 2022

Decision: December 21, 2022

BEFORE **TAMA B. HUGHES**, ALJ:

STATEMENT OF CASE

The Board of Education of the Township of Deptford (“Deptford” or “petitioner”) filed a “Petition of Appeal” seeking a declaratory ruling of a February 7, 2022, decision by the Gloucester County Interim Executive County Superintendent (Superintendent) holding petitioner responsible for the tuition and transportation costs of any resident student admitted to the Gloucester County Vocational-Technical School District (“GCVTD” or “respondent”). It is Deptford’s contention that they complied with the applicable statutes and regulations when they created and instituted a State recognized “Career and Technical Education” (CTE) program that was assigned the same Classification of Instructional Program (CIP) code as a vocational school. As such, they should be exempt from the tuition and transportation costs of any of their residents/student admitted to GCVTD’s program when the same or similar courses are offered in their own district.

PROCEDURAL HISTORY

By letter, dated January 28, 2022, Deptford informed parents and guardians of students in their district that commencing in the 2022/2023 school year, Deptford would no longer pay the tuition and transportation costs for students enrolled in certain programs at the Gloucester County Institute of Technology (GCIT) — GCVTD’s vocational school. On February 7, 2022, the superintendent issued a decision rejecting Deptford’s plan to stop tuition and transportation reimbursement.

On May 5, 2022, Deptford appealed to the Commissioner of Education seeking a declaratory ruling in its favor. On May 26, 2022, GCVTD filed its answer and a cross-petition for a declaratory ruling. On June 20, 2022, Deptford filed its answer to GCVTD’s cross-petition.

On June 23, 2022, the Acting Commissioner of the Department of Education transmitted the matters to the Office of Administrated Law (OAL) to be heard as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. An initial call was

held on August 24, 2022, at which time the parties were provided dates to file cross motions for summary decision and their respective oppositions. Upon receipt of the parties moving papers, the record closed on November 8, 2022.

FINDING OF FACT

1. GCVTD was established in 1970 as the county vocational school for Gloucester County and pursuant to N.J.S.A. 18A:54-6, the Commissioner of Education (“Commissioner”) approved the establishment and operation of GCIT.
2. GCVTD provides multiple CTE programs at GCIT, which include among other things, programs in: Health Sciences/Allied Health/Health Sciences, General; Engineering Technology, General; and Carpentry/carpenter.
3. Deptford operates the Deptford Township School District located in Gloucester County and pays the tuition and transportation costs for its resident students who attend GCIT.
4. Starting in 2018 to 2021, Deptford created and instituted three CTE courses of study: (1) Academy of Biomedical Science and Nursing/Allied Health Sciences, (2) Academy of Engineering and Computer Science, and (3) Spartan School of Carpentry. The CTE courses were approved by the New Jersey Department of Education (NJDOE) pursuant to N.J.A.C. 6A:19-3.1 and 3.2 and assigned the appropriate CIP codes. (Petitioner’s brief, Exhibits A–D.)
5. GCVTD offers the same CTE programs at GCIT, all of which are approved by the NJDOE.¹ (Respondent’s brief, pages 3–4.)

¹ Some of the courses may be listed under different titles and a different CIP code.

6. By letter, dated January 28, 2022, Deptford informed parents and guardians of students in their District that commencing in the 2022/2023 school year, it would no longer pay the tuition and transportation costs for students enrolled in the following programs at GCIT:

GC Vo-Tech Program	Deptford High School Equivalent Program
Health Science	Academy of Biomedical Science and Nursing/Allied Health
Engineering Technology	Academy of Engineering and Computer Science
Carpentry	Spartan School of Carpentry

Deptford also advised parents/guardians that “We are also required by law to cover tuition and transportation costs of any resident student enrolled in a county vocational program, unless we offer the same program within our district. The law defines “the same” as being Department of Education approved, assigned the same Classification of Instructional Program (CIP) code, and meeting or exceeding all applicable program performance standards.” (Petitioner’s brief, Exhibit F.)

7. By letter, dated February 7, 2022, the superintendent issued a decision rejecting Deptford’s plan to stop tuition and transportation reimbursement citing to N.J.A.C. 6A:19-2.3 and N.J.A.C. 18A:54-5 *et seq.* and the fact that Deptford did not maintain a vocational school. (Petitioner’s brief, Exhibit F.)
8. Deptford is not an approved vocational school and has not applied for such status with the State Department of Education.

LEGAL ARGUMENT AND CONCLUSION

N.J.A.C. 1:1-12.5 provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that

there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Our regulation mirrors R. 4:46-2(c), which provides that “the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed.2d 202, 212 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby at 252, 106 S. Ct. at 2512, 91 L. Ed.2d at 214.

Based upon the facts in the present matter as set forth more fully above, I **CONCLUDE** that this matter is ripe for summary decision.

There are no genuine issues of material fact in this matter. The respondent provides a vocational program at GCIT. Petitioner has District students who attend this program and pays their tuition in accordance with N.J.S.A. 18A:54-20.1(a). The petitioner has created three programs (Academy of Biomedical Science and Nursing/Allied Health, Academy of Engineering and Computer Science, Spartan School of Carpentry) and

received CTE program approval from the NJDOE. However, the petitioner does not operate a vocational school and has not applied or received approval to run a vocational school.

Petitioner argues that in each of its course offerings, it has demonstrated that they meet all requirements for a CIP classification under N.J.A.C. 6A:19-2.3, satisfied all program requirements for a CTE program outlined under N.J.A.C. 6A:19-3.1 and therefore its courses are the same as those offered by respondent. Moreover, petitioner avers it has received for the Fiscal Year 2023, an allocation of \$27,654,595 in Perkins Grant Funds, for the advancement of its CTE program. Taken collectively, petitioner believes that its good faith efforts to create and obtain NJDOE approval of its CTE courses, is the functional equivalent of an approved vocational school that offers the same courses as the regional vocation school, in this case, GCIT. Therefore, it satisfies the two-part test for exemption of tuition and transportation cost payments under N.J.A.C. 6A:19-2.3(a)(1).

Respondent's argument focuses on the fact that the Commissioner of Education has never declared petitioner a vocational school under N.J.S.A. 18A:54-6. Nowhere in petitioner's motion or supporting documents is there the Commissioner's approval for petitioner to establish and maintain its own vocational school. Likewise, in review of petitioner's papers, is there any evidence that petitioner has considered or voted on a resolution to create a vocational school. While there is evidence that petitioner has created and sought approval for vocational courses which they self-labeled as "Academies" or the like, there are no letters or applications to the Commissioner seeking actual approval as a vocational school pursuant to the statute. As such, summary decision is the appropriate remedy as a matter of law because petitioner does not meet the statutory or regulatory requirements for exemption from paying tuition and transportation costs for their resident students currently enrolled at GCIT.

Respondent is correct.

In this matter, N.J.S.A. 18A:54-20.1 and the corresponding code N.J.A.C. 6A:19-2.3 are controlling.

N.J.S.A. 18A:54-20.1 states in pertinent part:

- a. 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 has been accepted for attendance at any of the schools of the county vocational school 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.A.C. 6A:19-2.3, which mirrors, N.J.S.A. 18A:54-20.1 states in pertinent part:

- (a) Each resident district board of education shall ensure that resident students may apply to and, if accepted, attend a county vocational school pursuant to N.J.S.A. 18A:54-20.1. The existence of the same career and technical education program at the resident district board of education shall not negate a student's right to apply to and, if accepted, attend a county vocational school, subject to the following limitations:
 1. The resident district board of education shall be responsible for the tuition and transportation costs of any resident student admitted to the county vocational school in which the school district is located, unless the resident district board of education maintains a vocational school pursuant to N.J.S.A. 18A:54-5 et seq., and such school offers the same program as the county vocational school where the student has been admitted. A program shall be deemed the same, for purposes of this section, if it is approved by the Department in accordance with N.J.A.C. 6A:19-3.1 and 3.2, is assigned the same Classification of Instructional

Programs (CIP) code, and meets or exceeds all applicable program performance standards . . . [emphasis added]

N.J.S.A. 18A:54-5 provides that “the board of education of any school district or regional school district may establish and maintain vocational schools.” Id. That authority however is qualified under N.J.S.A. 18A:54-6 which states:

Before any such school shall be established, the location and rules for the management of the school, the course, or courses of study to be pursued therein, and all changes in such courses shall be approved by the commissioner, subject to the advice and consent of the state board. Id.

Thus, it is critical to determine whether the approval for a CTE program is the equivalent to being an approved vocational school, and if this relieves a board of education from the obligation to pay for resident students who are enrolled at a regional vocational school as set forth in N.J.S.A. 18A:54-20.

This exact issue was recently addressed in Delaware Valley Regional High School District, Board of Education v. Hunterdon County Vocational School, EDU 13276-19, Final Decision (June 8, 2020), affirmed Superior Court of New Jersey Appellate Division, Docket No. A-3927-19, 2021 N.J. Super. Unpub. LEXIS 3090 * | 2021 WL 5872879.

In Delaware Valley, the same issue of law and similar facts were raised. Similar to the petitioner in this matter, Delaware Valley had state approved CTE programs of study which were assigned CIP codes. Delaware Valley sought a determination that because it had state approved CTE programs, it was the equivalent of being a vocational school so that it could qualify for tuition and transportation exemption. The Commission adopted the ALJ’s findings and confirmed that “operating a CTE program is not the same as operating a vocational school” and concluded that a Board of Education “does not fall into the exception outlined in N.J.S.A. 18A:54-20.1(a) because it does not operate a vocational school since it never applied or been approved to do so.” (Final Decision at page 5.)

In affirming the Commissioner's Final Decision, the Appellate Division determined that:

[I]t was not arbitrary, capricious, or unreasonable for the Commissioner to conclude Delaware Valley Board does not operate a vocational school. The relevant Department regulations consistently differentiate the terms school, program, and program of study. See, e.g., N.J.A.C. 6A:19-2.1. Thus, approval to administer a CTE program is not the equivalent of approval to operate a vocational school. As the ALJ aptly noted, Delaware Valley Board "does not have an approved 'school[,] . . . only . . . an approved 'program.'" Delaware Valley Board asserts that contrary to legislative intent, current Department regulations do not provide a mechanism for a regional board of education to obtain approval to operate a vocational school. However, Delaware Valley Board has not sought the Commissioner's approval to operate a vocational school as authorized by statute; it only requested authorization to offer a CTE program, which was approved.

N.J.S.A. 18A:54-5 declares that district and regional school boards "may establish and maintain vocational schools," and N.J.S.A. 18A:54-6 conditions the establishment of district and regional vocational schools on Commissioner approval. Consequently, on this record, we have no basis for concluding Delaware Valley Board operates a vocational school or that the Commissioner denied it the opportunity to establish a vocational school contrary to legislative intent.

Id. at 11-12.

Petitioner argues that it has satisfied the various pieces and parts of the regulatory framework to be a vocational school when it was granted NJDOE approval to offer various CTE courses. Petitioner cites to Delaware Valley, for the proposition that when the controlling statute and implementing regulations as to vocational schools are unclear, a Court should not defer to the agency's interpretation of the statutory language and regulatory scheme because to do so would be "plainly unreasonable." This is a misreading of Delaware Valley.

The Appellate Division in Delaware Valley provided an in-depth analysis of N.J.S.A. 18A:54-20.1(a) and what was necessary to qualify as a vocational school pursuant to the applicable regulations. Citing to N.J.S.A. 18A:54-6, the Court determined

that the Commissioner must approve the location, management rules, and courses of study of all district and regional vocational schools. Citing to N.J.A.C. 6A:19-2.1(c) the Court also noted that boards of education cannot label their schools and programs “career and technical” or “vocational-technical” without NJDOE approval. Id. at 11.

Similar to Delaware Valley, petitioner in this case is not a NJDOE approved vocational school. While it has several NJDOE approved CTE course/programs, that alone does not qualify it to be a vocational school. See N.J.S.A. 18A:54-5 *et seq.* There is nothing in the record to reflect any board minutes, letters or other correspondence by the petitioner to the NJDOE consistent with the statutory requirements, seeking approval and establishment of a vocational school.

As succinctly stated in Delaware Valley, approval to administer a CTE program is not the equivalent of approval to operate a vocational school. For all of the foregoing reasons, I **CONCLUDE** that petitioner’s CTE courses/program as approved by the NJDOE, is not the equivalent to approval as a vocational school. I further **CONCLUDE** that petitioner is not exempt from paying tuition and transportation costs of its students who apply for and are admitted to the CTE program at GCIT.

ORDER

I hereby **ORDER** that the Board of Education of the Gloucester County Vocational School District’s Motion for Summary Decision is hereby **GRANTED** and that the Board of Education of the Township of Deptford’s Cross-Motion for Summary Decision is **DENIED**, and their petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 21, 2022

DATE



TAMA B. HUGHES, ALJ

Date Received at Agency:

Date Mailed to Parties:

TBH /gd

APPENDIX

EXHIBITS

For petitioner

- Petitioner's Brief for Motion for Summary Decision
- Opposition to Respondent's Motion for Summary Decision
- Letter brief in support of Petitioner's Motion for Summary Decision and Respondent's Opposition to Petitioners Motion for Summary Decision

For respondent

- Respondent's Brief for Motion for Summary Decision
- Respondent letter brief in Opposition to Petitioner Motion for Summary Decision