

313-00

BOARD OF EDUCATION OF	:	
SCOTCH PLAINS-FANWOOD,	:	
UNION COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
UNION COUNTY BOARD OF	:	DECISION
CHOSEN FREEHOLDERS, BOARD	:	
OF EDUCATION OF THE UNION	:	
COUNTY VOCATIONAL-	:	
TECHNICAL SCHOOL DISTRICT AND	:	
NEW JERSEY STATE DEPARTMENT OF	:	
EDUCATION,	:	
	:	
RESPONDENTS.	:	

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SYNOPSIS

Petitioning Board challenged the legality of a magnet school operated by the Union County Vocational-Technical School District (UCVT), contending that the programs of the magnet school are outside the scope of vocational education as defined in *N.J.S.A. 18A:54-1 et seq.* and violative of federal law. The Board sought an order restraining the UCVT from accepting students residing within its district and from collecting tuition for such students enrolled in the magnet school. The Board contended that it is not liable for tuition because, as contemplated by *N.J.A.C. 6:43-11*, it offers a program at least comparable to that offered by the magnet school.

The ALJ granted partial summary decision to the UCVT. The ALJ concluded that 1) the Board was time-barred from attempting to avoid its obligation to pay tuition and transportation costs for resident students who attended UCVT's magnet school during 1997-98; 2) operation of a magnet school does not violate state constitutional and statutory law or the Perkins Act; and 3) that the matter (Count IV of the Amended Petition) should be referred to the Department to verify that the courses offered at the magnet school have received the required state approval and are not duplicative of the existing programs offered at the local level. (*Ramapo-Indian Hills*)

The Commissioner adopted findings and determination in Initial Decision as his own with modification. The Commissioner found that Count IV of the Amended Petition was properly dismissed on summary basis since the Board failed to set forth any specific allegations, and facts supporting them, which would constitute a basis for its position that it offers a comparable or superior vocational educational program nor did it allege that its program, to the extent that one exists, had been approved by the Department. The Commissioner summarily dismissed the Petition of Appeal and directed the Board to remit tuition costs to the UCVT for its resident students attending the Magnet High School for the 1997-98 school year and, thereafter, for any similarly situated students for whom tuition has not been paid.

September 22, 2000

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner filed exceptions, as did respondents Union County Vocational Technical School District (UCVT) and the Department of Education, in accordance with *N.J.A.C. 1:1-18.4*.

In its exceptions, petitioner contends that: 1) this matter is not appropriate for summary decision, in that “there is an abundance of factual issues” which have not been brought to the record, particularly with respect to a comparability analysis. (Petitioner’s Exceptions at 1); 2) the Initial Decision is inconsistent with the State Board’s remand in the matter entitled *K.B. v. Board of Education of the Rancocas Valley Regional High School District, Burlington County, State Board Decision*, March 1, 2000; 3) the Administrative Law Judge (ALJ) erroneously dismissed petitioner’s contention that the UCVT is not a vocational school within the statutory definition of same; 4) the ALJ failed to consider §2471 of the Perkins Act when he found that the

programs offered by the UCVT Magnet School of Science, Mathematics and Technology (hereafter, “Magnet School”) are compatible with the purposes of that Act; and 5) the ALJ improperly found that the Magnet School does not violate the Constitutional Prohibition against a gift of public funds for a private purpose. (Petitioner’s Exceptions at 3-7)

The UCVT takes exception to that portion of the Initial Decision wherein the ALJ returns this matter to the Department of Education “for further administrative review” relative to the “comparable program” issue. (UCVT’s Exceptions at 1) This referral, the UCVT contends, “usurps the very function of the Administrative Law Judge as the trier of fact and law in this matter.” (*Ibid.*) The UCVT reasons that if the ALJ could not make his comparability determination on the record before him, additional submissions could have been provided or a full evidentiary hearing conducted. (*Id.* at 2)

Similarly, the Department of Education excepts “to the portion of the Administrative Law Judge’s recommendation \*\*\* that [this matter] be returned to the Department for administrative review of the allegations set forth in Count IV of the petition that approved programs offered by the Union County Vocational-Technical School \*\*\* are comparable to those offered by the Scotch Plains-Fanwood school district.” (Department of Education’s Exceptions at 1) Here, the Department submits that it need not conduct the reviewed ordered by the ALJ since the very purpose of the *Directory, supra*, is to identify the various approved programs, thereby rendering unnecessary a course-by-course comparison. Moreover, the Department continues, the burden of proof was on petitioner to submit documentation in opposition to the motion for summary decision; however, it elected not to provide any such evidence in support of its position that it offers comparable courses.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the Initial Decision, with modification as set forth herein. Initially, the Commissioner underscores that the Department of Education does not approve or

regulate the *format* of vocational and technical education programs. As such, vocational and technical education programs may be offered through a magnet school format, a career academy format or through a traditional program format. (*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*, Commissioner Decision July 10, 2000, slip. op. at 4, footnote 5) Yet, “every magnet school and career academy must be based on an approved vocational *program*.” (emphasis in text) (*Id.*, slip op. at 5, citing to the testimony of Dr. Thomas A. Henry, Director of the Office of School-to-Career and College Initiatives at the New Jersey State Department of Education) Thus, although the format of the program herein may be different from that at issue in *Ramapo*, petitioner alleges no facts which, if true, would establish that the Magnet School is *not* a “vocational education program” in accordance with the State and Federal statutes and definitions, as per the analysis in *Ramapo*.<sup>1</sup> (*Id.*, slip. op. at 6-8) Moreover, the Commissioner concurs with the ALJ’s finding that petitioner’s claim that the Magnet School violates the constitutional prohibition against a gift of public funds for a private purpose may be summarily dismissed.

Finally, the Commissioner finds that Count IV of the Amended Petition is properly dismissed on summary basis. Petitioner apparently seeks to invoke *N.J.A.C.* 6:43-

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<sup>1</sup> Although petitioner points to a definition of “vocational education” found in §2471 of the Perkins Act which, it asserts, was not considered in *Ramapo, supra*, the Commissioner finds that the definition cited by petitioner at that section is not substantially different from that found at §2302, as cited in *Ramapo*. That is, §2302 defines “vocational and technical education” as educational activities that: “(A) offer a sequence of courses that provides individuals with the academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a baccalaureate, master’s, or doctoral degree) in current or emerging employment sectors; and (B) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, of an individual.” *Ramapo, supra*, slip. op. at 11. Whereas, petitioner asserts that §2471 defines “vocational education” as “organized educational programs offering a sequence of courses which are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual’s academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, and other occupational-specific skills necessary for economic independence as a productive and contributing member of society....” (Petitioner’s Exceptions at 6)

3.11(a) to prevent its students from attending the Magnet High School; in so doing, it claims that it offers a comparable or superior program to that offered by the Magnet School (Amended Petition of Appeal at 8). Yet, in support of this claim, petitioner avers, in pertinent part, that:

3. The Union County Magnet School has a staff of seven teachers, and certainly, the limited number of teachers on the faculty \*\*\* will not provide the professionally enriched, day-to-day diversity of experiences that the staff of the Scotch Plains-Fanwood High School can offer.
4. The Union County Magnet School offers no facilities for the fine and practical arts, nor is there a media or an all purpose gymnasium.
5. The Union County Magnet School does not offer a world language program with the depth and breadth of the program as delivered in the school district of the Petitioner.
6. The curriculum of the Union County Magnet School offers no courses in art, music, business or practical arts.
7. The health and physical education program of the Union County Magnet School is offered through a fitness facility and is not [as] comprehensive in scope as [that] provided by the Petitioner.
8. The Union County Magnet School does not have a fully completed curriculum in the Core Curriculum Content Areas, unlike the curriculum developed by the Petitioner in its high school.
9. The Union County Magnet School does not offer interscholastic athletic or co-curriculum programs \*\*\*.
10. The academic and co-curricular programs at Scotch Plains-Fanwood High School, including mathematics and science education, are superior in depth and breadth to what is offered at the Union County Magnet School. (*Id.* at 8-9)

Thus, petitioner fails to set forth any specific allegations, and facts supporting them, which would constitute a basis for its position that it offers a comparable or superior *vocational educational program*. Nor does petitioner allege that its vocational education program, to the extent one exists, has been approved by the Department of Education. *See D.F. on Behalf of Minor Child, E.F. v. Board of Education of the Borough of Roselle Park*, Commissioner Decision, July 9, 1999.

Moreover, in response to the UCVT School District's Motion for Summary Decision, petitioner fails to bring to the record any documentation in opposition to the UCVT

School District's claim that *N.J.A.C.* 6:43-3.11(a) should not control the outcome in this matter. To the contrary, in its response to the motion, petitioner simply contends that "if the education provided by the Union County Magnet School is a 'Vocational Education', then the Scotch Plains-Fanwood High School also provides the same 'Vocational Education'." (Petitioner's Response to Motion to Dismiss, June 17, 1999, at 4)<sup>2</sup>

Accordingly, the Commissioner finds that the within Petition of Appeal may be summarily dismissed.<sup>3</sup> Petitioner is directed to remit tuition costs to the respondent UCVT for its resident students attending the Magnet High School for the 1997-98 school year and, thereafter, for any similarly situated students for whom tuition has not been paid.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 22, 2000

Date of Mailing: September 26, 2000

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<sup>2</sup> Upon a motion for summary decision, "an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered." *N.J.A.C.* 1:1-12.5(b)

<sup>3</sup> Additionally, in accordance with *N.J.A.C.* 1:1-14.10(j), the Commissioner affirms the ALJ's Interlocutory Orders of July 8, 1999 dismissing the Petition of Appeal as against the Union County Board of Chosen Freeholders and July 9, 1999 denying the Department's motion to dismiss for failure to provide answers to interrogatories.

<sup>4</sup> 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.