

EDU #7139-98
C # 313-00
SB # 63-00

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

Decided by the Commissioner of Education, September 22, 2000

For the Petitioner-Appellant, Casper P. Boehm, Jr., Esq.

For the Respondent-Respondent Board of Education of the Union County
Vocational-Technical School District, Edward J. Kologi, Esq.

For the Respondent-Respondent Union County Board of Chosen
Freeholders, Christopher M. Howard, Assistant County Counsel

For the Respondent-Respondent New Jersey State Department of
Education, Kathleen Asher, Deputy Attorney General (David
Samson, Attorney General of New Jersey)

Today we rendered our decision in Board of Education of the Ramapo-Indian Hills Regional School District v. Board of Education of the Bergen County Vocational Technical School District (“Ramapo”), which presented us with issues relating to the administrative structure under which certain programs were offered by the Board of

Education of the Bergen County Vocational Technical School District. Although the programs in the matter now before us are offered through a “magnet school,” rather than through an “academy,” the questions involved in this case are markedly similar to those presented in Ramapo.

Like the Board of Education of the Ramapo-Indian Hills Regional School District, the Board of Education of Scotch Plains-Fanwood (hereinafter “Board”) sought a determination from the Commissioner of Education that it was not obligated to pay tuition for students in the district enrolled in the “magnet school” operated by the Union County Vocational-Technical School District (hereinafter “Union County Vo-Tech). The Board maintained that operation of the “magnet” was contrary to State and federal law governing the provision of vocational education. In addition, the Board sought an order restraining Union County Vo-Tech from accepting students from its district. It also sought a directive from the Commissioner rescinding all approvals given to the “magnet school” and halting any use by the “magnet” of State and federal funds provided to support vocational education.

Following transmittal to the Office of Administrative Law, Union County Vo-Tech filed a motion seeking summary decision. Although the Department of Education, which was a respondent in the matter, took no position on the motion, the Union County Board of Chosen Freeholders joined in the motion. The Board opposed the motion.

Since none of the parties filed any affidavits or certifications with respect to the motion, the Administrative Law Judge (“ALJ”) based his factual findings on the pleadings, admissions during oral argument and the New Jersey Department of Education’s Directory of Verified Occupational Educational Programs, of which he had

taken official notice. On that basis and relying on the Commissioner's decision in Ramapo, he concluded that the operation of the "magnet school" did not violate State or federal law. In addition, he rejected the Board's claim that operation of the "magnet school" violated the New Jersey Constitution's prohibition against using public monies for private purposes. Because the record was limited, the ALJ found that it was premature to determine whether the Board offered a "comparable program" within the meaning of N.J.A.C. 6:43-11 so as to require its students to enroll in that program rather than attending Union County Vo-Tech. However, he found that the preferred course was to refer the matter to the Department of Education for further review, rather than resolving the issue through an administrative hearing.

Rejecting the Board's contention that summary decision was not appropriate in this case, the Commissioner adopted the ALJ's determination that operation of the "magnet school" was not contrary to State or federal Law, stressing that the Department of Education does not approve the administrative structure under which vocational programs are provided. He also adopted the ALJ's finding that operation of the "magnet school" did not violate the constitutional prohibition against using public funds for a private purpose. However, he rejected the ALJ's recommendation that the matter be referred to the Department of Education for determination of whether the Board operated a "comparable program" to that offered by Union County Vo-Tech, finding that summary dismissal of that claim was appropriate because the Board had failed to set forth any specific allegations and facts supporting its contention that it offered a comparable vocational education program.

We affirm the Commissioner's determination that operation of the "magnet school" is not contrary to State or federal law. As we stressed in our decision in Ramapo, under New Jersey law, the State plan for vocational education establishes the parameters for defining vocational education. As was the case with the "academies" at issue in Ramapo, the State Plan for Vocational-Technical Education FY 2000-2004 also establishes that providing vocational education programs through magnet schools is consistent with State and federal law. Ramapo, supra, slip op. at 5-6.

Similarly, for the reasons expressed by the ALJ, we affirm the Commissioner's determination that operation of the "magnet school" does not violate the New Jersey Constitution's prohibition on using public funds for a private purpose. We also concur with the Commissioner that summary dismissal of the Board's claim that it operates a program comparable to that offered by Union County Vo-Tech was appropriate. We do so, however, on grounds different than those upon which the Commissioner based his determination.

As set forth in our decision in Ramapo, N.J.A.C. 6:43-3.11 was contrary to the statutory mandate of N.J.S.A. 18A:54-20.1(a) in limiting a student's ability to attend a county vocational school in the county in which he resides to those instances in which his resident district does not offer a comparable program. Hence, the Board would not be absolved of its obligation to pay tuition for students from the district enrolled in Union County Vo-Tech regardless of whether it offered a comparable program. It is therefore unnecessary to resolve this issue, and summary dismissal of the Board's claim was appropriate.

Accordingly, for the reasons stated herein, we affirm the Commissioner's summary dismissal of the Board's petition in its entirety.

Debra Casha recused herself.

February 6, 2002

Date of mailing _____