

391-00

D.M., on behalf of minor child, A.M., :

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE CITY
OF LONG BRANCH, MONMOUTH
COUNTY, AND BOARD OF EDUCATION
OF RED BANK REGIONAL HIGH SCHOOL
DISTRICT, MONMOUTH COUNTY, :

RESPONDENTS, :

AND :

S.C.S. AND K.L.R., on behalf of minor child,
M.R.S, :

COMMISSIONER OF EDUCATION

PETITIONERS, :

DECISION

V. :

BOARD OF EDUCATION OF THE
TOWNSHIP OF MIDDLETOWN,
MONMOUTH COUNTY, AND BOARD OF
EDUCATION OF RED BANK REGIONAL
HIGH SCHOOL DISTRICT, MONMOUTH
COUNTY, :

RESPONDENTS, :

AND :

E.M.W. AND L.F.W., on behalf of minor child,
M.W. :

PETITIONERS, :

V. :

BOARD OF EDUCATION OF THE CITY :
OF LONG BRANCH, MONMOUTH :
COUNTY, AND BOARD OF EDUCATION :
OF RED BANK REGIONAL HIGH SCHOOL :
DISTRICT, MONMOUTH COUNTY, :

RESPONDENTS, :

AND :

L.F., on behalf of minor child, J.F., :

PETITIONER, :

V. :

BOARD OF EDUCATION OF SHORE :
REGIONAL HIGH SCHOOL DISTRICT, :
MONMOUTH COUNTY, AND :
BOARD OF EDUCATION OF RED BANK :
REGIONAL HIGH SCHOOL DISTRICT, :
MONMOUTH COUNTY, :

RESPONDENTS, :

AND :

M.G. AND A.G., on behalf of minor child, :
N.M.G., :

PETITIONERS, :

V. :

BOARD OF EDUCATION OF THE :
RUMSON-FAIR HAVEN REGIONAL :
HIGH SCHOOL DISTRICT, MONMOUTH :
COUNTY AND BOARD OF EDUCATION :
OF RED BANK REGIONAL HIGH SCHOOL :
DISTRICT, MONMOUTH COUNTY, :

RESPONDENTS, :

AND :

R.L.H. AND J.M.H., on behalf of minor child, :

J.K.H., :
PETITIONERS, :
V. :
BOARD OF EDUCATION OF SHORE :
REGIONAL HIGH SCHOOL DISTRICT, :
MONMOUTH COUNTY AND BOARD OF :
EDUCATION OF RED BANK REGIONAL :
HIGH SCHOOL DISTRICT, MONMOUTH :
COUNTY, :
RESPONDENTS. :
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SYNOPSIS

Petitioning parents and guardians appealed respondent local Boards’ refusal to pay tuition and transportation costs for their children to attend the visual/performing arts program operated by Red Bank Regional High School District. Respondent Boards denied responsibility for the payments; Red Bank Regional cross-claimed against each local Board seeking payment for tuition and transportation costs, asserting that it was an approved vocational school pursuant to *N.J.S.A. 18A:54-5 et seq.*; that petitioners’ children are entitled to enroll in Red Bank pursuant to *N.J.A.C. 6:43-3.11(a)*; and that it was entitled to receive payment from the respondent Boards pursuant to *N.J.S.A. 18A:54-7*.

The ALJ concluded that any special status that Red Bank Regional enjoyed under *N.J.S.A. 18A:54-7* because of its Area Vocational Technical School and Local Area Vocational School District designations terminated with the repeal of *N.J.A.C. 6:46-2* in 1991. Moreover, the ALJ concluded that the intent of *N.J.S.A. 18A:54-7* is to permit districts voluntarily to enter into sending-receiving type relationships and only where they have done so does it impose upon the sending district a responsibility to pay tuition. The ALJ determined that the provisions of *N.J.S.A. 18A:38-15* make clear that the ultimate discretion concerning whether a student will attend a program in another district at public expense lies with the local board. The ALJ dismissed the petitions and cross-claims.

The Commissioner adopted findings and determination in the Initial Decision as his own.

OAL DKT. NOS. EDU 4737-99, 6019-99, 6125-99, 6126-99, 8009-99 AND 10943-99
(CONSOLIDATED)
AGENCY DKT. NOS. 118-5/99, 130-5/99, 160-6/99, 182-7/99, 219-8/99 AND 353-12/99

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The record of this consolidated matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. In accordance with *N.J.A.C.* 1:1-18.4, exceptions were submitted by respondent Board of Education of Red Bank Regional High School District (hereinafter, “Red Bank Regional”) and on behalf of Petitioners D.M. (EDU 4737-99), E.M.W. and L.F.W. (EDU 6125-99), and S.C.S. and K.L.R. (EDU 6019-99), identified hereinafter as “petitioners.”

In its exceptions, Red Bank Regional sets forth a number of facts which were not included in the summary provided by the Administrative Law Judge (ALJ), and argues, *inter alia*, that it never received *actual notice* of discontinuance as “a vocational school” pursuant to *N.J.S.A.* 18A:54-4. (Red Bank Regional’s Exceptions at 4) Relying on Dr. Nogueira’s certification that the District never received such written notice, Red Bank Regional reasons that the issue of “actual notice of discontinuance,” therefore, remains in dispute.

Further, for the reasons set forth in its submissions before the ALJ, Red Bank Regional maintains that *N.J.S.A.* 18A:54-7 is applicable herein, and requires that the local

districts pay tuition for their students' attendance in its vocational programs. In this regard, Red Bank Regional avers:

The absence of litigation by a parent challenging the refusal of a local district to pay tuition up until now should have no bearing in the correct interpretation of this section of the law. Red Bank Regional has run a successful vocational program in the visual performing arts based in large measure upon the willingness of local school districts to fund their resident student's education at Red Bank Regional. *** The administrative law judge's inference that because primarily Red Bank Regional looked to local districts to voluntarily agree to make payment somehow should be construed as [a] benchmark for what the legislature intended the language contained in *N.J.S.A. 18A:54-7* to mean is specious.***
(*Id.* at 6)

Red Bank Regional further contends that *N.J.A.C. 6:43-3.11* must be read in conjunction with *N.J.S.A. 18A:54-7*, thereby compelling it to accept qualified nonresident students whose tuition and transportation costs would be borne by their local districts. (*Id.*)

Finally, even assuming *N.J.S.A. 18A:38-15* controls in this matter, Red Bank Regional asserts that "a local district acts arbitrarily and capriciously in denying a qualified resident female student the tuition and transportation costs necessary to permit such student the opportunity to attend an approved vocational education not offered by the local school district. *** Local districts cannot arbitrarily and capriciously refuse to provide the funds necessary to allow female students the opportunity to attend approved vocational education programs." (*Id.* at 7)

Petitioners join in selected exceptions submitted by Red Bank Regional, and add that the interpretation and legal weight accorded to *N.J.S.A. 18A:38-15* by the ALJ is erroneous, in that it deprives them of their right to the review of local district discretionary decisions and "vitiates a singular element of a plan for the delivery of vocational education services that is more consistent with the language of the statutes and the code promulgated by the State Board of

Education” in favor of “unfettered and unregulated local discretion.” (Petitioners’ Exceptions at 3, 5) Petitioners reason that “*N.J.S.A. 18A:54-2 through 54-7*, read in conjunction with *N.J.A.C. 6:43-3.11*, have a certain plain English meaning that the [Initial Decision] simply ignores ***.” (*Id.* at 6) Moreover, petitioners argue that the Initial Decision “obliterates” the notice requirement found in *N.J.S.A. 18A:54-4* “by positing an implied administrative repeal of it ***.” (*Id.* at 7) Petitioners dispute the conclusions drawn by the ALJ from the legislative history of the vocational education enactments and maintain that *N.J.A.C. 6:43-3.11* is written as a student entitlement, rather than a provision applicable only to voluntary placements by resident school districts. (*Id.* at 8) For these reasons, petitioners urge the Commissioner to reject the Initial Decision, acknowledge their entitlements, and remand this matter for further proceedings.

Upon careful and independent review of the record in this matter, which included a transcript of the oral arguments heard at the OAL on February 3, 2000, the Commissioner finds no cause to disturb the Initial Decision. Additionally, the Commissioner concurs with the ALJ that “*any special status Red Bank Regional enjoyed under N.J.S.A. 18A:54-7 because of its [Area Vocational Technical School] AVTS and [Local Area Vocational School District] LAVSD designations terminated with the repeal of N.J.A.C. 6:46-2 in 1991,*” (emphasis added) (Initial Decision at 24) and *N.J.S.A. 18A:38-15*, therefore, controls the outcome in this matter. In so doing, the Commissioner finds nothing in the record to substantiate Red Bank Regional’s claim that the respondent districts abused their discretionary authority by arbitrarily and capriciously refusing to pay tuition and transportation costs for their students to attend Red Bank Regional’s vocational programs.

Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein. The Petitions of Appeal and cross-claims of Red Bank Regional High School District are dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: November 28, 2000

Date of Mailing: November 28, 2000

* 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.