

422-02

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| BOARD OF EDUCATION OF THE     | : |                           |
| UNION COUNTY VOCATIONAL-      | : |                           |
| TECHNICAL SCHOOLS,            | : |                           |
|                               | : |                           |
| PETITIONER,                   | : | COMMISSIONER OF EDUCATION |
|                               | : |                           |
| V.                            | : | DECISION                  |
|                               | : |                           |
| BOARD OF EDUCATION OF THE     | : |                           |
| CITY OF LINDEN, UNION COUNTY, | : |                           |
|                               | : |                           |
| RESPONDENT.                   | : |                           |
| _____                         | : |                           |

SYNOPSIS

Petitioning Vocational-Technical Board alleged respondent Linden Board refused to remit tuition or provide transportation costs for students residing in Linden who were accepted as freshmen in the Magnet High School run by the Union County Board for the 1999-2000 school year. Petitioner sought full tuition payment and transportation for the 1999-2000 school year and for any subsequent period. Respondent based its decision declining to provide tuition and transportation on a statutory exemption as it claimed to have operated an approved vocational school continuously since 1973. The State Board designated Linden High School as an “Area Vocational High School” in June 1967.

*Citing D.M. v. Long Branch*, the ALJ concluded that any special status respondent enjoyed under *N.J.S.A.* 18A:54-7 because of its Area Vocational-Technical School designation terminated with the repeal of *N.J.A.C.* 6:46-2 in 1991. The ALJ found that the Linden High School provides all academic subjects to all its students while offering vocational programs in selected areas. The ALJ found no evidence that the Linden District ran a separate specialized school devoted exclusively to vocational education, which is implied by the exception contained in *N.J.S.A.* 18A:54-20.1; thus, the exemption in that statute does not apply to the Linden District. The ALJ concluded that respondent must pay tuition and transportation for any Linden resident attending school in the County District. The ALJ ordered payment.

The Commissioner adopted the Initial Decision as his own. He concurred with the ALJ that petitioner demonstrated that respondent delivered its vocational programs through its comprehensive high school and, consequently, is not entitled to the statutory exemption set forth in *N.J.S.A.* 18A:54-20.1.

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.

December 6, 2002

OAL DKT. NO. EDU 11819-99  
AGENCY DKT. NO. 209-9/99

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| _____                         | : |                           |

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and petitioner’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

Respondent does not except to the Administrative Law Judge’s (ALJ) recitation of facts at pages 2 through 5 of the Initial Decision, but, generally, challenges her subsequent analysis and the conclusions drawn from those facts. In particular, respondent maintains that *D.M., supra*, is not relevant to the within matter, since the repeal of regulations governing the funding of categorical aid to Local Area Vocational School Districts (LAVSD) has no effect on the statutory scheme providing for the establishment *and* discontinuance of vocational schools in local and regional school districts. (Respondent’s Exceptions at 4) Additionally, contrary to the ALJ’s observation, current regulations specifically use the term “vocational high schools” at *N.J.A.C.* 6A:8-2.2(b)5 and 6A:19-3.5. (*Ibid.*) Respondent underscores that the record demonstrates that it established a vocational school in 1973 and petitioner cannot prove that the school was ever discontinued. Respondent therefore argues that the ALJ’s conclusions are

“unfounded and unwarranted extrapolations of law that are confounding in light of an incontrovertible documentary and testimonial record establishing that the Linden Board of Education had received approval from the State Board of Education as a vocational school.” (*Id.* at 2)

In reply, petitioner contends, *inter alia*, that irrespective of whether respondent ever received initial approval, in order to avail itself of the statutory exception at *N.J.S.A.* 18A:54-20.1, respondent must continue to maintain a vocational school. However, petitioner concludes that, pursuant to *D.M.*, which is, indeed, applicable in this case, respondent must now be viewed as a comprehensive high school offering vocational programs, rather than as a LAVSD. Petitioner reiterates that since respondent has agreed to send and pay the tuition for some students attending certain programs at the Union County Vocational School, it has waived any claim for exemption under *N.J.S.A.* 18A:54-20.1. (Petitioner’s Reply/Cross Exceptions at 5)

Upon careful and independent review of the record in this matter, which included a transcript of the hearing conducted at the OAL on February 25, 2002, the Commissioner underscores the ALJ’s observation that “the State Board of Education has made it clear that any special status any school district enjoyed by the AVTS and LAVSD designations ended in 1991 with the repeal of *N.J.A.C.* 6:46-2.” (Initial Decision at 7, citing to *D.M.*, *supra.*) In this connection and in light of the conclusion reached in *D.M.* that the Department of Education provided clear notice in the *New Jersey Register* that the LAVSD designation process was, indeed, discontinued in 1991, the Commissioner finds without merit respondent’s contention that it must prevail because petitioner cannot demonstrate that respondent’s once-approved “vocational school” was discontinued in accordance with *N.J.S.A.* 18A:54-4.<sup>1</sup> The

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<sup>1</sup> On August 5, 1991, the *New Jersey Register* published the following comment from the principal of the Red Bank Regional High School District, along with the Department of Education’s response:

Commissioner, therefore, concurs with the ALJ that petitioner has demonstrated that respondent delivers its vocational programs through its comprehensive high school and, consequently, is not entitled to the statutory exemption set forth in *N.J.S.A.* 18A:54-20.1.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.<sup>2</sup>

IT IS SO ORDERED.<sup>3</sup>

## COMMISSIONER OF EDUCATION

Date of Decision: December 6, 2002

Date of Mailing: December 6, 2002

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COMMENT: The commenter requested that the local area vocational school district (LAVSD) designation process be continued even though comprehensive high schools, under the Quality Education Act (P.L. 1990, c.52), will no longer receive State categorical aid for vocational education programs.

RESPONSE: The Department declines to continue the LAVSD designation process given the current State budget situation and staff reductions. The Department cannot afford the staff time needed to review courses of study, applications, prepare evaluations and other paperwork involved in redesignation of the 18 LAVSDs. If funding is not the issue, there is no reason why the comprehensive high schools cannot continue to offer vocational education programs to meet the needs of pupils in their districts. 23 *N.J.R.* 2332; *see, also, D.M. supra*, slip op. at 17; Petitioner's Post-hearing Brief at Exhibit A.

In *D.M.*, therefore, the ALJ concluded, and the Commissioner and State Board of Education affirmed that, "Since 1991 \*\*\* there have been no rules or regulations specifying any procedure for designation as a local area vocational technical school, and the Department of Education's response in the August 5, 1991 *New Jersey Register* to Red Bank Regional's request that the LAVSD designation process be continued \*\*\* *provided clear notice to Red Bank that thereafter its vocational programs could continue to operate, but in the same manner and under the same rules and regulations as approved vocational education programs offered in any comprehensive high school*" (emphasis added) (*D.M., supra*, slip op. at 23)

<sup>2</sup> The Commissioner finds that based on the outcome of his decision herein, it is not necessary to address petitioner's claim that respondent has violated "contractual terms" of certain grant agreements wherein respondent, as a grant recipient, "must allow students the opportunity to attend [vocational] programs of their choice \*\*\*." (Petition of Appeal at 3, 4)

<sup>3</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.