

#399-04

OAL DKT. NO. EDU 7891-03 (http://lawlibrary.rutgers.edu/oal/html/initial/edu07891-03_1.html)

AGENCY DKT. NO. 201-6/03

BOARD OF EDUCATION OF THE	:	
BERGEN COUNTY VOCATIONAL	:	
AND TECHNICAL SCHOOL DISTRICT,	:	
BERGEN COUNTY,	:	
	:	COMMISSIONER OF EDUCATION
PETITIONER,	:	
	:	DECISION
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
RAMAPO-INDIAN HILLS REGIONAL	:	
SCHOOL DISTRICT, BERGEN COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this 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, the respondent Board of Education (Ramapo) filed timely exceptions, to which the petitioning Board of Education (Vocational District) duly replied.

In its exceptions, Ramapo objects to the failure of the Administrative Law Judge (ALJ) to find that Ramapo has, in fact, obtained Department of Education approval and Classification of Instruction Program (CIP) codes for its University Programs, since the record clearly supports such a finding. Ramapo further objects to the ALJ’s failure to conclude that such approval, given that Ramapo’s University Programs are “of the identical type, with the same CIP codes” as those offered by the Vocational District, qualifies Ramapo as an “approved local secondary vocational-technical education program” meeting the requirement of *N.J.S.A.* 18A:54-20.1(a) for exemption from the obligation to send students to the county schools. (Ramapo’s Exceptions at 2-3,

quotations at 3) In this regard, Ramapo protests the ALJ's reliance on the matter of *Board of Education of the Union County Vocational-Technical Schools v. Board of Education of the City of Linden, Union County*, Commissioner of Education decision, December 6, 2002, *affirmed* State Board of Education, May 7, 2003, contending that that matter is factually and legally distinguishable because Linden's high school merely offered a number of vocational courses, whereas Ramapo offers four-year University Programs bearing Department approval through CIP codes and integrating specialized vocational and comprehensive academic training in a manner identical to the programs offered by the Vocational District. In light of this distinction, Ramapo contends, the fact that its programs are not housed in a separate building is of no import for purposes of *N.J.S.A.* 18A:54-20.1(a). (*Id.* at 4)¹

In reply, the Vocational District urges that the Initial Decision be adopted in its entirety, since Ramapo does not maintain a "vocational school" devoted exclusively to vocational education as contemplated by the statutory exemption provision, but rather comprehensive high schools through which vocational education programs are delivered. The District reiterates that the existence of Ramapo's University Programs does not transform its comprehensive high schools into vocational schools, any more than Linden's vocational courses did, and that Ramapo's efforts to cloud the issue with questions of "approval" and "identity" must be rejected, since, for purposes of *N.J.S.A.* 18A:54-20.1(a) and its implementing rule, *N.J.A.C.* 6A:19-3.1, it does not matter whether Ramapo's programs are approved or CIP-coded; nor does it matter whether their content and structure is similar (or even identical) to that of the Vocational District's academy

¹ Ramapo did not take exception to the ALJ's conclusion that the Vocational District has standing to pursue this matter.

programs. If a student is accepted at the county vocational school, the District contends, the only basis on which a local or regional board of education may lawfully refuse payment for its resident students in attendance there, as found by the ALJ, is if it operates its own vocational school, which Ramapo clearly does not. (Vocational District’s Reply Exceptions at 2-10)

Upon careful review and consideration, the Commissioner concurs with the analysis and conclusions of the ALJ as set forth in the Initial Decision.

In essence, this matter turns on the question of whether a comprehensive high school may include, within its range of offerings, a distinct curricular track centered on a DOE-approved, CIP-coded vocational program, and by the existence of such track, be considered a “vocational school” within the meaning of *N.J.S.A. 18A:54-20.1(a)* so as to enable the operating local or regional board of education to absolve itself from any obligation for tuition and transportation for resident students wishing to attend a county vocational school program in the same CIP approval area.² For the reasons expressed by the ALJ and those which follow, the Commissioner holds that it cannot.

As noted by the ALJ in the Initial Decision at 9, the last sentence of *N.J.S.A. 18A:54-20.1(a)* refers to a “school district maintaining a vocational school or schools *pursuant to article 2 of chapter 54 of Title 18A of the New Jersey Statutes*” (emphasis supplied). *N.J.S.A. 18A:54-5* and *N.J.S.A. 18A:54-6* of that article authorize local and regional districts to establish and maintain vocational schools, but also require the approval of the Commissioner subject to the advice and consent of the State Board in

² It is assumed for purposes of this analysis that Ramapo’s programs do, in fact, operate under valid CIP codes, since, in the absence of such approval, there could be no arguable basis whatsoever for a claim of the type Ramapo attempts to make herein.

order to do so. There is no claim here that Ramapo has obtained any approval of this type, in contrast, significantly, to boards of education which were denied “vocational school” status notwithstanding their prior approval as Local Area Vocational Schools in recent matters turning on that question, *D.M., on behalf of minor child, A.M., v. Board of Education of the City of Long Branch, Monmouth County, and Board of Education of the Red Bank Regional High School District, Monmouth County*, Commissioner of Education decision, November 28, 2000, *affirmed* State Board of Education, July 10, 2001, and *Union County Vo-Tech, supra*. Indeed, as those matters have made abundantly clear, the present State Plan for Vocational Education has acted, together with the history of State funding laws and the operative State Board of Education regulations, effectively to preclude such status, providing instead for vocational instruction to be delivered either through comprehensive high schools or county vocational schools and approvals to be granted for *programs* rather than schools.³

Neither can Ramapo succeed in its attempt to distinguish its situation from that of the Linden Board of Education in *Union County Vo-Tech, supra*. Contrary to Ramapo’s contention, Linden did not “simply” offer “a number of vocational courses” (Ramapo’s Exceptions at 4); indeed, it had a separate high school building specially constructed for, and largely devoted to, vocational programs; prior approval as a Local Area Vocational School District; and Department approval through CIP codes for its entire range of vocational offerings, which was substantial at the time of the Commissioner and State Board decisions holding that Linden was not exempt from the

³ In addition to the regulations, practices and documents referenced in the cited decisions, see also the Department’s current (2003) *Vocational-Technical Education Program Approval Procedure* at <http://www.state.nj.us/njded/voc/occprapp.htm>.

requirements of *N.J.S.A.* 18A:54-20.1(a). Nor does it matter whether the programs offered by Ramapo are “identical” to those offered by the Vocational District’s academies, either in CIP coding or actual structure and content, both because Ramapo does not operate a “vocational school” within the meaning of the statute and because its arguments with respect to identity are, as correctly noted by the ALJ, based on a regulation pertaining to students seeking vocational instruction in another local or regional school district, not in the county vocational school. (Initial Decision at 10)

Accordingly, for the reasons expressed by the ALJ and herein, the Vocational District is entitled to prevail in its claim for tuition and transportation costs as a matter of law. The Initial Decision of the OAL is adopted as the final decision in this matter, and the ALJ’s recommended Orders for relief are to be implemented forthwith. In so holding, the Commissioner, like the ALJ, denies the District’s claim for prejudgment interest and counsel fees.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: October 13, 2004

Date of Mailing: October 13, 2004

⁴ This decision 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.*