

EDU #9421-97
C # 580-97E
SB # 94-97
EDU #3517-98
C # 201-99
SB # 33-99

JACK JACOBS, :
 :
 PETITIONER-RESPONDENT, :
 :
 V. : STATE BOARD OF EDUCATION
 :
 BOARD OF EDUCATION OF THE :
 NORTHERN VALLEY REGIONAL : DECISION
 SCHOOL DISTRICT, BERGEN :
 COUNTY, :
 :
 RESPONDENT-APPELLANT. :
 _____ :

Decision on motion by the Commissioner of Education, November 5, 1997

Decision by the State Board of Education, March 4, 1998

Decided by the Commissioner of Education, January 24, 1999

For the Petitioner-Respondent, Jack Jacobs, pro se

For the Respondent-Appellant, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross (Cheri L. Maxwell, Esq., of Counsel)

On March 4, 1998, the State Board of Education affirmed that part of the determination of the Commissioner of Education which, acting on an application for emergent relief, directed the Northern Valley Regional School District (hereinafter "District") to pay the cost for transportation for D.J., a student residing in the District

who was attending the Bergen County Technical School in the afternoons while being home-schooled.¹

On June 24, 1999, the Commissioner issued his decision on the merits of the underlying case. Adopting the Administrative Law Judge's determination and based on a joint stipulation of facts submitted by the parties, the Commissioner concluded that the District was required by N.J.S.A. 18A:54-20.1 and N.J.S.A. 18A:39-1 to pay the student's tuition for attending Bergen County Technical School during the 1997-98 school year and for transportation from his home in the District to the Technical School during that period.

The District has appealed to the State Board, seeking reversal of the Commissioner's decision in both respects. The District contends that it should not be required to pay D.J.'s tuition because he was being home-schooled and was not enrolled in the District's schools during the relevant period. Relying on a memorandum entitled "Home Schooling in New Jersey" that was issued by the Department of Education in 1997, the District argues that services provided by a public school district, including a county vocational school, are rendered at the option of the provider, in this case Bergen County Technical School, and that, therefore, the District should not be held responsible for tuition for D.J.'s vocational program. It further argues that a tuition agreement executed between the District and the Bergen County Technical School was "moot" because although D.J. was enrolled in the District when the agreement was executed, he was "disenrolled" by the time he began attending the vocational program.

¹ In that decision, we set aside that portion of the Commissioner's decision that directed the District to pay the cost of tuition during the pendency of the case because petitioner had not requested such relief in applying for emergent relief.

The District also challenges the Commissioner's conclusion that D.J.'s father (hereinafter "petitioner") should be reimbursed \$2,125 by the District for the cost of D.J.'s transportation to and from the Technical School from September 1997 through January 1998. Pointing to N.J.S.A. 18A:39-1, the District contends that a home school program is not a "non-public school" within the meaning of the statute so that the entitlement to transportation conferred by that statute under specified circumstances on students attending non-public schools remote from their homes does not apply. However, it argues that if the statute were applicable, reimbursement should be limited to \$675, which is the maximum amount for transportation costs under the statute for students attending non-public schools.

Under the circumstances presented, we affirm the Commissioner's determination that the express terms of N.J.S.A. 18A:54-20.1 placed an obligation on the District to pay tuition to the Technical School for D.J. during the 1997-98 school year. As the Commissioner stressed, N.J.S.A. 18A:54-20.1 provides that:

The board of education of each school district or regional school district in any county in which there is a county vocational school district shall send to any of the schools of the county vocational school district each pupil who resides in the school district or regional school district and who has applied for admission to and has been accepted for attendance at any of the schools of the county vocational school. The board of education shall pay tuition for each of these pupils to the county vocational school

The language of this statute is clear and unambiguous. A district board is required to send each student who resides in the district to the county vocational school in that county and to pay the tuition for each regardless of whether the student is

enrolled in the district's schools. No publication by the Department of Education could alter the statutory requirement, and, like the Commissioner, we have paid it no heed.²

We also affirm the Commissioner's determination that petitioner is entitled to \$2,125 reimbursement for the costs of his son's transportation from September 1997 to January 1998. In so doing, we stress that petitioner incurred these costs because the District refused to recognize its statutory obligation to D.J. Hence, while we recognize that petitioner calculated the amount due him for September to October, the period during which he drove his son to the Technical School, to include the same hourly rate charged by the private bus company that he ultimately engaged, we do not find this result to be inequitable. Moreover, as the Commissioner pointed out, although the District argues that the amount is excessive, the only alternative it offers is the statutory maximum specified in N.J.S.A. 18A:39-1. Commissioner's Decision, slip op. at 15, n.6. We concur with the Commissioner that this provision is not applicable here because the express terms of the pertinent provision apply only to "...school pupils residing in [any district providing any transportation for public school pupils to and from school pursuant to this section] in going to any remote school other than a public school" (Emphasis added.)

We recognize that the language of N.J.S.A. 18A:39-1 and N.J.S.A. 18A:54-20.1 does not expressly provide for the situation that was presented by this appeal. After reviewing these statutes, as well as those related statutes which establish the framework under which transportation is provided to New Jersey's school children, we conclude that the Commissioner properly found that an obligation on the part of the

² In his decision, the Commissioner noted that the publication at issue, "Home Schooling in New Jersey," could not be viewed as authoritative, and he directed that it be revised or withdrawn as necessary. Commissioner's Decision, slip op. at 14, n.4.

District could be inferred under those statutes given the circumstances. However, we direct that, under the Commissioner's direction, the Department of Education undertake a comprehensive review of the regulations providing for the distribution of State aid for transportation to insure that they are consistent with the options currently afforded by New Jersey's educational delivery system including, as was the case here, home schooling combined with a shared-time vocational program.

December 1, 1999

Date of mailing _____