

EDU #6974-97  
C # 509-97E  
C # 660-97  
SB # 87-97 and #10-98 (consolidated)  
EDU #2190-00 and #6096-00  
C # 276-02R

K.B., on behalf of minor child, H.B., :

PETITIONER-RESPONDENT, :

V. :

BOARD OF EDUCATION OF THE :  
RANCOCAS VALLEY REGIONAL HIGH :  
SCHOOL DISTRICT, BURLINGTON :  
COUNTY, :

RESPONDENT-APPELLANT, :

AND :

STATE BOARD OF EDUCATION

K.B., on behalf of minor child, H.B., :

DECISION

PETITIONER-RESPONDENT, :

AND :

GLOUCESTER COUNTY INSTITUTE OF :  
TECHNOLOGY, :

INTERVENOR-RESPONDENT, :

V. :

BOARD OF EDUCATION OF THE :  
RANCOCAS VALLEY REGIONAL HIGH :  
SCHOOL DISTRICT, BURLINGTON :  
COUNTY, :

RESPONDENT-APPELLANT. :

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Decision on motion by the Commissioner of Education,  
September 25, 1997

Decided by the Commissioner of Education, December 29, 1997

Remanded by the State Board of Education, March 1, 2000

Decision on remand by the Commissioner of Education, July 18, 2002

For the Petitioner-Respondent, K.B., pro se

For the Respondent-Appellant, Parker, McCay & Criscuolo (Stephen J. Mushinski, Esq., of Counsel and Frank P. Cavallo, Esq., of Counsel)

For the Intervenor-Respondent, Capehart & Scatchard (Joseph F. Betley, Esq., of Counsel)

This matter was initiated when K.B. (hereinafter “petitioner”), who resided within the Rancocas Valley Regional High School District in Burlington County, filed a petition of appeal with the Commissioner of Education, along with an application for emergent relief, alleging that the Board of Education of the Rancocas Valley Regional High School District (hereinafter “Board” or “Rancocas Valley”) had improperly refused to provide transportation for her daughter, H.B., who attended the Gloucester County Institute of Technology Academy of Performing Arts (“GCIT” or “Gloucester County Institute”). The Board countered that it had no obligation to provide transportation for H.B., contending that it offered a performing arts program that was comparable to the program provided by the Gloucester County Institute. The Board also questioned whether an academy for the performing arts was a vocational program within the intendment of N.J.S.A. 18A:54-1 et seq. so as to require a school district to provide transportation for a student’s attendance.

On September 17, 1997, an administrative law judge (“ALJ”) recommended denying the petitioner’s application for emergent relief.

On September 25, 1997, the Commissioner adopted the ALJ’s decision to deny the petitioner’s application for emergency relief. In doing so, the Commissioner added:

Although the record additionally indicates that the Board raises a question as to whether the Performing Arts Program offered by the Gloucester County Institute falls within the scope of vocational education as contemplated by N.J.S.A. 18A:54-1, the Commissioner takes judicial notice of the program’s inclusion in the Department of Education’s Directory of Verified Occupational Educational Programs (DOE Publication PTM No. 1123.00, Revised 1995), reflecting its status as a DOE approved trade and instructional program. As such, it is clearly within the purview of the cited statutory provisions and, therefore, there is no necessity for resolution of this question at the plenary hearing. Additionally, in reviewing the Directory, the Commissioner notes that the program at issue herein is the only approved vocational program in Dance and Performing Arts in southern New Jersey (Atlantic, Burlington, Camden, Cape May, Cumberland and Gloucester Counties).

Commissioner’s Decision, slip op. at 9.

The Commissioner therefore directed that the hearing in this matter be limited to the issue of whether the Rancocas Valley Regional High School District offered a performing arts program comparable to the program offered by the Gloucester County Institute.

Rancocas Valley appealed to the State Board, arguing that nothing in N.J.S.A. 18A:54-1 et seq. or its legislative history suggested that the Legislature had intended the definition of vocational education to include the type of program at issue herein.

On November 12, 1997, following a hearing, the ALJ concluded that Rancocas Valley did not offer a program in the performing arts that was comparable to the

program offered by the Gloucester County Institute. Consequently, he recommended that Rancocas Valley be directed to provide transportation for H.B. to the Gloucester County Institute. On December 29, 1997, the Commissioner adopted the findings and conclusions of the ALJ and directed Rancocas Valley to provide such transportation and to pay tuition for H.B.

Rancocas Valley then filed an appeal to the State Board from that decision, contending that the Commissioner erred in determining that its performing arts program was not comparable to the program offered by the Gloucester County Institute. In addition, Rancocas Valley argued that the Commissioner had gone beyond the scope of the petition in determining that it was also responsible for H.B.'s tuition.

Since they arise from the same claim, the State Board consolidated the two appeals.

On March 1, 2000, the State Board reversed the Commissioner's decision and remanded the matter for a determination of whether the GCIT performing arts program was vocational within the intendment of N.J.S.A. 18A:54-1 et seq. during the relevant period and for a resultant determination of the merits of petitioner's claim for transportation. The State Board retained jurisdiction over the matter.

Subsequent to the State Board's decision, GCIT filed a petition seeking the payment of tuition from Rancocas Valley. The petition was thereafter amended to include claims for tuition and transportation for three additional students. This matter was transmitted to the Office of Administrative Law for hearing where it was

consolidated with the matter arising from petitioner's claim for transportation which was being considered pursuant to the State Board's remand.<sup>1</sup>

On remand, the ALJ found that the performing arts program offered by GCIT was inconsistent with the definition of "vocational education" under New Jersey law. He also concluded that there was insufficient proof that GCIT had complied with the regulatory requirements for obtaining approval for its performing arts program and, therefore, that there was insufficient proof that the program was in fact an approved vocational program. Accordingly, the ALJ recommended that the Commissioner grant summary decision to Rancocas Valley on these issues.

The Commissioner set aside the ALJ's findings and conclusions with respect to these issues, holding that GCIT's performing arts program was, during the relevant period, an approved vocational program within the intendment of the law. In so concluding, the Commissioner rejected any suggestion that a performing arts program could not be "vocational" within the intendment of the applicable law. The Commissioner found that the record was clear that the program was designed to prepare students for professional careers in the performing arts and, as a result, that it met the regulatory requirements that defined vocational education. The Commissioner also found that the record demonstrated that GCIT had substantially complied with the regulatory approval process and that there was no evidence that the Department of Education had not fulfilled its responsibilities. He therefore concluded that the program was an approved vocational program during the relevant period. He further concluded that GCIT was not operating as a "private vocational school," finding that it clearly was not a business soliciting students from the general public on a tuition basis. Finally, the

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<sup>1</sup> K.B., who was the original petitioner, did not participate in the proceedings on remand.

Commissioner found that he did not need to determine whether the regulation limiting access to a county vocational school when a comparable program was available in the student's resident district had any applicability following the State Board's decision on February 6, 2002 in Board of Education of the Ramapo-Indian Hills Regional School District v. Board of Education of the Bergen County Vocational Technical School District because Rancocas Valley did not offer a program comparable to that offered by GCIT.

The State Board then provided the parties with the opportunity to file supplemental briefs on any remaining issues related to the Commissioner's decision on remand. Both GCIT and Rancocas Valley filed briefs. GCIT urges affirmance of the Commissioner's decision on remand. Rancocas Valley argues that the Commissioner's decision should be reversed, continuing to maintain that the program at issue was not a recognized form of vocational education during the relevant period. It also continues to argue that the program had not been properly approved and that it should not be responsible for tuition because the GCIT program is operated more as a private school than a county vocational school.

After carefully reviewing the record and considering the arguments of counsel, the State Board of Education affirms the decision of the Commissioner for the reasons expressed in his decision. In doing so, we fully concur with the Commissioner's finding that the GCIT's performing arts program met the applicable criteria for classification as a "vocational" program during the relevant period. We agree that the ALJ's findings and conclusions with respect to this issue were based on generalized perceptions and that both the documentation in the record and the transcripts establish that the program at

issue was in every respect designed to prepare students for professional careers in the performing arts directly upon graduation or after further college-level preparation.

July 2, 2003

Date of mailing \_\_\_\_\_