

#395-04

AGENCY DKT. NO. 250-7/04

BOARD OF EDUCATION OF THE	:	
SOMERSET COUNTY VOCATIONAL-	:	
TECHNICAL SCHOOL DISTRICT,	:	
SOMERSET COUNTY,	:	COMMISSIONER OF EDUCATION
	:	
PETITIONER,	:	DECISION
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF FRANKLIN,	:	
SOMERSET COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

This matter comes before the Commissioner by way of a Petition of Appeal filed by the Board of Education of the Somerset County Vocational-Technical School District (Vocational District) on July 21, 2004. Therein, the Vocational District seeks an Order holding that the Franklin Township Board of Education (Franklin) is violating State statute by refusing to send its students to the Vocational District’s shared-time programs, and directing that Franklin students who have been accepted into such programs be permitted to attend them.<sup>1</sup>

Following receipt of Franklin’s answer to the petition, by letter dated August 6, 2004, the Department advised the parties that the Commissioner would be amenable to deciding this matter on cross-motions for summary decision, since it appeared that the dispute turned on the legal question of whether a district board of

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<sup>1</sup> The District also seeks access to Franklin students, pursuant to *N.J.A.C.* 6A:19-3.1(d), for purposes of presenting information about its shared-time, as well as full-time, programs, and a directive that Franklin students be permitted to submit applications to the District’s shared-time programs.

education is required by statute to send eligible students to shared-time county vocational school programs.

On August 16, 2004, the Vocational District moved for summary decision, arguing as set forth more fully below. Proceedings were briefly held in abeyance while settlement discussions were attempted by the parties; when these proved unsuccessful, on September 2, 2004, Franklin filed a cross-motion to which the Vocational District replied on September 13, 2004. These submissions, along with their accompanying certifications and exhibits, constitute the substantive record of this matter.

### FACTUAL BACKGROUND

The central facts operative herein are undisputed, and, where areas of disagreement exist between the parties, they are so noted:

1. On June 13, 2002, the Franklin Township Board of Education resolved that, as of September 2002, it would no longer send new shared-time (as opposed to full-time) students to the Vocational District; currently enrolled students were “grandfathered,” allowing them to complete the programs they had begun. In a letter to Franklin parents, students and staff giving notice of the Board’s impending discussion, Franklin’s then-superintendent explained that he was recommending the discontinuance because 1) additional graduation requirements were making it increasingly difficult for shared-time students to complete high school in four years, 2) significant time during the school day was being wasted in transit to and from the vocational school, 3) students with the staggered schedules necessitated by shared-time programs were at a disadvantage in fulfilling annual credit expectations and in obtaining remedial instruction, specialized class placements and skills labs, and 4) scheduling and operations at Franklin High School were significantly burdened by the demands of trying to accommodate shared-time arrangements.
2. There is no evidence on record suggesting that, during the 2002-03 school year, the Vocational District either accepted new shared-time students from Franklin or objected to Franklin’s decision to discontinue sending such students.<sup>2</sup>

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<sup>2</sup> The Commissioner takes notice that subsequent to the events narrated in No. 1 above but prior to the events narrated in No. 3 below, both the Vocational District and Franklin experienced a change in chief school administrators.

3. During the spring of 2004, the Vocational District accepted new shared-time students from Franklin for the upcoming school year. However, by letter from the principal of the Vocational District's high school, these acceptances were rescinded based on Franklin's policy of refusing to send its students to shared-time programs. A concurrent letter to the new Franklin superintendent, also from the principal, apologized for the "mistake." The new Vocational District Superintendent wrote to the Franklin Superintendent, stating that, while the principal's letter was well-intentioned, it was at best premature in light of the requirements of law and the Superintendent's concerns about Franklin's policy as expressed in meetings and communications that had occurred during the preceding weeks.
4. Further oral and written communications ensued between the two superintendents. The parties dispute the specifics of these communications, as well as those referenced in No. 3 above, and the degree to which viable solutions to Franklin's concerns were offered by the Vocational District. However, there is no dispute that, whatever discussions occurred between the parties, they resulted in no change to Franklin's policy of not sending shared-time students to the Vocational District.
5. Shared-time students are in attendance at the Vocational District from every K-12 and regional school district in Somerset County; the five students from Franklin are either home-schooled or "grandfathered" because they were accepted prior to Franklin's change in policy. In an allegation that is neither admitted nor denied by Franklin, the Vocational District states that Franklin is the only district in the county that refuses to send students to share-time Vocational District programs.
6. Franklin's current Superintendent of Schools contends that Franklin's shared-time students are unable to meet State graduation requirements because scheduling limitations preclude them from completing the requisite courses in a timely fashion. The Vocational District Superintendent disagrees with this assessment.
7. No tuition is charged to local districts by the Vocational District, other than for a special alternative education program ("TOPS") not at issue herein.

#### THE VOCATIONAL DISTRICT'S POSITION

The Vocational District argues that, whatever Franklin's view may be with respect to the viability of shared-time programs, it is statutorily obligated to permit its students to attend the Vocational District on a shared-time basis when such students are

accepted into shared-time programs. The District points to *N.J.S.A.* 18A:54-20.1, which provides in pertinent part:

a. 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 district. The board of education shall pay tuition for each of these pupils to the county vocational school district pursuant to subsection c. of this section. The provisions of this section shall not apply to the board of education of a school district or regional school district maintaining a vocational school or schools pursuant to article 2 of chapter 54 of Title 18A of the New Jersey Statutes.

According to the Vocational District, this statute is clear on its face, and must, therefore, be read consistent with its plain meaning. Contrary to any contention that the law must be read to exclude shared-time programs because the Legislature did not specifically mention them, the District argues, “ ‘words should never be supplied or changed [in the construction of such a statute] unless to do so will effect the meaning clearly shown by the other parts of the statute, or to carry out an intent somewhere expressed.’ *Board of Ed. of Voc. School v. Finne*, 88 *N.J. Super.* 91, 111 (L. Div. 1965).” (Vocational District’s Brief on Motion for Summary Decision at 3-5, quotation at 5)

The District proffers that the plain meaning of this statute is reinforced by rules promulgated by the State Board of Education to set forth New Jersey’s system of vocational-technical instruction, *N.J.A.C.* 6A:19. According to the Vocational District, these rules, and the explanatory comments published in the *New Jersey Register* at the time of their promulgation, make it abundantly clear that vocational programs are viewed as an integral part of New Jersey’s educational system and that all qualified students are

to be given access to them, without distinction between full-time and shared-time programs. (*Id.* at 3-7) Similarly, the Vocational District observes, prior Commissioner decisions, such as *Jack Jacobs v. Bd. of Ed. Of Northern Valley Regional School District, Bergen County*, decided May 4, 1999, have held that all New Jersey students have an independent entitlement to vocational education. (*Id.* at 7-8)

Because there is no question that Franklin refuses to send any of its students to the Vocational District's shared-time programs, the District urges that the material facts of this matter are not in dispute and that the relief it requests can be summarily granted as a matter of law, *Brill v. Guardian Life Ins. Co. of America*, 142 *N.J.* 520 (1995). (*Id.* at 8-10)

FRANKLIN'S POSITION  
AND THE VOCATIONAL DISTRICT'S REPLY

Franklin counters that it has no obligation to send shared-time students to the Vocational District because no statutory authority exists for county vocational schools to provide shared-time programs. Rather, Franklin posits, the enabling legislation for county vocational schools provides only that instruction may be offered in "day, part-time and evening classes." According to Franklin, it is clear from the introductory clause "in order that instruction in the principles and practice may go on together," that, in this context, "part-time" refers to the school employment programs known as cooperative vocational-technical education programs and not to shared-time programs which require Franklin students to study academic subjects at their home school in the morning and vocational subjects at the county school in the afternoon. *N.J.S.A.* 18A:54-3. Additionally, Franklin avers, the only mention in *N.J.A.C.* 6A:19 of shared-time

programs, *N.J.A.C.* 6A:19-5.2(i), pertains to maintenance of a medical inspection service for applicants, a reference which is not, in itself, sufficient to overcome the absence of other statute or rule authorizing the existence of shared-time programs. (Franklin’s Brief on Cross-Motion for Summary Decision at 2-4)

Alternatively, Franklin argues, even if it is held that the Vocational District may legally conduct shared-time programs without an express grant of statutory authority, Franklin satisfies any obligation it may have under *N.J.S.A.* 18A:54-20.1<sup>3</sup> by sending full-time students to the District. This is because *N.J.S.A.* 18A:54-20.1 must be read *in pari materia* with *N.J.S.A.* 18A:54-3, so that the mandatory language of the former applies only to programs expressly authorized by the latter, and any decision by a local board of education to send students to programs other than those enumerated is purely discretionary. (*Id.* at 4-5)

Finally, Franklin argues that the Vocational District’s shared-time program “interferes” with Franklin’s duty to provide a thorough and efficient education (T&E) to its students. Franklin contends, based on the certification of its Superintendent, that the hours spent in vocational instruction, coupled with the significant portion of each day shared-time students must spend on a school bus, create a “severe obstacle” to Franklin’s ability to ensure that such students meet Core Curriculum Content Standards as embodied in the minimum Statewide graduation requirements established by the State Board of Education at *N.J.A.C.* 6A:8-5.1; indeed, Franklin has experienced instances of shared-time students being “forced” to drop out of vocational programs to take remedial classes in mandated academic subjects at Franklin High School. (*Id.* at 6)

Franklin explains:

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<sup>3</sup> Quoted in pertinent part at page 4 above.

As demonstrated [in the Superintendent's certification], the shared-time program requires ninth and tenth graders to spend their first five periods and lunch at Franklin High School and then travel to the Vo-Tech High School for three periods. Eleventh and twelfth graders spend four periods at the Vo-Tech High School and then travel to Franklin High School for three academic periods and lunch. This schedule provides for the accumulation of ninety academic credits at Franklin High School. However, included in those ninety credits are twenty credits in physical education/health, whereas the state graduation requirement is fifteen credits (3¾ credits per year). 3¾ credits would translate into a 4-day per week physical education course, which is impossible to schedule. Therefore, Franklin students are scheduled for a five-day per week course.

The result is that, under the shared-time schedule, a incoming freshman in 2004-05 would remain one course short of the mandatory graduation requirements of *N.J.A.C. 6A:8-5.1* after four years. In the sample schedule attached to [the Superintendent's] certification, that course is social studies. Furthermore, current sophomores, juniors and seniors remain subject to the prior requirement of ten credits in world languages, not the five credits currently imposed on incoming freshmen in 2004-05. The shared-time program does not permit the scheduling of an additional one-year foreign language course. Finally, as noted by [the Superintendent], the shared-time schedule does not accommodate the scheduling of the five-credit course for freshmen, and ten credits for upperclassmen, in visual, performing and/or practical arts, as required by *N.J.A.C. 6A:8-5.1*.

The legal conclusion is inescapable; under the shared-time system, it is impossible for [Franklin] to provide its students with a sufficient number of graduation credits in four years. It is for this reason that, as noted by [the Superintendent], at least one other vocational-technical district [Morris County School of Technology] has acted to terminate its shared-time program. (*Id.* at 7-8)

Franklin concludes that *it*, rather than the Vocational District, is entitled to summary decision; however, in the alternative, it asks that the District's motion for summary decision be denied in light of the "significant factual issues" Franklin has raised concerning its ability to provide T&E to shared-time students. (*Id.* at 8)

In reply, the Vocational District counters that Franklin offers no case law contradicting the District's contention that shared-time as well as full-time students are entitled by statute to attend the county vocational school. The District further proffers

that its shared-time programs are fully within the authorization of *N.J.S.A.* 18A:54-3 since they are conducted during the day, are part-time, and offer both theory and “hands on” experience of precisely the type referenced in the statutory language upon which Franklin relies. (Vocational District’s Reply Brief at 2) With respect to Franklin’s “T&E” argument, the District responds:

[Franklin] raises arguments regarding scheduling that are red herrings. The main objection raised by [Franklin] to the sending of their students to Shared Time programs is that they will miss one period of gym per week. [Franklin] admits that its current schedule mandates more credits than are necessary for students to graduate in the subject area of gym. Rather than permit [its] students to obtain the benefits of the programs offered at [the Vocational District], Franklin's main objection is that the overscheduling of gym classes [supersedes its] desire to restructure the schedule to give [its] students every opportunity to receive the education suited to their needs.

The [Vocational District] currently has 292 full-time students and 433 shared-time students who come from all over the county. By way of example, Bridgewater sends 103 students as shared-time students, Hillsborough sends 55 shared-time students, Manville sends 50 shared-time students, North Plainfield sends 33 shared-time students, Somerville sends 10 shared-time students and Watchung sends 30 shared-time students.\*\*\* Certainly [Franklin] does not contend that these students do not meet the requirements necessary to be graduated from high school in 4 years. These school districts created a schedule to suit the needs of their students. They make it work successfully to the benefit of their students.

[Franklin] also argues that the \*\*\*high school graduation [requirement] for world languages [is] 10 credits. [As demonstrated by the appended April 8, 2004 memorandum from the Commissioner of Education, the] 10-credit total has been suspended for students who entered the 9<sup>th</sup> grade in the school years 2001 through 2002, 2002 through 2003 and 2003 through 2004. Students who are entering the 9<sup>th</sup> grade in 2004 through 2005 are subject to 5 credits or testing.\*\*\* Therefore, the argument regarding world language is also a red herring. (Id. at 2-3, footnote omitted)

The Vocational District reiterates its request for summary decision, contending that Franklin has neither presented a genuine issue of material fact nor offered legal argument sufficiently persuasive to defeat the District’s motion. (Id. at 3)



## COMMISSIONER'S DETERMINATION

Upon review, the Commissioner agrees with the Vocational District that Franklin's position is entirely without merit and that the District is entitled to summary decision as a matter of law.

Both of Franklin's legal arguments are rooted in the absence of any explicit reference to "shared-time" instruction in the enabling legislation for the establishment of vocational education programs, *N.J.S.A.* 18A:54-3. However, even if one could, in theory, attempt to argue that the Legislature, upon enactment of the statute in its present form in 1967 or of its predecessor in 1913, might not have specifically contemplated shared-time programs, such interpretation could not be presently sustained in light of State funding laws concurrently in effect since at least 1975.<sup>4</sup>

In that year, the Legislature expressly made formulaic provisions to calculate State aid for "pupils regularly attending both the schools of the district and of a county vocational school district in the same county," P.L. 1975, c. 212 (*N.J.S.A.* 18A:7A-3, definition of "resident enrollment"). Upon repeal of this provision in 1990, a similar provision was incorporated into the new definition of "resident enrollment" enacted that year, P.L. 1990, c. 52 (*N.J.S.A.* 18A:7D-3). Current law, P.L. 1996, c. 138, enacted upon repeal of c. 52, retains similar provisions in its definition of "resident enrollment" at *N.J.S.A.* 18A:7F-3, and additionally provides, at *N.J.S.A.* 18A:7F-21, a formula for State aid to county vocational schools that specifically allows for "pupils attending shared-time secondary programs."

Additionally, both the State Board of Education and the Department of Education have recognized shared-time programs as an integral part of New Jersey's

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<sup>4</sup> Earlier funding laws were not reviewed for purposes of this decision.

educational system through diverse indications ranging from the School Register (*N.J.A.C.* 6:3-9.1(c)), to the program criteria for special education students (*N.J.A.C.* 6A:14-4.7(e)1ii), to the Application for State School Aid (ASSA), the Report Card, and official Audit Instructions for statutorily required annual audits. That *N.J.A.C.* 6A:19, Vocational-Technical Education, does not mention shared-time programs, except incidentally, reflects nothing more than the fact that no such differentiation is necessary in that context, since the purpose of the chapter is to regulate *vocational* instruction, not concomitant academic instruction which a student may, in order to receive a State-endorsed high school diploma, take either at a full-time vocational school or at his or her home high school. Simply stated, shared-time vocational programs have been, and remain, an important part of New Jersey's educational landscape, sanctioned by the Legislature, the State Board and the Department.

Franklin's attempt to argue that *N.J.S.A.* 18A:54-20.1 does not apply to shared-time students is equally disingenuous. That statute plainly entitles students whose own district does not maintain a vocational school to attend the county vocational school if they have applied and have been accepted there, without distinction between full-time and shared-time programs. Even if the Commissioner were to grant, solely for purposes of argument, Franklin's alternative contention that *N.J.S.A.* 18A:54-3 permits the offering of shared-time programs but does not create an independent student entitlement to attend them, that statute regulates the provision of vocational instruction in general, whereas *N.J.S.A.* 18A:54-20.1 pertains specifically to county vocational schools and *does* create such an entitlement, since the right to attend the county school is not contingent on the program attended.

Finally, the Commissioner concurs with the Vocational District that any scheduling difficulties Franklin may experience as a result of students attending county vocational programs on a shared-time basis cannot serve to deprive such students of their statutory entitlement to this form of vocational education if they choose and are qualified for it. Even granting every inference to Franklin's factual contentions, the Commissioner does not find them sufficient to support a claim that Franklin cannot provide T&E to shared-time students, particularly in light of the flexibility allowed, indeed encouraged, by the Department and State Board with respect to fulfillment of high school graduation requirements. Nor can it be ignored that such flexibility is expressly provided, at least in part, so that interested students may pursue from shared-time vocational programs.<sup>5</sup>

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<sup>5</sup> See, for example, the following exchange from public comments received on proposed amendments to *N.J.A.C. 6A:8-5.1*:

5. COMMENT: The commenter expressed concern that even the five-credit world languages requirement, along with the five-credit requirement in the visual and performing arts, will create a hardship for many students who want to pursue a shared-time vocational-technical program. The commenter concluded that students who are unable to complete these credit requirements plus any required remedial studies in their freshman and sophomore years will not have time in their schedules to attend a shared-time vocational program, and they will be deprived of the opportunity to develop meaningful occupational skills that prepare them for employment after graduation. (8) [Comment from Thomas Bistocchi – President, New Jersey Council of County Vocational-Technical Schools]

RESPONSE: The department, in recognition of time issues associated with shared-time vocational-technical programs, has endorsed the option of having students take a competency-based assessment in world languages in middle school to satisfy the requirement in lieu of seat time in a high school instructional program. This option is included in the proposed amendments at *N.J.A.C. 6A:8-5.1(a)1i(7)*. The department also believes that all districts involved in shared-time vocational programs must make every effort to create flexible schedules so that students can participate in vocational programs. (36 N.J. R. 662-663)

See also the following exchange from public comment received by the State Board prior to proposal and the resulting statement included in the summary published by the Department at proposal level:

**14. Comment:** The commenters expressed concern that while some districts utilize option ii in *N.J.A.C. 6A:8-5.1(a)1ii*, most county vocational-technical schools and local districts that send students on a shared-time basis to (*sic*) do not make use of this option, and most parents and students are unaware of the option. The commenters suggested strengthening the code language by specifically defining the ability of vocational-technical students to address world languages and visual and performing arts competencies through option ii and compelling sending districts to recognize and accept option ii alternatives. This would provide alternatives to a full year of "seat time" without eliminating credit requirements. (20) [Comment from William R. Donald, Jr., Supervisor, Fine and Performing Arts, Teaneck Public Schools]

**Response:** The department agrees that option ii is underutilized and that clarification of the language in *N.J.A.C. 6A:8-5.1(a)1ii* might encourage greater utilization of this option by districts, schools, and students. Such clarification is provided in the department's current proposal.

( <http://www.state.nj.us/njed/code/title6a/chap8/amendment2/crform.htm> )

The 110-credit requirement may be met in whole or in part through program completion aimed at achieving the Core Curriculum Content Standards, as described in *N.J.A.C. 6A:8-5.1(a)1ii*, commonly referred to as "option ii" or "option two." The proposed amendments will provide additional guidance to help districts take advantage of

Accordingly, the Somerset County Vocational-Technical School District is entitled to prevail in its request for relief as a matter of law. The Commissioner hereby grants summary decision to the District and declares null and void the Franklin Township Board of Education's policy prohibiting the sending of its students to shared-time county vocational programs.<sup>6</sup>

IT IS SO ORDERED.<sup>7</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2004

Date of Mailing: October 8, 2004

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this option. For example, they will provide districts with several possible models for developing option ii activities or programs linked to the Core Curriculum Content Standards. They include interdisciplinary or theme-based programs, independent study, co-curricular or extra-curricular activities, magnet programs, student exchange programs, distance learning opportunities, internships; community service; or other structured learning experiences. The proposed amendments clarify that activities and programs developed in accordance with option ii shall include appropriate assessments and that student achievements may meet or exceed the Core Curriculum Content Standards. Depending on their individual interests, abilities, and career plans, many students will and should develop knowledge and skills that build upon and go beyond the specific indicators in the Core Curriculum Content Standards.

Other proposed additions to the option ii rules empower district boards of education to utilize performance or competency assessment to approve, as fulfilling requirements for high school graduation, the completion of educational programs or activities occurring all or in part prior to a student's high school enrollment.

(35 N.J.R. 4166)

<sup>6</sup> Inherent in this Order is the concomitant relief sought by the District with respect to student applications and informational presentations to students. See Note 1 above.

<sup>7</sup> 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.*