81-19

New Jersey Commissioner of Education

Final Decision

T.W., on behalf of minor child, M.W.,

Petitioner,

v.

Board of Education of the Freehold Regional High School District, Monmouth County,

Respondent.

Synopsis

Petitioner filed an appeal on behalf of her minor child, M.W., seeking a determination that the cost of M.W.'s tuition to attend the Mercer County Technical School's (MCTS) Electrical Construction Program is the responsibility of the Freehold Regional High School District (Board), M.W.'s resident district board of education. M.W. was denied admission to the Monmouth County Vocational School District's (MCVSD) Electricity Program, but was admitted to MCTS's Electrical Construction Program, which has the same classification of instruction program code as MCVSD's Electricity Program. Petitioner alleged that the Board's decision to deny her request for tuition reimbursement under *N.J.A.C.* 6A:19-2.3(a)2 was arbitrary, capricious and unreasonable. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: petitioner's appeal was timely filed under *N.J.A.C.* 6A:3-1.3(i); *N.J.S.A.* 18A:54-1 *et seq* authorized the creation of local, county and regional vocational schools and set forth funding and enrollment requirements to deliver vocational education to interested students; an examination of the rules and regulations promulgated to foster access to county vocational schools shows that these provisions do not guarantee enrollment or tuition-free attendance; a student's right to attend a county vocational school is subject to admissions standards and available space, and only guarantees equal opportunity for enrollment, not enrollment for all; even if admitted to a county vocational school, a right to tuition-free attendance is not absolute; a county vocational school is permitted to establish admission requirements based on academic qualifications and space considerations; thus, *N.J.A.C.* 6A:19-2.3(a)2 is appropriately read to absolve a local school board of an obligation to fund a resident student's attendance at a non-resident county vocational school *if* a resident county vocational school has the same program, whether or not the student has been admitted to the resident county school; under *N.J.A.C.* 6A:19-2.3(b), every child is assured an equal opportunity to pursue an education at their county vocational school, but not every child is assured admission. The ALJ concluded that the Board is not obligated to pay for M.W.'s attendance at MCTS, and granted its motion for summary decision.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter.

March 27, 2019

OAL Dkt. No. EDU 11522-18
Agency Dkt. No. 192-8/18

New Jersey Commissioner of Education

Final Decision

T.W., on behalf of minor child, M.W.,

Petitioner,

v.

Board of Education of the Freehold Regional High School District, Monmouth County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, T.W., and the Freehold Regional High School Board of Education's (Board) reply thereto.[1] In this matter, the petitioner alleges that the Board's decision to deny her request for tuition reimbursement under *N.J.A.C.* 6A:19-2.3(a)2 was arbitrary, capricious and unreasonable. Petitioner's minor child, M.W., is a Monmouth County resident who was denied admission to the Monmouth County Vocational School District's (MCVSD) electrical program; M.W. therefore applied to the Mercer County Technical School's (MCTS) electrical program and was admitted. The petitioner contends that the respondent Board – M.W.'s resident school district – must pay tuition for M.W. to attend MCTS. Pursuant to *N.J.A.C.* 6A:19-2.3(a)2:

> The resident district board of education shall be responsible for the tuition and transportation costs, and nonresident fee (where applicable) of any resident student admitted to a county vocational school outside the county in which the resident school district is located unless the district board of education maintains a

[1] The petitioner submitted a response to the Board's reply exceptions that was not considered because replies to reply exceptions are not permitted.

> vocational school pursuant to *N.J.S.A.* 18A:54-5 *et seq*., or the county in which the resident school district is located maintains a county vocational school, and either of these school offers the same program as the non-resident county vocational school where the resident was accepted.

The petitioner does not appear to dispute the fact that MCVSD has the same electrical program as MCTS, but instead states that MCVSD did not offer its program to M.W.[2] The Administrative Law Judge (ALJ) granted the board's motion for summary decision and recommended that the petition of appeal be dismissed. In so doing, the ALJ found that the Board is not responsible for the cost of M.W.'s attendance at MCTS because MCVSD offers the same electrical program.[3]

The petitioner's exceptions substantially reiterated the substance of her submissions at the OAL, recasting the arguments therein to support the contention that the ALJ erroneously granted summary decision in favor of the Board. Specifically, the petitioner maintains that the ALJ wrongfully applied a strict reading of the word "offer" in *N.J.A.C.* 6A:19-2.3(a)(2) to find that the Board is not responsible for M.W.'s tuition at MCTS. M.W. was not accepted into MCVSD's program and as such MCVSD's program was not offered or made available to M.W. The ALJ's narrow interpretation of "offer" is inconsistent with public policy that encourages a vocational education.

Petitioner also takes exception to the ALJ's failure to address her argument that the Board has paid for other students' tuition at vocational schools despite the same programs offered through an in-county program. The Board's willingness to pay tuition for other students in similar circumstances demonstrates that there exists a factual issue as to whether the Board's

[2] The electrician programs at both MCTS and MCVSD have the same classification of instruction program code of 460302.

[3] The ALJ also determined that the petition of appeal was timely filed in accordance with *N.J.A.C.* 6A:3-1.3.

decision was arbitrary, capricious or unreasonable. Accordingly, summary decision was not appropriate, and a hearing is required. Therefore, the Initial Decision should be rejected.

In reply, the Board also reiterated the positions advanced in its submissions at the OAL, maintaining that the ALJ properly granted its motion for summary decision. The ALJ correctly found that the Board has no responsibility to pay for an out-of-district vocational program when an in-county vocational school has the same program. M.W. is free to attend the out-of-county program at MCTS, but the Board has no obligation to pay for M.W.'s tuition. The fact that M.W. did not get accepted into MCVSD is irrelevant for purposes of *N.J.A.C.* 6A:19-2.3 and does not change the fact that the program was "offered" as envisioned by the regulation. Moreover, the ALJ conducted an extensive examination of the meaning of "offer" before concluding that the Board has no obligation to pay for M.W.'s tuition at MCTS. The Board also stresses that, despite the petitioner's assertion that it paid tuition for other students in circumstances similar to those of M.W., it has never paid for a general education student to attend a vocational program at MCTS where the same program is offered at MCVSD. Finally, the ALJ properly found that there are no material facts in dispute and the Board is entitled to summary decision. Therefore, the Commissioner should adopt the Initial Decision as the final decision in this matter.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly stated in the Initial Decision – that the Board's decision to deny the petitioner's request for tuition was not arbitrary, capricious or unreasonable.[4] The ALJ correctly found that, "*N.J.A.C.* 6A:19-2.3(a)(2) is appropriately read to absolve a local school board of an obligation to fund a resident student's attendance at a non-resident county vocational school if a resident county vocational school has the same program,

[4] The Commissioner is also in accord with the ALJ's determination that the petition was timely filed.

whether or not the student has also been admitted to the resident county school." Initial Decision at 11. Moreover, the Commissioner does not agree with the petitioner's argument that because T.W. was not admitted into MCVSD's program, the program was not "offered" in accordance with *N.J.A.C.* 6A:19-2.3(a)(2). Finally, the Board's placement of certain special education students does not have any impact on this matter nor does it create the existence of material facts in dispute that requires a hearing in this case.

Accordingly, the recommended decision of the ALJ is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[5]

COMMISSIONER OF EDUCATION

Date of Decision: March 27, 2019
Date of Mailing: March 27, 2019

[5] Pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A*. 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON
SUMMARY DECISION
OAL DKT. NO. EDU 11522-18
AGENCY DKT. NO. 192-8/18

T.W. on behalf of M.W.,
Petitioner,
v.
BOARD OF EDUCATION
OF THE FREEHOLD REGIONAL
HIGH SCHOOL DISTRICT,
Respondent.

Patrick F. Carrigg, Esquire, for petitioner (Lenox, Socey, Formidoni, Giordano, Cooley, Lang & Casey, attorneys)

Mark G. Toscano, Esquire, for respondent Freehold Regional High School District Board of Education (Comegno Law Group, P.C., attorneys)

Record Closed: February 5, 2019 Decided: February 14, 2019

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

T.W. (petitioner) on behalf of her minor son, M.W., a Monmouth County resident, was denied admission to Monmouth County Vocational School District's (MCVSD)

Electricity Program but was admitted to Mercer County Technical Schools' (MCTS) Electrical Construction Program, seeks an order requiring respondent Freehold Regional High School District Board of Education (Freehold), which is M.W.'s resident district board of education, to pay for M.W. to attend MCTS pursuant to N.J.A.C. 6A:19-2.3(a)(2), which states:

> The resident district board of education shall be responsible for the tuition, transportation costs, and nonresident fee (where applicable) of any resident student admitted to a county vocational school outside the county in which the resident school district is located, unless the district board of education maintains a vocational school pursuant to N.J.S.A. 18A:54-5 et seq., or the county in which the resident school district is located maintains a county vocational school, and either of these schools offers the same program as the non-resident county vocational school where the student has been admitted. A program shall be deemed the same, for purposes of this section, if it is approved by the Department in accordance with N.J.A.C. 6A:19-3.1 and 3.2, is assigned the same Classification of Instructional Programs (CIP) code and meets or exceeds all applicable program performance standards.

T.W. argues that this provision compels Freehold to pay for her son to attend MCTS because, even though MCVSD has the same electrician program as MCTS, M.W. was denied admission to MCVSD's program and, thus, MCVSD did not offer its program specifically to M.W. In opposition, Freehold maintains that N.J.A.C. 6A:19-2.3(a) must be strictly construed, such that Freehold is under no obligation to pay for M.W. to attend MCTS because MCVSD, the resident county vocational school, "offers the same program as the non-resident county vocational school where the student has been admitted."

PROCEDURAL HISTORY

On August 9, 2018, petitioner filed a petition for due process with the Office of Controversies and Disputes of the New Jersey Department of Education, along with a request for emergent relief. On August 10, 2018, the emergent matter was filed with the Office of Administrative Law (OAL). The emergent-relief request was scheduled for oral argument, which was held on August 21, 2018. The emergent application was denied, and respondent

thereafter filed the within motion for summary decision. Oral argument was requested and heard on December 10, 2018. Petitioner was permitted to supplement the record until February 1, 2019. Respondent replied to petitioner's supplemental submission on February 5, 2019, and the record closed on that date.

FACTUAL DISCUSSION

The following facts are not in dispute and as such **I FIND AS FACT** that M.W. lives with his mother, T.W., in Howell, which is in Monmouth County. Petition, ¶ 1. He attends Howell High School (HHS), which is within the Freehold's jurisdiction. Id. at ¶ 2.

M.W. applied for admission to the career and technical education (CTE) programs for aspiring electricians at MCVSD and MCTS for the 2018-2019 school year.[6] Id. at ¶¶ 5-9. On April 24, 2018, MCTS informed M.W. that he had been accepted into its Electrical Construction Program. Id. at Ex. B. However, on May 9, 2018, MCVSD informed M.W. that he had been denied admission to its Electricity Program. Id. at Ex. A. The two programs have the same CIP code of 460302.[7] Certification of Michael Dillon, Ex. B; New Jersey Department of Education, Postsecondary Career and Technical Programs, https://homeroom5.doe.state.nj.us/pctep/search.php.

On May 10, 2018, T.W. wrote a letter to Dr. Lester Richens, the Interim Executive County Superintendent for Monmouth County, to inform him that M.W.'s guidance counselors had told her that, despite his admission, M.W. could not attend the MCTS program, and asked Dr. Richens to "resolve this issue." Petition, Ex. C. In her letter, T.W. asserted that N.J.A.C. 6A:19-2.3(a)(2) obligated Freehold Regional to pay for M.W.'s attendance at MCTS since he was denied admission to MCVSD's program. Ibid.

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[6] Freehold Regional does not operate its own vocational school or offer a CTE program for aspiring electricians. Id. at 3-4.
Several years ago, the State Board of Education generally changed the regulatory terminology from "vocational" to "career and technical" education "to ensure that programs once considered 'vocational' are now given the legitimacy and respect they deserve." 38 N.J.R. 3205(a); 39 N.J.R. 29(a). The term "vocational" is still used if there is a statutory basis. 38 N.J.R. 3205(a).

[7] These programs are known as "shared-time" programs because they allow a student to attend a vocational school for half of each day and the home high school for the other half of the day. MCVSD, "Shared Time Overview," available at https://www.mcvsd.org/sharedTime/shared-time-overview.html.

In a response letter dated May 17, 2018, Dr. Richens notified T.W. that, under N.J.A.C. 6A:19-2.3(a)(2), Freehold Regional "would not be required to pay tuition or provide transportation, despite the fact that [M.W.] was denied admission to [MCVSD's] program" because "[w]e have deemed Monmouth and Mercer to have equivalent electrical programs." Id. at Ex. D.

In an August 7, 2018, letter to T.W., Michael Dillon, Freehold's Director of Guidance and Operations, stated that "[t]his letter serves as formal notice that the Freehold Regional High School District will not pay tuition or transportation to any program at [MCTS] as [M.W.] has access to the Monmouth County Vocational Programs." Dillon Cert., Ex. A. Dillon quoted from N.J.A.C. 6A:19-2.3(a)(2) and concluded that, "[a]s such, you would be solely responsible for the full tuition and transportation costs to [MCTS] should [M.W.] choose to attend their program." Ibid.

On August 9, 2018, T.W. filed a petition of appeal with the Commissioner of Education, seeking an order requiring Freehold to "pay all costs, including transportation, associated with M.W.'s attendance at [MCTS'] Electrician program." T.W. included a separate motion for emergent relief in the form of an order requiring Freehold to pay for M.W.'s attendance at MCTS for the 2018-2019 school year, pending the Commissioner's final decision on the underlying petition of appeal.

On August 9, 2018, the Commissioner transmitted the petition of appeal and motion for emergent relief to the Office of Administrative Law (OAL). On August 22, 2018, I denied T.W.'s motion for emergent relief by order. On September 10, 2018, the Commissioner adopted the emergent relief order and ordered that "[t]his matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure." Commissioner's Decision on Application for Emergent Relief.

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there

is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

On October 1, 2018, Freehold filed with the OAL a "Motion for Summary Decision in Lieu of an Answer."[8] In a supporting brief and certification, Freehold submits that summary decision on T.W.'s petition of appeal is appropriate because there are no genuine issues of material fact and Freehold is entitled to prevail as a matter of law. Specifically, Freehold argues that, under the strict terms of N.J.A.C. 6A:19-2.3(a)(2), Freehold is not obligated to pay for M.W.'s attendance at MCTS, a non-resident county vocational school, because MCVSD, the resident county vocational school, "offers the exact same program" as the electrician program at MCTS. In this regard, Freehold notes that the two programs have the same CIP code, as required by N.J.A.C. 6A:19-2.3(a)(2). Brief, p. 2.

Freehold also argues that summary decision is appropriate because T.W. failed to appeal Dr. Richens' denial of her request for Freehold to pay for M.W.'s attendance at MCTS. According to Freehold, "[t]he 90-day deadline to appeal the Interim Executive Superintendent's determination passed on August 15, 2018, meaning it has now become a final decision, and Petitioners' Petition is now also barred as untimely." Id. at pp. 2-3.

[8] This type of motion does not exist under either the procedural rules governing controversies and disputes before the Commissioner, N.J.A.C. 6A:3-1.1 to -1.17, or the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to 21.6. N.J.A.C. 6A:3-1.5(a) generally requires a respondent to file an answer within twenty days after receiving a petition. But see N.J.A.C. 6A:3-1.5(g) (stating that "[n]othing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer"). Here, the Commissioner immediately sent T.W.'s emergent motion, along with the underlying petition, to the OAL without an answer. See N.J.A.C. 6A:3-1.6. T.W. has not objected to Freehold's motion on the grounds that it is premature without an answer, and the papers submitted by the parties shows that there are no genuine issues of material fact. Thus, Freehold should be allowed to proceed with its motion for summary decision even though it has not filed an answer to T.W.'s petition. See N.J.A.C. 1:1-1.3(b) (providing that procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice").

On October 18, 2018, T.W. filed a brief in opposition to Freehold's motion. T.W. argues that Freehold's interpretation of N.J.A.C. 6A:19-2.3(a)(2) is too narrow. Instead, T.W. contends that, under that provision, Freehold is responsible to pay for M.W.'s attendance at MCTS because MCVSD failed to "offer" M.W. the same program as MCTS by denying him admission. According to T.W., public policy in favor of access to a vocational education supports a broader reading of N.J.A.C. 6A:19-2.3(a)(2) to include M.W.'s situation.

T.W. also disagrees with Freehold's contention that Dr. Richens' May 17, 2018, letter triggered the ninety-day rule under N.J.A.C. 6A:3-1.3(i), which provides that "[t]he petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing." According to T.W., "[t]he Executive County Superintendent's letter of May 17, 2018 is advisory as [he] has no authority to render an appealable decision." Opposition Brief, p. 10.

On October 31, 2018, Freehold submitted a reply brief in which the board argues that T.W. "continues to intentionally confuse the reference to the program being 'offered' generally, as used in [N.J.A.C. 6A:19-2.3(a)(2)], with an offer of admission specific to M.W., which is not how the regulation reads." Reply Brief, p. 3. Freehold also reiterates its contention that this matter should be dismissed because T.W. failed to timely appeal Dr. Richens' decision regarding Freehold's obligation to pay for M.W.'s attendance at MCTS.

Again, as in the emergent application, it was clear that the parents only have the best interest of their child in pursuing this application and educational pursuit. In fact, the entire presentation by petitioner was appreciated by the court.

Likewise, with the emergent application, the undersigned questioned the logic of the respondent in following the "letter of the law" and not the "spirit of the law." Clearly, the spirit of the law was to prevent forum shopping by residents of a county where a program was offered but they just simply refused to attend. That is not the case here.

Failing to pay for a program in another county simply because it is offered in the home county where the student was rejected not due to academics or disciplinary problems is not the intent of the law. The intent is to encourage education. At the time, there was no indication that he was rejected for anything other than seating availability. However, following oral argument on Freehold's motion on December 10, 2018, the court asked T.W. to supplement the record on January 22, 2019, with information about the reason MCVSD denied M.W. admission to its Electricity Program. According to T.W., MCVSD informed her that "there were 70 applicants to the program and they accepted 20 students" and that "[t]he criteria used for determining which applicants would be accepted was grades and attendance." T.W.'s January 22, 2018, Supplemental Submission. However, "M.W. was not one of the top 20 students based on his grades and attendance" because "he had a cumulative GPA of 1.59 and 11 absences in his 9th grade year and 13 absences in through [sic] his 10th grade year." Ibid. As part of her supplemental submission, T.W. provided MCVSD's admission policy.[9] Ibid.

According to the policy, "[a]ll pupils will be given equal opportunity for enrollment," but "[q]ualified pupils will be accepted into regular vocational programs . . . on a geographic basis based upon the number of applications submitted by the home high schools." Ibid. Under the criteria for "qualified pupils," "[p]upils must have an excellent attendance record (less than fifteen days absent per year)" and "must have a 'C' grade point average." Ibid. The admission policy also states that "[i]f less applications than spaces are received, all qualified pupils will be accepted" and that, "[i]f more applications than spaces are received, pupil selection will be based upon need as established by the number of qualified applications from each school district with all schools being given equal access to all programs." Ibid.

LEGAL DISCUSSION

First, as a threshold matter, Freehold incorrectly argues that T.W.'s petition should be dismissed as untimely. Under N.J.A.C. 6A:3-1.3(i), otherwise known as the ninety-day rule, "[t]he petitioner shall file a petition no later than the 90th day from the date of

[9] The policy is publicly available at https://www.mcvsd.org/shared-time-policy.html.

receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing." If a petitioner fails to file his or her petition within this ninety-day period, the petition may be dismissed as untimely.

Here, T.W. timely filed her petition in accordance with N.J.A.C. 6A:3-1.3(i). On August 7, 2018, Freehold's Director of Guidance and Operations notified T.W. by letter that "[t]his letter serves as formal notice that the Freehold Regional High School District will not pay tuition or transportation to any program at [MCTS] as [M.W.] has access to the Monmouth County Vocational Programs." Two days later, on August 9, 2018, T.W. filed her petition challenging this final ruling by the district Board of Education that is the subject of this contested case. Therefore, T.W. filed a timely appeal. The county superintendent's May 17, 2018, opinion letter is not the triggering event under N.J.A.C. 6A:3-1.3(i), and even if it were, T.W. still filed her petition questioning Freehold's financial obligation within ninety days. As such, T.W.'s petition will not be dismissed as untimely.

However, for the following reasons, Freehold is not obligated to pay for M.W.'s attendance at MCTS.

In New Jersey, a primary purpose of vocational education is "to fit for profitable employment." N.J.S.A. 18A:54-1. To reach this goal, the Legislature has, through N.J.S.A. 18A:54-1 to -41, authorized the creation of local, county, and regional vocational schools, and set forth funding and enrollment requirements for the delivery of a vocational education to interested students.

If a local board of education does not operate its own vocational school, N.J.S.A. 18A:54-20.1 provides that such board "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 . . . and who has applied for admission to and has been accepted for attendance at any of the schools of the county vocational school district" and "shall pay tuition for each of these pupils to the county vocational school district." N.J.S.A. 18A:54-20.1(a).

N.J.S.A. 18A:54-20.1 further provides that "[t]he board of education of a county vocational school district shall receive pupils from districts without the county so far as their facilities may permit" and authorizes the non-resident school to collect tuition and a non-resident fee from the sending district. N.J.S.A. 18A:54-20.1(b) and (c). However, N.J.S.A. 18A:54-20.1 does not specifically address the funding requirements for situations in which a resident county has a vocational school, but the resident student wishes to attend a non-resident county vocational school at the expense of his local school district. To fill this statutory void, the State Board of Education and Department of Education promulgated the regulation at issue in this matter, N.J.A.C. 6A:19-2.3(a)(2), which governs non-resident access to county vocational schools. Again, that regulation provides in relevant part:

> The resident district board of education shall be responsible for the tuition, transportation costs, and nonresident fee (where applicable) of any resident student admitted to a county vocational school outside the county in which the resident school district is located, unless . . . the county in which the resident school district is located maintains a county vocational school, and . . . offers the same program as the non-resident county vocational school where the student has been admitted. A program shall be deemed the same, for purposes of this section, if it is approved by the Department in accordance with N.J.A.C. 6A:19-3.1 and 3.2, is assigned the same Classification of Instructional Programs (CIP) code, and meets or exceeds all applicable program performance standards.
>
> [N.J.A.C. 6A:19-2.3(a)(2).]

Also, N.J.A.C. 6A:19-2.3(b) states that "[a] county vocational school district shall admit resident students based on board-approved policies and procedures that ensure equity and access for enrollment that shall be posted on the school district's website" and that "[a] county vocational school district shall similarly admit non-resident students to the extent that space is available, pursuant to N.J.S.A. 18A:54-20.1.b."

Upon a thorough review of prior administrative decisions, it appears that the issue in this matter is one of first impression. Here, the parties dispute the meaning of the word "offers" under N.J.A.C. 6A:19-2.3(a)(2). Freehold strictly reads "offers" to mean that, so

long as the resident county school has the same program as the non-resident school, a local school district is under no obligation to fund a resident student's attendance at the non-resident school, regardless of whether the student is denied admission to the resident school. In contrast, T.W. broadly reads "offers" to include the implicit assumption that the resident school admits the resident student; only then has the resident school "offered" the student the same program as the non-resident school. Due to these conflicting views, it is necessary to determine which party's interpretation should prevail.

In interpreting a regulation, the rules of statutory construction apply. US Bank, N.A. v. Hough, 210 N.J. 187, 199 (2012) (citation omitted). As such, "[d]etermining the intent of the drafter is [the] paramount goal," and "[g]enerally, the drafter's intent is found in the actual language of the enactment." Ibid (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005); Bedford v. Riello, 195 N.J. 210, 221 (2008)). Moreover, a "well established rule of statutory construction [is] that a legislative provision should not be read in isolation or in a way which sacrifices what appears to be the scheme of the statute as a whole," but "which harmonizes all of its parts so as to do justice to its overall meaning." Zimmerman v. Mun. Clerk of Berkeley, 201 N.J. Super. 363, 368 (App. Div. 1985) (citing Alexander v. New Jersey Power & Light Co., 21 N.J. 373 (1956)). With these principles in mind, Freehold's interpretation of N.J.A.C. 6A:19-2.3(a)(2) must prevail.

While N.J.S.A. 18A:54-20.1 and N.J.A.C. 6A:19-2.3 are designed to foster access to county vocational schools, these provisions do not guarantee enrollment or tuition-free attendance. First, these provisions recognize that a student's right to attend a county vocational school is subject to admissions standards and available space. Under N.J.S.A. 18A:54-20.1(a), an obvious prerequisite to a local school board's funding obligation is that a resident student "has applied for admission to and has been accepted for attendance . . ." See also N.J.A.C. 6A:19-2.3(a) (stating that "[e]ach resident district board of education shall ensure that resident students may apply to and, if accepted, attend a county vocational school pursuant to N.J.S.A. 18A:54-20.1").

And N.J.A.C. 6A:19-2.3(b) provides that "[a] county vocational school district shall admit resident students based on board-approved policies and procedures that ensure equity and access for enrollment" and that "[a] county vocational school district shall

similarly admit non-resident students to the extent that space is available, pursuant to N.J.S.A. 18A:54-20.1(b) ['The board of education of a county vocational school district shall receive pupils from districts without the county so far as their facilities may permit']." Thus, these provisions only guarantee equal opportunity for enrollment, not enrollment for all.

Second, even if a student is admitted to a county vocational school, his right to tuition-free attendance is not absolute. Under the provision at issue, N.J.A.C. 6A:19-2.3(a)(2), "[t]he existence of the same career and technical education program at the resident district board of education shall not negate a student's right to apply to and, if accepted, attend a county vocational school," but the local school board is not responsible for tuition if the resident district or resident county vocational school "offers the same program as the non-resident county vocational school where the student has been admitted." (Emphasis added).

When this provision is read in conjunction with the language regarding admissions standards and available space under N.J.S.A. 18A:54-20.1 and N.J.A.C. 6A:19-2.3(b), it becomes clear that Freehold's interpretation is correct. Admission is not certain for every student who would like to attend a county vocational school. A county vocational school is permitted to establish admission requirements based on academic qualifications and space considerations. Thus, N.J.A.C. 6A:19-2.3(a)(2) is appropriately read to absolve a local school board of an obligation to fund a resident student's attendance at a non-resident county vocational school if a resident county vocational school has the same program, whether or not the student has also been admitted to the resident county school. Again, under N.J.A.C. 6A:19-2.3(b) every child is assured an equal opportunity to pursue an education at his or her county vocational school, but not every child is assured admission.

The conclusion that "offers" means "has," and cannot be read to imply that a resident county school only "offers" a program to admitted students, is further supported by the presence of both the word "existence" and "offers" in reference to the "same program" under N.J.A.C. 6A:19-2.3(a). Clearly, "existence" and "offers" are synonymous under that provision, and in this context, both words simply mean "has."

As a result of this interpretation, Freehold is not responsible for the cost of M.W.'s attendance at MCTS under N.J.A.C. 6A:19-2.3(a)(2). MCVSD, the resident school, "offers the same program" as MCTS, the non-resident school, because the electrician programs at both schools have a CIP code of 460302. N.J.A.C. 6A:19-2.3(a)(2) does not require Freehold to pay for M.W.'s attendance at MCTS because he was denied admission at MCVSD. The record shows that he had the opportunity to apply for admission to MCVSD, but unfortunately did not meet that school's academic requirements. Fortunately, he was admitted to, and attends, MCTS. However, as a matter of law, Freehold does not have to pay for his attendance.

Also, despite the fact that petitioner did not file a cross-motion for summary decision, it is clear from the papers that there are no genuine issues of material fact requiring a hearing and that T.W. should prevail as a matter of law. As such, and because the UAPR provide that "[t]he judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing" and "[t]he judge may take such other actions as are necessary for the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision," N.J.A.C. 1:1-14.6(h) and (p). and **I FIND AS FACT** that there are no genuine issues of material fact requiring a hearing.

For the foregoing reasons, **I CONLUDE** Freehold's motion for summary decision is **GRANTED** even though he did not file a cross-motion for summary decision.

Having **CONCLUDED** that Freehold's motion for summary decision is **GRANTED**, it is hereby **ORDERED** that the petitioner's appeal be **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized

to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 14, 2019
DATE

DEAN J. BUONO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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