

C #386-97
SB # 71-97

M.R., by his guardian ad litem, J.N. AND :
K.K., by his guardian ad litem, F.K., :
 :
 PETITIONERS-RESPONDENTS, :
 :
 V. : STATE BOARD OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF POMPTON LAKES, :
 PASSAIC COUNTY, :
 :
 RESPONDENT-APPELLANT. :
 _____ :

Decided by the Commissioner of Education, July 29, 1997

For the Petitioners-Respondents, Jeffer, Hopkinson, Vogel & Peiffer
(Reginald F. Hopkinson, Esq., of Counsel)

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

For the Commissioner of Education, Geraldine Callahan, Deputy Attorney
General (Peter Verniero, Attorney General of New Jersey)

This matter was initiated by a petition of appeal accompanied by an application for emergent relief filed on behalf of two students who had applied to and been accepted by the Academy for Computer Technologies and the Academy for Engineering and Design, respectively, both of which are operated by the Bergen County Technical Schools. The students, who had graduated from eighth grade in the Pompton Lakes school district in Passaic County in June 1997, had requested that the Board of Education of the Borough of Pompton Lakes (hereinafter "Board") pay for their tuition and transportation to attend the academies in question, and the Board had

refused to assume these costs. The students' guardians then petitioned the Commissioner of Education, seeking payment by the Board pursuant to N.J.S.A. 18A:54-20.1 and N.J.S.A. 18A:54-23.4.

With their petition, petitioners filed a notice of motion for emergent relief and a brief in support of that motion. The Board filed an answer to the petition and a brief in opposition to the motion for emergent relief, accompanied by the certification of its superintendent and supporting exhibits. Petitioners then filed a letter memorandum in response to the Board's submissions.

Following the submission of petitioners' reply to the Board's responsive papers, the Commissioner determined that the issues raised could appropriately be decided by an expedited ruling on the merits of the matter on the basis of the record before him. Accordingly, he proceeded to do so, thereby disposing of this matter in its entirety.

The Commissioner found that the academies at issue were vocational schools within the meaning of Chapter 54 and its implementing regulations. He further found that no program comparable to the type available in Bergen County could be provided by the Pompton Lakes Board. He therefore directed the Board to remit tuition on behalf of petitioners to the Bergen County Vocational School District pursuant to N.J.S.A. 18A:54-20.1 and to provide for their transportation pursuant to N.J.S.A. 18A:39-1.

The Pompton Lakes Board appealed the Commissioner's determination, contending that the academies at issue do not provide vocational education within the meaning of N.J.S.A. 18A:54-1 and the implementing regulations, and that, as a result, it is not obligated to pay for petitioners' education at these academies. It further contended that even if the State Board determined that the academies were vocational

schools, the dispute should be returned to the Commissioner for a factual hearing in the Office of Administrative Law on the question of whether it could offer a comparable program to petitioners in Passaic County.

Petitioners countered that the Commissioner had properly interpreted and applied the applicable statutes, and argued that a hearing was not necessary because there were no material facts in dispute.

In its reply brief, the Pompton Lakes Board reiterated its earlier arguments that the academies were not vocational schools within the meaning of New Jersey's statutes and that their programs did not constitute vocational education and training. The Board also contended for the first time that the Commissioner's determination violated the Carl D. Perkins Vocational and Applied Technology Act ("Perkins Act"), 20 U.S.C.A. §2301 et seq.

On November 5, 1997, the Deputy Attorney General representing the Commissioner filed a letter brief on his behalf. By this filing, the Commissioner moved to participate in the matter to request that it be remanded to him so that he could have the opportunity to consider the Board's claim relating to the Perkins Act.

The Pompton Lakes Board is in accord with the Commissioner's request. Petitioners, however, oppose the request, arguing that the question involved is one of law which the State Board should now decide.

We grant the Commissioner's motion to participate so as to allow the State Board to entertain his request for a remand. After careful consideration, we grant the request and remand this matter to the Commissioner with the further direction that it be transmitted to the Office of Administrative Law for hearing and determination of all the

issues raised by this appeal, including the factual question of whether the Board can offer a comparable program to petitioners in Passaic County. Brill v. Guardian Life Insurance Company, 142 N.J. 520 (1995).

December 3, 1997

Date of mailing _____