

GLOUCESTER COUNTY INSTITUTE :
OF TECHNOLOGY, GLOUCESTER :
COUNTY, : COMMISSIONER OF EDUCATION

PETITIONER, : DECISION ON REMAND

V. :

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

RESPONDENT. :

SYNOPSIS

Petitioner, Gloucester County Institute of Technology (GCIT), seeks to recover nonresident fees from respondent Board for Lenape Regional High School students attending the GCIT performing arts program, as well as prejudgment interest. Respondent has argued that GCIT improperly calculated the nonresident fee it charges for out-of-county students. This case stems from a long standing dispute between the parties regarding whether the GCIT performing arts programs met the definition of vocational education, and— if so— whether GCIT is entitled to reimbursement from the home districts of their students. This issue was determined in the affirmative by a companion case decided in the Appellate Division November 12, 2004 (certification denied by Supreme Court on January 28, 2005).

The ALJ found, *inter alia*, that the nonresident fee for out-of-county secondary students should be based on secondary students in attendance at GCIT, and that the Court’s January 28, 2005 denial of certification established that GCIT was eligible for payment of the nonresident fee from respondent Board. The ALJ concluded that the GCIT nonresident fee calculation is appropriate and that prejudgment interest is warranted for “tuition and transportation costs” beginning on March 1, 2005.

The Commissioner concurs with the ALJ that: 1) GCIT did not err by omitting nonresident post-secondary students from its calculation of the nonresident fee authorized by *N.J.S.A. 18A:54-20.1(c)*; and 2) there was no reason why respondent Board should not have paid at least the undisputed amount due to GCIT as of March 1, 2005. The Commissioner adopts the Initial Decision of the OAL as the final decision in this matter, clarifying that the amount referenced in the recommended order is the nonresident fee, not “tuition and transportation costs.” Respondent Board is directed to remit payment forthwith to GCIT, including both the disputed nonresident fee balance and interest on the undisputed amount.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

OAL DKT. NO. EDU 4720-00
(EDU 10120-98 ON REMAND)
AGENCY DKT. NO. 444-9/98

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The record of this matter and the Initial Decision on Remand¹ of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the respondent Board of Education (Lenape) in accordance with *N.J.A.C.* 1:1-18.4.²

In its exceptions, Lenape reiterates its arguments before the OAL with respect to statutory and regulatory construction, urging that Lenape’s reading is the only one comporting with the plain language—as well as the history and intent—of the statutes and rules at issue. (Lenape’s Exceptions at 3-11) Lenape also proposes findings of fact in addition to those reached by the Administrative Law Judge (ALJ), most notably with respect to events subsequent to March 1, 2005, when the Gloucester County Institute of Technology

¹ This matter was originally filed in 1998 and resulted in a Commissioner decision dated December 16, 1999, directing the respondent Board to pay tuition to petitioner. However, the State Board of Education, in its June 7, 2000 decision on appeal of the Commissioner’s decision, remanded the matter to the Commissioner for determination consistent with the State Board’s March 1, 2000 decision in the related matter of *K.B. v. Rancocas Valley, supra*. Accordingly, in June 2000, the Commissioner remanded the matter to the OAL for hearing consistent with the State Board’s decision. (See Initial Decision at 1-2)

² The Gloucester County Institute of Technology’s reply to Lenape’s exceptions bore a face date of September 29, 2005 and was filed on October 3, 2005—well beyond the time frame permitted by *N.J.A.C.* 1:1-18.4(a). Since no extension was requested and granted pursuant to *N.J.A.C.* 1:1-18.8, the Institute’s submission is not considered herein.

(GCIT) first presented its nonresident fee calculations. Lenape proffers that the amount due GCIT was not finally determined on that date—the date from which the ALJ ordered payment of prejudgment interest based on its being 30 days after resolution of the larger underlying dispute by the Supreme Court—and notes that the district is “currently processing a check for the undisputed amount of \$257,042.22,³ which will be promptly paid to GCIT without prejudice to Lenape.” (*Id.* at 2, Note 2)

With respect to the central question of this matter, the Commissioner concurs with the ALJ that GCIT did not err by omitting nonresident post-secondary students from its calculation of the nonresident fee authorized by *N.J.S.A.* 18A:54-20.1(c). Notwithstanding Lenape’s focus on the construction of particular words and phrases, it is clear from the overall statutory and regulatory scheme governing support of county vocational schools—as well as sound in terms of educational and fiscal policy—that the nonresident fee is intended to generate for out-of-county students the same level of support that the school’s county of location provides for resident students.

Post-secondary county vocational education for nonresidents—including charges to such students’ counties of residence where appropriate—is governed by its own separate statutory scheme, *N.J.S.A.* 18A:54-23.1 through 23.5 (*P.L.* 1973, c. 333), and indeed, was at the time *N.J.S.A.* 18A:54-20.1(c) was enacted and subsequently amended. Moreover, secondary and post-secondary students are generally funded in entirely different manners, with the result that, here, the school’s post-secondary costs are covered in full by State aid and the county contribution is used in its entirety to support the secondary program. (Petitioner’s Responsive Brief to Respondent’s Cross Motion for Summary Judgment, Exhibit B; Petitioner’s Cross Motion for Summary Decision, Exhibit B; Respondent’s Cross

³ Lenape contends that GCIT’s methodology “improperly inflates the total nonresident fee from \$257,042.22 to \$368,900.00, not including interest.” (Lenape’s Exceptions at 3, Note 4)

Motion for Summary Decision, Exhibit D) Under these circumstances, it was entirely consistent with statute and rule for GCIT to have reckoned the county's per pupil contribution toward secondary-level vocational education based on the county tax levy divided by the number of resident students enrolled in the secondary program, and then to assess the resulting amount to nonresident students' home districts.

With respect to the question of prejudgment interest, the Commissioner concurs that, as of March 1, 2005, there was no reason why Lenape should not have paid at least the undisputed amount due to GCIT, as it represents it now has; therefore, the Commissioner directs that prejudgment interest be paid on the amount of \$257,042.22⁴ from March 1, 2005 to the date such funds were—or are, if the above-referenced payment has not yet been fully processed—disbursed to GCIT.

Accordingly, as amplified above, the Initial Decision of the OAL is adopted as the final decision in this matter and the Board of Education of the Lenape Regional High School District is directed to remit payment forthwith to the Gloucester County Institute of Technology, including both the disputed nonresident fee balance and interest on the undisputed amount as set forth herein.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 11, 2005

Date of Mailing: October 12, 2005

⁴ Although the ALJ references “interest for tuition and transportation,” the Commissioner clarifies that the amount at issue herein is solely the nonresident fee, since GCIT did not additionally charge Lenape for tuition, and transportation costs were not involved in the underlying dispute.

⁵ 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.*