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October 27, 2011

Dr. Aldo Jackson, Director
Erie County Technical School
8500 Oliver Road
Erie, PA 16509

RE: Non-Resident and Nonparticipating School Districts
students – Marketing Program

Dear Dr. Jackson:

The purpose of this opinion letter is to provide you information in regard to the ability of the Erie County Technical School to market and permit non-resident students and non-participating school districts students to attend the Erie County Technical School. Pennsylvania Public School Code contains various sections that address this issue.

1. Non-Resident Tuition Students

First, Section 13-1316 entitled “Permitting attendance of non-resident pupils” provides as follows: “The board of school directors of any school district may permit any non-resident pupils to attend the public schools in its district upon such terms as it may determine, subject to the provisions of this act.”

Section 16-1608 entitled “Requirements for attendance in other districts” provides as follows:

Pupils wishing to attend a high school in a district other than the high school in the district in which they reside shall obtain the consent of the board of school directors of the district or joint school of the area in which such high school is located before attending the same. Pupils desirous of having their tuition paid in a high school in another district shall secure written approval from the school board in the district or joint board in the district or joint board of the area of which they are residents. The board of school directors of the district in which any such pupil resides may enter into a written agreement with the receiving district for the attendance and tuition of the pupil.

In the case of Ferndale Area School District v. Shawley, 11 Pa. Comm. 185, 313 A.2d 366 (1973) the court held that where parents failed to sustain their burden of proof showing that they resided in a certain school district it is inappropriate for a court to order that child to be enrolled in that school district without authority required from the school district in question and the payment of tuition. In addition, the court held that the board of school directions may refuse to permit the registration of a non-resident pupil unless provision for payment of tuition for student is made.

Pursuant to 24 Pa.C.S. §25-2562 the sending district is obligated to pay these costs if the attendance is previously approved by the sending district. Thus the sending district is obligated to pay the cost of tuition and transportation for students attending vo-tech classes in another district (1) if the home district does not have an approved program; (2) if the home district does not participate in a vo-tech school; or (3) if the home district has previously approved the attendance.

Obviously, the option of parent paid tuition based attendance or consent of the resident school district with paid tuition and transportation are options.

2. Non-resident Students

Section 18-1809 entitled "Attendance in other districts and other states; pupils from other states" and provides as follows:

(a) Any resident of any school district which does not maintain an approved vocational industrial, vocational agricultural, vocational homemaking, or vocational distributive occupational education day, part-time, or evening class, school or department, offering the type of training which he desires, may make application to the board of school directors of any other district for admission to such school or department maintained by said board. If the board refuses him admission, he may apply to the State Board for Vocational Education for admission to such school or department. The State Board for Vocational Education may approve or disapprove such application. In making such decision the State Board for Vocational Education shall take into consideration the opportunities for free vocational training in the community in which the applicant resides, the financial status of the community, the age, preparation, aptitude, and previous record of the applicant, and all other relevant circumstances. A decision State Board for Vocational Education shall be final.

(c) The school district in which the person resides, who has been admitted, as above provided, to an approved vocational industrial, vocational agricultural, vocational homemaking, vocational distributive occupational school, or department maintained by another school district, shall pay the high school charge provided by this Act (Section 18-1801 et seq.). If any school district neglects or refuses to

pay for such tuition, it shall be liable therefore, in an action of contract, to the school district or school district's maintaining the school which the pupil, with the approval of the board, attended.

3. Non-Participating School District Students

Section 18-1847 entitled Attendance of Pupils from Non-Participating Districts provides as follows:

On obtaining the consent of the area of vocational-technical board operating in an area of vocational-technical school or technical institute, and with or without the consent of the board of school directors of the district in which the pupil resides, any pupil residing in a non-participating district may attend the area-technical school or technical institute. The school district in which the pupil resides shall be charged, for each pupil attending the area vocational-technical school or technical institute, in an amount equal to the total approved budget for current expenses, debt service and capital outlay divided by the number of pupils enrolled in the school.

In light of the above provisions and cases it is clear that the Erie County Technical School may market and permit non-resident and non participating students to attend the Erie County Technical School. However, the issue is whether students whose resident school districts has its own approved vocational program, would have to consent to reimbursement for tuition and transportation.

The case of Bethlehem Area Vocational-Technical School v. Palisades School District, 156 Pa. Comm. 120, 625 A.2d 1330 (1993) is instructive, a copy of the case is attached hereto. In this case, students, who resided in the Palisades School District, attended the area vocational classes in the Bethlehem Area School District. The Bethlehem Area School District filed suit for reimbursement of the cost for providing vocational education and transportation services to the Palisades School District students. The court interpreted Section 1809 and 1847 of the Pennsylvania Public School Code and held that before the receiving school district which provides vocational-technical services to residents from another school district can claim reimbursement, it must first determine whether the students are eligible to attend a vocational-technical program outside their home school district.

Prerequisites for reimbursement pursuant to 24. Pa.C.S. §18-1809 non-resident students are : (a) that the district in which the student resides does not maintain an approved vo-tech program offering the type of training which the student desires; and (b) that the student's application to another vo-tech program be approved either by that school board or by the Pennsylvania State Board for Vocational Education.

Prerequisites to reimbursements of a school district providing vocational-technical services pursuant to 24. Pa.C.S. §18-1847 non-participating school district students are: (a) residents in a non-participating school district; and (b) consent of the receiving area vocational board.

The court stated that:

“The legislature has provided that home districts reimburse receiving districts which provide services under limited circumstances. In addition, to our reading of the Code, public policy consideration militate against permitting students to chose a vo-tech program as a matter of personal convenience without first receiving the consent of the school district in which they reside and which provides approved vo-tech programs. School districts must be able to accurately plan for financial demands and educational programs. While the amounts at issue here do not seem large, a reading of the code which permits one district to accept students from another district and then bill the home district without any prior coordination makes it difficult for the home district to ascertain budgetary and staffing needs. Furthermore, requiring Palisades to reimburse Bethlehem under these circumstances would create a form of school choice for vo-tech programs. School choice is a policy issue in the province of the legislature which can best fashion a program to avoid pitfalls we see in this situation.”

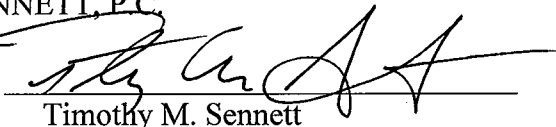
In accord is the case of Correll v. Millvill Area School District, a copy of the case is attached hereto. In this case the court held that the receiving school district is required under Section 1809 to make a determination whether the student is eligible for admission. In this case the receiving school district did not give notice to the sending school district that they wanted to admit the student under Section 1809. In this case one school district had an agricultural production program and another school district had a horticultural program with different vo-tech codes. The court held that the receiving school district is required to make a determination of eligibility and attempt to seek reimbursement. The failure of the school district to make that eligibility determination results in a failure to receive reimbursement.

In light of the above, it is clear the Erie County Technical School must seek the resident districts approval for tuition based education. For non-resident students and non-participating school district students certain prerequisite eligibility determinations and notices will have to be sent to the resident district in order to receive reimbursement for tuition and travel expenses.

If you have any questions concerning this matter, please contact me at any time.

Very truly yours,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

By: 

Timothy M. Sennett

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Citation: **625 A.2d 1330**

*156 Pa. Commw. 120, *; 625 A.2d 1330, **;
1993 Pa. Commw. LEXIS 328, ****

BETHLEHEM AREA VOCATIONAL-TECHNICAL SCHOOL and Bethlehem Area School District v.
PALISADES SCHOOL DISTRICT, Appellant

No. 344 C.D. 1992,

COMMONWEALTH COURT OF PENNSYLVANIA

156 Pa. Commw. 120; 625 A.2d 1330; 1993 Pa. Commw. LEXIS 328

November 16, 1992, Argued
May 26, 1993, Decided
May 26, 1993, Filed

PRIOR HISTORY: [***1] APPEALED From No. 1991 C 3851. Common Pleas Court of
Northampton County. Judge PANELLA

DISPOSITION: Accordingly, we reverse.

ROCHELLE S. FRIEDMAN, JUDGE

ORDER

AND NOW, this 26th day of May, 1993, the order of the Court of Common Pleas of Northampton
County, dated January 17, 1992, is reversed.

ROCHELLE S. FRIEDMAN, JUDGE

CASE SUMMARY

PROCEDURAL POSTURE: Defendant school district appealed an order of the Court of
Common Pleas of Northampton County (Pennsylvania), that found it liable to plaintiff
vocational-technical school and to plaintiff foreign school district for costs of providing
vocational-technical education and transportation services to students who resided in
defendant's municipality.

OVERVIEW: Students who resided in defendant school district's municipality attended
vocational-technical (vo-tech) classes at plaintiff vocational-technical school, which was
located in plaintiff foreign school district. Plaintiffs filed suit for reimbursement of the cost of
providing vo-tech education and transportation services to defendant's students. The trial
court entered an order requiring defendant to reimburse such fees, and defendant appealed.

The court held that under 24 Pa. Cons. Stat. §§ 18-1809, 1847 and 24 Pa. Cons. Stat. § 25-2562, defendant was obligated to pay the costs of tuition and transportation for students attending vo-tech classes in another district only if defendant did not have an approved vo-tech program, defendant did not participate in a vo-tech school, or if defendant approved the students' attendance in the other district. The court found that defendant was not obligated to reimburse plaintiffs because none of the situations was present; defendant had an approved vo-tech program, participated in a vo-tech school, and did not approve the students' attendance at plaintiffs' program. The court therefore reversed the trial court's order.

OUTCOME: The order that found defendant school district liable to plaintiff vocational-technical school and plaintiff foreign school district for costs of providing vocational-technical (vo-tech) education and transportation to defendant's students was reversed because defendant had an approved vo-tech program, participated in a vo-tech school, and did not approve the students' participation in plaintiffs' program.

CORE TERMS: school district, vo-tech, transportation, reimbursement, resident, sending, reside, reimburse, vocational-technical, tuition, attend, educational services, public school, transportation services, high school, obligated to pay, non-participating, participating, attendance, circular, consented, error of law, own initiative, educational program, public policy, vocational education, participated, permission, obligated, attending

LEXISNEXIS® HEADNOTES

 Hide

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Education Law > Administration & Operation > Homeschooling > Regulation 

Education Law > Students > Right to Education 

HN1 24 Pa. Cons. Stat. § 18-1809 provides that a resident of a school district which does not maintain an approved vocational-technical (vo-tech) program may apply for admission to another district's vo-tech program and that the home school district shall be liable to the school district which provides the vo-tech services. 24 Pa. Cons. Stat. § 18-1847 provides that any student residing in a non-participating district may attend an area vo-tech school or technical institute and that the school district in which the student resides shall be charged. More Like This Headnote | *Shepardize: Restrict By Headnote*

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Education Law > Administration & Operation > Homeschooling > Regulation 

Education Law > Students > Right to Education 

HN2 Before the receiving school district which provides vocational-technical (vo-tech) services to residents from another school district can claim reimbursement, it must first determine whether the students are eligible to attend a vo-tech program outside their home school district. Pre-requisites to reimbursement pursuant to 24 Pa. Cons. Stat. § 18-1809 are: (a) that the district in which the student resides does not maintain an approved vo-tech program offering the type of training which the student desires; and (b) that the student's application to another vo-tech program be approved either by that school board or by the Pennsylvania State Board for Vocational Education. More Like This Headnote | *Shepardize: Restrict By Headnote*

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Education Law > Administration & Operation > Transportation 

Education Law > Students > Right to Education 

HN3  Prerequisites to reimbursement of a school district providing vocational-technical (vo-tech) services to non-residents pursuant to 24 Pa. Cons. Stat. § 18-1847 are: (a) residents in a non-participating school district; and (b) consent of the receiving area vocational board. One other route is available to students who may reside in a district with a vocational technical program but who desire to attend another program. Pursuant to 24 Pa. Cons. Stat. § 25-2562, the sending district is obligated to pay these costs if the attendance is previously approved by the sending district. Thus, the sending school district is obligated to pay the costs of tuition and transportation for students attending vo-tech classes in another district: (1) if the home district does not have an approved program; (2) if the home district does not participate in a vo-tech school; or (3) if the home district has previously approved the attendance. More Like This Headnote | *Shepardize*: Restrict By Headnote

COUNSEL: Stephen G. Rhoads, for appellant.

Elwood M. Malos, for appellees.

JUDGES: Colins, and Friedman, JJ., and Lord, Senior Judge.

OPINION BY: FRIEDMAN

OPINION

[*122] [1331]** The Palisades School District appeals an order of the Court of Common Pleas of Northampton County which found the Palisades School District (Palisades) liable to the Bethlehem Area Vocational-Technical School and to the Bethlehem Area School District (collectively, Bethlehem) for the costs of providing vocational-technical (vo-tech) education and transportation services to students who are residents of Palisades. We reverse.

The issue before us is whether the tuition and transportation expenses for students who reside in one school district and who attend vo-tech classes in another district, more convenient to their non-public school, must be reimbursed by **[*123]** the home school district in which they reside when that school **[***2]** district also operates its own vo-tech program and has not consented to pay the tuition and transportation costs.

The facts are not in dispute. The Bethlehem Area Vocational-Technical School (BAVTS) provided educational services to several students who resided in Palisades but attended Bethlehem Catholic High School. The Bethlehem Area School District (BASD) provided transportation from the students' high school to the vo-tech classes. The students participated in the BAVTS vo-tech program rather than the Palisades' program on their own initiative and without the permission or consent of Palisades which is a participating district in the Upper Bucks Vocational-Technical School. Bethlehem demanded reimbursement for the costs of the educational services and transportation, and Palisades denied liability. The trial court construed the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §§ 1-101 -- 27-2702 and determined that Palisades was obligated to reimburse Bethlehem.

On appeal, ¹ Palisades contends that the trial court committed an error of law and that, under

the circumstances, the determination that Palisades is obligated to reimburse Bethlehem **[***3]** for providing vo-tech educational services to Palisades residents offends public policy.

FOOTNOTES

1 Our scope of review is whether the trial court committed an error of law or abused its discretion. *Mirror Printing Co., Inc. v. Altoona Area School Board*, 148 Pa. Commonwealth Ct. 168, 609 A.2d 917 (1992).

The sections of the Code dealing with reimbursement for vo-tech education provide for reimbursement under limited circumstances. **HN1** Section 1809 of the Code, 24 P.S. § 18-1809, provides that a resident of a *school district which does not maintain an approved program* may apply for admission to another district's vo-tech program and that the home school district shall be liable to the school district which provides the vo-tech services. Section 1847 of the Code, 24 P.S. § 18-1847, provides that any student residing in a *non-participating district* may attend an area vo-tech school or technical institute and that the school district in which the student resides **[*124]** shall **[***4]** be charged. In this case, Palisades is a *participating district* in the Upper Bucks Vocational-Technical School. Neither section 1809 nor section 1847 nor any other section of the Code deals with the situation presented here where the school in which the student resides is a participating district in a vo-tech school and the student participates in a vo-tech program elsewhere.

We disagree with the trial court's conclusion that the legislative intent will be served by requiring the home school district to reimburse the receiving school district which provides vo-tech services to residents from the home school district. **HN2** Before the receiving school district can claim reimbursement, it must first determine whether the students are eligible to attend a vo-tech program outside their home school district. Pre-requisites to reimbursement pursuant to section 1809 are: (a) that the district in which the student resides does not maintain an approved vo-tech program offering the type of training which the student desires, and (b) that the student's application to another vo-tech program be approved either by that school board or by the State Board for Vocational **[**1332]** Education. **[***5]** Similarly, **HN3** prerequisites to reimbursement pursuant to section 1847 are:

(a) residents in a non-participating school district; and (b) consent of the receiving area vocational board. One other route is available to students who may reside in a district with a vo-tech program but who desire to attend another program. Pursuant to section 2562 of the Code, 24 P.S. § 25-2562, the sending district is obligated to pay these costs "if the attendance is previously approved by the sending district." Thus, the sending school district is obligated to pay the costs of tuition and transportation for students attending vo-tech classes in another district (1) if the home district does not have an approved program, (2) if the home district does not participate in a vo-tech school or (3) if the home district has previously approved the attendance.

Because this appears to be a case of first impression, it is important to carefully review the assumptions on which the trial court based its decision. The trial court determined that **[*125]** Palisades had tacitly consented to the arrangement because "the students in question were transported from their home school district by plaintiff BASD (Stipulation **[***6]** of Counsel No. 5)." (Trial court op. at 5.) This determination is not supported by the record. The stipulation states that BASD provided transportation from Bethlehem Catholic High School to BAVTS but does not say who transported students from the home school district (Palisades). Also, the parties stipulated that "[t]he students who participated in Bethlehem Area Vo-tech School's educational program and utilized Bethlehem Area School District's transportation services did so on their own initiative in conjunction with their attendance at Bethlehem Catholic High School, and without the prior permission or approval of Palisades School

District." (Stipulation of Counsel No. 6.) None of the stipulations support the trial court conclusion that Palisades tacitly consented to the arrangement.

The trial court reviewed the sections of the Code dealing with vocational education and with reimbursement between school districts and determined "that the sending district is obligated to pay for costs of transportation and tuition for its students in another district's vo-tech program, whether or not they were expressly given consent or otherwise authorized by the sending district," (trial court *****7** op. at 7-8), reasoning that "[w]hether the student followed the proper application routes in getting into the vo-tech program of the receiving district is secondary to the fact that the district in which the student resides is ultimately liable for costs incurred in educating him." (Trial court op. at 11.) We disagree. The Code provides for reimbursement by a sending district when a student is *entitled* to attend another district's vo-tech program. Entitlement is contingent upon acceptance in a receiving district's program after the conditions enumerated in the Code have been met, i.e., non-participating school district (section 1847 of the Code, 24 P.S. § 18-1847); district does not maintain an approved program offering the type of training the student desires (section 1809 of the Code, 24 P.S. § 18-1809); or consent by the sending school district (section 2562 **[*126]** of the Code, 24 P.S. § 25-2562). None of these three situations is involved in this case. The trial court also relied on the Basic Education Circular No. 2-88 as support for Bethlehem's position. In fact, that circular appears to apply only to situations addressed by sections 1809 and 1847 of the Code, stating *****8** that if the sending school district is responsible for tuition, it must also pay for transportation. The circular provides no support for Bethlehem's argument because the first prong of the test is not met.

We believe that the Code does not envision reimbursement in these circumstances. *Babcock School District v. Potocki*, 502 Pa. 349, 466 A.2d 616 (1983) is instructive. There, a resident student attending a public school in another district sought to have the home school district provide transportation. Our supreme court determined that the parents had

elected to enroll their son in a public school outside the boundaries of the Babcock School District Babcock is a *****1333** provider of educational services to its resident pupils, not a provider of free transportation services to resident pupils whose parents have elected to enroll their children in a public school in another school district.

Id. at 352, 466 A.2d at 617. This strict reading of the transportation requirements of the Code is consistent with our determination that the Code does not require that Palisades *****9** reimburse Bethlehem.

Here, the trial court's rationale for construing the Code as it does even more convincingly supports the reverse construction. We agree with the trial court that the purpose of the legislative scheme is to establish a "thorough and efficient system of public education to which every child has a right," *Philadelphia Federation of Teachers, Local No. 3, AFT, AFL-CIO v. Board of Education of School District of Philadelphia*, 51 Pa.Commonwealth Ct. 296, 414 A.2d 424 (1980), but we believe that the legislature has done this by providing that home districts reimburse receiving districts which provide services *under certain limited circumstances*.

[*127] In addition to our reading of the Code, public policy considerations militate against permitting students to choose a vo-tech program as a matter of personal convenience without first receiving the consent of the school district in which they reside and which provides approved vo-tech programs. School districts must be able to accurately plan for financial demands and educational programs. While the amounts at issue here do not seem large, a reading of the Code which *****10** permits one district to accept students from another district and then bill the home district without any prior coordination makes it difficult for the home district to ascertain budgetary and staffing needs. Furthermore, requiring Palisades to reimburse Bethlehem under these circumstances would create a form of school choice for vo-tech programs. School choice is a policy issue in the province of the legislature which can best fashion a program to avoid the pitfalls we see in this situation.

Accordingly, we reverse.

ORDER

AND NOW, this 26th day of May, 1993, the order of the Court of Common Pleas of Northampton County, dated January 17, 1992, is reversed.

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Steel Center Area Vocational Technical School, Plaintiff v. McKeesport Area School District,
Defendant

No. GD 08-001036

COMMON PLEAS COURT OF ALLEGHENY COUNTY, PENNSYLVANIA

2009 Pa. Dist. & Cnty. Dec. LEXIS 353

November 6, 2009, Decided
November 6, 2009, Filed

PRIOR HISTORY: [*1]

Commonwealth Court No. 1822 C.D. 2009.

CASE SUMMARY

PROCEDURAL POSTURE: Before the court were competing motions for summary judgment filed by plaintiff vocational center and defendant school district. Plaintiff brought a declaratory judgment action against defendant seeking reimbursement of tuition and all associated costs, together with interest and costs of suit, for the attendance of a student residing within defendant's district who attended plaintiff's school.

OVERVIEW: There was no dispute that the student attended plaintiff's school for three years and that defendant made no payment to plaintiff during that time. Defendant asserted, principally, that Pennsylvania School Code, 24 Pa. Stat. Ann. § 18-1847, applied, rather than 24 Pa. Stat. Ann. § 18-1809. Defendant argued that it offered an approved program similar to that provided by plaintiff, that it never approved of the student's attendance at plaintiff's school, and that plaintiff never made a determination that the student was eligible under § 18-1809 for admission to plaintiff's school. The court found that defendant did not participate in the area voc-tech program that plaintiff did, despite its insistence otherwise. Thus, 24 Pa. Stat. Ann. § 18-1847 controlled the dispute. The court noted that whether defendant approved of the student's attendance at plaintiff's area vocational school was immaterial to entitlement to charges under § 18-1847. Since the prerequisites of § 18-1847 were met, defendant was responsible for the charges allowed under that section to plaintiff.

OUTCOME: The court granted summary judgment to plaintiff.

CORE TERMS: school district, vocational, pupil, vocational-technical, reside, vocational

education, electrical, nonparticipating, attended, training, summary judgment, academic years, attendance, residing, tuition, attend, school years, resident, vocational school, reimbursement, participated, agricultural, distributive, occupational, prerequisites, permission, industrial, homemaking, approve, evident

LEXISNEXIS® HEADNOTES **Hide**Education Law > Administration & Operation > Career & Vocational Schools **HN1**  See 24 Pa. Stat. Ann. § 18-1809.Education Law > Administration & Operation > Career & Vocational Schools **HN2**  See 24 Pa. Stat. Ann. § 18-1847.Education Law > Administration & Operation > Career & Vocational Schools 

HN3  Although the Pennsylvania School Code, 24 Pa. Stat. Ann. § 18-1801, addresses the circumstance of a resident of a school district that does not maintain an approved program of vocational education, 24 Pa. Stat. Ann. § 18-1847 does not at all address whether the pupil's resident school district provides a vocational-technical school or technical program, approved or otherwise. Section 18-1847 considers, rather, whether the pupil resides in a nonparticipating district. 24 Pa. Stat. Ann. § 18-1809 provides opportunities to pupils residing in school districts that do not offer a particular type of training to obtain desired training in other districts, at the expense of the pupils' home districts. 24 Pa. Stat. Ann. § 18-1847 permits pupils who reside within a school district that does not participate in an area vocational-technical school or technical institute to attend the area facility and to have the charges specified under § 18-1847 assessed to school district in which the pupil resides, without regard to the nature of vocational-technical programs available within the home school district. More Like This Headnote

Education Law > Administration & Operation > Career & Vocational Schools 

HN4  Prerequisites to reimbursement pursuant to the Pennsylvania School Code, 24 Pa. Stat. Ann. § 18-1847 are: (a) residency within a nonparticipating school district; and (b) consent of the receiving area vocational board. More Like This Headnote

JUDGES: Michael E. McCarthy , Judge.**OPINION BY:** Michael E. McCarthy **OPINION**

This matter came before the Court on competing motions for summary judgment. In January 2008 Plaintiff, Steel Center Area Vocational Technical School ("Steel Center"), entered a complaint in action for declaratory judgment seeking reimbursement of tuition and all associated costs, together with interest and costs of suit for the attendance of a student residing within McKeesport Area School District ("McKeesport"), at Steel Center. Subsequently, McKeesport filed an Answer and New Matter that was met by preliminary objections from Steel Center. McKeesport filed an Amended Answer and New Matter, to which Steel Center timely replied. Thereafter, the parties engaged in discovery, including exchanges of requests for

production of documents, interrogatories and admissions.

The complaint alleged that Jeffrey T. Rotharmel ("Rotharmel"), a student residing within the McKeesport Area School District attended Wilson Christian Academy and Steel Center during the 2005-2006, 2006-2007, and 2007-2008 academic years. It is not disputed that Rotharmel attended Wilson Christian Academy and Steel Center during each of [*2] those years, that he participated in the Steel Center Electrical Construction and Electrical Maintenance programs and that he graduated from the vocational programs at Steel Center. During each of the three school years in question, Rotharmel attended Steel Center's Electrical Construction and Electrical Maintenance programs with the consent of the Steel Center Board of Education. In October of each of those school years, Steel Center delivered an invoice to McKeesport representing student tuition attributable to Rotharmel for that academic year. ¹ McKeesport made no payment for any year. Rotharmel neither requested nor received permission directly from the McKeesport Board of School Directors to attend Steel Center at the expense of McKeesport.

FOOTNOTES

¹ Invoiced amounts were: \$ 8,088.00 for 2005-2006; \$ 6,221.00 for 2006-2007; and \$ 7,600.00 for 2007-2008.

Following argument, the Court denied McKeesport's Motion for Summary Judgment and granted Steel Center's Motion. McKeesport appealed from that Order and timely submitted a statement of matters complained of on appeal. In its statement, McKeesport asserts, principally, that the Court erred in adopting Section 18-1847 of the Pennsylvania School Code (24 P.S. § 18-1847) [*3] rather than Section 18-1809 of that Code (24 P.S. § 18-1809) as the controlling provision in this dispute. McKeesport further argues that summary judgment in favor of Steel Center was improper because the record demonstrated: that McKeesport participated in vocational-technical training and, in fact, offered an approved program similar to that provided by Steel Center; that McKeesport did not approve Rotharmel's attendance at Steel Center; and that Steel Center never made a determination that Rotharmel was eligible under Section 18-1809 for admission to the Steel Center vocational program.

Both McKeesport and Steel Center insist that no genuine issue of material fact remains to be determined. Accordingly, both concur that summary judgment is appropriate in this matter pursuant to Pa.R.Civ.P. 1035.2(1). Indeed, the parties concur that the issue presented is whether the matter is controlled by Section 18-1809 of the Pennsylvania School Code or by Section 18-1847 of that Code. Section 18-1809 of the Code provides, in pertinent part:

HN1 (a) Any resident of any school district which does not maintain an approved vocational industrial, vocational agricultural, vocational [*4] homemaking, or vocational distributive occupational education day, part-time, or evening class, school or department, offering the type of training which he desires, may make application to the board of school directors of any other district for admission to such school or department maintained by said board. If the board refuses him admission, he may apply to the State Board for Vocational Education for admission to such school or department. The State Board for Vocational Education may approve or disapprove such application. In making such decision the State Board for Vocational Education shall take into consideration the opportunities for free vocational training in the community in which the applicant resides, the financial status of the community, the age, preparation, aptitude, and previous record of the applicant, and all other relevant circumstances. The decision of the State Board for Vocational Education shall be final.

...

(c) The school district in which the person resides, who has been admitted, as above provided, to an approved vocational industrial, vocational agricultural, vocational homemaking, vocational high or vocational distributive occupational school or department [*5] maintained by another school district, shall pay the high school charge provided for by this act. If any school district neglects or refuses to pay for such tuition, it shall be liable therefor, in an action of contract, to the school district or school districts maintaining the school which the pupil, with the approval of the board, attended.

Section 18-1847 of the School Code provides:

HN2 On obtaining the consent of the area vocational-technical board operating an area vocational-technical school or technical institute, and with or without the consent of the board of school directors of the district in which the pupil resides, any pupil residing in a nonparticipating district may attend the area vocational-technical school or technical institute. The school district in which the pupil resides shall be charged, for each pupil attending the area vocational-technical school or technical institute, an amount equal to the total approved budget for current expenses, debt service and capital outlay divided by the number of pupils enrolled in the school.

Among the evident distinctions between those two School Code sections is that, **HN3** although Section 18-1801 addresses the circumstance of a resident [*6] of a school district that *does not maintain an approved program* of vocational education, Section 18-1847 does not at all address whether the pupil's resident school district provides a vocational-technical school or technical program, approved or otherwise. Section 18-1847 considers, rather, whether the pupil resides in a *nonparticipating district*.

Section 18-1809 provides opportunities to pupils residing in school districts that do not offer a particular type of training to obtain desired training in other districts, at the expense of the pupils' home districts. Section 18-1847 permits pupils who reside within a school district that does not participate in an area vocational-technical school or technical institute to attend the area facility and to have the charges specified under Section 18-1847 assessed to school district in which the pupil resides, without regard to the nature of vocational-technical programs available within the home school district.

In this matter, McKeesport concedes that it is a nonparticipating school district in the area vo-tech program. (Answer to Complaint, at P9; Responses to Plaintiff's Requests for Admission, at P2). McKeesport's insistence that it provides vocational [*7] education opportunities comparable with those utilized by Rotharmel at Steel Center is immaterial to the matter of whether Section 18-1847 or Section 18-1809 of the School Code applies to this dispute; because McKeesport does not participate in the area voc-tech program, Section 18-1847 controls this dispute.

HN4 Prerequisites to reimbursement pursuant to Section 18-1847 are: (a) residency within a nonparticipating school district; and (b) consent of the receiving area vocational board. See, **Bethlehem Area Vocational-Technical School v. Palisades School District, 156 Pa. Commw. 120, 625 A.2d 1330 (1993)**. Steel Center avers, and McKeesport does not deny that Rotharmel attended Steel Center's electrical construction and electrical maintenance programs during the academic years in dispute with the approval of the Steel Center Board. The record contains minutes of the board meetings of the Steel Center Advisory Board that expressly included Rotharmel among nonparticipating district students approved for participation in the Steel Center program for the 2006-2007 and 2007-2008 school years.

Approval is evident, moreover, from the fact of application and attendance by Rotharmel and the fact of [*8] Steel Center's invoicing of McKeesport in October of each academic year for Rotharmel's annual tuition.

McKeesport has argued that Rotharmel did not request permission from McKeesport to attend Steel Center and that, in any event, McKeesport never approved Rotharmel's attendance at the area vocational school. Those matters are not material to the area vocational school entitlement to charges permitted under Section 18-1847. The prerequisites of Section 18-1847 having been met, McKeesport was responsible for the charges allowed under that section to the area vocational-technical school, Steel Center.

By the Court:

Date: November 6th, 2009

/s/ Michael E. McCarthy ▼, J

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Tutorial](#)Service: **Get by LEXSEE®**Citation: **1995 Pa. Commw. LEXIS 345***662 A.2d 696, *; 1995 Pa. Commw. LEXIS 345, ***

JOHN A. CORRELL, JR. and SHARYN CORRELL, individually and as parents and natural guardians of CHAD M. CORRELL, Appellants v. MILLVILLE AREA SCHOOL DISTRICT

No. 3234 C.D. 1994

COMMONWEALTH COURT OF PENNSYLVANIA

662 A.2d 696; 1995 Pa. Commw. LEXIS 345

June 20, 1995, Argued

July 20, 1995, Decided

July 20, 1995, Filed

PRIOR HISTORY: **[**1]** APPEALED From No. 296 of 1993. Common Pleas Court of the county of Columbia. Judge KELLER, President Judge.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellants, student's parents, sought review of the decision of the Court of Common Pleas of the County of Columbia (Pennsylvania), which granted summary judgment to appellee school district and denied appellants' motion for summary judgment in appellants' action for tuition reimbursement under the Public School Code, 24 P.S. §§ 1-101 to 27-2702, for another school's vocational program in which appellants' son participated.

OVERVIEW: Appellants, student's parents, wanted their son to take a specific program in vocational agriculture production, which was not offered in appellee school district. Appellants requested that appellee pay for appellants' son's tuition in another district that offered the program. Their request was denied. They appealed the order of the trial court, which granted appellee's motion for summary judgment and dismissed appellants' action. The court affirmed the grant of summary judgment to appellee and held that appellee had no obligation to reimburse the other district or appellants. Although the Public School Code, 24 P.S. §§ 1-101 to 27-2702, provided for reimbursement for the situation, appellants' son's admission to the other district did not fall within 24 P.S. § 18-1809, which required reimbursement. The other district did not make a required § 1809 determination or a § 1809 admission and did not attempt to pursue reimbursement. Without the other district's action, appellee was under no obligation to reimburse the tuition. In addition, nothing that appellants did gave notice to appellee that they wanted to admit their under § 1809.

OUTCOME: The court affirmed the grant of summary judgment in favor of appellee school district and the dismissal of appellants, student's parents', motion for summary judgment in their attempt to obtain reimbursement of the cost of appellants' son's attendance in another school district's vocational program. Appellants' son attended the other district as a tuition-paying student. No request was ever made to admit him under the Public School Code.

CORE TERMS: tuition, vocational, school district, public school, vocational education, resident, reimbursement, non-resident, high school, requesting, school board, summary judgment, letter dated, admitting, school year, paying, vocational school, agricultural, reside, attend, pupil, superintendent, transportation, eligibility, attendance, reimburse, exhaust, waived, obligation to pay, unjust enrichment

LEXISNEXIS® HEADNOTES

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Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Education Law > Departments of Education > State Departments of Education > Authority 

Education Law > Students > Right to Education 

HN1  See 24 P.S. § 18-1809(a).

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Education Law > Departments of Education > State Departments of Education > Authority 

Education Law > Students > Right to Education 

HN2  See 24 P.S. § 18-1809(c).

Civil Procedure > Discovery > Methods > General Overview 

Civil Procedure > Summary Judgment > Appellate Review > General Overview 

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review 

HN3  A reviewing court's scope of review of the grant of a summary judgment is limited to a determination of whether an error of law has been committed or an abuse of discretion has occurred. Summary judgment should be granted only where the movant's right to relief is clear and free from doubt, as shown through the pleadings, answers to interrogatories, depositions, affidavits, and admissions. Pa. R. Civ. P. 1035(a). More Like This Headnote

Education Law > Administration & Operation > Student Admissions > Residency Requirements 

Education Law > Departments of Education > State Departments of Education > Authority 

Education Law > Students > Right to Education 

HN4  The admission of a student to a non-resident public school district can only be made pursuant to one of two sections of the Public School Code, 24 P.S. §§ 1-101 to 27-2702, either 24 P.S. § 18-1809 or 24 P.S. § 16-1608. Section 1809 allows a student to go to another district where there exists no approved vocational program in the

resident district, or where a student desires to enroll in a particular vocational program not offered within the resident district. Under the provision, the student makes application to the admitting school district and it is the admitting school that determines whether § 1809 admission should be granted. Once the admitting school grants § 1809 admission, § 1809(c) requires that the resident district pay the student's tuition at the admitting school. The other method by which a student can gain admission to a public school outside of his resident district is as a tuition-paying student under § 1608. More Like This Headnote

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Education Law > Departments of Education > State Departments of Education > Authority 

Education Law > Students > Right to Education 

HN5  See 24 P.S. § 16-1608.

Contracts Law > Types of Contracts > Implied-in-Law Contracts 

HN6  In order to establish that a party has been unjustly enriched, three elements must be fulfilled. (1) A benefit must be conferred upon the defendant by the plaintiff, (2) the defendant must appreciate or have knowledge of the benefit, and (3) the acceptance or retention of the benefit by the defendant must be under such circumstances to make its retention inequitable. More Like This Headnote

COUNSEL: Gary E. Norton for appellants.

ATTORNEYS: Elwood R. Harding, Jr. for appellee.

JUDGES: BEFORE: HONORABLE DAN PELLEGRINI, Judge, HONORABLE ROCHELLE S. FRIEDMAN, Judge, HONORABLE SANDRA SCHULTZ NEWMAN, Judge.

OPINION BY: DAN PELLEGRINI

OPINION

[*697] OPINION BY JUDGE PELLEGRINI

FILED: July 20, 1995

John A. and Sharyn Correll (Corrells), as parents of Chad M. Correll as well as assignees of any claims of the Danville Area School District (Danville), appeal from an Order of the Columbia County Court of Common Pleas, granting Millville Area School District's (Millville) motion for summary judgment and dismissing the Corrells' action for payment of Chad Correll's tuition at Danville.

Chad Correll, an about-to-be high school freshman residing in the Millville school district, wanted to take a specific program in Vocational Agriculture Production (Vo-Ag). While Columbia-Montour Vocational School, a vocational school serving the Millville district, offered a Vocational Horticulture ¹ program that was similar to Vo-Ag and had many of the same courses, it did not offer a **[*2]** Vo-Ag program. However, Danville, an adjacent district, offered a Vo-Ag program through Danville Area High School. In May of 1989, the Corrells wrote to Millville's superintendent and requested that Millville pay Chad's tuition at Danville for the Vo-Ag

program, but that request was denied.

FOOTNOTES

¹ The vocational program in *Agricultural Production* (Code 01.0301) is defined as an instructional program that prepares individuals to apply scientific knowledge and methods in the planning related to an economical use of facilities, land, water, machinery, chemicals, finance, and labor in the production of plant and animal products. Activities include classroom instruction, agricultural mechanics instruction, and laboratory experiences in and out of school, including farms, agribusinesses, and other agriculturally related establishments. The vocational program in *Horticulture* (Code 01.0601) is defined as organized subject matter and practical experiences concerned with the instructional program that prepares individuals to produce, process, and market plants, shrubs, and trees used principally for ornamental or aesthetic purposes. Instruction emphasizes knowledge and understanding important to establishing, maintaining, and managing horticultural enterprises such as aboriculture, floriculture, greenhouse operation and management, landscaping, nursery operation and management, and turf management.

[3]** Pursuant to the Corrells' request that Millville pay Chad's tuition at Danville, Millville's legal counsel advised the Millville superintendent that the district *may* pay Chad's tuition at Danville, but was under no obligation to do so. The Millville superintendent inquired as to Danville's Vo-Ag Program and Danville's superintendent wrote to Millville on June 6, 1989, explaining that Danville's Vo-Ag program was offered at Danville Area High School -- not at a separate vocational school. On June 16, 1989, Millville wrote to Danville, requesting Danville to notify them as to Chad's status, specifically whether Chad was admitted to Danville pursuant to § 1809 of the Public School Code. ² Danville, by letter **[*698]** dated June 26, 1989, informed Millville that, as of that date, Danville had received no formal request for Chad's admission.

FOOTNOTES

² Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101 -27-2702. **HN1** Section 1809 of the Public School Code states as follows:

(a) Any resident of any school district which does not maintain an approved ... vocational agricultural ... education day, part-time, or evening class, school or department, offering the type of training which he desires, may make application to the board of school directors of any other district for admission to such school or department maintained by said board. If the board refuses him admission, he may apply to the State Board for Vocational Education for admission to such school or department. The State Board for Vocational Education may approve or disapprove such application. In making such decision the State Board for Vocational Education shall take into consideration the opportunities for free vocational training in the community in which the applicant resides, the financial status of the community, the age, preparation, aptitude, and previous record of the applicant, and all other relevant circumstances. The decision of the State Board for Vocational Education shall be final.

* * * *

HN2 (c) The school district in which the person resides, who has been admitted, as above provided, to an approved ... vocational agricultural ... school or department maintained by another school district, shall pay the high school charge provided for by this act. If any school district neglects or refuses to pay

for such tuition, it shall be liable therefor, in an action of contract, to the school district or school districts maintaining the school which the pupil, with the approval of the board, attended.

24 P.S. § 18-1809(a), (c).

[4]** The Corrells wrote to the Director of the State Board of Education, Mr. Robert Feir, regarding the vocational education available to Chad. Mr. Feir responded to the Corrells by a letter in October of 1989, advising them that they had no right to an § 1809 appeal because appeals to the State Board of Vocational Education pursuant to § 1809 of the Public School Code were available only to students denied admission by the non-resident school. Since Chad had been admitted to Danville, in Mr. Feir's opinion, the issue was moot. ³

FOOTNOTES

³ The Corrells had previously telephoned the Department of Education in June of 1989, concerning Millville's obligation to pay Chad's tuition at Danville. Responding by letter dated July 11, 1989, the Chief of Vocational Field Services, Mr. Lane Kemler, noted that, under § 1809 of the Public School Code, a student could pursue a vocational program not offered within the home school district at a non-resident school district, and that the home school district would be responsible for tuition. He also informed the Corrells that they possessed the right to appeal to the State Board of Vocational Education (Board) and advised them of his belief that the Board would recommend that Chad pursue the vocational horticulture program offered within Millville's district.

[5]** The Corrells then made a request of the Danville School Board that Chad be admitted to Danville for the 1989-90 school year as a ninth grader on a "tuition basis" to enroll in the "Vocational Agriculture course in addition to the College Prep program." Nothing in the Corrells' request to Danville mentioned that Chad's admission was pursuant to § 1809 or that admission was being requested because Millville did not offer a Vo-Ag program. The Danville school board voted to accept Chad as a tuition student and Chad began high school at Danville in the fall of 1989. At the conclusion of each of the three subsequent school years, the Corrells wrote to the Danville school board, requesting continued admission for Chad at Danville. ⁴ The Danville school board approved Chad's admission as a "tuition student" each of the three subsequent years.

FOOTNOTES

⁴ The Corrells repeated the same process through letters in the summers of 1990, 1991 and 1992. In their letter dated August 9, 1990, the Corrells requested Chad's continued admission as a "tuition student." By letter dated June 26, 1991, the Corrells requested Chad's continued admission as a "non-resident in the Vocational Agriculture Program." And, by letter dated July 29, 1992, the Corrells requested that Chad be permitted to continue to "attend the Vocational Agriculture Program." Nothing in any of these letter requests that Chad's continued admission be pursuant to § 1809 of the Public School Code, nor is there any reference to the fact that the Vo-Ag program was not offered at Millville. In February of 1990, the Corrells wrote to Danville, requesting that they waive Chad's tuition for the 1990 school year as a professional courtesy to Mrs. Correll because she was employed at Danville as a guidance counselor. This is the only letter to Danville in which the Corrells state that Millville offered no suitable Vo-Ag program within its district. This request was denied.

[6]** The Corrells also wrote annually to Millville, requesting that they pay Chad's tuition at

Danville, which requests Millville

annually rejected. ⁵ The Corrells paid Chad's tuition [***699**] in full to Danville, until the 1992-1993 school year, when they were advised by Danville's solicitor to put the tuition money in a special account, pending the determination of whether Millville had any obligation to pay Chad's tuition.

FOOTNOTES

⁵ By letter dated April 2, 1990, the Corrells wrote to Millville, requesting they pay tuition and transportation costs for Chad's attendance at Danville, citing Millville's lack of a Vocational Agriculture program as their basis for Chad's attendance out of the district. By letter dated April 22, 1991, the Corrells wrote to Millville requesting that Millville pay tuition for Chad to attend the Vocational Agriculture program at Danville, and if denied, requesting that Chad be re-enrolled in Millville so that the district could receive reimbursement, as neither district was currently receiving compensation. On August 31, 1992, the Corrells wrote to Millville, again requesting Chad's tuition and transportation be paid to Danville. This is the only letter to Millville in which the Corrells specifically requested payment of Chad's tuition pursuant to § 1809 of the Public School Code, and informed Millville that they intended to take action to receive reimbursement for Chad's 9th, 10th, and 11th grade tuition as well.

[****7**] In January of 1993 Danville assigned to the Corrells all rights in contract for tuition reimbursement against Millville pursuant to § 1809(c) of the Public School Code. In February of 1993, the Corrells filed a complaint against Millville, both on their own behalf and as assignees of Danville, alleging that Millville owed them reimbursement for tuition pursuant to § 1809 of the Public School Code. The complaint also contained a claim based on unjust enrichment/quasi-contract. Millville answered, alleging that Chad Correll was accepted at Danville as a tuition paying student, not pursuant to § 1809 of the Public School Code; Danville never notified Millville of Chad's acceptance as an § 1809 student, nor did Danville ever submit tuition bills to Millville.

Both Millville and the Corrells made motions for summary judgment. Denying the Corrells' motion for summary judgment, and granting Millville's motion for summary judgment, the trial court found that Chad's application for admission to Danville was as a tuition paying student. The trial court also held that any claim of an § 1809 admission had been waived by Chad's admission to Danville as a "tuition student" and by the inaction [****8**] of the Corrells to prove otherwise. Finally, the trial court held that, by failing to file an appeal with the State Board of Vocational Education, the Corrells failed to exhaust their administrative remedies. The Corrells then took this appeal. ⁶

FOOTNOTES

⁶ *HN3* Our scope of review of the grant of a summary judgment is limited to a determination of whether an error of law has been committed or an abuse of discretion has occurred. *Rankin v. SEPTA*, 146 Pa. Commw. 429, 606 A.2d 536 (1992). Summary judgment should be granted only where the movant's right to relief is clear and free from doubt, as shown through the pleadings, answers to interrogatories, depositions, affidavits, and admissions. Pa. R.C.P. No. 1035(a); *Id.* at 433.

Though both the Corrells ⁷ and Millville ⁸ present several compounded issues in their briefs, the central issue presented for our [***700**] consideration is whether Chad's admission to Danville falls within § 1809 of the Public School Code, thus subjecting Millville to liability for tuition [****9**] reimbursement. The Corrells maintain that everyone in the process was fully

aware of the fact that Millville did not have a Vo-Ag program and that their requests for tuition payment were under § 1809. Moreover, they argue, by writing letters to Millville annually in which they requested payment of Chad's tuition at Danville, they have clearly demonstrated their intent that Millville be responsible for Chad's tuition under § 1809(c) and never waived or abandoned that position.

FOOTNOTES

7 The Corrells allege that the trial court erred as a matter of law because it lacked substantial evidence upon which to base its findings that: (1) the Corrells waived or abandoned their rights under 24 P.S. § 18-1809, (2) the Corrells did not exhaust their appeal rights to the State Board of Vocational Education, (3) Chad's admission as a "tuition paying student" precluded the application of § 18-1809, (4) the same factual scenario was repeated yearly by all parties involved, (5) appellants paid Chad's tuition for the 1992-1993 school year, and (6) the defenses of Millville were viable. The Corrells further allege that they exhausted the appeal available to them under § 1809(a) by writing to Mr. Robert Feir, director of the State Board of Vocational Education. Finally, the Corrells assert that the trial court erred as a matter of law in failing to grant their own motion for summary judgment because the undisputed material facts of record establish that there exists a quasi-contractual relationship between themselves and Millville. **[**10]**

8 As before this court, Millville also contended that (1) they have no tuition reimbursement obligation under § 1809 because that section is unconstitutional as it denies the resident district procedural due process (2) the Corrells assert rights under an invalid assignment that is an *ultra vires* act with no legal effect, and (3) even if the assignment were valid, the Corrells' claim must fail because Millville received no legal benefit under the unjust enrichment/quasi-contract theory of recovery. Even had there been a valid assignment, Millville argues, the Corrells are subject to the rights and defenses available to Danville, who is owed nothing since the tuition has been paid by the Corrells. Finally, Millville contends that the Corrells did not exhaust their administrative appeal available under § 1809(a) by merely writing to Mr. Robert Feir, Director of the State Board of Vocational Education. Because of the way we resolved this case, we need not reach any of those issues.

HN4 The admission of a student to a non-resident public school district can only be made pursuant to one of two **[**11]** sections of the Public School Code -- § 1809 or § 1608. Section 1809 allows a student to go to another district where there exists no approved vocational program in the resident district, or where a student desires to enroll in a particular vocational program not offered within the resident district. Under this provision, the student makes application to the admitting school district and it is the admitting school that determines whether § 1809 admission should be granted. Once the admitting school grants § 1809 admission, § 1809(c) requires that the resident district pay the student's tuition at the admitting school.

The other method by which a student can gain admission to a public school outside of his resident district is as a tuition paying student. **HN5** Section 1608 of the Public School Code states as follows:

Pupils wishing to attend a high school in a district other than the district in which they reside shall obtain the consent of the board of school directors of the district or joint school of the area in which such high school is located before attending the same. Pupils desirous of having their tuition paid in a high school in another district shall secure written **[**12]** approval from the school board in the district or joint board in the district or joint board of the area of which they are residents. The board of school directors of the district in which any such student resides may enter into a written agreement with the receiving district for the attendance and

tuition of the pupil.

24 P.S. § 16-1608.

According to this section, a student wishing to attend a non-resident high school may apply for admission to the non-resident school board. A student admitted under this section may request that his resident district pay his tuition at the non-resident school, but payment under this section is at the discretion of the resident school board and is not required.

Under § 1809 of the Public School Code, Danville was required to make a determination of Chad's eligibility. It was Danville who had the obligation to make admission pursuant to § 1809 in order to secure a right to receive tuition payment from the resident school district. Danville made no § 1809 eligibility determination, no § 1809 admission, and at no time attempted to pursue reimbursement from Millville under § 1809(c). Without these determinations being **[**13]** made, Millville is under no obligation to reimburse Danville for Chad's tuition.

In ***Bethlehem Area Vo-Tech v. Palisades School District*, 156 Pa. Commw. 120, 124, 625 A.2d 1330 (1993)**, we considered the application of § 1809 of the School Code where a group of students attended a non-resident vocational school without approval from their resident district, and the non-resident district sought tuition and transportation reimbursement. We held that, unless the determination was made by the admitting school district that the non-resident student had fulfilled the eligibility requirements of § 1809, that district could not claim reimbursement from the home district. ***Id.* at 124.** Because Danville, the admitting school in the instant matter, never made a determination as to whether Chad was eligible under § 1809 for admission, there is no obligation on the part of Millville to reimburse Danville for Chad's tuition.

Contrary to the Corrells' contentions, nothing they did gave any notice to Danville that they were seeking to admit Chad under § 1809. The Corrells, in no request, mentioned that Chad's application was pursuant to § 1809, nor did they request that Danville **[**14]** **[*701]** seek tuition reimbursement from Millville. To the contrary, the Corrells specifically requested Chad be admitted to Danville on a "tuition basis." The Corrells agreed to be solely responsible for the payment of Chad's tuition at Danville, they were billed for such tuition, and they paid accordingly without objection. The facts support the trial court's conclusion that Danville admitted Chad on a "tuition basis" pursuant to § 1608 of the Public School Code.

The Corrells also contend that Millville was unjustly enriched because it received the benefit of their tuition payment to Danville. ⁹ The payment of Chad's tuition at Danville by the Corrells does not satisfy the elements of unjust enrichment because it confers no benefit upon Millville. Millville had no obligation to pay Chad's tuition and because it had no obligation, no benefit could be conferred upon it simply because the Corrells paid the tuition. Moreover, the trial court's finding that Chad was a tuition paying student makes the concept inapplicable.

FOOTNOTES

⁹ **HN6** In order to establish that a party has been unjustly enriched, three elements must be fulfilled. (1) A benefit must be conferred upon the defendant by the plaintiff, (2) the defendant must appreciate or have knowledge of the benefit, and (3) the acceptance or retention of the benefit by the defendant must be under such circumstances to make its retention inequitable. *Styer v. Hugo*, 422 Pa. Super. 262, 619 A.2d 347 (1993), *appeal granted*, 535 Pa. 638, 631 A.2d 1009 (1993), *affirmed*, 535 Pa. 610, 637 A.2d 276 (1994).

[15]** Accordingly, the trial court's grant of summary judgment to Millville, that it had no obligation to reimburse Danville or the Corrells for Chad's tuition, is affirmed.

DAN PELLEGRINI, Judge

ORDER

AND NOW, this 20th day of *July*, 1995, the order of the Court of Common Pleas of Columbia County, No. 296 of 1993, is affirmed.

DAN PELLEGRINI, Judge

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* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
-  - Positive treatment is indicated
-  - Citing Refs. With Analysis Available
-  - Citation information available

* Click on any *Shepard's* signal to *Shepardize®* that case.

In

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