

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

PETITIONER, : DECISION

V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF SPECIAL  
EDUCATION PROGRAMS, :

RESPONDENT. :

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SYNOPSIS

Petitioning Board of Education appealed the Department’s finding of noncompliance as the result of a complaint investigation conducted by the Office of Special Education Programs pursuant to *N.J.A.C. 6A:14-9.2*. The parties agreed that the matter was appropriately heard as a contested case before the Commissioner.

The ALJ vacated the Department’s finding of noncompliance, concluding that the Board’s actions were in “substantial compliance” with applicable law and that they were reasonable under the circumstances. The ALJ did not address the question of Commissioner jurisdiction, concluding that the parties’ prior agreement – together with transmittal of the matter to the Office of Administrative Law (OAL) by the agency – had resolved the issue. A motion to intervene or participate filed by the parent (A.M.) who initiated the complaint on behalf of her son – raising Commissioner jurisdiction among other issues – was denied by the ALJ, and the Commissioner declined to review the ALJ’s ruling on an interlocutory basis.

The Commissioner, upon review of the entire record, expressed serious reservations about her jurisdiction to decide the merits of the matter, and remanded it to the OAL for argument, analysis and recommended conclusions of law on the threshold question of Commissioner jurisdiction. Additionally, solely for purposes of argument on jurisdiction, the Commissioner granted participant status to A.M.

<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>
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March 21, 2006

OAL DKT. NO. EDU 8853-01  
AGENCY DKT. NO. 373-9/01

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The record of this matter and the Initial Decision and prior Order of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the Department of Education (Department) and the Board of Education’s (Board) reply thereto. “Proposed exceptions” submitted by A.M. on behalf of P.M. – filed in the event that A.M. was granted intervenor or participant status by the Commissioner subsequent to issuance of the Initial Decision, *N.J.A.C. 1:1-14.10(j)2* – were considered to a limited extent as set forth below, as were the parties’ objections to this submission and A.M.’s response.<sup>1</sup>

In its exceptions, the Department contends that the Administrative Law Judge (ALJ) erred in vacating the Office of Special Education Programs’ (OSEP) finding of Board noncompliance, improperly relying on a “substantial compliance” standard that is supported by neither the Individuals with Disabilities Education Act (IDEA) nor the

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<sup>1</sup> A.M. sought leave from the State Board of Education to appeal the Commissioner’s December 12, 2005 denial of her request for interlocutory review of the referenced order (see Initial Decision at 1-2). In a decision dated February 1, 2006, the State Board denied the motion.

State regulations enacted pursuant thereto. The Department further contends that the ALJ effectively shifted the burden of proof in this matter, improperly requiring OSEP to justify its action rather than requiring the Board to demonstrate that such action was arbitrary, capricious or unreasonable. According to the Department, if OSEP's finding of noncompliance is viewed under the correct standard, it must be upheld because the Board clearly failed to act in accordance with specific, applicable law as well as the intent of the IDEA. (Department's Exceptions at 1-3)

In reply, the Board contends that the ALJ did not shift the burden of proof, but rather was persuaded by the Board's demonstration that OSEP's finding was arbitrary, capricious and unreasonable under the circumstances. The Board reiterates prior arguments to the effect that its actions, "when viewed in conjunction with the facts at hand and the actions of A.M.," clearly met the requirements of the IDEA and State regulation. The Board urges the Commissioner to "consider the practical effect of P.M.'s dis-enrollment, recognize [the Board's] efforts to accommodate the special needs of this student, and affirm [the ALJ's] decision vacating OSEP's findings." (Board's Reply at 1-4; quotations at 2, 4)

Upon review, the Commissioner finds that she has serious reservations regarding any attempt on her part to rule on the merits of this matter. As the fully developed record so abundantly indicates – and as the parties' exceptions confirm – the issues in this matter fundamentally arise out of the IDEA and its interpretation, notwithstanding that they also implicate Department actions and State Board regulations adopted in furtherance of the federal law. While it was not unreasonable for the ALJ to conclude that the question of Commissioner jurisdiction did not need to be addressed at

the OAL in light of the fact that the case was transmitted after the parties agreed that such jurisdiction was not an issue in dispute, the fact remains that party agreement cannot confer jurisdiction where none exists, and the act of transmittal does not in itself foreclose further inquiry where the need for it becomes apparent, as it has here.

Although the existing record in this matter contains substantial argument on the question of Commissioner jurisdiction, particularly in the context of briefing on A.M.'s motion to intervene or participate and in A.M.'s proposed exceptions, the Commissioner is loathe to decide so critical an issue without benefit of full adversarial argument and an initial analysis with recommended conclusions of the law by the OAL. Unfortunately, the ALJ's order denying such intervention or participation – together with her conclusion that jurisdiction was not at issue as noted above – effectively precluded a detailed analysis of the adversarial argument on this threshold issue within the Initial Decision.

Therefore, prior to any possible consideration of the merits of this matter, the Commissioner has determined to: 1) grant A.M.'s motion to participate, but *solely* on the question of Commissioner jurisdiction; and 2) remand this matter to the OAL so that the argument, analysis and recommendations necessary for the Commissioner to decide the threshold jurisdictional issue on the most informed basis possible may be developed with A.M.'s participation. A.M.'s participation will add constructively to the case, since she alone is presenting an adversarial perspective on the question of jurisdiction, and it will not delay or confuse the matter because the Commissioner would – even without her involvement – seek further exploration of the jurisdictional question before issuing a final ruling in this matter; moreover, as a parent of disabled child(ren), A.M. has a significant

interest in the outcome of a matter implicating the process by which such parents may seek to resolve complaints against school districts. *N.J.A.C. 1:1-16.6(a)-(b)*. In light of these considerations, the Commissioner deems it appropriate for A.M. to have the opportunity to argue orally, file statement(s) or brief(s), and file exceptions to the Initial Decision on Remand. *N.J.A.C. 1:1-16.6(c)*.

Accordingly, the Order of the ALJ denying A.M.'s request to intervene or participate in this matter is rejected to the extent that it does not allow A.M. to participate on the question of Commissioner jurisdiction, and the matter is hereby remanded to the OAL for the limited purpose of argument, analysis and recommended conclusions of law on the question of jurisdiction as set forth above.

IT IS SO ORDERED.\*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 21, 2006

Date of Mailing: March 21, 2006

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\* 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.*