

BOARD OF EDUCATION OF THE	:	
WEST WINDSOR-PLAINSBORO	:	
REGIONAL SCHOOL DISTRICT,	:	COMMISSIONER OF EDUCATION
MERCER COUNTY,	:	
	:	
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 determination that the district failed to follow the appropriate procedures for obtaining parental consent pursuant to *N.J.A.C.* 6A:14-2.3(b), and provided speech and language therapy services without effective consent and without going to due process for A.R. Petitioner asserts that parental consent for special education services was obtained when the mother A.R. signed the initial Individual Education Program (IEP) shortly after the child entered the district's schools, and that this initial consent remains effective until revoked by written notification. The Department moved for Summary Decision.

The ALJ found, *inter alia*, that: the district's continued implementation of the IEP for A.R. did not require parental consent; that continued implementation of the IEP could not be negated by the parents' revocation of consent since parental consent for such implementation is not required by either the IDEA or the implementing New Jersey regulations. Accordingly, the ALJ concluded that the determination of the respondent in its complaint investigation report is incorrect and should be reversed and dismissed.

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.

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.
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OAL DKT. NO. EDU 8012-05  
AGENCY DKT. NO. 212-8/05

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the Department of Education (Department) and the reply thereto by the Board of Education (Board). These submissions pertain to the merits of the matter, and are not summarized herein for the reasons set forth below.

Upon review, the Commissioner finds – as in two recent appeals of complaint investigations, *Board of Education of the Lenape Regional High School District v. New Jersey State Department of Education*, decided by the Commissioner on March 21, 2006, and *Board of Education of the Lenape Regional High School District v. New Jersey State Department of Education*, decided by the Commissioner on April 25, 2006 – that she has serious reservations regarding any attempt on her part to rule on the merits of this matter. As in the *Lenape* matters, the issues herein 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.

Although it was reasonable for the ALJ to have assumed that the question of Commissioner jurisdiction did not need to be addressed at the OAL – since the case was transmitted by the agency and the parties did not dispute jurisdiction,<sup>1</sup> – as the Commissioner held in the *Lenape* matters, 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. Here as in *Lenape*, the Commissioner is loathe to decide so critical an issue without benefit of an initial analysis with recommended conclusions of the law by the OAL.

Therefore, prior to any consideration of the merits of this matter, the Commissioner has determined to remand it to the OAL for the limited purpose of analysis and recommended conclusions of law on the question of jurisdiction.

Accordingly, the Commissioner does not reach the findings and conclusions of the Initial Decision, and this matter is hereby remanded to the OAL for limited proceedings on the question of jurisdiction as set forth above.

IT IS SO ORDERED. <sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 2, 2006

Date of Mailing: May 2, 2006

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<sup>1</sup> Unlike the *Lenape* matters, this matter did not include a motion to intervene by the parents who initiated the compliant investigation at issue.

<sup>2</sup> 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.*