

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. :

### 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 investigation was conducted subsequent to a request from a parent, A.M., who enumerated areas of concern with regard to her son's IEP for the 2001-2002 school year, particularly related to the provision of appropriate technology to improve P.M.'s academic and environmental organizational skills. The parties agreed that the matter was appropriately heard as a contested case before the Commissioner.

The ALJ granted respondent's motion for summary decision and affirmed the Department's finding of noncompliance and corrective action, concluding that the school district was obligated to provide appropriate assistive technology – at public expense and without charge – in order to meet its federally mandated obligation to provide a “free and appropriate public education” under the Individuals with Disabilities Education Act. 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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April 25, 2006

OAL DKT. NO. EDU 735-03  
AGENCY DKT. NO. 27-1/03

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The record of this matter and the Initial Decision and prior Order of the Office of Administrative Law (OAL) on A.M.'s Motion to Intervene or Participate have been reviewed,<sup>1</sup> as have exceptions filed by the Board of Education (Board) and the reply thereto by the Department of Education (Department). 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 a recent appeal of a complaint investigation involving the same parties, *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 (*Lenape I*) – that he has serious reservations regarding any attempt on his part to rule on the merits of this matter. As in *Lenape I*, the

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<sup>1</sup> Pursuant to *N.J.A.C. 1:1-14.10(j)2*, this order is reviewable at the end of the contested case, where – as here – the Commissioner declined to review it on an interlocutory basis. It is noted that the Initial Decision (at 2) erroneously states that the Commissioner *adopted* the referenced order, when – in fact – she merely declined to review it interlocutorily. A.M. sought leave from the State Board of Education to appeal the Commissioner's denial of her request for interlocutory review; in a decision dated March 1, 2006, the State Board denied the motion.

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.

Similarly, as in *Lenape I*, the ALJ again concluded that the question of Commissioner jurisdiction did not need to be addressed at the OAL in light of the fact that: 1) the case was transmitted by the agency; and 2) the parties agreed that such jurisdiction was not an issue in dispute. However, as the Commissioner held in *Lenape I*, 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 – as it did in *Lenape I* – substantial argument on the question of Commissioner jurisdiction in the context of briefing on A.M.’s motion to intervene or participate, the Commissioner is no less loathe in this instance 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.

Therefore, prior to any possible consideration of the merits of this matter, the Commissioner has determined, as in *Lenape I*, 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. Once again, 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). *Lenape I, supra.*

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: April 25, 2006

Date of Mailing: April 26, 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.*