

#169-05 (OAL Initial Decision not yet available)

BONNIE TUTTLE, MARK SEREBRANSKY, :  
JANET CONNELL, STACY ROCHIN AND :  
NANCY STEVENS, :  
PETITIONERS, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WASHINGTON, :  
GLOUCESTER COUNTY, :  
RESPONDENT. :

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### SYNOPSIS

This matter arose out of a long standing mold problem at Orchard Valley Middle School, and attendant student health concerns. Petitioners alleged that the Board acted improperly when it adopted a protocol regarding the evaluation of transfer requests for students seeking to leave the school for environmental reasons, and when it hired Dr. Howard M. Sandler as a consultant to review the medical records of transfer applicants. The petitioners' asserted that: Dr. Sandler did not meet the criteria for school physicians as required by *N.J.A.C. 6A:16-2.1*; the Board's adoption of the protocols violated the Open Public Meetings Act; and the protocols violated special education regulations.

The ALJ found that the Board's hiring of Dr. Sandler did not violate *N.J.A.C. 6A:16-2.1* in that requirements contained therein regarding criminal history background checks and New Jersey licensure apply to school physicians only and do not extend to consultants hired for limited purposes. Furthermore, the ALJ found the petitioners' argument regarding violation of the Open Public Meetings Act to be largely conjecture and that there was no substantiation that the Board's actions in adopting the protocol were intended to deceive the public, or were in violation of any by-law or governing procedure of the Board. Regarding petitioners' assertion that the Board's protocols violate the Individuals with Disabilities Act (IDEA), the ALJ noted that the protocols were not specific to classified students, and found that this issue is properly a matter for the pending due process proceedings. The ALJ dismissed the petition.

Upon full and independent review of the record in this matter, the Commissioner concurs with the ALJ that: 1) the consultant hired for the purpose of medical review of student requests for transfer from Orchard Valley Middle School was not serving as a school physician and therefore was not required to meet the statutory and regulatory specifications for that position; 2) the petitioners' have not met their burden of proof regarding violation of the Open Public Meetings Act; and 3) any claims arising in relation to the IDEA are properly reserved for due process proceedings. Accordingly, the Initial Decision was adopted for the reasons stated therein and the Petition of Appeal was dismissed.

<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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OAL DKT. NO. EDU 10011-04  
AGENCY DKT. NO. 338-9/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions were untimely filed and are, therefore, not considered herein.<sup>1</sup>

Upon review, the Commissioner concurs with the Administrative Law Judge that the consultant retained by the Board for medical review of student requests for transfer from Orchard Valley Middle School for environmental reasons was not serving as a school physician so as to require him to meet the statutory and regulatory specifications for that position. The Commissioner further concurs that petitioners have not met their burden of proving that the Board, in adopting a protocol for the handling of such requests, violated the Open Public Meetings Act, school law within the purview of the Commissioner, or its own established policies and procedures. Finally, the Commissioner concurs that he lacks jurisdiction over petitioners' claims as they relate to the Individuals with Disabilities Education Act (IDEA) and other special education law.

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<sup>1</sup> Pursuant to *N.J.A.C.* 1:1-1.4, exceptions would have been due 13 days from the April 14, 2005 mailing date of the Initial Decision. Petitioners' submission bears a face date of May 4, 2005, and was filed on May 6, 2005, with no request for extension having been made in accordance with applicable rule.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL dismissing the Petition of Appeal is adopted as the final decision in this matter.

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

COMMISSIONER OF EDUCATION

Date of Decision: April 10, 2005

Date of Mailing: April 10, 2005

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<sup>2</sup> This decision, as the Commissioner's final determination, 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.*