

EDU #8853-01
C # 446-05L
SB # 54-05

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

PETITIONER-RESPONDENT, : STATE BOARD OF EDUCATION

V. : DECISION ON MOTION

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

RESPONDENT-RESPONDENT. :

Decision on motion by the Acting Commissioner of Education,
December 12, 2005

For the Petitioner-Respondent, Archer & Greiner (Arthur Ridsen, Esq., of
Counsel)

For the Respondent-Respondent, Carolyn Labin, Deputy Attorney General
(Zulima V. Farber, Attorney General of New Jersey)

For the Movant-Movant, Education Law Center (Elizabeth Athos, Esq., of
Counsel)

In April 2001, A.M. ("movant") filed a complaint pursuant to N.J.A.C. 6A:14-9.2 with the Office of Special Education Programs ("OSEP") in the Department of Education, contending that the Board of Education of the Lenape Regional High School District ("Regional Board") had failed to develop an individualized education program ("IEP") for her son, P.M., that included all components required by law. OSEP

conducted an investigation and issued a report in which it found the Regional Board to be non-compliant and ordered it to take corrective action. The Regional Board submitted a revised IEP in July 2001 and was advised by OSEP that the new IEP complied with the corrective action plan. The Regional Board filed a petition with the Commissioner of Education challenging the findings and conclusions of the compliance investigation and seeking to have the finding of non-compliance vacated. Although the Commissioner's jurisdiction over the issues was in dispute, the parties consented to jurisdiction and filed cross motions for summary decision.

The movant filed a motion to intervene and/or participate in the matter. On November 7, 2005, an Administrative Law Judge ("ALJ") denied the motion. The ALJ found that the movant lacked standing and that her true interest in this matter, dismissal of the petition, did not add measurably to the proceeding or aid the fact-finder on the limited issue presented. On December 12, 2005, the Acting Commissioner of Education determined not to grant interlocutory review pursuant to her discretion under N.J.A.C. 1:1-14.10.

The movant filed a motion with the State Board of Education for leave to appeal the Acting Commissioner's determination to deny interlocutory review. N.J.A.C. 6A:4-2.3.

After reviewing the papers submitted, we deny the motion. We find that the movant has not demonstrated good cause requiring our review of the Acting Commissioner's determination not to grant interlocutory review of the ALJ's ruling. In re Certain Sections of the Uniform Admin. Procedure Rules, 90 N.J. 85 (1982). Nor has

the movant demonstrated that the Acting Commissioner abused her discretion in not granting interlocutory review. N.J.A.C. 1:1-14.10.

February 1, 2006

Date of mailing _____