

#190-14 (OAL Decision: http://njlaw.rutgers.edu/collections/oal/html/initial/edu507-12_1.html)

BERNARDS TOWNSHIP EDUCATION :
ASSOCIATION, :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
 :
BOARD OF EDUCATION OF THE , DECISION
TOWNSHIP OF BERNARDS, :
SOMERSET COUNTY, :
 :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning Education Association (Association) contended that the respondent Board violated *N.J.S.A.* 18A:26-2 when it authorized non-certificated coaches to provide physical education grades for student athletes involved in athletic team activities. The Association further asserted that the Board may not lawfully substitute team athletic endeavors for structured physical education classes. The Board filed a motion to dismiss, alleging that the within petition was untimely filed pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found, *inter alia*, that: on December 20, 2010, the Board adopted its “Option II” policy, which permits high school students to meet their core curriculum and graduation requirements – including the physical education requirement – through alternative pathways; the “roll-out” of this policy began on September 6, 2011, the first day of the 2011-2012 school year; the instant petition was timely, as it was filed within 90 days of the “roll-out” of the policy; the current “Option II” for physical education directly incorporates the Core Curriculum Content Standards and thus harmonizes with State educational requirements and the authorization for this type of alternative program, with non-traditional personnel involved in assessing the progress of students. The ALJ concluded that the petitioner failed to establish that the Board’s actions in implementing the “Option II” for physical education, and its use of grading information received from non-physical education certificated coaches as the essential source of grades for students participating in “Option II,” violated the law. Accordingly, the ALJ dismissed the petition.

Upon full consideration, the Commissioner concurred with the ALJ that the petitioner’s appeal was timely filed under *N.J.A.C.* 6A:3-1.3(i), and that the Board’s Option II policy for physical education does not violate *N.J.S.A.* 18A:26-2. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

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.

May 5, 2014

OAL DKT. NO. EDU 507-12
AGENCY DKT. NO. 351-12/11

BERNARDS TOWNSHIP EDUCATION ASSOCIATION,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE ,	:	DECISION
TOWNSHIP OF BERNARDS,	:	
SOMERSET COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the petitioner's appeal was timely filed under *N.J.A.C.* 6A:3-1.3(i). The Commissioner is also in accord with the ALJ's determination that the Board's Option II policy for physical education does not violate *N.J.S.A.* 18A:26-2. Accordingly, the recommended decision of the ALJ is adopted for the reasons expressed therein.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 5, 2014

Date of Mailing: May 6, 2014

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).