EDU #2696-96
C # 191-96E
SB # 44-96
C # 573-96M
C # 293-97
SB # 59-97

BOARD OF EDUCATION OF THE TOWNSHIP OF MIDDLETOWN, MONMOUTH COUNTY,	:	
PETITIONER-RESPONDENT,	:	
V.	:	STATE BOARD OF EDUCATION
D.F. AND R.F., individually and as guardians of D.F.,	:	DECISION
RESPONDENTS-APPELLANTS.	:	

Decided by the Commissioner of Education, May 14, 1996

Decided by the State Board of Education, October 2, 1996

Decision on motion by the Commissioner of Education, December 20, 1996

Decided by the Commissioner of Education, June 3, 1997

For the Petitioner-Respondent, Kenny & Gross (Robert J. Pruchnik, Esq., of Counsel)

For the Respondents-Appellants, D.F. and R.F., pro se

The underlying controversy in this matter between respondents and the Board of Education of the Township of Middletown (hereinafter "Board") developed after respondents moved to New Jersey from Staten Island and enrolled their three children in the Middletown school district in September 1995. Review of the immunization records provided by respondents at that time indicated that although the Mantoux

Intradermal Tuberculin Test ("Mantoux test") had been administered to respondents' two oldest children in May 1995, D.F., who was entering first grade, had not been tested since May 1994. Since the State Department of Health's guidelines required that out-of-state transfer students be tested if the Mantoux Test had not been administered to them within the previous six months, the District attempted to obtain respondents' consent to administer the test. When respondents notified the District that the family's religious beliefs prohibited vaccination or medical testing by the State, the Board excluded D.F. from school and filed a petition with the Commissioner of Education seeking a declaratory judgment that it had acted properly and that respondents could not claim an exemption from the testing requirement on the basis of their religious principles. The Board also sought a directive from the Commissioner that respondents either permit administration of the Mantoux test to D.F. or resume his education at a private school or through home schooling. At the same time, the Board filed an application for emergent relief with the Commissioner seeking the same relief as requested in its petition.

The Commissioner denied the motion for emergent relief and directed the Board to provide home instruction to D.F. pending the outcome of hearings on the merits of the underlying matter.

On appeal, the State Board affirmed the Commissioner's determination, agreeing that the Board had not demonstrated the necessity of relieving it from its obligation to provide D.F. with a thorough and efficient education during the pendency of this matter. Consequently, we affirmed the Commissioner's directive that the Board

provide D.F. with home instruction until the Commissioner rendered his final determination on the merits.

When the matter came before an Administrative Law Judge ("ALJ") for consideration of the merits, the Board moved for summary decision compelling D.F. to submit to testing for tuberculosis or directing other schooling alternatives if D.F.'s parents refused to comply. The ALJ granted the Board's motion and directed that D.F. obtain a Mantoux test in order to enter public school or, in the event his parents refused, that they either enroll him in a nonpublic school or initiate home schooling.

By decision of June 3, 1997, the Commissioner adopted the ALJ's determination, concluding that the Mantoux test served the compelling State interest in screening students for tuberculosis in order to insure the health, safety and welfare of students in public schools in the least invasive manner available. The Commissioner found that such testing therefore met the constitutional standard and that the ALJ had properly concluded that D.F.'s re-entry into public school was contingent on obtaining an appropriately administered Mantoux test. In so ruling, the Commissioner found that the Board had not violated the Religious Freedom Restoration Act of 1993 and concluded that it was not necessary for him to decide other questions raised by D.F.'s mother, including her allegation that there were gods and goddesses in the "religion" of medicine.

D.F.'s parents appealed to the State Board, renewing their previous arguments.

After the parties had filed their briefs, the counsel for the Middletown Board advised us by letter that D.F.'s father had provided the Board with appropriate documentation that a Mantoux test had been administered to D.F. by a private

physician on September 2 and that the result was negative. On October 16, the Board formally moved for dismissal of the matter on grounds of mootness.

D.F.'s mother opposes the Board's motion, arguing that she had no control over the actions taken by D.F.'s father to comply with the Commissioner's determination and that the public interest demands resolution of her claims, including her contention that medicine is a religion.

After reviewing the arguments made by the parties, the State Board dismisses this matter as moot. E.g., Oxfeld v. New Jersey State Board of Education, 68 N.J. 301 (1975). Notwithstanding the fact that D.F.'s mother does not agree with the decision made by D.F.'s father to comply with the Commissioner's directive, the Mantoux test has been administered to D.F. and, as a result, he is able to re-enter public school. Furthermore, the specific allegations made by D.F.'s mother with respect to either the course taken by D.F.'s father or the entanglement of religion with the medical profession are not wrongs which are capable of repetition yet evading review in the proper forum. Nor do we find that any of the issues remaining in this case are of such transcendent public importance as to compel resolution by this agency. State v. Allen, 73 N.J. 132, 138-39 (1977). We therefore agree with the Board that this matter has been rendered moot, and dismiss the appeal.

December 3, 1997

Date of mailing _____