

#306-15 (OAL Decision: Not yet available online)

LEARNING CENTER FOR EXCEPTIONAL CHILDREN, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 NEW JERSEY STATE DEPARTMENT OF EDUCATION, :
 :
 RESPONDENT. :
 :
 AND :
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 LEARNING CENTER FOR EXCEPTIONAL CHILDREN, :
 :
 PETITIONER, :
 :
 V. :
 :
 NEW JERSEY STATE DEPARTMENT OF EDUCATION, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner, the Learning Center for Exception Children (LCEC) – a private school for the disabled, which had been approved by the New Jersey Department of Education (Department) to receive public school students on a tuition basis – challenged the Department’s action in placing LCEC on conditional approval status. LCEC asserted that there is no factual or legal basis for the Department’s action, and sought an order restoring full approval of its educational program. The Department contended that LCEC is not operated in accordance with applicable agency regulations. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; the Department’s action in placing LCEC on conditional approval status was reasonable, warranted, and effectuated in accordance with the law; the only remaining issue for consideration in this case is whether improper mainstreaming of special needs students continues to occur at LCEC; it is uncontroverted that some students at LCEC were educated for at least a part of their day in mainstream settings, which in many cases was not stipulated in the students’ Individual Education Program (IEP); therefore, the action of the Department in March 2014 in placing LCEC on conditional approval because children were improperly mainstreamed was appropriate and consistent with law and regulation; and the record offers no cause to question the Department’s continued belief that LCEC must remain on conditional approval. Accordingly, the ALJ granted the Department’s motion for summary decision, denied petitioner’s motion, and dismissed the petition.

Upon comprehensive review of the record, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL 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.

September 24, 2015

OAL DKT. NOS. EDU 5929-14, EDU 7995-14 (CONSOLIDATED)
AGENCY DKT. NOS. 60-3/14, 155-6/14

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Learning Center for Exceptional Children (LCEC), and the Department of Education's (Department) reply thereto.¹ In this matter, LCEC, an approved private school for

¹ After the deadline for filing exceptions expired, LCEC submitted a copy of an Opinion issued by the Third Circuit Court of Appeals in *D.M., et al. v New Jersey Department of Education, et al.* which involves a student who currently attends LCEC. It should be noted that nothing in the Third Circuit Opinion dictates a different result in this case.

students with disabilities, challenges the Department's decision placing LCEC on conditional approval status.

In its exceptions, LCEC maintains that the Administrative Law Judge (ALJ) erroneously granted summary decision in favor of the Department. Specifically, LCEC maintains that the ALJ wrongfully stated in the Initial Decision that it was "uncontroverted" that the mainstreaming of LCEC students with students at Today's Learning Center² was not approved. Although LCEC maintains that it is no longer mainstreaming students, it contends that the Department actually approved the practice of mainstreaming its students when the Department granted its program application in 2011. LCEC also takes exception to the ALJ's determination that there was "no competent evidence" showing that the mainstreaming had ended, arguing that the school has in fact provided ample evidence to the Department proving that the school is not mainstreaming students. Finally, LCEC argues that the ALJ erroneously treated the ongoing IEP/scheduling issues as if they are the same as mainstreaming issues. Therefore, LCEC requests that the Initial Decision be rejected and that the Commissioner issue an order releasing LCEC from conditional approval status.

In reply, the Department maintains that the ALJ properly rejected LCEC's argument that it had satisfactorily addressed the mainstreaming issue and upheld the conditional approval status. The Department also contends that LCEC did not offer anything in its exceptions to justify the modification of the Initial Decision. The Department emphasizes that LCEC is only authorized to operate special class programs, and LCEC's argument that the Department approved the mainstreaming of student's at LCEC should be rejected.³

² Today's Learning Center is a private, regular educational program that is located alongside LCEC.

³ Special class programs are defined as programs that "serve students who have similar intensive educational, behavioral, and other needs related to their disabilities in accordance with their individualized education programs." Placement in a special class program shall occur when the IEP team determines that the nature and severity of the

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that the Department’s decision to place LCEC on conditional approval status was appropriate and consistent with the law and governing regulations. Moreover, despite the fact that LCEC has rectified the Department’s concerns regarding the full-time principal and inappropriate rental space, LCEC has yet to provide enough evidence to prove that it is no longer mainstreaming students. Finally, the Commissioner is not persuaded by LCEC’s suggestion that the conditional approval should be removed based on its argument that the Department approved the mainstreaming of its students in 2011 when the program application was granted. LCEC was approved to operate special class programs only, and its practice of mainstreaming is in violation of its approval under *N.J.A.C. 6A:14-4.7*.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: September 24, 2015

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student’s disability is such that no other school-based program will meet the student’s needs.” *N.J.A.C. 6A:14-4.7(a)*.

⁴ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.