

IN THE MATTER OF THE DENIAL OF A :
WAIVER TO THE OCCUPATIONAL CENTER : STATE BOARD OF EDUCATION
OF UNION COUNTY, UNION COUNTY. : DECISION

Waiver denied by the Commissioner of Education, December 7, 2004

For the Appellant, Hehl & Hehl (Robert J. Genovese, Esq., of Counsel)

For the Respondent, Carolyn Labin, Deputy Attorney General (Peter C. Harvey, Attorney General of New Jersey)

On July 15, 2004, the appellant, the Occupational Center of Union County, which operates the Victory School, a private school for the disabled, applied to the Commissioner of Education for a waiver pursuant to N.J.A.C. 6A:5-1.1 et seq. from the requirement of N.J.A.C. 6A:23-4.3(c)iii, which provided that:

Any previously approved private school for the disabled that falls below the previous minimum ADE [average daily enrollment] of 16 public school placement students in a school year shall have its status as an approved private school for the disabled rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for the disabled.¹

¹ We note that N.J.A.C. 6A:23-4.3(c) was amended by the State Board in August 2004 so as to increase the minimum average daily enrollment required for private schools for the disabled approved in 2004-05 or thereafter from 16 to 24.

The interim Union County Superintendent recommended approving the appellant's application. However, both the Assistant Commissioner of the Division of Finance and the Assistant Commissioner of the Division of Student Services recommended that the Commissioner deny the requested waiver. The Assistant Commissioner for Finance observed that N.J.A.C. 6A:23-4.3 was developed "due [to] the Department's serious concerns about the high number of separate placements for students with disabilities in New Jersey. The Department's intent is to encourage the development of programs that are consistent with the mandate to provide services in the least restrictive environment and in the most cost effective and efficient manner." He avowed that "[a]pproval of this waiver would have statewide implications and make this regulation meaningless and unenforceable," adding that the State Board had recently amended that regulation so as to increase the required minimum average daily enrollment for a private school for the disabled from 16 to 24.

The Assistant Commissioner for Student Services, pointing out that the school served only four students, explained that "[a] school of that size does not provide students with disabilities the variety of education and social opportunities they would have in a larger school." He emphasized that since the Victory School was affiliated with the Occupational Center of Union County, which was approved by the Division of Vocational Rehabilitation in the Department of Labor, "[s]tudents with disabilities can continue to receive vocational training at the Occupational Center even if the academic program at Victory School is no longer approved."

In October 2004, a consistency review committee reviewed the application and agreed with the Assistant Commissioners that the waiver request should be denied.

By letter dated December 7, 2004, the Commissioner denied the appellant's application, and the appellant filed the instant appeal to the State Board.

After a thorough review of the record, we affirm the Commissioner's denial of the waiver request at issue. In doing so, we stress that although the appellant contends that the program provided by the Victory School is of a unique nature that cannot be duplicated, it did not submit anything to demonstrate that this is, in fact, the case. Under the circumstances and given the fact that the school, as the Assistant Commissioner for Student Services pointed out, was serving only four students, we affirm the Commissioner's decision to deny the appellant's waiver application.

July 6, 2005

Date of mailing _____