

New Jersey Commissioner of Education**Final Decision**

Monica Osgood,

Petitioner,

v.

New Jersey Department of Education,
Office of Special Education,

Respondent.

Synopsis

Petitioner challenged the actions by the respondent Department of Education, Office of Special Education (NJDOE) in handling applications for approved private schools for students with disabilities. Petitioner, who was approved by the NJDOE in 2004 to open an Approved Private School for Students with Disabilities (APSSD), sought to establish a new APSSD and submitted an application in 2023. After her application was denied, petitioner submitted the within appeal. The NJDOE filed a motion to dismiss the petition in lieu of an answer.

The ALJ found, *inter alia*, that: petitioner challenged the NJDOE's application process for APSSDs, including its process of developing and mailing out the Needs Assessment forms directly to school districts and Local Education Agencies (LEAs) rather than allowing an applicant to develop and secure these forms directly from the districts/LEAs; petitioner challenged the wording used by the NJDOE in these forms; petitioner also sought to compel the NJDOE to approve a "small number" of APSSDs every year, and sought an opportunity to re-apply once these proposed changes were made by the NJDOE; however, petitioner offered no legal support for her claims nor for the relief she sought. The ALJ concluded that that the petition must be dismissed because petitioner failed to advance any cause of action upon which relief can be granted; there is no legal basis to grant the specific relief she seeks. Accordingly, respondent's motion to dismiss was granted and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that petitioner failed to state a claim upon which relief can be granted. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

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.

406-24
OAL Dkt. No. EDU 09640-24
Agency Dkt. No. 124-5/24

New Jersey Commissioner of Education
Final Decision

Monica Osgood,

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v.

New Jersey Department of Education, Office of
Special Education,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner has failed to state a claim upon which relief can be granted.

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

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 09640-24

AGENCY DKT. NO. 124-5/24

MONICA OSGOOD,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION, OFFICE OF SPECIAL
EDUCATION,**

Respondent.

Monica Osgood, petitioner, pro se

Michael Lombardi, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: August 8, 2024

Decided: September 12, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner Monica Osgood (Petitioner or Osgood) challenges the actions by the respondent Department of Education, Office of Special Education (NJDOE) in handling

applications for approved private schools for students with disabilities. The respondent moves to dismiss the Petition.

PROCEDURAL HISTORY

On or around May 2, 2024, petitioner filed a Petition of Appeal with the Commissioner of Education. The Commissioner transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case on July 10, 2024 pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Prior to receiving the matter at the OAL, on or around July 5, 2024, the respondent filed a Motion to Dismiss in lieu of an Answer to the Petition. The petitioner opposed the motion on July 7, 2024. I held a telephone prehearing conference with the parties on August 8, 2024, at which time we discussed the status of the motion. No additional pleadings were filed, and the record closed at the conclusion of the conference.

FINDINGS OF FACT

Upon my review of Osgood's Petition and the parties' submissions, I **FIND** the following as **FACT**:

In 2004, Osgood was approved by the NJDOE to open an Approved Private School for Students with Disabilities (APSSD). She now seeks to establish a new APSSD, and submitted a new APSSD application to the NJDOE in 2023.

Osgood submitted her first draft of the Phase I portion of the application in or around November 20, 2023. As part of the Phase II approval process, NJDOE submitted Osgood's proposal for a new APSSD and Needs Assessment Survey to the counties requested by her in the application, which included over 600 Local Education Agencies (LEAs). These Needs Assessment Surveys were to be completed and returned to the NJDOE by the LEAs. According to the NJDOE, only fourteen of the 120 districts that responded to the Needs Assessment Survey indicated a positive response to Osgood's proposed new APSSD. Therefore, by letter dated March 21, 2024, NJDOE informed

Osgood that her application for a new APSSD was denied. The NJDOE informed Osgood that the returned Needs Assessment Surveys failed to reflect the required twenty-four potential student placements, and that, consequently, it determined that the need for Osgood's proposed program had not been established and that her application to establish the new school was denied. Osgood does not assert that she received the twenty-four required positive responses from districts/LEAs, nor does she challenge the NJDOE's basis for denying her application.

On or around May 3, 2024, Osgood filed with the Acting Commission of Education and the NJDOE's Office of Controversies and Disputes an appeal "regarding the current process of applying for an Approved Private School for Students with Disabilities." In the Petition of Appeal, Osgood writes that the Petition is regarding the NJDOE's APSSD Application for 2023. She asserts that the APSSD application changed since the last time she applied in 2004. Specifically, she maintains that the Needs Assessment process that is part of the Phase II review process was changed by the NJDOE and that this change is creating a "moratorium" on new APSSDs. Osgood asserts in her Petition that the wording of the current Needs Assessment "intimidates" the LEAs/districts from responding truthfully concerning their needs, and that because of this, she asserts, there has not been a new APSSD approved in over seven years, which the NJDOE denies. She alleges that districts "are reluctant to confirm they have OOD [out-of-district] needs due to the way the Needs Assessment is worded" by the NJDOE, and because the districts are now required to submit this directly to the NJDOE rather than to the applicant. Osgood recognizes that her most recent application did not yield the required twenty-four positive responses to be approved but maintains that the Needs Assessment process "is unacceptable and should be revised to allow districts to honestly express their out-of-district needs." In her Petition, Osgood expressly states that the relief requested in her Petition is "to change the Needs Assessment to allow school districts to express their needs truthfully."

Days after submitting her appeal to the NJDOE, petitioner submitted an Addendum to her appeal, seeking to amend the relief requested in the Petition to the following:

First, revert Phase Two – Needs Assessment of the application back to the original procedure requiring the applicant to send the Needs Assessment to districts vs. the new procedure allowing the Needs Assessment to be distributed, collected, and tallied by the DOE. This change will remove the intimidation district feel expressing they have out-of-district (OOD) needs and allow them to speak freely about their needs. Again, not to encourage more OOD placements, but to provide districts with more choices so they can make the best decisions for their students and the district's budget.

Second, change the Needs Assessment to allow school districts to express their needs truthfully. Specifically, reword the Needs Assessment Form as follows: . . .

Third, I would like the opportunity to resend my Needs Assessment using my originally proposed name

Fourth, the DOE should allow a small number of new APSSDs to open every few years to provide competition to existing APSSDs. Holding a moratorium on new private schools only allows the existing schools to increase tuition and 1:1 rates unchallenged

Osgood does not challenge the NJDOE's authority to develop and approve applications to establish new APSSDs in the State. She also does not dispute any of the facts upon which the NJDOE relied to deny her application, and she does not request that the NJDOE's denial of her application be reversed. Rather, she challenges the NJDOE's application process, including its process of developing and mailing out the Needs Assessment forms directly to the districts/LEAs rather than allowing the applicant to develop and secure these forms directly from the districts/LEAs; and she challenges the wording used by the NJDOE in these forms. Osgood also seeks to compel the NJDOE to approve a "small number" of APSSDs every year, and she seeks an opportunity to re-apply once these proposed changes are made by the NJDOE. She offers no legal support for her claims or to obtain the relief she seeks.

LEGAL ANALYSIS AND CONCLUSION

The NJDOE filed a Motion to Dismiss the Petition, in lieu of an Answer, asserting that the matter should be dismissed because the petitioner has advanced no cause of

action, even if her factual allegations are accepted as true, and because there are no constitutional or statutory bases to grant the relief Osgood seeks, rendering further proceedings unnecessary.

N.J.A.C. 6A:3-1.10 provides:

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good cause.

In reviewing such a motion to dismiss, the inquiry is "limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 749 (1989). "Dismissal is the appropriate remedy where the pleading does not establish a colorable claim and discovery would not develop one." State v. Cherry Hill Mitsubishi, 439 N.J. Super. 462, 467 (App. Div. 2015). While a Petition is entitled to a liberal reading by the reviewing tribunal, dismissal is appropriate when, on its face, it fails to set forth a basis for relief.

The NJDOE regulates APSSDs and has adopted a process to accept, review and approve applications to create new APSSDs in the State. N.J.A.C. 6A:14-7.2 governs the application process and authorizes the NJDOE to determine if any proposed program is needed. The NJDOE's current application process includes the dissemination and review of Needs Assessment Surveys/forms submitted to prospective sending school districts for any new proposed APSSDs.

Here, Osgood is not appealing the NJDOE's denial of her application, and she does not dispute any of the facts upon which the NJDOE relied to deny the application for a new APSSD. She concedes in her Petition that she failed to secure the required positive responses for potential student placements from the districts that were sent a Needs Assessment Form. Rather, Osgood is challenging the NJDOE's application process, including the manner in which it obtains Needs Assessment Surveys, the

language contained in these surveys/forms, and she asserts that the NJDOE should revert to its “original procedure.” She claims that the NJDOE’s current procedure is unfair; it discourages LEAs/districts from truthfully and accurately reporting their needs; and that this procedure effectively creating a moratorium on the approval of any new schools. Even if Osgood’s factual allegations as reflected in the Petition are true, however, she has advanced no cause of action or colorable claim upon which relief can be granted by this tribunal. Moreover, this tribunal is without jurisdiction to grant the specific relief Osgood seeks in response to her claims. This tribunal is without authority to compel the NJDOE to approve any number of APSSD applications per year; to restrict the NJDOE from creating and/or obtaining Needs Assessment Surveys as part of its consideration of an APSSD application; or to order the NJDOE to re-write, as Osgood suggests, the Needs Assessment Forms that it distributes as part of the application process.

Consequently, upon my review of the Petition and the Addendum to the Petition, and while considering the allegations as true and affording petitioner all reasonable inferences that could be drawn therefrom, I **CONCLUDE** that this Petition must be dismissed because Osgood has failed to advance any cause of action upon which relief can be granted, and because there is no legal basis to grant the specific relief she seeks.

In order to effect a change to an application process, the petitioner may always seek redress through a petition for rulemaking under N.J.A.C. 1:30-4.1, which provides that “[a]n interested person may petition an agency to adopt a new rule or amend or repeal an existing rule.”

ORDER

It is hereby **ORDERED** that the respondent’s motion to dismiss be **GRANTED**, and that the Petition be **DISMISSED**.

I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

September 12, 2024
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency:

Date Mailed to Parties:

jb