

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

MASSACHUSETTS OFFICE OF CHILD CARE)	
SERVICES,)	
Petitioner)	
)	DALA Docket No: OC-00-941
v.)	
)	
THE DeSISTO SCHOOL, INC.)	
Respondent.)	
)	

Final Agency Decision

The Office of Child Care Services (OCCS) is mandated to license programs that care for children, including private residential schools that serve special needs children.¹ A license is required because of the state's strong interest in ensuring that programs provide high quality care that will protect children and youth, and support their healthy social, emotional, and cognitive development. A license is especially important for residential care for special needs children since these programs assume the parental role of providing care for our most vulnerable children on a twenty-four hour basis.

OCCS licenses approximately 500 private residential schools in Massachusetts.

This matter involves The DeSisto School (the school), a private residential school located in Stockbridge, Massachusetts, that claims it does not need a license to operate even though it describes itself as a "... school for students with special emotional and educational needs." See <http://www.vgernet.net/desisto/academ.html>. The school was previously licensed by OCCS (at the time Office for Children) until 1986 when it provided information to the agency that it was fundamentally changing its student population and no longer would fall under OCCS' licensing jurisdiction.

Since that time, OCCS has received many allegations of abusive practices at the school. This information also strongly indicated that the school was again serving special needs children in excess of 30% of the student population, the triggering factor for needing a license. OCCS attempted to gather information from the school to see if in fact the student population was one that required an OCCS license. OCCS met with school administrators and made numerous requests to the school for access to information to allow OCCS to make an informed decision on licensing. The school effectively

¹ Any group care facility is required to have a license. Such facilities are defined as "any facility which provides care and custody for one or more children under the age of eighteen years of age, on a regular, twenty-four hour a day, residential basis by anyone other than a relative by blood or marriage, notwithstanding the fact that such care may include educational instruction, provided, private schools shall be considered group care facilities only if such schools provide special services to children with special needs. M.G.L. c. 28A § 9. A private school must be licensed if it fits the above definition and 30% or more of the student population is special needs students. See 102 CMR 3.02.

stonewalled OCCS; claiming they were not subject to licensing, but refusing to provide the necessary information to back up their claim.

Licensing of residential schools is critical because OCCS standards ensure that children are in an environment that is safe and appropriately meeting their needs. The licensing standards are uncompromising on child welfare and flexible to account for each program's unique design. The OCCS standards are based on five goals: 1) to provide a program that is administratively and fiscally sound with clearly conceived policies and practices; 2) to provide services for residents that meet their immediate and long term needs; 3) to meet each child's needs relating to health, nutrition, individuality and interaction with peers and adults; 4) to meet each child's need for privacy, comfort, and community while protecting residents from fire, health and accident hazards; and 5) to provide residents with services and an environment which meet the special needs their families are unable to fulfill. Since the licensing standards are based on goals that are mutually supported by OCCS and programs, The DeSisto School's refusal to allow even an assessment of whether or not they were subject to licensing became of increasing concern to OCCS.

After repeated efforts by OCCS to resolve this matter without litigation, on May 10, 2000, OCCS ordered The DeSisto School to show cause why it was not subject to OCCS licensure. The school appealed that order to the Division of Administrative Law Appeals (DALA). On May 2, 2001, DALA imposed sanctions against the school for failure to comply with discovery orders. In order to take every action to protect children, OCCS moved for summary decision on June 11, 2001, based on both the sanctions imposed and documents received during discovery that demonstrated that over 30% of the student body at the school is special needs. On September 5, 2001, DALA made a recommended decision granting summary decision for OCCS. DALA recommended that OCCS order The DeSisto School to immediately commence the necessary procedures to secure a license or in the alternative, to immediately cease and desist operation of the school.

Decision

On May 2, 2001, DALA imposed sanctions that established facts adversely to the school for failure to comply with discovery orders. Despite repeated orders from DALA, the school refused to provide OCCS with the complete information that would allow OCCS to determine the nature of the student body at the school. Specifically, even though a confidentiality order was in place and the school had previously agreed to provide the information, the school refused to provide the information regarding students' diagnoses and treatment plans. On September 5, 2001, DALA allowed OCCS' Motion for Summary Decision. DALA concluded that based on the ordered sanctions, The DeSisto School is serving well in excess of 30% special needs students and needs an OCCS license to operate.

I incorporate the DALA decision's procedural history and adopt the findings of fact and conclusion that The DeSisto School is subject to OCCS' licensure.

I also find that the limited student information that was obtained during discovery demonstrates that over 41% of the students enrolled as of May 1, 2001 were special needs students as a matter of law based on either their Individual Education Programs or funding from their local school districts. Thus, I conclude that regardless and independent of the sanctions imposed by DALA, the school is subject to OCCS licensure.

Order

I accept DALA's recommendation, and order The DeSisto School to immediately commence the necessary procedures to secure such a license or in the alternative, to immediately cease and desist operation of the school.

In recognition that The DeSisto School is an operational program with approximately ninety students enrolled, this order will not prevent the school from operating while OCCS conducts a licensing study. The DeSisto School, however, must fully cooperate with OCCS during the licensing study. If OCCS identifies any condition at the school that poses a threat to the safety of the students, the school must immediately address and correct such condition during the licensing study. Any failure to cooperate with OCCS during the licensing study or failure to meet licensing standards within a reasonable time will result in an order to cease and desist operation.

The school may elect to cease and desist operation rather than proceed with a licensing study. If it does, the school must immediately commence closing the school and be closed to students within thirty days. OCCS will monitor the school until operations cease. The DeSisto School must fully cooperate with OCCS during the closure of the school.

The operation of any group care facility in Massachusetts without a valid license issued by the Office of Child Care Services is illegal. See G.L. c. 28A, § 11. If OCCS at any time finds The DeSisto School is not complying with this order, it can be fined for each such violation by a fine of up to one thousand dollars (\$1,000). Any person not complying with this order may be subject to imprisonment for not more than six (6) months. See G.L. c. 28A, § 15.

SO ORDERED.

Ardith Wieworka
Commissioner
Office of Child Care Services

Date