September 2, 2004

David C. Apy, Esq.
McCarter & English, LLP
100 Mulberry Street
Four Gateway Center
P.O. Box 652
Newark, NJ 07101-0652

Dear Mr. Apy:

Upon review of the motion for stay in the matter entitled *In the Matter of the Final Grant of the Application of the Jersey Shore Charter School, Monmouth County*, Agency Dkt. No. 295-8/04, wherein petitioner requests that I stay the Commissioner's August 23, 2004 denial of final approval for a charter for the Jersey Shore Charter School, I have determined to deny the motion for stay for the reasons set forth below.

In my consideration of petitioner's request for a stay, I am cognizant that the standards for granting injunctive relief are well-established. The party seeking such relief must satisfy each of the following four separate conditions: 1) that, in the absence of such a stay, the movant will suffer irreparable harm; 2) that the legal right underlying petitioner's claim is settled; 3) that there is a clear probability that the movant will prevail on the merits of the underlying controversy; and 4) that the harm to other persons or entities will not be greater that the harm the movant will suffer in the absence of such a stay. See *Crowe v. DeGioia*, 90 *N.J.* 126, 132-134 (1982).

Upon review of petitioner's arguments and supporting documentation, I conclude that petitioner has not established that it has a likelihood of success on the merits of its appeal to the State Board. Specifically, I reject petitioner's claim that the long-standing deficiencies outlined in the August 23, 2004 letter denying final approval of its charter were based on incorrect information or have all been corrected in the week since that determination. Initially, I point out that petitioner had a planning year in which to prepare for the opening of its school this Fall, during which it was petitioner's responsibility to provide the Commissioner complete, accurate and timely information with regard to, *inter alia,* its enrollment data, fiscal viability, faculty, composition of its Board of Trustees, documents concerning the renovation of its school facility, fiscal accounting practices, etc. In this regard, I point out that petitioner, while requesting that it be allowed to open on September 9, 2004, concedes in its motion papers that,

even at this late date, the facility information is incomplete, stating that "the deficiencies referenced in the August 23, 2004 (letter) do not exist at this time and the Charter School should be allowed to open, subject to submission on or before September 9, 2004, of the remaining documentation pertaining to the facility." (Motion at 2) Moreover, with the exception of one of the teachers, petitioner has failed to submit copies of the certifications of the personnel hired this past week and has failed to provide the detail necessary to assuage my concerns regarding fiscal accounting practices and the governing structure. Given the serious concerns expressed in the August 23, 2004 determination, which were hastily addressed after petitioner received notification that the final approval of its charter had been denied, I cannot conclude with any certainty that the Jersey Shore Charter School will be able to provide the quality educational program and fiscal integrity to which students are entitled by law. Under these circumstances, I cannot find that petitioner will likely prevail on the merits of its appeal, or that students, parents and staff will suffer greater harm by having to now make alternative educational and employment arrangements for the next school year than they would if the stay were granted and the final approval of petitioner's application for a charter is ultimately denied by the State Board.

Accordingly, I decline to stay the August 23, 2004 determination denying final approval of petitioner's application to establish the Jersey Shore Charter School.

Sincerely,

Dwight R. Pfennig
Acting Commissioner

c: Viola S. Lordi, Esq.
    R. Armen McOmber, Esq.
    Dennis A. Collins, Esq.
    Kathleen Asher, DAG
    County Superintendent
    Roslynne Novack