

SB #38-04

IN THE MATTER OF THE DENIAL OF :
THE CHARTER SCHOOL : STATE BOARD OF EDUCATION
APPLICATION OF THE GREAT : DECISION
FALLS CHARTER SCHOOL, PASSAIC :
COUNTY. :

Decided by the Commissioner of Education, August 23, 2004

Decision on motion by the Commissioner of Education,
September 8, 2004

Decision on motions by the State Board of Education, October 6, 2004

For the Appellant, Ronald T. Nagle, Esq.

For the Participant Commissioner of Education, Allison C. Eck, Deputy
Attorney General (Peter Harvey, Attorney General of New Jersey)

On January 15, 2003, the Commissioner of Education notified the proposed Great Falls Charter School (hereinafter "appellant") that he was approving its application to operate a charter school pursuant to the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq. Such approval was expressly contingent on the proposed school taking a planning year as requested by the founders and, as mandated by our regulations, upon receipt by the Commissioner of required documentation not included in the application.¹ The Commissioner added that "once all documentation is received

¹ N.J.A.C. 6A:11-1.2 provides that "[a]pproval of a charter' means an endorsement by the Commissioner following the review of an eligible application by the Department of Education and contingent upon the

and approved, your charter will be granted in accordance with N.J.A.C. 6A:11-2.1(h-j).” Commissioner’s Decision, slip op. at 1 (emphasis in original).

By letter dated August 23, 2004, the Commissioner notified the appellant that he was denying it final approval to operate a charter school.² The Commissioner explained that “[g]iven the deficiencies in the documentation submitted, missing documentation and the persistent failure to adhere to prescribed timelines in the crucial months leading up to the opening of school, a charter will not be granted to the school.” Id. The Commissioner indicated that “[t]he information provided the department as of August 16, 2004, the final deadline to fulfill the requisite conditions set forth in the Commissioner’s January 15, 2003 letter approving charter school applications, indicated significant problems.” Id. Specifically, the Commissioner found that as of August 11, 2004, the appellant was reported to have 54 verified students enrolled as compared to the department’s approved enrollment of 162, which was the basis for fiscal projections. In addition, documentation due on August 16, 2004 regarding the renovation of the

receipt of necessary documentation in accordance with N.J.A.C. 6A:11-2.1(h).” N.J.A.C. 6A:11-2.1 provides in pertinent part:

(h) The Commissioner may approve an application for a charter which shall be effective when all necessary documents and information are received by the Commissioner. The charter school shall submit on or before the dates specified in the letter of approval the documentation not available at the time of the application submission....

* * * * *

(j) All statutorily required documentation shall be submitted to the Department of Education by May 15. The final granting of the charter by the Commissioner shall be effective when all required documentation as listed in (h) above is submitted and approved by the Department of Education.

² N.J.A.C. 6A:11-1.2 defines “final granting of a charter” as “the written notification in which the Commissioner makes the charter effective as a result of all required documentation being submitted by the charter school and approved by the Department of Education in accordance with N.J.A.C. 6A:11-2.1(h), (i) and (j).”

facility and the required staff list had not been submitted to assure compliance with statutes and regulations.

On August 31, 2004, the appellant filed an appeal to the State Board of Education challenging the Commissioner's decision. The appellant also filed a motion with the Commissioner seeking a stay of his decision.

On September 8, 2004, the Commissioner denied the appellant's motion for a stay, concluding that it had failed to satisfy the standards for such relief set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). The appellant thereupon filed an application for a stay with the State Board.

On October 6, 2004, we denied the appellant's application, concluding, like the Commissioner, that it failed to meet the standards that would entitle the appellant to relief under Crowe. Stressing that the Commissioner's letter of January 15, 2003 was clear that final approval of the proposed charter school was contingent upon submission and approval of the documentation required by our regulations, we found that the appellant had not demonstrated the likelihood that it would prevail on the merits of its appeal. We reiterated in that regard that the charter school preparedness site visit conducted by Department of Education staff on July 30, 2004 revealed the existence of serious deficiencies despite the fact that the proposed school had taken a planning year after the Commissioner had given his contingent approval to the appellant's application in January 2003. We observed that "[i]n addition to low student enrollment and facilities concerns, the deficiencies that existed at the time of the site visit included the failure to employ a certified nurse or special education teacher, the failure to fully develop a curriculum, the failure to employ an adequate staff of properly certified teachers, the

failure to submit a criminal history record check for any of the proposed school's employees, and the failure to have a plan for providing services to students with limited English proficiency. Moreover, at the time of the site visit, only one of the six teachers who had been employed possessed a standard teaching certificate." State Board's Decision on Motions, slip op. at 5. We found that nothing in the materials submitted by the appellant demonstrated that it had corrected these deficiencies, and we noted in that regard that, while the appellant indicated that a full complement of teachers had been hired and that the number of teachers employed had increased from six to nine, the documentation submitted showed that only three of those individuals possessed standard certification and that, of the other six, three held only certificates of eligibility and three had county substitute credentials.

We further found that the materials submitted by the appellant confirmed the Commissioner's findings and concerns with regard to the proposed school's facility and enrollment. We explained that:

As stated by the Commissioner in his decision denying a stay, the appellant "has presented none of the requisite documentation with respect to the renovation of its facility so as to allow a reasonable expectation that receipt of students on this date is feasible." Commissioner's Decision, slip op. at 2. Moreover, although the appellant contends that it anticipated an enrollment of nearly 162 students by the start of the school year, the proposed school's principal avers in a certification filed in support of appellant's motion for a stay that there were only 108 students enrolled as of September 9, 2004. In addition, although the appellant blames its facilities problems on the "breach of lease caused by the owner" of its original facility, Certification of Thomas Ambrosio, at 1, the papers submitted also reveal that the owner of that property terminated the lease agreement as of May 31, 2004 as a result of the appellant's failure to pay the security deposit.

Id. at 6.

Nor under the circumstances could we find any basis for concluding that denial of the relief sought would cause irreparable harm to any students. To the contrary, even viewing all factual assertions and interpreting all inferences in the appellant's favor, we found that it would be the students attending a school with deficiencies of the character and seriousness shown in the stay papers who would suffer irreparable harm.

In support of its appeal, the appellant contends that the Commissioner's letter of August 23, 2004 offered little, if any, support for his decision to deny final approval to the proposed school and that his determination was arbitrary and capricious since Department of Education staff did not conduct a follow-up visit to the proposed school's facility on August 18, 2004. The Deputy Attorney General representing the Commissioner counters that the Commissioner properly determined that the appellant had not made reasonable progress to ensure that the critical elements required to operate as a public school had been met. She points out that the appellant does not deny the existence of the deficiencies identified by the Commissioner, but, rather, claims that the problems could be resolved during a probationary period.

After a thorough review of the record, we affirm the decision of the Commissioner. As previously stated, and as detailed in our decision denying the appellant's stay application, the deficiencies which resulted in the Commissioner's decision to deny the proposed school's charter were serious and well documented. Nor do we find any merit to the appellant's argument that the Commissioner's decision was arbitrary and capricious since Department of Education staff did not conduct a follow-up visit to the facility on August 18, 2004. Department staff had identified significant

problems during a site visit to the proposed school on July 30, 2004, a little more than a month before it was scheduled to open, and the appellant failed to provide documentation required by August 16, 2004 regarding the renovation of the facility. Moreover, as detailed hereinabove, the deficiencies identified by the Commissioner, and the appellant's failure to provide required documentation, extended well beyond the condition of the school's facility.

Therefore, for the reasons stated herein as well as those expressed by the Commissioner, we affirm the Commissioner's decision to deny final approval to the appellant to operate a charter school.

January 19, 2005

Date of mailing _____