

August 30, 2001

Lydia H. McEvoy, Esq.
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60 Washington Street
Morristown, NJ 07960

Dear Ms. McEvoy:

Upon review of the papers filed in the matter entitled *In the Matter of the Revocation of the Charter of the Russell Academy Charter School, Essex County*, Agency Dkt. No. 333-8/01, I have determined to deny the motion for stay, pending appeal to the State Board of Education, of the Commissioner's August 10, 2001 decision to revoke the charter of the Russell Academy Charter School effective August 30, 2001. I have also determined to deny the Motion for Reconsideration of my decision to revoke the school's charter for the reasons set forth below.

Initially, I have serious concerns with respect to whether the "newly elected" Board of Trustees has standing to bring this action. In its Motion for Reconsideration, petitioner states:

On the evening of August 10, 2001, the Board of Trustees in existence at that time *effectively resigned* their positions and a new board was elected and seated as planned. (emphasis added)
(Motion for Reconsideration at 2)

There is nothing in the materials provided by petitioner to explain the meaning of the statement "effectively resigned." There is also nothing to substantiate that the new Board was duly elected pursuant to the provisions of the charter. However, given that the timeframe for the rendering of this decision does not permit the development of a sufficient factual record to resolve this issue, I am assuming, *solely for purpose of argument*, that petitioner has standing to file these motions so as to enable me to consider the merits of the applications presented on behalf of the Russell Academy Charter School.

In its Motion for Stay, the petitioning Charter School argues that it has met the standard for grant of emergent relief pursuant to *N.J.A.C. 6A:3-1.6* and underlying case law.

Specifically, petitioner argues that the school will be irreparably harmed if the Motion for Stay is not granted because the issue of the propriety of the Commissioner's order for revocation will become moot without the school receiving a stay and the reconsideration to which it is entitled by administrative regulation if the school is forced to stop preparations for the opening of school. (Motion for Stay at 2) Petitioner also asserts that the legal right to reconsideration is well-settled, arguing that by statute and regulation, Russell Academy Charter School is entitled to have the Commissioner's order reconsidered and/or appealed. (*Ibid.*) Petitioner contends that there is a likelihood of success on the merits, arguing that great strides have been made in remediating the issues of concern to the Commissioner and that, had each of the remedial items that are now in place been in place at the time the Commissioner made his decision, the Commissioner's decision would have been different. (*Ibid.*) Moreover, petitioner argues, the balance of equities weigh in favor of petitioner because the Commissioner will suffer no harm if the decision to revoke the charter is stayed while this matter is being reconsidered, whereas, the Russell Academy Charter School may cease to exist if the Commissioner's decision is not stayed so as to permit the Charter School to demonstrate that it has addressed the Commissioner's concerns. (*Id.* at 2-3)

In its Motion for Reconsideration, petitioner submits that it has evidence that the Commissioner could not have been aware of at the time of his decision to revoke the school's charter because these actions took place after the Commissioner's letter revoking the charter had been faxed to the Russell Academy Charter School. This evidence demonstrates that the school is now ready to open and to provide a quality education to its students. (Motion for Reconsideration at 1) Petitioner avers that on the evening of August 10, 2001, it elected a new Board of Trustees, hired a CPA firm for the coming school year, and hired a certified business administrator, a qualified principal and eight certified or provisionally certified teachers. (*Id.* at 2) Petitioner also avers that it has initiated the process of repairing the school, submitted its year-end report and registered approximately 140 students to begin school in September. (*Ibid.*) In support of its motion, petitioner submitted a packet of documents which included a revised curriculum, a resolution approving Critical School Policies and Procedures, resolutions for the payment of bills, a business administrator consultant contract, a proposal for appointment of a certified public accountant, a resolution hiring a custodian, a secretary, a nurse's aide, a provisional teacher, three certified teachers, three mentors, a principal and a security guard, a copy of Corinne Steinmetz's provisional certificate, issued 6/01, expired 7/01, and her application for renewal of her provisional certificate,¹ the resumes of Mary Sorge and Paul Suozzo,² a list of the names and social security numbers of proposed teachers,³ administrative staff and mentors, a list of newly elected Board members, personal/relative disclosure statements for the newly elected Board members and a list of students. Additionally, the information provided on August 28, 2001 in support of petitioner's Motion for Reconsideration includes a Verification of Facts by the Board President, which states, in pertinent part, as follows:

¹ Since Ms. Steinmetz's name does not appear on the staffing list provided, I am unable to determine the function which Ms. Steinmetz serves in the school.

² Ms. Sorge and Mr. Suozzo appear on the staffing list as mentors.

³ The list does not provide information on the certification of these individuals or what grades or subjects they would teach.

Please be advised that due to the emergent nature of the pending appeal, reconsideration, and stay applications, I was not able to personally review each and every factual statement made by our attorney, Lydia McEvoy, in her motion for reconsideration, submitted August 23, 2001. The facts submitted in her statement were accurate to the best of our knowledge at the time, but I now wish to correct the following errors and/or misstatements:

The qualified principal mentioned in the letter of August 23, 2001 will only commit to Russell Academy when and if it is determined that the school will open as scheduled. He is ready and willing to come to work, but will not sign anything until we have assurances that we will open. Furthermore, Ms. O'Day of the office of charter schools indicated her dissatisfaction with several of the teachers we had hired, due to deficiencies in their qualifications. Therefore, a new list of proposed teachers is attached, and the previous list is moot. Please also note that there are additional items of concern addressed in the attached documentation, not listed in our letter of August 23, 2001. (Verification of Board of Trustees President, Birrel Smith)

Upon review of petitioner's arguments and supporting documentation, I conclude that a stay of revocation and reconsideration of my decision to revoke the charter of the Russell Academy Charter School would not be appropriate in this instance. Specifically, I find that the deficiencies identified in my letter of August 10, 2001 are long-standing, not quickly or easily remediable, and sufficiently serious to preclude the school's continued operation pending appeal and further attempts at correction. Although it appears that the school has attempted to address the deficiencies identified in my revocation letter, I note that the ability to employ and retain a *fully certified staff* continues to elude the Russell Academy. As the President of the newly elected Board of Trustees noted in her verification on August 28, the staffing situation has once again changed since the motions were filed on August 23. Moreover, there is no indication that a budget has been prepared for the 2001-2002 school year. Additionally, the Board's assurances that everything will be different with the new Board of Trustees overseeing the school is, at best, speculative. In this regard, I note that petitioner does *not* dispute the cumulative findings that led to the decision to revoke its charter, but merely seeks a 90-day probationary period to correct its deficiencies while continuing in operation. Under these circumstances, I cannot find that petitioner will likely prevail on the merits of its appeal, or that students, parents and staff, who have been on notice of the impending revocation, will suffer greater harm by having to make alternative arrangements for the next school year than they would by remaining in a school that has proven seriously and persistently deficient, and which would still face likely closure, perhaps in the middle of an academic year.

Given the precariousness of its staffing situation, the lack of a properly developed budget and the uncertainty that the school will be able to retain students in this unstable environment, I find that petitioner has failed to demonstrate that it will be able to provide the quality educational program to which students are entitled by law or that the Russell Academy

Charter School will be able to correct its deficiencies in a timely and responsible manner so as to comply with its charter and applicable statutes and rules. Accordingly, I cannot in good conscience allow the school to continue operating, pending disposition of the merits of petitioner's appeal.

Moreover, pursuant to *N.J.A.C. 6A:3-1.15(b)2*, a motion for reconsideration shall be based on a claim of mistake, newly discovered evidence likely to alter the outcome of a matter, newly ascertained misrepresentation or other misconduct of an adverse party, or reversal of a prior judgment on which the disputed decision is based. Petitioner avers that I should reconsider my August 10, 2001 decision to revoke the charter of the Russell Academy Charter School because of "newly" discovered evidence which demonstrates that the school has corrected its deficiencies and is now ready to open. I note, initially, that the actions taken by the newly elected Board of Trustees to correct the school's deficiencies do not fall within the definition of "newly" discovered evidence as contemplated in the regulations, in that those actions were taken after my decision was issued. I note specifically petitioner's statement that "[u]sing your revocation letter as a guide, the board authorized funding and actions to address each of your major concerns." (Motion for Reconsideration at 2) Even assuming, *arguendo*, that this information falls within the criteria for reconsideration of my decision, I find that actions taken in one evening to correct persistent, long-standing substantial deficiencies do not persuade me that my decision to revoke the charter of the Russell Academy Charter School was incorrect.

Accordingly, I, therefore, decline to stay or reconsider my prior decision revoking the charter of the Russell Academy Charter School, effective August 30, 2001, and I direct that closure proceedings continue as previously ordered.⁴

Sincerely,

Vito A. Gagliardi, Sr.
Commissioner

c: Anthony P. Marino, Essex County Superintendent
Allison Colsey Eck, DAG

⁴ The Attorney General's Office filed a Motion to Participate in this matter on behalf of the Department of Education. However, the motion was received after completion of my review and preparation of this determination.