

SB # 14-01

IN THE MATTER OF THE NONRENEWAL OF :
THE CHARTER OF THE SAMUEL DE WITT : STATE BOARD OF EDUCATION
PROCTOR ACADEMY CHARTER SCHOOL, : DECISION
MERCER COUNTY. :

Decided by the Commissioner of Education, May 1, 2001

For the Appellant, Lori M. McNeely, Esq.

For the Participant Commissioner of Education, Kathleen Asher, Deputy Attorney
General (John J. Farmer, Jr., Attorney General of New Jersey)

The Samuel DeWitt Proctor Academy Charter School (hereinafter "appellant") filed an appeal to the State Board of Education from a letter decision of the Commissioner of Education dated May 1, 2001, in which he determined that the charter for the school, which was due to expire on June 30, 2001, would not be renewed for an additional five-year period. See N.J.S.A. 18A:36A-17; N.J.A.C. 6A:11-2.3(b). Observing that the school had been placed on probationary status in February 2001 as the result of the "need to implement significant modifications to its academic program," the Commissioner found that "reasonable progress has not been made in meeting the school's academic goals and fulfilling the terms and provisions of the charter." Commissioner's Decision, slip op. at 2. He pointed out that:

In the goals and objectives of the charter, the school indicated that it would provide a rigorous college preparatory

program resulting in high academic achievement. However, throughout its four-year tenure, the school has not made reasonable progress in meeting this provision of its charter. In addition, the school has had consistent difficulty in sustaining a suitable academic environment to promote high academic achievement.

Id. at 1.

The Commissioner identified the following deficiencies as impacting his decision to deny the school's renewal request:

The school's enrollment has not been stable as evidenced by the fact that the school is under-subscribed and has experienced increasingly high numbers of student withdrawals. Thus far this academic year, 46 students have withdrawn. While approved to serve 136 students, the school is currently serving 101 students.

Since the school's inception, there have been seven (7) interim or appointed heads of school contributing to instability in school governance and instructional leadership. This year alone the school has had three (3) interim heads of school.

High School Proficiency Test (HSPT) results indicate that less than 50 percent of the students taking the HSPT administered in October 2000 passed the reading and mathematics sections.

In the absence of the March 31 submission of a revised budget reflecting the decreased revenue due to decreased student enrollment, the department could not make a determination about the school's fiscal solvency.

The Board of Trustees has failed to implement an accountability plan that provides adequate means to demonstrate academic progress.

Id. at 2.

Consequently, the Commissioner directed the school to cease operations on June 30, 2001.

On June 18, 2001, the appellant filed a brief in support of its appeal. On June 29, a Deputy Attorney General filed a motion to participate on behalf of the Commissioner and an answer brief on the merits of the appeal. The appellant did not oppose the motion.

Initially, we grant the Commissioner's motion to participate and have considered his answer brief in reviewing this matter.

After a thorough review of the entire record, we affirm the Commissioner's decision.

Initially, we stress that there is nothing in the statutory scheme that would preclude the Commissioner from denying a charter school's renewal application at the expiration of a probationary period.¹ Indeed, neither the statute nor the implementing regulations require the Commissioner to provide a charter school with a probationary period before he denies its renewal request. See N.J.S.A. 18A:36A-17; N.J.A.C. 6A:11-2.3 and 6A:11-2.4. Rather, N.J.A.C. 6A:11-2.3(b) requires that the Commissioner base his determination as to whether to grant or deny a renewal application on a "comprehensive review of the school."

The record reveals that the Commissioner did perform such a review. Staff from the Department of Education conducted a site visit to the school and an interview session in January 2001 to review the evidence of academic progress presented in the school's renewal application. Thereafter, on February 1, citing serious concerns about the school's record of student achievement, the Commissioner placed the school on

¹ We note in that regard that the Commissioner is authorized to summarily revoke a school's charter if a remedial plan developed during a probationary period is unsuccessful. N.J.S.A. 18A:36A-17.

probationary status for 90 days to allow for the development and implementation of a remedial plan.

On February 20, the school submitted a remedial plan, and, after the Department requested greater specificity, the school submitted an amended plan on March 20. Department staff reviewed the plans, conducted telephone conferences and on-site reviews to discuss the specific actions the school had taken to improve its academic program and to increase student achievement results. In his decision of May 1, 2001, the Commissioner acknowledged that “concerted efforts” had been made by the school’s Board of Trustees and administrative staff to address the substantive issues affecting the school’s performance, but he concluded that “reasonable progress had not been made in meeting the school’s academic goals and fulfilling the terms and provisions of the charter.” Commissioner’s Decision, slip op. at 2.

Our own review of the record confirms the deficiencies cited by the Commissioner and substantiates the seriousness of those deficiencies. The school’s charter application, which was approved by the Commissioner in 1997 as a residential program for grades seven through twelve,² pledged that the school’s “hallmark will be its high expectation of academic excellence.” However, a report prepared on January 30, 2001 by Department staff following a site visit rated the school’s academic program inadequate in virtually every category. Those problems persisted even after the school was placed on probation and implemented a remedial plan. A report prepared on April

² We note that the school applied for and was granted an amendment to its charter in 1999 reducing its residential program from seven days per week to five. The school subsequently applied for an amendment to end the residential program entirely for seventh and eighth grade students, indicating that it could not continue to provide this program due to facility limitations and insufficient residential staff to ensure the safety of all students. The Commissioner approved that amendment on December 13, 2000.

16, 2001 by the director of the Department's Office of Charter Schools following a site visit to assess the school's progress in implementing the remedial plan exemplifies its failings in this regard. The report related that students' Individual Learning Plans reflected no learning strategies and no guidance for remediation efforts, that assessment measures lacked clear alignment with curriculum, that remediation efforts had no clear alignment to the core curriculum content standards, that there was a lack of feedback to guide students' work and an absence of clear and objective writing rubrics to guide the evaluation of student progress, that curriculum development for math and language arts had been minimal, that there were only five hours of instructional time per day (below the statewide average for charter and traditional schools), that an observed teacher had only a county substitute certificate and was not offered the opportunity to participate in the provisional teacher training program although he held a certificate of eligibility, that summer school course offerings and criteria had yet to be articulated, and that 46 students had withdrawn from the school since September 2000.

Particularly striking is the appellant's response to the Commissioner's charge that there had been seven heads of the school during its four years of existence. The appellant, in its defense, insists that it has had six, not seven, heads of the school in four years and that the last three were part of a management team rather than a succession of different people. Even accepting the appellant's "head count," such instability in educational leadership during the school's formative years is particularly troubling given the academic deficiencies identified in the record.

Thus, we reject the appellant's contention that its charter should have been renewed in light of its remedial plan.

We also reject the appellant's argument that it received disparate treatment and that the Commissioner created an impermissible classification which discriminated against students and charter schools in Abbott districts. There is absolutely no basis in the record for such an allegation. Nor does the Commissioner's decision "send a message that under-performing communities may be denied the opportunity to have charter schools" and that "this denial deprives the students of these communities of their rights to a thorough and efficient education." Appeal Brief, at 27. To the contrary, we find that the Commissioner's action was based on well-documented deficiencies at this particular school, and, upon review of the record, we conclude that such deficiencies created an environment which belied any expectation of academic excellence.

Accordingly, given the nature and severity of the deficiencies demonstrated by the record, we conclude that the Commissioner's decision to deny the school's renewal application was the appropriate one, and we affirm that determination.³

August 1, 2001

Date of mailing _____

³ We note that the Commissioner's decision was, under the circumstances, tantamount to a revocation of the school's charter. Revocation, however, was not necessary in this instance since the charter was due to expire on June 30, 2001 at the end of its initial four-year term.