

SB #38-04

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

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Decided by the Commissioner of Education, August 23, 2004

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

By letter dated 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.<sup>1</sup> The Commissioner added that "once all documentation is

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<sup>1</sup> 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 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

received **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.<sup>2</sup> 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.” Commissioner’s Decision, slip op. at 1. 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 facility and the required staff list had not been submitted to assure compliance with statutes and regulations.

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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....

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(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.

<sup>2</sup> 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).”

On August 31, 2004, the appellant filed an appeal to the State Board challenging the Commissioner's decision.

On September 8, 2004, the Commissioner denied the appellant's motion for a stay of his decision, concluding that it had failed to satisfy the standards for such relief set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). In particular, the Commissioner found that the appellant had not demonstrated a reasonable likelihood of prevailing on the merits of its appeal, stressing that, the appellant "offers no persuasive documentation or factual information, beyond the unsupported assurances of its principals, that the deficiencies leading to the denial of its charter...have, in fact, been remedied." Commissioner's Decision, slip op. at 1. Pointing out that the appellant had opted to take a planning year in which to prepare for the opening of its school in September 2004, the Commissioner found that the appellant had "persistently failed to adhere to prescribed timelines," and that the information and documentation it had submitted regarding, inter alia, the renovation of its facility, teaching staff and enrollment was "woefully inadequate." Id. Given these deficiencies, the Commissioner could not "conclude with any certainty that the Great Falls Charter School will be operational and equipped to provide the quality education program and fiscal integrity to which students are entitled by law." Id. at 2.

On September 9, 2004, the Commissioner filed a motion to participate in the appeal, and on September 10, the appellant filed a motion with the State Board for a stay of the Commissioner's decision.

Before considering the appellant's motion for a stay, we grant the Commissioner's motion to participate. Hence, in arriving at our determination of the appellant's motion, we are considering the brief filed on the Commissioner's behalf.

Initially, we stress that the effect of staying the Commissioner's decision of August 23, 2004 would not be to confer upon the appellant the authority to operate a charter school. In this respect, the statutes and regulations governing the operation of charter schools are clear. Pursuant to the Charter School Program Act, the Commissioner has the final authority to grant or reject a charter application. N.J.S.A. 18A:36A-4c. Hence, no charter school can operate without the Commissioner's approval. Our regulations implementing the Charter School Program Act are also clear that approval to operate a charter school is contingent upon receipt by the Commissioner of necessary documentation, N.J.A.C. 6A:11-1.2, and that the final grant of a charter is effective only upon receipt and approval of all required documents and information, N.J.A.C. 6A:11-2.1(h) and (j).

In this case, 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. By his letter of August 23, 2004, the Commissioner denied final approval on the basis of the deficiencies he cited in the letter. Consequently, the appellant was never given the authority to operate a charter school, and staying the Commissioner's determination denying final approval would not alter that fact.

Nonetheless, we have considered whether the appellant's application for a stay of the Commissioner's decision meets the standards that would warrant a stay. After carefully reviewing the papers that were filed, we concur with the Commissioner that the application fails to meet the standards that would entitle the appellant to relief under Crowe, supra. In this respect, we fully agree with the Commissioner that the appellant has not demonstrated the likelihood that it will prevail on the merits of its appeal. We

reiterate in that regard that the charter school preparedness site visit conducted by Department of Education staff on July 30, 2004 revealed the existence of significant deficiencies despite the fact that the proposed school had taken a planning year after the Commissioner gave his contingent approval to the appellant's application in January 2003. In 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 that had been employed possessed a standard teaching certificate.

Nothing in the materials submitted by the appellant demonstrates that it has corrected these deficiencies. In this regard, we note that, while the appellant asserts that a full complement of teachers has been hired and that the number of teachers employed has increased from six to nine, the documentation submitted by the appellant shows that only three of those individuals possess standard certification. Of the other six, three possess only certificates of eligibility and three hold county substitute credentials.

As to the deficiencies in the proposed school's facility and student enrollment, the appellant asserts that "the school facilities are complete and full approval to open has been given by the City of Paterson," Brief in Support of Motion, at 5, and that "[a]s of August 23, 2004, there were 113 students enrolled at GFCS and 29 students on a waiting list for the 6th grade," *id.* at 6. The appellant further maintains that "[e]very day

the school enrolls additional students....GFCS expects that it will have close to 162 students enrolled by the start of September 2004.” Id.

Review of the materials submitted by the appellant, however, confirms the Commissioner’s findings and concerns in these areas. 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.

Accordingly, we conclude that the appellant has not shown a likelihood of prevailing on the merits of its appeal. Nor under these circumstances can 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, 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.

Accordingly, since the appellant has not met the standards that would entitle it to a stay, we deny its motion. However, we reiterate that even if we had granted the motion, the appellant would not have had the authority to operate a charter school.

October 6, 2004

Date of mailing \_\_\_\_\_