

September 1, 2006

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Sookie Bae, DAG
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Dear Counsel:

IN THE MATTER OF THE REFUSAL TO GRANT FINAL APPROVAL TO THE
CHARTER SCHOOL APPLICATION OF THE BENCHMARK ACADEMY CHARTER
HIGH SCHOOL, ATLANTIC COUNTY, STATE BOARD DOCKET #35-06

On January 13, 2006, the Commissioner of Education granted contingent approval for a charter to the Benchmark Academy Charter High School ("Benchmark"). No determination with respect to final approval had been made when on August 30, 2006, counsel for the Benchmark Academy Charter School filed a notice of appeal and an application for emergent relief with the State Board of Education, seeking "emergent issuance of a final charter to the Benchmark Academy Charter High School because the Commissioner of Education has refused to grant the final charter." Notice of Motion for the Emergent Issuance of a Final Charter.

On August 31, 2006, the Commissioner issued her decision determining not to grant final approval to the School.

By letter dated August 31, 2006, directed to the Commissioner of Education, counsel for Benchmark "formally requested an immediate stay" of the Commissioner's decision from both the Commissioner and the State Board of Education.

By letter from the Director of the Bureau of Controversies and Disputes, counsel for Benchmark was advised on September 1, 2006, that no action could be taken by the Commissioner with respect to the request for a stay because a motion with supporting papers conforming to the requirements of N.J.A.C. 6A:3-1.15 had not been filed.

After a thorough review of the papers, we find that Benchmark's application for emergent relief is moot because the Commissioner has issued a decision with respect to final approval for the school.¹ We also conclude that no action can be taken with respect to the request made in the letter from Benchmark's counsel and directed to the Commissioner of Education that the State Board stay the Commissioner's decision of August 31, 2006. As the Director of the Bureau of Controversies and Disputes found, Benchmark has not filed a motion with the Commissioner that complies with the requirements of N.J.A.C. 6A:3-1.15. Hence, Benchmark has not complied with N.J.A.C. 6A:4-2.2, which requires that a motion for a stay of a Commissioner's decision must first be made to the Commissioner. Nor has Benchmark complied with the regulatory requirements set forth in N.J.A.C. 6A:4-2.2(c) by filing a motion with the State Board in accordance with N.J.A.C. 6A:4-1.18. That being the case, the State Board can take no action regarding the request.

Sincerely,

Dr. Arnold G. Hyndman, President
State Board of Education

Josephine Hernandez, Chairperson
Legal Committee of the State Board

c: Members of the State Board of Education

¹ Pursuant to N.J.A.C. 6A:4-3.3, "[t]he President of the State Board or, in the President's absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6A:4-2.4 unless the determination would constitute the final decision with respect to the controversy."