

August 14, 2001

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Dear Counsel:

Upon review of the papers filed in the case entitled *In the Matter of the Revocation of the Charter for the College Preparatory Academy Charter School, Morris County*, Agency Dkt. No. 294-8/01, I have determined to deny the Board of Trustee's (Petitioner) motion for stay, pending appeal to the State Board of Education, of the Commissioner's June 14, 2001 decision to revoke the charter of the College Preparatory Academy Charter School (CPACS) effective June 30, 2001.

According to the papers filed by Petitioner with the request for stay of the Commissioner's June 14, 2001 decision to revoke its charter, Petitioner filed an appeal with the State Board of Education on July 12, 2001. Upon being apprised of the briefing schedule by the State Board, Petitioner realized that a decision on its appeal would not likely be issued prior to September, or more likely, October 2001. (Petitioner's Letter Brief In Support of Motion for Stay at 3) Consequently, on July 31, 2001, Petitioner filed a Motion for Emergent Relief with the State Board, seeking a stay of the June 14, 2001 decision. Contrary to Petitioner's contention that it was *directed* by the State Board to file a motion for a stay with the Commissioner, the letter sent to Petitioner by the Director of the State Board Appeals Office on August 1, 2001 *informed* Petitioner that *N.J.A.C. 6A:4-2.2* requires a motion for a stay of a Commissioner's decision to be made first to the Commissioner in accordance with the requirements of *N.J.A.C. 6A:3-1.15*. The Director's letter further *informed* Petitioner that, under *N.J.A.C. 6A:3-1.15*, a motion for a stay must be filed within 30 days of the filing date of the Commissioner's decision.

On August 2, 2001, Petitioner filed the instant motion and supporting papers with the Commissioner, seeking a stay of the June 14, 2001 decision pending disposition of the merits of its appeal to the State Board. Petitioner states in the August 2, 2001 letter accompanying the motion for stay that, "[d]ue to the urgent nature of this matter, we request that the instant motion proceed in an expedited fashion. We further request that this matter proceed in accordance with

the provisions of *N.J.A.C.* 6A:3-1.16 pertaining to relaxing of procedural rules in the interests of preventing injustice.”

Petitioner’s submission, however, provides no explanation as to why an application for a stay of the June 14, 2001 decision was not or could not have been submitted in compliance with the requirements of *N.J.A.C.* 6A:3-1.15, the language of which clearly and explicitly states:

- (a) Any party may make a motion for stay of a Commissioner’s decision pending a determination on appeal to the State Board of Education. Such motion shall be made subsequent to, or concurrent with, the filing of a notice of appeal with the State Board, but within 30 days of the filing of the Commissioner’s decision.

Assuming *arguendo* that the date on which Petitioner filed a motion with the State Board seeking a stay (July 31, 2001) should be considered the date on which Petitioner filed a motion for stay with the Commissioner, even that date was two weeks beyond the 30-day time limit set forth in *N.J.A.C.* 6A:3-1.15.

As to relaxation of the filing time line, *N.J.A.C.* 6A:3-1.16 states that where there is not a specific statutory requirement or underlying Office of Administrative Law rule, the Commissioner may, in his or her discretion, relax or dispense with the rules set forth in *N.J.A.C.* 6A:3-1.1 *et seq.* “in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.” However, review of Petitioner’s papers reveals that Petitioner offers no arguments or facts in support of its claim that relaxation is warranted in the interests of preventing injustice, except for the arguments it advances on the merits of its motion for the grant of a stay in accordance with *N.J.A.C.* 6A:3-1.6 and the standards set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982).

In its papers, Petitioner 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 its students, parents/guardians and staff will suffer irreparable harm if the motion for stay is not granted, because the CPACS will not be able to provide 189 days of instruction; it will not have any teachers because they will commence employment in other schools; the landlord will re-rent the facility, therefore, it will have no facility; and it will be unable to secure the funding necessary to operate the school. Petitioner further argues that the 119 students enrolled in the CPACS for September 2001 will have to enroll in local school districts because many of the parents do not have the means to enroll their children in private schools.

Petitioner additionally argues that it is likely to prevail on the legal and factual merits of its appeal because the Commissioner’s decision was arbitrary, capricious and unreasonable since it was rendered without due process and is contrary to the legislative intent of the Charter School Act, namely, to provide choice to parents. With respect to the claim of due process violation, Petitioner argues that, although it was placed on probation by the Department two times since it opened in September 2000, neither of those times involved the grounds for which its charter was revoked in June 2001, namely, steady decline of student enrollment and failure to submit a financial plan eliminating its debts prior to June 30, 2001. As to this,

Petitioner argues that, contrary to *N.J.S.A.* 18A: 36A-17 and 17.1, it was given no prior warning that its charter was to be revoked and it was not given the time to cure the deficiencies cited by the Department. Moreover, it asserts that its enrollment numbers for the 2001-2002 school year are comparable to those at the start of the 2000-2001 school year, its first year of operation; therefore, Petitioner contends that deficiency has been remedied. Finally, Petitioner argues that the harm to the students, parents/guardians and staff of the school will be greater from leaving the CPACS program than would occur if they were allowed to remain, pending final disposition of the school's appeal on the merits to the State Board, or than would result by virtue of a decision to deny the request for a stay.

Upon review of Petitioner's arguments I conclude that a stay of revocation would not be appropriate in this instance. Specifically, I find and determine that Petitioner offers no documentation or factual information whatsoever to support its assertions that the deficiencies leading to the revocation of its charter as set forth in the June 14, 2001 decision were erroneously determined by the Department, or, have in fact been remedied. The reasons set forth in the June 14, 2001 decision for revoking the charter of the CPACS include the fact that:

1. The CPACS was not operating in compliance with its charter, statutes and regulations and has experienced a steady decline in student enrollment over the course of the 2000-2001 academic year.
2. After being placed on probation a second time for the 2000-2001 academic year, Petitioner was directed to submit a revised budget summary, estimated revenues and expenditures for the balance of that school year, an updated schedule of district charter school aid payments and the schedule of repayment of Petitioner's Prudential loan.
3. The District was directed to expend only funds for those expenses which were reasonable and necessary for the ongoing day-to-day operations of the school.
4. Petitioner's response, submitted on April 20, 2001, included incomplete fiscal information, prompting Department staff to conduct a subsequent onsite visit to assess the solvency of CPACS on May 11, 2001; whereupon, it was determined that the CPACS was in a significant deficit position and fiscally insolvent.
5. On May 15 and May 16, 2001, the Department requested verification that the school could meet its day-to-day operating expenses for the balance of the academic year, which Petitioner provided with the exception of the school's requisite filings for the Teachers Pension and Annuity Fund. Further, the Department advised Petitioner that the CPACS was not relieved of its obligation to repay the affected school districts the overpayment of charter school aid due to the withdrawal of students during the academic year.

6. Subsequently, on May 30, 2001, Petitioner submitted a weak financial plan, which relied upon unsubstantiated sources of funds, thus, rendering the CPACS's financial plan unviable.

In this regard, I note that Petitioner does *not* dispute the cumulative findings with respect to its financial operation that led to the decision on June 14, 2001 to revoke its charter, but merely seeks an opportunity to correct them during the next academic year. Nor does Petitioner address at all the issue of repaying affected school districts for the overpayment of charter school aid due to the withdrawal of students during *last* academic year. Under these circumstances, I cannot find that Petitioner is likely to prevail on the merits of its appeal, or that students, parents/guardians and staff, who have been on notice of the impending revocation since June 2001, will suffer greater harm by having to make alternative educational and employment arrangements for the next school year than they would by remaining in a school which has been determined to be in a significant deficit position and fiscally insolvent.

Lastly, the Commissioner finds unpersuasive Petitioner's due process arguments. As recently held by the State Board in the case entitled *In the Matter of the Revocation of the Charter of the Greenville Community Charter School, Hudson County*, decided August 1, 2001, *N.J.S.A. 18A:36A-17* provides that the Commissioner *may* place a charter school on probation but does not require that he do so. Petitioner's argument is particularly unpersuasive, given the Department's determination that the CPACS was financially insolvent in May 2001 and the lack of any claim by Petitioner that the Department erred or was inaccurate in its assessment of financial insolvency, as well as the lack of any substantive evidence to support that the CPACS was and is solvent. Given the papers submitted in this matter, I cannot in good conscience allow the school to continue operating, pending disposition of the appeal on the merits to the State Board.

Accordingly, I find no support of the claim that injustice would result from my failure to consider and grant the requested relief and I, therefore, decline to stay my prior decision revoking the charter of the College Preparatory Academy Charter School, effective June 30, 2001. Closure proceedings are to continue as previously ordered, during the pendency of Petitioner's appeal to the State Board.

Sincerely,

Vito A. Gagliardi, Sr.
Commissioner

VAG/DNA/MK
Via Regular and Certified Mail

c: Rene Rovtar, County Superintendent