

#201-14 (OAL Decision: Not available online)

D.U.E. SEASON CHARTER SCHOOL,	:	
DORIS CARPENTER AND E.B.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY DEPARTMENT OF	:	DECISION
EDUCATION AND EVO POPOFF,	:	
	:	
RESPONDENTS.	:	

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SYNOPSIS

The petitioners, D.U.E. Season Charter School, Doris Carpenter and E.B. (D.U.E. Season or petitioner) filed an emergent appeal from a March 5, 2014 determination of Assistant Commissioner Evo Popoff (Popoff) denying D.U.E. Season’s renewal application. Later, the petitioner amended its emergent application to include the alternate relief of a stay pending final determination to keep the school open pending a hearing on the denial. On March 5, 2014, then-Commissioner Christopher Cerf designated Popoff to act on his behalf in matters relating to the 2013-2014 charter school renewal process. The petitioner alleges that this delegation of authority was potentially inauthentic or unauthorized. Respondents filed opposition to the motion for emergent relief, and a cross-motion to dismiss the appeal on the grounds that the Office of Administrative Law (OAL) lacks jurisdiction and that a direct appeal must be filed with the Appellate Division of the Superior Court.

The ALJ found, *inter alia*, that: it is unambiguously set forth in the law that a party aggrieved by the Department’s charter determination – whether the charter school or the local board – may appeal, but the appeal must be made to the Appellate Division as set forth in *N.J.S.A. 18A:36A-4(d)*; there is no jurisdiction at the OAL over D.U.E. Season’s appeal or its motion for emergent relief; regarding D.U.E. Season’s argument that Popoff had no properly delegated authority to issue a final decision under the Charter School Law, *N.J.S.A. 18A:4-33* provides the Commissioner with legislative authorization to delegate powers, including final decision making authority; in order for D.U.E. Season to challenge the authenticity of the delegation of Popoff in this matter, the argument must be brought before the Appellate Division. The ALJ: concluded that the OAL has no jurisdiction to decide a charter school appeal; denied petitioner’s application for emergent relief for lack of jurisdiction; denied petitioner’s motion for a stay for the same reason; and granted the Department’s motion to dismiss the petition. Further, the ALJ stated that D.U.E. Season may pursue its remedies in the Appellate Division of the Superior Court.

Upon a thorough and independent review, the Commissioner concurred with the determination of the ALJ that the petition and the concomitant motion for emergent relief must be dismissed for lack of jurisdiction. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter. The petition and motion for emergent relief were dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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May 13, 2014

OAL DKT. NO. EDU 4311-14  
AGENCY DKT. NO. 88-4/14

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The record of this emergent matter and the Order of the Administrative Law Judge (ALJ) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioners and the respondents.<sup>1</sup>

On March 5, 2014, pursuant to *N.J.S.A.* 18A:4-33, then-Commissioner Christopher Cerf designated Assistant Commissioner Evo Popoff to act on his behalf for all matters relating to the 2013-2014 charter renewal cycle. Thereafter, Assistant Commissioner Popoff issued a decision denying D.U.E. Season Charter School's application to renew its charter for a five-year term. Petitioners filed the instant petition of appeal challenging the denial of D.U.E. Season's renewal request, and subsequently moved for emergent relief. The matter was transmitted to the Office of Administrative Law (OAL), where respondents opposed the request for emergent relief and argued that the matters should be dismissed for lack of jurisdiction.

In the Order on Emergent Relief, the ALJ determined that, pursuant to *N.J.S.A.* 18A:36A-4 and *N.J.A.C.* 6A:11-2.5, the exclusive forum for appeal of the Department's

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<sup>1</sup> The regulatory provisions do not provide for exceptions to an Order; however, in this case the ALJ effectively resolved this matter notwithstanding that her decision was issued in the form of an Order. As a result, exceptions were permitted and considered by the Commissioner.

determination on a charter renewal application is the Appellate Division of the Superior Court. On this basis, the ALJ further determined that the OAL lacked jurisdiction to review Assistant Commissioner Popoff's decision, and that the petition of appeal and request for emergent relief must, therefore, be dismissed.

Upon review, the Commissioner concurs with the ALJ's determination that the petition of appeal and concomitant motion for emergent relief must be dismissed for lack of jurisdiction. To that end, *N.J.A.C.* 6A:11-2.5 specifies that decisions on charter school renewal applications are, in accordance with *N.J.S.A.* 18A:6-9.1, final agency decisions appealable to the Appellate Division of the Superior Court. Consequently, the ALJ correctly concluded that the Commissioner and the OAL lack jurisdiction to rule on the issues presented. The Commissioner also finds that the exceptions submitted by the petitioners and the respondents largely replicate their arguments at the OAL, and were fully considered and appropriately addressed by the ALJ in her Order.

Accordingly, the Order of the OAL is adopted as the final decision in this matter, and the within petition of appeal and motion for emergent relief are hereby dismissed. No further proceedings at the OAL are necessary; therefore, the Clerk of the Office of Administrative Law is hereby requested to return the file pursuant to *N.J.A.C.* 1:1-3.3.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 13, 2014

Date of Mailing: May 14, 2014

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<sup>2</sup> Pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.