

SHALOM ACADEMY CHARTER SCHOOL, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :
RESPONDENT. :
_____ :

SYNOPSIS

The petitioner, Shalom Academy Charter School (Shalom), challenged the July 2012 decision of the New Jersey Department of Education (Department) denying it an additional “planning year” in which to secure final approval to operate a Hebrew immersion charter school. Shalom contended that the Department treated it differently from other charter school applicants, and that its decision to deny the additional planning year was arbitrary and capricious.

The ALJ found, *inter alia*, that: on remand from the Appellate Division of the Superior Court, the issue for determination in this case was whether the Department unfairly treated Shalom Academy differently than other charter schools when it denied Shalom’s request for a second planning year; to properly frame this issue and create a factual record, it was necessary to compare Shalom’s application with those of the seven charter schools that were, in fact, granted an additional planning year in 2012; the schools that were successful in obtaining an additional year were those that recognized on their own that they were unready to receive students – and stated this – prior to a Department preparedness team’s site visit, *or* were partnered with a recognized organization that had previously been successful in opening and operating a charter school, *or* were located in an underserved community; none of these factors applied to Shalom Academy, which twice participated in a Department preparedness visit without having a suitable approved facility in place; further, Shalom twice needed to be informed by the Department that it was not ready to open, thereby raising questions as to whether Shalom’s founding team lacked the leadership and organizational capacity to successfully run a charter school; charters are innovative educational programs funded by public dollars, and accordingly, the statutory and regulatory scheme vests the obligation and authority in the Commissioner to carefully vet aspiring charter programs in accordance with a prescribed application process (*N.J.S.A. 18A: 36A-4 et seq.*; *N.J.A.C. 6A:11-2.1 et seq.*); and there is ample factual support for the Department’s determination that Shalom lacked the capacity to successfully operate a charter school. The ALJ concluded that the Commissioner’s decision to reject Shalom’s application, together with his decision to deny additional time to demonstrate preparedness, was not arbitrary or capricious, but rather demonstrated a thoughtful and thorough judgment of the merits of Shalom’s application. Accordingly, the Department’s action in denying an additional planning year was affirmed, and the petition was dismissed.

Upon consideration of the record and the Initial Decision of the OAL, the Commissioner concurred with the determination of the ALJ that the petitioner failed to meet its burden to show that the Department’s actions were arbitrary, capricious, unreasonable or discriminatory. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

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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Petitioner Shalom Academy Charter School challenges the Department of Education’s (the Department) denial of petitioner’s request for an extra planning year, and the Department’s ultimate decision not to grant petitioner a final charter. The basis for petitioner’s challenge is its contention that the Department treated it differently from other charter school applicants. After consideration of the record and Initial Decision of the Office of Administrative Law,¹ the Commissioner concludes – for the reasons articulated by the Administrative Law Judge – that petitioner failed to meet its burden to show that the Department’s actions were arbitrary, capricious, unreasonable or discriminatory.

Accordingly, the Initial Decision is adopted as the final decision in this case and the petition is dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 19, 2014
Date of Mailing: May 21, 2014

¹ Neither party filed exceptions to the Initial Decision.

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).