

EDU #3041-07 and 5430-07 (consolidated)
SB #35-07

TODDLERTOWN CHILD CARE CENTER, :
 :
 PETITIONER-APPELLANT, :
 :
 V. :
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF IRVINGTON, :
 ESSEX COUNTY, :
 :
 RESPONDENT-RESPONDENT, : STATE BOARD OF EDUCATION
 :
 AND : DECISION ON MOTION
 :
 TODDLERTOWN CHILD CARE CENTER, :
 :
 PETITIONER-APPELLANT, :
 :
 V. :
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF IRVINGTON, ESSEX :
 COUNTY, AND NEW JERSEY STATE :
 DEPARTMENT OF EDUCATION, :
 DIVISION OF EARLY CHILDHOOD :
 EDUCATION, :
 :
 RESPONDENT-RESPONDENT. :
 _____ :

Order of Extension executed by the Deputy Commissioner of Education,
November 29, 2007, and by the Director and Chief Administrative
Law Judge of the Office of Administrative Law, November 30, 2007

For the Petitioner-Appellant, Taylor & Mitchell, LLC (Eric Taylor, Esq., of
Counsel)

For the Petitioner, Kecia M. Clarke, Esq.

For the Respondent-Respondent Board of Education of the Township of Irvington, Trenk, DiPasquale, Webster, Della Fera & Sodano, P.C. (Jennifer M. Carrillo-Perez, Esq. and Sam Della Fera, Jr., Esq., of Counsel)

For the Respondent-Respondent New Jersey State Department of Education, Division of Early Childhood Education, Melissa T. Dutton, Deputy Attorney General (Anne M. Milgram, Attorney General of New Jersey)

In February 2007, the Board of Education of the Township of Irvington notified the petitioner, Toddlerstown Child Care Center, a provider of Abbott preschool services, that its Abbott preschool program contract would not be renewed for the 2007-08 school year. The petitioner filed petitions with the Commissioner of Education challenging the Irvington Board's decision and the affirmation of that decision by the Division of Early Childhood Education in the Department of Education. The petitioner claimed that it did not receive proper notification of the non-renewal of its contract from the Irvington Board as required by N.J.A.C. 6A:10A-2.3(b), which specifies the process for non-renewal of a child care center provider's Abbott preschool program contract.

Following a hearing on the matter, on October 15, 2007, an Administrative Law Judge ("ALJ") agreed with the petitioner and recommended that the Commissioner reverse the decision of the Division of Early Childhood Education and direct the Irvington Board to enter into a contract with the petitioner for the 2007-08 school year for the purpose of providing Abbott preschool services to eligible students.

Pursuant to N.J.S.A. 52:14B-10(c), the Commissioner had 45 days, or until November 29, 2007, to issue a final decision adopting, rejecting or modifying the ALJ's recommendations. Pursuant to the provisions of N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, over petitioner's objection, an Order of Extension was signed by the Deputy

Commissioner of Education on November 29, 2007 and by the Director and Chief Administrative Law Judge of the Office of Administrative Law on November 30, 2007, extending the time for the Commissioner to render her final decision for 45 days until January 14, 2008.¹ As stated in the Order, the request for an extension was made by the Commissioner “to allow adequate time for consideration of the record in light of exceptions and replies filed by the parties in accordance with an extended time frame – and in view of continued staffing limitations and the press of numerous concurrent matters.”

On December 10, 2007, the petitioner filed a “Motion for Emergent Relief” with the State Board seeking an order compelling the Commissioner to issue a final decision by December 21, 2007. The petitioner contends, *inter alia*, that it will suffer irreparable harm if the Commissioner’s decision in this matter is delayed until January 14, 2008.

The petitioner’s director avers in a certification that:

On or about September 6, 2007 the 2007-2008 school year began in Irvington and Petitioner, despite having limited funding, opened its doors to offer free preschool. With an all-volunteer staff, Petitioner began to enroll Irvington 3- and

¹ N.J.S.A. 52:14B-10(c) provides: “For good cause shown, upon certification by the director [of the Office of Administrative Law] and the agency head, the time limits established herein may be subject to extension.”

N.J.A.C. 1:1-18.8 implements that statutory provision and provides in part:

- (a) Time limits for ... issuing a final decision may be extended for good cause.
- (b) A request for extension of any time period must be submitted no later than the day on which the time period is to expire....
- ...
- (e) If the agency head requests an extension of the time limit for filing a final decision, he or she shall sign and forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director approves the request, he or she shall within 10 days of receipt of the proposed order sign the proposed order and return it to the transmitting agency head, who shall issue the order and cause it to be served on all parties.
- (f) Any order granting an extension must set forth the factual basis constituting good cause for the extension, and establish a new time for filing the decision Extensions for filing ... final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only for good cause shown.

4-year olds in its preschool program....At the time of this filing, Petitioner is providing free preschool to approximately 125 students while functioning with an all-volunteer staff. The additional delay created by the Commissioner's extension will seriously impact Petitioner's ability to provide a free preschool program. The volunteer efforts that have sustained the program cannot indefinitely be maintained. Additional delay will ultimately force Petitioner to cease operation as a preschool....

Certification of Sharon Wade-Spearman, at 3-4.

The respondents were provided with the opportunity to file a response to the petitioner's motion. The Deputy Attorney General representing the Division of Early Childhood Education argues that the petitioner has no likelihood of success on the merits of its underlying claim and that the petitioner's claim is predicated on an unsettled legal right. The Irvington Board contends that the petitioner has failed to offer an adequate basis to overturn the extension order and that any irreparable harm that would be suffered by the petitioner is of its own making since it had made the decision to provide free preschool services in the 2007-08 school year despite the Board's decision not to renew its Abbott preschool program contract.

Initially, we find that the petitioner's submission is actually a motion for leave to appeal an interlocutory order, N.J.A.C. 6A:4-1.1(b); N.J.A.C. 6A:4-2.3, rather than a motion for emergent relief, and we have reviewed it under the standard applicable to such motions. As in a court case, interlocutory review of an administrative ruling may be granted in the interest of justice or for good cause shown. In re Uniform Admin. Procedure Rules, 90 N.J. 85, 100 (1982). After a thorough review of the papers filed, we deny the petitioner's motion. We find that the petitioner has not demonstrated good

cause for reviewing the extension order. In so doing, however, we urge the Commissioner to issue her final decision in this matter as expeditiously as possible.

Ronald K. Butcher abstained.

December 19, 2007

Date of mailing _____