

September 8, 2004

Ronald T. Nagle, Esq.
32 Maple Avenue
Morristown, New Jersey 07960

Dear Mr. Nagle:

I have reviewed the motion for stay in the matter entitled *In the Matter of the Final Grant of the Application of the Great Falls Charter School, Passaic County*, Agency Dkt. No. 300-9/04, wherein petitioner requests that I stay my August 23, 2004 denial of final approval for a charter for the Great Falls Charter School pending appeal to the State Board. Upon such review, I have determined, for the reasons detailed below, to deny the motion for stay.

In my consideration of petitioner's request for a stay, I am cognizant that the standards for granting injunctive relief are well-established. The party seeking such relief must demonstrate the existence of each of the following four separate conditions: 1) that in the absence of such a stay, the movant will suffer irreparable injury; 2) that the legal right underlying petitioner's claim is settled; 3) that there is a clear probability that the movant will prevail on the merits of the underlying controversy; and 4) that the harm to other persons will not be greater than the harm the movant will suffer in the absence of such a stay. *See Crowe v. DeGioia*, 90 N.J. 126, 132-134 (1982).

Upon review of petitioner's arguments and supporting documentation, I determine that petitioner has not satisfied the above requisites so as to entitle it to the requested relief. Most specifically, petitioner has not demonstrated that it has a reasonable likelihood of prevailing on the merits of its appeal to the State Board. Notably, I find that petitioner's submission here offers no persuasive documentation or factual information, beyond the unsupported assurances of its principals, that the deficiencies leading to the denial of its charter as set forth in my August 23, 2004 have, in fact, been remedied. In this regard, I am particularly mindful that petitioner opted to take a planning year in which to prepare for the opening of its school in September 2004. During this planning period, petitioner was repeatedly made aware that approval of its charter was contingent on the timely submission and approval of complete and accurate information with respect to, *inter alia*, the renovation of its school facility, listing of its teaching staff, complete with the requisite proofs of these individuals' certification, and its enrollment data. Irrespective of its responsibility in this regard, petitioner has persistently failed to adhere to prescribed timelines and its submitted information and documentation in each of these areas is woefully inadequate. Initially, I note that, although attesting that "[t]he opening date of September 9, 2004 is a reality," (Certification of John Ambrosio, Vice President, Great

Falls Charter School Board of Directors, at 4), petitioner has presented none of the requisite documentation with respect to the renovation of its facility so as to allow a reasonable expectation that receipt of students on this date is feasible. Additionally, a complete staff list, with accompanying certification copies has yet to be received and approved. Finally, particularly troublesome is petitioner's reported student enrollment data. Although petitioner's submitted materials variously claim a verified enrollment figure of 113 as of August 23, 2004 (Memorandum in Support of Emergent Application at 5) and one of 102 as of August 31, 2004 (Certification of Willola Ashley, Principal, Great Falls Charter School, at 1)¹, even accepting the highest of these figures as the actual enrollment, this number is far below the department approved enrollment of 162 that formed the basis for fiscal projections. This dramatically low enrollment is unacceptable as it has serious negative implications for the fiscal viability of the proposed charter school.²

I specifically reject petitioner's contention that "[n]one of the deficiencies contained [in my August 23, 2004 decision denying petitioner's charter] are deficiencies that cannot be satisfactorily dealt with in the coming weeks so to not jeopardize the well being of the students of CFCS." (Certification of John Ambrosio, at 4) Rather, in light of the above, I cannot conclude with any certainty that the Great Falls Charter School will be operational and equipped to provide the quality educational program and fiscal integrity to which students are entitled by law. I, therefore, cannot find that petitioner will likely prevail on the merits of its appeal, or that students, parents and staff will suffer greater harm by having to now make alternative educational and employment arrangements for the upcoming school year than they would if the stay were granted and the final approval of petitioner's application for a charter is subsequently denied by the State Board.

Accordingly, I decline to stay my August 23, 2004 determination denying final approval of petitioner's application to establish the Great Falls Charter School.

Sincerely,

William L. Librera, Ed.D.
Commissioner

c: County Superintendent
Roslynne Novack
Rochelle Hendricks

¹ Although this document listed enrollment as 103, this figure was broken down as "54 sixth grade students, 31 seventh grade students and 17 eighth grade students" (Ashley Certification at 1), which totals 102 not 103 students.

² Petitioner's submitted materials assert "GFCS requested a waiver on August 23, 2004 to allow it to reduce its eighth grade classes by two and increase its sixth grade classes by two. If this waiver were granted, GFCS would have 142 students." (Memorandum in Support of Emergent Application at 6) It is noted that such a request can only be made by a school which has a charter granted by the Commissioner and would be made in the form of a request to amend its charter, not a waiver request.