

IN THE MATTER OF THE REVOCATION OF :
THE CHARTER OF THE RUSSELL ACADEMY : STATE BOARD OF EDUCATION
CHARTER SCHOOL, ESSEX COUNTY. : DECISION

Decision on motion by the State Board of Education, November 7, 2001

Decision on motion by the Commissioner of Education, August 30, 2001

Decided by the Commissioner of Education, August 10, 2001

For the Appellant, Algeier, Tosti & Woodruff (Robert M. Tosti, Esq., of
Counsel)

For the Participant Commissioner of Education, Allison Eck, Deputy
Attorney General (John J. Farmer, Jr., Attorney General
of New Jersey)

This is an appeal from a determination made by the Commissioner of Education on August 10, 2001 to revoke the charter of the Russell Academy Charter School ("Charter School" or "School") effective August 30, 2001. The appeal was filed by the newly constituted Board of Trustees of the School (hereinafter "appellant").¹

¹ According to the appellant, the former Board of Trustees was replaced on the evening of August 10, 2001, following receipt by the School's CEO of the Commissioner's decision revoking the charter. As set forth in the appellant's appeal brief:

The parents and staff of Russell Academy were prepared for an argument that night with the former Board, hoping to persuade them that it was in the best interests of everyone involved for them to resign. But that confrontation never materialized. Only three members of the Board showed up at Russell Academy that evening....Before the meeting even started, when the Board members heard rumors of what had happened and what was planned for the evening's meeting, each and every Board member present that night voluntarily left the building. Before the

In his decision, the Commissioner concluded that the Charter School was not operating in compliance with its charter, statutes and regulations, finding that the School “has failed to make reasonable progress to resolve substantive issues in fiscal and programmatic areas including its governance structure, the staffing of certified instructional personnel, and fiscal compliance. In addition, findings of the most recent site visit on July 31, 2001 to assess the preparedness of the school in its second year of operation to open its doors for students revealed that the school continues to violate provisions in its charter and is not operating in accordance with applicable state statutes and regulations.” Commissioner’s Decision, slip op. at 1.

The specific deficiencies cited by the Commissioner included: The Board of Trustees had failed to act on critical issues related to the operation of the School, including the selection process and hiring of a lead person, faculty and staff, the review of the curriculum, and the implementation of an accountability plan that provides adequate means to demonstrate academic progress; had failed to employ and retain a fully certified instructional staff; had failed to maintain a stable enrollment as evidenced by increasingly high numbers of student withdrawals; had failed to develop, review or adopt critical school policies and procedures; did not utilize the prescribed Generally Accepted Accounting Principles; and had not submitted a budget for the 2001-02 school year.

evening’s agenda could even be discussed, it was moot. The entire former Board of Trustees of Russell Academy walked out on the school in its darkest hour. There was no question they had abandoned their posts. Having no board members left to vote to accept the resignations, the parents voted unanimously to do so. They immediately elected a new Board....

On August 14, 2001, the appellant filed the instant appeal to the State Board. The appellant contends that the former Board of Trustees “is the entity almost entirely responsible for [the Charter School’s] current predicament.” Appeal Brief, at 2. While acknowledging that “significant deficiencies existed” at the School, the appellant contends that “[n]ow that the former Board has left Russell Academy, it seems clear that there is a significant core of dedicated parents that will stop at nothing to keep their school.” Id. at 4. The appellant requests that the charter be reinstated and that the School be placed on probationary status for 90 days so as to provide the newly constituted Board of Trustees with the opportunity to correct the deficiencies and to reopen the School in January or September 2002.

The appellant also filed motions with the Commissioner seeking reconsideration of his decision and a stay.

On August 30, 2001, the Commissioner denied the appellant’s motions. Initially, the Commissioner expressed “serious concerns with respect to whether the ‘newly elected’ Board of Trustees has standing to bring this action.” Commissioner’s Decision of August 30, 2001, slip op. at 1. Observing that the appellant had indicated in its motion for reconsideration that “[o]n the evening of August 10, 2001, the Board of Trustees in existence at that time effectively resigned their positions and a new board was elected and seated as planned,” the Commissioner found that:

[t]here is nothing in the materials provided by petitioner to explain the meaning of the statement ‘effectively resigned.’ There is also nothing to substantiate that the new Board was duly elected pursuant to the provisions of the charter. However, given that the timeframe for the rendering of this decision does not permit the development of a sufficient factual record to resolve this issue, I am assuming, solely for purpose of argument, that petitioner has standing to file these motions so as to enable me to consider the merits of

the applications presented on behalf of the Russell Academy Charter School.

Id.

Upon review of the School's arguments and supporting documentation, the Commissioner concluded that a stay of revocation and reconsideration of his decision would not be appropriate in this instance. Specifically, the Commissioner found that:

the deficiencies identified in my letter of August 10, 2001 are long-standing, not quickly or easily remediable, and sufficiently serious to preclude the school's continued operation pending appeal and further attempts at correction. Although it appears that the school has attempted to address the deficiencies identified in my revocation letter, I note that the ability to employ and retain a fully certified staff continues to elude the Russell Academy. As the President of the newly elected Board of Trustees noted in her verification on August 28, the staffing situation has once again changed since the motions were filed on August 23. Moreover, there is no indication that a budget has been prepared for the 2001-2002 school year. Additionally, the Board's assurances that everything will be different with the new Board of Trustees overseeing the school is, at best, speculative. In this regard, I note that petitioner does *not* dispute the cumulative findings that led to the decision to revoke its charter, but merely seeks a 90-day probationary period to correct its deficiencies while continuing in operation. Under these circumstances, I cannot find that petitioner will likely prevail on the merits of its appeal, or that students, parents and staff, who have been on notice of the impending revocation, will suffer greater harm by having to make alternative arrangements for the next school year than they would by remaining in a school that has proven seriously and persistently deficient, and which would still face likely closure, perhaps in the middle of an academic year.

Given the precariousness of its staffing situation, the lack of a properly developed budget and the uncertainty that the school will be able to retain students in this unstable environment, I find that petitioner has failed to demonstrate that it will be able to provide the quality educational program to which students are entitled by law or that the Russell Academy Charter School will be able to correct its

deficiencies in a timely and responsible manner so as to comply with its charter and applicable statutes and rules. Accordingly, I cannot in good conscience allow the school to continue operating, pending disposition of the merits of petitioner's appeal.

Id. at 3-4 (emphasis in original).

With respect to the appellant's contention that the newly constituted Board of Trustees had authorized actions and funding to address the major concerns expressed by the Commissioner in his decision of August 10, the Commissioner found that "actions taken in one evening to correct persistent, long-standing substantial deficiencies do not persuade me that my decision to revoke the charter of the Russell Academy Charter School was incorrect." Id. at 4.

On September 20, 2001, the Commissioner filed a motion with the State Board for leave to participate in this matter, which was granted on November 7.

After a thorough review of the record, we affirm the Commissioner's decision to revoke the School's charter. Like the Commissioner, we are assuming arguendo that the appellant, the newly constituted Board of Trustees, has standing to file this appeal so as to permit us to consider the merits of this matter.

N.J.S.A. 18A:36A-17 provides that "[t]he commissioner may revoke a school's charter if the school has not fulfilled any condition imposed by the commissioner in connection with the granting of the charter or if the school has violated any provision of its charter." Pursuant to N.J.A.C. 6A:11-2.4(b):

The Commissioner may revoke a school's charter following review by the Department of Education for one or more of the following reasons:

1. Any condition imposed by the Commissioner in connection with the granting of the charter which has not been fulfilled by the school; or

2. Violation of any provision of its charter by the school.
3. Failure of the remedial plan to correct the conditions which caused the probationary status.

The record before us fully documents the deficiencies cited by the Commissioner and substantiates the seriousness of those deficiencies, and we find nothing in any of the materials submitted by the appellant that would counter those findings.

In affirming the Commissioner's decision, we reject the appellant's contention that the School should be placed on probationary status for 90 days so that the newly constituted Board of Trustees would have the opportunity to correct the School's problems and prepare to reopen. Under the circumstances, and given the nature and gravity of the ongoing deficiencies demonstrated on the record, we find that providing such a probationary period would not be appropriate. We stress, in addition, that if the Charter School were permitted to reopen following such probationary period, students who had attended the School until its charter was revoked and who are now attending school elsewhere would again be uprooted if they choose to return to the Charter School. See *In the Matter of the Revocation of the College Preparatory Academy Charter School*, decided by the State Board of Education, October 3, 2001.

Accordingly, for the reasons expressed by the Commissioner in his decisions of August 10 and 30, 2001, as well as those expressed herein, we affirm the Commissioner's determination to revoke the charter of the Russell Academy Charter School.

December 5, 2001

Date of mailing _____