

SB #22-01

IN THE MATTER OF THE REVOCATION :  
OF THE CHARTER OF THE COLLEGE : STATE BOARD OF EDUCATION  
PREPARATORY ACADEMY CHARTER : DECISION  
SCHOOL, MORRIS COUNTY. :

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Decided by the Commissioner of Education, June 14, 2001

Decision on motion by the Commissioner of Education, August 14, 2001

Decision on motion by the State Board of Education, September 5, 2001

For the Appellant, Schwartz, Simon, Edelstein, Celso & Kessler (Carol R. Smeltzer, Esq., of Counsel)

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

This is an appeal by the Board of Trustees of the College Preparatory Academy Charter School ("School" or "Charter School") from a determination made by the Commissioner of Education on June 14, 2001 to revoke the School's charter, which had initially been granted for the 2000-01 school year. The Commissioner indicated that the Charter School was not operating in compliance with its charter, statutes and regulations and, in addition, had experienced a steady decline in student enrollment over the course of the academic year. The Commissioner observed that the Charter

School had been placed on probation for the second time in March 2001<sup>1</sup> and that a visit to the School by Department of Education staff in May 2001 revealed that it was in a significant deficit position and fiscally insolvent. He found, in addition, that the School had submitted a weak financial plan on May 30, 2001 that relied on unsubstantiated sources of funds and that the School had failed to submit a viable plan to eliminate its deficit position. He therefore directed the School to cease operations on June 30, 2001.

On July 12, 2001, the Board of Trustees filed a notice of appeal to the State Board. The Board of Trustees seeks reversal of the Commissioner's determination to revoke the School's charter and requests approval "to re-open for the 2002-03 school year conditioned upon the submission of a viable remediation plan which fully addresses the issues raised by the Commissioner of Education in his June 14, 2001 decision...." Appeal Brief, at 1.

On August 2, 2001, the Board of Trustees filed a motion with the Commissioner seeking a stay of his decision. By letter decision of August 14, 2001, the Commissioner declined to stay his decision.

On August 15, 2001, the Board of Trustees filed an application with the State Board for emergent relief in the form of a stay of the Commissioner's decision, and on August 21, 2001, the Commissioner applied for leave to participate in this matter. In a decision rendered on September 5, 2001, we granted the Commissioner's request to participate and denied the Board of Trustee's application for a stay. In so doing, we found that there was:

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<sup>1</sup> We note that the Commissioner had first placed the School on probation in November 2000 after it had failed to comply with his directive to provide the names of the students who had transferred out of the School and the names, addresses and phone numbers of their parents.

nothing in the brief and materials submitted by the Board of Trustees in support of its motion that would counter the Commissioner's findings regarding the serious deficiencies at the School. Contrary to its contention, the Board of Trustees was provided with considerable notice of the School's financial deficiencies and given the opportunity to correct them. For example, by letter dated April 6, 2001, the County Superintendent directed the Charter School to make a payment in the amount of \$21,572 to the Dover school district by April 16, 2001 for overpayment of tuition. Such overpayment resulted from students who had withdrawn from the Charter School and returned to the Dover district. When the Charter School sought to have such payment deferred, the County Superintendent, by letter dated April 17, denied such request but extended the deadline for making that repayment to April 20. The County Superintendent added that since the total overpayment was \$76,180, the School should also make arrangements to encumber at least \$54,608 to be returned to Dover at the conclusion of the current quarterly period in June. The record shows that as of June 14, 2001, the Charter School still had not made any of the required payments but was proposing to defer the repayment by making twelve equal payments during the next school year.

The deficiencies with regard to the certification of staff members, which had included certified teachers being assigned outside of their certification and individuals being employed as teachers before being admitted to the provisional teacher training program, continued even through the second probationary period. In a letter dated May 14, 2001 to the Board of Trustees, the Director of the Office of Charter Schools found "no evidence that the use of inappropriately certified and non-certified teachers of physics and Spanish, respectively, has been successfully corrected." In addition, the record indicates a continuing failure by the School to comply with the regulations governing the employment and training of provisional teachers, N.J.A.C. 6:11-5.1 et seq. See, e.g., memo dated June 13, 2001 from Judy Cifone to Anne O'Dea.

We also concur with the Commissioner's rejection of the Board of Trustees' due process argument. As we stressed in In the Matter of the Revocation of the Charter of the Greenville Community Charter School, decided by the State Board of Education, August 1, 2001, the law does not

require that a charter school be afforded a probationary period to correct deficiencies before its charter can be revoked. Rather, N.J.S.A. 18A:36A-17 and N.J.A.C. 6A:11-2.4 provide that the Commissioner may place a charter school on probation, but do not require that he do so. In this instance, the Charter School was placed on probationary status twice during its first year of operation before its charter was revoked at the end of that school year. Moreover, as previously indicated, the School was given considerable notice of its deficiencies and provided with the opportunity to correct them.

State Board's Decision on Motions, slip op. at 5-6.

We have now thoroughly reviewed the entire record. On the basis of that review, we affirm the Commissioner's decision of June 14, 2001 revoking the School's charter.

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 Board of Trustees that would counter those findings. Indeed, contrary to the Charter School's contention that the school laws and

implementing regulations do not prohibit it from carrying debt to the following year, N.J.A.C. 6A:11-7.3(b) provides that:

A charter school may incur temporary debt for terms no longer than 12 months. The exception shall be the first year that a charter school is approved in which the temporary debt obligation pursuant to N.J.S.A. 18A:36A-6(f) shall be for a term no longer than January 15 of the preceding school year to June 30 of the first school year of the charter.<sup>2</sup>

We also reject the Board of Trustees' request that it be permitted to reopen in 2002-03 conditioned upon submission of an acceptable remedial plan. As previously indicated, the School was placed on probationary status twice during its first year of operation after the Commissioner determined that it was not operating in compliance with its charter, statute or regulations. N.J.A.C. 6A:11-2.4(a). During that process, it was provided with ample opportunity to correct its deficiencies. Nonetheless, the deficiencies persisted. Under these circumstances and given the nature and gravity of the ongoing deficiencies demonstrated on the record, we find that an additional "planning year" is not appropriate. In this respect, we fully agree with the Deputy Attorney General representing the Commissioner that providing an additional planning year at this point "would have the effect of uprooting students once from the Charter School for the 2001-2002 school year only to have them once again removed from their educational programs to return to the Charter School for the 2002-2003 school year." Brief on behalf of Commissioner, at 13.

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<sup>2</sup> N.J.S.A. 18A:36A-6(f) provides that a charter school may "[I]ncur temporary debts in anticipation of the receipt of funds." We note, in addition that N.J.A.C. 6A:11-7.3(c), while not applicable in this case, permits a charter school to "incur debt for a greater period than 12 months provided that the debt is fully backed by the value of real estate or other asset, so that the total value of all such debt does not exceed the total assessed value of the property or assets by which the debt is backed." However, as stated, this provision has no application to the circumstances presented herein.

Accordingly, we conclude that the Commissioner followed the appropriate course in revoking the School's charter, and we affirm that determination.

October 3, 2001

Date of mailing \_\_\_\_\_