

SB# 22-01

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

Decided by the Commissioner of Education, June 14, 2001

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

On June 14, 2001, the Commissioner of Education notified the Board of Trustees of the College Preparatory Academy Charter School ("School" or "Charter School") that he was revoking 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 2001¹ 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 of Education. That appeal is currently pending before the State Board.

On August 1, 2001, the Board of Trustees filed a motion for a stay of the Commissioner's decision with the State Board. By letter of that date, the Director of the State Board Appeals Office advised the counsel for the Board of Trustees that, pursuant to N.J.A.C. 6A:4-2.2, a motion to stay a determination of the Commissioner pending determination of an appeal to the State Board must first be made to the Commissioner.

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, finding that the Board of Trustees:

offers no documentation or factual information whatsoever to support its assertions that the deficiencies leading to the revocation of its charter as set forth in the June 14, 2001 decision were erroneously determined by the Department, or, have in fact been remedied....

In this regard, I note that Petitioner does not dispute the cumulative findings with respect to its financial operation that led to the decision on June 14, 2001 to revoke its charter, but merely seeks an opportunity to correct them

¹ 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.

during the next academic year. Nor does Petitioner address at all the issue of repaying affected school districts for the overpayment of charter school aid due to the withdrawal of students during last academic year. Under these circumstances, I cannot find that Petitioner is likely to prevail on the merits of its appeal, or that students, parents/guardians and staff, who have been on notice of the impending revocation since June 2001, will suffer greater harm by having to make alternative educational and employment arrangements for the next school year than they would by remaining in a school which has been determined to be in a significant deficit position and fiscally insolvent.

Commissioner's Decision, slip op. at 3-4.

The Commissioner also rejected the Charter School's due process arguments, stressing that the school laws and implementing regulations did not require him to place a charter school on probation before he could revoke its charter.

On August 15, 2001, the Board of Trustees renewed its application to the State Board for emergent relief in the form of a stay of the Commissioner's decision. As set forth in its moving papers, the Board of Trustees argues that the School and its students will suffer irreparable harm if a stay is not granted, stating that there were approximately 119 students enrolled at the School for the 2001-02 school year and that "[w]ithout a stay of the Commissioner's decision, students will be forced to make enrollment decisions well before September 5, 2001. Many of the families comprising the [Charter School's] population lack the financial means to enroll their children in private schools. To force them to reenroll their children in public schools, would cause irreparable harm to the students of [the Charter School]." Brief in Support of Motion, at 6-7.

However, in a certification filed with the motion, the counsel for the Board of Trustees avers that "the school will not open to students for the 2001-02 school year. Accordingly, the State Board may grant the requested stay, without concern that the

school children will suffer any detrimental impact as a result thereof.” Certification of Carol R. Smeltzer, Esq., at 3. She notes that “should the State Board decline to grant its requested emergent relief, the school will be required to immediately liquidate its assets [pursuant to a letter dated August 3, 2001 from Anne O’Dea, Director of the Office of Charter Schools]. Such liquidation would detrimentally impact the College Preparatory Academy Charter School.” Id.

The Board of Trustees further contends in its motion that there is a reasonable probability that it will prevail on the merits of its appeal and that the equities weigh in favor of the Charter School.

On August 21, 2001, the Commissioner filed a motion to participate in this matter, along with a brief in opposition to the motion for a stay. The Board of Trustees filed a brief in opposition to the Commissioner’s motion. In its brief, the Board of Trustees indicates that “it has no intention of opening for the 2001-02 school year but rather that a stay is required to prevent the liquidation of assets pending a final disposition by the State Board on the merits of its request for a planning year and an opportunity to reopen for the 2002-03 school year.” Brief in Opposition to Motion to Participate, at 2.

Initially, we grant the Commissioner’s motion to participate and have considered his brief in reviewing this motion.

After careful review of the papers, we find that the Board of Trustees has failed to demonstrate that it is entitled to emergent relief under the standard set forth in Crowe v. De Gioia, 90 N.J. 126 (1982).

We fully agree with the Commissioner that the Board of Trustees has not demonstrated the likelihood that it will prevail in its appeal. There is 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.

It is also noteworthy that while the Board of Trustees contends in its brief in support of its motion that its students will suffer irreparable harm if the School is not permitted to operate in the 2001-02 school year, it also acknowledges that it has no intention of opening for the 2001-02 year and that it is seeking a stay to prevent the liquidation of assets.

Given these circumstances and the nature and gravity of the School’s deficiencies, we can find no basis for concluding that denial of the relief sought would

cause irreparable harm to the School's students. Nor do the equities favor the granting of a stay.

Accordingly, for the reasons stated, we deny the Board of Trustee's application for emergent relief.

September 5, 2001

Date of mailing _____