



State of New Jersey

DEPARTMENT OF EDUCATION
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CHRISTINE TODD WHITMAN
Governor

LEO KLAGHOLZ
Commissioner

December 4, 1998

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Dear Sirs:

On November 4, 1998, the State Board of Education rendered its decision regarding the appeal of the Commissioner of Education's final approval of the Unity Charter School dated September 3, 1998. In so doing, the State Board raised concerns and remanded this matter to the Commissioner for further review and determination of the suitability of Unity Charter School's facility for educational purposes.

The State Board expressed both policy and legal concerns with respect to the Commissioner's approval of a final charter for the Unity Charter School. The State Board first expressed a concern because of the fact that the Unity Charter School is located on the second floor of the Columbian Club, a social club that possesses a liquor license.¹ Upon review of the Charter School Act and regulations, as well as the laws referenced in the State Board's November 4, 1998 decision (See N.J.S.A. 33-1-76; N.J.S.A. 2C:33-16; N.J.S.A. 18A:36A-10), the Commissioner can find no legal prohibition to the Unity Charter School being located at 340

¹ The State Board noted on page five of its decision that the Commissioner of Education was unaware of the fact that a social club was located on the first floor of the building where the Unity Charter School is located when a final charter was granted. Department staff must make site visitations to approved charter schools prior to the granting of a final charter. The Commissioner was advised of the fact that the Unity Charter School is located in a building that also houses a social club. Because the social club does not operate when school is in session, and its facilities are separate and not accessible by the students in the school, it was determined that 340 Speedwell Avenue is an appropriate location for the Unity Charter School. See N.J.S.A. 18A:36A-10.

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Speedwell Avenue and once again determines that 340 Speedwell Avenue is a suitable location for a charter school in accordance with N.J.S.A. 18A:36A-10.²

With regard to the State Board's remaining concerns, the Unity Charter School provided a three-page submission and a blueprint detailing the facility and the school's operations. In addition, on December 2, 1998, Department of Education staff again inspected the facility at 340 Speedwell Avenue to reassess its suitability as a location for a charter school.

Department staff described the facility as follows: Unity Charter School and the Columbian Club have separate entrances. All instructional areas are located on the second floor. Bathrooms are located on the first and second floors. While the Columbian Club is located on the first floor, access to the Columbian Club may be gained only through securely locked doors. In addition, staff was permitted access to the Columbian Club and observed that alcohol is not visible or accessible. Alcohol is secured in a locked storage room, or in a pad-locked refrigerator, and as was reported to department personnel by Joseph Masterfano, project manager, Morristown Columbian Club, alcohol is only served at the club on Wednesday nights and weekends when students are not present.

Based on the Unity Charter School's submission and the report from department staff, the Commissioner finds the foregoing to be an accurate description of the Unity Charter School, and hereby concludes that the students do not, in fact, have any access to the Columbian Club or the alcoholic beverages stored therein, and that 340 Speedwell Avenue is a suitable facility for the Unity Charter School.

With regard to the State Board's directive for the Commissioner to verify that all building deficiencies have been corrected and that all documentation required by N.J.A.C. 6A:11-2.1 has been provided by the Unity Charter School, as set forth below, the Commissioner has determined that all documentation required by N.J.A.C. 6A:11-2.1 has been provided to the Department of Education by the Unity Charter School.

² N.J.S.A. 33:1-76 concerns the acquisition or renewal of a liquor license. Although it does not appear to affect the Columbian Club which was located at 340 Speedwell Avenue prior to the charter school, it can only affect the Columbian Club's ability to retain its liquor license, not the ability of the Unity Charter School to remain at 340 Speedwell Avenue. N.J.S.A. 2C:33-16 concerns bringing alcohol onto school property, or possessing alcoholic beverages on school property without permission of the Board of Education or appropriate school officials. Because the Unity Charter School is located on the second floor of the building, not the first floor where the social club is operated, and considering that the school does not own the property at issue as required by the statute, it does not appear that this statute would be implicated based on the fact that the Columbian Club is located on the first floor of 340 Speedwell Avenue.

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The Unity Charter School was issued a temporary certificate of occupancy on September 2, 1998. An official from Morristown indicated that the school had to install four doors and correct a deficiency with respect to the school's jungle gym before a permanent certificate of occupancy could be issued. Additional temporary certificates of occupancy were issued on October 2, 1998, October 29, 1998 and November 30, 1998. The November 30, 1998 certificate of occupancy is effective through December 30, 1998.

The Unity Charter School informed the department that the doors were installed in September 1998. This was confirmed in a letter dated December 2, 1998 from Rudy Lefke, a construction official for the Town of Morristown, to Mr. Joseph Masterfano, project manager, Columbian Club. The jungle gym issue concerned the ground covering underneath the jungle gym. The school informed the department that it covered the ground with wood chips. On December 2, 1998, department staff confirmed that the ground under the jungle gym is covered with wood chips and that the doors were installed. The school has been awaiting an inspection and approval of the jungle gym by the municipal engineer so that it may obtain a permanent certificate of occupancy, thus necessitating the acquisition of additional temporary certificates of occupancy.

With regard to Unity's use of wood chips as a ground cover underneath the jungle gym, N.J.A.C. 6:22-5.4(e)(5) provides that "the composition at the base of the playground equipment . . . [must be] of a soft composition." Wood chips have always been considered by the department to be a material of a soft composition, and thus suitable for playgrounds.

Therefore, it appears that the Unity Charter School has satisfied all necessary contingencies, considering that the doors have been replaced and the ground underneath the jungle gym is properly covered, and a permanent certificate of occupancy should be issued in the near future.

However, regardless of when a permanent certificate of occupancy is issued, N.J.A.C. 6A:11-2.1(g)(4) specifically sets forth that a charter school must provide the department with a "[c]ertificate of occupancy issued by the local municipal enforcing official" in order to receive a final charter. The regulation does not mandate that the certificate of occupancy be of a particular duration. Thus, there is no requirement that a charter school must possess a permanent certificate of occupancy in order to receive a final charter. In fact, the Department of Education permits public schools to operate with temporary certificates of occupancy. Therefore, considering that the department permits public schools to operate with a temporary certificate of occupancy, there is no basis to deny a final charter to a charter school because of a lack of a permanent certificate of occupancy.

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In this regard, N.J.S.A. 52:27D-121 defines a certificate of occupancy as a certificate that indicates that all construction permitted has been completed in accordance with the permit and applicable laws. No distinction is made in the definition with respect to the duration of certificates of occupancy. More significantly, N.J.S.A. 52:27D-133, which governs issuance of certificates of occupancy, provides that a temporary certificate of occupancy may only be issued "if the part or parts of the building or structure to be covered by the certificate may be occupied prior to completion of all work in accordance with the permit, the code, and other applicable laws and ordinances, without endangering the health and safety of the occupants or users." Clearly, Morristown officials have determined that the health and safety of the students in the Unity Charter School are not endangered, as they could not have issued a temporary certificate of occupancy without making such a determination. In addition, as indicated earlier, the approval of the town engineer of the surface under the jungle gym appears to be the only remaining task to be completed prior to issuance of a permanent certificate of occupancy.

Because the department permits traditional public schools to operate with a temporary certificate of occupancy, and N.J.A.C. 6A:11-2.1(g)(4) does not mandate a certificate of occupancy of a particular duration, and considering that all other documentation required by N.J.A.C. 6A:11-2.1 has been provided by the Unity Charter School, the Commissioner has determined that the Unity Charter School has provided all necessary documentation and was properly awarded a final charter. If the Unity Charter School were to ever operate without a certificate of occupancy or other necessary documentation, the department would take appropriate action against the school pursuant to statute and code at that time. Finally, because the temporary certificate of occupancy for the Unity Charter School expires on December 30, 1998, the Commissioner directs that the school provide the department a new certificate of occupancy by that date indicating that the Unity Charter School may operate beyond December 30, 1998.

Based on the foregoing, it is the Commissioner's determination that there is no basis in law or policy to reverse the approval for a final charter for the Unity Charter School.

Sincerely,

Leo Klugholz
Commissioner

LK/EMS/AOD/Unity
c: State Board Appeals Office
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