

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5977-09T1

IN THE MATTER OF THE APPROVAL
OF HATIKVAH INTERNATIONAL
ACADEMY CHARTER SCHOOL

Argued: October 13, 2011 - Decided: December 21, 2011

Before Judges Axelrad, Sapp-Peterson and
Ostrer.

On appeal from the Department of Education.

Matthew J. Giacobbe argued the cause for
appellant East Brunswick Township Board of
Education (Cleary, Giacobbe, Alfieri,
Jacobs, LLC, attorneys; Mr. Giacobbe, of
counsel; Robin T. McMahon, on the brief).

Thomas O. Johnston argued the cause for
respondent Hatikvah International Academy
Charter School (Porzio, Bromberg & Newman,
P.C., attorneys; Mr. Johnston, of counsel
and on the brief; Raquel S. Lord, on the
brief).

Jennifer L. Campbell, Deputy Attorney
General, argued the cause for respondent
Department of Education (Paula T. Dow,
Attorney General, attorney; Ms. Campbell, on
the brief).

Robert M. Tosti argued the cause for amicus
curiae The Boards of Education of the
Princeton Regional, South Brunswick Township
and West Windsor Plainsboro Regional School
Districts (Parker McCay, P.A., attorneys;
David W. Carroll, on the brief).

PER CURIAM

The East Brunswick Board of Education (Board) appeals from the Commissioner of the Department of Education's (Commissioner) approval of the charter of Hatikvah International Academy Charter School (Hatikvah) commencing July 1, 2010. According to the Board, the Commissioner disregarded the Department of Education's (Department) regulations pertaining to the charter school application and approval process, contending, in particular, Hatikvah had not met the ninety percent of maximum enrollment requirement of N.J.A.C. 6A:11-2.1(i)(14) as of the applicable date and was thus ineligible to receive final approval. The Board urges us to revoke Hatikvah's charter and remand the matter to the Commissioner to set a timetable for it to wind down its operations, or take other steps as a result of Hatikvah's purportedly deficient application. Based on our review of the record and applicable law, we are not convinced the Commissioner abused his discretion and affirm.

I.

In March 2009, Danna Nezarria, President of the Board of Trustees of Hatikvah, submitted Hatikvah's application to the Department to establish a charter school in East Brunswick that proposed to serve grades kindergarten through second during its first year of operation – 2010 to 2011. By letter of May 15,

2009, the Board recommended the Commissioner deny Hatikvah's charter status.

On September 22, 2009, then-Commissioner Lucille Davy granted Hatikvah conditional approval, contingent on receipt of additional statutorily-required documentation. In October, the Board sought reconsideration of this conditional approval.

Subsequent correspondence and meetings ensued between Hatikvah and Department representatives and on-site visits were conducted by Department representatives. By letter of July 6, 2010, then-Commissioner Bret Schundler granted final approval of Hatikvah's charter status. A copy of the letter was sent to the East Brunswick Township District Superintendent.

On August 11, 2010, the Board filed with the Commissioner an emergent motion for a stay of his decision, and filed with this court a notice of appeal of the Commissioner's final determination. On August 25, the Commissioner denied the Board's motion for a stay, and on August 27, we declined to permit the Board to file an emergent motion for a stay. By order of September 23, we also denied the Board's motion for a stay pending appeal.

In the meantime, on September 2, 2010, Hatikvah filed a complaint and order to show cause in the Law Division to compel the Board to transmit State aid and local funds to it. By order

of September 14, 2010, the court denied emergent relief and dismissed Hatikvah's complaint for lack of jurisdiction based on the pending appeal. We granted Hatikvah permission to file emergent motions on short notice. However, by letter of September 28, then-Acting Commissioner Rochelle Hendricks directed the Board to forward payments to Hatikvah, and the Board promptly complied.

By orders of March 15, 2011, we granted motions by both the Board and Hatikvah to supplement the record on appeal with certain exceptions, and a motion by the Board to seal certain student-identifying information. By order of August 12, 2011, we granted amici status and permission to participate in oral argument to the Boards of Education of the Princeton Regional, South Brunswick Township and West Windsor-Plainsboro Regional School Districts, and accelerated the appeal.

II.

In its application, Hatikvah identified East Brunswick as its "district of residence." N.J.A.C. 6A:11-1.2. It projected commencing in September 2010 as a K-2 institution with total enrollment of 108 students, and anticipated growing to a K-5 institution with a maximum of 240 students by the completion of the first four years of the charter.

After reviewing Hatikvah's application, N.J.S.A. 18A:36A-4(c), the Board adopted a resolution on May 14, 2009, recommending the Commissioner deny Hatikvah's charter school status, and authorized its President and District Superintendent to submit to the Commissioner a comprehensive letter in opposition to the application. This letter was sent the next day, alleging Hatikvah's application interfered with the separation of church and state, had a negative economic impact on the district's taxpayers, and did not comport with the requirements for charter schools as codified in N.J.A.C. 6A:11 because it did not include an educator from East Brunswick. The letter further asserted Hatikvah's single-cultural, single-emersion Hebrew language charter school would be at odds with and would not serve the multi-cultural community; it would unfairly compete with the Solomon Schechter Day School in East Brunswick; its proposed full day kindergarten would result in a lack of educational equity and access for East Brunswick residents; the petition did not accurately demonstrate East Brunswick's community interest in the charter school; and its needs analysis was flawed, inaccurate and did not document a need for the charter school.

By letter of September 22, 2009, Commissioner Davy informed Nezarria that Hatikvah's petition for a charter was approved

"contingent upon receipt of outstanding documentation not included in [the] application, successful participation in the preparedness process and compliance with applicable state and federal regulations." The Commissioner noted the strengths of Hatikvah's implementation plan and the adequacy of the fiscal plan. By letter of October 22, 2009, the Board President and District Superintendent requested reconsideration of the Commissioner's approval of Hatikvah's charter, essentially renewing the previously asserted arguments.

The record reflects that over the ensuing months, Hatikvah provided the Department with "requested supplemental documentation," including "information about Hatikvah's physical facility, board of trustees, staff, evidence of appropriate bookkeeping processes, and evidence of anticipated student enrollment." Between April and June 2010, Karina Bielaus, an employee of the Department's Office of School Funding, and Nezarria exchanged emails concerning proof of residency, student registration, transfer cards, and enrollment in Hatikvah, and Nezarria periodically transmitted to the Department the names of enrolled students along with supporting documentation. In an email of June 2, Bielaus attached a "spreadsheet of all the registered students (with proof of residency) that [Hatikvah had] faxed to its office," noting to date it had "58 students or

54% of [Hatikvah's] maximum enrollment." Bielaus expressed concern that Hatikvah did not have "the necessary enrollment of at least 90% (97 students) of approved maximum enrollment of 108 students, as verified by student registrations from the district of residence pursuant to N.J.A.C. 6A:11-2.1(i)."

The Department conducted Hatikvah's "preparedness visit" on June 9, 2010. The record does not reflect the exact documents the Department reviewed, although its response to the Board's Open Public Records Act (OPRA) request, N.J.S.A. 47:1A-1 to -13, reflects that its staff reviewed "individual student registrations signed by parent/guardian(s) and supporting documentation for each student identified on the list."¹ Nezarria's August 10, 2010 certification represents that the Department also "conducted a comprehensive audit of Hatikvah's education plans and finances [and] reviewed and inspected Hatikvah's files regarding its curriculum, policies, handbook, employment contracts, third-party contracts, by-laws, lease, among many other documents."

A series of emails ensued between Bielaus and Nezarria referencing student enrollment information continually faxed by Nezarria. Our record contains some faxed information pertaining

¹ For completeness of the record, it would be preferable for the Department to keep a master list of the category of documents reviewed during the on-site preparedness visit.

to lottery applications and proofs of residency but it is unknown what other information was presented by Hatikvah to the Department. By email of June 21, 2010, Bielaus confirmed that Hatikvah had reached the requisite ninety percent enrollment of ninety-seven students. Bielaus reiterated this in a June 28, 2010 email, stating that since Hatikvah attained the "90% in-resident enrollment," it no longer had to forward student enrollment documentation to the Department unless its registered students disenrolled and it dropped below that requirement.

Nezaria certified Hatikvah had submitted evidence to demonstrate that as of June 27, 2010, it had 100 East Brunswick resident students enrolled – 44 in kindergarten, 38 in first grade, and 18 in second grade. There was also a waiting list for kindergarten of 9 East Brunswick residents and 24 non-residents, as well as non-residents enrolled in the other grades to fill the remaining spaces.

In her August 23, 2010 certification, Jacqueline Grama, CPA, the Department's Planning Associate I, Office of School Finance, stated as follows:

[] Pursuant to [the administrative] process, after the initial September 22, 2009, grant of a charter to Hatikvah, myself and my staff continued to work with Hatikvah and Hatikvah diligently submitted the requisite fiscally related documentation.

. . . .

[] Myself and my staff verify the enrollment of students in a charter school by reviewing student registrations.

[] Hatikvah provided student registrations to myself and my staff by making them available for review at site visits or submitting them directly to us. As of June 30, 2010, we verified the necessary enrollment of at least ninety percent (90%) of approved maximum enrollment. Attached as Exhibit B is a true and complete copy of a chart demonstrating that Hatikvah had met the necessary enrollment requirement, as verified by myself and my staff. Exhibit B has been redacted to protect the confidentiality of the students.

The undated chart captioned "Hatikvah Charter School" listed from East Brunswick Township 44 out of a maximum enrollment of 44 students enrolled in kindergarten, 36 out of a maximum enrollment of 44 students enrolled in first grade, and 17 out of a maximum enrollment of 20 students enrolled in second grade, totaling 97 out of 108 students, or 90%. It also enumerated the documentary proof of residency for each of the 97 students, including mortgages, deeds, leases, utility bills, passports, birth certificates, motor vehicle information, voting records, and sworn statements.²

² Grama's certification, which is contained in the Board's appendix, does not contain any of the referenced exhibits; however, the table of contents represents that this chart, though not labeled as such, is Exhibit B.

By letter of July 6, 2010, Commissioner Schundler notified Hatikvah that it had satisfied the contingencies of the preparedness visitation process and the furnishing of the required additional documentation.³ Accordingly, Hatikvah was granted a charter to open and function as a public school for the period from July 1, 2010 through June 30, 2014.

According to Nezaria's certification, on July 28, 2010, Grama informed her by phone that the Board was challenging Hatikvah's enrollment figures, and the next day Department officials audited Hatikvah's files and contacted all parents of registered students. The Board also served an OPRA request on the Department and received information relative to Hatikvah's application and approval.

On August 3, 2010, Nezaria sent correspondence to the Commissioner, advising that following the granting of the

³ N.J.A.C. 6A:11-2.1, Application and approval process, provides, in pertinent part:

. . . .

(1) All statutorily required documentation shall be submitted to the Department of Education by June 30. The final granting of the charter by the Commissioner shall be effective when all required documentation as listed in [N.J.A.C. 6A:11-2.1(i)] above is submitted and approved by the Department of Education no later than July 15.

charter, Hatikvah's enrollment had taken a "modest dip" to approximately "100 students, 89 of whom live in East Brunswick." However, Hatikvah had a waiting list for kindergarten and an out-of-town waiting list for first and second grade, which were sufficient to fill the remaining eight spots, and it continued to receive new registrations daily. To the extent the Department interpreted N.J.A.C. 6A:11-2.1(i)(14) as requiring a ninety percent in-district benchmark prior to the school's opening, Hatikvah requested a waiver or flexibility for the first year.

In the Board's submission to the Commissioner in support of its motion for a stay of his approval of Hatikvah's charter status, and in Hatikvah's opposition, the parties dispute many of the facts regarding Hatikvah's student enrollment status on various dates. For example, the Board contends, with supporting certifications, that its records demonstrate Hatikvah did not properly register and enroll the requisite number of students by June 30, 2010 and thereafter. Hatikvah responds, with supporting certifications, that it satisfied the enrollment requirements and notes instances where the Board and related school officials thwarted the enrollment process and refused to provide transfer cards to parents seeking to enroll their children in Hatikvah.

On September 7, 2010, Hatikvah opened its doors to students. As certified by its principal, there were ninety-six enrolled students, eighty-three of whom reside in East Brunswick.

III.

The Board appealed, arguing the Commissioner disregarded its regulations in granting final charter approval to Hatikvah, and thus its decision cannot stand. See County of Hudson v. Dep't of Corr., 152 N.J. 60, 70 (1997) ("Because administrative regulations that apply to the regulated public have the force and effect of statutory law, an administrative agency ordinarily must enforce and adhere to, and may not disregard, the regulations it has promulgated."). See also Van Note-Harvey Assocs., P.C. v. New Jersey Sch. Dev. Auth., 407 N.J. Super. 643, 651 (App. Div. 2009) (directing the Authority to expand its list of eligible contractors to include appellant among those eligible where the agency failed to prepare a consolidated ranking as required by the regulation guiding its award of contracts for professional services); Davis v. Am. Honda Motor Co., 368 N.J. Super. 333, 337 (App. Div. 2004) (vacating dismissal of a complaint and remanding the matter to the Division of Civil Rights where the agency convened a fact-finding conference without notice to the complainant or an

opportunity to participate in violation of the regulations addressing the exercise of its investigatory function).

In particular, the Board contends the Commissioner failed to comply with N.J.A.C. 6A:11-2.1(i)(14) requiring "[e]vidence of enrollment of at least 90 percent of approved maximum enrollment, as verified by student registrations signed by parent/guardian(s)." According to the Board, the phrase "approved maximum enrollment" does not permit, as a matter of law, non-district students to be included in the ninety-seven student count because Hatikvah's application sought to operate within a "district of residence" as opposed to a "region of residence."⁴ It also contends the "[e]vidence of enrollment . . . as verified by student registrations signed by parent/guardian(s)" is not satisfied by a lottery application, which merely serves as "consent for my child's/children's name(s) to enter the charter school's admission lottery" and indicates parental interest in Hatikvah. In contrast, the Board contends that a registration form actually serves to enroll a child in school.

⁴ A "district of residence" means the school district in which the charter is located. A "region of residence" means contiguous school districts all having a common border, in which the region is deemed the charter school's district of residence. N.J.A.C. 6A:11-1.2.

The Board further contends the Commissioner bypassed the requirement of N.J.A.C. 6A:23A-15.3(a), that the district of residence conduct the residency assessment, by permitting the Department to accept Hatikvah's "proof of residency."⁵ According to the Board, Hatikvah required inadequate proof demonstrating the lottery applicants had a permanent home in East Brunswick, as it did not require four forms of proof of residency.⁶ The Board further certifies its registration records demonstrate there were only forty potential Hatikvah students who had actually registered in the District and completed transfer cards in accordance with the above-referenced registration process as

⁵ N.J.A.C. 6A:23A-15.3, Enrollment counts, payment process and aid adjustments, provides:

(a) In order to enroll in a charter school, the student must first be registered in the school district in which the student resides. For any student who applies for enrollment in a charter school, a district board of education in which the charter school applicant resides shall process the registration of the student for the subsequent school year upon submission of the registration forms. A district board of education shall process in a timely manner all such registrations, including the assessment of residency and the subsequent transfer to the charter school, and shall identify the specific categorical aid for which each student qualifies.

⁶ The Board's assertion that the Department's own registration forms seek four forms of proof of residency is not supported by citation or documentation.

of June 30, 2010, and seventy-seven properly registered students as of August 26, 2010.

Lastly, the Board argues the regulations do not authorize a waiver of the minimum enrollment requirement, N.J.A.C. 6A:11-2.1, and additionally submits it would not be reasonable for the Department to waive the mandated enrollment requirement. The Board emphasizes that the minimum in-district or in-region enrollment assures the Department that there exists community and financial support for the charter school and urges that here, East Brunswick taxpayers are "largely footing the bill for a charter school that failed to garner that community's support."

Thus, the Board argues that since Hatikvah deviated from the enrollment process and did not enroll ninety-seven students from East Brunswick as of June 30, 2010, the Commissioner abused his discretion in granting Hatikvah a final charter. The Board urges us to set aside the Commissioner's decision, revoke final grant of the charter, and remand the matter to the Commissioner for further action consistent with the Charter School Program Act of 1995 (the Act) and its regulations. See N.J.S.A. 18A:36A-17 and N.J.A.C. 6A:11-2.4(b) (authorizing the Commissioner to revoke a school's charter, or place the charter school on probationary status if the school has not fulfilled

any condition imposed by the commissioner in connection with the charter grant or has violated any provision of its charter); N.J.A.C. 6A:11-2.4(a) (authorizing the Commissioner to place a charter school on probationary status for a period of ninety days to allow implementation of a remedial plan upon a finding that the school is not operating in compliance with its charter, statutes or regulations). The Board submits that the remedy of considering the past year and one-half a "planning year" and setting a short deadline for Hatikvah to wind down operations will not disrupt the continuity of education for its students as they will return to East Brunswick public schools, the private school previously attended, or the school in their former district of residence.

Amici curiae state that N.J.A.C. 6A:11-2.1(l) requires submission to the Board of all statutorily-required documents, i.e., presumably those items enumerated in N.J.S.A. 18A:36A-5, by June 30, and all required documentation as listed in N.J.A.C. 6A:11-2.1(i) to be submitted to and approved by the Department no later than July 15. They submit the only plausible reading of the deadline is that the charter school must submit items (1) through (15) of N.J.A.C. 6A:11-2.1(i) to the Commissioner in sufficient time on or before July 15 to permit a grant of final approval by July 15, in order for a new charter school to open

in September. Here, the Commissioner approved Hatikvah's charter on July 6, 2010, expressly determining that all required contingencies had been met. Accordingly, amici urge that the correctness of the Commissioner's determination should be based on the record as it existed on the date of approval.

Amici support the Board's position that lottery forms are legally defective documentation of enrollment as they do not evidence registration and do not comport with the two-step procedure for enrollment of a child in a charter school. According to amici, the "verified by student registrations" language of N.J.A.C. 6A:11-2.1(i)(14) requires the charter school to submit proof of both the student's registration in the District under the residency regulations and the parent's submission of a transfer card. N.J.A.C. 6A:23A-15.3(a). Amici also challenge the Department's reliance on residency documents submitted by Hatikvah, which may have merely demonstrated address, not domicile, rather than leaving the residency verification process to the local school district. Finally, amici argue the ninety percent enrollment requirement and the July 15 approval deadline are mandatory regulations, well founded in policy, and cannot be waived.

Amici similarly contend the Commissioner's final approval of the charter was in error and must be overruled and request we

direct a period of not more than thirty days for Hatikvah to be closed down (at least as a publicly funded institution). Regardless of the remedy, amici urge us to rule definitively on the legal issues presented regarding the regulatory requirements to provide guidance to the Commissioner and future charter school applicants and school districts.

IV.

We are mindful of the limited standard of appellate review of an agency's decision. As a general rule, we will not reverse an administrative agency determination unless it is arbitrary, capricious, or unreasonable, is not supported by substantial credible evidence in the record as a whole, or violates legislative policies expressed or fairly to be implied in the statutory scheme to be administered by the agency. Dennery v. Bd. of Educ., 131 N.J. 626, 641 (1993) (citing Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980)); Dore v. Bd. of Educ., 185 N.J. Super. 447, 453 (App. Div. 1982) (citing Campbell v. Civil Serv. Dep't, 39 N.J. 556, 562 (1963)).

Moreover, an agency's interpretation of the statute or regulations it is charged with enforcing is entitled to substantial deference. In re Young, 202 N.J. 50, 68 (2010); DiMaria v. Bd. of Trs. of Pub. Emps. Ret. Sys., 225 N.J. Super. 341, 351 (App. Div.), certif. denied, 113 N.J. 638 (1988).

Specifically, "as the agency ultimately charged with implementation of the school laws, the [Board of Education's] statutory interpretation is entitled to considerable weight, where not inconsistent with the statute and in harmony with the statutory purpose." Kletzkin v. Bd. of Educ. of Borough of Spotswood, 136 N.J. 275, 278 (1994) (quoting Kletzkin v. Bd. of Educ. of Borough of Spotswood, 261 N.J. Super. 549, 553 (App. Div. 1993)). See also Capodilupo v. Bd. of Educ., 218 N.J. Super. 510, 515 (App.Div.) (holding that a final decision of the State Board of Education should not be upset unless it is unreasonable, and unsupported by the record or violative of the legislative will), certif. denied, 109 N.J. 514 (1987).

We initially note that no waiver appears to have been issued by the Commissioner; thus, that issue need not be addressed.

The record demonstrates that Hatikvah followed the procedures set forth in the Act and regulations for approval of a charter school, commencing with the submission to the Commissioner in March 2009 of an extensive application containing statutorily-required information, with copies to the Board and District Superintendent. N.J.S.A. 18A:36A-4(c); N.J.A.C. 6A:11-2.1. Despite objections by the Board and District Superintendent, the Department's initial review

determined the application complied with the statutory and regulatory requirements, N.J.S.A. 18A:36A-5 and N.J.A.C. 6A:11-2.1(b), and the Commissioner gave Hatikvah conditional approval subject to providing outstanding documentation and successful participation in the preparedness process. Upon the Commissioner's initial approval of Hatikvah's charter, Hatikvah's projected enrollment of 108 students became its maximum allowable enrollment.

The record reflects that Hatikvah cooperated with the Department in diligently providing requested information and documentation pertaining to a variety of matters, including student enrollment, by emails, faxes, and site visits. It is apparent that Department staff, including Bielaus of the Office of School Funding, and Grama, a Planning Associate I, were familiar with the N.J.A.C. 6A:11-2.1(i) documentation a charter school was required to submit for approval of its application, including "[e]vidence of enrollment of at least 90 percent of approved maximum enrollment, as verified by student registrations signed by parent/guardian(s)." N.J.A.C. 6A:11-2.1(i)(14). They reviewed lottery forms, proofs of residency, and potentially other undefined documents and confirmed that as of June 30, Hatikvah had at least ninety-seven students, the necessary enrollment required for final approval, enrolled in

the school. As Hatikvah's chart referenced in Grama's certification represented that all ninety-seven enrolled students were East Brunswick Township residents, we need not decide the issue of whether the regulation mandates that such enrollment be comprised of in-district students or whether it is merely a preference.

Grama certified she and her staff reviewed "student registrations" provided by Hatikvah. Even if they were primarily lottery forms signed by a parent or guardian and not formal registrations and transfer cards issued by the Board, we are not convinced under the circumstances presented in the record that the Commissioner abused his discretion or violated legislative policies by disregarding the regulations. Within his specialized expertise, the Commissioner determined the documents in this case provided adequate evidence of enrollment in Hatikvah as of June 30 such that it would be a viable charter school. It is apparent from the certifications there was arguably a lack of cooperation by the Board with the Hatikvah enrollment process. As a result, the Commissioner could have concluded, within his discretion, that either the parents or Hatikvah, or both, were unable to secure formal registrations.

Although we do not find an abuse of discretion under the facts here, we do not mean to suggest that the registration

requirement may be easily relaxed. We are mindful that the registration requirement is designed to assure that new charter schools enjoy the genuine interest and real commitment of the community, to justify the expenditure of public funds.

All deadlines were met and on July 6, 2010, the Commissioner granted final approval of Hatikvah's charter, satisfied it had complied with all the requirements of the Act and charter school regulations. Hatikvah became a valid and operational charter school effective July 1, 2010 through June 30, 2014. That Hatikvah's enrollment numbers "dipped modestly" after the approval does not mean it did not meet the ninety percent requirement as of June 30. Nor should the fact that there is some fluctuation in actual registration and transfer be fatal to Hatikvah's final approval of its charter. Parents could change their minds about their child attending the public or the private school over the summer. Moreover, students relocate in and out of the district prior to, and even during the school year.

Critically, should Hatikvah's enrollment fall so low that it could not financially continue to operate the school, the Commissioner has the authority to take action. See N.J.S.A. 18A:36A-17 (granting the Commissioner the power to revoke a charter, place a charter school on probation and implement a

remedial plan, or reject the renewal of a charter). Moreover, there are ongoing protections for the public and taxpayers. During the operation of a charter school, the Commissioner is required to "annually assess whether each charter school is meeting the goals of its charter, and shall conduct a comprehensive review prior to granting a renewal of the charter." N.J.S.A. 18A:36A-16(a). The county superintendent of schools is provided ongoing access to the records and facilities of charter schools within that county to ensure each school complies with its charter and with all applicable regulations regarding assessment, testing, civil rights, and student health and safety. Ibid. Each charter school is required to submit an annual report to the local board of education, the county superintendent, and the Commissioner, which is used to facilitate the Commissioner's annual review. N.J.S.A. 18A:36A-16(b). See also N.J.A.C. 6A:11-2.2 (requiring the board of trustees of a charter school to submit an annual report by August 1 following each full school year in which the charter school is in operation to the Commissioner, the respective county superintendent of schools and the district board(s) of education or State district superintendent(s) of the district of residence of a charter school, and other documentation annually to the Commissioner for approval prior to the opening of

school); N.J.A.C. 6A:11-4.4 (requiring a charter school to submit to the Commissioner, no later than January 15 of subsequent school years, "the number of students by grade level, gender and race/ethnicity from each district selected for enrollment from its initial recruitment period for the following school year"); N.J.A.C. 6A:23A-15.3(4), (5) (requiring a charter school to submit to the resident school district a listing of all enrolled students on October 15 for the purpose of aid and to determine average daily enrollment).

In summary, considering our limited standard of review, and our deference to the expertise of the agency in interpreting its own regulations, we are not persuaded the record demonstrates a basis upon which to second-guess the final decision of the Commissioner in granting approval to Hatikvah to operate a charter school for an initial four-year period commencing July 1, 2010.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION