

February 2, 2016

VIA FACSIMILE TO 609.777.4099
AND OVERNIGHT MAIL

The Honorable David C. Hespe, Commissioner
New Jersey Department of Education
100 Riverview Executive Plaza
Trenton, NJ 08625-500

RE: Opposition to Hatikvah International Academy Charter School
Amendment Application

Dear Commissioner Hespe:

This firm represents the Highland Park and Edison Township Boards of Education ("Highland Park" and "Edison" respectively). Please accept this letter as formal opposition on behalf of Highland Park and Edison in response to the recent requests submitted by the Hatikvah International Academy Charter School ("Hatikvah") to amend its charter and expand its enrollment.

Although neither Highland Park nor Edison is Hatikvah's district of residence or region of residence and is therefore not granted the explicit right to comment on the pending charter amendment pursuant to N.J.A.C. 6A:11-2.6(c), we trust that you will consider the facts set forth herein and deny Hatikvah's application accordingly. Further, we request that your office issue a determination that neither Highland Park nor Edison is responsible to pay tuition for any students enrolled in Hatikvah, as those districts are not the district of residence nor region of residence as required for such payments under the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq. (the "Act").

Less than one year after you denied Hatikvah's last request to expand its elementary school program, Hatikvah is back at it again seeking to siphon funds from more than twenty-eight (28) public school districts across the State to support its "unique" (i.e., segregated) school model. When your office reviewed Hatikvah's November 26, 2014 expansion request, your decision was based on Hatikvah's "academic performance, fiscal viability and organizational soundness." Based on these three factors, Hatikvah's elementary expansion request should again be denied.

As required by the Act, Hatikvah's expansion application addresses its purported impact, or lack thereof, on its district of residence, East Brunswick. Specifically, Hatikvah's

amendment request resolution states that “the majority of the waitlisted students for Kindergarten and 1st grade, originate from a district other than East Brunswick, so their enrollment at Hatikvah will have very limited financial impact on taxpayers in East Brunswick.” This statement is seemingly true, yet it is grossly misleading as to the financial impact on the larger public actually impacted by the requested enrollment increase under the Department of Education’s current funding scheme.

The Act clearly provides that only “**the school district of residence** shall pay directly to the charter school for each student enrolled in the charter school who resides in the district.” N.J.S.A. 18A:36A-12b (emphasis added). This explicit limitation set forth in the Act does not prohibit the enrollment of “non-resident” students to the charters such as Hatikvah, it simply shifts the burden of paying the tuition for those students to their parents rather than their neighbors and fellow taxpayers. In this way, the Act carries out its intended purpose of treating charters like other public schools by allowing them to enroll non-resident students with or without the payment of tuition by the parents of those students.¹ No public school district can admit non-resident students at the expense of other public school districts, and the Act does not grant this right to charters. That the Act treats districts of residence and non-resident districts differently is beyond dispute² and can only be reasoned by the obvious fact that only districts of residence are responsible for the payment of tuition to charter schools and only for the students who reside in those districts.

Absent the unfettered access to public funds appropriated from public school districts across the State (in this case, 28 districts located in seven counties), Hatikvah would be unable to financially support its existing model, let alone its requested expansion. According to Hatikvah’s resolution, only one (1) out of 51 waitlisted Kindergarten students and only three (3) out of 62 waitlisted 1st grade students are from East Brunswick. These numbers stand in stark contrast to Hatikvah’s baseless claim that “there is excess demand in the community by parents/guardians to enroll their children” in Hatikvah given that approximately half of Hatikvah’s total enrollment and 82% of the students on its school-

¹ Compare, e.g., N.J.S.A. 18A:38-3a (authorizing boards of education to enroll non-resident students “with or without payment of tuition, as the board may prescribe); N.J.S.A. 18A:36A-8a (prohibiting charters only from charging “tuition to students who reside in the district”), and N.J.S.A. 18A:36A-8d (authorizing the enrollment of non-resident students in accordance with the school’s charter with no prohibition on the ability to charge tuition to those students).

² See, e.g., N.J.S.A. 18A:36A-4c (requiring potential charter schools to provide copies of their applications to the Commissioner and the local board of education of district where charter is intended to be located); N.J.S.A. 18A:36A-13 (only districts of residence required to provide transportation); N.J.S.A. 18A:36A-15b (limiting the highest salary step for charter school teachers to that of the highest step in effect in the district where the charter is located); and N.J.S.A. 18A:36A-16b (requiring charter to provide annual report to Commissioner, county superintendent and local board of education of district where charter is located). Note that even the underlying amendment request submitted by Hatikvah was not required to be submitted to Edison, Highland Park or any of the other twenty-six plus non-resident districts for comment pursuant to N.J.A.C. 6A:11-2.6.

wide waitlist are from districts outside of East Brunswick. It is also projected that, based on Hatikvah's waitlist, only 45% of its student body will be from its district of residence in Fiscal year 2017. Perhaps Hatikvah's definition of "community" is different than that required by the Act (i.e., the district or region of residence), and instead encompasses a larger community located throughout the State who would be interested in a Hebrew education at public expense. Regardless as to their opinion of community, Hatikvah cannot continue to justify its current enrollment, let alone further expansion, when half of its student body are currently supported by funds incorrectly leeched from public school districts other than the district of residence. When the Act is correctly applied and students from outside East Brunswick are required to pay their own way, Hatikvah will have to scale back its current programs, not expand them.

Hatikvah's smoke-and-mirrors enrollment practices have been going on since they first applied for their charter in 2009. In their original application, Hatikvah claimed that they would divide prospective students into two pools, one for East Brunswick students and another for non-district students, "although non-district enrollment is not projected." Certainly Hatikvah's "projections" are unreliable and deceptive in light of the amount of "non-district" students enrolled and the even greater number of such students that Hatikvah seeks an expansion to accommodate. Likewise, Hatikvah's 2014 request to expand its program into grades 6-8 was presumably granted at least partially on Hatikvah's assurance that 88.4% of their current families "would definitely be interested in enrolling their children in the school's Middle School program." Once again, however, Hatikvah's rosy depiction of the "community" demand has been proven false as only 35 students were enrolled in the new 6th grade class as of October 15, 2015, representing only a 70% retention rate and a continued inability of Hatikvah to recruit new students from its district of residence (or any other district for that matter). Hatikvah can hardly be described as "organizationally sound" when it requires active recruitment of students from towns up to 25 miles away in order maintain its current programs.

Hatikvah's own view as to the "community" that it serves, and the community demanding enrollment in Hatikvah, is painfully obvious but has no ties to the stated purpose of Hatikvah's charter of being "committed to enrolling a cross-section of the East Brunswick Township community." Hatikvah's enrollment data provides that the two languages most-frequently spoken in the homes of its students are Hebrew and Russian, which is certainly not reflective of the East Brunswick Township community, or even a "cross-section" thereof.

The Nefesh Yehudi Academy ("NYA"), the popular after-school program servicing only Hatikvah students, is likewise illustrative of Hatikvah's view of its "community." The NYA's stated mission "is to provide a Jewish education to complement the curriculum of a Hebrew immersion charter school program,"³ which program, of course, is only offered by

³ Source: <http://www.nefeshyehudiacademy.com/>

Hatikvah. The NYA's application form is less obtuse and flat-out admits that it was designed to follow "the schedule of Hatikvah International Academy Charter School" and operates only "on days where Hatikvah is in session" and "begins 15 minutes after dismissal from Hatikvah."⁴ The NYA application also confirms that "Children will be transported from the Hatikvah facility following dismissal from Hatikvah to the NYA facility." Although NYA is a private program, its ties to Hatikvah only shed further light on the fact that Hatikvah itself is not truly serving a "cross-section of the East Brunswick Township community" as required by law and its charter.

If Hatikvah were truly and honestly interested in serving the needs of a community larger than that its current district of residence, it could simply apply to amend its charter to add other districts to its "region of residence" pursuant to N.J.A.C. 6A:11-2.6(a)1iii. Despite amendment request after amendment request and a dwindling enrollment of students from its current sole district of residence, however, Hatikvah has thus far avoided expanding its official community of service. By failing to formally seek an expansion of its district of residence, Hatikvah avoids having to give notice of its amendment requests, as well as a number of other requirements, to the vast majority of the school districts who are currently paying for students to attend Hatikvah.

A closer examination of Hatikvah's purported "community" and its alleged demand for an expanded school reveals issues not only with Hatikvah's financial viability but its academic performance as well. Hatikvah's own application admits that its students performed lower than its district of residence on the NJASK for English Language Arts, as well as Science on the NJASK 4th Grade examination. Although this fact alone calls into question the need for Hatikvah's continued existence, let alone its expansion, it is important to note that these scores were achieved by a student population far different than that of not only East Brunswick, but all of its top sending districts. Hatikvah's enrollment data confirms that its student body is comprised of a much smaller proportion of minorities, special education students and students eligible for free and reduced lunch than East Brunswick and the other six school districts that send the most students to Hatikvah.

In comparing Hatikvah's enrollment trends to these other districts, it is further evident that Hatikvah's Caucasian student population continues to increase while the same population decreases in all of the public school districts. It is common and accepted knowledge, as well as proven statistical fact, that minority student, free and reduced lunch eligible and special education student subgroups have a negative impact on standardized test results, yet Hatikvah's scores are on par or worse-off than its public school district counterparts despite lower proportions of at-risk populations. Thus, Hatikvah has not

⁴ Source: http://www.nefshyehudiacademy.com/uploads/1/2/2/7/12274973/2015-2016_nya_registration.pdf

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demonstrated sufficient academic achievement to justify any further expansion of its programs.

Seemingly admitting that it has a significant demographics problem, Hatikvah proposes a weighted enrollment lottery that it will implement only if it is granted its request to expand at both the Kindergarten and 1st grade levels and which it will apply only to those grades. Tying its weighted lottery to further expansion and applying it only to two grades, it is clear that Hatikvah has no real interest in servicing at-risk students as Hatikvah believes those students won't help Hatikvah achieve the "higher level of achievement in English and Mathematics" that Hatikvah is looking for. Even were Hatikvah to implement its weighted lottery system, however, it would still not have an impact on Hatikvah's actual demographics given its already stacked deck that is its waiting list. A weighted lottery will not change the student population and "community" that is truly interested in attending a Hebrew language immersion school that focuses on the history and culture of Israel.

The publicly elected representatives of the community that Hatikvah is statutorily charged with serving, the East Brunswick Public School District, continue to oppose Hatikvah's expansion. As demonstrated by Hatikvah's enrollment and waitlist figures, the residents of East Brunswick likewise have no appetite for Hatikvah's proposed expansion. Highland Park and Edison agree that East Brunswick, as the district of residence, is the sole community whose position the Department of Education should consider when evaluating Hatikvah's amendment request, subject, of course, to a proper and legal application of the Act and a determination that charter schools such as Hatikvah are not State-wide institutions entitled to plunder funds from taxpayers and school districts beyond the borders of East Brunswick.

Just as you did last year, we ask that you again reject Hatikvah's application to amend its charter to expand its elementary school offerings. Further, we ask that you confirm that Hatikvah is entitled to tuition only for students from its community, i.e., its district of residence, and that Highland Park and Edison are not responsible for same.

Sincerely,

THE BUSCH LAW GROUP LLC

Douglas Silvestro, Esq.
Counsel

cc: Richard O'Malley, Ed.D., Superintendent, Edison Township Public School District

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Scott Taylor, Ed.D., Superintendent, Highland Park Public School District