

BOARD OF EDUCATION OF THE MORRIS :
SCHOOL DISTRICT, MORRIS COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
UNITY CHARTER SCHOOL, MORRIS :
COUNTY, : DECISION
RESPONDENT. :

SYNOPSIS

Petitioning Board sought a decision remedying the racial variance in the enrollment of the charter school as compared to that of the district in which it is located.

The parties agreed to a settlement establishing a multi-tiered, racially based lottery system for determining the school's enrollment.

The Commissioner rejected the settlement as a remedy not sufficiently supported by facts established on the record. The matter was remanded to the Office of Administrative Law for further proceedings, without precluding the possibility of settlement through a remedy narrowly tailored to established deficiencies.

January 11, 2002

OAL DKT. NO. EDU 7310-01
AGENCY DKT. NO. 157-6/01

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The record of this matter and proposed settlement in the form of a Consent Order approved by the Administrative Law Judge pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed.

Upon such review, Commissioner is compelled to reject the proposed agreement as insufficiently supported by the record.

The parties in this matter have, in effect, proposed a remedy employing race as a paramount factor in determining which students may be admitted, both initially and through waiting lists, to the charter school. They have done so in the absence of proofs that the school does not, in fact, reflect a racial cross-section of the community's school-age population, *N.J.S.A.* 18A:36A-8(e), or that its existence has created a negative impact on the racial composition of the District's public schools. Moreover, even assuming, *arguendo*, that an infirmity of this type had been established on record, the parties have not identified its cause(s), so as to enable the Commissioner to find that the proposed remedy is specifically tailored to such cause(s).¹

¹ For example, disparities caused by insufficient outreach would likely be addressed through remedies quite different from those addressing inability to retain minority students once admitted.

In rejecting the proposed agreement, the Commissioner commends the parties' cooperative efforts toward effectuating increased diversity, and he stresses that he does not preclude stipulation of facts or the possibility of settlement through an appropriately supported and tailored remedy. He also notes, however, that any agreement presented to him for approval must be so supported and tailored, and that it may not, as does the current agreement, provide for indefinite extension by the parties without provision for assessment of the agreement's effectiveness. He further notes that any proposed settlement concerning recruitment, enrollment or waiting lists is tantamount to an application for charter amendment, *N.J.A.C.* 6A:11-2.6. As such, if an agreement in this matter is ultimately approved by the Commissioner, it will serve to amend the Unity Charter School's charter.

Accordingly, this matter is remanded to the Office of Administrative Law for such proceedings as are necessary to establish a factual record, with legal argument and analysis as necessary, that will permit the Commissioner to make an informed determination on the appropriateness of any proposed remedial agreement, or for proceedings on the merits if settlement consistent with this decision cannot be reached.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 11, 2002

Date of Mailing: January 11, 2002

² This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.