

SB #89-98

IN THE MATTER OF THE FINAL GRANT :  
OF A CHARTER FOR THE ENGLEWOOD : STATE BOARD OF EDUCATION  
ON THE PALISADES CHARTER SCHOOL, : DECISION  
BERGEN COUNTY. :

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Decided by the Commissioner of Education, September 16, 1998

Remanded by the State Board of Education, December 2, 1998

Decision on remand by the Commissioner of Education, December 14,  
1998

Decision by the State Board of Education, March 17, 1999

Remanded by the State Board of Education, June 2, 1999

Decision on remand by the State Board of Examiners, dated  
September 24, 1999

Decision on remand by the Commissioner of Education, November 17,  
1999

For the Appellant, Mauro, Savo, Camerino & Grant (Eric Martin  
Bernstein, Esq., of Counsel)

For the Respondent, Carpenter, Bennett & Morrissey (Lois Goodman,  
Esq, of Counsel)

For the Participant Commissioner of Education, Arlene G. Lutz, Deputy  
Attorney General (Paul H. Zoubek, Acting Attorney General of  
New Jersey)

In our last decision in this matter, the State Board of Education concluded  
that the final approval given by the Commissioner of Education to the Englewood

on the Palisades Charter School (“Charter School”) in September 1998 had not been properly granted because the Commissioner had not received the documentation required to ensure that the school would be operating in compliance with statutory certification requirements when he had granted a charter to the school.

When we rendered our decision on June 2, 1999, we further found that the Charter School was not operating in compliance with the applicable statutes and regulations. Stressing that employment of properly certified teaching staff members is indispensable to the ability of a school to operate properly, the State Board concluded that it was imperative for a charter school to have at least one fully certified teaching staff member on site at all times. Since it appeared that the Englewood on the Palisades Charter School had not employed even one staff member who possessed standard New Jersey certification, we directed the school to correct this deficiency immediately by employing an appropriately certified staff.

Given the import of the specific problems that had been revealed in the course of the proceedings, we placed the Charter School on probationary status pursuant to N.J.A.C. 6A:11-2.4(a) for a period of 90 days to allow for the implementation of a remedial plan. We directed the Charter School to submit its remedial plan to the Commissioner within 30 days, providing therein the specific steps that it would undertake to remedy the violations identified in our decision of June 2. In doing so, we retained jurisdiction over the matter.

By letter dated September 23, 1999, the Commissioner extended the school's probationary period until December 1, 1999 in order to insure that the State Board of Education had adequate time to review his report as to the school's probationary status and to act on his recommendation. On November 17, the Commissioner transmitted his recommendation to us along with the documentation upon which that recommendation was based.

That documentation includes: 1) the remedial plan which the Charter School submitted to the Commissioner on June 30, 1999; 2) a submission relating to the plan's implementation dated August 16 and filed by counsel for the Charter School; 3) a request by the Director of the Office of School Choice for further action with respect to two items dated September 1; 4) a response dated September 3 from Anthony Barckett, the Charter School's director; and 5) a copy of a transmittal memorandum from the State Board of Examiners to the members of the State Board of Education dated September 24 indicating that the Board of Examiners had voted not to take action with respect to standard certification issued in June 1999 to Dana Clark, the school's only teacher during the 1998-99 school year.

Based on this documentation, the Commissioner has recommended that the Charter School's probationary status be ended and that it be granted a final charter as of December 2, 1999.

We have reviewed the Commissioner's recommendation and the supporting documentation in light of our June 2 decisions, and we accept that

recommendation. Accordingly, we grant final approval for a charter to the Englewood on the Palisades Charter School.

However, in our June 2 decision, we also found that the provisional teacher training program for Dana Clark, the only teacher employed by the Charter School for the 1998-99 school year, did not comport with the regulatory requirements that were the prerequisite to the ultimate issuance of standard certification by the State Board of Examiners. While retaining jurisdiction over the matter, we remanded the issues relating to Dana Clark's alternate route program to the Board of Examiners for review. In doing so, we directed that the Board of Examiners examine those issues as they related to the sufficiency of the alternate route program under which Ms. Clark was earning standard certification.

On September 24, 1999, the State Board of Examiners transmitted its conclusions to us, together with the documents upon which those conclusions were based. The conclusions were set forth in a memorandum from the Secretary of the Board of Examiners to the members of the State Board of Education. That memorandum stated that the Board of Examiners had voted unanimously at its September 23 meeting to take no action to revoke Ms. Clark's Teacher of Elementary School certificate, which had been issued to her in June 1999. The Board of Examiners provided the following reason in support of its determination:

...The Board [of Examiners] found that the circumstances of the charter school were outside of Ms. Clark's control. She was not aware that her supervisor was not appropriately certified. The Board

further found that when looking at the totality of Ms. Clark's induction year, she has substantially complied with the requirements of the Provisional Teacher Program-Alternate Route.

The memorandum indicated that the Board of Examiners had reviewed "Dana Clark's completion of the Provisional Teacher Program" and that it had "also reviewed records on file in the Office of Licensing and Credentials concerning Ms Clark." The memorandum was accompanied by the following documentation: 1) A memorandum dated August 9, 1999 from the Secretary of the Board of Examiners conveying to its members the State Board of Education's June 2 decision and indicating that the "issue is whether the events that occurred in the charter school as set forth in the State Board of Education's decision impacted Ms. Clark's successful completion of the Provisional Teacher Program;" 2) the State Board of Education's June 2 decision along with the Commissioner's cover letter; 3) a data base printout from the Department of Education; 4) pages 1, 3 and 4 of Dana Clark's Training Support and Evaluation Contract of September 1998; 5) Dana Clark's summative evaluation; and 4) a letter dated June 30, 1999 from the President of the Board of Trustees of the Charter School to the Commissioner dated June 30, 1999 setting forth the school's proposed remedial plan.

We have carefully reviewed the transmittal memorandum and the supporting documents provided to us by the State Board of Examiners. Because neither the transmittal memorandum nor the supporting documentation reflects that the Board of Examiners fulfilled the terms of our June 2 remand, and because only partial documentation has been provided to us, we again remand

this aspect of the matter to the Board of Examiners. In doing so, we stress that the review directed by our June 2 decision was not merely of “Dana Clark’s completion of the Provisional Teacher Program.” Rather, as set forth in our decision, we contemplated that the Board of Examiners would review each aspect of Ms. Clark’s program against the applicable regulatory requirement, identify any deficiencies that had resulted in her program and, on that basis, ascertain whether anything further was required in order for her to satisfy the regulatory requirements.

Specifically, in our decision of June 2, we found on the basis of the record before us that Ms. Clark had been given full responsibility for the school’s only classroom in September 1998, despite the fact that she did not complete Phase I of her provisional training program—which requires that a provisional teacher attend “[a] full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom”—until February 1999. N.J.A.C. 6:11-5.3(f)1. The record further indicated that Ms. Clark did not even receive her provisional certificate from the Board of Examiners until December 1998 and that her service prior to that time was under a certificate of eligibility, which did not entitle her to assume responsibility for a job assignment. N.J.A.C. 6:11-4.4(a).

In addition, we found that Ms. Clark’s program had failed to comply with N.J.A.C. 6:11-5.3(f)2, which requires a “period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least 10 weeks.

During this time, the provisional teacher shall be visited and critiqued no less than one time every two weeks by members of a Professional Support Team....” The record indicated that Ms. Clark’s mentor teacher had visited her classroom just four times from the beginning of the school year through January 1999. The record further revealed that Ms. Clark’s first formal evaluation, as required by N.J.A.C. 6:11-5.3(f)2, was conducted by the school’s headmaster, who did not possess certification that would authorize her to evaluate staff. See N.J.A.C. 6:11-9.3; N.J.A.C. 6:11-5.4(a); N.J.A.C. 6:11-5.3(f)2. Moreover, the headmaster was the only support team member who participated in that evaluation, despite the requirement that such evaluations “shall be shared by at least two, but no more than three members of the Support Team.” N.J.A.C. 6:11-5.4(b).

In light of the seriousness of our concerns, we directed the State Board of Examiners to review Ms. Clark’s provisional teacher training program in the context of the particular circumstances presented. Again, the purpose of such directive was to enable the Board of Examiners to ascertain what was necessary in order for the training ultimately received by this provisional teacher to meet regulatory standards. In this respect, we stress that the alternate route program was intended to be “stringent.” 16 N.J.R. 1647. Whether Ms. Clark was aware of the circumstances outlined in our previous decision, including the adequacy of her supervisor’s certification, may be relevant in determining the appropriateness of permitting her to remediate the situation. However, such circumstances cannot be determinative of the sufficiency of her preparation to teach. As the Commissioner of Education has stressed under similar circumstances, “the

State's interest in licensing only teachers who have fully met...requirements cannot be thwarted by circumstances such as those herein." LaRosa v. John Ellis, et al., 93 N.J.A.R.2d (EDU), 459, 461. This is because "[u]nqualified teachers, just like unqualified surgeons, should not be licensed to practice under any condition." Id., Initial Decision, at 460. Hence, the focus of the Board of Examiners' review must be on the adequacy of Ms. Clark's preparation as judged under the applicable regulations.

Accordingly, we again remand the issues relating to Dana Clark's certification to the State Board of Examiners. In doing so, we remind the Board of Examiners that its conclusions must be based exclusively on the record, N.J.S.A. 52:14B-9(f), and that its determination must articulate adequate findings to apprise those interested, as well as the State Board of Education, of the basis on which its decision was reached. E.g., McCool v. Western Electric/AT&T Techs., 229 N.J. Super. 84 (App. Div. 1988). In short, the grounds on which it is acting, its reasoning, and the manner in which the facts in the record have been "transmuted into ultimate conclusions" should be clearly disclosed and carefully explained in the Board of Examiners' decision. In re 1976 Hosp. Reimbursement Rate for William B. Kessler Memorial Hosp., 78 N.J. 564, 577 (1979) (Handler, J., concurring). We retain jurisdiction.

December 1, 1999

Date of mailing \_\_\_\_\_