

SB #1-02

IN THE MATTER OF THE GRANT OF :
THE RENEWAL APPLICATION OF : STATE BOARD OF EDUCATION
THE RED BANK CHARTER SCHOOL, : DECISION
MONMOUTH COUNTY. :

Decided by the Commissioner of Education, December 14, 2001

Decision on motion by the Commissioner of Education, January 22, 2002

Decision on motions by the State Board of Education, April 3, 2002

For the Appellant, McOmber & McOmber (R. Armen McOmber, Esq., of Counsel)

For the Respondent, McCarter & English (David C. Apy, Esq., of Counsel)

For the Movant New Jersey Education Association, Zazzali, Fagella, Nowak,
Kleinbaum & Friedman (Richard A. Friedman, Esq., of Counsel)

For the Participant Commissioner of Education, Kimberly Lake, Deputy Attorney
General (David Samson, Attorney General of New Jersey)

On January 3, 2002, the Board of Education of the Borough of Red Bank (“Board” or “Red Bank Board”) filed an appeal to the State Board of Education from a letter decision of the Commissioner of Education dated December 14, 2001 granting the renewal application of the Red Bank Charter School for a five-year term and authorizing an expansion of the Charter School so as to permit it to serve 162 students in kindergarten through eighth grade.¹

¹ The school had not previously served grades K-3.

On January 22, 2002, the Commissioner denied the Red Bank Board's motion to stay the expansion of the School. The Board then filed a motion with the State Board to stay the expansion, which we denied on April 3, 2002.

On May 2, 2002, the Board filed a motion with the State Board to stay the expansion of the Charter School pending an appeal to the Appellate Division in the event that we affirmed the decision of the Commissioner. Both the Charter School and the Commissioner filed briefs in opposition to that motion.

In this appeal, the Red Bank Board challenges the appropriateness both of allowing the Charter School to continue to operate and of authorizing it to expand. The Board contends that the Charter School has had a segregative effect on the schools operated by the Board and that its continued operation will undermine the ability of the Board to provide a thorough and efficient education to its students.

In support of its appeal, the Board stresses the Commissioner's obligation to combat white flight and to promote integration, arguing that the Commissioner failed to assess the racial impact on the district when the charter was originally granted in 1997 and that the Charter School's existence has had a severe adverse racial impact on the district's schools which has led to further segregation in a school district that was already largely minority. The Board contends that renewing the charter for five more years and permitting the Charter School to expand into the primary grades will result in the continued decrease in white enrollment in the district's schools and lead to an entirely segregated school system. The Board asserts that the Commissioner improperly failed to investigate its allegations that the Charter School replaces minority students with white students over the course of a given year and that the Charter

School's "sibling policy," which allows for the admission of siblings of Charter School students, exacerbates the racial imbalance at both the district's schools and the Charter School. On this basis, the Board maintains that the State's constitutionally derived policy against de facto segregation, as well as the directives of the New Jersey Supreme Court and the State Board of Education that a charter school must not result in segregation, dictates reversal of the Commissioner's determination.

The Board also challenges the Commissioner's determination to permit expansion of the Charter School, contending that such expansion will have a disastrous economic impact on the district's school's and will jeopardize the Board's ability to provide a thorough and efficient education to its students. Specifically, it contends that the loss of revenue to the Charter School will in all likelihood result in elimination of four teaching positions, elimination or restriction of courtesy busing, and elimination of hall monitors, instructional aides and cafeteria monitors.

In addition, the Red Bank Board challenges the Commissioner's determination on the grounds that he did not afford the Board due process. In this respect, the Board argues that because there were disputed facts relating to the approval of the Charter School's renewal application, the Commissioner was obligated to grant the Board's request for a hearing.

After consideration of the Board's contentions and an independent review of the record upon which the Commissioner based his approval, we affirm the Commissioner's determination.

Initially, we find that the Red Bank Board has not shown that the grant of the Charter School's renewal application will prevent it from providing a thorough and

efficient education to its students. Nor has it demonstrated that the Charter School has had a segregative effect on the district's schools or that expansion of the School will have an impermissible impact on the racial composition of the district's schools. We note in that regard that the Charter School's sibling policy is expressly authorized by N.J.S.A. 18A:36A-8(c), which permits a charter school to give enrollment priority to a sibling of a student enrolled in the school.

We also reject the Board's due process argument. This matter was before the Commissioner for review of a charter renewal application and not as a contested case. See N.J.S.A. 52:14B-9. Neither the Charter School Program Act, N.J.S.A. 18A:36A-1 et seq., nor the implementing regulations provide the Board with the right to a hearing prior to the issuance of a charter or the grant of a renewal application. Rather, the statute authorizes a local board to review the charter school's application and to forward a recommendation thereon to the Commissioner. N.J.S.A. 18A:36A-4(c). Pursuant to N.J.A.C. 6A:11-2.3(b)8, the Board submitted a written response to the charter school's renewal application, as well as a legal memorandum in opposition to the application, which the Commissioner was required to consider as part of his comprehensive review of that application. N.J.A.C. 6A:11-2.3(b).

Accordingly, we affirm the Commissioner's decision to grant the Charter School's renewal application. In so doing, we emphasize the importance of the Commissioner's continuing responsibility to assess on an annual basis the student composition of the Charter School and the segregative effect that the loss of the students may have on the Red Bank School District, as required by N.J.A.C. 6A:11-2.2(c).

Finally, we deny the Red Bank Board's motion to stay the expansion of the Charter School pending an appeal to the Appellate Division, finding that its application fails to meet the standards that would entitle it to relief under Crowe v. De Gioia, 90 N.J. 126 (1982).

June 5, 2002

Date of mailing _____