

SB # 3-03

IN THE MATTER OF THE GRANT OF :
THE CHARTER SCHOOL APPLICATION : STATE BOARD OF EDUCATION
OF THE JERSEY SHORE CHARTER : DECISION ON MOTIONS
SCHOOL, MONMOUTH COUNTY. :

Decided by the Commissioner of Education, January 15, 2003

Decision on motion by the State Board of Education, May 7, 2003

Decision on motion by the State Board of Education, June 4, 2003

Decision on motion by the State Board of Education, July 2, 2003

For the Appellants, Wilentz, Goldman & Spitzer (Viola S. Lordi, Esq., of
Counsel)

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

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

For the Participant Commissioner of Education, Kathleen Asher, Deputy
Attorney General (Peter C. Harvey, Attorney General of New
Jersey)

By letter dated January 15, 2003, the Commissioner of Education granted contingent approval to the application submitted by the Jersey Shore Charter School to operate a charter school pursuant to the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq. On February 14, 2003, the Boards of Education of West Long Branch, Eatontown and Oceanport filed the instant appeal to the State Board of

Education challenging the Commissioner's decision. On May 7, 2003, the State Board of Education granted a motion to participate filed on behalf of the Commissioner of Education, and, on July 2, 2003, it granted intervenor status to the Board of Education of the City of Long Branch.

On June 4, 2003, the State Board granted a motion to supplement the record with materials relating to the Charter School's ability to accommodate students with special needs.

On July 30, 2003, the Board of Education of the City of Long Branch filed a motion seeking to supplement the record with the affidavits of Joseph M. Ferraina, Superintendent of Schools for Long Branch, and Carmina Rodriguez-Villa, the Whole School Reform Facilitator for Long Branch. The Long Branch Board argues that the motion should be granted because the affidavits contain information that is material to the issues on appeal but which is not in the record because Long Branch was not afforded the opportunity to respond to the Jersey Shore Charter School's application submitted in 2002 since it was not part of the Charter School's region of residence. The Long Branch Board argues that the affidavits should be included because they demonstrate that the Charter School will have a negative and unlawful impact on the racial balance of the public schools operated by the District and will hinder the ability of the Board to provide a thorough and efficient education by diverting funding from the District.

On August 4, 2003, the Charter School filed a motion to dismiss the appeal in the matter or to place it in abeyance, contending that the issues being raised are hypothetical, moot, and/or not justiciable at this time because the Charter School will not

begin operating until 2004. The Charter School argues that as a result of the planning year, the record is unsettled and will change and that the enrollment figures will change in terms of which districts its students will be drawn from.

On August 25, 2003, a Deputy Attorney General representing the Commissioner filed an answer to the Long Branch Board's motion to supplement the record. The Deputy Attorney General argues that the motion should be denied because the affidavits and accompanying documents are outside the scope of what was before the Commissioner when he approved the Charter School's application and that no evidence has been provided to indicate that the Commissioner failed to properly consider the entire record when he determined to grant the charter.

On August 28, 2003, a letter brief was filed on behalf of the West Long Branch Board and the Eatontown Board.¹ The appellants oppose the Charter School's motion to dismiss the appeal or place it in abeyance, arguing that the Charter School has demonstrated its inability to meet the needs of special education students and that this alone warrants further review before it is given final approval by the Commissioner.

On August 28, 2003, the Deputy Attorney General representing the Commissioner filed a letter stating that the Commissioner did not oppose the Charter School's motion to dismiss.

On September 4, 2003, the Long Branch Board filed its answer to the Charter School's motion. The Long Branch Board alleges that, while intentionally not including Long Branch in its region of residence so as to prevent the Long Branch Board from responding to the Charter School's 2002 application, the Charter School is actively

¹ By letter dated July 22, 2003, the Oceanport Board withdrew from the matter.

recruiting Long Branch students. The Long Branch Board contends that not only will funding be diverted from the District, but because a majority of such students are white, the racial balance in the District's schools will be negatively affected. The Long Branch Board maintains that the Charter School has demonstrated its intention to continue recruiting heavily from Long Branch and that there is nothing to suggest that the Charter School will alter its recruitment practices or that the enrollment figures will change as a result of the planning year. Under these circumstances, the Long Branch Board urges the State Board to consider the critical issues raised by the appellants and the Long Branch Board before the Charter School opens.

After carefully considering the arguments, the State Board of Education denies the Charter School's motion to dismiss or to place this matter in abeyance. This appeal clearly raises concerns of such character which must be addressed before the proposed school can become operational. In the Matter of the Grant of the Charter School Application of the Red Bank Charter School, decided by the State Board of Education, April 1, 1998, aff'd, Docket #4725-97T1 (App. Div. 1999); In the Matter of the Grant of the Charter School Application of the Patrick Douglas Charter School, decided by the State Board of Education, April 1, 1998, aff'd, Docket #4713-97T1 (App. Div. 1999).

We grant the Long Branch Board's motion to supplement the record with affidavits and documents pertaining to its claims that the Charter School will have an unlawful negative impact on the racial balance of the District's schools and will severely hinder the Long Branch Board's ability to provide a thorough and efficient education by diverting funding from the District.

Given the disposition of these motions, the briefing schedule in the matter is reestablished. Briefs on behalf of the appellants and the intervenor are due 20 days from the date of this decision.

November 5, 2003

Date of mailing _____