

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

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Decided by the Commissioner of Education, February 21, 1997

Decision on motion by the Commissioner of Education, March 10, 1997

For the Appellant, McOmber & McOmber (Richard D. McOmber, Esq., of  
Counsel)

For the Respondent, Michael Moore, pro se

By letter dated February 21, 1997, the Commissioner of Education notified the Red Bank Charter School Association ("Charter School") that he had approved its application for establishment of a charter school to begin operation in the 1997-98 school year. Such approval was stated as being "contingent upon receipt of outstanding documentation not included in your application and detailed in Section 19 of the New Jersey Charter Schools Application," which includes a fire certificate, a health inspection certificate, proof of compliance with health and safety regulations, by-laws, contracts, incorporation documents, and any leases.<sup>1</sup> In a statement of

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<sup>1</sup> We note, however, that in his decision of March 10, 1997 denying the Red Bank Board's motion for a stay of the decision granting the charter, the Commissioner characterized his grant of the charter as "final as of February 21, 1997," Commissioner's decision, slip op. at 4 (emphasis added), adding that documentation was still required to be submitted with regard to the facility in which the school would be

reasons dated February 28, 1997, the Commissioner stressed that the following strengths had contributed to his approval of the application: a mission fostering the values of respect, personal responsibility and good citizenship, a plan for parental and community involvement and educational goals encompassing the New Jersey Core Curriculum Content Standards and integrating technology in all areas of study.

On February 26, 1997, the Red Bank Board of Education challenged the Commissioner's determination by filing a notice of appeal to the State Board of Education as provided in N.J.S.A. 18A:36A-4(d). On March 5, 1997, the Red Bank Board filed its arguments in support of the appeal. On March 10, a Deputy Attorney General representing the Commissioner filed a motion to participate in the matter and a brief in response to the appeal.

On March 10, 1997, the Commissioner denied a motion filed by the Red Bank Board for a stay of his grant of the charter. Accordingly, the Red Bank Board sought a stay from the State Board by filing a motion for emergent relief on March 12. On March 13, the Deputy Attorney General representing the Commissioner filed a motion to participate in the emergent relief and a brief in response to the motion. On the same date, both the Red Bank Board and the Commissioner submitted supplemental certifications relating to the motion.

In view of the importance of the issues raised and the extremely stringent time limit under which the Legislature has required us to decide appeals of this type, N.J.S.A. 18A:36A-4(d), we have determined to decide the matter today. Hence, we need not decide the Red Bank Board's motion for emergent relief. However, in

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located. The record does not include any indication of the date by which the documentation was to be

deciding the merits of the Red Bank Board's appeal, we have considered all of the documents which have been filed in the matter.<sup>2</sup> In addition, we have reviewed the record provided to us on behalf of the Commissioner with extreme care.

After considering this matter under the terms of the pertinent statutes and for the reasons that follow, we reverse the Commissioner's determination to approve the grant of a charter to the Red Bank Charter School Association for the 1997-98 school year.

In enacting the Charter School Program Act of 1995 ("Act"), N.J.S.A. 18A:36A-1 et seq., the Legislature found that charter schools could assist educational improvement by providing a variety of educational approaches which might not be available in the traditional public school classroom. In order to encourage the establishment of such schools, the Act directs the Commissioner to establish a program for the approval and granting of charters pursuant to the Act. N.J.S.A. 18A:36A-3. It also delineates the procedure for establishing a charter school and establishes criteria for eligibility. N.J.S.A. 18A:36A-4.

In addition, the Act mandates the specific information which must be included in an application for a charter school. That information, which is expressly enumerated in N.J.S.A. 18A:36A-5, includes: 1) identification of the charter applicant, 2) the name of the proposed charter school, 3) the proposed governance structure of the school, including a list of the proposed members of the board of trustees or a description of their qualifications and method of appointment or election, 4) the school's educational goals, the curriculum to be offered and the methods of assessing whether students are

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provided or make any provision for review and evaluation of these submissions.

meeting educational goals, 5) the admission policy and criteria for evaluating the admission of students, 6) the age or grade range of students to be enrolled, 7) the school calendar and school day schedule, 8) a description of the charter school staff responsibilities and proposed qualifications, 9) a description of procedures to ensure parental involvement, 10) a description of and address for the physical facility in which the school will be located, 11) information on how community groups will be involved in the planning process, 12) the financial plan for the school and provisions for auditing, 13) a description of and justification for any waivers of regulations which the school will request, and 14) such other information as the Commissioner may require.

The application, as defined in N.J.S.A. 18A:36A-5, must be submitted to the Commissioner and the local board for review in the school year preceding that in which the charter school will be established. N.J.S.A. 18A:36A-4(c). The district board has 60 days from receipt of the application to forward a recommendation thereon to the Commissioner. Id. The Commissioner has the final authority to grant or reject a charter application, id., but a district board or a charter school applicant may appeal his decision to the State Board. N.J.S.A. 18A:36A-4(d). The legislation requires the State Board to render a decision within 30 days of receipt of the appeal. Finally, a charter school may not have an enrollment in excess of 500 students or greater than 25% of the student body “of the school district in which the charter school is established,” whichever is less. N.J.S.A. 18A:36A-4(e).

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<sup>2</sup> Although we have reviewed the papers filed by the New Jersey Education Association in support of its request to appear as amicus curiae in this matter, we do not have the discretion to delay our decision so as to allow it the time necessary to file a brief on the substantive issues it is now raising.

Initially, we reject the contention that the Commissioner did not have the authority to approve a charter school application in the absence of the adoption of implementing regulations by the State Board. However, in the absence of regulations, we are forced to consider the appropriateness of the Commissioner's approval in this case under the terms of the pertinent statute.

The record indicates that the Charter School submitted a "Preliminary Application" on September 1, 1996. The Charter School was provided with a "Preliminary Application Feedback Form" from the Department which indicated that the application was inadequate in the following areas: goals and objectives, governance structure, educational program, student assessment, student discipline criteria, parental involvement, facility, financial plan and timetable. The comments indicated that there was no description of the curriculum development process.

The Charter School thereafter submitted its "Final Application" on October 15, 1996, seeking approval of a charter based on an anticipated enrollment of 220 students in grades five through eight. The record shows that this application was assessed by two reviewers. The first reviewer indicated that the "Final Application" was inadequate as follows: academic and non-academic goals and objectives; revision was needed to address the curriculum in the specific grade levels; the admission policy and criteria were questionable, especially with regard to ensuring diversity and preventing discriminatory impact; and the financial plan needed revisions and was missing items. The reviewer also indicated the applicant had not identified a facility.

The second reviewer found that the financial plan was inadequate, that the projected first-year enrollment of 220 students exceeded the statutory limit in that it

represented more than 25% of the student population in the public school district, that goals and objectives were inadequate, that grade levels were not designated and class projections not given, that specifics were needed with respect to the educational program, that more detail was needed with respect to student assessment, and that the admission policy and criteria were inadequate. Like the first reviewer, the second also indicated that no facility had been identified.

A separate budget review rated the overall financial plan as “inadequate.” The reviewer specified that “other sources of revenue,” which represented almost half of the total operating budget, needed “much more detail,” that there was no grade level breakdown of projected enrollment, that there was insufficient detail concerning a proposed 30-year mortgage, that no mortgage interest had been budgeted, and that there was no cash flow analysis. The budget reviewer also pointed out that the projected enrollment of 220 students appeared to exceed the statutory maximum. The reviewer found the overall quality of the budget in all major areas—revenues, expenditures and cash flow—to be inadequate.

A tally sheet dated November 7, 1996 reflects the inadequacies indicated by the reviewers with respect to the Charter School’s goals and objectives, educational program, admissions policy and criteria, and financial plan. Nonetheless, the tally sheet includes a recommendation that the application be approved conditional on receipt of documentation and revisions.

The Charter School was then provided with “Final Review Feedback” forms by the Department and permitted to revise its “Final Application” by the submission of

addenda.<sup>3</sup> The “Final Review Feedback” provided on November 20, 1996 indicated, inter alia, that the Charter School was proposing enrollment in excess of 25% of the student population in the public school district, that it failed to specify grade levels to be served over the period of the charter, needed to expand the goals and objectives to focus on student achievement, needed to explain the governance structure, and needed to explain its admission criteria.

A separate “Final Review Feedback” form dealing with the Charter School’s budget indicated that the Charter School had overestimated local/state share revenues by approximately \$242,000 and categorical aid revenues by approximately \$317,000; that there was no substantiation for the receipt of “other sources of revenue,” which represented 48% of the budget; that the mortgage terms were not sufficiently detailed; that nearly all line items could not be reviewed for reasonableness since no backup was supplied; and that no cash flow analysis was provided.

The Department received two addenda from the Charter School in the first half of December. However, a review of the revised materials by the Department on December 11 indicates that the financial plan was still inadequate, noting that details to calculate the number of teachers and their average salary had not been supplied, that there was no substantiation for anticipated grants in the amount of \$250,000, that backup was still not supplied for nearly all line items, and that no cash flow analysis had been provided. The reviewer also indicated concern regarding the fact that there was no explanation for the Charter School’s revised plans for financing a facility, noting

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<sup>3</sup> We note that none of the charter school applications on appeal to the State Board which were rejected by the Commissioner were provided with a “Final Review Feedback” by the Department or given the opportunity to amend their applications.

that the amounts of \$375,000 and \$400,000, which had been budgeted in the Charter School's "Final Application" for building purchase and mortgage payments, were now shown as \$0. The reviewer "assumed" that, in its place, the Charter School had budgeted \$93,750 for the rental of land and building.

On December 26, the Department received a third addendum from the Charter School, which reduced its projected student enrollment for 1997-98 to 214 students.

On December 10, 1996, the Red Bank Board notified the Department that it could not support the grant of a charter and requested that the proposal be held for one year. After the submission of the third addendum on December 26, the Red Bank Board was given 30 days to review the addenda.

On February 4, 1997, the Charter School informed the Department that it was willing to modify its application by further limiting first-year enrollment to 80 students. As previously indicated, the application was approved on February 21, 1997. However, "given the important and legitimate concerns expressed by the Red Bank Board regarding the impact upon the existing educational system in the school district," the Commissioner granted the Charter School approval to admit a maximum of 60 students in 1997-98, with reassessment of that issue to be conducted in January 1998.

As detailed above, the Charter School's "Final Application" submitted on October 15, 1996 did not satisfy the requirements of statute. As late as early February 1997, the Charter School was still proposing to enroll more than 200 students in grades five through eight. This, as observed by the Department's reviewers, exceeded the statutory limit of 25% of the student population of the public school district. Indeed, the Charter School's application indicated that "[t]he enrollment number of 220 has the



potential to reach approximately 90% of the existing Middle School population.” In that context, we note that the Charter School’s offer in February 1997 to limit its first-year enrollment to 80 students would also appear to exceed the 25% limitation.

We stress that the enrollment limitation established by N.J.S.A. 18A:36A-4(e) is one of the statutorily-established criteria for eligibility. Yet, despite its ongoing failure to bring the application into conformity with the statutory criteria, as well as the persistence of other inadequacies in its application, the Charter School was permitted to submit addenda through December 26, 1996, and to make extensive modifications to its proposal until early February 1997. Even then, the Commissioner was compelled to lower the Charter School’s proposed enrollment from eighty to sixty before approving the grant of a charter.

We cannot lightly dismiss the failure of the Charter School’s application to meet the threshold statutory criteria. As demonstrated by the need for revisions and the submission of extensive substantive addenda through December, it is evident that the October 15 submission did not satisfy the statutory criteria, thereby precluding meaningful assessment of the school’s “Final Application” at that time.

Moreover, even if we were to consider the revisions included in the Charter School’s addenda, the application still fails to meet minimal statutory standards. The most glaring example of this is the fact that the Charter School has still not provided “a description of, and address for, the physical facility in which the charter school will be located,” as required by N.J.S.A. 18A:36A-5(j). Without such information, it is impossible to assess with any confidence the sufficiency of the Charter School’s financial plan, which in this case had anticipated obtaining a building and mortgage in

the amounts of \$375,000 and \$400,000 respectively. Those amounts were thereafter reduced to \$0 in addenda submitted by the Charter School subsequent to its “Final Application” without any explanation or specifications as to a revised plan. As previously noted, a Department reviewer raised “concerns” regarding this modification and “assumed” that the Charter School had budgeted \$93,750 for rental of land and building in its place. This problem is underscored by the fact that the Charter School’s own “Timetable” included with its addenda indicates its intention to secure a facility “through lease or sale.” (Emphasis added.) Nor can it be determined without a description and address for the facility whether the school would be situated in a “suitable location,” as required by N.J.S.A. 18A:36A-10.

In this respect, we stress also that, contrary to the Commissioner’s assertion in his decision denying the Red Bank Board’s motion for a stay, it is possible for a charter school applicant to identify a facility prior to the granting of a charter and to develop a proposal on that basis, as several of this year’s applicants have clearly demonstrated. See, e.g., In the Matter of the Denial of the Charter School Application of the East Orange Headstart Charter School, decided by the State Board, March 26, 1997; In the Matter of the Denial of the Charter School Application of the Gloucester County Charter High School, decided by the State Board, March 26, 1997. In both of those applications, which were rejected by the Commissioner, the applicant provided a description and address for a facility, as required by the statute.

We find that the need for caution is heightened in a case where, as here, the grant of a charter will have an impact on a small public school district which, it is undisputed, is already struggling to achieve academic improvement within tight fiscal

constraints. While the legislation is aimed at encouraging charter schools with the hope of realizing reform in our system of public education as a whole and improvement in student achievement, we cannot ignore our responsibility to insure the adequacy of the education provided to both the students who will attend the charter schools and those who will attend the public schools for which the district board is primarily responsible. Given our obligations, we cannot overlook the glaring inadequacies of the Charter School's "Final Application" and the fact that significant inadequacies persisted despite repeated submissions after October 15, especially with respect to the Charter School's financial plan. N.J.S.A. 18A:36A-5(l). In fact, the revisions submitted by the Charter School in December 1996 were extensive, and were required in such critical areas as curriculum, N.J.S.A. 18A:36A-5(d), and admissions policy, N.J.S.A. 18A:36A-5(e).

Further, there is no indication in the record that any final or comprehensive analysis of the materials, including the budgetary revisions, was conducted by the Department after the last addendum had been submitted. This cannot be ignored in view of the significant changes made by the Charter School and the fact that serious budget concerns were still being raised by the Department's reviewer even after the Charter School had revised its "Final Application." Moreover, we find no explanation in any of the Charter School's addenda to alleviate the reviewer's concerns regarding its plans for financing a facility.

These failures are not minor. Without the information required by the statute, it is impossible for us to insure that the Charter School's financial plan is adequate or to assess the impact on the district board involved in this appeal. Under these

circumstances, and given our responsibilities for assuring that the children attending the charter school, as well as those in the affected public school district, are provided with a constitutionally adequate education, e.g., Robinson v. Cahill, 62 N.J. 473 (1973), we cannot affirm the Commissioner's grant of the charter at this time. We stress that our determination herein is limited to the 1997-98 school year and is without prejudice to the Charter School's ability to apply for a charter for any subsequent school year.

Robert A. Woodruff, Maud Dahme, Jean Alexander, Margaret M. Bennett, Ronald K. Butcher, and Thomas P. McGough join in the opinion of the State Board.

Wendel E. Daniels recused himself from the deliberations in this matter.

March 26, 1997

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

Anne S. Dillman, S. David Brandt, Orlando Edriera, Daniel P. Moroney, and Corinne M. Mullen dissenting:

On Wednesday, March 26, 1997, the State Board of Education voted 7-5 to reject its Legal Committee's recommendation to affirm the Commissioner of Education's approval of the Greater Brunswick Regional Charter School. The board also rejected by a vote of 6-5-1 its Legal Committee's recommendation to affirm the Commissioner's approval of the Red Bank Charter School.

We the undersigned board members wish to file this dissenting opinion because the State Board had less than one day to consider the written recommendations of the Legal Committee, and the reasons offered by board members for rejecting both the

recommendations of its legal Committee and the Commissioner's decisions are factually erroneous and legally infirm.

The Charter School statute (N.J.S.A. 18A:36A) adopted on December 11, 1995, and signed into law by Governor Whitman on January 11, 1996, clearly intended that charter schools would be implemented in or before the 1997-98 school year. In this regard, the statute authorizes the Commissioner of Education to establish charter schools "...during the 48 months following the effective date of this act ( 8A:36A-3b)," and it states that "that this act shall take effect immediately (18A:36A-19)."

It is also clear that the authors of the statute intended that the Commissioner of Education's judgment would be the ultimate criterion for approving or disapproving the applications of individual charter schools. The statute states at 18A:36A-3 that "A charter school shall be a public school operated under a charter granted by the Commissioner ..." and at 8A:36A-4(c), "The Commissioner shall have final authority to grant or reject a charter application."

Further, it is clear that the process used by the Commissioner in exercising this statutorily assigned responsibility was reasonable.

The following are our positions on the each of the major issues raised by board members to explain why they voted to reject the recommendation of the Legal Committee that the Commissioner's approval of the two schools be affirmed.

### **Application Booklet**

It was indicated that the provisions in the Commissioner's charter schools application booklet were not identical to those in the statute. However, the provisions

of any law as complex as the charter school statute require interpretation, and the Commissioner's method of developing such interpretations in carrying out his statutorily assigned responsibility to implement the charter school law was extraordinarily thorough.

The Commissioner developed and published a charter school application booklet (copy attached) in order to interpret specific provisions of the statute and to guide prospective charter school sponsors in the preparation of their applications. To begin this task, the Commissioner appointed a committee of Department of Education staff members, each of whom possesses expertise in a relevant area. The committee's membership included a former staff member of the State Assembly who assisted in writing that body's version of the law. The committee studied the statute and prepared an initial draft of the application booklet.

The Commissioner then met with the legislative authors of the statute, Senator John Ewing, and Assemblymen Joseph Doria and John Rocco, to review the initial draft that the committee had prepared. The purpose of this meeting was to assure that each interpretation contained in the application booklet was fully consistent with the provisions of the statute and with the underlying legislative intent. Several changes were made in the application booklet as a result of this meeting.

The Commissioner then shared the booklet with the major state education associations that had followed the progress of the legislation before its enactment, and he met with representatives of those associations to obtain their comments and suggestions. A nationally recognized expert on charter schools, who had also consulted during the preparation of the statute, was asked to review the booklet to

identify any important issues that might have been overlooked. At the Commissioner's direction, Department of Education staff also shared the booklet with prospective charter school applicants to determine whether it communicated instructions clearly and would, therefore, elicit the proper information.

Through this process the application booklet was continually refined and then shared a final time with the legislative authors to assure the consistency of its interpretations with the literal provisions of the statute and the underlying legislative intent. The authors affirmed that the booklet was consistent with the statute in all aspects. A copy of the final booklet was forwarded to the sponsors upon its publication. (See attached letter dated June 26, 1996.) Further, State Board of Education members received a copy of the final application, as well, on the same date. Board members were informed that the booklet "...was developed with input from the legislative sponsors, major education associations, prospective charter school applicants, field representatives, and key department staff (see attached memo dated June 26, 1996).

### **Evaluation Process**

It was indicated that the evaluation process was invalid because it applied different standards and procedures to different applications. It was stated that some charter school applicants had numerous opportunities to amend their applications while others did not. This conclusion is incorrect for the following reasons.

First, the statute specifically empowers the Commissioner to evaluate the charter school applications and it does not constrain the Commissioner with respect to the process that he may use in evaluating applications. Under those circumstances, the

State Board would exceed its role if it were to substitute its evaluation preferences for those of the Commissioner.

Second, the process that the Commissioner chose to use is reasonable. In order to obtain approval in time to open in September 1997, prospective charter school applicants were required to submit their applications by October 15, 1997. However, the statute is clear in its intent that the state play more than a passive role of simply receiving and evaluating applications. The act states that "...the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools (18A:36A-2)."

To affect this public policy and to address the fact that the charter school initiative is new and innovative, a voluntary deadline of September 1, 1996 was set for any applicant who wanted to submit a draft application early in order to obtain the review and advice of those Department of Education staff who are responsible for providing technical assistance in the creation of charter schools.

The opportunity for voluntary early submission was equally available to all prospective applicants. Twenty-eight preliminary applications were submitted, including those of the Greater Brunswick and Red Bank Charter Schools. In each case, the department's technical assistance staff provided appropriate advice without the Commissioner's involvement. All applicants then had the opportunity to revise their plans before meeting the final submission date.

As stated above, the Greater Brunswick and Red Bank Charter School sponsors took advantage of the opportunity for assistance based on voluntary early submission,



which was available to all prospective applicants, and like all others who did so, they were able to revise their plans accordingly before the final deadline for formal submission. Therefore, it is inaccurate to suggest that these applicants were somehow accorded an unfair advantage.

Following the first round of review of the thirty-seven applications submitted by October 15, 1996, eighteen were identified as demonstrating sufficient potential to be strong charter schools to warrant a second round of technical assistance. During this second round of technical assistance, all applicants submitted addenda upon the request of department reviewers. Eight of the eighteen applicants under consideration submitted three addenda, including the Red Bank and Greater Brunswick Regional Charter Schools.

The above notwithstanding, the matter before the board did not require a determination as to whether some charter school applicants were treated "more fairly" than other applicants. It is only to determine whether there was any violation of statute in the evaluation of the Greater Brunswick and Red Bank applications. Clearly there was not.

### **Incomplete Documentation**

It was indicated that the two applicants had been granted charters without submitting all of the documentation required by the statute. In particular, they did not identify the location of their facilities.

During the development of the application booklet, it was determined that certain documentation could not be obtained by the applicants until they received their charters

from the Commissioner. In particular, while the statute requires applicants to provide the addresses of their facilities, charter schools would be unable to contract for facilities until they were approved to exist.

This would place the applicants in a "catch-22" situation of simultaneously being unable to obtain documents until they were approved to exist and being unable to obtain approval without submitting the documents. Therefore, the process was designed to base evaluation and approval on the quality of each applicant's substantive educational and financial plans, and to grant such approval contingent on the submission of any outstanding documentation prior to implementation.

This method of addressing the submission of certain documentation was established at the outset after discussion with the legislative sponsors, and it was communicated clearly and consistently throughout the process. The application booklet states on page 5 that, "Commissioner's approval can be conditional in instances such as if the applicant has yet to acquire facilities or to provide documentation of teachers yet to be hired." On page 20 of the charter schools application in the section which specifies required information regarding facilities it states, "If you do not have a facility, describe your present options for designating a school facility." Further, the letter of approval given to each applicant states "When the approval of charter schools for 1997-98 was announced on January 14, 1997, that approval was contingent upon receipt of outstanding documentation not included in your application. A list of this required documentation is enclosed." (See attached copy of letter dated January 31, 1997.) In the section of the application which deals with Questions and Answers, the following question is raised (page 5 of Appendix C): "Can

a charter school be approved if a facility has not yet been acquired?" The answer provided: "Yes. The charter would be granted conditionally on the basis that the school would be housed in an approved facility." Finally, the charter certificate states on its face that "Approval is contingent upon receipt of the necessary documentation listed in Section 19 of the New Jersey Charter Schools Application."

### **"Region of Residence"**

It was stated that because the Greater Brunswick Charter School is designed to serve a region that encompasses four school districts, it is ineligible for approval since the statute does not specifically provide for the creation of multi-district charter schools. To address this lack of clarity, the Commissioner, exercising his statutorily assigned responsibility to implement the law, defined the "region of residence" of students to be served by a charter school to include contiguous district boards of education as well as single district boards. This definition was developed in consultation with counsel, and it was presented to the legislative authors of the statute to determine its consistency with legislative intent. The definition was applied consistently in the review of the current applications, and it was incorporated in regulations that the Commissioner has proposed that the State Board adopt to guide consideration of applications in future years.

### **Enrollment**

It was argued that the Red Bank Charter School application should not have been approved because the Red Bank School District's enrollment is too small to

absorb the loss of students who would enroll in the charter school. This argument is statutorily erroneous since, as approved, the Red Bank Charter School's maximum enrollment is well within the limits imposed by the statute.

## **Regulations**

It was argued that in the absence of regulations approved by the State Board, the Commissioner was bound to adhere to the literal language of the statute. However, the statute does not preclude the Commissioner from interpreting or implementing its provisions until after the enactment of rules. In addition, the Commissioner exercised his authority to do so only after consulting with the authors of the statute to verify legislative intent.

For these reasons, we the undersigned members of the State Board of Education hereby advance the dissenting opinion that the Commissioner of Education's approval of the Greater Brunswick and Red Bank Charter Schools was consistent with the literal provisions of the statute and based on reasonable interpretations of statutory language that were affirmed by the authors of the legislation.

Perhaps more importantly, charter schools are an important innovation that has the potential to provide the children they serve with an improved education, as well as the potential to stimulate improvements in the broader system of public education. As the statute states, "...the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools (18A:36A-2)." At the very heart of the charter school initiative is the concept of flexibility in implementation.

Further, by authorizing the creation of charter schools over an initial four-year period, the statute recognizes that the initiative is an exploration, one which is intended through flexible implementation to generate refinements over time.

Given the educational significance of the initiative and the fact that it is intended to be a flexible exploration, we believe that it is inappropriate to block implementation of the new charter school initiative without clear and compelling evidence of a major impropriety or a blatant and direct violation of statute.

April 2, 1997

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