

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. :

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

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

For the Respondent, Harry A. Carroll, Esq.

For the Participant Commissioner of Education, Arlene G. Lutz, Deputy
Attorney General (Peter Verniero, Attorney General of New Jersey)

This appeal was initiated by the Board of Education of the City of Englewood (hereinafter "Board") following the grant of final approval by the Commissioner of Education to the Englewood on the Palisades Charter School (hereinafter "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. (hereinafter "Act"). The approval authorized the Charter School to operate from July 1, 1998 through June 30, 2002,¹ at which time the

¹ We note that the Charter School's application indicates that the school would include kindergarten through eighth grade by the 2005-2006 school year, and that it anticipated employing 18 to 27 classroom teachers at that point.

Charter School anticipated that it would encompass grades K-5 and employ fourteen teachers. At the time of its approval, the school anticipated opening for the 1998-99 school year with ninety students in grades K-2 and 6 full-time teachers.

On December 2, 1998, we issued our first decision relating to the final approval which had been granted to the Charter School by the Commissioner on September 18, 1998. After reviewing the record, we found that we could not properly decide the appeal without first remanding it to the Commissioner. As set forth in our decision, one of our major concerns was whether the teaching staff members employed by the Charter School were appropriately certified for such employment as required by statute. We were cognizant of the fact that the Commissioner's contingent approval on January 21, 1998 had approved the Charter School's application contingent, inter alia, on receipt of copies of certifications for the staff.² However, the documentation submitted by the Charter School showed only that it had employed a single individual, Dana D. Clark, who was to serve as a teacher and that she had been issued a "certificate of eligibility" by the State Board of Examiners in October 1996.

When we reviewed the matter, we were aware that under the terms of our regulations, a certificate of eligibility merely authorizes an individual to seek employment in positions requiring a provisional certificate and that a certificate of eligibility cannot be considered as appropriate certification within the meaning of the education statutes. We were also sensitive to the fact that there was very little information in the record

² We note that the Board had filed an earlier appeal from a decision by the Commissioner on January 21, 1998 to grant contingent approval to the Charter School's application. In a decision issued on April 1, 1998, we permitted the Charter School to continue the process which would allow it to become operative if the Commissioner granted it final approval. In the Matter of the Grant of the Charter School Application

provided to us concerning the program that was actually being implemented by the Charter School during the first year of the term of its charter. We therefore found that it was necessary to remand the matter to the Commissioner for a determination by December 14, 1998 of whether all classroom teachers employed by the Charter School possessed certification that was appropriate to authorize them to fulfill the responsibilities attending their positions and whether the school had employed a headmaster as it had indicated in its application.³

On December 14, 1998, the Commissioner issued his decision on remand regarding the certification issue. That decision confirmed that Ms. Clark was in fact the only teacher who had been employed by the Charter School. Without reference to the program structure of the Charter School, the Commissioner reported that Ms. Clark “possesses certification that authorizes her to serve as an elementary school teacher.” Commissioner’s Decision on Remand, slip op. at 3. The Commissioner also reported that:

On December 7, 1998, the department received the Statement of Assurance [of Position to Teach] and related fee from Englewood on the Palisades Charter School. On December 8, 1998, the department received and reviewed for approval a copy of the “Provisional Teacher Program Training Support and Evaluation Contract for Holders of Certificates of Eligibility Contract.” Subsequently, the department issued the teacher a Provisional Teaching Certificate dated December 1998. This certificate authorizes the holder to teach at the charter school. The employed

of the Englewood on the Palisades Charter School, decided by the State Board of Education, April 1, 1998, appeal pending (App. Div.).

³ We also directed the Commissioner to provide us by January 15, 1999 with a written assessment of both the racial balance of the student population attending the Charter School and the potential impact of that school on the Englewood school district during the term for which the charter was approved, as well as an assessment of the school’s potential long-term impact on the district’s racial balance. Our decision today, however, addresses only the certification issue.

teacher has been working with a mentor teacher and participating in the Phase I training class at the Montclair Regional Training Center....

Id. at 2.

The Training Support and Evaluation Contract provided to the Commissioner by the Charter School on December 8, 1998 indicated that a retired teacher was serving as Ms. Clark's mentor teacher. It further indicated that the support team assembled for Ms. Clark, as required by N.J.A.C. 6:11-5.3, consisted of the mentor teacher, the school's headmaster, who did not possess supervisory certification, and a retired principal, who held certification as a principal.

The Commissioner also verified that the school's headmaster, Joyce Garrison Wiggins, had been employed by the Charter School when he had granted final approval of the charter. In response to our directive that he provide us with Ms. Wiggins' qualifications, the Commissioner indicated that, under the regulations applicable to charter schools, certification as a principal was not required in order to serve as a headmaster.

After a careful review of the record, including the additional materials provided to us on behalf of the Commissioner, we are still unable to resolve the question of whether the Charter School is fulfilling its statutory obligations with respect to certification requirements. In fact, the information which the Commissioner has supplied in response to our remand has increased our level of concern by confirming that, despite the representations in its application, the Charter School began operating with only one class of kindergarten students, one individual to serve as a teacher, and a headmaster.

The information which the Commissioner has supplied confirms that the single individual employed by the school as a teacher is an alternate route candidate who did not receive her provisional certification until three months after the school year had begun.⁴ It also appears that there are no staff members employed by the school who hold standard certification.

These circumstances are unusual, even for a charter school. While the Commissioner properly reported that provisional certification authorizes an alternate route candidate to teach, and although there is no general requirement that the director of a charter school possess certification either as a teacher or an administrator, this combination of circumstances requires careful evaluation when the only individual who is providing instructional services to the students is the alternate route candidate. In this context, the apparent change in the scope of the school's operations from that anticipated in the application that was the basis for the grant of the charter is critical, especially with respect to whether the Charter School can provide the level of support required in an approved plan for an alternate route candidate given its current configuration.⁵ In this respect, we stress that compliance with the regulatory

⁴ As we stated in our previous decision in this matter, a certificate of eligibility is "a permanent certificate that may be issued to persons who meet academic degree and examination requirements for provisional employment." N.J.A.C. 6:11-4.4(a). The provisional certificate is a substandard teaching certificate which "is a temporary one-year certificate issued to candidates who have met requirements for initial employment as part of a State-approved district training program or residency leading to standard certification." N.J.A.C. 6:11-4.2. Accordingly, the regulations specify that "[h]olders of certificates of eligibility shall not assume responsibility for a job assignment until they have been issued provisional certificates." N.J.A.C. 6:11-4.4(a).

⁵ We note that the Charter School's founder sent a letter to the Department of Education in August 1998 advising that the school planned to open with 30 students for kindergarten only in 1998-99, the first year of its charter, rather than K-2 with 90 students and six full-time teachers as proposed in the school's application approved by the Commissioner. The letter further indicated that the school would be submitting a formal resolution requesting an amendment of its charter to permit such a change. However, there is nothing further in the record before us regarding such an amendment.

requirements for the provisional teacher training program is necessary in order to protect the children of the state and the integrity of the certification system. See, e.g., LaRosa v. Ellis, decided by the Commissioner of Education, September 2, 1992.

Given the particular circumstances, we are unable to determine whether the provisional teacher training program implemented by the Charter School in this instance complies with the requirements of N.J.A.C. 6:11-5.3. Therefore, pursuant to N.J.A.C. 6:2-1.9, we direct that the Charter School supplement the record in this case with the following information: documents showing acceptance of the school's provisional teacher program by the State Board of Examiners; documents demonstrating that the composition of Ms. Clark's professional support team complies with the requirements of N.J.A.C. 6:11-5.3(h); documents showing when Ms. Clark commenced phase I of the provisional teacher program, the substance of that program and the current status of her training, N.J.A.C. 6:11-5.3(f)1; any evaluations of Ms. Clark prepared by the professional support team as required by N.J.A.C. 6:11-5.3 and 5.4; any reports by the regional training center showing successful completion by Ms. Clark of any phases of the provisional teacher program, N.J.A.C. 6:11-5.3(f); whether any certified teaching staff members were on site and shared responsibility for Ms. Clark's classroom pending her receipt of a provisional certificate and completion of phase I of the training program, including the names and certification of any such individuals, their responsibilities during this period and the amount of time they spent in the classroom, N.J.A.C. 6:11-4.4(a), N.J.A.C. 6:11-5.3(f)1; and any other documents providing details regarding the substance of the provisional teacher program implemented by the Charter School pursuant to the requirements of N.J.A.C. 6:11-5.3.

We direct the Charter School to submit all information required by our decision today to our Legal Committee within ten days from the date of this decision.

March 17, 1999

Date of mailing _____