

SB #86-98

IN THE MATTER OF THE FINAL GRANT :  
OF A CHARTER FOR THE UNITY : STATE BOARD OF EDUCATION  
CHARTER SCHOOL, MORRIS COUNTY. : DECISION

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Decided by the Commissioner of Education, September 3, 1998

Remanded by the State Board of Education, November 4, 1998

Decision on remand by the Commissioner of Education, December 4, 1998

For the Appellant, Wiley, Malehorn & Sirota (John G. Geppert, Jr., Esq., of Counsel)

For the Respondent, Harvey Gilbert, Esq.

For the Participant Commissioner of Education, Terri A. Cutrera, Deputy Attorney General (Peter Verniero, Attorney General of New Jersey)

This matter was initiated by an appeal by the Morris School District (hereinafter "District") from a grant of final approval given on September 3, 1998 by the Commissioner of Education to the Unity 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") for the period from July 1, 1998 through June 30, 2002. One of the focal issues of the District's appeal was the suitability of the Charter School's facility for educational purposes.<sup>1</sup>

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<sup>1</sup> In addition, the District raised questions relating to the constitutionality of the Act and implementing regulations under the New Jersey constitution and claimed that approval of the Charter School was in violation of other requirements of New Jersey law. More specifically, the District contended that final approval permitted the operation of a segregated public school in violation of New Jersey's constitution and judicial decisions relating to racial balance, including Jenkins v. Tp. of Morris School District and Bd.

On November 4, 1998, we issued our decision. We found that there was nothing in the record before the Commissioner at the time he granted final approval to the Charter School to indicate that the facility it was planning to utilize was a social club in which alcoholic beverages were served and stored. This circumstance raised both policy and legal concerns relating to the presence of alcoholic beverages in a facility housing a school. In light of the information contained in supplemental materials, we concluded that further review and determination by the Commissioner of the suitability of this site for educational purposes was required. N.J.S.A. 18A:36A-10. We therefore retained jurisdiction while remanding this matter to the Commissioner for determination within thirty days of the suitability of the site for educational purposes.

On December 4, 1998, the Commissioner issued his decision on remand. Based on the Charter School's submission and a report to him following a site visit by Department of Education staff describing the facility, the Commissioner concluded that students did not have access to the social club or to the alcoholic beverages stored in the building and that the facility was suitable for a charter school.

Our Legal Committee's initial review of the Commissioner's December 4 decision indicated that some items which had been referenced by the Commissioner in his decision had not been included in the record transmitted to us by the Attorney General's Office on December 15. Consequently, on December 29, we sent a letter to the

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of Educ., 58 N.J. 483 (1971), which was the foundation for the formation of the Morris School District. The District also contended that New Jersey's guidelines governing the desegregation of the public schools require that all public schools, including charter schools, be racially balanced. The District also claimed that payment of funds to the Charter School was unconstitutional and that the regulations were unconstitutional because they required district boards to allocate public funds for the use of private individuals. Given the constraints on our jurisdiction and the statutory time limit within which we were required to act, N.J.S.A. 18A:36A-4(d), we noted the presence of these issues in our decision of November 4, 1998, but presumed the validity of the statute and implementing regulations for purposes of determining whether the Charter School should be permitted to continue to operate.

Commissioner requesting those items, which included documentation as to the exact location of the alcoholic beverages that the Commissioner had concluded were not accessible to the Charter School's students. We also requested clarification of the bathroom facilities that were assigned for use by students and those which were used by staff and other adults who had access to the building. See N.J.A.C. 6:22-5.4(h).

On January 5, 1999, Deputy Attorney General Terri A. Cutrera responded to our request on behalf of the Commissioner. While providing most of the documents we had requested, the Deputy Attorney General did not furnish documentation relating to the site visit conducted by Department staff which had been relied upon by the Commissioner, indicating that such report had been "communicated orally to the Commissioner." Letter dated 1/5/99 from Deputy Attorney General Cutrera, at 2. Nor did the Deputy Attorney General provide clarification regarding the bathroom facilities or specify the location of the alcoholic beverages stored at the site, stating that "all other information and documentation requested in the [December 29, 1998] letter was not before the Commissioner when he rendered his December 4, 1998 decision." Id.

We have reviewed the materials provided to us on behalf of the Commissioner. Given the issues that have been raised by the District's appeal, we are unable to resolve this matter without identification of the bathroom facilities and specification of the exact location of the alcoholic beverages. We therefore remand this matter once again to the Commissioner. In so doing, we direct the Commissioner to direct the County Superintendent to revisit the Charter School's facility and to submit a written report to him which 1) specifically identifies the exact location within the building where the alcoholic beverages are stored, including identification of such location on a site

plan and 2) provides clarification of the bathroom facilities which are assigned for use by students and those which are used by staff and other adults who have access to the building, including the specific type and location of bathroom facilities provided for the school's kindergarten students, so as to assure that the facilities are in compliance with the requirements of N.J.A.C. 6:22-5.4(h). In that regard, we also specifically direct that the County Superintendent assure that the Charter School has complied with the requirements of N.J.A.C. 6:22-5.4(h)4i or submitted an alternative bathroom plan for its kindergarten students in accordance with the requirements of N.J.A.C. 6:22-5.4(h)4ii and iii.

We direct the Commissioner to transmit the County Superintendent's report to us by February 16, 1999.

We again retain jurisdiction.

February 3, 1999

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