

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

Decision by the State Board of Education, March 17, 1999

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
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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. The Commissioner's approval authorized the Charter

School to operate from July 1, 1998 through June 30, 2002,¹ at which time the Charter School anticipated that it would encompass grades K-5 and employ fourteen teachers. In its application, the school anticipated opening for the 1998-99 school year with ninety students in grades K-2 and 6 full-time teachers.²

On December 2, 1998, we issued our first decision relating to the final approval granted to the Charter School by the Commissioner on September 16, 1998. After reviewing the record, we found that we could not properly determine the appeal without first remanding it to the Commissioner. As set forth in that 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 school's staff.³ However, the documentation submitted by the Charter School showed that it had employed only a single individual, Dana D. Clark,

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.

² 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, and the Commissioner permitted the school to open with one kindergarten class consisting of 15 students. Contrast with In the Matter of the Denial of the Charter School Application of the Galloway Educational Meridian Charter School, decided by the State Board of Education, April 7, 1999.

³ 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 of the Englewood on the Palisades Charter School, decided by the State Board of Education, April 1, 1998. On March 29, 1999, the Appellate Division affirmed that decision. In the Matter of the Grant of the Charter School Application of Englewood on the Palisades Charter School, et al., ___ N.J. Super. ___ (App. Div. 1999).

who was to serve as a teacher and that Ms. Clark had been issued a “certificate of eligibility” by the State Board of Examiners in October 1996.⁴

When we reviewed the matter, we were aware that under the terms of our regulations, a certificate of eligibility authorized an individual only to seek employment in positions requiring a provisional certificate and that a certificate of eligibility could not be considered as appropriate certification within the meaning of the education statutes.⁵ We were also sensitive to the fact that there was very little information in the record provided to us concerning the program that was being implemented by the Charter School during the first year of the term of its charter. We therefore found it necessary to remand the matter to the Commissioner for a determination by December 14, 1998 of whether the 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.⁶

⁴ We note in that regard that the checklist of required documentation prepared by the Department and utilized by the Commissioner in reviewing the documents submitted by the Charter School after its contingent approval does not have a checkmark next to “Copies of Certifications of Teachers, Principals/Directors and Professional Support Staff.”

⁵ Our regulations provide that 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).

⁶ 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.

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.

The Commissioner rendered his decision on remand without reference to the structure of the Charter School and its program. Hence, while the Commissioner reported in his decision that Ms. Clark “possesses certification that authorizes her to serve as an elementary school teacher,” Commissioner’s Decision on Remand, slip op. at 3, he did not consider whether provisional certification was appropriate in the context of the structure of the particular instructional program being delivered.

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 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.

Again, the Commissioner made no judgment as to whether, given the particular circumstances, the qualifications possessed by Ms. Wiggins were sufficient to authorize her to fulfill the specific responsibilities of her position. Nor did the Commissioner assess whether the individuals comprising the support team responsible for overseeing Ms. Clark's alternate route program were appropriately certified for the roles they were fulfilling or that the team conformed with the requirements of the certification regulations.

On March 17, 1999, we issued our second decision relating to the final approval which had been granted to the Charter School by the Commissioner. We stated in that decision:

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. 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. In this respect, we stress that compliance with the regulatory 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.

State Board's Decision, slip op. at 4-7 (footnotes omitted).

The Charter School submitted additional materials pursuant to our directive. It also filed a letter brief with those materials. The Board was provided with the opportunity to file a brief, but did not take advantage of this opportunity.

On the basis of the information now contained in the record, we find that the Commissioner's final approval of the Charter School was not proper in that he had not received the documentation required to ensure that the Charter School would be operating in compliance with statutory certification requirements. We find, in addition, that the Charter School is not at this point operating in compliance with the applicable statutes and regulations.

Initially, we reiterate that, as set forth in our regulations, "[s]tate certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public." N.J.A.C. 6:3-1.4. As emphasized by the Department of Education, the purpose of N.J.S.A. 18A:26-2, which requires all teaching staff members to hold valid certificates,

“is to protect the public from potential harm through regulation of the minimum qualifications that must be possessed by those who seek to work in the schools.” New Jersey Register, 22 N.J.R. 1873 (1990). Accordingly, all teaching staff members employed by a school district must be properly certified. N.J.S.A. 18A:1-1 (defining “teaching staff member” as a member of a district’s staff whose position is of such character as to require possession of a valid certificate appropriate to the position); 18A:26-2 (no teaching staff member may be employed unless he is the holder of a valid certificate); 18A:27-2 (terminating the employment of staff members who do not hold appropriate certification); 18A:28-14 (employment of teaching staff member who does not hold appropriate certificate may be terminated without charge or hearing); 18A:29-1 (teaching staff members not entitled to salary unless they hold appropriate certificate). See also N.J.S.A. 18A:28-5 (providing tenure for “all teaching staff members” and “such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners”).

Moreover, as reflected by the education statutes and implementing regulations, employment of properly certified teaching staff members is indispensable to the ability of a school to operate properly. See, e.g., N.J.A.C. 6:3-6.2 through 6:3-6.5 (providing “certified school personnel” with access to pupil records); N.J.A.C. 6:3-1.6(b) (district boards “shall provide certified personnel needed to implement a thorough and efficient system of free public schools”); N.J.S.A. 18A:46-5.1 (pupils to be referred to a child study team by “certified school personnel”); N.J.A.C. 6:8-2.8(a) (an indicator in monitoring code required for an acceptable rating is that the district employs teaching staff members who hold appropriate certificates); N.J.A.C. 6:11-3.1 (appropriate

certification required); N.J.A.C. 6:29-10.4(a) (“teaching staff member” shall report possession or distribution of drugs by students).

Thus, the requirement that a district employ properly certified teaching staff members cannot be overstated. In view of the policy implications reflected in the law, we conclude that it is imperative for a charter school to have at least one fully-certified teaching staff member on site at all times. From the record, it appears that this Charter School has not employed even one staff member who possesses standard New Jersey certification. We, therefore, direct the Charter School to correct this deficiency by employing appropriately certified staff.

In addition, while not determinative of the school’s ability to operate, we cannot ignore the fact that Ms. Clark’s alternate route program does not comport with the regulatory requirements that are the prerequisite to the ultimate issuance of standard certification by the State Board of Examiners. See In the Matter of the Denial of Standard Certification to Linda J. Avellino, decided by the State Board of Education, May 5, 1999. For example, N.J.A.C. 6:11-5.3(f)1, setting forth the requirements for Phase I of the provisional teacher training program,⁷ provides that a provisional teacher must attend “[a] full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom.” (Emphasis added.) The record as supplemented shows that Ms. Clark

⁷ N.J.A.C. 6:11-5.3(f) provides for three phases of the provisional training program: Phase 1, which requires a “full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom”; Phase 2, “[a] period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least 10 weeks”; and Phase 3, “[a]n additional period of continued supervision and evaluation of no less than 20 weeks duration.” In addition, “[a]pproximately 200 hours of formal instruction...shall be provided in all three phases of the program combined.” N.J.A.C. 6:11-5.3(g).

did not commence Phase I of her provisional training program until December 1, 1998 and that she did not complete that phase of her program until February 18, 1999. Nonetheless, Ms. Clark was given full responsibility for the school's only classroom in September 1998.⁸ The record further indicates that Ms. Clark did not even receive her provisional certificate from the State Board of Examiners until December 1998, and that her service prior to that time was under a certificate of eligibility.⁹

Following completion of Phase I training, Phase 2 of the training program requires a "period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least 10 weeks. During this time, the provisional teacher shall be visited and critiqued no less than one time every two weeks by members of a Professional Support Team...." N.J.A.C. 6:11-5.3(f)2. There is no indication in the record that the Charter School complied with this requirement. Indeed, the materials submitted indicate that Ms. Clark's mentor teacher visited her classroom just four times from the beginning of the school year through January 1999: October 8 and 9, 1998, December 21, 1998, and January 26, 1999.

The record further reveals that Ms. Clark's first formal evaluation, as required by N.J.A.C. 6:11-5.3(f)2, was conducted by Ms. Wiggins, the school's headmaster, who

⁸ In her affidavit, Ms. Clark indicates for the first time that there is a non-certified teaching assistant in the classroom with her. The presence of a non-certified assistant, however, does not overcome the school's failure to employ a properly certified teaching staff member. Nor does the presence in the classroom of an individual who is not an appropriately certified teaching staff member alter the fact that Ms. Clark was given full responsibility for the classroom prior to her receipt of a provisional certificate and prior to her completion of Phase I of her provisional training program. We note, in addition, that our decision is not altered by Ms. Clark's contention that two founding members of the school who possess New Jersey certification, but who are not members of her professional support team, "spent substantial time with me both inside and outside the classroom." Certification of Dana D. Clark, at 4.

⁹ See, supra, n.5.

does not possess certification that would authorize her to evaluate staff. See N.J.A.C. 6:11-9.3. That requirement is reaffirmed by the regulations governing provisional teachers, which require that provisional teachers must be observed and evaluated by “appropriately certified Support Team Members.” N.J.A.C. 6:11-5.4(a); N.J.A.C. 6:11-5.3(f)2. Moreover, such evaluations “shall be shared by at least two, but no more than three members of the Support Team.” N.J.A.C. 6:11-5.4(b). In this case, only Ms. Wiggins, who was not an appropriately certified member of Ms. Clark’s professional support team, participated in the evaluation.

Given the import of the specific problems that have been revealed in the course of these proceedings, we place the Charter School on probationary status pursuant to N.J.A.C. 6A:11-2.4(a) for a period of 90 days to allow for the implementation of a remedial plan. We direct the Charter School to submit a remedial plan to the Commissioner within 30 days from our decision today in which it provides the specific steps that it will undertake to remedy the violations identified in our decision. N.J.A.C. 6A:11-2.4(a). We further direct that the State Board of Examiners review Ms. Clark’s provisional teacher training program in the context of the particular circumstances presented herein.

We retain jurisdiction.

June 2, 1999

Date of mailing _____