

IN THE MATTER OF THE GRANT OF THE :  
CHARTER SCHOOL APPLICATION OF THE : STATE BOARD OF EDUCATION  
GREEN WILLOW CHARTER SCHOOL, : DECISION  
BERGEN COUNTY :

---

Decided by the Commissioner of Education, January 11, 2001

For the Appellant Board of Education of the School District of Mahwah, Schwartz,  
Simon, Edelstein, Celso & Kessler (Nathanya G. Simon, Esq., of Counsel)

For the Appellant Board of Education of the School District of Saddle River,  
Fogarty & Hara (John R. Vreeland, Esq., of Counsel)

For the Appellant Board of Education of the School District of Ramsey, Winne,  
Banta, Rizzi, Hetherington & Basralian (Robert M. Jacobs, Esq., of  
Counsel)

For the Appellant Board of Education of the School District of Upper Saddle  
River, Wiley, Malehorn and Sirota (Fredric J. Sirota, Esq., of Counsel)

This is an appeal by four district boards of education from the grant of contingent approval by the Commissioner of Education on January 11, 2001 to the Green Willow 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") commencing in September 2001. As set forth in their briefs, all four boards claim that the application of the Charter School is contrary to the Charter School Program Act, that the Commissioner failed to consider concerns expressed by Department of Education personnel who reviewed the application, that the Commissioner improperly failed to

consider the financial impact of the approval, and that the Act imposes unfunded mandates on the district boards contrary to the requirements of the New Jersey Constitution.<sup>1</sup>

We reject the contention that conditional approval of the Charter School's application was contrary to the legislative intent of the Charter School Program Act. The thrust of the district boards' arguments is that the application does not fulfill the Act's intent to provide educational approaches that may not be available in the traditional public school classroom because the districts involved here offer a vast array of educational programs. These arguments are negated by the contents of the application. Specifically, the application indicates that the Charter School will provide an "art infused, thematic, interdisciplinary" approach, as well as small classrooms and multi-age grouping. While the substance of the districts' programs may be outstanding and the breadth of their overall educational programs vast, none of these districts suggests that it is taking the same approach as the Charter School in implementing any of those programs.

Similarly, we find no merit to the claim that the Commissioner improperly ignored the reviewers' concerns. Most strikingly, the districts concede that notwithstanding such concerns, even those portions of the application which they attack were rated "adequate" by the reviewers. Moreover, the fact that the Department required the Charter School to submit a supplemental application, as well as the supplemental application itself and the evaluation documents, reflect the extensive review given to the

---

<sup>1</sup> We note that briefs were filed on behalf of the boards of education of Mahwah, Upper Saddle River and Ramsey. In its letter of February 28, 2001, which was accompanied by the affidavit of its interim superintendent, the Saddle River board indicated that it would rely upon the briefs filed on behalf of the other three boards.

application before it was approved and that the reviewers' concerns were not ignored. In this respect, we stress that, contrary to the districts' view, the Commissioner need not set forth extensive analysis each time he reviews a concern expressed during the evaluation process. Furthermore, in this instance, we find that the substance of the application supports the conclusions reached by both the reviewers and the Commissioner that it was adequate in all categories. See, e.g., In re Grant of Charter School Application, 320 N.J. Super. 174 (App. Div. 1999), aff'd with modification, 164 N.J. 316 (2000).

Nor is there any merit to the districts' claim that the Commissioner improperly failed to evaluate the financial impact of the Charter School before approving its application. We stress that it is now settled that the Commissioner is required to expressly evaluate the financial impact of the grant of a charter only when a district of residence demonstrates with some specificity that the constitutional requirements of a thorough and efficient education would be jeopardized by the loss of funds attending the grant of the charter. In re Grant of Charter School Application, 164 N.J. 334-335. As expressed by the New Jersey Supreme Court:

...the Commissioner must consider the economic impact that approval of a charter school will have on a district of residence when during the approval process a district makes a preliminary showing that satisfaction of the thorough-and-efficient education requirements would be jeopardized....[T]he district must be able to support its assertions. We do not impose on the Commissioner the burden of canvassing the financial condition of the district of residence in order to determine its ability to adjust to the per-pupil loss upon approval of the charter school based on unsubstantiated, generalized protests.

Id. at 336.

None of the districts involved in this appeal suggest that it will not be able to meet its obligation to provide a thorough and efficient education to its students, and no evidence has been presented that raises constitutional concerns about the ability of any of these districts to do so. Id. at 335. Rather, the focus of the districts' arguments is almost exclusively on the districts' taxpayers, not its students. We can identify nothing in either the Act or the New Jersey Constitution that imposes an obligation on the Commissioner to consider the fiscal effects on the local taxpayers when he determines whether to approve a charter application.

Likewise, we find no merit to the claim that either the Act or its implementing regulations impose an unfunded State mandate on the districts in violation of Article VIII, Section II, paragraph 5 of the New Jersey Constitution (hereinafter "Amendment"). That Amendment provides that any law enacted on or after January 17, 1996, and any rule originally adopted after July 1, 1996, which is determined to be an unfunded mandate shall cease to be mandatory in effect and shall expire. The mechanism to implement the Amendment was provided by N.J.S.A. 52:13H-1, which created the Council on Local Mandates and charged it with the responsibility of deciding claims that such statutes and regulations constituted unfunded mandates. Hence, the claim being made in this appeal is outside of our jurisdiction.

However, we note that the Charter School Program Act became effective on January 11, 1996, six days before the effective date which the Amendment established for purposes of its application. See In the Matter of a Complaint filed by the Board of Education for the City of Clifton, decided by the Council on Local Mandates, May 13,

1998.<sup>2</sup> Further, we recognize that the funding regulation which we adopted effective June 1, 1998 was determined by the Council on Local Mandates to be an unfunded mandate. In the Matter of the Complaints Filed by the Highland Park Board of Education and the Borough of Highland Park, decided by the Council on Local Mandates, May 11, 2000. See 30 N.J.R. 588(a) and 30 N.J.R. 2084(a) (amending N.J.A.C. 6A:11-1.2 to define "local levy budget per pupil for the specific grade level" as the "program budget per pupil"). However, we note that effective October 2, 2000, we amended the regulation so that it does not now constitute an unfunded mandate. See 32 N.J.R. 2523(a) and 32 N.J.R. 3560(a) (rewriting the definition of "local levy budget

---

<sup>2</sup> In a footnote in its brief, the Ramsey board contends that the determination made by the Council on Local Mandates is not dispositive of whether the Amendment applies to the Charter School Program Act because rulings of the Council are political and are not subject to judicial review. This, argues the Ramsey board, precludes the Council from making constitutional determinations such as it is seeking here because constitutional determinations must in all cases be subject to judicial review. Brief on behalf of the Ramsey Board of Education, at 8, note 3.

In addressing this argument, we note that it is now well established that when a controversy arising under the school laws presents constitutional issues, such as is the case here, "such issues should merely be noted....Factual presentations relevant to the constitutional issues may be made, however, to ensure an adequate record for determination on appeal. In this way both the integrity of the administrative system and the [party's] right to a judicial determination of constitutional issues will be preserved." Parents for Student Safety, Inc. v. Board of Education of the Morris School District, decided by the State Board of Education, February 5, 1986, slip op. at 5, aff'd, Docket #A-3257-85-T7 (App. Div. 1987), quoting Paterson Redevelopment Agency v. Schulman, 78 N.J. 378, 388 (1979). Moreover, "in litigation to resolve purely constitutional claims,...although an agency may base its decision on constitutional considerations, such legal determinations do not receive even a presumption of correctness on appellate review." Bd. of Ed. v. Neptune Educ. Ass'n., 293 N.J. Super. 1, 9 (App. Div. 1996), quoting Abbott v. Burke, 100 N.J. 269, 298-99 (1985). Nonetheless, the Court stressed that "[w]here the broader subject matter of a case is within the purview of an administrative agency's authority, it is valuable to have the insights and policy reflections of that agency, even if the only issue to be decided is one of constitutional dimensions, in respect of which the agency is seen to have no particular expertise or authoritative decisional role." Id.

Hence, while we recognize that we do not have the authority to decide the broader constitutional issue being raised by the Ramsey board, we reject its argument in the context of this case. By the terms of the Amendment itself, it applies only to laws enacted after January 17, 1996. Accordingly, it is not the character of the decisions made by the Council on Local Mandates that would limit judicial review of the substance of the Charter School Program Act under Article VIII, Section II, paragraph 5, but the fact that the Charter School Program Act was enacted by the Legislature before the date on which the Amendment became applicable to such laws.

per pupil for the specific grade level” and inserting additional language relating to the definition of “program budget”).

Accordingly, for the reasons stated herein, the State Board of Education affirms the Commissioner’s determination to grant conditional approval to the charter application of the Green Willow Charter School. In doing so, we direct the Commissioner to insure that the Charter School either secures the funding that its application indicates it is pursuing, i.e., a \$300,000 loan from Prudential and a \$125,000 grant from the federal government, or that it makes appropriate adjustments in its budget and operations before it opens. Finally, in view of our determination, we deny the motion to participate made on behalf of the Commissioner.

May 2, 2001

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