

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

---

Decided by the Commissioner of Education, December 14, 2001

Decision on motion by the Commissioner of Education, January 22, 2002

For the Appellant, McOmber & McOmber (R. Armen McOmber, Esq., of Counsel)

For the Respondent, McCarter & English (David C. Apy, Esq., of Counsel)

For the Movant New Jersey Education Association, Zazzali, Fagella, Nowak,  
Kleinbaum & Friedman (Richard A. Friedman, Esq., of Counsel)

For the Participant Commissioner of Education, Allison Eck, Deputy Attorney  
General (David Samson, Attorney General of New Jersey)

On January 3, 2002, the Board of Education of the Borough of Red Bank (“Board” or “Red Bank Board”) filed an appeal to the State Board of Education from a letter decision of the Commissioner of Education dated December 14, 2001 granting the renewal application of the Red Bank Charter School for a five-year term to serve 162 students in kindergarten through eighth grade.<sup>1</sup>

The Board filed a motion with the Commissioner for a stay of his decision, which the Commissioner denied on January 22, 2002. On February 8, 2002, the Board filed a motion with the State Board seeking a partial stay of the Commissioner’s decision. The

---

<sup>1</sup> We note that the school had not previously served grades K-3.

Board indicates that it is applying for a stay “only with respect to the expansion of the Charter School, including both the existing and proposed grades.” The Board maintains that it is likely to prevail on the merits of the underlying claim since the charter school “has had a severe segregative impact on the public schools operated by the Board of Education which has exacerbated de facto segregation in the Red Bank Public Schools,” Brief in support of motion, at 8, and that the Commissioner’s decision will have a disastrous economic impact on the district’s schools, thereby preventing it from providing students with a thorough and efficient education.

There have been several additional motions filed in this matter. The New Jersey Education Association (“NJEA”) has filed a motion for leave to participate as amicus curiae; the Charter School has filed a motion seeking to strike certain documents included in the appendix of the Board’s appeal brief or, in the alternative, to supplement the record with additional certification<sup>2</sup>; and the Commissioner has filed a motion for leave to participate in the appeal. The briefing schedule was placed in abeyance pending determination of the Charter School’s motion to strike/supplement.

After a careful review of the papers submitted, we deny the Board’s motion for a partial stay of the Commissioner’s decision. We conclude that the Board’s application fails to meet the standards that would entitle it to relief under Crowe v. De Gioia, 90 N.J. 126 (1982). We find that the Board has failed to demonstrate the likelihood of prevailing on the merits of its claim. Nor has it shown that absent a stay, it will suffer irreparable harm. Although the Board contends that the Charter School has had a severe segregative impact on the district’s schools, we agree with the Commissioner that the

---

<sup>2</sup> We note that the counsel for the Board has indicated that the parties have agreed to allow the record to be supplemented as requested in the motion rather than striking any portion of the Board’s brief or appendix. Letter from R. Armen McOmbler, Esq. dated February 21, 2002.

Board has not demonstrated for purposes of this motion “the specific effect of the charter school as opposed to other causes” or “that its existence has resulted in an impermissible impact on the racial composition of the District’s public schools.” Commissioner’s Decision on Motion, at 2. Nor has the Board demonstrated that expansion of the Charter School would prevent the Board from providing its students with a thorough and efficient education. We also agree with the Commissioner that the Red Bank Board had no entitlement to a hearing as part of the Commissioner’s review of the Charter School’s renewal application.

We deny the motion filed by the NJEA for leave to appear as amicus curiae. Upon review of the papers submitted on the motion, we are unable to find that the applicant’s participation will assist in the resolution of the issues raised by the Red Bank Board in this matter. N.J.A.C. 6A:4-2.1(b).

Turning to the Charter School’s motion to strike/supplement the record, we find that all of the disputed documents, except for Items 16, 17 and 23 in the appendix to the Board’s appeal brief, are already part of the record on appeal. See N.J.A.C. 6A:4-1.8(a). Items 10 through 15 of the Board’s appendix to its appeal brief and the certifications submitted to the Commissioner by the Charter School in opposition to the Board’s motion for a stay, were included in the record before the Commissioner during his review of that motion. Consequently, such documents are part of the record on appeal. Item 23, a letter dated January 16, 2002 from the counsel for the Charter School to the Commissioner with regard to the Board’s motion for a stay, should have been included in the record before the Commissioner. In addition, the document dated October 16, 2001 entitled “How Does the Red Bank Charter School Measure-up?” was

included in a Second Revised Statement of Items Comprising the Record dated March 6, 2002 prepared by a Deputy Attorney General on behalf of the Commissioner. Since all of these materials are included in the record on appeal, it is not necessary to supplement the record with them or to strike such items from the Board's appeal brief and appendix.

Although Items 16, a letter dated January 21, 2002 from the counsel for the Board to the counsel for the Charter School, and Item 17, a response from the counsel for the Charter School, were not part of the record before the Commissioner during his review of the Board's motion for a stay, we find it appropriate to supplement the record with those documents. Such documents are material to the issues on appeal. N.J.A.C. 6A:4-1.9(b). We note, in addition, that the parties are agreeable to supplementing the record with such materials.

Finally, we grant the Commissioner's motion to participate in this matter.

Given our determination of these motions, we are reestablishing the briefing schedule. The Charter School and the Commissioner are directed to file answer briefs on the merits of this matter by April 26, 2002.

April 3, 2002

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