SB #20-97

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

Decided by the Commissioner of Education, February 21, 1997

Decision on motion by the Commissioner of Education, March 10, 1997

Decided by the State Board of Education, March 26, 1997

For the Appellant, McOmber & McOmber (Richard D. McOmber, Esq., of Counsel)

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

On March 26, 1997, the State Board of Education reversed the determination of the Commissioner of Education approving the grant of a charter to the Red Bank Charter School Association ("Charter School"). On April 15, 1997, David C. Apy, Esq. filed a motion on behalf of the Charter School seeking reconsideration of our decision. By that motion, the Charter School seeks reversal of our March 26 decision. In the alternative, the Charter School seeks a stay of our decision. Additionally, the Charter School has moved to disqualify Margaret M. Bennett, a member of the State Board, from participation with respect to the relief requested based upon "a conflict of interest arising from an appearance of impropriety."

Because our determination as to whether the State Board of Education should grant the Charter School's motion to disqualify Ms. Bennett from participating in the motion to reconsider may affect our deliberations on that motion, we would ordinarily consider it first. However, the Charter School has presented no independent basis for precluding Ms. Bennett from participating in the motion to reconsider. Rather, it appears that the Charter School seeks to disqualify Ms. Bennett from participating in this motion on the grounds that she should have been disqualified from voting on the substantive appeal on March 26, 1997. We question whether it would be appropriate for the State Board of Education to preclude one of our members from participating in our decisionmaking, and, in the absence of a clear legal preclusion, would decline to do so. However, in reviewing the papers submitted by counsel for the Charter School in support of its motion to reconsider, we have carefully considered the issues raised concerning Ms. Bennett's vote of March 26.

The Charter School has moved for reconsideration on two separate grounds: 1) that Ms. Bennett should not have been permitted to vote on March 26, and 2) that we applied the wrong standard of review when we decided the appeal. It contends that Ms. Bennett should have been precluded from voting because she had a conflict of interest. It argues that such conflict was present because her husband is a state senator. In support of this claim, the Charter School makes various factual allegations concerning both Ms. Bennett and her husband. See Brief and Affidavit of David C. Apy.

We do not view lightly allegations of conflicts of interest. While we recognize that administrative adjudication such as that involved here "constitutes a form of judicial mimicry" so as to be characterized as quasi-judicial rather than judicial, City of Hackensack v. Winner, 82 N.J. 1, 29 (1980), the State Board of Education has always been firmly committed to

performing our adjudicative role with unquestionable integrity, objectivity and impartiality as great as that of judges. See Kremer v. City of Plainfield, 101 N.J. Super. 346, 352 (Law Div. 1968); Sheeran v. Progressive Life Ins. Co., 182 N.J. Super. 237, 243 (App. Div. 1981).

It is well established that it is within the sound discretion of the judge in the first instance to determine whether he should recuse himself. State v. Walker, 33 N.J. 580 (1960); Matthews v. Deane, 196 N.J. Super. 441 (Ch. Div. 1984). Accordingly, we have given Ms. Bennett the opportunity to determine whether she wishes to recuse herself from participating in this motion. As reflected by her statement today, which we are appending to our decision, and for the reasons articulated in that statement, Ms. Bennett has decided to recuse herself . Hence, we will now consider the substance of the Charter School's motion to reconsider.

Initially, we deny that portion of the motion which would have us reconsider our decision by invalidating our vote of March 26. Nothing in the papers presented to us identifies any direct financial benefit from our decision of March 26 that might have accrued to either Ms. Bennett or her husband. Indeed, leaving aside the accuracy of the factual underpinnings of the Charter School's motion or any of its allegations concerning the conduct of either spouse, careful scrutiny fails to identify any concrete benefit that would result to either. Hence, as the Deputy Attorney General representing the State Board advised Ms. Bennett prior to our March 26 meeting, it was not improper for her to vote. Nor has the Charter School presented anything to us in these proceedings that would warrant revisiting our March 26 decision on the basis of Ms. Bennett's participation. In point of fact, Mr. Apy concedes in his affidavit in support of the motion that the Charter School has no

evidence of any direct communication between Ms. Bennett and the Red Bank Board or its counsel. Affidavit of David C. Apy, at 6.

Furthermore, we would not alter our conclusion on the basis of bare allegations made in Mr. Apy's affidavit that there may have been "such communications" subsequent to our March 26 meeting. Id. In this respect, we stress that disqualification rules are to be strictly construed in order to safeguard the State Board from attacks upon our dignity and to avoid interruption to our proper functioning. Cf. Matthews v. Deane, supra, at 446-47. By means of a motion supported only by newspaper articles and bare assertions, the Charter School is seeking to have the State Board act to invalidate the vote of one of our members and, then, on that basis, to change our decision. Consideration of this aspect of the Charter School's motion has diverted our resources from the substantive matters still pending before us and has interrupted our ordinary and proper functioning.

We turn now to the Charter School's contention that we should reconsider our decision on the grounds that we failed to apply the correct standard of review in deciding the appeal. After reviewing the arguments of counsel, we find no reason to revisit the substance of our determination of March 26. In doing so, we strongly emphasize that the State Board of Education is the head of the Department of Education. N.J.S.A. 18A:4-1. Hence, in addition to our supervisory powers, the State Board has jurisdiction to consider appeals from any determination of the Commissioner, N.J.S.A. 18A:6-27, and it has been well established in a wide range of contexts that the State Board of Education is the ultimate administrative decisionmaker in school matters. E.g., In re Masiello, 25 N.J. 590 (1958); Laba v. Newark Board of Education, 23 N.J. 364 (1957); Matter of Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), cert. denied, 121 N.J. 615 (1990); Dore v. Bedminster Tp. Bd. of

Ed., 185 N.J. Super. 447, 452 (App. Div. 1982); East Windsor Reg'l Bd. of Ed. v. State Bd. of Ed., 172 N.J. Super. 547 (App. Div. 1980). The Red Bank Charter School Association has not pointed to anything that would require us to apply a different standard when deciding appeals under N.J.S.A. 18A:36A-1 et seq. Moreover, it has failed to convince us that enactment of this legislation altered our agency's "comprehensive system of internal appeals" by which we assure that final agency decisions of the Department of Education are arrived at fairly and justly, and are in accord with the education laws. See e.g., Masiello, supra; Laba, supra.

As indicated by our decision today, we have not found oral argument to be necessary in order to fairly decide this motion, and we therefore deny the Charter School's request for oral argument. Finally, inasmuch as the Red Bank Charter School Association has failed to meet the standards that would entitle it to relief under Crowe v. De Gioia, 90 N.J. 126 (1982), we deny its request for a stay of our decision dated March 26 in this matter.

Margaret M. Bennett and Wendel E. Daniels recused themselves from the deliberations. Daniel J.P. Moroney abstained.

May 7, 1997

Date of mailing _____

STATEMENT OF MARGARET M. BENNETT
RECUSING HERSELF FROM THE DELIBERATIONS

On the advice of the Attorney General's office, I have decided to recuse myself in the Red Bank Charter School's motion for reconsideration. I have not participated in either the Legal Committee or Executive Session discussions on the motion. I will not participate in either the public discussion or the vote.

When I voted the first time this case was considered, I did so after I sought the advice of the Attorney General's office. I was told then that it was not improper for me to vote. The Attorney General's office has reaffirmed that original advice.

A central issue in the motion for reconsideration is the validity of my original vote. That has placed me at the center of the controversy over whether the case should be reconsidered. The Attorney General's advice is that it would be appropriate for me to remove myself as the issue on this motion. I can best do that by not participating in the decision.

I think that every case should be decided on the merits and appear to be decided on the merits. I do not want anyone to think that any vote I would cast on reconsideration would have been in any way affected by the fact that my earlier vote has been challenged.

I hope that it is clear that my decision today does not reflect any second thoughts as to the correctness of my decision to vote on the first hearing of the case. My conduct was not under challenge the first time. It is now, that change in circumstances is the only reason that I believe it is proper for me not to participate now.

Margaret M. Bennett

May 7, 1997