

SB #88-98

IN THE MATTER OF THE FINAL GRANT :
OF A CHARTER FOR THE TEANECK : STATE BOARD OF EDUCATION
COMMUNITY CHARTER SCHOOL, : DECISION
BERGEN COUNTY. :

Decided by the Commissioner of Education, September 11, 1998

For the Appellant, Schenck, Price, Smith & King (Sidney A. Sayovitz, Esq., of Counsel)

For the Respondent, Paula Dillon, Esq.

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

This is an appeal by the Board of Education of the Township of Teaneck (hereinafter "Board") from a grant of final approval given on September 11, 1998 by the Commissioner of Education to the Teaneck Community 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.

The Board alleges that the Charter School had failed to meet its obligation to provide a copy of a signed lease for its facility by July 31, 1998, as required by the Commissioner in his contingent approval dated January 21, 1998, and that, in any event, there is no valid approval of the facility in which the Charter School is actually located because the facility that was the subject of the contingent approval was

unavailable for occupancy in early September, causing the Charter School to move from one facility to another.¹

The Commissioner is participating in this appeal as provided by N.J.A.C. 6A:11-2.5(d).

In addition, the Board has filed a motion to settle the record, contending that the record of this matter, which was prepared for the State Board by the Deputy Attorney General representing the Commissioner in this appeal, omits a number of material documents. The Commissioner opposes this motion, arguing that “[t]he letters which appellant seeks to add were not materials the regulations required the charter school to provide and were not considered by the Commissioner in reaching his final decision to grant a charter.”

The Charter School has moved to supplement the record on appeal with the certifications of its Coordinator/Master-facilitator and its landlord. The Board opposes this motion.

We have reviewed the record provided to us on behalf of the Commissioner. Additionally, in view of the extremely stringent time limit under which the Legislature has required us to decide appeals of this type, N.J.S.A. 18A:36A-4(d), we have also accepted and reviewed all of the documents that have been filed with us by the parties to this matter. However, we recognize that an appeal of the Commissioner’s contingent approval of the Charter School’s application is currently pending before the Appellate

¹ We note that the Board filed an appeal from the contingent approval given by the Commissioner on January 21, 1998 to the Charter School’s application. In a decision dated April 1, 1998, we presumed the validity of the statute and implementing regulations for purposes of determining whether the applicant should be permitted to proceed in this process and focused on whether the appeal raised concerns of such character as to preclude the grant of a charter. We concluded that the Board had not shown that the substance of the application was such that we should set aside the Commissioner’s determination

Division and, consequently, that jurisdiction over the issues raised by that appeal now lies with the court. In arriving at our determination today, we have not considered any of those issues or documentation relating to those issues.

N.J.S.A. 18A:36A-4(c) provides that “[a]n application to establish a charter school shall be submitted to the commissioner and the local board of education...in the school year preceding the school year in which the charter school will be established. The board of education...shall review the application and forward a recommendation to the commissioner within 60 days of receipt of the application.” The application is required to include, inter alia, “[a] description of, and address for, the physical facility in which the charter school will be located.” N.J.S.A. 18A:36A-5. The Act further provides that “[a] charter school may be located in part of an existing public school building, in space provided on a public work site, in a public building, or any other suitable location.” N.J.S.A. 18A:36A-10 (emphasis added).

The record provided on behalf of the Commissioner reflects that the Bergen County Superintendent of Schools submitted a facility verification form to the Commissioner on September 11, 1998, recommending approval of the Charter School’s temporary facility contingent upon correction of a number of building deficiencies identified by the township’s construction official. In a report issued earlier that day, the township’s construction official had made the certificate of use for the school’s temporary facility, St. Mark’s Syrian Orthodox Cathedral, dependent upon correction of certain specified defects by September 16, 1998. However, the Commissioner’s grant of final approval to the Charter School on September 11 contained no such

that the proposed charter school could continue the process which would allow it to become operative if the Commissioner granted it final approval. That decision is currently on appeal in the Appellate Division.

contingencies. To the contrary, the Commissioner indicated that all contingencies, including submission and approval of a certificate of occupancy for the Charter School's temporary facility, had been satisfied. As indicated, however, such finding was based on the temporary certificate of use that would expire in five days on the temporary facility that the Charter School intended to use for approximately one month until its permanent facility was ready.² Moreover, there is no indication in the record that the deficiencies identified by the construction official were ultimately corrected or that the certificate of use on the temporary facility extended beyond September 16.³

In addition, while the record before the Commissioner included a signed lease for the Charter School's permanent facility, Yeshiva High School for Girls, several of the required documents relating to that facility had not yet been submitted when the Commissioner approved the final grant of a charter to the school for four years. These included a certificate of occupancy, fire inspection certificate and sanitary inspection report. See N.J.A.C. 6A:11-2.1(g). Nor did the Commissioner make his final grant of a charter contingent upon submission of such documents.⁴

We are sensitive to the fact that, as in its appeal to the Appellate Division, some of the Board's claims involve constitutional issues. Again, we are cognizant of our jurisdictional limitations. E.g., Abbott v Burke, 100 N.J. 269 (1985) (subsequent history

² We note that a certificate of occupancy submitted by the Charter School was dated December 16, 1994 and had been issued to the church. It does not give approval for the occupancy of the facility as a charter school.

³ The Charter School indicates that it did not move into its permanent facility until October 12.

⁴ We note that after the Commissioner granted final approval to the Charter School on September 11, 1998, temporary certificates of occupancy were issued for the school's permanent facility, Yeshiva High School for Girls, on October 9 and October 14, requiring correction of certain specified building deficiencies by November 13. Although the Charter School indicates that it relocated to its Yeshiva facility on October 12, the record prepared for us, which is dated October 16, does not contain a fire inspection certificate or sanitary certificate for that facility.

omitted). Given the constraints, we have noted the presence of these issues but have presumed the validity of the statute and implementing regulations for purposes of determining whether the Charter School should be permitted to continue to operate.

As detailed above, the record before us reflects significant departures from the procedural requirements of the State Board's regulations which govern the charter school approval process. As a result, we find it necessary to remand this matter to the Commissioner for further review and determination of the suitability of Yeshiva High School for Girls, the Charter School's permanent facility, for educational purposes as required by N.J.S.A. 18A:36A-10. As part of his review, we direct the Commissioner to verify that all building deficiencies identified by the township's building official have been corrected and that all documentation required by N.J.A.C. 6A:11-2.1 has been submitted and approved. We also direct the Commissioner to verify that the Charter School had a valid certificate of use during the entire period of its operation at its temporary facility, the St. Mark's Syrian Orthodox Cathedral.

Since the Board has not shown that the procedural defects in this case reflect substantive deficiencies in the Charter School's facility of such character as to preclude the Charter School from continuing to operate at this time, we permit the Charter School to operate in the interim. In so doing, however, we do not minimize the importance of following the requirements of the regulations and of ensuring that a charter school has fulfilled all substantive requirements before granting final approval.

We retain jurisdiction.

November 4, 1998

Date of mailing _____