

SB #22-98

IN THE MATTER OF THE GRANT OF :  
THE CHARTER SCHOOL APPLICATION : STATE BOARD OF EDUCATION  
OF THE ACADEMY CHARTER HIGH : DECISION  
SCHOOL, MONMOUTH COUNTY. :

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Decided by the Commissioner of Education, January 21, 1998

For the Appellant, Kim A. Fellenz, Esq.

For the Respondent, Mary Jo Kapalko, pro se

For the Participant Commissioner of Education, Arlene G. Lutz, Deputy  
Attorney General (Peter Verniero, Attorney General of New Jersey)

This is one of fourteen appeals from contingent approvals given by the Commissioner of Education to applications submitted to obtain charters to operate charter schools pursuant to the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq. We have presumed the validity of the statute and implementing regulations for purposes of determining whether a specific applicant should be permitted to proceed in this process. Hence, for purposes of this review, we have focused on whether the appeal raises concerns of such character as to preclude the grant of a charter or has revealed circumstances which must be addressed before the proposed school can become operational.

In support of its appeal, the Asbury Park Board (hereinafter "Board") contends that the Commissioner has an affirmative duty to deny a charter in this instance

because such grant will negatively impact the racial balance at Asbury Park High School. The Board argues that such impact will contravene New Jersey's constitutionally-derived policy with respect to racial balance in the public schools and that the approval of this application is contrary to the sending-receiving relationship between Asbury Park and its sending districts.<sup>1</sup> In addition, the Board asserts that the failure of the application to specify a location for the school is fatal and alleges that there are no significant curriculum differences between the proposed charter school and that already offered by Asbury Park.

We find that the Board has not shown that the substance of the application is such that we should set aside the Commissioner's determination that the proposed charter school may continue the process which would allow it to become operative if the Commissioner grants it final approval. Moreover, the Asbury Park Board's arguments with regard to racial impact are speculative at this point in the absence of actual enrollment data. However, given the racial composition of Asbury Park's student population, the Commissioner should review the racial composition of the student population of the Academy Charter High School before granting final approval.

Margaret M. Bennett abstained.

April 1, 1998

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

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<sup>1</sup> We note that the "region of residence" of this proposed charter high school includes Asbury Park as well as its sending districts.