

SB #16-98

IN THE MATTER OF THE GRANT OF THE:

CHARTER SCHOOL APPLICATION OF : STATE BOARD OF EDUCATION

THE OCEAN CITY chARTer-TECHnical : DECISION

HIGH SCHOOL FOR THE PERFORMING :

ARTS, CAPE MAY COUNTY. :

Decided by the Commissioner of Education, January 21, 1998

For the Appellant, Taht, Stanton & McCrosson (Michael P. Stanton, Esq., of Counsel)

For the Respondent, Griffith & Carlucci (Gary R. Griffith, Esq., of Counsel)

For the Participant Commissioner of Education, Michelle Miller, Deputy Attorney General (Peter Verniero, Attorney General of New Jersey)

For the Intervenors, G.F., pro se and C.H., pro se

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 Ocean City Board of Education (hereinafter "Board") contends that the Commissioner's decision should be reversed because the proposed school's application violates the Charter School Act in several respects, including that, contrary to N.J.S.A. 18A:36A-7, the proposed school's admissions/promotions policy discriminates on the basis of intellectual ability. The Board further contends that the Charter School Act is unconstitutional because it violates every child's right to a thorough and efficient education, divests local taxpayers of procedural due process relating to the use of public funds, allows for private use of public funds, and is so lacking in standards as to constitute an unconstitutional delegation of the Legislature's power. In addition, a motion to intervene has been filed by the parents of children attending school in the district. By their motion, Intervenors challenge the validity of approving the inclusion of an eighth-grade class in the proposed charter high school for one year.

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. However, we refer back to the Commissioner the question of whether his approval should properly include an eighth-grade class for the first year of the proposed charter high school's operation. The Commissioner should also review the admissions/promotions policy of the proposed school in light of concerns raised by the Board before granting final approval.

Margaret M. Bennett abstained.

April 1, 1998

Date of mailing _____