

SB #19-98

IN THE MATTER OF THE GRANT OF THE:

CHARTER SCHOOL APPLICATION OF : STATE BOARD OF EDUCATION

THE RED BANK CHARTER SCHOOL, : DECISION

MONMOUTH COUNTY. :

Decided by the Commissioner of Education, January 21, 1998

For the Appellant, McOmber & McOmber (Arsen Zartarian, Esq., of
Counsel)

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

For the Participant Commissioner of Education, Geraldine Callahan, 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 Board of Education of the Borough of Red Bank (hereinafter "Board") contends that the Commissioner's decision should be reversed

because he approved the application on the basis of components that had been evaluated as inadequate by the Department of Education's reviewers. The Board further contends that identification of the Trinity Episcopal Church as the proposed facility for the charter school violates the New Jersey Constitution and is contrary to the Charter School Act. The Board argues that the Commissioner violated its due process rights and that the regulations are deficient in that they do not provide any standards for evaluating charter school applications. The Board also argues that the failure to consider the financial, racial and educational impact of a charter school violates the Equal Protection Clause of the New Jersey Constitution and that the grant of a charter in this case will violate the New Jersey Law Against Discrimination, Title VI of the Civil Rights Act and the Equal Educational Opportunities Act.

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 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 Red Bank, the Commissioner should review the racial composition of the student population of the Red Bank Charter School before granting final approval.

Margaret M. Bennett and Wendel S. Daniels abstained.

April 1, 1998

Date of mailing _____