

SB #89-98

IN THE MATTER OF THE FINAL GRANT :
OF A CHARTER FOR THE ENGLEWOOD : STATE BOARD OF EDUCATION
ON THE PALISADES CHARTER SCHOOL: DECISION
BERGEN COUNTY. :

Decided by the Commissioner of Education, September 16, 1998

For the Appellant, Mauro, Savo, Camerino & Grant (Eric Martin Bernstein,
Esq., of Counsel)

For the Respondent, Harry A. Carroll, Esq.

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

This is an appeal by the Board of Education of the City of Englewood (hereinafter "Board") from a grant of final approval given on September 16, 1998 by the Commissioner of Education to the Englewood on the Palisades Charter School (hereinafter "Charter School" or "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, 2002.¹

The Board alleges that the Charter School's facility and lease information did not meet the requirements of the Act, that the documentation provided to the Commissioner by the Charter School did not address admissions issues and racial balance, that the

¹ The Board had filed an earlier appeal from a decision by the Commissioner on January 21, 1998 to grant contingent approval to the Charter School's application. In a decision issued on April 1, 1998, we permitted the Charter School to continue the process which would allow it to become operative if the Commissioner granted it final approval. In the Matter of the Grant of the Charter School Application of the Englewood on the Palisades Charter School, decided by the State Board of Education, April 1, 1998, appeal pending (App. Div.).

documentation did not satisfy governance and staff requirements, that the Charter School had the burden to ensure that it did not have a negative impact on the Englewood public schools, that the approval of the Charter School would have an adverse impact on the Englewood public schools and that the Commissioner's exercise of discretion without applying every requirement raised constitutional issues.

The Commissioner, who is participating in this appeal as provided by N.J.A.C. 6A:11-2.5(d), filed an answer to the Board's brief along with a motion to supplement the record on appeal with "44 pages of documents related to racial issues regarding the Englewood on the Palisades Charter School" and a certification of the Deputy Attorney General representing the Commissioner.

After a thorough review of the record, we find it necessary to remand this matter to the Commissioner for further review and determination in accordance with our decision herein.

We stress that we did not make any determinations concerning the racial composition of the Charter School's pupil population in our prior decision in this matter. See supra note 1. Nor did we make any determinations with respect to the Board's allegations that granting this charter would have a negative racial impact on the Englewood school district because we agreed with the Commissioner that these questions were not ripe for determination at that point in the absence of actual enrollment data. However, we concluded that "given the racial composition of Englewood's student population," the Commissioner "should review the racial composition of the student population of the proposed Englewood on the Palisades Charter School before granting final approval." In the Matter of the Grant of the Charter

School Application of the Englewood on the Palisades Charter School, supra, slip op. at 2.

Unfortunately, neither the record provided to us on behalf of the Commissioner in this matter nor the Commissioner's letter of September 16, 1998 reflect that he reviewed the racial composition of the school before granting it final approval to begin operations. Hence, we direct the Commissioner to provide us by January 15, 1999 with a written assessment of both the racial balance of the student population currently attending the Charter School and the potential impact of that school on the Englewood school district during the term for which the charter is approved, as well as an assessment of the school's potential long-term impact on the district's racial balance. We also direct that the Commissioner articulate the standard which he relied upon in making his determination, as well as the factual basis for his conclusions. Such standard must be delineated with careful reference to the applicable judicial decisions. E.g., Board of Educ. of Englewood Cliffs v. Board of Educ. of Englewood, 257 N.J. Super. 413 (App. Div. 1992), aff'd, 132 N.J. 327 (1993), cert. denied, 510 U.S. 991, 114 S.Ct. 547, 126 L.Ed.2d 449 (1993).

In addition to our concerns relating to racial balance, we find that the record provided to us on behalf of the Commissioner fails to demonstrate that the only teacher employed by the Charter School is properly certified as required by N.J.S.A. 18A:36A-14(c). That statute, which applies specifically to charter school employees, requires that:

All classroom teachers and professional support staff shall hold appropriate New Jersey certification....

In his letter of January 21, 1998 to the Charter School, the Commissioner recognized that the Charter School had not yet complied with this statutory requirement because his approval of the school's application was made contingent upon receipt and approval of documentation not included with the Charter School's application, including: "Copies of Certifications of Teachers, Principals/Directors and Professional Support Staff."

The documentation which the Charter School submitted to the Commissioner in order to satisfy this contingency shows only that the school has employed a single individual who was to serve as a teacher. Those documents, however, do not reflect that this individual is appropriately certified for such employment. See N.J.S.A. 18A:1-1; N.J.S.A. 18A: 26-1; N.J.S.A. 18A:26-2; N.J.S.A. 18A: 27-2. Rather, the documents show only that this individual had been issued a "certificate of eligibility" by the State Board of Examiners in October 1996. The certificate of eligibility states that the teacher, Dana D. Clark, is "eligible to seek employment in positions requiring the Provisional Certificate," and specifies that "[t]he Provisional Certificate will be issued contingent upon evidence of employment in a district that agrees to provide an approved induction program, including required job support, performance evaluation and professional coursework."²

² Our regulations provide that a certificate of eligibility is "a permanent certificate that may be issued to persons who meet academic degree and examination requirements for provisional employment." N.J.A.C. 6:11-4.4(a). The provisional certificate is a substandard teaching certificate which "is a temporary one-year certificate issued to candidates who have met requirements for initial employment as part of a State-approved district training program or residency leading to standard certification." N.J.A.C. 6:11-4.2. Accordingly, the regulations specify that "[h]olders of certificates of eligibility shall not assume responsibility for a job assignment until they have been issued provisional certificates." N.J.A.C. 6:11-4.4(a).

Those regulations further require that "[e]ach district school or consortium seeking to hire a provisional teacher must submit a plan to the Department of Education and receive approval in accordance with the same procedures used for initial approval of collegiate preparation programs." N.J.A.C. 6:11-5.3(a). "No

We recognize that, as found by the Legislature, charter schools may provide a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom. N.J.S.A. 18A:36A-2. However, nothing in N.J.S.A. 18A:36-1 et seq. or in any other provision of the education law excuses a charter school from complying with statutory certification requirements.

Again, there is nothing in the record provided to us by the Commissioner to show that Ms. Clark, the Charter School's only teacher, holds appropriate New Jersey certification as required by the applicable statutes. Furthermore, even where a provisionally certified alternate route teaching candidate may appropriately be employed, a certificate of eligibility, as set forth hereinabove, does not constitute provisional certification. See supra note 2.

Although we make no definitive judgment at this time concerning the specific certification required in this case, we cannot ignore the fact that there is no indication in the record that the Charter School has retained any staff member other than Ms. Clark to serve as part of its teaching staff or as director/headmaster of the school.

Accordingly, we also remand this matter to the Commissioner for determination, in accordance with our decision herein, of whether all classroom teachers employed by the Charter School possess certification that is appropriate to authorize them to fulfill the responsibilities attending their positions, as required by N.J.S.A. 18A:36A-14(c),

public school district shall be authorized to employ a provisional teacher unless it has submitted a plan and received the approval of the commissioner at the recommendation of the State Board of Examiners." N.J.A.C. 6:11-5.3(d). State-approved training programs for provisional teachers must provide a "full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom" and a "period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom." N.J.A.C. 6:11-5.3(f). The program must also include approximately 200 hours of formal instruction. N.J.A.C. 6:11-5.3(g).

whether the school has employed at this point a headmaster as indicated in its application and, if so, the qualifications of such individual. Given our concerns, we direct the Commissioner to make such determination and transmit it to us by December 14, 1998.

In view of our determination, we have not considered at this time the motions to supplement the record filed by the Commissioner and the Englewood Board. While the Charter School may continue to operate in the interim, we retain jurisdiction.

Donald C. Addison, Jr. and S. David Brandt opposed.

December 2, 1998

Date of mailing _____