

IN THE MATTER OF THE DENIAL OF :
THE CHARTER SCHOOL APPLICATION : STATE BOARD OF EDUCATION
OF THE JERSEY SHORE CHARTER : DECISION
SCHOOL, MONMOUTH COUNTY. :

Decided by the Commissioner of Education, January 11, 2002

Decision on Motion by the State Board of Education, April 3, 2002

For the Appellant, Kathleen Devine, pro se

For the Respondent West Long Branch Board of Education, Wilentz, Goldman & Spitzer (Viola S. Lordi, Esq., of Counsel)

On January 18, 2002, Kathleen Devine¹ filed an appeal to the State Board of Education from a determination by the Commissioner of Education rejecting the application submitted to him on behalf of the proposed Jersey Shore Charter School pursuant to the Charter School Program Act of 1995. The Commissioner rejected the application because he concluded that it needed to be strengthened in a variety of areas. Specifically, the Commissioner found that the application reflected a lack of understanding of educational equity and access, was weak in its articulation of a plan to serve at-risk students and students with educational disabilities, and was also weak in its articulation of a plan to use assessment to drive curriculum implementation.

Before the application was rejected, the School's founders were provided with feedback from Department of Education ("DOE") staff through both an in-depth

¹ Ms. Devine is one of the founders of the proposed school.

interview and written comments. They also had been afforded the opportunity to submit addenda to the application in response to the feedback. The founders took advantage of the opportunity and submitted four separate addenda aimed at correcting the weaknesses that had been identified by the feedback. Despite the feedback and the submission of addenda, the application remained weak in the areas of educational equity and access, provisions for at-risk students and students with educational disabilities, and assessment to drive curriculum implementation. In the face of these weaknesses, the Director of the Charter School Office and the Assistant Commissioner responsible for the charter school program determined to conduct a structured interview with the founders before deciding whether or not to approve the application. The objective of this interview was to ascertain whether the founders could articulate how they would address the identified areas of weakness despite the failure of the written application to adequately do so. Following that interview, the Commissioner determined to deny the application.

The focus of Ms. Devine's appeal is the structured interview. She contends that it was improper to conduct the structured interview because N.J.A.C. 6A:11-2.1 does not authorize such an interview. She argues that, therefore, any "feedback" derived from that interview must be excluded from the Commissioner's consideration of whether to grant a charter to the School and, consequently, that the deficiencies brought to his attention as a result of the structured interview no longer exist. She contends that the Commissioner must rely solely on the evaluation forms completed by Department of Education reviewers and, since these were supportive of approving the application, the application must be approved.

Quite simply, Ms. Devine fails to grasp the character of the Charter School Program and to understand the Commissioner's responsibilities in implementing that program. Consequently, she misperceives the nature of the review process.

Initially, we stress that the Legislature's purpose in authorizing the establishment of charter schools was to improve pupil learning. N.J.S.A. 18A:36A-1. Given the Commissioner's responsibility for the supervision of New Jersey's public schools and for insuring that students attending those schools receive a thorough and efficient education, the Legislature has entrusted him with the final authority to grant or reject a charter application subject to appeal to the State Board. N.J.S.A. 18A:36A-4. In that a charter school is a public school, N.J.S.A. 18A:36A-3, the Commissioner is responsible for insuring that such a school provides a thorough and efficient education when he exercises that authority and, hence, his powers are as expansive in this context as in any instance in which he acts to insure the provision of a constitutionally sufficient education. Cf. In re Upper Freehold Reg'l School Dist., 86 N.J. 265 (1981). Accordingly, the Commissioner must be satisfied as to the sufficiency of the education that will be afforded by a charter school when he approves a charter application, and it would be incongruous to interpret the regulations that we have adopted to preclude him from obtaining and considering information that is pertinent in making his determination.

In this instance, the Department of Education officials responsible for the administration of the Charter School Program, acting on behalf of the Commissioner and having before them the application, evaluation forms, application feedback, addenda and addenda feedback, had concerns as to the proposed School's ability to address the areas that they identified as weak. Such concerns were not unreasonable given such documentation and the fact that after being provided with feedback, the

School's founders had submitted addenda to address those areas. In this respect, we find that contrary to Ms. Devine's assertions, the reviewer's evaluations do not indicate "strong" support for the proposed school, but rather, as the cumulative ratings reflect, that they considered the proposal to be merely "adequate." Further, the application review feedback clearly identifies major weaknesses in the application, including those upon which the Commissioner based his denial, and we can find no indication in the record that Department of Education staff concluded that the addenda had adequately addressed those weaknesses.

Given the significance of the weaknesses at issue, the application could well have been denied at that point. We find that the structured interview afforded to the founders was not an onerous burden, but rather provided them with the opportunity to demonstrate the adequacy of the proposed school despite the weaknesses in the written application and addenda that they had submitted. Under the circumstances, it was entirely appropriate that the DOE officials responsible for implementation of the Charter School Program acted to obtain additional information through a structured interview, and, especially in view of the educational import of the determination he was making, the Commissioner was entitled to consider that information in arriving at his conclusion.

In sum, we find Ms. Devine's contentions to be entirely without merit. Therefore, for the reasons stated, we affirm the Commissioner's determination in this matter.

Edward Taylor and Roberta Van Anda abstained.

July 2, 2002

Date of mailing _____