

SB #1-02
App. Div. #A-5811-01T2

IN THE MATTER OF THE GRANT OF :
THE RENEWAL APPLICATION OF : STATE BOARD OF EDUCATION
THE RED BANK CHARTER SCHOOL, : DECISION
MONMOUTH COUNTY. :

Decided by the Commissioner of Education, December 14, 2001

Decision on motion by the Commissioner of Education, January 22, 2002

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

Decided by the State Board of Education, June 5, 2002

Remanded by the Appellate Division, March 17, 2004

For the Appellant, McOmber & McOmber (R. Armen McOmber, Esq., of
Counsel)

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

For the Participant Commissioner of Education, Kimberly Lake Franklin,
Deputy Attorney General (Peter Harvey, Attorney General of New
Jersey)

This matter is before the State Board pursuant to a remand by the Appellate Division. The underlying case involved an appeal to the State Board by the Red Bank Board of Education from a determination by the Commissioner of Education in December 2001 which granted the renewal application of the Red Bank Charter School for a five-year term and authorized an expansion of the Charter School so as to permit it to serve 162 students in kindergarten through eighth grade.

On appeal to the State Board, the Red Bank Board of Education challenged the appropriateness of both allowing the Charter School to continue to operate and authorizing it to expand. The Board contended that the Charter School had had a segregative effect on the district's schools and that its expansion would have a disastrous economic impact that would jeopardize the Board's ability to provide a thorough and efficient education to its students. The Board also argued that the Commissioner had not afforded it due process because he had denied its request for a hearing.

In its decision of June 5, 2002, the State Board found that the Red Bank Board had not shown that operation of the Charter School would prevent the Board from providing a thorough and efficient education to its students. The State Board also rejected the Board's due process argument, stressing that the matter before the Commissioner involved the approval of a charter application and was not a contested case.

The State Board also found that the Red Bank Board had not demonstrated that the Charter School had had a segregative effect on the district's schools or that its expansion would have an impermissible impact on the racial composition of the district's schools. The State Board, however, emphasized the importance of the Commissioner's continuing responsibility to assess on an annual basis the student composition of the Charter School and any segregative effect that the loss of students might have on the Red Bank school district.

On March 17, 2004, the Appellate Division affirmed the State Board's determination that the Red Bank Board had not demonstrated that the fiscal impact of

renewing the charter jeopardized the Board's ability to provide a thorough and efficient education to its students. I/M/O Grant of Renewal Application of the Red Bank Charter School, Docket #A-5811-01T2 (App. Div. 2004). The Court also concurred with the State Board that the Commissioner was not required to provide an evidentiary hearing whenever a district objects to the renewal of a charter. In this respect, the Court found that the Commissioner was acting in his quasi-legislative rather than quasi-judicial capacity when he determined to renew the charter at issue. Hence, the proper standard for judging the appropriateness of the Commissioner's determination was whether his decision was arbitrary, capricious or unreasonable. Considering the record as a whole, the Court found that it could not say that either the State Board's or the Commissioner's decision was arbitrary, capricious, or unreasonable.

However, stressing the Commissioner's obligation to ensure that no student is subjected to discrimination or segregation in the public schools, the Court found the Red Bank Board's allegations concerning the Charter School's enrollment and withdrawal policies "disturbing and difficult to dismiss" on the record it had before it. Red Bank Charter School, supra, slip op. at 21. Consequently, the Court found that although the matter had not been initiated as a contested case, the Board's charges that the Charter School frequently returned minority students to the Red Bank Middle School and that its sibling preference policy resulted in the fact that an overwhelming percentage of the Charter School's graduates were white warranted closer scrutiny in order to determine whether some of the Charter School's practices were "worsening the existing racial/ethnic imbalance" in the Red Bank school district. Id. Concluding that relegating the Board's charges to the Commissioner's annual review would be insufficient to

protect New Jersey's anti-segregation policies and pointing out that New Jersey's schools were among the most segregated in the nation, the Court remanded the matter to the State Board for the Commissioner "to conduct an appropriate hearing to determine whether the Charter School's operation of the lottery, waiting list, sibling preference, and student withdrawal practices, together with any other actions following enrollment, exacerbate the district's racial/ethnic balance." Id. at 24. The Court further directed that the Commissioner, upon completion of the hearing, determine whether any remedial action is warranted. Id.

As directed by the Appellate Division, we remand this matter to the Commissioner for such further proceedings as are necessary to fulfill the terms of the Court's decision. In doing so, we stress that, as expressed in our recent decision in In the Matter of the Grant of the Charter School Application of the Jersey Shore Charter School, decided by the State Board of Education, March 4, 2004, slip op. at 10-11:

The New Jersey Supreme Court has made it clear that the "constitutional command to prevent segregation in our public schools superimposes obligations on the Commissioner when he performs his statutory responsibilities under the Charter School Act." In re Grant of Charter School Appl., [164 N.J. 316, 328 (2000)]. While the Court declined to find the Charter School Act facially unconstitutional because it did not "expressly state in detail how the Commissioner is to fill that constitutional obligation," id. at 329, it left no doubt that the Commissioner's responsibilities in this context extend beyond determining whether a charter school is seeking a cross section of the community's school age population.

We also reiterate that, as expressed by the New Jersey Supreme Court:

The Commissioner must consider the impact that the movement of pupils to a charter school would have on the district of residence. That impact must be assessed when the Commissioner initially reviews a charter school for

approval to open, and on an annual basis thereafter...the Commissioner [must] be prepared to act if the de facto effect of a charter school were to affect a racial balance precariously maintained in a charter school's district of residence. The Commissioner's obligation to oversee the promotion of racial balance in our public schools to ensure that public school students are not subjected to segregation includes any type of school within the rubric of the public school designation.

In re Grant of Charter School Appl., supra at 328.

As found by the Appellate Division in the case now before us, the circumstances that have been presented require that the Commissioner fulfill his mandated responsibility to assess the racial impact of the Red Bank Charter School on the Red Bank school district so as to insure that the Charter School does not have a segregative effect on the schools operated by the Red Bank Board of Education. His constitutional obligation to insure racial balance in New Jersey's public school demands no less. Board of Educ. of Borough 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).

May 5, 2004

Date of mailing _____