

Addendum to the Civil Rights Complaint Filed by Fair Schools Red Bank and the Latino Coalition of New Jersey

Introduction

On November 15, 2016, Fair Schools Red Bank, a group of concerned parents of Red Bank Borough Public School students, and the Latino Coalition of New Jersey (“LCNJ”) filed a civil rights complaint with the Civil Rights Division of the U.S. Department of Justice and the Office for Civil Rights of the U.S. Department of Education. The complaint seeks to vindicate the rights of the children of Red Bank, NJ to attend non-segregated schools. Complainants respectfully asked both agencies to investigate the discriminatory impact of the enrollment policies of the Red Bank Charter School (“RBCS”); the discriminatory impact of the refusal of the Commissioner of the New Jersey Department of Education (“Commissioner”) to enforce state laws against segregation; and the discriminatory impact of the school funding policies of the administration of Governor Chris Christie and the New Jersey Legislature.

This addendum is being submitted to dispel myths perpetuated by the RBCS, which continues to claim that its enrollment reflects the school-aged population of Red Bank, and to provide more current demographic information.

Demographics

The RBCS continues to use outdated Census data to perpetuate the myth that the demographics of its school represent the preK to 8th grade population of Red Bank The Charter School Program Act of 1995 (“the Act”) specifically mandates that charter schools “seek the enrollment of a cross section of the community’s school age population including racial and academic factors.”¹ In its application for a proposed expansion that was filed December 1, 2015, and ultimately denied, the RBCS cited the following Census Data for the under-18 population of the Borough of Red Bank to show that the demographics of the school are closely aligned with that of the Borough of Red Bank.²

	RBCS	Census
Hispanic	34%	40%
White	52%	41%
Black	12%	18%

Source: RBCS expansion amendment request

In Appendix 1 of that request, the RBCS explains that those Census numbers come from the 2006-10 American Community Survey (“ACS”):

"Because the data used to calculate the 5-year estimate is between 5 and 10 years old, if Borough demographics have been shifting, the estimated data may be slightly

¹ N.J.S.A. 18A: 36A-8e

² RBCS expansion request, page 13, available at <http://www.redbankgreen.com/wp-content/uploads/2015/12/RBCS-Amendment-Request-Dec-2015.pdf>

out of date. However, it is as close to current as we can get. Even though the most recent ACS 5-year estimates use data from 2009-13, the latest 5-year estimate for Red Bank Borough with racial/ethnic/economic demographics is 2006-10.”³

However, the U.S. Census updates the ACS data each year, meaning much more current data for Red Bank Borough was available to the RBCS when it filed its expansion request on December 1, 2015. In addition, the 2010 decennial census is a far more accurate dataset when examining characteristics such as race and Hispanic origin because it is based on actual population counts, rather than estimates from a sample of the population. According to the U.S. Census:

“In general, use ACS to obtain population characteristics (percents, means, medians, and rates) rather than estimates of population totals. Use numbers from the 2010 Census to obtain counts of the population and their basic characteristics (sex, age, race, Hispanic origin, and homeowner status).”⁴

RBCS not only uses ACS estimates rather than decennial census counts when discussing the race of the school-aged population of Red Bank, but it also uses ACS estimates that are several years old. What makes its selection of the 2006-10 ACS data even more peculiar is that the RBCS said it used more recent ACS data from 2009-13 when it cited Census data pertaining to the percentage of Red Bank students who attend private schools—even though it never mentioned those statistics in the expansion request.

Why not use decennial census counts or more recent ACS estimates when discussing race and ethnicity?

So why doesn't the RBCS use more recent Census data when citing the race of the under-18 population for the Borough of Red Bank? Perhaps because the more recent data show a much wider gap between the under-18 population of Hispanic and white children in Red Bank and the demographics of the RBCS.

The following table compares ACS data for 2006-10, which the RBCS widely cites, with more recent ACS data for 2009-13—which was available when the RBCS submitted its renewal application.⁵ The table also shows the decennial 2010 census, which gives actual population counts and was also available to the RBCS when it submitted its expansion request on December 1, 2015. As the table shows, the ACS 2006-10 data provides a lower percentage of Hispanic children and a higher percentage of white children than either the 2009-13 ACS data or the 2010 Census counts.

³ RBCS expansion request, Appendix 1, available at <http://www.redbankcharterschool.com/rbcs/PDFS/RBCSAmendmentLetter.pdf>

⁴ <http://www.census.gov/programs-surveys/acs/guidance/comparing-acs-data.html>

⁵ RBCS expansion request, Appendix 1, available at <http://www.redbankcharterschool.com/rbcs/PDFS/RBCSAmendmentLetter.pdf>

Comparison of Census data for the under-18 population of Red Bank

	ACS 2006-10	ACS 2009-13	Census 2010
Hispanic	40%	45%	53%
White	40%	35%	30%
Black	18%	20%	14%

Source: U.S. Census; American Community Survey for years 2006-10, 2009-13; 2010 data is Summary File 1. Note: our calculation of the ACS Census for white children under 18 is 40% while the RBCS was 41%. Also, Census 2010 data show 3% of students are of other races or composed of two or more races.

Now let's see how the demographics of the RBCS stack up against each of the Census data groups. The following table shows the RBCS demographics as presented in its renewal application versus the ACS 2006-10.⁶

RBCS demographics vs ACS 2006-10

	RBCS	ACS 2006-10	Difference
Hispanic	34%	40%	-6%
White	52%	40%	+12%
Black	12%	18%	-6%

Source: RBCS and U.S. Census

The next table shows the RBCS demographics with more recent ACS 2009-13 data, which were available when the RBCS put together its renewal application.

RBCS demographics vs ACS 2009-13

	RBCS	ACS 2009-13	Difference
Hispanic	34%	45%	-11%
White	52%	35%	+17%
Black	12%	20%	-8%

Source: RBCS and U.S. Census

And here are the demographics of the RBCS when stacked up against the 2010 Census—which was not only available to the RBCS when it put together its renewal application, but it is also a count of the population, considered by the U.S. Census to be a more accurate way of looking at race.

RBCS demographics vs Census 2010 S1 data

	RBCS	2010 Census	Difference
Hispanic	34%	53%	-19%
White	52%	30%	+22%
Black	12%	14%	-2%

Source: RBCS and U.S. Census

⁶ Note: Enrollment numbers and demographics for public schools fluctuate depending on when they are counted. So, for example, the enrollment numbers provided by the RBCS in its December 1, 2015, expansion request as well as those provided by the Red Bank Borough Public Schools in its January 2016 response are different than those provided by the NJ DOE's fall enrollment numbers. Fair Schools Red Bank mostly used the NJ DOE's fall enrollment numbers for 2015-16 in its initial civil rights complaint because they are the official counts from the state and are taken at the same time for all schools. The NJ DOE typically releases enrollment data in mid October of each year, but it has not yet released new enrollment numbers for any school for the 2016-17 school year.

It is clear that the more recent 2009-13 ACS data and the 2010 Census data show wider gaps in Hispanic and white children than the 2006-10 data cited by the RBCS in its December 1, 2015, renewal application.

The RBCS continues to cite the outdated Census data

Since the filing of the expansion request on December 1, 2015, the RBCS has continuously used the outdated ACS Census numbers to prove that it’s “the only diverse student body in Red Bank.”⁷ In online forums and in comments to news articles, RBCS parents are often quick to say that the RBCS is “the one school that truly reflects the borough.”⁸ And in an op-ed that RBCS principal Meredith Pennotti wrote for *The Asbury Park Press* on November 10, 2016, she again repeated those statistics even as she updated the demographics of the RBCS for the current 2016-17 school year:⁹

“Red Bank Charter School is not the segregated school that our detractors would lead residents to believe. Our school population is roughly 49 percent white, 39 percent Latino and 10 percent black, which closely tracks the school-age population of Red Bank, which is 41 percent white, 40 percent Latino, and 18 percent black.”¹⁰

Recently, the U.S. Census released ACS data for the years 2011-15. The following table shows how the most recent U.S. Census data stacks up against demographics of the current population of the RBCS as provided by Ms. Pennotti in her op-ed.

Current RBCS demographics vs 2011-15 ACS data

	Current RBCS	ACS 2011-15	Difference
Hispanic	39%	51%	-12%
White	49%	30%	+19%
Black	10%	19%	-9%

Source: RBCS and U.S. Census

Despite the disparity between the demographics of the RBCS and the school-aged population of Red Bank, Ms. Pennotti continues to assert that the RBCS is more reflective of the school-aged population of Red Bank than the Red Bank Borough Public Schools are. In a November 29, 2016, letter Ms. Pennotti sent to Frank Argote-Freyre, Director of the LCNJ, she said:

“Red Bank Charter School is 39 percent Latino and 10 percent black, which means that nearly half of our students are minorities. Red Bank Charter School is more integrated and reflective of the school age population in Red Bank than the district

⁷ RBCS flyer (12/15/2015) available at <http://www.redbankcharterschool.com/rbcs/PDFS/RBCSDifference-OneSheet-Dec2015-final.pdf>

⁸ Comment from RBCS parent Paul Cagno on redbankgreen.com on 12/12/16, available at <http://www.redbankgreen.com/2016/12/red-bank-parking-garage-plan-on-deck/#respond>

⁹ *The Asbury Park Press*, <http://www.app.com/story/opinion/columnists/2016/11/10/pennotti-charter-school-contribute-segregation-red-bank/93582312/>

¹⁰ PENNOTTI: Charter school doesn’t contribute to segregation in Red Bank, *The Asbury Park Press*, November 10, 2016, available at <http://www.app.com/story/opinion/columnists/2016/11/10/pennotti-charter-school-contribute-segregation-red-bank/93582312/>

school. Any suggestion of ‘segregation’ at Red Bank Charter School is erroneous and not reflective of reality. We hope to have the chance to inform you of that.”¹¹

RBCS also claims that there are hundreds of preK-8th grade children who attend neither RBCS nor the Red Bank Borough Public Schools but provides no information on where those numbers come from

In a letter to the Commissioner on February 19, 2016, RBCS Principal Meredith Pennotti said:

“Presently in Red Bank we have about 658 students in grades K-8 who are being served by non-public schools.”¹²

However, Ms. Pennotti never explained how she came up with the 658 number. In addition, while the RBCS said in its December 1, 2015, expansion request that it obtained the percentage of Red Bank private school students through 2009-13 ACS Census data, it never provided that information in the request.

Even so, the 2009-13 ACS for the number of Red Bank children who attend private school in kindergarten through 8th grade is nowhere near the 658 number touted by Ms. Pennotti.

The following table shows the number of Red Bank children in private school from kindergarten through 8th grade as provided by the ACS for the years 2009-13, as well as more recent data from 2010-2014 and 2011-15.

Red Bank children who attend private school

	ACS 2009-13	ACS 2010-14	ACS 2011-15
K – 8th grade	145	140	144

Source: U.S. Census

If the 658 number didn’t come from ACS data, where did it come from?

While we can’t say with certainty where the 658 number came from, looking at enrollment numbers for the RBCS and the Red Bank Borough Public Schools provide one possibility. The following table totals the 658 private school students with the NJ Department of Education enrollment numbers for the 2015-16 school year, which were released in October of 2015. They are the last year for which enrollment numbers for both schools are available and were therefore available when the RBCS submitted its expansion request in December 2015.

¹¹ Letter from Meredith Pennotti to Frank Argote-Freye, 11/29/2016, available in Appendix 1.

¹² Letter from Meredith Pennotti to NJ DOE Commissioner, 2/19/2016, available in Appendix 2.

2015-16 enrollment of RBCS and Red Bank Borough Public Schools plus 658 nonpublic school students cited by Ms Pennotti

	Red Bank Borough Public Schools	RBCS	+658 Private School Students (as cited by Ms. Pennotti)
Total Enrollment	1,255	200	2,113
White Students	86	100	844
Percent of White Students	7%	50%	40%*

Source: NJ DOE for school enrollment numbers; * assumes all 658 students are white

As the table shows, if all 658 students are assumed to be white, then 40% of the total preK-8th grade population of the Borough of Red Bank would be white. However, as the Census count already demonstrated, Red Bank has nowhere near 658 preK-8th grade children who attend private or parochial schools.

The Red Bank Borough Public Schools also provided a count of the school-aged population of Red Bank, and this count is more current and more correct.

As stated in our original civil rights complaint, Red Bank Borough Public Schools calculated the demographics of the school-aged population of Red Bank in early 2016 as it was fighting to block the expansion of the RBCS. After the RBCS made its initial expansion request to the NJ DOE on December 1, 2015, to double in size from 200 students to 400 students, the RBCS Board of Trustees modified the request to phase in the expansion over three years, rather than do it all at once.

On February 4, 2016, the Red Bank Borough Public Schools issued a press release to reiterate the Red Bank Borough Board of Education’s opposition to any expansion, including one that is phased in over three years. [See Appendix 3.] The press release included the following table, which provides preK-8th grade enrollment counts for the RBCS and the Red Bank Borough Public Schools in early 2016 as well as enrollment data for Red Bank children who attend parochial and other schools. The table shows that the Red Bank Borough Public Schools calculated that 137 children age preK to 8th grade attended non-public schools in the winter of 2016. The vast majority of those students are assumed to be white. As Dr. Jared Ramage, superintendent of the Red Bank Borough Public Schools, concluded:

“The demographics of the Borough of Red Bank have shifted greatly in recent years, and we believe the following table best represents the demographics of Red Bank students in preK through 8th grade.”¹³

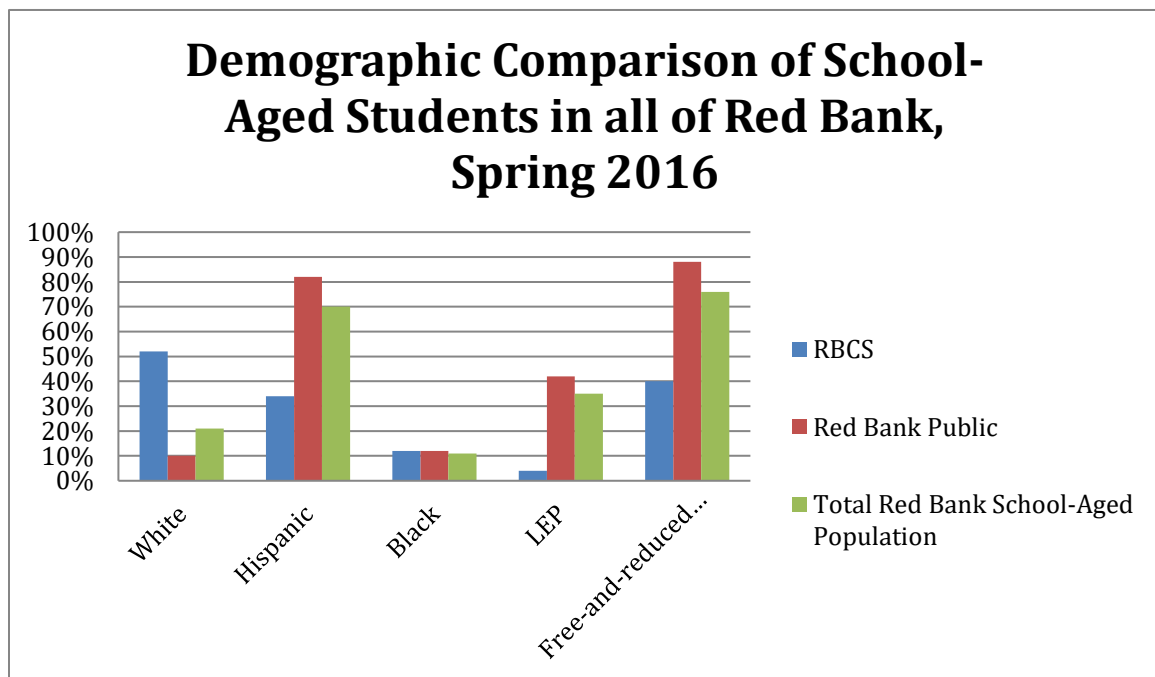
¹³ Red Bank Borough Public Schools press release, 2/4/2016, available in Appendix 3.

Demographics of the preK-8th grade population of the Borough of Red Bank, from Red Bank Borough Public Schools Press release, February 4, 2017

PK-8	Charter enroll	RBB enroll	Parochial enroll	Other enroll	Total enroll	Total RB students	Current Charter	Current RBB
Total	200	1428	71	66	1765			
White	104	144	55	*66	369	21%	52%	10%
Hispanic	68	1166	8	X	1242	70%	34%	82%
Black	24	168	5	X	197	11%	12%	12%
LEP	7	604	X	X	611	35%	4%	42%
ED	80	1256	X	X	1336	76%	40%	88%

“*” is uncertain and denotes an assumption; “x” is unknown and assumed to be “0” for this chart. LEP = Limited English Proficient. ED = Economically Disadvantaged.
 Source: Red Bank Borough Public Schools

The civil rights complaint filed by Fair Schools Red Bank and the LCNJ on November 15, 2016, included the following chart, which used the data provided by the Red Bank Borough Public Schools in its press release. As the table and the chart demonstrate, the RBCS is clearly causing segregation, and the Red Bank Borough Public Schools more closely reflect the demographics of the school-aged population of the children of the Borough overall.



Summary

As stated in our November 15, 2016, complaint, Red Bank’s publicly funded schools are clearly segregated. The RBCS has refused to abide by state law to seek enrollment of a cross section of Red Bank’s school-aged population, and it has also refused to abide by a Consent Order that requires it to use its best efforts to assure that the gender, race/ethnicity, economic status and LEP percentages of its students equate as closely as possible to the students residing in the Borough of Red Bank. Now it is also clear that the RBCS has relied on faulty data to perpetuate the myth that its demographics are closely in line with the

school-aged population of the Borough of Red Bank, and the Commissioner and the New Jersey Department of Education have done nothing to stop the spread of misinformation or reverse the segregative effects caused by the RBCS.

At the same time, the administration of Governor Chris Christie and the New Jersey Legislature have refused to fairly fund the Red Bank Borough Public Schools while fully funding the RBCS. The result is a significant funding disparity between the two schools, with the RBCS, which is predominantly wealthier and majority white, carrying a per-pupil cost of \$18,726 while the Red Bank Borough Public Schools, which are predominantly poor and Hispanic, carry a per-pupil cost of \$16,607. This funding disparity is further exacerbated by the segregation among Red Bank's publicly funded schools, because state law is supposed to provide a greater funding weight is supposed to be given to students who are poor, have disabilities, or who are English-language learners.

We continue to urge the U.S. Department of Justice and the U.S. Department of Education to take any and all steps in their power to stop and reverse the demographic and financial segregation at Red Bank's publicly funded schools.