



State of New Jersey

DEPARTMENT OF EDUCATION

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Governor

SHEILA Y. OLIVER  
Lt. Governor

LAMONT O. REPOLLET, Ed.D.  
Acting Commissioner

April 16, 2018

Mr. Roger J. Foss, President  
Board of Trustees  
Red Bank Charter School  
58 Oakland Street  
Red Bank, NJ 07701

Dear Mr. Foss:

By letter dated February 28, 2017, the New Jersey Department of Education (Department) notified Red Bank Charter School (RBCS) that following a comprehensive review, its charter was being renewed for a period of five years through June 30, 2022. The renewal decision was appealed by the Latino Coalition of New Jersey (LCNJ) and Fair Schools Red Bank (FSRB) in April 2017. By letter dated August 9, 2017, the Department amplified its decision to renew RBCS in accordance with New Jersey Court Rule 2:5-1(b). On September 15, 2017, the New Jersey Superior Court, Appellate Division entered an Order remanding this matter to the Department, allowing the parties to supplement the record as it relates to the August 9, 2017 Amplification of Reasons. The remand Order was extended on two occasions and the record closed on February 7, 2018. After review of the additional materials submitted, I reiterate the February 28, 2017 decision to renew RBCS's charter through June 30, 2022.

As articulated in the February 28, 2017 renewal letter and the August 9, 2017 Amplification of Reasons, the decision to renew a charter school is made after a comprehensive review of the charter school over the charter term, in accordance with *N.J.S.A. 18A:36A-17* and *N.J.A.C. 6A:11-2.3(b)*. As part of that review, the Department considers the charter school's renewal application, annual reports, academic performance on statewide assessments, structured interviews with school officials, public comments, and the fiscal impact on the district(s) of residence. In addition to all previously identified materials comprising the record in this matter, the following supplemental materials were considered as part of the Department's review on remand:

1. New Jersey Department of Education letter approving RBCS's amendment request to establish a weighted lottery for economically disadvantaged students, dated March 10, 2016 (1 page);
2. Submission of Fair School Red Bank and the Latino Coalition to Commissioner Kimberley Harrington on Remand from the Superior Court, Appellate Division in *In re Grant of Charter Renewal of the Red Bank Charter School*, from Gibbons P.C., dated November 13, 2017 (27 pages);

- a.) Appendix: Supplemental Items for the Record (Tab #1-16);<sup>1</sup>
3. Johnston Law Firm LLC letter submission, dated November 20, 2017 (3 pages);
4. Johnston Law Firm LLC letter submission, dated January 10, 2018 (25 pages);
- a.) Exhibit A: McOmber & McOmber, P.C. Email dated January 28, 2016 and accompanying draft letter attachments (8 pages) and Red Bank Borough School District communications (7 pages);
  - b.) Exhibit B: RBCS Expansion Approval, dated March 2, 2012 (2 pages);
  - c.) Exhibit C: RBCS NJSMART Enrollment as October 15, 2014 (1 page);
  - d.) Exhibit D: English/Spanish Communications and Outreach (51 pages);
  - e.) Exhibit E: LCNJ Press Release, "Coalition Files Federal Civil Rights Complaint Against Red Bank Charter School," dated November 15, 2016 (1 page);
  - f.) Exhibit F: "Latino Coalition doesn't speak for Latino charter school parents," Op-Ed by Rodolfo Ramirez, dated March 15, 2017 from the Johnston Law Firm LLC letter submission, dated January 10, 2018 (Item 4 above);
  - g.) Certification of Meredith Pennotti, dated January 10, 2018 (2 pages);
5. Gibbons P.C. reply-submission, dated February 7, 2018(12 pages)

At the outset, it is clear that LCNJ and FSRB do not seek relief by way of non-renewal of RBCS's charter. Rather, they argue on remand that the demographics of RBCS do not reflect a cross-section of the community's school-age population. LCNJ and FSRB allege that RBCS demonstrated a recruitment preference for white families and the imbalance in enrollment, specifically related to white, Latino, economically disadvantaged students, and English language learners, has had a segregative effect in Red Bank Borough Public Schools. To remedy the segregative effect, LCNJ and FSRB seek the following relief: 1) an evaluation of RBCS's academic performance by race, socio-economic status, and English language proficiency; 2) a meaningful investigation and oversight of RBCS's marketing and recruitment efforts; and 3) a suspension of RBCS's sibling preference policy until the charter school's racial imbalance is corrected. In contrast, RBCS raises several procedural claims and asserts that it is not engaging in discriminatory recruiting practices. RBCS outlines its recruitment and enrollment practices, including community outreach, and its establishment of a weighted lottery in favor of economically disadvantaged students, to demonstrate that it is attempting to enroll a cross-section of the community's school-age population.

The enrollment policies of all charter schools are guided by *N.J.S.A. 18A:36A-7, -8*, and corresponding provisions of the New Jersey code, including the Commissioner's duty to assess the segregative effect that the loss of students to a charter school may have on a district of residence, per *N.J.A.C. 6A:11-2.2(c)*. The New Jersey Supreme Court has held that, "the Commissioner must assess the racial impact that a charter school applicant will have on the district of residence in which the charter school will operate." *In re Grant of the Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 329 (2000). The Court has declined to require a particular format or structure for the Commissioner's assessment. *Ibid.* That said, under *N.J.S.A. 18A:36A-8(e)*, charter enrollment policies

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<sup>1</sup> The Appendix: Supplemental Items for the Record also included court filings related to the appeal of this matter. See Tab #17: Commissioner's August 10, 2017 Filing with the Superior Court, Appellate Division, Including Civil Case Information Statement, Statement of Items Comprising the Record, Notice of Motion to File Amplification and Certification of Kathryn Duran, DAG, in support, and Proposed Amplification of Reasons.

must, “to the maximum extent practicable, seek the enrollment of a cross section of the community’s school age population including racial and academic factors.” It is through this lens that the supplemental record is reviewed.

The supplemental materials submitted as part of the remand demonstrate that RBCS utilizes an enrollment policy that is consistent with the Department’s *Guidelines for Access and Equity in New Jersey Charter Schools* and meet the criteria for Access and Equity as articulated in the Department’s Performance Framework, the evaluation tool used to assess all charter schools in New Jersey. As part of the renewal application, RBCS was required to submit information regarding its recruitment, application, admissions, lottery and enrollment policies and practices. As part of the comprehensive review for renewal, the Department reviews this information to ensure that the practices are fair, equitable and demonstrate a commitment to serving all students. The Department also assesses whether these practices are aligned to the Department’s *Guidelines for Access and Equity in New Jersey Charter Schools*. The veracity of these practices is further assessed through structured interviews with stakeholders, which take place during onsite renewal visits, and by reviewing any public comment received regarding the charter school’s renewal application.

As part of the submitted supplemental materials, letters to Commissioner Harrington regarding RBCS recruitment practices were considered (Appendix: Supplemental Items for the Record Tab #13). The parties’ additional supplemental documentation demonstrates that during the relevant charter term (SY2013 to SY2017), RBCS recruited throughout the Red Bank community by: providing the application in hard-copy and electronically in English/Spanish, direct mailings to Red Bank Borough residents, English/Spanish lawn signs throughout the community, posted and published advertisements for the application and lottery in English/Spanish, a banner on the main Red Bank thoroughfare, and reaching out to local churches and community organizations to include information about RBCS in their bulletins and announcements. (Johnston Law Firm LLC Exhibit D). These efforts are also demonstrated in RBCS’s 2016 Annual Report, which further avers that applications could be submitted in person at RBCS, mailed, submitted via the RBCS website, faxed, or emailed. These recruitment strategies, as previously stated in the Amplification of Reasons, are open to all students in the Red Bank community, without regard to race, creed, color, national origin, ancestry, gender identity, or expression or affectional, or sexual orientation. Nor do these recruitment strategies discriminate on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, proficiency in the English language, or any other basis that would be illegal if used by a school district, as prohibited by *N.J.S.A. 18A:36A-7*.

The supplemental record also shows that RBCS has instituted a weighted lottery in favor of economically disadvantaged students, consistent with *N.J.A.C. 6A:11-4.5(f)*. RBCS’s weighted lottery, effective SY2017 through SY2019, allows economically disadvantaged students to have his or her name placed in the lottery three times rather than twice. (March 10, 2016 amendment approval letter). The weighted lottery increases the odds that a student identified as part of a specific educationally disadvantaged class (e.g. economically disadvantaged students) will gain a seat in RBCS. The ultimate purpose of the weighted lottery is to ensure that RBCS’s enrollment represents a cross-section of the community’s school-age population. (March 10, 2016 approval letter). In the first year of the weighted lottery, which is the only school year falling within the relevant time period, the number of Hispanic students enrolled with a sibling preference increased 26 percent and the number of white students enrolled with a sibling preference decreased 11 percent. The supplemental record suggests that as a result of the weighted lottery in favor of economically disadvantaged students, enrollment at RBCS is trending in a direction that better reflects the demographics of the school-age population in the community.<sup>2</sup> (Certification of Meredith Pennotti, January 10, 2018). It is anticipated that this trend will continue in coming years as students with documented economically disadvantaged statuses, and siblings thereof,

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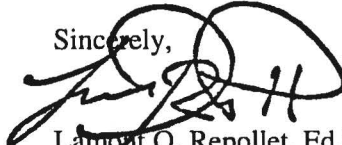
<sup>2</sup> RBCS maintains a sibling preference policy in which siblings of currently enrolled RBCS students are automatically granted a seat in RBCS. In the event that the number of siblings applying for seats exceeds the number of available spots, the sibling students will be placed on a wait list and granted enrollment through a lottery system. See the Amplification of Reasons for more information regarding RBCS’s sibling preference and the Department’s determination that abolishing the sibling preference would not lead to Appellants’ desired demographic changes.

obtain seats at RBCS. That said, the Department will continue to monitor RBCS's demographics and will consider revisiting both the weighted lottery and the sibling preference if the trend does not continue.

Therefore, after review, I have determined that the supplemental record does not provide justification to change the February 28, 2017 renewal decision. To the contrary, it is evident from the supplemental record that RBCS is seeking, "to the maximum extent practicable," to enroll a cross-section of Red Bank Borough's school-age population. For this reason, and for all the reasons set forth in the February 28, 2017 renewal letter and August 9, 2017 Amplification of Reasons, I reiterate the decision to renew RBCS's charter through June 30, 2022.

Please accept my best wishes as you continue to serve the students of New Jersey.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Repollet", written over the word "Sincerely,".

Lamont O. Repollet, Ed.D.  
Acting Commissioner

LR/CH/JB/LC/O:LEGAL/Red Bank Charter School 2017/Red Bank Charter School\_7720\_Affirm Renewal Decision

c: Colleen Schulz-Eskow  
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