

PRINCETON INTERNATIONAL ACADEMY :
CHARTER SCHOOL, INC., PARKER BLOCK, :
HELENA MAY, GIORA GRIFFEL AND :
RAJAN RAVIKUMAR, :
 :
PETITIONERS, :
 :
V. : COMMISSIONER OF EDUCATION
 :
BOARD OF EDUCATION OF THE : DECISION
PRINCETON REGIONAL SCHOOL DISTRICT, :
BOARD OF EDUCATION OF :
SOUTH BRUNSWICK TOWNSHIP, AND :
BOARD OF EDUCATION OF THE WEST :
WINDSOR-PLAINSBORO REGIONAL :
SCHOOL DISTRICT, :
 :
RESPONDENTS. :
_____ :

SYNOPSIS

Petitioners sought to enjoin the respondent Boards from using taxpayer funds to engage in activities that they allege are geared to undermining the petitioners' success in opening and operating a new charter school. Princeton International Academy Charter School (PIACS) was granted conditional approval by the Commissioner on January 11, 2010, with an anticipated opening in September 2010. The charter school has not yet opened. Since the charter was approved, petitioners charge that respondent Boards have spent public funds in efforts to defeat the charter school, including – through May 2011 – \$44,810 in legal fees to oppose PIACS. Both parties filed motions for summary decision based on the question of whether the respondent Boards may pay attorneys to oppose the establishment of a charter school through zoning challenges and lobbying activities, and whether members of school boards may issue public statements in opposition to the establishment of a charter school.

The ALJ found that: there were no genuine issues of material fact, and the matter was ripe for summary decision; although respondents do not have express or implied authority under *N.J.S.A. 18A:36A-4* of the Charter School Program Act to engage in the challenged activities, there is also no express prohibition against the challenged activities; the respondent Boards have discretionary authority under *N.J.S.A. 18A:11-1* to engage in the challenged activities; and the School Funding Reform Act, *N.J.S.A. 18A:7F-43* to -63, does not prohibit the challenged activities. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition. In so determining, the ALJ emphasized that, pursuant to *N.J.S.A. 18A:11-1(d)*, a board of education shall "[p]erform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district."

Upon review and consideration, the Commissioner was constrained to agree with the ALJ that summary decision is appropriately granted to respondents, as there is no legal authority which precludes respondents from engaging in the activities in question. In so determining, the Commissioner noted that the respondents have been zealous and relentless in challenging the existence of PIACS, and cautioned that though *N.J.S.A. 18A:11-1(d)* gives boards of education broad discretionary authority, such authority is not unfettered, and must be in furtherance of a *legitimate* board interest. Further, the discretion of school districts to oppose the application of a charter school is circumscribed by the provisions of *N.J.S.A. 18A:36A-4c*. However, districts are not prohibited from challenging implementation issues, as was the case here. Accordingly, the recommended decision of the OAL was adopted, and the petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions and respondents' reply thereto – filed in accordance with the provisions of *N.J.A.C.* 1-1:18.4 – were fully considered by the Commissioner in reaching his determination herein.¹

On exception, petitioners essentially recast and reiterate their arguments advanced before the ALJ below. In that it is determined that such arguments were duly considered and addressed in the initial decision, further elaboration on them here is deemed unnecessary.

¹ It is noted that petitioners submitted a myriad of additional materials along with their exceptions. By letter dated December 5, 2011, petitioners were advised by the Director of the Bureau of Controversies and Disputes that the Commissioner always reviews the entire record returned to him by the Office of Administrative Law, not just the initial decision. Therefore, if the additional submissions sent with petitioners' exceptions were submitted to the Administrative Law Judge (ALJ), they are part of the official record she returned to the agency and these were fully reviewed.

Upon a comprehensive review and full consideration of the record – including the parties’ exception submissions, the Commissioner first notes that this is a fact specific case presented to him through cross motions for summary decision. Petitioners here allege an improper use of school district funds by respondents to oppose the establishment of its charter school through zoning board challenges and opposition to charter school legislation and its implementation generally through amicus participation and lobbying activities. Petitioner also alleges that board members improperly made public statements in opposition to the charter school.

The record clearly evidences that the respondent school districts in this matter have been zealous and relentless in challenging the very existence of the petitioner charter school, thus effectively operating to contravene the intent of the legislature to create an alternative educational opportunity for children. Such behavior is inconsistent with the professional duty of educators whose primary concern must continually be the students of the community as a whole. Fulfillment of this professional obligation is best accomplished through cooperation and collaboration.

This said, upon a comprehensive review of the record before him, the Commissioner is compelled to agree with the ALJ that summary decision is appropriately granted to respondents, as he concurs that there is no legal authority which precludes respondents from engaging in the contested actions set forth above. While he additionally concurs with the ALJ that boards of education possess broad discretionary authority pursuant to *N.J.S.A. 18A:11-1(d)*, the Commissioner strongly emphasizes that such authority is not unfettered. Exercise of this discretionary authority – particularly with respect to the expenditure of public funds – must be in furtherance of a *legitimate* board interest. The Commissioner notes that the discretion of

school districts to oppose the application of a particular charter school is circumscribed by the statutory provisions of *N.J.S.A. 18A:36A-4c*, and ultimate appeal of the Commissioner's decision granting final approval of a charter to the Superior Court, Appellate Division.² However, districts are not prohibited from challenging implementation issues outside of this established process – as was the case here – through participation at zoning board meetings when safety issues are clearly relevant. Additionally, lobbying activities regarding general charter school legislative changes, or the filing of an amicus brief with the Appellate Division regarding the general application of the charter school law are not properly at issue here since they are not specific to petitioners application to establish a charter school. Finally, public statements of individual board members expressing their personal opinions are a protected exercise of their 1st Amendment rights – unless such public expressions are in contravention of the School Ethics Act.

Accordingly, the recommended decision of the OAL – as modified above – is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 2, 2012

Date of Mailing: April 3, 2012

² An attempt to appeal a conditional approval, such as the one here, would probably be heard by the Appellate Division only upon a successful motion for interlocutory review.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).