

PLEASE TAKE NOTICE the undersigned, attorneys for Intervenor-Movants, New Jersey Charter Schools Association, Inc., BelovED Community Charter School, Ana Maria De La Roche Araque, Tafshier Cosby and Diane Gutierrez (collectively “Intervenors”) shall move before the Superior Court of New Jersey, Law Division, Mercer County, located in Trenton, New Jersey on October 11, 2019 at 9:00 a.m. or as soon thereafter as counsel may be heard, for an Order granting Intervenors leave to intervene as a party to this proceeding pursuant to R. 4:33.

PLEASE TAKE FURTHER NOTICE that the movant shall rely upon the enclosed supporting brief, certification of Paul Josephson, Certification of Harold Lee, Certification of Ana Maria De La Roche Araque, Certification of Diane Gutierrez, and Certification of Tafshier Cosby.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is also submitted herewith.

PLEASE TAKE FURTHER NOTICE that movant only requests oral argument if opposition is tendered.

Duane Morris LLP

s/Paul P. Josephson
 Paul P. Josephson
 Samantha L. Haggerty
 Attorneys for Intervenor-Movants
*New Jersey Charter School Association, Inc.,
 BelovED Community Charter School,
 Ana Maria De La Roche Araque, Tafshier Cosby
 and Diane Gutierrez*

Dated: September 17, 2019

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LATINO ACTION NETWORK, ET AL.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	
	:	MERCER COUNTY
v.	:	
	:	Docket No. L-1076-18
STATE OF NEW JERSEY, ET AL,	:	
	:	CIVIL ACTION
Defendants.	:	[PROPOSED] ORDER
	:	
	:	
	:	
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	:	
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THIS MATTER having been brought before the Court on for Movant-Intervenors, New Jersey Charter Schools Association, Inc., BelovED Community Charter School, Ana Maria De La Roche Araque, Tafshier Cosby and Diane Gutierrez (collectively “Movant-Intervenors”)’s Motion to Intervene, and the Court having considered the moving papers and any argument of counsel, and for good cause shown;

IT IS on this ____ day of _____, 2019

ORDERED that the Motion to Intervene is GRANTED; and it is further

ORDERED that a Copy of this Order be served on counsel for all parties within seven (7) days of receipt of this Order.

The Honorable William Anklowitz

☐ opposed

☐ unopposed

DUANE MORRIS LLP

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 New Jersey Charter School Association, Inc., BelovED Community Charter School,
 Tafshier Cosby, Ana Maria De La Roche Araque and Diane Gutierrez*

LATINO ACTION NETWORK, ET AL.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	
	:	MERCER COUNTY
v.	:	
	:	Docket No. L-1076-18
STATE OF NEW JERSEY, ET AL,	:	
	:	CIVIL ACTION
Defendants.	:	
	:	CERTIFICATION OF PAUL P.
	:	JOSEPHSON, ESQUIRE IN SUPPORT OF
	:	MOVANT-INTERVENORS' MOTION TO
	:	INTERVENE
	:	

I, Paul P. Josephson, Esquire, of full age, hereby certify as follows:

1. I am an attorney at law duly admitted and in good standing in the State of New Jersey and am an attorney with the law firm of Duane Morris LLP, attorneys for Movant-Intervenors New Jersey Charter Schools Association, Inc., BelovED Community Charter School, Tafshier Cosby, Ana Maria De La Roche Araque and Diane Gutierrez. In that capacity, I have knowledge of the facts set forth herein.
2. Attached hereto as Exhibit "A" is a true and correct copy of the Resolution Authorizing BelovED Community Charter School Participation in Latino Action Network v. State of New Jersey, et al.

3. Attached hereto as Exhibit “B” is a true and correct copy of the unpublished decision Highland Park Bd. Of Educ. And Piscataway Township Bd. Of Educ. V. Harrington and Hatikvah Int’l Academy Charter School, et al., No. A-3455-16T1, 2019 WL 2402544 (N.J. Super. App. Div. June 7, 2019). The undersigned is not aware of any contrary unpublished opinions.
4. Attached hereto as Exhibit “C” is a true and correct copy of the unpublished decision In the Matter of the Approval of Charter Amendment of Central Jersey College Prep, No. A-3074-16T4, 2019 WL 2402541 (N.J. Super. App. Div. June 7, 2019). The undersigned is not aware of any contrary unpublished opinions.
5. Attached hereto as Exhibit “D” is a true and correct copy of the unpublished decision Bd. Of Educ. Of Hoboken v. New Jersey State Dept. of Educ., No. A-3690-14T3, 2017 N.J. Super. Unpub. LEXIS 1639 (App. Div. June 29, 2017). The undersigned is not aware of any contrary unpublished opinions.
6. Attached hereto as Exhibit “E” is a true and correct copy of the unpublished decision Highland Park Bd. Of Educ. V. Hespe, No. A-3890-14T1, 2018 N.J. Super. Unpub. LEXIS 158 (App. Div. January 24, 2018). The undersigned is not aware of any contrary unpublished opinions.
7. Attached hereto as Exhibit “F” is a true and correct copy of the unpublished decision In re Approval of Hatikvah Intl. Academy Charter Sch., No. A-5977-09T1, 2011 N.J. Super. Unpub. LEXIS 3144 (App. Div. December 21, 2011). The undersigned is not aware of any contrary unpublished opinions.

I certify that the foregoing statements made by me are true. I am aware that if they are willfully false, I am subject to punishment.

DUANE MORRIS LLP

/s/ Paul P. Josephson

Paul P. Josephson, Esq.

EXHIBIT A

2019-06-20-19-04

**RESOLUTION AUTHORIZING BELOVED COMMUNITY CHARTER
SCHOOL PARTICIPATION IN LATINO ACTION NETWORK V. STATE OF
NEW JERSEY, et al.**

WHEREAS, a coalition of advocacy groups and school children filed a Complaint for Declaratory Judgment on or about May 18, 2018 before the New Jersey Superior Court, Law Division challenging the New Jersey public education system and seeking a declaration that: 1) the residency-based public education system in New Jersey violates the New Jersey constitution's and Civil Rights Act's prohibitions against racial and ethnic discrimination in the public schools; 2) the New Jersey Charter School Program Act's (NJCSA) residency preference mandate in charter school lottery admission procedures exacerbates segregation; and 3) the Commissioner of Education has, in authorizing charter schools, exacerbated segregation in the public schools (the "Litigation"); and

WHEREAS, because of the express claims directed at the NJCSA and New Jersey charter schools, the New Jersey Charter School Association (NJCSA) determined that intervention in the Litigation is warranted; and

WHEREAS, the NJCSA seeks the participation of charter schools and charter school parents in its motion to intervene in the Litigation; and

WHEREAS, the Board agrees that charter school interests cannot be fairly and fully defended in the Litigation without the participation of the NJCSA and charter schools and charter school families who will be directly impacted by any resolution of the Litigation; and

WHEREAS, BelovED Community Charter School is one of the most diverse public schools in Jersey City and is the public school which mirrors the overall demographic composition of the Jersey City Public Schools district, which many of the district's own schools reflect only the demographics of their immediate sending area;

THEREFORE, BE IT RESOLVED that the Board hereby authorizes the participation of BelovED Community Charter School as a proposed intervenor in the Litigation, authorizes staff to assist the NJCSA and its attorneys in preparation of and participation in the Litigation, authorizes the attorneys selected by the NJCSA to represent the NJCSA and other charter schools and charter school parents to represent BelovED Community Charter School in the Litigation, and consents to such attorneys representing NJCSA, BelovED Community Charter School, and other proposed intervenors; and

BE IT FURTHER RESOLVED that NJCSA shall be solely responsible for the fees and costs of seeking to intervene in and participate in the Litigation so long as BelovED Community Charter School is represented by the attorney or law firm selected by the NJCSA, and

BE IT FURTHER RESOLVED that BelovED does not authorize any payment or expenditure on such attorneys fees or related costs of the Litigation except for any claims or advice sought specifically and solely by BelovED Community Charter School and as expressly approved by the Board in a subsequent resolution.

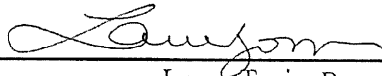
Motion made by Sal Risalvato and seconded by Nicole Jackson.

Approved:

Nicole Jackson	Yes
Salvatore Risalvato	Yes
Jessica Lisboa	Yes
Sheridan Bell	Yes
Richard Valdes	Absent

I, Laura Totic, Board Secretary, certify that the above resolution was passed unanimously by this Board of Trustees, as indicated above.

BY:



Laura Totic, Board Secretary

Date of Board Meeting June 20, 2019

EXHIBIT B

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

2019 WL 2402544

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

HIGHLAND PARK BOARD OF EDUCATION
and Piscataway Township Board of
Education, Petitioners-Appellants,

v.

Kimberly HARRINGTON, Acting Commissioner
of Education, New Jersey State Board of
Education, and Hatikvah International Academy
Charter School, Respondents-Respondents.

DOCKET NO. A-3455-16T1

|
Argued May 30, 2019

|
Decided June 7, 2019

On appeal from the New Jersey Department of Education.

Attorneys and Law Firms

David B. Rubin argued the cause for appellants (David B. Rubin, PC, and The Busch Law Group, LLC, attorneys; David B. Rubin and Douglas M. Silvestro, on the brief).

Thomas O. Johnston argued the cause for respondent Hatikvah International Academy Charter School (Johnston Law Firm, LLC, attorneys; Thomas O. Johnston, of counsel and on the brief; Rula Alzadon Moor, on the brief).

Geoffrey N. Stark, Deputy Attorney General, argued the cause for respondents Kimberly Harrington, Acting Commissioner of Education and State Board of Education (Gurbir S. Grewal, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Donna Arons and Jennifer J. McGruther, Deputy Attorneys General, on the brief).

Before Judges Haas, Sumners and Mitterhoff.

Opinion

PER CURIAM

*1 Appellants Highland Park Board of Education (Highland Park) and Piscataway Township Board of Education (Piscataway) (collectively appellants) appeal from the February 28, 2017 final decision of the Commissioner of Education (Commissioner), approving an application by Hatikvah International Academy Charter School (Hatikvah) to increase its enrollment from fifty to seventy-five students in kindergarten and first grade, and to implement a weighted enrollment lottery affording preference to economically disadvantaged students. We affirm.¹

I.

We begin by reciting the essential background facts and procedural history of this matter. In March 2009, Hatikvah submitted a charter school application to the New Jersey Department of Education (Department or NJDOE), seeking to serve students in East Brunswick Township, Middlesex County—its “district of residence.”² During its initial four-year charter period, it planned to serve students in kindergarten through fifth grade, with a projected maximum enrollment of 240 students. The goal was to eventually “expand grade levels through eighth grade, completing growth with a maximum of 396 students with 44 students per grade.” It sought to build on the “multicultural strength” of the district through an International Baccalaureate (IB) program, which included a partial-immersion Hebrew language program. In compliance with the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 to -18 (Charter School Act or CSPA), East Brunswick students were given preference for enrollment. N.J.S.A. 18A:36A-8(a).

On May 14, 2009, the East Brunswick Board of Education (East Brunswick) adopted a resolution recommending that the Commissioner deny Hatikvah's application. See In re Approval of Hatikvah Int'l Academy Charter Sch., No. A-5977-09 (App. Div. Dec. 21, 2011) (slip op. at 5), certif. denied, 210 N.J. 28 (2012). East Brunswick alleged that Hatikvah's application

interfered with the separation of church and state, had a negative economic impact on the district's taxpayers, and did not comport with the requirements for charter schools as codified in N.J.A.C. 6A:11 because it did not include an educator from East Brunswick. [It] ... further asserted Hatikvah's single-cultural, single-emersion Hebrew language charter school would be at odds with and would not serve the multi-cultural community; it

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

would unfairly compete with the Solomon Schechter Day School in East Brunswick; its proposed full day kindergarten would result in a lack of educational equity and access for East Brunswick residents; the petition did not accurately demonstrate East Brunswick's community interest in the charter school; and its needs analysis was flawed, inaccurate and did not document a need for the charter school.

*2 [*Ibid.*]

On July 6, 2010, the Commissioner granted final approval of Hatikvah's charter, effective from July 1, 2010 to June 30, 2014, to operate a school for grades kindergarten through fifth, with a maximum of fifty students per grade for a total of 300 students, for an initial four-year period. East Brunswick appealed, arguing that Hatikvah failed to present evidence of sufficient enrollment under N.J.A.C. 6A:11-2.1(i) (14), because as a "district of residence" charter school it could not include non-district students in the count. *Id.* at 13. This court affirmed the Commissioner's decision, finding that "[t]he record reflect[ed] that Hatikvah cooperated with the Department in diligently providing requested information and documentation pertaining to a variety of matters, including student enrollment, by emails, faxes, and site visits." *Id.* at 19. The Supreme Court denied certification. *Hatikvah*, 210 N.J. at 28, 40 A.3d 58.

In 2013, Hatikvah submitted an application to the Department for a charter renewal and for an expansion to add grades sixth through eighth. The Commissioner granted the renewal, effective through June 2019, but denied the expansion "due to a decline in the school's academic performance in the 2012-13 school year."

In November 2014, Hatikvah filed another application for an amendment, seeking again to add grades sixth through eighth and to increase enrollment in its existing grades. *See Highland Park Bd. of Educ. v. Hespe (Highland Park I)*, No. A-3890-14 (App. Div. Jan. 24, 2018) (slip op. at 3), *certif. denied*, 233 N.J. 485, 186 A.3d 899 (2018). East Brunswick, Highland Park, and the South River Board of Education (South River) opposed the application. *Id.* at 4.

On March 19, 2015, the Commissioner issued a final decision granting Hatikvah's request to expand into the middle school grades, at the same fifty-student maximum enrollment, but denied the request to expand the enrollment in kindergarten through fifth grade. *Id.* at 7. The Commissioner found that Hatikvah's academic performance had improved from the

2012-2013 school year, placing its students "in the ninety-sixth percentile in language arts literacy and eighty-seventh percentile in mathematics, in comparison to other schools across the State." *Id.* at 8.

Highland Park appealed, arguing that it was not required to fund its students' attendance at Hatikvah, a charter school located outside its school district. *Id.* at 8-19. We granted East Brunswick's motion to intervene, and granted Manalapan-Englishtown Board of Education's (Manalapan) and the New Jersey Charter School Association's (NJCSA) motions to participate as amici curiae. *Ibid.*

This court affirmed, finding that the record was sufficient to support the Commissioner's decision, and we rejected Highland's contention "that only the charter school's 'district of residence' is obligated to pay for its students to attend the school." *Id.* at 19-21. The court also rejected, because it had not been raised below, East Brunswick and Manalapan's argument that Hatikvah was operating in violation of its charter by enrolling out-of-district students, stating that:

*3 If East Brunswick and Manalapan-Englishtown wish to pursue this issue, the districts may submit a complaint to the Hatikvah board of trustees asserting that the school is not being operated in accordance with its charter and, if the complaint is not "adequately addressed," the districts may present the complaint to the Commissioner pursuant to N.J.S.A. 18A:36A-15. We express no opinion on the merits of such a complaint, if filed.

[*Id.* at 14.]

The Supreme Court denied certification. *Highland Park I*, 233 N.J. at 485, 186 A.3d 899.

In November 2015, Hatikvah filed a third application to amend its charter, seeking to expand its enrollment from fifty to seventy-five students per grade by the 2024 school year. On February 29, 2016, the Commissioner issued a final decision denying that request.

II.

We now turn to the application that is at the center of the current appeal. On November 10, 2016, Hatikvah filed a fourth application with the Commissioner to expand its charter, again seeking to increase enrollment from fifty to seventy-five students per grade, and, conditioned upon

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

that approval, to implement a weighted enrollment lottery for economically disadvantaged students. In support of that application, Hatikvah submitted board resolutions and rationale statements.

In its “Resolution One,” Hatikvah sought an amendment to its charter to progressively increase the maximum approved number of students per grade from fifty to seventy-five, starting with kindergarten for the 2017-2018 school year and ending with eighth grade for the 2025-2026 school year. In the alternative, in “Resolution Two,” Hatikvah sought to amend its charter to increase enrollment from fifty to seventy-five

District	Grade K	Grade 1	Grade 2
East Brunswick	11	6	8
Non-East Brunswick	76	56	57
Total (waitlisted students)	87	62	65

Additionally, for the 2016-2017 school year, twenty-four of the available fifty kindergarten seats went to siblings of students thereby “greatly limiting access to the school for new families.”

Hatikvah maintained that expanded enrollment would allow it to “implement an even more robust instructional staffing model” and “enhance the extracurricular programs that it

Subject	Hatikvah	Weighted Average of All Sending Districts	NJ State	NJ Charters
ELA	67.8%	64.8%	51.6%	47.9%
Math	67.2%	62.7%	47.2%	41.0%

With regard to the weighted lottery system, Hatikvah sought to amend its charter to “allow economically disadvantaged students to have an increased priority for admission using a 2:1 margin.” At the time of the application, Hatikvah operated a random blind lottery under the supervision of an independent official, where each child was assigned a number and each grade level was “divided into three groups drawn in order of the preferences afforded to the groups as delineated in its charter: Siblings, East Brunswick residents and non-East Brunswick residents.” It “targeted recruitment efforts in areas within five miles of its location in East Brunswick, including most importantly, Section 8 housing in East Brunswick,” utilizing direct mailers, flyers, and television advertisements in English and Spanish. Under that system, Hatikvah asserted

students, starting with kindergarten, first, and second grade for the 2017-2018 school year, and ending with eighth grade for the 2023-2024 school year.

With respect to the request for expanded enrollment, Hatikvah represented that there was “excess demand in the community by parents/guardians to enroll their children at the School.” It claimed that the number of applicants outnumbered the available seats in every grade, and that as of June 30, 2016, there were 214 students on the waitlist for kindergarten through second grade, as follows:

can offer to middle school students.” It represented that “the unique educational approaches of the School have resulted in strong academic performance and year-to-year growth on the NJ PARCC State tests.” For example, in 2016, its third through sixth grade students significantly outperformed their peers:

it had been “extremely successful in creating a diverse school community.” Indeed, many of its students were first-generation Americans whose parents came from about thirty different countries and spoke a variety of languages.

*4 Hatikvah represented that increasing the economic diversity of its student body through the weighted lottery system would “further social cohesion across a broader spectrum of students.” It posited that charter schools “are uniquely positioned to create economically diverse student bodies where economically disadvantaged students can thrive,” because

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

[u]nlike traditional public schools whose seats are limited to students who live within their local geographical boundaries, charter schools can draw students from its resident and neighboring districts. Thus charter schools' student bodies do not reflect residential segregation patterns driven by local geography, be they economic, racial or ethnic. Charter schools have means to intentionally create economically diverse student bodies....

As for the fiscal impact of its application, Hatikvah stated that increasing enrollment would have a "very limited financial impact on taxpayers in East Brunswick" because the majority of the waitlisted students come from districts other than East Brunswick, and thus those districts would be required to pay for the added students. Increased enrollment would thus have a "negligible and immaterial fiscal impact" on both "Hatikvah's resident district East Brunswick as well as non-resident sending districts." Hatikvah calculated that under its Resolution One, the impact on the sending districts' budgets ranged from .077% to .011%, based on enrollment of the waitlisted students:

Sending District	2015-2016 Total District Revenue (\$)	2016-2017 Waitlisted Applicants Who Would be Able to Enroll to Fill New Capacity	Projected Costs to Sending Districts	Fiscal Impact (Projected Costs as a Percent of Total District Revenue)
East Brunswick	149,628,859	9	114,833	.077%
South River	32,316,812	2	15,203	.047%
Highland Park	32,655,815	1	14,571	.045%
North Brunswick	89,484,289	3	25,020	.028%
Old Bridge	141,098,853	3	31,607	.022%
Sayreville	85,365,388	2	15,145	.018%
Edison	235,500,869	3	35,553	.015%
South Plainfield	57,169,108	1	10,000	.017%
East Windsor	85,800,550	1	9752	.011%
Total Waitlisted		25		

Under its Resolution Two, Hatikvah calculated that the impact on sending districts' budgets ranged from .196% to .004%, as follows:

Sending District	2015-2016 Total District Revenue (\$)	2016-2017 Waitlisted Applicants Who Would be Able to Enroll to Fill New Capacity	Projected Costs to Sending Districts	Fiscal Impact (Projected Costs as a Percent of Total District Revenue)
East Brunswick	149,628,859	23	293,457	.196%

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

North Brunswick	89,484,289	13	108,420	.121%
South River	32,316,812	5	38,005	.118%
Highland Park	32,655,815	2	29,142	.089%
Milltown	16,216,247	1	10,694	.066%
Sayreville	85,365,388	7	53,011	.062%
Edison	235,500,869	9	106,659	.045%
East Windsor	85,800,550	3	29,256	.034%
Old Bridge	141,098,853	4	42,144	.030%
Marlboro	86,394,503	2	22,363	.026%
South Plainfield	57,169,108	1	10,000	.017%
Manalapan	82,300,339	1	12,542	.015%
Franklin Park	156,416,249	1	13,266	.008%
Piscataway	111,295,663	1	8400	.006%
New Brunswick	180,444,475	1	10,973	.006%
Perth Amboy	233,538,204	1	9648	.004%
Total Waitlisted		75		

Further, Hatikvah estimated that under both its Resolution One and Two, the cost for appellants to send their students to Hatikvah would be less than the projected costs if the students remained in appellants' districts:

Resolution One

District	Projected Costs to Sending Districts of Students Who Transfer to Hatikvah	Projected Costs to Sending Districts of Students Who Remain in District
Highland Park	\$ 14,571	\$ 15,789

Resolution Two

District	Projected Costs to Sending Districts of Students Who Transfer to Hatikvah	Projected Costs to Sending Districts of Students Who Remain in District
Highland Park	\$ 29,142	\$ 31,578
Piscataway	\$ 8400	\$ 13,289

*5 In response to Hatikvah's application, appellants Highland Park and Piscataway submitted almost identical

resolutions calling for a moratorium on new charter school seats in Middlesex and Somerset Counties.³ They raised

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

general objections asserting that payments to the charter schools drained funds from, and diminished money available to serve students in, the traditional public schools. Appellants represented that for the 2016-2017 school year, 2316 students attended the five existing charter schools in Middlesex and Somerset Counties (including Hatikvah), and that if the applications for expansions were approved for these schools, and a sixth charter school was added, the number of charter school seats would increase by 128% to 5283.

Appellants alleged there was already a lack of demand for the existing charter schools located in Middlesex and Somerset counties, and that the expansion of these schools would exacerbate that issue. They also argued that many charter schools, “in direct contradiction to the letter and spirit of the” CSPA, were seeking to “expand in order to enroll additional students from districts outside of the charter schools’ approved districts or regions of residence due to a lack of interest from students who live in the very communities for which the charters were created to serve.”

Appellants took no position on Hatikvah's weighted lottery system, and instead represented that only 48% of the students enrolled in Hatikvah resided in the school's district of residence. However, they also alleged, without providing any statistics, that Hatikvah and another charter school, Thomas Edison EnergySmart Charter School (TEECs), enrolled “a significantly more segregated student body than any of the resident or non-resident sending districts with respect to race, socioeconomic status, and need for special education.”

East Brunswick, Hatikvah's district of residence, also opposed Hatikvah's application. It argued that the Commissioner should not approve Hatikvah's fourth request to increase its enrollment because “[t]he conditions that existed at the time of each of the Commissioner's denials have only negatively escalated.” It alleged that enrollment of East Brunswick students in Hatikvah, which had not been approved as a regional charter school,⁴ had dropped from 50% in 2015-16 to 45% in 2016-17, and thus there was no community need for increased enrollment. It represented that enrollment totaled:

Grade	Approved Enrollment	East Brunswick Actual Enrollment
	2016-2017	2016-2017
K	50	23
1	50	23
2	50	23
3	50	33
4	50	24
5	50	21
6	50	18
7	50	16
Total	400	181

*6 Therefore, East Brunswick maintained that:

The supposed need for increasing enrollment from 50 to 75 students per grade is based on a “reported” wait list of non-resident students

from 24 communities scattered across multiple counties. Wait lists reported by the Charter School for non-East Brunswick residents should not be considered in reviewing the Charter School's application. Clearly there is more than enough room for any East

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

Brunswick residents if they choose to attend the Charter School.

East Brunswick also alleged that the “financial impact of the expansion combined with ongoing costs to support the Charter School would increase to 107% of the amount of the State’s imposed budget cap” and that the “estimate of the cost of their proposed expansion to East Brunswick Public Schools in 2016-2017 is an additional \$ 114,833-\$ 293,457. The additional cost of the grade expansion would escalate to over \$ 1 million per year over the next five years.” Further, in order to meet the required financial support of the Charter School, East Brunswick asserted that in 2011, it cut opportunities for traditional public school students, including the elimination of the World Language Program and summer academy, and the reduction in teaching staff.⁵

Grade	2016-2017	2017-2018	2018-2019
K	50	75	75
1	50	50	75
2	50	50	50
3	50	50	50
4	50	50	50
5	50	50	50
6	50	50	50
7	50	50	50
8		50	50
Total	400	475	500

This appeal followed.

On appeal, appellants raise the following contentions:

POINT I

The Commissioner Failed To Analyze Hatikvah's Application Or To Disclose The Basis For Her Approval.

POINT II

On February 28, 2017, the Commissioner, based on the Department's recommendation and her review of the record, issued a one-page final decision approving Hatikvah's application to amend its charter to increase enrollment and to implement a weighted lottery. The Commissioner stated that the Department had “completed a comprehensive review, including, but not limited to, student performance on statewide assessments, operational stability, fiscal viability, public comment, fiscal impact on sending districts, and other information in order to make a decision regarding the school's amendment request.”

The Commissioner approved the expansion for kindergarten and first grade only, and confirmed the school's maximum approved enrollment through June 2019, the end of the charter renewal period, as follows:

The Commissioner Failed To Consider The Segregative Impact Of Hatikvah's Charter Amendment.

*7 POINT III

Other Significant Deficiencies [I]n Hatikvah's Application Render The Commissioner's Approval Arbitrary, Capricious and Unreasonable.

POINT IV

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

There Is No Authority To Compel Highland Park [A]nd Piscataway To Fund Students' Attendance [A]t Hatikvah.

III.

In Point I of their brief, appellants argue that the Commissioner's decision approving the amendment was arbitrary, capricious or unreasonable because she failed to analyze Hatikvah's application or to provide any discernable reason for the approval. We disagree.

By way of background, charter schools are public schools that operate under a charter granted by the Commissioner, operate independently of a local board of education, and are managed by a board of trustees. N.J.S.A. 18A:36A-3(a). In the CSPA, the Legislature found and declared that

the establishment of charter schools as part of this State's program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom. Specifically, charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers.

The Legislature further finds that the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools.

[N.J.S.A. 18A:36A-2.]

Charter schools are "open to all students on a space available basis...." N.J.S.A. 18A:36A-7. A charter school may not discriminate in its admissions policies and practices, but "may limit admission to a particular grade level or to areas of concentration of the school, such as mathematics, science, or the arts." N.J.S.A. 18A:36A-7. Enrollment in a charter school

is voluntary, and a student may withdraw from a charter school at any time. N.J.S.A. 18A:36A-9.

Preference for enrollment must be given to students who reside in the school district in which the charter school is located, and the school cannot charge those resident students tuition. N.J.S.A. 18A:36A-8(a). "If there are more applications to enroll in the charter school than there are spaces available, the charter school shall select students to attend using a random selection process." N.J.S.A. 18A:36A-8(a). "If available space permits, a charter school may enroll non-resident students. The terms and condition of the enrollment shall be outlined in the school's charter and approved by the commissioner." N.J.S.A. 18A:36A-8(d). A charter school shall maintain a waiting list of grade-eligible students, divided into two groups, students from the district or region of residence and students from non-resident districts. N.J.A.C. 6A:11-4.6(a)(2).

*8 Funding for charter schools comes from the local school district, but is not equivalent to the per pupil funding that a traditional public school receives. N.J.S.A. 18A:36A-12(b). The CSPA funding provision provides in part that "the school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to 90%" of certain per pupil state aid and any federal funds "attributable to the student." N.J.S.A. 18A:36A-12(b).

Applications to establish a charter school are governed by N.J.S.A. 18A:36A-4 to -5, and the implementing regulation, N.J.A.C. 6A:11-2.1. The Commissioner has final authority to grant or reject a charter. N.J.S.A. 18A:36A-4(c). "The notification to eligible applicants not approved as charter schools shall include reasons for the denials." N.J.A.C. 6A:11-2.1(f) (emphasis added). An initial charter is for a term of four years and may be renewed for a five-year period. N.J.S.A. 18A:36A-17.

After approval, the Commissioner annually assesses whether the charter school is meeting the goals of its charter. N.J.S.A. 18A:36A-16. The Commissioner also annually assesses "the student composition of a charter school and the segregative effect that the loss of the students may have on its district of residence." N.J.A.C. 6A:11-2.2(c). To facilitate that review, charter schools must submit an annual report to the Commissioner, local board of education, and the county superintendent of schools. N.J.S.A. 18A:36A-16(b); N.J.A.C. 6A:11-2.2(a). The Commissioner may revoke a charter at any

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

time if the school has not fulfilled or has violated any of the conditions of its charter. N.J.S.A. 18A:36A-17.

Applications to renew a charter are governed by N.J.S.A. 18A:36A-17, and the implementing regulation, N.J.A.C. 6A:11-2.3. The Commissioner shall grant or deny the renewal of a charter based upon a comprehensive review of the school, including, among other things, the annual reports, recommendation of the district board of education or school superintendent, and student performance on statewide tests. N.J.A.C. 6A:11-2.3(b). “The notification to a charter school that is not granted a renewal shall include reasons for the denial.” N.J.A.C. 6A:11-2.3(d) (emphasis added).

As in this case, a charter school may also apply to the Commissioner for an amendment to its charter, including for an expansion of enrollment and the establishment of a weighted lottery. N.J.A.C. 6A:11-2.6(a)(1)(i), (v). In support of that application, the board of trustees of a charter school shall submit the request in the form of a board resolution. N.J.A.C. 6A:11-2.6. Similar to the initial approval process, boards of education in the district of residence can submit comments in response to the application. N.J.A.C. 6A:11-2.6(c). The Department “shall determine whether the amendments are eligible for approval and shall evaluate the amendments based on” the Charter School Act and implementing regulations, and the “Commissioner shall review a charter school's performance data in assessing the need for a possible charter amendment.” N.J.A.C. 6A:11-2.6(b). “The Commissioner may approve or deny amendment requests of charter schools and shall notify charter schools of decisions.” N.J.A.C. 6A:11-2.6(d).

With this essential regulatory background in mind, and before moving to a consideration of appellants' contentions concerning the sufficiency of the Commissioner's decision, we will briefly address Hatikvah's argument that appellants lack standing to challenge the Commissioner's decision because the CSPA does not specifically permit an appeal from a decision approving an amendment to a charter.

***9** As we recently stated in In re Renewal Application of TEAM Acad. Charter Sch., — N.J. Super. —, — (App. Div. 2019) (slip op. at 8-9):

“Standing ‘refers to the plaintiff's ability or entitlement to maintain an action before the court.’ ” In re Adoption of Baby T, 160 N.J. 332, 340, 734 A.2d 304 (1999) (quoting N.J. Citizen Action v. Riveria Motel Corp., 296 N.J. Super. 402, 409, 686 A.2d 1265 (App. Div. 1997)). Standing is a

threshold issue that “neither depends on nor determines the merits of a plaintiff's claim.” Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 417, 591 A.2d 592 (1991). “Unlike the Federal Constitution, there is no express language in New Jersey's Constitution which confines the exercise of our judicial power to actual cases and controversies. U.S. Const. art. III, § 2; N.J. Const. art. VI, § 1.” Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107, 275 A.2d 433 (1971).

Our [c]ourts do not, however, render advisory opinions, function in the abstract, or consider actions brought by plaintiffs who are “merely interlopers or strangers to the dispute.” Ibid. (citation omitted). “To possess standing in a case, a party must present a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision.” In re Camden Cty., 170 N.J. 439, 449, 790 A.2d 158 (2002) (citation omitted).

Hatikvah correctly points out that there are no provisions in the CSPA or the implementing regulations providing for an appeal from the Commissioner's decision approving an amendment to a charter, nor is there any provision permitting an appeal of any decision by a non-district of residence. In this regard, N.J.S.A. 18A:36A-4(d), which governs the establishment of charter schools, provides only that “[t]he local board of education or a charter school applicant may appeal the decision of the commissioner to the Appellate Division of the Superior Court.” Similarly, N.J.A.C. 6A:11-2.5, which controls the “charter appeal process,” provides that “[a]n eligible applicant for a charter school, a charter school, or a district board of education or State district superintendent of the district of residence of a charter school may file an appeal according to N.J.S.A. 18A:6-9.1.”

However, in “New Jersey, courts take ‘a liberal approach to standing to seek review of administrative actions.’ ” In re Grant of Charter to Merit Preparatory Charter Sch. of Newark, 435 N.J. Super. 273, 279, 88 A.3d 208 (App. Div. 2014) (quoting In re Camden Cty., 170 N.J. at 448, 790 A.2d 158). In Merit Preparatory, the New Jersey Education Association (NJEA) appealed from the Commissioner's decision granting charters to two “blended” charter schools, where students were instructed both in person and online. Id. at 276-77, 88 A.3d 208. In addressing standing, we concluded that although it was not clear that NJEA's members would be “adversely affected” by approval of the charter schools, the

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

NJEA had nevertheless “demonstrated a slight private interest that, together with the substantial public interest, affords it standing to pursue this appeal.” *Id.* at 280, 88 A.3d 208.⁶

*10 We are satisfied that a similar conclusion is appropriate here. The record indicates that appellants will be directly affected by the Commissioner's decision that they are required to fund their students' attendance at Hatikvah, and they have a private interest in addressing the application to expand enrollment, which will potentially open more seats for students from their districts. Moreover, the issues raised in this appeal, notably the effect of an increase in enrollment on the sending districts and the interpretation of the funding provision, are of “great public interest” and thus, even if appellants had demonstrated only a “slight additional private interest,” they should be afforded standing. *Merit Preparatory*, 435 N.J. Super. at 279, 88 A.3d 208 (quoting *Salorio v. Glaser*, 82 N.J. 482, 491, 414 A.2d 943 (1980)). Therefore, we reject Hatikvah's contention on this point.

Turning to the merits of appellants' arguments under Point I, we note that the scope of judicial review of a final decision of the Commissioner on a charter school application is limited. *In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp.*, 216 N.J. 370, 385, 80 A.3d 1120 (2013). We may reverse only if the Commissioner's decision is “arbitrary, capricious, or unreasonable.” *Ibid.* In making that determination, our review is generally restricted to three inquiries:

- (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
- (2) whether the record contains substantial evidence to support the findings on which the agency based its action;
- and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[*Id.* at 385-86 (quoting *Mazza v. Bd. of Trs.*, 143 N.J. 22, 25, 667 A.2d 1052 (1995)).]

“When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field.” *In re Herrmann*, 192 N.J. 19, 28, 926 A.2d 350 (2007). The court “may not substitute its own judgment for the agency's even though the court might have reached a different result...” *In re Carter*, 191 N.J. 474, 483, 924 A.2d 525 (2007) (quoting *Greenwood*

v. State Police Training Ctr., 127 N.J. 500, 513, 606 A.2d 336 (1992)).

“[T]he arbitrary, capricious, or unreasonable standard ... subsumes the need to find sufficient support in the record to sustain the decision reached by the Commissioner.” *Quest Acad.*, 216 N.J. at 386, 80 A.3d 1120. “[A] failure to consider all the evidence in a record would perforce lead to arbitrary decision making.” *Ibid.* However, in cases where “the Commissioner is not acting in a quasi-judicial capacity,” and is instead acting in [her] legislative capacity, as [s]he was doing here, [s]he “need not provide the kind of formalized findings and conclusions necessary in the traditional contested case.” *TEAM Acad.*, — N.J. Super. — (slip op. at 30) (quoting *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 320 N.J. Super. 174, 217, 727 A.2d 15 (App. Div. 1999), *aff'd as modified*, 164 N.J. 316, 753 A.2d 687 (2000)).

Thus, although the arbitrary, capricious, or unreasonable standard demands “that the reasons for the decision be discernible, the reasons need not be as detailed or formalized as an agency adjudication of disputed facts; they need only be inferable from the record considered by the agency.” *Englewood*, 320 N.J. Super. at 217, 727 A.2d 15. See *Red Bank*, 367 N.J. Super. at 476, 843 A.2d 365 (“[T]he reasons for the decision need not be detailed or formalized, but must be discernible from the record.”); *Bd. of Educ. of E. Windsor Reg'l Sch. Dist. v. State Bd. of Educ.*, 172 N.J. Super. 547, 552, 412 A.2d 1320 (App. Div. 1980) (detailed findings of fact not required by Commissioner in reducing amount local school board sought to increase its budget).

*11 Furthermore, there is no statutory or regulatory provision requiring the Commissioner to include reasons for granting an application to amend. The regulations provide only that the notification shall include reasons for the denial of an initial charter school application, N.J.A.C. 6A:11-2.1(f), and an application for renewal, N.J.A.C. 6A:11-2.3(d). The Commissioner is not required to include reasons for granting an initial charter or a renewal, nor is he or she required to include reasons for granting or denying an application to amend.

To that end, *Quest Academy*, 216 N.J. at 390, 80 A.3d 1120, as cited by appellants, is distinguishable. In that case, the operator of a proposed charter school appealed from the Commissioner's decision denying the charter. *Id.* at 373, 80 A.3d 1120. The Commissioner's initial decision was “short

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

on detail with respect to the application's deficiencies." *Ibid.* However, after the appeal was filed, the Commissioner submitted a written amplification of his reasons for denying the application. *Id.* at 374, 80 A.3d 1120. The Court affirmed, finding in relevant part that:

Although the letter of denial did not detail the deficiencies found in the application, it offered instead a face-to-face meeting to review in detail the shortcomings in the application that Quest Academy submitted. According to the Commissioner, the large number of applicants (forty-five) who were reviewed in the batch with Quest Academy rendered lengthy written responses difficult and taxing of precious departmental resources. While it would be naturally preferable from the applicant's perspective to receive initially more than a generic form letter denying an application, here Quest Academy received a bit more than that. Some information about the application's shortcomings was provided in the denial letter, and the subsequent amplification fully detailed those issues. In reviewing as complex a proposal as that required for a newly proposed charter school, there is a benefit to offering a discussion, instead of a written cataloging, of mistakes or deficiencies in the application that has been rejected. We do not fault the Commissioner for choosing a dialogue involving constructive criticism as her preferred approach for producing approvable applications when resubmitted.

[*Id.* at 390.]

Quest Academy is distinguishable from the present case because there is no requirement that the Commissioner detail her findings in approving an amendment. Although it would have been helpful for the Commissioner to make some findings in support of her decision, particularly since she had denied an identical request one year earlier, she was not required to do so. TEAM Acad., — N.J. Super. — (slip op. at 40). Instead, the focus on review is whether the reasons for the Commissioner's decision are discernible from the record. Red Bank, 367 N.J. Super. at 476, 843 A.2d 365. As explained below, they clearly are.

Here, the Commissioner's decision approving Hatikvah's request to amend its charter to increase enrollment in kindergarten and first grade by fifty students is supported by the record and achieves the legislative policy of promoting charter schools. Most notably, it is undisputed that Hatikvah's performance data, a significant factor in assessing a request to amend a charter, N.J.A.C. 6A:11-2.6(b), was, as represented by its students' PARCC scores, significantly higher than the

State average. Further, the approval was in conformance with the legislative policy of encouraging innovative approaches by charter schools, in that, Hatikvah had implemented a partial English/Hebrew language immersion program, which is not widely available in the traditional public schools in the State. N.J.S.A. 18A:36A-2.

*12 The record also demonstrates that there was a need for the increase in enrollment for kindergarten and first grade because there was a waiting list of eighty-seven students for kindergarten and sixty-two students for first grade. Expansion of enrollment will allow Hatikvah to meet that need, strengthen its academic program, and enhance its extracurricular program.

Further, the record shows that Hatikvah, which had been submitting detailed annual reports to the Commissioner since it was approved to operate in 2010, and had submitted a financial audit prior to having its charter renewed in 2014, was organizationally sound and fiscally viable. N.J.S.A. 18A:36A-16(b); N.J.A.C. 6A:11-2.2. Hatikvah represented that it had a stable and qualified board of directors, and a "finding-free audit for the three years prior to the amendment request." Moreover, Hatikvah presented evidence that the expansion would have little fiscal impact on East Brunswick, its district of residence, and the other sending districts. Lastly, appellants do not dispute that the weighted lottery will foster expanded enrollment of economically disadvantaged students.

Because the Commissioner's decision was amply supported by the record and achieves the legislative goals of the CSPA, we reject appellants' contentions on this point.

IV.

In Point II, appellants argue that the Commissioner's decision was arbitrary, capricious, or unreasonable because she failed to consider the alleged segregative impact of Hatikvah's charter amendment on the district. However, appellants failed to provide sufficient evidence of a segregative effect to warrant either more detailed scrutiny or the denial of the application and, therefore, we conclude that this argument also lacks merit.

In its resolution in support of its application for an amendment to its charter, Hatikvah asserted that it had "been extremely successful in creating a diverse school community," and that

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

it sought to “increase the diversity of its student body by including more students at risk of academic failure and greater demographic diversity.”

In opposition to the amendment, appellants asserted without any statistical evidence, that Hatikvah and TEECS enrolled “a significantly more segregated student body than any of the resident or non-resident sending districts with respect to race, socioeconomic status, and need for special education.” They also asserted that it was “unclear whether the NJDOE gives

due consideration to the increased segregation of students caused by expanding charter schools.”

On appeal, appellants submitted additional enrollment data, which they contend demonstrated that Hatikvah had become “an enclave for white students that does not even remotely reflect the demographics of the local community it purports to serve.” They compared Hatikvah's enrollment with the local public school's enrollment for the 2016-2017 school year, as follows:⁷

Ethnic/Racial Group	Hatikvah Students	East Brunswick Students	Highland Park Students	Piscataway Students
White	69.7%	53.7%	37.5%	15.7%
Asian	13.0%	33.5%	24.0%	33.6%
Hispanic	8.2%	6.5%	22.4%	19.0%
Black	6.4%	4.7%	10.8%	28.8%

Appellants also asserted that for the 2016-2017 school year, only 5.1% of Hatikvah students qualified for free or reduced lunches, in contrast to 15.7% in East Brunswick, 36.9% in Highland Park, and 32% in Piscataway. They argue that these statistics are prima facie proof that Hatikvah does not reflect a “cross section of the community's school age population including racial and academic factors.” N.J.S.A. 18A:36A-8(e).

*13 In response, Hatikvah cited to the 2010 census data, which indicated that the racial/ethnic breakdown of the school age population in East Brunswick (including both public and private school students) was: 60% white; 5% black or African American; 27% Asian; and 8% Hispanic. Hatikvah maintained that that data was similar to its students' racial/ethnic breakdown, which was as follows:

Hatikvah's School Year	White	Black	Asian	Hispanic
2014-2015	69.5%	5.4%	16.1%	7.4%
2015-2016	70.1%	6.6%	13%	8.5%

Further, Hatikvah represented that for the 2016-2017 school year, 5% of its students qualified for free or reduced lunch, 13% had disabilities, and 3% were English language learners (ELL).

It is well established that, “[r]ooted in our Constitution, New Jersey's public policy prohibits segregation in our public schools....” *Englewood*, 164 N.J. at 324, 753 A.2d 687. Segregation is also “specifically prohibited in charter schools.” *TEAM Acad.*, — N.J. Super. — (slip op. at 37) (citing N.J.S.A. 18A:36A-7). Thus, the CSPA provides that “[t]he admission policy of the charter school shall, to the maximum extent practicable, seek the enrollment of a cross section of the community's school age population including

racial and academic factors.” N.J.S.A. 18A:36A-8(e). Further, N.J.S.A. 18A:36A-7 states that:

A charter school shall be open to all students on a space available basis and shall not discriminate in its admission policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a person with a disability, proficiency in the English language, or any other basis that would be illegal if used by a school

district; however, a charter school may limit admission to a particular grade level or to areas of concentration of the school, such as mathematics, science, or the arts. A charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school's charter.

Our Supreme Court has held that the “form and structure” of the segregative analysis is up to the Commissioner and the Department to determine. Englewood, 164 N.J. at 329, 753 A.2d 687. “The Commissioner must consider the impact that the movement of pupils to a charter school would have on the district of residence” and “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.” Id. at 328, 753 A.2d 687. “The Commissioner must vigilantly seek to protect a district's racial/ethnic balance during the charter school's initial application, continued operation, and charter renewal application.” Red Bank, 367 N.J. Super. at 472, 843 A.2d 365.

[S]egregation, however caused, must be addressed. To be timely addressed, assessment cannot wait until after a charter school has been approved for operation and is already taking pupils from the public schools of a district of residence. The Commissioner must assess whether approval of a charter school will have a segregative effect on the district of residence of the charter school. Once a charter school is operating, the Commissioner must also assess whether there is a segregative effect in any other district sending pupils to the approved charter school.

[Englewood, 164 N.J. at 330, 753 A.2d 687.]

In response to the Court's decision in Englewood, and to the companion case, In re Greater Brunswick Charter School, 164 N.J. 314, 315, 753 A.2d 686 (2000), the Board adopted regulations requiring the Commissioner, prior to approval of a charter, N.J.A.C. 6A:11-2.1(j), and on an annual basis thereafter, N.J.A.C. 6A:11-2.2(c), to “assess the student composition of a charter school and the segregative effect that the loss of the students may have on its district of residence.” The assessment shall be based on the enrollment from the initial recruitment period pursuant to N.J.A.C. 6A:11-4.4(a) and (b). 32 N.J.R. 3560(a), 3561 (Oct. 2, 2000). N.J.A.C. 6A:11-4.4(a) provides that “a charter school shall

submit to the Commissioner the number of students by grade level, gender and race/ethnicity from each district selected for enrollment from its initial recruitment period for the following school year.”

*14 Appellants argue that the Commissioner's decision granting the expansion of enrollment is arbitrary and capricious because “there is nothing discernable” in either her decision or the record to suggest that she considered its assertions that Hatikvah enrolled a significantly more segregated student body than any of the resident or non-resident school districts. However, as set forth above, the Commissioner was not required to include reasons for granting the application to amend the charter. See Red Bank, 367 N.J. Super. at 476, 843 A.2d 365 (Commissioner did not specifically address the segregation argument in his letter approving the charter school's renewal and expansion). Nor did appellants present to the Commissioner sufficient evidence of a segregative effect to warrant more in-depth scrutiny. Id. at 472-85, 843 A.2d 365.

Further, appellants' unsubstantiated generalized protests did not provide a basis to deny the application. Ibid. It is undisputed that Hatikvah did not discriminate in its admission policies or practices. Hatikvah operated a random race-blind lottery under the supervision of an independent official. It does not interview or otherwise pre-screen applicants based on intellectual ability, race, or ethnicity. It recruited from a cross-section of the school age population, in accordance with its charter agreement, targeting recruitment within a five-mile radius of the school, most notably in Section 8 housing complexes, using direct mailings, face-to-face solicitations, flyers, and television ads in English and Spanish. It also sought to increase its diverse student population through implementation of a weighted lottery system affording preference to economically disadvantaged students.

Additionally, even if appellants had presented the information about student enrollment data to the Commissioner that they now present for the first time in their appellate brief, it would not have provided a basis to reject the application. The data provided by appellants on appeal shows a disparity between the enrollment of minority students in Hatikvah and students in the public schools in East Brunswick, Highland Park, and Piscataway. However, the census data provided by Hatikvah, which includes both public and private school-aged children in East Brunswick (its district of residence, where the majority of students reside), is much closer to the racial/ethnic breakdown of Hatikvah. In any event, appellants

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

do not argue that the school districts are becoming more segregated, or that Hatikvah's existence has worsened the existing racial imbalance. See Bd. of Educ. of Hoboken v. N.J. State Dep't of Educ., No. A-3690-14 (App. Div. June 29, 2017) (slip op. at 15) (affirmed charter renewal where there were no allegations that the charter school's practices after the enrollment of students by an impartial lottery exacerbated the racial or ethnic balance); see also TEAM Acad., — N.J. Super. — (slip op. at 14) (stating that “[t]he mere fact that the demographics of the charter schools do not mirror the demographics of the [d]istrict does not alone establish a segregative effect”).

In that regard, this case is distinguishable from Red Bank, 367 N.J. Super. at 462, 843 A.2d 365. In that case, the Board of Education (Board) appealed from the Commissioner's decision approving an application by a charter school to renew its charter. Id. at 467, 843 A.2d 365. The Board opposed the application on the basis that the school's operation had worsened the racial/ethnic imbalance, citing to data showing that since the charter school opened, the percentage of non-minority students in the traditional public schools had decreased from 32% to 18%, and a disproportionate number of non-minority students were enrolled in the charter school. Id. at 469, 843 A.2d 365. The Board also alleged that prior to standardized testing, the charter school frequently returned enrolled minority students with poor academic records to the traditional public schools. Id. at 479, 843 A.2d 365.

*15 The Commissioner in Red Bank did not specifically address the segregation argument in the final decision. Id. at 476, 843 A.2d 365. However, this court discerned from the entire record, including the Commissioner's brief on appeal, that the Commissioner had concluded there was “no evidence in the record to suggest that the charter school has promoted racial segregation among the district's school-age children,” and “there is no requirement that the two schools have exactly the same minority/non-minority enrollment figures.” Ibid. (internal quotation marks omitted). We held that “the Commissioner is to assess whether or not the charter school is seeking ‘a cross section of the community's school age population.’ ” Ibid. (quoting N.J.S.A. 18A:36A-8(e)).

Despite the disparity in the enrollment, we affirmed the Commissioner's decision, finding that:

The Charter School should not be faulted for developing an attractive educational program. Assuming the school's enrollment practices remain color blind, random, and open to all students in the community, the parents of age

eligible students will decide whether or not to attempt to enroll their child in the Charter School and any racial/ethnic imbalance cannot be attributed solely to the school. To close this school would undermine the Legislature's policy of “promoting comprehensive educational reform” by fostering the development of charter schools. N.J.S.A. 18A:36A-2.

[Id. at 478.]

Nonetheless, this court found that the school's post-enrollment practices were “disturbing and difficult to dismiss on this record.” Id. at 480, 843 A.2d 365. “While the Charter School's enrollment practices might not be the sole cause of existing racial/ethnic imbalance, the manner of operation of the school after its color-blind lottery, warrants closer scrutiny to determine whether some of the school's practices may be worsening the existing racial/ethnic imbalance in the district schools.” Ibid. Thus, we remanded the matter to the Commissioner to determine “whether remedial action is warranted.” Ibid.

Here, and unlike in Red Bank, there are no allegations that Hatikvah's practices, after the enrollment of students by an impartial lottery, exacerbated the racial, ethnic, or economically disadvantaged population balance in its district of residence. Instead, appellants simply claimed, in the most general of terms, that Hatikvah was more segregated than the districts—a bald claim insufficient to warrant further review on an application to amend.

It is also undisputed that the Commissioner considered the segregative effect of the charter school in approving the school in 2010, N.J.A.C. 6A:11-2.1(j), in renewing Hatikvah's application in 2013 and 2018, N.J.A.C. 6A:11-2.3(b)(8), and on an annual basis, N.J.A.C. 6A:11-2.2(c). There is no indication in this record that there was any challenge based on the segregative effect either before this application to amend, or after (during the second renewal). See Hatikvah, No. A-5977-09; Highland Park I, No. A-3890-14. Nor is there any indication in this record that the Commissioner found a segregative effect during the annual review. N.J.A.C. 6A:11-2.2(c).

Accordingly, we are satisfied that the Commissioner's decision approving the expansion was not arbitrary, capricious, or unreasonable because appellants did not provide sufficient evidence of a segregative effect to warrant either more detailed scrutiny or the denial of the application. Therefore, we reject appellants' contention on this point.

V.

In Point III, appellants argue that the Commissioner's decision approving Hatikvah's application to amend its charter was arbitrary, capricious, and unreasonable because she failed to consider "significant deficiencies" in Hatikvah's application, namely, the financial burden of the expansion on the sending districts and the lack of demand for the increased enrollment. Again, we disagree.

*16 Before the Commissioner, appellants raised only general objections in opposition to Hatikvah's application to amend its charter, calling for a moratorium on new charter seats in Middlesex and Somerset Counties because of the alleged financial impact on the sending districts. Appellants did not submit any specific financial data to support those assertions.

East Brunswick, the district of residence, alleged, more specifically, that the "financial impact" of Hatikvah's "expansion combined with ongoing costs to support the Charter School would increase to 107% of the amount of the State's imposed budget cap" and estimated that the cost to East Brunswick Public Schools in 2016-2017 was an additional \$ 114,833 to \$ 293,457, or "over \$ 1 million per year over the next five years." East Brunswick also alleged that in order "to meet the required financial support of the Charter School," it had, in 2011, cut educational opportunities for its public school students. Specifically, it: eliminated the World Language program for 2000 public school students (which it partially restored by the 2016-2017 school year); eliminated the Summer Academy serving over 2000 students with remedial needs; and reduced its elementary teaching staff thereby raising class size.

The Commissioner relied on the Department's comprehensive review of the "fiscal impact on sending districts" in approving the amendment.

The Education Clause of the New Jersey Constitution imposes an obligation on the State Legislature to "provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." N.J. Const. art. 8, § 4, ¶ 1. Funding for charter schools is provided by "the school district of residence," which is required to pay directly to the charter school 90% of its

program budget per pupil for each of its resident students enrolled in the school. N.J.S.A. 18A:36A-12(b). Case law requires that

if the local school district "demonstrates with some specificity that the constitutional requirements of a thorough and efficient education would be jeopardized by [the district's] loss" of the funds to be allocated to a charter school, "the Commissioner is obligated to evaluate carefully the impact that loss of funds would have on the ability of the district of residence to deliver a thorough and efficient education."

[Quest Acad., 216 N.J. at 377-78, 80 A.3d 1120 (quoting Englewood, 164 N.J. at 334-35, 753 A.2d 687).]

The district must, however, "be able to support its assertions." Englewood, 164 N.J. at 336, 753 A.2d 687. The Commissioner does not have "the burden of canvassing the financial condition of the district of residence in order to determine its ability to adjust to the per-pupil loss upon approval of the charter school based on unsubstantiated, generalized protests." Ibid. "[T]he Commissioner is entitled to rely on the district of residence to come forward with a preliminary showing that the requirements of a thorough and efficient education cannot be met." Id. at 334, 753 A.2d 687. The Court held that "[t]he legislative will to allow charter schools and to advance their goals suggests our approach which favors the charter school unless reliable information is put forward to demonstrate that a constitutional violation may occur." Id. at 336, 753 A.2d 687.

For example, in Red Bank, 367 N.J. Super. at 467, 843 A.2d 365, the Board argued that the Commissioner erred in granting the renewal without adequately considering the detrimental impact on its ability to provide a thorough and efficient education. Id. at 482, 843 A.2d 365. It claimed that the expansion would cause reduction in the District's budget of \$ 720,000, requiring the elimination of four teaching positions resulting in bigger classes, the elimination of courtesy busing, and the reduction of hall monitors, instructional assistants, and cafeteria monitors. Ibid.

*17 On appeal, we affirmed the Commissioner's decision, finding that "[t]he paucity of specificity in the Board's charges is fatal." Id. at 483, 843 A.2d 365. Notably, the Board had failed to reference the regulations adopted to measure a thorough and efficient education. Ibid. (citing N.J.A.C. 6:8-1.1 to 4.2 (subsequently repealed, now N.J.A.C. 6A:8-1.1 to 5.3)). Further, a reduction in force would "be expected

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

given that there will be fewer students to educate by the Board after they move to the expanded charter school.” Ibid. Moreover, while “courtesy busing” might be important for Red Bank, it was not mandated or necessary for a thorough and efficient education. Ibid. Nor did the Board demonstrate how the elimination of monitors and other assistants would impair its thorough and efficient education efforts. Ibid.

Similarly, here, appellants presented only unsubstantiated generalized protests against the entire charter school scheme and thus did not make a preliminary showing on which the Commissioner could rely. Englewood, 164 N.J. at 334, 753 A.2d 687.

Further, East Brunswick's allegations of financial impact were less specific than in Red Bank, and it failed to demonstrate that the requirements of a thorough and efficient education could not be met as a result of the expansion. As was the case in Red Bank, East Brunswick did not refer to the regulations establishing standards for the provision of a thorough and efficient education. N.J.A.C. 6A:8-1.1 to -5.3. Although the “New Jersey Student Learning Standards” (NJSLs) include a world language requirement, N.J.A.C. 6A:8-1.3, it is not clear from East Brunswick's submission why the program was eliminated in 2011, and more significantly, how it was partially reinstated after the approval of Hatikvah's expansion in 2014.

Moreover, East Brunswick did not account for the fact that although it has to pay the charter school 90% of certain student funding categories, it retains 10%—an amount designed to respond to concerns about the loss of funding to the District. Englewood, 164 N.J. at 333, 753 A.2d 687; N.J.S.A. 18:36A-12(b). Nor does it account for the fact that the CSPA funding formula, as amended by the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -63, was specifically designed to fund students at the constitutionally required level. Abbott v. Burke (Abbott XX), 199 N.J. 140, 147, 971 A.2d 989 (2009). Therefore, appellants' claim on this point lacks merit.

Appellants also argue that the Commissioner failed to consider the lack of demand for the increased enrollment, as allegedly demonstrated by the fact that only 48% of Hatikvah's students reside in East Brunswick. This contention must also be rejected.

Preference for enrollment in a charter school is given to students who reside in the district where the charter school

is located. N.J.S.A. 18A:36A-8(a). A charter school may, however, enroll non-resident students, if available space permits. N.J.S.A. 18A:36A-8(d). As in this case, a charter school may apply to the Commissioner for an amendment to its charter to expand its enrollment. N.J.A.C. 6A:11-2.6(a)(1)(i). There is no statutory or regulatory provision limiting the requested amount of an expanded enrollment, or limiting the expansion to in-district students. The Commissioner evaluates whether amendments are eligible for approval under the CSPA and the implementing regulation, N.J.A.C. 6A:11-2.6(b), under which a charter school must include information showing a “[d]emonstration of need” in its initial application. N.J.A.C. 6A:11-2.1(b)(2)(vi).

Here, Hatikvah demonstrated that need. As of June 2016, there were 149 students, from both East Brunswick and non-resident districts, on the waiting list for kindergarten through second grade. Additionally, for the 2016-2017 school year, twenty-four of the available fifty kindergarten seats went to siblings of students thereby, according to Hatikvah, “greatly limiting access to the school for new families.” Thus, the record fully supported the Commissioner's decision approving an increase in enrollment from fifty to seventy-five students in kindergarten and first grade and, therefore, we discern no basis for disturbing it.

VI.

*18 Appellants argue in Point IV that there is no statutory authority under the CSPA to obligate them to fund their students' attendance at Hatikvah and, therefore, the Commissioner's decision was arbitrary, capricious, or unreasonable because it violated express or implied legislative policies. They contend, as other appellants do in two of the companion cases, Piscataway, and North Brunswick, that N.J.S.A. 18A:36A-12(b) explicitly limits financial responsibility for students' attendance at charter schools to the “school district of residence,” which they interpret to mean the district where the charter school is located, or at most, the contiguous districts identified in the school's approved “region of residence.” Thus, appellants argue that since the Commissioner's approval of the expansion was based on the presumed ongoing flow of revenue from appellants, non-resident school districts, it was inherently arbitrary and should be vacated. For the reasons that follow, however, we conclude that the Commissioner's interpretation of the funding provisions was

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

entirely consistent with the Act and the policies expressed by the Legislature.

In their resolutions calling for a moratorium on all new charter school seats in Middlesex and Somerset Counties, appellants only generally claimed that the Department had interpreted the CSPA “to require all public school districts statewide to pay charter schools for students enrolled in those schools regardless as to whether the charter serves the district’s community as part of the charter’s approved district or region of residence.”

The scope of judicial review of a final decision of the Commissioner is limited. Quest Acad., 216 N.J. at 385, 80 A.3d 1120. Although the Appellate Division is not bound by an agency’s determination on a question of law, Hargrove v. Sleepy’s, LLC, 220 N.J. 289, 301, 106 A.3d 449 (2015), “[c]ourts afford an agency ‘great deference’ in reviewing its ‘interpretation of statutes within its scope of authority and its adoption of rules implementing’ the laws for which it is responsible.” N.J. Ass’n of Sch. Adm’rs v. Schundler, 211 N.J. 535, 549, 49 A.3d 860 (2012) (quoting N.J. Soc’y for Prevention of Cruelty to Animals v. N.J. Dep’t of Agric., 196 N.J. 366, 385, 955 A.2d 886 (2008)).

“[T]he goal of statutory interpretation is to ascertain and effectuate the Legislature’s intent.” Cashin v. Bello, 223 N.J. 328, 335, 123 A.3d 1042 (2015). “[T]he best indicator of that intent is the statutory language.” DiProspero v. Penn., 183 N.J. 477, 492, 874 A.2d 1039 (2005). “Accordingly, ‘[t]he starting point of all statutory interpretation must be the language used in the enactment.’ ” Spade v. Select Comfort Corp., 232 N.J. 504, 515, 181 A.3d 969 (2018) (quoting N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 178, 104 A.3d 244 (2014)).

Courts “construe the words of a statute ‘in context with related provisions so as to give sense to the legislation as a whole.’ ” Spade, 232 N.J. at 515, 181 A.3d 969 (quoting N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 570, 163 A.3d 887 (2017)). If the plain language leads to a clear and unambiguous result, then the court’s “interpretative process is over.” Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 386, 143 A.3d 254 (2016). Courts “turn to extrinsic tools to discern legislative intent ... only when the statute is ambiguous, the plain language leads to a result inconsistent with any legitimate public policy objective, or it is at odds with a general statutory scheme.” Shelton v. Restaurant.com, Inc., 214 N.J. 419, 429, 70 A.3d 544 (2013).

At issue here, N.J.S.A. 18A:36A-12(b) provides that:

The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to 90% of the sum of the budget year equalization aid per pupil, the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation, and the employer payroll tax per pupil that is transferred to the school district pursuant to subsection d. of section 1 of P.L.2018, c.68. In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district’s special education categorical aid equal to the percentage of the district’s special education students enrolled in the charter school and, if applicable, 100% of preschool education aid. The district of residence shall also pay directly to the charter school any federal funds attributable to the student.

*19 [(Emphasis added).]

The term “school district of residence” is not defined in the CSPA or the implementing regulations. The term “district of residence” is defined in the regulations as “the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school’s district of residence.” N.J.A.C. 6A:11-1.2; N.J.A.C. 6A:23A-15.1.⁸ A school district does not, however, reside in a district; instead, it is located in a district. Moreover, the district of residence where the charter school is located does not receive equalization aid, security categorical aid, or federal funds “attributable” to a charter student who is not a resident of that district. See N.J.S.A. 18A:7F-43 to -63 (SFRA). Thus, it would make no sense to interpret “school district of residence” to mean the “district of residence.” N.J.S.A. 18A:36A-12(b).

In fact, the State Board of Education promulgated N.J.A.C. 6A:23A-15.2 and -15.3, which as discussed in more detail in our decision today in Piscataway, require both a “district of residence” and a “non-resident district” to fund its students’ attendance at a charter school. However, appellants argue that under N.J.A.C. 6A:23A-15.2 and -15.3, a “non-resident district” should be interpreted to mean only those “non-resident districts” that are within a charter school’s region of residence, because those districts would be entitled to the same opportunity for input as the district where the charter

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

school is located. N.J.A.C. 6A:11-2.1; N.J.A.C. 6A:11.2.6(a) (2). They contend that the Department's interpretation of N.J.S.A. 18A:36A-12(b) to require all non-resident districts to fund their students' attendance at charter schools is inconsistent with the Act, because non-resident districts located outside the approved region of residence are not entitled to receive notice or input as to the approval or amendment process.

Significantly, after the parties filed briefs in this case, we rejected this identical argument in Highland Park I.⁹ In that case, Highland Park (one of the appellants in this case), appealed from the Commissioner's March 19, 2015 final decision approving Hatikvah's second application to amend its charter to expand its grades. Highland Park I, (slip op. at 2).

*20 In Highland Park I, this court initially noted that Highland Park had not raised this issue in March 2014 when Hatikvah sought to renew its charter, or in November 2014 when Hatikvah sought to expand its enrollment. Id. at 14. Highland Park had never challenged the regulations requiring resident and non-resident school districts to fund their students' attendance at a charter school, and had "paid tuition for its students to attend the school for at least six years." Id. at 15. Nonetheless, because it involved "an issue of law," the court decided to exercise its discretion and address the argument even though it was raised for the first time on appeal. Ibid.

Turning to the merits, the court found that the plain language of N.J.S.A. 18A:36A-12(b) "expressly provides that the 'school district of residence' must pay the charter school for 'each student' enrolled in the school." Id. at 16. Thus, the court held that "as used in N.J.S.A. 18A:36A-12(b), the term 'school district of residence' refers to the district where the student resides, not the district where the charter school is located." Ibid. The court further found that the CSPA

expressly envisions that students may enroll in a charter school, even though they reside in a district other than the district where the charter school is located. See N.J.S.A. 18A:36A-8(a) (requiring charter schools to give preference for enrollment to students who reside "in the school district in which the charter school is located"). There is nothing in the Act that would allow these students to attend a charter school without a financial contribution from the school districts in which they reside. Thus, under N.J.S.A. 18A:36A-12(b), obligation of a school district to attend a

charter school is not limited to the charter school's "district of residence."

[Id. at 16-17.]

Further, we found that the regulations adopted pursuant to the CSPA were "consistent with this interpretation of N.J.S.A. 18A:36A-12(b). Indeed, the regulations expressly provide that both a charter school's 'district of residence' and the 'non-resident school districts' must pay for their students to attend a charter school. N.J.A.C. 6A:23A-15.3(g)(2), (3)." Id. at 17. See also N.J.A.C. 6A:23A-15.2 (resident and non-resident school districts shall use projected charter school aid).

The court in Highland Park I also found support for this interpretation in the legislative history, explaining that in its fiscal estimate for S. 1796 (1995), which, combined with A. 592 (1995), became the CSPA, the Office of Legislative Services (OLS), included the following statement:

In regard to the funding of charter schools, the bill provides that the school district of residence would pay directly to the charter school for each student enrolled who resides in the district an amount equal to the local levy budget per pupil in the district for the specific grade level.... The cost for out of district pupils would be paid by the district of residence of the pupil....

[Id. at 17-18 (quoting Legislative Fiscal Estimate to S. 1796 1 (Sept. 14, 1995) (emphasis added)).]

That statement "makes clear that all school districts of residence must pay for students to attend a charter school, and the financial obligation is not limited to the charter school's 'district of residence.'" Id. at 18.

In so ruling, we found unpersuasive Highland Park's citation to other provisions of the Charter School Act that pertain to a charter school's "district of residence." Id. at 18. For example, the court found that

Highland Park cites N.J.S.A. 18A:36A-4(c), which requires a proposed charter school to provide a copy of its application to the "local board of education." However, the statute does not support Highland Park's argument. N.J.S.A. 18A:36A-4(c) also requires the Commissioner to provide notice to "members of the State Legislature, school superintendents, and mayors and governing bodies of all legislative districts, school districts, or municipalities in which there are students who will be eligible for enrollment in the charter school."

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

*21 Highland Park also cites N.J.S.A. 18A:36A-14(b), a statute that limits a charter school's salaries to the salaries of the highest step in the district where the school is located; and N.J.S.A. 18A:36A-16(b), which requires a charter school to serve a copy of its annual report on the local board of education in the district where the school is located. However, these statutes have no direct bearing on whether a student's "school district of residence" must pay for students from that district to attend at a charter school.

[Id. at 18-19.]

Thus, we concluded that

under N.J.S.A. 18A:36A-12(b), the term "school district of residence" means the school district where the student resides, and each "school district of residence" must pay the charter school for its student to attend the school, in the amounts required by the Act and the regulations. We therefore reject Highland Park's contention that only the charter school's "district of residence" is obligated to pay for its students to attend the school.

[Id. at 19.]

Similarly, as addressed in Piscataway, the Commissioner issued a final decision in which she interpreted the CSPA and the regulatory provisions, N.J.A.C. 6A:23A-15.1 to -15.4, to require school districts to "provide funding for its students enrolled in charter schools located in other school districts." Bd. of Educ. of Twp. of Piscataway v. NJ Dep't of Educ., EDU 10995-16, final decision, (July 27, 2017) (the Piscataway Board of Education was obligated to pay for its resident students to attend a number of out-of-district charter schools, including Hatikvah).

Appellants argue that under that interpretation, non-resident school districts will be deprived of due process because non-resident districts are not entitled to receive formal notice of a charter school's application to amend its charter, or input into the amendment process. See N.J.A.C. 6A:11-2.6(a)(b). They argue that "the net effect of these regulations as applied by the Department is to render every New Jersey district the 'district of residence' of every charter school in the state."

However, because preference for enrollment in a charter school is given to students who reside in the school district in

which the charter school is located, N.J.S.A. 18A:36A-8(a), it is likely that the majority of students will reside in that district, and thus it makes sense that the district of residence should receive formal notice and an opportunity for input. Moreover, it was undisputed that appellants in this case, and in the back-to-back companion appeals, were aware of the amendment and had an opportunity to submit comments on the amendment requests involved in these cases. In fact, the Commissioner received, and considered, comments from several school districts, individuals, an educational service commission, and even several legislators. Thus, the notice provisions simply do not relieve non-resident districts from bearing financial responsibility for their students' attendance at charter schools.

We are persuaded by the reasoning expressed in Highland Park I, and by the Commissioner in her final decision in Piscataway. The plain language of the statute requires each student's district of residence to pay for the student to attend a charter school. N.J.S.A. 18A:36A-12(b). That interpretation is entirely consistent with the Act and the policy expressed by the Legislature. Charter schools are open to all students, both resident and non-resident students, and there is no indication in the Act that the Legislature intended to exclude non-resident districts from funding their students' attendance at a charter school. It is also consistent with the legislative history and the implementing regulations, which require a non-resident district to fund its students' attendance at a charter school. N.J.A.C. 6A:23A-15.2 and -15.3. Thus, appellants are obligated to provide funding for their students enrolled in Hatikvah.

VII.

*22 In sum, we affirm the Commissioner's decision approving Hatikvah's application to amend its charter, and compelling appellants to fund their students' attendance at that school. The decision was not arbitrary, capricious, or unreasonable, promoted the legislative policy of the CSPA, and was fully supported by the record.

Affirmed.

All Citations

Not Reported in Atl. Rptr., 2019 WL 2402544

Highland Park Board of Education v. Harrington, Not Reported in Atl. Rptr. (2019)

2019 WL 2402544

Footnotes

- 1 This case was calendared back-to-back with three other appeals, and we heard oral argument on all four matters on the same day. In re Approval of Charter Amendment of Cent. Jersey Coll. Prep (Central Jersey), No. A-3074-16, North Brunswick Twp. Bd. of Educ. v. Harrington (North Brunswick), No. A-3415-16, and Bd. of Educ. of Twp. of Piscataway v. N.J. Dep't of Educ. (Piscataway), No. A-5427-16. Because some of the issues in these appeals overlap, the reader is encouraged to review all four of our opinions in these cases, which are being released simultaneously.
- 2 The term "district of residence" is defined as "the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school's district of residence." N.J.A.C. 6A:11-1.2.
- 3 Similar resolutions were submitted by North Plainfield Board of Education, Educational Services Commission of New Jersey, Monroe Township Board of Education, South River Board of Education, South Brunswick Board of Education, Middlesex Borough Board of Education, New Brunswick Board of Education, and South Amboy Board of Education.
- 4 A regional charter school serves a region or collection of districts, as opposed to a single district. In re Charter Sch. Appeal of Greater Brunswick Charter Sch., 332 N.J. Super. 409, 423-24, 753 A.2d 1155 (App. Div. 1999).
- 5 Three New Jersey legislators also wrote to the Commissioner opposing Hatikvah's application. The Commissioner also considered a petition submitted on behalf of more than 1400 individuals urging denial of the application, and approximately 300 other public comments.
- 6 We have also entertained challenges by boards of education to renewals and amendments of charters in other cases, including In re Red Bank Charter Sch., 367 N.J. Super. 462, 467, 843 A.2d 365 (App. Div. 2004) (Red Bank Board of Education opposed renewal and expansion of a charter school) and Highland Park I, No. A-3890-14 (appeal from amendment).
- 7 Available at <https://rc.doe.state.nj.us/PerformanceReports.aspx>
- 8 A "region of residence" is defined as the "contiguous school districts in which a charter school operates and is the charter school's district of residence." N.J.A.C. 6A:11-1.2. See Greater Brunswick Charter Sch., 332 N.J. Super. at 424, 753 A.2d 1155 ("[R]egulations allowing regional charter schools are a legitimate means of effectuating the Act's purpose of encouraging the establishment of charter schools."). A non-resident school district is defined as "a school district outside the district of residence of the charter school." N.J.A.C. 6A:11-1.2.
- 9 Although the case is unpublished, it involved most of the same parties and the identical issue raised here, and thus even if not binding under the doctrine of collateral estoppel, the legal analysis is persuasive and properly constitutes secondary authority in connection with the present appeals. R. 1:36-3.

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EXHIBIT C

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

2019 WL 2402541

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

In the MATTER OF the APPROVAL
OF the CHARTER AMENDMENT OF
CENTRAL JERSEY COLLEGE PREP

DOCKET NO. A-3074-16T4

|
Argued May 30, 2019

|
Decided June 7, 2019

On appeal from the New Jersey Department of Education.

Attorneys and Law Firms

William C. Morlok argued the cause for appellant Franklin Township School District (Parker McCay, PA, attorneys; Brett E.J. Gorman, of counsel and on the briefs; Kayleen Egan, on the briefs).

Brenda C. Liss argued the cause for respondent Central Jersey College Prep Charter School (Riker Danzig Scherer Hyland & Perretti, LLP, attorneys; Brenda C. Liss, of counsel and on the brief; Stephen M. Turner, on the brief).

Geoffrey N. Stark, Deputy Attorney General, argued the cause for respondent Department of Education (Gurbir S. Grewal, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; James M. Esposito, Deputy Attorney General, on the brief).

Before Judges Haas, Sumners and Mitterhoff.

Opinion

PER CURIAM

*1 Appellant Franklin Township Board of Education (Franklin) appeals from the February 28, 2017 final decision of the Commissioner of Education (Commissioner), approving an application by Central Jersey College Prep Charter School (CJCP) to amend its charter to increase enrollment, add a satellite campus, and move its main campus to a new facility.¹ We affirm.

I.

We begin by reciting the essential background facts and procedural history of this matter. CJCP is a charter school located in Franklin Township, Somerset County, with an approved “region of residence,”² that includes Franklin Township, New Brunswick, and North Brunswick. The school began operation in 2006. It was approved under the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 to -18 (the Charter School Act or CSPA), to serve students in grades kindergarten through eighth, with a maximum enrollment of forty-eight students per grade, and a projected total enrollment of 624 students for the 2019-2020 school year. Its mission is “to prepare its students for post-secondary education and beyond with the necessary skills and knowledge they need to intellectually and emotionally reach their maximum potential.”

CJCP is a high-performing, Tier 1 school, a ranking it received from the New Jersey Department of Education's (Department or NJDOE) assessment of its academic performance based on the metrics set forth in the State's Academic Performance Framework governing charter schools.³ It was awarded the National Blue Ribbon Award in 2016, named a High Performing Title I Reward School in 2015, featured as a Top Performing High School in U.S. News and World Report in 2015 and 2016, and designated as a “Top Ten Middle School” by JerseyCAN in 2013.

Appellant Franklin Township Board of Education (Franklin) operates the traditional Franklin Township Public Schools (FTPS). For the 2016-2017 school year, approximately 7000 students from Franklin Township were enrolled in FTPS. Two charter schools also operate within the district, CJCP and Thomas Edison EnergySmart Charter School (TEECs). A third school, Ailanthus Charter School, received approval to begin operation for the 2018-2019 school year. In re Ailanthus Charter Sch., No. A-0945-16 (App. Div. May 11, 2018). As of April 2017, 330 students from Franklin were enrolled in CJCP, 311 students were enrolled in TEECS, and forty-eight students were enrolled in out-of-district charter schools (Hatikvah International Charter School (Hatikvah) and the Greater Brunswick Charter School).

*2 On December 1, 2016, CJCP submitted a charter amendment application seeking to: 1) expand its maximum enrollment from 624 to 1320 students by the 2019-2020

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

school year; 2) add a satellite campus in New Brunswick (within its region of residence) by the 2019-2020 school year; and 3) relocate the current facility to a new facility on Mettlers Road in Somerset. It proposed to enroll 960 students at the Somerset campus and 360 students at the New Brunswick campus. In accord with N.J.A.C. 6A:11-2.6(a)(2), CJCP submitted a board resolution authorizing the request to amend, a copy of the proposed revisions to the charter, and a rationale statement in support of the proposed amendment.

CJCP stated that its need for expansion was “driven primarily by the heavy demand from the community to be a part of the educational success that it had instilled.” It represented that the number of applications had dramatically increased over the past few years, totaling 465 for the 2014-2015 school year, and 956 for the 2016-2017 school year. CJCP had, at the time of the application, 628 students on its waiting list and was only able to accept approximately 25% of the application pool. Thus, it maintained that under the current maximum capacity of forty-eight students per grade, it was “unable to service the vast number of students who would benefit” from the education provided by the school.

CJCP anticipated that demand for admission would continue to increase as a result of its awards, expansion, and proposed new facilities. It submitted student achievement results showing that in the spring of 2016, its students had significantly outperformed their peers attending FTPS in all PARCC assessments. For the 2016-2017 school year: 65% of their high school students were enrolled in at least one Advanced Placement (AP) class; 84% had taken college-level courses; and for the fifth consecutive year, 100% of the students had graduated high school and were accepted into a four-year college. Expanded enrollment would allow it to increase its AP and college-level courses and to offer a wider range of extracurricular activities.

If approved, CJCP planned to hire approximately twenty-eight new teachers, together with additional administrative staff to meet their staffing needs. Under the expansion, the school projected the following expenses for teacher salaries: \$ 2,572,388 (2017-2018); \$ 3,081,559 (2018-2019); and \$ 3,510,006 (2019-2020).

CJCP also sought to amend its charter to add a satellite campus in New Brunswick “to increase opportunities of

education equity for all students in its attendance zone.” CJCP identified two facilities for consideration, but had not finalized its selection pending the approval to operate a satellite campus.

CJCP asserted that the addition of the New Brunswick satellite campus would allow for the “accessibility and replication” of the school’s “existing model to service this high-need community and the increased number of students attending [the] school,” and would open the opportunities offered by CJCP to “a much larger student base in need of a college education.” CJCP would also “be able to cut the costs within the schools by utilizing district-wide resources between the New Brunswick and Somerset campuses.”

Although CJCP served New Brunswick students, as part of its “region of residence,” it had received only ninety-three applications from families in New Brunswick for the 2016-2017 school year, of which sixteen students were enrolled through the lottery system, and seventy-seven students were placed on the waiting list. The applications from New Brunswick students for the 2016-2017 school year had doubled from the applications for the 2015-2016 school year, but were still less than expected given that there were no charter schools located in the city of New Brunswick. CJCP cited to studies that emphasized “the importance of residential proximity for charter schools to be a real option for parents,” and expressed confidence that positioning the satellite campus in New Brunswick will increase the awareness of the school within the community and result in increased enrollment.

*3 If approved, CJCP represented that it would “run an enrollment campaign” to reach out to the entire New Brunswick community. “Brochures and fliers would be translated for non-English speakers and distributed to various organizations, including but not limited to places of worship, community centers, enrichment programs and service organizations.” It would also hold open houses at the school and at other locations accessible to members of the community.

CJCP projected that enrollment at the satellite campus would total:

Grade	2016-2017	2017-2018	2018-2019	2019-2020
Grade 6	0	0	72	72

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

Grade 7	0	0	72	72
Grade 8	0	0	0	72
Grade 9	0	0	72	72
Grade 10	0	0	0	72
Grade 11	0	0	0	0
Grade 12	0	0	0	0
Total	0	0	216	360

Lastly, CJCP sought to relocate its main facility to an approximately 90,000 square foot building located on Mettlers Road in Somerset. CJCP acknowledged that part of the reason for the request to relocate was the fact that the current "landlord's recent and unreasonable actions and legal challenges have made it impossible to stay in [the current building] beyond this school year." It also sought to relocate because the current facility did not provide enough space and amenities to accommodate its students. The new larger facility had fifty-five classrooms, a media

center, cafeteria, auditorium, and conference rooms among other features. Further, although the rent for the new facility was higher, CJCP determined that considering "all factors" including legal expenses and maintenance costs, "the new facility will not significantly increase the percentage of the school's general fund allocated for the building/land rent and maintenance."

CJCP projected that enrollment at the Somerset Campus would total:

Grade	2016-2017	2017-2018	2018-2019	2019-2020
Kindergarten	48	72	96	96
Grade 1	48	72	98	96
Grade 2	48	72	96	96
Grade 3		48	72	96
Grade 4			48	72
Grade 5				48
Grade 6	48	72	96	96
Grade 7	48	48	72	96
Grade 8	48	48	48	72
Grade 9	48	48	48	48
Grade 10	48	48	48	48
Grade 11	48	48	48	48
Grade 12	48	48	48	48

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

Total

480

624

816

960

More than 100 individuals and organizations sent letters to the Commissioner supporting CJCP's application, including the Latino Leadership Alliance of New Jersey, which expressed its "strong support" for the application.

On January 13, 2017, Franklin submitted a letter to the Commissioner asking her to deny CJCP's application. It claimed that CJCP had not demonstrated that it could meet the challenges posed by its rapid expansion, including tripling its current enrollment and opening two new facilities. Franklin maintained that this "ill-advised amendment" threatened "the educational viability of CJCP's students." It asked the Commissioner to deny the application, or in the alternative, to reduce the "proposed increase in enrollment and facilities."

Franklin claimed that CJCP had not allocated sufficient funds to attract and adequately staff its schools with competent professionals, which would result in "catastrophic consequences to the viability of the school and the delivery of educational services." It calculated that the new teachers would receive an average salary of \$ 33,486.35 per year (\$ 937,618 (budget increase for teacher salaries) ÷ 28 (new teachers)). That annual salary for new teachers was significantly less than CJCP's median staff salary of \$ 49,200 for the 2015-2016 school year. As a result, Franklin asserted that CJCP would "struggle to find qualified teachers to run a rigorous college preparatory curriculum." Franklin also maintained that CJCP's staffing goal for its Somerset campus did not comport with its stated goal of small class sizes and a low teacher-student ratio because it would not be fully staffed for several years after the increased enrollment.

*4 Moreover, Franklin alleged that there was insufficient community demand for the expansion, because the lack of applications from New Brunswick families for the Somerset campus did not necessarily mean that there was community support for a satellite campus in New Brunswick. Further, CJCP sought to "expand enrollment in Somerset despite the fact[] that only 87% of the students enrolled at the CJCP Somerset campus reside in the district of residence." Franklin asserted that CJCP's "argument that more seats are necessary in Somerset to meet the demand seems illogical since 13% of the students currently attending CJCP reside in a town outside the district of residence."

Next, Franklin asserted that CJCP had "a poor track record" with English Language Learners (ELL). It argued that as of

the 2014-2015 school year, CJCP had not enrolled any ELL students, in contrast to the Franklin Township school district, which had 600 ELL students.

Lastly, Franklin had concerns relating to the suitability of the Mettlers Road facility. According to Franklin, the facility was apparently located in a ROL Zone (Research/Office/Laboratory Zone), where schools were not a permitted use. Although the Planning Board ultimately approved CJCP's application for a use variance, it imposed "significant conditions" on the project, which Franklin asserted "undermine[d] its viability as a school location." Moreover, CJCP's proposed location for a gymnasium was "located within the setback of a gas transmission pipeline, potentially exposing the students to a dangerous condition."

CJCP also only intended to use approximately one-half of the existing Mettlers Road facility, leaving the remainder vacant and available for lease. Thus, the property owner could lease the balance of the building to a commercial office or research laboratory, thereby potentially "creating a number of security risks for the students, who would be forced to share a building." Franklin also noted that CJCP's proposal to move its main facility had resulted in "threatened/pending litigation" with its current landlord.

On January 27, 2018, the Superintendents of Edison, Highland Park, New Brunswick, Sayreville, South River, and Metuchen Township Public School Districts submitted a letter to the Commissioner opposing the applications filed by CJCP, Hatikvah, and TEECS, to expand their enrollments. They alleged that Hatikvah and TEECS, but not CJCP, "enroll a significantly more segregated student body than any of the resident or non-resident sending districts with respect to race, socioeconomic status, and need for special education."

Boards of Educations from ten other school districts, including the appellants in the companion appeal, North Brunswick, No. A-3415-16, passed almost identical resolutions calling for a general moratorium on new charter school seats in Middlesex and Somerset Counties. The Boards also alleged that Hatikvah and TEECS, but not CJCP, enrolled a "significantly more segregated student body" than any of the resident or non-resident sending districts.

By letter dated January 31, 2017, CJCP responded to each of Franklin's claims. With regard to Franklin's argument that the "existing charter schools located in Middlesex and

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

Somerset counties are already lacking in demand in their own designated communities,” CJCP stated that it had “been experiencing an increase in demand for enrollment from students living within its sending district.” It asserted that the number of applicants from its region of residence totaled: 302 (2014-2015); 684 (2015-2016); and 734 (2016-2017). For the 2017-2018 school year, CJCP had received 748 applications as of January 2017, and anticipated receiving over 1200 applications by the 2017-2018 school year deadline.

*5 With regard to Franklin's claim that only 87% of the students enrolled in CJCP resided in the school's region of residence, CJCP explained that that number was “a result of upperclassmen high school students from outside of the attendance zone who started to attend CJCP when they were sixth graders. CJCP pointed out that as these students graduated, the ratio of students from CJCP's region of residence had increased,” as follows: 71% (2014-2015); 80% (2015-2016); 87% (2016-2017). As a result, CJCP anticipated that approximately 94% of its students would reside in its region of residence in the 2017-2018 school year, and 100% by the 2018-2019 school year.

Lastly, CJCP stated that Franklin's claim that TEECS and Hatikvah enrolled a more segregated student body was a tacit admission that CJCP's student body was representative of its sending districts. CJCP represented that the demographics of its students were: 14% (White); 17% (Hispanic); 30% (African American); 38% (Asian); and 1% (other).

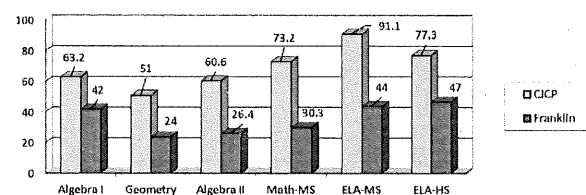
By letter dated February 10, 2017, the Latino Coalition of New Jersey, a civil rights organization, and Franklin C.A.R.E.S., a group of parents of FTPS students, informed the Commissioner that they had filed a federal civil rights complaint against CJCP, alleging that CJCP engaged in segregative practices relating to enrollment of students with disabilities and ELL students.⁴ CJCP responded to the allegations the next day, and “vehemently” denied engaging in any form of discrimination. CJCP stated it was an inclusive and diverse school that, for the past ten years, had been “successfully educating students from Franklin Township, North Brunswick and New Brunswick under the strict regulatory oversight of the NJDOE,” and was in “complete compliance with all NJDOE regulations regarding enrollment policies.”

CJCP explained that it solicited and accepted applications from all interested students. Students gained enrollment through a publicly held random lottery process that blindly

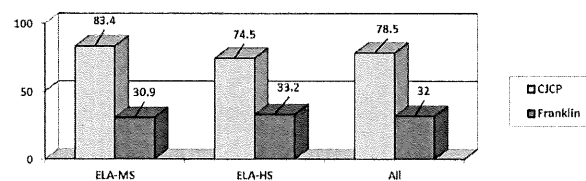
selected a certain number of students to fill available seats. Importantly, CJCP did not collect any information at the time of the application as to the students' socioeconomic and ethnic background, disability status, or English language skills. Any disparity in demographics of its student enrollment, as compared to FTPS, was “completely attributable to parent-choice.” Further, the request to open a satellite campus in New Brunswick was “specifically designed to give more ethnically diverse, economically disadvantaged, and ELL students access to a high quality, public education.”

Lastly, CJCP claimed that it had “raised the bar of what should be expected in public education in Franklin Township with a proven track record of academic success.” Its students had outperformed their peers in FTPS in every subject, as represented by the 2016 PARCC test results:

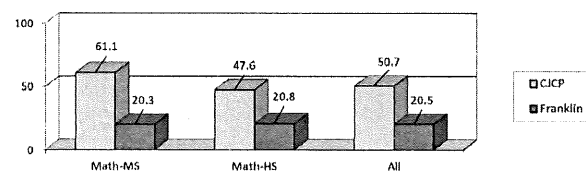
2016 PARCC Results – All Students



2016 PARCC ELA Results - Free/Reduced Lunch Students



2016 PARCC Math Results - Free/Reduced Lunch Students



*6 On February 28, 2017, the Commissioner granted CJCP's application to amend its charter based on the recommendations and her review of the record. In a brief written decision, the Commissioner noted that the Department had “completed a comprehensive review including, but not limited to, student performance on statewide assessments, operational stability, fiscal viability, public comment, fiscal impact on sending districts, and other information in order to make a decision regarding the school's amendment request.” The Commissioner confirmed the school's maximum

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

enrollment for the “approved region of residence of Franklin, New Brunswick and North Brunswick,” as follows:

Grade	2017-2018	2018-2019	2019-2020
Kindergarten	72	96	96
Grade 1	72	96	96
Grade 2	72	96	96
Grade 3	48	72	96
Grade 4		48	72
Grade 5			48
Grade 6	72	168	168
Grade 7	48	144	168
Grade 8	48	48	144
Grade 9	48	120	120
Grade 10	48	48	120
Grade 11	48	48	48
Grade 12	48	48	48
Total	624	1032	1320

The Commissioner also confirmed the new site location at Mettlers Road, and directed CJCP to “provide all facility related documents to the Office of Charter and Renaissance Schools and the Somerset County Office of Education.” Further, the Commissioner directed that once CJCP had identified the final site of the satellite campus, it should provide the Department with the required amended documentation pursuant to N.J.A.C. 6A:11-2.6. This appeal followed.

On appeal, Franklin raises the following contentions:

POINT I

THE COMMISSIONER'S DECISION SHOULD BE REVERSED BECAUSE SHE FAILED TO CONSIDER THE SEGREGATIVE IMPACT CJCP'S CHARTER AMENDMENT WOULD HAVE ON THE DISTRICT.

POINT II

THE COMMISSIONER'S DECISION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE.

II.

In Point I, Franklin argues that the Commissioner's decision was arbitrary, capricious and unreasonable because she failed to consider the alleged segregative impact of CJCP's charter amendment on the district. We disagree.

The scope of judicial review of a final decision of the Commissioner on a charter school application is limited. *In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp.*, 216 N.J. 370, 385, 80 A.3d 1120 (2013). We may reverse only if the Commissioner's decision is “arbitrary, capricious, or unreasonable.” *Ibid.* In making that determination, our review is generally restricted to three inquiries:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[*Id.* at 385-86 (quoting *Mazza v. Bd. of Trs.*, 143 N.J. 22, 25, 667 A.2d 1052 (1995)).]

“When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field.” *In re Herrmann*, 192 N.J. 19, 28, 926 A.2d 350 (2007). This court “may not substitute its own judgment for the agency's even though the court might have reached a different result....” *In re Carter*, 191 N.J. 474, 483, 924 A.2d 525 (2007) (quoting *Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 513, 606 A.2d 336 (1992)).

Charter schools are public schools that operate under a charter granted by the Commissioner, operate independently of a local board of education, and are managed by a board of trustees. N.J.S.A. 18A:36A-3(a). The Legislature found and declared that

the establishment of charter schools as part of this State's program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom. Specifically, charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers.

*7 The Legislature further finds that the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools.

[N.J.S.A. 18A:36A-2.]

It is well established that, “[r]ooted in our Constitution, New Jersey's public policy prohibits segregation in our public schools....” *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 324, 753 A.2d 687 (2000). In that regard, the CSPA provides that “[t]he admission policy of the charter school shall, to the maximum extent practicable, seek the enrollment of a cross section of the community's school age population including racial and academic factors.” N.J.S.A. 18A:36A-8(e). See N.J.A.C. 6A:11-4.5(e) (charter school lottery). Further, N.J.S.A. 18A:36A-7 provides:

A charter school shall be open to all students on a space available basis and shall not discriminate in its admission policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a person with a disability, proficiency in the English language, or any other basis that would be illegal if used by a school district; however, a charter school may limit admission to a particular grade level or to areas of concentration of the school, such as mathematics, science, or the arts. A charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school's charter.

Our Supreme Court has held that the “form and structure” of the segregative analysis under the CSPA is up to the Commissioner and the Department to determine. *Englewood*, 164 N.J. at 329, 753 A.2d 687. “The Commissioner must consider the impact that the movement of pupils to a charter school would have on the district of residence” and “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.” *Id.* at 328, 753 A.2d 687. “The Commissioner must vigilantly seek to protect a district's racial/ethnic balance during the charter school's initial application, continued operation, and charter renewal

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl...
2019 WL 2402541

application.” In re Red Bank Charter Sch., 367 N.J. Super. 462, 472, 843 A.2d 365 (App. Div. 2004).

[S]egregation, however caused, must be addressed. To be timely addressed, assessment cannot wait until after a charter school has been approved for operation and is already taking pupils from the public schools of a district of residence. The Commissioner must assess whether approval of a charter school will have a segregative effect on the district of residence of the charter school. Once a charter school is operating, the Commissioner must also assess whether there is a segregative effect in any other district sending pupils to the approved charter school.

[Englewood, 164 N.J. at 330, 753 A.2d 687.]

In response to the Court's decision in Englewood, and to its companion case, In re Greater Brunswick Charter School, 164 N.J. 314, 315, 753 A.2d 686 (2000), the Board adopted regulations requiring the Commissioner, prior to approval of a charter, N.J.A.C. 6A:11-2.1(j), and on an annual basis thereafter, N.J.A.C. 6A:11-2.2(c), to “assess the student composition of a charter school and the segregative effect that the loss of the students may have on its district of residence. The assessment shall be based on the enrollment from the initial recruitment period pursuant to N.J.A.C. 6A:11-4.4(a) and (b).” 32 N.J.R. 3560(a), 3561 (Oct. 2, 2000). N.J.A.C. 6A:11-4.4(a) provides that “a charter school shall submit to the Commissioner the number of students by grade level, gender and race/ethnicity from each district selected for enrollment from its initial recruitment period for the following school year.”

*8 Moreover, in response to a public comment about the readoption of the implementing regulations with amendments, the Commissioner explained that:

20. COMMENT: The commenter requested revisions to N.J.A.C. 6A:11-2.1 and 2.2 to ensure the Department assesses the segregative effects of charter schools not only by race, but also on religion, ethnicity and gender, students with disabilities, English language learner status, low-income students (socioeconomic status), and students at risk of dropping out or with other special academic needs.

RESPONSE: The Department assesses the segregative effects of charter schools by many factors other than race,

Demographic	FTPS Students	CJCP Students	TEECs Students
White	12.8%	13.3%	14.7%

including those referenced by the commenter, although it is not specifically required by or enumerated in N.J.A.C. 6A:11-2.1 and 2.2. The factors that are considered are predicated on the composition of the involved school districts. In light of this fact specific analysis, the Department contends revisions to N.J.A.C. 6A:11-2.1 and/or 2.2 are not necessary or warranted.

[46 N.J.R. 2351(c), 2353 (Dec. 1, 2014).]

On appeal, Franklin claims that CJCP is not representative of a cross section of the community's school age population because it over-enrolls Asian students, and under-enrolls Hispanic students, economically disadvantaged students (defined as students receiving free or reduced cost lunch), ELL students, and special needs students. However, before the Commissioner, Franklin only asserted that CJCP had a “poor track record” with ELL students, and presented no evidence to the Commissioner regarding the racial and economic segregative effects of CJCP's increased enrollment.

Further, the other opposing districts included data regarding the segregative effect of two different charter schools, but not CJCP, and there is no indication in this record whether the Latino Coalition and Franklin C.A.R.E.S presented any substantiated evidence of a segregative effect on the district. Thus, there was nothing in this record to support Franklin's assertion that CJCP's enrollment practices will have a segregative effect on the district. Red Bank, 367 N.J. Super. at 472-85, 843 A.2d 365.

It was also undisputed that CJCP did not discriminate in its admission policies or practices. In accordance with the CSPa, CJCP operated a publicly-held random race-blind lottery. In addition, CJCP did not collect any data at the time of the application about the students' socioeconomic and ethnic background, disability status, and English language skills.

Additionally, even if Franklin had presented the information about student enrollment data to the Commissioner at the time she was considering CJCP's application, it would not have presented a basis to reject the application. Franklin compared the racial/ethnic demographics of CJCP and TEECS (not a party to this appeal) students, with FTPS students for the school year 2016-2017, as follows:

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

Asian	16.0%	34.0%	67.6%
Hispanic	25.4%	18.8%	3.5%
Black	37.4%	31.1%	12.6%
Free or reduced price lunch	47.7%	28.0%	7.0%
Special Education	16.0%	8.0%	3.0%
ELL or LEP	7.0%	0%	3.0%

*9 It also cited to the change in CJCP's demographics, as follows:

CJCP's Demographics	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
White	6.6%	8.0%	9.5%	12.0%	13.3%
Asian	5.7%	7.7%	15.4%	19.6%	34.0%
Hispanic	20.4%	21.4%	20.9%	20.3%	18.8%
Black	66.7%	62.3%	53.9%	47.5%	31.1%
Economically disadvantaged	33.0%	44.0%	43.0%	39.0%	28.0%
ELL or LEP	0%	0%	0%	0%	0%
Special education	8.0%	9.0%	7.0%	7.0%	8.0%

The demographics cited by Franklin do not present a sufficient basis for assessing segregative effect. The data provided shows some disparity between the enrollment of Asian, Hispanic, economically disadvantaged, and ELL students in FTPS. Significantly, however, Franklin does not argue that FTPS are becoming more segregated, and in fact, the data submitted by the Commissioner indicates that they have not. See Bd. of Educ. of Morris Sch. Dist. v. Unity Charter Sch., EDU 1797-02, final decision, (May 22, 2003) ("student population for purposes of comparison with a charter school is not the public school enrollment

of the district of residence, but 'the community's school age population,' a group for which no comparison can here be made, since the present record is virtually devoid of information about it").

As the Commissioner correctly points out, the District's student demographics, including socioeconomic and racial demographics, have, as set forth below, remained relatively static from the 2010-2011 to the 2015-2016 school year, and thus there was no indication that CJCP's operations were exacerbating the racial imbalance:

Students	Franklin	Franklin
Pre-K to 12	2010-2011	2016-2017
White	18.7%	13.7%
Black or African American	40.3%	38.0%
Asian	18.4%	16.7%

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

Hispanic	21.5%	29.5%
LEP	5.1%	7.8%
Special needs	15.2%	16.0%
Free or reduced lunch	36.6%	45.0%

A comparison of the demographic data indicates that CJCP enrolled a diverse student population, albeit, a population that did not exactly match FTPS demographics. Moreover, CJCP maintained that the expansion and the operation of a satellite campus in New Brunswick would allow it to develop an even more diverse student population. To that end, Franklin has not presented any evidence that the District was becoming more segregated, or that CJCP's existence has worsened the existing racial imbalance. See Bd. of Educ. of Hoboken v. N.J. State Dep't of Educ., No. A-3690-14 (slip op. at 15) (App. Div. June 29, 2017) (affirmed charter renewal where there were no allegations that the school's practices after the enrollment of students by an impartial lottery exacerbated the racial or ethnic balance); see also In re Renewal Application of TEAM Acad. Charter Sch., — N.J. Super. —, — (slip op. at 14) (stating that “[t]he mere fact that the demographics of the charter schools do not mirror the demographics of the [d]istrict does not alone establish a segregative effect.”).

In that regard, this case is distinguishable from Red Bank, 367 N.J. Super. at 462, 843 A.2d 365. In that case, the Board of Education (Board) appealed from the Commissioner's decision approving an application by a charter school to renew its charter. Id. at 467, 843 A.2d 365. The Board opposed the application on the basis that the school's operation had worsened the racial/ethnic imbalance, citing to data showing that since the charter school opened, the percentage of non-minority students in the traditional public schools had decreased from 32% to 18%, and a disproportionate number of non-minority students were enrolled in the charter school. Id. at 469, 843 A.2d 365. The Board also alleged that prior to standardized testing, the charter school frequently returned enrolled minority students with poor academic records to the traditional public schools. Id. at 479, 843 A.2d 365.

*10 The Commissioner in Red Bank did not specifically address the segregation argument below. Id. at 476, 843 A.2d 365. However, this court discerned from the entire record, including the Commissioner's brief on appeal, that the Commissioner had concluded there was “no evidence in the record to suggest that the charter school has promoted racial segregation among the district's school-age children,”

and “there is no requirement that the two schools have exactly the same minority/non-minority enrollment figures.” Ibid. (internal quotation marks omitted). We held that “the Commissioner is to assess whether or not the charter school is seeking ‘a cross section of the community's school age population.’ ” Ibid. (quoting N.J.S.A. 18A:36A-8(e)).

Despite the disparity in the enrollment, we affirmed the Commissioner's decision, finding that:

The Charter School should not be faulted for developing an attractive educational program. Assuming the school's enrollment practices remain color blind, random, and open to all students in the community, the parents of age eligible students will decide whether or not to attempt to enroll their child in the Charter School and any racial/ethnic imbalance cannot be attributed solely to the school. To close this school would undermine the Legislature's policy of “promoting comprehensive educational reform” by fostering the development of charter schools. N.J.S.A. 18A:36A-2.

[Id. at 478.]

Nonetheless, this court found that the school's post-enrollment practices were “disturbing and difficult to dismiss on this record.” Id. at 480, 843 A.2d 365. Additionally,

[w]hile the Charter School's enrollment practices might not be the sole cause of existing racial/ethnic imbalance, the manner of operation of the school after its color-blind lottery, warrants closer scrutiny to determine whether some of the school's practices may be worsening the existing racial/ethnic imbalance in the district schools.

[Ibid.]

Thus, we remanded the matter to the Commissioner to determine “whether any remedial action is warranted.” Id. at 482, 843 A.2d 365. Here, and unlike in Red Bank, there are no allegations that CJCP's practices, after the enrollment of students by an impartial lottery, exacerbated the racial, ethnic, or special needs balance in FTPS. Franklin does not cite to any

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

policy or procedure utilized by CJCP in a manner to further exacerbate that balance. Instead, Franklin simply claimed, in general terms, that CJCP was more segregated than the FTPS—a claim insufficient to warrant further review on an application to amend.

This case is also distinguishable from two other cases cited by Franklin. In In re Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District, 181 N.J. 161, 183, 854 A.2d 327 (2004), the Court reversed the grant of North Haledon's petition to withdraw from the Passaic County Manchester Regional High School District. The Court found that “demographic trends are contributing to a steady decrease in the number of white students attending Manchester Regional, and that North Haledon's withdrawal will accelerate this trend.” *Ibid.* The Court held that “[r]ather than using the demographic trend as an excuse for approving North Haledon's petition, the Board should have considered the ameliorative effect of denying the petition on the racial balance at Manchester Regional.” *Ibid.*

Similarly, in Board of Education of Englewood Cliffs v. Board of Education of Englewood, 257 N.J. Super. 413, 459-65, 608 A.2d 914 (App. Div. 1992), *aff'd*, 132 N.J. 327, 625 A.2d 483, *cert. denied*, 510 U.S. 991, 114 S.Ct. 547, 126 L.Ed.2d 449 (1993), the Appellate Division affirmed the State Board of Education's denial of Englewood Cliffs' petition to withdraw from the sending/receiving relationship due to the substantial negative impact on the racial balance in the district. In contrast, here, Franklin did not show that CJCP's expansion will increase the racial imbalance as in North Haledon and Englewood Cliffs. In fact, it appears from the data submitted by the Commissioner that the racial demographics have remained fairly consistent during CJCP's operation.

*11 Lastly, it is undisputed that the Commissioner considered the segregative effect of the charter school in approving CJCP's application to open the school in 2006, N.J.A.C. 6A:11-2.1(j), in renewing its application in 2010 and 2015, N.J.A.C. 6A:11-2.3(b)(8), and on an annual basis, N.J.A.C. 6A:11-2.2(c). There is no indication in this record that there was any challenge based on the segregative effect either in the initial approval or on renewal. Nor is there any indication in this record that the Commissioner found a segregative effect during the annual review. N.J.A.C. 6A:11-2.2(c).

Based upon the foregoing, we conclude that the Commissioner's decision granting the expansion was not arbitrary, capricious, or unreasonable because Franklin did not provide sufficient evidence of a segregative effect to warrant either a more detailed scrutiny or the denial of the application. Therefore, we reject Franklin's contention on this point.

III.

In Point II, Franklin argues that the Commissioner's decision approving the amendment was arbitrary, capricious and unreasonable because she failed to consider “serious deficiencies and problems in CJCP's application.” Specifically, Franklin contends the Commissioner failed to consider that: 1) CJCP sought to expand too rapidly; 2) CJCP's staffing plan was unrealistic; 3) there was a lack of community demand for the New Brunswick campus and no demonstrated need for additional seats at the Somerset campus; 4) CJCP has a “poor track record” with ELL students; 5) the proposed location of the Somerset campus is unsuitable for a school; and 6) CJCP may become involved in expensive litigation with its current landlord. We are unpersuaded by these arguments.

Applications to establish a charter school are governed by N.J.S.A. 18A:36A-4 and -5, and the implementing regulation, N.J.A.C. 6A:11-2.1. The Commissioner has final authority to grant or reject a charter. N.J.S.A. 18A:36A-4(c). “The notification to eligible applicants not approved as charter schools shall include reasons for the denials.” N.J.A.C. 6A:11-2.1(f) (emphasis added).

Applications to renew a charter are governed by N.J.S.A. 18A:36A-17 and the implementing regulation, N.J.A.C. 6A:11-2.3. The Commissioner shall grant or deny the renewal of a charter based upon a comprehensive review of the school, including, among other things, the annual reports, recommendation of the district board of education or school superintendent, and student performance on statewide tests. N.J.A.C. 6A:11-2.3. “The notification to a charter school that is not granted a renewal shall include reasons for the denial.” N.J.A.C. 6A:11-2.3(d) (emphasis added).

With particular reference to the case at hand, a charter school can also apply to the Commissioner for an amendment to its charter. N.J.A.C. 6A:11-2.6. A charter school can seek, as in this case, an expansion of enrollment and the establishment

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

of a new satellite campus. N.J.A.C. 6A:11-2.6(a)(1)(i), (iv). Boards of Education in the district of residence can submit comments in response to the application for amendment. N.J.A.C. 6A:11-2.6(c).

“The Commissioner may approve or deny amendment requests of charter schools and shall notify charter schools of decisions. If approved, the amendment becomes effective immediately unless a different effective date is established by the Commissioner.” N.J.A.C. 6A:11-2.6(d). In determining whether the amendments are eligible for approval, the Department “shall evaluate the amendments” based on the CSPA and the implementing regulations, and the Commissioner “shall review a charter school's performance data...” N.J.A.C. 6A:11-2.6(b). A school's performance data is reflected in the school's Academic Performance Framework report. N.J.A.C. 6A:11-1.2. The Performance Framework consists of three sections: academic, financial, and organizational. N.J.A.C. 6A:11-1.2. A charter school's performance on the Academic section carries the most weight. That component includes measures of student growth, achievement, graduation rate, and attendance. N.J.A.C. 6A:11-1.2.

*12 An appellate court may reverse a Commissioner's decision on a charter school application only if it is “arbitrary, capricious, or unreasonable.” Quest Acad., 216 N.J. at 385, 80 A.3d 1120. “[T]he arbitrary, capricious, or unreasonable standard ... subsumes the need to find sufficient support in the record to sustain the decision reached by the Commissioner.” Id. at 386, 80 A.3d 1120. “[A] failure to consider all the evidence in a record would perforce lead to arbitrary decision making.” Ibid. However, in cases where “the Commissioner is not acting in a quasi-judicial capacity,” and is instead acting in [her] legislative capacity, as [s]he was doing here, [s]he “need not provide the kind of formalized findings and conclusions necessary in the traditional contested case.” TEAM Acad., — N.J. Super. — (slip op. at 30) (quoting In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch., 320 N.J. Super. 174, 217, 727 A.2d 15 (App. Div. 1999), aff'd as modified, 164 N.J. 316, 753 A.2d 687 (2000)).

Thus, although the arbitrary, capricious, or unreasonable standard demands “that the reasons for the decision be discernible, the reasons need not be as detailed or formalized as an agency adjudication of disputed facts; they need only be inferable from the record considered by the agency.” Englewood, 320 N.J. Super. at 217, 727 A.2d 15. See Red

Bank, 367 N.J. Super. at 476, 843 A.2d 365 (reasons need not be detailed or formalized, but must be discernible from the record); Bd. of Educ. of E. Windsor Reg'l Sch. Dist. v. State Bd. of Educ., 172 N.J. Super. 547, 552, 412 A.2d 1320 (App. Div. 1980) (detailed findings not required by Commissioner in reducing amount local school board sought to increase its budget).

There is also no statutory or regulatory provision requiring the Commissioner to include reasons for granting an application to amend. TEAM Acad., — N.J. Super. — (slip op. at 40). The regulations provide only that the notification “shall include reasons for the denial[]” of an initial charter school application and an application for renewal. N.J.A.C. 6A:11-2.1(f); N.J.A.C. 6A:11-2.3(d). The Commissioner does however, take comments regarding the amendment into consideration when rendering a final decision. N.J.A.C. 6A:11-2.6(c). Here, although the Commissioner did not specifically address the comments submitted by Franklin in its opposition to CJCP's application, a review of the record indicates that none of the issues raised by Franklin presented a basis to deny the amendment.

First, Franklin argues that CJCP failed to present sufficient evidence of a need for a satellite campus in New Brunswick. A charter school can seek an amendment to open a new satellite campus. N.J.A.C. 6A:11-2.6(a)(1)(iv). See Educ. Law Ctr. ex rel. Burke v. N.J. State Bd. of Educ., 438 N.J. Super. 108, 112, 102 A.3d 929 (App. Div. 2014) (affirmed State Board's action in adopting regulations allowing satellite campuses). A satellite campus is defined as “a school facility operated by a charter school that is in addition to the facility identified in the charter school application or charter, if subsequently amended.” N.J.A.C. 6A:11-1.2. “A charter school may operate more than one satellite campus in its district or region of residence, subject to charter amendment approval, pursuant to N.J.A.C. 6A:11-2.6.” N.J.A.C. 6A:11-4.15(b).

The Department evaluates whether amendments are eligible for approval based on the CSPA. N.J.A.C. 6A:11-2.6(b). Under the CSPA, a charter must include information showing a “[d]emonstration of need” in its initial application for a charter. N.J.A.C. 6A:11-2.1(b)(2)(vi). Franklin contends that CJCP did not demonstrate a need for the satellite campus because it cited only to a lack of demand from New Brunswick families.

However, in its application, CJCP presented a detailed rationale for the addition of a satellite campus—a record

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl....

2019 WL 2402541

that amply supports the Commissioner's decision. Notably, CJCP set forth that New Brunswick's high percentage of economically disadvantaged students (86% (high school) and 93% (middle school)), would benefit from easier access to CJCP. It also cited to studies that "emphasize[d] the importance of residential proximity for charter schools to be a real option for all parents."

***13** Moreover, CJCP demonstrated need because even though it received fewer applications than expected from New Brunswick students in 2016-2017, it still received double the number of applications from 2015-2016, and seventy-seven of the ninety-three students were placed on the waiting list. CJCP also represented that the total number of applications had dramatically increased over the past few years (465 for the 2014-2015 school year and 956 for the 2016-2017 school year), and that at the time of the application, there were 628 students on its waiting list.

Second, Franklin argues that CJCP failed to demonstrate need because only 87% of the students enrolled at the Somerset campus were from CJCP's region of residence. However, CJCP explained that number was "a result of upperclassmen high school students from outside of the attendance zone who started to attend CJCP when they were sixth graders. As these students graduate, the ratio of students from CJCP's region of residence attending CJCP has increased," as follows: 71% (2014-2015); 80% (2015-2016); 87% (2016-2017). CJCP anticipated that approximately 94% of its students would reside in its region of residence in the 2017-2018 school year, and 100% by the 2018-2019 school year.

Third, Franklin argues that the Commissioner ignored the fact that CJCP had a "poor track record in enrolling ELL students." It asserts that 14% of the students enrolled in traditional public schools in New Brunswick are ELL students, and that CJCP has not demonstrated that it is able to serve this student population. However, there was no evidence that CJCP utilized any policy or procedure, either before or after the lottery, to exclude ELL students. It was also undisputed that students gain admission to CJCP through a publically held random lottery process that blindly selects students from among the applicant pool, and CJCP did not collect any information prior to the lottery as to a student's English language skills. Further, CJCP maintained that it sought to open a satellite campus in New Brunswick in order to reach more ELL students.

Franklin also failed to present any evidence that CJCP was unable to serve the population of ELL students. It was undisputed that CJCP complied with NJDOE regulations during its ten years of operation, including N.J.A.C. 6A:11-4.8, which provides that "[a] charter school shall provide an enrolled limited English proficient student with all required courses and support services to meet the New Jersey Student Learning Standards in accordance with N.J.S.A. 18A:7A-4 and 18A:7A-5 and N.J.A.C. 6A:15, Bilingual Education."

Fourth, Franklin argues that the Commissioner failed to address its concern that the increased enrollment at the Somerset campus and the creation of the satellite campus will cause "catastrophic staffing issues due to unrealistic teacher salaries." However, there is no indication in this record that CJCP proposed to pay its teachers less than the amount required under the CSPA. In this regard, N.J.S.A. 18A:36A-14(b) provides that "[a] charter school shall not set a teacher salary lower than the minimum teacher salary specified pursuant to section 7 of P.L.1985, c.321 (C.18A:29-5.6) nor higher than the highest step in the salary guide in the collective bargaining agreement which is in effect in the district in which the charter school is located." See also 34 N.J.R. 2920(a) (Aug. 19, 2002) ("Charter schools pay their teachers and professional staff not less than the State minimum salary nor more than the salaries of the district boards of education in which the charter schools are located"). Therefore, Franklin's contention on this point also lacks merit.

***14** Fifth, Franklin contends that the Commissioner ignored its safety concerns about the Mettlers Road location. However, prior to opening the new campus, CJCP must submit to the NJDOE the new lease, mortgage, or title to the facility, a valid certificate of occupancy for educational use issued by the local municipal enforcing official, a sanitary inspection report with a satisfactory rating, and a fire inspection certificate with an "Ae" (education) code life hazard. N.J.A.C. 6A:11-2.1(i)(6)-(9). The regulations are designed to ensure that facilities are safe for students. Thus, none of the issues raised by Franklin in opposition to the application form a basis for denying the application.

In sum, we are satisfied that the administrative record amply supports the Commissioner's decision to grant CJCP's request to amend its charter. CJCP demonstrated that it is a high-performing, Tier 1 school, a ranking it received from the Department's assessment of its academic performance based on the metrics set forth in the State's Academic Performance

Matter of Approval of Charter Amendment of Central..., Not Reported in Atl...

2019 WL 2402541

Framework governing charter schools. N.J.A.C. 6A:11-1.2; N.J.A.C. 6A:11-2.3(b). In 2015-2016, CJCP students ranked in the 99th percentile statewide for Math on the PARCC and outperformed their home district on the 2016 PARCC in every subject. It was also awarded the National Blue Ribbon Award in 2016, named a High Performing Title I Reward School in 2015, featured as a Top Performing High School in U.S. News and World Report in 2015 and 2016, and designated as a "Top Ten Middle School" by JerseyCAN in 2013.

Thus, a review of CJCP's performance data clearly supported the need for the amendment. N.J.A.C. 6A:11-2.6(b). Further, in the application and annual reports submitted by CJCP during its ten-year operation, it demonstrated that it

was fiscally stable and operationally sound. Finally, the Commissioner properly approved CJCP's request to expand enrollment with the understanding that facilities would need to be identified, secured, and potentially improved to comply with the charter regulations. Under these circumstances, we discern no basis for disturbing the Commissioner's reasoned determination.

Affirmed.

All Citations

Not Reported in Atl. Rptr., 2019 WL 2402541

Footnotes

- 1 Calendared back-to-back with this appeal, North Brunswick Township Board of Education (North Brunswick), New Brunswick Board of Education (New Brunswick) and Piscataway Township Board of Education (Piscataway) separately appealed from this same decision. North Brunswick Twp. Bd. of Educ. v. Harrington (North Brunswick), No. A-3415-16. Two other appeals from decisions by the Commissioner regarding charter schools are also calendared back-to-back with this case. Highland Park Bd. of Educ. v. Harrington (Highland Park II), No. A-3455-16; Bd. of Educ. of the Twp. of Piscataway v. N.J. Dep't of Educ. (Piscataway), No. A-5427-16. Because of this overlap, the reader is encouraged to review all four of our opinions in these cases, which are being released simultaneously.
- 2 The term "region of residence" is defined as "contiguous school districts in which a charter school operates and is the charter school's district of residence." N.J.A.C. 6A:11-1.2.
- 3 The "Performance Framework" as referenced in N.J.A.C. 6A:11-2.3(b)(2), and as defined in N.J.A.C. 6A:11-1.2, sets specific quantitative and qualitative standards for academic, financial, and organizational performance.
- 4 Franklin did not include the letter or the complaint in its appendices. It also provided no information concerning the outcome, if any, of this litigation.

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EXHIBIT D



Cited

As of: September 17, 2019 5:24 PM Z

Bd. of Educ. of Hoboken v. New Jersey State Dep't of Educ.

Superior Court of New Jersey, Appellate Division

May 2, 2017, Argued; June 29, 2017, Decided

DOCKET NO. A-3690-14T3

Reporter

2017 N.J. Super. Unpub. LEXIS 1639 *

BOARD OF EDUCATION OF THE CITY OF HOBOKEN, HUDSON COUNTY, Petitioner-Appellant, v. NEW JERSEY STATE DEPARTMENT OF EDUCATION and BOARD OF TRUSTEES OF THE HOBOKEN DUAL LANGUAGE CHARTER SCHOOL, Respondents-Respondents.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Commissioner of Education.

Core Terms

charter school, enrollment, charter, segregative, public school, pre-K, white student, renewal, thorough, funding, lottery, student population, practices, argues, school district, school year, schools, cross section, special needs, statistics, decrease, policies, census, grades, low-income, withdrawal, imbalance, factors, parties, ethnic

Counsel: Eric L. Harrison argued the cause for appellant (Methfessel & Werbel, attorneys; Mr. Harrison, of counsel and on the brief; Kegan S. Andeskie, on the brief).

Viola S. Lordi argued the cause for respondent Board of Trustees of Hoboken Dual Language Charter School (Wilentz, Goldman & Spitzer, attorneys; Ms. Lordi, of counsel and on the brief; Gordon J. Golum and Maureen S. Binetti, on the brief).

Donna S. Arons, Deputy Attorney General, argued the cause for respondent Department of Education (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Ms. Arons and Frederick Wu, Deputy Attorneys

General, on the brief).

Avram D. Frey argued the cause for amicus curiae American Civil Liberties Union of New Jersey and Education Law Center (Gibbons, P.C., Education Law Center, and American Civil Liberties Union of New Jersey Foundation, attorneys; Lawrence S. Lustberg, Mr. Frey, David Sciarra, Elizabeth Athos, Edward Barocas and Alexander Shalom, on the brief).

Paul P. Josephson argued the cause for amicus curiae New Jersey Charter Schools Association (Duane Morris LLP, attorneys; Mr. Josephson, [*2] on the brief).

Judges: Before Judges Reisner, Koblitz and Rothstadt.

Opinion

PER CURIAM

The Board of Education of the City of Hoboken, Hudson County (Hoboken) appeals the Commissioner of Education's (Commissioner) March 20, 2015 grant of the Hoboken Dual Language Charter School's (HoLa) application to expand its grade-level offerings to seventh and eighth grade. Hoboken claims that the Commissioner failed to consider the charter school's alleged segregative and funding impact on the district and improperly declined to hold a hearing, conduct interviews, or gather more facts concerning the charter school's policies. Because neither the methodology used by the Commissioner nor his decision were arbitrary, capricious, or unreasonable, we affirm.

On October 15, 2013, HoLa submitted a charter renewal and expansion application to the Commissioner and Hoboken. The Hoboken Superintendent fully supported HoLa's charter renewal, but objected to its expansion. On March 5, 2014, Evo Popoff, the Chief Innovation Officer at the Department of Education (the Department), acting on the Commissioner's behalf, renewed HoLa's charter for five years, through June 30,

2017 N.J. Super. Unpub. LEXIS 1639, *2

2019. Popoff also permitted the elementary school to add [*3] a seventh-grade class for the 2016-2017 school year and an eighth-grade class for the 2018-2019 school year.

Hoboken appealed, and after our remand to the Commissioner upon application of the Department, and after the parties submitted additional materials, the Commissioner again granted HoLa's renewal and expansion application on March 20, 2015. We denied a stay.

The City of Hoboken has a public school system for students in grades kindergarten (K) through 12 consisting of four public schools: Brandt, Calabro, Connors and Wallace. It also includes three charter schools including HoLa, and four private, tuition-based K-8 schools.

According to HoLa, the original intent of its founders was to implement a dual-language program (Spanish and English) at Hoboken's Connors school (the district's most segregated and poorest school), but Hoboken rejected the plan. HoLa then applied for and was granted a charter to operate a dual-language school beginning in September 2010, starting with grades K-2 and expanding each year until HoLa encompassed grades K-6. HoLa is located in a low-income section of Hoboken, close to the Connors school.

Students are admitted to HoLa through a lottery with no interviews. [*4] No demographic data is collected until students are registered. In order to represent a cross section of the Hoboken community, HoLa holds open houses and tours and advertises in local publications. It also partners with local organizations to recruit on-site. Dates for the open houses, tours and events, as well as the lottery, are posted on the school's website and are printed on flyers "distributed throughout the city." In addition, applications and brochures are mailed to every low-income household each year prior to the lottery. HoLa's parents and teachers also canvass subsidized and public housing and help complete applications on the spot.

Parents may enroll children in the lottery online, in person, or by a phone call to the school. HoLa has a sibling preference, so that if a child is enrolled in HoLa, that child's younger sibling will have priority over other lottery applicants. On December 23, 2014, HoLa submitted a request to the Commissioner to include a

low-income preference in its lottery.¹

Initially, in 2013, Popoff conducted "a comprehensive review" of HoLa, "including the evaluation of the school's renewal application, annual reports, student performance on state assessments, [*5] site visit results, public comments, and other information." Popoff found that HoLa was "providing a high-quality education to its students." In the 2012-2013 school year, 82% of HoLa's students were at least proficient in Language Arts, while 91% were at least proficient in math. By comparison, only 50% of Hoboken's traditional public school students were at least proficient in Language Arts and 52% were at least proficient in math.

After the remand, the parties submitted more information, including census and student enrollment data. According to 2010 U.S. Census data, Hoboken's under-seventeen population was 57% white, 26% Hispanic, and 16% "other" reflecting a significant increase in the percentage of white children from the 2000 Census data, which showed Hoboken's under-seventeen population as 39% white, 46% Hispanic, and 15% "other." In the 2009-2010 school year (the year before HoLa started operating), Hoboken's traditional public school student population was 22% white, 59% Hispanic, 15% black, and 4% Asian. By the 2013-2014 school year, four years after HoLa began, Hoboken's traditional public school student population had increased its percentage of white students from 22% [*6] to 27%.

The Commissioner considered the racial breakdown of the students in the public and charter schools for 2012-2013 and 2013-2014. Between these school years, the percentage of white students at HoLa rose from 60.6% to 63%, while Connors rose from only 3.9% white students to 4%. Brandt rose from 61.5% to 72%, and Wallace rose from 32.6% to 43%. The final public school, Calabro, dipped from 34.6% to 32%. As can be seen by these statistics, minority students are heavily concentrated at Connors, where in both years they made up approximately 95% of the student population. The percentage of students receiving free or reduced-price lunch decreased for all four Hoboken public elementary schools from 2010-2011 to 2013-2014, although at Connors 88% of the students still received a lunch subsidy in 2013-2014.

In addition to considering the submitted materials, the

¹ This request was granted in December 2015 after the record in this case closed.

2017 N.J. Super. Unpub. LEXIS 1639, *6

Office of Charter Schools conducted its own review of data focusing on race and ethnicity to determine whether HoLa was having a segregative effect on the Hoboken Public School District, stating: "After the Department's analysis of publically available student enrollment data, census data, and documentation submitted by the parties, [*7] it has been determined that HoLa does [not] and will not have a segregative effect on [Hoboken]." The Commissioner explained:

[A]lthough HoLa enrolls a higher percentage of White students, and a smaller percentage of Black and Hispanic students than [Hoboken], the percentage of White students attending [Hoboken] has actually increased since HoLa opened in 2010 with the percentage of Hispanic students decreasing in that same period. The percentage of Black students in [Hoboken] has stayed fairly constant since 2010. The increase in percentage of [Hoboken's] White students since 2010, along with the decrease in Hispanic students, and the lack of changes to the percentage of Black students indicates that HoLa's enrollment has not had a segregative effect on [Hoboken]. Instead, the data points towards an overall population shift in the last ten years in the City of Hoboken, which began before the opening of HoLa Charter School.

Hoboken argues that in granting the expansion of HoLa's charter to include seventh and eighth grades, the Commissioner: 1) failed to consider HoLa's alleged racially and economically segregative effect; 2) failed to consider the funding impact to students affected by poverty [*8] and special needs; and 3) failed to conduct interviews, gather facts, or hold a hearing to consider HoLa's policies and practices.

Our review of the Commissioner's decision is limited. *In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp.*, 216 N.J. 370, 385, 80 A.3d 1120 (2013). "[A] court may intervene when 'it is clear that the agency action is inconsistent with its mandate.'" *Ibid.* (quoting *In re Petition for Rulemaking*, 117 N.J. 311, 325, 566 A.2d 1154 (1989)).

[A]lthough sometimes phrased in terms of a search for arbitrary or unreasonable agency action, the judicial role [in reviewing an agency's action] is generally restricted to three inquiries: (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in

applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[*Id.* at 385-86 (quoting *Mazza v. Bd. of Trs.*, 143 N.J. 22, 25, 667 A.2d 1052 (1995)) (second alteration in the original).]

In reviewing administrative decisions, however, courts are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." *Shim v. Rutgers*, 191 N.J. 374, 384, 924 A.2d 465 (2007) (quoting *In re Taylor*, 158 N.J. 644, 658, 731 A.2d 35 (1999)). Nevertheless, "case law has recognized the value that [*9] administrative expertise can play in the rendering of a sound administrative determination." *In re Proposed Quest Acad.*, *supra*, 216 N.J. at 389.

The Supreme Court gave the following overview of the law regarding charter schools:

The *Charter School Program Act of 1995 (the Act)* . . . (codified as amended at *N.J.S.A. 18A:36A-1 to -18*), authorizes the establishment of charter schools in New Jersey. See *N.J.S.A. 18A:36A-2* (finding that charter schools "can assist in promoting comprehensive educational reform" and that their establishment "is in the best interests of the students of this State"). The Act charges the Commissioner of Education (Commissioner) with the responsibility to establish a program to "provide for the approval and granting of charters to charter schools pursuant to [the Act]." *N.J.S.A. 18A:36A-3*. The application process is governed by the Act, see *N.J.S.A. 18A:36A-4, -4.1, and -5*, and implementing regulations, see *N.J.A.C. 6A:11-2.1*. . . . Ultimately, the Commissioner has the "final authority to grant or reject a charter application." *N.J.S.A. 18A:36A-4(c)*; see also *N.J.A.C. 6A:11-2.1(a)*.

[*In re Proposed Quest Acad.*, *supra*, 216 N.J. at 373.]

"Charter schools are public schools, which through legislative authorization are free from many state and local regulations." *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 320, 753 A.2d 687 (2000) (*Englewood*). The Commissioner must conduct a "comprehensive review" before granting a charter renewal. *In re Red Bank Charter Sch.*, 367 N.J. Super.

462, 469, 843 A.2d 365 (App. Div.), certif. denied, 180 N.J. 457, 852 A.2d 193 (2004); N.J.A.C. 6A:11-2.3(b). "[I]f the goals [*10] set forth in the charter school's charter are not fulfilled, the charter is not renewed." Englewood, supra, 164 N.J. at 320.

I. Racial Segregative Impact

Hoboken first argues that the Commissioner erred by using incomplete or flawed data and ignoring relevant data when finding that HoLa has not had and will not have a racially segregative impact. "Rooted in our Constitution, New Jersey's public policy prohibits segregation in our public schools." Id. at 324. "[T]he Commissioner is required to monitor and remedy any segregative effect that a charter school has on the public school district in which the charter school operates." In re Red Bank Charter Sch., supra, 367 N.J. Super. at 471. The "form and structure" of the segregation analysis is up to the Commissioner and the state Board of Education to determine. Englewood, supra, 164 N.J. at 329.

Hoboken complains of two problems with the data: 1) pre-K data was improperly included in the Department's reports for 2013-2014 and 2) the Commissioner used census data inclusive of the entire Hoboken population under age seventeen instead of data for only the school-age population. Hoboken argues that because the 2013-2014 Department's report erroneously included data for pre-K students in the district and HoLa did not enroll pre-K students, the report was not an accurate reflection [*11] of Hoboken's population. The Department data included data from the Brandt school, which served only pre-K and K students, and which enrolled a higher percentage of white students than the other public schools (62% white in 2012-2013 and 72% white in 2013-2014).

It is true that HoLa did not admit pre-K students and the Department's statistics for 2013-14 included data for pre-K students. However, the Department's 2012-2013 data did not include the pre-K data, and those numbers were relied upon to the same extent as the 2013-2014 numbers. Moreover, the inclusion of the pre-K data did not skew the statistics; although the pre-K data included Brandt, a predominately white school in the district, those same statistics also included data on Wallace and Connors, schools that were predominately minority, and which also added pre-K in the 2013-2014 school year. Thus, contrary to Hoboken's suggestion, the inclusion of Brandt did not skew the statistics. And, although HoLa

did not offer pre-K, "trends in the student population" are "valid factors" to be considered when determining whether an action will have a segregative impact. [*12] In re Petition for Authorization to Conduct a Referendum on the Withdrawal of N. Haledon Sch. Dist. from the Passaic Cty. Manchester Reg'l High Sch. Dist., 363 N.J. Super. 130, 142, 831 A.2d 555 (App. Div. 2003) (N. Haledon I), aff'd as mod., 181 N.J. 161, 854 A.2d 327 (2004). The Commissioner properly considered the pre-K data because it provided solid evidence of the trends in the student population.

Hoboken also complains that the Commissioner erred in considering census information concerning all of the children under age seventeen in Hoboken and not just those of school age. It argues this was error because: 1) the statute requires a review of the community's "school age" population; 2) the under-five age group is overrepresented in the Hoboken population; and 3) the relevant comparison is that of the student population in the district, not the student population of Hoboken.

N.J.S.A. 18A:36A-8(e) addresses enrollment preferences, stating: "The admission policy of the charter school shall, to the maximum extent practicable, seek the enrollment of a cross section of the community's school age population, including racial and academic factors." The racial make-up of students expected to enroll in school in the next four years is a trend that the Commissioner should consider. N. Haledon I, supra, 363 N.J. Super. at 142.

Hoboken argues that the relevant statistics were those that compared HoLa's student population to the student population of [*13] the traditional public school system, not to the population of those under age seventeen. To support its position, it cites to Englewood, which states the Commissioner "must consider the impact that the movement of pupils to a charter school would have on the district of residence" and it is the Commissioner's "obligation to oversee the promotion of racial balance in our public schools to ensure that public school pupils are not subjected to segregation." Englewood, supra, 164 N.J. at 328 (emphasis added). Hoboken also cites to N.J.A.C. 6A:11-2.2(c) that states in part that "the Commissioner shall assess the student composition of a charter school and the segregative effect that the loss of the students may have on its district of residence."

N.J.S.A. 18A:36A-8(e), however, states that a charter school's admission policy must seek to enroll "a cross section of the community's school age population." (Emphasis added). This indicates that the entire

community, not just the students enrolled in the public schools, must be considered. Any other interpretation would exclude potential students who had already elected not to attend public schools, but who were part of the population eligible to attend the public schools. A simple comparison between the charter schools [*14] and the traditional public schools is not necessarily representative of the demographics: based on 2013-2014 data, 65% of Hoboken's school-age population was white, but only 27% of Hoboken's students were white. This was largely the result of four private K-8 schools that enrolled thousands of Hoboken's students. Consequently, the analysis is complicated. It is not fair to HoLa to refuse to recognize the impact of the private schools on overall school enrollment in Hoboken, as HoLa has no control over private school enrollment. Hoboken presents no data of its own to support its positions. The Commissioner did not act arbitrarily in considering the data presented.

Assuming that the data the Commissioner relied on was correct, Hoboken maintains that the Commissioner's legal interpretation of that data was wrong in that "the lack of a documented *increase* in HoLa's segregative impact on Hoboken's school-aged children does not negate the *existence* of the segregative impact." We have stated:

[A] Charter School should not be faulted for developing an attractive educational program. Assuming the school's enrollment practices remain color blind, random, and open to all students in the community, [*15] the parents of age eligible students will decide whether or not to attempt to enroll their child in the Charter School and any racial/ethnic imbalance cannot be attributed solely to the school. To close this school would undermine the Legislature's policy of "promoting comprehensive educational reform" by fostering the development of charter schools.

[In *re Red Bank Charter Sch.*, *supra*, 367 N.J. Super. at 478 (quoting N.J.S.A. 18A:36A-2).]

In *Red Bank*, as here, a disparity existed between the enrollment of minority students in the charter school and the traditional public schools. *Id.* at 473-74. We were concerned that after initial enrollment, the charter school in *Red Bank* decreased the percentage of minority students as the students progressed toward graduation, with the argument being made that the charter school frequently returned minority students with poor academic records to the public schools just in time for

standardized testing. *Id.* at 479. We determined that the charter school's "manner of operation of the school after its color-blind lottery, warrants closer scrutiny to determine whether some of the school's practices may be worsening the existing racial/ethnic imbalance in the district" and remanded to the Commissioner to determine "whether remedial action is warranted." [*16] *Id.* at 480, 482. Despite the stark disparity in *Red Bank*, however, we approved the renewal and expansion of the charter school. *Id.* at 486. Unlike in *Red Bank*, there are no allegations that HoLa's practices after the enrollment of students by an impartial lottery exacerbated the racial or ethnic balance.

In addition to the arguments Hoboken makes in the context of the charter school statutory scheme, it also argues that the Commissioner violated his duty to enforce the "Thorough and Efficient Education" clause of the New Jersey Constitution when he failed to remedy *de facto* segregation caused by HoLa's expansion. In the "Education Clause" or the "Thorough and Efficient Provision," the New Jersey Constitution provides: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." N.J. Const. art. VIII, § 4, ¶ 3; see *Petition for Authorization to Conduct a Referendum on Withdrawal of N. Haledon Sch. Dist. v. Passaic Cty. Manchester Reg'l High Sch. Dist.*, 181 N.J. 161, 173 n.3, 854 A.2d 327 (2004) (*N. Haledon II*). "[R]acial imbalance resulting from *de facto* segregation is inimical to the constitutional guarantee of a thorough and efficient education." *Id.* at 177. The Commissioner must "exercise broadly his statutory powers when confronting segregation, whatever the cause." *Englewood, supra*, 164 N.J. at 324. However, it is "not [*17] really possible to establish a precise point when a thorough and efficient education is threatened by racial imbalance." *N. Haledon II, supra*, 181 N.J. at 183.

In *North Haledon*, the Borough of North Haledon sought a referendum to determine whether it should be allowed to withdraw from the Passaic County Manchester Regional High School District. *Id.* at 164. Although the Board of Review granted the withdrawal, several interested parties objected arguing that the Board failed to assess the impact of the withdrawal on the racial makeup of the high school, given the white student population would decrease by nine percent, and that the percentage of minorities would continue to rise and the white population would continue to decline due to population trends in the sending towns. *Id.* at 164, 174.

2017 N.J. Super. Unpub. LEXIS 1639, *17

Our Supreme Court stated:

Not every action that reduces the percentage of white students necessarily implicates the State's policy against segregation in the public schools. . . . What we do know is that in this case, demographic trends are contributing to a steady decrease in the number of white students attending Manchester Regional, and that North Haledon's withdrawal will accelerate this trend. Rather than using the demographic trend as an excuse for approving [*18] North Haledon's petition, the Board should have considered the ameliorative effect of denying the petition on the racial balance at Manchester Regional.

[*Id.* at 183.]

Hoboken does not, however, show that expanding HoLa will increase racial imbalance as it did in *North Haledon*. To the contrary, the percentage of white students in Hoboken schools increased since HoLa opened.

II. Economic Segregation

Hoboken also claims that the Commissioner failed to consider the economic disparity between the student populations of HoLa and the district. It points out that while 11% to 16% of HoLa's population qualified for free or reduced-price lunch, Hoboken had much higher levels in some schools. *N.J.S.A. 18A:36A-8* does not specifically address economic factors, instead requiring the admission policy of a charter school to "seek the enrollment of a cross section of the community's population including racial and academic factors."

The evidence showed that HoLa's policies are geared toward admitting a cross section of the school-aged population, economically as well as racially and ethnically. HoLa canvassed and advertised in Hoboken's subsidized housing developments. On December 23, 2014, HoLa submitted a successful request to the [*19] Department to include a low-income preference in its lottery. Hoboken fails to convince us that the facts regarding economically disadvantaged students lead to a conclusion that HoLa should not be permitted to expand.

III. Funding Impact

Hoboken next argues that the Commissioner's decision was arbitrary and capricious because he failed to

consider its January 30, 2015, submission to the court and Hoboken Superintendent Mark Toback's December 13, 2010 letter concerning the funding impact that charter schools had on Hoboken's budget, including the number of special needs students enrolled in HoLa versus Hoboken.

N.J.S.A. 18A:36A-12(b) provides:

The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to 90% of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation. In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district's special education categorical aid equal to the percentage [*20] of the district's special education students enrolled in the charter school, and, if applicable, 100% of preschool education aid. The district of residence shall also pay directly to the charter school any federal funds attributable to the student.

Toback pointed out that the allocation of funds to the charter schools located in Hoboken had "nearly tripled in only a few short years" and that the pattern was not sustainable "given our enrollment increase at the lower grade levels coupled with a 2% tax cap." He claimed that "[e]ven with tax increases, the district must make cuts to services and programs for our students to support charter expansion." He wrote: "We have four school district leaders in one square mile, four business administrators, four separate payrolls, four separate boards of education and a host of required services that are duplicated." However, he did not submit specific financial data to support those assertions.

As to students with special needs, Toback wrote:

HoLa does enroll a few special needs children, and the other two charters enroll about the same percentage of special needs students as our district. But it must be noted that the charter schools do not enroll students [*21] with significant disabilities. It is the public district that enrolls the most significantly disabled children and pays for private out-of-district placements. This concentrates an expensive undertaking in the public schools, thus raising our per-pupil costs and reducing per-pupil costs in charter schools.

2017 N.J. Super. Unpub. LEXIS 1639, *21

He further noted, again without district-specific evidence, that the existing law gave an "incentive" for charter schools to place special needs students in out-of-district placements, which put the cost back on the district.

[I]f the local school district "demonstrates with some specificity that the constitutional requirements of a thorough and efficient education would be jeopardized by [the district's] loss" of the funds to be allocated to a charter school, "the Commissioner is obligated to evaluate carefully the impact that loss of funds would have on the ability of the district of residence to deliver a thorough and efficient education."

[*In re Proposed Quest Acad.*, *supra*, 216 N.J. at 377-78 (quoting *Englewood*, *supra*, 164 N.J. at 334-35).]

"[U]nsubstantiated, generalized protests" are insufficient. *Englewood*, *supra*, 164 N.J. at 336. "Renewal of a successful charter school will be favored, 'unless reliable information is put forward to demonstrate that a constitutional violation may occur.'" *In re Red Bank Charter Sch.*, *supra*, 367 N.J. at 482-83 (quoting *Englewood*, *supra*, 164 N.J. at 336).

"[T]he Commissioner is [*22] entitled to rely on the district of residence to come forward with a preliminary showing that the requirements of a thorough and efficient education cannot be met." *Englewood*, *supra*, 164 N.J. at 334. The district "must be able to support its assertions" as the Commissioner does not have "the burden of canvassing the financial condition of the district of residence in order to determine its ability to adjust to the per-pupil loss upon approval of the charter school based on unsubstantiated, generalized protests." *Id.* at 336.

In *In re Red Bank Charter Sch.*, *supra*, 367 N.J. Super. at 482, the district claimed that the funding of a charter school would cause the district's budget to be reduced by \$720,000, and that it would cause the elimination of four positions, resulting in bigger classes, as well as the elimination of courtesy busing and reduction of hall monitors, instructional assistants, and cafeteria monitors. In spite of these representations, we found the "paucity of specificity" in the district's claim to be "fatal." *Id.* at 483.

Here, Hoboken does not argue that the financial losses surrounding HoLa's expansion would impede Hoboken's

ability to provide a thorough and efficient education. It mounts only general, non-specific and unconvincing attacks on the entire charter school scheme and [*23] does not separate HoLa's impact from the impact of the other two charter schools.

IV. Fact-gathering

In its supplemental submission to the Commissioner after remand, Hoboken requested that the Commissioner "conduct further interviews, fact gathering, and perhaps hold a hearing to better assess possible interventions." On appeal, Hoboken argues that the Commissioner should have held hearings to consider the effect HoLa's policies and practices had on segregation before reaching a decision as to HoLa's renewal and expansion application.

An adjudicatory hearing is not required in every contested renewal application case. *In re Proposed Quest Acad.*, *supra*, 216 N.J. at 383. Hoboken raised the issues of HoLa's sibling preference, recruiting practices, fundraising practices, opt-in practice, and request for a low-income preference in its submissions to the Commissioner. Hoboken fails to state, however, what additional information was needed in order for the Commissioner to complete his review. The decision states: "[a]ll submitted materials from both parties were thoroughly reviewed." "When the Commissioner is not acting in a quasi-judicial capacity, as he was not here, he need not provide the kind of formalized findings and conclusions necessary [*24] in the traditional contested case." *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 320 N.J. Super. 174, 217, 727 A.2d 15 (App. Div. 1999), *aff'd as mod.*, 164 N.J. 316, 753 A.2d 687 (2000).

HoLa provides quality education to a cross section of Hoboken's children. As a dual-language school, HoLa allows students to become bilingual in a curriculum with a multi-cultural content, and thus advances public policy goals. Hoboken has not shown that the Commissioner's decision to allow HoLa to expand was arbitrary, capricious, or unreasonable.²

Affirmed.

² This decision does not preclude parents who believe their child was unfairly denied admission to HoLa for discriminatory reasons from registering an individual complaint pursuant to *N.J.S.A. 18A:36A-15*.

2017 N.J. Super. Unpub. LEXIS 1639, *24

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EXHIBIT E



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As of: September 17, 2019 5:25 PM Z

Highland Park Bd. of Educ. v. Hespe

Superior Court of New Jersey, Appellate Division

November 8, 2017, Submitted; January 24, 2018, Decided

DOCKET NO. A-3890-14T1

Reporter

2018 N.J. Super. Unpub. LEXIS 158 *; 2018 WL 525308

HIGHLAND PARK BOARD OF EDUCATION, Appellant, **v.** DAVID C. **HESPE**, COMMISSIONER OF **EDUCATION** OF THE STATE OF NEW JERSEY, NEW JERSEY STATE **BOARD OF EDUCATION** and HATIKVAH INTERNATIONAL ACADEMY CHARTER SCHOOL, Respondents. EAST BRUNSWICK **BOARD OF EDUCATION**, Intervenor-Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: Certification denied by Highland Park Bd. of Educ. v. Hespe, 2018 N.J. LEXIS 791 (N.J., June 12, 2018)

Certification denied by Highland Park Bd. of Educ. v. Hespe, 2018 N.J. LEXIS 801 (N.J., June 12, 2018)

Prior History: [*1] On appeal from the Commissioner of **Education**.

Core Terms

charter, charter school, school district, grades, attend, enrollment, districts, argues, resides, budget, regulations, kindergarten, asserts, **board of education**, the Act, capricious, requires, contractual obligation, final decision, state-wide, taxpayers, contends, annual, fiscal, pupil

Counsel: David B. Rubin argued the cause for appellant (David B. Rubin, PC and The Busch Law Group, LLC, attorneys; David B. Rubin and Douglas M. Silvestro, on the briefs).

Matthew J. Giacobbe argued the cause for intervenor-appellant (Cleary Giacobbe Alfieri Jacobs LLC,

attorneys; Matthew J. Giacobbe, of counsel and on the brief, Jessica **V.** Henry, on the brief).

Jennifer J. McGruther, Deputy Attorney General, argued the cause for respondents Commissioner of **Education** and State **Board of Education** (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Jennifer J. McGruther, on the brief).

Thomas O. Johnston argued the cause for respondent Hatikvah International Academy Charter School (Johnston Law Firm, LLC, attorneys; Thomas O. Johnston and Jignesh J. Shah, on the brief).

Duane Morris LLP, attorneys for amicus curiae New Jersey Charter Schools Association (Paul P. Josephson, of counsel and on the brief).

Cleary Giacobbe Alfieri Jacobs LLC, attorneys for amicus curiae Manalapan-Englishtown Regional **Board of Education** (Matthew J. Giacobbe, of counsel and on the brief; Jessica **V.** Henry, on the [*2] brief).

Judges: Before Judges Yannotti, Carroll and Leone.

Opinion

PER CURIAM

Highland Park Board of Education (Highland Park) appeals from a final decision of the Commissioner of **Education** (Commissioner) dated March 19, 2015, which approved an application by Hatikvah International Academy Charter School (Hatikvah) to amend its charter to expand its grades from kindergarten through grade five to kindergarten through grade eight. We affirm.

I.

We briefly summarize the pertinent facts. In March 2009, Hatikvah applied to the New Jersey Department

2018 N.J. Super. Unpub. LEXIS 158, *2

of Education (NJDOE) for the issuance of a charter pursuant to the Charter School Program Act of 1995 (the CSPA or the Act). *N.J.S.A. 18A:36A-1 to-18*. In its application, Hatikvah indicated that its proposed charter school would include only grades kindergarten through grade five during the initial four-year charter period, beginning with grades kindergarten through grade two, with the addition of one grade level each year thereafter. Hatikvah stated that its goal was to have the school eventually educate students in grades kindergarten through grade eight.

Hatikvah's initial charter period ended in June 2014, and in March 2014, Hatikvah submitted an application to the NJDOE for a [*3] five-year charter renewal. In that application, Hatikvah also sought approval to expand the school to include grades six through eight. The Commissioner granted the renewal but denied the request to expand the school's grades due to a decline in the school's academic performance in the 2012-2013 school year. Hatikvah's current charter expires in June 2019.

In November 2014, Hatikvah submitted an application to amend its charter to add grades six through eight and increase the number of students in kindergarten through grade five. In support of its application, Hatikvah submitted a resolution of its board of trustees and a rationale statement, which detailed improvements Hatikvah's students made from 2013 to 2014, and compared the academic performance of its students to the performance of students in all New Jersey public and charter schools.

Hatikvah's rationale statement also noted that progress had been made in its quest to become a fully-certified "International Baccalaureate Middle Years Programme." According to Hatikvah, the program "utilizes six transdisciplinary themes as its framework for exploration and study," and requires a multi-year pre-evaluation period before a school [*4] may be labelled an International Baccalaureate school.

The East Brunswick Board of Education (East Brunswick), Highland Park, the Borough of Highland Park (Borough), and the South River Board of Education (South River) submitted statements to the Commissioner opposing Hatikvah's application. The Commissioner also received a joint letter from three members of the State Legislature opposing the application.

In its statement, East Brunswick asserted that Hatikvah's proposed expansion would be unfair to East

Brunswick because it "would provide no benefit to the East Brunswick Township taxpayers, residents, [or] students . . . and would jeopardize the [district's] ability to maintain its educational programs and meet its contractual obligations." East Brunswick also asserted that Hatikvah "falsely state[d]" that the proposed expansion would not have any financial impact on East Brunswick's taxpayers.

East Brunswick stated that if Hatikvah's expansion were allowed, it would require East Brunswick's taxpayers to pay more than \$1 million in addition to the district's current charter school budget. According to East Brunswick, this would be forty-two percent of the district's allowed two-percent [*5] annual budget increase. East Brunswick claimed that this expenditure would "seriously jeopardize [East Brunswick's] ability to meet its contractual obligations and maintain and promote competitive educational offerings."

In its statement, Highland Park noted that only fifty-four percent of the students then attending Hatikvah were residents of East Brunswick. According to Highland Park, Hatikvah had become a regional or state-wide school with students from numerous different school districts and five different counties throughout the State. Highland Park stated that this was contrary to Hatikvah's charter.

Highland Park also asserted that it was responsible for paying tuition for Highland Park students to attend Hatikvah and three other charter schools, and these tuition payments amounted to \$562,473 for the 2014-2015 school year. According to Highland Park, this was twenty-one percent more than the district's allowed two-percent budget cap for the year, "making it difficult for the [d]istrict to meet its contractual obligations and maintain and promote competitive educational offerings." Highland Park stated that expansion of Hatikvah would place an increased burden on Highland Park's [*6] taxpayers.

In opposing the application, the Borough stated that if permitted to expand, Hatikvah would be seeking additional students from districts other than East Brunswick, including Highland Park. The Borough asserted that Hatikvah viewed its students as a commodity and a source of income to advance its business. The Borough also asserted that it was "deeply concerned about the impact of the possible expansion of Hatikvah on [its] entire tax base."

In its statement, South River stated that in the 2015-2016 fiscal year, the NJDOE had required the district to

2018 N.J. Super. Unpub. LEXIS 158, *6

budget \$191,300 for South River students to attend Hatikvah. South River also stated that the State-mandated diversion of funds to Hatikvah threatened the competitiveness of its "educational" offerings through the reduction of teaching staff and technology and program preparation." South River estimated that increased enrollment at Hatikvah would require South River to pay an additional \$48,000 in 2015-2016, which was seventeen percent of its allowed annual two-percent budget increase.

In their joint letter, the legislators indicated that they were writing on behalf of the "children and districts of Middlesex County." They stated [*7] that despite Hatikvah's claims, there is no "excess community demand" because the school "needs to recruit from [twenty-two] other districts, across multiple counties, to fill even their current allowable 300 student enrollment."

The legislators asserted that the proposed expansion of Hatikvah's enrollment would "seriously jeopardize" the ability of the East Brunswick public school district "to meet its contractual obligations and maintain and promote competitive offerings." The legislators also stated that Hatikvah's expansion would have an adverse impact on the Highland Park public school district.

On March 19, 2015, the Commissioner issued a final decision on Hatikvah's application. The Commissioner denied Hatikvah's request to expand the number of students in kindergarten through grade five, but granted the request to add grades six through eight. In his decision, the Commissioner noted that he had reviewed all of the "evidence collected" and "all [of the] public correspondence and comments" before approving Hatikvah's request to expand its operations to include grades six through eight.

The Commissioner found that Hatikvah's academic performance had improved from the 2012-2013 school [*8] year to the 2013-2014 school year. The Commissioner stated that these improvements placed Hatikvah's students in the ninety-sixth percentile in language arts literacy and eighty-seventh percentile in mathematics, in comparison to other schools across the State. The Commissioner also stated that the addition of grades six through eight would allow Hatikvah to "fulfill its mission to offer a middle-year International Baccalaureate Programme and continue the development of the Hebrew language proficiency model for students currently attending the school."

Thereafter, Highland Park filed its notice of appeal. We granted East Brunswick's motion to intervene in the

appeal. We also granted motions by the Manalapan-Englishtown Board of Education (Manalapan-Englishtown), and the New Jersey Charter School Association (NJCSA) for leave to participate as amici curiae.

II.

On appeal, Highland Park argues that the Commissioner's decision to approve Hatikvah's request to add grades six through eight was arbitrary, capricious, and unreasonable. Highland Park asserts it must be assumed students from Highland Park and twenty-two other school districts will continue to be enrolled in Hatikvah. Highland [*9] Park contends the NJDOE has erroneously interpreted the CSPA as requiring these sending districts to pay for its students to attend Hatikvah. Highland Park further argues the Commissioner failed to give meaningful consideration to the objectors' challenges to Hatikvah's application.

East Brunswick argues the Commissioner's decision is arbitrary, capricious, and unreasonable because it allegedly allows Hatikvah to continue to operate in violation of the CSPA. East Brunswick contends Hatikvah's "district of residence" is East Brunswick and under the NJDOE's regulations, Hatikvah may only enroll students from East Brunswick and school districts that are contiguous to East Brunswick Township.

East Brunswick asserts that Hatikvah is operating a state-wide charter school, drawing students from multiple districts and counties, which East Brunswick claims is a violation of its charter. It further argues that the Commissioner erred by failing to accord weight to the "negative impact" Hatikvah's expansion will have on other districts.

Manalapan-Englishtown argues that the Commissioner's decision arbitrarily, capriciously, and unreasonably allows Hatikvah to continue to operate a state-wide charter [*10] school in violation of its charter and the NJDOE's regulations. Manalapan-Englishtown also asserts that the Commissioner erred by failing to accord weight to the negative impact Hatikvah's expansion allegedly will have on East Brunswick. Differing with Highland Park, Manalapan-Englishtown argues that the requirement that non-resident districts defray the cost for their students to attend a charter school comports with the CSPA.

Also differing with Highland Park, the NJCSA argues the CSPA requires each school district to pay for its students to attend a charter school. Therefore, the

2018 N.J. Super. Unpub. LEXIS 158, *10

NJCSA argues that Highland Park must pay the cost for Highland Park students to attend Hatikvah.

III.

Initially, we note that the scope of our review of a final decision of the Commissioner on a charter school application is limited. In re Proposed Quest Acad. Charter Sch. of Montclair Founders Group, 216 N.J. 370, 385, 80 A.3d 1120 (2013). We may only reverse the Commissioner's decision if arbitrary, capricious, or unreasonable. *Ibid.* (citing In re Petitions for Rulemaking, N.J.A.C. 10:82-1.2 & 10:85-4.1, 117 N.J. 311, 325, 566 A.2d 1154 (1989)). We must accord a "strong presumption of reasonableness" to the Commissioner's exercise of his statutorily-delegated responsibilities. City of Newark v. Nat. Res. Council in Dep't of Env'tl. Prot., 82 N.J. 530, 539, 414 A.2d 1304 (1980).

In determining whether an agency's action is arbitrary, capricious, or unreasonable, our [*11] review is generally limited to considering:

- 1) [W]hether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
- 2) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- 3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Quest Academy, 216 N.J. at 385-86 (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25, 667 A.2d 1052 (1995)).]

A reviewing court "may not substitute its own judgment for that of the agency, even though the court might have reached a different result." In re Carter, 191 N.J. 474, 483, 924 A.2d 525 (2007) (citing Greenwood v. St. Police Training Ctr., 127 N.J. 500, 513, 606 A.2d 336 (1992)). Our deference to the agency's decision is especially appropriate when the issue under review pertains to the agency's special "expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28, 926 A.2d 350 (2007).

IV.

East Brunswick and Manalapan-Englishtown argue that the Commissioner's decision improperly allows Hatikvah

to operate in violation of its charter. According to these districts, Hatikvah has been chartered as a school with a "district of residence" in East Brunswick. The districts argue that Hatikvah's charter only permits it to enroll students from East Brunswick and school [*12] districts that are contiguous to East Brunswick Township. East Brunswick and Manalapan-Englishtown maintain the Commissioner's decision improperly permits Hatikvah to continue operating as a state-wide charter school.

The establishment and operation of a charter school in this State is governed by the CSPA and the regulations adopted pursuant to the Act. N.J.S.A. 18A:36A-1 to-18; N.J.A.C. 6A:11-1.1 to-6.4; N.J.A.C. 6A:23A-15.1 to -15.4. Among other things, the CSPA provides that a charter school must operate in accordance with its charter and the relevant statutes and regulations. N.J.S.A. 18A:36A-11(a).

In its initial application for a charter, Hatikvah identified East Brunswick Township as its "district of residence." The term "district of residence" is defined in the regulations as "the school district in which a charter school facility is physically located." N.J.A.C. 6A:11-1.2. The term "[r]egion of residence" is defined as "contiguous school districts in which a charter school operates and is the charter school's district of residence." *Ibid.*

East Brunswick and Manalapan-Englishtown argue that Hatikvah was chartered as a school with a specified "district of residence," not as a school with a "region of residence." The districts therefore maintain the Commissioner is improperly allowing Hatikvah [*13] to operate a state-wide charter school.

We note that in November 2014, when Hatikvah sought to amend its charter to expand its enrollment and grades, neither East Brunswick nor Manalapan-Englishtown submitted comments to the Commissioner asserting that Hatikvah was operating in violation of its charter. Therefore, the Commissioner did not address this issue in his March 19, 2015 decision, which is the decision before us on appeal.

Generally, an appellate court will not consider questions or issues that were not presented properly in the court or agency below. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234, 300 A.2d 142 (1973). Because the contention that Hatikvah was operating in violation of its charter was not raised before the Commissioner, we will not consider the districts' arguments on this issue.

We note, however, that under N.J.S.A. 18A:36A-17, the Commissioner "may revoke a school's charter if the school has not fulfilled any condition imposed by the commissioner in connection with the granting of the charter or if the school has violated any provision of its charter." Therefore, the districts' contention that Hatikvah is operating in violation of its charter implicates the Commissioner's discretionary enforcement authority under N.J.S.A. 18A:36A-17.

If East Brunswick and Manalapan-Englishtown [*14] wish to pursue this issue, the districts may submit a complaint to the Hatikvah board of trustees asserting that the school is not being operated in accordance with its charter and, if the complaint is not "adequately addressed," the districts may present the complaint to the Commissioner pursuant to N.J.S.A. 18A:36A-15. We express no opinion on the merits of such a complaint, if filed.

V.

Next, Highland Park argues that it is not required to bear the cost for Highland Park students to attend Hatikvah. Highland Park contends that N.J.S.A. 18A:36A-12(b) limits the financial responsibility for the students' attendance at charter schools to the "school district of residence," which Highland Park interprets to mean the charter school's "district of residence." Highland Park contends that in enacting the CSPA, the Legislature intended to limit this financial responsibility to the charter school's "district of residence" or, at most, the contiguous districts identified in the school's approved "region of residence."

We note that in March 2014, when Hatikvah sought to renew its charter, Highland Park did not assert that it does not have a statutory obligation to pay for Highland Park students to attend the school. Moreover, in November [*15] 2014, when Hatikvah filed its application to expand its enrollment and grades, Highland Park did not raise this issue.

In addition, Highland Park never challenged the validity of the administrative regulation which requires all sending school districts to pay for their students to attend a charter school. Hatikvah also points out that Highland Park has without objection paid tuition for its students to attend the school for at least six years.¹

For these reasons, Hatikvah argues that the court should preclude Highland Park from challenging its payment obligations to the school. Although the issue is raised for the first time on appeal, we have decided to exercise our discretion and address Highland Park's argument, because it involves an issue of law.

When the court interprets statutory language interpreting a statute, our "goal is to divine and effectuate the Legislature's intent". State v. Shelley, 205 N.J. 320, 323, 15 A.3d 818 (2011) (quoting DiProspero v. Penn, 183 N.J. 477, 492, 874 A.2d 1039 (2005)). In determining the Legislature's intent, we begin our analysis with the language of the statute, and give the terms used their ordinary and accepted meanings. *Ibid.*

If the statutory language leads to one clear and unambiguous result, the interpretive process is at an end. State v. D.A., 191 N.J. 158, 164, 923 A.2d 217 (2007) (citation omitted). However, [*16] if "there is ambiguity in the statutory language that leads to more than one plausible interpretation" we can consider extrinsic evidence in our search for the interpretation that is consistent with the Legislature's intent. *Ibid.* (citing DiProspero, 183 N.J. at 492).

The relevant provision of the Act states in pertinent part that:

[t]he school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to [ninety-percent] of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the [Consumer Price Index] rate most recent to the calculation. . . .

[N.J.S.A. 18A:36A-12(b).]

Thus, the statute expressly provides that the "school district of residence" must pay the charter school for "each student" enrolled in the school "who resides in the district." *Ibid.* Thus, as used in N.J.S.A. 18A:36A-12(b), the term "school district of residence" refers to the district where the student resides, not the district where the charter school is located.

We note that the Act expressly envisions that students may enroll in a charter school, even though they reside in a district other than the district where the

¹In support of these arguments, Hatikvah filed a motion to supplement the record with evidence of Highland Park's

payments to the school from at least 2010-2011. We have denied the motion.

charter [*17] school is located. See N.J.S.A. 18A:36A-8(a) (requiring charter schools to give preference for enrollment to students who reside "in the school district in which the charter school is located"). There is nothing in the Act that would allow these students to attend a charter school without a financial contribution from the school districts in which they reside. Thus, under N.J.S.A. 18A:36A-12(a), obligation of a school district to attend a charter school is not limited to the charter school's "district of residence."

The regulations adopted pursuant to the Act are consistent with this interpretation of N.J.S.A. 18A:36A-12(b). Indeed, the regulations expressly provide that both a charter school's "district of residence" and the "non-resident school districts" must pay for their students to attend a charter school. N.J.A.C. 6A:23A-15.3(g)(2), (3).

The extrinsic evidence also supports this interpretation of N.J.S.A. 18A:36A-12(b). The CSPA has its genesis in two bills: Assembly No. 592 and Senate No. 1796. In September 1995, the Office of Legislative Services (OLS) provided the Legislature with its fiscal estimate for Senate No. 1796, which includes the following statement:

In regard to the funding of charter schools, the bill provides that the school district of residence would pay directly to the [*18] charter school for each student enrolled who resides in the district an amount equal to the local levy budget per pupil in the district for the specific grade level. . . . *The cost for out of district pupils would be paid by the district of residence of the pupil. . . .*

[Legislative Fiscal Estimate, S.1796, at 1 (N.J. 1995) (emphasis added).]

Thus, the OLS's fiscal estimate makes clear that all school districts of residence must pay for students to attend a charter school, and the financial obligation is not limited to the charter school's "district of residence."

In support of its interpretation of the CSPA, Highland Park refers to certain provisions of the Act that pertain to a charter school's "district of residence." Highland Park cites N.J.S.A. 18A:36A-4(c), which requires a proposed charter school to provide a copy of its application to the "local board of education." However, the statute does not support Highland Park's argument. N.J.S.A. 18A:36A-4(c) also requires the Commissioner to provide notice to "members of the State Legislature, school superintendents, and mayors and governing bodies of all legislative districts, school districts, or

municipalities in which there are students who will be eligible for enrollment [*19] in the charter school."

Highland Park also cites N.J.S.A. 18A:36A-14(b), a statute that limits a charter school's salaries to the salaries of the highest step in the district where the school is located; and N.J.S.A. 18A:36A-16(b), which requires a charter school to serve a copy of its annual report on the local board of education in the district where the school is located. However, these statutes have no direct bearing on whether a student's "school district of residence" must pay for students from that district to attend at a charter school.

We conclude that under N.J.S.A. 18A:36A-12(b), the term "school district of residence" means the school district where the student resides, and each "school district of residence" must pay the charter school for its student to attend the school, in the amounts required by the Act and the regulations. We therefore reject Highland Park's contention that only the charter school's "district of residence" is obligated to pay for its students to attend the school.

VI.

Highland Park and East Brunswick further argue that the Commissioner's final decision is arbitrary, capricious, and unreasonable because it fails to provide sufficient reasons for granting Hatikvah's application to add grades six through eight. Highland [*20] Park argues that the Commissioner cites the "commendable performance" of Hatikvah's students over a three-year period, and the school's continued implementation of "an innovative model of instruction," but fails to provide sufficient explanation or analysis for this conclusion.

Highland Park further argues that despite its claim to the contrary, Hatikvah is experiencing "steadily withering enrollment" by East Brunswick students and increased reliance upon marketing the school to families outside Hatikvah's "district or residence." Highland Park also cites what it claims is an "intolerable strain" upon its budget from the "outflow of funds" to support its students' attendance at Hatikvah. Highland Park contends the Commissioner failed to address these issues in his decision.

In addition, Highland Park asserts that it is "manifestly clear" Hatikvah has abandoned its original mission of serving the needs of the East Brunswick community, and the Commissioner arbitrarily relied upon the NJ ASK test results of Hatikvah's students. Highland Park claims that NJ ASK testing is not a "meaningful

indicator" of a student's progress. **Highland Park** further claims that Hatikvah's students scored lower [*21] than East Brunswick's students on the NJ ASK tests. Affirmed.

End of Document

East Brunswick argues that the Commissioner erred by failing to give sufficient weight to the negative impact the Hatikvah expansion will allegedly have upon the East Brunswick school district. East Brunswick asserts that Hatikvah's proposed expansion will jeopardize its ability to maintain existing **educational** programs and contractual obligations; require East Brunswick taxpayers to fund an additional up-front amount of more than \$1 million; have a negative impact on its annual budgets for 2016 to 2019; and cause the district to apply a significant amount of the district's two-percent cap on annual budget increases to the charter school. East Brunswick also cites Hatikvah's alleged failure to meet its community target enrollment; East Brunswick's alleged inability to afford to maintain small class sizes like Hatikvah; and certain financial hardships the district allegedly has "endured" since Hatikvah's charter was approved.

We are convinced that these arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We note, however, that we are convinced that there is sufficient credible evidence in the record to support [*22] the Commissioner's final decision.

Here, the Commissioner considered Hatikvah's application in accordance with N.J.A.C. 6A:11-2.6, and the record supports the Commissioner's finding that Hatikvah's academic performance had improved from 2012-2013 to 2013-2014. The record also supports the Commissioner's finding that the school continues to implement an innovative model of instruction, as detailed in its charter application. Moreover, Hatikvah's application indicates that its organization is sound and the school remains fiscally viable.

As noted, in opposing Hatikvah's application, **Highland Park** and East Brunswick cited certain financial and **educational** harms that allegedly would result if Hatikvah were permitted to expand its enrollment and add grades six through eight. The Commissioner denied Hatikvah's request to increase enrollment in kindergarten through grade five. In any event, the districts' "generalized" protests did not provide a basis to deny Hatikvah's application to add grades six through eight. See In re Red Bank Charter Sch., 367 N.J. Super. 462, 482, 843 A.2d 365 (App. Div. 2004) (quoting Charter Sch. Application of Englewood on the Palisades, 164 N.J. 316, 334, 753 A.2d 687 (2000)).

EXHIBIT F



Neutral

As of: September 17, 2019 5:30 PM Z

In re Approval of Hatikvah Int'l Acad. Charter Sch.

Superior Court of New Jersey, Appellate Division

October 13, 2011, Argued; December 21, 2011, Decided

DOCKET NO. A-5977-09T1

Reporter

2011 N.J. Super. Unpub. LEXIS 3144 *; 2012 WL 141495

IN THE MATTER OF THE APPROVAL OF HATIKVAH
INTERNATIONAL ACADEMY CHARTER SCHOOL**Notice:** NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION.PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR
CITATION OF UNPUBLISHED OPINIONS.**Prior History:** [*1] On appeal from the Department of
Education.**Core Terms**enrollment, charter school, charter, registrations,
documentation, residency, regulations, maximum,
certification, amici, verified, grade, staff, school district,
final approval, requirements, registered, lottery, district
superintendent, ninety percent, kindergarten, contends,
email, student enrollment, motion for a stay, school
year, ninety-seven, guardian, Funding, records**Counsel:** Matthew J. Giacobbe argued the cause for
appellant East Brunswick Township Board of Education
(Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys; Mr.
Giacobbe, of counsel; Robin T. McMahon, on the brief).Thomas O. Johnston argued the cause for respondent
Hatikvah International Academy Charter School (Porzio,
Bromberg & Newman, P.C., attorneys; Mr. Johnston, of
counsel and on the brief; Raquel S. Lord, on the brief).Jennifer L. Campbell, Deputy Attorney General, argued
the cause for respondent Department of Education
(Paula T. Dow, Attorney General, attorney; Ms.
Campbell, on the brief).Robert M. Tosti argued the cause for amicus curiae The
Boards of Education of the Princeton Regional, South
Brunswick Township and West Windsor Plainsboro
Regional School Districts (Parker McCay, P.A.,
attorneys; David W. Carroll, on the brief).**Judges:** Before Judges Axelrad, Sapp-Peterson and
Ostrer.**Opinion**

PER CURIAM

The East Brunswick Board of Education (Board) appeals from the Commissioner of the Department of Education's (Commissioner) approval of the charter of Hatikvah International Academy Charter School (Hatikvah) commencing July 1, 2010. According to the Board, the [*2] Commissioner disregarded the Department of Education's (Department) regulations pertaining to the charter school application and approval process, contending, in particular, Hatikvah had not met the ninety percent of maximum enrollment requirement of N.J.A.C. 6A:11-2.1(i)(4) as of the applicable date and was thus ineligible to receive final approval. The Board urges us to revoke Hatikvah's charter and remand the matter to the Commissioner to set a timetable for it to wind down its operations, or take other steps as a result of Hatikvah's purportedly deficient application. Based on our review of the record and applicable law, we are not convinced the Commissioner abused his discretion and affirm.

I.

In March 2009, Danna Nezaria, President of the Board of Trustees of Hatikvah, submitted Hatikvah's application to the Department to establish a charter school in East Brunswick that proposed to serve grades kindergarten through second during its first year of operation - 2010 to 2011. By letter of May 15, 2009, the Board recommended the Commissioner deny Hatikvah's charter status.

On September 22, 2009, then-Commissioner Lucille Davy granted Hatikvah conditional approval, contingent

2011 N.J. Super. Unpub. LEXIS 3144, *2

on receipt [*3] of additional statutorily-required documentation. In October, the Board sought reconsideration of this conditional approval.

Subsequent correspondence and meetings ensued between Hatikvah and Department representatives and on-site visits were conducted by Department representatives. By letter of July 6, 2010, then-Commissioner Bret Schundler granted final approval of Hatikvah's charter status. A copy of the letter was sent to the East Brunswick Township District Superintendent.

On August 11, 2010, the Board filed with the Commissioner an emergent motion for a stay of his decision, and filed with this court a notice of appeal of the Commissioner's final determination. On August 25, the Commissioner denied the Board's motion for a stay, and on August 27, we declined to permit the Board to file an emergent motion for a stay. By order of September 23, we also denied the Board's motion for a stay pending appeal.

In the meantime, on September 2, 2010, Hatikvah filed a complaint and order to show cause in the Law Division to compel the Board to transmit State aid and local funds to it. By order of September 14, 2010, the court denied emergent relief and dismissed Hatikvah's complaint for lack [*4] of jurisdiction based on the pending appeal. We granted Hatikvah permission to file emergent motions on short notice. However, by letter of September 28, then-Acting Commissioner Rochelle Hendricks directed the Board to forward payments to Hatikvah, and the Board promptly complied.

By orders of March 15, 2011, we granted motions by both the Board and Hatikvah to supplement the record on appeal with certain exceptions, and a motion by the Board to seal certain student-identifying information. By order of August 12, 2011, we granted amici status and permission to participate in oral argument to the Boards of Education of the Princeton Regional, South Brunswick Township and West Windsor-Plainsboro Regional School Districts, and accelerated the appeal.

II.

In its application, Hatikvah identified East Brunswick as its "district of residence." *N.J.A.C. 6A:11-1.2*. It projected commencing in September 2010 as a K-2 institution with total enrollment of 108 students, and anticipated growing to a K-5 institution with a maximum of 240 students by the completion of the first four years of the charter.

After reviewing Hatikvah's application, *N.J.S.A.*

18A:36A-4(c), the Board adopted a resolution on May [*5] 14, 2009, recommending the Commissioner deny Hatikvah's charter school status, and authorized its President and District Superintendent to submit to the Commissioner a comprehensive letter in opposition to the application. This letter was sent the next day, alleging Hatikvah's application interfered with the separation of church and state, had a negative economic impact on the district's taxpayers, and did not comport with the requirements for charter schools as codified in *N.J.A.C. 6A:11* because it did not include an educator from East Brunswick. The letter further asserted Hatikvah's single-cultural, single-emersion Hebrew language charter school would be at odds with and would not serve the multi-cultural community; it would unfairly compete with the Solomon Schechter Day School in East Brunswick; its proposed full day kindergarten would result in a lack of educational equity and access for East Brunswick residents; the petition did not accurately demonstrate East Brunswick's community interest in the charter school; and its needs analysis was flawed, inaccurate and did not document a need for the charter school.

By letter of September 22, 2009, Commissioner Davy informed Nezaria [*6] that Hatikvah's petition for a charter was approved "contingent upon receipt of outstanding documentation not included in [the] application, successful participation in the preparedness process and compliance with applicable state and federal regulations." The Commissioner noted the strengths of Hatikvah's implementation plan and the adequacy of the fiscal plan. By letter of October 22, 2009, the Board President and District Superintendent requested reconsideration of the Commissioner's approval of Hatikvah's charter, essentially renewing the previously asserted arguments.

The record reflects that over the ensuing months, Hatikvah provided the Department with "requested supplemental documentation," including "information about Hatikvah's physical facility, board of trustees, staff, evidence of appropriate bookkeeping processes, and evidence of anticipated student enrollment." Between April and June 2010, Karina Bielaus, an employee of the Department's Office of School Funding, and Nezaria exchanged emails concerning proof of residency, student registration, transfer cards, and enrollment in Hatikvah, and Nezaria periodically transmitted to the Department the names of enrolled students [*7] along with supporting documentation. In an email of June 2, Bielaus attached a "spreadsheet of all the registered students (with proof of residency) that

2011 N.J. Super. Unpub. LEXIS 3144, *7

[Hatikvah had] faxed to its office," noting to date it had "58 students or 54% of [Hatikvah's] maximum enrollment." Bielaus expressed concern that Hatikvah did not have "the necessary enrollment of at least 90% (97 students) of approved maximum enrollment of 108 students, as verified by student registrations from the district of residence pursuant to N.J.A.C. 6A:11-2.l(i)."

The Department conducted Hatikvah's "preparedness visit" on June 9, 2010. The record does not reflect the exact documents the Department reviewed, although its response to the Board's Open Public Records Act (OPRA) request, N.J.S.A. 47:1A-1 to -13, reflects that its staff reviewed "individual student registrations signed by parent/guardian(s) and supporting documentation for each student identified on the list."¹ Nezaria's August 10, 2010 certification represents that the Department also "conducted a comprehensive audit of Hatikvah's education plans and finances [and] reviewed and inspected Hatikvah's files regarding its curriculum, policies, handbook, employment [*8] contracts, third-party contracts, by-laws, lease, among many other documents."

A series of emails ensued between Bielaus and Nezaria referencing student enrollment information continually faxed by Nezaria. Our record contains some faxed information pertaining to lottery applications and proofs of residency but it is unknown what other information was presented by Hatikvah to the Department. By email of June 21, 2010, Bielaus confirmed that Hatikvah had reached the requisite ninety percent enrollment of ninety-seven students. Bielaus reiterated this in a June 28, 2010 email, stating that since Hatikvah attained the "90% in-resident enrollment," it no longer had to forward student enrollment documentation to the Department unless its registered students disenrolled and it dropped below that requirement.

Nezaria certified Hatikvah had submitted evidence to demonstrate that as of June 27, 2010, it had 100 East Brunswick resident students enrolled - 44 in kindergarten, 38 in first grade, and 18 in second grade. There was [*9] also a waiting list for kindergarten of 9 East Brunswick residents and 24 non-residents, as well as non-residents enrolled in the other grades to fill the remaining spaces.

In her August 23, 2010 certification, Jacqueline Grama,

CPA, the Department's Planning Associate I, Office of School Finance, stated as follows:

[] Pursuant to [the administrative] process, after the initial September 22, 2009, grant of a charter to Hatikvah, myself and my staff continued to work with Hatikvah and Hatikvah diligently submitted the requisite fiscally related documentation.

....

[] Myself and my staff verify the enrollment of students in a charter school by reviewing student registrations.

[] Hatikvah provided student registrations to myself and my staff by making them available for review at site visits or submitting them directly to us. As of June 30, 2010, we verified the necessary enrollment of at least ninety percent (90%) of approved maximum enrollment. Attached as *Exhibit B* is a true and complete copy of a chart demonstrating that Hatikvah had met the necessary enrollment requirement, as verified by myself and my staff. *Exhibit B* [*10] has been redacted to protect the confidentiality of the students.

The undated chart captioned "Hatikvah Charter School" listed from East Brunswick Township 44 out of a maximum enrollment of 44 students enrolled in kindergarten, 36 out of a maximum enrollment of 44 students enrolled in first grade, and 17 out of a maximum enrollment of 20 students enrolled in second grade, totaling 97 out of 108 students, or 90%. It also enumerated the documentary proof of residency for each of the 97 students, including mortgages, deeds, leases, utility bills, passports, birth certificates, motor vehicle information, voting records, and sworn statements.²

By letter of July 6, 2010, Commissioner Schundler notified Hatikvah that it had satisfied the contingencies of the preparedness visitation process and the furnishing of the required additional documentation.³

² Grama's certification, which is contained in the Board's appendix, does not contain any of the referenced exhibits; however, the table of contents represents that this chart, though not labeled as such, is Exhibit B.

³ N.J.A.C. 6A:11-2.l, Application and approval process, provides, in pertinent part:

....

(l) All statutorily required documentation shall be submitted to the Department of Education by June 30. The final granting of the charter by the Commissioner

¹ For completeness of the record, it would be preferable for the Department to keep a master list of the category of documents reviewed during the on-site preparedness visit.

2011 N.J. Super. Unpub. LEXIS 3144, *10

Accordingly, Hatikvah was granted a charter to open and function as a public school for the period from July 1, 2010 through June [*11] 30, 2014.

According to Nezaria's certification, on July 28, 2010, Grama informed her by phone that the Board was challenging Hatikvah's enrollment figures, and the next day Department officials audited Hatikvah's files and contacted all parents of registered students. The Board also served an OPRA request on the Department and received information relative to Hatikvah's application and approval.

On August 3, 2010, Nezaria sent correspondence to the Commissioner, advising that following the granting of the charter, Hatikvah's enrollment had taken a "modest dip" to approximately "100 students, 89 of whom live in East Brunswick." However, Hatikvah had a waiting list for kindergarten and an out-of-town waiting list for first and second grade, which were sufficient to fill the [*12] remaining eight spots, and it continued to receive new registrations daily. To the extent the Department interpreted N.J.A.C. 6A:11-2.1(i)(14) as requiring a ninety percent in-district benchmark prior to the school's opening, Hatikvah requested a waiver or flexibility for the first year.

In the Board's submission to the Commissioner in support of its motion for a stay of his approval of Hatikvah's charter status, and in Hatikvah's opposition, the parties dispute many of the facts regarding Hatikvah's student enrollment status on various dates. For example, the Board contends, with supporting certifications, that its records demonstrate Hatikvah did not properly register and enroll the requisite number of students by June 30, 2010 and thereafter. Hatikvah responds, with supporting certifications, that it satisfied the enrollment requirements and notes instances where the Board and related school officials thwarted the enrollment process and refused to provide transfer cards to parents seeking to enroll their children in Hatikvah.

On September 7, 2010, Hatikvah opened its doors to students. As certified by its principal, there were ninety-six enrolled students, eighty-three of whom reside [*13] in East Brunswick.

III.

shall be effective when all required documentation as listed in [N.J.A.C. 6A:11-2.1(i)] above is submitted and approved by the Department of Education no later than July 15.

The Board appealed, arguing the Commissioner disregarded its regulations in granting final charter approval to Hatikvah, and thus its decision cannot stand. See County of Hudson v. Dep't of Corr., 152 N.J. 60, 70, 703 A.2d 268 (1997) ("Because administrative regulations that apply to the regulated public have the force and effect of statutory law, an administrative agency ordinarily must enforce and adhere to, and may not disregard, the regulations it has promulgated."). See also Van Note-Harvey Assocs., P.C. v. New Jersey Sch. Dev. Auth., 407 N.J. Super. 643, 651, 972 A.2d 476 (App. Div. 2009) (directing the Authority to expand its list of eligible contractors to include appellant among those eligible where the agency failed to prepare a consolidated ranking as required by the regulation guiding its award of contracts for professional services); Davis v. Am. Honda Motor Co., 368 N.J. Super. 333, 337, 845 A.2d 1278 (App. Div. 2004) (vacating dismissal of a complaint and remanding the matter to the Division of Civil Rights where the agency convened a fact-finding conference without notice to the complainant or an opportunity to participate in violation of the regulations addressing the exercise of its investigatory [*14] function).

In particular, the Board contends the Commissioner failed to comply with N.J.A.C. 6A:11-2.1(i)(14) requiring "[e]vidence of enrollment of at least 90 percent of approved maximum enrollment, as verified by student registrations signed by parent/guardian(s)." According to the Board, the phrase "approved maximum enrollment" does not permit, as a matter of law, non-district students to be included in the ninety-seven student count because Hatikvah's application sought to operate within a "district of residence" as opposed to a "region of residence."⁴ It also contends the "[e]vidence of enrollment . . . as verified by student registrations signed by parent/guardian(s)" is not satisfied by a lottery application, which merely serves as "consent for my child's/children's name(s) to enter the charter school's admission lottery" and indicates parental interest in Hatikvah. In contrast, the Board contends that a registration form actually serves to enroll a child in school.

The Board further contends the Commissioner

⁴ A "district of residence" means the school district in which the charter is located. A "region of residence" means contiguous school districts all having a common border, in which the region is deemed the charter [*15] school's district of residence. N.J.A.C. 6A:11-1.2.

bypassed the requirement of N.J.A.C. 6A:23A-15.3(a), that the district of residence conduct the residency assessment, by permitting the Department to accept Hatikvah's "proof of residency."⁵ According to the Board, Hatikvah required inadequate proof demonstrating the lottery applicants had a permanent home in East Brunswick, as it did not require four forms of proof of residency.⁶ The Board further certifies its registration records demonstrate there were only forty potential Hatikvah students who had actually registered in the District and completed transfer cards in accordance with the above-referenced registration process as of June 30, 2010, and seventy-seven properly registered students as of August 26, 2010.

Lastly, the Board argues the regulations do not authorize a waiver of the minimum enrollment requirement, N.J.A.C. 6A:11-2.1, and additionally submits it would not be reasonable for the Department to waive the mandated enrollment requirement. The Board emphasizes that the minimum in-district or in-region enrollment assures the Department that there exists community and financial support for the charter school and urges that here, East Brunswick taxpayers are "largely footing the bill for a charter school that failed to garner that community's support."

Thus, the Board argues that since Hatikvah deviated from the enrollment process and did not enroll ninety-seven students from East Brunswick as [*17] of June 30, 2010, the Commissioner abused his discretion in granting Hatikvah a final charter. The Board urges us to set aside the Commissioner's decision, revoke final

⁵ N.J.A.C. 6A:23A-15.3, Enrollment counts, payment process and aid adjustments, provides:

(a) In order to enroll in a charter school, the student must first be registered in the school district in which the student resides. For any student who applies for enrollment in a charter school, a district board of education in which the charter school applicant resides shall process the registration [*16] of the student for the subsequent school year upon submission of the registration forms. A district board of education shall process in a timely manner all such registrations, including the assessment of residency and the subsequent transfer to the charter school, and shall identify the specific categorical aid for which each student qualifies.

⁶ The Board's assertion that the Department's own registration forms seek four forms of proof of residency is not supported by citation or documentation.

grant of the charter, and remand the matter to the Commissioner for further action consistent with the Charter School Program Act of 1995 (the Act) and its regulations. See N.J.S.A. 18A:36A-17 and N.J.A.C. 6A:11-2.4(b) (authorizing the Commissioner to revoke a school's charter, or place the charter school on probationary status if the school has not fulfilled any condition imposed by the commissioner in connection with the charter grant or has violated any provision of its charter); N.J.A.C. 6A:11-2.4(a) (authorizing the Commissioner to place a charter school on probationary status for a period of ninety days to allow implementation of a remedial plan upon a finding that the school is not operating in compliance with its charter, statutes or regulations). The Board submits that the remedy of considering the past year and one-half a "planning year" and setting a short deadline for Hatikvah to wind down operations will not disrupt the continuity of education for its students as they will return to East Brunswick public [*18] schools, the private school previously attended, or the school in their former district of residence.

Amici curiae state that N.J.A.C. 6A:11-2.1(l) requires submission to the Board of all statutorily-required documents, i.e., presumably those items enumerated in N.J.S.A. 18A:36A-5, by June 30, and all required documentation as listed in N.J.A.C. 6A:11-2.1(i) to be submitted to and approved by the Department no later than July 15. They submit the only plausible reading of the deadline is that the charter school must submit items (1) through (15) of N.J.A.C. 6A:11-2.1(i) to the Commissioner in sufficient time *on or before* July 15 to permit a grant of final approval *by* July 15, in order for a new charter school to open in September. Here, the Commissioner approved Hatikvah's charter on July 6, 2010, expressly determining that all required contingencies had been met. Accordingly, amici urge that the correctness of the Commissioner's determination should be based on the record as it existed on the date of approval.

Amici support the Board's position that lottery forms are legally defective documentation of enrollment as they do not evidence registration and do not comport with the two-step [*19] procedure for enrollment of a child in a charter school. According to amici, the "verified by student registrations" language of N.J.A.C. 6A:11-2.1(i)(14) requires the charter school to submit proof of both the student's registration in the District under the residency regulations and the parent's submission of a transfer card. N.J.A.C. 6A:23A-15.3(a). Amici also challenge the Department's reliance on residency

2011 N.J. Super. Unpub. LEXIS 3144, *19

documents submitted by Hatikvah, which may have merely demonstrated address, not domicile, rather than leaving the residency verification process to the local school district. Finally, amici argue the ninety percent enrollment requirement and the July 15 approval deadline are mandatory regulations, well founded in policy, and cannot be waived.

Amici similarly contend the Commissioner's final approval of the charter was in error and must be overruled and request we direct a period of not more than thirty days for Hatikvah to be closed down (at least as a publicly funded institution). Regardless of the remedy, amici urge us to rule definitively on the legal issues presented regarding the regulatory requirements to provide guidance to the Commissioner and future charter school applicants [*20] and school districts.

IV.

We are mindful of the limited standard of appellate review of an agency's decision. As a general rule, we will not reverse an administrative agency determination unless it is arbitrary, capricious, or unreasonable, is not supported by substantial credible evidence in the record as a whole, or violates legislative policies expressed or fairly to be implied in the statutory scheme to be administered by the agency. *Dennery v. Bd. of Educ.*, 131 N.J. 626, 641, 622 A.2d 858 (1993) (citing *Henry v. Rahway State Prison*, 81 N.J. 571, 580, 410 A.2d 686 (1980)); *Dore v. Bd. of Educ.*, 185 N.J. Super. 447, 453, 449 A.2d 547 (App. Div. 1982) (citing *Campbell v. Civil Serv. Dep't*, 39 N.J. 556, 562, 189 A.2d 712 (1963)).

Moreover, an agency's interpretation of the statute or regulations it is charged with enforcing is entitled to substantial deference. *In re Young*, 202 N.J. 50, 68, 995 A.2d 826 (2010); *DiMaria v. Bd. of Trs. of Pub. Emps. Ret. Sys.*, 225 N.J. Super. 341, 351, 542 A.2d 498 (App. Div.), *certif. denied*, 113 N.J. 638, 552 A.2d 164 (1988). Specifically, "as the agency ultimately charged with implementation of the school laws, the [Board of Education's] statutory interpretation is entitled to considerable weight, where not inconsistent with the statute and in harmony [*21] with the statutory purpose." *Kletzkin v. Bd. of Educ. of Borough of Spotswood*, 136 N.J. 275, 278, 642 A.2d 993 (1994) (quoting *Kletzkin v. Bd. of Educ. of Borough of Spotswood*, 261 N.J. Super. 549, 553, 619 A.2d 621 (App. Div. 1993)). See also *Capodilupo v. Bd. of Educ.*, 218 N.J. Super. 510, 515, 528 A.2d 73 (App. Div.) (holding that a final decision of the State Board of Education should not be upset unless it is unreasonable, and unsupported by the record or

violative of the legislative will), *certif. denied*, 109 N.J. 514, 537 A.2d 1300 (1987).

We initially note that no waiver appears to have been issued by the Commissioner; thus, that issue need not be addressed.

The record demonstrates that Hatikvah followed the procedures set forth in the Act and regulations for approval of a charter school, commencing with the submission to the Commissioner in March 2009 of an extensive application containing statutorily-required information, with copies to the Board and District Superintendent. *N.J.S.A. 18A:36A-4(c)*; *N.J.A.C. 6A:11-2.1*. Despite objections by the Board and District Superintendent, the Department's initial review determined the application complied with the statutory and regulatory requirements, *N.J.S.A. 18A:36A-5* and *N.J.A.C. 6A:11-2.1(b)*, [*22] and the Commissioner gave Hatikvah conditional approval subject to providing outstanding documentation and successful participation in the preparedness process. Upon the Commissioner's initial approval of Hatikvah's charter, Hatikvah's projected enrollment of 108 students became its maximum allowable enrollment.

The record reflects that Hatikvah cooperated with the Department in diligently providing requested information and documentation pertaining to a variety of matters, including student enrollment, by emails, faxes, and site visits. It is apparent that Department staff, including Bielaus of the Office of School Funding, and Grama, a Planning Associate I, were familiar with the *N.J.A.C. 6A:11-2.1(i)* documentation a charter school was required to submit for approval of its application, including "[e]vidence of enrollment of at least 90 percent of approved maximum enrollment, as verified by student registrations signed by parent/guardian(s)." *N.J.A.C. 6A:11-2.1(i)(14)*. They reviewed lottery forms, proofs of residency, and potentially other undefined documents and confirmed that as of June 30, Hatikvah had at least ninety-seven students, the necessary enrollment required for final [*23] approval, enrolled in the school. As Hatikvah's chart referenced in Grama's certification represented that all ninety-seven enrolled students were East Brunswick Township residents, we need not decide the issue of whether the regulation mandates that such enrollment be comprised of in-district students or whether it is merely a preference.

Grama certified she and her staff reviewed "student registrations" provided by Hatikvah. Even if they were primarily lottery forms signed by a parent or guardian

2011 N.J. Super. Unpub. LEXIS 3144, *23

and not formal registrations and transfer cards issued by the Board, we are not convinced under the circumstances presented in the record that the Commissioner abused his discretion or violated legislative policies by disregarding the regulations. Within his specialized expertise, the Commissioner determined the documents in this case provided adequate evidence of enrollment in Hatikvah as of June 30 such that it would be a viable charter school. It is apparent from the certifications there was arguably a lack of cooperation by the Board with the Hatikvah enrollment process. As a result, the Commissioner could have concluded, within his discretion, that either the parents or Hatikvah, or [*24] both, were unable to secure formal registrations.

Although we do not find an abuse of discretion under the facts here, we do not mean to suggest that the registration requirement may be easily relaxed. We are mindful that the registration requirement is designed to assure that new charter schools enjoy the genuine interest and real commitment of the community, to justify the expenditure of public funds.

All deadlines were met and on July 6, 2010, the Commissioner granted final approval of Hatikvah's charter, satisfied it had complied with all the requirements of the Act and charter school regulations. Hatikvah became a valid and operational charter school effective July 1, 2010 through June 30, 2014. That Hatikvah's enrollment numbers "dipped modestly" after the approval does not mean it did not meet the ninety percent requirement as of June 30. Nor should the fact that there is some fluctuation in actual registration and transfer be fatal to Hatikvah's final approval of its charter. Parents could change their minds about their child attending the public or the private school over the summer. Moreover, students relocate in and out of the district prior to, and even during the school [*25] year.

Critically, should Hatikvah's enrollment fall so low that it could not financially continue to operate the school, the Commissioner has the authority to take action. See N.J.S.A. 18A:36A-17 (granting the Commissioner the power to revoke a charter, place a charter school on probation and implement a remedial plan, or reject the renewal of a charter). Moreover, there are ongoing protections for the public and taxpayers. During the operation of a charter school, the Commissioner is required to "annually assess whether each charter school is meeting the goals of its charter, and shall conduct a comprehensive review prior to granting a renewal of the charter." N.J.S.A. 18A:36A-16(a). The

county superintendent of schools is provided ongoing access to the records and facilities of charter schools within that county to ensure each school complies with its charter and with all applicable regulations regarding assessment, testing, civil rights, and student health and safety. *Ibid*. Each charter school is required to submit an annual report to the local board of education, the county superintendent, and the Commissioner, which is used to facilitate the Commissioner's annual review. N.J.S.A. 18A:36A-16(b). [*26] See also N.J.A.C. 6A:11-2.2 (requiring the board of trustees of a charter school to submit an annual report by August 1 following each full school year in which the charter school is in operation to the Commissioner, the respective county superintendent of schools and the district board(s) of education or State district superintendent(s) of the district of residence of a charter school, and other documentation annually to the Commissioner for approval prior to the opening of school); N.J.A.C. 6A:11-4.4 (requiring a charter school to submit to the Commissioner, no later than January 15 of subsequent school years, "the number of students by grade level, gender and race/ethnicity from each district selected for enrollment from its initial recruitment period for the following school year"); N.J.A.C. 6A:23A-15.3(4), (5) (requiring a charter school to submit to the resident school district a listing of all enrolled students on October 15 for the purpose of aid and to determine average daily enrollment).

In summary, considering our limited standard of review, and our deference to the expertise of the agency in interpreting its own regulations, we are not persuaded the record demonstrates a [*27] basis upon which to second-guess the final decision of the Commissioner in granting approval to Hatikvah to operate a charter school for an initial four-year period commencing July 1, 2010.

Affirmed.

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LATINO ACTION NETWORK, ET AL.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	
	:	MERCER COUNTY
v.	:	
	:	Docket No. L-1076-18
STATE OF NEW JERSEY, ET AL,	:	
	:	CIVIL ACTION
Defendants.	:	
	:	BRIEF IN SUPPORT OF MOVANT-
	:	INTERVENORS' MOTION TO
	:	INTERVENE
	:	
	:	

TABLE OF CONTENTS

	Page
INTRODUCTION	1
FACTUAL AND PROCEDURAL HISTORY	4
ARGUMENT.....	5
A. Individually and Collectively, Movant-Intervenors Have a Direct Stake in Defending Against Plaintiff’s Claims That Charter Schools Unlawfully Exacerbate Segregation.....	6
1. Real and Direct Interest.	7
2. Adverseness.	11
3. Interest Distinct from Other Parties.	12
B. Intervention Before This Court Is Necessary to Protect the Interests of Charter Schools and Charter School Parents.	14
C. As the Sole Regulator of Charter Schools, the Commissioner and Attorney General are Conflicted and Cannot Adequately Represent the Distinct Interests of Charter Schools and Charter Parents.	15
D. Alternatively, the Court Should Grant Movant-Intervenors Permissive Intervention.	18
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<i>Abbott v. Burke</i>	16
<i>In re Approval of Hatikvah Intl. Academy Charter Sch.</i> , No. A-5977-09T1, 2011 <i>N.J. Super.</i>	13
<i>Bd. of Educ. of Hoboken v. New Jersey State Dept. of Educ.</i> , No. A-3690-14T3, 2017 <i>N.J. Super.</i>	13
<i>Burgos v. State</i> , 2014 <i>N.J. Super. Unpub.</i>	16
<i>In re Camden County</i> , 170 N.J. 439 (2002).....	6
<i>Crescent Park Tenants Ass’n v. Realty Equities Corp. of New York</i> , 58 N.J. 98 (1971).....	6
<i>In re Grant of Charter Renewal of the Red Bank Charter School</i> , Dkt. No. A- 003342-16	12
<i>Greenfield v. Dusseault</i> , 60 N.J. Super. 436 (App. Div. 1960)	15
<i>Highland Park Bd. of Educ. And Piscataway Township Bd. of Educ. v. Harrington and Hatikvah Int’l Academy Charter School, et al.</i> , No. A-3455-16T1, 2019 WL 2402544 (N.J. Super. App. Div. June 7, 2019).....	13
<i>Highland Park Bd. of Educ. v. Hespe</i> , No. A-3890-14T1, 2018 <i>N.J. Super.</i>	13
<i>Liddell v. Special Admin. Bd. of the Transit’l Sch. Dist. of St. Louis</i> , 894 F.3d 959 (8th Cir 2017).....	6-7
<i>Meehan v. K.D. Partners, L.P.</i> , 317 N.J. Super. 563 (App. Div. 1998)	6
<i>New Jersey Dept. of Envtl. Protection v. Exxon Mobil Corp.</i> , 453 N.J. Super. 272 (App. Div. 2018).....	5
<i>Nolan by Nolan v. Lee Ho</i> , 120 N.J. 465 (1990).....	14
<i>In re Red Bank Charter Sch.</i> , 367 N.J. Super 462 (App. Div. 2004).....	14
<i>In re Renewal Application of Team Academy Charter School, et al.</i> , 2019 <i>N.J. Super.</i> 111 (App. Div. 2019).....	13
<i>Rova Farms Resort, Inc. v. Investors Ins. Co. of America</i> , 65 N.J. 474 (1974).....	14

<i>In the Matter of the Approval of Charter Amendment of Central Jersey College Prep</i> , No. A-3074-16T4, 2019 WL 2402541 (N.J. Super. App. Div. June 7, 2019)	13
--	----

Other Authorities

<i>Charter Schools</i> , NAACP, available at https://www.naACP.org/campaigns/naACP-plan-action-charter-schools/ (last visited 9/24/18)	12
<i>Close Over Alleged Discrimination</i> , Trentonian, available at https://www.trentonian.com/news/nj-latino-group-wants-princeton-charter-school-to-close-over/article_f36adedf-43d9-5ff4-a62b-abd31427cf9a.html (last visited 9/24/18)	12
<i>Fed. R. Civ. P.</i> 24(b)	6
Pressler, <i>Current N.J. Court Rules</i> , Comment to R. 4:33-1	5
<i>Red Bank Charter School</i> , ACLU New Jersey, available at https://www.aclu-nj.org/cases/latino-coalition-fair-schools-red-bank-v-red-bank-charter-school (last visited 9/24/18)	12
Tomas Monarrez, Brian Kisida, Matthew Chingos, <i>Charter School Effects on School Segregation</i>	3
Tomas Monarrez, Brian Kisida, Matthew Chingos, <i>Do Charter Schools Increase Segregation?</i> , <i>Education Next</i>	3

INTRODUCTION

With this motion, the New Jersey Charter Schools Association, Inc. (“NJCSA”), now joined by one of its member charter schools BelovED Community Charter School and by several public charter school parents (collectively, the “Movant-Intervenors”), renew their request to intervene and defend the specific interests of New Jersey public charter schools and their students and families.

Movant-Intervenors have a unique interest in this litigation. The Lawsuit’s allegations and the wide range of remedies Plaintiffs seek explicitly target New Jersey’s public charter schools and the system of laws and rules that govern them. Plaintiffs not only seek invalidation of the residency preference in charter school enrollment; they also seek a “detailed remediation plan designed to achieve comprehensive desegregation and diversification of New Jersey’s public schools within and among school districts.” In addition, and perhaps most critically, the State’s role as public charter school authorizer renders it incapable of adequately representing the interests of public charter schools and the families those schools serve.

In September 2018, this Court ruled that the NJCSA’s prior intervention motion was premature because the State had not yet answered the complaint. Thus the Court was unable to determine whether the State would or could adequately represent the interests of charter schools. The Court also sought to encourage settlement discussions between Plaintiffs and the State. Those settlement discussions failed, and the State was directed to answer the Complaint, which it did in May 2019. Plaintiffs later amended the complaint which was followed by the filing of Defendants’ Amended Answer.

Plaintiffs’ Amended Complaint and the State’s Amended Answer conclusively demonstrate what the NJCSA previously argued – Movant-Intervenors have a direct interest in defending against Plaintiffs’ allegations involving public charter schools and the State cannot

adequately represent the interests of charter schools and students, charter school advocates and families. First, the State contends that Plaintiffs failed to name indispensable parties (*See* Am. Answer, Fourteenth Affirm. Def.) and that any injuries suffered by Plaintiffs “are due to the acts or omissions of third parties or entities ...” (*Id.*, Tenth Affirm. Def.) New Jersey charter schools, whose alleged enrollment patterns are the subject of this action, are plainly indispensable parties whose voices will be missing from this action absent intervention. The NJCSA, schools and parents exercising the right of parental choice enshrined in the Charter School Program Act (“CSPA”) are clearly among the third parties whose acts or omissions Plaintiffs insist have caused the alleged segregation.

Second, the State admits that it is unable to defend against one of the principal and most egregious allegations directed exclusively at public charter schools. The State answered that it “lacks knowledge or information sufficient to form a belief as to the truth of the allegations” that that charter schools exhibit “intense racial and socioeconomic segregation comparable to or worse than that of the most intensely segregated urban public schools.” (*Id.*, ¶¶ 31-34). The State may not possess the knowledge or information sufficient to provide an adequate defense against the claims against public charter schools, but Movant-Intervenors are uniquely positioned to do so.

Third, the State has a unique role as the authorizer and regulator of public charter schools. As authorizer, the State focuses on approving and overseeing, but not operating charter schools or serving public charter school students. The State’s role as charter school authorizer necessarily limits the scope of its knowledge and understanding of public charter school operations to that of an outside regulator. Notwithstanding even the noblest of intentions, Commissioner and Attorney General are necessarily conflicted and incapable of defending

charter school interests in this Lawsuit. The State cannot simultaneously represent the interests of charter schools and school districts when defending against Plaintiffs' charge that charter schools exacerbate segregation. Many districts have initiated legal actions against charters making the same erroneous claim. Additionally, the Commissioner is the sole regulator of charter schools in New Jersey and for that reason, cannot serve simultaneously as the judge of charter schools and as their representative.

Movant-Intervenors believe firmly that the role charter schools play in New Jersey public education is a positive one and must be defended vigorously. In seeking to intervene, however, by no means do Movant-Intervenors contend that unconstitutional segregation should go unaddressed or that well-intentioned efforts by the Plaintiffs to make the State's public education system work for all students should be blocked. Instead, Movant-Intervenors seek entry into this litigation for the express purpose of defending charter schools as a public school option that the State has decided to grant New Jersey parents, as a valuable resource the State can use to help address long-standing segregation in New Jersey and as a critical weapon in the campaign to improve equity in education by closing the achievement gap in communities where efforts to achieve racial balance and remedy segregation to date have failed.

Recent precedent and academic research support Movant-Intervenors' principal point: the existence of New Jersey charter schools and implementation of the CSPA do not exacerbate long-standing segregation in New Jersey public schools. *See* Tomas Monarrez, Brian Kisida, Matthew Chingos, *Do Charter Schools Increase Segregation?*, *Education Next* Fall 2019, Vol. 19, No. 4 (finding that charter schools in New Jersey have had little or no effect on segregation)¹

¹ See *also* Tomas Monarrez, Brian Kisida, Matthew Chingos, *Charter School Effects on School Segregation*, July 2019, Urban Institute.

Movant-Intervenors are uniquely positioned to litigate this issue and present evidence to the Court defending public charter schools. Accordingly, Movant-Intervenors should be allowed to intervene to defend the interests and practices of charter schools, students and parents in this case.

FACTUAL AND PROCEDURAL HISTORY

On or about May 17, 2018, Plaintiffs filed this action alleging the existence of segregation in the State's public schools, including its public charter schools.

On August 30, 2018, after this Court denied Defendants' motion to dismiss or transfer the claims to administrative proceedings, but before Defendants filed an answer, the parties announced their intention to engage in settlement discussions.

NJCSA moved to intervene in this case on September 6, 2018. On September 28, 2018, this Court denied NJCSA's motion without prejudice, principally on the ground that motion was "premature" given that the Court did not "have enough before it to be able to make some of the findings" required by the New Jersey Court Rules. Specifically, the Court was unable to determine whether the State "is not adequately representing the interests of charter schools ..." (Tr. 65:8-24). The Court expressly noted that "there may be changes in the posture, particularly of the defendant, that may give an opportunity for charter schools to come back to seek intervention ..." (Tr. 67:21-68:1).

Thereafter, the Parties engaged in a series of settlement meetings. NJCSA was allowed to participate in one of those meetings. At no time before, during, or after that meeting did the State or its representatives express any position on the interests and proposals advanced by NJCSA at the meeting, nor has it sought any input from NJCSA on the claims that have been

raised in this case or how the State intends to defend them. *See* Certification of Harold Lee (“Lee Cert.”), ¶ 19.

The Parties terminated settlement discussions in April 2019, and this Court ordered the State to answer the Complaint. The State filed its Answer on May 17, 2019. Thereafter, Plaintiffs amended their complaint on August 2, 2019 and the State filed an Amended Answer on August 22, 2019.

Based on the State’s inability to adequately defend charter interests as reflected in its Answer and Amended Answer, Movant-Intervenors have filed this motion, renewing their request to intervene.

ARGUMENT

Pursuant to *R. 4:33-1*, intervention of right “shall be permitted” if

... the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Intervention as of right “requires the movant to show an interest in the subject matter of the litigation, an inability to protect that interest without intervention, lack of adequate representation of that interest, and timeliness of the application.” Pressler, *Current N.J. Court Rules*, Comment to *R. 4:33-1*.

When considering whether a third party may become directly involved in pending litigation, “our courts have repeatedly used the phrase ‘standing to intervene’ as conceptually equivalent to ‘standing.’” *New Jersey Dept. of Env’tl. Protection v. Exxon Mobil Corp.*, 453 *N.J. Super.* 272, 287 (App. Div. 2018) (quoting *State v. N.J. Zinc Co.*, 40 *N.J.* 560, 576-78 (1963)). New Jersey courts take a liberal approach to standing, less rigorous than the federal standing

requirements. *See Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York*, 58 N.J. 98, 107-08 (1971); *see also In re Camden County*, 170 N.J. 439, 448 (2002). While New Jersey courts will not entertain proceedings by “mere intermeddlers” or “interlopers or strangers to the dispute,” it will find standing where the litigant’s concern with the subject matter evidences “a sufficient stake and real adverseness.” 58 N.J. at 107. If the requirements of R. 4:33-1 are met, the movant must be granted intervention. *Meehan v. K.D. Partners, L.P.*, 317 N.J. Super. 563, 568 (App. Div. 1998).

A. Individually and Collectively, Movant-Intervenors Have a Direct Stake in Defending Against Plaintiff’s Claims That Charter Schools Unlawfully Exacerbate Segregation.

When charges of segregation and racial discrimination are levied against a school, its students, parents and advocates who support it have a specific interest in both the litigation and its outcome. Under those circumstances, intervention by those stakeholders is proper. The specific interests of charter schools, students and parents supporting intervention in a desegregation suit were recently confirmed in *Liddell v. Special Admin. Bd. of the Transit'l Sch. Dist. of St. Louis*, 894 F.3d 959 (8th Cir 2017).

In *Liddell*, charter school parents sought to intervene as of right pursuant to *Fed. R. Civ. Pro.* (“*FRCP*”) 24(a)(2), or for permissive intervention under *FRCP* 24(b), in a case in which African-American students sued the St. Louis City Board of Education (City Board) for perpetuating racial discrimination. The plaintiffs and a Special Administrative Board sought to enforce a 1999 Desegregation Agreement by discontinuing the practice of allocating tax proceeds to charter schools and reimbursing the Special Administrative Board for past allocations. *See Liddell*, 894 F.3d at 962. The charter parents argued that enforcement would decrease funding for charter schools, thereby harming the students. *See id.* at 965. The trial court

accepted the plaintiffs’ contention that the parents had not established an injury in fact because their injuries were conjectural and hypothetical and the charter parents only alleged injury to third parties, namely charter schools, and denied the motion to intervene. *See id.* The Eighth Circuit reversed. It rejected the plaintiffs’ argument and held that were the plaintiffs to prevail, the intervenors’ children would suffer a loss in educational funding for teachers, facilities, and equipment necessary for their children’s education, and that this would erode the quality and reputation of the charter schools that their children attended. *See id.*

The Movant-Intervenors here are a New Jersey public charter school (*see* Exhibit “A,” Resolution of BelovED Community Charter School), public charter school parents Ms. Tafshier Cosby, (See Certification of Tafshier Cosby [“Cosby Cert.”] at ¶¶ 1-3, 15); Ms. Diane Gutierrez, (See Certification of Diane Gutierrez [“Gutierrez Cert.”] at ¶¶ 1-3, 15); Ms. Ana Maria De La Roche Araque, (Certification of Ana Maria De La Roche Araque [“Araque Cert.”] at ¶¶ 1-3, 17), and the New Jersey Charter Schools Association, which represents 89% of public charter schools that educate the New Jersey public charter school students (Lee Cert. ¶ 4). NJCSA also represents the interests of the 35,000 students presently on charter school wait lists awaiting an enrollment opportunity in creating more public charter school seats and options (Lee Cert. ¶ 5). Like the plaintiffs in the *Liddell* case, Movant-Intervenors will be harmed if Plaintiffs succeed in this Lawsuit. Movant-Intervenors are directly interested in the outcome of this litigation and would be adversely affected if Plaintiffs prevail on their charter school allegations.

1. *Real and Direct Interest.*

Movant-Intervenors are each directly interested in Plaintiffs’ claims that charter schools exhibit and exacerbate segregation in New Jersey public schools and stand to be harmed by a

Court finding in Plaintiffs' favor on those claims. *See* Cosby Cert. ¶¶ 8-11; Gutierrez Cert. ¶¶ 8-11 ; De La Roche Araque Cert. ¶¶ 9-13.

The Movant-Intervenors Parents chose to send their children to New Jersey public charter schools. (Cosby Cert. ¶¶ 3-7; Gutierrez Cert. ¶¶ 3-7; De La Roche Araque Cert. ¶¶ 3-8). Each of their choices was animated by a desire to find the right school for their children and dissatisfaction with traditional public district options. *See id.* For each family, the New Jersey public charter school selected possesses distinct qualities that the family believes will be adversely impacted by a judgment for Plaintiffs and the remedies they are seeking, which includes changes proposed to the CSPA. *See* Cosby Cert. ¶¶ 9-13; Gutierrez Cert. ¶¶ 7-13; De La Roche Araque Cert. ¶¶ 9-15.

BelovED Charter School stands to be directly affected by the outcome of this case as well. As a school that is one of the most diverse in the state, BelovED seeks to defend itself against charges that as a public charter school, instead of fulfilling its mission to develop the kind of values, skills, knowledge, confidence and character in students that will propel them to success in school, college, and career, and lead to a happy, contributory life, BelovED works to exacerbate segregation in the State. BelovED serves as one of the few inter-district school options available in New Jersey, and it stands to lose that distinctive feature if a judgment is entered favoring Plaintiffs and no consideration is made of the unique role public charter schools play. NJCSA works on behalf of BelovED and other New Jersey public charter schools. The organization's membership is comprised primarily of public charter schools who serve New Jersey students directly as education providers and who, like BelovED, could see significant changes if Plaintiffs' claims are successful. *See* Lee Cert. ¶ 3.

Movant-Intervenors Parents and BelovED also have a direct interest in the remedy that the Court would fashion to address Plaintiffs' claim that charter schools exacerbate segregation in New Jersey. Plaintiffs expressly blame the Commissioner for charter-related segregation because of his alleged "failure ... to perform his statutory and regulatory duties regarding the operation of charter schools." Complaint, ¶ 32. Specifically, they allege that the Commissioner is not doing enough in the course of establishing, operating and renewing charter schools to assess and prevent the potential segregative effect a charter school may have on traditional district schools. Plaintiffs seek two remedies relative to charter schools: (i) judicially rewriting the CSPA to eliminate the resident preference in the CSPA, and (ii) an order compelling the Commissioner to prepare and submit a "detailed remediation plan designed to achieve comprehensive desegregation and diversification" of New Jersey's public schools. Either of these remedies would undoubtedly impact public charter schools, like BelovED, and the parents, who like Movant-Intervenors Cosby, Gutierrez and De La Roche Araque, have chosen to send their children to those schools. A judicial rewrite of the CSPA or a court ordered remediation plan would necessarily change the very structure and rules that govern existing charter schools. Those changes could directly impact the availability of these public school options for parents and students. *See* Cosby Cert. ¶¶ 9-10; Gutierrez Cert. ¶¶ 8-10; De La Roche Araque Cert. ¶¶ 9-12.

Movant-Intervenors have a specific interest to protect against changes in enrollment policies or the Commissioner's oversight of charter schools that may limit charter school options for students and parents in the communities in which they are located. *See* Cosby Cert. ¶ 9; Gutierrez Cert. ¶ 9; De La Roche Araque Cert. ¶ 10. The disposition of Plaintiffs' claims will surely impact charter schools because Plaintiffs take dead-aim at charter school enrollment

practices and seek to re-write them. Changes affecting enrollment policies, and the authorization, renewal and expansion of charter schools, directly affect charter schools and their families.

Charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers. Intervention is necessary so that parents like Movant-Intervenors Cosby, Gutierrez and De La Roche Araque can preserve the charter school option they find so compelling for their children. *See* Cosby Cert. ¶¶ 3-7; Gutierrez Cert. ¶¶ 3-7; De La Roche Araque Cert. ¶¶ 3-8. Movant-Intervenors also have a direct interest in assuring the goals of the CSPA are met, and that charter schools are able to expand and provide choice to more families. *See* Lee Cert. ¶¶ 6-7.

At the bare minimum, Movant-Intervenors' interests in this matter, including the NJCSA's, are superior to those of the Plaintiffs' organizations, none of whom operate schools, or are responsible for the education of students. NJCSA serves as the sole state-wide association for public charter schools. In contrast, "LAN develops and advocates for legislation, regulations, and government programs aimed at improving the social welfare of Latinos...." Complaint, at ¶ 4. "The mission of the NAACP is to ensure the political, educational, social and economic equality of rights of all persons to eliminate racial discrimination." *Id.* at ¶ 5. The Latino Coalition ("LC") "advocates with regard to issues affecting the Latino community in New Jersey and organizes and performs community service for the same population." *Id.* at ¶ 6. The United

Methodist Church of Greater New Jersey has a mission “informed by the Church’s long history of concern for social justice.” *Id.* at ¶ 8.

Like these organizational Plaintiffs, NJCSA seeks to participate in this litigation because doing so aligns with its mission. NJCSA’s mission is to advance quality public education for New Jersey’s children through the cultivation of high-quality public charter schools. *See Lee Cert.* ¶ 3. This mission is founded upon the belief that every child in the State of New Jersey should have the opportunity to attend a high-quality public school that best meets his or her needs. *Id.*

If the Court believes Plaintiffs have an adequate interest to support standing to bring this action, the public charter schools that Plaintiffs accuse of exacerbating segregation and NJCSA, their organizational representative, necessarily have at least an equal interest in defending against those accusations. Movant-Intervenors plainly have an interest in this litigation – both in its defense and outcome.

2. Adverseness.

As noted above, each of the Movant-Intervenors have a direct interest in the remedy that the Court would fashion to address Plaintiffs’ claim that charter schools exacerbate segregation in New Jersey. Though framed broadly with respect to the entire system of public education, when viewed in the context of some of the Plaintiffs’ very public adversity to public charter schools, it becomes apparent that the remedies Plaintiffs seek would be contrary to the interests of charter schools and charter school families.

Three of the five Plaintiff organizations have initiated action to close New Jersey charter schools or otherwise limit their growth. The Latino Action Network and Latino Coalition have filed complaints against New Jersey charter schools, specifically alleging that the schools’

enrollment practices are discriminatory and have opposed expansion of the schools on the basis that they maintain segregationist policies. Rather than initiate dialogue with the school or work collaboratively to address concerns about diversity, the two organizations asked the Commissioner to close the school or prohibit expansion. *See NJ Latino Group wants Princeton Charter School to Close Over Alleged Discrimination*, *Trentonian*, available at https://www.trentonian.com/news/nj-latino-group-wants-princeton-charter-school-to-close-over/article_f36adedf-43d9-5ff4-a62b-abd31427cf9a.html (last visited 9/24/18); *see also Latino Coalition, Fair Schools Red Bank v. Red Bank Charter School*, ACLU New Jersey, available at <https://www.aclu-nj.org/cases/latino-coalition-fair-schools-red-bank-v-red-bank-charter-school> (last visited 9/24/18) and *In re Grant of Charter Renewal of the Red Bank Charter School*, Dkt. No. A-003342-16. The NAACP adopted a resolution calling for a nationwide moratorium on charter school expansion. *See NAACP Plan of Action for Charter Schools*, NAACP, available at <https://www.naacp.org/campaigns/naacp-plan-action-charter-schools/> (last visited 9/24/18).

Based on their publicly stated anti-charter positions, it is reasonable to conclude that if successful on the merits, Plaintiffs would seek remedies that would limit the availability and growth of charter schools like BelovED, the schools selected by the Movant-Intervenors Parents, and the public charter schools NJCSA represents and affect the State's decisions regarding charter school applications, renewals, and expansions in ways that adversely impact these schools and the families that have selected them.

3. *Interest Distinct from Other Parties.*

As a matter of law, charter schools' interests are wholly distinct from those of the Defendants, who are charter school regulators, not public charter schools, charter school parents, charter advocates or charter representatives. Defendants' primary responsibility is to oversee the

entire system of public education, including both public charter schools and traditional school districts. Charter schools and charter school representatives like BelovED and NJCSA maintain interests that are wholly distinct from traditional school districts, which are often charter school opponents.

In fact, in most relevant cases, a school district itself charges that a public charter school's request for approval, renewal or expansion should be denied due to concerns that the charter school exacerbates segregation. *See e.g., Highland Park Bd. of Educ. And Piscataway Township Bd. of Educ. v. Harrington and Hatikvah Int'l Academy Charter School, et al.*, No. A-3455-16T1, 2019 WL 2402544 (N.J. Super. App. Div. June 7, 2019) (rejecting district's argument that the Commissioner failed to consider alleged segregative impact of charter school's expansion on the district); *see also In re Renewal Application of Team Academy Charter School, et al.*, 2019 N.J. Super. 111 (App. Div. 2019) (affirming Commissioner's grant of renewal of Newark charter schools and that a difference in demographics between individual charter schools and host district is not sufficient to demonstrate segregative effect); *In the Matter of the Approval of Charter Amendment of Central Jersey College Prep*, No. A-3074-16T4, 2019 WL 2402541 (N.J. Super. App. Div. June 7, 2019) (finding no evidence that the presence of the charter school made the district more segregated or that the charter school worsened the existing racial balance); *Bd. of Educ. of Hoboken v. New Jersey State Dept. of Educ.*, No. A-3690-14T3, 2017 N.J. Super. Unpub. LEXIS 1639 (App. Div. June 29, 2017) (affirming charter renewal where there were no allegations of charter school practice leading to exacerbation of racial or ethnic balance).²

² *See also, Highland Park Bd. of Educ. v. Hespe*, No. A-3890-14T1, 2018 N.J. Super. Unpub. LEXIS 158 (App. Div. January 242018); *In re Approval of Hatikvah Intl. Academy Charter Sch.*, No. A-5977-09T1, 2011 N.J.

As the regulator for both public charter schools and traditional school district schools, the State is not capable of representing the interests of each in the face of Plaintiffs' allegations, which many districts have also advanced, that charter schools exacerbate segregation in traditional districts throughout the state. Accordingly, Movant-Intervenors' interests are not only adverse to Plaintiffs, they are also distinct from the State and the traditional school districts that the State will be defending in this Lawsuit.

B. Intervention Before This Court Is Necessary to Protect the Interests of Charter Schools and Charter School Parents.

The Court previously suggested a right to intervene on appeal might be adequate to protect the Movant-Intervenors' interests. Yet the right to intervene at the appellate stage to object to an adverse ruling or to oppose a proposed settlement is wholly inadequate to protect the Movant-Intervenors' interests in public charter schools.

On appeal, the standard of review is sharply limited. Factual findings made in this Court are not subject to appellate review unless they are so wholly unsupportable as to result in a denial of justice. *See Rova Farms Resort, Inc. v. Investors Ins. Co. of America*, 65 N.J. 474 (1974) (internal citation omitted). Settlements reached by the parties cannot be disturbed absent a demonstration of fraud or other compelling circumstances. *See Nolan by Nolan v. Lee Ho*, 120 N.J. 465, 472 (1990) ("Before vacating a settlement agreement, our courts require clear and convincing proof that the agreement should be vacated") (internal citation omitted).

Here, Plaintiffs have wrongfully blamed charter schools for perpetuating or exacerbating segregation. The factual record established in this Court as to the extent and causes of

Super. Unpub. LEXIS 3144 (App. Div. December 21, 2011); *In re Red Bank Charter Sch.*, 367 N.J. Super 462 (App. Div. 2004).

segregation in charter schools and the broader public schools system will bear directly on any judgment on the merits and any remedies ordered by the Court or proposed by the Commissioner, and their appropriateness on appellate review. Absent intervention now allowing Movant-Intervenors to contribute to the establishment of the factual record with respect to charter schools and segregation, their appellate rights will be sharply limited. At the appellate level, Movant-Intervenors cannot introduce competing facts as to the diversity of charter schools or any other relevant issues, nor can they introduce expert testimony challenging the testimony proffered by Plaintiffs. *See Greenfield v. Dusseault*, 60 N.J. Super. 436 (App. Div. 1960) (internal citation omitted).

The only way Movant-Intervenors can protect their interests in the findings and outcome of this action is by participating as a full party, with the right to introduce evidence, cross-examine witnesses, proffer expert testimony, and argue the law at the trial court level when the key factual underpinnings of this case are established.

C. As the Sole Regulator of Charter Schools, the Commissioner and Attorney General are Conflicted and Cannot Adequately Represent the Distinct Interests of Charter Schools and Charter Parents.

The Movant-Intervenors' interests are distinct from the Commissioner's interests. The Commissioner, as the State's top education official, must oversee all the public schools, including both public charter and traditional schools. To carry out its oversight responsibilities, the Commissioner must navigate numerous competing interests among the schools and stakeholders that comprise the public school system. The Commissioner's interest is in reconciling those varied interests. In this lawsuit, however, the competing interests of public charter schools and other stakeholders in the system cannot be so easily reconciled.

First, Plaintiffs assert that the law governing public charter schools creates the conditions that exacerbate segregation in New Jersey school districts. *See* Compl., ¶ 1. As noted above, a number of traditional school districts that the State must also defend in this Lawsuit, have made the very same assertion.

Second, in this case, the Commissioner’s plenary authority to resolve school disputes does not demonstrate the State’s ability to serve as a proper representative of charter schools. Rather, it points to the Commissioner’s inherent conflict in representing charter schools while simultaneously overseeing them in both quasi-judicial (contested case) and quasi-legislative (authorization, renewal, expansion and rule makings) capacities.

Plaintiffs and Defendants argued previously that Defendants’ oversight authority over public schools gives them the “exclusive” authority to defend all public schools, including charter schools, from allegations of racial segregation. *See* Pl. Opp. Brief at p. 18. Notably, they did not cite a case in New Jersey that stands for this proposition, nor have we discovered one. Moreover, the Parties’ position on this point is inconsistent with state court intervention decisions involving public education. The most important New Jersey school segregation cases include public school districts as parties in the litigation, as noted above. *See also Abbott v. Burke*, which had intervening parties other than the state education agencies. *See Abbott VII*, 164 N.J. 84 (2000) (Speaker of General Assembly granted intervenor status); *Abbott IX*, 172 N.J. 294 (2002) (several Abbott school districts granted intervenor status); *Abbott XV*, 187 N.J. 191 (2006) (Abbott boards of education granted intervenor status); *Abbott XVI*, 203 N.J. 157 (2006) (Abbott boards of education granted intervenor status); *Abbott XVII*, 193 N.J. 34 (2007) (Abbott boards of education granted intervenor status); *see also Burgos v. State*, 2014 N.J. Super. Unpub. LEXIS 3103 (Law Div. 2014), *reversed on other grounds*, 222 N.J. 175 (2015) (motion to

intervene granted to the New Jersey Principals and Supervisors Association in an action filed by the New Jersey Education Association over the funding of state pension funds).

Third, though it might ordinarily be presumed the Commissioner will faithfully defend the laws governing charter schools, this Commissioner is in the midst of an as-yet uncompleted charter review process intended to establish his policies around charter school authorization, renewal and expansion, and to recommend to the Governor and Legislature how charter schools should be regulated. In short, and until results of his review process are announced, the Movant-Intervenors cannot know whether the Commissioner will defend the CSPA as presently written, recommend its modification, or perhaps even its repeal. Under such circumstances, the Commissioner (and his attorneys) cannot zealously defend charter school interests in this litigation. As a matter of law then, the Commissioner and his attorneys are conflicted under both State ethics and attorney ethics rules from representing charter school interests in this action. *See, e.g.,* New Jersey R.P.C. 1.7(a); R.P.C. 1.9.

Finally, though the Court may have been uncertain at the time whether the Commissioner could adequately represent charter school interest before it filed its Amended Answer, there can be no question now that the Amended Answer has been filed. The State conceded its inadequacy to defend charter school interests in this case by asserting the affirmative defense that indispensable parties are missing from this case. The only parties who can possibly be considered indispensable are the public schools – traditional district and charter schools alike – Plaintiffs seek to desegregate. The State also asserts the defense that the acts complained of are those of third parties beyond their control. Again, the school districts and charter school boards that run New Jersey public schools plainly qualify as third parties the State is referencing. Both defenses reveal clearly that the Commissioner cannot represent — indeed, will not represent—

charter school interests while also defending his own interests as regulator of the public school system. Additionally, Defendants indicate that they lack knowledge to form a belief regarding the truth of many of the specific allegations lodged against charter schools. Unlike Defendants, Movant-Intervenors would assert an outright denial of those allegations. *See* Cosby Cert. ¶ 11; Gutierrez Cert. ¶ 11; De La Roche Araque Cert. ¶ 13; Lee Cert. ¶ XX. If the Defendants cannot provide the information to support a denial, Movant-Intervenors are precisely the entities and individuals who can, and will. Movant-Intervenors will present the evidence and arguments necessary to zealously defend public charter schools and the role they have played in actually combating segregation and improving equity in New Jersey public schools.

On the previous motion, the Court expressed concern about the complicating role of an intervening party in then-nascent settlement discussions between the parties. That is no longer a concern. Now that the Court will entertain fact-finding and the creation of a fact record, Movant-Intervenors' participation with full party status will not unduly delay or complicate what is already a complex litigation. This may pose some additional inconvenience to the parties, but it will not prevent or delay them from making their cases. Regardless, the extraordinary stakes of this important, wide-ranging litigation demand the participation of representatives of the indispensable parties— public schools, charter and traditional alike. On this point, the State has agreed in its Amended Answer. Accordingly, intervention should be granted as of right.

D. Alternatively, the Court Should Grant Movant-Intervenors Permissive Intervention.

Pursuant to *R.* 4:33-2, permissive intervention may be granted

if the claim or defense and the main action have a question of law or fact in common. ... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The factors New Jersey courts consider include: the promptness of the application; whether it would cause undue delay; whether it would eliminate the probability of subsequent litigation; and the extent to which it would further complicate already complex litigation.” *Id.* Permissive intervention is to be liberally construed with a “view to whether [it] will unduly delay or prejudice the adjudication of the right of the original parties.” *Id.* Here, it cannot be disputed that the Movant-Intervenors timely filed this motion.

As for delays, the key question is whether the proposed intervention would result in an undue delay. Fairly adjudicating constitutional and statutory claims over our State’s system of public education can indeed take time. Aside from Plaintiffs’ charges against charter schools, the Plaintiffs have brought a complaint with a broad scope of allegations, which touch on every school district in New Jersey. It is not improper for such a litigation to proceed carefully and deliberately with the benefit of a full record and advocacy on behalf of interested parties.

As the Defendants stated just several months ago in its brief to transfer this matter to the Commissioner: “Despite the Plaintiffs’ attempt to present this matter as if the solutions are simple and well-settled, changes in attendance or districting are intricate and fact sensitive.” *See* Defendants’ Brief in Support of Transfer Motion, dated June 29, 2018 at p. 11. Plaintiffs likewise had foreseen the intervention of other parties in their opposition to the Defendants’ transfer motion, and noted it as a reason, in part, not to transfer this matter to the Commissioner. *See* Pl. June 29, 2018 Brief at pp. 35-36. It should be noted that Plaintiffs prevailed in making that argument. The evidence filed previously by the NJCSA and again in Movant-Intervenors’ moving papers demonstrates the already existing practice of charter school students crossing municipal boundaries to attend school. *See* Cosby Cert. ¶¶ 12-13; De La Roche Araque Cert. ¶¶ 6-11. Plaintiffs apparently were unaware of that fact, since it contradicts the central narrative in

the Complaint. It is that kind of charter school advocacy that will help ensure that an adequate and fair evidentiary record is created.

Plaintiffs previously complained of the risk of “suffer[ing] the proliferation of disparate voices” should the NJCSA intervene. *See* Pl. Opp. Br. at p. 24. As noted above, Movant-Intervenors have critical input to provide as it relates to the charter school allegations in the Complaint. The need to include parties that are arguably indispensable to the litigation outweighs any concern for the proliferation of voices.

As for subsequent litigation, shutting out charter schools at the fact-finding stage would surely increase the risk and scope of subsequent litigation. A judgment or settlement over our public education enrollment system in New Jersey, reached with a narrow group of Plaintiffs, with no participation from other stakeholders beyond Defendants, begs for post-settlement or post-judgment intervention motions and challenges by the indispensable parties to these proceedings—charter schools and school districts. When moving to transfer this matter, Defendants admitted that other stakeholders may litigate in this case. “Defendants also recognize that this litigation may attract additional parties or *amici* (such as district or other advocacy groups).” *See* Defendants’ Brief in Support of Motion to Transfer, at p. 14 dated June 29, 2018.

The issues Plaintiffs raise are simply too important for the parties to litigate or settle without the involvement of the NJCSA and the other Movant-Intervenors. If intervention is not granted as a matter of right, permissive intervention should be granted.

CONCLUSION

For the foregoing reasons, Movants-Intervenors respectfully request that their Motion to Intervene be granted.

Respectfully submitted,

DUANE MORRIS LLP

By: /s/ Paul P. Josephson

Paul P. Josephson, Esq.
Samantha L. Haggerty, Esq.

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*Attorneys for Intervenor-Movants,
New Jersey Charter School Association, Inc., BelovED Community Charter School,
Tafshier Cosby, Ana Maria De La Roche Araque and Diane Gutierrez*

LATINO ACTION NETWORK, ET AL.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	
	:	MERCER COUNTY
v.	:	
	:	Docket No. L-1076-18
STATE OF NEW JERSEY, ET AL,	:	
	:	CIVIL ACTION
Defendants.	:	
	:	CERTIFICATION OF HAROLD LEE IN
	:	SUPPORT OF MOTION TO INTERVENE
	:	
	:	
	:	

I, HAROLD LEE, of full age, hereby certifies as follows:

1. I currently serve as President to the New Jersey Charter Schools Association (“NJCSA”).

2. From April 2014 to July 2016, I served as Director in the New Jersey Department of Education, Office of Charter and Renaissance Schools.

Charter Schools in New Jersey

3. NJCSA represents the state’s charter school community and the students and parents they serve to advance quality public education for New Jersey’s children through the cultivation of quality public charter schools. NJCSA’s membership is comprised of New

Jersey charter schools and associate members committed to advancing the charter school movement in New Jersey.

4. NJCSA is the only state-wide association for New Jersey charter schools, representing eighty-nine (89%) of charter schools in the state. Our work focuses on three areas: advocacy, school services, and research.

5. NJCSA also represents the 35,000 students who remain on waitlists and who are seeking the opportunity to create more public charter school seats and options.

6. NJCSA's purpose is informed by the public policies underlying the Charter School Program Act of 1995 (the "Act"). The Act provides that the:

establishment of charter schools as part of this State's program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom. Specifically, charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers.

N.J.S.A. 18A:36A-2.

7. The Act provides that "the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools." *Id.* The Act "actively encourages" the establishment of charter schools in "urban school districts." N.J.S.A. 18A:36a-3. Charter schools are required to "seek the enrollment of a cross section of the community's school age population including racial and academic factors." N.J.S.A. 18A:36a-8(e).

8. The Commissioner of Education exerts direct regulatory authority over charter schools, including the ability to deny a charter application, revoke a charter or put a charter school on probation. *See* N.J.S.A. 18A:36A-17.1. The Commissioner also adjudicates disputes between charter schools and third parties, pursuant to the Commissioner's authority to decide cases which arise under the school laws.

9. Plaintiffs allege in their complaint that the Defendants failed to “perform . . . statutory duties and regulatory duties regarding the operation of charter schools.” (**Complaint at p. 12.**)

10. The NJCSA disputes this claim. As for attracting a cross-section of the school age population in the community, the Commissioner of Education and Department of Education regularly oversee charter schools' “access and equity” practices to ensure that they abide by the Act's mandates to serve all students, regardless of race, ethnicity, gender, intellectual ability, English proficiency or economic status.

11. For example, all charter schools must submit to the Department of Education an annual report specifying its access and equity practices, such as the lottery admission process.¹ Charter Schools must specify their access and equity practices in their renewal applications. *See* <https://www.nj.gov/education/chartsch/accountability/renewal.htm>. A charter school's access and equity practices are also measured as a metric in the Performance Framework standards applied to each charter school as party of their accountability. *See* <https://www.nj.gov/education/chartsch/accountability/framework.htm>. Moreover, the New Jersey Department of Education published “Guidelines for Access and Equity in New Jersey Charter Schools.” *See* <https://www.nj.gov/education/chartsch/equity/>

¹ A web link to such annual report template is available at <https://www.nj.gov/education/chartsch/accountability/ar.htm>.

12. In January 2014, the United States Department of Education published guidance on charter schools instituting weighted lotteries, wherein economically disadvantaged students are afforded preferential weight in a charter school lottery admission process relative to other students. *See* <https://www2.ed.gov/programs/charter/nonregulatory-guidance.html/> The New Jersey Department of Education issued guidance the next school year to charter schools on implementing such weighted preferences. *See* <https://www.nj.gov/education/chartsch/equity/guidelines.pdf>. As of the 2017-2018 school year, approximately 22.5 percent of charter schools use weighted lotteries.

13. Three of the most “diverse” schools in New Jersey are charter schools when measured by the probability that any two students selected at random will belong to the same ethnic group (Learning Community Charter School, the Ethical Community Charter School and Beloved Community Charter School). In the 2017-2018 school year, about 49,100 children in New Jersey were charter school students. A true and correct copy of NJCSA fact sheets are attached hereto as Exhibit A.

The Interests of Charter Schools, Their Students, Parents, and Employees

14. Plaintiffs inexplicably assign blame to charter schools for the status of school segregation in New Jersey. They cite data which reports the high percentage of minority student enrollment in some charter schools, although such enrollment is comparable to a cross section of the charter school community’s school age population and many charter school students operate in urban communities, as explicitly “encouraged” under the Act.

15. In fact, studies have demonstrated that, in Newark and Hoboken, for example, as charter schools have expanded, the local districts have not become more segregated. Rather, the opposite is true.

16. Plaintiffs seek in this action an order declaring that application of the Act violates the New Jersey Constitution, and an order enjoining each charter school's admission methodology in favor of a "replacement assignment methodology." (Complaint at p. 34.) In sum, they seek a judicially sanctioned re-writing of charter school admission practices and policies, which will have a direct impact on charter school operations, charter school parents, and existing and prospective students.

17. To the extent that the State's laws foster segregation with a geography-based public school system, the charter schools in fact offer a working example on how an alternative system works, wherein parents are empowered and public dollars follow the student. The NJCSA shares a concern with Plaintiffs about the degree of school segregation in New Jersey, but contests that charter schools are a cause for segregation. Rather, they represent one of the solutions.

18. The Commissioner of Education does not, nor do any of the other defendants, represent charter schools in this matter. To the contrary, the Commissioner is frequently adverse to charter schools, such as when the Commissioner denies a charter application or revokes a charter.

19. During settlement negotiations that occurred in this case previously, NJCSA was allowed to participate in just one of several meetings between the Parties. At no point before, during or after that settlement conversation did the State or its representatives express any position on the interests and proposals advanced by NJCSA. Nor has the State sought any input

from NJCSA on the claims that have been raised regarding public charter schools or how the State intends to defend them. Shutting out charter school representatives from early settlement discussions is a gross deprivation of their due process rights and the rights of their current and prospective students and parents.

20. The NJCSA should be permitted to intervene in this case to give charter schools, charter school parents, students, and employees a fair opportunity to contest accusations made against charter schools. NJCSA intends to fight those remedies requested by Plaintiffs that are designed to hinder the operation and growth of public charter schools in New Jersey. The NJCSA also intends to present evidence about how charter schools are a vital tool to combat segregation and promote equity in public schools.

21. Notably, none of the Plaintiffs are public schools or organizations that represent public schools. In a case which purports to be brought on behalf of public school children, none of the current parties operate schools.

Charter Schools as a Solution to Segregation in the Schools

22. Plaintiffs allege that the Defendants “ignored” “feasible solutions” to segregation of expanding parent parental choice in selecting public schools across municipal boundaries. But the practice of students crossing local municipal borders to attend public schools is already happening in charter schools. Some students from urban districts identified as “Abbott” districts attend charter schools in predominately white suburban communities and students from non-Abbott districts cross municipal boundaries to attend charter schools located in Abbott districts. (Abbott districts have a disproportionately high number of students of color relative to non-Abbott districts.)

23. By way of illustration, Central Jersey College Prep Charter School, served, in

the 2017-18 year, students from 12 school districts outside the school's municipality, Somerset. They draw students from three counties. Two of the school's sending districts are Abbott districts. A true and correct copy of the Department of Education, Division of Finance, Office of Charter School Facilities and Finance 2017-18 State Charter School Final Enrollment Count schedule, effective June 2018, is attached hereto as Exhibit B. Such schedules for the below identified charter schools are also attached hereto in Exhibit B.

24. Unity Charter School, in Morristown, serves students from 47 school districts outside Morristown. They draw students from nine counties. Six of the sending districts are Abbott districts.

25. Conversely, there are charter schools located in Abbott districts, which draw students from non-Abbott districts, many of whom are from majority white municipalities. By way of illustration, Hoboken Dual Language Charter School is in Hoboken, an Abbott District, yet draws students from 17 districts, 12 of which are non-Abbott Districts. It draws students from five counties.

26. North Star Academy Charter School is in an Abbott District, Newark, yet draws students from 16 districts, 11 of which are non-Abbott districts. It serves students from five counties.

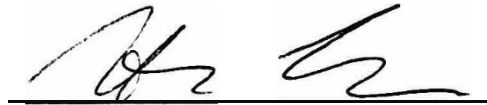
27. Team Academy Charter School is in Newark, yet draws students from 14 districts, nine of which are non-Abbott districts, and serves students from four counties.

28. The Act's mandate, to afford admission preferences to students who reside in the district where a charter school is located, is an appropriate subject of analysis. As noted above, even with that preference, students are still crossing municipal boundaries to attend charter schools.

29. The NJCSA agrees with Plaintiffs that an important tool to reduce school segregation is empowering parents with meaningful public school choice. The NJCSA vehemently disagrees that charter schools are part of the problem.

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if they are not true, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'Harold Lee', is written over a horizontal line.

Harold Lee

September 16, 2019

EXHIBIT A

STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
DIVISION OF FINANCE
OFFICE OF SCHOOL FACILITIES AND FINANCE
FY 2017-18 STATE CHARTER SCHOOL AID
Final Enrollment Count

CHARTER=6018-CENTRAL JERSEY COLLEGE P

DISTRICT	K-12 Final Enroll	Presch. Final Enroll	District Equaliza. Aid	District Sp Ed Ctag.	District Security Aid	District Presch. Ed Aid	District Payment Total	State Non-Pub Aid	State adjust. Aid	Grand Total
MIDDLESEX 1390-EDISON TWP	1.0	0	11,501	0	16	0	11,517	0		11,517
MIDDLESEX 2150-HIGHLAND PARK BORO	1.0	0	30,141	3,669	63	0	33,873	0		33,873
MIDDLESEX 3530-NEW BRUNSWICK CITY	53.2	0	635,334	15,824	13,215	0	664,373	8,458		672,831
MIDDLESEX 3620-NORTH BRUNSWICK TWP	84.0	0	739,506	14,939	3,004	0	757,449	16,304		773,753
MIDDLESEX 4130-PISCATAWAY TWP	8.0	0	83,680	0	743	0	84,423	0		84,423
MIDDLESEX 4660-SAYREVILLE BORO	2.0	0	17,287	0	102	0	17,389	0		17,389
MIDDLESEX 5850-WOODBRIDGE TWP	2.0	0	19,571	0	42	0	19,613	0		19,613
SOMERSET 1610-FRANKLIN TWP	430.0	0	5,112,390	83,994	45,114	0	5,241,498	153,754		5,395,252
SOMERSET 2170-HILLSBOROUGH TWP	3.2	0	34,198	0	76	0	34,274	0		34,274
SOMERSET 3000-MANVILLE BORO	2.6	0	21,580	0	46	0	21,626	0		21,626
SOMERSET 3320-MONTGOMERY TWP	1.0	0	18,692	0	128	0	18,820	0		18,820
SOMERSET 4850-SOUTH BOUND BROOK	3.7	0	37,656	0	62	0	37,718	0		37,718
UNION 4160-PLAINFIELD CITY	22.0	0	236,183	6,551	3,230	0	245,964	0		245,964
STATE									678,753	678,753
CHARTER	613.7	0	6,997,719	124,977	65,841	0	7,188,537	178,516	678,753	8,045,806
	613.7	0	6,997,719	124,977	65,841	0	7,188,537	178,516	678,753	8,045,806

N = 14
Total N = 14

4

STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
 DIVISION OF FINANCE
 OFFICE OF SCHOOL FACILITIES AND FINANCE
 FY 2017-18 STATE CHARTER SCHOOL AID
 Final Enrollment Count

CHARTER=6041-HATIKVAM INTERNATIONAL CS

DISTRICT	K-12 Final Enroll	Preach. Final Enroll	District Equaliza. Aid	District Sp Ed Categ.	District Security Aid	District Presch. Ed Aid	District Payment Total	State Non-Pub Aid	State Adjust.	Grand Total
MERCER 1245-EAST WINDSOR REGIONAL	5.0	0	49,531	0	167	0	49,698	0		49,698
MERCER 5715-W WINDSOR-PLAINSBO RD	1.2	0	15,830	568	21	0	16,419	0		16,419
MIDDLESEX 0750-CARTER HORO	2.0	0	18,138	0	177	0	18,315	0		18,315
MIDDLESEX 1470-EAST BRUNSWICK TWP	193.6	0	2,431,279	117,890	3,157	0	2,552,326	97,028		2,649,354
MIDDLESEX 1290-EDISON TWP	15.0	0	154,959	5,494	274	0	160,727	29,168		189,895
MIDDLESEX 2150-HIGHLAND PARK BORO	21.4	0	291,737	16,128	215	0	308,080	0		308,080
MIDDLESEX 2370-JANESBURG BORO	9.0	0	86,059	4,018	610	0	90,687	0		90,687
MIDDLESEX 3120-NETTEREN BORO	0.8	0	6,830	0	13	0	8,843	0		8,843
MIDDLESEX 3220-MILLTOWN BORO	5.0	0	53,395	0	89	0	53,484	0		53,484
MIDDLESEX 3290-MORRIS TWP	13.6	0	126,897	0	224	0	127,121	21,547		148,668
MIDDLESEX 3530-NEW BRUNSWICK CITY	12.0	0	126,227	3,185	2,086	0	131,498	0		131,498
MIDDLESEX 3620-NORTH BRUNSWICK TWP	30.8	0	269,456	4,820	991	0	275,267	0		275,267
MIDDLESEX 3845-OLD BRIDGE TWP	16.6	0	169,646	4,068	809	0	174,523	0		174,523
MIDDLESEX 4130-PISCATAWAY TWP	6.0	0	54,392	0	200	0	54,592	0		54,592
MIDDLESEX 4660-SAYREVILLE BORO	18.3	0	138,452	3,577	883	0	143,012	7,567		150,579
MIDDLESEX 4860-SOUTH BRUNSWICK TWP	6.3	0	88,700	11,727	112	0	100,539	0		100,539
MIDDLESEX 4920-SOUTH RIVER BORO	38.0	0	259,130	10,925	1,545	0	271,600	20,273		291,873
MIDDLESEX 4970-SPOTSWOOD	5.4	0	62,521	0	226	0	62,747	0		62,747
MIDDLESEX 5850-WOODBRIDGE TWP	2.0	0	0	0	0	0	0	17,834		17,834
MIDDLESEX 5920-MANALAPAN-ENGLISHTOWN REG	3.0	0	31,239	0	216	0	31,455	0		31,455
MIDDLESEX 5030-MANALAPAN TWP	8.3	0	100,044	0	598	0	100,642	0		100,642
MIDDLESEX 3200-MILLSBORO TWP	2.0	0	24,388	0	153	0	24,541	0		24,541
MIDDLESEX 3830-FLOHAM PARK BORO	1.0	0	28,909	3,109	18	0	32,036	0		32,036
MIDDLESEX 1610-FRANKLIN TWP	20.8	0	251,564	4,439	2,578	0	258,581	0		258,581
MIDDLESEX 2170-HILLSBOROUGH TWP	1.0	0	10,687	0	24	0	10,711	0		10,711
STATE								199,774		199,774
CHARTER	438.1	0	4,852,010	190,048	15,386	0	5,057,444	193,417	199,774	5,450,635
	438.1	0	4,852,010	190,048	15,386	0	5,057,444	193,417	199,774	5,450,635

N = 26
 Total N = 26

STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
DIVISION OF FINANCE
OFFICE OF SCHOOL FACILITIES AND FINANCE
FY 2017-18 STATE CHARTER SCHOOL AID
Final Enrollment Count

CHARTER=8050-UNITY CS

DISTRICT	K-12 Final Enroll	Presch. Final Enroll	District Equaliza. Aid	District Sp Ed Categ.	District Security Aid	District Presch. Ed Aid	District Payment Total	State Non-Pub Aid	State Adjust. Aid	Grand Total
BERGEN 0430-BOGOTA BORO	3.0	0	32,035	0	56	0	32,091	0		32,091
BERGEN 1230-EAST RUTHERFORD BORO	2.0	0	35,610	3,089	99	0	38,798	0		38,798
ESSEX 1210-EAST ORANGE	2.0	0	8,656	0	71	0	8,727	8,727		17,454
ESSEX 2330-IRVINGTON TOWNSHIP	3.0	0	28,476	0	524	0	29,000	0		29,000
ESSEX 2730-LIVINGSTON TWP	3.0	0	64,534	4,731	52	0	69,317	0		69,317
ESSEX 3570-BENNAH CITY	1.0	0	14,034	0	460	0	14,494	0		14,494
ESSEX 3750-RUTLEY TOWN	1.0	0	9,937	0	17	0	9,954	0		9,954
ESSEX 3880-CITY OF ORANGE TWP	1.0	0	7,830	0	61	0	7,891	0		7,891
ESSEX 4900-SOUTH ORANGE-MAPLEWOOD	3.0	0	36,312	0	50	0	36,362	0		36,362
HUDSON 0220-BAYONNE CITY	1.0	0	13,994	4,147	17	0	18,158	0		18,158
MIDDLESEX 4130-FISCATAWAY TWP	1.0	0	8,368	0	33	0	8,401	0		8,401
MIDDLESEX 4910-SOUTH PLAINFIELD BORO	2.0	0	38,681	4,478	160	0	43,319	0		43,319
MORRIS 0450-BOONTON TOWNSHIP	8.0	0	101,496	3,153	157	0	104,806	0		104,806
MORRIS 0630-BUTLER BORO	2.0	0	24,312	0	30	0	24,342	0		24,342
MORRIS 1090-DEWITTE TWP	6.0	0	77,488	0	108	0	77,596	0		77,596
MORRIS 1110-DOVER TOWNSHIP	3.0	0	38,379	4,166	452	0	42,997	0		42,997
MORRIS 1530-FLORHAM PARK BORO	1.0	0	13,139	0	18	0	13,157	0		13,157
MORRIS 2000-KANAWAT TWP	4.0	0	58,485	4,758	56	0	63,299	12,234		75,533
MORRIS 2380-JEFFERSON TWP	3.0	0	57,090	8,059	235	0	65,384	0		65,384
MORRIS 2460-KINNELON BORO	1.0	0	0	0	0	0	0	12,251		12,251
MORRIS 2870-MADISON BORO	1.0	0	22,073	2,019	17	0	24,109	0		24,109
MORRIS 3100-MENDHAM TWP	1.0	0	16,826	0	22	0	16,848	0		16,848
MORRIS 3340-MONTVILLE TWP	1.0	0	24,395	2,266	19	0	26,680	0		26,680
MORRIS 3380-MORRIS PLAINS BORO	6.0	0	80,898	0	108	0	81,006	0		81,006
MORRIS 3385-MORRIS SCHOOL DISTRICT	94.0	0	1,238,965	49,270	9,214	0	1,297,449	45,888		1,343,337
MORRIS 3410-MOUNT ARLINGTON BORO	1.0	0	13,368	0	78	0	13,446	0		13,446
MORRIS 3450-MOUNT OLIVE TWP	2.0	0	38,936	4,587	78	0	43,601	0		43,601
MORRIS 3950-PARSIPPANY-TROY HILLS TWP	17.3	0	207,950	3,828	264	0	212,052	25,086		237,138
MORRIS 4000-LONG HILL TWP	7.0	0	109,331	3,926	121	0	113,378	0		113,378
MORRIS 4330-RANDOLPH TWP	9.0	0	131,203	8,702	183	0	140,088	0		140,088

STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
DIVISION OF FINANCE
OFFICE OF SCHOOL FACILITIES AND FINANCE
FY 2017-18 STATE CHARTER SCHOOL AID
Final Enrollment Count

CHARTER=8050-UNITY CS

DISTRICT	K-12 Final Enroll	Presch. Enroll	District Equalize. Aid	District Sp Ed Categ.	District Security Aid	District Presch. Ed Aid	District Payment Total	State Non-Pub Aid	State adjust. Aid	Grand Total
MORRIS 4480-ROCKAWAY BORO	4.0	0	40,304	0	82	0	40,586	0		40,586
MORRIS 4490-ROCKAWAY TWP	1.0	0	25,962	3,361	17	0	29,340	0		29,340
MORRIS 4560-ROCHERY TWP	9.0	0	175,161	26,915	113	0	202,189	12,555		214,744
MORRIS 5220-WASHINGTON TWP	1.0	0	23,911	4,059	78	0	28,048	0		28,048
MORRIS 5770-NEARTON BORO	5.0	0	53,540	3,419	86	0	57,045	0		57,045
PASSAIC 0220-BLOOMINGDALE BORO	6.0	0	106,212	6,370	73	0	112,655	0		112,655
PASSAIC 2100-LITTLE FALLS TWP	1.0	0	20,588	2,557	14	0	23,159	0		23,159
ROMERSETT 0310-BIRMINGHAM TWP	1.0	0	10,328	0	18	0	10,346	0		10,346
ROMERSETT 0565-BRIDGEMAN-HARTMAN REG	1.0	0	11,084	0	71	0	11,155	0		11,155
ROMERSETT 6410-HARDEN TWP	2.0	0	33,584	0	40	0	33,624	0		33,624
RUSSELL 3930-HAMBURG BORO	1.0	0	12,364	0	68	0	12,432	0		12,432
RUSSELL 4900-SPARTA TWP	1.0	0	18,018	0	126	0	18,144	0		18,144
UNION 1120-ELIZABETH CITY	2.6	0	31,451	4,337	171	0	35,959	0		35,959
UNION 2155-HILLSIDE TWP	1.0	0	20,040	4,330	16	0	24,386	0		24,386
UNION 4150-PLAINFIELD CITY	4.0	0	31,380	0	226	0	31,606	0		31,606
UNION 4820-ROSELIE BORO	4.0	0	50,802	4,473	60	0	55,335	0		55,335
UNION 5020-SUMMIT CITY	1.0	0	10,779	0	17	0	10,796	0		10,796
UNION 5250-UNION TWP	2.0	0	18,712	0	38	0	18,750	0		18,750
STATE									5,472	5,472
CHARTER	237.9	0	3,247,231	171,000	14,074	0	3,432,305	116,741	5,472	3,554,518
	237.9	0	3,247,231	171,000	14,074	0	3,432,305	116,741	5,472	3,554,518

N = 49

Total N = 49

STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
 DIVISION OF FINANCE
 OFFICE OF SCHOOL FACILITIES AND FINANCE
 FY 2017-18 STATE CHARTER SCHOOL AID
 Final Enrollment Count

CHARTER=6036-HOLA KOBOKEN DUAL LANG CS

DISTRICT	K-12 Final Enroll	Presch. Final Enroll	District Equaliza. Aid	District Sp Ed Categ.	District Security Aid	District Presch. Ed Aid	District Payment Total	State Non-Pub Aid	State Adjust. Aid	Grand Total
BERGEN 2740-LODI BOROUGH	1.0	0	8,597	0	18	0	8,615	0	0	8,615
BERGEN 4610-SADDLE BROOK TWP	1.0	0	20,411	2,634	19	0	23,064	0	0	23,064
BERGEN 5830-WOOD-RIDGE BORO	1.0	0	9,884	0	15	0	9,899	0	0	9,899
ESSEX 0660-CALDWELL-WEST CALDWELL	0.8	0	16,717	1,500	13	0	18,230	0	0	18,230
ESSEX 3750-RUTLEY TOWN	3.0	0	29,811	0	50	0	29,861	0	0	29,861
HUDSON 0220-BAYONNE CITY	6.0	0	48,951	0	395	0	49,346	0	0	49,346
HUDSON 2210-KOBOKEN CITY	301.2	0	3,280,323	74,827	32,648	0	3,387,798	11,723	0	3,399,521
HUDSON 2390-JERSEY CITY	39.2	0	323,431	16,133	4,242	0	343,806	0	0	343,806
HUDSON 3610-NORTH BERGEN TWP	2.0	0	21,474	0	361	0	21,835	0	0	21,835
HUDSON 4730-SECAUCUS TOWN	4.0	0	41,348	0	61	0	41,409	0	0	41,409
HUDSON 5240-UNION CITY	3.0	0	40,117	5,218	593	0	45,928	0	0	45,928
HUDSON 5580-WEHAWKEN TWP	12.0	0	116,866	3,739	956	0	121,561	0	0	121,561
HUDSON 5670-WEST NEW YORK TOWN	1.0	0	7,422	0	64	0	7,486	0	0	7,486
MERCER 1245-EAST WINDSOR REGIONAL	1.0	0	9,712	0	33	0	9,745	0	0	9,745
PASSAIC 2100-HAWTHORNE BORO	1.0	0	10,118	0	17	0	10,135	0	0	10,135
UNION 1320-ELIZABETH CITY	2.0	0	26,599	4,337	132	0	31,068	0	0	31,068
UNION 5090-SUMMIT CITY	4.0	0	60,244	3,436	69	0	63,749	0	0	63,749
STATE									57,480	57,480
CHARTER	383.2	0	4,072,025	111,824	39,686	0	4,223,535	11,723	57,480	4,292,738
	383.2	0	4,072,025	111,824	39,686	0	4,223,535	11,723	57,480	4,292,738

N = 18
 Total N = 18

STATE OF NEW JERSEY -- DEPARTMENT OF EDUCATION
DIVISION OF FINANCE
OFFICE OF SCHOOL FACILITIES AND FINANCE
FY 2017-18 STATE CHARTER SCHOOL AID
Final Enrollment Count

CHARTER=7330-NORTH STAR ACADEMY CHART

DISTRICT	K-12 Final Enroll	Presch. Final Enroll	District Equaliza. Aid	District Sp Ed Categ.	District Security Aid	District Presch. Ed Aid	District Payment Total	State Non-Pub Aid	State Adjunt. Aid	Grand Total
ESSEX 0250-BELLEVILLE TOWN	1.0	0	6,887	0	16	0	6,903	0		6,903
ESSEX 0410-BLOOMFIELD TWP	2.0	0	25,658	0	682	0	26,340	0		26,340
ESSEX 1210-EAST ORANGE	35.4	0	430,522	4,383	13,089	0	447,994	0		447,994
ESSEX 2330-IRVINGTON TOWNSHIP	40.0	0	487,843	14,349	13,123	0	515,315	0		515,315
ESSEX 3570-NEWARK CITY	4834.3	0	68,257,474	1271970	1940271	0	71,469,715	0		71,469,715
ESSEX 1880-CITY OF ORANGE TWP	18.0	0	224,655	3,737	7,506	0	235,898	0		235,898
ESSEX 4900-SOUTH ORANGE-MAPLEWOOD	4.0	0	54,954	0	208	0	55,162	0		55,162
HUDSON 2390-JERSEY CITY	1.0	0	6,912	0	68	0	6,980	0		6,980
MIDDLESEX 0750-CARTERET BORO	1.0	0	10,883	0	154	0	11,037	0		11,037
MIDDLESEX 3140-MIDDLESEX BORO	2.0	0	27,170	0	173	0	27,343	0		27,343
MIDDLESEX 5850-WOODBRIDGE TWP	2.2	0	27,578	0	267	0	27,845	0		27,845
MORRIS 1530-FLORENCE PARK BORO	1.0	0	19,206	0	20	0	19,226	0		19,226
UNION 1320-ELIZABETH CITY	1.0	0	12,131	0	452	0	12,583	0		12,583
UNION 2190-HILLSIDE TWP	7.0	0	86,701	0	598	0	87,299	0		87,299
UNION 2660-LINDEN CITY	5.0	0	78,163	0	566	0	78,729	0		78,729
UNION 4540-ROSELLE BORO	1.0	0	14,421	0	102	0	14,523	0		14,523
UNION 5290-UNION TWP	3.0	0	42,102	0	258	0	42,360	0		42,360
STATE									5,524,215	5,524,215
CHARTER	4958.9	0	69,813,260	1294439	1977553	0	73,085,252	0	5,524,215	78,609,467
	4958.9	0	69,813,260	1294439	1977553	0	73,085,252	0	5,524,215	78,609,467

N = 18
Total N = 18

STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
DIVISION OF FINANCE
OFFICE OF SCHOOL FACILITIES AND FINANCE
FY 2017-18 STATE CHARTER SCHOOL AID
Final Enrollment Count

CHARTER=7325-TEAM ACADEMY CHARTER SCH

DISTRICT	K-12 Final Enroll	Presch. Final Enroll	District Equaliza. Aid	District Sp Ed Categ.	District Security Aid	District Presch. Ed Aid	District Payment Total	State Non-Pub Aid	State adjust. Aid	Grand Total
ESSEX 0250-BELLERVILLE TOWN	3.0	0	22,039	0	47	0	22,085	0		22,085
ESSEX 0410-BLOOMFIELD TWP	2.0	0	23,252	0	682	0	23,934	0		23,934
ESSEX 0660-CALDWELL-WEST CALDWELL	1.0	0	15,273	0	34	0	15,307	0		15,307
ESSEX 1210-EAST ORANGE	78.6	0	1,025,053	26,425	30,562	0	1,082,040	0		1,082,040
ESSEX 2330-IRVINGTON TOWNSHIP	139.1	0	1,786,345	65,937	50,180	0	1,902,462	0		1,902,462
ESSEX 3570-NEWARK CITY	3739.5	0	54,587,546	1583713	1562225	0	57,733,484	0		57,733,484
ESSEX 3880-CITY OF ORANGE TWP	30.5	0	366,963	14,949	10,403	0	392,315	0		392,315
MIDDLESEX 4090-PERTH AMBOY CITY	2.0	0	34,562	5,390	578	0	40,530	0		40,530
SUSSEX 2240-NOPATCONG	1.0	0	16,894	0	353	0	17,247	0		17,247
UNION 1320-ELIZABETH CITY	4.0	0	38,009	0	650	0	38,659	0		38,659
UNION 2190-HILLSIDE TWP	18.0	0	226,752	8,660	1,166	0	236,578	0		236,578
UNION 2660-LINDEN CITY	6.0	0	96,419	3,746	485	0	100,650	0		100,650
UNION 4290-RAHWAY CITY	2.0	0	22,250	0	222	0	22,472	0		22,472
UNION 4540-ROSELLE HORO	6.5	0	89,335	2,236	447	0	92,018	0		92,018
UNION 5290-UNION TWP	10.0	0	139,917	4,416	794	0	145,127	0		145,127
STATE									4,969,093	4,969,093
CHARTER	4043.2	0	58,490,608	1715472	1658928	0	61,864,908	0	4,969,093	66,834,001
	4043.2	0	58,490,608	1715472	1658928	0	61,864,908	0	4,969,093	66,834,001

N = 16
Total N = 16

EXHIBIT B

2017-18

PLAINFIELD CHARTER SCHOOL FACTS

ENROLLMENT

5 CHARTER SCHOOLS



Students Served 1,910
Waitlist Students 517

- ★ **College Achieve Central Charter School's** (K-9) mission is to prepare students to excel and graduate from the top colleges and universities in the nation.
- ★ **Cresthaven Academy Charter School's** (K-1) mission is to provide a comprehensive, high-quality education that develops the whole child through academic excellence, physical wellness, emotional health, and character enrichment.
- ★ **The Barack Obama Green Charter High School's** (9-12) mission is to prepare students to become informed, engaged and independent critical thinkers and to inspire leaders for sustainable development with a focus on our environment.

- ★ **The Queen City Academy Charter School's** (K-8) mission is to provide a nurturing and cooperative learning community where each student can achieve his/her maximum academic, creative and physical potential.
- ★ **Union County TEAMS (Technology, Engineering, Architecture, Mathematics and Science) Charter School** (K-12) is a small learning community where all students achieve high academic standards by using the built environment as a learning laboratory. Students gain the tools and confidence necessary for successful post-secondary education, entrepreneurship, and the world of work.

IN THE 2017-18 SCHOOL YEAR...

19%

of public school students are attending Plainfield charter schools.

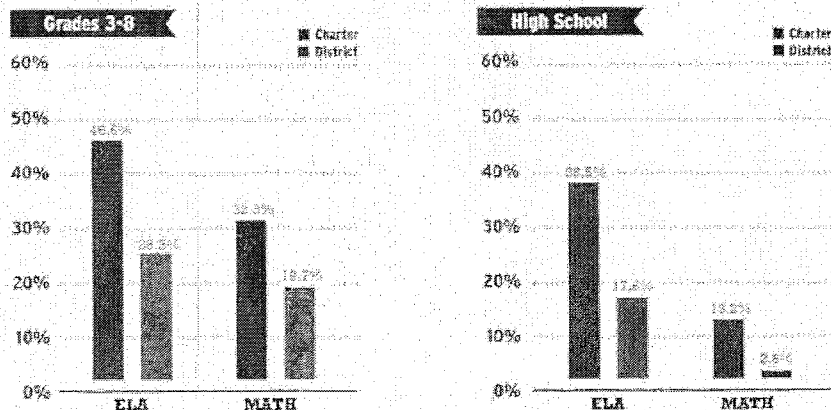
82%

On average, charter schools in Plainfield receive 82% of per pupil funding compared to Plainfield district schools.

PERFORMANCE

PLAINFIELD CHARTER SCHOOLS CONTINUE TO OUTPERFORM TRADITIONAL DISTRICT SCHOOLS

2016-17 Overall Student Achievement (Proficiency Rates)



GRADUATION RATE*

90%

CHARTER

74%

DISTRICT

Plainfield charter high schools are graduating 90% of students within 4 years compared to 74% in Plainfield district schools.

*2017 graduation rate

KEY DEMOGRAPHICS

37% Black
62% Hispanic
71% Economically Disadvantaged
9% Students with Disabilities
13% English Language Learners

CHARTER SCHOOLS BY GRADES SERVED

1 Elementary School
1 K-8 Schools
2 K-12 School
1 High School

NEW JERSEY CHARTER SCHOOLS ASSOCIATION

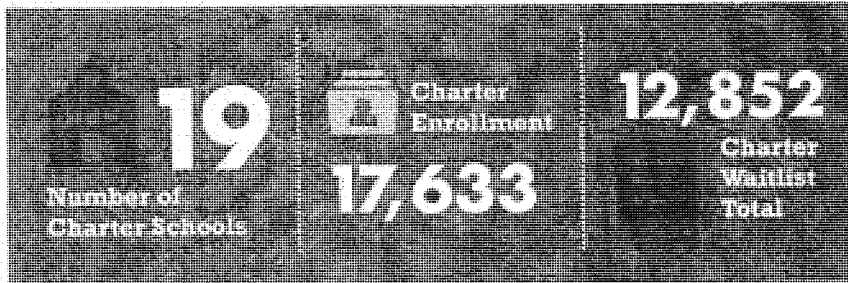
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2017-18

NEWARK CHARTER SCHOOL FACTS

ENROLLMENT



IN THE 2017-18
SCHOOL YEAR...

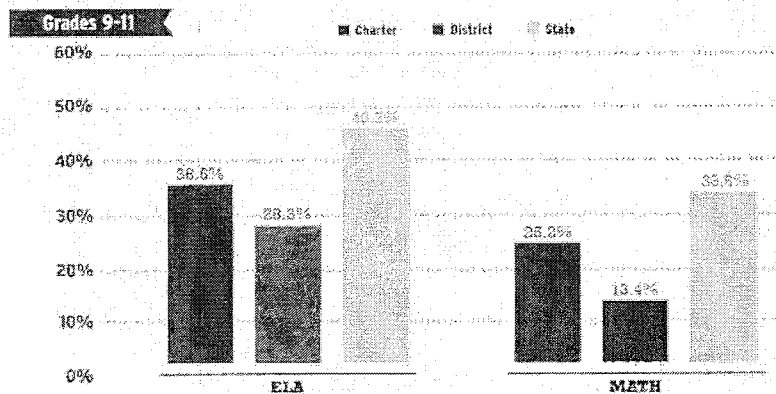
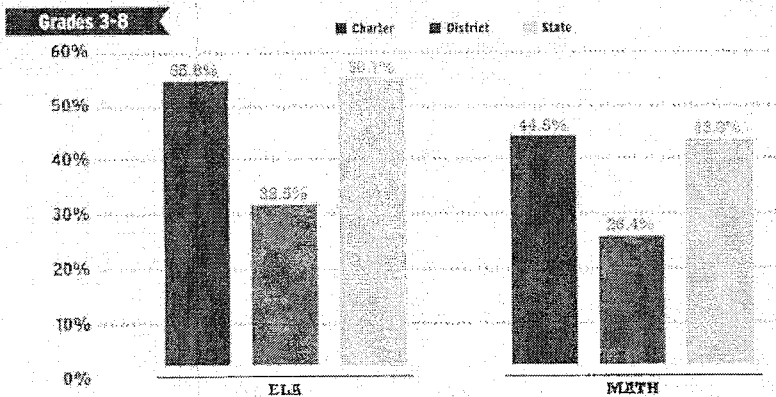
34%

of public school students
are attending Newark
charter schools

PERFORMANCE

**NEWARK CHARTER SCHOOLS OUTPERFORMED THE STATE AVERAGE IN MATH (3-8);
NEWARK CHARTERS CONTINUE TO OUTPACE NEWARK DISTRICT SCHOOLS**

2016-17 Overall Student Achievement (Proficiency Rates)



GRADUATION RATE*

81%

CHARTER

78%

DISTRICT

Newark charter high
schools are graduating
81% of students within 4
years compared to 78%
in Newark district schools.

*2017 graduation rate

In 2015, Stanford University's CREDO study found that Newark's charter sector was the second highest performing in the country.

KEY DEMOGRAPHICS

82%
Black

16%
Hispanic

83%
Economically
Disadvantaged

11%
Students with
Disabilities

1%
English Language
Learners

CHARTER SCHOOLS BY GRADES SERVED

3
Elementary
Schools

2
Middle
Schools

7
K-8
Schools

3
High
Schools

4
K-12
School

*4 charter schools are also serving PreK students

ACCESS AND EQUITY

WEIGHTED LOTTERIES: **13** CHARTER SCHOOLS (90% of charter enrollment)

are implementing weighted lotteries to serve more economically disadvantaged and special needs students through Newark's universal enrollment system.

SPECIAL EDUCATION ENROLLMENT:

11%

The percentage of Newark charter schools serving students with disabilities has doubled since 2009 to 11% in 2017.

SCHOOLS

STUDENTS

★ Achieve Community Charter School (K-1)	65
★ Discovery Charter School (4-8)	100
★ Gray Charter School (K-8)	347
★ Great Oaks Legacy Charter School (PreK-12)	1,451
★ Lady Liberty Academy Charter School (K-8)	455
★ LEAD Academy Charter School (9-12)	119
★ Link Community Charter School (5-8)	288
★ Maria L. Varisco-Rogers Charter School (K-8)	540
★ Marion P. Thomas Charter School (K-12)	1,386
★ M.E.T.S. Charter School (9-12)	217
★ New Horizons Community Charter School (K-7)	597
★ Newark Educators' Community Charter School (PreK-5)	299
★ North Star Academy Charter School (Uncommon) (K-12)	5,017
★ People's Preparatory Charter School (9-12)	375
★ Philip's Academy Charter School (PreK-8)	439
★ Robert Treat Academy Charter School (K-8)	682
★ Roseville Community Charter School (K-4)	328
★ TEAM Academy Charter School (KIPP NJ) (K-12)	4,045
★ University Heights Charter School (PreK-8)	883

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2017-18

JERSEY CITY CHARTER SCHOOL FACTS

ENROLLMENT

12 CHARTER SCHOOLS



Students Served **6,240**

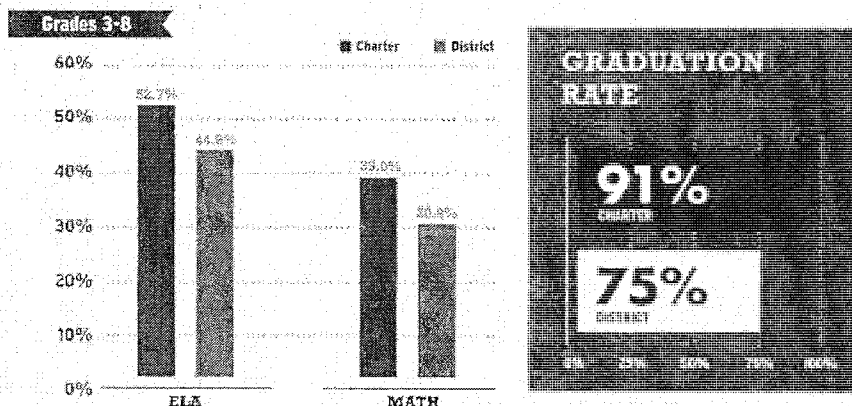
Waitlist Students **5,325**

- ★ BelovED Community Charter School (K-7)
- ★ Dr. Lena Edwards Academic Charter School (K-8)
- ★ Empowerment Academy Charter School (K-3)
- ★ Great Futures Charter High School for the Health Sciences (9-12)
- ★ Jersey City Community Charter School (K-8)
- ★ Jersey City Global Charter School (K-6)
- ★ Jersey City Golden Door Charter School (PreK-8)
- ★ Learning Community Charter School (PreK-8)
- ★ METS Charter School (6-12)
- ★ Soaring Heights Charter School (K-8)
- ★ The Ethical Community Charter School (K-8)
- ★ University Academy Charter High School (9-12)

PERFORMANCE

JERSEY CITY CHARTER SCHOOLS CONTINUE TO OUTPERFORM JERSEY CITY DISTRICT SCHOOLS

2016-17 Overall Student Achievement (Proficiency Rates)



KEY DEMOGRAPHICS



CHARTER SCHOOLS BY GRADES SERVED



IN THE 2017-18 SCHOOL YEAR...

19%

of public school students attending Jersey City charter schools

63%

Jersey City charter schools are among the lowest funded public schools in the state. On average, charter schools receive 63% of per pupil funding compared to Jersey City district schools.

FOCUS ON DIVERSITY*

3 out of the TOP 10 MOST DIVERSE

Jersey City charter schools include some of the most racially/ethnically diverse schools in the entire state.

3 out of the top 10 most diverse public schools in NJ are Jersey City charter schools (out of 2,512 schools).

*A racially/ethnically diverse student population is defined as a school(s) having a higher Diversity Index score. The Index measures this by computing the probability that any two students selected at random will belong to the same ethnic group. That probability is then normalized to produce a number between 0 and 1 with numbers closer to 0 representing lower diversity and numbers closer to 1 representing more diversity. Learning Community CS, The Ethical Community CS, and BelovED Community CS rank in the top 10 in the entire state (out of 2,512 total schools).

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2017-18

CAMDEN CHARTER SCHOOL FACTS

ENROLLMENT

5 CHARTER SCHOOLS



Students Served **5,122**
Waitlist Students **2,693**

- ★ **Camden's Promise Charter School (K-12)** is part of the Camden Charter School Network (CCSN) which includes 4 campuses throughout the city. CCSN schools focus on foundational skills, character education, a rigorous college-prep curriculum, and strong partnerships between the school, family, and the community.
- ★ **Environment Community Opportunity (ECO) Charter School (K-6)** ensures that all students develop strong roots, achieving excellence through rigor, relevance, and reflection. ECO nurtures students to become adept learners, community leaders, and environmental stewards.
- ★ **Freedom Prep Charter School (K-12)**, part of the Democracy Prep charter school network, seeks to educate responsible citizen-scholars for success in

the college of their choice and a life of active citizenship. In 2012, NJDOE approved Democracy Prep to turn around Freedom Academy Charter School, a perennially low-performing school in Camden, New Jersey.

- ★ **Hope Community Charter School (K-4)** provides a safe, caring, literacy rich learning environment for our students. Hope believes a whole school focus on language acquisition and development can transform a child's life.
- ★ **LEAP Academy Charter School (K-12)** utilizes a rigorous college-preparatory STEM curriculum to ensure students are ready to meet the challenges of the 21st Century. As a holistic community school, LEAP also provides services (early childhood education, physical therapy, mental health counseling, medical support, and health and wellness) to its families from birth through adulthood.

IN THE 2017-18 SCHOOL YEAR...

31%

of public school students are attending Camden charter schools.

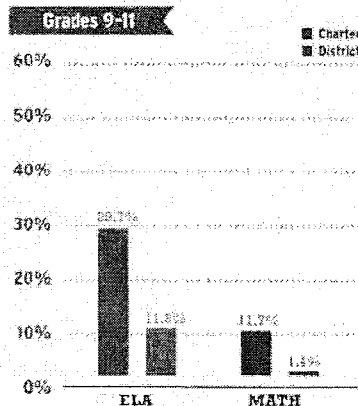
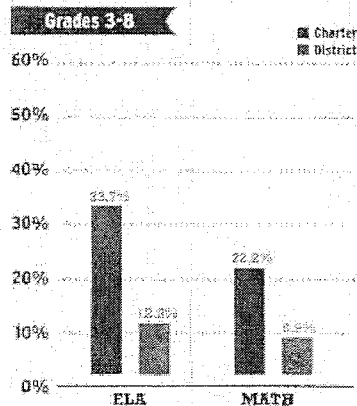
66%

On average, charter schools in Camden receive 66% of per pupil funding compared to Camden district schools.

PERFORMANCE

CAMDEN CHARTER SCHOOLS CONTINUE TO OUTPERFORM TRADITIONAL DISTRICT SCHOOLS

2016-17 Overall Student Achievement (Proficiency Rates)



GRADUATION RATE*

98%

CHARTER

66%

DISTRICT

Camden charter high schools are graduating 98% of students within 4 years compared to 66% in Camden district schools.

*2017 graduation rate

KEY DEMOGRAPHICS

38% Black
60% Hispanic
89% Economically Disadvantaged
12% Students with Disabilities
7% English Language Learners

CHARTER SCHOOLS BY GRADES SERVED

1 Elementary School
1 K-6 Schools
3 K-12 Schools

NEW JERSEY CHARTER SCHOOLS ASSOCIATION

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2017-18

PATERSON CHARTER SCHOOL FACTS

ENROLLMENT

6 CHARTER SCHOOLS



Students Served 3,753

Waitlist Students 3,179

- ★ **College Achieve Paterson Charter School** (K-1, 5-6) prepares its students to excel and graduate from the top colleges and universities in the nation.
- ★ **Community Charter School of Paterson (K-8)** is a full-service community school that provides an array of services designed to remove barriers to learning and promote student and family success.
- ★ **John P. Holland Charter School (K-8)** focuses on individualized learning, a strong applied arts program, character education, and community service and involvement.
- ★ **Paterson Arts and Science Charter School (K-9)** provides students with a high-quality STEAM-

based education in a digital learning environment to empower students to succeed in college and careers.

- ★ **Paterson Charter School for Science & Technology (K-12)** is the longest running and only K-12 charter school in the City of Paterson that offers 12 AP courses to ensure that students are ready for the rigors of college.

- ★ **Philip's Academy Charter School of Paterson (K-1)** provides students with a moral and rigorous education that embraces differentiated instruction to allow students to attend college, and develop a commitment to global citizenship, environmental sustainability, and personal virtue.

IN THE 2017-18 SCHOOL YEAR...

13%

of public school students attending Paterson charter schools

84%

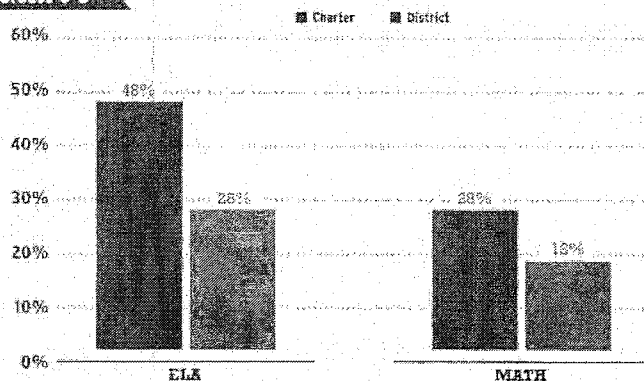
On average, charter schools in Paterson receive 84% of per pupil funding compared to Paterson district schools.

PERFORMANCE

PATERSON CHARTER SCHOOLS CONTINUE TO OUTPERFORM TRADITIONAL DISTRICT SCHOOLS

2016-17 Overall Student Achievement (Proficiency Rates)

Grades 3-8



GRADUATION RATE*

97%
CHARTER

88%
DISTRICT

Paterson charter high schools are graduating 97% of students within 4 years compared to 88% in Paterson district schools.

KEY DEMOGRAPHICS

34%
Black

62%
Hispanic

81%
Economically Disadvantaged

8%
Students with Disabilities

4%
English Language Learners

CHARTER SCHOOLS BY GRADES SERVED

1
Elementary School

3
K-8 Schools

1
K-9 School

1
K-12 School

NEW JERSEY CHARTER SCHOOLS ASSOCIATION

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DUANE MORRIS LLP

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Telephone: (856) 874-4200

*Attorneys for Intervenor-Movants,
New Jersey Charter School Association, Inc., BelovED Community Charter School,
Tafshier Cosby, Ana Maria De La Roche Araque and Diane Gutierrez*

LATINO ACTION NETWORK, ET AL.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	
	:	MERCER COUNTY
v.	:	
	:	Docket No. L-1076-18
STATE OF NEW JERSEY, ET AL,	:	
	:	CIVIL ACTION
Defendants.	:	
	:	CERTIFICATION OF DIANE
	:	GUTIERREZ IN SUPPORT OF MOTION
	:	TO INTERVENE
	:	
	:	

The undersigned, of full age, hereby certifies:

1. My name is Diane Gutierrez. I am a parent and resident of the State of New Jersey.
2. I live at 31 South Broad Street in Trenton, New Jersey with my two (2) minor children, each of whom does attend or has attended a public charter school in New Jersey.
3. My children have been attending Foundation Academy Charter School (“Foundation Academy”) since August 2012. Our family actively decided to enroll our children in the school and they are thriving at the school.

4. I chose Foundation Academy because we had some concerns with the school my children had been attending, a traditional district school. In particular, one of my children has high functioning autism, and we found the environment at his previous school to be too chaotic for him. The school wanted to handle my son's disability informally, rather than taking a professional approach to evaluating and developing behavioral plans to address and support his high functioning autism. In contrast, at Foundation Academy, we were able to work with his teachers to get him evaluated and develop the appropriate 504 Plan for him. He has thrived at Foundation Academy. Additionally, we did not believe that our daughter was being sufficiently challenged academically at her prior school.

5. We learned about the lottery for Foundation Academy from a friend who had similar concerns about traditional public schools and who had moved her children to Foundation Academy as a result. There are thousands of children on waitlists for charter schools, including Foundation Academy. We heard that Foundation differed from the traditional district school in that it was more structured, and that students were taught traditional values like respect, caring, responsibility and honesty.

6. We had decided that if we were unable to find a better school for our children that we would have to leave our home and move out of Trenton. We were not in a position to consider sending our children to a private school. After entering the lottery and securing seats at Foundation Academy, we decided to enroll our children there.

7. We have been very pleased with the education our children have received at Foundation Academy. As a charter school, Foundation Academy has the ability to give students a solid foundation and focus on college preparation. The school also has a very strong music

program in which all students participate in orchestra and learn to play an instrument. The music program is unlike any we have seen in traditional district public schools. In addition, the parents at Foundation Academy are active in the school community. At our previous school, the parent group was not sufficiently inclusive, particularly of Spanish-speaking families. At Foundation, all parents are included. The school retains more Spanish-speaking staff, especially in lower grades to help ease transition into the school from Spanish-speaking homes. In addition, parent involvement is welcomed and supported.

8. I know that a legal challenge was mounted against the State of New Jersey in a lawsuit which includes allegations that: the residency-based public education system in New Jersey violates the New Jersey constitution's and Civil Rights Act's prohibitions against racial and ethnic discrimination in the public schools; the New Jersey Charter School Program Act's (NJCSA) residency preference mandate in charter school lottery admission procedures exacerbates segregation; and that the Commissioner of Education has, in authorizing charter schools, exacerbated segregation in the public schools (the "Litigation").

9. I have also learned that if successful, the plaintiffs in the Litigation may seek significant changes to the New Jersey Charter School Program Act that could materially alter the Foundation Academy and could impact the educational environment that has been developed there and the education that my child receives. I believe that such changes, including ones that affect enrollment policies and how charter schools are authorized, could significantly harm students at Foundation Academy and other New Jersey public charter schools.

10. I make this affidavit in support of my motion to intervene in this Litigation, the outcome of which could adversely impact my ability to ensure that my children continue to

receive an education in a public charter school that we believe is in the best interest of our children.

11. I do not believe that the State should be permitted to discriminate against students on the basis of race or ethnicity. However, it has not been not my experience that public charter schools exacerbate segregation or otherwise discriminate on the basis of race or ethnicity by implementing the residency preference mandate admissions procedures mandated as part of the NJCSPA.

12. Foundation Academy and our former, traditional public school serve a similar community of students. In both schools, the majority of students are African-American and Hispanic, with a smaller number of students of other races and ethnicities.

13. Public charter schools operate differently than traditional public schools and public school districts. Families choose to send a child to a public charter school based upon the unique mission and educational program of the school. We chose Foundation Academy because we believed that our children would receive a better education and that the educational environment there was better suited for our children's and our family's needs.

14. The counsel that represents the State of New Jersey cannot adequately defend parents who have a specific interest in seeing the continued operation of New Jersey public charter schools, which may not be shared with the broad constituencies that the Attorney General is required to represent in this Litigation.

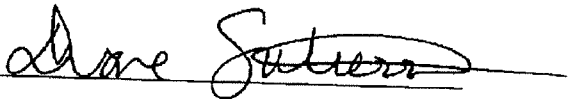
15. Without conceding that Plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to send my child to a public charter school and

ensure that the distinct nature of public charter schools are considered in the litigation of claims that directly challenge the NJCSPA. These rights may be adversely affected if Plaintiffs succeed.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 17, 2019

DIANE GUTIERREZ

By: 

4. I chose KIPP RISE because we were unhappy with the traditional district public school in our community after a leadership change. As a family, we were committed to enrolling our son in a community school but the district public school was not working for him. The environment at his prior school was too distracting for our son, who was eventually diagnosed with ADD and who needed a better curriculum and more structure. As more of the people in our community learned about public charter school options, more students began to leave the traditional district public school.

5. We found that KIPP RISE and NCA had strong leaders and a better curriculum. We also learned that students at the charter schools performed better academically. When we enrolled our son at KIPP RISE and NCA, we found that as a charter school, it is able to be more innovative with its curriculum and tailor it to the needs of students like our son. When we saw the need for a new club, the school was able to support the creation of it and our son was able to participate. The dedication of the teachers is also important. At KIPP RISE and NCA, everyone is treated like family and teachers give you their direct phone number to call. We also found the environment to be less chaotic than his previous school.

6. One of the other reasons we selected KIPP RISE and NCA was because they were within our community, which was important to us. KIPP RISE and NCA were still in safe walking distance from our home. Even though it is a public charter school, it was not a longer distance from our home than his previous school.

7. In addition to being a safe school within our community, KIPP RISE and NCA allowed us to be engaged parents. As a charter school, the leadership at KIPP RISE and NCA was able to dedicate resources to parent involvement. At my son's previous school, after a new

principal was put in place, the commitment to parent engagement declined. At KIPP RISE and NCA, the schools developed parent partnership teams. Leadership supported and devoted resources to parent professional development. The school understands and respects the important role parents play in their child's education.

8. I know that a legal challenge was mounted against the State of New Jersey in a lawsuit which includes allegations that: the residency-based public education system in New Jersey violates the New Jersey constitution's and Civil Rights Act's prohibitions against racial and ethnic discrimination in the public schools; the New Jersey Charter School Program Act's (NJCSPA) residency preference mandate in charter school lottery admission procedures exacerbates segregation; and that the Commissioner of Education has, in authorizing charter schools, exacerbated segregation in the public schools (the "Litigation").

9. I have also learned that if successful, the plaintiffs in the Litigation may seek significant changes to the New Jersey Charter School Program Act that could materially alter the KIPP RISE and NCA and could impact the educational environment that has been developed there and the education that my child received. I believe that such changes, including ones that affect enrollment policies and how charter schools are authorized could significantly harm students at KIPP RISE and NCA and other New Jersey public charter schools.

10. I make this affidavit in support of my motion to intervene in this Litigation, the outcome of which could adversely impact my ability to ensure that children in my community continue to receive an education in a public charter school that we believe is in the best interest of our children.

11. I do not believe that the State should be permitted to discriminate against students on the basis of race or ethnicity. However, it has not been not my experience that public charter schools exacerbate segregation or otherwise discriminate on the basis of race or ethnicity by implementing the residency preference mandate admissions procedures mandated as part of the NJCSPA.

12. KIPP RISE and NCA and the school my son previously attended serve a similar community of students. In both schools, the majority of students are African-American. We live in a Newark ward where the majority of families are African-American. However, at KIPP RISE and NCA, unlike my son's prior school, he was able to attend school with students from outside Newark. He attended class with students from East Orange and Irvington. This geographic diversity would not have been possible in his prior school.

13. Public charter schools operate differently than traditional public schools and public school districts. Families choose to send a child to a public charter school based upon the unique mission and educational program of the school. We chose KIPP RISE and NCA because we believed that our children would receive a better education and that the educational environment there was better suited for our children's and our family's needs.

14. The counsel that represents the State of New Jersey cannot adequately defend parents who have a specific interest in seeing the continued operation of New Jersey public charter schools, which may not be shared with the broad constituencies that the Attorney General is required to represent in this Litigation.

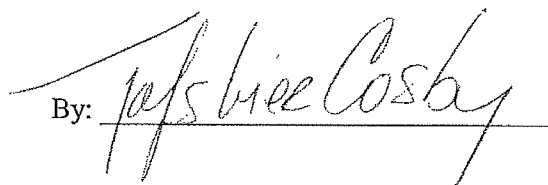
15. Without conceding that Plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to send my child to a public charter school and

ensure that the distinct nature of public charter schools are considered in the litigation of claims that directly challenge the NJCSPA. These rights may be adversely affected if Plaintiffs succeed.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 17, 2019

TAFSHIER COSBY

By: A handwritten signature in cursive script, reading "Tafshier Cosby", is written over a horizontal line. The signature is written in dark ink.

4. We began to consider public school options when my son began to approach school age. We looked at a number of schools that were within twenty (20) miles of our home. We visited HIACS and ultimately decided to apply at HIACS, which is in East Brunswick – not in the municipal district where we reside. However, the school had more applicants than there were seats available and my son was placed on the waitlist. He began kindergarten at a traditional Edison district school. He had a very bad experience during the first few weeks and we began looking for another school again.

5. We were notified that there was an opening at HIACS and we enrolled our son in the school. When it was time for my daughter to begin school, we chose HIACS for her as well.

6. One of the reasons we chose HIACS over other public school options in the Edison district is because HIACS runs a full day kindergarten program and in the Edison schools, the program was only half day. We believed that our child would benefit from the additional time in school. We appreciate that even though we do not live in East Brunswick, we have been able to cross geographic boundaries and choose the school that is good for our children.

7. We also believe that HIACS provides our children with a diverse educational environment that they would not have been able to experience in a traditional Edison district school. HIACS is part of the Diverse Charter School Coalition. The mission at HIACS is to develop inquiring, knowledgeable and caring young citizens in order to promote a better and more peaceful world through intercultural understanding and respect. The school works to ensure that students from all cultures, religions and ethnicities will be able to exist within one

community while maintaining individual identities and pride. The school's mission to embrace diversity is one that we value.

8. HIACS serves a diverse student population. The school does a good job tailoring the education to each student's needs. The teachers are amazing and they never give up on a student and the goal of helping students achieve academically.

9. I know that a legal challenge was mounted against the State of New Jersey in a lawsuit which includes allegations that: the residency-based public education system in New Jersey violates the New Jersey constitution's and Civil Rights Act's prohibitions against racial and ethnic discrimination in the public schools; the New Jersey Charter School Program Act's (NJCSPA) residency preference mandate in charter school lottery admission procedures exacerbates segregation; and that the Commissioner of Education has, in authorizing charter schools, exacerbated segregation in the public schools (the "Litigation").

10. I have also learned that if successful, the plaintiffs in the Litigation may seek significant changes to the New Jersey Charter School Program Act that could materially alter the HIACS and could impact the educational environment that has been developed there and the education that my child receives. I believe that such changes, including ones that affect enrollment policies and how charter schools are authorized could significantly harm students at HIACS and other New Jersey public charter schools.

11. Specifically, HIACS is a diverse charter school that maintains a mission of serving a diverse array of students from different cultures, religions and ethnicities. The school is able to pursue this mission in part because of the autonomy and flexibility it has under the

NJCSPA. If this Litigation results in changes to the NJCSPA that make it more difficult or prevent HIACS from pursuing its diverse student mission, it will directly impact my children.

12. I make this affidavit in support of my motion to intervene in this Litigation, the outcome of which could adversely impact my ability to ensure that my child continues to receive an education in a public charter school that we believe is in the best interest of our children.

13. I do not believe that the State should be permitted to discriminate against students on the basis of race or ethnicity. However, it has not been not my experience that public charter schools exacerbate segregation or otherwise discriminate on the basis of race or ethnicity by implementing the residency preference mandate admissions procedures mandated as part of the NJCSPA.

14. HIACS shows that diversity and integration can indeed be accomplished in public charter schools.

15. Public charter schools operate differently than traditional public schools and public school districts. Families choose to send a child to a public charter school based upon the unique mission and educational program of the school. We chose HIACS because we believed that our children would receive a better education and that the educational environment there was better suited for our children's and our family's needs.

16. The counsel that represents the State of New Jersey cannot adequately defend parents who have a specific interest in seeing the continued operation of New Jersey public charter schools, which may not be shared with the broad constituencies that the Attorney General is required to represent in this Litigation.

17. Without conceding that Plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to send my child to a public charter school and ensure that the distinct nature of public charter schools are considered in the litigation of claims that directly challenge the NJCSPA. These rights may be adversely affected if Plaintiffs succeed.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 17, 2019

ANA MARIA DE LA ROCHE ARAQUE

By

