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December 22, 2016

Kimberley Harrington  
Acting Commissioner  
NJ Department of Education  
100 River View Plaza  
PO Box 500  
Trenton, NJ 08625  
Fax: 609.777.4099

Re: Red Bank Charter School's Renewal Application

Dear Commissioner Harrington:

The American Civil Liberties Union of New Jersey Foundation (ACLU-NJ), on behalf of Latino Coalition of New Jersey and Fair Schools Red Bank, provides this letter to supplement the organizations' previous submission to this office (*see* Letter dated November 15, 2016, with attached complaint to the United States Department of Justice) regarding its review of the Red Bank Charter School's renewal application.

The Latino Coalition of New Jersey and Fair Schools Red Bank explained in their prior submission that you must reject the renewal of Red Bank Charter School's (RBCS) charter because RBCS exacerbates segregation in Red Bank's schools and because its composition does not comport with that of the municipality's student-aged population. Specifically, white students are significantly over-represented at RBCS while Hispanic students are significantly under-represented. And, since the founding of RBCS, the disparities have gotten worse, both at RBCS and in the Red Bank Borough Public Schools (RBBPS).

The Latino Coalition of New Jersey and Fair Schools Red Bank submit this letter to clarify that, even if RBCS's racial composition were perfectly reflective of the students in the district's boundaries (it is not), and even if RBCS did not exacerbate the segregation in the district schools from the time of its founding (it has), its charter must still be rejected. By re-chartering RBCS, the State would perpetuate and institutionalize a segregated school system, in violation of the New Jersey Constitution.

The New Jersey Constitution guarantees: "No person shall ... be segregated ... in the public schools, because of religious principles, race, color, ancestry or national origin." N.J. Const. art. I, para. 5. *See also* *Petition for Authorization to Conduct a Referendum on Withdrawal of North Haledon Sch. Dist. v. Passaic Cty. Manchester Reg'l High Sch. Dist.* (hereinafter "*North Haledon*"), 181 N.J. 161, 178 (2004); *Jenkins v. Morris Sch. Dist.*, 58 N.J. 483, 496-97 (1971); *Booker v. Board of Education, Plainfield*, 45 N.J. 161 (1965). This is true

whether the segregation occurs *de facto* or *de jure*. In *re Grant of the Charter Sch. in re Englewood on the Palisades Charter Sch.* (hereinafter "*Englewood*"), 164 N.J. 316, 324-25 (2000) ("segregation, however caused, must be addressed"). Segregation in public schools, whether *de facto* or *de jure*, is also "inimical to the constitutional guarantee of a thorough and efficient education." *North Haledon, supra*, 181 N.J. at 177.

The "constitutional command to prevent segregation in our public schools superimposes obligations on the Commissioner when he performs his statutory responsibilities under the Charter School Act." *Englewood, supra*, 164 N.J. at 328. The racial and ethnic composition of the charter school, as well as its impact on the overall district, must be assessed. *Id.* In so doing, the charter school must not be examined in a vacuum; rather, not only are the charter school's demographics compared to the population overall, but there must be a "school-to-school comparison." *Id.* All schools in the geographic area covered by the district "are compared to the expected pupil percentages, allowing for a reasonable deviation." *Id.* at 325. The need for administrative remedial actions exist when a school has "a pupil population that is substantially out of line with that of the other . . . schools in the district." *Id.*

Despite the fact that RBCS and RBBPS pull students from the same geographic region, the racial composition of RBCS and RBBPS are starkly divergent. There is, in essence, a set of public schools primarily comprised (over 80%) of Hispanic students and where white students make up less than 10% of the enrollees, and then one public charter school from the same geographic region (RBCS) that is majority white.<sup>1</sup>

There is thus no doubt that segregation exists. The disparity between RBBPS and RBCS is constitutionally unacceptable. The question, then, is: what actions must be taken to remedy the segregated schools in Red Bank?

In making that determination, giving any weight to the fact that RBBPS's schools are themselves not fully reflective of the municipality's demographics of student-aged children would miss the point: the State cannot remedy the problem of segregation by creating a new system that institutionalizes an even starker disparity, one that accedes to having one set of schools mainly for Hispanic students and one school with a white student majority for those families who might not otherwise participate in the public school system. Indeed, were the State to permit the continued operation of the majority white charter school in order to account for "white flight" or grant white families a "safe haven" paid for by public tax dollars, the State would be a participant in discrimination and in the segregation of Red Bank's schools.

Further, the continued chartering of RBCS would ensure that the problem will not get better. As the evidence from more than a decade now substantiates, the existence of RBCS has cemented, and will continue to cement and institutionalize, segregation. It perpetuates a system where white families who want their child to be in a majority white school are incentivized to opt-out of the public school district for the charter option, which in turn perpetuates the disproportionately high percentage of Hispanic students (and exceedingly low percentage of white students) in RBBPS schools.

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<sup>1</sup> A full description of the numbers is provided in the organizations' prior submission.

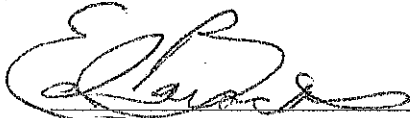
As held by the New Jersey Supreme Court:

{T}he Commissioner's obligation to prevent segregation in the public schools must inform his review of an application to approve a charter school, and if segregation would occur the Commissioner must use the full panoply of his powers to avoid that result. The statutory authorization to approve a charter school does not affect the Commissioner's constitutional obligation to prevent segregation in the public schools.

[*Englewood, supra*, 164 N.J. at 329.]

When the grant or renewal of a charter would perpetuate or exacerbate segregation – as it does here – that charter must be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ed Barocas', written over a horizontal line.

Ed Barocas, Legal Director, ACLU-NJ  
Attorney for Latino Coalition of New Jersey  
and Fair Schools Red Bank

## TRANSACTION REPORT

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# ACLU

**FOUNDATION**
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of NEW JERSEY**

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