

# Civil Rights Complaint from Fair Schools Red Bank and the Latino Coalition

## Introduction

This is a civil rights complaint brought on behalf of Fair Schools Red Bank, a group of concerned parents of Red Bank Borough Public School students, and the Latino Coalition of New Jersey (“LCNJ”). Complainants seek to vindicate the rights of children of Red Bank, NJ to attend non-segregated schools. Because the Red Bank Charter School (“RBCS”) was founded in 1997 to mitigate white flight, Red Bank is home to the most segregated school district in the state of New Jersey, with a charter school comprised of children who are predominantly wealthy and white, and borough public schools that are predominantly poor and Hispanic and have a much larger population of English-language learners. The district is also segregated along socio-economic lines, with a much higher percentage of children qualifying for free-and-reduced lunch attending the public schools.

As outlined in the complaint below, the RBCS has defied state law that requires it to seek a cross-section of the host district’s school-aged population, and it has defied a Consent Order that requires it to use its best efforts to assure that the demographics of its students equate as closely as practicable to those of the students of the Borough of Red Bank. In addition, the Commissioner of the New Jersey Department of Education (“Commissioner”) has refused to take any steps to stop racial segregation of the schools, as required by state law. At the same time, the administration of Governor Chris Christie and the New Jersey Legislature have funded the RBCS at a much higher level than the Red Bank Borough Public Schools, resulting in financial discrimination as well.

We respectfully ask the Civil Rights Division of the U.S. Department of Justice and the Office for Civil Rights of the U.S. Department of Education to conduct an investigation into the discriminatory impact of the RBCS’s enrollment policies, the discriminatory impact of the Commissioner’s refusal to enforce state laws against segregation, and the discriminatory impact of the school funding policies of the Christie administration and the New Jersey Legislature. We respectfully ask the U.S. Department of Justice and the U.S. Department of Education to take any and all steps necessary to reverse the segregation (by demographics, economics, and funding) at Red Bank’s publicly funded schools. We seek the integration of the Red Bank Public Schools by creating a unified school district and assert that this cannot be done without the disbanding of the charter school.

## Segregation

**The RBCS and the Commissioner have done nothing to stop the widening demographic disparity of the two publicly funded school systems in Red Bank, which is now the most segregated school district in the state of New Jersey**

The laws against school segregation are very clear. Article 1, Section 5 of the New Jersey Constitution guarantees that no person shall be segregated in public schools because of race, color, ancestry or national origin.<sup>1</sup> The New Jersey Constitution also requires that the Commissioner “take measures to prevent racial segregation in the public schools.”<sup>2</sup> And the New Jersey Supreme Court has held that the Commissioner has broad power and real responsibility to effect racial integration in public schools.<sup>3</sup>

This extends to charter schools as well. The Charter School Program Act of 1995 (“the Act”)<sup>4</sup> specifically mandates that charter schools “seek the enrollment of a cross section of the community’s school age population including racial and academic factors.”<sup>5</sup> It also prohibits charter schools from discriminating in the admissions process. And to ensure that segregation does not develop during the course of a charter school’s operations, the Act requires the Commissioner to annually “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.”<sup>6</sup> The Act goes one step further, requiring the Commissioner to conduct a comprehensive review when charter schools request a renewal of their charters every five years to ensure that the charter school’s continued operation will not exacerbate racial segregation. So from the initial application through the entire course of a charter school’s operations, the Commissioner is charged with evaluating the segregative impact that charter schools have on their host school districts.

Despite all of these mandates, there is no question that the RBCS is causing segregation in the Borough of Red Bank. And the RBCS, the Commissioner (through various gubernatorial administrations), and the New Jersey Department of Education (“NJ DOE”) have done nothing to stop it.

For proof, look no further than the NJ DOE’s own enrollment numbers for the 2015-16 school year (the most recent data available). As the following chart illustrates, a vast demographic disparity exists between the RBCS and the Red Bank Borough Public Schools among white, Hispanic, LEP (“Language English Proficient,” or English-language learners), and poor children (as measured by the number of

---

<sup>1</sup> The promise of unsegregated schooling extends not only to *de jure* but to *de facto* segregation as well *Jenkins v. In re Adoption of 2003 Low Income Hous. Tax Credit Qualified Allocation Plan*, 369 N.J. Super. 2, 21 (App. Div. 2004) (citing *N.J. Const.* art. I, para. 5)

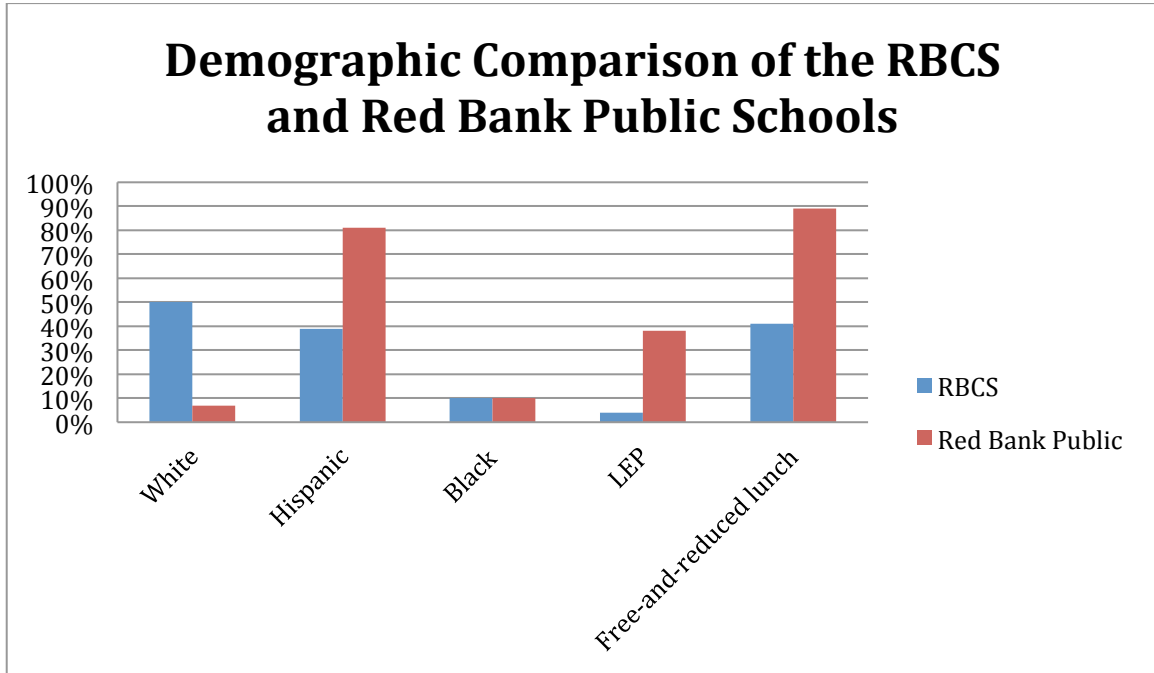
<sup>3</sup> 45 N.J. at 173-74

<sup>4</sup> *N.J.S.A.* 18A: 36A-1, *et seq.*

<sup>5</sup> *N.J.S.A.* 18A: 36A-8(e)

<sup>6</sup> *N.J.S.A.* 6A:11-2.2(c)

children who receive free-and-reduced lunch).<sup>7</sup> Because of the RBCS, the Borough of Red Bank has the most segregated school district in the state of New Jersey.<sup>8</sup>



Source: NJ DOE Enrollment figures<sup>9</sup>

**RBCS demographics do not reflect the school-aged population of Red Bank**

The RBCS has insisted that as required by the Act, its demographics reflect the school-aged population of its host district. Most recently, the RBCS asserted this in its expansion amendment request that it submitted to the Commissioner in December 2015. In that request, the RBCS cited U.S. Census Data from 2006 - 2010.<sup>10</sup> There are two problems with this. First, the Census data is old. In fact, it's not even the most recent Census data available, and the demographics of Red Bank have shifted greatly in recent years. Since the 2009-10 school year through the 2015-16 school year, the overall population of the Red Bank Borough Public Schools has grown 30%, with a 61% increase in LEP students—nearly all of whom speak Spanish as a first language—and a 62% increase in children who receive free-and-reduced lunch.

In addition, the U.S. Census only provides data on children who are under the age of 18—meaning it includes babies, toddlers and high school students, not just the school-aged children that attend the RBCS (which educates children from preK

<sup>7</sup> <http://www.state.nj.us/education/data/enr/>

Red Bank Borough Public School 2015-16 data <http://www.state.nj.us/cgi-bin/education/data/enr11plus.pl>

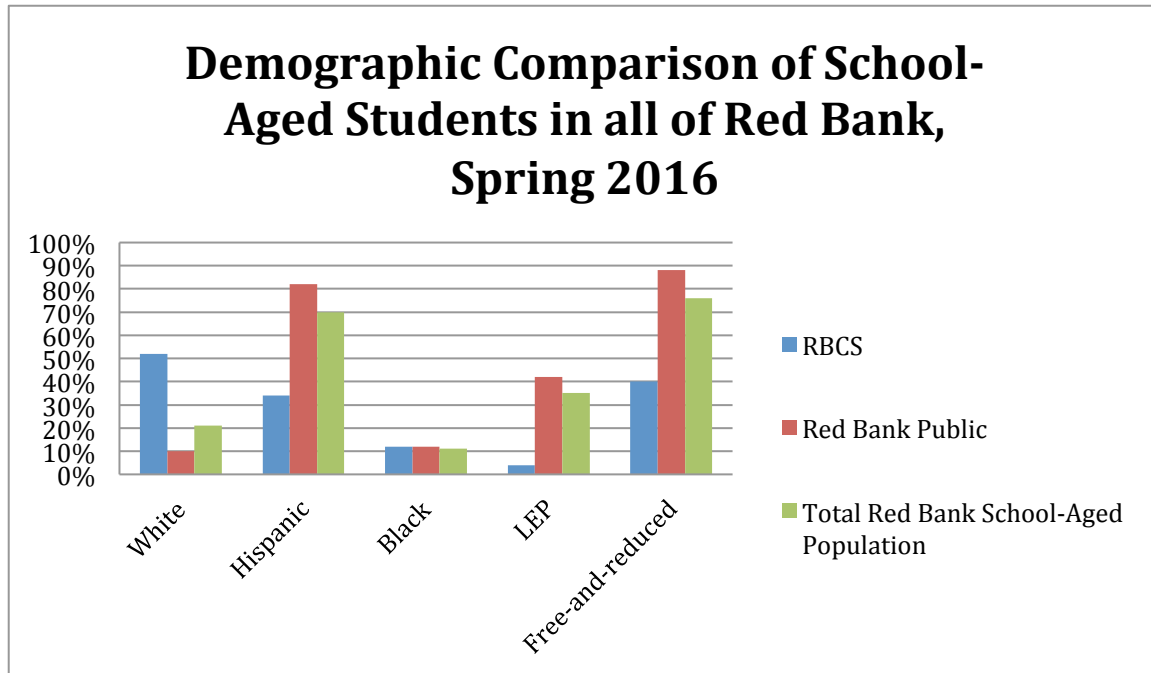
Red Bank Charter 2015-16 data <http://www.state.nj.us/cgi-bin/education/data/enr11plus.pl>

<sup>8</sup> The Blue Ribbon Commission on the Red Bank Charter School Proposal <http://www.redbankgreen.com/wp-content/uploads/2016/01/RBCS-blue-ribbon-report-FINAL-012716.pdf>

<sup>9</sup> NJ DOE collects enrollment figures in October of each school year

<sup>10</sup> RBCS expansion request, Appendix I, available at <http://www.redbankgreen.com/wp-content/uploads/2015/12/RBCS-Amendment-Request-Dec-2015.pdf>

through 8<sup>th</sup> grade) and Red Bank Borough Public Schools (which educate children from preschool to 8<sup>th</sup> grade). A more accurate measurement of the school-aged population of Red Bank comes from the Red Bank Borough Public School District, which is responsible for providing school transportation for nearly all children residing in the district. As part of its response to the December 2015 RBCS expansion proposal, the District calculated the demographics of the school-aged population from its records. And that calculation clearly shows that the Red Bank Borough Public Schools better reflect the demographics of the school-aged children of Red Bank—and further demonstrates the segregation caused by the RBCS.<sup>11</sup>



Source: Red Bank Borough Public Schools

**At its roots: RBCS was formed to prevent white flight**

While charter schools were created to provide an alternative publicly funded education, the RBCS had another goal in mind when it was founded nearly two decades ago. In the words of RBCS Board of Trustees Vice President Roger Foss, the RBCS was formed in 1998 to “mitigate the effect of white flight.”<sup>12</sup>

Throughout its 18-year history, the Board of Education for the Red Bank Borough District Schools (“the Board”) has raised its concerns about the segregation to the Commissioner, and it even took legal action in an attempt to reverse it—all to no avail. Prior to the granting of the RBCS’s initial charter, the Board requested that the Commissioner conduct a hearing to consider the adverse racial impact the RBCS

<sup>11</sup> Note: The demographics provided by the Red Bank Borough Public Schools differ slightly from those provided by the NJ DOE. The NJ DOE’s numbers are from October 2015; the RBBPS numbers are from the spring of 2016.

<sup>12</sup> Roger Foss, Vice President of the RBCS Board of Trustees, February 10, 2016. Audio of quote: <https://vimeo.com/155288308> Full recording of press conference can be found here <http://www.redbankgreen.com/2016/02/red-bank-charter-officials-defend-plan/#more-102350>

would have on the District Schools. The Commissioner rejected the Board's request. The Board then appealed to the State Board of Education, which found the Board's arguments speculative given that there was no actual enrollment at that time. The State Board of Education, however, instructed the Commissioner to review the racial composition of the RBCS's student population before approving the charter. There is no evidence that the Commissioner ever conducted the review.<sup>13</sup>

The RBCS opened in 1998, initially serving about 80 students in the fourth through eighth grades. On October 1, 2001, the RBCS submitted an application with the Commissioner to renew its charter with a request to expand by adding kindergarten through third grades, for a total enrollment of 162 students. The Board opposed the expansion, arguing that the RBCS was creating a severe segregative effect on the District Schools. The Board presented the Commissioner with evidence of this and requested that the Commissioner conduct a hearing prior to taking any action on the application. The Commissioner once again denied the hearing request and granted the renewal application without ever considering the segregation issue. The State Board of Education then affirmed that decision, and the Board appealed to the New Jersey Appellate Division. The court affirmed in part and remanded in part, directing the Commissioner to conduct a hearing to determine whether the lottery, waiting list, sibling preference, withdrawal policy, and other practices of the RBCS were adversely affecting racial/ethnic balance of the host district. The court further ordered that should the Commissioner find merit in the Board's claims, he must "develop an appropriate remedy, which properly balances our strong policy in favor of non-segregated schools with our policy of fostering the development of effective charter schools."<sup>14</sup>

Ultimately, the Board and the RBCS entered into a Consent Order on March 20, 2007, in which the RBCS agreed to "use its best efforts to assure that the gender, race/ethnicity, economic status and limited English proficient percentages of students attending the [Red Bank] Charter School equate as closely as practicable with the gender, race/ethnicity, economic status and limited English proficient percentages of students residing in the Borough of Red Bank."<sup>15</sup> In addition, the RBCS agreed that "to the greatest extent possible" it would "seek to recruit students by grade level, gender, race/ethnicity and economic status to be in general conformity with the students residing in the Borough of Red Bank," and that starting with the lottery for the 2007-08 school year, the RBCS "shall use its best efforts to assure that the applicants entered into the lottery are in the same proportions of Caucasian, African-American and Hispanic Limited English Proficient students as reside in the Borough of Red Bank."<sup>16</sup>

---

<sup>13</sup> Board's Legal Response (January 28, 2016), at 9-10, available at

<http://rbb.k12.nj.us/cms/lib5/NJ01001817/Centricity/domain/109/hespe/LegalResponse.pdf>

<sup>14</sup> Board's Legal Response (1/28/2016) at 11-13, *In re Grant of Renewal Application of the Red Bank Charter School*, 367 N.J. Super. 462 (App. Div. 2004).

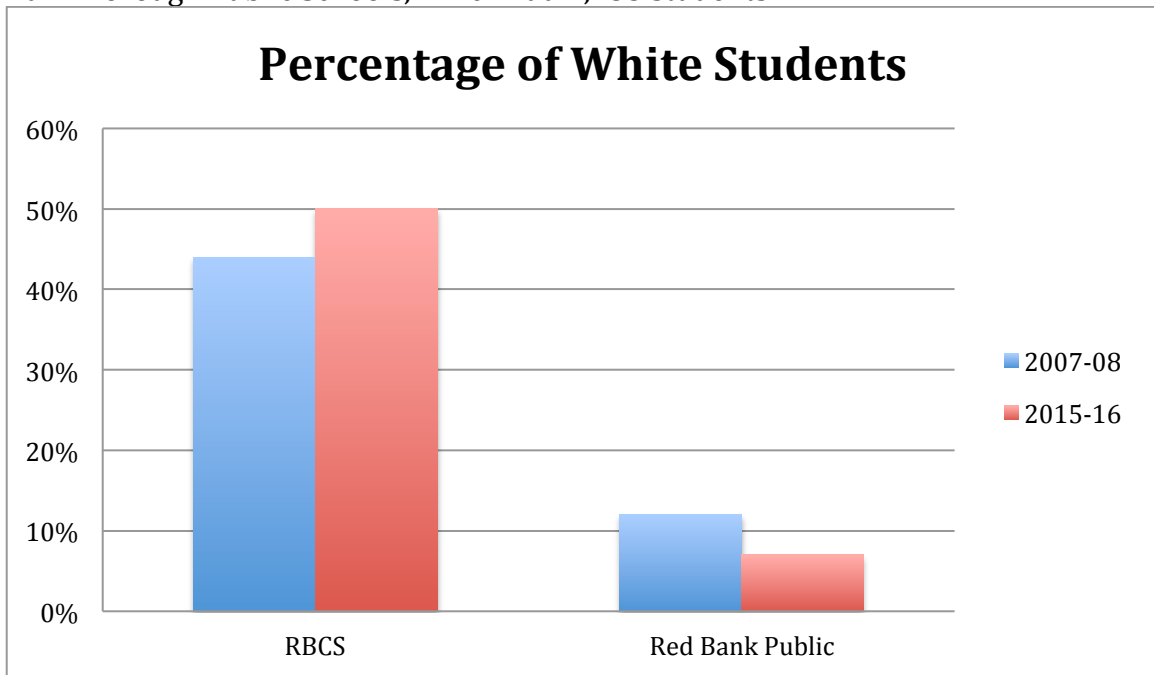
<sup>15</sup> Consent Order (3/20/2007) at 4

<sup>16</sup> Consent Order (3/20/2007) at 5.

However, the RBCS has ignored virtually all provisions of the Consent Order,<sup>17</sup> and the demographic disparity among white, Hispanic, LEP, and poor students has only accelerated since the Consent Order was signed in March of 2007.

**Segregation escalates despite Consent Order**

Starting from 2007-08 school year, the first school year after the Consent Order was signed, through the 2015-16 school year, the overall population of the Red Bank Borough Public Schools increased by 413 students (+49%), with huge growth among Hispanics (+92%), LEP/English-language learners (+140%), and children who receive free-and-reduced lunch (+174%). During that same time, the RBCS also grew by 26% to a total of 200 students, as it expanded its class sizes from 18 to 20 and added a full-day pre-kindergarten. And yet as seen in the following charts, enrollment trends at the RBCS are dramatically different from those at the Red Bank Borough Public Schools. For example, while the number and percentage of white students have fallen at the Red Bank Public schools, the number and percentage of whites have grown at the RBCS. In fact, at the start of the 2015-16 school year, there were 14 more white children at the RBCS, a school of 200 students, than all of Red Bank Borough Public Schools, which had 1,255 students.

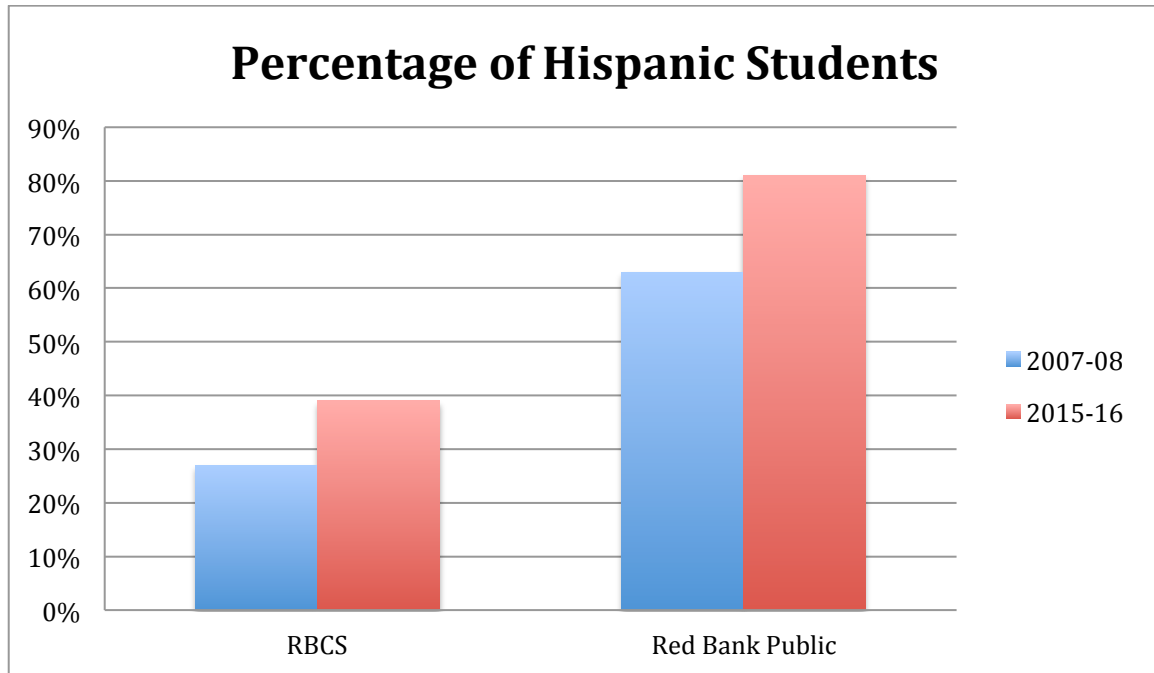


Source: NJ DOE Enrollment Figures

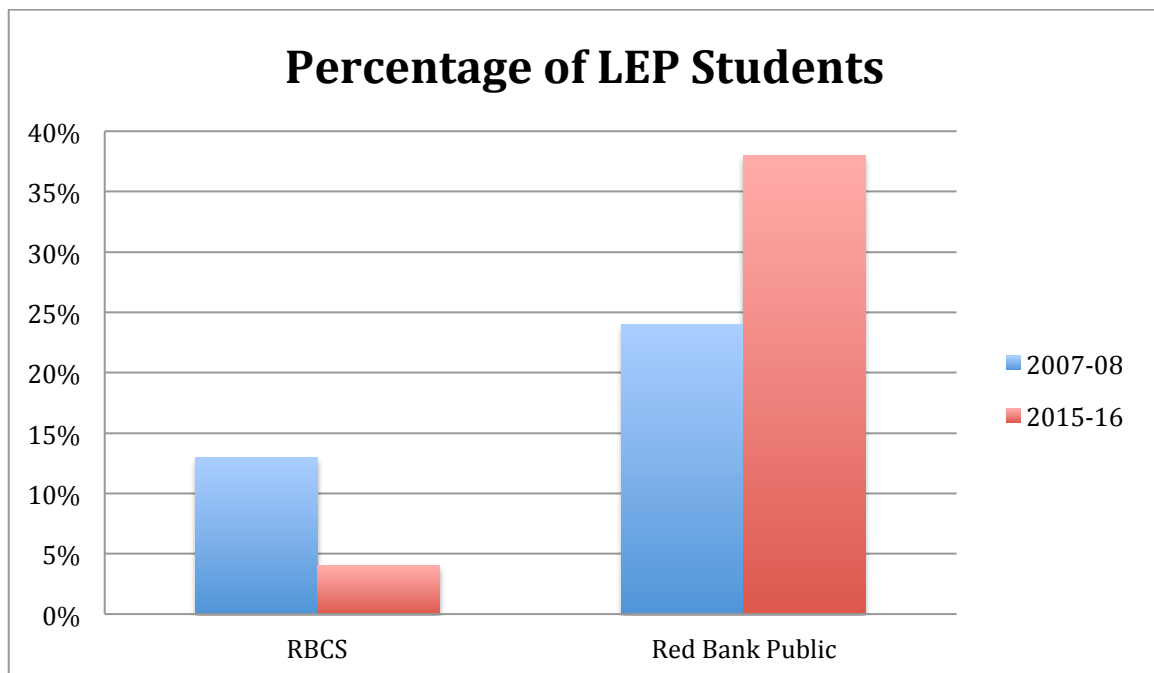
Enrollment trends among Hispanics and LEP students at the RBCS are even more remarkable. As stated previously, the large growth among LEP students at the Red Bank Borough Public Schools was driven by an influx of Spanish-speaking families who moved into the borough in recent years. As a result, from 2007-08 to 2015-16, the number of Hispanic students at the Red Bank Public Schools nearly doubled, from 530 to 1,019 students, while the number of LEP students more than doubled,

<sup>17</sup> Board’s Legal Response (1/28/2016) at 13.

from 200 to 480. During that time, the RBCS has been successful in recruiting more students who identify as Hispanic into its lottery and ultimately into its school. However, the ranks of LEP/English language learners at the RBCS actually fell—from 21 students when the Consent Order was signed in 2007 to just seven students, or 4% of the total population, in the 2015-16 school year.

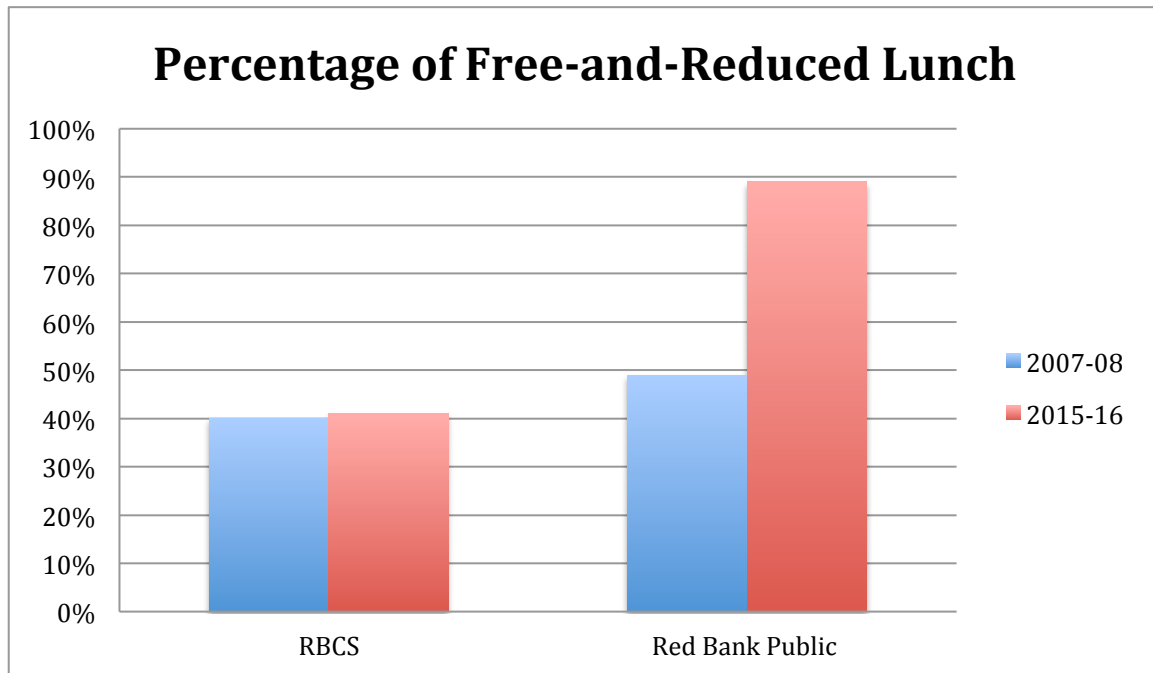


Source: NJ DOE Enrollment Figures



Source: NJ DOE Enrollment Figures

Enrollment trends among RBCS students who receive free-and-reduced lunch are also troubling. The influx of poor families who moved to Red Bank is clearly reflected at the Red Bank Borough Public Schools, where the percentage of students who receive free-and-reduced lunch grew from 49% in 2007 to 89% in 2015. During that same time, however, the percentage of students who receive free-and-reduced lunch at the RBCS was essentially flat, growing only one point since 2007.



\*Source: NJ DOE Enrollment figures; Red Bank Borough Public Schools for 2007-08 free-and-reduced lunch

**RBCS weighted lottery is only aimed at increasing enrollment of poor students, does nothing to address racial segregation**

On December 1, 2015, the RBCS submitted an application to the Commissioner requesting permission to double its enrollment from 200 to 400 students. The expansion request sparked an outcry in the community. Red Bank residents and public school parents, the LCNJ, the Latino Action Network, the Red Bank NAACP, and the Red Bank Westside Ministerial Alliance among others wrote letters in opposition to the expansion, as did State Senator Jennifer Beck<sup>18</sup> and State Assemblyman Declan O’Scanlon.<sup>19</sup> Red Bank Mayor Pasquale Menna convened a Blue Ribbon Commission, which determined that the RBCS was causing segregation

<sup>18</sup> Letter to Gov. Chris Christie (1/15/2016) available at <http://www.redbankgreen.com/wp-content/uploads/2016/01/Beck-Hespe-letter-011516.pdf>

<sup>19</sup> Letter to Commissioner David Hespe (1/25/2016) available at <http://www.redbankgreen.com/wp-content/uploads/2016/02/oscanlon-rbcs-letter-012516.pdf>



in its report.<sup>20</sup> The Red Bank Borough Council passed two resolutions opposing the expansion as well.<sup>21 22</sup>

All the while, the RBCS continued to insist that it reflected the school-aged population of Red Bank. A flyer it posted on its school website stated that the RBCS is “the **only** diverse student body in Red Bank” (emphasis added),<sup>23</sup> a line school officials continued to insist on throughout the debate and to the media.<sup>24</sup>

At the same time, the RBCS contradicted these assertions in its own expansion request to the Commission. “Examining the deltas of the demographic ethnicity data” in the 2006-10 Census data “indicates the (RBCS) school population is somewhat skewed from that of the town,” the RBCS said in its expansion request.<sup>25</sup> The RBCS also noted that the outdated Census data from 2006-10 indicated that 26% of all Red Bank children under the age of 18 are below the poverty level, while approximately 40% of the RBCS’s student population qualified for free-and-reduced lunch over the past five years. (The NJ DOE uses free-and-reduced lunch status to define economic disadvantage.).<sup>26</sup> Even though the RBCS claimed that its student population had a much higher percentage of poor children than reflected in the Census data, the RBCS proposed conducting a weighted lottery to increase the number of poor children that attended the charter school. However, the weighted lottery was not designed to do anything to address the racial or LEP disparity between the two schools. With the weighted lottery, children who were able to provide proof of their “economically disadvantaged” status would have their names placed in the lottery three times instead of two. In this way, the weighted lottery would allow the RBCS to “sustain our diverse school culture while educating more economically disadvantaged children,” the school said in its expansion request.<sup>27</sup>

By letter dated February 29, 2016, to the RBCS, the Commissioner denied the RBCS’s expansion request. Notably absent from the Commissioner’s letter was any mention of the segregation issue.<sup>28</sup> However, in a letter dated March 10, 2016, the

---

<sup>20</sup> Mayor Pasquale Menna’s Blue Ribbon Commission recommendation to the Red Bank Borough City Council (1/27/2016) available at <http://www.redbankgreen.com/wp-content/uploads/2016/01/RBCS-blue-ribbon-report-FINAL-012716.pdf>

<sup>21</sup> Borough of Red Bank Resolution 16-26 (1/16/2016) available at <http://rbb.k12.nj.us/cms/lib5/NJ01001817/Centricity/domain/109/hespe/RedBankResolution16-26.pdf>

<sup>22</sup> Borough of Red Bank Resolution 16-38 (1/27/2016) available at <http://rbb.k12.nj.us/cms/lib5/NJ01001817/Centricity/domain/109/hespe/RedBankResolution16-38.pdf>

<sup>23</sup> RBCS flyer (12/15/2015) available at <http://www.redbankcharterschool.com/rbcs/PDFS/RBCSDifference-OneSheet-Dec2015-final.pdf>

<sup>24</sup> “Red Bank Charter says it has ‘diverse student body,’” Asbury Park Press (2/1/2016), available at <http://www.app.com/story/news/education/2016/02/01/red-bank-charter-says-has-diverse-student-body/79633054/>

<sup>25</sup> RBCS expansion request (12/15/2015) at 14, available at <http://www.redbankgreen.com/wp-content/uploads/2015/12/RBCS-Amendment-Request-Dec-2015.pdf>

<sup>26</sup> RBCS expansion request (12/15/2015) at 13, available at <http://www.redbankgreen.com/wp-content/uploads/2015/12/RBCS-Amendment-Request-Dec-2015.pdf>

<sup>27</sup> Ibid.

<sup>28</sup> Commissioner’s denial letter (2/29/2016) available at <http://www.redbankgreen.com/wp-content/uploads/2016/02/RBCS-Denial-Letter-022916.pdf>

Commissioner granted the RBCS's request to conduct a weighted lottery for the 2016-17 through the 2018-19 school years.<sup>29</sup> In a press release announcing the weighted lottery, RBCS Principal Meredith Pennotti said: "We are pleased with Commissioner of Education David Hespe's approval to serve a greater number of underserved students," and added, "We are proud of the diversity of the RBCS community."<sup>30</sup>

Under the RBCS charter, siblings of current students are granted automatic entry to the school as long as spaces are available. Typically, the only open spots are in the pre-kindergarten class, although the RBCS holds the annual lottery for applicants of all grades in the event spots open up during the school year.

The RBCS conducted its weighted lottery on April 28, 2016, only the second New Jersey charter school to hold a weighted lottery. However, after widely publicizing the weighted lottery as a tool to increase the enrollment of poor students, it appears it had no discernible effect. Red Bank residents who observed the weighted lottery on April 28 tallied the number of economically disadvantaged applicants as lottery numbers were being assigned, and that tally showed that only 21% of the non-sibling RBCS students applying for spots in the school were economically disadvantaged—far below the 41% of economically disadvantaged students in the school during the 2015-16 school year.

In addition, only 10 pre-kindergarten spots were available to non-sibling students for the 2016-17 school year. Thirty-one students competed for those 10 spots, and of the 10 that gained entry, only four were economically disadvantaged.<sup>31</sup> According to *The Asbury Park Press*:

"[RBCS Principal Meredith]Pennotti acknowledged changing the schools demographics to better mirror Red Bank will be a slow process. 'How long is that going to take? Forever,' she said. 'But we're working on it.'"<sup>32</sup>

### **Despite increased segregation, RBCS seeks relief from the Consent Order it refuses to abide by**

On September 15, 2016, the RBCS submitted an application to the Commissioner for a five-year charter renewal.<sup>33</sup> (The Commissioner and the NJ DOE Office of Charter Schools is currently reviewing the application.) Despite the fact that segregation has increased since the Consent Order was signed, the RBCS believes it no longer needs

---

<sup>29</sup> Commissioner's letter to RBCS re: weighted Lottery (3/10/2016) available at <http://www.redbankgreen.com/wp-content/uploads/2016/03/RBCS-Weighted-Lottery-Approval-031016.pdf>

<sup>30</sup> March 23, 2016 RBCS press release available at <http://www.redbankcharterschool.com/rbcs/QUICK%20LINKS/Press%20Releases/Red%20Bank%20Weighted%20Lottery%20Release%20FINAL%203-24-15%20KK.pdf>

<sup>31</sup> *The Asbury Park Press*, "Red Bank schools improve as tensions simmer over charter," 11/4/16, available at <http://www.app.com/story/news/education/in-our-schools/2016/10/31/red-bank-borough-schools-improve-tensions-simmer-over-charter/91661732/>

<sup>32</sup> *Ibid*

<sup>33</sup> RBCS Renewal Application (9/15/2016)

to abide by it. “Confident in its’ [sic] abilities and consistent performance, the [RBCS Board of Trustees] seeks to be relieved of the Consent Order issued in 2005 [sic],” claiming that “all elements are being met.”<sup>34</sup>

However, in the renewal application, the RBCS never outlined any efforts it has made or is making to assure that the gender, race/ethnicity, economic status and limited English proficient percentages of the students attending the RBCS equate as closely as practicable with the gender, race/ethnicity, economic status, and limited English proficient percentages of school-aged students residing in the Borough of Red Bank, as required by section 9 of the Consent Order. In addition, while it is clear that the RBCS’s outreach to poor, Hispanic, and LEP families has not been adequate, resulting in the vast disparity in percentages of free-and-reduced lunch, Hispanic, and LEP students, the RBCS says in its renewal application that it has “focused a major priority on community outreach in the 2016-17 school year,” and “engaging the larger community.” And yet, again, it never specifies what its plan for broader outreach to the community is.

---

<sup>34</sup> RBCS Renewal Application, September 15, 2016, at 32

## Funding Disparity

### **Segregation is not limited to demographics: The whiter and wealthier RBCS receives more per-pupil funding than the predominantly poor and Hispanic Red Bank Borough Public Schools**

Under New Jersey's charter school law, charter schools are supposed to be funded at a lower level than the host district's public schools. New Jersey's charter school law requires sending districts to provide charter schools "an amount equal to 90% of sum of the budget year equalization aid per pupil."<sup>35</sup> The RBCS states on its website: "New Jersey Charter Schools are free public schools that are open to all children and typically offer their students more individualized attention, longer school days, longer school years, and innovative programs with **substantially less funding than other public schools.**"<sup>36</sup> [emphasis added]

But in Red Bank, because of the school funding policies of the administration of Governor Chris Christie, the state of New Jersey has determined that the education of students at the RBCS, who are wealthier and whiter than the Red Bank Borough Public Schools, is worth far more than the education of students at its host district public schools, which are predominantly poor and Hispanic.

According to the NJ DOE's own data, the per-pupil cost of the Red Bank Charter School has soared to \$18,726,<sup>37</sup> or \$2,119 more than the per-pupil cost of the Red Bank Borough Public Schools, which is at \$16,607,<sup>38</sup> according to the most recent Taxpayer's Guide to Education Spending.<sup>39</sup>

What this means is that the RBCS can afford things like two teachers in every small class of 20 students. It can afford "boutique fitness" classes, including dance, spin, and cross fit.<sup>40</sup> It can afford to put a public relations firm on retainer for \$3,300 a month.<sup>41</sup> And it can afford to give its principal, Meredith Pennotti, two raises in the span of three months,<sup>42</sup> bringing her total salary to \$151,964.80,<sup>43</sup> which is nearly \$7,000 more than Red Bank Borough School Superintendent Jared Ramage, who now oversees two schools of more than 1,400 students, while Pennotti oversees one

---

<sup>35</sup> N.J.S.A. 18A: 36A-12(b)

<sup>36</sup> Available at [http://www.redbankcharterschool.com/rbcs/ABOUT%20US/\\_top](http://www.redbankcharterschool.com/rbcs/ABOUT%20US/_top)

<sup>37</sup> NJ DOE Taxpayer's Guide to Education Spending, RBCS available at [http://www.state.nj.us/cgi-bin/education/csg/16/csg.pl?string=dist\\_code7720&maxhits=650](http://www.state.nj.us/cgi-bin/education/csg/16/csg.pl?string=dist_code7720&maxhits=650)

<sup>38</sup> NJ DOE Taxpayer's Guide to Education Spending, Red Bank Boro, available at [http://www.state.nj.us/cgi-bin/education/csg/16/csg.pl?string=dist\\_code4360&maxhits=650](http://www.state.nj.us/cgi-bin/education/csg/16/csg.pl?string=dist_code4360&maxhits=650)

<sup>39</sup> NJ DOE Taxpayer's Guide to Education Spending, available at <http://www.nj.gov/education/guide/>

<sup>40</sup> RBCS renewal application (9/15/2016) at 11.

<sup>41</sup> RBCS Board of Trustees minutes for June 28, 2016 meeting, at C6, available at <http://www.redbankcharterschool.com/rbcs/BOARD%20OF%20TRUSTEES/Board%20Notes/Minutes/RBCS%20BOT%20June%202016%20Minutes.pdf>

<sup>42</sup> RBCS Board of Trustees minutes for April 26, 2016 meeting, D1, available at <http://www.redbankcharterschool.com/rbcs/BOARD%20OF%20TRUSTEES/Board%20Notes/Minutes/Minute%20s4-2016.pdf>

<sup>43</sup> RBCS Board of Trustees minutes for June 28, 2016 meeting, D12, available at <http://www.redbankcharterschool.com/rbcs/BOARD%20OF%20TRUSTEES/Board%20Notes/Minutes/RBCS%20BOT%20June%202016%20Minutes.pdf>

school of 200 students.

As the following table shows, the RBCS's per-pupil cost is now higher than Shrewsbury and Little Silver, making it the most expensive school among the sending districts to Red Bank Regional High School. The RBCS per-pupil cost is so high it exceeds that of the much more affluent Rumson school district, which is \$18,320 per student.

### Comparison of Per-Pupil Costs

	2014-2015	2013-2014	2012-2013
Red Bank Borough	\$16,607	\$16,035	\$16,996
Red Bank Charter School	\$18,726	\$17,903	\$17,687
Little Silver	\$17,767	\$16,173	\$17,078
Shrewsbury	\$18,454	\$17,951	\$17,700
Rumson	\$18,320	\$17,386	\$17,288

\*Source: Taxpayer's Guide to Education Spending

### New Jersey cuts aid to public schools while fairly and fully funding charter schools

The reason the RBCS's per-pupil cost has risen above that of the Red Bank Borough Public Schools is because the state, under the Christie administration, has held charter schools harmless to cuts in state aid that have devastated public school districts across New Jersey. Under the School Funding Reform Act ("SFRA"), state aid is supposed to be distributed based on district enrollment and student demographics, with a greater funding weight given to students who are poor, have disabilities, or who are English-language learners. However, since 2010, the Christie administration has used the state's appropriation's act—which supersedes the SFRA—to determine school funding. According to a report from the State Auditor, the Appropriations Act began superseding all or part of SFRA from 2010 through 2014, "making the distribution convoluted. During fiscal years 2015 and 2016, no data from either year was applied to the formula to determine funding. Consequently, there were significant differences between actual funding and what the SFRA dictates."<sup>44</sup> The report went on to say that 385 districts in fiscal year 2015 and 365 districts in 2016 would have received more funding under SFRA. The Auditor did not name the districts.

As a result, public school districts across New Jersey have been shortchanged by \$8 billion since 2010.<sup>45</sup> Red Bank alone has lost out on \$7 million in state aid, making it one of the most underfunded districts in the state.<sup>46</sup> State Senator Jennifer Beck has

<sup>44</sup> Report of NJ State Auditor (9/21/2016) available at <http://www.njleg.state.nj.us/legislativepub/auditor/340115.pdf>

<sup>45</sup> Education Law Center school funding data available at <http://www.edlawcenter.org/research/school-funding-data.html>

<sup>46</sup> The Education Law Center ranks Red Bank Borough among the top 50 <http://www.edlawcenter.org/news/archives/school-funding/new-jerseys-50-most-underfunded-school-districts.html> with list available here

said Red Bank is 37% below the adequacy standard even as it has experienced a 36% enrollment growth since 2012.<sup>47</sup> In essence, for the last seven years, the Red Bank Borough Public Schools have been challenged to meet the needs of a surge of enrollment, driven by an influx of poor students and English-language learners, on flat state funding. Unlike the RBCS, where there are two teachers for each class of 20, the Red Bank Borough Public School teachers share aides across many classes. For the 2016-17 school year alone, the Red Bank Borough Public Schools have been unable to fund much-needed reading interventionists, content-area teachers, curriculum writing programs, and middle school bus monitors. The Red Bank Borough Public Schools were forced to cut their full-time strings programs three years ago and still only spend \$57,618 on sports and extra-curricular activities. There is no money for enhanced middle school athletics, no money for a comprehensive after-school program, and no money for additional playgrounds. Funds for grade-level field trips must be raised separately. And of course there is no money for facility improvements.<sup>48</sup>

But while the Christie Administration has cut aid to public schools, it has sent substantial amounts of Adjustment Aid to charter schools, including the RBCS, to ensure that they are fully funded. For example, in recent years, the State of New Jersey has sent more than \$1 million a year in additional Adjustment Aid directly to the RBCS. (This is in addition to the more than \$1.5 million of the roughly \$3 million in state aid that the Red Bank Borough Public Schools have to send directly to the RBCS.) No extra money is sent to the Red Bank Borough Public Schools.<sup>49</sup> As a result, funding inequities between charter schools and school districts have increased.<sup>50</sup>

### **Segregation exacerbates the funding inequities in Red Bank**

In Red Bank, the vast demographic disparity that exists between the two publicly funded school systems further exacerbates the funding inequities between the RBCS and the Red Bank Borough Public Schools. According to a report by Julia Sass Rubin, an associate professor at the Rutgers University Edward J. Bloustein School of Planning and Policy:

“The high percentages of Free or Reduced Price Lunch, Limited English Proficient and special needs students have a direct impact on the Red Bank Borough School District’s finances, since the district must provide services to address those students’ needs. In addition to out-of-district private placements, these services include provision of in-district special education,

---

<http://staging.edlawcenter.org/assets/files/pdfs/Newsblasts/50%20Most%20Underfunded%20School%20Districts%205-2016.pdf>

<sup>47</sup> Letter from Sen. Jennifer Beck to Gov. Chris Christie, January 15, 2016, available at

<http://www.redbankgreen.com/wp-content/uploads/2016/01/Beck-Hespe-letter-011516.pdf>

<sup>48</sup> Red Bank Borough Public Schools 2016-17 Budget presentation at 19-21, available at

<http://rbb.k12.nj.us/Page/913>

<sup>49</sup> NJ DOE Charter Payment Summary; Projected to be \$1.22 million for the 2016-17 school year

<sup>50</sup> Rubin, Julia Sass. New Jersey Charter School Funding. Retrieved from

<http://dx.doi.org/doi:10.7282/T3SB47P2> at 20;

bilingual education, and access to social workers, which are necessary to help mitigate some of the negative impacts of poverty.<sup>51</sup>

As an example, Sass Rubin pointed to the fact that in the 2013-14 school year, as now, only 4% of the RBCS's population—or eight students—were LEP, versus 34%—or 409 students—at the Red Bank Borough Public Schools.

“The cost of providing bilingual education services to 8 students is substantially smaller, in absolute and relative terms, than the \$812,931 that the district spent on bilingual education. Because the Red Bank Borough School District has a much larger proportion of students that require bilingual education and other special services, including these costs in any comparison would further increase the funding advantage that the Red Bank Charter School has over the Red Bank Borough School District.”<sup>52</sup>

Sass Rubin's analysis showed that in the 2013-14 school year, the RBCS received \$4,338 more per pupil than the Red Bank Borough Public Schools.<sup>53</sup> That is substantially more than what is reflected in the NJ DOE's Taxpayer's Guide to Education Spending because it takes into account the impact that segregation has on Red Bank's finances.

### **Red Bank taxpayers are forced to subsidize school segregation**

The Borough of Red Bank is known for many things. Its arts and antique district and trendy shops and restaurants have put it on several lists of “best small towns in America.”<sup>54</sup> It is also known as the birthplace of Count Basie. It was where the civil rights journalist T. Thomas Fortune made his home. Today it's where comedian Jon Stewart resides, where musician Jon Bon Jovi operates his JBJ Soul Kitchen, and where filmmaker Kevin Smith owns his Jay and Silent Bob's Secret Stash comic book store. And yes, it is also known as the New Jersey town with the most segregated public school district.

Red Bank residents are powerless to reverse this segregation, and yet they are forced to subsidize it. Red Bank taxpayers spend nearly \$2 million a year in duplicative costs to support two public school systems—a predominantly poor and Hispanic public school of 1,400 students, and a much smaller, wealthier and whiter school of 200 students.<sup>55</sup> These duplicative costs include an additional curriculum director, an additional guidance counselor, numerous specials teachers, as well as the RBCS principal Pennotti, who in the span of three months earlier this year was granted two raises, bringing her salary to \$151,964.80.

---

<sup>51</sup> Rubin, Julia Sass. New Jersey Charter School Funding at 27.

<sup>52</sup> Rubin, Julia Sass. New Jersey School Funding at 29.

<sup>53</sup> Rubin, Julia Sass. New Jersey Charter School Funding at 29

<sup>54</sup> Smithsonian Magazine (4/30/12) available at <http://www.smithsonianmag.com/travel/the-20-best-small-towns-in-america-of-2012-66120384/?no-ist>

<sup>55</sup> Comprehensive Audited Financial Reports for the RBCS and Red Bank Borough Public Schools

## Conclusion

Red Bank schools are clearly segregated. Because of the RBCS, Red Bank is home to the most segregated school district in New Jersey. And at every turn, the RBCS, the Commissioner, the NJ DOE, the Christie Administration and the New Jersey Legislature have failed Red Bank's children by turning a blind eye to the segregative impact that the RBCS is having on Red Bank.

As stated by RBCS Board of Trustee Vice President Roger Foss, the RBCS was formed to mitigate the effects of white flight. Since its formation, the RBCS has refused to abide by state law to seek enrollment of a cross section of Red Bank's school-aged population. And since 2007, the RBCS has refused to abide by a Consent Order requiring it to use its best efforts to assure that the gender, race/ethnicity, economic status and LEP percentages of students of its students equate as closely as possible to the students residing in the Borough of Red Bank. The RBCS has done a tremendous job enrolling white students, and it has done an adequate job enrolling black students. But it is clear from its enrollment statistics that the RBCS has no interest in conducting adequate outreach to enroll more poor, LEP, and Latino students.

From the creation of the RBCS in 1997 through its continued operation today, the Commissioner has refused again and again to ensure that the RBCS's continued operation does not cause segregation. There is no evidence the Commissioner has conducted annual assessments of the segregative effects of the RBCS, as required by law; no evidence the Commissioner has conducted a more thorough review when the RBCS requested a five-year renewal of its charter in the past; and no evidence the Commissioner plans to do a more thorough review now that the state is considering the RBCS's latest charter renewal, which was filed on September 15, 2016.

At the same time, the Christie administration and New Jersey Legislature have refused to fairly fund the Red Bank Borough Public Schools while fully funding the RBCS. While this is true for public school districts and charter schools throughout the state, the result in Red Bank is a charter school that carries a per-pupil cost that is \$2,119 higher than the host public schools. This funding disparity is further exacerbated by the segregation in Red Bank, because under SFRA, a greater funding weight is supposed to be given to students who are poor, have disabilities, or who are English-language learners. The RBCS's funding reflects these weighting requirements, but the Red Bank Borough Public Schools' do not.

The RBCS, Commissioner, NJ DOE, Christie administration, and New Jersey Legislature have failed Red Bank's children. It is clear that none of these entities has any interest in reversing the demographic and financial disparities caused by the RBCS. We respectfully ask the U.S. Department of Justice and the U.S. Department of Education to take any and all steps in their power to stop and reverse the demographic and financial segregation at Red Bank's publicly funded schools,



including but not limited to: 1) conducting an investigation into the discriminatory impact of the RBCS enrollment policies; 2) investigating the refusal of the Commissioner and the NJ DOE to take action to stop and reverse the segregation caused by the RBCS as required by law; 3) intervening in the RBCS charter renewal application that is currently before the Commissioner and the NJ DOE Office of Charter Schools; 4) investigating the discriminatory school funding policies of the Christie administration and the New Jersey Legislature; and 5) compelling the Christie administration and New Jersey Legislature to fairly fund the Red Bank Borough Public Schools.

In conclusion, the best solution for Red Bank is the closing of the charter school and the creation of a unified school district. Segregation has a pernicious impact on a community as it gradually undermines the ties that bind it together. Our separate and unequal school district communicates to our children that we are not all equal. It teaches them that some children are chosen to receive special treatment. This sort of injustice is something worthy of study in a historical sense, but it should not be a living experience for the vast majority of Red Bank students.