

EDU # 1086-86
 C # 193-88
 SB # 37-88
 App. Div. #A-4912-89T5, #A-6384-90T5 and #A-6385-90T5 (consolidated)
 Sup. Ct. #A-121/2/3/4/5
 SB # 81-96
 C # 337-02L
 App. Div. #A-1870-97T2
 #A-1091-98T2
 Sup. Ct. # A-60

BOARD OF EDUCATION OF THE BOROUGH :
 OF ENGLEWOOD CLIFFS, BERGEN :
 COUNTY, :

PETITIONER-CROSS/RESPONDENT- :
 APPELLANT, :

V.

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE CITY OF :
 ENGLEWOOD, BERGEN COUNTY, :

DECISION ON MOTION

RESPONDENT-CROSS/PETITIONER- :
 CROSS/APPELLANT, :

V.

BOARD OF EDUCATION OF THE BOROUGH :
 OF TENAFLY, BERGEN COUNTY, :

CROSS/RESPONDENT-APPELLANT. :

Decided by the Commissioner of Education, July 11, 1988

Decision on motion by the Commissioner of Education, September 1, 1988

Decision on motion by the State Board of Education, November 1, 1988

Decision on motion by the Commissioner of Education, February 22, 1989

Decision on motion by the State Board of Education, May 3, 1989

Decision on motion by the Commissioner of Education, September 6, 1989

Decision on motion by the State Board of Education, March 7, 1990

Decided by the State Board of Education, April 4, 1990

Resolution adopted by the State Board of Education, July 3, 1991

Decision on motions by the Appellate Division, August 27, 1991

Decided by the Appellate Division, June 15, 1992

Decided by the New Jersey Supreme Court, June 9, 1993

Decision on motions by the State Board of Education, December 4, 1996

Final Report from the Commissioner of Education submitted on
February 5, 1997

Decision on motion by the State Board of Education, March 5, 1997

Decided by the State Board of Education, November 5, 1997

Resolution adopted by the State Board of Education, October 7, 1998

Decision on motion by the Commissioner of Education,
December 20, 1999

Decided by the Appellate Division, July 20, 2000

Decided by the New Jersey Supreme Court, January 24, 2002

Decision on motion by the State Board of Education, December 4, 2002

Report from the Commissioner of Education,
submitted December 16, 2002

Decision on motion by the State Board of Education, January 8, 2003

For the Board of Education of the Borough of Englewood Cliffs,
Anthony P. Sciarrillo, Esq. and William Bradford Reynolds, Esq.,
pro hac vice

For the Board of Education of the City of Englewood, Weiner Lesniak
(Mark A. Tabakin, Esq., of Counsel)

On September 17, 2002, the Board of Education of the City of Englewood filed a motion with the State Board of Education seeking to vacate the directive which was part of the State Board's decision of April 4, 1990 in this matter. That directive precluded other school districts from accepting high school age students from Englewood and Englewood Cliffs on a tuition basis or otherwise. On September 23, 2002, the Board of Education of the Borough of Englewood Cliffs filed a petition with the State Board to dissolve that directive or to modify it so that it would not apply to students from Englewood Cliffs.

In a decision rendered on December 4, 2002, we concluded that we could not remove that prohibition unless we were fully confident that such action would not compromise our obligation to ensure that the racial imbalance at Dwight Morrow High School in Englewood was addressed. Hence, we found that we could not properly review the motions without knowing the exact status of the magnet school program being established through the partnership between Englewood and the Bergen County Technical Schools, including the enrollment and racial composition of the academies that form the magnet program. Consequently, we directed the Commissioner to submit a status report to us by December 16, 2002. We directed such report to also encompass information relating to funding for the magnet school program, including \$1 million in financial assistance from Bergen County which the counsel for Englewood referred to in his certification.

On December 16, 2002, the Commissioner submitted his status report to us, along with the following information attached thereto: A) the State Board's decision of December 4, 2002; B) a chart showing interdistrict public school choice enrollment in

Englewood for the 2002-03 school year; C) enrollment figures for the Englewood school district for the 2001-02 school year; D) a report prepared by Englewood's Assistant Superintendent: "Equity and Excellence...a 2002 agenda for the improvement of public education in the City of Englewood"; E) a letter dated August 26, 2002 from the Director of the Office of Innovative Programs and Schools to the Superintendent of Schools in Englewood; F) resolutions of the Englewood Board; G) a chart showing the racial/ethnic breakdown of the Bergen County Vocational School; H) a chart showing enrollment at the Bergen County Vocational School for the 2001-02 school year; I) Affidavit of Mark A. Tabakin, Esq. in Support of the Motion to Vacate the Injunction on Behalf of the Englewood Board; J) projected State aid figures for Englewood for 2002-03 and actual 2001-02 State aid figures; K) a chart showing the racial/ethnic breakdown of the Englewood School District; and L) a chart showing the racial/ethnic breakdown of Dwight Morrow High School.

At the State Board's meeting of January 8, 2003, the Legal Committee recommended that the State Board deny the motions to vacate. However, the State Board rejected that recommendation and referred this matter back to the Legal Committee for further consideration.

Upon further review, the Legal Committee determined that in order for the State Board to properly consider this matter, it was necessary to supplement the record with additional information relating to the funding and current operation of the Academies@Englewood. In a memorandum to the Commissioner dated January 28, 2003, the Chairperson of the Legal Committee requested additional information in these two areas. Specifically, he indicated that:

First, the Committee would like to include in the record the resolution adopted by the Bergen County Freeholders providing for \$1 million in funding for the Academies. It also seeks to include any other documents pertaining either to the resolution or to the \$1 million appropriation. In particular, the Committee would appreciate any documentation relating to the representation made by the Englewood Board's counsel in the certification he filed with the State Board that receipt of the \$1 million is contingent on vacation by the State Board of its directive precluding all other public school districts from accepting high school age students from Englewood or Englewood Cliffs on a tuition basis or otherwise.

Second, the Committee would like updated data as to student enrollment in the Academies@Englewood. Specifically, it is requesting data showing: 1) the number, racial composition, and home districts of the students who enrolled in the Academies in September 2002 and of those who actually attended them during the first semester, 2) the number, racial composition, and home districts of those students who attended the Academies during the first semester and who have continued to attend as of this date, 3) the number, racial composition, and home districts of those students who have applied to the Academies for the 2003-04 school year, and 4) the student enrollment that was projected for the 2002-03 school year and the student enrollment projected for the 2003-04 school year, including racial composition and home districts. The Committee also would like you to provide information regarding the remedies that were put in place for the application process for the 2003-04 school in order to correct the flaws in the application process for the 2002-03 school year which you identified in your report of December 16, 2002.

On January 31, the Acting Commissioner responded to the Legal Committee's request. Included with his memorandum were the following documents: A) a memorandum dated January 29, 2003 from the Coordinator of the Interdistrict Public School Choice Program to the Director of the Office of Innovative Programs and Schools; B) a chart showing interdistrict public school choice enrollment at the Academies@Englewood for the 2002-03 school year; C) a letter dated October 17,

2002 from the Coordinator of the Interdistrict Public School Choice Program to the Assistant Superintendent of the Bergen County Academies; D) a list of school application timelines for the 2003-04 school year for the Academies@Englewood; E) a letter dated September 25, 2002 from the Director of the Office of Innovative Programs and Schools to the Superintendent of Schools in Englewood; F) a letter dated September 13, 2002 from the Coordinator of the Interdistrict Public School Choice Program to the Superintendent of Schools in Englewood; G) first trimester summary of the Academies@Englewood; H) faxed copy of letter dated January 17, 2003 from Mark A. Tabakin, Esq. to the Director of the State Board Appeals Office; and I) a copy of the Bergen County Board of Chosen Freeholders bond ordinance. On February 3, 2003, an updated chart showing interdistrict public school choice enrollment in the Academies@Englewood for the 2002-03 school year was added to these documents.

After further review, the Legal Committee determined that, in addition to the information that had already been provided, data showing the racial composition and home districts for the overall student body of the Academies@Englewood was required. By memorandum dated February 10, 2003, the Chairperson of the Legal Committee requested that data.

On February 14, 2003, the Deputy Commissioner responded, providing a chart that shows the racial composition of students from Englewood who were attending the Academies@Englewood during the 2002-03 school year, along with a chart showing the racial composition of the overall student body.

We have reviewed the information that has been provided to us on behalf of the Commissioner. We find that in order to fulfill our responsibility to ensure that the racial

imbalance at Dwight Morrow is addressed, it is essential that the State Board consider this information in deciding the motions that are before us. However, the documents that include the information are not part of the record. Accordingly, as provided for by N.J.A.C. 6A:4-1.9(b), we direct that the record in this matter be supplemented with the documents transmitted to us on behalf of the Commissioner on January 31, 2003 and February 14, 2003, as well as with his report of December 16, 2002 and attachments.

February 19, 2003

Date of mailing _____