

May 14, 2003

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Dear Counsel:

**BOARD OF EDUCATION OF THE BOROUGH OF ENGLEWOOD CLIFFS, BERGEN COUNTY V. BOARD OF EDUCATION OF THE CITY OF ENGLEWOOD, BERGEN COUNTY V. BOARD OF EDUCATION OF THE BOROUGH OF TENAFLY, BERGEN COUNTY, STATE BOARD DOCKET #16-03**

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In a decision issued on April 4, 1990, the State Board of Education denied a petition filed by the Englewood Cliffs Board seeking to sever its sending-receiving relationship with the City of Englewood. In so doing, the State Board found that the deterioration in the racial balance at Dwight Morrow High School in Englewood was directly related to a tuition program instituted by the Tenafly Board, which that district had initiated to address its own declining enrollment problem. As a result, the State Board concluded that the first step in achieving the kind of balance that would effectuate the State's policy with respect to racial balance in the public schools was to act to forestall any further deterioration in the racial balance at Dwight Morrow by assuring that high school age students from Englewood and Englewood Cliffs would attend their assigned school if they attended public school. The State Board therefore directed that no other public school district could accept high school age students from Englewood or Englewood Cliffs on a tuition basis or otherwise.

In September 2002, the Englewood Board filed a motion with the State Board seeking to vacate that directive. The Englewood Cliffs Board also filed a motion seeking to dissolve the injunction or to modify it so that it would not apply to students from Englewood Cliffs.

On December 4, 2002, the State Board considered the motions, stressing that it could not remove the prohibition on other public school districts from accepting high school age students from Englewood or Englewood Cliffs unless it was fully confident that such action would not compromise its obligation to ensure that the racial imbalance at Dwight Morrow was addressed. Finding that it was necessary to obtain information from the Commissioner as to the exact status of the magnet school program that was being established, the State Board directed the Commissioner to submit a status report to it by December 16, 2002.

The Commissioner submitted his report on December 16, and, on January 8, the State Board again considered the motions to vacate or modify its directive of April 4, 1990. In doing so, the State Board rejected the recommendation of the Legal Committee and referred the matter back to the Committee for further review.

Upon further review, the Legal Committee determined that it was necessary to supplement the record with additional information relating to the funding and operation of the Academies@Englewood, the magnet school program being established at Dwight Morrow High School. By decision of February 19, 2003, the State Board directed that the record be supplemented with documentation that provided such information.

On April 2, 2003, the State Board considered the motions to vacate or modify its directive on the basis of the record as supplemented with the additional documentation, including the revised documentation relating to the racial balance of the overall student population attending the Academies@Englewood, which had been provided by the Deputy Commissioner. By its decision, the State Board removed the prohibition it had placed on New Jersey's public school districts that precluded them from admitting high school age students from Englewood and Englewood Cliffs on a tuition basis or otherwise. The State Board found that, while there was not sufficient data at this point to draw any conclusions as to the likely effect of the Academies@Englewood program on the racial and ethnic composition of the student body at Dwight Morrow High School, the statistics were promising, and, although they did not provide a sufficient basis to draw any definitive conclusions as to whether the Academies@Englewood would be successful in ameliorating the racial imbalance at Dwight Morrow, they did demonstrate positive movement in that direction. The State Board observed, in addition, that the Bergen County Board of Chosen Freeholders had appropriated \$1 million as a contribution to the Englewood public schools and the Legislature had agreed to match that funding with another \$2 million for this project, demonstrating a commitment to insuring that such positive movement would continue.

The State Board, however, retained jurisdiction over the matter, concurring with the concerns that had been expressed by the Deputy Commissioner that removal of the

prohibition that the State Board had imposed on April 4, 1990 must be conditioned on the continued progress of the Academies@Englewood in ameliorating the racial imbalance at Dwight Morrow High School. To ensure such progress, the State Board directed the Commissioner to report formally to it on a semi-annual basis, reminding him that his reports must include data as to the progress being made toward achieving racial balance in the composite student body at Dwight Morrow. Additionally, given Englewood Cliffs' obligation to act consistently with its sending-receiving relationship with Englewood, the State Board directed that the Commissioner monitor which school districts accept high school age students from Englewood and Englewood Cliffs. The State Board also stressed that it was compelled to carefully assess the progress being made over time in ameliorating the racial imbalance at Dwight Morrow and that, in the event it concluded that sufficient progress was not being made, it would be obligated to consider all available remedies, including re-imposing the directive that it was setting aside by its decision.

On May 7, 2003, the Englewood Board filed a notice of appeal with the State Board from "final funding decisions" of the Commissioner of Education dated March 5 and April 30, 2003. Englewood also filed an application for emergent relief.<sup>1</sup>

The Commissioner's letter of March 5, 2003 to the Englewood Superintendent of Schools indicates that it was "written to provide guidance to you in your final preparation of your budget for the 2003-2004 school year." In that letter, the Commissioner reported that he was working with legislators to develop and pass legislation that would provide Englewood with \$4 million to help implement and expand desegregation programs and services. The Commissioner further indicated that he intended to identify up to \$2,000,000 in grant funds for the district and that it would receive approximately \$1,000,000 as part of the Interdistrict Public School Choice Program. The Commissioner expressed optimism that the new legislation would be enacted and indicated that under his proposal, the State's contribution for fiscal year 2004 would increase to \$7 million from \$5 million for fiscal year 2003. While stressing that the funds were not guaranteed, the Commissioner instructed that they should be identified as a receivable for budgeting purposes and advised that if the funds did not materialize, he would work with the district to identify an alternative course of action.

The Commissioner's letter of April 30, 2003 was a follow-up to his March 5 letter. In the April 30 letter, the Commissioner provided tentative amounts for the grant funds that he had indicated he would identify in his March 5 letter. These amounts totaled approximately \$2,100,000, and the Commissioner reiterated that the district would also receive approximately \$1 million from the Public School Choice Program. With regard to the proposed legislation, the Commissioner advised that he would be able to seek

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<sup>1</sup> Due to "the urgency of [its] application," Englewood requests relaxation of the regulations governing "appeals, motions, exhaustion of remedies and the length of briefs." Under the circumstances, we have agreed to relax those regulations in the interests of justice. N.J.A.C. 6A:4-1.19. Similarly, we have assumed solely for purposes of deciding the Englewood Board's application for emergent relief that the letters from which it is appealing are final determinations of the Commissioner so as to be appealable to the State Board as of right pursuant to N.J.S.A. 18A:6-28. See N.J.A.C. 6A:4-1.1.

\$2,000,000 for the district “due to the state’s ongoing fiscal dilemma,” rather than \$4,000,000 as indicated in his March 5 letter. However, while informing the district that this was the “best we can do in the current fiscal climate,” the Commissioner stated that he was sending a team to the district on that day to help it identify strategies to ameliorate the situation. In doing so, the Commissioner indicated that he was mindful of the district’s budget defeat and keenly aware of the New Jersey Supreme Court’s decisions with respect to the racial imbalance at Dwight Morrow High School. Stressing that the ultimate financial resolution would require a combined effort by the Department of Education, the Englewood School District, the federal government, the City of Englewood and Bergen County, the Commissioner expressed his confidence that legislation would be enacted by the New Jersey Legislature and, accordingly, that the district should continue to identify these funds as a receivable for budgeting purposes.

In its application for emergent relief, Englewood seeks an order by May 9, 2003 directing the Commissioner and the State Board to provide funding to cover a \$5.15 million budgetary shortfall in its Equity and Excellence Program for the 2003-2004 school year. Englewood contends that the only secured funding currently in place for the 2003-04 school year is \$1.1 million from the Interdistrict Public School Choice Program and grant funds totaling approximately \$850,000. In the alternative, Englewood requests an order staying the May 15, 2003 deadline of N.J.S.A. 18A:27-10 for sending notices to nontenured teaching staff members notifying them that their employment will not be renewed for the 2003-04 school year. In the event that such requests are denied, Englewood seeks an order directing compulsory regionalization.

The Englewood Cliffs and Tenafly Boards were provided with the opportunity to file a response to Englewood’s application for emergent relief. Tenafly filed a letter brief in which it indicates that it does not oppose Englewood’s request that the State provide funding for its Equity and Excellence Program or, in the alternative, stay the May 15, 2003 deadline for non-renewal of its teaching staff. It does, however, oppose Englewood’s request for compulsory regionalization, arguing that Englewood cannot establish its entitlement to injunctive relief on this issue. Englewood Cliffs filed a letter brief in which it indicates that it does not have sufficient information to comment on Englewood’s funding request. However, like the Tenafly Board, it opposes Englewood’s regionalization request.

After a careful review of the papers filed, we conclude that Englewood has failed to demonstrate that it is entitled to emergent relief under the standard set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). We therefore deny its application for emergent relief.<sup>2</sup>

Careful review of the application shows that the Englewood Board has failed to demonstrate that it will suffer irreparable harm if it is not afforded the relief it seeks. Englewood’s argument in this respect centers on its contention that unless it receives an

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<sup>2</sup> Pursuant to N.J.A.C. 6A:4-3.3, “[t]he President of the State Board or, in the President’s absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6A:4-2.4 unless the determination would constitute the final decision with respect to the controversy.”

immediate directive from the State Board for the requested funding, it will have to notify 122 staff members, most of whom teach in the Equity and Excellence Program, by May 15 that their employment will not be renewed for the 2003-04 school year. Englewood maintains that, "it is most likely that non-renewed staff members will have secured alternative employment by June 30, 2003, and, therefore, it may be impossible to properly staff the Equity and Excellence Program in time for the coming school year." Appeal Brief, at 19. It posits that "once the public becomes aware of these notices, the demise of the Equity and Excellence Program is assured as the parents of students will immediately disenroll their children from the Academies@Englewood." *Id.* at 20.

This scenario is highly speculative. Englewood has provided nothing beyond its assertion that it will have to notify 122 staff members by May 15 that their employment will not be renewed to support its contention that parents of students will disenroll their children from the Academies@Englewood as a result.<sup>3</sup> Nor has it shown that it will be impossible to properly staff its Equity and Excellence Program or the Academies@Englewood if it does not get the funding it is seeking on an emergent basis or that the Academies will fail as a consequence.

Moreover, the likelihood that a scenario such as that described by the Englewood Board would occur is countered by the clear commitment expressed by the Commissioner in his letters of March 5 and April 30 to insure that adequate resources are provided to the Academies@Englewood despite the fiscal situation with which the State is confronted. In this respect, the letters from the Commissioner reflect that he understands that, as the New Jersey Supreme Court held in its decision of January 24, 2002, the State Board and the Commissioner have retained the ultimate responsibility for developing and directing implementation of a plan to redress the racial imbalance at Dwight Morrow High School. Furthermore, as the Commissioner reaffirmed in his report of December 16, 2002, his letters show that, while the authority to ensure fiscal support lies with the Legislature and the Governor, he is undertaking all measures at his disposal to ensure that the Academies@Englewood are not permitted to fail for lack of funding.

Quite simply, the record does not show that the ability of the district to operate the Academies@Englewood is in jeopardy. To the contrary, the Commissioner's letters demonstrate that he is engaged in insuring that they will continue to operate successfully despite fiscal constraints. In this respect, it must be stressed that the New Jersey Supreme Court's decision of January 24, 2002 did not entitle the Englewood Board to any specific amount of funding for purposes of implementing the Academies. Nor did it require that the State directly finance their operation. That being the case, we

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<sup>3</sup> We stress that since the May 15 deadline for notifying nontenured teaching staff members that their employment will not be renewed for the succeeding school year is statutory, N.J.S.A. 18A:27-10, we lack the authority to extend it. See Scrudato v. Mascot Sav. & Loan Ass'n, 50 N.J. Super. 264 (App. Div. 1958). We note in that regard that N.J.S.A. 18A:27-11 provides that if a district board fails to provide notice to a nontenured teaching staff member within the time prescribed by N.J.S.A. 18A:27-10, the board is deemed to have offered continued employment for the next succeeding school year.

find that the Englewood Board has not shown that there is a likelihood that it will succeed on the merits of its appeal.

Accordingly, for the reasons expressed herein, we deny the Englewood Board's application for emergent relief.

Sincerely,

Maud Dahme, President  
State Board of Education

c: Members, State Board of Education  
Dr. Aaron R. Graham  
Robert Brown  
Raymond Jacobus  
Wayne Demikoff