

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

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

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

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

Decided by the Appellate Division, June 15, 1992

Decided by the 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

For the Board of Education of the Borough of Englewood Cliffs, Joseph L.
Mecca, Esq. and William Bradford Reynolds, Esq., pro hac vice

For the Board of Education of the City of Englewood, Kraemer, Burns,
Mytelka & Lovell (Arnold K. Mytelka, Esq., of Counsel) and
Decotiis, Fitzpatrick & Gluck (Agnes I. Rymer, Esq., of Counsel)
and Paul L. Tractenberg, Esq.

For the Board of Education of the Borough of Tenafly, Riker, Danzig,
Scherer, Hyland & Perretti (James S. Rothschild, Esq., of Counsel)

This matter is before us as a result of a decision we rendered on April 4, 1990. That decision resulted from a petition filed in 1985 by the Englewood Cliffs Board in which it sought to terminate its long-standing sending-receiving relationship with the City of Englewood and to enter into a new relationship with Tenafly.

We, like the Commissioner, denied Englewood Cliffs' petition. We found that the negative educational implications of severance would be significant because permitting termination at that point would have sanctioned a concentration of minorities at a level that was not reflective of the society in which those students would have to function.

We also found that the deterioration in the racial balance at Englewood's Dwight Morrow High School was directly related to Tenafly's tuition program, which that district had introduced to address its own declining enrollment problem. In order to reverse this trend, we directed that no public school district could accept any students from Englewood or Englewood Cliffs on a tuition basis.

Those rulings, however, did not entirely dispose of the matter because, in response to Englewood Cliffs' petition to terminate the sending-receiving relationship, the Englewood Board had filed a petition for regionalization of Englewood, Englewood Cliffs and Tenafly. The Commissioner had denied this petition because he did not believe that he had the authority to do otherwise.

We concluded that this agency does possess such authority, a conclusion which was ultimately affirmed on appeal. It was in this context that we addressed Englewood's petition for regionalization, determining that it was premature to direct regionalization at that point because the situation might be amenable to correction through less intrusive measures.

Foremost in our minds was the hope that the situation could be resolved through cooperative efforts by the parties that would ultimately provide the citizens of these districts with an appreciation of the educational advantages to all students of a diverse student population. We also hoped that our efforts would achieve this result to the extent possible.

Our conclusions were grounded in our State's policies as embodied in decisions that had been rendered by the New Jersey Supreme Court and in State Board policy statements. After considering the situation in general terms, we concluded that the

concentration of minorities at Dwight Morrow High School was contrary to New Jersey's long-standing policy objectives with respect to racial balance in the public schools.

We issued an administrative order directing the parties to develop a plan to address these circumstances in a manner consistent with State policy. We instructed the parties to submit their plan to the Commissioner of Education for approval, and we directed the Commissioner to report to us over a five-year period as to the progress being made and any additional recommendations he wished to make.

As part of the Commissioner's first annual report, he recommended that a regionalization study be commenced. We accepted this recommendation, which resulted in the Applied Data Services study.

As reflected in the Commissioner's final report to us, he is now recommending a different course. It is the Commissioner's view that it would be counterproductive to compel regionalization in this situation. Instead, he stresses the desirability of achieving a cooperative solution which would also contribute to educational improvement.

We have carefully considered the Commissioner's report and the attachments, including the Applied Data Services study and the University Partnership report. Submission of these documents by the Commissioner marks the fulfillment of his final reporting obligation pursuant to our 1990 administrative order. Accordingly, we now bring closure to the litigation that began in 1985.

The broader problem raised by that litigation is not disposed of so easily. We are forced to confront the fact that seven years after our decision in this matter, and despite the efforts by all involved, the racial composition of the student population

attending Dwight Morrow is now less diverse than before. We do not shrink from facing the educational implications of this situation.

The situation confronting us in Englewood developed over time from changes in residential housing patterns and other factors outside of our control. It is clear to us that the dimensions of the problem go far beyond the boundaries of the school districts involved in this matter. At its root, it is a problem which this agency cannot hope to solve alone. Neither, however, can we walk away from the problem.

As the head of this agency and as the body entrusted by the legislature with the responsibility for the general supervision of public education in this State, we, together with the Commissioner, must insure the implementation of our State's policies. This includes the responsibility for assuring the diversity of the student populations of our public schools to the extent possible.

In this case, we found that an interdistrict approach was necessary to remedy the situation because of the existence of the sending-receiving relationship between Englewood and Englewood Cliffs. In addition, the racial isolation of the student population attending Dwight Morrow had been exacerbated by the fact that a significant number of students from Englewood Cliffs were attending high school in Tenafly as a result of Englewood Cliffs' actions and Tenafly's tuition policy.

We recognize that this litigation has not ameliorated the racial isolation of the students attending Englewood's public schools. To the contrary, it appears to have added to the animosity existing among the communities involved. Given our policy objectives, it would appear counterproductive to continue in this direction.

We agree with the Commissioner that we must develop a solution which will contribute to educational improvement, as well as maximize diversity. The magnet school concepts set forth in the University Partnership and Applied Data Services reports hold much promise. The various configurations for regionalization included in the Applied Data Services study also offer additional possibilities. However, it would be pointless to attempt to implement any approach without developing the funding sources to insure that the resulting program would have sufficient fiscal support on an ongoing basis. This objective can best be achieved by working collaboratively with the Commissioner and the Department of Education staff.

After much consideration, we conclude that the problem confronting us cannot be solved in the context of agency adjudication. We conclude that the most productive course to pursue at this juncture is to explore the proposals upon which the Commissioner's report to us was based, including those embodied in the University Partnership and Applied Data Services reports. Accordingly, we have determined to exercise our supervisory powers and work collaboratively with the Commissioner to insure that all of the resources at our agency's disposal are applied so as to enable the State Board of Education to identify by January 1, 1998 the direction which our agency should take to effectuate our State's educational policy in this instance. Cf. *Texter v. Department of Human Servs.*, 88 N.J. 376, 385 (1982).

Attorney exceptions are noted.

November 5, 1997

Date of mailing _____