

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 MOTIONS

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 on  
December 16, 2002

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

Decision on motion by the State Board of Education, February 19, 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)

This matter is before us today for a determination of whether we should vacate one of the directives set forth in our decision of April 4, 1990 in Board of Education of the Borough of Englewood Cliffs v. Board of Education of the City of Englewood v. Board of Education of the Borough of Tenafly. In that decision, the State Board of Education affirmed the Commissioner's determination to deny a petition filed by Englewood Cliffs seeking permission to sever its sending-receiving relationship with Englewood and to establish a new relationship with Tenafly. The directive at issue here prohibits all public school districts in New Jersey from accepting high school age students from Englewood and Englewood Cliffs on a tuition basis or otherwise. As detailed in the numerous decisions that have been rendered in this case by both the State Board of Education and the courts, we recognized in our April 4, 1990 decision that this directive alone would not reverse the trend of withdrawal by white students from Dwight Morrow High School in Englewood that had begun in 1982-83 when students from Englewood Cliffs began to attend Tenafly High School under a tuition policy initiated by that school district. However, we found in this case that the first step to properly effectuate New Jersey's constitutionally-derived policy with respect to racial balance in the public schools was to ensure that the high school age students from Englewood and Englewood Cliffs attended their assigned school if they attended public school.

As set forth in our decision of December 4, 2002, Englewood filed a motion with the State Board of Education on September 17, 2002, seeking to vacate the directive at issue. On September 23, 2002, Englewood Cliffs filed a petition with the State Board

also seeking to vacate the directive or to modify it so that it would not apply to students from Englewood Cliffs.

Englewood argued that the directive should be vacated because the student population at Dwight Morrow has continued to be predominately minority and, therefore, the directive is not serving its purpose. It further argued that the establishment of a magnet school program at Dwight Morrow constitutes a change in circumstances and renders the injunction unnecessary. In addition, in the certification of its counsel, which was submitted in support of its motion, Englewood indicated that vacating the directive would enable it to apply for \$1 million in financial assistance which the County has made conditional on vacation of the injunction. Certification of Mark A. Tabakin, Esq., ¶40.

Similarly, Englewood Cliffs argued that the directive should be vacated, at least as to students from Cliffs, because the racial balance at Dwight Morrow has not improved and the purpose of the directive therefore is not being served. It also argued that the injunction has had a dampening effect on public education in Englewood Cliffs because intense competition for admission to “educationally better” private schools is prompting some Englewood Cliffs parents to send their children to private school at the seventh- or eighth-grade level rather than when they enter high school. Englewood Cliffs contends that such children, if permitted to attend public school in districts other than Englewood, would be more likely to remain in the public school system.

In our decision of December 4, 2002, we recognized that on January 24, 2002, the New Jersey Supreme Court held that the Commissioner and the State Board retained the ultimate responsibility for developing and directing implementation of a plan

to redress the racial imbalance at Dwight Morrow.<sup>1</sup> At the same time, the Supreme Court acknowledged that the most recent actions of the Commissioner and the Department of Education appeared to reflect an understanding of that responsibility. In this respect, the Court specifically pointed to the partnership between Englewood and the Bergen County Technical Schools District and the fact that the Department was providing start-up costs to support that partnership as a promising resolution of Dwight Morrow's racial imbalance.

It was in that context that we considered the motions now before us. In our decision of December 4, 2002, we concluded that we could not remove the prohibition on other public school districts from accepting high school age students from Englewood or Englewood Cliffs unless we were fully confident that such action would not compromise our obligation to ensure that the racial imbalance at Dwight Morrow is addressed. We therefore found that we could not properly review the motions without knowing the exact status of the magnet school program that is 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. Finding that it was necessary to obtain that information from the Commissioner, we directed him to submit a status report to us by December 16, 2002. We further directed that the report encompass information relating to funding for the program, including the \$1 million referred to by Englewood's counsel in his certification. In addition, we directed the Commissioner to include any recommendations he had that would enable us to fulfill our responsibilities in this matter.

---

<sup>1</sup> See Board of Educ. of Borough of Englewood Cliffs v. Board of Educ. of Borough of Tenafly, 170 N.J. 323 (2002) (prior history omitted).

The Commissioner submitted his report to us on December 16, 2002. The Commissioner's point of departure was his recognition of the fact that, as the New Jersey Supreme Court has held, the Commissioner and State Board retain the ultimate responsibility for redressing the racial imbalance at Dwight Morrow High School. Stressing the broad responsibility of the Commissioner and the State Board to effectuate New Jersey's policy against segregation with the same vigor as its policy in favor of a thorough and efficient education, the Commissioner reaffirmed that the Department of Education could not allow the Academies@Englewood to fail for lack of funding. At the same time, the Commissioner recognized that, ultimately, the authority to ensure adequate fiscal support lay with the Legislature and the Governor.

Given the information he had at that point, the Commissioner concluded that it was too soon to draw final conclusions as to the effectiveness of Englewood's efforts. The Commissioner also stressed that further review of the school district's budget was required before decisions could be made regarding any additional funding. That being the case, the Commissioner recommended that the Department of Education collect the necessary information and continue to report to the State Board of Education on an annual basis until students in grades 9 through 12 are enrolled in the Academies@Englewood. In addition, the Commissioner found that it would not be possible to evaluate the success of the district's overall program after only one or two years, and he therefore recommended that the Department's annual report also include patterns of student participation throughout the district as well as at the high school level.

However, in view of the positive steps that had been taken by the school district, the Department of Education, and the Legislature, and because an injunction could be re-issued if necessary, the Commissioner recommended that we consider vacating our directive of April 4, 1990.

On January 8, 2003, the State Board of Education considered the motions to vacate or modify our directive. In doing so, we rejected the recommendation of our Legal Committee to deny the motions, and we referred the matter back to the Legal Committee for further review.

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. Accordingly, the Chairperson of the Legal Committee requested such information. In response, the Deputy Commissioner provided documentation, and, on February 19, 2003, the State Board directed that the record in the matter be supplemented with the documents that had been transmitted on January 31, 2003 and February 14, 2003, as well as with the Commissioner's report of December 16, 2002 and attachments. Subsequent to that decision, the Deputy Commissioner transmitted revised documentation relating to the racial balance of the over-all student population attending the Academies@Englewood.

On February 27, 2003, we sent the additional materials, including the revised documentation, to the parties and afforded them the opportunity to comment. Englewood Cliffs took advantage of this opportunity and submitted comments urging that we vacate the directive since the record as supplemented shows that the

Academies@Englewood are having a “positive impact on the efforts to achieve a greater degree of diversity in the student population.”

Having carefully considered the record as supplemented, we turn to the motions pending before us.

We stress, as we did in our decision of December 4, 2002, that we cannot vacate our directive of April 4, 1990 unless we are fully confident that to do so will not compromise fulfillment of our obligation to ensure that the racial imbalance at Dwight Morrow is addressed.

Further, we cannot ignore that this case was brought before us originally as a result of the petition filed by Englewood Cliffs in 1985 seeking to terminate its sending-receiving relationship with Englewood and to establish a new relationship with Tenafly. As set forth in our April 1990 decision affirming the Commissioner’s determination to deny the petition, we found that a significant number of students from Englewood Cliffs were not attending Dwight Morrow but had remained in the public school system by attending high school in Tenafly on a tuition basis. We further found that the number of such students had increased steadily during the relevant period and that this increase had been mirrored in the continual decline in the number of Englewood Cliffs students attending Dwight Morrow during the five-year period during which the racial imbalance at Dwight Morrow had developed. Recognizing our obligation to counter the withdrawal of those students from the Englewood school community, we found it necessary to eliminate the option that students from Englewood and Englewood Cliffs could withdraw from their designated school but remain within the public school system. We also concluded that, given the legal relationship between Englewood and Englewood Cliffs,



the Cliffs Board had the obligation to encourage its students to attend their designated receiving school rather than facilitating their withdrawal from the Englewood school community and that the failure of the Englewood Cliffs Board to act consistently with its legal relationship with Englewood had exacerbated the trend toward withdrawal.

It was under these circumstances that we directed that no other public school district could accept high school age students from Englewood or Englewood Cliffs. However, we repeatedly recognized in our April 1990 decision that the trend toward withdrawal from the Englewood public school community by white students could not be reversed by this directive alone. Accordingly, as detailed in the prior decisions in this case, we directed that additional measures be taken in conjunction with the directive at issue.

However, our goals with respect to the measures we directed in our April 1990 decision were not limited to effectuating the sending-receiving relationship between the parties. Rather, as set forth in that decision, their purpose was to ameliorate the racial imbalance at Dwight Morrow High School. Since that time, both the Commissioner and the State Board have attempted to address that racial imbalance through the various mechanisms detailed in the prior decisions in this case. As set forth in the Commissioner's report to us, such additional measures are embodied in the Academies@Englewood program currently being implemented, and it is in this context that we must consider whether to remove the prohibition we have imposed on other public school districts that precludes them from accepting students from Englewood or Englewood Cliffs on a tuition basis.

Even considering the additional materials, the record shows that, as the Commissioner reported to us on December 16, 2002, there is 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. However, the statistics are promising. There are 113 students currently attending the Academies@Englewood. Fifty-eight of those students are from Englewood and 55 are from other districts in Bergen County, with the exception of two students from Hudson County and one from Passaic County. The out-of-district students are attending school in Englewood by virtue of that school district's participation in the Interdistrict School Choice Program. Pursuant to that program, students from 32 other school districts enrolled at the Academies@Englewood. Twenty-five of the out-of-district students are Asian-American, 5 are black, 8 are Hispanic, and 17 are white. Four of the students from Englewood are Asian-American, 28 are black, 23 are Hispanic, and 3 are white. Hence, 29 or 26% of the students enrolled in the Academies are Asian-American, 33 or 29% are black, 31 or 27% are Hispanic, and 20 or 18% are white. Although this data does not provide a sufficient basis to draw any definitive conclusions as to whether the Academies@Englewood will be successful in ameliorating the racial imbalance at Dwight Morrow High School, it does demonstrate positive movement in that direction.

Further, the supplemental materials indicate that, as Englewood has represented, the Bergen County Board of Chosen Freeholders has appropriated \$1 million as a contribution to the Englewood Public Schools for various improvements for the Academies@Englewood, including construction, acquisition of technology

equipment and acquisition of furniture. In addition, the Legislature will match the \$1 million being provided by the Freeholders with another \$2 million for this project. This support demonstrates a commitment to insuring that such positive movement will continue.

Moreover, we recognize that both Englewood and Englewood Cliffs are seeking State Board action to remove the prohibition. Additionally, Englewood Cliffs has indicated that it will continue to participate actively to develop voluntary measures aimed at correcting the racial isolation at Dwight Morrow.

Based on these factors, we have determined to remove the prohibition we placed on New Jersey's public school districts that precludes them from admitting high school age students from Englewood and Englewood Cliffs on a tuition basis. However, given the preliminary nature of the data, and in view of our responsibility to ensure that the racial imbalance at Dwight Morrow is addressed, we concur with the Deputy Commissioner that if we remove the prohibition at issue here:

...the State Board should make it absolutely clear that it retains jurisdiction insofar as the injunction is concerned and that the lifting of the injunction would be approved conditioned upon the continued progress of integration and that it could be imposed again at the first sign that any regression or lack of substantial progress has occurred.

Deputy Commissioner's Memo of January 31, 2003, at 2 (emphasis in original).

Therefore, while we are removing the prohibition at issue, we are retaining jurisdiction. In doing so, we share the concerns expressed by the Deputy Commissioner. Hence, the action we are taking today is conditioned on the continued progress of the Academies@Englewood in ameliorating the racial imbalance at Dwight Morrow High School. To ensure that such progress continues and to avoid the

possibility of regression, we direct the Commissioner to report formally to the State Board semi-annually every May and September. We remind the Commissioner that the Final Report of our Committee on Englewood, which was adopted by the State Board on October 7, 1998, requires that his reports include data as to the progress being made toward achieving racial balance in the composite student body at Dwight Morrow High School. Furthermore, given Englewood Cliffs' obligation to act consistently with its sending-receiving relationship with Englewood, the Commissioner must monitor which school districts are accepting high school age students from Englewood and Englewood Cliffs on a tuition basis or otherwise and provide us with that data in his reports.

Finally, our responsibility to ensure that the racial imbalance at Dwight Morrow is addressed compels us to carefully assess the progress being made over time. In the event that we conclude that sufficient progress is not being made, we would be obligated to consider all of the remedies available to us, including re-imposing the directive that we are setting aside today.

April 2, 2003

Date of mailing \_\_\_\_\_