

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 DECISION  
ENGLEWOOD, BERGEN COUNTY, :

RESPONDENT-CROSS/PETITIONER- :  
CROSS/APPELLANT,

V. :

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

CROSS/RESPONDENT-APPELLANT. :

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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

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 case was initiated in 1985 by a petition filed by the Board of Education of the  
Borough of Englewood Cliffs (hereinafter “Englewood Cliffs” or “Cliffs”) seeking to

terminate its long-standing sending-receiving relationship with the Board of Education of the City of Englewood (hereinafter “Englewood”) and to enter into a new relationship with the Board of Education of the Borough of Tenafly (hereinafter “Tenafly”). Englewood opposed severance of the relationship and also petitioned for regionalization of Englewood, Englewood Cliffs and Tenafly, arguing that this relief was necessary in order to vindicate New Jersey’s constitutionally-derived policy relating to racial balance in the public schools.

On appeal, the State Board of Education, like the Administrative Law Judge and the Commissioner, denied Englewood Cliffs’ petition to sever its sending-receiving relationship with Englewood. In doing so, the State Board found that the educational implications of approving severance were unacceptable because, by permitting termination, the State Board would be sanctioning a concentration of minorities at Dwight Morrow High School in Englewood at a level that was contrary to New Jersey’s constitutionally-derived policy with respect to racial balance in the public schools. The State Board further found that it would be denying its responsibility to properly implement the State’s educational policies if it were to fail to take such steps as necessary to correct the imbalance that had developed at Dwight Morrow. The State Board, however, denied 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. Finding that the deterioration in the racial balance at Dwight Morrow was directly related to Tenafly’s tuition program, which that district had initiated to address its own declining enrollment problem, the State Board concluded that the first step in achieving the kind of balance that would

effectuate the State's policy 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. Therefore, in its decision of April 4, 1990, the State Board directed that no other public school district accept high school age students from Englewood or Englewood Cliffs on a tuition basis or otherwise.

The State Board, however, found that this step alone would not reverse the trend of withdrawal by the white majority. It therefore directed that the Englewood Cliffs Board develop a plan in cooperation with Englewood to encourage parents in the two districts to send their children to Dwight Morrow. The State Board further directed that the plan be submitted to the Commissioner for his approval and that the Commissioner report to the State Board for a period of five years as to the status of implementation. The State Board also directed that the Commissioner provide his recommendations as to any additional measures that should be taken when he reported.

Englewood Cliffs appealed to the Appellate Division from the State Board's denial of its petition to terminate its sending-receiving relationship with Englewood, and Englewood appealed from the State Board's determination not to direct regionalization to remedy the racial imbalance at Dwight Morrow. During the pendency of the appeal, the Commissioner recommended in his first annual report to the State Board in June 1991 that a regionalization study be undertaken, and the State Board adopted his recommendation by resolution on July 3, 1991. Englewood Cliffs and Tenafly then appealed from the State Board's resolution.

The Appellate Division affirmed the State Board's decision of April 1990 with the exception of the State Board's determination that a racial balance that included 80% minority students might be acceptable. In that respect, the Court indicated that such a balance would not be acceptable because the concentration of minority students would be more than six times that of the county as a whole and more than 35 times that of Tenafly. The Appellate Division also stated that it believed that the State Board had the authority to direct regionalization.

The New Jersey Supreme Court, in a per curiam opinion, affirmed the Appellate Division's decision, specifically noting that the State Board had the authority to conduct a regionalization study. The Court, however, stated that it was not deciding whether the State Board could direct inter-district regionalization.

In December 1994, the Department of Education contracted with Applied Data Services to conduct a regionalization study encompassing twenty communities in Bergen County and with Dr. Harry Galinsky to assist Englewood and Englewood Cliffs in developing a cooperative plan to encourage attendance at Dwight Morrow. Both consultants submitted reports in July 1995, after which the Department of Education conducted public hearings on the reports. Thereafter, a task force comprised of county superintendents and district board members from eight Bergen County school districts developed a plan to address the racial imbalance through university partnerships to create a magnet school program at Dwight Morrow. In February 1997, the Commissioner issued his report to the State Board, concluding that the State Board should not direct regionalization, but rather encourage the development of a voluntary solution using such approaches as university-affiliated magnet schools.

By decision of November 5, 1997, the State Board acted upon the Commissioner's report. Agreeing with the Commissioner that a solution must be developed that would contribute to educational improvement as well as maximize diversity, the State Board found that the magnet school concepts offered much promise. However, the State Board concluded that it would be pointless to implement any approach without developing the funding sources to insure that the resulting program would have sufficient fiscal support on an ongoing basis. Further concluding that this objective could best be achieved by working collaboratively with the Commissioner and Department staff, the State Board determined to exercise its supervisory powers to work collaboratively with the Commissioner so as to identify the direction which the Department should take to effectuate the State's educational policy in this case. To implement its decision, the State Board established the Committee on Englewood.<sup>1</sup>

The Committee on Englewood issued its report in September 1998 and on October 7, 1998, the State Board acted by resolution to adopt that report. The State Board endorsed taking a voluntary approach and charged the Englewood school district with the initial responsibility for developing the specifics of an enhanced plan that could reasonably be expected to reduce the percentage of minorities at Dwight Morrow over the next five years so as to ultimately achieve a balance in the composite student body that would be acceptable under the Appellate Division's decision. The State Board further resolved that the plan must include benchmarks to enable the State Board to assess progress on a regular basis and that the Commissioner was to provide appropriate assistance to Englewood in developing the enhanced plan. It also required

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<sup>1</sup> The Committee on Englewood was subsequently integrated with other committees that had been established by the State Board to form the Urban Committee. The Urban Committee is responsible for examining issues that relate to New Jersey's urban school districts, including racial balance.

that any plan approved by the Commissioner had to satisfy the criteria set forth in the Englewood Committee's report and that the Commissioner report to the State Board no less than annually as to the status of implementation, including any recommendations he had for adjustments.

Englewood appealed the State Board's decisions of November 5, 1997 and October 7, 1998, arguing that a regional high school district had to be established in order to correct the racial imbalance at Dwight Morrow. The Appellate Division rejected that argument, finding that the record in the case provided adequate support for the State Board's conclusion that mandatory regionalization should not be required and that other alternatives for reducing the racial imbalance at Dwight Morrow, including the establishment of magnet schools, should be pursued instead. The Appellate Division emphasized that although the State Board's October 1998 decision placed the initial responsibility for developing a plan on Englewood, the directive placed a heavy responsibility on the Commissioner to assist in the development and implementation of a workable plan, a responsibility that he could not delegate to a local school board. The Appellate Division also found that the assistance provided by the Commissioner had to include assistance in developing the funding sources required to establish magnet and specialty schools.

Englewood then filed a petition for certification with the New Jersey Supreme Court. The Court granted the petition limited to the sole issue of the allocation of the responsibilities associated with the development and implementation of the plan between the school district and the Commissioner and State Board. In its decision of January 24, 2002, the Supreme Court held that the Commissioner and the State Board

retained the ultimate responsibility for developing and directing implementation of a plan to remedy the racial imbalance at Dwight Morrow. Although finding that the apparent allocation of responsibilities in the State Board's October 1998 decision was inconsistent with the law of the case in this matter as set forth in the State Board's 1990 decision as that decision had been affirmed by the Appellate Division and the New Jersey Supreme Court, the Court recognized that the actions of the Commissioner and Department since October 1998 appeared to reflect an understanding of their obligations. In this respect, the Court pointed to the Department's initiative in proposing a partnership between Englewood and the Bergen County Technical Schools District and in providing funding for the start-up costs. While stressing that no issue concerning funding for the proposed academy was before it, the Court stated that it was confident that the parties would not permit so promising a resolution to Dwight Morrow's racial imbalance to fail because of disagreement over a fair allocation of funding responsibility.

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

Englewood argues that the injunction should be vacated because the student population at Dwight Morrow has continued to be predominately minority and, therefore, the injunction is not serving its purpose. It further argues 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 indicates that vacating the injunction will 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 argues that the injunction 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 injunction therefore is not being served. It also argues that the injunction has had a dampening affect on public education in Englewood Cliffs because, with Dwight Morrow being the only available public school alternative, 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.

Again, in its decision of January 24, 2002, the New Jersey Supreme Court affirmed the Appellate Division's decision holding that the Commissioner and the State Board retain the ultimate responsibility for developing and directing implementation of a plan to redress the racial imbalance at Dwight Morrow. At the same time, the New Jersey Supreme Court acknowledged that the most recent actions of the Commissioner and 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 is in this context that we must decide the motions now before us. Accordingly, we could not remove the prohibition on other public school districts from accepting high school age students from Englewood or Englewood Cliffs that we imposed in our decision of April 4, 1990 unless we were fully confident that such action would not compromise our obligation to insure that the racial imbalance at Dwight Morrow is addressed. Hence, we cannot properly review the motions before us 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. We therefore find it necessary at this juncture to obtain that information from the Commissioner. In order to expedite our consideration of the motions, we direct the Commissioner to submit a status report to us by December 16, 2002. Such report should also encompass information relating to funding for the program, including the \$1 million referred to by Englewood's counsel in his certification. In addition, the Commissioner should include any recommendations he has that will enable us to fulfill our responsibilities in this matter.

Thelma Napoleon-Smith abstained.

December 4, 2002

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