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Attn: Roslynn Novack
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Re: Englewood v. Englewood Cliffs,
State Board Docket Nos. 81-96 and 16-03 and 19-05

Dear Members of the State Board:

Pursuant to your December 28 letter, please accept these comments on behalf of amici curiae Education Law Center ("ELC") and New Jersey Conference of NAACP ("NJ-NAACP") (collectively, "Amici") regarding the Commissioner of Education's Report of November 16, 2005 in the above-referenced matter.

Amici commend the Commissioner of Education ("Commissioner") for recognizing, in the Report, that it is time to dispense with the discredited "school within a school" approach to desegregating Dwight Morrow High School ("DMHS"), and for establishing the goal of creating one unified, high-quality program for all resident and out-of-district students. Nevertheless, given the requirements of the law set forth in successive Englewood rulings, the revised plan

proposed in the Commissioner's Report is deficient in several critical respects.

First, the Report proposes steps to accomplish a merger of DMHS and the Academies @ Englewood by 2008, but it is completely devoid of an integration plan designed to address the continuing and persistent state of "unconstitutional racial imbalance" at the high school. See Englewood Cliffs v. Englewood, 257 N.J. Super. 413, 479 (App. Div. 1992) ("Englewood I"), aff'd, 132 N.J. 327 (1993). The Commissioner's merger plan does not set forth, or even contemplate, a constitutionally-acceptable racial balance for the unified school, and it fails to lay out concrete retention and recruitment strategies to achieve this "target" level of integration.

Second, the Report fails to propose an educational plan for a comprehensive, high-quality program "in which all students who attend that school" - students with diverse needs, talents, and post-secondary aspirations - can "pursue their educational goals and realize their educational potential." See Englewood Cliffs v. Englewood, 170 N.J. 323, 344-45 (2002) ("Englewood III") (emphasis added).

Finally, the Report fails to set forth a process for engaging stakeholders - resident and out-of-district students, parents, and community leaders - in the development and implementation of an integration plan that is effective as a constitutional remedy and

responsive to the needs of all students.

As detailed more fully in the comments that follow, it is clear that the plan set forth in the Commissioner's Report must undergo substantial revision before a contract is signed with "High Schools That Work," or any other consultant group, and before implementation of the plan begins in full. To this end, Amici respectfully request that the State Board of Education ("State Board") promptly convene a meeting with the Commissioner, district administrators, the educational consultants, and ELC and NJ-NAACP to discuss necessary revisions to the plan, and to establish a process for modifying the plan, so that what results is effective as a desegregation tool and fully compliant with the requirements of the law.

1. The Commissioner's Report fails to set forth a plan to remedy the persistent state of "unconstitutional racial imbalance" at DMHS.

It is axiomatic that the approach taken to reduce the racial segregation at DMHS must actually work to rectify the long-standing state of "unconstitutional racial imbalance" at the high school. See Englewood I, 257 N.J. Super. at 479. Indeed, at this juncture, the Commissioner has proposed to re-structure the current approach to desegregation precisely because the separate Academies @ Englewood magnet has not been effective in integrating the composite student body at the high school, and has even exacerbated

the problem of segregation in certain respects, as documented in the penultimate Report to the Board. See Report of the Commissioner to the State Board of Education, Jan. 14, 2005, at 7 ("Report, 1/14/05"). However, instead of modifying the existing, discredited approach by proposing concrete strategies and innovative programs to address - head-on - the persistent state of unconstitutional racial imbalance at the high school, the Commissioner's Report offers no more than a plan to merge two schools. As such, the proposed plan fails to comply with the requirements of the law.

Time after time, the decisions in this case have underscored the expectation that the plan devised by the Commissioner and the district be effective as a remedial tool. See, e.g., Englewood I, 257 N.J. Super. at 479; Englewood III, 170 N.J. at 344-45; Englewood v. Englewood Cliffs, Decision of the New Jersey State Board of Education, Apr. 2, 2003, at 10 ("State Board Decision, 4/2/03"); Englewood v. Englewood Cliffs, Decision of the New Jersey State Board of Education, June 1, 2005, at 15 ("State Board Decision, 6/1/05"). These decisions have further made clear that the effectiveness of a proposed integration plan will be measured in terms of its actual success in achieving a constitutionally-acceptable - or "target" - racial balance at the high school.

For example, in Englewood I, the Appellate Division suggested that Dwight Morrow would remain in "a state of unconstitutional racial imbalance" even if the student body at DMHS reached a then-

projected 78% minority composition¹ because such "minimal racial and cultural diversity" would fail to meet the Supreme Court mandate that the Commissioner "not only eliminate schools that are 'entirely or almost entirely Negro,' but [] also achieve 'the greatest dispersal consistent with sound educational values and procedures.'" 257 N.J. Super. at 480 (quoting Booker v. Board of Educ. of Plainfield, 45 N.J. 161 (1965))(emphasis omitted); see also Englewood III, 170 N.J. at 344 (discussing the State Board's "'obligation to take such steps as are necessary to correct' the racial imbalance at Dwight Morrow"); State Board Decision, 4/2/03, at 10 (discussing the requirement that the Academies @ Englewood "be successful in ameliorating the racial imbalance" at DMHS).

Most recently, the State Board reaffirmed the Appellate Division's pronouncements on target racial balance, holding that "the approach taken to reduce the racial imbalance at Dwight Morrow High School must achieve a balance in the composite student body at Dwight Morrow that would be acceptable under the Appellate

¹ The Appellate Division explained that, "[p]ut another way, if the State Board's initiatives were entirely successful, the minority enrollment of DMHS would remain more than six times that of the county as a whole and more than 35 times that of Tenafly." See Englewood I, 257 N.J. Super. at 480. The Appellate Division expressly disapproved of the State Board's statement that this result "might well afford all students who attend Dwight Morrow the educational advantages of a heterogeneous student population" since it would result in DMHS being "both multi-racial and multi-cultural," noting that such reasoning would have "eviscerated" the new Jersey Supreme Court's "explicit ban on segregation. Id.

Division's [1992] decision."² State Board Decision, 6/1/05, at 15 (citing Englewood I) (emphasis in original).

In spite of the clarity with which courts and the State Board have spoken on the need for the integration plan devised to be effective in achieving a constitutionally-acceptable racial balance at the high school, the Commissioner's Report is - inexplicably - entirely silent on the question of how the proposed plan will measure up as a remedial tool. Indeed, the Report speaks only of steps the district must take to unify DMHS and the Academies @ Englewood by 2008, but it fails to address the effect that the plan for merging the schools will have on the persistent state of unconstitutional racial imbalance at the high school.

Critically absent from the Report, for example, is any discussion of what the constitutional, or "target", racial balance of the unified high school should be, or how the merger strategy set forth in the revised plan will meet this integration goal. The Appellate Division and the State Board have suggested that a plan that would achieve at most a 78% minority composition, if entirely successful in its initiatives, would likely fail to meet this bar. However, if DHMS and the Academies @ Englewood were merged today in

² In an accompanying footnote, the State Board erroneously characterized the level of integration that would not be acceptable under the Appellate Division's Englewood I ruling as a combined minority population of 84 percent. In fact, as explained above, the Court stated that, had it been required to rule on this question, it would have likely found that a 78 percent minority composition would have failed to meet the Supreme Court standard. See 257 N.J. Super. at 480.

accordance with the Commissioner's proposed plan - and if no out-of-district students left the program - there would be, at best, a 74% minority composition in the high school. See Report of the Commissioner to the State Board of Education, Nov. 16, 2006, at Appendix I, Table F1 ("Report, 11/16/05"). Would a 74% minority composition comport with the Appellate Division's and the State Board's expectation that the Commissioner, through her plan, "achieve 'the greatest dispersal consistent with sound educational values and procedures'"? See Englewood I, 257 N.J. Super. at 480.

Further, even if a 74% minority composition would be an acceptable target, the Report fails to lay out the types of concrete student retention strategies, based on methods of integration with proven success, that would be necessary to insure this level of desegregation at the unified school. Such essential strategies would work - by way of "additional innovative programs," new "academies" to add to the five existing themes, or otherwise - to safeguard the gains in racial balance that have been made within the separate Academies magnet, and to insure that these gains extend to the student body of the unified high school, by assuring that existing out-of-district students remain enrolled post-merger. See Report, 1/14/05, at 7-8 (pledging to "continue to work" to "explore. . .other potential [integration] plans" and to "study, develop, and implement additional innovative programs to address the long-standing problems of this district.").

Similarly, if, in the alternative, a 74% minority composition would not pass constitutional muster under governing case law, the implementation of "additional innovative programs," or newly-themed "academies," would be necessary to retain existing students and recruit the requisite numbers of additional White and Asian pupils to the school. Here again, however, the Commissioner's Report fails to make any specific proposals for the types of student recruitment strategies, based on methods of integration with proven success, that would be necessary to achieve a racial balance consistent with constitutional principles - whatever that target balance was determined to be.

In sum, the Commissioner's failure to devise a real integration plan, with all of the requisite elements of a viable plan, is one glaring problem with the Report. The merger plan outlined in the Report fails to include not only the requisite analysis of "target" racial balance and proposals for concrete programs and strategies to achieve this goal, but also other key elements of a viable integration plan, including: goals and benchmarks to meet the target level of integration; a clear timeframe to insure the immediate, effective, and efficient implementation of the plan, once devised; a set structure for monitoring implementation; and an established procedure for taking expedient corrective action if "real-world" progress does not accord with the plan goals and benchmarks.

2. The Commissioner's Report fails to set forth an educational plan for a comprehensive, high-quality program that meets the needs of all students.

The integration plan devised for Englewood must "provide an enhanced educational environment at Dwight Morrow in which all students who attend that school" - students with diverse needs, talents, and post-secondary aspirations - can "pursue their educational goals and realize their educational potential." See Englewood III, 170 N.J. at 344-45(emphasis added)(using this language to describe an "effective" resolution of DMHS's racial imbalance); see also Report, 1/14/05, at 8 (noting the Commissioner's "commitment to providing better educational opportunities for all of Englewood's resident students") (emphasis in original); Report, 11/16/05, at 10 (noting the Commissioner's goal of "providing a quality education for all students"). However, the Report's plan for creating one high school organized around the college-preparatory curricula of the five existing "academies" - Pre-Engineering, Bio-Medicine, Finance, Information Systems, and Law and Public Safety - fails to offer the type of comprehensive, high-quality program necessary to meet the educational needs of all resident and prospective out-of-district pupils.

With the ultimate goal of achieving the merger of DMHS and the Academies @ Englewood by 2008, the Commissioner's Report is replete

with changes aimed, exclusively, at preparing resident middle-school and DMHS students for Academy-level work. See Report, 11/16/05, at 10-19. For example, the Report directs that, over the next two years, the district ensure that 85% of students complete a high school core curriculum that includes four years of college-preparatory or honors English, four years of math of a level of Algebra I and higher, four years of laboratory science, and either an academic concentration or a sequence of at least four courses of career studies in the Academies. Id. at 17. Similarly, the Report requires that the district make college preparatory or honors English the only English course for students in grades 6-12, that it require each student in grade 6-12 to read 25 books per year and complete one independent research paper, that it implement "academy-prep" classes for 6th, 7th, and 8th grade students at the middle school, and that it upgrade the mathematics curricula for 7th and 8th graders to train them for the Academies. Id. at 17-18.

It is plain that these types of changes - aimed at creating one unified, academically-accelerated or honors-level high school program - will not insure that all students can "pursue their educational goals and realize their educational potential" at DMHS. Rather, along-side the existing offerings, "additional innovative programs," newly-themed academies, or diverse curricula must be implemented to meet the court's requirement of providing meaningful

opportunities for an array of different students. See Report, 1/14/05, at 8.

However, the Commissioner's Report fails to include an educational plan for the requisite spectrum of programmatic opportunities - a comprehensive set of offerings that should encompass advanced placement classes as well as courses for students with educational needs, talents, and post-secondary aspirations that diverge from the curricula and focus of the existing "academies." Importantly, the development of a diverse educational plan to meet the needs of all students would dovetail with the integration goal, discussed supra Part One, of recruiting additional numbers of out-of-district pupils to the unified school by offering innovative, high-quality programs for pupils who seek something different than the Academy curricula currently in place.

- 3. The Report fails to propose a process for engaging stakeholders in the development and implementation of an effective desegregation plan.**

In this protracted and litigious struggle to desegregate DMHS, parents, students, and community leaders have never been given a voice at the table. This is so even though the result of these efforts will have vast implications for the educational future of generations of pupils in the Englewood district and surrounding communities.

Input from resident and out-of-district stakeholders is critical to the development of a plan that is responsive to the needs of the community. The ongoing involvement and support of these individuals is equally vital to the effective implementation of the integration plan that results. Absent from the Commissioner's Report, however, is any mechanism for ensuring that parents, students, and community leaders become, and remain, engaged in the process of developing and implementing an integration plan that will be effective as a constitutional remedy, and responsive to the needs of all students.

Conclusion

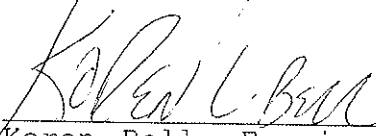
For the reasons stated above, Amici contend that the revised plan set forth in the Commissioner's Report is deficient and must be revised. To address these issues, Amici respectfully request that the Board promptly convene a meeting - before any contract is signed - with the Commissioner, district administrators, the educational consultants, and ELC and NJ-NAACP to discuss the necessary revisions to the plan, and to set forth a process for modifying the plan, so that what results is effective as a desegregation tool and fully compliant with the requirements of the law.

Respectfully,

Education Law Center



David G. Sciarra, Esquire



Koren Bell, Esquire, pursuant
to R: 1:21-3(c)