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January 25, 2006

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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-

