

March 25, 2021

Angelica Allen-McMillan
Acting Commissioner of Education
c/o Director, Office of Disputes and Controversies
Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Re: Absecon Board of Education v. Pleasantville Board of Education
OAL Dkt. No. EDU 14364-2019S

Dear Acting Commissioner Allen-McMillan,

We, the undersigned parents of children in the Pleasantville School district; members of the Pleasantville School Board; other elected officials of Pleasantville, NJ; the local chapter of the NAACP; faith and community leaders; and members of the public, strenuously object to Absecon's petition to withdraw from its obligations to cooperate with the Pleasantville school district to achieve racial integration among the districts. Granting Absecon's petition will completely isolate Pleasantville as a totally segregated and impoverished district and leave Pleasantville's students without any possible hope of the inclusive, integrated education that is *guaranteed them under the New Jersey Constitution*.¹ We demand the commissioner deny this petition outright or in the alternative we demand the right to a hearing on this petition before an administrative law judge.

This letter represents the combined positions of individuals, organizations including public school parents, community leaders, elected officials, civil rights organizations and faith communities based in Pleasantville, Atlantic County and across the State of New Jersey as well as national advocates and experts in civil rights, school finance and education policy and law. Together, we are the *New Jersey Coalition Against Racial Exclusion* or NJ CARE.

As a group, NJ CARE objects to the petition submitted to the Acting Commissioner of Education by attorney Vito Gagliardi on behalf of the Absecon Board of Education seeking to dissolve the send-receive relationship with Pleasantville High School. We object on the grounds that it violates the New Jersey Constitution as it will only increase racial segregation in the region, it will further isolate and cause harm to the children of Pleasantville academically, and it will have a negative

¹ The Constitution of the State of New Jersey, ratified in 1947 (a decade before the United States Supreme Court decision, *Brown v. Board of Education*, 347 U.S. 483 (1954), explicitly prohibits racially segregated public education). See N.J. Const. Art. 1, ¶ 5.

financial impact on the Pleasantville school district and the taxpayers of that community.

Furthermore, we are deeply troubled as this action is part of a larger statewide movement of illegal racial school district secessions being approved by the state that are promoting, expanding and deepening racial segregation and the isolation of poor, largely black and brown children in the state of New Jersey.

On March 21, 2021 over 100 parents, residents and community leaders, including the local NAACP chapter representing both Pleasantville and Absecon, and area congregations from Pleasantville and surrounding communities, marched under the banner of NJ CARE, from Pleasantville High School to Absecon to denounce and object to the Absecon School Board's petition on the grounds set forth below.

1. The dissolution of the send receive relationship between Absecon and Pleasantville High School will only increase racial segregation in a school district already segregated and deeply harmed by that segregation.

The state, not Pleasantville, has an affirmative obligation to provide for a thorough and efficient education, free of racial segregation and to guarantee equal protection for the children of Pleasantville and Absecon as set forth in the New Jersey Constitution

In a case like this one, in which Mr. Gagliardi previously failed to persuade the New Jersey Supreme Court to strand a segregated school district of Passaic County, the Court held that:

racial imbalance resulting from *de facto* segregation is inimical to the constitutional guarantee of a thorough and efficient education...***As a matter of State policy and apart from federal dictates, there is an obligation to take affirmative steps to eliminate racial imbalance, regardless of its causes...*** We find that the constitutional imperative to prevent segregation in our public schools applies as well to the Board within the ambit of the exercise of its responsibilities under *N.J.S.A. 18A:13-56(b)(4)*, which requires the Board to deny a withdrawal petition for "[a]ny other reason, which it may deem to be sufficient."

The court continued:

"it may well be that, given the racial disparity between [a sending and receiving district] and given the disparity in the socio-economic makeup of the two communities and resultant differences in capacity to provide quality education

programs, the Legislature has not fulfilled its constitutional obligation to provide for a thorough and efficient system of public schools.” But it seems to us that rather than suggesting an intolerable legislative default, [the commissioner] could and should more reasonably and suitably have found, as we did [that] faithful legislative fulfillment of the constitutional mandate in the many broad implementing enactments delegating comprehensive powers to the Commissioner.

In Re: Petition For Authorization To Conduct A Referendum on the Withdrawal of North Haledon School District From The Passaic County Manchester Regional High School, 181 N.J. 161, 854 A.2d 327 (2004).

While the court has held that the State of New Jersey and the Commission have an affirmative duty to integrate the schools and to make sure that partnerships like the Absecon agreement with Pleasantville work, the record shows just the opposite. By endlessly approving Gagliardi’s segregation petitions, the state has been cynically aiding and abetting New Jersey’s intense segregation and violating the state’s constitution.

2. The recent and ongoing effort to separate the Absecon and Pleasantville School Districts is part of a larger statewide movement to encourage racially segregated separations between districts. The firm Porzio, Bromberg and Newman led by Vito Gagliardi along with Statistical Forecasting LLC and their principal Richard Gripp are involved with multiple majority white school districts in which they have recommended separating from majority black and brown school districts. This includes Merchantville leaving Pennsauken, Maywood leaving Hackensack, North Haledon continuing to try leave Manchester Regional High School (Haledon). In all these cases they have made the false claim that the separation of these school districts would not result in increased racial segregation or cause harm to the school districts academically or financially. It can be established that the Pennsauken School District has since suffered increased racial segregation as a result of Merchantville’s withdrawal from that district in 2015.

We demand that the state investigate Gagliardi and every one of his segregation petitions. We want the state to account for every public dollar that was used to help Gagliardi, his client districts and the state itself, to strand and isolate the poor unfortunate segregated districts he and the state together have left behind.

The present governor's commissioner allowed Maywood to separate from Hackensack on March 2, 2020, a decision that seems to contradict the Supreme Court's decision in Englewood Cliffs.² See *Board of Education of the Borough of Maywood v. The Board of Education of the City of Hackensack*, Commissioner of Education Decision, March 2, 2020. There was no hearing before an ALJ involved in this decision. The state also allowed Interlaken to withdraw from a relationship with Asbury in the previous administration, even after an ALJ had warned the commission that the public process was defective. See *Board of Education of the Borough of Interlaken v. Board of Education of the City of Asbury Park*, 2014 WL 12844649.

Yet, the most egregious decision occurred when Merchantville was allowed to sever their relationship with Pennsauken in 2015. See *Board of Education of Merchantville v. Board of Education of Pennsauken*, New Jersey ALJ, 2015 WL 4078386.

For Merchantville Mr. Gagliardi embarked on a multiyear aggressive and expensive campaign to strand Pennsauken on the rocks of segregation and isolation even though Merchantville had repeatedly failed in such efforts in state courts. See *Board of Education of Merchantville v. Board of Education of Pennsauken* 204 N.J. Super. 508, 499 A.2d 523 (NJ Super 1985).

As in the present case, Gagliardi promised that the decision to strand Pennsauken would have no impact. Today we see his promises proved false. The year that Pennsauken was stranded, the 9th grade class at Pennsauken's high school declined from 328-272 students and the number of white ninth graders fell dramatically from 40-24 and Asian 9th graders from 38-33. At the same time the ninth grade at Haddon Heights high school went from 104 white students in 2015 to 149 in 2018.

The Education Commissioner who, at the time, decided the disastrous and unconstitutional Pennsauken case was later hired by Galadriel to join his "education team" at Porzio.

² Board of Education of the Borough of Englewood Cliffs v. Board of Education of the City of Englewood, 132 N.J. 327 (1993), available at <https://law.justia.com/cases/new-jersey/supreme-court/2002/a-60-00-opn.html>; see also Englewood Cliffs v. Englewood, 257 N.J. Super. 413 (1992), available at <https://law.justia.com/cases/new-jersey/appellate-division-published/1992/257-n-j-super-413-1.html>; In the matter of the petition for authorization to conduct a referendum on the withdrawal of north Haledon school district from the Passaic county Manchester regional high school district <https://law.justia.com/cases/new-jersey/appellate-division-unpublished/2015/a0789-13.html>

Gagliardi's quest to segregate and strand poor districts is relentless. If he doesn't succeed in one year on one theory, he will try another tactic. If a district tries to strand a segregated district in order to join with a very white district, and Gagliardi loses, he will then attempt to strand and isolate a poor district in order to join a somewhat diverse suburban district (such is the case with Absegami over Mainland) that is still much whiter and affluent than the stranded district.

If Gagliardi's segregation petition gets into the appellate system, he will always fail because his advice is clearly illegal and segregationist. He knows this because he always loses in state courts of appeal. But if Gagliardi, aided and abetted by the Commissioner of Education, can keep the decision in the hands of a friendly commissioner and ALJ, he will win with an argument the courts of New Jersey have always firmly rejected. Gagliardi wins by exhaustion, forcing poor isolated districts over and over into expensive proceeding and litigation subjecting them to torrents of abuse because they suffer under the weight of segregation and winning only when the segregated districts can no longer afford to fight and are drained and demoralized by endless defamation in the public forum.

On behalf of Absecon, Gagliardi makes the same argument that worked for him to strand Pennsauken and Hackensack and many other school districts, but that have failed in every court of law that he has presented them. He states that Absecon must be allowed to withdraw because its withdrawal would only affect a few students and that Absecon's students would still be in a somewhat integrated district.

Yet Gagliardi knows, and the school districts know, and the Commissioner knows that the New Jersey appellate courts have always forcefully and unambiguously rejected Gagliardi's argument over and over again.

In *Bd. of Educ. of Englewood Cliffs v. Bd. of Educ. of Englewood*, 257 N.J.Super. 413, 459-65, 608 A.2d 914 (App.Div.1992) Gagliardi himself made an identical argument unsuccessfully attempting to strand the poor segregated district of Englewood Borough. Rejecting Gagliardi's argument, the court held:

The Commissioner is at this juncture compelled to put to rest once and for all the belief that because painfully few white students remain in a school due to a pattern of withdrawal by members of the majority of the school community there can be no significant negative impact on racial composition. Thus, not just the few remaining

will be considered but the pool of eligible students as well who have withdrawn for whatever reason be it to private school, parochial school or, in this particular case, to a public high school in another community as well. If the State were to limit its consideration to 3 students as the Cliffs Board would have us do, it would be for all intents and purposes rewarding, not combating the withdrawal that has occurred. If such were to be allowed, the sending district would merely have to wait until enrollment is so devastatingly low that it could then argue that because so few students attend the receiving district, withdrawal can't possibly make a difference. This cannot be permitted.... For the Commissioner at this juncture to grant severance to the Englewood–Englewood Cliffs sending-receiving relationship as a matter of public policy would place an imprimatur of acceptance by the State to this flight.

3. The Pleasantville district originally objected to this petition. Parents and resident were assured that they would have a chance to testify before an administrative law judge in opposition to Absecon's segregation petition. Yet suddenly and surreptitiously, a majority of the Pleasantville School board withdrew its opposition and thus deprived us of our rights to oppose Absecon's segregation petition. A majority of the Pleasantville Board have taken this action: 1) without appropriate notice, 2) without any satisfactory explanation, 3) contrary to the clear and manifest will of the parents and voters in the Pleasantville School district, and 4) in legal defiance of its obligation to protect the constitutional rights of Pleasantville Students.

As a result of this action parents, residents, educators as well as civil rights and education experts and advocates have been denied a hearing to argue against Absecon's petition in front of an Administrative Law Judge. On at least two occasions a hearing was scheduled and canceled (presumably because of the Covid-19 restrictions) ³and then withdrawn after the sudden reversal of the Pleasantville School Board's curious decision to withdraw their

³ Claire Lowe, *Absecon Accuses Pleasantville of Stall Tactics in Quest to Leave School Send-Receive Deal*, PRESS OF ATLANTIC CITY (Dec. 22, 2020), available at https://pressofatlanticcity.com/news/local/education/absecon-accuses-pleasantville-of-stall-tactics-in-quest-to-leave-school-send-receive-deal/article_82065778-113a-5c35-9809-35b02d5d803f.html; Claire Lowe, *Hearing Dates Set for 2021 in Absecon Petition to Leave Pleasantville High School*, PRESS OF ATLANTIC CITY (Sept. 1, 2020), available at https://pressofatlanticcity.com/education/hearing-dates-set-for-2021-in-absecon-petition-to-leave-pleasantville-high-school/article_9d17b382-271c-5461-aaa0-a9669ed7170f.html

objections.⁴ without notifying voters, residents, taxpayers, the local NAACP or parents of their sudden decision to withdraw their formal opposition thus denying the people of Pleasantville the opportunity and the right to argue against Absecon's proposal.

Pleasantville School district's history of mismanagement and dereliction has placed it under the supervision of a state monitor and direct state guardianship. Some of this incapacity is a direct consequence and legacy of profound and unredressed unconstitutional segregation. When the state has asserted its role as a guardian of the students of Pleasantville, the district must have the monitor's permission in making its most basic decisions. As the district legal guardian, the monitor cannot lawfully allow Pleasantville to acquiesce in Absecon's segregation petition that will: 1) destroy forever the rights of Pleasantville students to have an integrated education and 2) undermine, as even the Absecon's petition admits, the fiscal capacity of the Pleasantville district itself. Without the state monitor's stated approval, the commissioner must assume Pleasantville's opposition to Absecon's petition.

We recognize the significant social and educational challenges that exist in the Pleasantville School district and are aware of some of the stated reasons Absecon school parents and school officials seek alternative options. We also recognize, however, that those social and educational challenges are a direct result of the damage inflicted on the children and community of Pleasantville by years of racial segregation, increased economic isolation and concentrated poverty. The state of racial and economic segregation that has harmed the children of Pleasantville is not a self-inflicted condition, but an external structure of exclusion and isolation caused by a myriad of state and state sanctioned public policies that have played themselves out in the Atlantic County region resulting in concentrated poverty and racial isolation. It is those state policies that must be addressed and changed, not a modern-day secession movement that will only further isolate an already troubled, isolated and segregated public school district.

⁴ Claire Lowe, *Pleasantville No Longer Contesting Absecon Bid to Leave School District*, PRESS OF ATLANTIC CITY (Jan. 28, 2021), available at https://pressofatlanticcity.com/news/local/education/pleasantville-no-longer-contesting-absecon-bid-to-leave-school-district/article_f5e04b0c-4250-59e7-8995-1dd375dc78f7.html

The state, not Pleasantville, has an affirmative obligation to provide for a thorough and efficient education, free of racial segregation and to guarantee equal protection for the children of Pleasantville and Absecon as set forth in the New Jersey Constitution

4. New Jersey has one of the highest rates of school segregation by race and class in the nation, surpassing all the states of the former Confederacy. This shameful state affairs prompted plaintiffs including the State NAACP to sue Governor Phil Murphy and Commissioner of Education Lemont Repolet on May 17, 2018 (the anniversary of the *Brown v Board Decision*) ⁵ for the extreme levels of racial segregation by school district. This litigation is still pending and calls for a remedy that addresses both the harms and damage of racial segregation as well as the challenges of middle class school districts such as Absecon. The Pleasantville district is a party to this lawsuit. It makes no sense to approve this or any other school district separations while this important civil rights case remains unsettled and in the courts.
5. Legislative leaders in New Jersey, including Senate President Stephen Sweeney, are promoting a *Path to Progress* package of legislation that includes the expressed goal of consolidating and regionalizing public schools, and not the goal of separating school systems and further segregating and isolating them by both race and class. This legislation promises funding and incentives to promote the consolidation and regionalization of school districts. The actions being taken by Absecon and their attorney Gagliardi's clients across the state suggest that this goal is either being disregarded or that "regionalization" is and will be used as a pretext to jettison and further isolate already segregated and isolated black and brown school districts. In other words, the principle and goal of regionalization will really mean the regionalization of majority white districts at the expense and isolation of black and brown and poor districts and the further segregation of the state public schools' system. Senator Sweeney's legislation must be revised to clarify that any regionalization advances the state's affirmative duty to integrate its schools and prohibits any further support for Gagliardi's unconstitutional segregation petitions.
6. A May 2018 study by Rutgers University Law Professor Paul L. Tractenberg and The Center for Diversity and Equality in Education New Jersey, states that many New Jersey school districts, including but not limited to Pleasantville and Atlantic City, remain "intensely segregated" by race and poverty. Conversely, the May 2018 study also states that a growing

⁵ Latino Action Network v. New Jersey.

number of suburban school districts, e.g., Egg Harbor Township and Galloway Township have become increasingly diverse, thus reflecting the demographics of the state and their region. The study quotes as follows: "Galloway Township in Atlantic County is the most proportional district in New Jersey (43.6% of its students are white, 23.1% are Hispanic, 16.5% are black, 10.7% are Asian, and 6.1% are classified as another race)." Absegami High School located in Galloway Township has nearly identical demographics as it receives most of its students from Galloway Township middle school. Absecon's petition and feasibility study states that leaving Pleasantville for Absegami would incur no segregative impact on either school district when in fact Pleasantville will become more intensely segregated and Absegami will become more white and less integrated.

7. 8. We are living in a time of unprecedented activism, anger, and public consciousness around issues of race in America especially as it relates to black and brown communities and individuals. The legacy of slavery and Jim Crow as well as redlining and the exclusionary practices that have created our modern segregated metropolitan regions are being examined today for their role and complicity in sustaining enduring disparities in income, wealth, educational attainment even health and mortality. Unlike slavery and southern Jim Crow laws, modern structures of school and residential segregation are still with us sustained by state policies and funding structures as well as the lack of state action to dismantle those barriers to opportunity and equality affirmatively promote integration. The governor has suggested that he is proponent of civil rights that he supports integration, but his approval of segregation petitions of Gagliardi in Hackensack and his tacit support of Gagliardi in the present matter demonstrates that his administration is willfully violating the state's affirmative duty to integrate its schools.

The action being proposed by Absecon would move us all in a backward direction as a state and a nation.

The feasibility study, conducted by the firm Statistical Forecasting LLC is on its face deeply flawed, racially biased, misleading and deceptive, particularly in its false assertion that there will be "no racial impact" on either of the two school districts as a result of the severing of the send/receive relationship. A hearing is required to fully refute the demographic analysis and challenge the findings and conclusions of this feasibility study that the separation will no or negligible racial, financial or educational impact.

Gagliardi's successful segregation petitions show the state's clear intent to violate the New Jersey constitution's affirmative duty to integrate in exactly the manner that the *Englewood* decision forbids. When the state approves these petitions, it acts to do the exact opposite of what its affirmative duty as spelled out in *Haledon* requires and it approves petitions that are per se illegal under *Englewood Cliffs*.

The state knows that Gagliardi lost this case. The state knows that when the state approves Gagliardi's segregation petitions, it places the "state's imprimatur" of acceptance on *illegal white flight* prohibited by the court in *Englewood*. Rather than attempt to increase integration, the state repeatedly takes an action to prevent integration, an action that state officials know will strand segregated improvised districts and remove all hope of ever vindicating the districts children's rights to an integrated education.

Even absent New Jersey's affirmative duty to integrate the clear holding of *Englewood Cliff* that petitions like Gagliardi's are per se unconstitutional, it is obvious that the dissolution of the send receive relationship between Absecon and Pleasantville High School will only increase racial segregation in a school district already segregated and deeply harmed by that segregation.

We renew our demand that the commissioner deny this petition outright or in the alternative we demand the right to hearing on this petition before an administrative law judge.