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March 24, 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:

Education Law Center (“ELC”) serves as counsel to the certified class of plaintiff school children in New Jersey’s thirty-one poorer urban districts in the landmark Abbott v. Burke litigation, which includes all students enrolled in the Pleasantville public schools. On behalf of these students, we provide comments on the impact on racial segregation raised by the Petition filed by the Absecon Board of Education (“Absecon”) – a K-8 school district – seeking approval to end its longstanding agreement to send its secondary students to neighboring Pleasantville High School (“PHS”).

This Petition to terminate the agreement is now before your Office for final administrative decision without the benefit of a fully developed evidentiary record. The absence of a record is the result of the Pleasantville Board of Education’s (“Pleasantville”) recent, sudden withdrawal of its objections to the Petition. As explained below, we request that, pursuant to N.J.A.C. 6A:3-6.1(e), you remand the matter to the Office of Administrative Law (“OAL”) for further inquiry, fact-finding and exploration of factual and legal issues pertaining to the impact of terminating the agreement on the intense and persistent racial isolation at PHS and the identification of proposed remedial measures to improve the substantive education, performance, climate and supports for students attending PHS, along with strategies to increase diversity at the school in future years.

At the outset, the Commissioner of Education’s (“State”) consideration of the impact on racial segregation of terminating districts’ sending-receiving agreements is governed by constitutional principles set forth in the Supreme Court’s seminal ruling in Withdrawal of North Haldon School District v. Manchester Regional High School District, 181 N.J. 161 (2004). In that decision, the Court made clear that the constitutional prohibition – indeed “abhorrence” – against racial discrimination and segregation in the public schools applies with full force in the context of the State’s consideration of petitions to terminate sending-receiving agreements. The Court further made clear that the State’s affirmative constitutional obligation to take all necessary steps to remedy

racial imbalance in the public schools, including requiring the consolidation of districts, to advance diversity among students in the public schools also applies with equal force to termination petitions.

Against this constitutional backdrop, several troubling issues necessitating further inquiry and fact finding are apparent on the face of the Petition and from publicly available data. First, in its Petition and feasibility study, Absecon relies upon the undisputed fact that of the 820 students attending PHS nearly 97% are Black and Hispanic, which Absecon contends will remain “diverse” if the sending-receiving agreement is terminated. Absecon further asserts that the exodus of approximately 35-40 Absecon students attending PHS, of whom 16% are white, would be so small as to have no appreciable impact on the racial “diversity” of the PHS student body. Absecon’s fundamental mischaracterization of the PHS student enrollment as “diverse” aside, what Absecon fails to recognize is the hyper-segregation and severe racial isolation of PHS students, so much so that the loss of any white students is simply unacceptable.

Second, the Petition ignores the crucial fact that Absecon’s middle school enrolls 380 students, over 50% of whom are white, 15% Black, 22% Hispanic and 4% Asian. The data also show that approximately 90 students graduate from the middle school and less than half of those students take advantage of the send-receive agreement to attend PHS. The record provides no information or analysis of the high schools other than PHS – both public and private – that Absecon students attend after middle school. Nor is there any information or analysis of the reasons, dynamics, or bases to explain why these students decide to attend schools other than PHS or, conversely, what programs, course offerings or improvements to PHS might, over time, attract more of these students to elect to attend PHS.

Third, it appears that Absecon may be actively encouraging its middle school students to attend alternative high schools to PHS. For example, an online flyer for the 2020-21 Open House at Emma Attles Middle School provides numerous “options for high school that our 8<sup>th</sup> grade students apply to,” followed by a menu of available public high schools and private high schools in the area. PHS is simply included in this long list of options with barely a mention that it is the district’s receiving high school under the agreement. There is also no indication that Absecon takes any coordinated efforts with Pleasantville to promote PHS to its graduating middle schoolers.

Fourth, the record contains no evidence of any collaborative efforts between Absecon and Pleasantville to address Absecon’s concerns with the educational program, academic performance, and school climate at PHS as set forth in the Petition, feasibility study, and other public statements. Importantly, the record does not reflect what joint efforts, if any, have taken place in prior years to evaluate and assess programs, courses, curricula and conditions at PHS; identify areas in need of improvement; and undertake initiatives to build a stronger academic program at PHS, boost student achievement, and raise graduation and college-entry rates for all PHS students. Information on the prior and current relationship under the sending-receiving agreement between Absecon and Pleasantville is crucial to evaluating whether all

efforts have been made by both districts to strengthen PHS's academic programs and initiate specialty programs in the arts, sciences, technology or other areas that would not only respond to parent and family expectations in both communities, but also, over time, attract a more diverse student body to PHS.

Fifth, data also show that a significant number of Pleasantville middle school students, like their Absecon counterparts, are not matriculating into PHS. The record is devoid of information on the alternative high school options being used by these students, why PHS does not meet their needs, and what improvements might be undertaken at PHS to retain these students in Pleasantville upon graduation from middle school.

Sixth, Pleasantville has been under the authority of State Fiscal Monitors, pursuant to N.J.S.A. 18A:7a-55, since 2007. Again, the record is silent on the actions and efforts undertaken by the Fiscal Monitors, now in place for nearly 15 years, to ensure adequate funding and resources for PHS and effective and efficient spending in Pleasantville as a whole. It is also unclear whether the Fiscal Monitors, paid for by Pleasantville, have taken any steps to meet with Absecon, gather information on their concerns with PHS, and formulate a proactive plan of action to strengthen the relationship between the districts and address Absecon's concerns with PHS. Since the State is under a complimentary, affirmative constitutional mandate to ensure a thorough and efficient education for all PHS students, including those from Absecon, and, simultaneously, take every possible action to remedy the intense racial segregation at PHS, it is crucial that the role and activities of the Fiscal Monitors in recent years be thoroughly examined.

Finally, over the last two decades, the State has made considerable investment in Pleasantville resulting from its "Abbott district" status. These investments include K-12 program funding through the School Funding Reform Act ("SFRA"), the state's weighted student funding formula; state-funded, high quality preschool for all three- and four-year-olds; and several 100% state-funded building projects to provide new and renovated facilities. These investments benefit all Pleasantville students, including those attending PHS. The State's provision of adequate funding and resources, high quality preschool, and safe and modern school facilities in Pleasantville cannot be viewed in isolation. Rather, these Abbott commitments must also be deployed in the service of remediating PHS's intense racial segregation and creating the opportunity to build towards a more diverse student enrollment at the school, as required by our State constitution.

For these reasons, we request this matter be remanded to the OAL with explicit instructions to conduct extensive inquiry, fact finding and exploration of student segregation and racial isolation at PHS and, most critically, what steps can be taken to dramatically improve PHS so that it can better serve all students, attract more Absecon students to attend, retain more of Pleasantville middle school students, and serve as a viable option for students from other neighboring districts. The remand should include consideration of converting all or a portion of PHS into a "magnet" school that can serve students from across Atlantic County; State incentives to build a stronger relationship

with Absecon, such as fully funding Pleasantville's SFRA adequacy budget; expanding Pleasantville's universal Abbott preschool program to include all three- and four-year olds Absecon children; and a the feasibility of consolidating the Absecon and Pleasantville districts into a single, unified pre-K-12 district with full entitlement to the Abbott remedial measures.<sup>i</sup>

Thank you and please include these comments in the record. We stand ready to assist both Absecon and Pleasantville in moving past the narrow, limited disputes presented in the Petition. We strongly urge the State to lead the districts to begin taking tangible, concrete steps towards a new era of collaboration and cooperation for the benefit of current and future generations of school children in both communities.

Sincerely,



David G. Sciarra, Esq.  
Executive Director

Cc: Absecon Board of Education  
Pleasantville Board of Education  
Office of Governor Phil Murphy  
Vito A. Gagliardi, Esq.

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<sup>i</sup> We note the introduction and possible enactment of Senate Bill 3488 to provide state grants to reimburse districts for the cost of conducting school consolidation feasibility studies. Should this bill become law, we recommend a grant be provided to reimburse Absecon and Pleasantville for the cost of a joint district consolidation study.