

FURTHER COMMENTS TO THE ACTING COMMISSIONER OF EDUCATION
REGARDING THE ABSECON SCHOOL DISTRICT’S PETITION TO TERMINATE ITS
SENDING-RECEIVING RELATIONSHIP WITH THE PLEASANTVILLE SCHOOL
DISTRICT, AND THE BROADER SCHOOL INTEGRATION AND EDUCATIONAL
QUALITY ISSUES RAISED

Submitted by Paul Tractenberg

May 18, 2021

On March 29, 2021, I submitted my initial comments about Absecon’s petition filed by Special Counsel Vito Gagliardi and about the 93-page feasibility study prepared by Statistical Forecasting LLC, Peter Carter and Steven Cea for Absecon in May 2019. Richard S. Grip, Ed.D. apparently is Statistical Forecasting’s principal.

Now I am commenting on the additional 231 pages submitted on behalf of Absecon in April 2021. They take the form of: (i) a 95-page brief filed by Mr. Gagliardi and his law firm Porzio, Bromberg & Newman; (ii) 45 pages of Supplemental Data on the Educational Impact of severance submitted by consultants Peter E. Carter and David C. Hesper;¹ (iii) a 49-page Racial and Demographic Impact Analysis submitted by consultant Statistical Forecasting LLC; (iv) a separate 29-page report on the Racial Impact submitted by consultant Camille Z. Charles, Ph.D.; and (v) a 13-page report on the Financial Impact submitted by consultant Steven Cea, M.B.A.

I must admit that I found the volume of Absecon’s recent submissions quite startling given that the Gagliardi brief characterizes this matter as an “Uncontested Petition.”² Thus far I believe that the opposition to the petition has consisted of a total of 19 pages--my eight-page public comment, David Sciarra’s four-page public comment on behalf of the Education Law Center, counsel to Pleasantville students in the Abbott litigation, and a seven-page³ public comment submitted by 200 named individuals, 53 of them from Pleasantville including the mayor and two board of education members, 14 from Egg Harbor, 11 from Galloway and three from Absecon.

All three public comments urge the Commissioner to reject Absecon’s petition. They also counsel the Commissioner to give primary attention to investigating the serious educational deficiencies alleged by Gagliardi and his consultants to exist in the Pleasantville school district and to remedy on an urgent basis any of those deficiencies that are established.

As with my March 29, 2021 public comments submitted to the Commissioner, the comments below also relate to some extent to the Absecon school district’s petition to terminate the

¹ Hesper is also listed as “of counsel” to the Porzio, Bromberg & Newman law firm.

² The Pleasantville Board of Education initially opposed the Absecon petition. It also successfully intervened in the LAN statewide school integration case on March 19, 2020, six and one-half months after Absecon filed its severance petition with the Commissioner. Pleasantville’s initial opposition to severance and its intervention in the LAN case were based on its intensely segregated status, which would be worsened by severance. It is not clear why the Pleasantville board reversed itself and chose not to contest severance, but I understand that community groups such as the NAACP remain opposed to Absecon’s withdrawal from Pleasantville.

³ There are three additional pages containing the names of the 200 signatories.

sending-receiving relationship between Absecon and the Pleasantville school district, and especially to Absecon's voluminous updating submissions. To an even greater extent, however, they relate to your much broader power and duty as Commissioner of Education to assure that New Jersey's school children, including the students in the Absecon and Pleasantville school districts, receive a thorough and efficient education, their fundamental constitutional right under the state constitution. Importantly, Absecon's April 2021 submissions suggest a concrete and fully feasible way you can respond to both issues in a manner that fulfills your constitutional duties to the children of both districts.

Introductory comments on Absecon's April 2021 supplementary materials

Given the modest number of pages of public comments raising questions and concerns about Absecon's severance petition, my review of the Gagliardi team's 231 pages in response made me think about one of Shakespeare's famous lines, this one from Hamlet: "The lady doth protest too much, methinks."

According to the Cambridge English Dictionary, that quote relates to expressing "an opinion or fact so strongly or so often that people start to doubt that you are telling the truth."

With the initial 93-page feasibility study that Gagliardi submitted in support of Absecon's verified petition, together with the verification of Dr. Daniel Dooley, Absecon's superintendent of schools, and the certification of service, Absecon's submissions thus far total 331 pages. I have reviewed it all carefully. In my opinion, if a competent editor had been turned loose on it and instructed to achieve clarity, consistency and non-repetitiveness, the volume and verbosity could have been reduced by well over half. The same points, often even in the same language, are made multiple times within the same documents, and then picked up and reiterated multiple times in another document, especially the "brief" submitted by Gagliardi. If the Gagliardi team were being paid by the word or page by their client, the Absecon school district, that might make sense. Otherwise, it tests the patience of any reader, including perhaps yours.

By contrast, my two brief and to-the-point public comments total less than 20 pages. Perhaps that is, at least in part, because my effort is by one person on a completely pro bono basis with no institutional support, financial or otherwise. Gagliardi's submissions, the various paid consultants aside, is supported by a law firm, Porzio, Bromberg & Newman, with more than 90 attorneys and at least that many support staff. I suspect that Gagliardi and his firm will receive the lion's share of the \$350,000 or more charged to the Absecon school district. Since the Gagliardi team projects that only 27 or 28 Absecon students will change high schools if the severance petition is successful, that is a rather hefty per pupil charge.

The major questions raised by the Absecon supplementary submissions

The voluminous and repetitive nature of the Gagliardi team's submissions make a detailed response to each point both unnecessary and unhelpful. Instead, I focus my comments below on identifying the major questions raised by the supplementary submissions and then applying my expertise, and common sense, to explain what considerations I think are relevant to those questions in your role as Commissioner. I hope these comments help to focus your approach to

the Absecon petition, as well as to the broader issues of what will be required to assure that Pleasantville students, in addition to Absecon students, receive their constitutional educational entitlements.

The questions:

1. How can Gagliardi assert in the very first bullet point in his April 19, 2021 brief that “Pleasantville does not oppose the severance” and that “Pleasantville voted unanimously not to oppose the petition” without referencing the fact that the Pleasantville board of education initially opposed the petition and successfully intervened in the LAN case six months after Absecon filed its petition on the strength of Pleasantville “vehemently opposing Absecon’s request [petition]”?
2. How can Gagliardi assert in the third bullet point of his brief, still on the first page, that “Not one Pleasantville parent, student, teacher, administrator or Board member submitted his or her own public comment opposing the severance” when 53 Pleasantville signatories, including two current Board members and the Mayor of Pleasantville, joined in a March 25, 2021 public comment strongly opposing severance?
3. If Pleasantville High School (PHS) is as seriously deficient a school as Gagliardi characterizes it throughout his brief and consultant reports, and Absegami High School (AHS) is as exemplary a school as Gagliardi claims, why has the former’s pupil enrollment been steadily increasing over the past five years and the latter’s steadily declining?
4. If AHS is such a well-managed and efficient school as Gagliardi suggests, why is it operating at about 42% capacity with well over 1400 “surplus seats”?
5. If PHS is in fact anywhere near as educationally deficient as Gagliardi claims repeatedly, how can the Commissioner ignore that and just rule on the narrow question of where the handful of Absecon students go to high school? Given what some Absecon citizens were quoted in Gagliardi’s brief as saying, to the effect that PHS is not good enough for Pleasantville students, why aren’t the Absecon citizens supporting a result that would help thousands of Pleasantville students not just dozens of Absecon students, who, because of their low-income status, Gagliardi describes as “have nots”?
6. Why are Gagliardi’s consultants projecting that essentially the same tiny number of Absecon high school students will be attending AHS as attended PHS, seven per grade, when Absecon’s average number of students per grade below high school is approximately 90?
7. Why is Gagliardi’s brief trying so hard, and so inaccurately, to discredit my concise and straightforward public submission?
8. Why is Gagliardi’s team claiming that a Washington Post study supports their facially absurd claim that Pleasantville, with a nonwhite student population of 99.9%, is “very diverse,” when the study’s authors made clear that districts including only Black and Latino students, but not white students, are segregated?
9. As to the relevant and dispositive New Jersey jurisprudence on the racial impact of severance, why do Gagliardi and his consultants try so hard to create an alternate reality by stitching together language from carefully selected administrative law judge and

Commissioner of Education administrative rulings, and by ignoring or mischaracterizing leading decisions by the New Jersey courts, including the state supreme court?

Had I the time and resources to definitively answer these, and the many other serious questions raised by Absecon's voluminous but deeply flawed and unreliable submissions, I might choose to do so. The Commissioner can do no less than to consider all the relevant information and to fact-check all the submissions before ruling in this matter.

My brief comments on the questions

Below I comment on the nine questions just raised in the order they were presented:

1. How can Gagliardi assert in the very first bullet point in his April 19, 2021 brief that “Pleasantville does not oppose the severance” and that “Pleasantville voted unanimously not to oppose the petition” without referencing the fact that the Pleasantville board of education initially opposed the petition and successfully intervened in the LAN case six months after Absecon filed its petition on the strength of Pleasantville “vehemently opposing Absecon’s request [petition]”?

One can speculate about why Gagliardi sought to present Absecon's severance petition as being uncontested, indeed, as enjoying the unanimous support of the Pleasantville Board of Education, when that was not at all the case for at least six months after the petition was filed. It also may not be the case for much longer since PBOE is being urged by many residents to reverse itself again. Whatever the Board decides, however, that should not influence, let alone be dispositive of, the Commissioner's decision.

The language the PBOE's then In-House Counsel Karyn White used in her letter-brief supporting Pleasantville's successful intervention in the LAN case is worthy of attention in documenting that history:

In response [to Absecon's severance petition], the PBOE filed an answer in opposition and engaged the services of an expert, Terry Crowley, to draft a written report regarding what effect such a termination would have on the Pleasantville School District. In his report, Mr. Crowley, based upon the data provided by the Absecon Board of Education in its feasibility study, opined that if the Commissioner of Education granted the request, Pleasantville High School would become a 100% minority school. The PBOE is vehemently opposing Absecon's request.

I have seen no explanation of why PBOE reversed that strong position in opposition to Absecon's severance petition.

2. How can Gagliardi assert in the third bullet point of his brief, still on the first page, that “Not one Pleasantville parent, student, teacher, administrator or Board member submitted his or her own public comment opposing the severance” when 53 Pleasantville signatories, including two current Board members and the Mayor of Pleasantville, joined in a March 25, 2021 public comment strongly opposing severance?

The only even arguable way to harmonize Gagliardi's definitive statement about no one from Pleasantville, and explicitly no Board member, submitting "his or her own public comment opposing the severance" with two current board members having joined 51 other Pleasantville residents and a total of 200 signatories in submitting a public comment in opposition, is to emphasize the words "his or her own comment" and to argue that joining many others in an opposing public comment is somehow different from one submitting his or her "own public comment." That is a distinction without a difference and, in evaluating the petition, you should fully account for the strongly held views of many community members and leaders from Pleasantville and many other communities, including Egg Harbor Township, Galloway and even Absecon.

3. If Pleasantville High School (PHS) is as seriously deficient a school as Gagliardi characterizes it throughout his brief and consultant reports, and Absegami High School (AHS) is as exemplary a school as Gagliardi claims, why has the former's pupil enrollment been steadily increasing over the past five years and the latter's steadily declining?

According to Statistical Forecasting's April 2021 racial and demographic impact analysis, between 2014-15 and 2019-20, Pleasantville High School's total enrollment went from 746 to 792, and in 2018-19 was as high as 816.⁴ By comparison, the analysis documents that Absegami High School experienced a steady and precipitous enrollment decline between 2014-15 and 2019-20, from 1,410 to 1,143.⁵

In all the reams of student enrollment data presented by Gagliardi's experts I found nothing to explain how enrollment changes at PHS and ABS over the past five years defied what one might expect from the sharply divergent characterizations of the educational quality at those schools.

4. If AHS is such a well-managed and efficient school as Gagliardi suggests, why is it operating at about 42% capacity with well over 1400 "surplus seats"? Similarly, even though the consultants' reports dealt in detail with how far under-capacity AHS is, and how many "surplus seats" it has, the only ostensible purpose for doing that seemed to be to assure that Absecon's handful of students would not strain AHS's capacity.

Since the Gagliardi experts projected that, even with Absecon's students, AHS would still have more than 1,400 surplus seats,⁶ that suggests a remedy, which not only would

⁴ See Racial and Demographic Impact Analysis at 14 (Table 5). Indeed, in Table 6 that follows at page 15, the projection is that PHS' enrollment will increase to 838 in 2020-21 and to 844 in 2021-22.

⁵ See Racial and Demographic Impact Analysis at 16 (Table 7).

⁶ See Racial and Demographic Impact Analysis at 18 (Table 9). The analysis states above the Table that "...Absegami presently is being underutilized to a significant extent. This underutilization has been exacerbated by its declining enrollment. Absegami currently has 1,482 surplus seats, based on its 2019-20 enrollment of 1,143." The only stated conclusion of the analysis is that "Absegami has more than sufficient room to accommodate the additional students from Absecon." Since the analysis projects that an average of seven Absecon students per grade, or a

satisfy Absecon’s desire for its high school students, but also could respond to the allegations about PHS’s educational deficiencies—the Commissioner could simply require that all of PHS’ students attend AHS. If AHS truly offers a superior education, and if AHS and Absecon truly value diversity, then isn’t such a remedy a win-win? And it would still leave AHS with more than 600 surplus seats so overcrowding is hardly an issue. Of course, AHS would have to increase its teaching and support staff significantly, but, under this remedy, there would be a lot of PHS teachers and staff available to fill the spots.

This sort of remedy would clearly be within the Commissioner’s powers and duties on the strength of New Jersey Supreme Court decisions, such as *Jenkins v. Morris Township Board of Education*, soon to celebrate its 50th anniversary.⁷ Of course, *Jenkins* suggests that the Commissioner could take other, even more far-reaching action, such as ordering the creation of a regional school district encompassing Pleasantville, Absecon, Great Egg Harbor, and perhaps other nearby districts.⁸ Still another available remedy would be state takeover of the Pleasantville district, a possibility already discussed as a natural follow-up to the State having two fiscal monitors assigned to Pleasantville, but apparently not deemed sufficient by Gagliardi and his expert consultants to cure Pleasantville’s serious educational deficiencies.

Since I understand that Gagliardi has been working with Senator Sweeney on the latter’s regionalization legislation, it might even be the case that Gagliardi would support the regionalization remedy and urge his clients, including Absecon, to add their support. If Gagliardi want us to take him at his word that his efforts with regard to sending-receiving relationships are designed to promote diversity and enhanced educational opportunities for all New Jersey students, not just those who are his fee-paying clients, this provides him with a wonderful opportunity to demonstrate his bona fides.

5. If PHS is in fact anywhere near as educationally deficient as Gagliardi claims repeatedly, how can the Commissioner ignore that and just rule on the narrow question of where the handful of Absecon students go to high school? Given what some Absecon citizens were quoted in Gagliardi’s brief as saying, to the effect that PHS is not good enough for Pleasantville students,⁹ why aren’t they supporting a result that would help thousands of Pleasantville students not just dozens of Absecon students, who, because of their low-income status, Gagliardi describes as “have nots”?

total of about 28, will be attending Absegami, should Absecon’s petition to the Commissioner be successful (see analysis at 12, Table 4), it seems a monumental understatement to indicate that Absegami has capacity to accept Absecon students.

⁷ 58 N.J. 483 (1971).

⁸ Indeed, at pages 38-40 of Gagliardi’s brief there is a discussion of how a merger of Absecon and Galloway might make great sense.

⁹ See Gagliardi brief at 11-12.

In the same vein, if the Absecon residents, quoted in Gagliardi's brief as truly caring about the education of Pleasantville students laboring in a deficient school district, want to be taken at their words, they can encourage Gagliardi, their special counsel, either directly or through their board, to work toward a remedy that meaningfully includes Pleasantville students, not just Absecon students.

6. Why are Gagliardi's consultants projecting that essentially the same tiny number of Absecon high school students will be attending AHS as attended PHS, seven per grade, when Absecon's average number of students per grade below high school is approximately 90?

I found it puzzling that Gagliardi and his experts are projecting that essentially the same number of Absecon students will attend AHS as have been attending PHS—an average of seven per high school grade level. I would have thought that switching from an educationally deficient receiving high school to an educationally exemplary one, would encourage many more Absecon eighth graders to gravitate to AHS, but that does not seem to be the calculus that Gagliardi and his experts have applied. And nowhere do they indicate why. It is a puzzlement.

7. Why is Gagliardi's brief trying so hard, and so inaccurately, to discredit my concise and straightforward public submission?

I also found it puzzling why Gagliardi has taken such pains to try to discredit the brief public comment I submitted on March 29, 2021, and why the effort required him to play so fast and loose with the facts. I will briefly address, partly as a point of personal privilege, three claims he has made about my earlier comments: (i) that I have a "mistaken belief" regarding Absecon's racial profile (Gagliardi brief at iv-v); (ii) that, with David Sciarra at ELC, I used, or advocated using, a "hypothetical analysis" (Gagliardi brief at 55); and (iii) that my statement about severance causing PHS to become a 100% minority high school was "factually incorrect" (Gagliardi brief at 62; emphasis in original).

As to Gagliardi's first charge, his "support" consists entirely of a quote lifted out of context, altered in a small but important way, and totally mischaracterized. He attributes to me "the mistaken belief that Absecon is a 'small, predominantly white and well-to-do district.'" (Gagliardi brief at iv-v). I did use the words "small, predominantly white and well-to-do districts,"¹⁰ but not to describe Absecon. The full sentence from which Gagliardi lifted his quote, which appeared at page 6 of my public comments, was the following: "The pattern is clear—small, predominantly white and well-to-do districts are seeking to distance themselves from districts, often larger, more urban and populated by

¹⁰ You should note the use of the plural "districts" in my public comments, but the use of the singular "district" in Gagliardi's brief. Clearly, the plural would not have worked for Gagliardi's purpose since it would have given the lie to a claim that I was referring to the Absecon district.

students who are lower-income Blacks and Latinx.” The pattern I was discussing had to do with the dozen district severance petitions Gagliardi had shepherded through the administrative process during the 20 years prior to his statement at an Absecon public Q&A session, when Gagliardi and his team were making a presentation to sell their proposed representation of Absecon. Lest there be any remaining doubt about my having, and trying to promote, a “mistaken belief” about the Absecon school district, two pages earlier in my public comments I had distinguished the Absecon-Pleasantville-Greater Egg Harbor severance effort from the one involving Englewood Cliffs-Englewood-Tenafly, which I discussed at length in my public comments at pages 4-5. During that discussion, I wrote the following:

The main difference between the Englewood Cliffs-Englewood-Tenafly situation and the Absecon-Pleasantville-Greater Egg Harbor situation is that **both Absecon and Greater Egg Harbor are significantly more racially and socioeconomically diverse than Englewood Cliffs and Tenafly were.** However, Pleasantville is even more racially and socioeconomically segregated than Englewood was. According to Absecon’s feasibility study, the handful of white Absecon students attending Pleasantville High School constituted all of the white students in attendance there in 2017-18, the last year covered by the study. That means Pleasantville High School would become a 100% non-white school, clearly the starkest example of school segregation. (Tractenberg public comments at 5; emphasis added.)

That hardly suggests I was laboring under a mistaken belief about Absecon’s racial composition. Indeed, later in Gagliardi’s brief he actually quoted from the highlighted language above without recognizing that by doing so he was acknowledging his calculated misuse of my other sentence that he misquoted and took out of context.¹¹

As to Gagliardi’s second charge that “the Education Law Center and Mr. Tractenberg” had suggested that the Commissioner engaged in a “hypothetical analysis...in which all students who could potentially have attended the sending-district be treated as if they actually had attended the district. Rather, only the actual impact is analyzed.” (Gagliardi brief at 55). To be honest, I have absolutely no idea what Gagliardi is referring to and, since he provides no indication of how ELC and I supposedly used a “hypothetical analysis,” and, where in our public comments any such alleged use appears, I am rendered speechless—except to say I am unaware of any such use.¹²

Finally, as to Gagliardi’s final charge that I was “factually incorrect” in stating that “Absecon would be removing ‘all of the white students at Pleasantville’” and that Pleasantville would become ‘a 100% non-white school,’ (Gagliardi brief at 62; emphasis

¹¹ See Gagliardi brief at 73.

¹² Of course, on the subject of a “hypothetical analysis,” I wonder what Gagliardi would say about his team’s assumption that Pleasantville’s increased population of white students at the K-8 level will continue on to Pleasantville High School. See, e.g., Racial and Demographic Impact Analysis at 31-32.

in original), I twice refer to that eventuality. The first time is at page 5 when I attribute it generally to Absecon’s feasibility study and the second time is at page 8 when I specify that I am relying on the feasibility study’s Table 27 at page 48.

The table in question is entitled “Pleasantville High School (9-12) Enrollments by Race Without Absecon Students 2012-13 to 2017-18.” In the left-most column specifying White students, for the last year included, 2017-18, the number provided is “0” and there is a note to that numeral, which reads as follows: “Value was below zero after removing Absecon students as the Pleasantville and Absecon enrollments by race were from different sources.” The nuances of that statement, and how a student population number can be “below zero,” escape me, but I don’t believe that was the “factually incorrect” matter with which I was being charged. By the way, the far-right column of that same table, labelled “Minority %,” shows for PHS in 2017-18 “100.00%.” I await Gagliardi’s clarification about what was “factually incorrect” in my reference to that table—unless he meant to say his feasibility study was “factually incorrect.”

8. Why is Gagliardi’s team claiming that a Washington Post study supports their facially absurd claim that Pleasantville, with a nonwhite student population of 99.9%, is “very diverse,” when the study’s authors made clear that districts including only Black and Latino students, but not white students, are segregated?

By a commonly used segregation research metric, school districts with fewer than 1% white students are considered “apartheid districts,” and those with fewer than 10% white students are considered “intensely segregated districts.”¹³ Yet, the Gagliardi team attempts, creatively, to label the Pleasantville district, with 99.9-100% nonwhite students, as “diverse” or “very diverse.” It also seeks to diminish the significance of the loss of most or all the few white students in Pleasantville High School by characterizing it as trivial or inconsequential. The asserted reason: because of how few white students from Absecon attend PHS. Finally, the Gagliardi team deprecates the notion that the departure from a school of the last white students has any symbolic impact on the remaining non-white students. “Stigmatization” is simply not in the Gagliardi team’s lexicon.

To try to justify these assertions, the Gagliardi team searches far and wide for a “research” basis. It proposes two: a 2019 Washington Post “study” spearheaded by three reporters;¹⁴ and an unsupported and uncited claim that “as is typical in racial segregation

¹³ See, e.g., Tractenberg & Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* (Center for Diversity and Equality in Education, 2018); Flaxman, et al., *A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010* (Civil Rights Project, UCLA, 2013); and Tractenberg, Orfield & Flaxman, *New Jersey’s Apartheid and Intensely Segregated Schools: Powerful Evidence of an Inefficient and Unconstitutional State Education System* (Rutgers Institute on Education Law & Policy, Civil Rights Project, UCLA, 2013).

¹⁴ Rabinowitz, Kate, et al., *How the Nation’s Growing Racial Diversity Is Changing Our Schools*, *The Washington Post*, WP Company, Sept. 1, 2019, www.washingtonpost.com/graphics/2019/local/school-diversity-data/ (cited at page 30 of *Statistical Forecasting’s Racial and Demographic Impact Analysis*, April 2021).

research, changes of less than five percent in either direction for any group are characterized as stability, or no change.”¹⁵

The Washington Post article does suggest that “A district is considered diverse when no one race constitutes more than 75 percent of the school system student body overall.” However, the Post clearly seems to assume that some white and Asian students will be in the student body to satisfy its diversity standard. In a related article, co-authored by the lead reporter of the Washington Post article cited above, one of the questions addressed is “Do you consider schools that include black and Latino students to be integrated?” The answer provided was:

No. Both groups have been historically discriminated against, and experts say educating them together does not provide the same benefits as mixing them with white and Asian students, who tend to come from wealthier families and bring more resources. So our measure of segregation combines black and Latino students and looks at how well they are integrated with students of other races.

Thus, any claim that the Washington Post standard of diversity is satisfied by a 99-100% non-white student body at Pleasantville, largely consisting of a mix of black and Latino students, is simply inaccurate and unfounded.

Similarly, it is hard to credit an unsupported “research” claim that a less than 5% change in student demographics is no change at all. That claim certainly is not supported by New Jersey case law on the racial impact of severance.

9. As to the relevant and dispositive New Jersey jurisprudence on the racial impact of severance, why do Gagliardi and his consultants try so hard to create an alternate reality by stitching together language from carefully selected administrative law judge and Commissioner of Education administrative rulings, and by ignoring or mischaracterizing leading decisions by the New Jersey courts, including the state supreme court?

Speaking of relevant New Jersey case law, Gagliardi’s brief works very hard at presenting a contrived view, sharply at variance with leading court decisions, including decisions by the state supreme court. But no one familiar with that jurisprudence will be persuaded for a moment by that lengthy, elaborate, highly selective and ultimately flawed attempt.

In fact, without going into detail, the leading New Jersey Supreme Court and Appellate Division decisions¹⁶ support the following broad propositions:

¹⁵ Quoted from page 19 of Camille Charles’ racial impact report for the Gagliardi team.

¹⁶ See, e.g., Bd. of Educ. of Englewood Cliffs v. Bd. of Educ. of Englewood, 257 N.J. Super. 413, 462 (App.Div. 1992) (“The focus of the Commissioner’s inquiry is whether a substantial negative impact exists *at all*; if it does, severance is to be denied.”), *aff’d*, 132 N.J. 327 (1993); In re Petition for Authorization to Conduct a Referendum on Withdrawal of N. Haledon, 181 N.J. 161, 184 (2004) (rejecting North Haledon petition to withdraw from Manchester Regional, even though “[t]here is no suggestion in the record that North Haledon was racially

- i. The departure of a small number of white students from a receiving school can be the basis for denying a severance petition;
- ii. The absence of proven racial animus by the sending district does not require approval of the severance petition; and
- iii. The particular circumstances in the affected districts have to be carefully evaluated to make an appropriate determination of whether severance is justified.

Conclusion

As my initial public comments indicated, the narrow question of whether Absecon's severance petition should be granted is overshadowed by the much broader question of how to assure that Pleasantville's much larger group of students is receiving a constitutionally sufficient education.

That broad question has been forced upon the Commissioner by the way in which Absecon's Special Counsel has formulated his argument in favor of severance, and his voluminous supplementary materials have dramatically underscored the importance of that question. Ironically, the Special Counsel and his team also, probably inadvertently, have set out a feasible solution to the problem, for Pleasantville as well as Absecon students—namely using Absegami High School as a receiving school for all the students of those districts currently attending Pleasantville High School or who might in the future choose to attend Absegami.

The Commissioner is constitutionally obliged to pay special attention to the educational plight of Pleasantville students, described in detail by Absecon's petition and accompanying documents, since, in the Abbott litigation, the New Jersey Supreme Court has emphasized that students from Abbott/SDA districts, such as Pleasantville, are to be treated as constitutional wards of the State entitled to special solicitude.

motivated in petitioning for withdrawal"); Englewood Cliffs, 257 N.J. Super. at 462 ("The Commissioner's responsibility is to reach an 'equitable' determination—one that is fair to both districts—keeping in mind his responsibility as the ultimate educational authority in the State.").