

- JEI's plan for a sale and lease back of the Greenwich Campus fails to promote JEI's not-for-profit educational corporate purposes and is actually detrimental to those purposes.
- The vote of the JEI Board of Trustees on November 29, 2005 allegedly approving the sale did not meet statutory requirements and must be disregarded.

Fair Consideration Lacking

5. JEI proposes to sell the Greenwich Campus for \$20 million. The property is worth at least \$26.8 million.
6. On November 23, 2005, the Town of Greenwich issued a real property assessment notice to JEI stating that the fair market value ("FMV") of the Greenwich Campus as of October 1, 2005 was \$28,286,100.²
7. In light of the dramatic discrepancy between JEI's sale price and the Township determination, the PTA, through its counsel, engaged a highly qualified independent appraiser to conduct a complete professional valuation of the Greenwich Campus as of the JEI contract date.
8. The independent appraisal report finds that as of December 12, 2005, the Greenwich Campus had a FMV of \$26.8 million. A copy of the Complete Appraisal and Self-Contained Report dated January 17, 2006, is being provided to the Commissioner and Attorney General along with my affidavit.
9. The failure of consideration for the proposed sale, JEI's failure to seriously market the property, JEI's favoritism towards a particular bidder, and the fallacy of JEI's arguments that the lease back arrangement can justify a sale at below FMV, are discussed more fully below.

² A copy of the summary page of the assessment for this property is annexed hereto as Exhibit A.

Failure to Promote Corporate Purposes

10. Even if JEI was not wasting \$6.8 million in corporate assets by selling the Greenwich Campus for far less than its FMV, the proposed sale and lease back transaction must be rejected as contrary to the purposes of JEI's educational charter.

11. To rationalize the sale of the property, JEI has greatly exaggerated its financial issues, wrongly blamed the JSNY program for JEI's trumped up crisis, and come up with a "solution" that will only worsen JEI's long-term financial position and its ability to increase or even sustain enrollments and to provide a quality educational program.

12. JEI claims that its underlying reason for selling the Greenwich Campus is declining enrollment at JSNY. Assuming that is JEI's actual motivation, then JEI is shooting itself in the foot by creating enormous uncertainty and worry about the future of the JSNY among parents and prospective enrollees. If the Greenwich Campus is to be sold at all, that should occur after JEI has made definite arrangements for a new school facility with a plan that shows the excellent facilities promised the parents, in a location that is within a realistic commuting distance for the students, together with the fiscal improvement the JEI claims can be achieved.

13. Furthermore, the obvious alternative to selling the Greenwich Campus for far below asset value is to increase JEI's revenues substantially by leasing out unused space to one or more other educational organizations and increasing income during the summer recess from camps or other summer rentals. JEI would hold on to tax exempt real estate that is rapidly appreciating in value, would turn its alleged deficit into a surplus, and would encourage families to enroll their children at JSNY.

14. The financial flaws in JEI's justification for the proposed sale are set forth in detail in a later section of this affidavit.

The Alleged Trustees Approval Vote Is Not Valid

15. JEI says that a vote by its trustees on November 29, 2005 satisfied the statutory requirements for corporate approval of a disposition of substantial all of JEI's assets. In fact, the November 29th vote was not valid.

16. First, JEI does not aver or prove that in advance of the meeting on November 29, 2005 all of the trustees had been notified that on November 23, 2005 the Assessor of the Township of Greenwich had issued a determination that the FMV of the property was \$28,286,100.³

17. The PTA's counsel advises me that the trustees of a not-for-profit educational organization should be given all of the material terms and material facts pertaining to a proposed disposition of assets in order for a board of trustees vote pursuant to N-PCL §§ 510 and 511 to be valid.

18. The Assessor's determination certainly was a material fact that the JEI trustees had to know about and consider with due care before voting to approve the sale on November 29, 2005, and before allowing the corporation to sign a contract on December 12, 2005. The huge jump in valuation between 2001 (\$15,268,500) and 2005 (\$28,286,100) would cause any prudent person to obtain a new independent appraisal and to carefully re-examine the proposed sale.

³ The issuance of the 2005 re-evaluations was a much anticipated event in the community. See N. Vigdor, "Holiday reprieve / Property owners' assessment notices are still in the mail," Greenwich Time, November 24, 2005, copy annexed hereto as Exhibit B. Owners who wanted to find out the results immediately could look up their records in the Assessor's office on November 23, 2005. JEI's officers should have made sure that they obtained the assessment information and sent it to the trustees with the Notice of Meeting. Failing that, either the vote on the proposed sale or the meeting itself should have been postponed.

19. Even as late as December 28, 2005, JEI's application⁴ failed to disclose to the Commissioner, to the Attorney General or to the Supreme Court, that the most up to date professional study of the Greenwich Campus determined a value of \$28,286,100.

20. Also missing from the Petition is any evidence as to what information was circulated to the trustees before the meeting or discussed at the meeting. A copy of the Notice of Meeting is not attached. There is no indication of what, if any, briefing package was circulated to the trustees. The meeting minutes – if there are any – are omitted from the Petition and JEI attempts to substitute an “extract” consisting of a resolution that does not even recite the facts on which it is based, but merely says the decision “is in the best interest of JEI.” Petition Ex. H.⁵

21. The second reason why the November 29th vote does not satisfy statutory requirements is that it was the product of a governance structure and process that violates fundamental principles of non-for-profit governance.

22. JEI's board of trustees is comprised of 37 Japanese business corporation executives, one corporate lawyer, one Japanese diplomat, and JEI's chief executive officer. Not one of them is a woman.

⁴ See Petition.

⁵ Even if JEI avers that the trustees were informed in advance of the meeting of the Township valuation at more than \$8 million above the contract price, then the approval vote should be given no deference by New York State officials because approving the \$20 million sale without undertaking due diligence as to fair market value would have been grossly negligent and a breach of the trustees' fiduciary duty to exercise due care. (The Board of Trustee minutes of the meeting on March 24, 2004, specifically list conditions of the trustees' approval of a plan to sell the campus – one of which is that the trustees should be immediately notified of any material changes to the assumptions under which the decision was made. Hence, the trustees acknowledged in 2004 that their final decision to sell must take into account the latest information about all material facts.)

23. Upon information and belief, not one of the forty men on the JEI board is academically or professionally trained as educational administrator, elementary/secondary school teacher; developmental psychologist, private school recruitment/admissions director, or private school development professional.⁶ There is no representation on the board for the beneficiaries of the corporation, i.e., the mothers and fathers of the children enrolled in JEI programs.⁷ JEI has not even placed on its governing board a non-voting trustee chosen by any of the parent groups or any of the PTAs existing at JEI's four programs. Board meetings are conducted in Manhattan. Upon information and belief, the overwhelming majority of Trustees have never stepped foot on the Greenwich Campus.

24. According to its charter and by-laws, JEI has no members. In fact, approximately 37 of the 40 trustees are representatives of 37 different corporations that have many business and cross-ownership interrelationships.⁸ The de facto members of JEI are the corporations in this business group plus the Consulate General of Japan.

25. Upon information and belief, based upon minutes and other records of trustee deliberations and decisions, and based upon communications with JEI trustees by me and other PTA members, the JEI board follows the common practice in the Japanese business corporate world of letting a small control group make decisions. Unanimous support for the control group's policies and decisions is expected and the voting record shows that unanimous decisions

⁶ A minor exception may be JEI's new Executive Secretary, who also is listed as a trustee. My understanding, however, is that this individual's experience in educational administration is limited to on the job experience as an administrator of one of JEI's programs, and that he had no prior credentials in the field of educational administration. I am referring to the list of trustees that is attached to the Petition as Exhibit B.

⁷ In 2005 there was a trustee representing one of the business corporations on the board and he also happened to have a child enrolled in JSNY. He was not selected by the parents to represent parents on the board.

⁸ Upon information and belief the law firm of the attorney trustee has represented some of the business corporations whose executives fill 37 seats on the board, and the diplomat trustee works for a Japanese consulate which lends assistance to Japanese business interests in the United State.

are the rule. Although the trustees nominally serve as individuals, for the most part they are neither independent of their corporate employers that put them on the board of trustees nor of the JEI control group.

26. The vote of 26 in favor and 0 opposed to this controversial transaction is a symptom of the trustees' failure to exercise independent judgment in carrying out their functions.

27. The November 29th vote is not valid because it is the product of a governance structure and practice in which trustees do not exercise judgment independent of a control group of JEI trustees, or independent of their corporate employers who select them for the trustee positions.

The Interest and Goals of the PTA

28. The PTA will be 30 years old in June. It was formed shortly after the school was founded. The PTA has worked ever since to promote quality education for its students.

29. The PTA is comprised of the parents whose children are enrolled in JSNY, and of the school's pedagogical staff. There are approximately 170 families that have one or more children in the school. The parents from these families make up a large majority of the PTA members.⁹ These JSNY families are beneficiaries of the corporation that was created by the University of the State of New York

30. I am a PTA member because my wife and I have a child who entered JSNY as a first grader, and now is in third grade.

31. In many of the PTA families, the father/husband is a Japanese citizen employed by one of the 37 corporations that fill seats on the Board of Trustees.

⁹ The PTA's decision to tell the Commissioner, Attorney General and Supreme Court about its opposition to JEI's proposed sale of the JSNY campus in Greenwich, Connecticut (the "Greenwich Campus") was made through a ballot of the parent members. The JSNY staff members were not put in a position to potentially oppose their employer.

32. In October 2005, I became the PTA's 22nd President. Before I became President, I was already active on a PTA working group addressing JEI's proposal to sell the Greenwich Campus (the "PTA Task Force").

33. JEI attempts to undermine the credibility of the parents by saying that we simply desire "to continue [the] luxury" of operating with 220 students on a campus zoned to accommodate 450 students. Petition ¶ 57. This falsifies both our motivations and our position on the merits of the proposed sale.

34. The parents have repeatedly told JEI that it should rent the unused space on the campus to another school rather than sell the campus without having a long term plan for our school. Our lawyer wrote to JEI's counsel to confirm that we wanted JEI to offer a long term lease to WFHA in lieu of selling WFHA the campus and leasing space back from it. See Letter dated September 19, 2005 from A. Block to D. Schwarz, copy annexed hereto as Exhibit C.

35. The PTA Task Force searched out other potential lessees and quickly found the British Schools of America ("BSA") which promptly made a concrete written offer to JEI to rent part of the campus for 5 years. See Letter dated September 19, 2005 from D. Hallahane, CEO of WCLS Group, to K. Sakamoto, JEI President, copy annexed hereto as Exhibit D. This shows that JEI's insinuation that our priority is to keep all of the underutilized campus for ourselves is a deliberate falsehood intended to make us look spoiled and selfish.

36. JEI also insinuates that we don't care about the approximately fifty families that send their children to JEI's New Jersey day school or about the hundreds of other families that have children enrolled in JEI's afterschool/weekend programs. This is a smokescreen to obscure the PTA's proposals for strengthening the overall finances of JEI and to reverse the decline in

enrollment in JEI's programs, which are far superior to JEI's proposal to sell its flagship campus unnecessarily and to waste at least \$6.8 million in charitable assets.

37. JEI also tries to argue that because it will acquire a lease for use of part of the Greenwich Campus, the parents have nothing to be concerned about. In truth, there are many reasons why the lease arrangements impair both the short term and long term interests of the parents/students beneficiaries of JEI.

38. The existence of the lease is no guarantee that JEI won't close its flagship program in Greenwich in the very near future. The terms of the lease explicitly allow JEI to terminate after three years. As a practical matter, JEI probably could leave even sooner. After all, JEI claims that it is paying far less than a market rental rate. If that is true, then WFHA should be delighted to have JEI leave sooner so that it could rent the space at a higher price to another party (or use some or all of the vacated space to accommodate WFHA's planned expansion of its student body and increase its tuition income).

39. JEI decided in March 2004 to delay unification of the New Jersey and New York Day Schools for 3-5 years.¹⁰ Under its own official timetable that would mean closing the Greenwich Campus as soon as March 2007.

40. JEI's sale of the Greenwich Campus, together with its perceived ability to vacate the campus altogether within a year or two leaves current parents and recruitment prospects guessing about where JSNY will be located in the next 2-3 years. It also leaves them with grave doubts about the quality of education in the school in years to come.

¹⁰ "On March 24, 2004, the board of trustees approved the postponement of the plan of integration for three to five years." Financial Statements, Note 1, Petition Ex. E.

41. The enrollment cap in the lease means that JEI is giving up on increasing enrollment at JSNY. JEI's excuse that demographic trends doom a growing, vibrant school community will become a self-fulfilling prophesy.¹¹

42. If JEI truly intended to continue to operate a quality Japanese language day school in the Greenwich vicinity, then a) it would not sell the Greenwich Campus at all, but would lease out unused space; or b) it would not sell the Greenwich Campus until it had secured a quality facility in the Greenwich area into which to move JSNY.

43. JEI's ill-conceived plan seems designed to trigger a further decline in enrollment at JSNY which JEI will be able to use to rationalize closing the Greenwich operation altogether, closing the existing New Jersey day school, and opening a very scaled down facility in upstate New York.

44. The New York metropolitan area is a very important part of the world for Japanese expatriate families, and for mixed families (like my own) that want to educate their children to be successful and sophisticated both in American and Japanese societies and institutions. JEI's Japanese language day schools are needed to provide full-time educational programs for these children. JSNY is the only school providing this educational opportunity in the New York City – Southwest Connecticut area.

45. While the parents of the PTA are, of course, interested in the impact of the proposed sale of the Greenwich Campus on their own children, our 30-year-old PTA is also interested in the continuation, growth and improvement of the JSNY facilities and programs for

¹¹ JEI claims that it tried to increase enrollments, without success. To the best of my knowledge, JEI's efforts in this regard were very minimal.

the present and future community of families that want access to a quality full-time Japanese school for their children.

\$20 Million Is Far Less Than Fair Consideration

The Fair Market Value of the Greenwich Campus is \$26,800,000

46. The fair market value (“FMV”) of the Greenwich Campus is \$26,800,000. See Complete Appraisal and Self Contained Report dated January 17, 2006, by Christopher K. Kerin, MAI, CCIM (“Kerin Appraisal”), copy submitted herewith under separate cover. This FMV is determined in accordance with professional standards by a licensed and highly qualified real estate appraiser¹² as of the contract date of December 12, 2005.

47. The appraised FMV exceeds the proposed sale price by \$6.8 million, or 34%. (The Greenwich Township determination of FMV exceeds the proposed sale price by \$8.3 million, or 42%.)

48. Even though the Petition does not disclose the existence of the Greenwich Township valuation of \$28.3 million, and JEI does not indicate that it has a new appraisal with fresh data to determine FMV as of the contract date,¹³ JEI is forced to admit that it wants to sell the property for less than FMV.

49. It attempts to bootstrap¹⁴ the stale analysis of a May 2004 appraisal report with a page and a half update letter which puts the FMV on August 4, 2005 (more than four months before the contract date) at \$21.7. See Petition Exs. F & G.

¹² See Outline of Qualifications annexed to Kerin Appraisal.

¹³ The Petition does not indicate whether or not JEI, before deciding to rely upon the flimsy appraisal update letter, either obtained a full current appraisal that returned a much higher figure, or obtained an informal expert opinion that if a new appraisal was done then the FMV determination would be millions of dollars greater than even the \$21,700,000 figure in the letter.

¹⁴ The letter merely extrapolates from the outdated original report using gross market trends in land and construction prices.

50. Furthermore, JEI admits that it received a bid of \$23,000,000 in March 2005. Petition ¶ 39. That bid was coupled with an offer to lease back part of the campus to JEI for four years!

51. If JEI had exercised due care, it would have invigorated its marketing efforts and commissioned a fresh appraisal report before signing a contract at \$20 million, nine months after receiving an offer of \$23 million in a period of rapidly rising real estate values in Greenwich.

52. JEI's excuse for rejecting the offer of \$23 million out of hand was that it was essential to have a lease for more than four years. But the Petition does not indicate¹⁵ that JEI made any genuine attempt to resolve that issue by negotiation. For example, JEI could have counter-offered to reduce the price by \$1 million in exchange for two or three more years of leasing. JEI would have gained \$2 million in one stroke of the pen if that offer was accepted.

53. JEI's rationale for selling the property to its favored bidder (see below) for \$1,700,000 less than JEI's alleged FMV is that the lost consideration in the purchase price was offset by a savings from receiving "substantially below market rent." Petition ¶ 5. This excuse dissolves under scrutiny.

54. First, if JEI's own financial statements are to be believed, then JEI's rent is merely a fair rent, not a sweetheart deal. The last schedule of JEI's Financial Statements represents that the rental "cost" of the Greenwich Campus is \$440,000. See Petition Ex. E at "Schedule 3," column "All-Day Greenwich," row "Rent." By comparison the "Base Rent" established in the proposed lease is \$434,949. See Petition Ex. D at Annex III. The figures are almost identical!

¹⁵ JEI does not identify the alleged bidder. The PTA urges that the Commissioner and Attorney General insist on disclosure of this information so that it will be possible to investigate the accuracy and completeness of JEI's description of this truncated negotiation.

55. If JEI is achieving any theoretical savings, it is a relatively small amount that arises merely from WFHA's carrying of the rent for about a third of the space. (The amount is very small compared to a \$1.7 million price reduction; it is tiny compared to a \$3,000,000 reduction (i.e. the March 2005 offer of \$23 million); and it is infinitesimal compared to a \$6.8 million price reduction.) The "saving" is reduced further if JEI leaves the premises before the maximum term of eight years, which is very likely to occur. (As noted above, JEI's official plan is to consolidate New Jersey and New York as soon as Spring 2007.) Also, any "saving" is offset by JEI's loss of the rental income from the Chapel, the summer school, and any other rentals that JEI could have realized by remaining the owner.

56. It also is very questionable that the lease back arrangement necessitated a lowering of the purchase price from fair market value rather than an increase. It is very advantageous for a purchaser like WFHA to purchase the property with a uniquely suitable tenant in place paying rent for parts of the premises that the purchaser could not use itself for several years.

JEI Did Not Make A Bona Fide Effort To Market The Property

57. JEI did not make a bona fide effort to test the market and determine the highest price it could realize from a sale of the Greenwich Campus circa December 2005.

58. The facts that I am aware of indicate that once a tentative deal was struck between a representative of WFHA and JEI's former Executive Secretary (Mr. Matsumura) in late 2003 or early 2004, JEI, for all intents and purposes, took the property off of the market for the next 18 months or longer. See infra ¶¶ 71-73.

59. The allegations in the Petition are one indication of the meager to non-existent efforts by JEI to obtain a better price for the property than the 2004 bid from WFHA. JEI says

that it initially engaged a broker to help it buy a property. Later, it asked the broker to check around with nearby schools to see if any of them wanted to buy the Greenwich Campus.

60. The Petition does not aver to the dates and scope of advertising of the property for sale, and when, if ever, the property was entered into multiple listings.

61. JEI's alleged determination that the property would only be of interest to nearby schools was grossly negligent. Assuming for the sake of argument that the property would only be suitable for use as a school, then JEI should have widely advertised its property on the Internet and in local, national and international publications that reach educational institutions. An organization or institution based far from Greenwich, Connecticut might be interested in opening a facility there. I proved this to be true when I easily made contact with the English company that operates the British Schools of America ("BSA"). BSA did not have any existing school in the area and it wanted to open a new one here.

62. To get the highest price, the property should also have been marketed for uses other than a private elementary and secondary school. It is suitable for other educational, training, religious or spiritual organizations. JEI says it had to limit its target audience to schools that were suitable for sharing the campus. But that begs the question as to what the highest bid would have been with a real marketing effort.

63. Even JEI's woefully inadequate marketing effort yielded a bid of \$23 million. A real marketing effort may have yielded bids in the range of \$23 - \$30 million, or higher.

64. One of the homeowners with an adjoining property offered to buy a one acre sliver of land from JEI for fair market value, which would be over a million dollars, and to assume the risk of obtaining any necessary regulatory approvals.

65. Both the BSA rental offer and the neighbor's offer to purchase unneeded land were facilitated by the PTA Task Force, in order to give JEI better alternatives for its alleged financial needs than selling the Greenwich Campus.

66. The PTA Task Force developed these potential deals after JEI's President, Mr. Sakamoto, stated to a large group of parents and PTA Task Force members that if the PTA could bring forward a concrete proposal that is better than the JEI Plan, then he would consider it.

67. But as soon as we made rapid progress in building concrete proposals JEI moved swiftly to shut down our efforts.

68. One of JEI's lawyers dispatched letters to the BSA representative and to the neighbor rejecting their offers out of hand, and simultaneously wrote a demand letter to the PTA's outgoing President (Mr. Adachi) telling the PTA to "immediately cease all . . . activities" aimed at obtaining alternative offers to JEI regarding the property.¹⁶

69. A few weeks later JEI's President sent me (as the new PTA President) a letter demanding that I stop the PTA mothers and fathers from trying to speak directly with the JEI trustees or their corporate sponsors about the problems with JEI's proposed plan and about the merits of the PTA's alternatives.¹⁷

Favored Buyer

70. JEI's lack of due diligence in marketing the property is one of indications that JEI treated WFHA as a favored buyer.

¹⁶ See Letter dated October 7, 2005 from P. Batten, Esq., Bingham McCutchen Murase, to T. Adachi, PTA President, (with four letters enclosed - 9/19 Hallanahane to Sakamoto, 10/4 letter Breed to Sakamoto, 10/6 Batten to Hallanahane; 10/6 Batten to Breed), copy annexed hereto as Exhibit E.

71. Upon information and belief there were many communications and meetings between JEI's Executive Secretary, Mr. Matsumora, and one or more WFHA representatives, in the period late 2003 through 2004.

72. I have seen no evidence that JEI made a due diligence attempt to sell the Greenwich Campus to any prospective purchaser other than WFHA after Mr. Matsumora, upon information and belief, reached a tentative agreement with a WFHA in late 2003 or early 2004.

73. The Petition glosses over the fact that WFHA's written proposal dated February 5, 2004, already provided that JEI could lease back part of the campus for up to five years, with a possibility for an extension. Indeed, the offer was entitled a "Proposal to Purchase and Lease Back" (emphasis supplied).¹⁸ But the JEI trustees did not vote to authorize the negotiation of a sale and lease back arrangement until the board meeting on March 24, 2004.

74. The vote on March 24, 2004 did not set off a due diligence search for the best deal in a sale and lease back arrangement. It was a retroactive legitimization of the steps already taken to select WFHA as the purchaser under such an agreement.

75. WFHA was the favored bidder before March 24, 2004, and JEI did not use due diligence to find a buyer on more favorable terms than WFHA after March 24, 2004. A striking example of this occurred a year later when JEI received a bid for \$23 million plus a four-year lease back and JEI failed to parlay that bid to get WFHA to pay more than \$20 million or to get the other party to give a longer lease term in exchange for reduced purchase price.

¹⁷ Letter dated October 21, 2005 from Kazuhiko Sakamoto, JEI President, to Emil Jachmann, PTA President, copy annexed hereto as Exhibit F. I declined to muzzle the mothers and fathers of the PTA. See Letter dated October 28, 2005 from E. Jachmann to K. Sakamoto, copy annexed hereto as Exhibit G.

¹⁸ See Proposal to Purchase and Lease Back the Campus of the Greenwich Japanese School, submitted to JEI Board of Directors by Westchester Fairfield Hebrew Academy dated February 5, 2004, copy annexed hereto as Exhibit H.

76. The JEI trustees did not inform the parents about the plan for a sale and lease back with WFHA until March 2005, a full year after the March 2004 vote.

77. When the parents were told about this in March 2005, they began to develop cogent criticisms of JEI's plan and its rationales. The parents set up the PTA Task Force to develop better alternatives.

78. The PTA Task Force developed superior alternative plans, most notably the plan to retain ownership and control of the Greenwich Campus and to raise revenues for JEI by renting unused space to WFHA, BSA, or another suitable campus-sharing partner.

79. Although the PTA's position was that JEI should not sell the campus at all, a lawyer for WFHA sent a letter to JEI accusing the parents of being anti-Semitic and alleging that opposition to the transaction was based on the parents not wanting to share the campus with Jewish children. WFHA's lawyer demanded that JEI conclude a sale contract immediately, threatening a civil rights action against JEI for invidious discrimination if the sale did not go through. See Letter dated July 13, 2005 from R. Emery to K. Sakamoto, copy annexed hereto as Exhibit I.

80. Around the time of the threatening letter from WFHA's attorney, we were told¹⁹ that Sen. Joseph Lieberman had called the Japanese Consulate about WFHA's attempt to purchase the Greenwich Campus. Sen. Lieberman reportedly said that he had a good opinion of WFHA and he knew that JEI was experiencing some resistance to the sale from the JSNY community. He reportedly requested Mr. Ando to "watch over" the sale to ensure its consummation. Sen. Lieberman also said that he had heard the resistance to the sale was based on anti-Semitism within the JSNY community. This comment so alarmed Ambassador Ando,

who is the honorary President of JEI, that he promptly flew to Washington to assure Mr. Lieberman in person that JEI and the Japanese parents were not anti-Semitic.

81. JEI's attorney wrote a letter to Mr. Emery in which he denied the charge of anti-Semitism. Letter dated July 26, 2005 from D. Schwarz to R. Emery, copy annexed hereto as Exhibit J.

82. The PTA had its attorney write to JEI's attorney to make absolutely clear that the parents would be happy to have their children share the campus with the WFHA children. The PTA's position was that JEI should retain ownership of the campus and rent to WFHA (or another school). Letter dated September 19, 2005 from A. Block to D. Schwarz, copy annexed hereto as Exhibit C.

83. A Jewish teacher at the JSNY heard about the anti-Semitism charge leveled against the school community in which she worked. She wrote a letter strongly disputing that there was any anti-Semitism at the school, and describing how the school welcomed her and supported her efforts to include speakers and information about Jewish culture and history on to the campus. See Undated letter from Beth Sandler to JEI Board of Trustees, copy annexed hereto as Exhibit K.²⁰

84. WFHA's accusation of anti-Semitism became the subject of a front page article in a local newspaper. See "N. Vigdor, "Bias accusations dog Japanese School sale," Greenwich Time printed October 7, 2005, copy annexed hereto as Exhibit M. Local residents with knowledge of the school wrote to the paper to attest to the decency and community spirit of the parents. Copies of the published letters are annexed hereto as Exhibits N and O.

¹⁹ These events were related to me and to Mr. Adachi in conversations with Ambassador Ando and with Mr. Sato, a diplomat who works under him at the Consulate in New York City.

85. Also, I should note that since 2000, JEI a Jewish Summer Camp, Gan Israel, has been renting part of the campus. The Jewish Camp bestowed on JSNY a plaque thanking the JSNY community for welcoming it onto its campus.

86. Despite JEI's strenuous denial of the anti-Semitism charge, and despite Ambassador Ando's assurance to Sen. Lieberman that the Japanese parents and school staff were not anti-Semitic, JEI's trustees told the PTA representatives that the sale to WFHA had to be completed so that JEI would not be sued, and so that the JEI-related business corporations and Japanese Government would not suffer the embarrassment of a public charge of racism.

87. Whatever was JEI's original motivation for keeping JEI as a favored bidder,²¹ after receiving the WFHA legal threat and the communication from Sen. Lieberman, JEI's trustees told PTA representatives that JEI must go through with the sale to WFHA no matter how compelling were the alternatives presented by the PTA.

88. JEI proceeded to sign a contract with WFHA to sell the property for \$6.8 million below FMV, and added on as a final exhibit to the contract a general release from WFHA to JEI and its trustees.²²

The Proposed Sale Will Weaken JEI's Financial Position

89. The Petition conjures up a financial crisis and tries to blame it on JEI's ownership of the Greenwich Campus. Then, using flawed reasoning and a dearth of hard financial facts, JEI incorrectly asserts that the sale of the Greenwich Campus will resolve the supposed crisis.

²⁰ A copy of Ms. Sandler's letter was attached to a letter dated October 25, 2005, from the PTA's attorney to JEI's attorney. Letter dated October 25, 2005 from A. Block to D. Schwarz, copy annexed hereto as Exhibit L.

²¹ An investigation into the favored bidder status of WFHA should be the subject of an inquiry by the Attorney General.

²² The contract is Petition Ex. D, and the release is marked as contract exhibit "L-2." It is my understanding that a general release by the buyer to the seller is not a standard part of a real estate contract.

90. The unnecessary sale of an organization's assets at a loss of \$6.8 million is hardly the way to strengthen the organization's long term financial picture. This is especially so when the asset is tax exempt real estate that is rapidly appreciating in value.

91. The proposed sale is also indefensible because there are better alternatives for improving both the short-term and long-term financial picture of JEI.

There Is No Financial Crisis

92. JEI's latest financial statement reports cash, cash equivalents, and investments totaling \$4,468,364. Petition Ex. E, "Statements of Financial Position."

93. The same report shows that JEI's current assets exceed its current liabilities by over \$4 million.

94. JEI owns un-mortgaged real estate that is worth \$26.8 million, and its only long-term debt is just \$1.2 million.

95. Without acknowledging that JEI is asset rich and has substantial liquidity, JEI makes the alarmist statement that the organization's cash on hand decreased by \$1.06 million in 2004. Petition ¶19. This figure is not broken down or explained²³

96. By contrast, the "Schedule of Activities" for the year ended March 31, 2005 reports a decrease in net assets of \$359,445. This is 8% of JEI's cash and investments on hand.

97. Most important, the decrease in net assets can easily be eliminated in the future and transformed into an increase by leasing part of the Greenwich Campus to WFHA, the BSA, or another school or compatible organization. For example, BSA offered to pay rent of \$500,000 per year and also to pay JEI \$300,000 per year to cover maintenance expenses.²⁴

98. JEI asserts that it cannot increase its revenues by renting part of the campus because any rent it received would have to be turned over to the Government of Japan. This is a startling argument to be made by a supposedly independent New York State educational corporation.

99. JEI is the title owner of the Greenwich Campus. JEI does not identify any legal instrument that forces it to remit rental income to the Government of Japan. JEI does not even submit evidence that there is a Japanese Government policy, edict or regulation that would somehow be binding on JEI to that effect.

100. Assuming that the Japanese Government has an interest in the long-term financial health of JEI and its programs, it is not even plausible that the Japanese Government would want

²³ JEI used a similar scare tactic in its communications with the JSNY parents. JEI sent the parents a letter stating that a JSNY tuition increase of \$4,000 was required to cover a JSNY deficit. This letter was very misleading because the \$4,000 increase would have corrected the combined deficits of all four schools, if paid only by the JSNY parents.

²⁴ JEI does not provide any support to its claim that it had to reject the BSA offer out of hand because the bidder was a credit risk. See Petition ¶ 33. BSA's representative informs me that this is not a valid assertion. The letter from BSA points out that BSA and its parent corporation have been successfully operating schools all over the world for many years.

JEI to commit waste of \$6.8 million in assets by selling the property because JEI was deterred from simply leasing part of the campus by a government demand that JEI give it the rental income.

101. If it is true that the Japanese government would expect to recoup some of its contributions to JEI if JEI rented part of the campus, then it would seem that the Japanese government would have an even stronger expectation to be refunded some of its investment in the Greenwich Campus at the time of sale.

102. Given the substantial financial support the Japanese Government has given to the cost of owning and developing this asset, is the government going to let JEI sell it and keep all of the money for JEI's use? ²⁵ If the government would let JEI keep the \$20 million proceeds of this proposed sale, then why wouldn't it let JEI keep \$500,000 per year in rental income? Or at least enough of the rental income to balance the JEI budget?

JSNY Is Not The Cause Of The Alleged Deficit

103. JEI uses creative accounting to blame JSNY for the entire alleged JEI deficit of about \$360,000. Schedules 2 & 3 of the Financial Statements unfairly assign expenses to JSNY and divert revenues away from JSNY (see columns headed "All-Day Greenwich").

104. Schedule 3 states that JEI incurs an annual rental expense of \$440,000 for the Greenwich Campus. In fact, JEI does not pay any "Rent" at all for the Greenwich Campus because JEI is the owner.²⁶ JEI's financial report characterizes the \$440,000 as a "functional expense."

²⁵ JEI's implication that it will not have to give any of the proceeds of the sale of the property to the Japanese government, either directly or indirectly through a reduction in future government subsidies, needs to be closely scrutinized.

²⁶ Note further that the Schedule also includes direct expenses for Repairs and Maintenance, and for Utilities, even though a "landlord" would have been responsible for much of this expense.

105. Schedule 2 shortchanges JSNY on the revenue side. The entry for rent is a blank, i.e., \$0.00. But if you read Note 8 to the Financial Statements, you discover that JEI received \$64,250 in “lease income” from residential leases to faculty members of premises that are part of the Greenwich Campus. This amount should be included with “Revenue” for JSNY.

106. JEI admits that it receives \$25,000 per year in rent for a summer camp rental. Petition ¶ 26. But then JEI arbitrarily excludes this revenue from JSNY’s column on the schedules.

107. JEI even goes to the extreme of excluding from JSNY “revenue” the fees that are received each year for use of the chapel building on the Greenwich Campus.²⁷

108. On the revenue side JEI also fails to explain how it can fairly allocate \$273,868 from “Contributions” to the column for its central administration operation, while allocating \$0.00 to JSNY. A not-for-profit organization should not be proud of applying virtually all of its contribution receipts to administrative costs and 0% to the cost of operating its most significant program.

109. The same applies to subsidy revenues of \$1,270,000. JEI merely allocates 5% of its subsidies to the Greenwich Campus program.

110. The so-called JSNY “deficit” that JEI takes from its Financial Statements is utterly lacking in support or credibility. JEI has manipulated its financial reports to make the finances of the JSNY program look as bad as possible. If proper accounting was used, there would be no JSNY deficit.

²⁷ The amount is relatively small. As I found out by talking to professional wedding planners in the Greenwich area, however, it would be a significantly larger revenue flow if JEI used due diligence to obtain bookings.

The Alleged \$1.1 Million In Savings Is A Myth

111. JEI's justification for the sale of the Greenwich Campus is based upon the assertion that "JEI will improve its financial situation by approximately \$1.1 million annually." Petition ¶ 5. This claim is unsupported and untrue.

112. A major component of the alleged financial gain is interest income on conservatively invested proceeds of the sale. But such income cannot be counted as a gain resulting from the sale without first deducting the expected appreciation of the real property if it is not sold. In fact, the real property is probably a much better investment than CD's and money market funds. Real estate prices in Greenwich, CT have been rising rapidly. Real estate is an especially beneficial investment for JEI because it does not have to pay real estate taxes in order to remain owner of the asset.

113. At best for JEI, this category of "gain" must be eliminated from JEI's alleged \$1.1 million. At worst, it should be counted as a net loss from selling the asset.

114. The alleged future financial gain also must be reduced by the \$6.8 million that JEI is reducing its net worth by selling the asset at far below market value.

115. Another alleged saving is that JEI will retire a bank loan. The projected reduction in future loan payments has to eliminate the portion of the payments that is repayment of principal. Paying back the principal of a loan has no affect on an organization's net worth.

116. Whether the elimination of future interest payments on the loan is a net financial gain depends on whether the rate of interest exceeds the rate of appreciation in value of the real estate that is being liquidated in order to repay the principal balance of the loan. In this case, the real property is probably appreciating at a rate no less than the 7.4% rate of interest on the bank loan. This category of alleged gain must be disregarded.

117. Another serious error in JEI's rationale is that it ignores the Japanese Government subsidies. The loan was taken out to finance some of the acquisition and construction costs for the Greenwich Campus. My understanding is that one part of the government subsidy ties in with the loan repayment. Hence, it is very possible that when the bank loan is repaid, there will be a corresponding decrease in the government subsidy.

118. A reduction in government subsidy will worsen JEI's financial position. The supposed savings from eliminating the loan balance will be entirely offset by the reduction in subsidy. Also, because the subsidy was helping to repay loan principal, JEI may be terminating a very beneficial arrangement in which the government subsidy was increasing JEI's net worth with every loan payment.

119. It is possible that JEI will try to counter this point by saying that the Japanese Government has indicated that it will not decrease the subsidy after a sale of the property. But if this were true, then it is hard to believe that the Japanese government would not also be amenable to letting JEI keep all or some of the rental income it could receive if JEI did not sell the Greenwich Campus and leased out part of it, as urged by the PTA.

120. The figure of \$1.1 million is also wrong because it does not take into account JEI's lost revenues from property ownership. As noted above, historically JEI has been receiving about \$65,000 in rent for the faculty residences, \$25,000 for summer camp rental, and fees for use of the Chapel. (The rental income for the non-residential premises, the PTA Task Force has learned, could be substantially increased.)

121. In addition to these historic revenues, by selling the property JEI will give up the opportunity to improve its financial position in years to come by using due diligence to increase

Chapel and miscellaneous rental and, most important, to enter into a lease with a school like WFHA or BSA.

122. JEI cannot support the figure of \$1.1 million with a supposed substantial saving in rent payments. To begin with, JEI does not pay rent to itself. In any event, the “functional” rent that JEI carries on its books values the rental cost at approximately the amount as the proposed lease back. JEI’s functional rent is \$440,000; the base rent under the proposed lease starts at \$434,949. The best that can be made out of JEI’s rent saving argument is that there is a small “savings” attributable to allocating about a third of the “rent” to WFHA. This small savings is more than extinguished by JEI’s loss of rental income from the residences, summer school, chapel, etc., not to mention the other losses it will incur if it sells the property.

123. Finally, JEI does not consider losses in future tuition revenue when it calculates the supposed gain of \$1.1 million. JEI’s sale of the campus will almost certainly depress new enrollments and re-enrollments.

124. In conclusion, JEI’s claimed financial improvement of \$1.1 million per year must be rejected completely as a justification for selling the Greenwich Campus.

125. JEI’s proposed sale of the Greenwich Campus for \$6.8 million below FMV will deal a substantial blow to JEI’s financial position.

Conclusion

126. The Commissioner of Education and the Attorney General should deny consent to JEI’s proposed plan to dispose of substantially all of its assets. The sale of the Greenwich

Campus lacks fair consideration, will not further JEI educational purposes, and was not validly approved by the board of trustees.

127. The PTA respectfully requests that the Commission of Education and the Attorney General appear before the Supreme Court and vigorously oppose JEI's application.

128. The PTA also requests that the Commissioner of Education and the Attorney General make use of their executive investigative powers as well as the discovery and subpoena procedures before the Supreme Court to inquire into the reasons why JEI favored a particular bidder for approximately two years and then went ahead and signed a contract to sell the Greenwich Campus to the favored bidder for \$20 million shortly after receiving a notice from the Town of Greenwich stating that the fair market value of the property was more than \$28 million.

EMIL F. JACHMANN

Sworn to before me this
17th day of January, 2006

Notary Public