73-26E
OAL Dkt. No. EDU 00396-26
Agency Dkt. No. 453-12/25

New Jersey Commissioner of Education

Order on Emergent Relief

Red Bank Charter School, Inc.,

Petitioner,

v.

Board of Education of the Borough of Red Bank, Monmouth County,

Respondent.

The record of this emergent matter, the sound recording of the hearing held at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed and considered.

Upon review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 *N.J.* 126, 132-34 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: March 2, 2026
Date of Mailing: March 2, 2026

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF
OAL DKT. NO. EDU 00396-26
AGENCY REF. NO. 453-12/25

RED BANK CHARTER SCHOOL, INC.,
Petitioner,
v.
RED BANK BOROUGH BOARD OF EDUCATION,
Respondent.

Thomas O. Johnston, Esq., for petitioner (Johnston Law Firm LLC, attorneys)

Aron G. Mandel, Esq., for respondent (Busch Law Group LLC, attorneys)

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Red Bank Charter School, Inc. (Charter School) seeks emergent relief in the form of a declaratory judgment that the status quo be maintained during the pendency of the underlying due process regarding student waitlists, that being that petitioner should continue transmitting waitlist data to the respondent, Red Bank Borough Board of Education (District), without listing student names.

The within motion for emergent relief was filed by petitioner on December 30, 2025, with the New Jersey Department of Education (DOE), Office of Controversies and Disputes (OCD). The motion for emergent relief was transmitted to the Office of Administrative Law (OAL), where it was filed on January 2, 2026. N.J.S.A. 52:14F-1 to -13.

On January 14, 2026, respondent filed a brief opposing emergent relief, and a cross-motion seeking dismissal of the underlying due process petition. That motion will be handled separately from this emergent matter.

An emergent hearing in this matter took place on January 15, 2026, and the record closed on that date.

FINDINGS OF FACT

Based on petitioner's petition for emergent relief and accompanying brief, respondent's brief and cross-motion to dismiss, and the parties' oral arguments, and solely for the purpose of deciding this emergent appeal, I **FIND** the following to be the undisputed facts:

1. Petitioner Charter School is a public charter school in the Borough of Red Bank, New Jersey, approved by the Commissioner of Education (Commissioner) pursuant to the Charter School Program Act of 1995 (Act). Respondent District is a board of education operating the Red Bank Borough school district.
2. After its initial term, the Commissioner renewed Charter School's charter five times. In 2002, respondent appealed the Commissioner's approval of petitioner's first charter renewal application. The Appellate Division entered a decision at In re Red Bank Charter School, 367 N.J. Super. 462, 486 (App. Div. 2004), cert. denied, 180 N.J. 457 (2004), remanding the matter for a hearing to determine whether the lottery, waitlist, sibling preference and withdrawal policies were adversely impacting the Red

Bank district's racial/ethnic imbalance. The Commissioner closed the matter upon entry of a Consent Order. (Johnston Certif., Exh. G at p. 5.)

3. On March 20, 2007, the parties entered into that Consent Order (Verified Petition, Exh. I.) In Paragraph 1 of the Consent Order, reference was made to N.J.A.C. 6A: 11–7.2, concerning the process for Red Bank residents to register in the District and then enroll in the Charter School. N.J.A.C. 6A: 11–7.2 has subsequently been repealed and replaced with N.J.A.C. 6A:23A-15.3, wherein new families register with respondent on or before enrolling with Charter School. Respondent agreed to process registration of Red Bank families in a timely manner, including, at the time of registration, an assessment of residency.
4. In Paragraph 2, the Consent Order required that by October 30 of each school year respondent "submit in writing to the Charter School . . . the number of students by grade level, their gender, race/ethnicity, economic status …" attending District schools, and petitioner had to provide similar information to respondent.
5. Paragraph 3 required providing student demographic information.
6. Paragraph 4 of the Consent Order provided that the Charter School had to maintain a waiting list. That regulation has been repealed and replaced by N.J.A.C. 6A:11-4.6. It also provided that petitioner must "provide a written copy of the waiting list to the Red Bank Superintendent, including the district of residence, no later than October 15, January 15, and May 15 of each school year."
7. Paragraph 11 covered "Recruitment Activities," regarding petitioner's compliance with N.J.S.A. 18A:36A-8(e) to recruit a cross-section of the community school age population.
8. The Commissioner reviewed the Consent Order and on April 13, 2007, deemed it a final decision. The Commissioner did not sign the Consent Order as an agency adjudicator, but rather "a party to the present case."
9. Hispanic enrollment at Charter School has increased through the years, from 30.3% in the 2011-12 school year to 62.5% in 2023-24. Charter School's White student population decreased from 43.5% in the 2016-2017 year to 29.3% in the 2023-2024 year. Red Bank's overall school-

age population in grades K through 8 is 54% Hispanic, 6% Black, and 40% White.

10. Charter School filed its application to renew its charter for a sixth term with the Commissioner on October 15, 2021, opposed by respondent on November 12, 2021. By letter dated February 1, 2022, the Commissioner approved the renewal of Charter School's charter for the five-year period ending on June 30, 2027. (Johnston Certif., Exh. L.) On March 3, 2022, respondent appealed the charter renewal approval.
11. By letter dated October 5, 2017, respondent alleged that petitioner had failed to transmit waitlists pursuant to the Consent Order. Petitioner responded on November 20, 2017, indicating that the items referenced by respondent had been superseded by laws and regulations developed subsequent to the Consent Order. (Johnston Certif., Exh. B.) Petitioner accused respondent of misusing waitlist information.
12. Under Dr. Martello in 2019, petitioner began to provide waitlist information with student names to respondent. In November 2021, Dr. Martello discovered that respondent was using the waitlist information to send letters to families to solicit them to enroll in District schools. In the letter, Superintendent Dr. Rumage stated, "Recently, I received a copy of the current Red Bank Charter School waitlist. While reviewing the list, I noted your child's name. I am reaching out today to see if there is anything we can do to improve your child's educational experience." He then asked the parent-recipients to contact the District "to discuss next steps." (Johnston Certif., Exh. F.) Respondent sent the letters in Spanish to non-English speaking families, on official letterhead. (Martello Certif., 19; Johnston Certif., E.)
13. District parent K.S., who speaks Spanish, received one of the Spanish-language solicitation letters from Dr. Rumage.
14. Respondent began requiring families enrolling their children at Charter School to reverify their residency status, even though families in the District had previously had their residence verified by respondent. (Martello Certif., ¶ 19.)

15. Petitioner alleged that the solicitation letters and reverifications evidenced discriminatory practices and filed a complaint with the United States Department of Education Office for Civil Rights (USDOE OCR), Case No. 2-22-1102, on December 16, 2021. On or about March 15, 2023, the USDOE OCR declined to investigate the complaint and concluded that the complaint on its face failed to state a violation of laws or regulations that their office was responsible for enforcing. (Johnston Certif., Exh. K.) Petitioner subsequently stopped sending waitlists to respondent.
16. Respondent filed an action to enforce the Consent Order on May 15, 2025, Red Bank Board of Education v. Red Bank Charter School, Inc., Mon-L-1843-25, on appeal, A-000049-25. In a certification, Dr. Rumage asserted that that respondent needed the Charter School's waitlist for budget planning purposes. (Verified Petition at p. 13.)
17. On July 25, 2025, the Hon. Andrea I. Marshall, J.S.C. entered an order directing Charter School to comply with the Consent Order.
18. On August 18, 2025, petitioner transmitted waitlist data to Dr. Rumage, but not copies of the waiting lists. Student names were not provided, but information that might be used for budgetary purposes was provided. (Verified Petition, Exhs. C and D.)
19. On September 8, 2025, petitioner filed a notice of appeal, which was amended on September 11, 2025. (Verified Petition, Exh. B.) A settlement conference with the Appellate Division's Civil Appeals Settlement Program, the Hon. Paulette Sapp-Peterson, P.J.A.C., on October 15, 2025, did not result in a settlement. Briefing is scheduled to commence in that appeal on January 20, 2025.
20. On November 12, 2025, Dr. Rumage emailed Dr. Martello to state that the waitlist transmittal of August 18, 2025, did not include the names of the students currently on the waitlist. (Verified Petition, Exh. E.)
21. On December 3, 2025, respondent filed a motion to enforce litigants rights, and on January 14, 2026, the Superior Court issued an order requiring petitioner to supply student names on the waitlists.

LEGAL ANALYSIS

The first issue to be addressed is whether respondent's cross-motion to dismiss should be granted.

Respondent seeks to have the underlying due process petition dismissed for failure to state a claim upon which relief can be granted, claiming the allegations in the petition are time-barred and that there is no ripe or justiciable controversy over which the Commissioner or this Court can properly exercise jurisdiction.

This motion will be addressed separately. Respondent has agreed to refile its motion to dismiss by January 23, 2026, and petitioner shall then have fourteen days for a reply brief.

The second issue is whether petitioner has proven by a preponderance of the credible evidence that it met the standard for emergent relief, and that it is entitled to relief.

N.J.S.A. 18A:6-9 authorizes the Commissioner to consider controversies between a charter school and a school board. The OAL is the appropriate venue for hearing an appeal of a school board's findings and the DOE properly forwarded this matter to the OAL for this emergent appeal to be heard.

Pursuant to N.J.A.C. 6A: 3-1.6 and the case of Crowe v. DeGioia, 90 N.J. 126 (1982), a petitioner must show by a preponderance of the evidence that the four prongs/prerequisites set forth therein had been met in petitioners' favor in order to be granted emergent relief. A petitioner bears the burden of proving the four prongs for emergent relief. B.W. ex rel. D.W. v. Lenape Reg'l High Sch. Dist., OAL Dkt. No. EDS 06933-05, Agency Ref. No. 2006-10522E, at 8 (N.J. Adm); see also J.G. ex rel. Q.B. v. Bd. of Educ. of Lakewood, OAL Dkt. No. EDU 10073-03, Agency Ref. No. 466-12/03, at 6 (N.J. Adm); R.D. ex rel. C.D. v. Willingboro Bd. of Educ., 95 N.J.A.R.2d 190, at 2.

Per N.J.A.C. 6A: 3-1.6 and Crowe, emergent relief may be granted if the judge determines from the proofs that the following four prongs have been met:

i. The petitioner will suffer irreparable harm if the requested relief is not granted;

ii. The legal right underlying the petitioner's claim is settled;

iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

Respondent argued that petitioner did not meet all four prongs of the Crowe test.

1. The petitioners will suffer irreparable harm if the requested relief is not granted.

Petitioner discussed the risk of irreparable harm, but offered no firm examples of actual harm or irreparable harm suffered. Petitioner argued that respondent improperly used the Consent Order by using waitlist information to solicit students to District schools and thwart Hispanic enrollment at the Charter School. It asserted that as superintendent of schools, Dr. Rumage, controlled many aspects of children's educational experiences, making a solicitation from him intimidating to Hispanic families. Petitioner submitted that one Hispanic parent, K.S., described being taken aback by Dr. Rumage's letter. Petitioner reported that Dr. Rumage and others in the District advanced a false narrative that the Charter School was exacerbating school segregation in Red Bank. Petitioner also asserted that Dr. Rumage compelled families transferring to the Charter School to undergo a residency reverification, contrary to N.J.A.C. 6A:22-2.1(c).

Petitioner argued to this Court that it was trying to prevent future harm and admitted that there was no harm suffered that was quantifiable in a monetary terms. Petitioner described Hispanic families as experiencing heightened anxiety due to current practices by U.S. Immigration and Customs Enforcement (ICE). Petitioner then argued that a solicitation letter such as sent by Dr. Rumage was an example of a prohibited facially neutral practice with an insidious intent, contrary to the civil rights laws. Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977).

But respondent correctly argued that "injunctive relief 'should not be entered except when necessary to prevent substantial, immediate and irreparable harm.'" Garden State Equality v. Dow, 433 N.J. Super. 347, 351 (Law Div. 2013) (quoting Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 639 (App. Div. 1997)). Merely "[e]stablishing a risk of irreparable harm is not enough." ECRI v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987).

Petitioner repeatedly provided respondent with waitlists including student names over the course of the years, and thus respondent properly argued that there is no rational basis upon which petitioner can claim that doing so again, while the underlying due process appeal is decided, would cause it irreparable harm. There is nothing but speculation by petitioner that respondent has used the waitlist information to harass or

harm anyone. As names on the waiting lists are those of three-year-old children who may not be receiving any education, but whom might benefit from being enrolled in the Board's Pre-K program if they were aware of the opportunity, I agree with respondent that the only parties that may be harmed are the Red Bank students, who will be deprived of additional public education opportunities if this emergent relief is granted.

On July 25, 2025, the Superior Court entered an order directing Charter School to comply with the Consent Order. The Consent Order required petitioner to send complete copies of their waitlists to respondent, not just selected data. Therefore, petitioner was aware in July 2025 that they needed to provide student names with their waitlist transmittals. Petitioner, however, waited until December 2025 to file for emergent relief. I agree with respondent that a party cannot cause its own delay and later claim there is an emergent need for relief. I also agree with the argument that these issues have been in play since 2017, and thus there is no "immediate" harm being incurred by petitioner or families resulting from the Consent Order's waitlist requirement.

I **FIND** that petitioner offered only speculation regarding harm, and failed to prove any substantial, immediate or irreparable harm. Accordingly, I **CONCLUDE** that petitioner failed to prove that there would be any irreparable harm and **CONCLUDE** that petitioner

failed to prove that the first prong of the Crowe test for emergent relief had been met in favor of the petitioners.

2. The legal right underlying the petitioner's claim is settled.
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim.

Petitioner argued the second and third prong together, claiming the Charter School had a substantial likelihood of success based on well settled legal rights.

Petitioner argued that the Consent Order was in essence a contract, and not a traditional order akin to an adjudicated order. Acknowledging that the New Jersey Administrative Code does not include a provision for being relieved of an order, similar to Superior Court Rule 4:50-1, petitioner argued that "N.J.A.C. 1:1-1.3(a) provides that '[i]n the absence of a rule, a judge [in an administrative proceeding] may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with 'the purposes of 'achiev[ing] just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.'" Matter of Newsom, A-2022 N.J. Super. Unpub. LEXIS 28* (App. Div. 2022) (N.J. Super. Ct. App. Div. Jan. 7, 2022) (citing to In re Adamar of N.J., Inc., 222 N.J. Super. 464, 474 (App. Div. 1988)). Petitioner interpreted this ruling to mean that an ALJ must apply the relief standard from Rule 4:50-1 to a final order entered into by an Administrative body.

Consequently, petitioner believes Rule 4:50-1(e) and (f) is relevant here, as it permits the relieving of a court order when it has been "satisfied, released or discharged . . . or it is no longer equitable that the judgment or order should have prospective application . . . or . . . any other reason justifying relief from the operation of the judgment or order." Petitioner asserted that in the eighteen years since the Consent Order, the majority of its obligations had been already addressed and/or superseded by the school laws, regulations or DOE practices. Its examples are that petitioner's enrollment of Hispanic students grew from 30.3% in 2011-2012 to 62.5% in the 2023-2024 year. (Verified Petition, p. 2.); student demographic data is reported by the DOE on an annual basis; special education requirements are set by the special education laws (20 U.S.C. 1400 et seq., N.J.A.C. 6A:14 et seq.); respondent receives Charter School student demographic data every October 15 and June 15 under the "Charter Enrollment System." N.J.A.C. 6A:23A-15.3; and private school placements of charter school students are now governed by N.J.S.A. 18A:36A-11(b) and N.J.A.C. 6A:23A-15.4.

However, as stated above, any claims of harm are speculative and unproven. While petitioner has made a cogent argument that an Administrative Law Judge may relieve parties of compliance with a court-created order, that ability is not proof that a judge "must" relieve the parties of an order. A discretionary right in no way indicates a likelihood of success on the merits of a case. And while it does appear that certain aspects of the Consent Order have been superseded by subsequent statutes and regulations, that is not proof in itself that the Consent Order no longer serves a purpose. In fact, the superseding of portions of the Consent Order by more recent statutes and regulations supports respondent's claim that the within matter has been filed in an untimely manner and barred by the statute of limitations, arguing that petitioner had the ability to file for relief as each of those Consent Order subsections were superseded. Further, while the law on vacating orders might be settled, it is not necessarily indicative of a likelihood of success once the merits are argued.

Petitioner argues, without proof, that respondent has attempted to "weaponize" the Consent Order to prevent them from enrolling a cross-section of school age children. For proof, petitioner argued that respondent repeatedly opposed the Charter School's charter renewal. Petitioner referred to a "segregation slur" by respondent, claiming that Dr. Rumage and others in the District had advanced a false narrative that Charter School was exacerbating school segregation in Red Bank. Petitioner comported that with its claim that respondent was actively trying to frustrate Charter School's attempts to make it available to Spanish-speaking families. This argument led petitioner to argue that there are civil rights violations by respondent.

For support, petitioner relied on the Fourteenth Amendment to the United States Constitution, concerning civil rights. U.S. Const., 14th Amend. It also cited to Title VI of the Civil Rights Act, 42 U.S.C. § 2000d et seq., enacted as part of the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. Petitioner also cited caselaw for the premise that a government practice that is ostensibly neutral but is an obvious pretext for racial discrimination or for discrimination on some other forbidden basis is subject to heightened scrutiny and invalidation. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Guinn v. United States, 238 U.S. 347 (1915); Lane v. Wilson, 307 U.S. 268 (1939); Gomillion v. Lightfoot, 364 U.S. 339 (1960). A law may be unconstitutional even if it does not facially discriminate on the basis of race, if it "uses the racial nature of an issue to define the governmental decision-making structure, and thus imposes substantial and unique burdens on racial minorities." Washington v. Seattle School Dist., 458 U.S. 457, 470 (1982).

Clearly, civil rights laws are settled law. But petitioner has yet to establish that there is a civil rights element to respondent's alleged actions. While civil rights violations could be an indicator of bad faith by respondent and could possibly lead to a vacation of the Consent Order, the violations claimed by petitioner are unproven. Petitioner offered only one example of a family affected by Dr. Rumage's letter, and that lone example was not accompanied by any proof of irreparable, or any, harm to that complainant.

It must be noted that petitioner alleged discriminatory practices by respondent in its complaint filed with the USDOE OCR on December 16, 2021. The USDOE OCR declined to investigate the complaint and concluded that the complaint on its face failed to state a violation of laws or regulations that their office could enforce.

Petitioner's claims remain unproven and thus I **CONCLUDE** that, for purposes of this emergent petition, these civil rights laws and caselaw do not establish that petitioner's claim is settled or create any likelihood of prevailing on the merits of the underlying claim. Therefore, I **CONCLUDE** that petitioner failed to show that the second and third prongs of the Crowe test for emergent relief had been met in favor of the petitioner.

a. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

There might be some merit to petitioner's argument that the public interest is best served by maintaining the status quo during the pendency of an action, but the fact is that the status quo in this case is not necessarily determined by petitioner's decision not to transmit waitlists with student names; both the Consent Order itself and the July 2025 Superior Court Order call for petitioner to transmit waiting lists with student names.

Neither party seemingly acted with any diligence in litigating its rights. Petitioner had ceased transmitting waitlists with student names in 2022, but respondent waited until May 2025 to file an enforcement action. Similarly, petitioner waited from July to December 2025 to bring the within emergent matter.

Petitioner sought a Consent Order in order to preserve peace in the borough and to have a roadmap for a successful charter school. Yet in retrospect, petitioner is no longer happy with either the terms of the Consent Order or respondent's attempts to use waitlist information in order to draw students to district schools. Both parties profess to be operating within the dictates of State law calling for a balanced makeup of student bodies, but are suggesting that the other party has been misapplying those laws. Petitioner claims respondent is targeting Hispanics by sending letters to Hispanic families in Spanish, calling that "disproportional"; respondent acknowledges that 85% of the Borough is Hispanic, and therefore sending letters to Hispanic families is the definition of "proportional."

For purposes of this motion for emergent relief, I **FIND** that the balancing of the equities favor neither party.

I **CONCLUDE** that petitioner failed to show that the fourth prong of the Crowe test for emergent relief had been met in favor of the petitioner.

Therefore, I **CONCLUDE** that petitioner failed to show by a preponderance of the credible evidence that they met any of the four prongs of the Crowe test for emergent relief. I **CONCLUDE** that petitioner failed to prove that they were entitled to emergent relief in this matter.

ORDER

Accordingly, **I ORDER** that the petitioner's application for emergent relief be and hereby is **DENIED**.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If Commissioner of the Department of Education does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

January 16, 2026 _____

DATE **JEFFREY N. RABIN**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JNR/lam

APPENDIX

WITNESSES

For petitioner:

Thomas O. Johnston, Esq.

For respondent:

Aron G. Mandel, Esq.

BRIEFS/EXHIBITS

For petitioners

- Petition Brief and exhibits, dated December 30, 2025

For respondents

- Brief in Response to Petition for Emergent Relief, dated January 15, 2026