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October 2, 2025

Via Electronic Filing

Heather Joy Baker, Clerk
Supreme Court of New Jersey
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 970
Trenton, New Jersey 08625

Re: Bd. of Educ. of the City of Absecon, Atlantic Cnty. v. Bd. of Educ.
of the City of Pleasantville, Atlantic County
Docket No. 91051

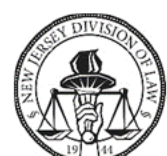
On Petition for Certification to the Supreme Court of New Jersey
from the July 18, 2025 Judgment of the Superior Court of New
Jersey, Appellate Division, Docket No. A-3237-22

Sat Below: Hon. Lisa Firko, J.A.D.
Hon. Avis Bishop-Thompson, J.A.D.
Hon. Lorraine M. Augostini, J.A.D.

Letter Brief on Behalf of Respondent, the New Jersey
Commissioner of Education, in Opposition to Petition for
Certification.

Dear Ms. Baker:

Please accept this letter brief on behalf of Respondent, the New Jersey
Commissioner of Education (Commissioner), in opposition to Petitioner, the
Board of Education of the City of Absecon's (Absecon) petition for certification.



The petition should be denied because the panel’s decision correctly applied well-settled precedent and is amply supported by the record.

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

The Commissioner relies on the procedural history and statement of facts set forth in his merits brief filed on February 12, 2024, (Rb1-16),² supplemented as follows.

Absecon’s high school-age students attend Pleasantville High School (PHS) as part of a send-receive agreement. (Pa6). On September 4, 2019,

¹ The procedural history and counterstatement of facts are closely related in this matter and have been combined to avoid repetition and for the Court’s convenience.

² “Pb” refers to Absecon’s brief; “Rb” refers to the Commissioner’s brief filed with the Appellate Division; “Pa” refers to Absecon’s appendix to the Appellate Division; “Ra” refers to the Commissioner’s appendix to the Appellate Division; and “SCa” refers to Absecon’s appendix with this petition.

Absecon filed a petition with the Commissioner seeking to sever its send-receive relationship with the Pleasantville Board of Education (Pleasantville) pursuant to N.J.S.A. 18A:38-13. (Pa6). Absecon's petition included a feasibility study, which concluded that severing the send-receive relationship would not have a substantial negative educational, racial, or financial impact on Pleasantville. (Pa93-94). The petition did not specify whether, if granted, Absecon students would immediately withdraw from PHS or if they would be gradually phased out. (See Pa6-9). Pleasantville initially filed an answer opposing Absecon's application, but ultimately advised the Commissioner on February 8, 2021, that it was withdrawing its opposition. (Pa115-19). As a result, the matter proceeded as an uncontested case before the Commissioner in accordance with N.J.A.C. 6A:3-6.1. (Pa546).

In regards to student demographic information, the initial feasibility study only included data for the 2012-2013 to 2017-2018 school years. (Pa56-68). Because of this, Absecon submitted supplemental studies on April 19, 2021, which included data up to the 2019-2020 school year. (Pa393-94; Pa444-49). On April 28, 2021, the Department requested that Absecon provide further updated data regarding the racial and demographic impact analysis. (Pa537). On June 14, 2021, Absecon submitted the updated analysis, which included data up to the 2020-2021 school year. (Pa537-38).

Pleasantville is an overwhelmingly majority-minority school district—meaning a majority of its student population is comprised of minority racial groups. (Pa396). During the 2019-2020 school year, for example, there were 792 students enrolled in PHS, of whom 99.39% were minority and 0.61% were White. (Pa396). As the record demonstrates, Absecon accounts for a significant proportion of the White student population in PHS.

According to Absecon's feasibility studies, in 2016-2017, there were eight White students at PHS, five of whom, or 62.5%, were from Absecon. (Pa58; Pa60; Pa445; Pa448; Pa541-42). In 2017-2018, there were five White students, one of whom, or 20%, was from Absecon. (Pa58; Pa60; Pa445; Pa448; Pa541-42). In 2018-2019, there were three White students, two of whom, or 66.7%, were from Absecon. (Pa58; Pa60; Pa445; Pa448; Pa541-42). In 2019-2020, there were five White students, four of whom, or 80%, were from Absecon. (Pa58; Pa60; Pa445; Pa448; Pa541-42). And in 2020-2021, there were eleven White students, six of whom, or 54.5%, were from Absecon. (Pa58; Pa60; Pa445; Pa448; Pa541-42).

Absecon's feasibility studies also examined whether a potential increase in enrollment of White students in Pleasantville's middle school could offset the loss of Absecon's White students from PHS. (Pa455; Pa544). As the record demonstrated, in Pleasantville, the average number of White students per grade

level from 2015-2016 to 2020-2021 remained constant at just 3.8 White students per grade level. (Pa455; Pa544). And Absecon's experts noted that not all students who complete eighth grade continue on to PHS. Rather, students have the option of attending the public high school, a private high school, the county vocational technical school, a charter school, or an inter-district or other statutory choice program. (Pa508).

On May 25, 2022, the Commissioner issued a final decision denying Absecon's request to terminate its send-receive relationship with Pleasantville. (Pa545; Pa553). In denying the petition, the Commissioner found that termination of the send-receive relationship "would cause no substantial negative educational or financial impact," but that "removal of Absecon's high school students from Pleasantville would have a substantial negative effect on the racial composition of Pleasantville." (Pa549). Specifically, the Commissioner found that because the total number of White students in PHS was so small, the loss of Absecon's White students amounted to a loss of up to 80% of the gross population of White students. (Pa552). Therefore, the Commissioner determined that the termination of the send-receive relationship would have a "substantial negative effect" on the "gross population of White students at Pleasantville." Ibid.

Absecon moved for reconsideration of the Commissioner's decision, arguing, in part, that an increase in White students in Pleasantville's middle school rendered withdrawal permissible. (Pa555). The Commissioner denied Absecon's motion, finding the potential increase in White middle school students entering PHS "speculative" and, importantly, that any potential increase "d[id] not negate the fact that the removal of Absecon's White students from Pleasantville w[ould] still result in a substantial decrease in the White population of a predominantly minority district[.]" Ibid.

On July 18, 2025, the Appellate Division issued a comprehensive decision affirming the Commissioner's final decision. (SCa3). The panel first rejected Absecon's claim that In re Petition for Authorization to Conduct a Referendum of North Haledon School District from the Passaic County Manchester Regional High School District (North Haledon), 181 N.J. 161 (2004), created a per se rule that the Commissioner could only evaluate racial impact based on the percentage drop in the proportion of White students alone. (SCa18). Instead, the panel found that, consistent with North Haledon and its prior decision in Board of Education of Englewood Cliffs v. Board of Education of Englewood (Englewood), 257 N.J. Super. 413 (App. Div. 1992), aff'd, 132 N.J. 327 (1993), the Commissioner "properly assessed" the gross change in the White student population. Ibid.

Applying these standards, the panel affirmed the Commissioner's denial of Absecon's petition, finding that the record demonstrated that severance would result in the loss of 50% to 80% of Pleasantville's overall White population. (SCa19-20). This loss, the panel noted, is substantial; and where there is a substantial negative impact, the Commissioner is required to deny severance. (SCa18-20). The panel therefore found the Commissioner's decision to be supported by the record and applied the correct legal standard. (SCa19-20).

Next, the panel rejected Absecon's claim that the Commissioner expanded his role beyond that contemplated by the enabling legislation. (SCa21). The panel noted that the Commissioner bears the "ultimate educational authority in the State," and where the Commissioner's inquiry finds a substantial negative impact, severance must be denied. (SCa18) (quoting Englewood Cliffs, 257 N.J. Super. at 462). For those reasons, the panel found the Commissioner properly exercised discretion in denying the petition. (SCa21).

Finally, the panel found that the Commissioner properly denied Absecon's motion for reconsideration. (SCa22). As the panel held, the Commissioner correctly found Absecon's motion to be no more than an expression of disagreement with the denial which did not set forth newly discovered evidence. Ibid. And the Commissioner reasonably rejected Absecon's arguments concerning a gradual phase out of students because no matter how the severance

was done, the record showed there would be a substantial negative racial impact on PHS. Ibid.

This petition for certification followed.

ARGUMENT

THIS COURT SHOULD DENY ABSECON'S PETITION BECAUSE THE APPELLATE DIVISION APPLIED THE CORRECT LEGAL STANDARDS AND THE MATTER DOES NOT MERIT FURTHER REVIEW.

Certification is not warranted here. A petition for certification will be granted only when the Court's supervision is required—that is, if the petition presents an unsettled question of general public importance, if the decision below is in conflict with other appellate or Supreme Court decisions, or if the interests of justice so require. R. 2:12-4. Certification will be denied, by contrast, where the Appellate Division decision is essentially an application of settled legal principles to the facts of a case and does not present any special reason for review. See Fox v. Woodbridge Twp. Bd. Of Educ., 98 N.J. 513, 515-16 (1985) (O'Hern, J., concurring); In re Contract for Route 280, 89 N.J. 1, 1-2 (1982). This is precisely that type of case.

No unsettled general questions of public importance require this Court's supervision, nor does Absecon identify any conflict with decisions of any other court. Instead, Absecon challenges the panel's application of well-settled law

to the unique facts of this matter. But as the panel correctly found, each of Absecon's arguments lack merit. And because this fact-bound matter does not merit this Court's intervention, certification is not appropriate here.

Absecon first argues that the Commissioner assumed, and the panel endorsed, an impermissibly expanded role in reviewing petitions to sever send-receive relationships. (Pb9). Essentially, Absecon's argument boils down to a claim that where the record is undisputed and the petitioning district's feasibility study finds no substantial negative impact, the Commissioner is constrained to grant such petitions. (Pb9-12). Not so.

Districts may enter into contracts for educational services, creating a send-receive relationship. N.J.S.A. 18A:38-11; Englewood Cliffs, 257 N.J. Super. at 457-58. But, unlike an ordinary contract, termination of a send-receive relationship is subject to approval of the Commissioner. Englewood Cliffs, 257 N.J. Super. at 457-58; N.J.S.A. 18A:38-13. In evaluating these requests, the Commissioner must conduct a holistic review, taking into account "all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts." N.J.S.A. 18A:38-13. After conducting this review, the Commissioner "shall grant the requested change in designation or allocation if no substantial negative

impact will result therefrom.” *Ibid.* (emphasis added). The Commissioner’s ability to grant such requests is therefore circumscribed by the impact severance would have on a district. As our courts have explained, “[t]he focus of the Commissioner’s inquiry is whether a substantial negative impact exists at all; if it does, severance is to be denied.” *Englewood Cliffs*, 257 N.J. Super. at 462 (emphasis in original).

Thus, while Absecon is correct that the Commissioner does not have unfettered discretion to deny severance petitions, the Commissioner still must “reach an equitable determination—one that is fair to both districts—keeping in mind his [or her] responsibility as the ultimate educational authority in the State.” *Ibid.* And where a substantial negative impact is found based on the record, the Commissioner must deny the petition, which is exactly what occurred here.

Absecon next argues that the panel failed to properly apply both N.J.S.A. 18A:38-13 and *North Haledon*. (Pb12). Specifically, Absecon asserts that in reviewing severance petitions, the statute and *North Haledon* create a per se rule that the Commissioner can only look at the percentage drop in the proportion of White students when determining racial impact. As the panel correctly found, Absecon misinterprets *North Haledon* and reads N.J.S.A. 18A:38-13 too restrictively.

There is no statutorily prescribed test to determine when severance would create an impermissible racial impact. While N.J.S.A. 18A:38-13 lays out a series of factors to be considered by the Commissioner, it “is not a traditional balancing” test. Englewood Cliffs, 257 N.J. Super. at 461. Rather, the Commissioner must take a holistic approach, basing his determination upon a consideration of “all the circumstances.” N.J.S.A. 18A:38-13 (emphasis added). As the panel properly found, this may include an evaluation of the overall proportion of students lost, North Haledon, 181 N.J. at 164, or the gross number of students lost as a result of the change in designation, Englewood Cliffs, 257 N.J. Super. at 447-49.

In Englewood Cliffs, the court affirmed the State Board of Education’s denial of Englewood Cliffs’ petition to sever its send-receive relationship due to the substantial negative impact on the racial balance in the district. 257 N.J. Super. at 422-23. There, the court adopted the State Board’s decision that although the “drop in the overall proportion of White students . . . would make a difference of 1.6%, seemingly a negligible amount,” severance would have resulted in the loss of fifteen White students out of a total of 94, constituting 16% of the total population of White students. Id. at 439. Adopting the State Board’s decision, the court held that this 16% reduction in the total White population constituted a substantial negative impact on the racial balance of the

district. Id. at 447-49. Importantly, the court did not rely solely on the lower proportional decrease; instead, the court accepted the State Board’s reasoning that N.J.S.A. 18A:38-13 “requires that any determination with respect to a requested change in designation must be based upon consideration of all the circumstances . . . and, consequently, the language of the statute precludes” such a narrow view. Id. at 447 (emphasis in original).

Absecon attempts to distinguish Englewood Cliffs because, unlike here, the petitioner there was motivated by racial prejudice in the form of “White flight” when seeking to terminate its sending-receiving relationship. (Pb15). But our courts have explained that “a particularized finding of intentional discrimination is not a prerequisite for state remedies for racial imbalance.” Englewood Cliffs, 257 N.J. Super. at 472. In relying, in part, on Englewood Cliffs, the Commissioner and the panel made a reasonable finding supported by substantial evidence from the record.

Nothing in North Haledon requires an alternate outcome. That case involved the withdrawal from a regional school district which is governed by a different statute. 181 N.J. at 164-65; compare N.J.S.A. 18A:38-13 (severance of a send-receive agreement) with N.J.S.A. 18A:13-51 to -81 (withdrawal from a regional school district). And, despite Absecon’s claim to the contrary, this Court did not announce that diminution of the gross population was not an

appropriate metric to evaluate severance requests. In fact, the Court cited Englewood Cliffs with approval. North Haledon, 181 N.J. at 141-42. The reasoning for this is simple and bears repeating: the Commissioner must consider “all the circumstances” and take steps to address situations where there would be a substantial negative racial impact. N.J.S.A. 18A:38-13 (emphasis added); see also Jenkins v. Twp. of Morris Sch. Dist. and Bd. of Educ., 58 N.J. 483 (1971) (explaining the Commissioner’s statutorily prescribed obligation to take steps to eliminate racial imbalance in public schools).

Applying these well-settled principles, the panel correctly held that the record supports the Commissioner’s reasonable finding that severance would result in a substantial negative racial impact. As the record reflects, PHS enrolls a very small number of White students, with Absecon students accounting for a significant proportion. In 2016-2017, Absecon students represented 62.5% of the total White population. (Pa60; Pa62; Pa448; Pa542). In 2017-2018, Absecon students represented 20% of the total White population; in 2018-2019, Absecon students represented 66.7% of the total White population; in 2019-2020, Absecon students represented 80% of the total White population; and in 2020-2021, Absecon students represented 54.5% of the total White population. (Pa60; Pa62; Pa448; Pa542).

While the withdrawal of Absecon students would result in only a 0.61% reduction in the total student population, (Pa416), the loss of up to 80% of the total White population is not trivial, especially in a majority-minority district such as Pleasantville. To be sure, a loss of 20% to 80% of the total White population is significantly more than the 16% reduction the court in Englewood Cliffs found to cause a substantial negative impact warranting denial of the petition. 257 N.J. Super. at 447-49; (SCa20).

The Commissioner also examined the effect of a phased withdrawal on the district, despite Absecon's petition not specifying whether the withdrawal would occur at once or gradually. (Pa6-9; Pa555). According to Absecon's own feasibility study and proposed phase out plan, in 2016-2017, Pleasantville would have lost 25% of its White student population; in 2017-2018, Pleasantville would have lost 80% of its White student population; in 2018-2019, Pleasantville would have lost 66.7% of its White student population; and in 2019-2020, Pleasantville would have lost 80% of its White student population. (Pa448-49; Pa542).³ Thus, the phase-out plan would have resulted in a 25% to 80% reduction in the White population, which is considerably more than the

³ While Absecon's petition was filed on August 30, 2019, it did not provide any analysis on its proposed phase-out plan until April 2021. (Pa449). And when it did, Absecon only provided a proposed phase-out plan using data from the four years preceding its application. Ibid.

16% reduction the court in Englewood Cliffs found to cause a substantial negative impact necessitating denial of the petition. 257 N.J. Super. at 447-49. And, more to the point, according to Absecon's own proposed phase out plan, which relied on outdated data from four years before the petition was filed, there would have been be a total of just one White student in PHS within two years of implementation. (Pa449). Effectively, Absecon admits that its plan would have all but eliminated the entire White student population at PHS.

Finally, and despite Absecon's claim to the contrary, the panel also correctly affirmed the Commissioner's denial of Absecon's motion for reconsideration because the demographic trends Absecon relied on did not support their petition. As an initial point, neither the Commissioner nor the panel held that demographic trends are not a relevant consideration in evaluating a severance petition. The problem here, however, is that Absecon's claim that withdrawal of its White students will be mitigated due to an increase in the population of White students in Pleasantville's elementary and middle schools is unsupported by the record.

Absecon's mitigation argument presupposes that all of the White students in Pleasantville's elementary and middle schools will enroll in Pleasantville High School. (See Pa443 (explaining that the projected enrollment assumes "these children continue to matriculate into the higher grades" in Pleasantville)).

But Absecon's own experts opined that "there is an inherent problem in drawing conclusions from this data" due to the expansion of school choice options. (Pa508). This is because not all students who complete eighth grade automatically continue on to PHS. Rather, students have the option of attending the public high school, a private high school, the county vocational technical school, a charter school, or an inter-district or other statutory choice program. (Pa508). As to Pleasantville students specifically, Absecon's experts found that Pleasantville's students "appear to be taking advantage of these programs given the drop off in students from 8th to 9th Grade." Ibid. Thus, the Commissioner correctly found that Absecon's argument is speculation untethered to the record.

Absecon's claim is also belied by the data in the record. As the feasibility study demonstrates, between 2015-2016 and 2020-2021, the average number of White students per grade level in Pleasantville's elementary and middle schools remained constant at just 3.8. (Pa455; Pa544). Thus, Pleasantville's enrollment of White students in Pre-K through eighth grade did not increase, but rather remained relatively stagnant. (Pa455; Pa544). Even looking at overall district enrollment, enrollment in Pleasantville schools "steadily declin[ed]" from 2014-2015 to 2019-2020, with Pleasantville's Pre-K to eighth grade enrollment shrinking from 3,120 students to 2,700 students. (Pa436-37). And the record

shows that this enrollment is projected to continue to decline from 2,583 students in 2020-2021 to 2,363 students in 2024-2025. (Pa438).

This data reveals two critical points. First, the average number of White students per grade level in Pleasantville's elementary and middle schools has not increased, or even significantly changed, from 2015-2016 to 2020-2021. (Pa455; Pa544). During this same time period, Absecon accounted for as much as 80% of the total White student population in Pleasantville High School. (Pa542). Second, Pleasantville's Pre-K to eighth grade enrollment has been on a steady decline since 2014-2015 with no prospect of reversing course in the near future. (Pa438). Taken together, the evidence belies any claim that enrollment of White students in PHS is likely to increase without continued enrollment of Absecon students.

Thus, the petition for certification should be denied because it reiterates the same arguments that the panel's well-reasoned opinion considered and rejected. The panel followed well-settled legal principles and its decision does not conflict with the decisions of any other court. And because the panel's decision only affects the parties to this particular matter, this is precisely the type of fact-bound issue that does not merit further review. R. 2:12-4; see also Mahony v. Danis, 95 N.J. 50, 52 (1983) (Handler, J., concurring) (finding

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supervision by this Court is not invited where a case does not transcend the immediate interests of the litigants).

CONCLUSION

For these reasons, and the reasons set forth in the Appellate Division's thoughtful opinion, this petition should be denied.

Respectfully submitted,

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