

OKLAHOMA COUNTY, OKLAHOMA

October 15, 2026 11:08 AM

RICK WARREN, COURT CLERK

Case Number CV-2026-649

Case No. CV-2026-649

V.

Respondents.

OUT PREJUDICE

Drummond, Attorney C

11, 2026, after the Oklah

decline weak or inadequate applications, by issuing a complete statement of the grounds for its March 9, 2026, action. The Attorney General took no position in this proceeding on the constitutional questions resolved in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, 2024 OK 53, 558 P.3d 1, and he takes none now.

Three developments since the Petition was filed have overtaken the relief it sought.

First, on March 24, 2026, Ben Gamla sued in the United States District Court for the Western District of Oklahoma, challenging the nonsectarian requirement under the Free Exercise Clause. *See Nat'l Ben Gamla Jewish Charter Sch. Found., Inc. v. Shellem*, No. CIV-26-582-R (W.D. Okla.). Ben Gamla also named the Attorney General as a defendant. On June 9, 2026, the federal court dismissed him from the action, holding that he has no role in enforcing the nonsectarian requirement and is not a proper defendant under *Ex parte Young*. Order (Doc. 90). The Board did not oppose Ben Gamla's request for a preliminary injunction. On September 24, 2026, the federal court granted that request and enjoined the Board "from enforcing the nonsectarian requirement or otherwise excluding Plaintiffs from participating in the charter school program on account of their religious character." Order at 30 (Doc. 121). The federal court's order does not disturb the Board's authority, or its duty, to reject an application on grounds unrelated to religion. The court observed only that the intervening defendants had "not identified any noncurable conditions or nondiscriminatory eligibility criteria that entirely disqualify Ben Gamla from receiving a charter contract," *id.* at 10, which is precisely the gap in the record that the Board's March 10, 2026, letter created and that this Petition sought to close.

Second, the enrollment concerns the Attorney General raised at the March 9, 2026, meeting have since been confirmed by Ben Gamla itself. On September 30, 2026, Ben Gamla's founder wrote to Oklahoma Jewish leaders seeking help recruiting students and a principal. He stated that the school "will initially be an online Jewish high school" and that its "aspirational enrollment goal

for the first year is intentionally modest: 10 students.” *See* Ex. 1 (letter of October 8, 2026, from counsel for the intervening defendants to counsel for the Board, with enclosure). Ben Gamla’s letter of intent proposed a school of forty students in grades 9–12. Its Initial Application then proposed a K–12 school of 335 to 400 students, and the budgets and cash-flow projections in the Revised Application were built on that assumption. Pet. ¶¶ 7–8, 10–12. An applicant that now hopes to enroll ten students in a high school it described to the Board as a K–12 school of 335 to 400 students has not demonstrated the educational need or financial viability that the Oklahoma Charter Schools Act (the “Act”) requires, *see* 70 O.S. § 3-134(B)(3), (10), (29)–(30), (I)(3)–(4), or the community support the Board’s own rules require, *see* OAC § 777:10-3-3(b)(4)(F).

Third, on October 12, 2026, the Board reconsidered Ben Gamla’s Revised Application in light of the federal court’s order. Four members voted to approve the application and three voted against it. Under the Act, “an affirmative vote of at least five members shall be required for the Board to take any final action.” 70 O.S. § 3-132.1(H). The motion to approve therefore failed, and the application stands rejected.¹ Because the Board is enjoined from excluding Ben Gamla on account of its religious character, the October 12, 2026, rejection necessarily rests on grounds other than the nonsectarian requirement. The public record confirms as much. One of the members who voted against approval explained that the absence of parent support and the opposition of Oklahoma’s Jewish community “played mostly in my mind,” and Ben Gamla’s

¹ *See* Nuria Martinez-Keel, *Oklahoma state board again rejects Jewish charter school in ‘shocking’ vote*, Oklahoma Voice (Oct. 12, 2026), <https://oklahomavoice.com/2026/10/12/oklahoma-state-board-again-rejects-jewish-charter-school-in-shocking-vote/> (reporting the 4-3 vote, that the motion “fell one vote short of the five needed for the Statewide Charter School Board to approve Ben Gamla Jewish Charter School,” and that one member was absent and one seat was vacant); *Denied: Jewish Charter School Application Fails By One Vote*, Oklahoma Watch (Oct. 13, 2026), <https://oklahomawatch.org/2026/10/13/denied-jewish-charter-school-application-fails-by-one-vote/>; Samantha Rupe & Micah Wilson, *Ben Gamla Jewish charter school application fails to win approval*, News 9 (Oct. 12, 2026), <https://www.news9.com/oklahoma-city-education/ben-gamla-jewish-charter-school-application-fails> (quoting Board counsel: “The threshold is five votes,” and “as of this moment, the board doesn’t meet the threshold for that.”).

founder has acknowledged that he expects only ten students to enroll in the first year.² Those are the same deficiencies the Attorney General’s representative placed before the Board on March 9, 2026, and that the Board declined to include in its rejection letter the following day.

These developments make the writ sought in the Petition unnecessary. The Petition asked the Court to compel the Board to amend its March 10, 2026, rejection letter or to issue a complete one in its place. The March 10, 2026, letter is no longer the operative Board action. The Board has since acted again on the same application, and the premise of this Petition has now been borne out by the Board’s own vote: the application suffered from independent, non-constitutional deficiencies that the Board could not lawfully ignore. Mandamus lies to compel the performance of a present duty, not to correct a record that subsequent events have superseded. *See* 12 O.S. § 1451; *Chandler (U.S.A.), Inc. v. Tyree*, 2004 OK 16, ¶ 24, 87 P.3d 598, 604.

The October 12, 2026, vote has a further consequence. Section 3-134(E)(3) prescribes a single sequence for a virtual charter application: an application, a written rejection stating the reasons, a revised application, and acceptance or rejection of the revised application within thirty days. The statute provides no procedure for a third vote. That omission is deliberate. Earlier versions of the Act allowed a rejected applicant, including an applicant denied by the Statewide Virtual Charter School Board, to appeal to the State Board of Education. *See* 70 O.S. Supp. 2022, § 3-134(E); 70 O.S.2021, § 3-145.3(K). In 2023, the Legislature eliminated both appeals and provided no further step. *See* 2023 Okla. Sess. Laws ch. 323, §§ 6, 22 (S.B. 516). Ben Gamla’s application has now been rejected on grounds that have nothing to do with religion, and the Act provides for no further Board action on it. Under the Board’s own rules, a new virtual charter

² Martinez-Keel, *supra* note 1 (quoting Board Member William Pearson: “We saw none of that [parent support] with the Ben Gamla issue, and that’s what played mostly in my mind,” and reporting that “[f]ounder Peter Deutsch has acknowledged he expects only 10 students to enroll in its first year”); *see also* Ex. 1 (Sept. 30, 2026, email from Mr. Deutsch: “Our aspirational enrollment goal for the first year is intentionally modest: 10 students.”).

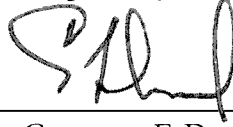
application may be submitted only in January, eighteen months before July of the proposed opening year. OAC § 777:10-3-3(a)(6)(A). Any further application by Ben Gamla would therefore be a new application, on a new record, for a later school year. The federal action challenged the Board's rejection of this application on account of Ben Gamla's religious character. That rejection has been superseded by one resting on non-religious grounds, no application by Ben Gamla is pending before the Board, and the Board is applying no religious criterion to Ben Gamla. The action is therefore moot. A case is moot "when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (internal quotation omitted). An injunction against the nonsectarian requirement can no longer redress Ben Gamla's claimed injury, because that requirement is no longer what stands between Ben Gamla and a charter. The Attorney General expects the federal action to be dismissed on that basis.

When it is, the federal court's preliminary ruling will carry no continuing legal force. A preliminary injunction is not an adjudication on the merits. "[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); accord *Attorney Gen. of Okla. v. Tyson Foods, Inc.*, 565 F.3d 769, 776 (10th Cir. 2009). Such a ruling is not binding precedent, and because it is not a final judgment, it has no res judicata or collateral estoppel effect in any other proceeding. See *Camenisch*, 451 U.S. at 395–96. Once the federal action is dismissed, the only binding precedent on the question whether an Oklahoma charter school may be sectarian will be what it was before that action was filed: the Oklahoma Supreme Court's decision in *Drummond*, 2024 OK 53, 558 P.3d 1, as affirmed by the Supreme Court of the United States in *Oklahoma Statewide Charter School Board v. Drummond*, 605 U.S. 165 (2025). That decision remains the law of this State, and the Board remains bound by it.

The dismissal is without prejudice for a reason. Whatever the procedural footing of the Board's October 12, 2026, action, that action was a rejection, and the statute's command attaches to it. If the Board rejects an application, it "shall notify the applicant in writing of the reasons for the rejection." 70 O.S. § 3-134(E)(3). The Board's duty under § 3-134(I)(4) to decline weak or inadequate applications likewise remains in force. The Attorney General expects the Board to discharge both duties with respect to its October 12, 2026, action by stating, completely and accurately, the non-constitutional grounds on which the application failed. He reserves the right to seek relief from this Court should the Board again issue a rejection that omits the grounds on which it actually acted, or should the Board take further action on this application that disregards the deficiencies now established on the public record.

The Attorney General brought this action to protect the integrity of Oklahoma's charter school authorization process and the completeness of the administrative record on which courts, the public, and the applicant are entitled to rely. That interest has not diminished. But the Board's October 12, 2026, vote, together with Ben Gamla's own admissions, has accomplished what the Petition set out to secure: an acknowledgment that this application fails on grounds having nothing to do with religion. Further litigation over the form of a superseded letter would serve no purpose. This action is accordingly dismissed without prejudice.

Respectfully submitted,



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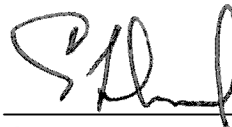
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2026, a true and correct copy of the foregoing was served by United States mail, first-class postage prepaid, on the following:

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GENTNER F. DRUMMOND

October 8, 2026

Via email

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Re: Ben Gamla Jewish Charter School application

Dear counsel for the Oklahoma Statewide Charter School Board:

We have learned that Ben Gamla Jewish Charter School founder Peter Deutsch last week sent emails to Jewish leaders in Oklahoma asking for assistance in recruiting students to attend Ben Gamla and finding a principal for the school. In the emails, Mr. Deutsch states, “Our aspirational enrollment goal for the first year [of the school’s operation] is intentionally modest: 10 students.” The emails also state that Ben Gamla will be “an online high school.” Attached is a copy of one such email, which Mr. Deutsch sent to one of our clients, a defendant-intervenor in the federal-court lawsuit filed by Ben Gamla.

The information in the email is diametrically different from the representations set forth in Ben Gamla’s application for charter-school sponsorship. In the application, Ben Gamla projected an enrollment of 335 to

495 students.¹ And the application represented that Ben Gamla would be a K–12 school.²

The miniscule “aspirational enrollment” set forth in Mr. Deutsch’s emails and the severe contradictions with the application demonstrate that Ben Gamla lacks community support, that the school cannot be financially or operationally viable, that its application is fatally deficient, and that the school lacks credibility. We therefore urge the Statewide Charter School Board to reaffirm on these grounds its past denials of Ben Gamla’s application.

Ben Gamla lacks community support. A charter-school application must include “[i]nformation related to the proposed school’s community, including the importance of the educational model to the community and its support.”³ To be approved, charter applications must “meet identified educational needs.”⁴ Ben Gamla’s admission that it will struggle to enroll as few as ten students shows that the proposed school lacks community support and will not fulfill an unmet educational need.

Ben Gamla is not financially or operationally viable. A charter high school that admits that it will struggle to enroll as few as ten students cannot possibly be financially or operationally viable. The school will need to hire, for each grade level, teachers who are qualified to teach the numerous classes across many subject areas that Oklahoma high-school students must pass to satisfy graduation requirements.⁵ The school must also be prepared and able to serve students with disabilities, English-language learners, and students who are academically behind.⁶ The costs of hiring sufficient administrators, teachers, and staff to satisfy all these requirements will far exceed the

¹ Ben Gamla Jewish Charter School, *2025 Oklahoma Statewide Charter School Board Initial Authorization Application*, at 121, 141, 142. A version of Ben Gamla’s application with page numbers, added by us and used for the page citations here, is at <http://bit.ly/4qNAfmF>.

² *Id.* at 141–42.

³ OAC § 777:10-3-3(b)(4)(F).

⁴ 70 O.S. § 3-134(I)(3).

⁵ *See id.* §§ 3-134(B)(12), 11-103.6; OAC § 777:10-3-3(c)(1)(E).

⁶ *See* 70 O.S. §§ 3-134(B)(15), 3-136(A)(6); OAC § 777:10-3-3(c)(1)(C).

revenue that the school will receive from the state, which will be very low under the state’s funding formula due to the miniscule enrollment.⁷

Ben Gamla’s application is fatally deficient. A charter-school application must include detailed financial plans, including budgets and cash-flow projections for its start-up phase and first five years.⁸ Ben Gamla’s application contained such information, but it was based on a projected enrollment of 425 students in the school’s first year, and on the assumption that the school would serve students in grades K–12.⁹ Now that Ben Gamla has an “aspirational enrollment” of ten students and plans to only be a high school, the financial and budget projections in the application are utterly meaningless.

Ben Gamla lacks any credibility. In the November 3, 2025 letter of intent that Ben Gamla sent the Board, Ben Gamla stated that it would be a high school and projected “an initial enrollment of approximately 40 students across grades 9–12.”¹⁰ In its application, Ben Gamla represented that it would be a K–12 school with enrollment of 335 to 495 students in its first year.¹¹ Now, Ben Gamla says that it will be a high school and is seeking help to meet an “aspirational enrollment goal” of ten students in its first year. These wild swings in how many students and what grades the school hopes to serve demonstrate that the Board should not give credence to any representations made by Ben Gamla about its planned operations.

The Board has a duty to deny Ben Gamla’s application. The Board has authority to approve only “quality charter applications” and is obligated to “[d]ecline to approve weak or inadequate charter applications.”¹² The preliminary ruling in the litigation filed by Ben Gamla prohibits the Board only (and temporarily) from continuing to deny Ben Gamla’s application based on its religious character; the Board’s authority to deny the application

⁷ See 70 O.S. §§ 3-142(A), 3-142(C), 18-200.1, 18-201.1.

⁸ See *id.* §§ 3-134(B)(3), (27), (29), (30); OAC § 777:10-3-3(b)(4)(H).

⁹ Application at 141–42.

¹⁰ Letter from Peter Deutsch to Oklahoma Statewide Charter School Board, at 1 (Nov. 3, 2025), <https://bit.ly/4i9zly3>.

¹¹ Application at 121, 141–42.

¹² 70 O.S. § 3-134(I)(3)–(4); accord OAC § 777:10-3-3(b).

on other grounds is unaffected.¹³ As the disclosure of Ben Gamla’s miniscule “aspirational enrollment” demonstrates that the school lacks community support, that the school is not financially or operationally viable, that its application materials are woefully deficient, and that the school lacks credibility, the Board is statutorily obligated to deny Ben Gamla’s application.

We request that the Board’s counsel share this correspondence with the Board’s members and staff. Thank you for your attention and consideration.

¹³ *Nat’l Ben Gamla Jewish Charter Sch. Found., Inc. v. Shellem*, No. CIV-26-582-R, 2026 WL 2882202, at *14 (W.D. Okla. Sept. 24, 2026) (“Accordingly, Plaintiffs are entitled to a preliminary injunction precluding the Oklahoma Statewide Charter School Board from enforcing the nonsectarian requirement or otherwise excluding Plaintiffs from participating in the charter school program *on account of their religious character*.” (emphasis added)).

Very truly yours,



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Enclosure: September 30, 2026, 4:51 a.m. email from Peter Deutsch to Rabbi Daniel Kaiman

From: peter deutsch <prdeutsch@gmail.com>

Sent: Wednesday, September 30, 2026 4:51 AM

To: Dan Kaiman <[REDACTED]>

Subject: Founding Leadership Opportunity - First Religious Charter School in the United States

Dear Rabbi Kaiman,

I am reaching out because you know the Tulsa Jewish community and its joint high-school Jewish-education program. I am looking for an exceptional person to help launch and lead a new Jewish high school, and I thought you might either be interested yourself or know someone outstanding whom I should speak with.

We are preparing to open the Ben Gamla Jewish Charter School of Oklahoma in September 2027. As a result of the recent preliminary injunction decision, Ben Gamla Jewish Charter School is entitled to open and will be the first religious charter school in the United States.

The school will initially be an online Jewish high school serving students in Oklahoma. Our aspirational enrollment goal for the first year is intentionally modest: 10 students. The purpose of the first year is to establish an excellent school, demonstrate that the model works, and create the foundation for substantial future growth.

Our goal, however, is much larger than opening a single school in Oklahoma.

We believe Ben Gamla Jewish Charter School can become a national model and potentially create a paradigm shift in Jewish education in the United States. Although our initial school in Oklahoma will be an online high school, our long-term vision is much broader: to establish Jewish religious charter schools serving students from kindergarten through 12th grade in communities throughout the country. We envision that the vast majority of these future schools will be traditional brick-and-mortar schools, providing both an outstanding secular education and a serious Jewish education, without charging tuition. If successful, this model could ultimately increase Jewish-school enrollment in the United States by hundreds of thousands of students.

There are several major reasons why so many Jewish parents today do not send their children to Jewish schools. Cost is obviously one. Geographic availability is another. But an equally important concern for many parents is the perception—or reality in some communities—that the available Jewish-school option does not provide the level of academic excellence they want for their children.

Our objective is therefore not simply to create a tuition-free Jewish

educational option. We want to demonstrate that a religious charter school can provide both serious Jewish education and outstanding secular academics. The long-term vision is to create a model compelling enough that Jewish-school participation in the United States could ultimately increase by hundreds of thousands of students.

We are looking for an exceptional founding principal and educational leader. During the school's initial stage, one of the principal's most important responsibilities will be recruiting high-school-aged students in Oklahoma and convincing their parents that Ben Gamla Jewish Charter School offers an outstanding educational opportunity.

Would you personally have any interest in discussing the position?

If the position is not something you would consider, I would be extremely grateful for your advice. Who are the best people you know who have been exceptionally successful recruiting Jewish high-school-aged students and who might be excited by the opportunity to build something from its very beginning that could ultimately have a major impact on Jewish education throughout the United States?

I would particularly value an introduction to anyone you believe I should speak with.

I would also very much appreciate the opportunity to speak with you briefly by telephone about what we are building, the position, and the people you think I should be talking to.

Please feel free to call or text me directly at 954-232-9579, or let me know a convenient time for me to call you.

Thank you very much.

Peter Deutsch
954-232-9579