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BOARD OF EDUCATION OF THE
CITY OF ABSECON, ATLANTIC
COUNTY,

Appellant,

v.

BOARD OF EDUCATION OF THE
CITY OF PLEASANTVILLE,
ATLANTIC COUNTY,

Respondent.

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 091051

ON APPEAL FROM A SUPERIOR
COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-3237-22

Sat Below:

HON. LORRAINE M. AUGOSTINI,
J.A.D.

HON. LISA A. FIRKO, J.A.D.

HON. AVIS BISHOP-THOMPSON,
J.A.D.

**PETITIONER BOARD OF EDUCATION OF THE CITY OF
ABSECON'S SUPREME COURT BRIEF**

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PRELIMINARY STATEMENT

This case concerns the Commissioner of Education’s unauthorized reassumption of discretionary authority over school district sending-receiving agreements that the Legislature eliminated 40 years ago. In 1986, the Legislature amended *N.J.S.A.* 18A:38-13 to replace the statute’s discretionary “good and sufficient reason” standard for severing sending-receiving relationships between districts with a mandate that the Commissioner “shall grant” severance applications absent a “substantial negative impact.” The Commissioner here defied that command, resurrecting authority she no longer possesses to fashion a standard that no district can satisfy. The Appellate Division then condoned this error through reflexive agency deference unsuitable for cases of statutory interpretation. The Commissioner now possesses statutory discretion outside the bounds created both by the Legislature and by this Court.

The facts are undisputed. Absecon, itself a majority-minority school district, filed an unopposed application to sever its sending-receiving relationship by which its high school students were educated in the majority-minority school district in Pleasantville. Absecon sought to send its high school students -- only a couple dozen of whom attend Pleasantville High School and roughly 85% of whom are minority -- to Absegami High School, also majority-minority. Unrebutted and statutorily-required feasibility studies showed

Absecon's withdrawal would have virtually no impact, let alone the substantial negative impact at issue in the governing statute, on Pleasantville High School's racial composition. The Commissioner nonetheless denied Absecon's petition. In doing so, she committed three fundamental errors, all of which stem from her unilateral arrogation of discretion long since circumscribed by the Legislature.

First, she applied the wrong standard. Rather than assessing a proportional change to Pleasantville High School's overall "pupil population" -- the standard required by statute, accepted by this Court, and used by the Commissioner in prior decisions -- she measured the change to the gross number of white students in isolation. A simple example explains why the Commissioner's gross student calculation is both illogical and misleading. If a high school has 100 students, two of them are white, and one white student will be lost from the withdrawal of a sending district, the statute and precedent consider this to be a 1% decrease in the percentage of white students, from 2% ($2/100$) to 1% ($1/100$). The Commissioner's analysis here looks only to the isolated number of white students; by her logic, the drop from 2 white students to 1 in this example is a 50% loss. By this reasoning, a school of 1,000 with one white student could never permit that one student's departure, even though that student accounts for only 0.1% of the student population. The statute and case law recognize no such exacting standard.

Second, the Commissioner dismissed as “speculative” the predictive feasibility studies showing an influx of white students in Pleasantville’s lower grades. These are studies which the statute requires and this Court’s precedent demands she consider. An agency cannot dismiss un rebutted evidence to reach a preferred outcome, particularly when that un rebutted evidence is required by statute to be submitted in the administrative record.

Third, by fashioning her own standard, the Commissioner gave herself a veto power to hold districts to an impossible standard any time she wishes to deny a severance petition. Her approach -- under which any alteration in racial composition warrants denial -- is functionally indistinguishable from the pre-1986 regime the Legislature expressly dismantled. The “shall grant” mandate becomes meaningless if the Commissioner may substitute her own unbounded judgment for the required statutory threshold.

The Commissioner’s new, unprecedented, and unsanctioned standard leaves Absecon and districts like it in an administrative straitjacket. Neither the statute nor this Court’s precedent contemplated any such role for the Commissioner. On the contrary, the Legislature has expressly repudiated that discretionary power. This Court therefore should reverse the Appellate Division’s decision, interpret the statute as the Legislature intended, and order that the Commissioner grant Absecon’s severance application.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

On September 4, 2019, Absecon filed a petition with the Commissioner seeking to sever its sending-receiving relationship for its high school students with Pleasantville. (Pa6) Absecon proposed to enter into a new sending-receiving relationship with the Greater Egg Harbor Regional School District Board of Education, whereby Absecon's high school students would attend Absegami High School. (Pa8)

Background Of The Districts

Absecon operates a Pre-K-8 school district and has sent its high school students to Pleasantville High School pursuant to a longstanding sending-receiving agreement. (Pa6) Absecon itself is a racially diverse district -- as of the time of filing, approximately 50% of its students came from minority backgrounds. (Pa442) The district is also home to a significant population of economically disadvantaged students, with approximately 45% qualifying as such. (Pa502)

Pleasantville High School contains approximately 800 students. (Pa396) Over 99% of the student body comes from minority backgrounds. Absecon sends approximately 26 students to Pleasantville High School, constituting less than

¹ The procedural history and statement of facts have been combined for the Court's convenience because they are inextricably intertwined.

4% of the high school's total enrollment. (Pa396) Of the Absecon students attending Pleasantville, approximately 85% are minority students. (Pa456) The white students whom Absecon sends to Pleasantville High School account for roughly one-half of one percent of the high school's student population. (Pa396) In the most recent school years before the Commissioner's decision, approximately one white Absecon student per year graduated from Pleasantville High School. (Pa541-542)

Absegami High School, the proposed receiving school, is also a diverse, majority-minority institution. (Pa67) At the time of filing, only 40% of Absegami's students were white, representing a robust mix of Hispanic, Black, Asian, and white students. Absecon's choice of Absegami was deliberate. It specifically selected a diverse school over other, less diverse options in the area.

Absecon's Dissatisfaction With Pleasantville High School

Absecon's application arose from years of dissatisfaction with the educational environment at Pleasantville High School. Over 100 Absecon residents submitted public comments documenting concerns about Pleasantville's lack of engagement with Absecon students, the overall learning environment, and serious institutional problems, including the State's assignment of two fiscal monitors to oversee Pleasantville's operations. (Pa125-392)

The public comments came from families of every background and reflected a common theme: the failure of Pleasantville High School to provide an adequate education. As one Absecon parent and former Pleasantville resident put it: “The problem here is not that Pleasantville’s schools are not good enough for Absecon; the problem is that Pleasantville’s schools are not good enough for Pleasantville. It does not make . . . sense to require the involvement of another community if a school is not good enough for its own constituents.” (Pa246) Not a single Pleasantville parent, student, teacher, administrator, or board member submitted a public comment opposing the severance.

Pleasantville also showed complete unwillingness to engage with Absecon middle school students. Indeed, the record is rife with statements by Absecon administrators and parents noting that, in this age of magnet schools and school choice, Pleasantville ignored overtures to engage with Absecon students about attending Pleasantville High School. Kevin Burns, Absecon’s middle school principal, stated that Pleasantville “completely ignored” his requests that Pleasantville send representatives to high school open houses hosted annually by Absecon. (Pa128-29) (*See also* Pa184-85 (similar statements by Absecon’s Director of Curriculum Lindsay Reed.)) Absecon’s mayor, Kimberly Horton, similarly stated that “[e]very year there is a high school night so the children can see what is being offered at the various high schools and

Pleasantville never opts to attend this event.” (Pa270) (*See also* Pa138-45, Pa203-208 (similar statements by Absecon’s administrators, teachers, and parents of Absecon students.))

Absecon’s administrators also lamented Pleasantville’s lack of cooperation and communication regarding matters of curriculum. Tina Maruca, Absecon’s Business Administrator, noted that Pleasantville never “shared in curriculum spiraling, or visited our school.” (Pa144) Absecon Director of Curriculum Lindsay Reed shared her concern that there was a “lack of general collaboration with Pleasantville High School Despite our efforts, Pleasantville has not made any specific effort to successfully matriculate Absecon’s students into its high school.” (Pa184-85) Superintendent Dan Dooley stated that he did not have any meetings with Pleasantville staff in the year leading up to Absecon filing its severance petition. (Pa319) Absecon thus faces not only significant institutional problems at Pleasantville, but an unwilling and uninterested partner.

Demographic Data And Absecon’s Feasibility Studies

As required by statute, Absecon submitted a comprehensive feasibility study, supplemented by several additional reports from expert demographers and education specialists. These studies showed that Absecon’s phased withdrawal would have no impact on the racial composition of Pleasantville

High School, and that Pleasantville High School's white student population was likely to increase, even after accounting for Absecon's withdrawal. (Pa454-455, Pa507)

The data demonstrated that white students from Absecon attending Pleasantville High School represented only 0.48% of the total student population, with approximately one white Absecon student per graduating class. (Pa396; Pa541-542) Most critically, the data showed that Pleasantville's own elementary and middle schools had an increasing white student population. (Pa544) The average number of white students per grade level in Pleasantville's lower schools had increased from 3.3 students in 2016-17 to 5.0 students per grade in 2019-20. (Pa544)

Dr. Richard S. Grip, a demographer with over 17 years of experience in sending-receiving cases, concluded that Absecon's departing white students would be replaced by a higher number of white students entering from Pleasantville's feeder schools. He projected that Pleasantville High School would have approximately 19 white students annually -- nearly double the number at the time of the Commissioner's decision -- even without any Absecon students. (Pa454-455)

Dr. Camille Charles, a Professor of Sociology, Africana Studies, and Education at the University of Pennsylvania, similarly concluded that severance

would have “no racial impact” on either district’s students. (Pa397-401) She explained that, in segregation research, changes of less than five percent in the total population are characterized as “stability, or no change,” and the change here would be less than one percent. (Pa413; Pa420)

Absecon also designed a phased withdrawal plan under which all presently-enrolled students would remain at Pleasantville through graduation; only incoming high school students would attend Absegami High School. (Pa509; Pa519) This approach would result in the loss of approximately one or two white Absecon students per year, students who would be replaced by the larger cohort entering from Pleasantville’s feeder schools. (Pa508-09; Pa541-42) None of this evidence was ever questioned, contradicted, or opposed.

The Unopposed Proceeding

After initially opposing Absecon’s application, Pleasantville withdrew its opposition on January 27, 2021, and the matter proceeded as an uncontested case. (Pa532-35) Pleasantville’s superintendent recommended, and Pleasantville’s board voted unanimously, not to oppose the petition. Indeed, Pleasantville’s own Board President stated: “I just don’t feel like it’s our fight . . . them and the State can decide the fate of that particular issue.”² (Pa129)

² Pleasantville later attempted to rescind its withdrawal of its opposition on June 11, 2021. (Pa532-35) The Commissioner denied this effort as untimely and
...Continued

Pleasantville implicitly conceded that Absecon's withdrawal did not represent an issue of significant concern to Pleasantville High School for any reason.

The Commissioner's Decision

The Commissioner issued a written decision on May 25, 2022, denying Absecon's unopposed application. (Pa545) The Commissioner found that there would be no substantial negative educational or financial impact on the districts. However, she determined that severance would have a substantial negative impact on the racial composition of Pleasantville High School's student body. (Pa548-553)

The Commissioner's analysis did not assess the change to Pleasantville High School's overall "pupil population" as the statute requires. Instead, she isolated the "gross population of white students" and calculated the percentage reduction to that subgroup alone. (Pa548-553) She reasoned:

[I]n the 2021-2022 school year, while the loss of 25 Absecon students, including 6 white students, would result in a proportional change of less than a percent of the student body, the loss of 6 out of 11 white students would result in a 54.5 percent reduction in the gross population of white students at Pleasantville. The Commissioner cannot find that the loss of 50 to 80 percent of Pleasantville's white population is insignificant.

because the matter had already proceeded as an uncontested case. (Pa546-47) Pleasantville took no further action and since then has never participated, nor sought to participate.

(Pa552)

The Commissioner's decision also failed to discuss the four-year phased withdrawal. It did not address the unrebutted evidence showing Pleasantville's increasing white student population in its feeder schools. It did not cite this Court's decision in *North Haledon*³ or apply its principles.

Absecon filed a motion for reconsideration, arguing that the Commissioner ignored the significance of the phased withdrawal and failed to account for Pleasantville's increasing white student population. The Commissioner denied the motion on June 12, 2023, stating that "[r]egardless of whether students are removed at once or gradually, the gross population of white students at Pleasantville would still decrease significantly in total." (Pa555) She further dismissed Absecon's demographic projections -- required by statute and case law and predictive by nature -- as "speculative." (Pa555)

Absecon then filed an appeal to the Appellate Division. (Pa1)

The Appellate Division's Decision

The Appellate Division affirmed the Commissioner's decision, simply applying principles of administrative deference. In doing so, the appellate panel overlooked several significant issues. First, the panel did not engage with the

³ *In re Petition For Authorization To Conduct A Referendum On Withdrawal Of N. Haledon Sch. Dist. From Passaic Cty. Manchester Reg'l High Sch.*, 181 N.J. 161 (2004) (referred to herein as *North Haledon*).

statutory language limiting the Commissioner's discretion. It did not discuss the 1986 amendments that removed the "good and sufficient reason" standard or analyze the mandatory "shall grant" language. Nor did it examine whether the Commissioner's focus on the "gross population of white students" rather than the overall "pupil population" comported with the statute. Instead, the Appellate Division implicitly treated the Commissioner's authority as broad and accepted, without sufficient scrutiny and without consideration of the statutory language and precedent, her conclusion that a "54.5 percent reduction in the gross population of White students" could not be considered insubstantial.

Second, the Appellate Division did not discuss the Commissioner's failure to consider the predictive assessments contained in Absecon's unrebutted feasibility studies. Predictive feasibility studies are required by *N.J.S.A. 18A:38-13*. *North Haledon* requires the Commissioner to account for "demographic trends." 181 N.J. at 183. The Commissioner departed both from the statutory command and this Court's precedent, and dismissed Absecon's demographic projections set forth in its feasibility studies -- the only evidence in the record on the issue and evidence that the statute requires districts seeking severance to submit -- as "speculative." (Pa555) The panel did not engage with the issue, nor did it appreciate that the Commissioner could arbitrarily deny any severance

petition for any reason or no reason simply by dismissing required feasibility studies as “speculative.”

Third, the panel provided a superficial overview of both *North Haledon* and *Board of Education of Borough of Englewood Cliffs v. Board of Education of the City of Englewood*, 257 N.J. Super. 413 (App. Div. 1992), *aff'd*, 132 N.J. 327 (1993), without properly applying their principles. The Appellate Division did not discuss the critical distinction between the gross population change analysis the Commissioner improperly employed here as compared to the analysis set forth in *North Haledon*. It also did not appreciate how concerns of “white flight” and the aggressive recruiting efforts of the proposed receiving district -- totally absent from the record here -- motivated the *Englewood* Court’s decision. It did not address the *North Haledon* Court’s express determination that “[n]ot every action that reduces the percentage of white students necessarily implicates the State’s policy against segregation.” 181 N.J. at 183. And it did not discuss the Commissioner’s failure even to cite *North Haledon* in her decision.

Fourth, the panel adopted the Commissioner’s fundamentally flawed factual premise that Absecon’s students would be removed from Pleasantville all at once. The Commissioner’s decision analyzed the withdrawal as though it would occur immediately, calculating that “the loss of 6 out of 11 white students

would result in a 54.5 percent reduction in the gross population of white students.” (Pa552) But the record is clear and uncontroverted: Absecon proposed a four-year phased withdrawal under which all presently-enrolled students would remain at Pleasantville through graduation, with only incoming high school students redirected to Absegami. (Pa519) This means Pleasantville would lose approximately one or two white Absecon students per year through graduation, not six at once. (Pa454-55; Pa540-42) Neither the Commissioner nor the Appellate Division acknowledged, let alone appreciated the effect of, the phased withdrawal. The Commissioner’s initial decision does not mention it, and her reconsideration decision dismisses it with one sentence. The Appellate Division’s opinion does not substantively discuss the issue at all.

Finally, the Appellate Division incorrectly stated that Absecon had “waived” arguments regarding its motion for reconsideration to the Commissioner. That conclusion is verifiably incorrect from the record. Absecon appealed the denial of its motion for reconsideration, included the order in its appendix (Pa554), and described in various ways in its appellate brief how the Commissioner erred in denying the motion. Though the panel went on to provide a cursory discussion and summary affirmance of the Commissioner’s decision denying reconsideration, it did not discuss the Commissioner’s failure to

consider on the merits, as the statute and case law require, the predictive value of Absecon's un rebutted feasibility studies.

In sum, the Appellate Division performed precisely the kind of "perfunctory" review that this Court warned against in *M.R. v. Dep't of Corrections*, 261 N.J. 322, 337-38 (2025). Rather than "sifting" through the record, the Appellate Division retreated to general principles of agency deference without recognizing that the Commissioner failed to abide by the applicable statute's command and crossed a boundary beyond what the statute permits.

LEGAL ARGUMENT

I. THE COMMISSIONER'S DECISION CONTRAVENES THE LEGISLATURE'S 1986 AMENDMENTS TO N.J.S.A. 18A:38-13, WHICH REMOVED THE "GOOD CAUSE" STANDARD, MANDATED SEVERANCE APPROVAL ABSENT A "SUBSTANTIAL NEGATIVE IMPACT," AND STRIPPED THE COMMISSIONER OF THE BROAD DISCRETIONARY AUTHORITY SHE EXERCISED HERE.

The Commissioner's decision resurrects discretionary authority that the Legislature expressly removed nearly 40 years ago. When the Legislature amended *N.J.S.A. 18A:38-13* in 1986, it fundamentally transformed the statutory framework for school district severance applications. The Commissioner's decision ignores these amendments and effectively reinstates the pre-1986 regime. In affirming the decision, the Appellate Division gave unwarranted

deference that permitted the Commissioner to exceed the statutory bounds that she purported to enforce.

A. Because This Matter Concerns An Issue Of Statutory Interpretation, The Commissioner Was Not Owed The Substantial Deference The Appellate Division Provided To Her.

As an initial matter, the Appellate Division did not owe the Commissioner such substantial deference on an issue of statutory enforcement. An appellate court reviews agency decisions under an arbitrary and capricious standard and assesses whether the agency followed the law, whether substantial evidence supports its findings, and whether it clearly erred in applying legislative policies to the facts. *Allstars Auto. Grp., Inc. v. Motor Vehicle Comm'n*, 234 N.J. 150, 157 (2018). Nonetheless, a reviewing court “is not bound by the agency’s interpretation” of a statute. *In re Ridgefield Park Bd. of Educ.*, 244 N.J. 1, 17 (2020). On “strictly legal question[s]” such as the “proper application of” a statute, a reviewing court “stands on equal footing with the Commissioner.” *Melnyk v. Bd. of Educ. of the Delsea Reg’l High Sch. Dist.*, 241 N.J. 31, 40 (2020). *See also In re Ridgefield Park Bd. of Educ.*, 244 N.J. at 17 (“[W]hen an agency’s decision is based on the agency’s interpretation of a statute . . . we are not bound by the agency’s interpretation. Instead, we review that determination de novo.”).

This is particularly true where, as here, an agency flouts the statutory language and clear restrictions imposed by the Legislature. “[I]f an agency’s statutory interpretation is contrary to the statutory language, or if the agency’s interpretation undermines the Legislature’s intent, no deference is required.” *Tpk. Auth. v. AFSCME, Council 73*, 150 N.J. 331, 351 (1997). Relatedly, “an administrative agency may not, under the guise of interpretation, extend a statute to give it a greater effect than its language permits.” *GE Solid State, Inc. v. Dir., Div. of Taxation*, 132 N.J. 298, 306 (1993). Because she exercised discretion beyond the bounds the Legislature created, and provided herself with discretion the Legislature has long since revoked, the Commissioner’s decision here warrants no deference. On the contrary, it warrants suspicion and scrupulous review.

B. The 1986 Amendments To N.J.S.A. 18A:38-13 Fundamentally Changed The Statutory Framework And Circumscribed The Commissioner’s Discretion.

Prior to 1986, *N.J.S.A. 18A:38-13* provided that a sending-receiving agreement could not be severed except for “good and sufficient reason” “approved by the commissioner.” *Jenkins v. Morris Twp. Sch. Dist.*, 58 N.J. 483, 501 (1971). This language vested the Commissioner with broad discretion to grant or deny severance applications based on her review of all the relevant facts and her own assessment of education policy.

The Legislature revoked this discretionary authority in 1986. *See* P.L. 1986, c. 156; *N.J.S.A.* 18A:38-13. The legislative history of the 1986 amendments confirms that the changes were purposeful and targeted. The prior version of the statute left severance entirely to the Commissioner’s judgment, with no defined criteria and no obligation to grant any application regardless of merit. The 1986 amendments replaced this open-ended regime with a structured framework: three enumerated factors (educational impact, financial impact, and racial composition of the pupil population) and a mandatory directive that the Commissioner “shall” grant the application if no substantial negative impact is shown. *See Cryan v. Klein*, 148 N.J. Super. 27, 30 (App. Div. 1977) (“As a matter of statutory construction, there is a presumption that ‘shall’ appearing in a statute is used in the mandatory or imperative sense and not in a directory sense.”). The amendments thus cabined the Commissioner’s role to fact-finding on defined statutory criteria, rather than to exercise broad policy discretion.

The significance of this amendment cannot be overstated. By replacing a subjective “good and sufficient reason” inquiry with an objective “substantial negative impact” standard, and by commanding that the Commissioner “shall grant” applications meeting that standard, the Legislature fundamentally restructured the statutory scheme. It transformed the Commissioner’s role from

gatekeeper with broad discretion to permit or deny severance, to adjudicator charged with applying defined criteria. The amended statute now provides:

The commissioner shall make equitable determinations based upon consideration of 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. The commissioner shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom.

N.J.S.A. 18A:38-13 (emphases added).

Two features of this amendment are critical. First, the Legislature excised the “good and sufficient reason” language entirely. The Commissioner no longer may deny a severance application based on her own discretionary judgment. The deliberate removal of this language signaled the Legislature’s intent to restrict the Commissioner’s previously broad authority. *See In re Adoption of Reg’s Governing the State Health Plan*, 135 N.J. 24, 27 (1994) (“Administrative agencies owe their existence to the Legislature, which retains plenary power over them. Thus, if the Legislature concludes that it has given away too much power, it may by statute take it back or may in the future enact more specific delegations.” (internal quotations omitted)).

Second, the Legislature employed mandatory language -- “shall grant” -- commanding the Commissioner to approve severance applications that meet the

statutory criteria. This shift from permissive to mandatory language reflects a purposeful legislative choice to limit agency discretion and provide sending districts with a defined pathway to severance. If there will be no “substantial negative impact,” the Commissioner must grant the application.

The Commissioner’s decision here ignores this statutory framework. Rather than applying the mandatory “shall grant” language, she treated her authority as essentially boundless. The statute does not ask whether the Commissioner is comfortable with the change, or whether she believes the change is significant in her own estimation. It asks whether there will be a “substantial negative impact” on the “pupil population of the districts.” If not, she must grant the application. The Commissioner’s subjective discomfort here with an infinitesimal change to the overall pupil population -- less than half of one percent -- is precisely the type of unbounded discretionary judgment the Legislature eliminated when it removed the “good and sufficient reason” standard in 1986.

The Commissioner’s approach effectively resurrects the pre-1986 “good and sufficient reason” standard, allowing her to deny any severance application based on her own sense of what is “significant” without regard to the objective criteria the statute prescribes. Because her decision here transgresses the bounds

the Legislature has set for her, this Court should reverse her decision and order that Absecon's severance petition be granted.

II. THE COMMISSIONER'S DECISION IS INCONSISTENT WITH THE STATUTE AND THIS COURT'S PRECEDENT, WHICH REQUIRE THE COMMISSIONER TO ASSESS THE PROPORTIONAL CHANGE TO THE DISTRICT'S OVERALL PUPIL POPULATION AND TO CONSIDER PREDICTIVE DEMOGRAPHIC TRENDS CONTAINED IN REQUIRED FEASIBILITY STUDIES.

In addition to releasing herself from the discretionary constraints imposed upon her by the Legislature, the Commissioner granted to herself the freedom to review the evidence pursuant to her own criteria. In doing so, she departed both from prior appellate precedent and from the statutory command that she look to future demographic trends and assess any potential substantial negative impact "on the pupil population" of the districts as a whole. In essence, she granted to herself a veto power that permits her to deny a severance petition whenever she wishes, based on whatever evidence she chooses to assess, in whatever way she chooses to assess it. Apart from its obvious arbitrary and capricious nature, this boundless standard departs from the constraints imposed both by the Legislature and this Court.

A. The Commissioner’s Analysis Ignores The Plain Statutory Language Requiring Assessment Of A Substantial Negative Impact On The “Pupil Population” As A Whole.

The Commissioner’s analysis here violates the statute because she applied the wrong standard. The statute requires the Commissioner to assess “the effect on the racial composition of the pupil population of the districts.” *N.J.S.A.* 18A:38-13 (emphasis added). The Commissioner instead assessed the effect on the “gross population of white students” -- a subgroup viewed in isolation from the overall student body. (Pa552)

This analytical distinction is outcome-determinative. When assessed against the “pupil population” of Pleasantville High School as a whole -- as the statute requires -- Absecon’s withdrawal would result in a change of only 0.48 percentage points to the proportion of white students at Pleasantville High School, from 0.61% to 0.13%. (Pa507; Pa541-42) This infinitesimal change cannot reasonably be characterized as a “substantial negative impact.” But the Commissioner isolated the white student population and calculated a “54.5 percent reduction in the gross population of white students.” (Pa552) By focusing on the percentage change within a tiny subgroup rather than the change to the overall “pupil population,” the Commissioner manufactured a finding of substantial impact where none exists.

As explained above in the preliminary statement, the Commissioner's exclusive focus on the gross white student population creates distorted results, particularly in districts with exceedingly small white student populations. On appeal, the Commissioner intimated that calculations based on the total student population and calculations based on gross student population of a particular subgroup are essentially the same thing. This contention is verifiably untrue. In a case in which a district seeks to remove 5 of 10 white students in a high school with 1,000 total students, her standard transforms a 0.5 percentage-point change to the percentage of white students in the school -- from 1% to 0.5% -- to a massive 50% reduction of the gross white student population. The first figure reflects the actual change to the school's overall student population; the second figure is a statistical artifact measured on a subgroup that exaggerates the impact by orders of magnitude, departs from all prior practice and precedent, and fails to adhere to the statutory command that the Commissioner look to the total "student population."

No prior case law endorses the Commissioner's standard. On the contrary, the *North Haledon* Court looked to the total student population, as the statute requires. *See North Haledon*, 181 N.J. at 171 (noting change to the percentage of white students in the student population at Manchester Regional High School from 51% to 38%). The *Englewood* Court similarly cited with approval the State

Board of Education’s calculation of the change to the total student population, 257 N.J. Super. at 448 & n.4, but based its decision on factors that are not present here, most notably its concern that “white flight” had motivated Englewood Cliffs’ desire to withdraw from Dwight Morrow High School and that the proposed receiving district had engaged in improper tactics. *Id.* at 441. Applying the same calculation used by the *North Haledon* Court here results in a net change to the total student population at Pleasantville High School of less than one half of one percent -- insubstantial by any calculation. Nor is there anything in the record to suggest that Absecon’s withdrawal is motivated by the same unlawful motives that guided the *Englewood* Court’s decision.

The *North Haledon* Court explicitly recognized that “[n]ot every action that reduces the percentage of white students necessarily implicates the State’s policy against segregation in the public schools.” *Id.* at 183. The Commissioner has acknowledged the same principle. In a previous case, *Board of Education of Longport v. Board of Education of Atlantic City*, Comm’r of Educ. Decision No. 238-14, at 5 n.5 (June 5, 2014) (Pa560), the Commissioner herself recognized that a standard requiring denial whenever there is “any negative impact on racial composition” would “effectively remov[e] the word ‘substantial’ from the statute” -- a result “inconsistent with the explicit language of the controlling statute” and the “cardinal rule of statutory construction that full effect should be

given, if possible, to every word of a statute.” The Commissioner has violated those same principles here. By her own prior reasoning, her decision below is indefensible.

The precedent the Commissioner chose to ignore here comports with the statutory language. The Legislature chose to assess impact on “the pupil population of the districts” -- not the white population, the minority population, or any other subgroup. Much like the statutory language limiting the Commissioner’s discretion generally, this language choice was deliberate. It requires the Commissioner to evaluate whether a severance will substantially change the overall racial composition of a school, not whether it will change the size of any particular racial group when viewed in isolation. The Commissioner separated and insulated her analysis from the pupil population of Pleasantville High School as a whole, contrary to what the statute requires.

This Court has repeatedly emphasized that courts must give effect to the Legislature’s chosen language, *DiProspero v. Penn*, 183 N.J. 477, 492 (2005), and avoid interpretations that render statutory language meaningless, *McCann v. Clerk of Jersey City*, 167 N.J. 311, 321 (2001). *See also State v. A.M.*, 252 N.J. 432, 450 (2023) (noting that courts must “give effect to the Legislature’s intent”). The Commissioner’s interpretation renders the statutory phrase “pupil population of the districts” meaningless by substituting her own focus on the

gross population of white students only. Her analysis therefore is both fundamentally incorrect and contravenes the instructions both of the Legislature and of this Court.

This Court thus should hold that the statute means what it says: the Commissioner must assess impact on the “pupil population” as a whole, not on isolated subgroups.

B. The Commissioner Improperly Dismissed Required Demographic Projections As “Speculative.”

The Commissioner’s errors are compounded by her refusal to consider Absecon’s unrebutted demographic projections. The statute itself requires submission of a “feasibility study” as part of any severance application. *N.J.S.A.* 18A:38-13 (“[P]rior to submitting an application the district seeking to sever the relationship shall prepare and submit a feasibility study.”) Similarly, *North Haledon* expressly requires the Commissioner to account for “demographic trends” and to “anticipate” “perceived . . . trends” in the racial and ethnic makeup of school districts. 181 N.J. at 183 (noting that “education policy makers” must “anticipate . . . perceived demographic trends”). Indeed, the *North Haledon* Court based its decision in part on “projected racial and ethnic imbalance in the near future.” *Id.* at 175 (emphases added). Demographic projections thus are required by statute and an essential part of the Commissioner’s required analysis.

Feasibility studies are inherently predictive. They assess future impacts of proposed changes. Absecon submitted feasibility studies containing detailed information regarding projected demographic data for Pleasantville High School. That data showed an influx of white students in Pleasantville's lower grades who were projected to transition to Pleasantville High School based upon the stated cohort survival rates. These students would more than compensate for the incredibly small number of white Absecon students -- no more than one or two per year -- who would leave Pleasantville High School during Absecon's phased withdrawal. That feasibility study was never questioned or opposed, and yet the Commissioner ignored its most important data.

The statute would not require feasibility studies if the Commissioner were free to ignore them even where they are unrebutted. A final agency decision divorced from the administrative record, or that does not fairly rely on the evidence in the administrative record is, by its nature, arbitrary and capricious. *See Green v. State Health Benefits Comm'n*, 373 N.J. Super. 408, 414-415 (App. Div. 2004) (“[I]t is incumbent on the agency to explain its decision in sufficient detail to assure us that the agency actually considered the evidence and addressed all of the issues before it. Failure to address critical issues, or to analyze the evidence in light of those issues, renders the agency’s decision arbitrary and capricious and is grounds for reversal.”)

The Commissioner here did not take issue with the quality of Absecon's experts, or explain potential flaws in the data Absecon provided. Rather, she dismissed required studies as "speculative." No feasibility study would survive such review. To the extent the Commissioner has the authority to dismiss these required studies in any case without explanation or analysis, she has an arbitrary veto power that permits her to deny severance applications for any reason or no reason any time she wishes. Such unbridled authority cannot possibly serve the statute's underlying legislative goals and policies or the Legislature's intent, and does not comport with this Court's established requirements for administrative adjudication.

Here, Absecon's unrebutted expert testimony projected that Pleasantville High School's white student population would increase, not decrease, following Absecon's withdrawal. (Pa454-55) The Commissioner dismissed this evidence in a single sentence, asserting that it "does not negate the fact that the removal of Absecon's white students from Pleasantville will still result in a substantial decrease in the white population." (Pa555) This conclusory dismissal violates *North Haledon's* command to consider demographic trends. It also fails to articulate any reasonable standard regarding what a district must provide in its statutorily-required feasibility studies in order to meet the requirements for severance. *See In re Vey*, 124 N.J. 534, 544 (1991) (holding that an agency

decision must “articulate the standards and principles that govern [its] discretionary decisions in as much detail as possible”). The Commissioner articulated no standard for dismissing un rebutted expert studies as “speculative” or for ignoring the implications of Absecon’s phased withdrawal. Her selective and inconsistent reasoning is the antithesis of the careful and principled administrative review this Court requires.

Finally, the Commissioner’s willingness to discard relevant evidence in the record reveals the arbitrary nature of her conclusions. To the extent she decides that the removal of any white students is impermissible, regardless of offsetting factors, she can veto the application regardless of the evidence in the record or the commands of the Legislature. Relatedly, her reasoning is also internally inconsistent. Though she refused to believe that white students from Pleasantville’s middle school would attend Pleasantville High School, she simultaneously assumed that the same number of white middle school students from Absecon would continue attending Pleasantville High School. Such selective and inconsistent reasoning is the hallmark of arbitrary and capricious review.

This Court therefore should reverse the Appellate Division’s decision and order that the Commissioner grant Absecon’s severance petition.

III. THE COMMISSIONER’S DECISION CREATES AN IMPOSSIBLE AND ARBITRARY STANDARD DIVORCED FROM THE ADMINISTRATIVE RECORD THAT PLACES SCHOOL DISTRICTS LIKE ABSECON IN AN ADMINISTRATIVE PARALYSIS FROM WHICH THEY CAN NEVER EXTRICATE THEMSELVES.

Finally, the Commissioner’s decision must be reversed because it creates a standard impossible for any district to meet, in direct contravention of the statutory language. By the Commissioner’s logic, any removal of white students from a predominantly minority school constitutes a substantial negative impact, regardless of how small the proportional change, regardless of offsetting demographic trends, and regardless of every other factor. The Commissioner made her standard explicit in denying Absecon’s motion for reconsideration: even a potential increase in white students entering Pleasantville from its feeder schools could “not negate” the substantial negative impact caused by Absecon’s gradual withdrawal. (Pa555) In other words, even if Pleasantville ends up with more white students after the withdrawal than before, the Commissioner still would not approve Absecon’s withdrawal. This is not the substantial negative impact analysis the statute requires, but rather an administrative veto power beyond what the Legislature contemplates and appellate courts permit.

Both the statute and the case law contemplate that some loss of white students is permissible upon the severance of a sending-receiving relationship,

even for a predominantly minority school district. *See North Haledon*, 181 N.J. at 183. The Commissioner's standard permits no loss whatsoever. Under her approach, no sending district with any white students could ever sever a relationship with a predominantly minority receiving school, regardless of the circumstances. The Commissioner's gross-population metric exacerbates this problem exponentially. When a school has an exceedingly small white student population, as Pleasantville does, even the departure of a single white student generates an enormous percentage change when viewed in gross terms. It manufactures the illusion of a substantial impact where none exists.

This places districts like Absecon in an administrative straitjacket, unable to end a relationship with a partner district that clearly does not value it or even want it. Absecon's students make up less than 4% of Pleasantville's population. (Pa396) A majority of Absecon's students come from minority backgrounds. (Pa456) The withdrawal would change Pleasantville High School's racial composition by less than half a percentage point. (Pa507) Pleasantville's own white student population is increasing and is projected to more than replace Absecon's students. (Pa441-43; Pa454-56) Pleasantville itself does not oppose the severance, and has for years shown a total lack of interest in and engagement with Absecon's students. Yet under the Commissioner's standard, Absecon cannot leave.

The Commissioner’s arbitrary and capricious reasoning, divorced from the administrative record and founded upon discretion the Legislature has revoked, should not pass the muster of appellate review. This Court does not “rubber-stamp agency decisions that rely upon conclusory findings” or “that fail to comport with the” applicable statutory language. *M.R.*, 261 N.J. at 337-38. Relatedly, “the obligation that there be substantial evidence in the record requires a sifting of the record, and the ability to find support for the conclusions reached by the agency under the requisite statutory framework.” *Id.* (internal quotations omitted).

Even the most cursory glance at the administrative record here reveals the arbitrary reasoning on which the Commissioner relied. Her decision is supported neither by the unrebutted administrative record, which she dismissed, nor the statutory framework, which she clearly exceeded. Rather, the record reveals the Commissioner’s willingness to declare any change “substantial” and to discard relevant evidence whenever she decides, in her unfettered discretion, not to endorse a severance petition. The Legislature no longer contemplates such broad discretion in school severance petitions.

The Commissioner’s decision also carries significant consequences beyond this case. If the Commissioner’s standard is permitted to stand, it will affect every sending-receiving relationship in the state. All such districts will be

beholden to an arbitrary and unprecedented scheme under which the Commissioner can alternate between the student data on which she wants to rely for any reason or no reason, can dismiss unrebutted expert projections, and can deny severance applications based on minuscule changes to the total student population. Districts seeking to provide better educational opportunities for their students will be forced to navigate an unreasonable review process at odds with the Legislature's expressed intent.

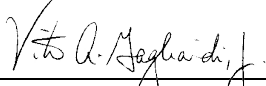
The chilling effect on the exercise of the legislative right to seek severance cannot be overstated. Districts contemplating entry into or continuation of sending-receiving relationships will be deterred by the knowledge that, once established, such relationships may prove impossible to terminate regardless of the circumstances. This chilling effect directly contravenes the "Legislature's goal to promote the regionalization of school districts." *In re Verified Petition for the Proposed Creation of a PK-12 All-Purpose Reg'l Sch. Dist. by the Borough of Sea Bright*, 262 N.J. 318, 325 (2025). The value of regionalization, and the educational opportunities it promises for students across the state, will be undermined if districts cannot reasonably predict how the Commissioner will evaluate their applications. This Court's intervention is necessary not only to correct the errors in this case, but to provide the clarity that districts, administrators, and school communities require.

CONCLUSION

For the foregoing reasons, Petitioner Absecon Board of Education respectfully requests that this Court reverse the Appellate Division's decision and order that the Commissioner grant its petition to sever its sending-receiving relationship with the Pleasantville Board of Education.

Respectfully submitted,

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DATED: April 27, 2026