429-26
OAL Dkt. No. EDU 13801-26
Agency Dkt. No. 366-08-26

New Jersey Commissioner of Education

Final Decision

M.R., on behalf of minor child, M.R.,

Petitioner,

v.

Beverly City Board of Education, Burlington County,

Respondent.

The record of this matter, the sound recording of the emergent hearing, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner[1] pursuant to *N.J.A.C.* 1:1-18.4, and the reply filed by the Beverly City Board of Education (Board), have been reviewed and considered.

Petitioner filed a petition of appeal and motion for emergent relief challenging the Board's decision to retain M.R. in the seventh grade for the 2026-2027 school year due to chronic absenteeism. Petitioner concedes that during the 2025-2026 school year, M.R. accumulated 47 unexcused absences and failed seventh grade mathematics. The Board opposed the petition and motion for emergent relief, contending that M.R.'s attendance fell substantially below the

[1] Because petitioner and her daughter share the same initials, petitioner will be referred to as petitioner herein and her daughter will be referred to as M.R. herein to avoid confusion.

district's eighty-five-percent attendance requirement for promotion to the next grade despite home instruction, a gradual re-entry plan, counseling, a Section 504 Accommodation Plan, and other supports offered throughout the school year.

Once the matter was transmitted to the OAL, the Administrative Law Judge (ALJ) convened an emergent hearing. During oral argument, petitioner and counsel for the Board agreed that there were no additional issues raised in the petition of appeal to be decided after the disposition of the motion for emergent relief. Upon review of the evidence presented, the ALJ determined that petitioner failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 *N.J.* 126, 132-34 (1982), and codified at *N.J.A.C.* 6A:3-1.6. In particular, the ALJ determined that petitioner has not shown an underlying likelihood of success on the merits of her claim, and for this failure, emergent relief is neither warranted nor appropriate. Accordingly, the ALJ issued an Initial Decision denying petitioner's motion for emergent relief and dismissed the petition of appeal.

In her exceptions, petitioner does not dispute "that M.R. had a serious attendance problem or that she failed seventh-grade mathematics." Exceptions at 1. Nevertheless, she argues that the ALJ's Initial Decision is erroneous because: (1) it recites the attendance-intervention requirements from *N.J.A.C.* 6A:16-7.6 but does not determine whether the district complied before relying on the absences for retention; (2) it treats the lack of an attendance accommodation in the Section 504 Accommodation Plan as dispositive without addressing the evidence that disability-related anxiety and school avoidance were themselves barriers to attendance; (3) it does not meaningfully address the undisputed evidence that M.R. was academically capable of eighth grade work, or whether repeating the entire seventh grade was

an appropriate educational remedy; and (4) it gives the eighty-five percent attendance provision dispositive weight without adequately addressing District Regulation 5410 as a whole and the individualized considerations raised in the petition.

In response, the Board argues that the Commissioner should reject petitioner's exceptions because: (1) the Initial Decision addressed the district's attendance interventions and petitioner has not shown that any alleged deficiency rendered the retention determination arbitrary; (2) the Initial Decision properly considered M.R.'s Section 504 Accommodation Plan in determining whether the attendance requirement remained applicable; (3) evidence that M.R. is capable of eighth-grade work does not establish that she satisfied the requirements for promotion; and (4) Regulation 5410 makes attendance a condition of promotion for students in grades five through eight and the record refutes petitioner's claim of mechanical application.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter and denies petitioner's request for emergent relief. The Commissioner concurs with the ALJ that petitioner cannot demonstrate a likelihood of prevailing on the merits of the underlying claim, *i.e.*, that the Board's decision to retain M.R. in the seventh grade was arbitrary, capricious, or unreasonable. Therefore, she is not entitled to emergent relief.

To obtain emergent relief, petitioner must satisfy the following four standards described in *Crowe*:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [*N.J.A.C.* 6A:3-1.6(b) (citing *Crowe*, 90 N.J. at 132-34).]

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute her judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974).

Regular attendance at school is compulsory for students between the ages of six and sixteen. *N.J.S.A.* 18A:38-25; *Joye v. Hunterdon Cent. Reg'l High Sch. Bd. of Educ.*, 176 *N.J.* 568, 641 (2003). Toward that end, boards of education are required to "develop, adopt, and implement policies and procedures regarding the attendance of students." *N.J.A.C.* 6A:16-7.6(a). Those policies and procedures must include "the expectations and consequences regarding attendance at school." *N.J.A.C.* 6A:16-7.6(a)(2). Additionally, "the board of education's "attendance plan and its punitive and remedial procedures shall be applied, where applicable, in accordance with the student's . . . accommodation plan." *N.J.A.C.* 6A:16-7.6(b).

Consistent with state regulations, Board Policy 5200 and District Regulation 5410 address expectations and consequences related to school attendance, including promotion and retention. Board Policy 5200 states that "prolonged or repeated absences, excused or

unexcused, from school or from class, deprive students of the educational and classroom experiences deemed essential to learning and may result in retention at grade level." Initial Decision at 7-8. District Regulation 5410 explains that promotion or retention is based upon academic achievement. For students in grades five through eight, District Regulation 5410 states that they "are expected to satisfactorily complete three major courses (reading/literature, math, science, social studies and language arts) and two minor courses (art, physical education or music) to be promoted to the following grade." Initial Decision at 8. Furthermore, District Regulation 5410 states that "for a passing grade to be obtained, students must be in attendance at least eighty-five percent of the time (one hundred fifty-three days)." *Ibid.*

The Commissioner agrees with the ALJ that petitioner cannot demonstrate a likelihood of prevailing on the merits of the underlying claim as she has not shown anything arbitrary, capricious, or unreasonable about the Board's decision to retain M.R. in the seventh grade. Instead, the record shows that the Board's decision is consistent with the plain language of Board Policy 5200 and District Regulation 5410, which allows retention of M.R. due to her excessive unexcused absences. Indeed, petitioner does not dispute that M.R. failed to satisfy the eighty-five percent attendance requirement for promotion to eighth grade. Moreover, petitioner concedes that M.R.'s Section 504 Accommodation Plan does not contain any exceptions to the attendance requirement.

In addition, none of the arguments raised in petitioner's exceptions establish that she is likely to prevail on the merits of the underlying claim. Her contention that the Initial Decision erroneously failed to consider the Board's lack of compliance with attendance intervention requirements stated in *N.J.A.C.* 6A:16-7.6 is unavailing. That regulation provides that once a

student accumulates between five and nine unexcused absences, the school district shall develop an action plan with interventions to support the student's regular attendance which may include family engagement, referrals, assessments of the student's behavioral health needs, or an alternate education placement. *N.J.A.C.* 6A:16-7.6(a)(4)(ii)(4). Once a student surpasses ten unexcused absences, the school district shall consider a court referral for truancy and continue to consult with the family and involved agencies. *N.J.A.C.* 6A:16-7.6(a)(4)(iii).

At the outset, the focus of this proceeding was on petitioner's ability to demonstrate satisfaction of the *Crowe* standards in support of her request for emergent relief and not the Board's compliance with *N.J.A.C.* 6A:16-7.6. That said, the ALJ did consider and make factual findings regarding the Board's intervention efforts to improve M.R.'s attendance, which included an in-home meeting to develop a home instruction plan, a gradual re-entry plan tailored to M.R.'s needs, regular meetings with the school counselor, and a Section 504 Accommodation Plan. Initial Decision at 2-4. The Board also made court referrals for truancy as per the regulations. *Id.* at 3. These efforts are consistent with the requirements of *N.J.A.C.* 6A:16-7.6.

While petitioner contends that the Board should have done more during prior school years when M.R.'s attendance was also problematic, those circumstances – even if true – do not warrant a finding that petitioner is likely to prevail on the merits. Neither the regulations nor relevant statutes contain any provisions requiring promotion to the next grade level if the parent establishes that the district's intervention efforts during prior school years were inadequate. All in all, petitioner failed to establish that any alleged deficiency with the Board's intervention efforts made it likely that she would prevail on the merits of her claim that the retention determination was arbitrary, capricious, or unreasonable.

Petitioner also argues in her exceptions that the Initial Decision should have considered individualized factors, including M.R.'s disability-related anxiety and school avoidance behaviors as well as her academic capability to perform eighth grade work, instead of giving the eighty-five-percent attendance requirement dispositive weight. This argument is also unavailing. Even assuming the individualized factors alleged by petitioner are true, they do not demonstrate satisfaction of the *Crowe* standards in support of petitioner's request for emergent relief. More specifically, they do not support the conclusion that petitioner is likely to prevail on the merits of her claim that the Board's retention determination was arbitrary, capricious, or unreasonable. The Board acted in accordance with the controlling policies, regulations, and statutes, and the ALJ gave the Board's policies appropriate weight in the Initial Decision.

Accordingly, the Initial Decision is adopted as the final decision in this matter, petitioner's motion for emergent relief is denied, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]



COMMISSIONER OF EDUCATION

Date of Decision: October 22, 2026
Date of Mailing: October 23, 2026

[2] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 13801-26
AGENCY DKT. NO. 366-08-26

M.R., ON BEHALF OF MINOR CHILD,
M.R.,
Petitioner,
v.
BEVERLY CITY BOARD OF EDUCATION,
BURLINGTON COUNTY,
Respondent.

M.R., petitioner, pro se

Brett E.J. Gorman, Esq. for respondent (Gorman D'Anella & Morlok, LLC, attorneys)

Record Closed: August 31, 2026 Decided: September 2, 2026

BEFORE **KIMBERLEY M. WILSON,** ALJ:

STATEMENT OF THE CASE

Petitioner M.R. (M.R. parent), on behalf of minor child M.R. (M.R. child), seeks emergent relief from respondent Beverly City Board of Education (District or Board)'s May

20, 2026, determination that M.R. child would be retained, repeating her seventh grade for the 2026−2027 school year, for excessive absences.

Has M.R. parent satisfied the criteria in District policy and regulations regarding attendance and promotion/retention to establish that the emergent relief she requests, directing the Board to place M.R. child in the eighth grade for the 2026−2027 school year, should be granted? No, as M.R. parent cannot show that she has a likelihood of success on the merits of her claim.

PROCEDURAL HISTORY

On or around August 19, 2026, M.R. parent filed a pro se petition of appeal and motion for emergent relief with the Commissioner of the Department of Education (DOE). On or around August 20, 2026, the DOE transmitted this matter to the Office of Administrative Law as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A hearing was scheduled for August 28, 2026.

On or around August 25, 2026, counsel for the District filed opposition to M.R. parent's motion for emergent relief. A status conference was scheduled for August 26, 2026. The August 28, 2026, hearing date was converted to a status conference with the parties' consent to remove the matter from my emergent calendar, understanding that the motion would be decided as soon as possible, but before September 3, 2026, the first day of school. The hearing date was rescheduled and proceeded on August 31, 2026.

During oral argument, M.R. parent and counsel for the Board agreed that there were no additional issues in M.R. parent's pro se petition of appeal to be decided after the disposition of the motion for emergent relief.

FACTUAL DISCUSSION AND FINDINGS

During the 2025−2026 school year, M.R. child was a seventh-grade student in District schools. M.R. parent Cert. at ¶ 3. On or around September 18, 2025, Dr. Elizabeth C. Giacobbe, superintendent of the District, met with M.R. parent, the District's

truancy officer and a school counselor to address M.R. child's attendance and school avoidance issues. Giacobbe Cert. at ¶ 12. During this meeting, M.R. parent and the District agreed upon a plan for home instruction. Ibid. The District then worked with M.R. parent to develop a gradual school re-entry plan to assist M.R. child in transitioning back to regular, in-person school attendance. Ibid.

On or around October 15, 2025, the District and M.R. parent agreed upon a school re-entry plan that gradually increased the time that M.R. child would attend school in person and provided regular access to the school counsellor who would support M.R. child. Id. at ¶ 13, 14. This plan included weekly attendance expectations from the week of October 20, 2025, to the week of December 1, 2025, when M.R. child was expected to return to in-person school full-time. Id. at ¶ 14.

During this six-week period, leading up to the week of December 1, 2025, M.R. child missed eight days of school, and M.R. child missed all five days of school the week of December 1, 2025, despite the expectation that she return to school full-time. Id. at ¶ 15, Ex. F. On December 1, 2025, and December 2, 2025, a parent or guardian contacted M.R. child's school, indicating that she did not want to come to school. Id. at Ex. F.

The District pursued truancy charges against M.R. parent for M.R. child's failure to attend school. M.R. parent pled guilty to municipal court truancy violations on December 2, 2025, and April 30, 2026. Id. at Ex. D.

On or around December 5, 2025, the District invited M.R. parent to participate in a December 23, 2025, meeting to determine whether evaluations were needed to assess whether M.R. child had a disability that affected her educational performance. On or around March 18, 2026, the District implemented a Section 504 plan under the Rehabilitation Act for M.R. child. Id. at Ex. E. The accommodations in M.R. child's Section 504 plan do not excuse absences from school. Ibid.

After the implementation of M.R. child's Section 504 plan through the end of the school year, M.R. child was absent an additional fourteen days and was tardy or left school early on about twenty-five school days. Id. at ¶ 23, Ex. C.

On or around April 30, 2026, Dr. Giacobbe advised M.R. parent that M.R. child would be retained in the seventh grade for the 2026−2027 school year due to excessive absences. Id. at Ex. F. This decision was made based on M.R. student's continued excessive absences and her failure to satisfy the District's attendance requirement in District Regulation 5410. Id. at ¶ 33.

On or around May 19, 2026, M.R. parent advised Dr. Giacobbe that she wished to appeal the grade retention decision. Id. at Ex. G. In a May 20, 2026, letter, Dr. Giacobbe denied M.R. parent's appeal based on District Policy 5200 and District Regulation 5410 and M.R. child's chronic absenteeism. Id. at Ex. H.

M.R. child failed her seventh-grade mathematics class. M.R. parent Cert. at ¶ 4. According to M.R. parent, she suggested alternatives to retention, including summer school and promotion to eighth grade with supports. Id. at ¶ 9.

During the 2025−2026 school year, M.R. child missed forty-seven days of school, excluding time that M.R. child was placed on home instruction. Giacobbe Cert. at ¶ 5, 7. During oral argument, M.R. parent conceded that M.R. child failed seventh-grade mathematics and missed forty-seven days of school.

LEGAL ANALYSIS AND CONCLUSIONS

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case. N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, the petitioner must show that they satisfy the following four standards:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
>
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)). The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (citation omitted). The standard is a high threshold to meet, and petitioner has failed to satisfy all three criteria.

As previously noted, M.R. child's retention in the seventh grade is based upon her unexcused absences from school during the 2025−2026 school year. Local school boards, including the District, are required to "develop, adopt, and implement policies and procedures regarding the attendance of students." N.J.A.C. 6A:16-7.6(a). This regulation requires school boards to do the following when a student has a certain number of unexcused absences:

> 4. School staff responses for unexcused absences:
>
> i. For up to four cumulative unexcused absences, the school district shall:
>
> (1) Make a reasonable attempt to notify the student's parents of each unexcused absence prior to the start of the following school day;
>
> (2) Make a reasonable attempt to determine the cause of the unexcused absence, including through contact with the student's parents;
>
> (3) Identify in consultation with the student's parents needed action designed to address patterns of unexcused absences, if any, and to

have the child return to school and maintain regular attendance;

(4) Proceed in accordance with N.J.S.A. 9:6-1 et seq. and N.J.A.C. 6A:16-11 if a potential missing or abused child situation is detected; and

(5) Cooperate with law enforcement and other authorities and agencies, as appropriate;

ii. For between five and nine cumulative unexcused absences, the school district shall:

(1) Make a reasonable attempt to notify the student's parents of each unexcused absence prior to the start of the following school day;

(2) Make a reasonable attempt to determine the cause of the unexcused absence, including through contact with the student's parents;

(3) Evaluate the appropriateness of action taken pursuant to (a)4i(3) above;

(4) Develop an action plan to establish outcomes based upon the student's patterns of unexcused absences and to specify the interventions for supporting the student's return to school and regular attendance, which may include any or all of the following:

(A) Refer or consult with the building's intervention and referral services team, pursuant to N.J.A.C. 6A:16-8;

(B) Conduct testing, assessments or evaluations of the student's academic, behavioral and health needs;

(C) Consider an alternate educational placement;

(D) Make a referral to or coordinate with a community-based social and health provider agency or other community resource;

(E) Refer to a court or court program pursuant to (a)4iv below;

(F) Proceed in accordance with N.J.S.A. 9:6-1 et seq. and N.J.A.C. 6A:16-10 if a potential missing or abused child situation is detected; and

(G) Engage the student's family.

(5) Cooperate with law enforcement and other authorities and agencies, as appropriate.

iii. For cumulative unexcused absences of 10 or more, a student between the ages of six and 16 is truant, pursuant to N.J.S.A. 18A:38-25, and the school district shall:

(1) Make a determination regarding the need for a court referral for the truancy, per (a)4iv below;

(2) Continue to consult with the parent and the involved agencies to support the student's return to school and regular attendance;

(3) Cooperate with law enforcement and other authorities and agencies, as appropriate; and

(4) Proceed in accordance with N.J.S.A. 18A:38-28 through 31, Article 3B, Compelling Attendance at School, and other applicable State and Federal statutes, as required[.]

Board Policy 5200 regarding attendance provides the following:

> In accordance with the provisions of N.J.S.A. 18A:38-25, every parent, guardian, or other person having control and custody of a child between the ages of six and sixteen shall cause the child to regularly attend school. The [Board] requires students enrolled in the school district attend school regularly in accordance with the laws of the State.
>
> In accordance with the provisions of N.J.A.C. 6A:16-7.6 and for the purposes of this Policy and Regulation 5200, a student's absence from school will be excused or unexcused that counts towards truancy.
>
> . . . .

> Prolonged or repeated absences, excused or unexcused, from school or from class, deprive students of the educational and classroom experiences deemed essential to learning and may result in retention at grade level.
>
> [Giacobbe Cert., Ex. A (emphasis added).]

In addition, under N.J.S.A. 18A:35-4.9, local boards of education, including the District, must adopt policies regarding the promotion, remediation and retention of students, which include notification to parents and pupils when that pupil's progress may not allow for his or her promotion and their appeal rights. The District's regulation, Regulation 5410, policy regarding promotion and retention, states the following:

> Board policy and administrative guidelines stipulate that the promotion or retention be based on academic achievement.
>
> . . . .
>
> Students in grades five to eight are expected to satisfactorily complete three major courses (reading/literature, math, science, social students and language arts) and two minor courses (art, physical education or music) to be promoted to the following grade. In order for a passing grade to be obtained, students must be in attendance at least eighty-five percent of the time (one hundred fifty-three days). All absences will be included except for State-approved religious holidays and absences during home instruction period.
>
> [Giacobbe Cert. at Ex. B.]

The Board's policies on attendance and retention have the force and effect of law and govern this matter. Finally, when a board of education acts within its discretionary authority, that action "may not be upset unless patently arbitrary, without rational basis or induced by improper motive." Kopera v. Bd. of Educ. of West Orange, 60 N.J. Super. 288, 294 (1960).

As previously noted, one of the criteria that M.R. parent must satisfy to prevail on her motion for emergent relief is to show that she has an underlying likelihood of success on the merits of her claim. Under this prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at

133 [citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)]. This typically "'involves a prediction of the probable outcome of the case based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) [quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)]. M.R. parent has failed to satisfy this criterion.

M.R. child missed forty-seven days of school during the 2025−2026 school year, excluding the days that she received home instruction. She also failed her seventh-grade mathematics course. M.R. child's Section 504 plan does not provide M.R. child with any accommodations regarding the District's attendance policy. These facts are undisputed.

The Board's policy on attendance, the governing law in this matter, indicates that it has the discretion to retain students at their grade level who have prolonged or repeated absences, regardless of whether those absences are excused or unexcused. Board Policy 5200. Seventh-grade students must satisfactorily complete three major courses and minor courses to be promoted to the following grade. Board Regulation 5410. In addition, District students must attend school at least 153 days, which is eighty-five percent of the school year, to obtain a passing grade.

The plain language of the Board policy indicates that the Board has the discretion to retain students with excessive absences, and the Board regulation includes the criteria that students must satisfy for grade promotion. M.R. child's failure to attend school at least 153 days during the 2025−2026 school year allows the District to determine that M.R. child did not obtain passing grades in the courses other than mathematics that M.R. did not fail. The plain language of the Board policy and regulation allows the District to retain M.R. child in the seventh grade based on the undisputed facts.

Moreover, M.R. parent has not shown that the Board's action in implementing the attendance, promotion and retention policy was patently arbitrary, without a rational basis or induced by improper motive. Without this evidence, there is no factual basis to disturb the District's decision. There is sufficient case law supporting the Board's decision under similar circumstances. See M.N. and E.Y., o/b/o minor child K.N. v. State-Operated Sch. Dist. of Jersey City, 2004 N.J. AGEN LEXIS 342 (June 17, 2004) (granting summary

decision for the school district when pro se parents presented no genuine issues of material fact regarding student's retention in fifth grade); P.D.M. o/b/o minor child K.M. v. Somerset Borough Bd. of Educ., EDU 6706-98 (Aug. 27, 1999), https://njlaw.rutgers.edu/OAL/NJLAW-pdfs/initial/edu6706-98_1.pdf, aff'd., Cmsr. (Oct. 12, 1999) (a school board's action denying a student credits for courses where the student's absences exceeded the maximum allowed and prevented the student from being promoted to the tenth grade was not arbitrary or capricious).

Finally, the fact that M.R. child had a Section 504 plan has no bearing on the disposition of this matter, as the Section 504 plan did not include any accommodations for M.R. child regarding her excessive absenteeism.

I understand M.R. parent's argument that M.R. child's school avoidance issues will likely increase if she is retained in the seventh grade for the 2026−2027 school year. The simple fact is that M.R. child did not attend school during the 2025−2026 school year to earn her promotion to the eighth grade for the 2026−2027 school year.

For the foregoing reasons, I **CONCLUDE** that M.R. parent has failed to show an underlying likelihood of success on the merits of her claim, and for this failure, emergent relief is neither warranted nor appropriate. M.R. parent's motion for emergent relief is denied.

ORDER

I ORDER that M.R. parent's motion for emergent relief is **DENIED**. Because the parties have advised me that there are no other issues to be resolved in the pro se petition of appeal, the petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized

to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

September 2, 2026 _____
DATE

KIMBERLEY M. WILSON, ALJ

Date Received at Agency: September 2, 2026

Date Mailed to Parties: _____

KMW/ml

APPENDIX

Witnesses

For petitioner:

None

For respondent:

None

Exhibits

For petitioner:

Pro se petition of appeal, Certification of M.R., Notice of Motion for Emergent Relief, Memorandum in Support of Motion for Emergent Relief filed on or around August 19, 2026; supplemental documents filed on or around August 31, 2026

For respondent:

Motion papers, including Certification of Dr. Elizabeth C. Giacobbe and certification of service