

461-03L

August 14, 2003

M.W.

*(Name and address redacted)*

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Dear Parties:

This matter, *M.W., on behalf of minor child, T.W. v. Board of Education of the Town of Hammonton, Atlantic County*, Agency Dkt. No. 274-8/03, was opened by way of a letter from petitioner, filed on August 6, 2003, seeking to reverse the Board's decision that her son could not graduate with the graduating class of 2003 due to unexcused absences in excess of those allowed by the Board. Petitioner asserts that her son has been accepted to attend classes at Hudson Valley College in the Fall of 2003 and that he is scheduled to arrive at the college on August 15. Due to the emergent nature of the matter, petitioner's letter is being construed as a Petition of Appeal with request for emergent relief.

Petitioner requests a "mercy ruling" on behalf of her son, claiming that he was absent 8 ½ days over the 24 unexcused days allowed by the school district and was, therefore, denied credit for his classes and did not receive his high school diploma. (Petition of Appeal at 1) Petitioner states that she met with the principal in June 2003 and with the Interim Superintendent on July 8, 2003 and submitted a letter to the Board for their review on July 27, 2003 in a effort to convince the school district to let her son complete "credit completion" and do extra work around the school or do community service to make up for the 8 ½ days he exceeded the Board's attendance requirement. (*Id.* at 2) Petitioner claims that her son passed all courses, except for the one in which he did not take the final exam because he had been told that day that he would not graduate due to excessive absences. (*Id.* at 2-3) In conclusion, petitioner lists the hardships that her son has endured this past year, including a live-in aunt who was diagnosed with breast cancer and the deaths of his grandfather and another aunt. (*Id.* at 3)

The Board filed its Answer with a Certification by High School Principal Donoghue on August 11, 2003. In its Answer, the Board states that, contrary to the claims made by petitioner, her son, T.W., had 47 ½ unexcused absences for the year, which equates to over one quarter of the school year. (Answer at 1) The Board avers that its attendance policy provides that a student may have not more than 14 unexcused absences. (*Id.* at 2) However, if a student has 14 unexcused absences, but does not exceed that amount by more than 10 additional unexcused absences, the student can make up the unexcused absences (for a maximum of 10 days) in a four-hour daily summer Credit Completion Program. (*Ibid.* and Donoghue Certification, Number 9) If a student exceeds 24 unexcused absences, the student will lose credit in all courses for the year, but can still make up work through an approved summer school program. (*Ibid.*)

Moreover, the Board points out that it provides an appeal process to challenge the number of unexcused absences, and that petitioner availed herself of this process to challenge the number of unexcused absences attributed to her son. (*Ibid.*) Although the school's Attendance Appeals Committee denied her appeal, the principal reduced the number of unexcused absences from 47 ½ to 32 ½. (*Ibid.*) The principal certifies that he excused absences that petitioner argued had occurred because T.W. was receiving physical therapy associated with a football injury he had suffered during football season notwithstanding the fact that petitioner did not provide appropriate documentation according to the Student Handbook. (Donoghue Certification, Number 23) The principal also states that he excused absences occurring in June that were the result of attending family funerals. (Donoghue Certification, Number 24) The Interim Superintendent and the Board affirmed the principal's decision to reduce the number of unexcused absences. (*Ibid.* and Donoghue Certification at 27) Thus, the Board argues, all of the mitigating circumstances petitioner asserts in her petition were considered by the principal and affirmed by the superintendent and the Board. (Answer at 2)

The Board further points out that its policy regarding unexcused absences is set forth in the Student Handbook and that petitioner cannot argue that T.W. did not receive a copy. (*Ibid.* and Donoghue Certification, Number 7) Additionally, petitioner was advised by letter from the Vice-Principal in or about December that T.W. had accumulated 15 unadjusted absences as of December 4, 2003 and had, therefore, lost credit in school for the current year.<sup>1</sup> (*Ibid.*, Donoghue Certification at 18 and Exhibit C) The principal certifies that, although the Board does not offer a full-time summer school program, petitioner was advised that T.W. could attend another summer school and receive credit for his senior year, but there is no indication from petitioner that T.W. made any attempt to attend summer school. (*Ibid.* and Donoghue Certification at 26) Therefore, the Board concludes, there is no reason why T.W. should be entitled to emergent relief as the situation is one of his own making. (Answer at 2)

Finally, the Board turns to whether petitioner's claim meets the standard for emergent relief. The Board acknowledges that petitioner will suffer some harm if T.W. is not given credit, but argues that this harm could have been avoided: 1) if T.W. had attended school

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<sup>1</sup> The Commissioner notes that the Vice-Principal's letter refers to T.W.'s absences reaching 17 days in the "subject" area at the top of the letter, but then states that "your child has accumulated (15) unadjusted days of absence" in the body of the letter. There is no way to discern with certainty whether the 17 days of absences reflect a total of both excused and unexcused absences or whether this is a form letter, which it appears to be, that is triggered to notify parents that the student has lost credit in school whenever a student reaches the *threshold* of 15 absences. (Exhibit C)

or 2) if T.W. had attended summer school. (*Ibid.*) Thus, the Board reasons, “[p]etitioner’s failure to take even minimal steps to avoid the sanction of the Board’s reasonable policy does not now, at this late stage, convert any harm to Petitioner into irreparable harm.” (*Ibid.*) With respect to whether petitioner’s legal rights are settled in this matter, the Board avers that the law is settled in the Board’s favor and that any legal discussion favors the Board. (*Id.* at 3) The Board also points to *M.A.A. o/b/ P.A.A. v. Bd. of Ed. of Twp. of Edison*, OAL Dkt. No. EDU 4134-98, Agency Dkt. No. 120-4/98, 1998 N.J. AGEN LEXIS 307, and submits that the Board’s action is presumed reasonable and is entitled to deference. (*Ibid.*) Moreover, in balancing the equities, the Board asserts that it will suffer the greater harm because challenges to the application of sound Board policy are likely to increase and a contrary ruling would erode the Board’s authority. (*Ibid.*) The Board, therefore, requests the Commissioner to deny petitioner’s claim for emergent relief and dismiss the petition. (*Ibid.*)

Initially, I note that it is well-established that the granting of emergent relief is an extraordinary remedy and may be granted only where necessary to prevent irreparable harm, where the legal right underlying petitioner’s claim is settled, where there is a likelihood of success on the merits and where the relative hardship to the moving party favors granting such relief. *Crowe v. DeGioia*, 90 N.J. 126, 132-134 (1982). Here, I find that petitioner has failed to satisfy the four-pronged standard necessary to warrant this extraordinary remedy.

Upon review of the parties’ submissions in this matter, I find and conclude that, on the facts presented, petitioner cannot demonstrate a likelihood of success on her claim where she does not dispute that her son’s unexcused absences exceed the number permitted to receive credit in his classes and does not assert that the Board acted in an arbitrary, capricious or unreasonable manner in applying its absenteeism policy. In this regard, I note that it is well-established that when a board acts within its discretionary authority, “its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable.”<sup>2</sup> *Thomas v. Bd. of Ed. of Morris Tp.*, 89 N.J. Super. 327, 332 (App. Div. 1965), *aff’d* 46 N.J. 581 (1966). *See, also, J.M. v. Hunterdon Central Regional High School District*, 96 N.J.A.R.2d (EDU) 415, 419, (1996), *citing Kopera v. West Orange Bd. of Education*, 60 N.J. Super. 288 (App. Div. 1960). Thus, it is petitioner’s burden to prove, by a preponderance of evidence, that the Board’s decision denying her son credit for the classes he took in his senior year and thus his ability to graduate from high school was unreasonable, based on the facts.

In the instant matter, petitioner does not even allege that the Board’s actions were unreasonable; and, in fact, it appears that the Board provided petitioner and T.W. ample opportunity to appeal his unexcused absences and earn credit by other means. Even viewed in the light most favorable to petitioner, therefore, there are no facts which would indicate that the Board’s actions were anything but reasonable and accommodating. I note in particular that the Board’s policy regarding unexcused absences is in the Student Handbook distributed to students. Moreover, the December 2002 letter sent to petitioner regarding T.W.’s loss of credit due to excessive unexcused absences sets forth information on strategies T.W. could have utilized to achieve credit through the summer Credit Completion Program or by attending summer school. Additionally, petitioner’s appeal of T.W.’s unexcused absences was considered by the

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<sup>2</sup> It is noted that N.J.A.C. 6A:8-5.1(a)2 specifically directs district boards to develop, adopt, and implement requirements for a State-endorsed diploma which includes the local district’s attendance policy.

Attendance Appeals Committee, the High School Principal, the Interim Superintendent and the Board, and some of T.W.'s unexcused absences were changed to excused absences as a result of petitioner's appeal.

I further find that petitioner cannot establish irreparable harm where petitioner and T.W. were aware as early as December 2002 that T.W. had lost credit and yet the unexcused absences from school continued. It also cannot be ignored that T.W. did not take advantage of the avenues provided by the school to restore credit for his courses through the attendance at the Credit Completion Program or summer school. Although it is unfortunate that T.W.'s attendance record in high school may prohibit him from attending Hudson Valley College starting August 15, 2003, there are other avenues for achieving a high school diploma, such as the Graduation Equivalent Diploma (GED), and there is nothing to preclude T.W.'s attendance at Hudson Valley College or some other college in the future.<sup>3</sup>

Additionally, I find that the equities in this matter lie on the side of the Board, which has apparently taken a clear and consistent stance, both in policy and practice, with respect to its attendance policy, and has provided a mechanism for appeal to ensure a review process to consider any disputes to a student's record of unexcused absences. Absent a showing that the implementation of said policy was arbitrary and capricious, or otherwise taken in bad faith, I decline to disturb the Board's decision.

Accordingly, petitioner's application for emergent relief is denied. Moreover, in that petitioner does not allege that the Board acted in an arbitrary, capricious or unreasonable manner in applying its attendance policy, there is no basis on which I can grant petitioner the relief she seeks and no grounds on which I may direct further proceedings. Pursuant to my discretionary authority under *N.J.A.C.* 6A:3-1.10, therefore, the Petition of Appeal is hereby dismissed.<sup>4</sup>

Sincerely,

William L. Librera, Ed.D.  
Commissioner

c: Board Secretary  
County Superintendent

**VIA FAX AND REGULAR MAIL**

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<sup>3</sup>Although petitioner did not indicate whether Hudson Valley College is a community college or a four-year college, the Commissioner observes that some community colleges accept students who have not completed their high school requirements and provide programs where students may earn a high school diploma while earning college credits.

<sup>4</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*