

September 11, 2003

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Dear Ms. Wimbish and Mr. Donio:

M.W., on behalf of minor child, T.W. V. BOARD OF EDUCATION OF THE TOWN OF HAMMONTON, ATLANTIC COUNTY, STATE BOARD DOCKET #34-03

Petitioner in this case is the mother of a 12th-grade student who was not permitted to graduate with the class of 2003 because he had unexcused absences in excess of the number permitted by the Hammonton Board. The Board's policy provides that a student may have no more than 14 unexcused absences. If a student's absences exceed 14 but are under 24, the student can attend a credit completion program. If the number exceeds 24, the student loses credit for the entire year, although the credits can be made up by attending an approved summer program. This was the situation in which petitioner's son, T.W., found himself at the end of the 2002-03 school year.

T.W.'s unexcused absences totaled 47½ when his mother appealed to the Attendance Appeals Committee. Although her appeal was denied, the principal reduced the number of unexcused absences to 32½ by eliminating absences that T.W. said were due to physical therapy for a football injury and his attendance at funerals of family members. The principal's reduction in the number of unexcused absences was affirmed by the Interim Superintendent and the Board. However, because the number of unexcused absences still was in excess of 24, T.W. lost credit for the year.

Petitioner then sought relief from the Commissioner, who considered the matter on an emergent basis. In a letter decision dated August 14, 2003, the Commissioner

determined that petitioner had not met the standards set forth in Crowe v. De Gioia, 90 N.J. 126 (1982) so as to be entitled to emergent relief. In this respect, the Commissioner found that petitioner could not demonstrate a likelihood of success on the merits of her claim, stressing that petitioner did not dispute that her son's unexcused absences exceeded the number permitted under the Board's policy and that she had not even alleged that the Board's actions were unreasonable. The Commissioner found that the Board had been reasonable and accommodating, notifying petitioner in December that T.W.'s unexcused absences were such that he would lose credit and advising him that he could regain credit through the Board's summer Credit Completion Program or by attending summer school. Moreover, petitioner had availed herself of the appeals process provided by the Board and, as a result, the number of T.W.'s unexcused absences had been reduced.

The Commissioner also found that petitioner could not establish that T.W. would suffer irreparable harm if not afforded emergent relief. The Commissioner found that although it was unfortunate that T.W.'s attendance record might preclude him from matriculating at Hudson Valley College beginning on August 15, 2003, he stressed that there were other avenues through which T.W. could obtain a high school diploma, such as General Educational Development (GED) programs. The Commissioner also stressed that there was nothing to prevent T.W. from attending Hudson Valley College or another college in the future. In this respect, the Commissioner noted that some community colleges accept students who have not completed high school and provide programs through which such a student can earn a high school diploma while earning college credit.

The Commissioner therefore denied petitioner's application for emergent relief. He also determined that because petitioner did not allege that the Board's application of its attendance policy to T.W. had been arbitrary, capricious, or unreasonable, there was no basis on which he could grant her the relief she was seeking and no grounds on which he could direct further proceedings. Accordingly, the Commissioner dismissed the petition of appeal in the matter.

After carefully considering petitioner's submission and the Board's response, we affirm the Commissioner's decision to deny petitioner's application for emergent relief. We also agree with the Commissioner that there is no basis on which to direct further proceedings. Quite simply, as the Commissioner found, petitioner has not met the standards articulated in Crowe v. De Gioia, supra, so as to be entitled to emergent relief. Moreover, as the Commissioner determined, there is nothing to indicate that the Board's actions were anything other than accommodating. It is clear from the record before us that petitioner had notice of T.W.'s situation and had been advised of the available options. It is unfortunate that T.W.'s attendance at Hudson Valley College may be postponed because he did not exercise these options. However, we emphasize that T.W. can still pursue

a college education by obtaining a GED or enrolling in a community college program that would allow him to obtain a high school diploma while earning college credits, and we encourage him to do so.

Sincerely,

Dr. Arnold G. Hyndman, President  
State Board of Education

Debra Casha, Chairperson  
Legal Committee of the State Board

c: Members of the State Board of Education  
Dr. Daniel Loggi  
Michael Cuneo