



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 10875-18

AGENCY DKT. NO. 2019-28498

**T.T.,**

Petitioner

v.

**WEST ESSEX REGIONAL  
BOARD OF EDUCATION,**

Respondent.

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**T.T.,** appearing pro se

**Marc Mucciolo**, Esq. for respondent (Methfessel & Werbel, attorneys)

Record Closed: March 22, 2019

Decided: March 28, 2019

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner T.T. is a twenty-one-year old (21) young man who argues that he fulfilled the requirements to receive a high school diploma from Respondent, West Essex Regional Board of Education (Board) and is entitled to compensatory education. Petitioner asserts that despite his poor attendance he passed English class which gives him all the credits needed for a high school diploma.

Respondent's contentions are that T.T. lacks the credits necessary for graduation, that he had issues with absenteeism and that his most recent IEP did not

provide him with an exemption from the Board's attendance policy and therefore he was required to attend school regularly like any other student. Respondent seeks denial of the relief requested by petitioners and dismissal of the due process petition.

### **PROCEUDRAL HISTORY**

The case was transmitted to the Office of Administrative Law ("OAL") on July 30, 2018. On or about September 6, 2018 the matter was reassigned to the undersigned. A telephone prehearing was conducted on September 19, 2018 wherein the parties agreed on hearing dates and a discovery schedule. Hearings were held on March 1, 2019 and March 22, 2019. The record closed on March 22, 2019 after receipt of post hearing submissions.

### **TESTIMONY**

#### **Lauren Cherny**

Lauren Cherny (Cherny) is a Guidance Counselor at West Essex Regional High School (WERHS or West Essex). She is certified as a school counselor. T.T. was home schooled in the seventh, eight and ninth grade. He went to High School in Florida after the ninth grade. He had been in New Jersey since September 2015 without going to school. T.T. was registered at West Essex in March 2016. He received special education services shortly thereafter. At that time, he had thirty high school credits. T.T. was enrolled as a sophomore. There was only one marking period and approximately one week remaining in the school year when he was enrolled.

Cherney discussed how far behind T.T. was with him and his father. In the 2015-2016 school year at West Essex, T.T. received 31.25 credits. At that time, he struggled with Math, Typing and Writing. He received assistance in those areas. From March 2016, until the end of the school year in June 2016, T.T. had eleven unexcused absences. There are only seven unexcused absences allowed for half of a school year.

West Essex offered T.T. the half year program in September 2017 because they had been told in April 2017 that his mother had ALS and he helped to take care of her.

### Juliann Hoebee

Juliann Hoebee (Hoebee) is the Vice Principal at West Essex. She is the Administrator in charge of attendance and discipline. She became familiar with T.T. at the 2015-2016 special education meeting.

Teachers enter attendance into a computer daily in every class. Absences are excused if medical based or religious based. Hoebee must receive documentation if an absence is over three days. If a student has fifteen absences, she sends a letter to the parent. If there are over seventeen absences a certified letter is sent and there is a loss of credit.

In 2015-2016 T.T. had a significant number of absences. He was enrolled for one marking period and one week for that school year. T.T. received eight disciplines and three suspensions while he was a student at WERHS.

### Cesar Diliberto

Cesar Diliberto (Diliberto) is the Principal at WERHS and holds the following certificates: Principal, Supervisor, English Teacher and Elementary School Teacher. As Principal, his duties include major disciplines and confirming the attendance information from Hoebee and the attendance committee. He certifies that the graduating students meet the graduation requirements based on the Board's policy. The minimum number of credits needed to graduate WERHS is 135. This number can be lowered based on an IEP.

Diliberto became familiar with T.T. at the end of the 2015-2016 school year. He was concerned with the lack of credits T.T. had at age eighteen. He wanted to determine what supports T.T. would need to get a diploma before he aged out. He had conversations with T.T. during the 2016-2017 school year.

In the beginning of the 2017-2018 school year, T.T. was offered a shortened school schedule. Attendance was discussed at this meeting.

Diliberto had difficulty meeting with T.T. because of T.T. 's lack of attendance. Diliberto never said that T.T.'s father could not come to the IEP meetings. Any information that was communicated to T.T. was also communicated to his father.

### Tania Symmons

Tania Symmons (Symmons) is the Director of Special Services in West Essex. She supervises Special Education teachers and Child Study Teams. She met T.T. in March 2016. He was eligible for special education services. A Psychological Evaluation, Education Evaluation and Social History were done of T.T. in October and November 2016. There were concerns regarding his lack of education prior to entering the District. He was placed in Resource Replacement classes.

In November 2016, Symmons was informed that T.T. was having problems due to lack of attendance and not making up work that he missed. In September 2017, T.T. was still struggling with attendance. On March 21, 2018 there was an IEP meeting where T.T.'s graduation status was discussed. At that time, she knew that T.T. might not graduate. The number of credits that T.T. needed to graduate had been reduced to 120.

### T.T.

T.T. spent his sophomore year in High School in Florida. He moved to New Jersey because his grandparents were ill. When he entered school at WERHS, he was behind. Initially he had a half schedule. The next year he had a full schedule and received all of the credits.

T.T.'s mother has ALS. It has progressed, and she is now bedridden. He has 118.5 credits. He was told by Hoebee that if he had to be absent due to his mother, he could bring a note and it would be excused. He provided notes that were not listed as

excused absences. In January 2018, his grandfather died. He was absent from school for a few weeks as a result of his grandfather's death.

T.T. attended IEP meetings and received copies of the IEPs. He did not read the IEPs. The graduation requirements and attendance requirements were explained to T.T. In 2017-2018 Diliberto would not allow T.T.'s father to come to IEP meetings. He requested credits be reinstated but his request was denied.

Upon reviewing the testimony and evidence, I **FIND** the following **FACTS**:

T.T. began WERHS as a sophomore in March 2016. He had previously gone to high school in Florida. When he entered WERHS he had thirty high school credits. He began receiving special education services in April 2016 under the classification of specific learning disability. The IEP offered T.T. in class support for Language Arts, Science, Social Studies and Math. T.T. had difficulty with Math, Typing and Writing, in which he received assistance. From March 2016 through June 2016, T.T. had eleven unexcused absences. Seven is the maximum number of unexcused absences in a school year. T.T. received 31.25 high school credits for the 2015-2016 school year.

In 2016-2017 school year T.T. had attendance issues that were excused and unexcused absences. He had thirty-seven unexcused absences and thirty-one excused absences in Earth and Environmental Science. In English he had forty unexcused absences and thirty-one excused absences. In CPA Studio Art 1 he had nineteen unexcused absences and thirty-excused absences. In CPA History II he had twenty-six unexcused and excused absences. In CPA conversational Spanish, he had twenty-nine unexcused absences and twenty-eight excused absences. In Algebra II he had twenty-six unexcused absences and thirty-one excused absences.

In the 2016-2017 school year, T.T. had in class support Language Arts, Science and Social Studies and resource center Math. He was given the option of English II class in the summer of 2016 and Geometry in the summer of 2017. He declined both summer classes. T.T. would be twenty-one by June 30, 2018. He needed to take the two summer classes before that date.

In 2016-2017, T.T. had Geometry and English classes at an adult school in order to have him graduate timely. He failed the Geometry class and stated he needed another year of school. During that year T.T. passed Drivers Education, Physical Education and Algebra. He was missing basic skills due to absenteeism. On January 24, 2017, T.T. signed an attendance contract. His attendance improved after signing the contract and his credits were reinstated. At the end of the 2016-2017 school year T.T. had 108.5 credits. He needed eleven and one-half credits to graduate. He had to take an English Course to graduate. He needed a five credit English Course to graduate. In April 2017, T.T informed the District that his mother had ALS and that he had to help take care of her.

In September 2017, T.T. missed the first two weeks of school. Cherny met with Principal Diliberto, Vice-Principal Hoebee and T.T. about his attendance. They wanted to put T.T. on a half year schedule in September 2017, which he declined. He was also offered adult school, but he declined that as well. At the time, he had a full year schedule.

In January 2018, there was a schedule change for T.T. He had missed so many days of school that he was again offered the half year schedule. Diliberto encouraged T.T. to take the half day schedule because T.T. lost credits in every class. T.T. agreed to a half year schedule. He also signed another attendance contract on January 22, 2018, which allowed for one unexcused absence per month. T.T. was told that he was not on track to graduate. He agreed to take Health and Algebra II at the Adult School.

T.T. had seventeen unexcused absences after signing the attendance contract in January 2018. Diliberto denied the contract on April 27, 2018, because of the absenteeism. In April 2018, T.T. was told that he would not graduate because he did not comply with the attendance contract by being absent in excess of the amount allowed by the contract, which was one a month, without medical documentation. WERHS requires students to have 135 credits to graduate. The state requirement to graduate is that the student must have 120 credits. WERHS lowered its number of credits to graduate for T.T. to 120 credits. Credits are determined by the final grade which attendance is taken into account. If a student misses a certain amount of time

due to absenteeism, the student loses credit. T.T. had 118.5 credits at the end of the school year in June 2018.

In the 2017-2018 school year, in English T.T. had forty-one unexcused absences and twenty-six excused absences. In Study Hall S2 T.T. had twenty unexcused absences and nine excused absences. In Health 12, T.T. had eighteen unexcused absences and nine excused absences. In PEIV T.T. had fifty-nine unexcused absences and nineteen excused absences. In CPA Emergency and Clinical Care T.T. had twenty-four excused absences and seven unexcused absences.

Hoebee reviewed all of the medical documentation that she received regarding T.T.'s absences. Handwritten notes from his father could not convert an unexcused absence to an excused absence. Any absence of T.T. where the Board was provided with documentation from Columbia Doctors regarding T.T.'s absence due to his mother's illness was an excused absence. Medical or religious documentation needs to be provided for an excused absence.

On April 27, 2018, T.T. was sent a letter stating he would not graduate in June 2018.

Cherny is an expert in Guidance Counseling for high school students. Hoebee is an expert in High School Administration. Symmons is an expert in Special Education Administration and School psychology.

### **LEGAL ANALYSIS**

N.J.A.C. 6A: 8-5.1(a) provides:

For a State-endorsed diploma, district boards of education shall develop, adopt, and implement local graduation requirements that prepare students for success in post-secondary degree programs, careers, and civic life in the 21st century, and that include the following:

1. Participation in a local program of study of not fewer than 120 credits in courses designed to meet all of the NJSLs, including, but not limited to, the following credits:

i. At least 20 credits in English language arts, aligned to grade nine through 12 standards, effective with the 2009-2010 grade nine class;

ii. At least 15 credits in mathematics, including algebra I or the content equivalent effective with the 2008-2009 grade nine class; geometry or the content equivalent effective with the 2010-2011 grade nine class; and a third year of mathematics that builds on the concepts and skills of algebra and geometry and that prepares students for college and 21st century careers effective with the 2012-2013 grade nine class;

iii. At least 15 credits in science, including at least five credits in laboratory biology/life science or the content equivalent effective with the 2008-2009 grade nine class; one additional laboratory/inquiry-based science course, which shall include chemistry, environmental science, or physics effective with 2010-2011 grade nine class; and one additional laboratory/inquiry-based science course effective with 2012-2013 grade nine class;

iv. At least 15 credits in social studies, including satisfaction of N.J.S.A. 18A:35-1 and 2; five credits in world history; and the integration of civics, economics, geography and global content in all course offerings;

v. At least 2.5 credits in financial, economic, business, and entrepreneurial literacy, effective with 2010-2011 grade nine class;

vi. At least 3 3/4 credits in health, safety, and physical education during each year of enrollment, distributed as 150 minutes per week, as required by N.J.S.A. 18A:35-5, 7 and 8;

vii. At least five credits in visual and performing arts;

viii. At least five credits in world languages or student demonstration of proficiency as set forth in (a)2ii(2) below;

ix. Technological literacy, consistent with the NJSLs, integrated throughout the curriculum; and

x. At least five credits in 21st century life and careers, or career-technical education;



T.T. has admitted in this matter that he does not have the 120 credits required by the state to graduate from High School. Although T.T. had to assist his family with his mother's care, he has numerous unexcused absences. He lost credits in classes due to unexcused absences.

I **CONCLUDE** that T.T. does not meet the requirement for a high school diploma from WERHS because he does not 120 high school credits that are necessary to receive a high school diploma.

The next issue is whether T.T. is entitled to compensatory education. Compensatory education is a remedy not specifically provided for in the IDEA. However, the courts have recognized that "Congress expressly contemplated that the courts would fashion remedies not specifically enumerated in IDEA." W.B. v. Matula, 67 F.3d 484, 494-95 (3d Cir. 1995). Thus, a student deprived of a FAPE may be entitled to an award of compensatory education, which is an available remedy even after the student has reached age twenty-one. Ridgewood, 172 F.3d. at 249; M.C. v. Central Reg. Sch. Dist., 81 F.3d 389, 395 (3d Cir. 1996); Carlisle Area Sch. Dist. v. Scott P., 62 F.3d 520, 536 (3d Cir. 1995); Lester H. v. Gilhool, 916 F.2d 865, 873 (3d Cir. 1990), cert. denied, 499 U.S. 923 (1991).

The legal standard for the granting of such relief is summarized by the Third Circuit as follows:

[A] school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation but excluding the time reasonable required for the school district to rectify the problem.

[M.C., 81 F. 3d at 397.]

Awards of compensatory education have included an additional two-and-one-half years of special education where the school district had been lax in its efforts to provide a proper placement, Lester H., 916 F. 2d at 873, and payment of college tuition where

the disabled student would apply credits obtained toward acquisition of a high school diploma. Sabatini v. Corning-Painted Post Area Sch. Dist., 78 F.Supp.2d 138, 145-146 (W.D.N.Y. 1999).

In this matter, T.T.'s IEP was appropriate. His problem was unexcused absences. WERSH worked with T.T. and offered summer courses and half schedules to accommodate him assisting with his mother. T.T.'s unexcused absences were not related to his IEP.

**ORDER**

Based on the foregoing, it is **ORDERED** that the relief requested by petitioner be and is hereby **DENIED** and the petition be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2018). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

March 28, 2019



\_\_\_\_\_  
DATE

\_\_\_\_\_  
**KIMBERLY A. MOSS, ALJ**

Date Received at Agency

\_\_\_\_\_  
March 28, 2019

Date Mailed to Parties:

\_\_\_\_\_  
March 28, 2019

ljb

**WITNESSES**

For Petitioner

T.T.

For Respondent

Lauren Cherny

Juliann Hoebee

Cesar Diliberto

Tania Symmons

**EXHIBITS**

For Petitioner

P-1 Gradebook Assignments for T.T.

P-2 Morris Hills Adult High School Grades for T.T.

For Respondent

R-1 Child Study Team Psychological Assessment Dated October 13, 2016

R-2 Child Study Team Social Assessment Dated October 27, 2016

R-3 Child Study Team Educational Assessment Dated November 15, 2016

R-4 IEP Dated June 6, 2017

R-5 IEP Dated May 9, 2018

R-6 Decision on Emergent Relief Dated June 22, 2018

R-7 Board of Education Graduation Policy

R-8 Board of Education Attendance Policy

R-9 T.T. Transcript

R-10 2015-2016 Report Card

- R-11 2016-2017 Report Card
- R-12 2017-2018 Report Card
- R-13 2015-2016 Attendance Report
- R-14 2016-2017 Attendance Report
- R-15 2017-2018 Attendance Report
- R-16 Attendance Contracts
- R-17 April 27, 2018 Correspondence regarding Graduation
- R-18 Absence Documentation Provided by T.T.
- R-19 Discipline History and Reports of T.T.
- R-20 C.V. of Tania Symmons
- R-21 C.V. of Juliann Hoebee
- R-22 C.V. of Lauren Cherny
- R-23 C.V. of Cesar Diliberto
- R-24 IEP Dated April 8, 2016
- R-25 IEP Dated June 3, 2016
- R-26 IEP Dated November 17, 2016
- R-27 IEP Dated October 5, 2016
- R-28 IEP Dated March 2, 2018