

JUSTIN WILLIAMS, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE TOWNSHIP : DECISION

OF WEST ORANGE, ESSEX COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner challenged the Board’s determination that he was not entitled to a free education in the District. The Board cross-claimed for tuition.

The ALJ determined that petitioner was not entitled to a free education in the District because family hardship pursuant to the affidavit portion of *N.J.S.A.* 18A:38-1 had not been established, but denied the Board’s request for tuition because it failed to seek it against the proper party, petitioner’s uncle, who is the domiciliary in the District.

The Commissioner set aside the ALJ’s decision. He first expressed concern that this matter, brought pursuant to *N.J.S.A.* 18A:38-1, which by its very terms contemplates a rapid resolution, is inexplicably more than two years old. The Commissioner next found that, because petitioner turned 18 after the Board denied his application as an affidavit student, and considering that the record does not reflect that the Board ever made a determination as to whether *petitioner* was domiciled in the District, and further taking into consideration the lengthy time lapse since the petition was filed, it would be inequitable to now conduct proceedings to determine whether petitioner was domiciled in the District during the 1999-2000 school year. Accordingly, the Commissioner dismissed the Board’s cross-claim for tuition.

November 26, 2001

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| <p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
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The record of this matter, including the audiotapes of the hearing conducted at the Office of Administrative Law (OAL), and the Initial Decision of the Administrative Law Judge (ALJ) have been reviewed. The Board filed timely exceptions, pursuant to *N.J.A.C.* 1:1-18.4, which were fully considered by the Commissioner in reaching his determination herein.

Upon careful and independent review of the record in this matter, the Commissioner determines, for the reasons set forth below, to set aside the Initial Decision of the ALJ. The Commissioner first finds it necessary to address the somewhat enigmatic procedural posture in which this matter comes before him. This case, initiated pursuant to *N.J.S.A.* 18A:38-1, which by its terms clearly contemplates expeditious resolution of these matters, is more than two years old. The Commissioner, further, notes that the record is devoid of information as to why these proceedings were delayed to the extent to which they were. Of particular import here is that the student petitioner in this matter graduated in June 2000. As such, at this point in time, properly framed, the issue before the Commissioner here is not a question of the continued

attendance of a student in the District's schools but, rather, whether a claim for tuition for a school year which commenced in excess of two years ago may appropriately be granted.

Turning, therefore, to the issue before him, the Commissioner observes that the within record indicates that in August 1999, when Justin Williams initially attempted to register for school in the District, he was 17 years old, and his uncle was, therefore, appropriately presented with, and asked to return, a completed affidavit application pursuant to *N.J.S.A.* 18A:38-1b(1).¹ However, there is no indication in the record that when Justin attained the age of majority on September 10, 1999, the Superintendent or the Board made a determination as to whether he was *domiciled* in the District, thereby entitling him to free attendance at its schools pursuant to *N.J.S.A.* 18A:38-1(a). The within Petition of Appeal was filed by 18-year-old Justin Williams on September 14, 1999, and it is from Justin that the Board seeks tuition,² yet the Board in its Answer solely relied on criteria applicable only to affidavit students and, as confirmed by hearing testimony, the Board's *solitary* basis for denying Justin admittance to its schools was an affidavit analysis.³

Under these unique circumstances and giving due regard to the significant amount of time which has transpired since the inception of this matter, the Commissioner finds no

¹ *N.J.S.A.* 18A:38-1b(1) is that portion of the relevant statute known as the "affidavit student" provision, which permits a child who is living with another person who is domiciled in the district to attend school free of charge, under certain conditions, where the domiciliary provides the requisite affidavits and proofs.

² It is noted that the Board additionally seeks tuition from Justin Williams' parents for "[failure] to satisfy the hardship standards set forth by statute in affidavit pupil cases***." (Board's Exceptions at 1) Pursuant to *N.J.S.A.* 18A:38-1b(1), it is the "resident," not the parents, who would bear liability for tuition if the evidence did not support his affidavit claim.

³ Respondent's exceptions attempt to justify application of affidavit criteria to Justin on grounds that he is unemancipated. The record is devoid of **any** indication that the Board considered Justin's application to its schools as a domiciliary. As such, the Board's arguments in this regard, *raised for the first time in its exceptions*, essentially attempting to relitigate this case as one of domicile, based only on its after-the-fact assertions, are rejected.

equitable justification, at this point in time, to direct further proceedings *to determine whether Justin Williams was domiciled in West Orange in September 1999.*⁴

Accordingly, the Initial Decision of the OAL is set aside and the instant Petition of Appeal and the Board's request for tuition are hereby dismissed.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: November 26, 2001

Date of Mailing: November 28, 2001

⁴ It is noteworthy that hearing testimony indicates that, almost 1-1/2 years after his graduation from high school, Justin continues to live in his uncle's home in West Orange and has attended Essex County Community College since September 2000.

⁵ This decision, as the Commissioner's final determination 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. 6A:2-1.1 et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.