

P.B.K., on behalf of minor child, E.Y.,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF TENAFLY, BERGEN	:	
COUNTY,	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning uncle challenged the Board’s determination that minor child, E.Y., was not domiciled in the District and, therefore, not entitled to a free public education in its schools.

ALJ found that E.Y. was not seeking to be educated in Tenaflly solely for the purpose of receiving a free education within the District. ALJ found that E.Y. did meet the requirements of the “affidavit student” law as articulated in *Gunderson*. Thus, the ALJ concluded that E.Y. was entitled to admittance in the District’s schools free of charge. Respondent’s motion for summary judgment was denied.

Commissioner determined to reverse the initial decision of the ALJ. Commissioner concurred with the ALJ that the matter was properly analyzed under *N.J.S.A.* 18A:38-1b(1), the “affidavit student” provision. Commissioner noted, however, that notwithstanding petitioner’s apparently undisputed claims of supporting E.Y. *gratis*, he did not provide a sworn statement by the parent or guardian, together with supporting documentation, that E.Y.’s parents are not presently capable of supporting or providing care for E.Y. due to family or economic hardship, and that E.Y. is not residing with petitioner solely for the purpose of receiving a free education in the District. (*J.B.* State Board decision) Commissioner directed petitioner to remit to the Board tuition for E.Y., prorated to the time of his ineligible attendance in the District.

OAL DKT. NO. EDU 3637-97
AGENCY DKT. NO. 70-2/97

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to reverse the initial decision of the ALJ, for the reasons set forth herein.

Initially, the Commissioner concurs with the ALJ's and the Board's view that, since petitioner has not brought forth proof that he has gained legal custody of his nephew, then E.Y. cannot be found to be domiciled with him, since the domicile of an unemancipated minor follows that of the parent or guardian having legal control over him. See *Clifton Board of Education v. Vincent Sauro and Mildred Sauro*, 96 *N.J.A.R.* 2d (EDU) 497 at 500, citing

Mansfield Twp. v. State Board of Education, 101 N.J.L. 474, 478 (Sup. Ct. 1925). Thus, the matter is properly analyzed under N.J.S.A. 18A:38-1b(1), the “affidavit student” provision.

The Commissioner further agrees with the Board that, notwithstanding petitioner’s apparently undisputed claims that he is supporting E.Y. *gratis*, that he will assume all personal obligations for E.Y. relative to school requirements, and that he intends to keep E.Y. and support him gratuitously for a longer period than the school term, petitioner must also provide a sworn statement by the child’s parent or guardian, together with supporting documentation, that E.Y.’s parents are “not capable of supporting or providing care for the child due to a family or economic hardship *and* that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district.”***” (emphasis added) (N.J.S.A. 18A:38-1b(1)) See, *J.B. on behalf of her grandchild, R.H. v. Board of Education of the Twp. of Ocean, Monmouth County*, decided by State Board of Education September 3, 1997.

Here, both petitioner and E.Y.’s parents have specifically affirmed that E.Y. is living with his uncle because he “wants to continue his education in the United States.” (Initial Decision at p. 3, citing parental affidavit) Further, as the Board noted in its exceptions, petitioner has not established, nor has he even claimed, that E.Y.’s parents, due to family or economic hardship, are not presently capable of supporting or providing care for E.Y.; instead, petitioner incorrectly argues that this provision of the statute is inapplicable in this matter. In this regard, the Commissioner is cognizant of the State Board’s recent guidance concerning a petitioner’s burden to demonstrate family or economic hardship in order to fulfill the requirements of the affidavit student statute. The State Board has specifically provided that

***in order to satisfy that standard, the family or economic hardship must be real and demonstrable, evincing a current incapability on the part of [the minor child’s] parents to support him

or provide care as the result of that hardship.” (*J.B., supra*, slip opinion at p. 6)

Accordingly, the initial decision of the ALJ determining that E.Y. is entitled to admittance in the Board’s district is reversed. Further, with respect to the ALJ’s statement that, absent a conclusion that E.Y. is entitled to admittance in the Board’s district, E.Y. “****would otherwise have no entitlement to an education anywhere in the U.S.” (initial decision at p. 9), the Commissioner notes that, should E.Y.’s parents wish to procure an education for their son in a school district in New Jersey, they may presumably do so, with the consent of the local board, by paying the necessary tuition, in accordance with *N.J.S.A.* 18A:38-3. Having determined, however, that petitioner fails to meet the relevant statutory requirements, the Commissioner cannot find that E.Y. is entitled to a *free* education and, accordingly, directs, pursuant to *N.J.S.A.* 18A:38-1b(1), that petitioner remit to the Board tuition for E.Y., prorated to the time of his ineligible attendance in the District.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

DATE: October 14, 1997