

R.N., on behalf of minor, S.A.H., :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF HADDON HEIGHTS,
CAMDEN COUNTY AND BOARD :
OF EDUCATION OF THE BOROUGH :
OF LAWNSIDE, CAMDEN COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning parent challenged Board’s residency determination based on his possession of a custody order for minor child, S.A.H.

ALJ concluded that petitioner did not show that the requirements of *N.J.S.A. 18A:38-1(b)*, the “affidavit student” provision were met; thus, S.A.H. was not entitled to a free, public education from the District.

Commissioner affirmed the initial decision with modification. Commissioner noted that once petitioner became the legal guardian of S.A.H., the appropriate inquiry for the Board was whether S.A.H. and petitioner were domiciliaries of the District, pursuant to *N.J.S.A. 18A:38-1a*. Therefore, the matter should not be reviewed as a petition filed pursuant to *N.J.S.A. 18A:38-1b(1)*. Moreover, when petitioner brought his initial Petition of Appeal before the Commissioner, prior to petitioner’s obtaining the custody order, it was determined that S.A.H. lived with her mother outside of the District. Thus, without evidence of S.A.H. being domiciled in the District, the Commissioner determined S.A.H. was not entitled to a free public education on the District pursuant to *N.J.S.A. 18A:38-1a*.

April 24, 1998

OAL DKT. NO. EDU 2443-97
AGENCY DKT. NO. 14-1/97

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_____ :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the decision of the ALJ, with modification as set forth below.

Initially, the Commissioner notes that once R.N. became the legal guardian of S.A.H., the appropriate inquiry for the Board was whether S.A.H. and R.N. were domiciliaries of the District, pursuant to *N.J.S.A. 18A:38-1a*; therefore, this matter should not be reviewed as a petition filed pursuant to *N.J.S.A. 18A:38-1b(1)*, the “affidavit student” provision. In this regard, the Commissioner recognizes that the domicile of a minor child follows that of the parent or guardian having *legal control* over her, *Mansfield Twp. Board of Education v. State Board of Education*, 101 *N.J.L.* 474, 479, 480 (Sup. Ct. 1925). Where there is no indication of fraud on

the part of a petitioner, *V.H. v. Board of Education of the Township of Quinton*, 97 N.J.A.R. 2d (EDU) 124, 125, aff'd State Board of Education 554, and where it does not appear that the custody order is a temporary one, the custody order will be accepted on its face. *L.A. v. Town of West Orange*, 97 N.J.A.R. 2d (EDU) 266, 269, aff'd State Board of Education 554. Petitioner's motives for obtaining the custody order need not be determinative. (*Id.*)

However, in the instant matter, the Commissioner finds it noteworthy that petitioner failed to respond to the Board's interrogatories, despite repeated warnings, which forthrightly requested, *inter alia*, evidence that S.A.H. was domiciled in the Borough of Lawnside and living with petitioner.¹ Although served with the interrogatories by letter dated April 3, 1997, and required to respond within 15 days, petitioner failed to do so.² Additionally, petitioner *twice* failed to appear at the scheduled hearings, despite fair notice of the dates. Thus, the record is devoid of evidence, save for petitioner's bare allegation in his Petition of Appeal, that S.A.H., in fact, lived with petitioner at the relevant time period in question. (Petition of Appeal, December 27, 1996)³ Moreover, the Commissioner is mindful that, when petitioner brought his initial Petition of Appeal before him, prior to petitioner's obtaining the custody order, it was determined that

[t]here seems to be no dispute in this matter that S.A.H. lives with her mother, B.N. in Stratford, which is not in the Lawnside School District. R.N. has admitted to this, in his [petition]. B.N. also states this in her submission. *R.N., on behalf of minor, S.A.H., v.*

¹ It is noted that, to the extent the Board's interrogatories also placed emphasis on the financial support which petitioner provided to S.A.H., such inquiries are relevant to an analysis under *N.J.S.A. 18A:38-1b(1)*, the affidavit student provision. An analysis under *N.J.S.A. 18A:38-1a*, however, does not necessarily ascribe significance to financial circumstance.

² Petitioner merely submitted, on November 7, 1997, a list of case citations and a copy of a pupil permit, which were non-responsive. (Initial Decision at p. 5)

³ At the time petitioner filed the Petition of Appeal, S.A.H. was a senior. The Board asserts, however, that S.A.H. did not finish the 1996-97 school year in its District. (Board's Letter to Judge Clark, October 27, 1997 at p. 2)

Board of Education of the Borough of Lawnside, decided October 15, 1996, Slip. Op. at p. 2.

Thus, under these particular circumstances, the Commissioner cannot be persuaded that petitioner has demonstrated by a preponderance of credible evidence that S.A.H. was, or is, entitled to a free public education in the Board's District pursuant to *N.J.S.A.* 18A:38-1a.

Accordingly, the initial decision of the ALJ is affirmed, as modified. The within Petition of Appeal is hereby dismissed.⁴

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

April 24, 1998

⁴ This decision, as the Commissioner's final determination in the instant matter, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.