

E.L., on behalf of :
minor child, A.H.,

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
MORRIS HILLS REGIONAL SCHOOL :
DISTRICT, MORRIS COUNTY, :

RESPONDENT. :
_____ :

SYNOPSIS

Petitioning grandparent challenged Board’s residency determination.

The ALJ concluded that petitioner satisfied the two-part statutory test under the “affidavit student” provision of *N.J.S.A.* 18A:38-1b(1) to be entitled to a free public education in respondent’s District.

The Commissioner affirmed the ALJ’s determination that A.H. was entitled to attend school in the District pursuant to the “affidavit student” provision in *N.J.S.A.* 18A:38-1b(1) for the period prior to March 25, 1997. The Commissioner modified the Initial Decision as it pertains to the period after March 25, 1997, the date on which A.H. reached the age of majority, underscoring that after that date A.H. acquired the right to choose her own domicile, the record demonstrated that A.H. was domiciled in respondent’s District and, thus, A.H. was entitled to a free public education pursuant to *N.J.S.A.* 18A:38-1a.

February 15, 2000

OAL DKT. NO. EDU 3172-97
AGENCY DKT. NO. 32-1/97

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm, with modification, the Initial Decision of the Administrative Law Judge (ALJ). In so doing, the Commissioner underscores that, *prior to March 25, 1997*, the date on which A.H. turned 18 years old, this matter was governed by *N.J.S.A. 18A:38-1b(1)*, 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. Like the ALJ, the Commissioner is satisfied that, for the aforementioned period of time, A.H. was entitled to attend school in the District pursuant to *N.J.S.A. 18A:38-1b(1)*.¹

¹ Here, the Board issued its ineligibility decision on January 27, 1997 and petitioners filed their Petition of Appeal on January 31, 1997. The record indicates that the Board *was aware* that A.H. would soon turn 18, (*see* Answer at 2, para. 4; Board’s Exhibits A and B), notwithstanding that its submissions were rife with references to “the minor, A.H.” (Board’s Initial Set of Interrogatories, June 20, 1997 at 5, 7, 8, 11, 12)

However, upon reaching age of majority, A.H. acquired “the same legal capacity to act and the same powers and obligations as a person 21 or more years of age.” *N.J.S.A. 9:17B-3*.² As such, the Commissioner finds that A.H. acquired the right to choose her own domicile.³ Thus, after March 25, 1997, as long as A.H. was a domiciliary of the District, she was entitled to attend school there, pursuant to *N.J.S.A. 18A:38-1a*. In this connection, the record indicates that A.H. had lived in Denville since July of 1996 (Initial Decision at 4), and that, when this matter was heard in the summer of 1997, A.H.’s driver’s license listed the Denville address, her passport identified the Denville address as her address of record, and she had both bank and phone accounts established in Denville. (Board’s Initial Set of Interrogatories, June 20, 1997 at number 5). *Indeed, the Board offered no evidence that A.H. resided elsewhere while she attended school in the District.* Consequently, the Commissioner determines that A.H. was entitled to a free public education in the Board’s District after March 25, 1997, pursuant to *N.J.S.A. 18A:38-1a*.⁴

² “Effective January 1, 1973, the Legislature lowered the age of majority in New Jersey from twenty-one to eighteen. *L.1972, c. 81* (codified at *N.J.S.A. 9:17B-1 to -3*). *N.J.S.A. 9:17B-1* consists of a legislative declaration of intent, pending revision and amendment of other statutes, to extend to eighteen-year-olds the basic civil and contractual rights and obligations that previously had been available only to those twenty-one years of age or older:

including the right to contract, sue, be sued and defend civil actions, apply for and be appointed to public employment, apply for and be granted a license or authority to engage in a business or profession subject to State regulation, serve on juries, marry, adopt children, attend and participate in horse race meetings and parimutuel betting and other legalized games and gaming, *** sell, purchase and consume alcoholic beverages, act as an incorporator, registered agent or director of a corporation, consent to medical and surgical treatment, execute a will, and to inherit, purchase, mortgage or otherwise encumber and convey real and personal property.”

Green v. Auerbach Chevrolet Corp., 127 *N.J.* 591, 594 (1992).

³ In so finding, the Commissioner does not agree that financial self-sufficiency is a relevant consideration in a matter of this type (Initial Decision at 3), as opposed to a proceeding to determine emancipation for purposes of deciding entitlement to continued maintenance and support.

⁴ Although the parties do not so specify, it appears from the record that A.H. was a junior in high school at the time this matter was filed in January 1997 and, therefore, has likely graduated.

Accordingly, the Initial Decision of the ALJ is affirmed and modified as noted herein.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: February 15, 2000

Date of Mailing: _____

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. 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.