

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF CAMDEN, :
CAMDEN COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

C. ANN VOLK, EXECUTIVE COUNTY : DECISION
SUPERINTENDENT, NEW JERSEY STATE :
DEPARTMENT OF EDUCATION, AND :
E.H., ON BEHALF OF MINOR CHILD, K.M., :

RESPONDENTS. :

SYNOPSIS

Petitioner, the State-Operated School District of Camden (SOSD Camden), contended that E.H. and her family, including K.M., are residents of the City of Camden – despite previously being homeless after losing their home in Voorhees Township – and now live in a Camden home that is “fixed, regular and adequate,” thus precluding a determination that they are homeless. Consequently, the petitioner urged that K.M. is entitled to a free public education in Camden schools, not in Voorhees Township schools. The Executive County Superintendent rejected the petitioner’s position, concluding that E.H. and K.M. were homeless and, as such, K.M. is entitled to attend school in Voorhees Township – the district of origin – at the expense of SOSD Camden, which is responsible for both K.M.’s tuition and transportation costs. E.H. has never filed an answer to the petition. Petitioner filed a motion for summary decision.

The ALJ found, *inter alia*, that: documents filed by the family in this case indicate that at some point following April 2011, E.H. and her children were forced out of necessity to move in with E.H.’s mother at her residence in Camden, and no longer had a regular or permanent home of their own; the essential question here is whether their homeless state continues today; evidence supports a determination that E.H. and her family have resided at the same address on Bradley Avenue in Camden since 2011, and – as there is no material dispute on this question – summary decision as to the family being domiciled in Camden is warranted; petitioner’s assertions that the Bradley Avenue residence is fully equipped and meets the criteria for a “fixed, regular and adequate” home have not been refuted by the parent or the County Superintendent; the County Superintendent, however, determined that the family is homeless and therefore Camden is responsible for tuition and transportation costs; and the record is devoid of competent evidence to explain the present intentions or resources of the E.H. – who has selected not to participate in these proceedings. The ALJ concluded that: there are no material issues in dispute, and summary decision is warranted in favor of the petitioner; E.H. and K.M. are not homeless, but domiciled in the city of Camden; and, accordingly, petitioner is responsible to provide K.M. with a free public education in its schools.

Upon full review and consideration, the Commissioner determined to remand this matter to the OAL for further proceedings, finding, *inter alia*, that: the ALJ failed to address all of the issues raised in the petition, and petitioner is entitled to findings of fact and conclusions of law on these issues; the ALJ erred in granting summary decision to petitioner on the issue of the family no longer being homeless, as petitioner failed to provide sufficient evidence to support its allegation that K.M. currently resides in a fixed, adequate and regular residence; and the record is devoid of evidence regarding K.M.’s present living conditions, as well as the resources and intentions of her parent.

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.

OAL DKT. NO. EDU 6081-15
AGENCY DKT. NO. 371-12/14

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The record and the Initial Decision of the Office of Administrative Law have been reviewed, along with respondent Volk’s exceptions – filed in accordance with *N.J.A.C.* 1:1-18.4 – and petitioner’s reply thereto. Upon such review, and consideration of all submissions, the Commissioner is constrained to remand this matter to the OAL for further proceedings.

First, the Administrative Law Judge (ALJ) failed to address all of the issues raised within the Petition of Appeal; the Initial Decision is silent as to Counts Two through Five, as well as petitioner’s request for reimbursement from the State. Because petitioner is entitled to findings of fact and conclusions of law on those issues, a remand is warranted.

Second, the ALJ erred in granting summary decision to petitioner on Count One because petitioner failed to provide sufficient evidence in support of its allegation that K.M. presently resides in a fixed, adequate, and regular residence and is, therefore, not homeless. *See Contini v. Bd. of Educ.*, 286 *N.J. Super.* 106, 121-122 (App. Div. 1995) (citing *Brill v. Guardian*

Life Ins. Co., 142 N.J. 520, 523 (1995) (the moving party must present sufficient evidence in support of its motion for summary decision).

The Commissioner has determined that “an evaluation of ‘homelessness’ cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality. The reasons for a child’s homelessness, the child’s living conditions, and the resources and intentions of the parents or custodians are relevant.” *M. O’K. v. Board of Education of the Borough of Cresskill, Bergen County*, OAL Dkt. No. EDU 14830-13, Commissioner Decision No. 325-14, issued August 12, 2014, at 3. Here, the record is devoid of evidence regarding the child’s present living conditions, as well as the resources and intentions of her parent or guardian. Petitioner’s bare assertions that the Bradley Avenue home is regular, fixed and adequate are unsupported by the record. The only certification petitioner submitted in connection with its motion (from its school business administrator) merely confirms that K.M. presently resides at the Bradley Avenue address. Additionally, results of a public records search relied upon by petitioner suggest that E.H. has utilized the Bradley Avenue address to receive mail and pay bills. This information – taken alone and out of context – does not compel the conclusion that K.M. is not considered a homeless child under relevant federal and state law. Given the lack of information contained in the record, a plenary hearing centered upon a comprehensive, fact-specific examination of the family’s circumstances is required to determine whether K.M. is homeless.¹ See, e.g., *Board of Education of the Town of Hammonton, Atlantic County v. Board of Education of the City of Gloucester, Camden County*, OAL Dkt. No. EDU 18573-13, Commissioner Decision No. 311-14, issued July 31, 2014, at 4.

¹ Although E.H. has elected not to participate as a respondent in this matter, nothing prevents either remaining party from compelling her – or any other occupant of the Bradley Avenue home – to testify at a plenary hearing.

Accordingly, petitioner's motion for summary decision is denied, respondent Volk's cross-motion for partial summary decision is denied², and the matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2016

Date of Mailing: March 18, 2016

² The Commissioner concurs with the ALJ that petitioner's failure to name the Eastern Camden Regional Board of Education as a respondent does not warrant dismissal of the petition of appeal. (Initial Decision at 4)