

**New Jersey Commissioner of Education**  
**Final Decision**

Board of Education of the Township of Pennsauken,  
Camden County,

Petitioner,

v.

Lovell Pugh-Bassett, Interim Executive County  
Superintendent; Board of Education of the Township  
of Haddon, Camden County; and A.A., on behalf of  
minor child, A.L.,

Respondents.

**Synopsis**

Petitioner, the Board of Education of the Township of Pennsauken (Pennsauken), appealed the determination of the respondents, Lovell Pugh-Bassett, Interim Executive County Superintendent (Pugh-Bassett), and the Board of Education of the Township of Haddon, that A.A. and her minor child are homeless. Pennsauken contended that A.A. and A.L. are domiciled in Pennsauken, as they have resided in the Pennsauken home of A.A.’s mother for more than eighteen months, and further argued that Pennsauken is therefore not financially responsible for tuition costs related to A.L.’s attendance in Haddon Township schools. Pennsauken and Pugh-Bassett filed cross-motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; the issue to be determined here is whether A.A. and her minor child are homeless; although respondent A.A. has repeatedly indicated that her residence in Pennsauken is temporary, she has been living in her mother’s Pennsauken home since 2017; as such, A.A. cannot continue to be considered homeless even if she initially moved to Pennsauken because she had been evicted from her previous home in Haddon Township. The ALJ determined that the family is no longer homeless as they have resided in Pennsauken at a fixed, regular and adequate nighttime residence for more than one year; therefore, Pennsauken has no financial responsibility for A.L.’s attendance in Haddon Township schools, and A.L. should be placed in Pennsauken schools if A.A. so desires. Accordingly, the ALJ granted Pennsauken’s motion for summary decision and reversed Pugh-Bassett’s homelessness determination.

Upon review, the Commissioner is constrained to remand this matter to the OAL as she is unable to determine from the present record whether the family is homeless. The Commissioner noted, *inter alia*, that although domicile attaches immediately when a child’s dwelling becomes fixed, regular and adequate, homelessness determinations require a fact-specific analysis that includes the intentions of the parents or guardians. *M. O’K. v. Board of Education of the Borough of Cresskill, et al*, Commissioner Decision No. 325-14, decided August 12, 2014 at 3, *aff’d*, A-0828-14T4 (App. Div. Sept. 8, 2016). Such an analysis is not possible based upon the record before the Commissioner, as it is unclear whether the family is residing in the Pennsauken home out of necessity or whether it has become a permanent residence. Accordingly, the cross motions for summary decision were denied and the matter was remanded to the OAL for further proceedings consistent with the Commissioner’s decision.

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.

January 6, 2021

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Superintendent; Board of Education of the  
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A.A., on behalf of minor child, A.L.,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by respondent Lovell Pugh-Bassett, Interim Executive County Superintendent (Pugh-Bassett), and the reply thereto filed by petitioner Pennsauken Board of Education (Pennsauken). Respondent Haddon Township Board of Education (Haddon Township) and respondent A.A. did not file exceptions.

This matter involves a homelessness determination regarding A.A. and her minor child, A.L. The family resided in Haddon Township from 2012 through 2016, when they were evicted due to financial hardship. After temporarily living with a friend in Bellmawr, they

moved into A.A.'s mother's home in Pennsauken in August or September of 2016 or 2017.<sup>1</sup> A.A. previously lived in the home for fifteen years as a child. The house has an unspecified number of bedrooms, a bathroom, electricity, running water, television, and a kitchen with a refrigerator, oven and stove top. While living in the Pennsauken home, A.A. cared for her mother, who had become handicapped. However, A.A. indicated in discovery responses that she wants to get her own place and possibly take her mother with her.

A.L. has continued to attend school in Haddon Township from the time the family was evicted in 2016 to the present. Upon moving to Pennsauken, A.A. informed Haddon Township on September 13, 2017 that her goal was to move back to the township so A.L. could finish elementary school at Strawbridge Elementary. She told Haddon Township again, on July 31, 2018, that her Pennsauken address was still temporary and that she wanted A.L. to remain enrolled in Haddon Township's schools. On August 2, 2018, Haddon Township informed Pennsauken that as of September 1, 2018, A.L. would be deemed domiciled in Pennsauken because the family had lived there for one year. At that time, Pennsauken became financially responsible for the cost of A.L.'s education in Haddon Township. On December 17, 2018, following a meeting with Pennsauken's Homeless Liaison, A.A. informed the district that her living arrangement was temporary and that she was doubling up with more than one family due to economic hardship.

Following a request by A.A. to determine A.L.'s McKinney-Vento eligibility, Pugh-Bassett issued a determination on March 28, 2019, which found that A.L. is homeless, as the family lost their apartment due to financial hardship and has been residing with relatives out of necessity. Accordingly, Pugh-Bassett found that Pennsauken is financially responsible for

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<sup>1</sup> The timeline of when A.A. moved into the Pennsauken home is unclear. While A.A.'s answer admits that she moved in August or September of 2017, her responses to interrogatories indicate that it was 2016.

A.L.'s education. Pennsauken filed an appeal challenging the homelessness determination, seeking for A.L. to be placed in Pennsauken's schools, if the family so desires, and a finding that Pennsauken would not be financially responsible for A.L. to attend Haddon Township schools.

On cross-motions for summary decision, the Administrative Law Judge (ALJ) concluded that the family was not homeless as they have resided at a fixed, regular and adequate nighttime residence for more than one year in Pennsauken. The ALJ found that although A.A. has repeatedly indicated that the residence is temporary, she has been living in her family home in Pennsauken since 2017. As such, even if she initially moved to Pennsauken because she had been evicted, she cannot continue to be considered homeless. Accordingly, the ALJ found that Pennsauken has no financial responsibility for A.L.'s attendance at Haddon Township's schools, and that A.L. should be placed in Pennsauken's schools, if A.A. desires.

Upon review, the Commissioner is constrained to remand this matter as she is unable to determine from the present record whether the family is homeless. Under the McKinney-Vento Act, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children sharing housing with other persons due to loss of their own housing, economic hardship, or a similar reason." 42 *U.S.C.A.* § 11434a. Similarly, under state law, homeless children are defined as "child[ren] or youth who lack[] a fixed, regular and adequate residence pursuant to *N.J.S.A.* 18A:7B-12 and *N.J.A.C.* 6A:17-2.2," which includes children living in the "residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own." *N.J.A.C.* 6A:17-1.2 and 2.2 (emphasis added).

Thus, conducting a homelessness evaluation to determine whether a child's home is considered fixed, regular and adequate requires a fact-specific analysis and "cannot rest upon a

simple calculation of the amount of time that children have spent in a particular location or municipality.” *M. O’K. v. Board of Education of the Borough of Cresskill, et al*, Commissioner Decision No. 325-14, decided August 12, 2014 at 3, *aff’d*, A-0828-14T4 (App. Div. September 8, 2016). In conducting such a fact-specific inquiry, the Commissioner must consider the totality of the circumstances, as “[t]he reasons for the children’s homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant.” *Ibid*.

The Commissioner has previously addressed the fact-specific nature of a homelessness inquiry. In *M. O’K., supra*, following the foreclosure of their home in Cresskill, the O’K family occupied the bottom floor of their relatives’ house in Little Ferry, which consisted of one small bedroom and a common area, without a bathroom or kitchen. The parents and two of the children shared the bedroom, while their third child slept in the common area. At the time of the litigation, neither parent was employed, and the family’s sole income consisted of Social Security Disability benefits. During the pendency of the litigation, the O’K family represented that they were actively searching for a house in Cresskill. The Commissioner found, and the Appellate Division affirmed, that the O’K family became homeless due to the foreclosure of their home in Cresskill, and although they had been deemed domiciled in Little Ferry as a result of their residence in the district for over one year, they continued to remain homeless due to their shared living conditions and the parents’ economic hardship.

In contrast, in *State-Operated School District of the City of Camden, Camden County v. C. Ann Volk, Executive County Superintendent, New Jersey Department of Education, and E.H., on behalf of minor child, K.M.*, Commissioner Decision No. 172-17R, decided June 20, 2017, the family relocated from Voorhees to Camden due to economic hardship that prevented them from continuing their lease. In the Camden residence, the family was able to use

the entire residence and was not relegated to a portion of the home that would otherwise be considered inadequate. E.H., the children's mother, argued that the residence was inadequate because the siblings had to share a room, which the Commissioner found was not uncommon. Furthermore, given E.H.'s ongoing employment at an annual salary of \$65,000, the Commissioner was not persuaded that she was unable to find suitable housing in Voorhees, particularly in light of her testimony that she had stopped looking for apartments. The Commissioner found that the family was not residing in the Camden residence out of necessity and that it qualified as a "fixed, regular, and adequate" nighttime residence, such that the family was not homeless. *Ibid.*

Similar to *Volk*, in *J.G., on behalf of minor children, T.G. and C.G. v. Board of Education of the Township of Edison, et al*, Commissioner's Decision No. 125-20, decided June 15, 2020, the G. family moved in with J.G.'s mother in Edison after being evicted from their home in Milltown. The family was able to use three of the four bedrooms, the kitchen, bathrooms, all common areas, and utilities in the Edison home. J.G. and his wife were both employed, with an income of \$71,000 a year, but they did not pay rent or contribute to housing costs, other than food and a storage facility. While they stated that their intent was to move back to Milltown, there was no documentation of their search for a new home, and J.G. admitted that he had not submitted a rental application in at least six months. The Commissioner found that, while J.G.'s intention may be to eventually move back to Milltown, the totality of the facts and circumstances demonstrate that the family is no longer homeless.

Here, the Commissioner cannot determine on the present record whether A.L. is homeless because it is unclear if the family is residing in the Pennsauken home out of necessity or whether it has become a permanent residence. There was no hearing on the merits, and A.A.'s

discovery responses fail to paint a clear picture as to the family's living situation. All the record demonstrates is that the home has bedrooms, a bathroom, and a kitchen. As such, the Commissioner cannot establish whether A.A. and A.L. have their own rooms, share a room, or sleep in a common area. Additionally, the Commissioner has no information on whether A.A. has an income, such that she can afford rent, or whether she has made any efforts to find a permanent home in Haddon Township. The fact that she has lived in the Pennsauken home for three years does not alone demonstrate that she is no longer living there out of necessity, especially when weighed against her stated intent that the living situation is temporary. Therefore, further information is necessary to determine whether the home is fixed, regular and adequate such that A.L. is no longer homeless under state and federal law.

Accordingly, Pennsauken's motion for summary decision is denied, Pugh-Bassett's cross-motion for summary decision is denied, and the matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 6, 2021  
Date of Mailing: January 6, 2021



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 16086-2019

AGENCY REF. NO. 94-5/19

BOARD OF EDUCATION OF THE  
TOWNSHIP OF PENNSAUKEN, CAMDEN COUNTY,  
Petitioner,

LOVELL PUGH-BASSETT, INTERIM EXECUTIVE COUNTY  
SUPERINTENDENT; BOARD OF EDUCATION OF HADDEN  
TOWNSHIP, CAMDEN COUNTY; AND A.A. ON BEHALF OF  
MINOR, A.L.

Respondents.

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William C. Morlok, Esq., for petitioner Pennsauken Township Board of Education  
(Parker McCay, P.A., attorneys)

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Department of Education and Lovell Pugh-Bassett (Gurbir S. Grewal,  
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A.A., o/b/o Minor Child, A.L., respondent, pro se

Record Closed: August 27, 2020

Decided: October 9, 2020

BEFORE CATHERINE A. TUOHY, ALJ:

### STATEMENT OF THE CASE

Petitioner, Board of Education of the Township of Pennsauken (Pennsauken), challenges the homelessness determination by the County Executive Superintendent. Petitioner contends that A.A. and her minor child, A.L., are not homeless, but are domiciled in their school district, having lived with A.A.'s mother (and A. L.'s grandmother) in the township of Pennsauken for over one and a half years. At issue is whether A.A.

and her minor child are homeless.

### PROCEDURAL HISTORY

This matter arose with the filing of a petition of appeal by Pennsauken on May 6, 2019. The State respondents, the New Jersey Department of Education (DOE) and Interim Executive County Superintendent Lovell Pugh-Bassett (ECS Pugh-Bassett) filed an answer on October 29, 2019. Respondent Haddon Township Board of Education (Haddon Township) filed its answer on November 12, 2019. The matter was transmitted by the Department of Education Office of Controversies and Disputes to the Office of Administrative Law (OAL) as a contested matter where it was filed on November 13, 2019 pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. An initial telephone pre-hearing conference was conducted on January 9, 2020 and subsequent telephone conferences were conducted February 19, 2020, February 26, 2020 and March 11, 2020.

A.A. did not appear for these conference calls. An initial hearing was scheduled for March 26, 2020 but was adjourned due to COVID-19. A follow-up telephone conference was conducted on June 12, 2020 at which time A.A. appeared and agreed to file an answer and provide discovery.

A.A., on behalf of her minor child A.L., filed an answer to the petition and provided answers to interrogatories and responses to requests to admit on July 6, 2020. A subsequent telephone conference was conducted on July 9, 2020 at which time all

parties appeared. It was agreed that the matter was appropriate for summary decision as there were no material facts in dispute as evidenced by A.A.'s answer to the petition, answers to interrogatories and responses to requests to admit. Pennsauken filed a motion for summary decision dated July 14, 2020. The State respondents filed opposition to same and cross-moved for summary decision dated August 10, 2020. Pennsauken filed its reply and opposition to the cross-motion on August 17, 2020. There being no further submissions filed, the record closed on August 27, 2020.

### FACTUAL DISCUSSIONS AND FINDINGS

Based on the documents submitted by the parties in support of and in opposition to the motions for summary decision, I FIND the following as FACT:

Respondent, A.A. and her minor child, A.L. resided in Haddon Township from 2012 through 2016. Due to financial hardship, A.A. was evicted from her Haddon Township residence in 2016 and she and her daughter moved in temporarily with a friend in Bellmawr. In August or September 2017, A.A. and her daughter moved in with A.A.'s mother in her Pennsauken home and continue to reside there. At all times relevant herein, A.L. has attended school at Strawbridge Elementary in Haddon Township.

On September 13, 2017, A.A. completed a Haddon Township Homeless Students Parent Consultation and Educational Placement Form indicating that the Pennsauken address was a temporary address and that her last district of residence was the Haddon Township address and her previous school attended was Strawbridge Elementary in Haddon Township. A.A. indicated on the form that her goal was to move back to Haddon Township so A.L. could finish out elementary school at Strawbridge Elementary (Petition, Exhibit A).

A.A. also filled out a McKinney-Vento Education Program registration form dated September 13, 2017 but noted that she did not need any of those services, but if things changed, she would contact them (Petition, Exhibit A).

On July 31, 2018, A.A. completed another Haddon Township Homeless Students Parent Consultation and Educational Placement Form indicating that the Pennsauken address was still a temporary residence and her last district of residence was in Haddon

Township. She indicated that she wanted A.L. to attend Strawbridge Elementary again (Petition, Exhibit A).

By letter dated August 2, 2018, Anthony Fitzpatrick, Haddon Township Supervisor of Instruction wrote to Mitzi Giletto, the Pennsauken Homeless Education Liaison and advised that A.L. will become a legal resident of Pennsauken on September 1, 2018 after one full year of being categorized as being homeless, based on the Egg Harbor v. Mainland decision that established that a homeless family is considered to be legally domiciled in a school district after being in that district for a year (Petition, Exhibit A).

On December 17, 2018, A.A. met with the Homeless Liaison for Pennsauken, Rochelle Elliot, who completed a Pennsauken School District Family in Transition Form — Family Information interview with A.A. The form indicated that the last school attended was Strawbridge Elementary and her last permanent address was her Haddon Township address. The handwritten notes on the form indicate that "Mom is back in her childhood home." Under the "Reason for being homeless" section of the form, there is a handwritten note "Father passed who was paying half of the rent which resulted in her being evicted. Since his passing her mom has become handicapped. She is the caregiver @ this time. She wants her dgt to complete Strawbridge." (Petition, Exhibit C.)

A.A. completed a Pennsauken School District Student Residency Affidavit as to Homeless Status, dated December 17, 2018 and indicated that her current Pennsauken address was a temporary living arrangement due to loss of housing or economic hardship.

A.A. indicated on the form that her last permanent address was the Haddon Township address and where the form indicated "Student's Present Living Situation", A.A. checked off "Doubling-Up with more than one family in a house or apartment for economic hardship/similar reason". A.A. indicated on the form that it was her wish that her child return to her previous school, Strawbridge Elementary in Haddon Township (Petition, Exhibit C).

Also, during the meeting of December 17, 2018, A.A. completed another McKinney-Vento Regional Education Program intake form but wrote on the form that A.L.

was in no need of additional services, but if anything changed, she would notify the Pennsauken liaison. (Petition, Exhibit C.)

By letter dated March 28, 2019, respondent ECS Pugh-Bassett, advised the Pennsauken Superintendent that the DOE Camden County Office of Education had been contacted by A.A. to make a McKinney-Vento eligibility determination for A.L. Based on the criteria outlined at N.J.A.C. 6A:17-2.2, the county office determined that A.L. is McKinney-Vento eligible and that Pennsauken is fiscally responsible for the student based on the fact that the family lost their apartment due to financial hardship and that the family is residing with friends/relatives out-of-necessity (Petition, Exhibit D).

A.A. has lived in the Pennsauken home for over fifteen years of her life, as it was her family home.

A.A. is living in the Pennsauken home and taking care of her mother who is disabled.

The Pennsauken home has bedrooms; a bathroom; a kitchen with a refrigerator, oven and stove top; running water; electricity; and a television. The Pennsauken home is an adequate place to live with regular sleeping accommodations.

### LEGAL ANALYSIS

The petitioner, Pennsauken and respondents, DOE and ECS Pugh-Basset, both seek relief pursuant to N.J.A.C. 1:1-12.5. Petitioner seeks summary decision determining that: A.A. and A.L. are not homeless as they have resided at a fixed, regular and adequate residence for over twelve months in Pennsauken; that Pennsauken has no financial responsibility for A.L.'s attendance at Haddon Township schools; and that A.L. should be placed in the Pennsauken public school district, if A.A. so desires. Respondents seek summary decision: confirming the ECS' determination that A.A. and A.L. are homeless as they lost their apartment in Haddon Township due to financial

hardship and that the family is residing with relatives out-of-necessity; and that Pennsauken is financially responsible for A.L.'s attendance at Strawbridge Elementary.

N.J.A.C. 1:1-12.5 provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 251-2, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

Following the Brill standard, after considering all the papers and evidence filed in support and in opposition to petitioner's and respondents' motion and cross motion for summary decision, I CONCLUDE that there are no genuine issues of material fact that require a plenary hearing and that this matter is ripe for summary decision.

Although N.J.S.A. Const., Art. 8, Section 4, paragraph 1 provides that free public education is a fundamental right under the New Jersey Constitution, it is well known that parents may not simply choose the school district that they wish their children to attend: the general rule is that school districts are responsible for providing a free education to children "domiciled" within the school district. N.J.S.A. 18A:38-1(a) states that Public schools shall be free to any person over five and under twenty years of age who is domiciled within the school district. "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." N.J.A.C.6A:22-3

Under the McKinney-Vento Homeless Education Assistance Improvement Act of 2001, 42 U.S.C.A. S 11431 et seq., state educational agencies must ensure that each homeless child and youth has equal access to the same public education as every other child and youth.

The protections offered to homeless students and their parents under the federal McKinney-Vento Act and New Jersey's corresponding state law represent an exception to otherwise applicable residency rules. In contrast to the basic premise that students must change schools when they leave a school district, the laws protecting homeless students generally allow parents the choice to keep their children enrolled in their original school district if the parents relocate to another school district as the result of being homeless N.J.S.A. 18A:38-1(f); N.J.A.C. 6A:22-3.2(d). The district of residence for children whose parents temporarily moves from one school district to another as the result of being homeless shall be the District in which the parent or guardian last resided prior to becoming homeless N.J.S.A. 18A:7B-12(c).

Under the federal McKinney-Vento Act and New Jersey's corresponding law, the term "homeless" refers to individuals who lack a fixed, regular and adequate residence. Federal law refers to the lack of an adequate "nighttime" residence 42 U.S.C. Sec. 11434a

(referring to 42 U.S.C.A. Sec. 1302(a)(1)); N.J.S.A. 18A:7B-12(c); N.J.A.C. 6A:17-1.2.

N.J.A.C. 6k.17-2.2 states that:

(a) A district board of education shall determine that a child is homeless for purposes of this subchapter when he or she resides in any of the following:

- 1 . A publicly or privately operated shelter designed to provide temporary living accommodations, including:
  - i.Hotels or motels;
  - ii. Congregate shelters, including domestic violence and runaway shelters; i i i . Transitional housing; and iv. Homes for adolescent mothers;
- 2 A public or private place not designated for or ordinarily used as a regular sleeping accommodation, including:
  - i.Cars or other vehicles including mobile homes; ii. Tents or other temporary shelters; iii. Parks; iv. Abandoned buildings;
  - v. Bus or train stations; or
  - vi. Temporary shelters provided to migrant workers and their children on farm sites;
- 3 The residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own;
- 4 Substandard housing; or
- 5 Any temporary location wherein children and youth are awaiting foster care placement.

[N.J.A.C. 6A:17-2.2.]

This subchapter and subsection, however, must be read, in conjunction with 42 U.S.C.A. S 1 1302(a)(1), which defines "homeless" for the McKinney-Vento Act, and N.J.S.A. 18A:7B-12(c), which defines "homeless" for school-funding purposes. Under the former, "homeless" means lacking "a fixed, regular, and adequate nighttime residence."

Under the latter, "homeless" means temporarily lacking "a fixed, regular and adequate residence." Thus, both definitions have at their core the concept of a fixed, regular, and adequate place to live with regular sleeping accommodations.

This shared concept is not a coincidence, as the New Jersey regulatory scheme, looks to the federal regulatory scheme for its definition of terms. See N.J.A.C. 6A:17-2.1 ("Nothing in this subchapter shall limit the educational rights of homeless children and youth or school district responsibilities under Subtitle VII-B of the Stewart B. McKinneyVento Homeless Assistance Act (42 U.S.C. 1 1431 et seq.")).

Financial responsibility of the district of residence terminates when the family is deemed "domiciled" in another district, which occurs when the family has lived in another district for a full year or longer. At this time, financial responsibility shifts to the school district in which the student now resides. N.J.S.A. 18A:38-1 (d) states: "Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed domiciled within the district for the purposes of this section."

Petitioner relies on Board of Education of the Township of Egg Harbor, Atlantic County, Petitioner, v. Board of Education of the Mainland Regional High School District, Atlantic County and New Jersey Department of Education, Division of Finance, Respondents, 170-, 210 WL 5691969 (N.J. Adm. Dec. 30, 2010) for the proposition that even if a family is homeless, it nonetheless achieves domicile for school law purposes after a year of residence, even if the family lived in motels in the school district. With that designation of domicile in the District, comes the provision by the district of a public education to the minor children.

Haddon Township, as the district of residence, was responsible for A.L.'s tuition when she first became homeless and she continued to go to school there throughout the 2017-2018 school year. After residing in Pennsauken for more than one year, A.A. and A.L. were deemed domiciled in Pennsauken pursuant to N.J.S.A. 18A:38-1 (d) and financial responsibility shifted to Pennsauken. Pennsauken welcomes A.L. to enroll in school in their district but disputes the fact that she is homeless and entitled to continue



in Haddon Township at Pennsauken's expense. Respondents argue that A.A. and A.L. remain homeless and A.L. is entitled to continue school in Haddon Township at Pennsauken's expense.

The ECS' determination that A.L. is McKinney-Vento eligible and that Pennsauken is fiscally responsible for the student was based on the fact that the family lost their apartment due to financial hardship and that the family is residing with friends/relatives out-of-necessity. There was no other analysis undertaken with regards to homelessness. It does not appear that any consideration was given to the fact that A.A. is currently residing in her family home and is the caregiver to her disabled mother. It does not appear that the ECS considered the adequacy of the Pennsauken home or the length of time A.A. has lived there.

The determination of whether a student is considered "homeless", triggering the protections for homeless students available under the law, is fact sensitive. In M. O'K. and S. O'K., A. O'K. and C. O'K. v. Bd. Of Educ. of the Borough of Cresskill and Bd. Of Educ. of the Borough of Little Ferry, OAL No. 14830-13, Agency No. 214-9/13 (N.J. Comm'r of Educ. Aug. 12, 2014); aff'd, 2016 WL 4699166 (N.J. sup. Ct. App. Div. sept. 8, 2016, the school district argued that the students who lived with their parents in the grandparents' home were no longer "homeless" where they had lived there for over a year. The family prevailed in their argument that they were still "homeless" in part because five people occupied the bottom floor of the house which had no shower, sink or kitchen. This was found to be less than a regular and adequate nighttime residence.

More recently, an administrative law judge (ALJ) wrote that "homelessness is best viewed in a continuum." State-Operated Sch. Dist. of Camden v. Volk, EDU 4521-16, Initial Decision (March 22, 2017), modified, Comm'r (June 20, 2017), at \*1 1, <http://njlaw.rutgers.edu/collections/oal/>. In that case, the ALJ thoroughly examined whether a family in a borderline situation was homeless and considered the totality of the circumstances. Among the factors the ALJ considered were intent, fixed location, regular use, and adequacy. The ALJ determined that the family intended to stay in their current living situation because they stopped looking for another place to live; that the location was fixed and that the use was regular because the family had lived in the same place for several years; and that their living situation was adequate because the children had a designated sleeping area and access to a kitchen and bathroom facilities, despite the sharing of rooms and limited space. To the extent that homeless status is identified as one without a "fixed, regular and adequate" living place, given the very lengthy

period of residence, the adequacy of the living place and the regularity of occupation, the ALJ found that the child did live in a "fixed, regular, and adequate residence" and concluded that she was not homeless. See also L.C. on behalf of her Minor Child B.C. v. Bd of Educ. of the Twp. of Branchburg, Somerset County, 96 N.J.A.R. 2d(EDU)1003 (Commissioner found that "while her living arrangements with her brother [in his apartment] may not be permanent in the sense that she may wish to eventually return to Branchburg, the evidence shows them to have become sufficiently fixed, regular, and adequate so as to preclude a finding of homelessness.")

The ECS' determination that A.L. is McKinney-Vento eligible and that Pennsauken is fiscally responsible for the student was based on the fact that the family lost their apartment due to financial hardship and that the family is residing with friends/relatives out-of-necessity. There was no other analysis undertaken with regards to homelessness. It does not appear that any consideration was given to the fact that A.A. is currently residing in her family home and is the caregiver to her disabled mother. It does not appear that the ECS considered the adequacy of the Pennsauken home or the length of time A.A. has lived there.

A.A. has been living in her mother's Pennsauken home with her daughter A.L. since 2017. The Pennsauken home is A.A.'s family home and she had previously resided there for fifteen years. A.A. is currently living there with A.L. and taking care of her mother who is disabled. The home is a fixed, regular, and adequate place to live with regular sleeping accommodations. Although A.A. has repeatedly indicated this is a temporary residence and she intends to return to Haddon Township, she has been living in her family home in Pennsauken since 2017. Even if initially she was considered homeless after being evicted from her Haddon Township apartment in 2016, she has resided in Pennsauken for more than one year in a fixed, regular and adequate home and can no longer be considered homeless as both the federal and New Jersey definitions of homelessness, have at its core, the lack of a fixed, regular and adequate nighttime residence.

For the reasons stated, I CONCLUDE that A.A. and A.L. are not homeless as they have resided at a fixed, regular and adequate place to live with regular sleeping accommodations for over twelve months in Pennsauken; that Pennsauken has no

financial responsibility for A.L.'s attendance at Haddon Township schools; and A.L. should be placed in the Pennsauken public school district, if A.A. so desires. I further CONCLUDE that the ECS' determination should be REVERSED.

ORDER

Based on the foregoing, it is hereby ORDERED as follows:

1. The motion for summary decision filed by Pennsauken is GRANTED.
2. The cross-motion for summary decision filed by the DOE and ECS is DENIED.
3. The March 28, 2019 determination by the ECS is REVERSED.

I hereby FILE this initial decision with the COMMISSIONER OF THE DEPARTMENT OF EDUCATION for consideration.

This recommended decision may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF EDUCATION, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 086250500, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

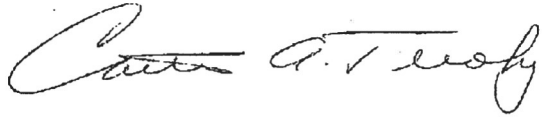
October 9  
2020\_\_\_\_\_

DATE

Date Received at Agency:

Date Mailed to Parties:

CAT/mel



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CATHERINE A. TUOHY,  
ALJ

October 9  
2020

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October 9  
2020

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## APPENDIX

### LIST OF EXHIBITS

#### For Petitioner:

Pennsauken's July 14, 2020 Notice of Motion for Summary Decision, Brief in Support, Statement of Undisputed Facts with attached Exhibits A through D

Pennsauken's Letter Brief dated August 17, 2020

#### For Respondents:

State Respondents, the New Jersey Department of Education and Interim Executive County Superintendent Lovell Pugh-Bassett's Letter Brief in Opposition to Pennsauken's Motion and in support of their Cross-Motion for Summary Decision dated August 10, 2020 with attached Exhibits A, B, and a copy of the Petition with attached Exhibits A through E