

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of Bound Brook,
Somerset County,

Petitioner,

v.

Board of Education of the Township of Piscataway,
Middlesex County, and A.S., on behalf of minor children,
J.D.O. and A.D.O.,

Respondents.

Synopsis

Petitioning Board challenged a homelessness determination made by the Somerset County Executive Superintendent of Schools on November 26, 2021, regarding respondent parent, A.S. Bound Brook alleged that the respondent Board is responsible for the education costs of A.S.'s minor children J.D.O. and A.D.O., and that the children cannot continue to attend school in Piscataway at Bound Brook's expense. The petitioner alleges that A.S. was never homeless; has had a permanent and fixed residence in Bound Brook; and that her children should be attending school within the Bound Brook school district. Piscataway contended that the children were and remain homeless such that Bound Brook is responsible for the cost of their education in Piscataway. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue and the matter is ripe for summary decision; in 2018, A.S. rented a room in a private home in Piscataway and established domicile there; thereafter, the children attended Piscataway schools as resident students; in October 2019 the family was forced to leave Piscataway suddenly after A.D.O. was physically abused by an unrelated adult in the home; A.S. then rented an unheated attic space in a shared house in Bound Brook where she and the children slept on a mattress on the floor; the children continued to attend school in Piscataway; the family lived in the attic until March 2021 when they moved in with A.S.'s mother, who had rented a three bedroom single family home in Bound Brook; A.S. and A.D.O. have continually lived with A.S.'s mother in Bound Brook since March 2021 (J.D.O. graduated from high school in 2021 and has since moved out). The ALJ concluded that A.S. and her children were homeless as of October 31, 2019 when they moved to a temporary, substandard living situation in Bound Brook out of necessity; A.S.'s move in March 2021 to a shared house with her mother became her fixed and regular residence as of March 2022; and, beginning with the 2022-2023 school year, the children should have been enrolled in the Bound Brook school district.

Upon review, the Commissioner adopted the factual findings of the ALJ, but rejected her conclusion regarding when the family established a fixed, permanent residence in Bound Brook and the time period for which Bound Brook was responsible for the children's tuition and transportation costs. Bound Brook was directed to assume financial responsibility for the children's education in Piscataway from November 1, 2020, to February 28 2021; and A.S. must immediately enroll A.D.O. in the Bound Brook school district.

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.

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Board of Education of the Township of
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behalf of minor children, J.D.O. and A.D.O.,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner (Bound Brook) pursuant to *N.J.A.C. 1:1-18.4*, and respondent Board of Education of the Township of Piscataway's (Piscataway) reply thereto, have been reviewed and considered.

Bound Brook challenges a homelessness and school district fiscal responsibility determination regarding J.D.O. and A.D.O., the children of respondent A.S., rendered by the Somerset County Executive County Superintendent (ECS) on November 26, 2021. The relevant facts are uncontested. In 2018, A.S. and her children moved to Piscataway. A.S. rented a room within a single-family home for \$500 per month. The children attended school in Piscataway. On or about October 31, 2019, for A.D.O.'s protection, the family relocated suddenly after A.D.O. disclosed that she was physically abused by an unrelated adult in the home. A.S. began renting

an attic in a home in Bound Brook for \$500 per month. The attic lacked heat and internet access, and the family slept on a mattress for several months until a social worker provided them with two beds. A.S. fell behind on her rent payments. The children continued to attend school in Piscataway.

In March 2021, A.S.'s mother, who had been living alone in a single room in Bound Brook, leased a three-bedroom, one-bathroom, two-floor single-family home in Bound Brook for \$1600 per month. Although only A.S.'s mother signed the lease, which ran from March 1, 2021, to February 28, 2022, A.S. and her children are listed as tenants on the lease. A.S. reported that they all moved into the new residence together. The home has heat, electricity, and running water. A.S. shares a bedroom and a queen-sized bed with A.D.O., while A.S.'s son had his own bedroom until he moved out of the home upon graduation from Piscataway High School in June 2021. A.S. gives her mother \$400 per month toward the rent and pays \$79 monthly for internet service.

While A.S. expressed that she would prefer to live in Piscataway, she acknowledges that rental rates exceed what she can afford, and she has not applied for housing there. Between 2018 and August 2022, she worked at various taverns and restaurants earning minimal income, and she lacked employment for several months in 2020 during the COVID-19 pandemic. In August 2022, she began working as a housekeeper at a senior living facility in Somerset earning \$16 per hour. A.S. and A.D.O. have continuously resided in the Bound Brook home with A.S.'s mother, even after the initial lease expired.

Bound Brook sought a determination from the ECS regarding homelessness and school district fiscal responsibility for J.D.O. and A.D.O. Upon consideration of information then

available about the family, the ECS determined that: (1) the family became homeless on October 31, 2019, and has continued to live in a “doubled-up” arrangement with a family member in Bound Brook; (2) Piscataway, the school district of origin, is responsible for the children’s tuition and transportation costs for the period of October 31, 2019, to October 31, 2020 pursuant to *N.J.A.C. 6A:17-2.4(c)*; (3) Bound Brook is responsible for the children’s tuition and transportation costs for the period of October 31, 2020, to present, per *N.J.S.A. 18A:38-1(d)*, as the family’s temporary domicile is now in Bound Brook and the family remains homeless; and (4) A.D.O. may remain enrolled in the Piscataway School District pursuant to *N.J.A.C. 6A:17-2.5* per A.S.’s wishes until such time as the family finds fixed, permanent housing in another school district.¹

Bound Brook appealed the ECS’s determination to the Commissioner of Education via the Office of Controversies and Disputes, which transmitted the matter to the OAL. Bound Brook and Piscataway filed cross-motions for summary decision. Bound Brook contended that A.S. is not and was never homeless as defined by law, and that when she moved to Bound Brook in 2019, the children were not entitled to continue attending school in Piscataway indefinitely and should have instead enrolled in Bound Brook schools. Bound Brook further contended that it is not financially responsible for transporting or educating the children in Piscataway. Piscataway contended that A.S. was and remains homeless and that Bound Brook has been and remains financially responsible for the children’s education in Piscataway since October 31, 2020.

¹ Because J.D.O. graduated from Piscataway High School in June 2021, any financial responsibility for his tuition and transportation ended at that time.

The ALJ concluded that A.S. and the children were homeless as of October 31, 2019, when they moved to Bound Brook out of necessity, as the living conditions were substandard at best and the housing arrangement was clearly not a permanent situation. The ALJ reasoned that living in an attic, with less than adequate bedding and utilities, cannot be considered a fixed and permanent residence. Regarding the move in March 2021, the ALJ concluded that while A.S. may have intended for this living arrangement with her mother to be temporary until her finances improved, it became A.S.'s fixed, regular and adequate residence as of March 2022. The ALJ further concluded that, "[a]ccordingly, A.S. can be considered to have established a fixed residence at the New Hampshire Lane address no later than the end of the school year in June 2022 and should no longer be considered homeless." Initial Decision, at 14. The ALJ also concluded that, beginning with the 2022-2023 school year, the children should be enrolled in the Bound Brook school district.

Regarding the parties' financial responsibility for the children's education, the ALJ concluded that Bound Brook was responsible for tuition and transportation expenses for the children while they attended Piscataway schools "from October 2019 to June 2021 as they remained homeless without a fixed and permanent residence." *Ibid.* The ALJ further concluded that "Bound Brook BOE was responsible for the younger child's education in Piscataway schools from September 2021 until June 2022 (school year 2021-2022) when A.S.'s residence had become her fixed and permanent abode." *Ibid.* The ALJ reasoned that "[i]t seems appropriate to conclude that the residence had become permanent for A.S. by the end of the school term as she did not seek to relocate during the summer of 2022." *Ibid.*, n. 9. Finally, the ALJ concluded that

“[e]ffective September 2022 . . . A.D.O. should have been enrolled in the Bound Brook school district and attended school in Bound Brook at Bound Brook’s expense.” *Ibid.*

In their exceptions, Bound Brook argues that the ALJ erred in finding that the family remained homeless for one year even after they moved in with A.S.’s mother in March 2021 until March 2022. They contend that *N.J.S.A. 18A:38-1(d)* should not have factored into the homelessness determination regarding the family’s status in March 2021, and that the record supports the conclusion that the family had a fixed, regular and adequate residence beginning in March 2021 at the latest. As such, they request that the Initial Decision be modified to reflect that A.S. and her children ceased being homeless in March 2021, and that Bound Brook’s financial responsibility for the children’s tuition and transportation in Piscataway ended during the 2020-2021 school year.

In response, Piscataway argues that the ALJ correctly found that A.S. and her children remained homeless after March 2021, and at least through June 2022. They emphasize that the totality of the circumstances must be considered, including that A.S. moved in with her mother in March 2021 out of necessity, as she could not afford to move back to Piscataway, and that A.S. and her daughter share a bedroom and sleep in the same bed. They also note that A.S. was not a signatory to the lease and thus did not have a legally enforceable right to remain in the home. Moreover, they assert that A.S.’s contribution toward the rent and expenses is not dispositive.

Upon review, and as explained fully herein, the Commissioner adopts the ALJ’s factual findings but rejects the ALJ’s legal conclusions regarding: (1) when the family’s homelessness status ended, *i.e.*, when they established a fixed and permanent residence in Bound Brook; and

(2) the time period for which Bound Brook was financially responsible for the children's tuition and transportation costs.

Under the McKinney-Vento Homeless Assistance Act, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason." 42 U.S.C.A. § 11434a(2). 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 the child's or youth's family lacks a regular or permanent residence of its own." *N.J.A.C. 6A:17-1.2*, *N.J.A.C. 6A:17-2.2(a)(3)*. "[D]omicile attaches immediately if a student's dwelling is found to be fixed, regular and adequate." *Bd. of Educ. of Twp. of Egg Harbor v. Bd. of Educ. of Mainland Reg'l Sch. Dist.*, Commissioner Decision No. 555-10 (Dec. 30, 2010), at 4 (citing *N.J.S.A. 18A:17B-12(c)*).

The Commissioner has previously held that homelessness "is best viewed in a continuum." *St.-Op. Sch. Dist. of Camden v. C. Ann Volk*, Commissioner Decision No. 172-17R (June 20, 2017), at 11. 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. Bd. of Educ. of Borough of Cresskill*, Commissioner Decision No. 325-14 at 3 (August 12, 2014), *aff'd*, No. A-0828-14T4 (App. Div. Sept. 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 agrees with Bound Brook that the ALJ erred when she concluded that the New Hampshire Lane home did not become A.S.'s fixed, adequate and permanent residence until at least March 2022, or the end of the school year in June 2022 at the latest. "[W]hile a homeless child may be deemed domiciled in a district after residing in that school district temporarily for one year or longer, the family may establish domicile prior to one year. As such, the 'one year rule' [expressed in *N.J.S.A. 18A:38-1(d)*] will only deem a homeless child to be domiciled within a school district if he or she has not already established a domicile." *Bd. of Educ. of Borough of Wood-Ridge v. Bd. of Educ. of Borough of Bogota*, Commissioner Decision No. 290-20 (Dec. 21, 2020), at 12-13.

Here, A.S. and her children were no longer homeless as of March 1, 2021, when they moved to New Hampshire Lane—a fixed, regular, and adequate residence—with A.S.'s mother. Thus, the family was domiciled in Bound Brook as of March 1, 2021, and the children should have been attending school in Bound Brook. *Egg Harbor*, at 4. A.S. testified at her deposition that she went with her mother to lease the three-bedroom residence at New Hampshire Lane, and she and the children moved in at the same time her mother did. A.S. and her children are listed as tenants on the lease. The record reflects that A.S. and her mother intended to live together with A.S.'s children as a family unit. Moreover, there is no indication that the residence is inadequate; the fact that A.S. and A.D.O. share a queen-sized bed in their bedroom does not make it so. The three-bedroom home has heat, electricity, running water, and A.S. and A.D.O. have access to the

kitchen, bathroom, and living areas. A.S. regularly contributes to the rent and internet expenses monthly.

The Commissioner does not find Piscataway's exceptions to be persuasive. The fact that A.S. was falling behind on her rent payments for the attic space does not require the Commissioner to conclude that she moved in with her mother out of necessity. Nothing in the record establishes that the attic space landlord evicted A.S. and her children. Furthermore, the fact that A.S. did not sign the lease for the New Hampshire Lane home and is not directly financially responsible for rent payments to the landlord does not require the Commissioner to conclude that A.S. and the children remain homeless. A.S. and A.D.O. have remained in the New Hampshire Lane home since March 2021 without interruption. They have resided there for an extended period, without any imminent or foreseeable risk of losing their place in the home, and they share the home with A.S.'s mother as a cohesive family unit. Even after A.S. obtained steady employment in August 2022 earning \$16 per hour, she and A.D.O. continued living at New Hampshire Lane. While A.S. would prefer to move back to Piscataway, she has not applied for housing there. A.S.'s "intention is insufficient to support a finding of homelessness" when considered in light of the totality of the circumstances. *Bd. of Educ. of Twp. of Pennsauken v. Pugh-Bassett*, Commissioner Decision No. 122-22 (June 16, 2022), at 7.

Once it is determined whether a child is homeless, the question becomes which district is financially responsible for the child's education. Ordinarily, a student is eligible for a free public education in a school district if he or she is domiciled within the school district. *N.J.S.A. 18A:38-1(a)*; *N.J.A.C. 6A:22-3.1(a)*. A student's domicile is determined by the domicile of his or her parents. *N.J.A.C. 6A:22-3.1(a)(1)*. When a child becomes homeless, the school district of

residence – i.e., the school district in which the child resided before becoming homeless – remains responsible for the cost of the child’s education, including when the child is temporarily living and attending school in another school district. *N.J.A.C. 6A:17-2.3; N.J.S.A. 18A:7B-12.* However, when a homeless child lives in a school district for one year or longer – and a new domicile has not been established – the child is “deemed domiciled” in that district for the purposes of determining which district is responsible for the cost of the child’s education. *N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:17-2.3(c).*

The Commissioner’s assessment of financial responsibility in this case differs from that of the ALJ. Piscataway was the financially responsible party from October 31, 2019—when the family became homeless—to October 31, 2020, because Piscataway remained the school district of residence at that time per *N.J.S.A. 18A:7B-12(c)*, as it was the district in which the family last resided prior to becoming homeless. See *N.J.A.C. 6A:17-2.3(c)* (“Financial responsibility will remain with the homeless child’s school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to *N.J.S.A. 18A:38-1(d)*.”). Although the ALJ erroneously found that Bound Brook was the financially responsible party from October 31, 2019 to October 31, 2020, Piscataway conceded in its summary decision motion that it was the financially responsible party for the children’s tuition and transportation during this time period.

In any event, as of November 1, 2020, the family had resided temporarily in Bound Brook for a period of one year and, although they remained homeless, they shall be “deemed domiciled” within the Bound Brook district pursuant to *N.J.S.A. 18A:38-1(d)* for purposes of allocating financial responsibility for their education. The children were still entitled to attend school in Piscataway because of the family’s homeless status under *N.J.A.C. 6A:17-2.3(a)*, as

Piscataway remained the school district of residence responsible for their education. However, financial responsibility for the children's tuition and transportation in Piscataway shifted to Bound Brook beginning on November 1, 2021, and ending on February 28, 2021. Thus, the Commissioner agrees with the ALJ that Bound Brook was the financially responsible party for the children's education in Piscataway during this time period.

However, on March 1, 2021, the family moved into a fixed, regular, and adequate residence in Bound Brook and were no longer homeless. Since "domicile attaches immediately if a student's dwelling is found to be fixed, regular and adequate," *Egg Harbor*, at 4, the children were now eligible for a free public education in the Bound Brook school district pursuant to *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:22-3.1(a) and should have enrolled in the Bound Brook schools at that time. Nevertheless, they continued to attend school in Piscataway despite the fact that they were no longer eligible to do so based upon A.S.'s established domicile in Bound Brook. Consequently, the Commissioner holds that Bound Brook cannot be held financially responsible for payment of the children's out-of-district tuition and transportation expenses to Piscataway from March 1, 2021, forward because the family was no longer homeless and had established domicile in Bound Brook. For these reasons, the Commissioner rejects the ALJ's determination that Bound Book remained financially responsible for the children's education in Piscataway until the school year ended in June 2022.

Accordingly, the Initial Decision is adopted in part and rejected in part. Piscataway's motion for summary decision is denied. Bound Brook's motion for summary decision is granted. Bound Brook is directed to assume financial responsibility for the children's education in Piscataway from November 1, 2020, to February 28, 2021. A.S. was no longer homeless as of

March 1, 2021. If she has not already, A.S. must immediately enroll A.D.O. in the Bound Brook school district.²

IT IS SO ORDERED.³



ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

² An ECS's determination that a child is homeless can be reasonable in light of the evidence available at the time; however, such determination can be overturned based on evidence received during the course of the OAL proceedings. *See Bd. of Educ. of Borough of Hawthorne v. Bd. of Educ. of Borough of Prospect Park*, Commissioner Decision No. 196-14 (May 12, 2014). Here, the Commissioner finds that the ECS's determination that A.S. was homeless was reasonable based on the information available at the time, but that decision must nonetheless be overturned based on the evidence presented at the hearing.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MOTION FOR SUMMARY

DECISION

OAL DKT. NO. EDU 02006-22

AGENCY DKT. NO. 23-2/22

**BOARD OF EDUCATION OF THE
BOROUGH OF BOUND BROOK,
SOMERSET COUNTY,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF PISCATAWAY,
MIDDLESEX COUNTY, AND A.S.
ON BEHALF OF MINOR CHILDREN,
J.D.O. AND A.D.O.,**

Respondents.

Kyle J. Trent, Esq., appearing for petitioner (Apruzzese, McDermott, Mastro & Murphy, PC, attorneys)

David B. Rubin, Esq., appearing for respondent, Piscataway Board of Education

A.S., on behalf of **J.D.O** and **A.D.O.**, respondents, pro se¹

¹ A.S. is the mother of the minor children J.D.O. and A.D.O.

Record Closed: May 31, 2024

Decided: July 15, 2024

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

Petitioner, Board of Education of the Borough of Bound Brook (Bound Brook BOE), challenges the homelessness determination made by the Somerset County Executive Superintendent of Schools (Executive Superintendent) on November 26, 2021, regarding respondent parent, A.S., and alleges that it is the respondent Board of Education of the Township of Piscataway (Piscataway BOE) which is responsible for the education costs of the minor children J.D.O. and A.D.O., and that the children cannot continue to attend school in Piscataway at Bound Brook BOE's expense.² The petitioner alleges that A.S. was never homeless, and has had a permanent and fixed abode in Bound Brook and that her children should attend school within its district.³

Piscataway BOE contends that the children were and remain homeless such that Bound Brook BOE is responsible for the cost of their education in Piscataway.

PROCEDURAL HISTORY

By letter dated November 26, 2021, the Somerset County Executive Superintendent of Schools rendered a determination regarding the residence status of A.S. and assessing fiscal responsibility to Bound Brook BOE for the education of J.D.O. and A.D.O. in Piscataway. An appeal was timely filed and on March 16, 2022, and the contested matter was transmitted to the Office of Administrative Law. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

² J.D.O. graduated from Piscataway High School in June 2021 and is no longer being educated in Piscataway. A.D.O. is in the eighth grade and continues to attend school in Piscataway.

³ The Executive Superintendent concluded that: A.S. has been homeless since October 31, 2019, and remains homeless because her residence is not fixed and permanent; Bound Brook is financially responsible for the education of both children for the period since October 31, 2020; and A.D.O. may continue to attend school in the Piscataway School District until the family finds fixed and permanent housing.

On April 3, 2023, an Order was entered compelling the deposition of A.S. because the parties were unable to complete discovery without information that could only be obtained from A.S., who had provided some, but not all, of the requested information regarding her residential status.

On September 28, 2023, Bound Brook BOE filed a motion for summary decision contending that “A.S. is not and was never homeless as defined by the law, and that when she moved to Bound Brook in 2019, the children were not entitled to continue attending school in Piscataway indefinitely and should have instead enrolled in Bound Brook schools.”

On October 7, 2023, the respondent Piscataway BOE filed a cross-motion for summary decision seeking “to affirm the Commissioner’s determination that Bound Brook has been and remains financially responsible for the students’ education in Piscataway since October 31, 2020, and [to dismiss] Bound Brook’s appeal.”

A response to Piscataway BOE’s cross-motion was received from Bound Brook BOE on October 23, 2023 and a reply was received from Piscataway BOE on November 3, 2023. A response to Bound Brook BOE’s motion for summary decision was received from Piscataway BOE on October 24, 2023; a reply was received from Bound Brook BOE on November 17, 2023. A.S. filed exhibits on November 30, 2023. A telephone conference was held on February 28, 2024, and the record remained open for any additional information until May 31, 2024.

FACTUAL DISCUSSION

Statement of Undisputed Material Facts⁴:

⁴ This statement of undisputed facts is taken from the petitioner’s and respondents’ briefs and the testimony of A.S. provided at the deposition. The facts are noted for the years in dispute.

2018

1. In 2018, A.S. moved to Piscataway with her son, J.D.O, nineteen years old, and daughter A.D.O., twelve years old.⁵ (T:10-11) Her domicile was established there.
2. At that time, A.S. paid \$500 per month to live with her two children in one room of a single-family home in Piscataway while also having access to a shared kitchen.
3. While residing in Piscataway, J.D.O. and A.D.O. were enrolled in the Piscataway School District. (T:12)

October 2019

4. In December 2018, while living in Piscataway, A.S. found work as a bartender at The Imperial, a tavern in Bound Brook. (T:15)
5. She earned \$6/hour plus tips, making approximately \$500/week—sometimes more, sometimes less. (T:16-17).
6. On or about October 31, 2019, A.S. was forced to leave her Piscataway home and relocate to Bound Brook after her daughter was victimized in a serious incident. (T:57-58)
7. After leaving Piscataway, A.S. and her children moved to and lived in the attic of a seven-bedroom, two-bathroom residence at XX West Maple Avenue, Bound Brook, for which she paid \$500/month.⁶ (T:46-47)
8. A.S. explained to Piscataway school officials that the “emergency” compelled her to leave Piscataway for Bound Brook, and her children were permitted to remain enrolled in Piscataway under the circumstances. (T:56)
9. The attic was “triangular” and “long,” and A.S.’s son would “always” bump his head. (T:48)
10. At first, they had no beds and slept on a mattress until several months later when a social worker and the police gave them two beds for the three of them to use. (T:57-58)
11. The attic had electricity but no heat or internet access. (T:50)

⁵ The ages are those provided by A.S. at the time of the deposition taken on June 14, 2023.

⁶ The exact address is not indicated to protect A.S.’s privacy.

12. After the COVID-19 pandemic shutdown in March 2020, A.S. was no longer able to work at The Imperial, and could not find employment elsewhere because “we couldn’t go out.” As she testified, “the school in Piscataway would help me a bit with food, my children, ...”. I did not have work. We didn’t have anything to eat practically. There were many difficult months.” (T:18)
13. To survive, A.S. and some friends made and sold empanadas “but it wasn’t enough. I couldn’t pay rent. I owed a lot of money on rent. The lady was putting me out the home because I wasn’t paying rent.” (T:18)
14. A.S. received no government assistance during that time. “I applied but I never received a response. Mostly for food.” (T:21-22) She also did not apply for unemployment compensation because “I didn’t have any social. I didn’t have a work permit. I couldn’t apply. There wasn’t anything.” (T:22)
15. Starting in November 2020, A.S. worked at a restaurant in Plainfield for approximately six months.

March 2021

16. In March 2021, A.S.’s mother, who had been living in a single room elsewhere in Bound Brook, leased a three-bedroom, one-bathroom, two-floor single-family home at XX New Hampshire Lane, Bound Brook for \$1,600 per month. (T:35, 49) A.S. said that “they all went together to the new residence.” (T:37, 7) A.S. and the children appear on the lease as “tenants,” but the lease was signed solely by A.S.’s mother.
17. The house has heat, electricity and running water, which are included in the base rent paid by A.S.’s mother. (T:42)
18. A.S. and her children moved into the New Hampshire Lane home leased by her mother. A.S.’s son had a bedroom of his own, and A.S. initially shared a bedroom with her mother and daughter. (T:38)
19. The lease ran from March 1, 2021, to February 28, 2022. Tenancy appears to continue on a month-to-month basis as no new lease was provided. A.S. continues to reside at the residence with her daughter. (T:37, 59)
20. A.S. gives her mother \$400/month toward the rent and pays for internet service of \$79 per month. (T:37)

June 2021

21. A.S.'s son, J.D.O., graduated from Piscataway High School in June 2021 and later moved out. His room is now occupied by A.S.'s brother, who moved into the home after A.D.O. left. He has lived there for a year and several months. (T:34)
22. A.S. and her daughter presently share a bedroom, sleeping together on a queen-size bed. (T:38)
21. A.S. buys her own food for herself and her daughter. (T:42)
23. At some point, A.S. started working at Tradiciones De Mi Pueblo, a Peruvian restaurant in Plainfield, where she was employed for "about six months" making \$9/hour, working eight-hour days, 4-5 days/week. with very little tips. (T:22-23)
24. A.S. left that restaurant because "they were [sic] not a lot of people. I was afraid of taking the train late at night. I was paying a lot for a ride. The money hardly lasted." (T:24)
25. A.S. later began working at Guatelinda, another restaurant in Plainfield, where she was employed for "approximately like a year and two months. A year, three months," making \$7/hour plus tips, working six hours a day, sometimes Wednesday to Sunday, sometimes Thursday to Sunday. (T:25-26)
26. In August 2022, A.S. found work as a housekeeper at CareOne, a senior living facility in Somerset, where she remains employed today. (T:27. 29)
27. At CareOne, A.S. earns \$16/hour working eight hours/day. Sometimes she works five days/week, sometimes four days, but on average five. (T:28) The precise dates when A.S. moved from one job to the next were unclear from her testimony.
28. A.S. has a bank account and credit card associated with the New Hampshire Lane address.
29. A.S. would prefer to move to a home in Piscataway and has continued to look but believes the prevailing rents are too high for her income and more than she could afford, she has not submitted any applications.⁷ (T:43) A.S.'s boyfriend also resides in Bound Brook and has provided her with a phone. (T:53-54)

⁷ Piscataway BOE has presented census data indicating that the median gross rent in Bound Brook for 2017-2021 was \$1,554 per month and \$1,767 for Piscataway. Both are clearly not affordable solely on A.S.'s income.

30. J.D.O. has not lived with A.S. for about a year. A.D.O. is presently in sixth grade [at the time of her deposition in June 2023] at Schor Middle School in the Piscataway School District and has lived with A.S. consistently throughout.⁸ (T:13-14)

LEGAL ANALYSIS

Summary Decision

It is well-established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” Brill guides us thusly:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Id. at 540.]

In explaining the standard to be applied in summary motion practice, the Brill Court explained:

The same standard applies to determine whether a prima facie case has been established by the party bearing the burden of proof in a trial. . . . If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party.

⁸ Presumably, A.D.O. has now completed seventh grade and would be going into eighth grade in school year 2024-2025.

[Id. at 536-3.7.]

As the facts here are not in dispute, this matter is ripe for summary decision.

Whether A.S. is homeless

Piscataway BOE argues that it is entitled to summary decision that A.S. and her children were and are homeless and have never established a fixed domicile and remain with A.S.'s mother in Bound Brook out of necessity. It seeks a decision that Bound Brook BOE has been and remains financially responsible for the students' education in Piscataway since October 20, 2020, and seeks the dismissal of Bound Brook BOE's petition of appeal.

Bound Brook BOE argues that it is entitled to summary decision because A.S. is not presently homeless and has never been homeless at any time relevant to this matter; that Bound Brook BOE is not and was not financially responsible for the transportation cost or educational expenses in Piscataway at any time; that the children cannot continue attending school in Piscataway at Bound Brook BOE's expense; that A.S. has established a fixed and permanent abode in Bound Brook; and that the children (now child) should be enrolled in Bound Brook schools.

The issue presented here is whether A.S. was, is, and remains homeless such that the children may continue to attend schools in Piscataway at Bound Brook BOE's expense. An analysis of each relevant period of time is necessary to reach a conclusion. Simply stated, do the undisputed facts support the conclusion that the children are no longer homeless because they reside in a "fixed, regular and adequate" home in Bound Brook, and if they are not homeless, who is or was obligated to pay school tuition and transportation costs for the relevant school periods?

New Jersey statutes provide for the determination of homelessness and responsibility for school tuition:

Pursuant to N.J.S.A. 18A:7B-12, “[t]he district of residence for children whose parent or guardian temporarily moves . . . as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless.”

Pursuant to N.J.A.C. 6A:17-2.8. “[w]hen [a] homeless child or youth is enrolled in a school district other than the school district of residence, the school district of residence shall pay to the school district of enrollment the tuition costs pursuant to N.J.S.A. 18A:38-19 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence or the school district in which the parent has been deemed domiciled shall pay tuition to the school district of enrollment.”

Pursuant to N.J.S.A. 18A:38-1, public school is free for “[a]ny 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 to be domiciled within the district for the purposes of this section.”

The regulations provide additional guidance for the determination of homeless status and responsibility for tuition:

N.J.A.C. 6A:17-2.2 provides for the determination of homeless status:

(a) The district board of education for the school district of residence shall determine that a child or youth is homeless for purposes of this subchapter when the child or youth 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;
 - iii. 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 or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own; or
- 4.** Substandard housing.

N.J.A.C. 6A:17-2.3 provides for the responsibilities of the school district of residence:

- (a)** The school district of residence for a homeless child or youth shall be responsible for the education of the child and shall:
 - 1.** Determine the school district in which the child shall be enrolled after consulting with the parent pursuant to N.J.A.C. 6A:17-2.5;
 - 2.** Pay the cost of tuition pursuant to N.J.S.A. 18A:38-19 when the child attends school in another school district; and
 - 3.** Provide for transportation for the child pursuant to N.J.A.C. 6A:27-6.2.
- (b)** The determination of a homeless child's or youth's school district of residence shall be made by the chief school administrator of the school district of residence, or the chief school administrator's designee, pursuant to N.J.A.C. 6A:17-2.4 based upon information received from the parent, a shelter provider, another school district, or an involved agency.
- (c)** The district identified in accordance with N.J.S.A. 18A:7B-12 as the school district of residence for a homeless child or youth shall be the school district of residence until the parent establishes a permanent residence. Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1.d.

Children are homeless when they stay in the home of relatives or friends temporarily because the family lacks a regular or permanent residence of its own. N.J.A.C. 6A:17-2.2(a)(3). The McKinney-Vento Act describes homeless children as those “who lack a fixed, regular, and adequate nighttime residence . . .” including, “children and youths who are sharing the housing of other persons due to loss of housing, economic

hardship, or a similar reason[.]” 42 U.S.C. 11434a(2)(A), (B)(i). “Thus, 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 the children’s homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant.” M.O’K. and S.O’K. o/b/o K.O’K., A.O’K., and C.O’K. v. Bd. of Educ. of Borough of Cresskill, Bergen Cty. and Bd. of Educ. of Little Ferry, Bergen Cty., OAL Docket No. EDU 14830-13, Comm’r (Final Decision, Aug 12, 2014).

Here, it is clear that in **May 2018**, A.S. had established a valid residence in Piscataway entitling the children to be educated there at Piscataway’s expense. While the living situation was not the best, it was where A.S. and the children had their permanent abode.

However, in **October 2019**, an emergency compelled A.S. to remove herself and the children from that domicile in Piscataway. Her next domicile was a seven-bedroom, two-bathroom residence at XX West Maple Avenue in Bound Brook, in which numerous other unrelated people resided. A.S. and the children lived in the attic; they had no beds and slept on a mattress for several months until they were provided with two beds for the three of them to use.

When A.S. was forced, out of necessity, to leave her Piscataway residence and move into this West Maple Avenue, Bound Brook, residence, the children were homeless as defined by the regulations. The living conditions for the family unit were substandard at best, and clearly did not represent a permanent situation. See, N.J.A.C. 6A:17-2.2(a)(3). Bound Brook BOE’s contention that the children were not homeless during this period cannot be sustained: living in an attic with less than adequate bedding or utilities cannot be considered a fixed and permanent residence. Accordingly, the district of residence of the children remained in Piscataway, the district in which their mother resided prior to their becoming homeless, and Bound Brook BOE was obligated to pay for their education in Piscataway. N.J.S.A. 18A:7B-12(c).

This designation that Piscataway remained the district of residence could not be changed until the family was “deemed domiciled in another jurisdiction, pursuant to

N.J.S.A. 18A:38-1.d,” and had found a fixed and permanent residence there. N.J.A.C. 6A:17-2.3(c). Accordingly, the homeless situation continued, and the children were entitled to continue to attend school in Piscataway at Bound Brook BOE’s expense.

Circumstances changed in the **spring of 2021** when A.S.’s mother, moving from a one-room residence, leased a three-bedroom house in Bound Brook, clearly anticipating that A.S. and her two children would be residing with her. Their names (mother, A.S., and the two children) appear on the lease as permitted tenants of the home. A.S. and her mother went together to the landlord. A.S., her mother and her daughter have resided continuously in this Bound Brook residence since March 2021, a period now exceeding three years. The issue then becomes whether this residence has become A.S.’s permanent and fixed domicile, or whether she continues to be homeless.

In Board of Education, Township of Pennsauken, Camden County v. Lovell Pugh-Bassett, EDU 00744-21, initial decision, (March 24, 2022), modified on other grounds, (June 16, 2022), https://njlaw.rutgers.edu/collections/oal/html/initial/edu00744-21_1.html, the ALJ reasoned that “[t]o determine which district is responsible to pay the tuition for a homeless student, they follow the domicile rule. The domicile rule is that the district where the child has been living for a year becomes the district of domicile and responsible for the education and transportation of the child.” Although not explicitly cited, this “domicile rule” is a reference to N.J.S.A. 18A:38-1, which provides that for legal purposes, a family is domiciled if their “all-year-round dwelling place [is] within the district for one year or longer,” even if they are still “homeless” under N.J.S.A. 18A:7B-12.

The same rule was followed in Board of Education of Egg Harbor, Atlantic County v. Board of Education of Mainland Regional, Atlantic County, EDU 6680-09, final decision, (Dec. 30, 2010), <https://njlaw.rutgers.edu/collections/oal/final/edu06680-09.pdf>. There, the Commissioner reasoned that:

N.J.S.A. 18A:38-1(d) instructs that any student whose parent or guardian is not domiciled in a district (e.g. because he or she is homeless), but has had his or her all-year round dwelling place in the district for at least one year, shall be deemed domiciled in the district for the purpose of N.J.S.A.

18A:38-1, which entitles a student to a free public education in the district of domicile. N.J.S.A. 18A:38-1(a). Thus, although a family may fall under the rubric of “homeless,” it nonetheless achieves domicile for school law purposes after a year of residence in one district. With that designation of domicile in the district, comes the provision by the district of a public education to the minor children. [*Id.* at 3.]

In M.O’K v. Bd. of Educ. of Cresskill, 2016 N.J. Super. Unpub. LEXIS 2046 (App. Div. 2016), the court reasoned that “[u]nder the applicable statutes, if a child becomes homeless, the ‘district of residence’ is responsible for providing the child’s education. N.J.S.A. 18A:7B-12(c). If homeless children reside in another district for more than one-year, financial responsibility for the children’s education shifts to that school district. N.J.S.A. 18A:38-1(d).” The court does not mention the establishment of a domicile as the trigger for the shift of financial responsibility. Rather, it is the time limit of “residing” in a different district for one year.

The facts that could point toward a finding of homelessness are that A.S. and her daughter share a room and a bed, her mother’s name is on the lease, and that the family is living with A.S.’s mother and brother. With respect to sharing a room, the Commissioner has noted that “although . . . sleeping arrangements may be less than ideal, it is not uncommon for siblings to share the same room,” and thus, siblings sharing a room does not lead to a homeless finding. State-Operated School District of the City of Camden v. Volk, EDU 4521-16, final decision, (June 20, 2017), https://njlaw.rutgers.edu/collections/oal/final/edu04521-16_1_1.pdf. Further, in Board of Education of the Bordentown Regional School District v. Marini, et al., EDU 09659-22, final decision, (July 6, 2023), <https://www.nj.gov/education/legal/commissioner/2023/202-23.pdf>, the fact that an adult child was sharing a room with a parent was not enough to establish a finding of homelessness.

Although here A.S. and her daughter are sharing a room and a bed may be a “less than ideal” situation, the rest of the living situation appears adequate and not one borne of “necessity.” The family intended to move in together after the mother left a single room residence and obtained housing that could accommodate the entire family. A shared

room can be considered appropriate housing particularly where the family unit has continued to reside in this manner for an extended period.

While A.S. may have originally intended that the family's move to New Hampshire Lane in Bound Brook would be temporary until her finances improved and she was able to move back to Piscataway, by March 2022 her home in Bound Brook with her mother had become established as a "sufficiently fixed, regular and adequate" residence. Accordingly, A.S. can be considered to have established a fixed residence at the New Hampshire Lane address no later than the end of the school year in June 2022 and should no longer be considered homeless.⁹ Effective with school year 2022-23, Bound Brook BOE would be responsible for the expense of educating the children at Bound Brook, not Piscataway, schools, and the children (now child) should be enrolled in the Bound Brook district and attend school there.

Accordingly, Piscataway BOE was responsible for the costs of educating the children from 2018 through October 2019 while they resided in Piscataway.

Bound Brook BOE was responsible for the tuition and transportation expenses for both children in Piscataway schools from October 2019 to June 2021 as they remained homeless without a fixed and permanent residence.¹⁰ Bound Brook BOE was responsible for the younger child's education in Piscataway schools from September 2021 until June 2022 (school year 2021-2022) when A.S.'s residence had become her fixed and permanent abode.

Effective September 2022, after A.S.'s residence became permanent and fixed in Bound Brook, the younger child, A.D.O., should have been enrolled in the Bound Brook school district and attended school in Bound Brook at Bound Brook BOE's expense.

⁹ It seems appropriate to conclude that the residence had become permanent for A.S. by the end of the school term as she did not seek to relocate during the summer of 2022.

¹⁰ The older child graduated from high school in June 2021; any tuition responsibility for him ended upon his graduation.

ORDER

I hereby **ORDER** that the motions for summary decision are **GRANTED** in part and **DENIED** in part.

I **ORDER** that the Piscataway Board of Education was responsible for the costs of educating the children, J.D.O. and A.D.O. until October 2019.

I **ORDER** that the Piscataway Board of Education is entitled to summary decision that A.S. and her children were homeless and without a fixed and permanent abode from October 2019 to June 2022.

I **ORDER** that Bound Brook Board of Education was responsible for the costs of educating the children A.D.O. and J.D.O. in Piscataway from October 2019 to June 2022.

I **ORDER** that effective with school year 2022-2023, that A.S. and A.D.O. had established a fixed and permanent residence in Bound Brook requiring A.D.O. to be enrolled in the Bound Brook School District and to be educated there at Bound Brook's expense.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. **Exceptions may be filed**

by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

July 15, 2024

DATE

A handwritten signature in blue ink that reads "Susan Scarola". The signature is written in a cursive, flowing style. Below the signature is a solid black horizontal line.

SUSAN M. SCAROLA, ALJ

(Ret., on recall)

Date Received at Agency:

Date Mailed to Parties:

SMS/kl

APPENDIX

Exhibits:

For Petitioner:

Brief and responses

For Respondent:

Brief and responses

For A.S.:

Response with documents