

New Jersey Commissioner of Education

Final Decision

D.S., on behalf of minor children, E.K.-S. and
S.K.-S.,

Petitioner,

v.

Board of Education of the Township of
Westampton, Burlington County,

Respondent.

Synopsis

Petitioner alleged a violation of the McKinney-Vento Act (Act) after the respondent Board denied her request to provide busing for her two children after the family became homeless. The family lives in transitional housing located within two miles of the children’s school. Under district policy, no busing is required or provided for families living within a two-mile radius of the school. The petitioner filed an appeal and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on October 18, 2023, pursuant to *N.J.S.A.* 52:14B-1 to -15 and *N.J.S.A.* 52:14F-1 to 3. The Board filed a motion to dismiss pursuant to *N.J.A.C.* 6A:3-1.10.

The ALJ found, *inter alia*, that: petitioner and her children are homeless and reside in transitional housing located less than two miles from Holly Hills School, where the children are enrolled; petitioner contends that the transitional housing is “remote” but does not allege that it is further than two miles from the school or that the route to school is dangerous; there is no allegation that other students in the same geographic area are provided busing, nor are there any other grounds entitling the children to services that are not provided to other similarly situated students in the district; petitioner cites the Act which requires the district to provide the same services for non-homeless children, but there is no allegation that any non-homeless children who reside within two miles of the school are receiving bus services. The ALJ concluded that petitioner does not have a right to busing under the McKinney-Vento Act; accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that petitioner’s children are not entitled to receive bus transportation to and from school. Accordingly, the Board’s motion to dismiss was granted, and the petition of appeal was dismissed.

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.

84-24
OAL Dkt. No. 11041-23
Agency Dkt. No. 256-9/23

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v.

Board of Education of the Township of
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Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner's children are not entitled to receive bus transportation to and from school.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024
Date of Mailing: January 31, 2024

¹ 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

SUMMARY DECISION

OAL DKT. NO. EDU 11041-23

AGENCY DKT. NO. 256-9/23

D.S. ON BEHALF OF MINOR CHILDREN

E.K.-S. AND S.K.-S.,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF WESTHAMPTON,

BURLINGTON COUNTY,

Respondent.

Manali Arora, Esq., for petitioner (Swartz Swidler, LLC, attorneys)

Alicia D'Anella, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: November 28, 2023

Decided: December 5, 2023

BEFORE **SARAH G. CROWLEY, ALJ:**

STATEMENT OF THE CASE

Petitioner, D.S. on behalf of her minor children, E.K.-S. and S.K.-S. brings this action against the respondent, Westampton Township Board of Education (Board or

District) alleging a violation of the McKinney-Vento Act by failing to provide busing for her children after the family became homeless. It is undisputed that the family lives within two miles of the designated school for the children, and thus, under district policy no bussing is required or provided. The petitioner filed a due process complaint and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on October 18, 2023, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to 3. The Board filed a motion to dismiss pursuant to N.J.A.C. 6A:3-1.10 on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true. Opposition was filed by the petitioner and a reply filed by the Board, and the record closed on November 28, 2023.

FACTUAL DISCUSSION AND FINDINGS

Based on the documents and certifications filed in this matter, I **FIND** the following as **FACTS**:

1. The petitioner and her children are homeless.
2. The petitioner and her children, ages five and seven, reside in transitional housing in Westhampton Township.
3. The children attend Holly Hills School, which is less than two miles from the transitional housing.
4. The petitioner seeks transportation on the grounds that the transitional housing is "remote."
5. There are no allegations that the housing is not within two miles or that the route to school is dangerous.
6. There is no allegation that other children in this same geographic area are provided bussing.

LEGAL ANALYSIS AND CONCLUSIONS

The respondent seeks dismissal on the basis that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true. Pursuant to N.J.A.C. 6A:3-1.10. It is undisputed that the petitioner resides within two

miles of the school and there is no allegation that the route is dangerous or there are any other grounds entitling the children to services that are not provided to other similarly situated students in the district.

Under the McKinney-Vento Homeless Education Assistance Improvement Act of 2001, 42 U.S.C. § 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 move 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).

In this case, the children have remained in their home district in transitional housing that is within two miles of the school. The petitioner states that the location is remote, but does not allege the route is dangerous. No further elaboration or argument is provided by the petitioner's in support of their due process petition seeking busing to school. The petitioner cites the Act which requires the district to provide the same services for non-homeless children. However, there is no allegation that any non-homeless children who reside within two miles of the school are receiving bus services. The goal of the McKinney-Vento Act is to remove barriers inherent in homelessness and the district is required, consistent with that goal, to provide comparable services offered to other students in the district. The children in this case live within two miles of the school, and no children living in this area or others within two miles of the school are provided bussing.

Accordingly, I **CONCLUDE** that the petitioner does not have a right to bussing under the McKinney-Vento Act, and the petition is hereby **DISMISSED**.

ORDER

For the foregoing reasons, I **ORDER** that the motion of respondent Westhampton Township Board of Education is **GRANTED**, and the petition is **DISMISSED**.

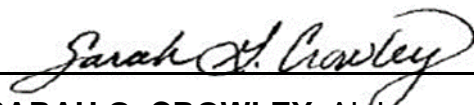
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 5, 2023 _____

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SGC/kl/mph