172-17R (OAL Decision: Not yet available online)

STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF CAMDEN, CAMDEN COUNTY,	:
PETITIONER,	:
V.	: COMMISSIONER OF EDUCATION
C. ANN VOLK, EXECUTIVE COUNTY SUPERINTENDENT, NEW JERSEY STATE DEPARTMENT OF EDUCATION, AND E.H., ON BEHALF OF MINOR CHILD, K.M.,	: DECISION
RESPONDENTS.	:

SYNOPSIS

In December 2014, the State-Operated School District of Camden (Camden) filed a petition contending that E.H. and minor child K.M. are residents of the City of Camden – despite previously being homeless after losing their home in Voorhees Township – and now live in a Camden home that is "fixed, regular and adequate," thus precluding a determination that they are homeless. Petitioner urged that K.M. is entitled to a free public education in Camden schools, not in Voorhees Township schools. The Executive County Superintendent (ECS) had rejected petitioner's position, concluding that E.H. and K.M. were homeless and, as such, K.M. is entitled to attend school in Voorhees Township at Camden's expense. After E.H. failed to file an answer to the petition, petitioner filed a motion for summary decision. An Initial Decision was issued in February 2016, wherein the ALJ found, *inter alia*, that E.H. and K.M. were no longer homeless as they had lived at a home in Camden that was fixed, regular and adequate for more than four years. Accordingly, summary decision was granted to petitioner. Subsequently, the Commissioner issued a final decision in the matter, which found, *inter alia*, that the ALJ failed to address all of the issues raised in the petition and the record was devoid of evidence regarding K.M.'s present living conditions; accordingly, the Commissioner remanded the matter to the OAL for further proceedings.

On remand, following a hearing which included testimony from E.H. and others, the ALJ found, *inter alia*, that: the Camden home that E.H. shares with family members meets the definition of "fixed, regular and adequate", and therefore K.M. is not homeless; Camden is the district in which K.M. is entitled to receive a free and appropriate education; there is no warrant in the record or circumstances presented to the Commissioner to issue injunctions against a county office; Camden has not presented a basis for any remedy of reimbursement against NJDOE; and the homelessness determination made by the ECS did not fully consider and analyze the entire scenario present in the instant case. The ALJ concluded that the ECS's determination regarding K.M.'s homelessness must be reversed, and Camden's applications for injunctive relief and financial reimbursement must be denied.

Upon comprehensive review, the Commissioner adopted the Initial Decision as the final decision, with modification. Specifically, the Commissioner found, *inter alia*, that: the appropriate standard of review for ECS decisions regarding homelessness is *de novo*; the ALJ properly found the K.M. is no longer homeless, however the ECS's 2014 decision that K.M. was homeless and deemed domiciled in Camden was also proper; the District has no basis for seeking reimbursement from the NJDOE for K.M.'s tuition and transportation costs; petitioner is not entitled to any of the injunctive or declaratory reliefs sought herein; the ECS's process for determining disputes regarding homelessness and financial responsibility for a homeless child's education comports with the requirements of *N.J.A.C.* 6A:17 *et seq.* and the McKinney-Vento Homeless Education Assistance Act, 42 *U.S.C.A.* § 11431 *et seq*; and the ECS's decision in this matter has neither created a new definition of domicile nor a "voucher" system for Camden.

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.

June 20, 2017

OAL DKT. NO. EDU 4521-16
(EDU 6081-15 ON REMAND)
AGENCY DKT. NO. 371-12/14

STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF CAMDEN, CAMDEN COUNTY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
C. ANN VOLK, EXECUTIVE COUNTY SUPERINTENDENT, NEW JERSEY STATE DEPARTMENT OF EDUCATION, AND E.H., ON BEHALF OF MINOR CHILD, K.M.,	:	DECISION
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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 the parties, and the replies thereto. In this matter, petitioner[1] challenges the homeless determination of the Executive County Superintendent ("ECS") for Camden County, C. Ann Volk, in reference to minor child, K.M. Petitioner seeks reversal of Volk's determination from September 2014 and October 2014 that K.M. was homeless, and that the District was financially responsible for her education.[2] Furthermore, petitioner requests various declaratory and injunctive reliefs from the Commissioner. Finally, petitioner seeks reimbursement for the cost of K.M.'s education, as well as attorney's fees, from the New Jersey Department of Education ("NJDOE"). Respondent[3] contends

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[1] Petitioner shall also be referred to as "Camden" and "District."

[2] K.M. was enrolled in Eastern Regional High School in Voorhees, New Jersey, where she remained enrolled for the time period relevant to this case.

[3] Respondent shall refer to "Volk" for the purposes of this decision.

that her determination was proper and that K.M. remains homeless; thereby, Camden is required to continue providing tuition and transportation costs for K.M. Respondent further contends that petitioner's requests for declaratory and injunctive relief are improper and must be denied. Additionally, respondent submits that petitioner is not entitled to reimbursement or attorney's fee from the NJDOE.

Following transmittal of this matter to the OAL, the parties filed a motion and cross-motion for summary decision before the Administrative Law Judge ("ALJ"). The ALJ granted summary decision to petitioner on Count One of the petition – finding that K.M. is not homeless because she presently resides in a fixed, adequate, and regular dwelling – but did not address Counts Two through Five of the petition or Camden's request for reimbursement. In a decision dated March 18, 2016, the Commissioner remanded the matter to the OAL, finding that the ALJ failed to address all of the issues raised within the petition and erred in granting summary decision. The Commissioner explained that, given the lack of information contained in the record, a plenary hearing centered upon a comprehensive, fact-specific examination of the family's circumstances was necessary to determine K.M.'s status.

On remand, the ALJ concluded that K.M. lives in a "fixed, regular and adequate residence" and therefore, she is not homeless.[4] The ALJ further concluded that there is no basis for the Commissioner to issue any injunctions in this matter, and that Camden is not entitled to reimbursement from the NJDOE.

Petitioner's exceptions substantially recast and reiterate the arguments made below. Specifically, petitioner argues: 1) Camden is entitled to reimbursement of tuition and transportation costs from the 2012-2013 through the 2016-2017 schools years since K.M. is not homeless, and the NJDOE is responsible for such reimbursement; 2) Camden is entitled to injunctive relief permanently enjoining and requiring Volk to apply the law in making homelessness determinations; 3) Volk's

[4] The ALJ also reversed Volk's decision.

decision has created a new definition for domicile, which permits a general education student from the District to attend an out-of-district school at Camden's expense; 4) Volk has created a "voucher" system by directing Camden to pay for the cost of K.M.'s education in another school district; and 5) as such, the NJDOE must declare that it will not penalize Camden for incurring the cost of tuition and transportation to send its general education students to another school district.

In her reply, respondent expresses her disagreements with petitioner's specific exceptions, and also argues that the ALJ's decision leaves open the question of when K.M.'s homeless status changed. Respondent submits that petitioner cannot assume that K.M. was no longer homeless beginning in the 2012-2013 school year merely because that is the point at which Camden became financially responsible for K.M.'s education. Respondent further argues that the ALJ did not find Volk's decision incorrect; rather, the ALJ reached a different determination based on *de novo* review of the record and the additional information gathered subsequent to Volk's decision. Respondent also uses this opportunity to reassert her position that a "more-appropriate" standard of review is "arbitrary, capricious, or unreasonable, or whether subsequently-received information requires the decision be reversed."

Respondent's exceptions similarly advance her arguments below. Specifically, respondent argues that the ALJ erred in determining that K.M. is no longer homeless. Respondent submits that K.M. lacks a fixed, regular and adequate residence as demonstrated by the family's particular living situation and E.H.'s financial difficulties. Additionally, Respondent argues that the inability of a homeless person to realistically obtain their own residence in the foreseeable future due to economic hardship, together with their long-term residence in a family member's home, does not change their homeless status. Respondent also seeks modification of the ALJ's decision to clarify that there is no temporal limit to homelessness, and a homeless student has the right to attend school in their district of origin even after they are deemed domiciled in another district, so long as they remain homeless. Lastly, respondent further reiterates arguments in support of the ALJ's

determination that petitioner is not entitled to the injunctive relief or declaratory relief sought in its petition.

Petitioner argues in its reply that the District is entitled to injunctive relief because "if the Commissioner felt that [s]he was not authorized to issue injunctive relief, then [s]he would not have remanded that portion of the case to the [ALJ]." Petitioner also argues that the Initial Decision creates a new definition of domicile because Camden is "required to pay for tuition and transportation to an out of district school for a general education student who lives in and is domiciled in the City of Camden." Lastly, petitioner reasserts that the ALJ's finding that K.M. is not homeless is proper because K.M. and her family live in a home that has "running water, a kitchen, a bathroom, living areas and bedrooms." Petitioner further notes in its reply,

> Respondents would have the Commissioner issue a decision that permits a family to declare itself "homeless" for the entire length of a child's education, spanning 12 years, simply because the family is living in a home that is either not the family's own home or is not where they would prefer to live . . . Respondents are redefining homelessness by creating a situation where [K.M.]'s family, who lives in a stable house for years and years, with the usual amenities found in a regular home, and that specifically fits the definition of "fixed, adequate and regular" is still considered homeless, simply because some people in the home share a bedroom and because this is not where [K.M.]'s mother would prefer to live.

Upon a comprehensive review of the record, the Commissioner is in accord with the ALJ's decision, as modified herein. Specifically, the Commissioner finds that the appropriate standard of review for ECS decisions regarding homelessness is *de novo* (without deference to the decision below). Additionally, the ALJ properly found that K.M. is no longer homeless; however, Volk's decision in 2014 that K.M. was homeless and deemed domiciled in Camden – and, therefore, the District was responsible for the cost of K.M.'s education – was also proper. Furthermore, the District has no basis for seeking reimbursement from the NJDOE for K.M.'s tuition and transportation costs. The Commissioner also finds that petitioner is not entitled to any of the

injunctive and declaratory reliefs sought in this matter.[5] Indubitably, Volk's process for determining disputes regarding homelessness and the financial responsibility for a homeless child's education comports with the requirements of *N.J.A.C.* 6A:17 *et seq.* and the McKinney-Vento Homeless Education Assistance Act, 42 *U.S.C.A.* § 11431 *et seq.* (McKinney-Vento Act), and the decision has neither created a new definition for domicile nor a "voucher" system for Camden. [6]

Under *N.J.A.C.* 6A:17-2.7, "[i]f an appeal of a determination of district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner pursuant to *N.J.A.C.* 6A:3, Controversies and Disputes." The regulations do not specify the standard of review for appeals from ECS decisions in matters of homelessness; however, both parties seek review of this case under the "arbitrary, capricious or unreasonable" standard. This limited scope of review is the standard used by appellate courts in considering final agency decisions. *See Campbell v. Dept. of Civil Service*, 39 *N.J.* 556 (1963). The decisions below are not disturbed "in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence." *Id.* at 562. Similarly, in matters where the Commissioner serves as the appellate entity, the "arbitrary, capricious, or unreasonable" standard is applied to determine whether a previous ruling was improper on the basis that it was made on unreasonable grounds or without appropriate consideration of circumstances. In

[5] Petitioner's request for injunctive and declaratory relief do not merit extensive discussion, as petitioner has no basis in law for same. The Commissioner notes the following, however: 1) Even if petitioner had a right to seek such relief in this matter, Camden cannot establish irreparable harm. More importantly, the Commissioner's decision to remand the matter to the OAL had nothing to with the merits of Camden's claims; rather, it was a procedural action – the matter had already been transmitted to the OAL for a hearing so the ALJ's failure to complete fact-finding and consider *all* the issues raised in the case rendered the matter incomplete, and 2) Petitioner's request for a declaration from the Commissioner that Camden will not be penalized for paying for the educational costs of "general education students" to attend school in another school district is, simply put, far-fetched. Petitioner has conflated the rights of a "homeless" child – which will be discussed below – with that of "non-homeless" children domiciled/residing in the District.

[6] Petitioner has again misconstrued the law as it applies to homelessness. The Commissioner does not deem it necessary to address Camden's arguments relating to "a new definition of domicile" and "establish[ment] of a voucher system," in detail, as the law is sufficiently clear, and petitioner's arguments are devoid of any legal support. Instead, the Commissioner directs the petitioner's attention to *N.J.S.A.* 18A:38-1, *N.J.S.A.* 18A:7B-12, *N.J.A.C.* 6A:17-2.3 and *N.J.A.C.* 6A:17-2.5, and corresponding decisional law – which will be discussed below – as they clearly set forth the education of homeless children and the school districts' responsibilities.

making such determinations, deference is given to the decision below. *See T.R v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist.*, Commissioner Decision No. 144-15 (May 6, 2015) (citing *Thomas v. Bd. of Ed. of Morris Twp.*, 89 *N.J. Super.* 327, 332 (App. Div. 1965), *aff'd* 46 *N.J.* 581 (1966)) ("[i]t is well established that when a local school board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable").

Moreover, when the Department has decided to limit the Commissioner's scope of review of specific subordinate divisions or offices, it has expressed that limitation by regulation. *E.g.*, *N.J.A.C.* 6A:4-4.1 (decisions of the State Board of Examiners), *N.J.A.C.* 6A:3-7.5 (decisions of the New Jersey State Interscholastic Athletic Association); *see also In the Matter of the Certificates of Gail Wunsch*, Commissioner Appeal No. 421-16A (December 14, 2016) ("the Commissioner may not substitute her judgment for that of the Board [of Examiners] so long as . . . the Board's decision is supported by sufficient credible evidence in the record . . . the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious or unreasonable"), *Bd. of Educ. of North Bergen Twp. v. NJSIAA*, Commissioner Decision No. 476-12 (December 14, 2012) ("[t]he Commissioner may not overturn an action by the NJSIAA in applying its rules, absent a demonstration by the petitioner that it applied such rules in a patently arbitrary, capricious or unreasonable manner"). As noted above, no such regulation similarly restricts the scope of review from an ECS determination of homelessness. Significantly, "the agency head is not legally required to give any deference to the staff of the agency, but as the head of an administrative agency is instead required to decide the matter as the agency head deems legally appropriate." *Bd. of Trustees of the Passaic Cnty. Elks Cerebral Palsy Center v. NJ Dept. of Educ.*, OAL Docket. No. EDU 16074-12, Commissioner Decision No. 334-14 (Aug. 14, 2014) (citing *Liberty House Nursing Home v. Dep't of Health and Senior Servs.*, OAL Dkt. No. HLT 7275-09, *adopted*, Commissioner (Sept. 23, 2010), *aff'd*, A-1069-10 (App. Div. Mar. 5, 2012) (slip op.), *cert. denied*, 210 N.J. 478 (2012)).

Accordingly, "arbitrary, capricious or unreasonable" is not the appropriate standard of review as this matter is not an appeal from a final agency decision, and petitioner has requested the Commissioner's review of a subordinate office within the Department where the Commissioner's scope of review is not limited.

It bears noting that appeals from a determination of homelessness are not solely a request to review and reverse an ECS's decision: the Commissioner must also decide – based on the facts available to her at the conclusion of the hearing at the OAL – whether the child is homeless. Such adjudications are fact-sensitive, and individual circumstances must be thoroughly considered. *See M. O'K. v. Bd. of Educ. of the Boro of Cresskill, et al*, Commissioner Decision No. 325-14 (August 12, 2014), *aff'd*, A-0828-14T4 (App. Div. Sept. 8, 2016) (slip op.) (Finding "[t]he reasons for a child's homelessness, the child's living conditions, and the resources and intentions of the parents or custodians" are relevant considerations in the evaluation of homelessness). During the time between an ECS's decision (which is ordinarily made within a short period of time and without the convenience of fact-finding or an extensive record) and the Commissioner's review of the appeal, the child's living conditions, and/or the resources and intentions of the family may change. Consequently, the Commissioner's review of the appeal is based on "the facts as they may exist at the conclusion of the hearing held in the OAL and the proper application [of] those facts [to] the existing law." Initial Decision at 13. As such, the Commissioner's independent determination of a student's homeless status is *de novo*.

In New Jersey, it is well-settled that homelessness determinations are dictated by Federal and State law. 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). As discussed above, determination of homelessness is not temporal, *i.e.*, there is no maximum duration of homelessness, and therefore, the determination must be made on the specific facts and circumstances of the case. The facts in this case support a finding that K.M. is *not* homeless pursuant to *N.J.A.C.* 6A:17 *et seq.,* and the McKinney-Vento Act because she does not lack a "fixed, regular, and adequate nighttime residence" and her family's continued residence at her grandmother's home can no longer be considered "resid[ing] out of necessity" due to "economic hardship." *See N.J.A.C.* 6A:17-1.2 and 2.2; 42 *U.S.C.A.* § 11433 and 11434a. *See als*o *M. O'K*, *supra*; *Bd. of Educ. of the Boro. Of Englewood Cliffs v. E.S. and W.S., o/b/o A.S. and E.S., et al*, Commissioner Decision No. 196-10 (June 30, 2010); *L.C. o/b/o B.C. v. Bd.of Educ. of the Twp. of Branchburg*, 96 *N.J.A.R.* 2d (EDU 1003).

A review of the record indicates that K.M.'s family moved from Voorhees to Camden in 2011 due to loss of residence and economic hardship. The record also reveals that E.H. has been gainfully employed since September 2012 and receives a salary of $65,000, and her two adult children are employed in part-time positions.[7] E.H. testified that she is unable to receive approval for a mortgage or a rental apartment due to debt and poor credit. E.H. also testified that there are default judgments entered against her for which she makes monthly payments.[8] Finally, E.H. testified that she does not pay rent to live in the Camden residence, but she contributes towards the household expenses by paying for the bills when her mother asks her to pay for a particular bill, which varies

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[7] It is observed from the transcript of the hearing that E.H. was hesitant to disclose the exact amount of her annual income and questioned the relevance of such information.

[8] There is no record of how much E.H. is paying on a monthly basis, and in response to the ALJ's request for an approximate amount, E.H. claimed that it is a substantial portion of her income without providing a specific amount.

from month to month.[9] Respondent has argued that the family's economic hardship has prevented E.H. from being able to find a residence of her own, and the shared residence cannot be considered "fixed, regular, and adequate" because of the sleeping arrangements,[10] and the family's previous short-term relocations to hotels due to conflict between E.H. and her mother on several occasions.[11]

In *M. O'K.*, *supra*, the Commissioner found, and the Appellate Division affirmed, that the O'K family – two parents and three children – become 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, the O'K family continued to remain homeless due to their shared living conditions and the parents' economic hardship.[12] The O'K family initially moved into S. O'K's parents' house in Little Ferry, but after a year of living in that home, they were temporarily displaced from the residence due to flooding caused by Hurricane Sandy. At that point, they were forced to relocate to a relative's home in New York. After a few months, the O'K family returned to Little Ferry and resumed living in S. O'K's parents' house. At the Little Ferry residence, the O'K family occupied the bottom floor of the house, which consisted of one small bedroom and a common area. There was no bathroom or kitchen on that floor. The parents and two of the children – a teenage daughter and the ten year old son – shared the bedroom, while the older son slept in the

[9] E.H. also testified that she pays for food but it is not clear from the transcript whether she pays for all of the food for the household or just her family, or contributes towards the total cost of food for the household.

[10] E.H. testified that she sleeps in the living room, the two daughters share one bedroom, while her son has his own room, and her mother has her own room. E.H.'s brother sleeps in the unfinished basement. E.H. also testified that her brother, who lived in the home prior to their move in 2011, voluntarily relocated to the basement.

[11] It is not clear from E.H.'s testimony the exact number of times the family left the Camden residence and stayed at a hotel, but E.H. testified that it was between five and ten times over the last six years. E.H. also testified that in some years, the brief relocation occurred more frequently than in others. It is also not clear whether such incidents have occurred in recent years, but the ALJ did not find this to detract from his conclusion because of the number of years that the family has occupied the Camden residence and the fact that they have moved back to the Camden residence after every hotel stay. The Commissioner agrees – to the extent that the family returned to the Camden residence and has continued their occupancy of the home – that such relocations do not impact the family's present status as there is no indication that the family is in imminent or foreseeable risk of losing their place in the home.

[12] Neither parent was employed at the time of the litigation, and the family's sole income consisted of Social Security Disability benefits.

common area. The O'K family lived in those conditions *out of necessity*, especially considering the family's financial challenges. Prior to their displacement, the O'K family had always lived in Cresskill and they expressed a desire to return to Cresskill and continue to raise their children in that community. During the pendency of the litigation, the O'K family represented that they were actively searching for a house in Cresskill. In fact, at the time of the Appellate Division proceedings, the O'K family still had not acquired housing of their own and moved into a two-bedroom apartment in Little Ferry being rented by the adult, emancipated son, while continuing to seek permanent housing.

In the instant matter, the living conditions of K.M. and her family, as well as E.H.'s financial situation, are distinguishable from those of the O'K family. First, K.M. and her family enjoy occupancy and use of the entire Camden residence, as they are not relegated to a portion of the home that would otherwise be considered inadequate. Moreover, although the sleeping arrangements may be less than ideal, it is not uncommon for siblings to share the same room.[13] Second, E.H. is presently employed; notably, she has been employed for over four and a half years. Additionally, her two adult children are also employed in part-time positions. While E.H. has testified that she has outstanding debt and judgments against her – which she claims has resulted in economic hardship – she has not been forthcoming about the amounts of such judgments and debts, and the extent to which they have prevented her from finding alternate housing for her family. Without such proofs, the Commissioner is not persuaded that E.H., who is gainfully employed and earns an annual salary of $65,000, is unable to find an apartment that is suitable for her family in Voorhees, while making payments for the alleged judgments and debt.[14] Third, E.H.'s testimony reveals that she stopped

[13] The Voorhees apartment also had three bedrooms, and at least five occupants at one point. As such, it is probable that the two sisters were also sharing a room in the Voorhees apartment.

[14] E.H. has not indicated where she has been looking for an apartment; however, based on her desire to have K.M. remain enrolled in Eastern Regional, it would be reasonable to expect that E.H. has been looking for an apartment in Voorhees for the last four and a half years. There is also nothing barring E.H. from looking for adequate housing in

looking for apartments in June 2016.[15] While the Commissioner is certainly sympathetic to E.H.'s predicament, the Commissioner is not persuaded – based on the facts in this case – that K.M. and her family continue to remain in the Camden residence out of necessity and economic hardship. Furthermore, since the Camden residence qualifies as a "fixed, regular, and adequate" nighttime dwelling-place, K.M. is deemed not homeless.[16]

Homelessness, particularly in cases like the present matter, is best viewed in a continuum. For instance, a family may move into a relative's home out of necessity and hardship, but over time, that home may become a regular, *albeit* temporary, dwelling-place where the members of the household seamlessly co-habit and share the expenses and amenities of the home. *See L.C.*, *supra* (finding "while [petitioner's] living arrangements with her brother 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"). In *L.C.*, *supra*, the C. family was evicted from their home in Branchburg, causing them to move into L.C.'s brother's apartment. The apartment was small and did not have room for the C. family's belongings, which were placed in storage. At the time of the hearing, L.C. testified that the C. family had continued to remain in the brother's apartment and that L.C. was paying half of the rent for the apartment. L.C. also indicated her desire to move back to Branchburg.

Here, E.H. similarly contributes to household expenses at the Camden residence, but – unlike in *L.C.*, *supra* – her circumstances appear less temporary, as there is no indication that any

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Camden or in its vicinity, as the S. Family did in Teaneck when they could not find a home in Englewood Cliffs. *See E.S.*, *supra*.

[15] It is also unclear whether E.H. has attempted to find housing where she is not required to submit a rental application or undergo a credit check: E.H. testified that she would not be approved for an apartment due to her credit as she has been rejected in the past.

[16] It is noted that E.H. sleeps in the living room and her brother – whose living condition should not be factored in deciding K.M.'s status as a homeless child – sleeps in the basement. Unless E.H. opts to share one of the three bedrooms – which is certainly not ideal – her continued living situation is a result of her decision to remain in the Camden residence despite having the potential means to move into an adequate home of her own.

of the family's possessions had to be placed in storage until such time as the family moves to a different home. E.H. may consider the Camden residence temporary, and her intention may be to eventually move back to Voorhees (or to a different home in Camden) in the future. However, while intention is a factor to be considered in determining homelessness, the totality of the facts and circumstances in this case renders a finding that K.M. is no longer homeless. Significantly, E.H. stopped looking for another home in June 2016; her financial situation is not typical of the economic hardships usually related to homelessness; and the Camden residence is fixed, regular, and adequate. *See E.S.*, *supra*, where the ALJ found, and the Commissioner concurred, that the S. family – who had been evicted from their rental home of two years in Englewood Cliffs, which precipitated their move to Teaneck in November 2008 – was not homeless despite their representation that the small home in Teaneck was temporary, and that they were forced to remain there because of issues with their credit.[17] The ALJ noted that the parents were steadily employed for many years, and the S. family did not suffer from the typical financial hardships that are often related to homelessness.

It is important to distinguish between a family's decision to remain in a relative's home or temporarily settle elsewhere *out of necessity* – *i.e.*, they do not have the resources or the ability to find alternate housing – and a situation in which a family remains in the relative's home *out of choice*, *e.g.*, they have not found the home that they desire, even when other suitable housing is available to the family, or one where a family – like *E.S., supra* – claims homelessness just because they do not live in the community of their preference. As such, when a homeless family moves into a relative's home that is adequate – and the adults in the family are sufficiently employed with the financial means to find alternate housing, and the family continues to live in the home for an extended period of time without any imminent or foreseeable risk of losing their place in that home, and they share the space as a cohesive unit – a finding of homelessness would be improper.

[17] The ALJ also found that the home was in need of repairs but habitable.

As conceivable as it may be that a child could be homeless for the duration of their education (in limited circumstances), such determination must not be based on broad application of the governing statutes and regulations, as respondent has proposed. The purpose of the law is to ensure that a homeless child is not denied a free public education; it is not meant to enable a child to receive an education in a school district of preference by circumventing residency requirements. For that reason, the notion that homelessness has no maximum duration must be applied with caution, taking into consideration the totality of the circumstances. Consequently, when a child's circumstances change such that the child is no longer homeless, the finder of fact must also determine the point at which the child's homelessness ceased. A child's homeless status may change well before the case concludes, and it would be inequitable to hold a school district responsible for a child's education until a final decision is rendered if that district is not in fact responsible for the cost of the child's education. In this case, the Commissioner finds that K.M. stopped being homeless in June 2016, because that is when E.H. stopped looking for another place to live, despite having the resources and claiming that her intent was to move. The Commissioner finds that implicit in E.H.'s actions is the intent to remain in her mother's home for the foreseeable future – a home that is fixed, regular and adequate, and where she no longer resides out of necessity. Therefore, K.M. was homeless when she moved to Camden in 2011; she was properly found homeless in 2014 by ECS Volk; she is presently not homeless (as of June 2016); and therefore, K.M. was not entitled to a free public education in Voorhees for the 2016-2017 school year.

With regard to Camden's demand for reimbursement from the NJDOE for the cost of K.M.'s education,[18] and its request for attorney's fees, the Commissioner finds that there is no legal basis for same. Notwithstanding petitioner's failure to cite to any legal authority and convincingly

[18] In the limited instances where the district of residence cannot be determined or in situations where the child has resided in a domestic violence center or transitional living facility located outside of the district residence for more than one year, the State will assume financial responsibility for the tuition of the child. See *N.J.S.A.* 18A:7B-12(d). Such circumstances are not present in this matter.

argue why the District is entitled to such relief, it appears that Camden also seeks to change how the district of residence and the responsibility for the cost of a homeless child's education is determined. As such, the Commissioner will clarify the ALJ's finding in this matter. It is undisputed that a homeless child's district of residence – when the parent or guardian temporarily moves out of one district to another – is the district where the parent or guardian last resided prior to becoming homeless. *See N.J.S.A.* 18A:7B-12. In this case, K.M.'s district of residence was Voorhees when she moved from Voorhees to Camden in 2011. The district of residence is responsible for the educational costs of the child, which includes determining where the child shall be enrolled, paying the cost of tuition if the child is enrolled in another school district, and providing transportation as necessary. *See N.J.A.C.* 6A:17-2.3. Therefore, during the 2011-2012 school year, Voorhees was responsible for K.M.'s education and the associated costs. *N.J.A.C.* 6A:17-2.3(c) further provides, "[f]inancial 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." In other words, if a homeless child moves to another school district and is deemed domiciled in that district, then for the purposes of the homeless child's education, the new school district is the child's district of residence, and the last school district is no longer financially responsible for the child's education.

Entitlement to a free, public education can be established once "[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 domiciled within the district . . ." *N.J.S.A.* 18A:38-1(d). It follows that the child is then entitled to a free, public education in that district. It is important to reiterate that when a child is "deemed domiciled in another jurisdiction" it does not mean that the child is no longer homeless, because the conditions of homelessness may still persist. Additionally, throughout the duration of a child's homelessness, they have a conditional right to continue education in the last

school district.[19] In this case, when K.M. and her family lived in Camden for a year, she was deemed domiciled in the District, and the District then became financially responsible for her education. Since K.M. was deemed homeless at the time, Camden had the option of continuing her enrollment in Voorhees, which the District decided was in K.M.'s best interest during the school years between 2012 and 2016. To now seek reimbursement for the 2012-2013, 2013-2014, 2014-2015, and 2015-2016 schools years from the NJDOE or any other similar entity for Camden's calculated decision to enroll K.M. in Voorhees, is improper.

With regard to the 2016-2017 school year, however, K.M. was not entitled to attend school in Voorhees as she was no longer homeless. Neither Voorhees nor the NJDOE is legally responsible for K.M.'s education as her present domicile is Camden. As K.M. was not homeless during the 2016-2017 school year, Camden may seek reimbursement from E.H. for: 1) the cost of K.M.'s transportation to Voorhees (deducting any cost of transportation Camden may have incurred had K.M. attended school in the District); and 2) the difference between the cost of K.M.'s tuition at Voorhees for the 2016-2017 school year and Camden's per pupil cost for the 2016-2017 school year (should Camden's cost of tuition be higher than Voorhees, the difference shall be credited towards the cost of transportation from Camden to Voorhees).

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is hereby adopted – as modified herein – as the final decision in this matter. Volk's determination in September 2014 and October 2014 that K.M. was homeless was proper given the totality of the family's circumstances at that time. K.M.'s status changed in June 2016 when E.H. – who has been satisfactorily employed for four and a half years – stopped looking for another place to live and

[19] The right to an education in the last school district is defined as "conditional" by the Commissioner because the determination of which school district the child will attend is made by the present school district based on the "best interest of the child," which includes consideration of factors such as the parents' wishes, continuity of the educational program, eligibility for special instructional programs, and the "distance, travel time, and safety factors in coordinating transportation services from the residence to the school." *N.J.A.C.* 6A:17-2.5. Therefore, unlike respondent's assertions, an absolute right to enroll in the last school district does not exist as such attendance may not be in the best interest of the child.

decided to continue her residence in a fixed, regular and adequate home in Camden despite having the resources and ability to move. Petitioner's request for reimbursement for tuition from the 2012-2013 school year through to the 2016-2017 school year, attorney's fees, injunctive relief and declaratory relief are denied on the basis that Camden has no legal right to same. Petitioner may, however, seek reimbursement of K.M.'s educational costs for the 2016-2017 school year from E.H., as outlined above.

IT IS SO ORDERED. [20]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 20, 2017

Date of Mailing: June 20, 2017

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[20] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c*. 36 (*N.J.S.A.* 18A:6-9.1) and applicable Appellate Division rules.