

**New Jersey Commissioner of Education**

**Final Decision**

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

Petitioner,

v.

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

Respondents.

**Synopsis**

In this matter on remand, the Board of Education of the Township of Pennsauken (Pennsauken) appealed the determination of the respondents, Lovell Pugh-Bassett, Interim Executive County Superintendent (ECS), and the Haddon Township Board of Education (Haddon Township), that A.A. and her minor child are homeless. Pennsauken contended that A.A. and A.L. were domiciled in Pennsauken, as they had resided in the Pennsauken home of A.A.'s mother for more than eighteen months, and further argued that Pennsauken is therefore not financially responsible for tuition costs related to A.L.'s attendance in Haddon Township schools. In a Commissioner's decision issued on January 6, 2021, the Acting Commissioner determined that more information was necessary to determine whether the Pennsauken home of A.A.'s mother is fixed, regular and adequate such that A.L. is no longer homeless under state and federal law. Accordingly, the matter was remanded for further proceedings to determine this issue.

On remand, the ALJ found, *inter alia*, that: A.A. has been living in her mother's Pennsauken home with her daughter A.L. since 2017; A.A. is living there with A.L. and taking care of her mother who is disabled; the home is a fixed, regular, and adequate place to live with regular sleeping accommodations; A.A. and A.L. each have their own bedroom; A.A. and A.L. have access to all of the home's facilities, including the kitchen, bathroom, and living rooms; despite A.A.'s repeated insistence that the Pennsauken house is a temporary residence and she intends to return to Haddon Township, she has been living in the family home in since 2017. Accordingly, the ALJ concluded that A.A. and A.L. can no longer be considered homeless; that they have been domiciled in Pennsauken since 2018; that Pennsauken has no financial responsibility for A.L.'s attendance in Haddon Township schools; that A.L. should be placed in the Pennsauken Public School District, if A.A. so desires; and that the ECS's determination of homelessness should be reversed.

Upon review, the Commissioner concurred with the ALJ's determination that A.L. is no longer homeless as the Pennsauken home is a fixed, regular, and adequate residence which has become the family's permanent residence. The Commissioner ordered that Pennsauken is not responsible for A.L.'s education costs in Haddon Township, and A.L. shall be enrolled in Pennsauken schools for the 2022-2023 school year.

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.

122-22

OAL Dkt. No. EDU 00744-21  
(EDU 16086-20 on remand)  
Agency Dkt. No. 94-5/19

## New Jersey Commissioner of Education

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

Respondents.

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

A.A. and her minor child, A.L., resided in Haddon Township from 2012 through 2016, when they were evicted due to financial hardship. After temporarily living with a friend in Bellmawr, they moved into the home of A.A.'s mother home in Pennsauken in August or September of 2017. A.L. continued to attend school in Haddon Township. On March 28, 2019,

the ECS issued a determination that A.L. was homeless, as the family lost their apartment due to financial hardship and was residing with relatives out of necessity. Accordingly, the ECS found that Pennsauken was financially responsible for A.L.'s education, because A.L. had resided there for more than one year. Pennsauken filed an appeal challenging the homelessness determination, seeking for A.L. to be placed in Pennsauken's schools, if the family desired, and a finding that Pennsauken would not be financially responsible for A.L. to attend Haddon Township schools.

Following an Initial Decision finding that A.L. was not homeless, the Commissioner concluded that additional information was required and remanded the matter for further proceedings to determine whether the Pennsauken home was fixed, regular, and adequate, such that A.L. was no longer homeless. On remand, the ALJ found that the three individuals living in the home each have their own bedrooms and are not doubled up. Furthermore, A.A. and A.L. have access to all of the home's facilities, including the kitchen, bathroom, and living rooms. Accordingly, the ALJ concluded that the Pennsauken home is a fixed, regular, and adequate place to live and that A.L. can no longer be considered homeless.

In her exceptions, the ECS argues that A.A. and A.L. continue to be homeless. She notes that the family was evicted from their Haddon Township residence due to inability to pay rent, and that A.A. lacks the resources and ability – based on her level of income and prior felony convictions – to obtain employment that would allow her to sustain an independent residence, such that she is doubled up in Pennsauken out of necessity. The ECS also contends that A.A. intends to return to Haddon Township and is making an active effort to obtain an independent apartment but has been unsuccessful. According to the ECS, because the family has been living in Pennsauken for over one

year, they have established a domicile there, and Pennsauken should be responsible for the cost of A.L.'s education while A.L. continues to attend school in Haddon Township.

In its exceptions, Haddon Township argues that A.L. and A.A. are doubled up in Pennsauken, where they moved out of necessity. Haddon Township also contends that it has always been A.A.'s intention to move back to Haddon Township, so the Pennsauken home is not a permanent residence. Haddon Township contends that A.L. is domiciled in Pennsauken and that Pennsauken is therefore responsible for the costs of her education.

In reply, the Board argues that the ALJ's decision properly considered all of the evidence and should be adopted by the Commissioner. According to Pennsauken, the family is not doubled up, as A.A. and A.L. have their own bedrooms and unrestricted access to the entire home. Pennsauken also contends that A.A., her mother, and A.L. have become a cohesive family unit, such that the Pennsauken home has become fixed and regular. Pennsauken notes that A.A. was unable to produce any evidence of her efforts to move out of the Pennsauken home and argues that A.A.'s stated intent is insufficient to support a finding of homelessness.

Upon review, the Commissioner concurs with the ALJ's determination that A.L. is no longer homeless. Under the McKinney-Vento Act, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children sharing housing with other persons due to loss of their own housing, economic hardship, or a similar reason." 42 U.S.C.A. § 11434a. Similarly, under state law, homeless children are defined as "child[ren] or youth who lack[] a fixed, regular and adequate residence pursuant to *N.J.S.A. 18A:7B-12* and *N.J.A.C. 6A:17-2.2*," which includes children living in the "residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own." *N.J.A.C. 6A:17-1.2* and 2.2.

Thus, conducting a homelessness evaluation to determine whether a child's home is considered fixed, regular and adequate requires a fact-specific analysis and "cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality." *M. O'K. v. Board of Education of the Borough of Cresskill, et al*, Commissioner Decision No. 325-14, decided August 12, 2014 at 3, *aff'd*, A-0828-14T4 (App. Div., September 8, 2016). In conducting such a fact-specific inquiry, the Commissioner must consider the totality of the circumstances, as "[t]he reasons for the children's homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant." *Ibid*.

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

In contrast, in *State-Operated School District of the City of Camden, Camden County v. C. Ann Volk, Executive County Superintendent, New Jersey Department of Education, and E.H., on behalf of minor child, K.M.*, Commissioner Decision No. 172-17R, decided June 20, 2017, the family relocated from Voorhees to Camden due to economic hardship that prevented them from continuing their lease. In the Camden residence, the family was able to use the entire residence and was not relegated to a portion of the home that would otherwise be considered inadequate. E.H., the children's mother, argued that the residence was inadequate because the siblings had to share a room, which the Commissioner found was not uncommon. Furthermore, given E.H.'s ongoing employment at an annual salary of \$65,000, the Commissioner was not persuaded that she was unable to find suitable housing in Voorhees, particularly in light of her testimony that she had stopped looking for apartments. The Commissioner found that the family was not residing in the Camden residence of out necessity and that it qualified as a "fixed, regular, and adequate" nighttime residence, such that the family was not homeless. *Ibid.*

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

submitted a rental application in at least six months. The Commissioner found that, while J.G.'s intention may be to eventually move back to Milltown, the totality of the facts and circumstances demonstrate that the family is no longer homeless.

Homelessness, particularly in cases like the present matter, is best viewed in a continuum. *Volk, supra*. 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 residence.<sup>1</sup> *Ibid*. Here, the family's circumstances demonstrate that they all depend on each other in the manner of a traditional household unit, supporting the conclusion that A.A. and A.L.'s residence has become fixed in its current arrangement and location. In the Pennsauken home, A.A. acts as caregiver for her mother, who is disabled and who would need to hire help if A.A. did not assist with her activities of daily living. In turn, A.A. relies on her mother to pay for the family's living expenses. A.A. testified that if she moved out of the Pennsauken home, she would want to take her mother with her, demonstrating that the living arrangement of A.A., her mother, and A.L. residing in the same home has become fixed. Furthermore, there is no indication that the residence is inadequate. A.A. and A.L. enjoy the use of the entire Pennsauken home, including the kitchen, bathroom, and living rooms, and they each have their own bedroom. While A.A. indicated that she intends to return to Haddon Township, given that her mother would continue to live with her, that intention appears to be based solely on a preference for location

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<sup>1</sup> For this reason, an ECS' determination that a child is homeless can be reasonable in light of the evidence she has at the time; however, such determination can be overturned based on evidence received during the course of the proceedings. See *Bd. of Educ. of the Borough of Hawthorne, Passaic Cty. v. Bd. of Educ. of the Borough of Prospect Park, Passaic Cty., and N.J. Dep't of Educ.*, Commissioner Decision No. 196-14, decided May 12, 2014. Here, the Commissioner finds that the ECS' determination that A.L. was homeless was reasonable based on the information she had at the time she made her decision, but that decision must nonetheless be overturned based on the evidence presented at hearing.

and not a need for additional space to avoid doubling up or to otherwise rectify any inadequacy in the Pennsauken home. Moreover, the ALJ found that there was no proof to support A.A.'s attempts to find housing in Haddon Township, and her stated intention is insufficient to support a finding of homelessness. Based on these facts, the Commissioner concludes that the Pennsauken home is a fixed, regular, and adequate residence, which has become the family's permanent residence, and A.L. is therefore no longer homeless.

Although the ALJ did not make a specific finding as to when A.L. was no longer homeless, the Commissioner finds that the Pennsauken home had become the family's permanent residence at the start of the 2018-2019 school year.<sup>2</sup>

Accordingly, the Commissioner orders that A.L. is no longer homeless and that Pennsauken is not responsible for the costs of her education in Haddon Township. A.L. shall be enrolled in the Pennsauken school district for the 2022-2023 school year.

IT IS SO ORDERED.<sup>3</sup>

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

Date of Decision: June 16, 2022  
Date of Mailing: June 20, 2022

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<sup>2</sup> The family's relocation from October 2019 until April 2020 does not change this conclusion. At that time, A.A. was in jail and rehabilitation, and A.L. lived in Bellmawr, while A.A.'s mother had to leave her home to reside with A.A.'s brother in his home. However, the family was not homeless during this time. They had a permanent residence in the Pennsauken home, to which they intended to return once A.A. was released, and to which they did indeed return.

<sup>3</sup> 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

**CORRECTED DECISION ON**

**REMAND**

OAL DKT. NO. EDU 00744-2021

AGENCY DKT. NO. 94-5/19

(On remand EDU 16086-2019)

**BOARD OF EDUCATION, TOWNSHIP  
OF PENNSAUKEN, CAMDEN COUNTY,**

Petitioner,

v.

**LOVELL PUGH-BASSETT, INTERIM  
EXECUTIVE COUNTY SUPERINTENDENT,  
BOARD OF EDUCATION HADDON  
TOWNSHIP, CAMDEN COUNTY AND**

**A.A. ON BEHALF OF A.L.,**

Respondents.

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

**Michael Stanton**, Esq., for respondent, Haddon Township Board of Education (McCrosson and Stanton, P.C., attorneys)

**Sadia Ahsanuddin**, Deputy Attorney General, for respondent, Lovell Pugh-Bassett, Interim Executive County Superintendent, (Matthew J. Platkin Acting Attorney General of New Jersey, attorneys)

**A.A.**, on behalf of A.L., respondent, pro se

Record Closed: February 28, 2022

Decided: March 24, 2022

BEFORE **CATHERINE A. TUOHY**, ALJ:

### **STATEMENT OF THE CASE**

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

### **PROCEDURAL HISTORY**

This matter arose with the filing of a petition of appeal by Pennsauken on May 6, 2019, (EDU 16086-2019.) The State's respondents; the New Jersey Department of Education (DOE) and Interim Executive County Superintendent, Lovell Pugh-Bassett (ECS or Dr. Pugh-Bassett) filed an answer on October 29, 2019. Respondent, Haddon Township Board of Education (Haddon Township), filed its answer on November 12, 2019. The matter was transmitted by the Department of Education Office of Controversies and Disputes to the Office of Administrative Law (OAL) as a contested matter where it was filed on November 13, 2019, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. An initial telephone prehearing conference was conducted on January 9, 2020, and subsequent telephone conferences were conducted February 19, 2020, February 26, 2020, and March 11, 2020. A.A. did not appear for these conference calls. An initial hearing was scheduled for March 26, 2020, but was adjourned due to COVID-19. A follow-up telephone conference was conducted on June 12, 2020, at which time A.A. appeared and agreed to file an answer and provide discovery.

A.A., on behalf of her minor child A.L., filed an answer to the petition and provided answers to interrogatories and responses to requests to admit on July 6, 2020. A subsequent telephone conference was conducted on July 9, 2020, at which time all parties appeared. It was agreed that the matter was appropriate for summary decision as there were no material facts in dispute as evidenced by A.A.'s answer to the petition, answers to interrogatories and responses to requests to admit. Pennsauken filed a motion for summary decision dated July 14, 2020. The State respondents filed opposition to same and cross-moved for summary decision dated August 10, 2020. Pennsauken filed its reply and opposition to the cross-motion on August 17, 2020. There being no further submissions filed, the motion record closed on August 27, 2020.

An initial decision was rendered October 9, 2020, concluding that A.A. and A.L. are not homeless as they have resided at a fixed, regular and adequate place to live with regular sleeping accommodations for over twelve months in Pennsauken; that Pennsauken has no financial responsibility for A.L.'s attendance at Haddon Township schools; and A.L. should be placed in the Pennsauken Public School District, if A.A. so desires; and that the ECS' determination should be reversed.

Based on the foregoing, it was ordered that the motion for summary decision filed by Pennsauken was granted; the cross-motion for summary decision filed by the DOE and ECS was denied; and the March 28, 2019, determination by the ECS was reversed.

Exceptions to the initial decision were filed on behalf of the State respondents by letter brief, dated November 3, 2020. Pennsauken filed its reply to the State respondent's exceptions by letter brief, dated November 5, 2020. No exceptions were filed by respondent Haddon Township or respondent, A.A.

The acting commissioner of education, by final decision, dated January 6, 2021, denied Pennsauken's motion for summary decision and the ECS' cross motion for summary decision and remanded the matter to the OAL because she could not determine

from the present record whether the family is homeless and that further information was necessary to determine whether the home is fixed, regular and adequate such that A.L. is no longer homeless under state and federal law.

A telephone conference was conducted on March 4, 2021, at which time the parties were afforded time to conduct additional discovery in light of the commissioner's decision. Another telephone status conference was conducted on May 5, 2021, and a hearing date set for July 26, 2021. This hearing date was adjourned until August 23, 2021, with the consent of all the parties.

The hearing was conducted on August 23, 2021, via zoom audio/video technology, due to the continued suspension of in-person hearings at the OAL due to the COVID-19 pandemic. The record closed on February 28, 2022, following receipt of closing submissions from petitioner, the state respondents **and respondent, Haddon Township Board of Education**. No closing submissions were filed on behalf of respondent A.A.

## **FACTUAL DISCUSSIONS AND FINDINGS**

### **Testimony**

**A.A.** has one biological child, A.L. who is thirteen years old. She has also raised a twenty-three-year-old male, D.H.L. A.A. has a masters' degree in social work and worked in the social work field approximately ten years. She has been out of the field for ten years and last worked for Laurel Rehabilitation Agency that helped people with traumatic brain injury in approximately 2012 or 2013. She also worked for Ann Marie Sparks, another private agency that works with traumatic brain injuries. She worked there for approximately one year in 2014 as a case manager. To prepare for the hearing she spoke with the DAG about what would happen at the hearing. She was told to be honest but did not review any testimony with her. A.A. has received the Pennsauken exhibit binder. The back of the exhibit book has a picture of her mother's house, which is the white house on the right in the photograph. (Pennsauken Exhibit 2.) This is the house

she grew up in and has been residing in at Hillcrest Ave, Pennsauken. J-1 is her handwritten answer that she provided. A.A. has lived in the Pennsauken home until the time she was twenty-one and left and then returned there when she was thirty-nine. She is forty-three now. The Pennsauken home has three bedrooms, a bathroom, a kitchen, electricity, running water, a refrigerator, oven, and stove top. J-1 is A.A.'s handwritten answer to the petition.

The Pennsauken home has three bedrooms. In November 2016, her father passed away and she moved back to the Pennsauken house at the very end of 2016, or the beginning of 2017. In 2017, her mother had her own bedroom. No one was in her father's bedroom. A.A.'s daughter, A.L. and D.H.L. shared the third bedroom. At the present time, everyone has their own room. The third bedroom is occupied by her daughter, A.L. A.A. has her father's bedroom and her mother still has her own room. When A.A. had to leave in 2019, D.H.L. left the Pennsauken home permanently.

They are currently living in her mother's home. A.A. is not paying any rent because she cannot afford it. She does not contribute to any of the household bills. She has not bought food for the home on a regular basis. She might have on occasion brought in lunchmeat. She had been receiving food stamps but lost those benefits. Before her father passed away, he was caring for her mother, but he could not do much as he also was sick. A.A. currently helps her mother with shopping, showering, laundry, and all activities of daily living, as her mother is unable to live by herself. When A.A. was incarcerated and then in rehab for a time, her brother Art. A. took care of their mother at his house in Cinnaminson. Unless someone is with the grandmother, she is unable to live by herself. A.A. has been in the Pennsauken home for approximately four years aside from the time she was incarcerated and then in rehab.

In her answers to interrogatories, A.A. wrote in her handwriting that she has lived in the Pennsauken home from 2016 to the present. (J-2.) She is currently employed by Forman Mills and has also worked part-time delivering pizzas and at a campground. (J-4.) She was employed by Traitulia before she went away. A.A. has not provided any

documents in this case. She did not produce any rental applications or housing assistance applications. Everything was oral and she did not know to save anything even though there had been conference calls in this case since 2019. She is claiming she wanted to find a home in Haddon Township but did not save anything regarding her attempts to do so even though she knew this was matter was going to a hearing.

A.A. completed McKinney-Vento homeless paperwork in both Haddon Township and Pennsauken Township. (J-8–J-15.) Any time she did, she was asked if she needed McKinney-Vento assistance for A.L., such as transportation, tutoring, and counselling services. A.A. indicated that she was not in need of those services. When she went to Pennsauken to fill out their McKinney-Vento paperwork she was in contact with Mr. Fitzpatrick, who worked at A.L.’s school, Strawbridge Elementary School. He had advised A.A. not to fill out the Pennsauken paperwork. A.A. had met with Ms. Elliott, the homeless liaison for Pennsauken. Ms. Elliott extended an offer for A.L. to attend school in Pennsauken. A.A.’s goal was to continue A.L. at her same school, Strawbridge Elementary in Haddon Township. In the Haddon Township Homeless Students Parent Consultation and Educational Placement form, A.A. wrote in her own handwriting “I want A.L. to attend Strawbridge Elementary again!!!” (J-13, page DOE 036.)

Dr. Pugh- Bassett reviewed the situation to determine if she was homeless. (J-16, page DOE 039.) A.A. did not speak with anyone from Dr. Pugh Bassett’s office. She did not provide any paperwork to Dr. Pugh-Bassett describing the living arrangements at the Pennsauken home. The only paperwork A.A. has submitted is the discovery that was requested.

In early 2017, A.A. moved into the Pennsauken home because she was evicted from her Haddon Crossings apartment for non-payment of rent. Her father passed away and he had been assisting her with the rent when she was residing in Haddon Township. After she was evicted, she was not able to rent another apartment because she could not afford it. She was working that summer at a campground and odd jobs cleaning to make some money. She did not have sufficient income to pay rent or utilities. After being

evicted from their Haddon Township residence, they resided for a couple of months in Belmar with A.A.'s fiancé's mother. A.A.'s family did not want to see her and her family on the street. She does not remember the exact date she moved into the Pennsauken home, but it was around the beginning of 2017. She did not have a bedroom when she first moved into Pennsauken home, she did not have a bedroom until she came back from rehab. A.L. got her own bedroom when her son moved out when she went away. A.A. stated that her mother stays in the living room a lot and her and A.L. stay upstairs. A.A.'s mother pays for everything because A.A. cannot afford to pay. Whatever A.A. makes goes towards A.L.'s needs such as clothes. A.A. makes twelve dollars per hour at Forman Mills and works twenty-five hours per week and she is paid bi-weekly.

A.A. is a recovering drug addict. She has two felony charges and was sent to jail October 15, 2019, for a month before going into an in-patient facility for two months and then a half-way house. She was discharged April 10, 2020. A.L. was in Belmar during this time. A.A.'s mother went to live with her son, A.A.'s brother, at his home. Her brother got the Pennsauken house ready for them and then they all came back to Pennsauken in mid-April 2020. In September 2020, A.A. got a job at Forman Mills. She had no job for five months between the time of her discharge in April 2020 and September 2020. She did not save any of her job applications. The obstacles she faced in obtaining employment were her two felony convictions for theft by deception and unlawful taking. She believed the only reason she got a job with Forman Mills is that they did not do a background check.

A.A. receives Medicaid. If her mother passed away, they would have no home. School is important to A.A. because it is the only stable thing in her daughter's life. She was looking for another place in Haddon Township but did not save any paperwork regarding her attempts to find an apartment in Haddon Township. She looked on-line, but she did not have any money. She cannot even get a loan. She has incurred debts

from her drug addiction in the amount of \$80,000 including her student loans. She does not pay anything towards her debts and only pays for what A.L. needs.

Her ultimate plans are that she has another year left of drug court and then after two years she can start applying for social work jobs. In the meantime, she will stay at Forman Mills and climb the ladder. Her ultimate goal is to move out of her mother's home, but she has no money.

A.A. answered interrogatories indicating that her current address is the Hillcrest Ave., Pennsauken address where she resides with her mother and A.L. She indicated that she does not intend to live there permanently but wants to get her own place with A.L. and possibly take her mother with her. (J-2, #5.) In A.A.'s answers to requests for admissions, she indicated that she does not intend to permanently reside at the Pennsauken address. (J-3, #8.) A.A. indicated that "we don't like living in Pennsauken at all, but we are stuck here for now." (J-4, #7.)

A.A. has consistently stated that Pennsauken is a temporary residence, and she is living in Pennsauken as a necessity.

A.A.'s mother does not pay A.A. to take care of her. A.A.'s ultimate goal is to move back into Haddon Township. She would like to take her mother with her because her mother would have to be cared for by either her or her brother or health insurance. Her brother and his family took care of her mother when she was in jail.

A.A. noted that she was not in need of any McKinney-Vento services but if things changed, and she did she would contact them. (J-5, page DOE 019, question 4.) A.A. has never requested McKinney-Vento services in the last four years because she did not want to cause any trouble. A.A. and her daughter each have their own bedroom and they



have access to all parts of the house and all of the facilities including the kitchen, bathroom, and living room.

**Rochelle Marie Meyers Elliott** (Ms. Elliott) testified on behalf of Pennsauken. She was the homeless liaison for the district and is familiar with A.A. who came in and filled out McKinney-Vento paperwork. Ms. Elliott is currently the residency secretary for the school district. J-14 and J-15 are the papers that A.A. filled out when she came to the Pennsauken District. J-14 and J-15 were completed by A.A. in her handwriting. J-8, is the in-house summary form which Ms. Elliott completed after her interview with A.A. When Ms. Elliott gave A.A. enrollment paperwork to fill out, A.A. telephoned the homeless liaison from Haddon Township School District. Ms. Elliott made the determination that A.A. was not homeless based on the interview. It was determined that she was living back in her childhood home and was not planning on leaving anytime soon as they were taking care of mom. Ms. Elliott did not feel that A.A. was “doubled up” and the home seemed adequate with the appropriate number of bedrooms and sleeping arrangements. Ms. Elliott’s determination is what lead to this matter being brought before the Executive County Superintendent, Ms. Pugh-Bassett. Ms. Elliott offered A.A. McKinney-Vento services which included resources such as transportation services, medical care, eyeglasses, those things would be provided. A.A. said she was not in need of any services and if she was, she would be in contact with them. (J-14.) To date, A.A. has not contacted Pennsauken for any McKinney-Vento services.

Ms. Elliott did not feel A.A. was homeless because she considered how many rooms were in the home, how many people in the home, are they sleeping on the floor or the couch and in speaking with A.A. there were adequate sleeping arrangements. A.A. was evicted because her father had passed away and he had paid half of her rent, so she had to go back to her home and after being there a year she was considered domiciled in Pennsauken. Ms. Elliott did not consider her resources because they were considering the sleeping arrangements. A.A.’s intentions were to go back to Haddon Township which

had been her intentions for many years, but her mother became ill and then she remained to take care of her mother.

The factors Ms. Elliott considered were the number of bedrooms and the sleeping arrangements. A.A. was evicted because her father had passed away and he was paying the rent. A.A. had been in Pennsauken for one year and then became domiciled in the district. Ms. Elliott would not consider A.A.'s resources because she is considering the sleeping arrangements. She did consider the intentions of A.A. that she wanted to return to Haddon Township, but her mother became ill and then she was there taking care of the mother in Pennsauken.

**Dr. Lovell Pugh-Bassett** recently became employed by Camden County College as the vice president of Institutional Effectiveness and Advancement. She has been in this position for two weeks. Prior thereto, she was the executive county superintendent of schools for Camden County and served as the liaison for the DOE and the local school districts. They provide technical assistance to school districts and various other supports to school districts including compliance issues. Her homeless liaison was Arenda Kelly who did most of the day-to-day work. Dr. Pugh Bassett does not usually get involved with a homelessness determination unless it rises to the level of requiring some type of mitigation with the school district. When Ms. Kelly is having difficulty working out a response to a dispute, she and Dr. Pugh-Bassett would review the regulation, discuss the case, and sometimes reach out to internal legal counsel for assistance.

The factors they take into account in making a determination of homelessness include looking strictly at the circumstances that caused the homelessness in the first place, either an eviction or a fire, and that as a result of those circumstances whether they are living in their current arrangement out of necessity. They do not look at the "soft" issues as to the nature of the living arrangements such as the makeup of the house, how many bedrooms there are in the house or the sleeping arrangements or whether there

are pictures on the wall or are they living with a family member. They are not given authority to consider those factors.

To 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. Depending on what the parent desires, the parent can enroll the child in that district, or the domicile district becomes responsible to pay for the child's attendance at their original school of enrollment before they became homeless.

In 2019, ECS, Dr. Pugh Bassett through her homeless liaison, Ms. Kelly, was asked to render a homeless determination regarding student A.L. The only information they had was the documentation that they had received that A.A. had submitted to Haddon Township. Haddon Township had reached out to Ms. Kelly about the question of A.A.'s being homeless and had submitted paperwork from their homeless liaison. (J-14.) Ms. Pugh-Bassett's office had also received paperwork from Pennsauken's homeless liaison in- take process (J-8), as well as various emails. The Gloucester County Special Services School District McKinney-Vento Regional Education Program form provides services for homeless students. (J-15.) She recalls reviewing the intake forms regarding homelessness including J-8, J-14 and J-15. From a review of these documents, Dr. Pugh-Bassett learned that A.A. indicated that they had been evicted from their home in Haddon Township and was living with her mother in Pennsauken out of necessity. A.A. indicated that she was doubling-up with family. (J-14.)

Dr. Pugh-Bassett made a determination that A.A. was homeless. A.A. was evicted and deemed homeless and they were living with A.A.'s mother out of necessity. Therefore, Pennsauken would be responsible for A.L.'s attending Haddon Township schools. By letter, dated March 28, 2019, to the Pennsauken School District, Dr. Pugh-Bassett stated that A.L. is McKinney-Vento eligible and Pennsauken is fiscally responsible for the student based on the fact that the family lost their apartment due to financial hardship and that the family is residing with friends/relatives out of necessity.

(J-16.) They also offered the opportunity to appeal and if any further questions to contact them.

When she looked at this case, she was not aware A.A. was providing care to her mother. She heard A.A. testify at this hearing. A.A.'s father passed away in November 2016 and A.A. moved into her mother's home to take care of her. They do not look into the circumstances of the living arrangements, only the paperwork submitted. They have not spoken to A.A. or reached out to her for more information. The DOE has not advised them to reach out to the family. They do not inquire as to the living arrangement or 'soft' indicators as a compliance agency, like the number of bedrooms. They do not have the authority to look into these factors or a template to consider these factors or the resources to investigate these factors. Although the statute requires that the home be fixed, regular and adequate, the DOE does not make those subjective determinations. The primary focus of the DOE is on the continuity of education. Since the DOE does not look at soft indicators, they would not know if the homeless family were in a small apartment or in a mansion. They do not determine how homeless they are, just whether they are homeless. When Dr. Pugh-Bassett wrote her determination of homelessness letter (J-16), she was not aware of any of these "soft" indicators.

**Arenda Kelly- Fleming** is employed by the NJDOE Camden County Office of Education as an education planning specialist and has been since 2009. Under the direction of the executive county superintendent, they provide technical assistance and are responsible for ensuring that the forty-four public and charter schools in the county are compliant with state and federal regulations. She also has responsibilities for making homelessness determinations. If a district or parent calls their offices and needs information about McKinney-Vento Eligibility, they will provide guidance and resources if there is a dispute and they will determine if a student is McKinney-Vento eligible. To arrive at a homelessness determination, they would review all of the information provided to their office and see if they require more information and then she will take the information into the county executive superintendent to meet and review the information. They look at what the family situation is, whether they are displaced from their home, any

economic hardship and what type of living arrangement they are in. The district of origin for the first year pays for the tuition and transportation of the homeless student. After the first year, the district where the homeless student is residing is then responsible for payment of tuition and transportation cost to still attend the district of origin.

In 2019, she received an inquiry regarding student A.L. The parent sent in a letter and the school district was having trouble contacting the parent and they wished help from their office. They had the McKinney-Vento forms, the district's form the parents fill out and a letter form the parent. The basics of the case were that they were displaced from their home and moved in with a relative. The executive superintendent had enough information to make a decision that they were still McKinney-Vento eligible.

**Anthony Joseph Fitzpatrick** is currently employed by Delsea Regional and Elk Township School District since August 18, 2021. Prior to that time, he was employed by the Haddon Township School District February 3, 2017, until August 18, 2021. He was the district supervisor of instruction from June 3, 2017, until June 30, 2019, and then an elementary school principal from July 1, 2019, until August 17, 2021. As supervisor of instruction he was the McKinney-Vento liaison as well as the district residency coordinator. His responsibilities included advocating for their homeless families who were experiencing various educational needs, transportation needs, and free lunches. He would try to provide basic material needs for their homeless families.

He is familiar with A.A. through the annual check on the families to see if they are still experiencing homelessness. He made the determination that they were still McKinney-Vento eligible in the summer of 2017, which was the first determination he made before the beginning of the 2017-2018 school year. After one year, Pennsauken became the district of domicile, but Haddon remained the district of enrollment. J-9 was the letter he sent to Pennsauken to inform them that the family was legally domiciled in their district for one year and at that point the responsibility to educate the child became the district responsible financially to pay for their education and bill them for tuition. They did in fact bill Pennsauken, but the bill did not get paid to his knowledge. Pennsauken

conducted a residency investigation and made a determination that the child was not homeless.

In December 2018, he recalled a telephone call with A.A. who was at the registrar's office in Pennsauken and Pennsauken was trying to get her to enroll the child in Pennsauken. The enrollment record should stay with Haddon Township if she was McKinney-Vento eligible. He believes he did speak to someone from Pennsauken who he believed he advised that the child was not supposed to be enrolled in Pennsauken but remain enrolled in Haddon Township, as long as they continued being doubled up out of necessity. He investigated and met the child's mother and asked questions regarding employment, the reason they went homeless to assess stability of living situation and the intention to move back to Haddon Township. After the investigation he determined the child was still doubled up out of necessity and was still McKinney-Vento eligible. This occurred in the fall of 2018, after the school year started and before the phone call in December and was around the same time as the formal appeal was filed with the County office. After the phone call of December 2018, he had no further contact with A.A. or Pennsauken. Haddon Township was responsible for 2017-2018 school year but from that point on it would be the responsibility of the Pennsauken School District.

He made two determinations in the summer and then in meeting with mom in the fall of 2018 after Pennsauken said they were not homeless. He did not do any reviews after 2018 since he was no longer the person who handled these matters. In the fall of 2018, Pennsauken's investigation revealed that A.A. was in the Pennsauken home caring for her mother in her mother's home. That was not something that was part of his assessment.

### **Discussion**

Although A.A. has repeatedly maintained that the Pennsauken residence is only temporary and her intent is to move back to Haddon Township, she has not offered any proof indicating either her efforts to locate and obtain housing in Haddon Township or of

seeking suitable full-time employment within the field of her masters' degree such that she could afford an apartment of her own. There was no documentary evidence submitted as to A.A.'s financial situation. A.A. is residing in her family home with her daughter A.L. and is taking care of her disabled mother. They are not doubled up as they are three people living in a single family three-bedroom home, each with their own bedroom. The Pennsauken home where she grew up in and is now residing with her daughter and caring for her mother is an adequate, regular, and fixed residence with suitable sleeping arrangements. No evidence has been offered by any party to the contrary.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, I **FIND** the following as **FACT**:

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

On September 13, 2017, A.A. completed a Haddon Township Homeless Students Parent Consultation and Educational Placement form indicating that the Pennsauken address was a temporary address and that her last district of residence was the Haddon Township address and her previous school attended was Strawbridge Elementary in Haddon Township. A.A. indicated on the form that her goal was to move back to Haddon Township so A.L. could finish out elementary school at Strawbridge Elementary. (J-11.) A.A. also filled out a McKinney-Vento Education Program registration form, dated September 13, 2017, but noted that she did not need any of those services, but if things changed, she would contact them. (J-12.)

On July 31, 2018, A.A. completed another Haddon Township Homeless Students Parent Consultation and Educational Placement form indicating that the Pennsauken address was still a temporary residence, and her last district of residence was in Haddon Township. She indicated that she wanted A.L. to attend Strawbridge Elementary again. (J-13.)

By letter, dated August 2, 2018, Anthony Fitzpatrick, Haddon Township supervisor of instruction wrote to Mitzi Giletto, the Pennsauken homeless education liaison and advised that A.L. will become a legal resident of Pennsauken on September 1, 2018, after one full year of being categorized as being homeless, based on the Egg Harbor v. Mainland decision that established that a homeless family is considered to be legally domiciled in a school district after being in that district for a year. (J-9.)

On December 17, 2018, A.A. met with the homeless liaison for Pennsauken, Rochelle Elliott, who completed a Pennsauken School District Family in Transition form – Family Information interview with A.A. The form indicated that the last school attended was Strawbridge Elementary and her last permanent address was her Haddon Township address. The handwritten notes on the form indicate that “Mom is back in her childhood home.” Under the “Reason for being homeless” section of the form, there is a handwritten note “Father passed who was paying half of the rent which resulted in her being evicted. Since his passing her mom has become handicapped. She is the caregiver @ this time. She wants her dgt to complete Strawbridge.” (J-8.)

A.A. also completed a Pennsauken School District Student Residency affidavit as to Homeless Status, dated December 17, 2018, and indicated that her current Pennsauken address was a temporary living arrangement due to loss of housing or economic hardship. A.A. indicated on the form that her last permanent address was the Haddon Township address and where the form indicated “Student’s Present Living Situation”, A.A. checked off “Doubling-Up with more than one family in a house or apartment for economic hardship/similar reason.” A.A. indicated on the form that it was her wish that her child return to her previous school, Strawbridge Elementary in Haddon Township. (J-14.)



Also, during the meeting of December 17, 2018, A.A. completed another McKinney-Vento Regional Education Program intake form but wrote on the form that A.L. was in no need of additional services, but if anything changed, she would notify the Pennsauken liaison. (J-15.)

Rochelle Marie Meyers Elliott, the Pennsauken homeless liaison interviewed A.A. after A.A. completed paperwork when she came to the Pennsauken district. (J-14 and J-15.) Ms. Elliott prepared the in-house summary form. (J-8.) Ms. Elliott made the determination that A.A. was not homeless based on her interview. It was determined that A.A. was back living in her childhood home and was not planning on leaving anytime soon as she was taking care of her mother. Ms. Elliott did not feel that A.A. was 'doubled up' as the home seemed adequate with the appropriate number of bedrooms and sleeping arrangements. She would not consider A.A.'s resources because they were considering the sleeping arrangements. She did consider the intentions of A.A. that she wanted to return to Haddon Township, but her mother became ill and then she was there taking care of her mother in the Pennsauken home. Ms. Elliott's determination that the family was not homeless is what brought this matter before the ECS.

By letter, dated March 28, 2019, respondent ECS Pugh-Bassett, advised the Pennsauken superintendent that the DOE Camden County Office of Education had been contacted by A.A. to make a McKinney-Vento eligibility determination for A.L. Based on the criteria outlined at N.J.A.C. 6A:17-2.2, the county office determined that A.L. is McKinney-Vento eligible and that Pennsauken is fiscally responsible for the student based on the fact that the family lost their apartment due to financial hardship and that the family is residing with friends/relatives out-of-necessity. (J-16.)

ECS Pugh-Bassett did not take into consideration the adequacy of the living arrangements of the family when making her homeless determination. She did not consider how many bedrooms are in the house, the sleeping arrangements or whether they were in a small apartment or a mansion. These were "soft" factors that she does not consider. She

also did not know that A.A. was residing in her family home and taking care of her mother. The ECS strictly looks at the circumstances that caused the homelessness in the first place and whether they are living in their current arrangement out of necessity.

A.A. had previously lived in the Pennsauken home for over fifteen years of her life, as it was her family home. The Pennsauken home has three-bedrooms; a bathroom; a kitchen with a refrigerator, oven and stove top, running water, electricity and a television.

A.A. is living in the Pennsauken home with her daughter A.L. and taking care of her mother who is disabled. A.A. assists her mother with all of her activities of daily living.

A.A. has a master's degree in social work but is a recovering drug addict with two felony convictions. She went to jail October 15, 2019, for a month before going into an inpatient facility and then a half-way house until her discharge April 10, 2020. During this time, her mother moved in with her brother and A.L. was in Bellmawr. When A.A. was discharged, she returned back to her Pennsauken family home with her mother and A.L. where they continue to reside.

A.A., her mother, and A.L. are the only three people residing in the home and they each have their own bedroom. A.A. and A.L. have access to all parts of the house and all of the facilities. A.A. does not pay her mother rent or reimburse her for any household expenses.

A.A. has had various part time jobs and is currently working at Forman Mills, twenty-five hours per week and makes twelve dollars per hour. Whatever A.A. makes goes toward A.L.'s needs. There has been no documentation submitted as to A.A.'s financial status or employment searches or applications.

A.A. has not produced any rental applications, housing assistance applications, or any documents in furtherance of her claim that it was her intent to find a home in Haddon Township.

### **LEGAL ANALYSIS AND CONCLUSION**

Although N.J.S.A. Const., Art. 8, section 4, paragraph 1 provides that free public education is a fundamental right under the New Jersey Constitution, it is well known that parents may not simply choose the school district that they wish their children to attend: the general rule is that school districts are responsible for providing a free education to children “domiciled” within the school district. N.J.S.A. 18A:38-1(a) states that public schools shall be free to any person over five and under twenty years of age who is domiciled within the school district. “A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.” N.J.A.C. 6A:22-3.1(a)(1).

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

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

of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. N.J.S.A. 18A:7B-12(c).

Under the federal McKinney-Vento Act and New Jersey's corresponding law, the term "homeless" refers to individuals who lack a fixed, regular, and adequate residence. Federal law refers to the lack of an adequate "nighttime" residence. 42 U.S.C. Sec.11434a (referring to 42 U.S.C.A. Sec.11302(a)(1)); N.J.S.A. 18A:7B-12(c); N.J.A.C. 6A17-1.2.

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

- (a) A district board of education shall determine that a child is homeless for purposes of this subchapter when he or she resides in any of the following:
  - 1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:
    - i. Hotels or motels;
    - ii. Congregate shelters, including domestic violence and runaway shelters;
    - 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 resides out of necessity because his or her family lacks a regular or permanent residence of its own;

4. Substandard housing; or
5. Any temporary location wherein children and youth are awaiting foster care placement.

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

This subchapter and subsection, however, must be read, in conjunction with 42 U.S.C.A. § 11302(a)(1), which defines “homeless” for the McKinney-Vento Act, and N.J.S.A. 18A:7B-12(c), which defines “homeless” for school-funding purposes. Under the former, “homeless” means lacking “a fixed, regular, and adequate nighttime residence.” Under the latter, “homeless” means temporarily lacking “a fixed, regular and adequate residence.” Thus, both definitions have at their core the concept of a fixed, regular, and adequate place to live with regular sleeping accommodations.

This shared concept is not a coincidence, as the New Jersey regulatory scheme, looks to the federal regulatory scheme for its definition of terms. See N.J.A.C. 6A:17-2.1 (“Nothing in this subchapter shall limit the educational rights of homeless children and youth or school district responsibilities under Subtitle VII-B of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.”).)

Financial responsibility of the district of residence terminates when the family is deemed “domiciled” in another district, which occurs when the family has lived in another district for a full year or longer. At this time, financial responsibility shifts to the school district in which the student now resides. N.J.S.A. 18A:38-1(d) states:

Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed domiciled within the district for the purposes of this section.

Haddon Township, as the district of residence, was responsible for A.L.'s tuition when she first became homeless, and she continued to go to school there throughout the 2017-2018 school year. After residing in Pennsauken for more than one year, A.A. and A.L. were deemed domiciled in Pennsauken pursuant to N.J.S.A. 18A:38-1(d) and financial responsibility shifted to Pennsauken. Pennsauken welcomes A.L. to enroll in school in their district but disputes the fact that she is homeless and therefore entitled to continue in Haddon Township at Pennsauken's expense. Respondents argue that A.A. and A.L. remain homeless and A.L. is entitled to continue school in Haddon Township at Pennsauken's expense since Pennsauken is now the district of domicile. Respondents argue that A.A. is living with her mother out of necessity since she lacks the financial ability to obtain an apartment of her own. Respondents do not address the fact that the Pennsauken home is a fixed, regular, and adequate place to live which is the focus of a homelessness determination. Petitioner submits that A.A. and A.L. are living in A.A.'s family home and taking care of her disabled mother. The Pennsauken home has three bedrooms, a living room, a kitchen, bathroom facilities, heat, and electricity. A.A. and her daughter each have their own bedroom and have the use of all household facilities. They have resided in the Pennsauken home continually since 2017 (aside from when A.A. was incarcerated) until the present time, which indicates that this residence is fixed and regular as well as adequate.

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

The determination of whether a student is considered "homeless", triggering the protections for homeless students available under the law, is fact sensitive. In M. O'K.

and S. O’K., A. O’K. and C. O’K. v. Bd. Of Educ. of the Borough of Cresskill and Bd. Of Educ. of the Borough of Little Ferry, OAL No. 14830-13, Agency No. 214-9/13 (N.J. Comm’r of Educ. Aug. 12, 2014); aff’d, 2016 WL 4699166 (N.J. Sup. Ct. App. Div. Sept. 8, 2016), the school district argued that the students who lived with their parents in the grandparents’ home were no longer “homeless” where they had lived there for over a year. The family prevailed in their argument that they were still “homeless” in part because five people occupied the bottom floor of the house which had no shower, sink or kitchen. This was found to be less than a regular and adequate nighttime residence. This is distinguishable from the facts in this case as A.A. and A.L. each have their own bedroom and full access to all of the household facilities.

More recently, an administrative law judge (ALJ) wrote that “homelessness is best viewed in a continuum.” State-Operated Sch. Dist. of Camden v. Volk, EDU 4521-16, Initial Decision (March 22, 2017), modified, Comm’r (June 20, 2017), at \*11, <http://njlaw.rutgers.edu/collections/oal/>. In that case, the ALJ thoroughly examined whether a family in a borderline situation was homeless and considered the totality of the circumstances. Among the factors the ALJ considered were intent, fixed location, regular use, and adequacy. The ALJ determined that the family intended to stay in their current living situation because they stopped looking for another place to live; that the location was fixed and that the use was regular because the family had lived in the same place for several years; and that their living situation was adequate because the children had a designated sleeping area and access to a kitchen and bathroom facilities, despite the sharing of rooms and limited space. To the extent that homeless status is identified as one without a “fixed, regular and adequate” living place, given the very lengthy period of residence, the adequacy of the living place and the regularity of occupation, the ALJ found that the child did live in a “fixed, regular, and adequate residence” and concluded that she was not homeless. See also L.C. on behalf of her Minor Child B.C. v. Bd of Educ. of the Twp. of Branchburg, Somerset County, 96 N.J.A.R. 2d(EDU)1003 (Commissioner found that “while her living arrangements with her brother [in his apartment] may not be permanent in the sense that she may wish to eventually return to Branchburg, the

evidence shows them to have become sufficiently fixed, regular, and adequate so as to preclude a finding of homelessness.”)

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

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

A.A. has been living in her mother’s Pennsauken home with her daughter A.L. since 2017. The Pennsauken home is A.A.’s family home and she had previously resided there for fifteen years. A.A. is currently living there with A.L. and taking care of her mother who is disabled. The home is a fixed, regular, and adequate place to live with regular sleeping accommodations. A.A. and A.L. each have their own bedroom. Although A.A. has repeatedly indicated this is a temporary residence and she intends to return to Haddon Township, she has been living in her family home in Pennsauken since 2017.



A.A. has offered no proofs to support her attempts to find housing in Haddon Township. Although A.A. may say she does not intend for Pennsauken to be her permanent residence, she has resigned herself to living in Pennsauken for the time being because of her financial situation and the fact that she is taking care of her mother. Even after A.A. was forced to temporarily leave her Pennsauken home when she was in jail and then rehab, the Pennsauken home is the home they all returned to when A.A. was discharged in April 2020. Even if initially, she was considered homeless after being evicted from her Haddon Township apartment in 2016, she has resided in Pennsauken for more than one year in a fixed, regular, and adequate home and can no longer be considered homeless as both the federal and New Jersey definitions of homelessness, have at its core, the lack of a fixed, regular, and adequate nighttime residence. The Pennsauken home has three bedrooms and the three individuals residing there, A.A., A.A.'s mother, and A.L. each have their own bedroom. There is no "doubling up" as A.A. and A.L. live in the Pennsauken home with A.A.'s mother/A.L.'s grandmother. They have access to all of the homes' facilities including the kitchen, bathroom and living rooms unlike the family of five in M.O'K. who occupied the bottom floor of a house with no shower, sink, or kitchen. The Pennsauken home is a fixed, regular, and adequate place to live with adequate sleeping accommodations.

While A.A.'s intentions may be to eventually move back to Haddon Township, A.A. has not produced any rental applications, housing assistance applications, or any documents in furtherance of her claim that it was her intent to find a home in Haddon township.

The totality of the facts and circumstances demonstrate that A.A. and A.L. are no longer homeless.

For the reasons stated, I **CONCLUDE** that A.A. and A.L. are not homeless and that they have been domiciled in Pennsauken since September 2018; that Pennsauken has no financial responsibility for A.L.'s attendance at Haddon Township schools; and A.L. should be placed in the Pennsauken Public School District, if A.A. so desires. I

further **CONCLUDE** that the ECS' determination of homelessness should be **REVERSED**.


**ORDER**

Based on the foregoing, it is hereby **ORDERED** that the relief requested in the petition is **GRANTED** and that the March 28, 2019, determination by the ECS is **REVERSED**.

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



March 24, 2022  
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

emailed 3/24/22

Date Mailed to Parties:

emailed 3/24/22

CAT/gd/tat

**APPENDIX**

**LIST OF WITNESSES**

For Petitioner

Rochelle Marie Meyers Elliott

For Respondents:

A.A.

Lovell Pugh-Bassett

Arenda Kelly-Fleming

Anthony Joseph Fitzpatrick

**LIST OF EXHIBITS IN EVIDENCE**

Joint Exhibits

- J-1 A.A. Answer to petition of appeal
- J-2 A.A. Answers to first set of interrogatories, July 6, 2020
- J-3 A.A. Answers to first request for admissions, July 6, 2020
- J-4 A.A. Answers to second set of interrogatories, April 13, 2021
- J-5 A.A. Answers to second request for admissions, April 13, 2021
- J-6 A.A. Answers to second requests for production of documents, April 13, 2021
- J-7 A.A. Answers to third set of interrogatories

- J-8 Pennsauken School District Family in Transition form – Family Information, December 17, 2018
- J-9 August 2, 2018, letter from Anthony Fitzpatrick
- J-10 Agreement for Homeless Student Attendance on Tuition Basis, 2018-2019 School Year
- J-11 Haddon Township Homeless Students Parent Consultation and Educational Placement form, September 13, 2017
- J-12 Gloucester County Special Services School District, McKinney-Vento Education Program form, September 13, 2017
- J-13 Haddon Township Homeless Students Parent Consultation and Educational Placement form, July 31, 2018
- J-14 Pennsauken School District Student Residency Affidavit as to Homeless Status, December 17, 2018
- J-15 Gloucester County Special Services School District, McKinney-Vento Regional Education Program form, December 17, 2018
- J-16 Interim Executive County Superintendent Lovell Pugh-Bassett's Determination, March 28, 2019

Petitioner's Exhibits

- P-1 Petition
- P-2 Pictures of A.A.'s residence