

**New Jersey Commissioner of Education
Final Decision**

Board of Education of the Bordentown Regional
School District, Burlington County,

Petitioner,

v.

Raymond Marini, Interim Executive County
Superintendent, New Jersey Department of Education,
Board of Education of the Northern Burlington County
Regional School District, Burlington County, and Z.L. and
T.L., on behalf of minor children, J.L. and B.L.,

Respondents.

Synopsis

The Board of Education of the Bordentown Regional School District (Bordentown) appealed the determination of respondent Raymond Marini, Interim Executive County Superintendent (Marini), that Z.L. and T.L. and their minor children are homeless. Bordentown contended that Z.L. and T.L. are domiciled in Bordentown, as they have resided in the Bordentown home of T.L.'s mother for a number of years since losing their housing within the Northern Burlington County Regional School District (Northern Burlington) due to financial hardship, and further argued that Bordentown is therefore not financially responsible for tuition costs related to J.L. and B.L.'s attendance in Northern Burlington schools.

The ALJ found, *inter alia*, that: Z.L. and T.L. have lived in Bordentown with T.L.'s mother for five years and have no plans to relocate; the family has full access to the Bordentown home's bathroom and kitchen; all family members have a bed; and the Bordentown home is a fixed, regular, and adequate place to live; accordingly, the children can no longer be considered homeless. The ALJ concluded that the family have become residents of Bordentown and Bordentown has no financial responsibility for the children's attendance in Northern Burlington schools.

Upon review, the Commissioner is constrained to remand this matter to the OAL as she is unable to determine from the present record whether the family is homeless. The Commissioner noted, *inter alia*, that although domicile attaches immediately when a child's dwelling becomes fixed, regular and adequate, homelessness determinations require a fact-specific analysis that includes the intentions of the parents or guardians, 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. Sept. 8, 2016). Further, a determination as to the date when the L family were no longer homeless is necessary in order to resolve the competing claims for tuition reimbursement. Accordingly, the matter was remanded to the OAL for further proceedings consistent with the Commissioner's decision.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

269-22
OAL Dkt. No. EDU 01693-22
Agency Dkt. No. 7-1/22

New Jersey Commissioner of Education

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Raymond Marini, Interim Executive County
Superintendent, New Jersey Department of
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Northern Burlington County Regional School
District, Burlington County, and Z.L. and T.L.,
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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 Northern Burlington County Regional Board of Education (Northern Burlington) and the reply thereto filed by petitioner Bordentown Board of Education (Bordentown).¹

The L. family resided in Chesterfield, which is part of the Northern Burlington school district, until they lost their housing due to financial hardship. They moved in with T.L.'s mother in Bordentown.² The children continued to attend school in Northern Burlington, and Bordentown

¹ The other respondents, ECS Marini and Z.L. and T.L., did not file exceptions or a reply.

² The record is not clear when the family moved in with T.L.'s mother. In making the homelessness determination at issue in this matter, ECS Marini indicated that the family was displaced in April 2017, and the ALJ based her decision on that date. However, a note from T.L.'s mother to Northern Burlington, stating that the family is living with her, is dated October 13, 2014. The ALJ indicated that this date was an error, but it is not clear to the Commissioner how the ALJ reached that conclusion. Still other documentation indicates that the family began

assumed responsibility for the cost of their tuition and transportation for the 2018-2019 and 2019-2020 school years. On October 14, 2021, after Bordentown challenged the family's homelessness status, Interim Executive County Superintendent (ECS) Raymond Marini issued a determination that the family was still homeless. Bordentown filed an appeal challenging this ECS decision and seeking a determination that Bordentown had become the family's permanent residence, and that Bordentown is not responsible for the cost of educating the children for the 2020-2021 school year and future years.³

Following motion practice, the Administrative Law Judge (ALJ) found that the Bordentown home is a fixed, regular, and adequate place to live and that the children can no longer be considered homeless. The ALJ noted that the family has lived in Bordentown for five years and has no plans to relocate.⁴ The ALJ indicated that the family has full access to the Bordentown home's bathroom and kitchen,⁵ and that all members of the family have a bed. Accordingly, the ALJ

living in Bordentown in June 2017. Notably, none of the documentation in the record that was completed by the family provides the date on which they relocated.

³ The petition also sought an order that Northern Burlington be required to repay to Bordentown the costs of tuition and transportation for the 2018-2019 and 2019-2020 school years. This request for relief was apparently incorrectly included during a period of transition of the Board's counsel. It was not briefed during motion practice, nor was it specifically addressed in the Initial decision. Bordentown formally withdrew this request for relief in its reply to Northern Burlington's exceptions.

⁴ It is unclear how the ALJ reached the conclusion that the family has no plans to relocate. That statement, which is represented as a direct quotation in the Initial Decision, does not appear in any of the questionnaires completed by the family. Furthermore, even if the ALJ did not intend for the statement to be a direct quotation but instead inferred that the family had no plans to relocate based on their length of stay in Bordentown or from other evidence, the family has repeatedly stated that they intend their residence in Bordentown to be temporary and has not made any statement that the Commissioner interprets to mean that they have no plans to relocate. To the extent that this information may have been presented during oral argument – of which the Commissioner was not provided a recording or a transcript – the Commissioner notes that argument does not constitute evidence.

⁵ While the family described difficulties related to having six family members sharing one bathroom, from which the ALJ may have inferred that they have full access to the bathroom, none of the questionnaires mention anything about the kitchen.

concluded that the children have become residents of Bordentown and that Bordentown has no financial responsibility for their attendance in Northern Burlington.

In its exceptions, Northern Burlington argues that the L. family did not participate in this matter and that there is insufficient information about their living situation to support a finding that they are no longer homeless. In particular, Northern Burlington notes that correspondence sent from Z.L. to Northern Burlington indicates that he is constantly looking for adequate employment and housing, contradicting the ALJ's finding that the family has no plans to move back to Northern Burlington. Northern Burlington further contends that the ALJ did not make a determination as to exactly when the family's living situation transformed into a fixed, regular, and adequate residence, such that the ALJ may only have intended her finding to be prospective. Finally, pointing to existing case law, Northern Burlington argues that Bordentown would have been financially responsible for the children's education if they had attended school in Bordentown, and that Bordentown should therefore be required to reimburse Northern Burlington for the costs of the children's attendance in Northern Burlington.

In its reply, Bordentown argues that the ALJ adopted the version of facts submitted by Northern Burlington and found that, even under that most favorable version, the facts do not support a finding that the family continues to be homeless after so many years of residing in Bordentown. According to Bordentown, the family's residence with T.L.'s mother is adequate and has become fixed and regular. Finally, Bordentown notes that it is currently under its targeted enrollment and would not be required to hire additional staff to educate the L. children in its schools, such that there would be no costs associated with the children's attendance in Bordentown.

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

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.

Here, the Commissioner cannot determine on the present record whether the L. family is homeless because it is unclear if the family is residing in the Bordentown home out of necessity or whether it has become a permanent residence. The Commissioner has no information on the current status of Z.L. and T.L.'s employment, their salaries, or any other sources of income to determine whether they are able to afford to rent or purchase another home. Nor is there any information in the record to demonstrate whether Z.L. and T.L. have made any efforts to find a permanent home in Northern Burlington. While the Commissioner acknowledges that Z.L. and T.L. have not participated in this matter to date, the fact remains that they are the only source of information about their living situation and financial circumstances, and thus their participation through discovery or testimony is critical to a determination in this matter. Furthermore, the fact that the family has lived in Bordentown for years⁶ does not alone demonstrate that they are no longer living there out of necessity, especially when weighed against their stated intent that the

⁶ The precise number of years should be clarified on remand, based on information provided by the family about the actual date they relocated to Bordentown. The Commissioner notes that the ALJ dismissed Northern Burlington's request for reimbursement from Bordentown for dates prior to October 2017, when Northern Burlington notified Bordentown that the family had relocated. The Commissioner does not reach the issue of whether this dismissal was proper. However, even if the ALJ is correct that Northern Burlington was not entitled to reimbursement from Bordentown prior to the notification, the date on which the family relocated is nonetheless relevant to a determination of whether their home in Bordentown is fixed and regular.

living situation is temporary.⁷ Therefore, further information is necessary to determine whether the home is fixed, regular and adequate such that J.L. and B.L. are no longer homeless under state and federal law. If the family is no longer homeless, it is also necessary to determine the date when they were no longer homeless, in order to resolve the competing claims for tuition reimbursement.

Accordingly, the Initial Decision is rejected, and the matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.



ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 19, 2022
Date of Mailing: October 19, 2022

⁷ While a family's intent to move is generally insufficient on its own to support a finding that they are homeless, see, e.g., *K.L. and K.L. o/b/o minor child M.L. v. Bd. of Educ. of the Borough of Kinnelon, Morris Cty.*, Commissioner Decision No. 315-08 (July 22, 2008), *aff'd*, *K.L. v. Bd. of Educ.*, 2010 N.J. Super. Unpub. LEXIS 11 (App. Div. 2010), intent can be relevant in determining whether the family is remaining in their current location out of necessity. If the family intends to move, and has been actively attempting to move but has been unsuccessful in doing so because of continued financial hardship, the family may be homeless. See *M. O'K.*, *supra*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 01693-22

AGENCY DKT. NO. 7-1/22

**BOARD OF EDUCATION OF THE
BORDENTOWN REGIONAL SCHOOL
DISTRICT, BURLINGTON COUNTY,**

Petitioner,

v.

**RAYMOND MARINI, INTERIM EXECUTIVE
COUNTY SUPERINTENDENT, NEW JERSEY
STATE DEPARTMENT OF EDUCATION,
BOARD OF EDUCATION OF THE NORTHERN
REGIONAL COUNTY SCHOOL DISTRICT,
BURLINGTON COUNTY; AND Z.L.
AND T.L ON BEHLAF OF MINOR CHILDREN,
J.L. AND B.L.,**

Respondents.

Cameron R. Morgan, Esq., for petitioner, Bordentown Regional Board of Education (Cleary, Giacobbe, Alfieri and Jacobs, attorneys)

Kaitlin C. McCaffrey, Esq., for respondent, Northern Regional County School District Board of Education (Parker McCay, attorneys)

Hasibul Haque, Deputy Attorney General, for respondent, Raymond Marini, Interim Executive County Superintendent (Matthew J. Platkin, Acting Attorney General of New Jersey, attorneys)

Z.L. and **T.L.**, on behalf of J.L. and B.L., respondents, pro se

Record Closed: June 7, 2022

Decided: July 22, 2022

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

STATEMENT OF THE CASE

Petitioner, Board of Education of the Bordentown Regional School District (Bordentown), challenges the homelessness determination by the Northern (different caption in PM/notices) Burlington (Burlington) County Regional Board of Education and the Interim Executive County Superintendent (ECS). Petitioner contends that J.L. and B.L., are not homeless, but are domiciled in the Bordentown School District, having lived with Z.L.'s mother (and J.L. and B.L.'s grandmother) in Bordentown for over five years. At issue is whether the children and their parents are "homeless," under the applicable law. Burlington determined that the family was still homeless and thus, Bordentown had an obligation to pay tuition and bus the children to Northern Burlington High School, where they resided prior to becoming homeless in 2017. The ECS affirmed the homelessness determination.

PROCEDURAL HISTORY

This matter arose with the filing of a petition of appeal by Bordentown on January 10, 2022, challenging the homelessness determination by the Interim County Superintendent. The New Jersey Department of Education (DOE) and Interim Executive County Superintendent, Raymond Marini, filed a Motion to Dismiss in lieu of an Answer

on February 25, 2022. The matter was transmitted to the Office of Administrative Law as a contested matter on March 4, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The petitioner filed a Motion for Partial Summary Decision and Opposition to the Motion to Dismiss. The respondent, Northern Burlington, filed a counter/cross petition seeking to hold Bordentown responsible for the 2015–2016, 2016–2017, and 2017–2018 school years, as well as going forward. The record closed after oral argument, via Zoom, on June 1, 2022.

FACTUAL DISCUSSIONS AND FINDINGS

The following facts are predicated on the Student Residency Questionnaire and are not disputed:

1. Respondents Z.L. and T.L. and their children were residents in Chesterfield, New Jersey, which is in the Northern Burlington Regional School District until they became homeless in April 2017.¹
2. They were attending school in the Northern Burlington Regional School District at that time.
3. In April 2017, the family lost their housing in Chesterfield, New Jersey, due to a financial hardship.
4. The family moved in with R.B., the children’s maternal grandmother, along with their mother and father at her 9 Deerfield Court home in Bordentown, New Jersey

1. There was some initial confusion about the date the family moved to Bordentown due to an error on a handwritten note from the grandmother. However, the parties all agree and the ECS’s determination was predicated on the relocation of the family in April 2017. Moreover, Northern Burlington notified Bordentown of the family relocation in October 2017. Accordingly, any request for tuition and/or reimbursement for dates prior to this notice are dismissed.

5. Northern Burlington was advised of the relocation to Bordentown by the grandmother in October 2017, at which point Burlington put Bordentown on notice of their potential responsibility under the McKinney-Vento Homeless Assistance Act.
6. They attended school in Northern Burlington and arranged for their own transportation for the 2017–2018 school year.
7. Thereafter, Bordentown assumed responsibility and provided tuition and transportation to Northern Burlington pursuant to N.J.S.A. 18A:38-1(d).
8. Bordentown paid the tuition and transportation for the children in the 2018–2019 and 2019–2020 school years.
9. When Northern Burlington sent the invoice to Bordentown for the 2020–2021 school year, Bordentown filed a Notice of Dispute with the Executive Superintendent challenging the homelessness status of the family.
10. On October 14, 2021, the County Superintendent concluded that the family, who had been residing with the grandmother in Bordentown since 2017, was still “homeless.”
11. The Superintendent’s decision was predicated on the information provided in the Questionnaire provided by the family in an email where they advised that “there are dressers in the hallway,” “two of the boys share a bed in one bedroom,” and “the father sleeps on an air mattress in the den.” The email further provides that “they have full access to bathing, toilet and kitchen,” and “they have no plans to relocate at this time.”

I **FIND** the foregoing as **FACT**.

LEGAL ANALYSIS AND CONCLUSION

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

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Id. at 540.]

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. § 11431 et seq., state educational agencies must ensure that each homeless child and youth has equal access to the same public education as every other child and youth. The protections offered to homeless students and their parents under the federal McKinney-Vento Act and New Jersey’s corresponding state law represent an

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

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. § (is symbol her preference instead of Sec.) Sec. 11434a (referring to 42 U.S.C. 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. § 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.

Northern Burlington, as the original district of residence, was responsible for the children's tuition when they first became homeless, and they continued to go to school there throughout the 2017–2018 school year. However, after residing in Bordentown for more than one year, they were deemed domiciled in Bordentown pursuant to N.J.S.A. 18A:38-1(d) and financial responsibility shifted to Bordentown. Bordentown provided tuition and transportation for an additional two years. When they received the tuition bill for the two remaining children in the Northern Burlington Regional School District in 2021, they requested a review by the County Superintendent claiming that the Bordentown residence had become "regular, fixed and adequate" home and they could no longer be deemed "homeless," having resided in this regular fixed and adequate housing for more than four years (and now five years), and by their own admission had no plans to move back to Northern Burlington or secure other housing.

Respondents argue that the family remains homeless, and they are entitled to continue school in Northern Burlington at Bordentown's expense because they are in a "doubled-up living arrangement" and continue to "experience financial hardship." The facts provided by Burlington and relied upon by ECS are provided by the family and for the purposes of these motions will be considered as fact. There is no documentation regarding the family's employment status or financial situation. The parents have not responded or filed any papers in connection with this action. The family advises that the situation where they have been living for the last five years is temporary, but they have no plans to relocate. Moreover, although it is not ideal, they have full access to bath and kitchen, and they all have a bed in the home of the grandmother. The position of the respondents is that the living arrangement is less than ideal and that the family is "doubled up." However, it is undisputed that it is fixed, adequate, and permanent to the extent that they have been living there for five years.

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” as 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 case is clearly distinguishable from the facts in the present case as the family has a shower, sink and kitchen as well as bedrooms for the children, and the father sleeps in the den.

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. 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 County Superintendent’s determination that respondents are McKinney-Vento eligible, and that Bordentown is fiscally responsible for the students was based on the fact that the family lost their home due to financial hardship and that the family is residing with friends/relatives out-of-necessity. He found that they were doubled up and hoped to move out eventually, with no current plans to relocate. There was no other analysis undertaken with regards to homelessness. There was no analysis of whether the housing was fixed, adequate or permanent. It does not appear that any consideration was given to the fact that the family had been living there for five years and has made no efforts to find housing. The totality of the facts and circumstances demonstrate that the T.L, Z.L., J.L. and B.L. are no longer homeless and have become permanent residents in Bordentown and entitled to enroll and attend school in that district.

For the reasons stated, I **CONCLUDE** that the family is no longer homeless, and Bordentown is their District of Residence. I further **CONCLUDE** that Bordentown has no financial responsibility for the respondent’s attendance at Northern Burlington Regional

High School, and respondents should be placed in the Bordentown Public School District. I further **CONCLUDE** that Northern Burlington has no basis for tuition reimbursement for the years 2015–2017. The ECS’s Motion to Dismiss is **DENIED**. I further **CONCLUDE** that the Burlington’s Motion for Summary Decision is **DENIED**, the ECS’s determination of homelessness should be **REVERSED**, and judgment entered in favor of the petitioner, Bordentown Township Board of Education.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the relief requested in the petition is **GRANTED**, the ECS’s Motion to Dismiss is **DENIED**, the Cross Motion for Summary Decision by Burlington is **DENIED**, and the homelessness decision of the Interim Executive County Superintendent 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.

July 22, 2022

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SCG:sm