

**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

In this matter on remand, the Board of Education of the Bordentown Regional School District (Bordentown) appealed the determination of respondent Raymond Marini, Interim Executive County Superintendent (ECS), 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 since they lost 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 for the 2020-2021 school year and beyond. Following issuance of an Initial Decision on July 22, 2022, in which the ALJ found that the L family was no longer homeless, the Commissioner remanded the matter to the OAL for further development of the record to determine whether the family's housing was regular, fixed and adequate, as well as a factual determination as to the date when the family were no longer homeless.

On remand, 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 kitchen and second bathroom; while the space is tight, 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; the ECS's determination of homelessness should be reversed; and Bordentown has no financial responsibility for the children's attendance in Northern Burlington schools; further, Northern Burlington has no basis for tuition reimbursement for the school years prior to 2020-2021.

Upon review, the Commissioner, *inter alia*, agreed with the ALJ that the L family is no longer homeless and adopted the Initial Decision with modification, finding that Bordentown is responsible for the cost of educating the L children during the 2020-2021, 2021-2022 and 2022-2023 school years and may seek reimbursement from Z.L. and T.L. for certain costs that exceed the cost Bordentown would have incurred to educate them in its own schools.

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.

202-23

OAL Dkt. No. EDU 09659-22
(EDU 01639-22 On Remand)
Agency Dkt. No. 7-1/22

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Raymond Marini, Executive County
Superintendent, New Jersey Department of
Education, Board of Education of the
Northern Burlington County Regional School
District, and Z.L. and T.L., on behalf of minor
children, J.L. and B.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 respondents Northern Burlington County Regional Board of Education (Northern Burlington) and Z.L. and T.L., and the reply thereto filed by petitioner Bordentown Board of Education (Bordentown).

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. The children continued to attend school in Northern Burlington, and Bordentown 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, 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. J.L. continued to attend school in Northern Burlington through the 2021-2022 school year, then transferred to an online private school for the 2022-2023 school year; the record indicates that he is scheduled to graduate in 2023. B.L. continues to attend school in Northern Burlington through the present; Z.L. testified that B.L. is on track to graduate in June 2024 although, as a special education student, he may be able to continue his education beyond the standard four years of high school.

On July 22, 2022, the Administrative Law Judge (ALJ) issued an Initial Decision finding that the family was no longer homeless. On October 19, 2022, the Commissioner remanded the matter to the OAL for further development of the record. Following a hearing, the 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 made no effort to find other housing. Accordingly, the ALJ concluded that the children have become residents of Bordentown and that Bordentown has no financial responsibility for their attendance in Northern Burlington for the 2020-2021 or 2021-2022 school years. The ALJ also concluded that Northern Burlington has no basis for tuition reimbursement for the school years prior to 2020-2021.

In their exceptions, Z.L. and T.L. argue that they were uprooted when Z.L. got sick and was unable to keep his job, leading to the loss of the family's house. They note that B.L. has special

needs and that it is in his best interests to remain in Northern Burlington schools for his senior year, as requiring him to switch schools will result in him becoming violent and inconsolable to the point that he would simply be unable to attend school and therefore would not graduate in June 2024 as anticipated.

In its exceptions, Northern Burlington argues that Bordentown failed to prove by a preponderance of the evidence that the L. family is no longer homeless. According to Northern Burlington, Bordentown did not seek any discovery from the L. family and improperly placed the burden on the L. family to show that they were homeless. Northern Burlington also contends that the family's living arrangements are not fixed, regular, or adequate, with two children sharing a bed, an adult child sharing a room with a parent, and the other parent sleeping on an air mattress in a common area, with the rooms so small that their dressers line the hallways. Northern Burlington notes that Z.L. testified that he sent in seven apartment applications but was denied based on his credit score, demonstrating that the family does not have the ability to find alternate housing.

Furthermore, Northern Burlington argues that Bordentown is fiscally responsible for the children's education regardless of whether the family was homeless. Northern Burlington contends that if the family remained homeless, Bordentown would be responsible for their costs once they had resided in Bordentown for one year, pursuant to *N.J.S.A. 18A:38-1(d)*. If the family was not homeless, Bordentown would still be responsible for their costs, pursuant to *J.G., o/b/o T.G. and C.G. v. Bd. of Educ. of the Twp. of Edison, Middlesex Co., and Bd. of Educ. of the Borough of Milltown, Middlesex Co.*, Commissioner Decision No. 125-20 (June 15, 2020), which held that the district where the G. family lived when they became homeless was not responsible for the costs of the children's tuition after they became domiciled in a new district.

In its reply, Bordentown argues that there is ample evidence in the record to support the ALJ's conclusion that the Bordentown home is fixed, regular, and adequate, and that the L. family is no longer homeless. Bordentown notes that Z.L. testified that he had only applied for housing seven times in the more than five years since the family moved to Bordentown – with the most recent application occurring in the summer of 2022 – and that the family has refused to look in any districts other than Northern Burlington. According to Bordentown, the parents' preference to have their children remain in Northern Burlington schools is insufficient to support a finding of homelessness. Bordentown argues that the family's income, in combination with their lack of housing expenses or bills since 2017 should allow them to obtain another residence and that there is no necessity to their remaining in Bordentown.

Bordentown also argues that Northern Burlington incorrectly relies on *J.G., supra*, to support its contention that Bordentown is responsible for the children's costs even if they are no longer homeless. Bordentown distinguishes this matter from *J.G.*, noting that *J.G.* was initiated as a residency case, which entitled the parents to keep their children enrolled in their school during the pendency of the appeal. The student's original district had attempted to disenroll the children and thereby put a stop to its accrual of tuition and transportation costs – something that Northern Burlington never attempted to do here. Additionally, the district where the G. family moved never notified them that it was disputing their continued homeless status – something that Bordentown did do here. Bordentown also argues that it would not have incurred any costs if the L. children attended school in Bordentown, as it owns and operates its own fleet of buses and is currently experiencing declining enrollment that would have allowed adequate space for the L. children.

Upon review, the Commissioner agrees with the ALJ that the L. family 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 *Camden*, 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 L. family's circumstances demonstrate that while their living situation may not be ideal due to tight quarters, it is fixed, regular, and adequate. The Commissioner does not find Northern Burlington's exceptions to be persuasive.¹ The testimony demonstrates that the family has full access to two bedrooms, the kitchen and a full bathroom, with T.L.'s mother also having her own full bathroom. Petitioners have an income of approximately \$62,000 per year but do not pay rent or any other expenses for the Bordentown home except for the television bill. Z.L. testified that he had applied for rental apartments in Northern Burlington but was denied due to his credit score. However, he also testified that he had applied for rental apartments only seven times over more than five years, had not applied for any rentals since the summer of 2022, and had not applied for housing in any other school districts because he and T.L. wanted the children to remain in Northern Burlington's schools. These facts are comparable to those in *Camden, supra*, in which the parents had poor credit and debts, including default judgments, and had been rejected for rentals. Additionally, the siblings shared a room, as B.L. and J.L. do here, and one parent slept in the living room, as Z.L. does here. However, they had full access to the home where they were residing; had an income of \$65,000 per year; and had stopped looking for other housing. The family in *Camden* was found not to be homeless. *See also J.G., supra*.

¹ Z.L. and T.L.'s exceptions do not specifically argue that the ALJ incorrectly concluded that they were no longer homeless, but rather address what they believe to be in the best interests of the children. However, that analysis is only applicable when the children have been determined to be homeless. *N.J.S.A. 18A:7B-12.1*.

The L. family has resided in the Bordentown home for more than five years. “[W]hen a homeless family moves into a relative’s home that is adequate – and the adults in the family are sufficiently employed with the financial means to find alternative housing, and the family continues to live in the home for an extended period of time without any imminent or foreseeable risk of losing their place in that home, and they share the space as a cohesive unit – a finding of homelessness would be improper.” *Camden, supra*. While the L. family may eventually intend to leave the Bordentown home, that intent alone is insufficient to support a finding of homelessness; the totality of the facts in this case demonstrate that the family is no longer homeless and has not been homeless since at least the beginning of the 2020-2021 school year.²

As J.L. and B.L. were neither homeless nor residents of Northern Burlington, they were not entitled to a free public education in Northern Burlington’s schools during the 2020-2021, 2021-2022, or 2022-2023 school years. However, as the children did attend Northern Burlington schools, the Commissioner must determine who bears the financial responsibility for their attendance. Northern Burlington is not the responsible party, as its obligation to provide the children with a free public education ceased when the family became domiciled in Bordentown in 2018, after one year of living with T.L.’s mother, in accordance with *N.J.S.A. 18A:38-1(d)* and *N.J.A.C. 6A:17-2.3*. On the other hand, the purpose of the McKinney-Vento Act and the related state law is to ensure that a homeless child is not denied a free public education; it is not meant to enable a child to receive an education in a school district of preference by circumventing residency requirements. *Camden, supra*.

² Because Bordentown has already paid Northern Regional for the children’s tuition for the 2018-2019 and 2019-2020 school years, and is not contesting payment for those years, it is not necessary for the Commissioner to determine whether the family’s residence in Bordentown became fixed prior to the 2020-2021 school year.

In *Camden, supra*, once the Commissioner determined that the children resided in Camden and were not homeless, Camden was held responsible for paying tuition to Voorhees, where the children attended school. However, Camden was permitted to recover from the parent the difference between the per pupil cost of education and transportation in Camden and the costs paid to Voorhees for the children. *Ibid.* Similarly, in *J.G., supra*, once the Commissioner determined that the children resided in Edison and were not homeless, Edison was held responsible for paying tuition to Milltown, where the children attended school. Edison was permitted to recover the difference in costs. *Ibid.*

This case presents a similar scenario. Bordentown is the district where the children were domiciled for the 2020-2021, 2021-2022, and 2022-2023 school years and is therefore the district responsible for their education. Accordingly, Bordentown must reimburse Northern Burlington for the cost of educating the children in Northern Burlington.

Bordentown may seek reimbursement from Z.L. and T.L. for certain costs that exceed the cost Bordentown would have incurred to educate the children in its own schools. This amount shall be calculated as the total of 1) the difference between the cost of the children's transportation to Northern Burlington and any cost of transportation Bordentown may have incurred had the children attended school in Bordentown, and 2) the difference between Northern Burlington's annual per pupil cost for the 2020-2021, 2021-2022, and 2022-2023 school years and Bordentown's per pupil cost for each of those years.

The Commissioner acknowledges that the amount Bordentown will be required to pay to Northern Burlington includes special education tuition and related costs for B.L., making those payments significantly higher than the per pupil cost that a district incurs to educate a general education student. However, the Commissioner has previously concluded in student residency

matters that a board of education's ability to recover tuition costs from a parent is limited. *N.J.S.A. 18A:38-1(b)* provides that if a parent loses a residency appeal, the Commissioner shall assess tuition "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." The statute does not specify that the assessed tuition be equal to the actual costs incurred by the district for educating the student at issue. Instead, it uses the measure of annual per pupil cost, which is based on the district's overall costs and enrollment and is not specific to any individual student. See *N.J.-B., on behalf of minor child, I.T. v. Board of Education of the Township of Union, Union County*, Commissioner's Decision No. 112-20, decided April 24, 2020 (finding that tuition reimbursement is limited to 1/180 of the per pupil cost and does not include the assessment of special education and related costs). While this matter was not opened as a residency matter, because this decision assesses tuition costs against respondents Z.L. and T.L. for the cost of their children's ineligible attendance in Northern Burlington, the Commissioner concludes that it is appropriate to apply the statute and case law related to residency assessments to this matter.

Bordentown argues that it should not be responsible for any costs for the 2020-2021, 2021-2022, or 2022-2023 school years and attempts to distinguish *J.G* because that case was initiated as a residency matter and because the district where the *G.* family moved never notified them that it was disputing their homelessness status. However, Bordentown fails to acknowledge that the Commissioner ordered a similar reimbursement structure in *Camden*, which was initiated as an appeal of a homelessness determination by an ECS, just as this case was. Accordingly, the Commissioner does not find Bordentown's exceptions persuasive. The Commissioner also rejects Bordentown's argument that since it was under its targeted enrollment, the district would incur no additional cost for educating J.L. and B.L. This argument mischaracterizes the costs of education as

being solely those arising from hiring a teacher to provide instruction to students. However, school funding and student tuition payments are based on many categories of expense that are averaged across all students. *See, e.g., N.J.A.C. 6A:23A-17.1* (establishing the means of determining the “actual cost per student” for determining tuition rates and including the cost of textbooks, instructional equipment, teaching supplies, land and building rentals, school-sponsored activities, administration services, technology, training, and numerous other types of expenses in addition to teacher salaries). Furthermore, as noted above, because B.L. is a special education student, his educational costs exceed those of a general education student, and such costs would have been incurred by Bordentown if B.L. had attended school in its school district, as Bordentown wished, for those school years.³

Regarding Northern Burlington’s cross-petition for tuition for the 2015-2016, 2016-2017, and 2017-2018 school years, the claim rests on a handwritten note from T.L.’s mother indicating that the family had been living with her, which is dated October 13, 2014. However, during the hearing, counsel for Northern Burlington agreed that the family became homeless in 2017, not in 2014. Additionally, Z.L. testified that the family moved to Bordentown in April 2017. Therefore, the Commissioner finds that Northern Burlington has no basis for tuition reimbursement and the cross-petition is dismissed.

Accordingly, the Initial Decision is adopted as modified herein. Bordentown is ordered to reimburse Northern Burlington for the costs of J.L. and B.L.’s attendance at Northern Burlington County Regional High School for the 2020-2021, 2021-2022, and 2022-2023 school years.

³ Bordentown has presented no argument that the additional services provided for B.L. were inappropriate or excessive, and, indeed, Bordentown paid those costs to Northern Burlington for the 2018-2019 and 2019-2020 school years.

Bordentown may seek reimbursement from Z.L. and T.L. as outlined herein. B.L. shall be enrolled in Bordentown for the 2023-2024 school year.

IT IS SO ORDERED.⁴


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

Date of Decision: July 6, 2023
Date of Mailing: July 7, 2023

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 09659-22

AGENCY DKT. NO. 7-1/22

(ON REMAND EDU 01639-22)

**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 BEHALF
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, LLC, attorneys)

William C. Morlok, Esq., for respondent, Northern Regional County School District Board of Education (Parker McCay, P.A., attorneys)

Colin G. Klika, Deputy Attorney General, for respondent, Raymond Marini, Interim Executive County Superintendent (Matthew J. Platkin, Attorney General of New Jersey, attorneys)

Z.L. and **T.L.**, respondents, pro se

Record Closed: March 22, 2023

Decided: April 21, 2023

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 Burlington County Regional Board of Education (Burlington) 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-in-law in Bordentown for the last 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 Burlington, 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 ECS. The matter was transmitted to the Office of Administrative Law (OAL) 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 matter was remanded after summary decision in favor of Bordentown had been granted. The remand requests a factual inquiry into the nature of the housing, i.e. is it "regular, fixed and adequate," and a factual determination as to when the family was no longer homeless. The matter was

heard via Zoom on January 30, 2023, and the record closed after written submissions by the parties.

TESTIMONY AND FACTUAL FINDINGS

For Bordentown

Tina Zach (Zach) is the homelessness liaison for the Bordentown school district. She has had training and has held this position for approximately ten years. She was familiar with the L. family who had moved in with family in Bordentown after losing their home in 2017. The family initially advised that they were staying with family in Bordentown but wanted to remain in the Burlington school district, and they did not need transportation. They advised that the housing was temporary and that they were living with the children's grandmother. There were originally three children in school, but the daughter (M.L.) graduated last year and B.L. is a senior this year and is finishing high school online through a private school. P.L. is a junior at Northern Burlington High School.

After the first year in which they lived in Bordentown and continued to go to Burlington, Bordentown assumed the cost. Bordentown paid for all three children to attend school in Northern Burlington during the 2018–2019, and 2019–2020 school years. Bordentown continued to receive updated information, but the family maintained that they were in transitional housing and were homeless. The district has a residency questionnaire that needs to be filled out annually. At the end of 2020, another questionnaire was sent to the family and they advised that they were still living with family in Bordentown. They provided no information about trying to secure other housing, or indicating that the housing was inadequate, and thus, the district determined that they no longer met the definition of homeless.

Ms. Zach attempted to speak to Z.L. about the situation and he was pretty agitated by the conversation. He indicated that the housing was not comfortable, but they had no plans to move, and he was still not employed full time. Zach testified that based upon the information that Bordentown had received, they determined that the family no longer meet the definition of homeless was made. They were living in a three-bedroom house, they

all had beds, access to a full bathroom and kitchen and had no plans to move. Zach does not know about the annual application for state aide but would assume that if Bordentown was paying for the L. family to go to school in Northern Burlington, it would be reflected in the state aide application, and when this changed, the state aid would change accordingly. Zach testified that the determination was not just based on the duration of their stay at the grandmother's home, but the fact that they had no plans to move. Moreover, they were in fixed and adequate housing.

Vanessa Bekarciak, is the Director of Special Services for Bordentown. She also oversees homelessness and residency issues for the district. She was familiar with the L. family. She understood that initially the L. family's housing in Bordentown was temporary, but they began to question this due to the duration of the stay and the admission that they were not seeking alternate housing. In addition, they had not moved around at all, since they left their home in Burlington, they had been in one house. She believed that where they were living was adequate and had become a fixed and permanent situation for them. She testified that just because Z.L. wanted to reside somewhere else did not mean they remained homeless. She testified that it was very fact sensitive, and it is not just duration that determines homelessness. They looked at the adequacy of the housing situation and if it was stable. The L. family was not in jeopardy of being removed from this housing and were not making any plans to move back into the Burlington District.

For Burlington

Z.L. testified on behalf of himself and the minor children. He advised that he lost his job and the home in Chesterfield, Burlington County, was foreclosed on in 2016. Thereafter, they moved in with his mother-in-law in Bordentown Township. The children continued to attend school in Burlington, and he filled out the paperwork necessary for this to continue. He and his wife have three children. Their oldest, M.L. graduated last year. She is in college at Rowan/Burlington Community College and takes classes online. The older son is now a senior and he attends high school online. They pay for him to attend private high school online, as they were concerned that he would not be able to complete his senior year at Burlington. Their youngest is at Burlington. He is a junior

and has an IEP due to some learning differences. They have every reason to believe that he will graduate next year. They do not know if he will go on to college or need additional services due to his disabilities.

Z.L. was terminated from his job in 2015 and was unable to keep the family home when it was foreclosed on. He indicated that he had some health issues, including a stroke which may have led to his unemployment. He testified that he had looked at some housing in Northern Burlington but was declined due to his bad credit with the foreclosure. His wife works and makes approximately \$40,000 a year. They do not pay rent or any other expenses at his mother-in-law's house except for the cable TV bill.

He testified that he is currently working as a consultant has but only makes about \$20,000 a year. No documentation of employment, unemployment or inability to work was provided. He testified that they have not looked in any other districts because he wants his son to remain at Northern Burlington, but he really could not afford any housing there.

His mother-in-law's home has three bedrooms. His wife currently shares a bedroom with their daughter, who is in college now. The boys share a bedroom and Z.L. has a blow-up mattress in the den. His mother-in-law has the master bedroom and her own bathroom. The L. Family shares the other full bathroom and has full access to the kitchen. There are dressers in the hallway due to limited room in the bedrooms and the situation. They have no plans to move out and do not want to leave the district before their son graduates from high school.

Richard Kaz is the business administrator at the Northern Burlington Regional School District. He has been employed there for twenty-two years. He testified that based upon their calculations, Bordentown owes them \$234,113.60 for the years of 2021, 2022 and 2023, for the education of the L children who have been residing in Bordentown due to homelessness but continued to attend school in Northern Burlington. He testified that they had submitted the appropriate documentation to Bordentown but had not been paid.

Based upon the documentary evidence and testimony, I **FIND** the following as **FACT**:

1. The children were attending school in the Northern Burlington Regional School District at that time they became homeless due job loss and foreclosure on their home in 2016.
2. The family moved in with R.B., the children's maternal grandmother, along with their mother and father at the Deerfield Court home in Bordentown, New Jersey.
3. Northern Burlington was advised of the relocation 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.
4. They attended school in Northern Burlington and arranged for their own transportation for the 2017–2018 school year.
5. Thereafter, Bordentown assumed responsibility and provided tuition and transportation to Northern Burlington pursuant to N.J.S.A. 18A:38-1(d).
6. Bordentown paid the tuition and transportation for the children in the 2018–2019 and 2019–2020 school years.
7. 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.
8. 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.”

9. The family is living in a three bedroom home with their grandmother. They have access to a full bathroom and have full access to the kitchen. The two boys share a bedroom as does the mother and daughter. The father Z.L. has a blow-up mattress in the den. Their family has dressers in the hallway due to limited space in the bedrooms.
10. The mother works and earns approximately \$40,000 a year, and Z.L. is working as a consultant earning \$20,000 a year. They pay no rent or expenses to live in the home with the exception of the cable bill.
11. They have made no efforts to find other housing.
12. The family has a fixed, regular and adequate dwelling, where they have resided for over five years.
13. The family is not homeless and was not homeless in the 2020–2021, 2021–2022 or 2022–2023 school years.

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

LEGAL ANALYSIS AND CONCLUSION

It is well settled in this jurisdiction 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. § 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, nor have they made any effort to secure affordable housing in Northern Burlington or elsewhere. The petitioner is still essentially unemployed, has bad credit, very little income.

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 testimony from Z.L. which is not disputed is that they moved in with his mother-in-law five years ago, and they have no current plans to leave. He does not have a full-time job, has bad credit and they do not want to pull their son out of the district. They live in a three-bedroom home with their mother-in-law. The children are all in a bedroom and have their own beds. The father sleeps in the den. They have full access to the kitchen and a full bath. The mother-in-law has her own full bathroom. They have dressers in the hallway and the living conditions are tight and not ideal. However, it is “fixed, adequate, and permanent” and they have no immediate plans to relocate.

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. EDU 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 is making no efforts to find other housing. Moreover, they are in a fixed and adequate home. The totality of the facts and circumstances demonstrate that the L. family was not homeless in the 2020–2021, 2021–2022 school years and are no longer homeless and have become permanent residents in Bordentown and are entitled to enroll and attend school in that district.

For the reasons stated, I **CONCLUDE** that the family has “fixed, permanent and adequate” housing and is no longer homeless. I further **CONCLUDE** that Bordentown is their District of Residence. I further **CONCLUDE** that Bordentown has no financial responsibility for the respondents' 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 school years prior to 2020–2021. I further **CONCLUDE** that 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**, 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.

April 21, 2023
DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency: April 21, 2023

Date Mailed to Parties: April 21, 2023

SCG/nn/am

APPENDIX

WITNESSES

For petitioner

Tina Zach

Vanessa Bekarciak

For respondent

Z.L.

EXHIBITS

For petitioner

- P-1 Letter from R.S. regarding the Z. family
- P-2 Email from Kaitlin Mallory (NBRSD), dated October 16, 2017
- P-3 Northern Burlington homelessness forms
- P-4 Email from Tina Zach, dated August 9, 2014
- P-5 Northern Burlington correspondence and tuition contracts
- P-6 Letter from Bordentown, dated October 18, 2018
- P-7 Purchase Orders 2018–2019
- P-8 Purchase Order 2019–2020
- P-9 Letter from Northern Burlington to Parent, dated December 7, 2018
- P-10 McKinney-Vento Permission Form, dated December 18, 2018
- P-11 Residency Questionnaire for 2018–2019 school year
- P-12 Residency Questionnaire for 2019–2020 school year
- P-13 Email from Caitlin Mallory, dated September 2, 2020
- P-14 Student Residence Questionnaire, dated September 2, 2020
- P-15 Email between Bordentown and Northern Burlington, dated September 14, 2020
- P-16 Email between Bordentown and Northern Burlington, dated August 11,

2021

- P-17 Notice of Dispute and Request for Redetermination, dated September 14, 2021
- P-18 County Superintendent decision, dated October 14, 2021
- P-21 NJ Property Tax records
- P-22 Residency Certification
- P-23 Contact Logs from Tina Zach
- P-24 Supplemental Residence Information Forms, dated September 2, 2021
- P-25 Memorandum from Tina Zach to Vanessa Bekarciak, dated September 24, 2021
- P-28 CV of Venessa Bekarciak

For respondent

- R-1 Emails to Samantha Crean, Homeless liaison for Northern Burlington, dated September 23, 2021 (Exhibit A and B)
- R-2 invoices for tuition (Exhibit C)
- R-3 invoices for tuition (Exhibit D)
- R-4 invoices for tuition (Exhibit E)
- R-5 invoices for tuition (Exhibit F)