

## New Jersey Commissioner of Education

### Final Decision

Board of Education of the Warren Hills Regional  
School District, Warren County,

Petitioner,

v.

Board of Education of the Town of Hackettstown,  
Warren County, and New Jersey Department of  
Education,

Respondents.

### Synopsis

Petitioner, the Board of Education of the Warren Hills Regional School District (Warren Hills), Warren County, appealed the homelessness determination of the Warren County interim executive county superintendent (ECS) that Warren Hills is the district financially responsible for the education of E.N., a student placed by the Department of Children and Families at the Bancroft School, a private residential school. Petitioner contended, *inter alia*, that E.N.'s mother, S.A., was not homeless when she moved from an apartment in Mansfield Village, in the Warren Hills school district, to Herbert Lane (located within the Hackettstown district) and that the ECS erred in issuing a homelessness determination regarding S.A. without first conducting a fact-sensitive investigation. Respondent Hackettstown contended, *inter alia*, that the ECS correctly determined that S.A. became homeless in Warren Hills, and because S.A. has not resided in one location for at least 365 days since being deemed eligible for protections under the McKinney-Vento Act, Warren Hills should be held responsible for the cost of E.N.'s education. A hearing in this matter was held on September 13, 2023.

The ALJ found, *inter alia*, that: respondents have the burden of proving that S.A. was homeless; S.A. was not homeless when she voluntarily moved from an apartment that she shared with family members in Mansfield Village (where she had lived from August or September 2017) to her cousin's split-level home on Herbert Lane in July 2018; Herbert Lane was a fixed, regular, and adequate domicile, where S.A. intended to stay indefinitely with her cousin's family, helping with childcare in exchange for housing; however, when her cousin's father-in-law died suddenly, his disabled wife displaced S.A. from the bedroom she had occupied to a small playroom; although she was not asked to leave, S.A. subsequently decided to voluntarily move from Herbert Lane. The ALJ concluded that: respondents have not met their burden to prove that S.A. was homeless; S.A. was not homeless when she moved out of the apartment in Mansfield Village to a single-family home with her cousin's family on Herbert Lane; and, accordingly, there is no basis for a finding of homelessness. The ALJ directed Hackettstown to assume financial responsibility for E.N.'s tuition from 2018 forward, totaling \$160,739.88.

Upon review, the Commissioner adopted the factual findings of the ALJ, but rejected, *inter alia*, her finding that Herbert Lane was a fixed, regular, and adequate domicile, as well as her conclusion that there was no basis for a finding of homelessness. Rather, the Commissioner found that S.A.'s transience subsequent to the mother-in-law's arrival at Herbert Lane indicates homelessness. Accordingly, the Commissioner determined that, pursuant to N.J.S.A. 18A:7B-12(b), Hackettstown is the district of residence and financially responsible for E.N.'s education for school years 2018-2019 to 2020-2021.

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.

**New Jersey Commissioner of Education**  
**Final Decision**

Board of Education of the Warren Hills Regional  
School District, Warren County,

Petitioner,

v.

Board of Education of the Town of Hackettstown,  
Warren County, and New Jersey Department of  
Education,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent Hackettstown Board of Education (Hackettstown) pursuant to *N.J.A.C.* 17:27-18.4, and petitioner Warren Hills Regional School District Board of Education's (Warren Hills) reply thereto, have been reviewed and considered. Respondent New Jersey Department of Education (DOE) did not file exceptions or a reply.

This matter arises out of a dispute concerning who is fiscally responsible for the education of E.N. from the 2018-2019 school year to the 2020-2021 school year. It is undisputed that on December 18, 2014, E.N. was placed by the Department of Children and Families (DCF) at the Bancroft School (Bancroft), a private residential school for students with special needs. Prior to her placement at Bancroft, E.N. lived with her mother, S.A., in Newark. In September 2016, S.A.'s mother and sister applied and signed a lease for an apartment in Mansfield Village, within the Warren Hills Regional

School District. The residency application and lease listed S.A. and A.N. (E.N.'s sister) as additional occupants/immediate family. The initial lease period was from December 1, 2016, to November 30, 2017, and a lease renewal addendum was signed for the term of December 1, 2017, to November 30, 2018. According to a notarized statement signed by X.S., S.A.'s cousin, S.A. moved out of the Mansfield Village apartment and into X.S.'s home in Hackettstown, within the Hackettstown school district, in July 2018.<sup>1</sup>

On March 15, 2019, Cindy Lee (Lee), then Director of State Aid Entitlements and Payments at the DOE, issued a determination that Hackettstown is responsible for E.N.'s education costs for the 2018-2019 school year because S.A. resided in Hackettstown on October 15, 2018. On July 30, 2019, then Deputy Assistant Commissioner for the Office of School Finance, Glenn Forney (Forney), affirmed Lee's determination.<sup>2</sup> Forney's decision was not appealed to the Commissioner.<sup>3</sup>

Hackettstown then emailed Anthony Hearn (Hearn) at the DOE's Office of Fiscal and Data Services, indicating that it suspected that S.A. may have been "doubled-up" at her sister's residence in Mount Olive. Hearn replied that this would make S.A. homeless and A.N. eligible for protection under the McKinney-Vento Homelessness Assistance Act (McKinney-Vento).

---

<sup>1</sup> The Mansfield Village apartment bears a mailing address in Hackettstown, but it is nonetheless located within the Warren Hills Regional School District. All references herein to S.A.'s residence in Hackettstown are intended to refer to X.S.'s home on Herbert Lane in Hackettstown, within the Hackettstown school district.

<sup>2</sup> The determinations made by Lee and Forney were determinations of the district of residence for a student placed by DCF, pursuant to the procedures established by *N.J.A.C. 6A:23A-19.2*.

<sup>3</sup> Hackettstown did write to Forney and request that he reconsider his decision. However, there is no provision in the applicable rules for reconsideration in these circumstances. See *N.J.A.C. 6A:23A-19.2(f)* (providing that when the Office of School Facilities and Finance is unable to resolve a dispute, a board of education may file a petition of appeal with the Commissioner pursuant to the provisions of *N.J.A.C. 6A:3*). Forney's July 30, 2019 letter notified Hackettstown of this procedure.

On August 1, 2020, the Bancroft School sent a letter to the Warren County Office of Education regarding E.N.'s outstanding tuition.<sup>4</sup> On August 26, 2020, Tania Mongioi (Mongioi), Special Education Specialist from the Warren County Office of Education, sent an email determining that Warren Hills was responsible for E.N.'s education and transportation costs from July 2018 to January 2020. On January 19, 2021, Executive County Superintendent (ECS) Rosalie Lamonte (Dr. Lamonte), issued a letter determining that S.A. had become homeless during the 2017-2018 school year in Warren Hills, and that Warren Hills was fiscally responsible for school years 2018–2019, 2019–2020, and 2020–2021.

On April 16, 2021, Warren Hills filed the instant petition against Hackettstown and the DOE, seeking a determination that Hackettstown is responsible for E.N.'s costs during the 2018-2019 school year and that the DOE is responsible for the 2019–2020 school year and forward, pursuant to *N.J.S.A. 18A:7B-12(d)*. Hackettstown filed an answer, and the DOE filed a motion to dismiss the petition. The matter was transmitted to the OAL and the DOE's motion was denied. Warren Hills and Hackettstown then filed cross-motions for summary decision, which were denied by the ALJ because a genuine issue of material fact existed regarding the validity of the homelessness determination that had been made and a more fact-intensive analysis was required.

Following a hearing, and citing to testimony and evidence on the record, the ALJ found that S.A. had moved to the Mansfield Village apartment in August or September 2017, and left Mansfield Village for Hackettstown in July 2018. The ALJ concluded that S.A. was not homeless when she moved from Mansfield Village to Hackettstown. Specifically, the ALJ found that S.A. did not leave Mansfield Village out of necessity or due to an emergency. The ALJ noted that S.A. testified that she was neither evicted nor asked to leave; rather, she planned to return to Newark, but received an appealing

---

<sup>4</sup> Hackettstown paid Bancroft \$60,697.72 towards E.N.'s educational costs for the 2019-2020 school year.

invitation from X.S. to live with her and her family in Hackettstown and help with childcare in exchange for rent.

Furthermore, the ALJ found S.A.'s residence in Hackettstown to be fixed, regular, and adequate, and more comfortable than the Mansfield Village apartment. The ALJ reasoned that S.A. had her own bedroom in Hackettstown compared to Mansfield Village, where she shared a room with her daughter;<sup>5</sup> in addition, the Hackettstown home is a split-level home and not an apartment. The ALJ also found that S.A. intended to remain in Hackettstown indefinitely, as evidenced by her changing the address on her driver's license to the Hackettstown address. Additionally, the ALJ found that the residents of the home in Hackettstown all depended on each other as in *Bd. of Educ. of the Twp. of Pennsauken, Camden Cnty. v. Lovell Pugh-Bassett, Interim Executive Cnty. Superintendent, Bd. of Educ. of Haddon Twp., Camden Co., and A.A. on behalf of minor child, A.L.*, Commissioner Decision No. 122-22 (June 16, 2022). The ALJ noted that S.A. was never asked to leave Hackettstown, and only moved out after X.S.'s father-in-law died unexpectedly and his spouse, X.S.'s mother-in-law, needed to move in because she could not take care of herself. The ALJ found that X.S. did not want S.A. to leave. The ALJ reversed the ECS's determination, reinstated Forney's decision from July 30, 2019, and directed Hackettstown to assume financial responsibility for E.N.'s tuition from 2018 onward, totaling \$160,739.88.

In its exceptions, Hackettstown argues that the ALJ erred in finding that S.A. was not homeless when she left Mansfield Village for Hackettstown. This finding, they contend, contradicts Mongoi's August 26, 2020 determination of homelessness that Warren Hills failed to timely challenge; as such, Warren Hills's appeal should be dismissed pursuant to *N.J.A.C. 6A:3.1.3(i)*. Further, even assuming a

---

<sup>5</sup> The Initial Decision indicates both that S.A. and her daughter shared a bedroom and that they shared a bed. The second statement appears to be a typographical error, as S.A. testified that she and her daughter shared a bedroom at Mansfield Village, not a bed. See T49:4.

timely appeal, Hackettstown argues that the record supports a conclusion that each of S.A.'s living arrangements – at the Mansfield Village apartment, in Hackettstown, in Budd Lake, and in Pennsylvania – were not fixed, regular, and adequate; thus, S.A. was homeless. Hackettstown notes that S.A. had not lived in the Hackettstown school district for at least 365 days during the relevant time period, and argues that Hackettstown cannot, therefore, be responsible for E.N.'s education.

Hackettstown also argues that the ALJ incorrectly relies on *Pennsauken, supra*, in reaching the conclusion that S.A. was not homeless. Hackettstown distinguishes this matter from *Pennsauken*, noting that the living conditions in *Pennsauken* were fixed, regular, and adequate, with the mother and student having their own bedrooms and access to all home facilities. Further, they had been living in the home for years by the time of the hearing, and the homeowner relied on her daughter (the student's mother) for fulltime medical care. Hackettstown argues that, in contrast, S.A. shared a room with her adult daughter in Mansfield Village, was not on the lease, and moved out because the lease was ending. Further, S.A. did not have a bedroom, but a "space" in Hackettstown; she resided there for well under a year; did not pay rent; was not on the lease; and was eventually told that she might have to leave. Hackettstown also argues that, unlike in *Pennsauken* where the homeowner depended on her daughter, X.S.'s family appears to have had other options for childcare beyond S.A.

Furthermore, Hackettstown argues that Warren Hills has not met its burden of proving that S.A. was not homeless. Hackettstown also takes exception to the ALJ's finding that Hackettstown did not act in compliance with the relevant homelessness regulations, asserting that they contacted the Office of School Finance and – by way of a carbon copy – the ECS, seeking reconsideration of the DOE's decision to uphold the finding that Hackettstown was responsible for E.N.'s educational costs. Hackettstown contends that it was appropriate for it to seek a homelessness determination from the

ECS because the ECS has exclusive jurisdiction over homelessness determinations and had not yet made a determination regarding E.N.

Lastly, Hackettstown takes exception to the ALJ's finding that Hackettstown is fiscally responsible for E.N.'s tuition from 2018 forward. Hackettstown argues that the DOE's determinations from Lee and Forney only reviewed the 2018-2019 school year, finding that because S.A. lived in Hackettstown on October 15, 2018, Hackettstown was fiscally responsible for 2018-2019. No other DOE determinations for subsequent school years had been made, and the record shows that S.A. did not live in Hackettstown in October 2019, October 2020, or October 2021. Accordingly, Hackettstown argues that neither the record nor the decision can substantiate a finding that Hackettstown is responsible for the school years from 2018 forward.

In response, Warren Hills contends that Hackettstown's exceptions reiterate arguments presented during the hearing and in their post-hearing brief that have already been considered and dismissed by the ALJ; as such, those arguments should not be considered by the Commissioner. Next, Warren Hills challenges Hackettstown's assertion that it complied with the relevant homelessness regulations, arguing that there is no provision in the law or code for a request for reconsideration of a determination of district of residence. Regarding the issue of timeliness, Warren Hills emphasizes that Dr. Lamonte's January 19, 2021 determination – that S.A. became homeless in Warren Hills during the 2017-2018 school year – forms the basis for the instant appeal; therefore, Warren Hill's appeal – filed April 16, 2021 – is timely. Warren Hills contends that Mongioi's August 26, 2020 email does not constitute an ECS determination since she did not consult the ECS in reaching her determination, and Dr. Lamonte neither signed nor certified the email.

Lastly, Warren Hills argues that there is ample evidence in the record to support the ALJ's conclusion that S.A. was not homeless. Citing to case law referenced in the ALJ's decision,

Warren Hills contends that S.A. was not living in Hackettstown out of necessity. Warren Hills notes that S.A. testified that she was neither evicted nor asked to leave Mansfield Village. Rather, she left Mansfield Village because she was unhappy and wanted to return to Newark, where she had grown up, but S.A.'s mother did not want her to move back. S.A.'s other family members remained at Mansfield Village after S.A. left. S.A.'s family members in Hackettstown did not give her a set amount of time during which she could stay with them and S.A. testified to always having lived with relatives throughout her life. Warren Hills also contends that the Hackettstown home was fixed, regular, and adequate, and that S.A.'s testimony suggests that she had more comfortable living arrangements in Hackettstown than she did at Mansfield Village.

Initially, the Commissioner concludes that Warren Hills' appeal was timely filed. Pursuant to *N.J.A.C. 6A:17-2.7*, a determination of homelessness is made by the ECS; the ECS's determination is then appealable to the Commissioner. Accordingly, Warren Hills' timeline to file its petition of appeal began running only when Warren Hills received Dr. Lamonte's January 19, 2021 determination; the earlier correspondence from Hearn and Mongoi is irrelevant. The petition of appeal was filed on April 16, 2021, less than 90 days after Dr. Lamonte's determination, and was therefore timely pursuant to *N.J.A.C. 6A:3-1.3(i)*.

Under McKinney-Vento, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason." 42 *U.S.C.A.* § 11434a(2). 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. “[D]omicile attaches immediately if a student’s dwelling is found to be fixed, regular and adequate.” *Bd. of Educ. of Twp. of Egg Harbor v. Bd. of Educ. of Mainland Reg’l Sch. Dist.*, Commissioner Decision No. 555-10 (Dec. 30, 2010), at 4 (citing N.J.S.A. 18A:17B-12(c)).

The Commissioner has previously held that homelessness “is best viewed in a continuum.” *St.-Op. Sch. Dist. of Camden v. C. Ann Volk*, Commissioner Decision No. 172-17R (June 20, 2017), at 11. 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. Bd. of Educ. of Borough of Cresskill*, Commissioner Decision No. 325-14 at 3 (August 12, 2014), *aff’d*, No. A-0828-14T4 (App. Div. Sept. 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.*

Here, these principles apply to the analysis of whether S.A. was homeless. Upon review, the Commissioner concurs with the ALJ that S.A. was not homeless upon leaving Mansfield Village, for the reasons detailed in the Initial Decision. S.A. did not leave Mansfield Village out of necessity or due to an emergency, and her residence in Hackettstown was – at least initially – fixed, regular, and adequate. Accordingly, upon her move to Hackettstown, into a fixed, regular, and adequate home with X.S., S.A. was domiciled in Hackettstown. Forney’s July 30, 2019 decision, which determined that Hackettstown was responsible for the costs of E.N.’s education for the 2018-2019 school year based on S.A.’s residence in Hackettstown on October 15, 2018, was therefore correct, as was the ALJ’s corresponding conclusion for the 2018-2019 school year.

However, the Commissioner finds that S.A. became homeless while residing in Hackettstown. Specifically, S.A.'s residence in Hackettstown was no longer fixed, regular, or adequate once X.S.'s mother-in-law moved in. S.A. testified that she only left Hackettstown because X.S. needed the guest room – where S.A. slept – for her mother-in-law following the unexpected death of X.S.'s father-in-law. The record indicates that space was so limited in Hackettstown after X.S.'s mother-in-law moved in that S.A. was relegated to the "other little space that they had temporary." T64:11. S.A. testified that the space they gave her was not a bedroom but rather a small playroom, which was like an office. Additionally, there was a small child in the household who could use the playroom, limiting any privacy S.A. had. X.S. wrote a letter dated March 25, 2019, stating that as of March 29, 2019, S.A. would no longer be able to reside in Hackettstown due to family circumstances. Based on these factors, the Commissioner finds that S.A. left Hackettstown did not leave Hackettstown out of preference, but rather due to an emergency – the sudden death of X.S.'s father-in-law, which led to the arrival of X.S.'s extremely ill mother-in-law, which in turn left S.A. displaced in and then from the home.

Upon leaving Hackettstown, S.A. went to live with her sister, W.C., in Budd Lake. S.A. did not contribute to rent or the mortgage and she testified only that she had a place to sleep. Further, nothing in S.A.'s testimony indicated that the members of W.C.'s residence depended on each other as a household unit as in *Pennsauken*. Accordingly, the Commissioner cannot find S.A.'s living arrangements at W.C.'s home to be fixed, regular, or adequate.

S.A.'s subsequent residences in Village Green, Budd Lake,<sup>6</sup> and in Pennsylvania, were also not fixed. When asked if she helped with rent or the mortgage at Village Green, she replied only that she

---

<sup>6</sup> S.A. testified to moving in with her mother, C.A., at Village Green, Budd Lake after living at W.C.'s Budd Lake residence. She testified that she does not remember when she moved into the Village Green residence.

contributed to “a lot of things.” Further, S.A. testified that after becoming sick in January 2019,<sup>7</sup> her mother told her that she could not stay at Village Green if she did not get better. S.A. testified that she went back and forth between New Jersey and a family friend in Pennsylvania who offered her a place to stay and took care of her while she was sick. S.A. testified to renting hotel rooms in order to see family members during this period. Regarding finances, S.A. testified that she started looking for a job and applying for benefits during this time, but to no avail. At the time of the hearing, S.A. acknowledged that she had been living in a hotel for several weeks because she was trying to see if she could return to Newark. Taken as a whole, S.A.’s transience after the time X.S.’s mother-in-law moved into the Hackettstown home, as well as her regular reliance on hotel rooms, indicates that her living arrangements were not fixed or regular.

Once it is determined that a child or her parent is homeless, the question becomes which district is financially responsible for the child’s education. Generally, a student is eligible for a free public education in a school district if he or she is domiciled within the school district. *N.J.S.A. 18A:38-1(a)*; *N.J.A.C. 6A:22-3.1(a)*. A student’s domicile is determined by the domicile of her parents. *N.J.A.C. 6A:22-3.1(a)(1)*. The district of residence for a child whose parent “temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent . . . last resided prior to becoming homeless.” *N.J.S.A. 18A:7B-12*. This district “shall be the school district of residence until the parent establishes a permanent residence.” *N.J.A.C. 6A:17-2.3*. However, when a homeless child lives in a school district for one year or longer – and a new domicile has not been established – the child is “deemed domiciled” in that district for the purposes of determining which district is responsible for the cost of the child’s education. *N.J.S.A. 18A:38-1(d)*; *N.J.A.C. 6A:17-2.3(c)*.

---

<sup>7</sup> S.A. testified that she became sick in the beginning of the COVID-19 pandemic and that she moved to Pennsylvania “around the time of the pandemic.” Therefore, the January 2019 date may be a mistake.

In this matter, S.A. last resided in Hackettstown prior to becoming homeless. Prior to X.S.'s mother-in-law moving in, S.A.'s living arrangements in Hackettstown were fixed, adequate, and regular. Her testimony reveals that she had her own room, with a bed. The ALJ correctly determined that everyone in the Hackettstown home depended on each other; in exchange for rent, S.A. watched X.S.'s son and at times purchased groceries. S.A. worked two part-time seasonal jobs and was waiting on a new job opportunity through X.S.'s husband. S.A. had not been given a moveout date and she moved into the Hackettstown home voluntarily and not out of necessity. Following the move of X.S.'s mother-in-law to Hackettstown, S.A. moved to the playroom, rendering her living conditions inadequate. X.S. took steps to secure housing for S.A. elsewhere, such as coordinating S.A.'s move to Budd Lake with W.C, and drafted a letter stating the S.A. no longer lived at the Hackettstown home. Accordingly, the Commissioner concludes that Hackettstown is the district of residence pursuant to *N.J.S.A. 18A:7B-12(b)*.

The Commissioner further concludes that Hackettstown remained the district of residence for the subsequent school years, because petitioner did not establish a permanent domicile during that time, nor did she live in any school district for one year in order to be deemed domiciled there. Petitioner lived in Hackettstown from July 2018 to May 2019. From there, she lived with W.C. in Budd Lake; A.N. testified that S.A.'s residence there lasted for 7-8 months. Next, S.A.'s testimony indicates that she moved to her mother's residence at Village Green, Budd Lake, but was transient and moved back and forth between Pennsylvania and New Jersey, sometimes staying in hotels. Therefore, although the Commissioner modifies the Initial Decision to conclude that S.A. was homeless after X.S.'s mother-in-law moved into the Hackettstown home, the Commissioner nonetheless concurs with the ALJ that Hackettstown remained responsible for the costs of E.N.'s education for the 2019-2020 and 2020-2021 school years.

Accordingly, the Initial Decision is adopted in part and modified in part. Hackettstown is directed to assume financial responsibility for E.N.'s education from the 2018-2019 school year to the 2020-2021 school year.

IT IS SO ORDERED.<sup>8</sup>

  
ASSISTANT COMMISSIONER OF EDUCATION<sup>9</sup>

Date of Decision: November 15, 2024  
Date of Mailing: November 20, 2024

---

<sup>8</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.

<sup>9</sup> Pursuant to *N.J.S.A.* 18A:4-34, this matter has been delegated to Assistant Commissioner Kathleen Ehling.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 04846-21

AGENCY DKT. NO. 56-4/21

**WARREN HILLS REGIONAL SCHOOL  
DISTRICT, WARREN COUNTY,**

Petitioner,

v.

**TOWN OF HACKETTSTOWN BOE, WARREN  
COUNTY AND NEW JERSEY DEPARTMENT  
OF EDUCATION,**

Respondents.

---

**Marc H. Zitomer**, Esq., for petitioner (Schenck, Price, Smith & King, LLP,  
attorneys)

**Emily E. Strawbridge**, Esq., for respondent Hackettstown Board of Education  
(Parker McCay, P.A., attorneys)

**Sadia Ahsanuddin**, Deputy Attorney General, for respondent New Jersey  
Department of Education (Matthew J. Platkin, Attorney General of New  
Jersey, attorney)

Record Closed: June 28, 2024

Decided: July 18, 2024

BEFORE **LESLIE Z. CELENTANO**, ALJ:

## **STATEMENT OF THE CASE**

Petitioner, Board of Education of the Warren Hills Regional School District, Warren County (Warren) appeals a McKinney-Vento Education Act (McKinney-Vento) determination made by the New Jersey Department of Education's (DOE) interim executive county superintendent (ECS) that Warren is the party fiscally responsible for the education of E.N., a now twenty-two-year-old student who was placed by the Department of Children and Families (DCF) at the Bancroft School (Bancroft). The DOE has previously concluded on two occasions that respondent Board of Education of the Town of Hackettstown (Hackettstown) was responsible. The determinations of the DOE were not timely appealed by Hackettstown. Thereafter, the interim ECS of Warren County reached a different conclusion, "rubber-stamping" Hackettstown's suggestion that Warren was responsible for the education of E.N. Warren contests that determination, as it directly contradicts multiple prior rulings of the DOE, including that of Deputy Assistant Commissioner Forney.

## **PROCEDURAL HISTORY**

On or about April 16, 2021, petitioner filed a petition of appeal together with exhibits with the Commissioner of Education (Commissioner), seeking a determination regarding the party responsible for the education of E.N. On May 11, 2021, Hackettstown filed an answer, and on June 2, 2021, the DOE filed a motion to dismiss the petition of appeal in lieu of an answer. The Department transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 3, 2021. The DOE filed a brief with exhibits in support of its motion, and petitioner filed a brief with exhibits in opposition to the motion. On November 5, 2021, the motion to dismiss was denied.

On September 1, 2022, petitioner filed a motion for summary decision. The DOE filed opposition to petitioner's motion on October 18, 2022. Respondent Hackettstown filed opposition to petitioner's motion and a cross-motion for summary decision on October 28, 2022. Petitioner filed opposition to respondent Hackettstown's opposition and cross-motion, also on October 28, 2022. Summary decision was denied as there

was a genuine issue of material fact with respect to the validity of the homelessness determination that had been made based upon insufficient evidence, and that a far more fact-intensive analysis was required.

A hearing was held on September 13, 2023. The parties submitted post-hearing briefs, and following receipt of all exhibits, the record was closed.

### **FACTUAL BACKGROUND**

The parties entered into a Joint Stipulation of Facts, as follows:

1. E.N.'s date of birth is August 10, 2000.
2. On December 18, 2014, E.N. was placed by the DCF at the Bancroft School.
3. Prior to placement at the Bancroft School, E.N. resided with her mother, S.A., in Newark, New Jersey.
4. On September 27, 2016, a residency application was filed for an apartment in Mansfield Village, Hackettstown, New Jersey 07840-3522, listing C.A. and K.A. as applicants. S.A. and A.N. were listed on the residency application for Mansfield Village as additional occupants. Attached hereto as "Exhibit J-1" is a true and accurate copy of the residency application for Mansfield Village.
5. C.A. and K.A. signed a lease, dated September 30, 2016, to become tenants in Mansfield Village, Hackettstown, New Jersey 07840. S.A. and A.N. are listed on the lease as "immediate family." Attached hereto as "Exhibit J-2" is a true and accurate copy of the lease.
6. The Mansfield Village, Hackettstown, NJ 07840 address falls within the Warren Hills Regional School District.
7. On March 9, 2018, Cindy Lee, Director of State Aid Entitlements and Payments, New Jersey Department of Education, issued a determination that Warren Hills Regional School District was responsible for tuition for E.N. for the 2017–2018 school year because S.A. resided at the Mansfield Village residence on October 13, 2017. Attached hereto as "Exhibit J-3" is the March 9, 2018, determination issued by the Department of Education.



8. The Warren Hills Regional School District Board of Education paid the tuition and aide for the 2017–2018 school year in the amount of \$107,363.16. Attached hereto as “Exhibit J- 4” is proof of payments made by Warren Hills for the 2017–2018 school year.
9. On November 27, 2017, C.A. and K.A. signed a lease renewal addendum for the apartment in Mansfield Village, Hackettstown, NJ 07840 for the term December 1, 2017 to November 30, 2018. Attached hereto as “Exhibit J-5” is a true and accurate copy of the lease renewal signed by C.A. and K.A..
10. On November 12, 2018, C.A. signed a notice of vacating form for the Mansfield Village, Hackettstown, NJ 07840 apartment. Attached hereto as “Exhibit J-6” is a true and accurate copy of the notice of vacating form signed by C.A..
11. On March 15, 2019, Cindy Lee from the DOE issued a determination that Hackettstown School District was responsible for tuition for E.N. for the 2018–2019 school year because on October 15, 2018, S.A. resided on Herbert Lane, Hackettstown, N.J. 07840-2503. Attached hereto as “Exhibit J-7” is the March 15, 2019, determination issued by the Department of Education.
12. On July 30, 2019, Deputy Assistant Commissioner Glenn Forney affirmed the determination that Hackettstown School District should be responsible for the 2018–2019 school year. Attached hereto as “Exhibit J-8” is the July 30, 2019, letter issued by Deputy Assistant Commissioner Glenn Forney.
13. On August 1, 2019, counsel for Hackettstown School District wrote to Mr. Forney requesting that they “reconsider its denial of the Board’s appeal.” However, a petition of appeal was not filed with the New Jersey Commissioner of Education to appeal the July 30, 2019, determination. Attached hereto as “Exhibit J-9” is the August 1, 2019, letter from Hackettstown.
14. The Hackettstown School District paid \$60,697.72 toward E.N.’s educational costs for the 2019–2020 school year.
15. On August 1, 2020, the Bancroft School sent a letter to the Warren County Office of Education regarding outstanding tuition for E.N. Attached hereto as “Exhibit J-10” is the August 1, 2020, letter from the Bancroft School.
16. On August 26, 2020, Tania Mongioi, special education specialist at the Warren County Office of Education, determined that S.A. became homeless

during the 2017–2018 school year from the Warren Hills Regional School District. Attached hereto as “Exhibit J-11” is the August 26, 2020, email from Tania Mongioi.

17. The August 26, 2020, decision discussed in the above paragraph was not appealed.

18. On January 19, 2021, Executive County Superintendent Rosalie Lamonte issued a letter determining that S.A. became homeless during the 2017–2018 school year from the Warren Hills Regional School District. Attached hereto as “Exhibit J-12” is the letter of determination from the Executive County Superintendent.

19. Attached hereto as “Exhibit J-13” are the interrogatory answers received by the Warren Hills Regional School District Board of Education from the Hackettstown Township Board of Education in this matter.

20. Attached hereto as “Exhibit J-14” are the interrogatory answers received by the Warren Hills Regional School District Board of Education from the New Jersey Department of Education in this matter.

I **FIND** the following additional facts:

After the DCF residentially placed E.N.—a special-needs student, then age fourteen—in the Bancroft School, E.N. attended Bancroft for the next eight years, through the 2020–2021 school year.

Over the course of E.N.’s time at Bancroft, Cindy Lee, the director of State Aid Entitlements and Payments at the Department of Education (DOE), made a yearly determination of district responsibility. To determine district responsibility, the DOE would traditionally look to the address of the student’s parent or guardian on the final school day before October 16 of that school year. On October 15, 2018, E.N.’s mother, S.A., resided at Herbert Lane, Hackettstown, NJ 07840. Because this address is located inside of the Hackettstown Public School District, Lee ultimately determined on March 15, 2019, that Hackettstown Public School District was responsible for paying E.N.’s educational costs at Bancroft for the 2018–2019 school year.

About a month after this determination, the Hackettstown Board of Education (Hackettstown) appealed Lee's decision to Kevin Dehmer, Assistant Commissioner for the DOE. The appeal requested that Dehmer consider findings that, according to Hackettstown, proved that S.A. still resided at Mansfield Village, Hackettstown, NJ 07840—the address at which she had resided in past school years—on October 15, 2018. The Mansfield address is located in the Warren Hills School District.<sup>1</sup> S.A. had responded to two letters from Hackettstown that were sent to the Mansfield Village address, one on April 7, 2018, and one on August 27, 2018.

S.A. moved to the apartment in August or September 2017. She did not have her own room while living there; rather, she shared a bedroom with her adult daughter. S.A. moved out of the Mansfield apartment and in with her cousin on Herbert Lane in July 2018, as confirmed by her cousin's notarized statement and S.A.'s testimony that "it could have been July, which is what [her cousin] said." She also told Guy Jorstad, Hackettstown director of pupil personnel services, that she has lived in Hackettstown since that date, which led him to meet with her to enroll E.N.

The move to her cousin's home was made out of preference and S.A. was not evicted or even asked to leave the Mansfield apartment. She had planned to move back to Newark, NJ, but her cousin X.S. invited her to come live with her and her family and help care for the cousin's baby in exchange for living there rent-free. She could have remained at the Mansfield apartment, and had the option to live in either place. S.A. had her own room at Herbert Lane, the prospect of a job with her cousin's employer, and no timetable for living there. She purchased groceries at times and was employed at two part-time jobs.

Hackettstown acknowledged that there was evidence supporting the determination that S.A. resided on Herbert Lane. Among this evidence was a pharmacy receipt dated November 28, 2018, and a 2018 tax return. Most notably, however, was a notarized letter

---

<sup>1</sup> S.A.'s mother and sister were confirmed to have stayed at that address roughly through the end of the lease.

dated February 19, 2019, and signed by S.A.'s cousin, attesting that S.A. had been residing with her on Herbert Lane since July 2018.

While waiting for a ruling on its appeal, Hackettstown refused to register E.N. in its district without receiving proofs of residency from S.A., despite Lee's residency determination.

On July 30, 2019, Glenn Forney, Deputy Assistant Commissioner at the Office of School Finance, rejected Hackettstown's request for a redetermination, upholding Lee's determination of district responsibility. In Forney's opinion, "[m]ost of the evidence [Hackettstown] presented [did] not specifically corroborate where the child's mother resided on October 15, 2018." (J-8.) Expounding on his decision, Forney wrote, "The only evidence presented that demonstrates where [S.A.] resided on October 15, 2018, is the notarized letter from S.A.'s cousin . . . [,] who provided a notarized statement that [S.A.] has been living at Herbert Lane since July 2018." At the end of his determination, Forney wrote, "If the Hackettstown Board of Education disagrees with this determination, it may initiate a formal proceeding before the Commissioner by filing a Petition of Appeal pursuant to the provisions of N.J.A.C. 6A:3-1 et seq." Notably, N.J.A.C. 6A:3-1.3(i) requires a petitioner to file their appeal within ninety days of receipt of the ruling.<sup>2</sup>

On August 1, 2019, counsel for Hackettstown wrote Forney requesting that he reconsider his denial of the original appeal and name Warren Hills School District responsible. The executive county superintendent was copied on this correspondence, which did not state that Hackettstown believed S.A. was homeless.

Guy Jorstad then emailed Anthony Hearn at the Office of Fiscal and Data Services of the DOE and Diahann DeRiggiero, the program coordinator of the McKinney-Vento Education of Homelessness and Youth Program at the DOE on September 10, 2019. He told them that he was looking to see if S.A. had become homeless after leaving her Mansfield Village address. Jorstad suspected that S.A. may have been "doubled-up" at

---

<sup>2</sup> This determination was not appealed.

her sister's residence in Mount Olive; Hearn replied that this would make S.A. homeless and E.N. eligible for McKinney-Vento.

The next day, Jorstad emailed administrators at Hackettstown, declaring that Hearn had determined S.A. to be homeless upon arriving in the Hackettstown school district and that that would make Warren Hills—as the district of origin—financially responsible for E.N. during the 2018–2019 school year. The next day, counsel for Hackettstown sent these documents to Forney, claiming that Hearn determined that S.A. had been “residing with relatives or friends out of necessity due to a lack of a regular or permanent residence” and was therefore homeless and eligible for McKinney-Vento. At the same time, counsel for Hackettstown implicitly acknowledged that this was not the end of the matter, requesting, “[i]n light of the new information and determinations . . . that the Office of School Finance reconsider its prior determination that Hackettstown is responsible [for] the financial costs for E.N.’s educational program for the 2018–19 school year.”

On January 1, 2020,<sup>3</sup> Timothy Havlusch, Hackettstown’s business administrator, emailed Bancroft asserting that Hearn’s determination<sup>4</sup> of homelessness rendered Warren Hills fiscally responsible for all costs related to E.N. Havlusch requested that Bancroft return any money paid for E.N.’s education by Hackettstown. Bancroft replied nearly two months later, claiming that Hackettstown was still responsible for E.N.’s costs “during any appeal process.” At this point, nearly seven months had passed since Deputy Assistant Commissioner Forney’s determination.

Tania Mongioi, the Warren County special education specialist, received a communication from Bancroft on August 1, 2020, claiming that because no payments had been made for E.N., she would be disenrolled from Bancroft in thirty days. On August 26, 2020, Mongioi issued a homelessness determination for S.A. and declared that because she did not reside at the Hackettstown location for a year, Warren Hills would

---

<sup>3</sup> There is a typo in the email’s heading reading that it was sent on January 20, 2019.

<sup>4</sup> In an interrogatory, Hearn’s department stated that he “never made any official determinations as to district of residence and only gave advice based solely on the facts provided to him” by Hackettstown. Hearn did not have the authority to make final determinations.

be responsible for all of E.N.'s tuition and transportation from July 2018 through January 2020. When Warren Hills objected, Mongioi claimed that Forney's decision was overturned by Hearn in September 2019, and the responsibility returned to Warren Hills.

On January 19, 2021, Interim Executive County Superintendent Rosalie Lamonte reviewed Mongioi's determination of homelessness and determined that Warren Hills would be responsible for all costs associated with E.N. Warren Hills appealed Lamonte's determination on April 16, 2021.

### **TESTIMONY**

What follows is not a verbatim accounting of the testimony, but rather a summary of the testimonial and documentary evidence I found to be relevant to resolving the issues in this matter.

S.A. is the mother of E.N., who was placed in Bancroft on or about December 16, 2014. E.N. was living with S.A. in Newark when she was placed.

S.A. moved to the Mansfield Village Apartments in Hackettstown in September 2017, she believes. She lived with her mother, C.A., and does not know if she was on the lease. She was there a few months until possibly August 2018 or early September and then moved to Herbert Lane, Hackettstown, NJ, with her cousin, X.S., and her husband and three children. She lived there until sometime after her cousin's father-in-law passed away at the end of July 2019. Her mother-in-law was in very poor health, on oxygen, and could not care for herself, and so they needed to have her move in with them.

S.A. testified that she had her own room and contributed to childcare by watching her cousin's children. She also bought groceries. When an unexpected need to care for the ailing in-law arose, they needed the guest room for her. S.A. then moved in with her sister, W.A., in Budd Lake, New Jersey after she left her cousin's house. She could not recall exactly when she left there. She did not pay rent or any of the mortgage while living with her cousin and family but helped with household costs and also worked part-time.

After she left Budd Lake, she went to live with her mother C.A. again, but she doesn't recall when. She contributed to expenses while living with her mother but declined to indicate what those were due to undisclosed privacy concerns.

From 2017 to 2021, she did not own her own home but always "had a roof to stay under." When asked whether she would have been able to afford her own home from 2017 to 2021, she indicated she could afford a shared apartment but not her own home, and that's why she lived with others, but added, "I always live with my family."

She is currently employed at T.J. Maxx and earns something over the minimum wage. In 2019, she worked at Dunkin' and also at Edible Arrangements. She testified that she got sick in April 2020. She went to Pennsylvania at some point during the COVID-19 pandemic to stay with a friend, who had an extra room, for a few months while she was sick. She went back and forth between New Jersey and Pennsylvania, but she and her mother were both sick and couldn't work due to COVID. Thereafter she returned to live with her mother.

She testified that she had applied for food stamps, TANF and unemployment benefits but didn't receive any, so she stayed in Pennsylvania only while she was sick.

S.A. indicated she moved to the Herbert Lane address sometime after July 4, so it may have been August or September 2018, but that "it could have been July, which is what [her] cousin said." Her cousin had invited her to move in and help with the kids, so she did. Her cousin's husband said that soon thereafter he would have a job for her at his company to take over from someone who was leaving. However, then his father passed away unexpectedly.

She remembered speaking with a Warren County residency officer in November 2018.<sup>5</sup> She testified that she had her own space at Herbert Lane and was saving for an apartment. She does not recall why she moved out of Mansfield Village but indicated she

---

<sup>5</sup> This was a typo in Investigator Guth's report, which reflects that the meeting took place in November 2018.

was not getting along with her mother and had conflicts with her over wanting to move back to Newark, which her mother was against. She had lived in Newark for over thirty years and it felt too different, so she wanted to move back to Newark. She emphasized that she was not evicted from Mansfield but rather left on her own. Her cousin had invited her to move in, and so she did.

S.A. stated her cousin's name and indicated she does not know if it's her cousin's signature on the March letter but that in May 2019 she was still at Herbert Lane. She then said that she was in Budd Lake in May as well. She testified that she visited her daughter every Wednesday and Saturday at Bancroft for years until COVID. She also visited her cousin at Herbert Lane even after she moved out and went to see the baby, but when she got sick, they lost touch for a bit.

S.A. was emphatic that she never told Bancroft that her cousin had asked her to leave.

The State had been the entity that suggested Bancroft and first told her that DYFS would pay for it, and then changed that to say that the State would pay, and then changed that again to say that the Newark Board of Education would pay, and then finally said that Hackettstown would pay for tuition at Bancroft.

When she lived in Mansfield Village, there were three people in the apartment: herself, her mom and her daughter. There were two large bedrooms. She would not answer the question initially as to whether she had her own bedroom, but when directed to do so, she indicated she shared a bedroom with her daughter.

She does not recall if she was employed in 2017. In 2018 she had a part-time seasonal job at Lowe's and another part-time job at Dollar Tree but made very little money. She received food stamp benefits during that time. She took care of her cousin's baby on the days she didn't work and helped around the house in exchange for rent.

She had her own room and bed at the Herbert Lane address. They told her there was a job that would be available for her at their company because someone was going



on maternity leave; until then, she could continue to take care of the baby and help around the house.

S.A. testified that her mother's home was not her permanent residence, and while her mother never told her she should leave, she did want to find her own place. She wanted to go back to Newark.

S.A. indicated that when she moved to Herbert Lane she was working the two part-time jobs she mentioned. She began working at Dollar Tree in November 2017 and at Lowe's beginning in March 2018. She noted her cousin's notarized letter saying that she had lived at her address since July 2018 and testified that she moved out at the end of July 2019 and as such had been there for one year.

S.A. reiterated that her cousin never told her to leave. When her cousin's husband's father died, they needed the room for his widow, who was very sick and had an oxygen tank and needed help functioning. Her cousin clearly felt horrible and did not want her to leave, but they needed the room for the mother-in-law, who was extremely ill. Her cousin said, "we want to keep you." In fact, the cousin indicated she was going to check with her son, who was in the army, to see if he was coming back or if they could give her his room. She only left because they had a crisis in that the mother-in-law, who was now unexpectedly widowed, had an oxygen tank and needed help. It was "all friendly," and there were no issues; indeed, she remained there for an additional period of time after the mother-in-law moved in. She stayed in the playroom and continued to watch the baby. Thereafter, her sister told her to come live with her.

A.N. is the guardian of her sister, E.N. She became the guardian on July 2, 2021. Prior to that, the State was the guardian, and prior to her placement at Bancroft, her sister lived with her mother, her grandmother, and her aunt in Newark, New Jersey. She moved to Hackettstown to live at Mansfield Village in 2016, around August or September. They lived there through 2017, and her mother, S.A., moved to Herbert Lane in 2018. After that, she lived with her sister in Budd Lake. After living in Budd Lake, she moved to Pennsylvania with a family friend in 2020.

When asked why S.A. moved from Hackettstown to Herbert Lane, she indicated that S.A. wanted to be independent and save money while living with her cousin because she couldn't afford her own apartment. A.N. testified that in her opinion, without her relatives, S.A. would have been homeless ever since she left Newark.

A.N. was not aware of when her sister became a ward of the State because she was a minor at the time, so she is not sure how it happened. She believes her mother left Herbert Lane sometime in 2019 after moving there in 2018 and agreed that her mother took care of her cousin's child.

A.N. did not recall when her mother left Mansfield, but it was before she moved out in December 2018. She believes her mother left months earlier.

Rosalie Lamonte is the interim ECS in Warren County and has been in that position for fourteen years. She said she is a resource between the DOE and districts in Warren County.

At times they make determinations of homelessness and provide guidance to a district on McKinney-Vento and how it works. She agreed that she has no authority to conduct a fact-sensitive determination of homelessness and did not do any investigation. She relies entirely upon information provided by districts. No one from her office spoke to S.A. or to any family member. No one from her office spoke to anyone at Warren.

She stated that in 2020 Bancroft contacted them for assistance.<sup>6</sup> They weren't able to reach S.A., who she believes lived in Mansfield Township and then with relatives in Hackettstown, and thereafter with relatives in Budd Lake. She testified that those residences were not permanent without indicating how she knew that. She stated that S.A. went to Pennsylvania in January 2020. She then testified that she learned all of this from various districts and that the mother had not established any permanent residences after she left Mansfield.

---

<sup>6</sup> Bancroft has no legal authority to dispute the prior determination of Deputy Assistant Commissioner Forney and request a McKinney-Vento determination. Bancroft is not an "involved school district" within the meaning of N.J.A.C. 6A:17-2.7(b).

When asked what she considered to be a permanent residence, Lamonte stated that it would be where S.A. is not doubled up with relatives for more than 365 days. She did not know, however, if S.A. was doubled up at Mansfield. She testified that doubled up means no residence of your own and just staying somewhere for shelter.

She agreed that she never inquired of S.A.'s cousin in Hackettstown what the living arrangement was and indicated that she relied on what Hackettstown had provided. She also stated that she believed S.A. had been evicted by her mother but was "not certain." She never spoke to S.A. or to any of her relatives, including her mother or her cousin. All the information she relied upon was what she was told by Hackettstown.

Bancroft asked for a determination as to who was responsible for tuition.<sup>7</sup> She has no idea how long S.A. was in Pennsylvania or why. When asked about the July 19, 2021, letter, which says she agrees with "the family's claim of homelessness," she testified that "that's a phrase that we use."

When shown J-7, the Cindy Lee letter, she testified that in her opinion the letter does resolve the homelessness issue.<sup>8</sup> McKinney-Vento requires that 365 days pass before the original district is no longer responsible for a student fiscally.

At the end of Lamonte's letter, she advises Warren that, "[i]n accordance with N.J.A.C. 6A:17-2.7, the Warren Hills School District may appeal a determination through the NJDOE Offices of Controversies and Disputes, while the district provides all educational services for E.N." This is the basis of the within appeal.<sup>9</sup>

Anthony Hearn is employed at the Department of Education, Office of Fiscal and Data Services. From 2018 to 2020, he was overseeing homeless education.

---

<sup>7</sup> The ECS was not legally permitted to make a determination here, as Lamonte admitted she was never asked to do so by one of the "involved school districts." N.J.A.C. 6A:17-2.7(b).

<sup>8</sup> Lee's letter (J-7) concludes, "[i]n accordance with N.J.S.A. 18A:7B-12, N.J.A.C. 6A:23A-19.2, N.J.A.C. 6A:23A-19.3 and based upon the information provided, we determine that Hackettstown Public School District is the responsible school district for E.N."

<sup>9</sup> The petition of appeal was filed on April 16, 2021, and thus is entirely timely.

Homelessness determinations are all fact-based, and very specific facts are required. He defined “doubled up” as having no legal right to live there, and you can be asked to leave.

Hearn agreed he had not spoken to anyone from Warren Hills, only the people from Hackettstown who had reached out. He did not speak to S.A. at all and does not offer the official position of the DOE. He said that a lot of factors go into a determination of homelessness and indicated he has no clue of the circumstances here and was not aware that S.A. had some jobs and who she lived with and why. No factual inquiry was conducted because he is “not the one giving the legal opinion on it” and that “if somebody wants a formal opinion from the county office, the county office then does their investigation and then makes that determination with the input of the homeless coordinator.” He has no idea if S.A. felt she was homeless, and no idea why she moved from the Mansfield apartment. They did not consider parent input. If an individual has their own bedroom, etc., it goes into the equation in determining whether someone is doubled up under McKinney Vento, adding that the inquiry is very fact-based, explaining

[T]he situation as to who is fiscally responsible determination [sic] has to do with a very, very factual based situation as to where a child lived and the living arrangements, and those type of things, so, its very, very factual based. If you don't have good facts, you're never going to be able to give the right answer, so, that's part of the reason why I don't give official answers as to it, because I only have the facts that are presented to me.

He testified that Jorstad provided facts indicating that Warren Hills was the responsible party. He did not do an investigation of any kind and has no authority to make homelessness determinations.

Dennis Morgan is the director of educational services at Bancroft. He indicated that in 2014, E.N. was placed by the Newark school district, and that in August 2020 was the last time she was there. He testified that the tuition due for 2018 and 2019 is

\$119,699.44. For 2019 to 2020, it is \$28,497.72. For 2020 to 2021, it is \$12,542.72, for a total due of \$160,739.88. He stated that Hackettstown has paid \$60,700.

David Guth is the security director for Warren Hills following a thirty-year career in law enforcement. He has done a few dozen residency investigations over the years and conducted one in this case.

His report is dated November 18, 2019 (P-1).<sup>10</sup>

On November 18, 2018, the Mansfield Village management office indicated S.A. lived there and gave him a copy of her application. No one was at the apartment when he went there. He visited again on November 25, 2018, and no one was there. On November 25, 2018, he arrived at 7:30 a.m. and spoke to the sister of E.N., A.N., who said that she, her grandmother, and her sister all lived there. He noted that the apartment was a mess and there were moving boxes everywhere. A.N. indicated that her mother did not live there and that she lived at Herbert Lane. He said she was very candid and credible. When he went to the Herbert Lane address later that same day, the cousin answered the door and indicated that S.A. did in fact live there. She called for S.A., who had been in her bedroom, and was smoking, so she came out to speak to him for privacy and they sat on the steps to talk. She became emotional and he told her he was there to determine where she was living. She indicated she had conflicts with her grandmother and her other daughter and so she left Mansfield. When Guth was told that S.A. had testified she had moved out by this time, he indicated that was false. S.A. made it clear that she chose to live with her cousin due to conflicts with her mother and her other daughter and also told him at the time, "I'm living here and contact me here if anything else is needed." It was a single-family residence.

Guy Jorstad has been employed at Hackettstown as the director of pupil and personnel services for 16 years. He is the McKinney-Vento coordinator. He does annual trainings on McKinney-Vento each year and has reviewed about 100 cases over 16 years. He testified that this case was first on his radar on January 23, 2019, after hearing from

---

<sup>10</sup> Guth indicated that there are typographical errors in his report and that the year was 2018, not 2019.

Bancroft. He was treating it as a usual residency case and started the process of enrolling her. He initially did not think the family was homeless and testified that E.N.'s mother S.A. repeatedly denied being homeless. He emailed Hearn on September 10, 2019, opining that the family did not live in Hackettstown for a year before they went to Budd Lake. He asked for documentation from S.A. to show when she lived in the district, if ever, and received ambiguous documentation. These were red flags.

He testified that Mansfield Village is in Hackettstown and is part of the Warren Hills school district and that Herbert Lane, Hackettstown is in the Hackettstown school district. He received no documents from S.A.'s cousin and the cousin's children actually went to school elsewhere. He emailed his homeless determination to Forney on September 11, 2019. Jorstad believed Warren Hills was responsible and agreed with Mongioi's determination.

Jorstad first became aware of the family in January 2019 when Bancroft called. He needed to enroll E.N. because her mother lived at Herbert Lane then. S.A. said they had been there since July 2018 and he met with her at his office to do the paperwork. She had no plans to move out at that time. Her modus operandi was to live with family and she said she was not and had never been homeless.

He found her to not be homeless. He later changed his opinion after talking to Hearn, who he relied on as "more of an expert" in this situation and who had said that S.A. was homeless.<sup>11</sup> He reiterated that S.A. adamantly denied that she was or had ever been homeless. He found this case to be unusually complicated.

He had asked for proofs, and S.A. provided a Walgreens receipt from November 2018 with the Herbert Lane address on it and her Dollar Tree tax documentation for 2018, also with the Herbert Lane address on it. A picture of her license issued April 11, 2019 (J-2), also has the Herbert Lane address on it.

---

<sup>11</sup> Hearn testified that he had "no clue" as to the circumstances here and had no authority to make final determinations.

Jorstad then issued his letter, relying on his conversations with Hearn; neither had conducted any fact-sensitive inquiry required to reach a homelessness determination. He did not send it to anyone first to verify facts upon which he relied. He never asked Warren Hills about it and never discussed it with them. Jorstad also did not copy Warren Hills on his letter to Hearn because he felt Hackettstown might have been the responsible district at that point.

### **PARTIES' ARGUMENTS**

Warren Hills indicates that the only issue is whether S.A. was homeless when she moved. The DOE did not conduct a fact-sensitive investigation or inquiry when they determined she had become homeless; rather, they just relied on what Hackettstown said and rubber-stamped it. No one visited S.A.; no one talked to or contacted S.A., and no one did any investigation or inquiry. Warren Hills, however, did investigate and went to S.A.'s home and spoke to her. She also confirmed that she was not homeless, never was homeless, and there is nothing to support a finding of homelessness

Warren Hills argues that Hackettstown should be bound by Deputy Assistant Commissioner Forney's July 30, 2019, determination which Hackettstown failed to timely appeal.

Hackettstown contends that E.N. was determined to be homeless, asserting that because she had not lived in one location for a year after being deemed eligible for McKinney-Vento Act protections, Warren Hills—her most recent place of domicile for over a year—should be responsible for any expenses related to her schooling.

The DOE avers that because the ECS is permitted to make determinations of homelessness and residency, they were proper under McKinney-Vento in designating Warren as the school district responsible to Bancroft for expenses related to E.N.

## **LEGAL DISCUSSION**

### **I. When adjudicating disputes under the McKinney-Vento Act, the burden of proof is typically placed on the party alleging homelessness.**

The McKinney-Vento Act, 42 U.S.C. §§ 11431 et seq., requires state educational agencies to “ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and youths.” 42 U.S.C. § 11431(1). To qualify for federal grant money under the Act, states must develop and outline “procedures” for identifying homeless children and “for the prompt resolution of disputes regarding the educational placement of homeless children and youth.” 42 U.S.C. § 11432(g)(1)(B) – (g)(1)(C).

#### **A. Statutes and regulations addressing education of homeless children**

New Jersey’s Commissioner of Education has adopted regulations to that end, in accordance with the Administrative Procedure Act. See N.J.A.C. 6A:17-1.1 et seq. Defining what it means to be homeless, N.J.A.C. 6A:17-2.2 provides:

[T]hat a child or youth is homeless for purposes of this subchapter when the child or youth 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 or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own; or
- 4. Substandard housing.

[N.J.A.C. 6A:17-2.2 (emphasis added).]

Similarly, 42 U.S.C. §§ 11434a(2)(A) and (B)(i) describe homeless children as those “who lack a fixed, regular, and adequate nighttime residence,” including, inter alia, “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason . . . .” With respect to a child living with relatives or friends, “[a]n examination of the conditions that precipitated the family’s relocation is critical to ascertaining whether the living arrangement arose ‘out of necessity,’ and whether the family is without access to a ‘regular or permanent residence of its own.’” Bd. of Educ. of Borough of Hawthorne v. Bd. of Educ. of Borough of Prospect Park, Agency Docket No. 247-10/13, Comm’r of Educ. (May 12, 2014), <[https://njlaw.rutgers.edu/collections/oal/final/edu16270-13\\_1.html](https://njlaw.rutgers.edu/collections/oal/final/edu16270-13_1.html)>. “Thus, an evaluation of ‘homelessness’ cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality. The reasons for the children’s homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant.” M.O’K v. Bd. of Educ. of Cresskill, Agency Docket No. 214-9/13, Comm’r of Educ. (Aug. 12, 2014), <[https://njlaw.rutgers.edu/collections/oal/final/edu14830-13\\_1.pdf](https://njlaw.rutgers.edu/collections/oal/final/edu14830-13_1.pdf)>. In other words, the analysis is fact-sensitive.

As the Commissioner stated in Bd. of Educ. of the Bordentown Reg’l Sch. Dist. v. Raymond Marini, Interim Exec. Cnty. Superintendent, Agency Docket No. 7-1/22, Comm’r of Educ. (July 6, 2023), in relevant part:

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.” Similarly, under

state law, homeless children are defined as “child[ren] or youth who lack[] a fixed, regular, and adequate residence . . . 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.”

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.” 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.”

[Internal citations omitted.]

See also Bd. of Educ. of Twp. of Springfield v. Bd. of Educ. of the City of Newark, Agency Docket No. 71-4/19, Comm’r of Educ. (Jan. 26, 2023) (“The Commissioner notes that while homelessness determinations are fact-specific, there was never an evaluation of the family's living conditions at any one of the Newark, Irvington, or Dover addresses. No one looked into what parts of the home the family could use, where the children were sleeping, or what efforts [the children’s mother] was taking to secure permanent housing.”); Bd. of Educ. of Twp. of Pennsauken v. Pugh-Bassett, Interim Exec. Cnty. Superintendent, Agency Docket No. 94-5/19, Comm’r of Educ. (June 16, 2022) (A.L.J. stating that “[t]he determination of whether a student is considered ‘homeless’, triggering the protections for homeless students available under the law, is fact-sensitive”); Bd. of Educ. of the Borough of Hawthorne v. Bd. of Educ. of the Borough of Prospect Park, Agency Docket No. 247-10/13, Comm’r of Educ. (May 12, 2014) (Commissioner noting that “an inquiry into the circumstances surrounding the . . . family’s move is essential to the homelessness determination”).

## **B. District of residence and district's financial responsibility**

“For school funding purposes,” N.J.S.A. 18A:7B-12 provides, in pertinent part, that “the Commissioner of Education shall determine district of residence as follows”:

(b) The district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes, skill development homes, private schools or out-of-State facilities, shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.

(c) The district of residence for children whose parent or guardian 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. . . .

(d) If the district of residence cannot be determined according to the criteria contained herein, if the criteria contained herein identify a district of residence outside of the State, or if the child has resided in a domestic violence shelter, homeless shelter, or transitional living facility located outside of the district of residence for more than one year, the State shall assume fiscal responsibility for the tuition of the child.

[N.J.S.A. 18A:7B-12]

See also N.J.A.C. 6A:17-1.2 (defining “‘school district of residence’ for a homeless child or youth” as “the school district in which the parent or youth resided prior to becoming homeless”).

N.J.A.C. 6A:23A-19.2 outlines the method of determining the district of residence for “a child in a residential State facility,” as defined in N.J.S.A. 18A:7F-45, “a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities or out-of-State facility,” and a child for whom “the State [has] become[] the child’s legal guardian after the date of the child’s initial placement by a State agency.” N.J.A.C. 6A:23A-19.2. For the first category of child, the “present district of residence” is “the New Jersey district of residence of the child’s parent(s) or guardian(s) as of the last school day prior to October 16.” N.J.A.C. 6A:23A-19.2(a)(1). For a child placed by a State agency, “the present district of residence” is “the New Jersey district of

residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency.” N.J.A.C. 6A:23A-19.2(a)(2). “In subsequent school years spent in the educational placement made by a State agency,” the district of residence is determined in the same manner outlined in (a)(1). N.J.A.C. 6A:23A-19.2(a)(2).

Since the DCF residentially placed E.N. at Bancroft in 2014, E.N.’s “present district of residence” is determined by “the New Jersey district of residence of the child’s parent(s) or guardian(s) as of the last school day prior to October 16” pursuant to N.J.A.C. 6A:23A-19.2(a)(1) and (a)(3). But if S.A.’s residence had only temporarily changed as a result of being homeless, the prior year’s district of residence would apply. See N.J.S.A. 18A:7B(c).

### **C. “Homeless” but domiciled**

N.J.S.A. 18A:38-1 codifies children’s right to a free education and the obligation of school districts to provide a free education to children “domiciled” within their borders.<sup>12</sup>

Under N.J.S.A. 18A:38-1(d), “[a]ny person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district . . . .” This language has been interpreted to mean that a family, though considered “homeless” under McKinney-Vento and the applicable regulations, becomes legally domiciled in a school district after being in that district for a year. Bd. of Educ. of Twp. of Egg Harbor v. Bd. of Educ. of Mainland Reg’l Sch. Dist., EDU 06680-09, Initial Decision (Oct. 15, 2010), <[https://njlaw.rutgers.edu/collections/oal/html/initial/edu06680-09\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/edu06680-09_1.html)>, adopted, Comm’r of Educ. (Dec. 30, 2010). Domicile can be established in less than a year by a

---

<sup>12</sup> N.J.S.A. 18A:38-1(b)(2) provides: “If the superintendent or administrative principal of a school district finds that the parent or guardian of a child who is attending the schools of the district is not domiciled within the district and the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person’s own child . . . . The parent or guardian may contest the board’s decision before the commissioner . . . and shall have the burden of proof by a preponderance of evidence . . . .”

family's intent to make its home its permanent residence. Bd. of Educ. of Borough of Wood-Ridge v. Bd. of Educ. of Bogota, EDU 16570-18, Initial Decision (Aug. 5, 2020), <<https://www.nj.gov/education/legal/commissioner/2020/290-20.pdf>>, adopted, Comm'r of Educ. (Dec. 21, 2020). "Financial responsibility of the district of residence terminates when the family is deemed 'domiciled' in another district." Bd. of Educ. of Twp. of Pennsauken v. Pugh-Bassett, Interim Exec. Cnty. Superintendent, EDU 00744-21, Initial Decision on Remand (Mar. 24, 2022), <[https://njlaw.rutgers.edu/collections/oal/html/initial/edu00744-21\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/edu00744-21_1.html)>, adopted, Comm'r of Educ. (June 16, 2022) (on remand from EDU 16086-19).

In Bd. of Educ. of the Twp. of Pennsauken, Camden Cnty., Agency Docket No. 94-5/19, Comm'r of Educ. (June 16, 2022), A.A. and her child, A.L. lived in Haddon Township from 2012 through 2016 when they were evicted because they could not afford rent. They temporarily lived with a friend in Bellmawr and subsequently moved into A.A.'s mother's home in Pennsauken in the summer of 2017. A.L. continued to attend school in Haddon Township, and in March of 2019, the executive county superintendent determined that the mother was homeless because "the family lost their apartment due to financial hardship and was residing with relatives out of necessity." The ALJ determined that all three people living in the home had their own bedrooms, that the mother and child had access to the kitchen, bathroom, and living room, and that therefore, "the Pennsauken home [was] a fixed, regular, and adequate place to live and that A.L. [could] no longer be considered homeless." The Commissioner affirmed this decision, stating, in relevant part:

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 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.

Unlike A.A., who was evicted, here, there was no loss of an apartment and nothing that necessitated S.A.'s move from the Mansfield apartment to her cousin's home. S.A. was emphatic that she was not evicted, nor even asked to leave the Mansfield address. Rather, she wanted to move back to Newark, which her mother disapproved of, and so they were conflicted over this. The invitation to move in with her cousin's family and help with childcare in exchange for rent was appealing to her, and there was no limit on how long she could live there. She was never asked to leave.

#### **D. Burden of proof in disputes over homelessness**

Neither the McKinney-Vento Act, the regulations, nor state laws addressing the education of homeless children explicitly allocate the burden of proof in disputes over a person's homeless status. In cases dealing with such disputes under the McKinney-Vento Act, New Jersey courts have placed the burden of proof on the party claiming homelessness, though they rarely use the words "burden of proof."

For example, in A.M. & M.S. on behalf of minor children A.S. & L.S. v. Bd. of Educ. of Town of Dover, Agency Docket No. 546-9/10, Comm'r of Educ. (June 14, 2011) (OAL decision not available online), the ALJ concluded that petitioners (the parents) did not demonstrate a continued state of homelessness to meet the criteria for their children to attend Dover schools at the public expense. The Commissioner disagreed, concluding that petitioners' five years of residence in a motel in Mine Hill met the definition of

homelessness under N.J.A.C. 6A:17-2.3(a)(1)(i) (recodified as N.J.A.C. 6A:17-2.2 in 2014).

If there has been a determination of homelessness by an agency with the authority to make such a determination (i.e., the executive county superintendent), then the party challenging that determination has the burden of proving its allegations. In Bd. of Educ. of Borough of Hawthorne v. Bd. of Educ. of Prospect Park, EDU 16270-13, Initial Decision (Mar. 26, 2014), <[https://njlaw.rutgers.edu/collections/oal/html/initial/edu16270-13\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/edu16270-13_1.html)>, adopted, Comm'r of Educ. (May 12, 2014), the executive county superintendent initially ruled that Hawthorne was the last district of residence when the N.A. family temporarily moved in with N.A.'s parents in Prospect Park, making N.A. and her children legally homeless. Hawthorne appealed that determination, arguing that the family "was not homeless because it was not forced out of its Hawthorne residence and did not leave or reside with N.A.'s parents out of necessity." Testimony during the hearing revealed that N.A. was not evicted or asked to leave her Hawthorne residence, and that she told her Hawthorne landlord she planned to move to Florida. The ALJ, noting that Hawthorne had "the burden of proving its allegations by a preponderance of the . . . evidence," concluded that Hawthorne "sustained its burden." The children were deemed not homeless because their temporary residence with N.A.'s parents "was not out of necessity . . . but rather by the willful and voluntary act of their mother as part of fulfilling her plan to move to Florida."

Multiple cases from the New York Department of Education follow a similar pattern, where parents are appealing a determination by the local school board that their child is not homeless within the meaning of the McKinney-Vento Act. The DOE has consistently placed the burden of proof on the parents in such cases. See, e.g., Appeal of F.C., 57 Ed Dept Rep, 2017 NY Educ. Dept. LEXIS 223 at \*6, Decision No. 17,243 (concluding that the parent "failed to meet her burden to show that the student is homeless under either State or federal law"). See also Appeal of G.S., 52 Ed Dept Rep, 2012 NY Educ. Dept. LEXIS 58, Decision No. 16,388; Appeal of H.H., 57 Ed Dept Rep, 2017 NY Educ. Dept. LEXIS 121, Decision No. 17,141; Appeal of A.S., 58 Ed Dept Rep, 2018 NY Educ. Dept. LEXIS 255, Decision No. 17,559; Appeal of Student with a Disability, 60 Ed Dept Rep, 2020 NY Educ. Dept. LEXIS 185, Decision No. 17,910.

Here, the respondents—Hackettstown and the DOE—argue that S.A. is homeless. Thus, while recognizing the unique procedural history of this case, respondents typically would have the burden of proving homelessness as an initial matter. Whether the burden has since shifted to petitioner to prove that S.A. was not homeless depends on whether there has been a valid determination of homelessness.

**II. Contrary to (1) N.J.A.C. 6A:3-1.3's 90-day limit for appeals, (2) N.J.A.C. 6A:17-2.7's rules for disputes regarding the determination of homelessness, and (3) N.J.A.C. 6A:23A-19.2(c)–(g)'s procedure for contesting the Department's determination of district of residence, more than a year passed between the Department's most recent decision and the executive county superintendent's determination of homelessness.**

N.J.A.C. 6A:3-1.3(i) requires a petitioner to “file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing.” And while the 90-day limit does “not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days,” N.J.A.C. 6A:17-2.7—dealing with disputes regarding homeless status—specifies that “appeal[s] shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3.” N.J.A.C. 6A:17-2.7(a); N.J.A.C. 6A:17-2.7(b)(2).

More specifically, N.J.A.C. 6A:17-2.7 provides as follows:

**(a) When a dispute occurs regarding the determination of homelessness** or the determination of the school district of residence, the chief school administrator(s), or the chief school administrator's designee(s), **of the involved school district(s) . . . shall immediately notify the executive county superintendent.** In consultation with the Department's McKinney-Vento Homeless Education Coordinator, or the coordinator's designee, **the executive county superintendent shall immediately decide** the child's or youth's status. If a dispute remains between the parent and the involved school district(s)



following the executive county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner for determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

**(b) When a school district designated as the school district of residence disputes its designation as the school district of residence, or where no designation can be agreed upon by the involved school districts, the chief school administrator(s), or the chief school administrator's designee(s), of the involved school districts shall immediately notify the executive county superintendent. The executive county superintendent shall make a determination immediately, if possible, but no later than within 48 hours and, when necessary, in consultation with the Department's Homeless Education Coordinator, or the Coordinator's designee.**

. . . .

2. If an appeal of a determination of the school district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

(c) Any dispute or appeal shall not delay the homeless child's or youth's immediate enrollment or continued enrollment in the school district. The homeless child or youth shall be enrolled in the school district in which enrollment or continued enrollment is sought by the parent, pending resolution of the dispute or appeal.

[N.J.A.C. 6A:17-2.7(a)–(c) (emphasis added).]

If the issue of homelessness is raised after a residency appeal has been filed with the Department, “the determination of homelessness must first be brought to the Executive County Superintendent of Schools.” L.E.H. v. Bd. of Educ. of Twp. of W. Orange, EDU 03787-09, Initial Decision (May 19, 2009), rejected, Comm’r of Educ. (July 2, 2009) <<https://njlaw.rutgers.edu/collections/oal/final/edu3787-09.pdf>> at n.1 (remanding residency appeal that had been dismissed for parent’s failure to appear at OAL hearing; petitioner claimed to not have notice of hearing and her exceptions intimated possible homelessness). An untimely appeal of an executive county superintendent’s homelessness determination will be dismissed. North Brunswick Twp.

Bd. of Educ. v. Bd. of Educ. of Somerville, EDU 10499-07, Initial Decision (Jan. 17, 2008),  
adopted, Comm'r of Educ. (Mar. 3, 2008),  
<<https://njlaw.rutgers.edu/collections/oal/final/edu10499-07.pdf>>.

With respect to decisions and disputes regarding the district of residence, N.J.A.C. 6A:23A-19.2 provides:

(c) The district board of education shall be notified by the Department of the determination of the district of residence. In order to prevent a lapse in the child's education and/or child study services, the district board of education shall be bound by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f) below.

(d) A district board of education contesting the Department's determination of district of residence shall submit a written notification of a dispute to the Office of School Facilities and Finance within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:

1. A written statement detailing the effort of the district board of education to verify the determination of the Department;
2. Written rationale for rejecting the determination of the Department; and
3. Any additional information the district board of education has obtained that might enable redetermination of the district of residence.

(e) The Office of School Facilities and Finance shall attempt to resolve the dispute administratively and shall notify the district board of education whether a redetermination of district of residence will be made within 90 days of the receipt of written notification that a dispute exists.

(f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the Office of School Facilities and Finance is unable to resolve a dispute within the 90-day time limit, by filing a Petition of Appeal with the Commissioner pursuant to the provisions of N.J.A.C. 6A:3, Controversies and Disputes.

(g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one school district to another is the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

[N.J.A.C. 6A:23A-19.2(c)–(g).] (19.2(a)–(b) were addressed in Part I-B, above.)

N.J.A.C. 6A:23A-19.2(d) is of special importance. It requires a district contesting the Department's determination of the district of residence to abide "by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f)" so as "to prevent a lapse in the child's education and/or child study services." N.J.A.C. 6A:23A-19.2(c). This echoes language in N.J.A.C. 6A:17-2.7(c) that "[a]ny dispute or appeal shall not delay the homeless child's" education.

Hackettstown, in contravention of these regulations, did not immediately notify the executive county superintendent that it believed S.A. might be homeless. The August 1, 2019, letter to Deputy Assistant Commissioner Forney, on which the executive county superintendent was copied, makes no reference to homelessness. It merely rehashes arguments previously made as to why Hackettstown believes the Department's residence determination was wrong. Nor did Hackettstown timely appeal the July 30, 2019, determination by Deputy Assistant Commissioner Forney of the DOE as required by the rules. Instead, on September 10, 2019, respondent reached out to Anthony Hearn, an official in the DOE's Office of Fiscal and Data Services, who opined that respondent's characterization of S.A.'s residence—which did not include any supporting documents—would make S.A. homeless and E.N. eligible for relief under McKinney-Vento. Respondent did not copy petitioner or the executive county superintendent on this correspondence.

Months later, on January 1, 2020, respondent represented Hearn's non-binding, informational opinion to the Bancroft School as a determination of homelessness rendering Warren Hills financially responsible for E.N. during the 2018–19 school year. Respondent demanded the return of any money it had paid to the school. Respondent

again failed to copy petitioner on this correspondence. Then, on August 1, 2020, an official from the Bancroft School emailed Tania Mongioi, special education specialist for Warren County, advising that because no payments had been made for E.N., she would be disenrolled from Bancroft within thirty days. Based on this letter from Bancroft, on August 26, 2020, Mongioi issued a new homelessness determination letter for S.A., declaring that Warren Hills would be responsible for E.N.'s educational expenses because S.A. did not reside in Hackettstown for a year. Surprised by the reversal, Warren Hills objected, and Mongioi claimed that Forney's July 2019 decision had been overturned by Hearn. Finally, on January 19, 2021, the person with actual authority to make homelessness determinations—Interim Executive County Superintendent Rosalie Lamonte—issued a letter upholding Mongioi's decision.<sup>13</sup>

This series of events initiated by Hackettstown completely ignores established formalized administrative procedures, including statutes of limitation, and threatened to disrupt E.N.'s education in precisely the manner prohibited by law. A formal determination of homelessness was not made "immediately" or "within 48 hours" of respondent obliquely raising the issue to the proper authority via carbon copy. Hearn and Mongioi lacked the authority to make homelessness determinations, and the interim executive county superintendent did not officially weigh in until more than a year after the DOE's last residence ruling, which was not timely appealed. Moreover, the executive county superintendent failed to engage in ANY fact-finding, deferring entirely to the opinions of Hearn and Mongioi. As such, respondent bears the burden of proving that the July 2019 decision was arbitrary, capricious, or unreasonable.

Here, there was no loss of an apartment and nothing that necessitated S.A.'s move from the Mansfield apartment to her cousin's home. S.A. was emphatic that she was not evicted or even asked to leave the Mansfield address. Rather, she wanted to move back to Newark, and her mother disapproved, so they were conflicted over this.

---

<sup>13</sup> Hackettstown claims that Mongioi emailed Warren and Hackettstown to advise that there had been a finding of homelessness on the part of E.N. and S.A. as of the 2017–2018 school year in Warren Hills. This is not true (J-11).

At the Mansfield apartment, S.A. shared a bedroom with her adult daughter. I **FIND** that she was not evicted from that apartment and was never asked to leave. I **FIND** that she had planned to move to Newark, and then the invitation to move in with her cousin's family and help with childcare in exchange for rent was made. I **FIND** there was no limit on how long she could live there. Her other family members residing at the Mansfield apartment remained there for at least four additional months after S.A. moved out.

At her cousin's home, S.A. had her own bedroom, and the living conditions were very good there. She worked two part-time jobs in addition to caring for her cousin's baby. I **FIND** that she could have remained at either residence and there was no 'emergency' requiring her to move to her cousin's home. Her testimony amply, credibly, candidly, and consistently established that she was not homeless when she chose to move out of the apartment she shared with family at Mansfield to her cousin's private home at Herbert Lane. I **FIND** that her residency at Herbert Lane was "fixed, regular and adequate," and more comfortable than her shared Mansfield apartment was, where she had to share a bed with her daughter. The Herbert Lane home was a comfortable, split-level home. There was no testimonial or documentary evidence offered to suggest that S.A. was seeking housing elsewhere while residing with her cousin. I **FIND** that the ability to "afford a shared apartment but not [her] own home," as was S.A.'s testimony, does not make her homeless. I **FIND** that she clearly intended to remain at Herbert Lane indefinitely and had changed the address on her drivers' license to the Herbert Lane address (P-2). As in Pennsauken, everyone residing at the Herbert Lane address depended on each other as a household unit. S.A. watched the baby in exchange for rent while her cousin worked without needing to arrange for outside childcare. She was not living there "out of necessity." She was never asked to leave, and only moved out after her cousin and husband had an unexpected emergency when an in-law died unexpectedly, and his spouse, the cousin's mother-in-law, needed to move in because she could not care for herself. Indeed, S.A. testified that her cousin's father-in-law died at the end of July and that she remained after that date, and after her cousin's mother-in-law subsequently moved in, she stayed in the playroom and continued to watch the baby. I **FIND** that not only did the cousin NOT want her to leave, she took the extraordinary,

highly exceptional, and remarkable step of reaching out to her own son, who is in the military, to see whether she could give away his room to S.A.

### **CONCLUSION**

Based on the foregoing, I **CONCLUDE** that respondents have the burden of proving that S.A. was homeless during the school year in question and further **CONCLUDE** that they have failed to do so. I **CONCLUDE** that S.A. was not homeless when she moved out of an apartment with family, to a single family home with other family. There is no basis whatsoever to find homelessness, and the ECS determination is reversed and Deputy Assistant Commissioner Forney's decision reinstated. Hackettstown is responsible for the tuition for E.N. from 2018 forward totaling \$160,739.88.

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**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto:ControversiesDisputesFilings@doe.nj.gov) or by mail to Office of Controversies

**and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500.** A copy of any exceptions must be sent to the judge and to the other parties.

July 18, 2024

DATE



**LESLIE Z. CELENTANO, ALJ**

Date Received at Agency:

July 18, 2024

Date Mailed to Parties:

July 18, 2024

dr

## **APPENDIX**

### **WITNESS LIST**

#### **For Petitioner**

David Guth

#### **For Hackettstown**

Guy Jorstad

#### **For Department of Education**

S.A.

A.N.

Rosalie Lamonte

Anthony Hearn

Dennis Morgan

### **EXHIBIT LIST**

#### **Joint Exhibits**

- J-1     Mansfield Village Residency Application
- J-2     Mansfield Village Lease dated September 30, 2016
- J-3     March 9, 2018 residence determination made by DOE (Cindy Lee)
- J-4     Warren proof of payment to Bancroft for 2017–2018 (\$107,363.16)
- J-5     Mansfield Village lease renewal December 1, 2017 to November 30, 2018
- J-6     November 12, 2018 notice of vacating form for Mansfield Village
- J-7     March 15, 2019 residence determination made by DOE (Cindy Lee) finding Hackettstown responsible for the 2018–2019 tuition at Bancroft
- J-8     July 30, 2019 letter from Deputy Assistant Commissioner Forney affirming the DOE decision of March 15, 2019 (J-7)



- J-9 August 1, 2019 letter from Hackettstown seeking reconsideration of Deputy Assistant Commissioner Forney's determination
- J-10 August 1, 2020 letter from Bancroft to Warren County Office of Education regarding outstanding tuition for E.N.
- J-11 August 26, 2020 letter from Tania Mongioi at the Warren County Office of Education determining that S.A. was homeless in 2017–2018
- J-12 January 19, 2021 letter from Rosalie Lamonte, Executive County Superintendent determining that S.A. was homeless in 2017–2018.
- J-13 Hackettstown interrogatory responses
- J-14 DOE interrogatory responses

**For Petitioner**

- P-1 Residency Investigation Report dated November 26, 2018
- P-2 Copy of Driver's License for S.A.

**For Hackettstown**

- RH-6 Emails between Guy Jorstad and Tri County CMO re possible MKV. – 2019.04.23 (RH039-RH040).
- RH-7 Email to NJDOE and Hackettstown Board of Education re Appeal of District of Residence (Note: Misdated letter). – 2019.04.24 (RH042-RH079).
- RH-12 Emails re homelessness determination. – 2019.09.11 (RH109-RH112).
- RH-13 Email and letter to Warren Hills re MKV determination. – 2019.09.11 (RH114-RH116).
- RH-14 Letter to NJDOE re homelessness determination. – 2019.09.11 (RH118-RH126).

**For Department of Education**

- R-4 Mansfield Village Non-Renewal (lease expired on November 30, 2018)
- R-6 Letter from X.S. dated February 19, 2019
- R-7 Letter from X.S. dated March 25, 2019
- R-15 Email from Bancroft regarding outstanding balance