

New Jersey Commissioner of Education

Final Decision

Board of Education of the City of Salem,
Salem County,

Petitioner,

v.

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

Respondent.

Synopsis

Petitioner, the Board of Education of the City of Salem (Salem), challenged the homelessness determination regarding the “M” family for the 2020-2021 school year issued by the Burlington County Interim Executive County Superintendent (IECS) in March 2021, arguing that the “M” children should not have been deemed homeless for that period of time. Further, Salem argued that, should the homelessness determination be upheld, its tuition responsibility should be credited by respondent, the Bordentown Regional School District (Bordentown), for the amount of Application for State School Aid (ASSA) funds Salem should have received, (but did not apply for) from the State for educating the homeless “M” students. Bordentown contended that the homelessness determination should be upheld and that it should receive payment from Salem for the cost of the “M” children’s tuition, transportation, and educational costs consistent with the homelessness determination. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue and the matter is ripe for summary decision; the “M” family lived in Salem until July 2018, when they became homeless; they resided at a motel in Salem until July 2019, when the mother and children moved to her parent’s home in the Bordentown school district, where the children were registered for the 2019-2020 school year; in February 2020, the family moved to transitional housing in Mount Holly, where they remained for the 2020-2021 school year; at issue here is financial responsibility for the “M” children’s education during for 2020-2021; the determination by the IECS that the family continued to be homeless for the 2020-2021 school year was appropriate, and Salem was the district of residence for that school year; thus, pursuant to *N.J.S.A. 18A:7B-12.1*, Salem is fiscally responsible for the four “M” children’s tuition and transportation costs for 2020-2021 from the first day of the school year until February 26, 2021, when fiscal responsibility shifted to the State. Accordingly, the ALJ granted summary decision to Bordentown; Salem is responsible to pay Bordentown for educating the “M” students for 2020-2021, through the date fiscal responsibility shifted to the State; if in fact respondent sought and received any ASSA funds for the “M” children for the 2020-2021 school year, then the amount of ASSA funding respondent actually received for the “M” children should be credited toward the tuition costs petitioner owes respondent.

Upon review, the Commissioner adopted the Initial Decision as the final decision in this matter, dismissed the petition, and ordered Salem to pay respondent the tuition and costs for the “M” children for 2020-2021, from the first day of school until February 26, 2021, pursuant to *N.J.S.A. 18A:7B-12.1* and *N.J.S.A. 18A:38-19*.

<p>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.</p>

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OAL Dkt. No. EDU 10173-21
Agency Dkt. No. 211-11/21

New Jersey Commissioner of Education
Final Decision

Board of Education of the City of Salem,
Salem County,

Petitioner,

v.

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

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon careful examination, the Commissioner adopts the comprehensive Initial Decision as the final decision in this matter for the reasons stated therein. In summary, the Commissioner concurs with the Administrative Law Judge (ALJ) that the homelessness determination rendered March 10, 2021, by the Interim Executive County Superintendent (IECS) regarding the “M” family for the 2020-2021 school year was appropriate. The Commissioner also agrees that petitioner’s school district is the school district of residence for the “M” family for the 2020-2021 school year. Consequently, pursuant to *N.J.S.A. 18A:7B-12.1*, petitioner is fiscally responsible for each of the four “M” children’s tuition and transportation

costs for the 2020-2021 school year from the first day of the school year until February 26, 2021, at which time the State of New Jersey assumed fiscal responsibility.

Additionally, the Commissioner concurs with the ALJ that respondent shall not be required to credit petitioner for Application for State School Aid (ASSA) funding for the 2020-2021 school year that petitioner could have received for the “M” children had it applied for same. That said, while the record fails to establish that respondent sought or received ASSA funding for the “M” children for the 2020-2021 school year, the Commissioner concurs with the ALJ that if in fact respondent sought and received any such funds for the “M” children for the 2020-2021 school year, then the amount of ASSA funding respondent actually received for the “M” children shall be credited toward the tuition costs petitioner owes respondent.

Accordingly, the petition of appeal is hereby dismissed. Per *N.J.S.A. 18A:7B-12.1* and *N.J.S.A. 18A:38-19*, petitioner shall pay respondent the tuition and transportation costs for the four “M” children that accrued for the 2020-2021 school year from the first day of the school year until February 26, 2021.

IT IS SO ORDERED.¹


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

Date of Decision: January 22, 2024

Date of Mailing: January 24, 2024

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 10173-21

AGENCY REF NO. 211-11/21

CITY OF SALEM BOARD OF EDUCATION,

Petitioner,

v.

BORDENTOWN REGIONAL

SCHOOL DISTRICT,

Respondent.

Corey E. Ahart, Esq., for petitioner (Corey E. Ahart, Esquire, Attorney at Law)

Seth N. Broder, Esq., for respondent (Broder Law Group, P.C., attorneys)

Record Closed: November 27, 2023

Decided: December 15, 2023

BEFORE ELAINE B. FRICK, ALJ:

STATEMENT OF THE CASE

The parties have each submitted summary decision motions, asserting there are no material facts in dispute, and that the matter can be determined as a matter of law. Petitioner, City of Salem Board of Education (Salem) challenges the homelessness

determination by the Interim Executive County Superintendent (IECS) of Burlington County, issued on March 10, 2021, regarding a family with four students, for the 2020-2021 school year. Salem alternatively contends that if the homeless determination is upheld, that its tuition responsibility for the portion of the 2020-2021 school year should be credited by respondent, Bordentown Regional School District (Bordentown) for the amount of Application for State School Aid (ASSA) funds Salem should have received from the State for the students. Bordentown asserts it is entitled to summary decision as a matter of law, upholding the IECS homeless determination and it should be paid by Salem for the cost of tuition, transportation, and educational costs, consistent with the IECS's determination for a portion of the 2020-2021 school year, until the date the State assumes fiscal responsibility for the students. Bordentown opposes Salem's contention that it must be responsible to provide a credit to Salem for the ASSA funds Salem could have received for the students for the 2020-2021 school year.

PROCEDURAL HISTORY

On March 10, 2021, correspondence was issued by Raymond Marini, Interim Executive County Superintendent (IECS), Burlington County, which rendered a determination of homelessness for the "M"¹ family for the 2020-2021 school year. It was also determined that Salem continued to be the school district of residence, with continuing fiscal responsibility for tuition, through February 26, 2021, at which time the State of New Jersey would become responsible for tuition. Salem submitted a petition of appeal to the Department of Education (DOE). The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on December 14, 2021, to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15 and 14F-1 to 14F-13.

Multiple telephonic conferences were conducted with the parties. The parties made continuing efforts to resolve the matter. Ultimately, each sought to file a summary decision motion, asserting that the facts are not in dispute and the matter is solely a legal issue determination. Extensions for submissions were granted and additional submissions were sought and received. Oral argument was heard via Zoom on July 13,

¹ The initial of the last name of the parent is used for privacy purposes.

2023. The record closed upon final review of submissions and argument on November 27, 2023.

FACTUAL DISCUSSION AND FINDINGS

The parties agreed upon the following undisputed statement of material facts, and I thus **FIND** as **FACTS** the following:

1. Bordentown Regional School District Board of Education (“Bordentown”) has a principal place of business located at 318 Ward Avenue, Bordentown, New Jersey 08505.
2. Salem City Board of Education (“Salem”) has a principal place of business located at 205 Walnut Street, Suite 408, Salem, New Jersey 08079.
3. Bordentown seeks partial payment/tuition for the 2020-2021 school year from Salem for four (4) students that attend and have attended school in Bordentown since September of 2019.
4. The mother and four (4) children lived in Salem City up through July of 2019, when they were evicted and then moved to the Motor Lodge in Salem City. The mother and four (4) children then moved to a relatives’ home located at 16 Hogback Road, Trenton, New Jersey 08620, which was/is within the Bordentown Regional School District.
5. The four (4) children registered for school in Bordentown for the 2019-2020 school year while living at the 16 Hogback Road address as of July 2019.
6. The family then moved from 16 Hogback Road into transitional housing in Mount Holly, New Jersey located at 126 Cherry Street, #3, on or around February 25, 2020.

7. The family was placed there by the Board of Social Services and have lived there since February of 2020.
8. The mother and four (4) students in question did not reside in Salem for any portion of the 2019-2020 school year while attending school in Bordentown.
9. By letter, dated May 11, 2020, Bordentown requested of the Interim Executive County Superintendent of the Burlington County Office, New Jersey Department of Education, an initial determination of homelessness pursuant to N.J.A.C. 6A:17-2.7, regarding the four (4) students whom were attending Bordentown's school district despite being homeless and living in transitional housing in Mount Holly, New Jersey.
10. By letter, dated July 1, 2020, Daryl Minus-Vincent, the Interim Executive County Superintendent of Burlington County, determined the four (4) students, and their mother, were in fact homeless pursuant to N.J.A.C. 6A:17-2.2 and that pursuant to N.J.A.C. 6A:17-2.8(a), Salem was the school district of residence and financially responsible for the four (4) students.
11. It was determined that the four (4) children have never been domiciled in another jurisdiction and Salem City must reimburse Bordentown the cost of tuition and transportation for the 2019-2020 school year.
12. The Defendant, Salem, had ninety (90) days to appeal the determination for the 2019-2020 school year. No appeal was filed by Salem.
13. Bordentown then on December 7, 2020, filed a lawsuit, pursuant to R. 4:67-6, seeking reimbursement for the cost of tuition and transportation from Salem. The matter was assigned to Judge Harrington in the Superior Court of New Jersey, Burlington County.

14. It was during that litigation that Judge Harrington required Salem to submit a request for homelessness to the Executive County Superintendent for the 2020-2021 school year.
15. That determination request was filed on or about February 12, 2021.
16. A Consent Order dated November 29, 2021, was entered into between the parties whereby it was settled and agreed that Salem would pay Bordentown tuition for the 2019-2020 school year, with credits given to Salem for money received by Bordentown from the State for the four (4) children's Application for State School Aid ("ASSA").
17. Salem paid Bordentown the 2019-2020 tuition less the payments received from the credits for the "ASSA.". The 2019-2020 school year tuition issue was settled.
18. The four (4) children again registered to attend Bordentown schools for the 2020-2021 school year.
19. At the time of the registration in Bordentown for the 2020-2021 school year, the family was still living at the Mount Holly address.
20. A request for Determination of Domicile and Homelessness, or Non-Homelessness, was filed with the Interim Executive County Superintendent on February 9, 2021, as per the direction of Judge Harrington.
21. The Executive Superintendent, in a ruling dated March 10, 2021, found that Salem is responsible for tuition per N.J.S.A. 6A:17-2.8(a) for the four (4) children, but only through February 26, 2021, at which time the State of New Jersey takes over responsibility.
22. There was nothing in the determination regarding any credits due Salem per the "ASSA" or any other credits.

23. Salem filed a timely appeal to this determination and is now pending in the Office of Administrative Law related to the 2020-2021 school year.

(Stipulated Statement of Material Facts.)

The following additional facts were gleaned from the written submissions of the parties or otherwise affirmed during oral argument, which I **FIND** as **FURTHER FACTS**:

The “M” family, which included the four students, was evicted from their residence in Salem in or about June or July 2018. The family moved into a local motor lodge/motel after the eviction, which was also located in Salem. They resided there for approximately one year, until July 2019, when the mother and four children moved into the mother’s parents’ home, located on Hogback Road, within the Bordentown school district. The mother later explained that they moved from the motor lodge due to a domestic violence situation and were “doubled up” at her parents’ home.

The children were registered in the Bordentown school for the 2019-2020 school year. The children’s grandparents’ address on Hogback Road was used as their residential address. The grandmother authored a handwritten note on August 15, 2019, indicating that her daughter and her four children were living with them at the Hogback Road address “until further notice.” (Exhibit C, attachment “A” of Bordentown’s Brief in support of Summary Decision Motion.) Bordentown did not know at the time of registration of the children for the 2019-2020 school year, that their living situation was considered temporary due to the homeless status of the family.

Bordentown learned on February 27, 2020, by a letter from People First Emergency Shelter Housing Program, that “M” family, with the four children, had been placed in a transitional housing facility in Mt. Holly on February 25, 2020. The placement was through a social services agency. (Exhibit H, Bordentown’s supplemental brief.)

When Bordentown learned about the placement of the children at the transitional housing location in Mt. Holly, the school’s homeless liaison, Tina Zack, took immediate

action the next day and spoke to the mother and completed a McKinney Vento identification form. The mother confirmed the family's last permanent address was in Salem, where they had resided for nine years until they were evicted in approximately June or July 2018, and the family went to live in the local motor lodge/motel in Salem. They lived there for approximately one year, until July 2019, when the mother and children moved due to domestic violence and moved in with the mother's parents at Hogback Road.

The children were registered in the Bordentown school district because the Hogback Road home was within the Bordentown district. The mother and four children lived at the Hogback Road home for six- and one-half months, until February 2020, when the mother's parents kicked her out of the house, and she was forced to leave with the children due to verbal abuse from her father. (Supplemental Residency Information form, Exhibit C, attachment D, Brief by Bordentown.) The mother explained that they were thus forced out of that temporary housing situation and placed at the Mt. Holly transitional housing location. The "M" family continued to reside at the transitional housing location for more than a year, beyond February 2021.

Bordentown's liaison, Kent, communicated with the homeless liaison for the Salem City School District, John Bacon, and informed him of the family's situation. The two liaisons engaged in further communications, with Bordentown asserting that Salem should be the responsible district of residence. Salem asserted that the Hogback Road residence should be deemed the address of record, given that Bordentown accepted the students and registered them in that school for the 2019-2020 school year. The two districts continued to communicate and assert their positions on the matter, regarding which district should be responsible for the tuition for the children.

Bordentown filed for Application for State School Aid (ASSA) for the four students, regarding the 2019-2020 school year. Bordentown received ASSA funds for the 2019-2020 school year from the state.

As of May 11, 2020, Bordentown requested an initial homelessness determination from the Interim Executive County Superintendent, Daryl Minus-Vincent (IECS Minus-

Vincent.). (Exhibit “A” Bordentown’s Brief.) On July 1, 2020, IECS Minus-Vincent issued his determination that the “M” family met the criteria for homelessness outlined in N.J.A.C. 6A:17-2.2, and since the family never resided anywhere besides Salem for more than one year and was never domiciled in another jurisdiction, Salem was the school district of residence and financially responsible for the four students for the 2019-2020 school year. (Exhibit B, Bordentown’s brief.) Salem did not appeal the determination. Salem asserted in its supplemental brief that the appeal was not filed due to a technical malware attack.

Communications between Bordentown and Salem about the status of the students continued, regarding the 2020-2021 school year. As of October 23, 2020, Salem’s homelessness liaison sent an email to the Bordentown liaison regarding the students’ status and whether Bordentown was claiming the students on its ASSA application for the 2020-2021 school year. (Exhibit M, Bordentown’s supplemental brief.) On October 26, 2020, Bordentown’s liaison responded, providing information that the district where the children last resided before becoming homeless is the children’s district of residence, which would be Salem, and Salem would report the students as being sent to Bordentown. (Exhibit M, Bordentown’s supplemental brief.) The Bordentown liaison followed up with an email to the ASSA email address, and received a reply that she was correct in identifying Salem to be the district of residence for the students, for ASSA purposes, and Salem having a sending/receiving relationship with Bordentown, where the children were attending school. This confirming email information was forwarded to the Salem liaison. (Exhibit M, Bordentown’s supplemental brief.)

Bordentown sought reimbursement for the cost of the tuition for the students from Salem, for the 2019-2020 school year, by filing a lawsuit in Superior Court. During that litigation, the Superior Court Judge required Salem to submit a request for homelessness to the IECS for the 2020-2021 school year. That request was filed by Salem on or about February 9, 2021. (Exhibit D Bordentown’s brief.) On March 10, 2021, IECS Raymond Marini, issued his determination that the family continued to meet the criteria of homelessness for the 2020-2021 school year, which would render Salem as the district with the continuing financial responsibility. However, pursuant to 6A:17-2.8(c), after one year, the financial responsibility would shift from Salem to the State, as of February 26,

2021. (Exhibit F Bordentown's brief.) Salem's appeal of that homelessness determination is at issue here.

Invoices issued from Bordentown to Salem in August of 2021, seeking payment of tuition for the 2020-2021 school year for the "M" family students. (Exhibit K and L, Bordentown's supplement brief.)

The parties entered into a Consent Order in the Superior Court litigation, confirming that Salem would pay the 2019-2020 tuition for the students to Bordentown, with credit given to Salem for the ASSA funds Bordentown had received from the state. (Exhibit E Bordentown's brief.) The Consent Order was entered by a Superior Court Judge on November 29, 2021.

Salem's appeal in the instant matter of the homelessness determination made by IECS Marini on March 10, 2021, was transmitted from the DOE to the OAL, and filed at the OAL on December 14, 2021.

Arguments of the parties

Salem argues that there are two simple issues: first, the students should not have been deemed homeless for the 2020-2021 school year, but if they are so deemed homeless, and Salem is required to pay the partial tuition for the 2020-2021 school year according to IECS's decision, Salem must be credited by Bordentown for the ASSA funds, per student, per the law, as stated in N.J.A.C. 6A:17-2.8(a) and (b). Salem claims it could not list the four students on its ASSA application because the students were registered in Bordentown for the 2019-2020 school year, and thus Bordentown reimbursed Salem for that year. Since the students again registered in Bordentown for the 2020-2021 school year, Bordentown should have offered reimbursement again to Salem.

It was asserted in Salem's response to Bordentown's supplemental submission that the "M" family "was not really homeless when the 2019-2020 school year began" since the family had moved in with relatives who resided in Bordentown district. They were not really homeless until they were placed in transitional housing in February 2020.

Since the homelessness was “backdated” to September of 2019, Salem contends that the transitional housing must be backdated in this instance. Salem does recognize that the 2019-2020 homelessness determination is not at issue here, yet has made arguments essentially contesting that determination, in its efforts to argue against the homeless determination made for the 2020-2021 school year, which is the determination at issue.

Salem asserts that Bordentown cannot argue that since they did not submit for the ASSA funds, they do not have to credit Salem for any tuition. Rather, Bordentown was aware of the homelessness determination yet allowed the students to register in its district for the 2020-2021 school year. It had an affirmative duty to have declined such registration and to direct the students to register in Salem. That would have enabled Salem to apply for the ASSA funding.

Salem thus seeks the entry of summary decision finding Bordentown responsible to pay the 2020-2021 school year tuition for the four students since they accepted the students into their school, which Salem contends would deem the students’ placement as permanent. However, if the IECS’s decision of March 10, 2021, is upheld, Salem shall be entitled to receive reimbursement from Bordentown, for the ASSA funds for the four students for the 2020-2021 school year, whether Bordentown received the funds or not.

Bordentown contends that the homelessness determination made by the IECS was correct and should be affirmed. Salem’s obligation to pay tuition for the four students through the 2020-2021 school year continued, pursuant to the regulations. The family continued to reside in the transitional housing facility in Mt. Holly. Salem thus continued to be financially responsible as the district of residence, as had been confirmed previously for the 2019-2020 school year by the prior IECS, which determination was not appealed by Salem. Bordentown cannot be held accountable to reimburse Salem for ASSA funds, since Salem knew of the family’s status and should have applied within the required time frame, for the ASSA funding. Bordentown thus asserts that summary decision should be granted, with affirmation of the IECS homeless determination of March 10, 2021, and Salem shall pay Bordentown for the partial tuition and transportation costs of the students.

LEGAL ANALYSIS AND CONCLUSIONS

In an administrative law matter, a “party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). The motion “shall be served with briefs and with or without supporting affidavits” and the decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). The non-moving party will prevail if they “set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Id.

This standard is also set forth in New Jersey Court Rule 4:46-2, regarding a motion for summary judgment, which is substantially equivalent to an administrative law summary decision motion. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), the New Jersey Supreme Court stated that a motion judge determining whether a genuine issue of material fact exists is to consider “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.”

“The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” In re Farmers’ Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

A federal law, known as the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11341, et seq., requires states to provide homeless children with access to free public education, as available to all other students. The McKinney-Vento requirements are addressed in the New Jersey Administrative Code, including the financial responsibilities of school districts and the State, for the cost of educating homeless students.

A “homeless child” is a “child or youth who lacks a fixed, regular, and adequate residence.” N.J.A.C. 6A:17-1.2. The regulations state that a child is homeless when they reside in any “publicly or privately operated shelter designed to provide temporary living accommodations” and specifies such places to be hotels or motels, congregate shelters, or transitional housing. N.J.A.C. 6A:17-2.2(a)1. The regulations provide that a child is homeless if they reside in “the residence of relatives or friends” when done “out of necessity because his or her family lacks a regular or permanent residence of its own.” N.J.A.C. 6A:17-2.2(a)3. There is no time limit on homelessness. A child will continue to be homeless until they have a fixed, regular, and adequate primary nighttime residence. M.O’K. and S.O’K. o/b/o K.O’K., A.O’K. and C.O’K. v. Board of Education of the Borough of Cresskill, Bergen County and Board of Education of the Borough of Little Ferry, Bergen County, EDU 14830-13, Comm’r Final Agency Decision (August 12, 2014).

The regulations define the “school district of residence” for a homeless child as “the school district in which the parent or guardian of a homeless child resided prior to becoming homeless.” N.J.A.C. 6A:17-1.2. This term is synonymous with “school district of origin” referenced in the McKinney-Vento Homeless Education Assistance Act. Id. The school district of residence for a homeless child shall be responsible for, among other things, paying the cost of tuition when the child attends school in another school district, and providing transportation for the child to get to school. N.J.A.C. 6A:17-2.3(a)2-3.

Here, Salem is asserting that the family should not have been considered homeless since they resided for six months with other family members in the Bordentown district and then moved to transitional housing placement in Mt. Holly. This is contrary to the first homeless determination made in the matter for the 2019-2020, which was unchallenged by Salem. The IECS here determined, consistent with the regulations, that the “M” family continued to be homeless after they were evicted from their Salem residence, then resided to a motel in Salem, then moved in with family members as a temporary resolution due to domestic violence, then were placed in transitional housing in Mt. Holly by a service agency. N.J.A.C. 6A:17-2.2(a). The housing circumstances are undisputed. The family continued to lack fixed, regular, and primary housing, from the time of their eviction from their Salem home and were placed by the social service agency

into transitional housing. I thus **CONCLUDE** that the IECS determination that this was a homeless family and homeless students for the 2020-2021 school year was appropriate.

Regarding the cost of tuition for homeless students, the regulations provide:

When the homeless child or youth is enrolled in a school district other than the school district of residence, the school district of residence shall pay to the school district of enrollment the tuition costs pursuant to N.J.S.A. 18A:38-19, until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1d. At that time, the school district of residence or the school district in which the parent has been deemed domiciled shall pay tuition to the school district of enrollment.

N.J.A.C. 6A:17-2.8(a).

In this matter, Salem was deemed to be the district of residence for the students. This was determined in the first homelessness determination for the 2019-2020 school year, by IECS Minus-Vincent. Salem did not appeal that determination. Although it asserts it was prevented from filing due to a malware attack, there is nothing else in the record to support that is reason why they did not appeal, nor has it been demonstrated there was any effort made to appeal out of time.

The IECS determination in the matter at hand was rendered for the 2020-2021 school year. The family was in the same position as it was when the 2019-2020 school year determination was made. The family was evicted from their Salem residence in 2018, then moved into a motel in Salem, where they resided for approximately one year, then moved in with family in the Bordentown district, due to domestic violence. That was a temporary move for the family, as they were doubled up and eventually had to be placed in transitional housing in Mt. Holly due to verbal domestic abuse. These facts are unchallenged. The family continued to reside in Mt. Holly through the time they again enrolled in Bordentown for the 2020-2021 school year. They were still residing in the transitional housing at the time of the March 10, 2021, homelessness determination. Hence, the IECS determined that Salem was the continuing school district of residence for the 2020-2021 school year. I **CONCLUDE** that the determination of Salem being the

school district of residence was appropriate; it was consistent with the regulations; and it was consistent with the prior unchallenged determination by the IECS for the 2019-2020 school year, when the circumstances remained unchanged as to the family's homelessness circumstances.

There is state funding available for the school district of residence for a homeless family's students, through the ASSA program.

The school district of residence shall list the child on its annual Application for State School Aid (ASSA) pursuant to N.J.S.A. 18A:7F-33 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence or the school district in which the parent has been deemed domiciled shall list the student on its ASSA.

N.J.A.C. 6A:17.28(b).

The State is required to assume fiscal responsibility for homeless students' tuition under circumstances identified in N.J.A.C. 6A:17-2.8(c). Such responsibility shifts to the State when students have resided in a transitional housing facility, in a school district other than the school district of residence, for more than a year. N.J.A.C. 6A:17-2.8(c)3.

Here, the IECS determined that as of February 26, 2021, fiscal responsible for the students shifted from Salem to the State pursuant to N.J.A.C. 6A:17-2.8(c)3, since the family resided in the transitional housing, in another school district, for more than a year. Neither party disputes that determination. I thus **CONCLUDE** that the IECS determination that the State must assume financial responsibility for the students as of February 26, 2021, in the midst of the 2020-2021 school year was appropriate.

Salem has been found to be the district of residence for the students and deemed responsible for the cost of the students for a portion of the 2020-2021 school year. Since Salem was the school district of residence, it should have listed the children on its annual ASSA, since the parent had not established a permanent residence. Salem did not do so. Salem contends that Bordentown acted inappropriately by enrolling the students again for the 2020-2021 school year and should have directed them to enroll in Salem.

Moreover, Salem argues it was not given a definitive answer from Bordentown as to whether it should be filing for ASSA funds until sometime in November 2020. Since Bordentown did not file for ASSA funds, and failed to advise Salem to do so, Salem further asserts that Bordentown should be held accountable and reimburse Salem for the ASSA funds for the four students, or otherwise credit Salem for such funds.

Salem recognizes that if the IECS decision is upheld regarding homelessness, it will be responsible to pay to Bordentown for having educated the students, through the date of February 26, 2021, when the State is required to assume responsibility due to the family having resided in transitional housing for one year as of then. N.J.A.C. 6A:17-2.8(c)3. Bordentown argues that Salem was on notice about the circumstances of the family; knew that Bordentown had re-registered the students; and Salem knew or should have known that it could apply for the ASSA funds for the students for the 2020-2021 school year. Bordentown disclaims any responsibility for Salem having failed to apply for ASSA funds for this family.

I have concluded that the IECS determination was correct in identifying Salem as the district of residence. Salem had the ability to submit the family under its ASSA application for the 2020-2021. There is no reason, or support under the regulations, that Bordentown must be required to reimburse or credit Salem for the ASSA funds Salem could have received. The districts resolved the issue for the 2019-2020 school year in that manner because Bordentown had received ASSA funds for the family. That agreement did not bind the districts to do so for the 2020-2021 school year. I **CONCLUDE** that Bordentown shall not be required to credit Salem for the amount of ASSA funding Salem could have, or should have received, had it applied for same for this family. However, if Bordentown did list the family on its ASSA application for the 2020-2021 school year **and** received any such funds, the amount Bordentown actually received for the family shall be credited towards the tuition Salem must pay for the portion of the 2020-2021 school year. Bordentown would not be entitled to retain ASSA funding it actually received for the students in question, if it did receive such funds for the 2020-2021 school year, and then get tuition payment from Salem, which would be a double dip.

As a matter of law, there are no material facts in dispute as asserted by the parties, and this summary decision may be rendered. I **CONCLUDE** that the determination by the IECS that the family continued to be deemed homeless for the 2020-2021 school year was appropriate. I **CONCLUDE** that the determination by the IECS that Salem was the district of residence for the 2020-2021 school year, and thus fiscally responsible for the cost of educating the students was appropriate. I **CONCLUDE** that the determination by the IECS that the fiscal responsibility for the education of the students as of February 26, 2021, shifted to the State was appropriate. I **CONCLUDE** that Salem is responsible to pay to Bordentown the cost of Bordentown having educated the students for the partial school year of 2020-2021, through the date fiscal responsibility shifts to the State. I **CONCLUDE** Salem is not entitled to relief of holding Bordentown accountable for Salem having failed to apply for ASSA funding and that Bordentown must credit Salem's tuition responsibility for what it should have received in ASSA funding. I **CONCLUDE** the only circumstance where Bordentown would be required to credit Salem for ASSA funding for the 2020-2021 school year is if Bordentown did list the family on its ASSA application for that year **and** did actually receive such funding.

I **CONCLUDE** that summary decision in **GRANTED** in favor of Bordentown, and the IECS determination of March 10, 2021, was appropriate. I **CONCLUDE** the relief sought through summary decision by Salem is **DENIED**. I **CONCLUDE** Salem is thus fiscally responsible for the portion of the 2020-2021 school year for the education of the four students in question by Bordentown. I **CONCLUDE** that Bordentown is not required to credit Salem for ASSA funds Salem could have applied for and received for the students for the 2020-2021 school year. I **CONCLUDE** the only situation where Bordentown would be required to credit Salem towards the cost of tuition is if Bordentown did apply for ASSA funds for the students for the 2020-2021 school year **AND** actually received and retained such funds for the students for the 2020-2021 school year.

ORDER

It is **ORDERED** that summary decision in favor of Bordentown is **GRANTED**, consistent with the conclusions above. It is **ORDERED** that the relief sought by Salem through summary decision is **DENIED**, consistent with the conclusions above.

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.



December 15, 2023
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/gd

APPENDIX

- Notice of Motion for Summary Decision by City of Salem, Certification of Counsel, Stipulated Statement of Facts, Brief in Support of Motion for Summary Decision, dated August 5, 2022
- Notice of Motion for Summary Decision by Bordentown, Brief in Support of respondent's motion, Certification of Counsel, dated August 5, 2022
- Opposition response letter brief by City of Salem, dated August 26, 2022
- Opposition response letter brief by Bordentown, dated August 26, 2022
- Proposed Stipulation of Material Facts with letter request from Bordentown to further supplement its submissions, dated December 9, 2022
- Letter brief supplemental response by Bordentown, with Exhibits H through L, dated December 22, 2022
- Letter brief supplemental response by Salem, dated April 3, 2023