

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

Board of Education of the Township of Holmdel,  
Monmouth County, and Board of Education of  
the Township of Mount Olive, Morris County,

Petitioners,

v.

New Jersey Department of Education and D.F.,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent, New Jersey Department of Education (Department) pursuant to *N.J.A.C. 1:1-18.4*, and petitioners' replies thereto, have been reviewed and considered. Respondent D.F. did not file exceptions or a reply.

This matter requires the Commissioner to determine whether D.F. and her minor child, C.F., were homeless at any point during the 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years. They lived in Mount Olive until the foreclosure of their home in 2018. Thereafter, they moved into D.F.'s parents' home in Holmdel and have lived there since that time. C.F. has continued to attend school in Mount Olive.

In October 2021, the Morris County Interim Executive County Superintendent (ECS) determined that: (1) D.F. and C.F. are homeless and, thus, C.F. has the right to continue attending

school in Mount Olive; and (2) Holmdel is responsible for the costs of C.F.'s education in Mount Olive because D.F. and C.F. have resided in Holmdel for more than 365 days. Petitioners challenge the ECS's homelessness determination and contend that C.F. should be ordered to enroll in Holmdel Township Public Schools.

Although this matter was transmitted to the OAL in February 2022, its disposition was delayed due to D.F.'s refusal to participate. In August 2022 and again in April 2023, D.F. failed to attend depositions ordered by the ALJ. In June 2024, after Holmdel moved for summary decision, D.F. asked to be joined as a party to the case. But once Holmdel moved to add D.F. as a necessary party, she claimed that she could not participate because the appeal is fraudulent and she had a conflict due to a lawsuit she filed against Mount Olive.

On August 16, 2024, the ALJ joined D.F. as a party and further ordered that she "shall be required to timely respond to any interrogatories, document demands, or requests for admissions served on her" and that "failure to respond to discovery requests would be deemed an admission and would result in the allegations in the Petition of Appeal and those requests for admissions germane to the issues to be deemed admitted, and the case decided on those facts without further opportunity for her to contest them." Petitioners served D.F. with the ALJ's order, joint interrogatories, and requests for admissions, and reminded her of her obligation to answer the petition; D.F. failed to respond to the discovery requests and did not file an answer.

Consequently, in October 2024, Holmdel renewed its motion for summary decision, which Mount Olive joined. D.F. responded by claiming that she should be excluded from the matter because the appeal lacks legitimacy, undermines due process, and she filed a lawsuit against

Mount Olive, Holmdel, and their attorneys which presents a conflict. However, D.F. did not contest any of the facts set forth in the motion.

The Department opposed summary decision on procedural grounds, claiming that *N.J.A.C. 1:1-10.5* requires a conference call be scheduled, and that if D.F. failed to appear, then petitioners could move to admit the unanswered requests for admissions and request an Initial Decision pursuant to *N.J.A.C. 1:1-14.4(d)*. Subsequently, D.F. failed to appear for a telephone conference on January 7, 2025.

Ultimately, the ALJ granted petitioners' motion for summary decision upon deeming the allegations in the petition of appeal and the unanswered requests for admissions to be admitted. Having considered the uncontested facts, the ALJ concluded that D.F. and C.F. have had a fixed, regular, and adequate residence in Holmdel between March 2018 and the present where they have continuously resided with D.F.'s parents for more than six years. The ALJ held that D.F. was not homeless at any time relevant to the present matter, including the 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years; thus, C.F. cannot continue to attend school in Mount Olive at Holmdel's expense. Accordingly, the ALJ ordered that C.F. enroll in the Holmdel Township Public Schools and declared that Holmdel was not financially responsible for C.F.'s education in Mount Olive during the 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years.

In its exceptions, the Department contends that the ECS's homelessness determination is entitled to deference. It asserts that the matter should be remanded for further fact-finding because the ALJ's Initial Decision is not supported by competent, credible evidence in the record. It adds that D.F. should be given another chance to participate in the litigation and develop a

proper record. It also claims, as it did before the ALJ, that petitioners should have affirmatively sought to admit the unanswered requests for admissions into the record per *N.J.A.C. 1:1-10.4* by moving to compel discovery before moving for summary decision.

In response, petitioners contend that the Commissioner should adopt the ALJ's Initial Decision. Specifically, Holmdel asserts that the undisputed facts at issue were properly established pursuant to the Uniform Administrative Procedure Rules (UAPR) and admitted pursuant to *N.J.A.C. 1:1-10.4(c)* and the ALJ's August 16, 2024, order. It also argues that the ECS's homelessness determination is not entitled to deference and the appropriate standard of review is *de novo*. Mount Olive asserts that the ALJ properly considered and applied relevant law in granting the motion for summary decision, and that the Department's procedural argument involving *N.J.A.C. 1:1-10.4(d)* lacks merit.

Upon review, the Commissioner concurs with the ALJ that D.F. and C.F. are not homeless and were not homeless at any point during the 2021-2022, 2022-2023, 2023-2024, or 2024-2025 school years. The Commissioner also concurs with the ALJ that Holmdel is not financially responsible for C.F.'s education in Mount Olive during the 2021-2022, 2022-2023, 2023-2024, or 2024-2025 school years, and that C.F. must enroll in the Holmdel Township Public Schools.

Under the McKinney-Vento Homeless Assistance Act, 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 the child’s or youth’s family lacks a regular or permanent residence of its own.” *N.J.A.C. 6A:17-1.2*, *N.J.A.C. 6A:17-2.2(a)(3)*. The Commissioner has previously held that homelessness status is best viewed on a continuum. *St.-Op. Sch. Dist. of Camden v. Volk*, Commissioner Decision No. 172-17R at 11 (June 20, 2017). For instance, “a family may move into a relative’s home out of necessity and hardship, but over time, that home may become a regular residence.” *Bd. of Educ. of Twp. of Pennsauken, Camden Cnty. v. Pugh-Bassett*, Commissioner Decision No. 122-22 at 6 (June 16, 2022).

“[A]ppeals from a determination of homelessness are not solely a request to review and reverse an ECS’s decision: the Commissioner must also decide – based on the facts available to h[im] at the conclusion of the hearing at the OAL – whether the child is homeless.” *Volk*, at 7. The Commissioner’s independent determination of a student’s homeless status is *de novo*. *Ibid*. Conducting a homelessness evaluation to determine whether a child’s home is considered fixed, regular, and adequate requires a fact-specific analysis. *M. O’K. v. Bd. of Educ. of Borough of Cresskill*, Commissioner Decision No. 325-14 at 3 (August 12, 2014), *aff’d*, 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*.

The totality of the facts and circumstances in this case, as detailed in the Initial Decision, demonstrate that D.F.’s parents’ home in Holmdel has been a fixed, regular, and adequate residence for D.F. and C.F. since at least the beginning of the 2021-2022 school year. D.F. and C.F. have resided in Holmdel with D.F.’s parents since March 2018 in a three-bedroom, three-

bathroom home. D.F. and C.F. have their own separate living and sleeping area with access to heat, water, electricity, and cooking facilities. Although her current employment status is unknown, D.F. has worked at retail stores and as a teacher while living in Holmdel. She pays for her and C.F.'s household expenses. She receives her mail, including bills, at the Holmdel residence, and she uses the Holmdel address for her bank account and her driver's license. She has taken no action to move from the Holmdel residence and does not have any plans to return to Mount Olive.

The Commissioner finds that the Department's exceptions are unavailing. At the outset, the ECS's decision is not entitled to deference as the Department claims. As explained herein, the Commissioner is tasked with a *de novo* review which requires him to decide – based on the available facts at the conclusion of the OAL proceedings – whether the child is homeless. *Volk*, at 7.

Furthermore, contrary to the Department's assertion, the Commissioner concludes that a remand for further fact-finding is unnecessary and would be futile given D.F.'s repeated refusal to meaningfully participate in this matter. D.F. had ample opportunities to dispute the facts relied upon by the ALJ; she chose not to do so. Notably, she has not filed exceptions and is not seeking a remand on her own behalf. After several years of delays due to D.F.'s continued lack of cooperation, it was entirely appropriate for the ALJ to deem the allegations in the petition to be admitted, to deem the unanswered requests for admissions to be admitted, and to rely upon those uncontested facts in the Initial Decision.

The Commissioner further concludes that the ALJ acted in accordance with both the Department's own regulations and the UAPR. *N.J.A.C. 6A:3-1.5(e)* provides that if a respondent

fails to answer a petition, “each count in the petition shall be deemed admitted” and the matter may be decided summarily. Moreover, the ALJ’s August 16, 2024, order, notified D.F. that her failure to respond “would result in the allegations in the Petition of Appeal . . . to be deemed admitted.” See *K.B. v. Bd. of Educ. of Twp. of Branchburg*, Commissioner Decision No. 151-16 (April 21, 2016), at 2 (holding each count in petition deemed admitted due to respondent’s failure to file an answer). *N.J.A.C. 1:1-10.4(c)* provides that if a request for admissions is not answered or objected to within 15 days, “each matter therein shall be admitted.” Once again, the ALJ’s order notified D.F. of same. See *R.M. v. Bd. of Educ. of Borough of Mountain Lakes*, OAL Dkt. No. EDU 04986-24, Initial Decision at 2 (Sept. 30, 2024) (holding unanswered requests for admissions deemed admitted pursuant to *N.J.A.C. 1:1-10.4(c)*), *adopted*, Commissioner Decision No. 447-24 (Dec. 9, 2024).

*N.J.A.C. 1:1-10.4(d)*, relied upon by the Department, is inapplicable to this matter. The plain language of *N.J.A.C. 1:1-10.4(c)* makes clear that unanswered requests for admissions are deemed admitted by operation of the regulation. Neither *N.J.A.C. 1:1-10.4(c)* nor *N.J.A.C. 1:1-10.4(d)* require a party to file a motion to compel discovery before they move for summary decision. Moreover, the Department has not cited any cases that have applied *N.J.A.C. 1:1-10.4(d)* in comparable circumstances where the ALJ has already ordered that failure to respond to discovery will result in the requests for admissions being deemed admitted. The Commissioner agrees with Holmdel that to interpret *N.J.A.C. 1:1-10.4(d)* in the manner urged by the Department would run afoul of *N.J.A.C. 1:1-1.3(a)*, which requires that the UAPR “be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.”

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby granted. The Commissioner finds and concludes that D.F. and C.F. are not homeless, and were not homeless during the 2021-2022, 2022-2023, 2023-2024, or 2024-2025 school years. Thus, Holmdel is not financially responsible for C.F.'s education in Mount Olive during the 2021-2022, 2022-2023, 2023-2024, or 2024-2025 school years, and C.F. must be enrolled in the Holmdel Township Public Schools.

IT IS SO ORDERED.<sup>1</sup>



COMMISSIONER OF EDUCATION

Date of Decision: April 28, 2025  
Date of Mailing: April 28, 2025

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





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

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 00854-22

AGENCY DKT. 246-12/21

**HOLMDEL TOWNSHIP BOARD OF EDUCATION,  
MONMOUTH COUNTY, AND MOUNT OLIVE  
TOWNSHIP BOARD OF EDUCATION,  
MORRIS COUNTY,**

Petitioners,

v.

**NEW JERSEY DEPARTMENT OF EDUCATION,  
AND D.F.,**

Respondents.

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**John G. Geppert, Jr., Esq.,** for Mount Olive Township Board of Education  
(Scarinci Hollenbeck, LLC, attorneys)

**Kyle J. Trent, Esq.,** for Holmdel Township Board of Education (Apruzzese,  
McDermott, Mastro & Murphy, PC, attorneys)

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

**D.F.**, co-respondent, pro se, failed to enter an appearance<sup>1</sup>

Record Closed: January 7, 2025

Decided: February 19, 2025

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

### **STATEMENT OF THE CASE**

The petitioners, Mount Olive Township Public School District Board of Education (Mount Olive) and the Holmdel Township Board of Education (Holmdel) (jointly, the petitioners), appeal the determination of the Morris County interim executive superintendent, Dr. Timothy Purnell (respondent, New Jersey Department of Education (DOE)) that the pupil, C.F., and the maternal parent, D.F., remain homeless from Mount Olive, permitting the child (who resides in Holmdel) to attend school in Mount Olive at Holmdel's expense. Both petitioners contend that D.F. has long been domiciled in Holmdel and that C.F. is no longer entitled to attend Mount Olive public schools as a homeless pupil, but rather should be enrolled in and attending public school in Holmdel. The petitioners seek a ruling that D.F. established residency in the Holmdel Public School District effective with the 2021–2022 school year.

### **PROCEDURAL HISTORY**

This matter has a lengthy procedural history:

On or about September 15, 2021, Mount Olive requested that the Morris County interim executive county superintendent, Dr. Timothy Purnell, make “a determination of a dispute regarding the homeless status of a pupil currently attending the Mount Olive public schools[.]”

Mount Olive explained to Dr. Purnell that “[b]oth the Mount Olive and Holmdel school districts have concluded that the pupil should no longer be considered homeless,

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<sup>1</sup> D.F. was added as a party by Order entered on August 16, 2024, but has failed to enter an appearance or otherwise answer the petition. See *infra*.

as the pupil and parent have, by becoming Holmdel domiciliaries for over three years, by now established a regular or permanent residence in Holmdel.”

On or about October 6, 2021, Dr. Purnell rendered his McKinney-Vento determination, finding “that Holmdel Township School District is responsible for the costs related to this student’s education.”

Dr. Purnell stated that the student’s mother “has indicated that she does not have permanent housing and, therefore, is still considered homeless and shall have the right to continue education in Mount Olive School District,” but that “the Mount Olive School District should not bear the financial responsibilities of this education since the parent has resided in Holmdel for more than 365 days, pursuant to N.J.S.A. 18A:38-1(d).”

An appeal was timely filed, and on February 3, 2022, the matter was transmitted to the Office of Administrative Law (OAL) as a contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On August 1, 2022, after unsuccessful efforts to obtain D.F.’s cooperation in providing information about the facts underlying this case, an order was entered granting the petitioners’ motion to take D.F.’s deposition. D.F. failed to respond to this order or to other efforts to obtain relevant information from her.

On or about June 7, 2024, Holmdel filed a motion for summary decision. After receiving a copy of that motion, D.F. emailed the OAL on or about June 9, 2024, requesting that she be “enlist[ed]” as a party to the case and opposing the motion for summary decision.

In light of the expectation that this case would not be disposed of by summary decision and would instead proceed to discovery with D.F.’s participation, Holmdel requested that the motion for summary decision be held in abeyance pending the filing of a motion to add D.F. as a necessary party to the case.

On July 15, 2024, Holmdel filed a motion to join D.F. as a necessary party; to provide for service by electronic mail; to compel her to timely respond to discovery requests; and to determine that her failure to timely respond to discovery requests would be deemed an admission. Mount Olive joined in that motion and the DOE took no position. D.F. filed opposition<sup>2</sup> by email contending that “she cannot participate in the case” as the appeal “was fraudulently created by then-counsel for Holmdel, and because it would be a conflict because, on July 2, 2024, she filed a lawsuit against Mount Olive in the Superior Court, Morristown NJ.”

On August 16, 2024, the motion was granted. The Order joined D.F. as a co-respondent and put her on written notice that her failure to respond to discovery requests would be deemed an admission and would result in the allegations in the Petition of Appeal and those requests for admissions germane to the issues to be deemed admitted, and that the case would be decided on those facts without further opportunity for her to contest them. On August 20, 2024, Holmdel served D.F. with a copy of the Order and a copy of the Petition of Appeal.

On September 10, 2024, Holmdel and Mount Olive served D.F. with Joint Interrogatories and Requests for Admissions and also reminded her of her obligation to file an Answer to the Petition of Appeal.

D.F. did not serve timely responses to the joint discovery demands served on her.

A telephone conference was held on October 16, 2024. D.F. was given notice but failed to appear.

On October 17, 2024, Holmdel renewed its motion for summary disposition. On October 25, 2024, Mount Olive joined in the motion.

On November 2, 2024, D.F. emailed opposition to the motion. She did not contest any of the facts set forth therein, but rather contended that this matter should not proceed

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<sup>2</sup> D.F. opposed the motion even though she had requested that she be enlisted as a party. She provided no counter-statement of facts.

in the OAL and that she should be excluded from it because she had filed an action in the Superior Court against Mount Olive, Holmdel, Mount Olive's former attorneys, and Holmdel's attorneys.<sup>3</sup> She contended that she should "be excluded" from the OAL matter because it "lacks legitimacy and undermines due process."

On November 11, 2024, Holmdel responded to D.F.'s contention that the action in Superior Court prevents the Commission from deciding the issue of homelessness by asserting that the Commissioner of Education has jurisdiction over these issues and that the issues are properly addressed in the OAL.

On November 20, 2024, the DOE filed opposition to the motion, contending that N.J.A.C. 1:1-10.5 requires that a conference call must first be scheduled, and if the co-respondent D.F. failed to appear and continued to fail to respond to discovery demands the petitioners could then move to deem as admitted the unanswered requests for admission and request an initial decision based on the failure to appear, citing N.J.A.C. 1:1-14.4(d).

On November 22, 2024, Holmdel replied to the DOE's opposition, contending that the DOE relied on outdated case law, and further that the undisputed facts presented as part of the petitioners' motion had already been deemed admitted based on the Order entered on August 16, 2024, and also because the co-respondent had failed to respond to the discovery requests.

On December 3, 2024, Mount Olive filed a response clarifying the relief sought in the motion.<sup>4</sup>

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<sup>3</sup> D.F.'s motion for entry of a default judgment was denied by order of the Hon. Rosemary E. Ramsey, JSC, on November 24, 2024, for failure to effectuate service on the parties.

<sup>4</sup> "DF is not presently homeless and has not been homeless at any time relevant to this matter; Holmdel is not and was not financially responsible for CF's education in [sic] MT Olive at any time relevant to this petition; and CF cannot continue attending school in Mt Olive at Holmdel's expense; and that Holmdel is entitled to a determination that CF must attend its schools as she no longer qualifies as a homeless pupil."

A telephone conference had previously been scheduled for all parties to be held on January 7, 2025. Holmdel and Mount Olive appeared. D.F. did not appear.<sup>5</sup>

To date, D.F. has not served an Answer to the Petition of Appeal; she has not responded to the petitioners' joint discovery demands; and she has not filed any additional response to the motion for summary decision. The record closed January 7, 2025.

### **FACTUAL DISCUSSION**

For purposes of this motion and pursuant to the terms of the Order of August 16, 2024, and as no facts to the contrary have been presented, the following is accepted as **FACT:**

1. C.F. is a minor pupil who at all times relevant herein has been enrolled in and attended the schools of the Mount Olive Public School District. At all times relevant herein, C.F. has resided with her mother, D.F. (Petition ¶ 2.)
2. On or about March 31, 2017, a judgment of foreclosure was entered in New Jersey Superior Court against D.F.'s Mount Olive home. (Petition ¶ 3.)
3. At some time during or prior to March 2018, D.F. lost her home in Mount Olive to the foreclosure and she and C.F. moved in with D.F.'s parents in Holmdel Township, New Jersey. (Petition ¶ 4.)
4. C.F. and D.F. have continuously resided in Holmdel at the home of D.F.'s parents—a three-bedroom, three-bathroom home—since at least March 2018. (Petition ¶ 5.)
5. In March 2018, petitioner Mount Olive became aware that C.F. was no longer residing in Mount Olive Township. Mount Olive permitted C.F. to continue

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<sup>5</sup> The DOE failed to appear, and requested that the call be re-scheduled. But, as the co-respondent had already failed to appear, another call was not deemed necessary.

attendance in the Mount Olive schools for the remainder of the 2017–2018 school year. (Petition ¶¶ 6.)

6. In July 2018, D.F. filed McKinney-Vento forms with the Mount Olive School District. As a result, C.F. was determined to be a homeless pupil and continued to attend the Mount Olive schools on that basis. (Petition ¶¶ 7.)
7. C.F. has continuously attended the Mount Olive schools since at least July 2018 through the present time and will continue to do so during the pendency of this matter. (Petition ¶¶ 8.)
8. On August 5, 2019, the Mount Olive School District notified the Holmdel School District that C.F. was homeless, and had been residing in Holmdel for one year, and that Holmdel was therefore now the district of residence. Holmdel agreed with Mount Olive’s determination. (Petition ¶¶ 9.)
9. In August 2021, Mount Olive submitted an invoice to Holmdel for tuition for C.F.’s attendance in Mount Olive for the 2021–2022 school year. (Petition ¶¶ 10.)
10. Holmdel responded to Mount Olive that, in Holmdel’s opinion, because the student and parent had resided continuously in Holmdel at the same home since 2018, they had by August 2021 established a permanent domicile in Holmdel and should no longer be considered homeless. (Petition ¶¶ 11.)
11. On September 2, 2021, Holmdel confirmed that it would not execute a tuition contract with Mount Olive, as C.F. should be enrolled in and attend the Holmdel schools. (Petition ¶¶ 12.)
12. By letter dated September 15, 2021, Mount Olive’s superintendent of schools requested a determination pursuant to N.J.A.C. 6A:17-2.7 from the Morris County interim executive county superintendent (ECS), Dr. Purnell, on C.F.’s homeless status. (Petition ¶¶ 13.)

13. By letter dated October 6, 2021, the ECS rendered a determination that C.F. is still considered a homeless pupil, and that Holmdel remains responsible as the district of residence for payment of tuition to Mount Olive. (Petition ¶ 14.)
14. D.F. continues to maintain that C.F. is a homeless pupil and is therefore entitled to continue attendance in the Mount Olive School District. (Petition ¶ 15.)
15. Petitioner Holmdel and petitioner Mount Olive contested and appealed the ECS's October 6, 2021, determination that C.F. continues to be deemed a homeless pupil and asserted that C.F. is no longer homeless and should be enrolled in and attend the schools of the Holmdel Public School District. (Petition ¶ 16.)
16. D.F. has resided in Holmdel, New Jersey, from March 2018 to the present. (Request for Admission (RFA) at ¶ 1.)
17. D.F.'s child, C.F., has resided with her in Holmdel, New Jersey, from March 2018 to the present. (RFA at ¶ 2.)
18. Before moving to Holmdel, New Jersey, D.F. resided in Mount Olive, New Jersey. (RFA at ¶ 3.)
19. D.F. has not lived in Mount Olive, New Jersey, since prior to March 2018. (RFA at ¶ 4.)
20. The Holmdel residence is owned by D.F.'s parents/C.F.'s grandparents. (RFA at ¶ 5.)
21. D.F. has resided at the Holmdel residence continuously since March 2018. (RFA at ¶ 6.)
22. D.F. has never taken any action nor made any effort to move from the Holmdel residence since moving there in March 2018. (RFA at ¶ 7.)



- 23.D.F. has had no intent to move from the Holmdel residence since moving there in March 2018. (RFA at ¶ 8.)
- 24.D.F. currently pays money to cover her and her child's household expenses while living at the Holmdel residence. (RFA at ¶ 9.)
- 25.D.F. has paid money to cover her and her child's household expenses while living at the Holmdel residence at all times since moving there in March 2018. (RFA at ¶ 10.)
- 26.C.F. and D.F. have their own separate living and sleeping area at the Holmdel residence. (RFA at ¶ 11.)
- 27.The Holmdel residence has all living necessities for D.F. and C.F., including but not limited to heat, water, electricity, and access to cooking facilities. (RFA at ¶ 12.)
- 28.The Holmdel residence is adequate for the housing needs of D.F. and her child. (RFA at ¶ 13.)
- 29.D.F. receives her mail at the Holmdel residence. (RFA at ¶ 14.)
- 30.D.F. has received her mail at the Holmdel residence since March 2018. (RFA at ¶ 15.)
- 31.D.F. receives her cell phone bill at the Holmdel residence. (RFA at ¶ 16.)
- 32.D.F. has received her cell phone bill at the Holmdel residence since March 2018. (RFA at ¶ 17.)
- 33.D.F. receives other bills at the Holmdel residence. (RFA at ¶ 18.)

34. D.F. has received other bills at the Holmdel residence since March 2018. (RFA at ¶ 19.)

35. The Holmdel residence is the address on D.F.'s bank account. (RFA at ¶ 20.)

36. The Holmdel residence has been the address on D.F.'s bank account since March 2018. (RFA at ¶ 21.)

37. The address on D.F.'s driver's license is the Holmdel residence. (RFA at ¶ 22.)

38. D.F. intends to continue living at the Holmdel residence with her child and with her parents' permission for at least the next year. (RFA at ¶ 23.)

39. D.F. intends to continue living at the Holmdel residence with her child indefinitely. (RFA at ¶ 24.)

40. D.F. does not intend to move back to Mount Olive, New Jersey, in the next year. (RFA at ¶ 25.)

41. D.F. does not have any plans to move back to Mount Olive, New Jersey, in the future. (RFA at ¶ 26.)

42. D.F. has never had plans to move back to Mount Olive, New Jersey, since moving to Holmdel, New Jersey, in March 2018. (RFA at ¶ 27.)

43. While residing at the Holmdel residence, D.F. has been employed at TJ Maxx and/or Ross Stores in Flanders, New Jersey. (RFA at ¶ 28.)

44. D.F. is currently and has been a New Jersey licensed teacher at all times since March 2018. (RFA at ¶ 29.)

45. On or about March 1, 2023, D.F. accepted employment as a Universal-K teacher in Dover, New Jersey, housed by Cornerstone Family Programs & Morristown

Neighborhood House/Dover Board of Education, but did not start that employment. (RFA at ¶ 30.)

46. On or about February 1, 2024, D.F. accepted employment as a pre-K teacher in Morristown New Jersey, through Cornerstone Family Programs & Morristown Neighborhood House/Morristown Board of Education with an agreed-upon salary of \$67,000 from March 17, 2024, until June 30, 2024, and the promise of an increase to \$69,010 beginning in September 2024. (RFA at ¶ 31.)

47. On or about March 29, 2024, D.F. received her first direct-deposit paycheck from Cornerstone in the amount of \$2,118.86. (RFA at ¶ 32.)

48. D.F.'s employment with Cornerstone ended in April 2024, and she filed a lawsuit against Morristown Neighborhood House and the Morristown Board of Education claiming that they breached her employment contract. (RFA at ¶ 33.)

## **LEGAL ANALYSIS**

### **Summary Decision**

Under the Uniform Administrative Procedure Rules, summary decision may be granted to a party when “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). This provision is similar to the summary judgment rule applicable to Superior Court matters contained in the New Jersey Court Rules, R. 4:46-2, and is afforded similar treatment.

It is well established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” As Brill states:

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

[Id. at 540.]

In explaining the standard to be applied in summary motion practice, the Brill Court explained:

The same standard applies to determine whether a prima facie case has been established by the party bearing the burden of proof in a trial. . . . If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party . . . .

[Id. at 536–37.]

As the facts here are not in dispute, this matter is ripe for summary decision.

### **Residency**

The issue presented here is whether D.F. and her child C.F. are homeless or are no longer homeless, and whether they are permanently domiciled in Holmdel.

New Jersey law provides school districts with certain responsibilities regarding the education of homeless children. See N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.1 to -2.8. The State Department of Education’s rules governing the education of homeless students in New Jersey “apply to district boards of education providing general education services

to students in preschool through grade 12 and special education services to students ages three through 21.” N.J.A.C. 6A:17-2.1. The rules “incorporate requirements contained in the reauthorized Stewart B. McKinney-Vento Homeless Education Act [42 U.S.C. §§ 11431 to 11435] as part of the Federal No Child Left Behind Act of 2001, P.L. 107-110.” See 35 N.J.R. 5469(a).

The McKinney-Vento Act provides that “[e]ach State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.” 42 U.S.C. § 11431(1). Under the law, homeless means “an individual who temporarily lacks a fixed, regular and adequate residence.” N.J.S.A. 18A:7B-12(c).

Homelessness exists in several circumstances, including when a child resides in “[t]he 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[.]” N.J.A.C. 6A:17-2.2(a)(3).

“[C]onducting a homelessness evaluation to determine whether a child’s home is considered fixed, regular and adequate requires a fact-specific analysis[.]” Pennsauken Bd. of Educ. v. Pugh-Bassett, EDU 00744-21, Final Decision (June 16, 2022), <https://www.nj.gov/education/legal/commissioner/2022/jun/122-22.pdf>. “Homelessness . . . is best viewed in a continuum.” Id. at \*6. Such analysis must be conducted based on the evidence elucidated through a contested case before the Office of Administrative Law regardless of the reasonableness of the executive county superintendent’s decision and is reviewed de novo. See ibid. n.1; State-Operated Sch. Dist. of Camden v. Volk, EDU 4521-16, Final Decision (June 20, 2017), <https://www.nj.gov/education/legal/commissioner/2017/jun/172-17R.pdf> (explaining that the “appropriate standard of review for ECS decisions regarding homelessness is de novo (without deference to the decision below).”).

Additionally, whether an allegedly homeless family pays money to contribute to household expenses even when staying with relatives or has taken any other actions

suggesting that their presence at the relatives' residence "might be more than short-lived" may lead to the conclusion that the family is not homeless. See Delaware Twp. Bd. of Educ. v. Dep't of Educ., EDU 8011-05, Final Decision at \*12 (May 10, 2006), <http://www.state.nj.us/education/legal/commissioner/2006/may/177-06S.pdf>.

Although homelessness does not have a maximum duration, the living arrangements of a family that is initially homeless may become "sufficiently fixed, regular, and adequate so as to preclude a finding of homelessness" after a period of time. See L.C. v. Bd. of Educ. of Branchburg, 96 N.J.A.R.2d (EDU) 1002, 1006. A child "residing temporarily at the home of a relative out of necessity because [the family] lacked a regular or permanent residence of their own" may initially qualify as homeless under N.J.A.C. 6A:17-2.2(a)(3), but "[t]his is not to say that any stay with a relative means that the parent or child is homeless," and "if the stay lasts for an extended time, it cannot be described as temporary." S.J. v. Bd. of Educ. of S. Orange-Maplewood Sch. Dist., EDU 5656-07, Initial Decision at 9 (Jan. 22, 2008), adopted, Comm'r (Mar. 3, 2008), [https://njlaw.rutgers.edu/collections/oal/html/initial/edu05656-07\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/edu05656-07_1.html).

Even "a family initially forced to relocate with family members on a temporary basis" may subsequently become residents of the new district if the residence becomes the parent's "regular and fixed residence." L.C., 96 N.J.A.R.2d (EDU) at 1006 (explaining that while the mother's "living arrangements with her brother may not be permanent in the sense that she may wish to eventually return to [the original district], the evidence shows them to have become sufficiently fixed, regular, and adequate so as to preclude a finding of homelessness."); see also State-Operated Sch. Dist. of Camden v. Volk, EDU 4521-16, Initial Decision (Mar. 22, 2017), modified, Comm'r (June 20, 2017), [https://njlaw.rutgers.edu/collections/oal/html/initial/edu04521-16\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/edu04521-16_1.html) (determining that the family intended to stay in their living situation and was not homeless because they stopped looking for another place to live).

In Bordentown Regional Board of Education v. Marini, the Commissioner found that a family was initially homeless after moving in with the children's grandmother, but ceased being so shortly thereafter due to the residence being fixed and regular. EDU 9659-22, Final Decision (July 6, 2023),

[https://njlaw.rutgers.edu/collections/oal/final/edu09659-22\\_1.pdf](https://njlaw.rutgers.edu/collections/oal/final/edu09659-22_1.pdf). Despite the initial homelessness status, the Commissioner concluded that the homelessness status ended at the latest two years after the family moved in with the grandmother, if not earlier, when it became a “fixed” living arrangement. (Id. at 8.)

**I. Is D.F. presently homeless and was she homeless at any time relevant to the present petition?**

The petitioners argue that the undisputed facts in this matter demonstrate that D.F. is not and was not homeless as defined by law at any period relevant to this matter, including the 2021–22, 2022–23, 2023–24, and 2024–25 school years. They urge that summary decision must be granted concluding that Holmdel was not financially responsible for C.F.’s education in Mount Olive at any time relevant to this Petition and that C.F. must be enrolled to attend school in Holmdel.

Here, the undisputed facts establish that D.F. and C.F. have had a fixed, regular, and adequate home in Holmdel, New Jersey, at all times between March 2018 and the present. D.F. and C.F. have continuously resided with D.F.’s parents for more than six years, and the established facts demonstrate that this was never a temporary situation. There is no basis to conclude that the living arrangements of D.F. in Holmdel were intended to be short-lived at any point. The six years of uninterrupted residence in Holmdel only further establish the fixed and permanent nature of the residence from 2018, and certainly by, if not before, the 2021–22 school year and the school years thereafter.

The undisputed facts further establish that D.F. and C.F.’s residence in Holmdel has been more than adequate under the law at all relevant times. The residence is a three-bedroom home occupied by D.F., C.F., and D.F.’s parents. C.F. and D.F. have their own separate living and sleeping areas and full access to all amenities of a stable and adequate home, including, but not limited to, heat, water, electricity, and cooking facilities. There is no assertion or basis for assertion of any inadequacy in the family living situation. The undisputed facts demonstrate that D.F. has had a fixed, regular, and adequate residence at all times relevant to this case through her residence in Holmdel beginning in March 2018. As a result, D.F. was not homeless as defined by law at any

time relevant to the present matter, including the 2021–22, 2022–23, 2023–24, and 2024–25 school years.

**II. If D.F. was not homeless as defined by law at any time relevant to this proceeding, then Holmdel is not financially responsible for C.F.’s education in Mount Olive, and C.F. must enroll in the Holmdel public schools.**

When a family that claims to be homeless is living in “a fixed, regular, and adequate residence” they do not qualify as homeless. Bound Brook Bd. of Educ. v. Piscataway Bd. of Educ., EDU 02006-22, Final Decision at \*10 (Oct. 8, 2024), <https://www.nj.gov/education/legal/commissioner/2024/363-24.pdf>. Since “domicile attaches immediately if a student’s dwelling is found to be fixed, regular and adequate,” the family becomes “eligible for a free public education in the . . . school district [they moved to] pursuant to N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a) and should have enrolled in [that district’s] schools at that time.” Ibid. In such circumstance, that new district “cannot be held financially responsible for payment of the children’s out-of-district tuition and transportation expenses” if the family claimed homelessness and continues attending school despite having a fixed, regular, and adequate residence in the new district. Ibid.

Here, although D.F. claimed to be homeless and C.F. continued attending Mount Olive’s schools, the undisputed record is clear that they had a fixed, regular, and adequate residence in Holmdel at all times relevant to this petition. Having concluded that D.F. was not homeless at any time relevant to this proceeding, Holmdel is not financially responsible for C.F.’s education in Mount Olive for the 2021–22, 2022–23, 2023–24, or 2024–25 school years. Although C.F. could have been enrolled in and attending Holmdel’s schools since moving to Holmdel, at the very least, once the Holmdel domicile became clearly fixed and permanent by school year 2021, Holmdel cannot be held financially responsible for C.F.’s education in Mount Olive during the 2021–22, 2022–23, 2023–24, or 2024–25 school years.



Moreover, having concluded that D.F. is not homeless and has not been homeless since 2021, and that Holmdel is the place of her residence in permanent, fixed, and adequate housing, the child C.F. must be enrolled in the Holmdel public schools.

### **CONCLUSION**

For the reasons set forth more fully above, there are no material facts in dispute in this matter, and it is ripe for summary decision. The motion for summary decision filed by Holmdel and joined in by Mount Olive is granted. I **CONCLUDE** that: (1) D.F. and the child C.F. are not presently homeless and have not been homeless at any time relevant to this matter; (2) Holmdel is not and was not financially responsible for C.F.'s education in Mount Olive during the 2021–22, 2022–23, 2023–24, or 2024–25 school years; and (3) C.F. cannot continue attending school in Mount Olive at Holmdel's expense, and must enroll in the Holmdel public schools.

### **ORDER**

I hereby **ORDER** that the motion made by petitioners' Mount Olive Township Public School District Board of Education and the Holmdel Township Board of Education for summary decision is **GRANTED**.

I further **ORDER** that as D.F. and the child C.F. have established a fixed, permanent, and adequate residence in Holmdel, that they are not presently homeless, nor have they been homeless at any time relevant to this matter. I **ORDER** that Holmdel is not and was not financially responsible for C.F.'s education in Mount Olive during the 2021–22, 2022–23, 2023–24, or 2024–25 school years.

I further **ORDER** that C.F. cannot continue attending school in Mount Olive at Holmdel's expense, and that C.F. must enroll in the Holmdel public schools.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING 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.



February 19, 2025 \_\_\_\_\_

DATE

\_\_\_\_\_  
**SUSAN M. SCAROLA, ALJ**

(Ret., on recall)

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

SMS/kl

c: Clerk OAL-T

**APPENDIX**

**Witnesses**

**For Petitioners:**

Mount Olive  
None

Holmdel  
None

**For Respondents:**

DOE  
None

D.F.  
None

**Exhibits**

**For Petitioners:**

Mount Olive  
Responses

Holmdel  
Brief, brief and response

**For Respondents:**

DOE  
Brief

D.F.  
Email responses