

191-26
OAL Dkt. No. EDU 08503-25
Agency Dkt. No. 132-5/25

New Jersey Commissioner of Education
Final Decision

D.A., on behalf of minor children, W.A. and
W.A.,

Petitioner,

v.

Board of Education of the Township of
Lumberton, Burlington County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the Lumberton Board of Education's (Board) reply thereto have been reviewed and considered.

This matter involves the Board's determination that petitioner does not reside in Lumberton and that her children are therefore not entitled to attend school in the district.¹ In 2018, petitioner was a victim of domestic violence, and she lost her home. The family briefly stayed with friends and then moved to emergency assistance housing in Mount Holly in October 2018. In March 2019, petitioner signed a lease for a property in Mount Holly, which included a provision indicating that the property could be used as transitional housing for 24 months.

¹ The petition of appeal named both of petitioner's children. However, because students from Lumberton and students from Mount Holly attend the same high school, there is no longer a residency issue regarding petitioner's older son.

Petitioner provided this lease to the district, which determined that W.A. could continue attending school in Lumberton. In 2023, the district requested verification that petitioner was still residing in transitional housing. Petitioner signed a transitional housing form, indicating that she continued to reside in the Mount Holly property, but she informed the district that she did not have an updated lease. In 2025, following additional requests for petitioner to provide updated information, the Board determined that petitioner and her family were not homeless and that W.A. is not entitled to attend middle school in Lumberton. Petitioner appealed.

The Administrative Law Judge (ALJ) concluded that petitioner is not homeless as defined by the McKinney-Vento Homeless Assistance Act (Act) because she has a fixed, regular, and adequate residence. The ALJ noted that petitioner has been living in the same property since 2019, and not only had petitioner failed to present any evidence that the property constituted transitional housing, but petitioner's landlord had confirmed that it was not. The ALJ also indicated that petitioner had not presented any evidence that she was searching for a new residence in Lumberton. Based on these facts, the ALJ concluded that petitioner was not homeless, had become a resident of Mount Holly, and was no longer domiciled in Lumberton.

In her exceptions, petitioner argues that the ALJ was biased against her. According to petitioner, the ALJ ignored all of the evidence she provided to demonstrate that she was homeless, as well as evidence that she had been searching for a residence in Lumberton.² Petitioner contends that the respondent's answer to her petition should not have been accepted

² Petitioner references a PDF file she sent regarding her search for rentals, although she does not indicate to whom she sent the PDF file or when she sent it. No documentation regarding her search for a residence in Lumberton was entered as an exhibit during the hearing or attached to any of petitioner's pleadings. Petitioner did testify that she attempted to find a residence in Lumberton but her applications were denied for various reasons, or properties were too expensive. Tr. 13:18-24.

because it was not timely filed. Petitioner argues that she resides in transitional housing, and even though it has been the same housing for several years, that does not make it permanent housing. Petitioner asks that the testimony of the district's homelessness liaison be deemed not credible and be stricken from the record, because he is not an expert in the Act and ignored her family's circumstances. Finally, petitioner argues that the ALJ ignored various provisions of the Act in reaching her conclusions.

In response, the Board argues that the ALJ correctly found that petitioner had established a residence in Mount Holly and was no longer legally homeless, and that W.A. should attend school in Mount Holly rather than Lumberton. The Board contends that the ALJ applied the proper standard and assessed petitioner's current living status rather than the circumstances that initially rendered her homeless.

Under the Act, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence." 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*." *N.J.A.C. 6A:17-1.2*. "[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 at 4 (Dec. 30, 2010) (citing *N.J.S.A. 18A:17B-12(c)*).

The Commissioner has previously held that homelessness status "is best viewed in 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 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). 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*.

Upon review, the Commissioner concurs with the ALJ that petitioner is no longer homeless as defined by the Act, that she has established a residence in Mount Holly, and that W.A. is no longer entitled to attend school in Lumberton.

The Commissioner does not find petitioner’s exceptions to be persuasive. The fact that the Mount Holly property was originally characterized as transitional housing by petitioner’s lease is not dispositive. The Commissioner addressed a question of transitional housing in *Bd. of Educ. of Bound Brook v. Bd. of Educ. of Somerville and K.B.*, Commissioner Decision No. 140-25 140-25 (Apr. 21, 2025). In that matter, Somerville argued that the family resided in transitional housing because the parent relied on financial support from Norwescap and the Department of Community Affairs’ Homelessness Prevention Program to pay her security deposit and rent. The Commissioner noted that *N.J.A.C. 6A:17-1.2* defines a transitional living facility as “a temporary facility that provides housing to a child due to domestic violence.”³ The Commissioner found that while the family initially relocated due to domestic violence, there was no evidence that

³ The Act refers to “emergency or transitional shelters.” 42 U.S.C. § 11434a(2)(B)(i).

their new residence fit within this definition of a temporary facility; rather, it was a fixed, regular, and adequate residence in which the family had lived for more than three years. *Id.* at 10.

Petitioner and her children similarly resided at the Mount Holly property for an extended period – at this time, they have lived there for more than seven years. Even accepting petitioner’s argument that she did not initially move to the property by choice but instead moved due to homelessness caused by domestic violence and financial circumstances, that does not end the inquiry, as the Commissioner must review the continuum of the circumstances and analyze the family’s current living situation as well. Petitioner and her family continued to reside at the Mount Holly property after their first lease expired, and the record indicates the family’s residence there was continuous and without interruption. Furthermore, petitioner and her two children were the sole occupants of the property that consisted of two bedrooms, one bathroom, a living room/den, and a kitchen; there is no indication that the property does not have standard amenities such as running water, heat, and electricity. While petitioner testified about her concerns regarding drugs, violence, and harassment in the area in which the property is located, those concerns do not render the property itself inadequate.

The only documentary evidence in the record that potentially supports petitioner’s homelessness claim is her lease for the period from April 1, 2019 through March 31, 2020, which indicates, “Tenants have been notified [the property] is part of Transitional Housing Services. Property can be utilized as transitional housing for 24 months.” Exhibit R-N. Petitioner submitted two unsigned leases for later years that contain similar transitional housing language, but they

are of limited evidential value because they are not signed by petitioner's landlord.⁴ Exhibits P-4 and P-5. Petitioner's lease verification form, which is signed by her landlord in 2025, does not indicate that her property is transitional housing.⁵ Exhibit P-1. Petitioner also submitted an undated and unidentified payment history, which she testified showed payments she made to PSE&G, and a payment history for her rent; neither document refers to transitional housing. Exhibits P-2 and P-3. While petitioner testified that she believes the property is transitional housing, that belief cannot overcome the fact that there is no documentary evidence to support her claim or the fact that the nature and length of petitioner's residence in the property is not consistent with a temporary facility.

When a homeless family moves into a "home that is adequate – and the adults in the family are sufficiently employed with the financial means to find alternative housing, and the family continues to live in the home for an extended period of time without any imminent or foreseeable risk of losing their place in that home, and they share the space as a cohesive unit – a finding of homelessness would be improper." *Camden, supra*. The record reflects that petitioner is employed as a classroom assistant, and she is not currently enrolled in any rental assistance program. Tr. 42:16-25; 33:18-23. While her financial circumstances may limit the properties available to her, the Commissioner cannot conclude that she is financially incapable of finding another residence. The Commissioner also finds that petitioner's expressed desire to

⁴ Petitioner was asked in discovery to produce signed leases, but she failed to do so. She testified that she did not receive fully signed leases from her landlord for each year that she lived at the property, and that she was unable to locate in her records any signed leases that may have existed. Tr. 28:3-11.

⁵ Petitioner testified that she used this verification form to obtain assistance from a program identified as "BCAP" for her PSE&G payments. Tr. 40:1-15.

move back to Lumberton is insufficient to support a finding of homelessness when considered in light of the totality of the circumstances. *See, e.g., J.G v. Bd. of Educ. of Edison*, Commissioner Decision No. 125-20 (June 15, 2020).⁶ The Mount Holly property is a fixed, regular, and adequate nighttime residence, and petitioner is therefore not homeless pursuant to the definition established by the Act. 42 U.S.C.A. § 11434a(2). The other provisions of the Act cited by petitioner, including 42 U.S.C.A. § 11432(g)(3)(A)(i),⁷ 42 U.S.C.A. § 11432g(3)(B)(i),⁸ and 42 U.S.C.A. § 11432(g)(3)(C)(i)(I),⁹ only apply to children who meet the definition of homeless; they do not independently provide a basis for categorizing a child as homeless.¹⁰

⁶ Because petitioner’s intentions alone are insufficient to establish homelessness, the Commissioner finds that even if petitioner had entered evidence of her search for another residence in Lumberton as a hearing exhibit or attached same to her pleadings, that evidence would not change the conclusion that she is not currently homeless.

⁷ The district “shall, according to the child’s or youth’s best interest continue the child or youth’s education in the school of origin for the duration of homelessness.”

⁸ The district shall “presume that keeping the child or you in the school of origin is in the child or youth’s best interest.”

⁹ The district “shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally requirement for enrollment, such as previous academic records, records of immunization and other required health records, proof of residency, or other documentation.”

¹⁰ Additionally, petitioner’s argument that the testimony of the district’s homelessness liaison should be discredited because he did not understand these statutes is unavailing. The liaison testified regarding the reasons for the determination he made at the district level. If his reasoning was inconsistent with the Act, the appeal process petitioner pursued here provides an opportunity to challenge that reasoning and the related decision; it is not a reason to throw out the testimony itself. Furthermore, the Commissioner rejects petitioner’s argument that the district was required by the Act to enroll her child without paperwork. The district’s enrollment obligation does not preclude it from re-assessing the child’s status subsequent to enrollment. Moreover, the Commissioner notes that the district in fact allowed the child to remain enrolled in the district for several years after the expiration of her initial lease reflecting that the property was transitional housing, without any updated lease supporting her claim of homelessness.

With regard to petitioner's claim that the Board's answer should not have been accepted because it was not timely filed, the Commissioner notes that *N.J.A.C. 6A:3-1.5(e)* provides that when an answer is not filed within 20 days after the filing of a petition, the Commissioner may decide the matter on a summary basis. The use of the word "may" demonstrates that the Commissioner has discretion not to decide the matter on a summary basis. Additionally, *N.J.A.C. 6A:3-1.16* allows the Commissioner to relax any rules that do not reflect a specific statutory requirement or an underlying rule of the OAL. In assessing this matter in light of those two provisions, the Commissioner determined that it was appropriate to accept the Board's answer and to transmit the case to the OAL for a contested case hearing, as summary decision is generally not preferred in this type of matter due to the fact-sensitive nature of a homelessness inquiry.

Finally, petitioner's claims regarding the alleged bias of the ALJ are not borne out by the record. Initially, many of petitioner's complaints concern the ALJ's demeanor. A review of the transcripts does not support petitioner's claim that the ALJ was argumentative or disrespectful, or that she favored the attorney for the Board. The prehearing orders, including the order regarding the motions to compel discovery, further demonstrates that the ALJ reviewed the parties' positions in a balanced manner throughout the proceedings. Furthermore, the Commissioner notes that petitioner filed a motion to disqualify the ALJ, which was denied by the ALJ. A party may request interlocutory review of an ALJ's order regarding disqualification with the Director of the Office of Administrative Law, pursuant to *N.J.A.C. 1:1-14.10(j)*, but petitioner did not do so. Moreover, pursuant to *N.J.A.C. 1:1-14.10(k)*, a party may not seek review of an order regarding disqualification after the judge renders the initial decision, meaning that the Commissioner lacks the authority to overturn the ALJ's decision that she was impartial and could

consider the matter fairly based on the proofs presented, without animus or bias for or against either party. The Commissioner's review of the Initial Decision must be based on the facts and in light of the applicable law, and, for the reasons stated herein, the Commissioner finds no basis to disturb the ALJ's factual findings or legal conclusions.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed. Petitioner must enroll W.A. in school in Mount Holly for the 2026-2027 school year.¹¹

IT IS SO ORDERED.¹²


COMMISSIONER OF EDUCATION

Date of Decision: June 2, 2026
Date of Mailing: June 3, 2026

¹¹ Due to the very short time between the issuance of this decision and the end of the current school year, the Board shall not disenroll W.A. until after the final day of school in the 2025-2026 school year.

¹² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 08503-25

AGENCY DKT. NO. 132-5/25

**D.A. ON BEHALF OF
MINOR CHILDREN W.A. AND W.A.,**

Petitioner,

v.

**TOWNSHIP OF LUMBERTON
BOARD OF EDUCATION,
BURLINGTON COUNTY,**

Respondent.

D.A., on behalf of W.A. and W.A., petitioner, pro se

Susan S. Hodges, Esq., for respondent (Parker McCay, P.A., attorneys)

BEFORE **NICOLE MINUTOLI, ALJ:**

Record Closed: March 16, 2026

Decided: March 23, 2026

STATEMENT OF THE CASE

Petitioner, D.A., the mother of minor child W.A.,¹ challenges respondent, Lumberton Township School District's (District or respondent), determination that W.A. was not domiciled within the Township of Lumberton (Township) and therefore not entitled to be enrolled at Bobby's Run School in the Township. Has petitioner shown by a preponderance of the evidence that W.A. was domiciled within the District and therefore entitled to be enrolled in the Township for purposes of receiving a thorough and efficient public education free of charge, pursuant to N.J.S.A. 18A:38-1, for the 2024–2025 school year? No, petitioner has provided no testimony or documentary evidence that W.A. is domiciled within the District or entitled to a free public education in the Township.

PROCEDURAL HISTORY

By letter dated January 3, 2025, respondent, the Lumberton Township Board of Education (Board), notified petitioner that her child, W.A., was ineligible to continue attending Bobby's Run School since W.A. no longer resided in the District. On February 10, 2025, petitioner sought to appeal the Board's decision. An answer was filed on May 6, 2025, and the Department of Education, Office of Controversies and Disputes, transmitted this matter to the Office of Administrative Law (OAL), where on May 12, 2025, it was filed as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On June 23, 2025, shortly after the matter was assigned, an initial prehearing conference was conducted. A second prehearing conference was held on July 14, 2025, to resolve a discovery dispute between the parties. This dispute led to motion practice by both sides, resulting in the matter being scheduled for oral argument before me on August 27, 2025. On August 28, 2025, following an extensive review of the submissions, having conducted oral argument, and having considered both positions, I entered an

¹ The pleadings should only have named one son, W.A., because there is no residency issue with petitioner's son, W.A., attending high school.

order compelling discovery from both petitioner and respondent. I did not, however, enter an order granting petitioner “sanctions” or “damages” against respondent.

On September 15, 2025, petitioner filed a motion to recuse. On September 24, 2025, petitioner’s motion was denied. On September 24, 2025, a revised order granting motions to compel was issued. On or about October 24, 2025, petitioner filed a motion for a stay. On October 29, 2025, petitioner’s motion for a stay was denied. On October 29, 2025, petitioner filed an application for permission to file an emergent appeal with the New Jersey Appellate Division following the denial of the motion for a stay. On October 30, 2025, the Appellate Division denied the application. On November 11, 2025, petitioner applied for emergent relief with the New Jersey Supreme Court. On November 5, 2025, the Supreme Court denied petitioner’s application.² On November 10, 2025, I held the hearing but kept the record open for the parties to obtain transcripts and provide post-hearing submissions. I closed the record on March 16, 2026.

DISCUSSION AND FINDINGS OF FACT

Based upon a review of the testimony and the documentary evidence presented, and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept the testimony set forth below as **FACT**.

In 2018, the petitioner and her two children were residents of Lumberton, New Jersey. In 2018, petitioner was a victim of domestic violence, and the family lost their housing in Lumberton due to financial hardship in August 2018. From August 2018 through September 2018, the family stayed with friends. From October 2018 through March 2019, petitioner received emergency assistance housing in Mount Holly. In November 2018, petitioner notified Lumberton that she had moved to Mount Holly.

² Petitioner failed to comply with this tribunal’s discovery orders dated August 28, 2025, or September 28, 2025. After the Supreme Court’s denial of the application, the petitioner only partially complied.

On or about March 31, 2019, petitioner signed a one-year residential lease with the Salt and Light Company, commencing on April 1, 2019, and ending on March 31, 2019, for a new semi-detached apartment located in Mount Holly. (Ex. N.) Petitioner's semi-detached apartment has two bedrooms, one bathroom, a den, and a kitchen. The lease states:

45. OTHER LEASE PROVISIONS, IF ANY: Tenants have been notified [] Church St. is part of Transitional Housing Services Property can be utilized as transitional housing for 24 months

[Ex. N.]

Petitioner was aware of the twenty-four-month restriction on this property.

In or about August 2019, Lumberton evaluated whether the petitioner's sons were eligible to continue attending the Township school. In September 2019, petitioner requested that her sons continue attending school in Lumberton, sent a copy of the lease she signed on March 31, 2019, for her Church Street apartment, and contended that her family is residing in a "post-transitional home." (Ex. D.) Lumberton decided to allow her sons to continue attending school in Lumberton.

Petitioner attempted to move before 2021, but after the COVID pandemic hit, she requested to remain at the Church Street apartment. In 2023, the petitioner advised Lumberton that she would be moving from this residence; however, she did not move. Petitioner contends that the Church Street apartment is in a drug-infested neighborhood, and her family gets harassed. Petitioner did not provide any documentation or information indicating that she was actively seeking a residence in Lumberton.

On August 2, 2023, petitioner told the Township that she and her family would be changing residences and wanted to ensure her children would continue enrollment in Lumberton. (Ex. I.) In response, Lee Van Fleet (Van Fleet)³, supervisor of special

³ Mr. Van Fleet was trained in the McKinney-Vento Homeless Educational Assistance Improvement Act of 2011.

education and homeless liaison in Lumberton, requested that the petitioner provide verification that her family was residing in transitional housing. (Ex. J.) Petitioner provided only her 2019 lease. However, Van Fleet advised petitioner that the Township needed a 2023 lease for petitioner's apartment on Church Street in Mount Holly, as McKinney-Vento reporting must be conducted annually. (Ex. L.) In response, petitioner told Van Fleet that she hasn't "had a lease from [her] landlord since 2021." (Ex. M.) However, during the hearing, petitioner testified that she had signed lease agreements since 2021.⁴

From mid- to late-August 2023, Van Fleet continued to request verification that petitioner was residing in transitional housing; however, petitioner failed to provide the documentation and repeatedly stated that her landlord was not in the office and/or out of town. (Ex. K; Ex. O; Ex. P.) On or about August 29, 2023, petitioner completed a transitional housing/homeless form, confirming that she and her sons still reside at the apartment on Church Street in Mount Holly. Petitioner and her sons have resided continuously in the apartment on Church Street in Mount Holly since April 1, 2019. Since 2019, the petitioner has paid \$975 in monthly rent for the Church Street apartment and has sometimes received assistance from organizations. Petitioners are responsible for paying all utilities.

Van Fleet reviewed petitioner's situation and found that her family is not homeless, living on the streets, or residing in a vehicle. Van Fleet contacted the petitioner's landlord on two separate occasions, the last being on November 4 or 5, 2025, who confirmed that the petitioner's apartment on Church Street, Mount Holly, is not transitional housing. Van Fleet determined that petitioner has a fixed and adequate residence, and accordingly, petitioner's son, W.A.,⁵ is not entitled to attend middle school in Lumberton.

On February 7, 2025, the County Superintendent concluded that, as of August 2024, the family had established a permanent residence at Church Street, Mount Holly,

⁴ Although this tribunal ordered petitioner to provide leases to respondent in discovery, petitioner failed to comply with the order, only providing two unsigned lease agreements from 2019 and 2021. She testified that she had the leases in her email but did not have time to look.

⁵ Petitioner's eldest son is in high school and no longer a residency issue, as both Lumberton and Mount Holly residents attend the same high school.

and no longer met the criteria for homelessness; as such, the Mount Holly Township School District is the district of residence. (Ex. S.)

DISCUSSION AND CONCLUSIONS OF LAW

Petitioner does not contest that her family has lived in Mount Holly since 2019. She contends that her Church Street, Mount Holly apartment is transitional housing and, therefore, under the McKinney-Vento Homeless Educational Assistance Improvement Act of 2001, 42 U.S.C. § 11431 et seq. (the Act), is considered homeless. The District contends that petitioner's residence is not transitional housing and is fixed, regular, and adequate.

Under the Act, state educational agencies must ensure that each homeless child and youth has equal access to public education on the same terms as other children and youth. The protections offered to homeless students and their parents under the federal McKinney-Vento Act and New Jersey's corresponding state law represent an exception to otherwise applicable residency rules. In contrast to the basic premise that students must change schools when they leave a school district, the laws protecting homeless students generally allow parents the choice to keep their children enrolled in their original school district if the parents relocate to another school district as a result of being homeless. N.J.S.A. 18A:38-1(f); N.J.A.C. 6A:22-3.2(d). The district of residence for children whose parents temporarily move from one school district to another as a result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. N.J.S.A. 18A:7B-12(c).

Under the federal McKinney-Vento Act and New Jersey's corresponding law, the term "homeless" refers to individuals who lack a fixed, regular, and adequate residence. Federal law refers to the lack of an adequate "nighttime" residence. 42 U.S.C. § 11434a (referring to 42 U.S.C. § 11302(a)(1)); N.J.S.A. 18A:7B-12(c); N.J.A.C. 6A:17-1.2.

N.J.A.C. 6A:17-2.2 states that:

- (a) A district board of education shall determine that a child is homeless for purposes of this subchapter when he or she resides in any of the following:
1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:
 - i. Hotels or motels;
 - ii. Congregate shelters, including domestic violence and runaway shelters;
 - iii. **Transitional housing**; and
 - iv. Homes for adolescent mothers;
 2. A public or private place not designated for or ordinarily used as a regular sleeping accommodation, including:
 - i. Cars or other vehicles including mobile homes;
 - ii. Tents or other temporary shelters;
 - iii. Parks;
 - iv. Abandoned buildings;
 - v. Bus or train stations; or
 - vi. Temporary shelters provided to migrant workers and their children on farm sites;
 3. The residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own;
 4. Substandard housing; or
 5. Any temporary location wherein children and youth are awaiting foster care placement.

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

This subchapter and subsection, however, must be read in conjunction with 42 U.S.C. § 11302(a)(1), which defines “homeless” for the McKinney-Vento Act, and N.J.S.A. 18A:7B-12(c), which defines “homeless” for school-funding purposes. Under the former, “homeless” means lacking “a fixed, regular, and adequate nighttime residence.” Under the latter, “homeless” means temporarily lacking “a fixed, regular and adequate residence.” Thus, both definitions have at their core the concept of a fixed, regular, and

adequate place to live with regular sleeping accommodations. This shared concept is not coincidental, as the New Jersey regulatory scheme looks to the federal regulatory scheme for definitions of terms. See N.J.A.C. 6A:17-2.1 (“Nothing in this subchapter shall limit the educational rights of homeless children and youth or school district responsibilities under Subtitle VII-B of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)”.)

Determining whether a student is considered “homeless” and thus eligible for the protections available under the law is fact-sensitive. In M. O’K. and S. O’K., A. O’K. and C. O’K. v. Bd. of Educ. of the Borough of Cresskill and Bd. of Educ. of the Borough of Little Ferry, OAL No. 14830-13, Agency No. 214-9/13 (N.J. Comm’r of Educ. Aug. 12, 2014); aff’d, 2016 WL 4699166 (N.J. Sup. Ct. App. Div. Sept. 8, 2016), the school district argued that the students who lived with their parents in the grandparents’ home were no longer “homeless” as they had lived there for over a year. The family prevailed in their argument that they were still “homeless” in part because five people occupied the bottom floor of the house, which had no shower, sink, or kitchen. This was found to be less than a regular and adequate nighttime residence. This case is clearly distinguishable from the present case, as the family is living in a semi-detached two-bedroom apartment with a kitchen, den, and bathroom.

In State-Operated Sch. Dist. of Camden v. Volk, EDU 4521-16, Initial Decision (Mar. 22, 2017), modified, Comm’r (June 20, 2017), at *11, <http://njlaw.rutgers.edu/collections/oal/>, an administrative law judge (ALJ) wrote that “homelessness is best viewed in a continuum.” In that case, the ALJ thoroughly examined whether a family in a borderline situation was homeless and considered the totality of the circumstances. Among the factors the ALJ considered were intent, fixed location, regular use, and adequacy. The ALJ determined that the family intended to stay in their current living situation because they stopped looking for another place to live; that the location was fixed and that the use was regular because the family had lived in the same place for several years; and that their living situation was adequate because the children had a designated sleeping area and access to a kitchen and bathroom facilities, despite the sharing of rooms and limited space. To the extent that homeless status is identified as one without a “fixed, regular, and adequate” living place, given the very lengthy period of

residence, the adequacy of the living place and the regularity of occupation, the ALJ found that the child did live in a “fixed, regular, and adequate residence” and concluded that she was not homeless. See also L.C. on behalf of her Minor Child B.C. v. Bd of Educ. of the Twp. of Branchburg, Somerset Cnty., 96 N.J.A.R. 2d (EDU)1003 (Commissioner found that “while her living arrangements with her brother [in his apartment] may not be permanent in the sense that she may wish to eventually return to Branchburg, the evidence shows them to have become sufficiently fixed, regular, and adequate so as to preclude a finding of homelessness.”)

Similar to Volk, in J.G., on behalf of minor children, T.G. and C.G. v. Bd. of Educ. of the Twp. of Edison, et al., Commissioner’s Decision No. 125-20, decided June 15, 2020, the G. family was evicted from their home in Milltown and moved in with J.G.’s mother in Edison. The family had use of three of the four bedrooms, the kitchen, the bathrooms, and all common areas and utilities in the Edison home. Although both J.G. and his wife were employed, they did not pay rent or contribute to housing costs, aside from food and a storage facility. While they stated that their intent was to move back to Milltown, there was no documentation of their search for a new home. The Commissioner found that while J.G.’s intentions may be to eventually move back to Milltown, the totality of the facts and circumstances demonstrated that the family was no longer homeless.

Respondent argues that petitioner has not presented any evidence that her apartment is transitional housing, that the family is actively looking for a new residence in Lumberton, or that the family is experiencing financial hardship. Respondent contends the family is not homeless and is not entitled to continue school in Lumberton because petitioner has a fixed, adequate residence in Mount Holly. I agree.

It is undisputed that petitioner and her family have been living in the same apartment in Mount Holly since 2019. The apartment consists of two bedrooms, one bathroom, a den, and a kitchen. Petitioner presented no evidence that her apartment constituted transitional housing. In fact, petitioner’s landlord confirmed that the apartment was not transitional housing. Further, petitioner failed to present any evidence that she was searching for a new residence in Lumberton. The totality of the facts and circumstances demonstrates that the

petitioner, D.A., and her family are no longer homeless and have become permanent residents of Mount Holly.

Based upon the facts adduced at the hearing and the exhibits introduced by the parties, I **CONCLUDE** that the petitioner has not demonstrated that she and her family are homeless. I further **CONCLUDE** that the petitioner and her family are not domiciled in Lumberton Township.

ORDER

I **ORDER** that the petitioner's residency appeal is **DISMISSED** with prejudice.

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** 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.

March 23, 2026
DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency: March 23, 2026

Date Mailed to Parties:

NTM/tc

APPENDIX

Witnesses

For petitioner:

D.A.

For respondent:

Lee Van Fleet

Exhibits

For petitioner:

- P-1 Tenant Lease Verification Form, May 28, 2025
- P-2 Unidentified payment history page, dated October 14, 2025
- P-3 Tenant payment report, dated October 6, 2025
- P-4 Unsigned lease, April 1, 2019
- P-5 Unsigned lease April 1, 2021

For respondent:

- Ex. A Emails, dated November 10, 2018, to November 20, 2018
- Ex. B Emails, dated September 24, 2019
- Ex. C Emails, dated September 24, 2019, to October 15, 2019
- Ex. D Emails, dated October 7, 2019
- Ex. E Emails, dated October 19, 2020
- Ex. F Emails, dated July 28, 2021, to August 20, 2021
- Ex. G Emails, dated August 20, 2021
- Ex. H Emails, dated August 20, 2021, to August 24, 2021
- Ex. I Emails, dated August 2, 2023
- Ex. J Emails, dated August 3, 2023
- Ex. K Emails, dated August 3, 2023, to August 26, 2023

- Ex. L Emails, dated August 28, 2023
- Ex. M Emails, dated August 28, 2023
- Ex. N Emails, dated August 28, 2023, with lease agreement from March 31, 2019
- Ex. O Emails, dated August 29, 2023
- Ex. P Emails, dated August 2, 2023, to August 30, 2023
- Ex. Q Emails, dated October 2019
- Ex. R Emails, dated September 6, 2024
- Ex. S Emails, dated February 7, 2025