302-18

BOARD OF EDUCATION OF THE TOWNSHIP OF MOUNT OLIVE, MORRIS COUNTY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF ENGLEWOOD, BERGEN COUNTY AND ROGER JINKS, EXECUTIVE COUNTY SUPERINTENDENT, MORRIS COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

This matter stems from the petitioning Board's request for a determination from the Executive County Superintendent (ECS) of whether the M family was homeless or domiciled in Mt. Olive for the period from May 2017 forward. The M family lives in a mobile home in the Fla-Net Campground, which is within the Mt. Olive school district; the family pays a monthly fee to the campground and considers their mobile home to be their permanent residence. The ECS determined that the family was not homeless; was resident in Mt. Olive; and that Mt. Olive was fiscally responsible for the M children enrolled in its school district. The petitioning Board subsequently filed the within appeal, contending that the M family is homeless because they live in a mobile home; further, because the family previously lived in Englewood, the Board of Education of Englewood (Englewood) is responsible for tuition for the M children's attendance in Mt. Olive schools.

The ALJ found, *inter alia*, that: the M family moved to the Fla-Net Campground in Mt. Olive in May 2017, after previously living in Englewood from November 2015 through December 2016; the family briefly relocated to Florida for the period from March to April 2017 because of the husband's work, and then relocated to Mt. Olive for the same reason; the M family's mobile home is equipped with a kitchen and each of the two children have their own room; there is no evidence to suggest that the M family is living without hot water or flushing toilets; the family has effectively selected to designate their mobile home as a regular sleeping accommodation; their mobile home is and has been a fixed, regular and adequate place to live for more than a year; and no evidence exists that the M family is looking for another place to live. The ALJ concluded that, while unconventional, the M family has chosen their living situation, and their mobile home in the Fla-Net Campground in Mt. Olive is – as the ESC previously determined – the place where the family has its true, fixed, and permanent home. The ALJ determined that the M family is domiciled in Mt. Olive and is not homeless; accordingly, the ALJ ordered that Mt. Olive – not Englewood – is responsible for the tuition at issue for the M children.

Upon review, the Commissioner concurred with the ALJ – for the reasons expressed within the Initial Decision – that the M family is not homeless and is currently domiciled in Mt. Olive. Accordingly, the recommended decision of the ALJ was adopted as the final decision in this matter, and the petition was dismissed.

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.

October 2, 2018

OAL DKT. NO. EDU 18374-17
AGENCY DKT. NO. 238-10/17

BOARD OF EDUCATION OF THE TOWNSHIP OF MOUNT OLIVE, MORRIS COUNTY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF ENGLEWOOD, BERGEN COUNTY AND ROGER JINKS, EXECUTIVE COUNTY SUPERINTENDENT, MORRIS COUNTY,	:	DECISION
RESPONDENT.	:	

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

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons stated in the Initial Decision – that the family at issue in this matter is not homeless, and is currently domiciled in Mount Olive. Accordingly, the recommended decision of the ALJ is adopted for the reasons expressed therein and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 2, 2018

Date of Mailing: October 3, 2018

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 18374-17

AGENCY DKT. NO. 238-10/17

BOARD OF EDUCATION OF THE TOWNSHIP OF MOUNT OLIVE, MORRIS COUNTY,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF ENGLEWOOD, BERGEN COUNTY; ROGER JINKS, EXECUTIVE COUNTY SUPERINTENDENT, MORRIS COUNTY,

Respondents.

Alison L. Kenny, Esq., for petitioner (Schenck, Price, Smith & King, LLP, attorneys)

Dennis McKeever, Esq., for respondent Board of Education of Englewood (Sciarrillo, Cornell, Merlino, McKeever & Osborne, LLP, attorneys)

Joan Scatton, Deputy Attorney General, for respondent Roger Jinks, Executive County Superintendent, Morris County (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: July 11, 2018 Decided: August 23, 2018

New Jersey is an Equal Opportunity Employer

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

The M. family live in a mobile home in Fla-Net Park Campground within the Mt. Olive School District. The M. family pay Fla-Net a monthly fee and consider their mobile home their permanent home. Is the M. family domiciled in Mt. Olive? Yes. A person's domicile is the place where he has his true, fixed, permanent home, from which he has no intention of moving. D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273 (App. Div. 2004).

PROCEDURAL HISTORY

On July 26, 2017, the superintendent for Mt. Olive asked the superintendent for Morris County, Roger Jinks, to determine whether the M. family was homeless or resident in Mt. Olive. On August 7, 2017, Jinks determined that the M. family was not homeless and was resident in Mt. Olive. Thus, Jinks determined that Mt. Olive was fiscally responsible for the M. children who were enrolled in its school district.

On August 18, 2017, Mt. Olive asked Jinks to reconsider his determination. In a letter dated August 22, 2017, Jinks explained that he reconsidered his determination, but maintained his determination that the M. family was not homeless and was resident in Mt. Olive. Thus, Jinks maintained that Mt. Olive remained fiscally responsible for the M. children who were enrolled in its school district.

On October 5, 2017, Mt. Olive appealed the determination to the Commissioner of Education; on October 30, 2017, Englewood filed a motion to dismiss the petition instead of filing an answer; and on December 1, 2017, the Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On June 1, 2018, Jinks filed a motion for summary decision; on June 21, 2018, Mt. Olive filed a cross-motion for summary decision; and on July 11, 2018, Englewood joined the motion for summary decision that Jinks filed.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to the motions for summary decision, I **FIND** the following as **FACT**:

On May 9, 2017, the M. family moved to Mt. Olive, New Jersey, and the parents, J.M. and M.M., enrolled their children, J.M. and J.M., in the Mt. Olive School District.

The M. family live in a mobile home located at the Fla-Net Park Campground, 10 Flanders-Netcong Road, Flanders, New Jersey, within Mt. Olive. Fla-Net is open all year long, and the M. family pays a monthly fee that includes both water and electricity. Although the campground does not provide hot water or flushing toilets during the winter, no evidence exists that the mobile home in which the M. family lives does not have hot water or flushing toilets all year long. The mobile home also has a kitchen, and each child has his own room.

Before the M. family moved to Mt. Olive, they lived in Englewood, New Jersey. The M. family lived there from November 2015 through December 2016. In January 2017, the M. family enrolled their children in school in Florida, and in March 2017 the M. family withdrew their children from school in Englewood. In fact, the last day the M. children attended school in Englewood was December 14, 2016.

The M. family had lived in Florida for approximately one month, from March 19, 2017, to April 26, 2017, before moving to Fla-Net. M.M. advised that the family moved to Florida and then returned to New Jersey because of her husband’s work, and that the family consider their mobile home as their permanent home because of J.M.’s work.

In short, the M. family have chosen their living situation.

CONCLUSIONS OF LAW

Public schools shall be free to any person over five and under twenty years of age who is domiciled within the school district. N.J.S.A. 18A:38-1(a).

Under the McKinney-Vento Homeless Education Assistance Improvement Act of 2001, 42 U.S.C.A. § 11431 et seq., state educational agencies must ensure that each homeless child and youth has equal access to the same public education as every other child and youth.

"A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." N.J.A.C. 6A:22-3.1(a)(1).

Mt. Olive argues that the M. family is not domiciled in its school district because they live in a mobile home. Mt. Olive bases its argument on the definition of "homeless" contained in N.J.A.C. 6A:17-2.2 because subsection (a)(2)(i) includes "mobile home" in its definition. More specifically, N.J.A.C. 6A:17-2.2(a)(2)(i) states that a district board of education shall determine that a child is homeless when the child resides in "a public or private place not designated for or ordinarily used as a regular sleeping accommodation," including, among other things, "[c]ars or other vehicles including mobile homes." The regulation is reproduced below in full:

> (a) A district board of education shall determine that a child is homeless for purposes of this subchapter when he or she resides in any of the following:
>
> 1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:
>
>   i. Hotels or motels;
>
>   ii. Congregate shelters, including domestic violence and runaway shelters;
>
>   iii. Transitional housing; and

iv. Homes for adolescent mothers;

2. A public or private place not designated for or ordinarily used as a regular sleeping accommodation, including:

   i. Cars or other vehicles including mobile homes;

   ii. Tents or other temporary shelters;

   iii. Parks;

   iv. Abandoned buildings;

   v. Bus or train stations; or

   vi. Temporary shelters provided to migrant workers and their children on farm sites;

3. The residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own;

4. Substandard housing; or

5. Any temporary location wherein children and youth are awaiting foster care placement.

[N.J.A.C. 6A:17-2.2.]

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

This shared concept is not a coincidence, as the New Jersey regulatory scheme, upon which Mt. Olive relies, looks to the federal regulatory scheme for its definition of

terms. See N.J.A.C. 6A:17-2.1 ("Nothing in this subchapter shall limit the educational rights of homeless children and youth or school district responsibilities under Subtitle VII-B of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.")).

Indeed, Jinks argues that the regulation upon which Mt. Olive relies, N.J.A.C. 6A:17-2.2(a)(2), recognizes this concept too, by its own language, when it first states, before it even mentions a mobile home as an example, that the place not be "designated for or ordinarily used as a regular sleeping accommodation." Here, the M. family designated their mobile home for, and ordinarily use it as, a regular sleeping accommodation. Moreover, their mobile home is, and has been, a fixed, regular, and adequate place to live with regular sleeping accommodations for more than a year. Thus, Jinks concludes that the M. family is not homeless.

In response, Mt. Olive argues that the M. family is homeless because the definition of "campground facility" contained in N.J.S.A. 46:8C-10 defines a campground facility as real property designed and used for camping and recreation and may not be used as a permanent dwelling or domicile:

> "Campground facility" means real property designed and used for the purpose of renting or leasing individual portions thereof to occupants who are to have access for the purposes of camping and the recreation associated therein, which may not be used as a permanent dwelling place or domicile for occupants, other than by the owner, and upon which recreational vehicles, as defined in this section, in excess of 400 square feet, and mobile homes and manufactured homes, as those terms are defined in section 3 of the "Manufactured Home Taxation Act," P.L. 1983, c. 400 (C. 54:4-1.4), in excess of 400 square feet, may not enter . . . .
>
> [N.J.S.A. 46:8C-10(a).]

To begin, I note that previous administrative decisions caution that the evaluation of homelessness cannot be based upon simple calculations and must include the reasons for the living conditions—including the resources and intentions of the parents

or custodians. M.O'K. & S.O'K. ex rel. K.O'K. v. Bd. of Educ. of Cresskill, EDU 14830-13, Initial Decision (June 13, 2014), adopted, Comm'r (Aug. 12, 2014), http://njlaw.rutgers.edu/collections/oal/.

More recently, an administrative law judge (ALJ) wrote that "homelessness is best viewed in a continuum." State-Operated Sch. Dist. of Camden v. Volk, EDU 4521-16, Initial Decision (March 22, 2017), modified, Comm'r (June 20, 2017), at *11, http://njlaw.rutgers.edu/collections/oal/. In that case, the ALJ thoroughly examined whether a family in a borderline situation was homeless and considered the totality of the circumstances. Among the factors the ALJ considered were intent, fixed location, regular use, and adequacy. The ALJ determined that the family intended to stay in their current living situation because they stopped looking for another place to live; that the location was fixed and that the use was regular because the family had lived in the same place for several years; and that their living situation was adequate because the children had a designated sleeping area and access to a kitchen and bathroom facilities, despite the sharing of rooms and limited space.

This case is no different. No evidence exists that the M. family is looking for another place to live; the M. family has lived at Fla-Net since May 2017; the children have their own rooms; and the family has access to a kitchen. No evidence exists that they do not have access to a bathroom.

Moreover, the Appellate Division has long held that a person's domicile is "the place where [a person] has his [or her] true, fixed, permanent home and principle establishment, and to which, whenever he [or she] is absent, he [or she] has an intention of returning," and from which he [or she] has no intention of moving. D.L., 366 N.J. Super. at 273 (quoting T.B.W. ex rel. A.W. v. Bd. of Educ. of Belleville, EDU 5959-96 Initial Decision (April 30, 1998), http://njlaw.rutgers.edu/collections/oal/).

In this case, Fla-Net in Mt. Olive is the place where the M. family has its true, fixed, permanent home and principle establishment, and to which, whenever they are absent, they intend to return, and from which they have no intention of moving. This is what the M. family made clear to Jinks, this is what Jinks had found, and this is what I

found too. Therefore, I **CONCLUDE** that the M. family is domiciled in Mt. Olive, not that they are homeless.

Finally, I note that the definition of a campground facility in a statute governing mobile-home parks, N.J.S.A. 46:8C-10, cannot supersede the definition of "homelessness" in a statute governing the education of children. What is before me is whether the M. family is homeless, not whether Fla-Net is a campground. Their living situation may be unconventional, but that does not render the M. family homeless.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Mt. Olive is fiscally responsible for the M. children who are enrolled in its school district, and that Mt. Olive, not Englewood, pay the tuition at issue for the M. children.

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 case. 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 under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 23, 2018
DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: August 23, 2018

Date Mailed to Parties:

dr