

**New Jersey Commissioner of Education**

**Final Decision**

J.B., on behalf of minor children,  
T.G. and C.G.,

Petitioner,

v.

Board of Education of the Township of Edison,  
Middlesex County, and Board of Education of the  
Borough of Milltown, Middlesex County,

Respondents.

**Synopsis**

*Pro se* petitioner challenged the determination of the respondent Board of Education of the Borough of Milltown that his children – who became homeless after they were evicted in May 2018 from their Milltown home – were no longer eligible for a free public education in Milltown because they had moved in with extended family in Edison and must therefore attend school in the Edison School District. Petitioner also challenged Edison’s determination that such action was in the best interest of the children. Both respondents filed motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and summary decision is appropriate to resolve the issues of 1) whether the undisputed facts support the conclusion that T.G. and C.G. are not homeless, but reside in a fixed, regular and adequate home in Edison, and 2) who is obligated to pay the tuition and transportation costs for the children for the 2019-2020 school year; petitioner did not meet his burden to prove that T.G. and C.G. are entitled to be educated in Milltown; although the family was homeless when they were first evicted from their home in Milltown, by the 2019-2020 school year their residence in Edison had become sufficiently fixed, regular, and adequate to deem them domiciled in Edison and no longer homeless; pursuant to *N.J.S.A.* 18A:38-1(d), the children became the financial responsibility of Edison once they had resided there for one year; Edison, however, failed to notify petitioner that the district had determined the children were no longer homeless and continued to treat the family as if they were homeless. The ALJ ordered Edison to reimburse Milltown for the cost of the children’s tuition and transportation in the total amount of \$80,515.60, and further ordered that, in the best interests of T.G. and C.G., they will remain in their Milltown schools for the remainder of the 2019-2020 school year.

Upon review, the Commissioner concurred with the ALJ that the family was not homeless and were residents of Edison during the 2019-2020 school year. In so determining, the Commissioner found, *inter alia*, that while Edison is the district where the children were domiciled during the current school year and is therefore the district responsible for their education, Edison is not responsible for paying any excess cost of sending the children to another district. Accordingly, Edison must pay Milltown the cost of educating the children in that district but is also entitled to seek reimbursement from petitioner for any costs in excess of what Edison would have incurred to educate the children in their own schools. The Initial Decision was adopted as the final decision with this modification.

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.

June 15, 2020

**New Jersey Commissioner of Education**

**Final Decision**

J.G., on behalf of minor children, T.G.  
and C.G.,

Petitioner,

v.

Board of Education of the Township of  
Edison, Middlesex County, and Board  
of Education of the Borough of  
Milltown, Middlesex County,

Respondents.

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

The issues in this matter are whether petitioner's children are eligible to attend school in Milltown, and which party is responsible for the cost of their education. Petitioner and his family resided in Milltown for approximately seven years before being evicted in May 2018, at which time they moved in with petitioner's mother in Edison. The children continued to attend school in Milltown.<sup>1</sup> In June 2019, Milltown sent petitioner a disenrollment notice because petitioner could not provide proof of the children's residence in Milltown. In July 2019,

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<sup>1</sup> In addition to T.G. and C.G., petitioner has a third child. At the time of the eviction, the third child was too young to attend school. She now attends preschool in Edison based on an IEP developed by Edison. Her eligibility to attend school in Edison and Edison's financial responsibility for her education are not at issue in this case.

Edison's Homeless Liaison sent petitioner a letter, stating that Edison – in mutual agreement with Milltown – had determined that Edison was responsible for the children's education and that it would be in their best interests to attend school in Edison. Petitioner appealed, and the children continued to attend school in Milltown for the 2019-2020 school year, during the pendency of this appeal. Milltown sought reimbursement from Edison for the costs of tuition and transportation for the 2019-2020 school year.<sup>2</sup>

The Administrative Law Judge (ALJ) found that petitioner did not meet his burden of proof to show that the children should be educated in Milltown. The ALJ found that the children were homeless when the family was initially evicted from their home in Milltown, but their residence in Edison had become sufficiently fixed, regular, and adequate by the 2019-2020 school year, such that they were no longer homeless and were instead residents of Edison. Moreover, the ALJ concluded that the children became the financial responsibility of Edison once they had resided there for one year, pursuant to *N.J.S.A.* 18A:38-1(d). The ALJ further found that Edison failed to notify petitioner that the district had determined that the children were no longer homeless; in fact, Edison continued to treat the children as if they were homeless by engaging in a "best interests" analysis regarding the children's enrollment and by providing information to petitioner about appeal rights in homelessness matters. Therefore, the ALJ ordered Edison to reimburse Milltown for the costs of the children's tuition and transportation. The ALJ also ordered that, in the best interests of the children, they remain in their Milltown schools for the rest of the 2019-20 school year.

In its exceptions, Edison argues that the ALJ improperly found that it continued to treat the children as if they were homeless, pointing to the petition of appeal, in which petitioner

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<sup>2</sup> Milltown has not made any claim for reimbursement for costs incurred during the 2017-2018 and 2018-2019 school years.

references at least four occasions on which he was told by Edison employees that he was considered a resident of Edison. Edison contends that because the ALJ found that the children were not homeless at the beginning of the 2019-20 school year, Edison is not responsible for the cost of the children's attendance in another district. According to Edison, its only obligation was to provide a free and public education to the children once they became residents in the district, and it fulfilled that obligation by offering to enroll them in Edison schools.

In reply, Milltown argues that Edison is the district financially responsible for the students, and thus Edison should be required to reimburse Milltown for the cost of tuition and transportation. Milltown contends that petitioner should not be responsible for the costs because Edison did not provide any notice to petitioner that he could bear that responsibility.

Upon review, the Commissioner concurs with the ALJ's conclusions that the children were not homeless and were residents of Edison during the 2019-2020 school year. Under the McKinney-Vento Act, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children sharing housing with other persons due to loss of their own housing, economic hardship, or a similar reason." 42 *U.S.C.A.* § 11434a. Similarly, under state law, homeless children are defined as "child[ren] or youth who lack[] a fixed, regular and adequate residence pursuant to *N.J.S.A.* 18A:7B-12 and *N.J.A.C.* 6A:17-2.2," which includes children living in the "residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own." *N.J.A.C.* 6A:17-1.2 and 2.2 (emphasis added).

The Commissioner has previously addressed the fact-specific nature of a homelessness inquiry. In *M. O'K. v. Bd. of Educ. of the Borough of Cresskill, et al*, Commissioner Decision No. 325-14 (August 12, 2014), *aff'd*, A-0828-14T4 (App. Div. Sept. 8,

2016), following the foreclosure of their home in Cresskill, the O’K family occupied the bottom floor of their relatives’ house in Little Ferry, which consisted of one small bedroom and a common area, without a bathroom or kitchen. The parents and two of the children shared the bedroom, while their third child slept in the common area. At the time of the litigation, neither parent was employed, and the family’s sole income consisted of Social Security Disability benefits. During the pendency of the litigation, the O’K family represented that they were actively searching for a house in Cresskill. The Commissioner found, and the Appellate Division affirmed, that the O’K family became homeless due to the foreclosure of their home in Cresskill, and although they had been deemed domiciled in Little Ferry as a result of their residence in the district for over one year, they continued to remain homeless due to their shared living conditions and the parents’ economic hardship.

In contrast, in *State-Operated School District of the City of Camden, Camden County v. Ann C. Volk, Executive County Superintendent, New Jersey Department of Education, and E.H., on behalf of minor child, K.M.* (Commissioner Decision No. 172-17R, June 20, 2017), the family relocated from Voorhees to Camden due to economic hardship that prevented them from continuing their lease. In the Camden residence, the family was able to use the entire residence and was not relegated to a portion of the home that would otherwise be considered inadequate. E.H., the children’s mother, argued that the residence was inadequate because the siblings had to share a room, which the Commissioner found was not uncommon. Furthermore, given E.H.’s ongoing employment at an annual salary of \$65,000, the Commissioner was not persuaded that she was unable to find suitable housing in Voorhees, particularly in light of her testimony that she had stopped looking for apartments. The Commissioner found that the family

was not residing in the Camden residence of out necessity and that it qualified as a “fixed, regular, and adequate” nighttime residence, such that the family was not homeless. *Ibid.*

Homelessness, particularly in cases like the present matter, is best viewed in a continuum. *Ibid.* 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. Petitioner may consider the Edison residence temporary, and his intention may be to eventually move back to Milltown in the future. However, while intention is a factor to be considered in determining homelessness, the totality of the facts and circumstances in this case, as thoroughly detailed in the Initial Decision, demonstrate that the family is no longer homeless.

Petitioner and his wife are both employed, and have been since before they moved to Edison, with an income of \$71,000 per year. In their current residence with petitioner’s mother, they do not pay rent or contribute to housing costs other than food, and the only monthly bill petitioner testified about was for a storage facility. Accordingly, their situation is not typical of the financial hardships usually associated with homelessness. They enjoy the use of the entire home, including three of the four bedrooms,<sup>3</sup> kitchen, bathrooms, all common areas, and utilities. Petitioner argues that the family wishes to move back to Milltown but has been unable to find affordable housing. However, the ALJ found that there was no documentation of petitioner’s search and, in fact, petitioner admitted that he had not submitted a rental application in at least six months. Moreover, petitioner and his wife changed the addresses on their drivers’ licenses to the Edison residence and took advantage of the benefits of that address when they enrolled their youngest child in preschool in Edison in accordance with an Individualized Education Program developed by Edison’s special education department. Based on these facts, the Commissioner is not persuaded that the family was homeless for the 2019-2020 school year.

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<sup>3</sup> The family’s previous residence in Milltown also had three bedrooms.

As petitioner's children were neither homeless nor residents of Milltown, they were not entitled to a free public education in Milltown's schools for the 2019-2020 school year. However, as the children did attend Milltown schools, the Commissioner must determine who bears the financial responsibility for their attendance. Milltown is clearly not the responsible party, as its obligation to provide the children with a free public education ceased when the family became domiciled in Edison in May 2019, in accordance with *N.J.S.A.* 18A:38-1(d) and *N.J.A.C.* 6A:17-2.3. Between Edison and petitioner, each argues that the other is the responsible party. Edison agrees that it became responsible for the children's education for the 2019-2020 school year. However, Edison contends that, having offered the children enrollment in its schools, its obligation to provide them with a free public education was fulfilled. But Edison does not address the fact that, if the children had been enrolled in Edison's schools – as the district itself determined to be in their best interests and repeatedly encouraged petitioner to do – Edison would have incurred a cost for their education. On the other hand, the purpose of the McKinney-Vento Act and the related state law is to ensure that a homeless child is not denied a free public education; it is not meant to enable a child to receive an education in a school district of preference by circumventing residency requirements. *Camden, supra*. In *Camden*, once the Commissioner determined that children were not homeless, but rather resided in Camden, Camden was held responsible for paying tuition to Voorhees, where the children attended school. However, Camden was permitted to recover from the parent the difference between the per pupil cost of education and transportation in Camden and the costs paid to Voorhees for the children. *Ibid*. This case presents a similar scenario. Edison is the district where the children were domiciled for the 2019-20 school year and is therefore the district responsible for their education. However, Edison is not responsible for paying any excess cost of sending the children to another

district. Therefore, while Edison must reimburse Milltown for the cost of educating the children in Milltown, it is also entitled to seek reimbursement from petitioner for any costs that exceed the cost Edison would have incurred to educate the children in its own schools.<sup>4</sup>

Finally, the Commissioner concurs with the ALJ that it is in the children's best interests to remain in Milltown's schools for the rest of the 2019-20 school year.

Accordingly, the Initial Decision of the OAL is adopted as modified herein. Edison is directed to reimburse Milltown in the amount of \$80,515.60 for tuition and transportation costs incurred during the period in which T.G. and C.G. were ineligible to attend school in Milltown. Edison may seek reimbursement from petitioner as outlined herein.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: 6/15/20  
Date of Mailing: 6/17/20

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<sup>4</sup> This amount shall be calculated as the total of: 1) the cost of the children's transportation to Milltown (deducting any cost of transportation Edison may have incurred had the children attended school in Edison); and 2) the difference between the cost of the children's tuition in Milltown for the 2019-2020 school year and Edison's per pupil cost for the 2019-2020 school year. Should Edison's cost of tuition be higher than Milltown's, the difference shall be credited towards the cost of transportation from Edison to Milltown).

<sup>5</sup> This decision may be appealed to the Appellate Division of the Superior Court 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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 11768-19

AGENCY DKT. NO. 215-8/19

**J.G. ON BEHALF OF  
MINOR CHILDREN, T.G. AND C.G.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP  
OF EDISON, MIDDLESEX COUNTY, AND  
BOARD OF EDUCATION OF THE BOROUGH  
OF MILLTOWN, MIDDLESEX COUNTY,**

Respondents.

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**J.G.**, on behalf of minor children, **T.G.** and **C.G.**, petitioner, pro se

**Ramon E. Rivera**, Esq., for respondent Board of Education of the Township of Edison  
(Scarinci & Hollenbeck, LLC, attorneys)

**Isabel Machado**, Esq., for respondent Board of Education of the Borough of Milltown  
(Machado Law Group, attorneys)

Record Closed: February 13, 2020

Decided: March 17, 2020

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

### **STATEMENT OF THE CASE**

Petitioner J.G., on behalf of minor children, T.G. and C.G., challenges: (1) the decision of respondent, Board of Education of the Borough of Milltown, Middlesex County (Milltown), that his children, who became homeless while living in the Borough of Milltown school district (Milltown District), are no longer domiciled in Milltown District and, therefore, must be transferred to the Township of Edison school district (Edison District), where they are now living; and (2) the decision of respondent, Board of Education of the Township of Edison, Middlesex County (Edison), that the best interests of T.G. and C.G. are served by attending the Edison District schools. Respondent Milltown filed a cross-petition by way of answer seeking a finding that respondent Edison is responsible to provide a free and appropriate public education (FAPE) to minor children T.G. and C.G. and/or must reimburse Milltown for all tuition and transportation costs.

Respondent/cross-petitioner Milltown now seeks summary decision (1) dismissing petitioner J.G.'s claim that his children are entitled to re-enroll in the Milltown District schools for the 2019-2020 school year in accordance with the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431 to 11435 (McKinney-Vento Act), and the New Jersey regulations governing the education of homeless children, N.J.A.C. 6A:17-2.1 to 2.8; and (2) granting the claim of Milltown against respondent Edison for the costs of education and transportation for T.G. and C.G. for the 2019-2020 school year.

### **PROCEDURAL HISTORY**

On August 21, 2019, petitioner filed with the Office of Controversies and Disputes of the New Jersey Department of Education (Department) a pro se petition of appeal and a request to re-enroll his minor children T.G. and C.G. in the Milltown District schools on an emergent basis. On August 26, 2019, the emergent matter was transmitted to the Office of Administrative Law (OAL) and scheduled for oral argument, which was held on August 30, 2019. During oral argument, petitioner introduced an email dated August 28, 2019, from

Kyle M. Anderson (Anderson), Interim Executive County Superintendent for Middlesex County, stating that he had advised Milltown to re-enroll T.G. and C.G. in the Milltown District schools. Given that Anderson had already provided J.G. the relief he was seeking on an emergent basis, J.G. withdrew his emergent petition.

On October 17, 2019, a telephone prehearing conference was held to schedule further proceedings, including the hearing on February 5, 2020. A prehearing order was issued on October 24, 2019. Both respondents failed to appear for a telephone prehearing conference scheduled for December 3, 2019; a preemptory prehearing conference was held on December 16, 2019, during which the parties were directed to submit dispositive motions, if any, on or before January 6, 2020.

On January 6, 2020, respondent/cross-petitioner Milltown filed a motion for summary decision. By letter dated January 6, 2020, I notified the parties of the schedule for response briefs and that the hearing scheduled for February 5, 2020, was adjourned and rescheduled to allow time to address this motion. With Milltown's consent, I agreed to the joint request of petitioner and respondent Edison for a one-week extension for response briefs. Petitioner and respondent Edison submitted response briefs on February 3, 2020; respondent/cross-petitioner Milltown replied on February 13, 2020, and the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

Most of the salient facts in this case are not in dispute. Between May 2011, and May 4, 2018, J.G. and his wife, A.G., and their three children (the G. family) lived in rental housing within the Milltown District. J.G. and/or A.G. have never owned a residence in Milltown. At the beginning of the 2017-2018 school year, two of the children were in school in Milltown, T.G. in seventh grade and C.G. in second grade. The third child, also J.G. (J.G., Jr.), had yet to begin school.

Since September 2015, J.G. has been continuously employed as a teacher at a school in East Brunswick, New Jersey.<sup>6</sup> He currently is also employed as head softball coach by Edison, and as a summer camp counselor at a school in Morristown, New Jersey. Since September 2013, A.G. has been continuously employed as a teacher at a school in New Brunswick, New Jersey.

On May 4, 2018, the G. family was evicted from the three-bedroom house they were renting in Milltown. (The family had previously been evicted from another rental unit in Milltown.) They moved in with J.G.'s mother (J.G., Sr.) in Edison and have resided there since. J.G., Sr. owns a four bedroom, one and one-half bathroom house. The G. family occupies three of the four bedrooms and has unrestricted access to the entire house, including the bathrooms, kitchen, and common areas.<sup>7</sup> J.G., Sr., and J.G. purchased a bed for C.G. to use in what had been J.G., Sr.'s office. J.G. does not pay rent to J.G., Sr. nor does he contribute to any of the household expenses other than food. The only monthly bill he described is for a storage facility.

Based on J.G.'s response to interrogatories, Milltown contends that J.G. has not made efforts to secure alternative housing, having not submitted an application for rental housing for at least six months. Br. of Resp't Milltown in Support of Motion for Summary Decision (January 3, 2020), at 11, citing Ex. 2. J.G. responds that he has been unable to find a residence in Milltown with at least three bedrooms in his price range and he is inhibited in his search by his financial record. Response Br. of Pet'r, at 3-4. He also stated that the family has now "turned our attention to Spotswood," where they are searching for rentals "door to door." Id. at 3, 4.

Both J.G. and A.G. changed their New Jersey drivers' licenses to show their address in Edison. Between July 1 and August 9, 2019, minor child C.G. attended the Edison Township Recreation Department summer program. On July 24, 2019, J.G. and A.G.

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<sup>6</sup> In his response to interrogatories, J.G. refused to provide any information regarding the income earned by J.G. and/or A.G. Br. of Resp't Milltown in Support of Motion for Summary Decision (January 3, 2020), Ex. 2. In his response brief, however, J.G. stated that the G. family income for 2019 was approximately \$71,000. Ltr. Br. of Pet'r in Opposition to Motion for Summary Decision (February 3, 2020), at 2. J.G. did not, however, provide documentary proof of the family's income or expenses.

<sup>7</sup> In his brief, J.G. describes conditions in his mother's home that are not "adequate," such as that C.G.'s bedroom is also used as an office and he and A.G. must continuously pick up after their youngest child. Response Br. of Pet'r, at 3, 4.

enrolled their youngest child in preschool in Edison. Br. of Resp't Milltown, Ex. 4. J.G., Jr. has an Individualized Education Program (IEP) that was developed for her by the Edison District special education department. See, Response Br. of Pet'r, at 6. The G. family sought the special education services of Edison and raised no challenge to the IEP which places J.G., Jr. in the Edison District schools.<sup>8</sup>

T.G. and C.G. attended school in the Milltown District during the 2018-2019 school year. In February 2019, in preparation for enrollment in Spotswood High School, Spotswood Borough Public School District (SHS),<sup>9</sup> Middlesex County, for the 2019-2020 school year, T.G. met with her guidance counselor to select classes. The G. family intended that in the 2019-2020 school year, T.G. would attend SHS and C.G. would attend Joyce Kilmer Elementary School (JK Elementary) in Milltown.

On March 7, 2019, Milltown District asked petitioner for proof of residency. Given that the G. family was living with J.G., Sr. in Edison, J.G. could not provide proof of residency in Milltown. On June 24, 2019, Milltown District sent a Disenrollment Notice to J.G. and A.G. stating that because they had not provided proof of residency in Milltown District, T.G. and C.G. were no longer enrolled in the Milltown District schools, but could be re-enrolled with proof of residency. A description of the documents required to prove residency in Milltown District was included in this notice. Br. of Resp't Milltown, Ex. 5.

By letter dated July 31, 2019, Richard Benedict (Benedict), Edison Manager of Enrollment and Data Systems and Homeless Liaison, notified J.G. and A.G. that Edison in "mutual agreement with Milltown, [had] determined that [T.G. and C.G. were] the educational responsibility of Edison" and it would be in the best interests of the G. children to attend the Edison schools. Ibid. The factors considered by the two districts included that neither T.G. nor C.G. had previously attended the school in which their parents requested they be enrolled; transportation from Edison to both SHS and JK Elementary would require the G. children to be

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<sup>8</sup> J.G. appears to argue that J.G., Jr.'s enrollment in Edison should be disregarded as she did not "have a school of origin" at the time of the eviction and Milltown does not have a program such as that which J.G., Jr. is attending in Edison. Id. at 6.

<sup>9</sup> SHS is the receiving school for high school students from Milltown. The Milltown District serves only grades K-8.

on buses close to one hour each day; the G. family had resided in Edison for over one year and stability would be found in enrolling the children in the same district in which they are living; and the parents had already enrolled their youngest child in the Edison District, meaning that they were requesting that each of their children be enrolled in a different school district, each with different schedules, calendars, and policies.

In his due process petition, J.G. stated that he began the process of appealing Benedict's decision with telephone calls to Interim Executive County Superintendent Anderson. Pro Se Petition of Appeal (August 21, 2019), ¶ 23. J.G. spoke with Anderson by telephone on August 20, 2019, and Anderson stated that he agreed with Edison's decision but that Milltown should not have disenrolled T.G. and C.G. Id., ¶ 28. As described in the procedural history, above, by emails dated August 28 and 30, 2019, Anderson directed Milltown to permit J.G. to register his children in Milltown District schools, stating that failure to do so would be a violation of the McKinney-Vento Act. Br. of Pet'r, Exs. A and B.

T.G. and C.G. attended the Milltown District schools during the 2017-2018 school year and the 2018-2019 school year. Milltown makes no demand for tuition and/or transportation costs for the 2017-2018 school year or for the 2018-2019 school year.

Minor child T.G. has attended SHS at cost to Milltown since the beginning of the 2019-2020 school year. The per pupil cost for her tuition is \$14,940.00/school year or \$83.00/day. The cost of transportation for T.G. is \$145.60/day. Minor child C.G. has attended JK Elementary at cost to Milltown since the beginning of the 2019-2020 school year. The per pupil cost for his tuition is \$11,662.00/school year or \$64.79/day. The cost of transportation for C.G. is \$153.92/day.

The preceding is not in dispute; accordingly, I **FIND** the preceding as **FACTS**.

## **POSITIONS OF THE PARTIES**

In its motion for summary decision, respondent/cross-petitioner Milltown first takes the position that the G. family is not homeless under federal and state law and is domiciled in Edison, where the family has resided for over one year. Second, even if the G. family was deemed homeless during the 2019-2020 school year, the best interests of the children are served by having them attend school in Edison, not Milltown (and Spotswood). Finally, regardless of the family's status, it is Edison, not Milltown, which is financially responsible for the education of the G. children pursuant to N.J.S.A. 18A:38-1(d). Accordingly, Edison must reimburse Milltown for tuition and transportation costs for T.G. and C.G. as of and following May 4, 2019.

Respondent Edison joins respondent/cross-petitioner Milltown in arguing that petitioner's children are not homeless and were not homeless for the entirety of the 2019-2020 school year. Edison, however, takes the position that it is petitioner who must reimburse Milltown for all tuition and transportation costs incurred by Milltown with respect to T.G. and C.G. for the 2019-2020 school year. Edison disclaims any responsibility for the tuition and transportation costs incurred by Milltown with respect to T.G. and C.G. as of and after May 4, 2019.

Petitioner does not dispute the above-described facts, but does draw different conclusions with respect to his family's situation, both with respect to their current housing and their financial position.<sup>10</sup> He then appears to make the following argument in support of his opposition to Milltown's motion for summary decision. First, his family has not moved since Milltown initially confirmed that they were homeless, in May 2018. Therefore, the G. family is still protected by the McKinney Vento Act, which provides for children who have become homeless to remain in the school district in which they were enrolled at the time of homelessness. However, J.G. now agrees that as of May 2019, his family became domiciled in Edison and financial responsibility for the education of his children shifted to Edison. In fact,

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<sup>10</sup> For example, J.G. admits that he and his wife are employed, but he adds that they are at-will employees on annual contracts and that their financial means is inadequate to find alternate housing. While Milltown describes J.G.'s failure to look for housing for at least the past six months, J.G. states that he has "made every effort" to search the rental market but admits that he cannot document these efforts. Finally, while Milltown describes the family's current housing as "fixed and adequate," J.G. describes it as uncomfortable, inadequate, and subject to the pending decision of J.G.'s mother to move.

J.G. contends that for this reason, Edison “engaged Milltown to ‘agree’ that it was in the best interests of [T.G. and C.G.] to be enrolled in Edison.” Response Br. of Pet’r, at 5. Because the family is still “homeless,” petitioner contends that it remains in the best interests of his children for Edison to finance their continued enrollment in the Milltown schools.

### **LEGAL ANALYSIS AND CONCLUSIONS**

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. The Guardian Life Insurance Co. of America, 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.” Brill guides us thusly:

[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 536-3.7.]

What began in August 2019 as a dispute over the eligibility of T.G. and C.G. to attend the Milltown schools is now also a dispute over whether Edison is obligated to keep the children in the Milltown schools. Either way, the burden of proof rests with petitioner to show that his children should be educated in Milltown, where the family lived in May 2018, as opposed to in



Edison, where the family has been deemed domiciled since May 2019. As stated above, petitioner concedes that as of May 2019, his family has been deemed domiciled in Edison and, therefore, Edison is financially responsible for his children's education. Response Br. of Pet'r, at 7. Milltown contends that in making this argument, petitioner has essentially admitted that "he and his family have established residence . . . in Edison [and] there is no need for further analysis in this matter[.]" Reply Br. of Resp't Milltown (February 10, 2020), at 3. The agreement of the parties that as of May 4, 2019, the G. family was deemed domiciled in Edison does not resolve the issue of whether the family resides permanently in Edison. However, I **CONCLUDE** that summary decision is appropriate to resolve the following issues:

1. Whether the undisputed facts support the conclusion that T.G. and C.G. are not homeless but reside in a "fixed, regular and adequate" home in Edison.
2. Whether Milltown, Edison, or J.G. is obligated to pay the tuition and transportation costs for T.G. and C.G. for the 2019-2020 school year.

New Jersey regulations provide that children are homeless when they stay in the home of relatives or friends temporarily because the family lacks a regular or permanent residence of its own. N.J.A.C. 6A:17-2.3(a)(3). Similarly, the McKinney-Vento Act describes homeless children as those "who lack a fixed, regular, and adequate nighttime residence . . ." including, "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. 11434a(2)(A), (B)(i). "Thus, an evaluation of 'homelessness' cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality. The reasons for the children's homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant." M.O'K. and S.O'K. o/b/o K.O'K., A.O'K., and C.O'K. v. Bd. of Educ. of Borough of Cresskill, Bergen Cty. and Bd. of Educ. of Little Ferry, Bergen Cty., OAL Docket No. EDU 14830-13, Comm'r (Final Decision, Aug 12, 2014).

Here, it is clear that in May 2018, when the G. family was evicted from their Milltown home and moved into the Edison home of J.G., Sr. out of necessity, the children were homeless as defined by the regulations. See, N.J.A.C. 6A:17-2.2(a)(3). Accordingly, the

district of residence of the children was Milltown, the district in which their parents resided prior to becoming homeless. N.J.S.A. 18A:7B-12(c). This designation did not change until the G. family was “deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1.d.” N.J.A.C. 6A:17-2.3(c). The G. family was deemed domiciled in Edison when their “all-year-round dwelling place [was] within the [Edison District] for one year or longer.” N.J.S.A. 18A:38-1(d). There is no dispute that the G. family has lived continuously with petitioner’s mother in Edison since May 2018, for close to two years.

Further, while the Commissioner has endorsed the conclusion that McKinney-Vento Act makes it clear that there is no maximum duration of homelessness, M.O’K. and S. O’K., Final Decision, at 5 citing L.R. v. Steelton-Highspire Sch. Dist. 54 IDELR 155 (M.D.Pa. 2010), petitioner errs in concluding that the McKinney-Vento Act permits his family to remain in their original school district indefinitely, as long as they do not move from his mother’s home. M.O’K. and S. O’K., Initial Decision, at \*13-14 citing L.C. v. Bd. of Educ. of the Twp. of Branchburg, 96 N.J.A.R 2d (EDU) 1002, 1006 (“[T]he living arrangement of a family that becomes homeless and then stays with relatives may become ‘sufficiently fixed, regular, and adequate so as to preclude a finding of homelessness’ after a period of time.”). While J.G. (and J.G., Sr.) may have originally intended that the family’s move to Edison would be temporary while they got a handle on their finances and were able to move back to Milltown, J.G., Sr.’s home is now, almost two years later, a “sufficiently fixed, regular and adequate” residence. The G. family occupies three bedrooms, which is the same number of bedrooms they had in their previous rental, and have access to the entire house with all the essentials, including heat, electricity, bathrooms and kitchen facilities. Being obligated to clean up after your children cannot be termed a hardship. Though J.G. states that his mother is anxious to sell the house and move out, she appears to have been accommodating to her son and his family, helping with the purchase of a bed for C.G. and removing soil-stained carpet from her office when C.G. moved in.

J.G. and A.G. are both employed and have been since before they moved to Edison; they have no current housing expenses and therefore, presumably would have been able to begin to address the financial situation that led to their eviction.<sup>11</sup> Although J.G. claims they have been

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<sup>11</sup> J.G. did not provide documentary or other reliable evidence of the basis for the eviction.

unable to find affordable housing, there is no reliable evidence that they are looking to move, and good evidence (J.G.'s brief) that they have abandoned the search for housing in Milltown. The desire to move is not enough to "diminish that their current living arrangement is regular and fixed so as to be deemed permanent." M.O'K. and S. O'K., Initial Decision, at \*19.<sup>12</sup> Significantly, the family took advantage of the benefits of their Edison residence for their youngest child while simultaneously denying such residency for the purpose of maintaining their other children's eligibility to attend school outside the Edison District.<sup>13</sup> I **CONCLUDE** that T.G. and C.G. are not homeless, but live in Edison.

Even if the G. family was still homeless, New Jersey "school law imposes a limit upon how long a former district of domicile is financially responsible for the education of homeless children." A.M. and M.S. on behalf of minor children A.S. and L.S. v. Bd. of Educ. of the Town of Dover, OAL Docket No. EDU 9780-10, Comm'r (Final Decision, June 14, 2011). The regulations specifically provide that a free public education must be made available to persons between the ages of five and twenty who are "domiciled within the school district," which includes "any person who has had or shall have his all-year-round dwelling place within the district for one year or longer[.]" N.J.S.A. 18A:38-1(d). Edison became financially responsible for the education of T.G. and C.G. (and J.G., Jr.) as of May 4, 2019. I **CONCLUDE** that the free and appropriate public education of T.G. and C.G. became the financial responsibility of Edison in May 2019, after they had resided in Edison for one year.

Petitioner contends that the McKinney-Vento Act requires Edison, the district of residence, to continue to pay tuition and transportation costs to send T.G. and C.G. to SHS and JK Elementary in the current school year because it is in the children's best interests, and such determination of "best interest" relies primarily on the wishes of the parents and the children. Response Br. of Pet'r, at 4-5. If T.G. and C.G. were still homeless, this "reassignment of financial responsibility for the children's education" to Edison would not have also required T.G. and C.G. to leave the Milltown schools. A.M. and M.S., at 3. The McKinney-Vento Act and the relevant New Jersey regulations provide that a local school

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<sup>12</sup> It is worth noting that if the G. family moves to Spotswood, both C.G. and J.G., Jr. will have to change schools.

<sup>13</sup> The family also took advantage of their residency in Edison when sending C.G. to the Edison summer camp.

district shall determine a homeless child's district of enrollment in light of the child's best interest. 42 U.S.C. § 11432(g)(3)(E); N.J.A.C. 6A:17-2.5.

Edison contends that T.G. and C.G. are not homeless and, therefore, J.G. is responsible "to reimburse the [Milltown District] for all tuition and transportation costs incurred by Milltown for the education of C.G. and T.G. for the 2019-2020 school year." Ltr. Br. of Resp't Edison in Partial Support of Motion for Summary Decision (February 3, 2020), at 2. This position, however, is not consistent with the letter Benedict, the Edison Homeless Liaison, sent to J.G. and A.G. on July 31, 2019. In this letter, Benedict notes that the family has resided in Edison for one year and, therefore, Edison is responsible for the children's education. But, he fails to state that Edison has determined that the children are no longer homeless. Benedict instead provides a "best interests" analysis which by its terms assumes that the children are still homeless. See, Br. of Resp't Milltown, Ex. 5. Further, Benedict describes the parents' right to appeal the decision that the children must be enrolled in Edison and includes a copy of the Edison Policy which states that if a parent disputes the enrollment decision, the child(ren) shall be immediately enrolled in the district of the parent's choice pending final resolution of the dispute. Ibid. Nowhere in this letter are the parents put on notice that either district has taken the position that the children are no longer homeless, nor given notice that should Edison's decision be upheld, the parents will be responsible to pay the tuition and transportation costs. (In fact, the policy document provided to J.C. by Benedict refers to a regulation that apportions financial responsibility for homeless children between the State and local district.)

Though T.G. and C.G. were not homeless at the beginning of the 2019-2020 school year, their district of residence, Edison, continued to treat them as if they were homeless. Therefore, I **CONCLUDE** that Edison must reimburse Milltown for the costs of tuition and transportation incurred for T.G. and C.G. during the 2019-2020 school year.

It appears that the emails dated August 28 and 30, 2019, from Superintendent Anderson may have caused petitioner some confusion. J.G. describes Anderson's emails as directions to Milltown to permit J.G. to register his children in the Milltown District schools, as to do otherwise would be a violation of the McKinney-Vento Act. See, Pro se Pet. of Appeal, ¶ 28. Although

Anderson quoted N.J.A.C. 6A:17-2.3, in his first email, the action he took was authorized by the following regulation:

The chief school administrator of the school district of residence or designee shall determine the child's school district enrollment immediately after consultation with the parent. The school district of residence shall adhere to the following procedures:

1. Enrollment decisions shall be made immediately upon notification of the need for enrollment. When the decision is made, the child shall be enrolled immediately. If a dispute arises regarding enrollment of a homeless child, the homeless child shall be immediately enrolled in the school district in which enrollment is sought by the parent or guardian, pending resolution of the dispute pursuant to N.J.A.C. 6A:17-2.7.

[N.J.A.C. 6A:17-2.5 (emphasis added).]

When Anderson spoke with J.G. on August 20, 2019, Anderson made clear that he agreed with Edison that the children had been residing in Edison for more than one year and were the educational responsibility of Edison, and that the best interests of the children would be served by enrolling in the Edison schools. See, Pro se Pet. of Appeal, ¶ 28; Br. of Resp't Milltown, Ex. 5. Further, Anderson stated that as long as J.G.'s appeal of that decision was pending, the children were to stay in the Milltown schools. Ibid. The "violation of McKinney-Vento" that Anderson referred to when speaking with J.G. was not the failure to keep the children in the Milltown schools indefinitely, but the failure to keep them in the Milltown schools during the pendency of J.G.'s appeal. T.G. and C.G. were therefore permitted to remain in the Milltown schools.

As of the date of this decision, J.G.'s appeal will no longer be pending, but the appropriate placement for T.G. and C.G. for the remainder of the current school year is not as clear. The Commissioner has stated that the regulations "disfavor disruptions in the continuity of a child's educational program." A.M. and M.S., at 4. At the beginning of the 2019-2020 school year, T.G. and C.G. both enrolled in new schools, SHS (the receiving school for Milltown students) and JK Elementary, respectively. In September 2019, the educational and social transition to the Edison schools would not have been much different for either child than to their

new schools in the Milltown District, a fact brought to J.G.'s attention during the short-lived emergent proceedings in this matter. Making that transition now however, with just four months left in the school year, would be the type of disruption against which the Commissioner warned. Accordingly, I **CONCLUDE** that T.G. and C.G. shall remain at SHS and JK Elementary, respectively, through the conclusion of the 2019-2020 school year and, as of the end of the 2019-2020 school year, T.G. and C.G. will no longer be entitled to enroll in the Milltown schools (or for T.G., in SHS) without the payment by J.G. of tuition and transportation costs.<sup>14</sup>

### **ORDER**

For the reasons set forth above, it is hereby **ORDERED** that the motion of respondent/cross-petitioner Board of Education of the Borough of Milltown for summary decision in its favor is **GRANTED** and the pro se appeal of petitioner J.G. is **DISMISSED**.

It is hereby **ORDERED** that the motion of respondent/cross-petitioner Board of Education of the Borough of Milltown for summary decision on its cross-petition for the costs of tuition and transportation for minor children T.G. and C.G. for the 2019-2020 school year is **GRANTED** against respondent Board of Education of the Township of Edison. Respondent Board of Education of the Township of Edison is hereby **ORDERED** to reimburse respondent/cross-petitioner Board of Education of the Borough of Milltown a total of \$80,515.60, for the costs of tuition and transportation for minor children T.G. and C.G. for the 2019-2020 school year.

Finally, it is hereby **ORDERED** that minor children T.G. and C.G. shall remain in attendance at Spotswood High School, Spotswood, New Jersey, and Joyce Kilmer Elementary School, Milltown, New Jersey, respectively, through the conclusion of the 2019-2020 school year, not including any extended school year program during the summer of 2020. At the conclusion of the 2019-2020 school year, petitioner J.G. shall be responsible to pay all future tuition and transportation costs for T.G. and/or C.G. should they attend schools outside the Edison District.

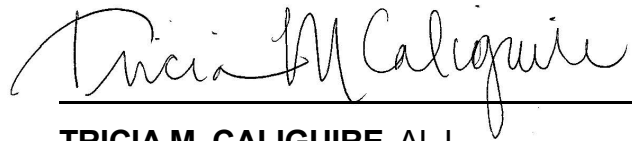
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<sup>14</sup> To be clear, any action by the G. family to relocate to a district other than Edison by the beginning of the 2020-2021 school year will have no impact on this decision and should the family so move, all three minor children will be eligible for a FAPE only in the district in which their new home is located.

This Initial 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. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision in accordance with N.J.S.A. 52:14B-10.

March 17, 2020

DATE

  
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**TRICIA M. CALIGUIRE, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

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TMC/nd

**APPENDIX**

**LIST OF EXHIBITS**

**For Petitioner:**

- P-1 Letter brief supporting petitioner's application and opposing the motion for summary decision

**For Respondent Board of Education, Township of Edison:**

- RE-1 Letter brief supporting Edison's position and opposing the application

**For Respondent Board of Education, Borough of Milltown**

- RM-1 Letter brief supporting Milltown's positions and opposing the application