

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY
900 Special Populations**

**901 Dispute Resolution Process for Educational Placement for Children and Youth
Experiencing Homelessness**

1.0 Purpose

This regulation outlines the resolution process for disputes related to the educational placement of children and youth experiencing homelessness.

23 DE Reg. 33 (07/01/19)

27 DE Reg. 423 (12/01/23)

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Charter school" means a public school that is operated under a charter granted by, or transferred to, the Department or other authorizing body pursuant to 14 Del.C. Ch. 5.

"Department" means the Delaware Department of Education.

"Guardian" means a non-parent legally appointed by the court with the powers, rights, and duties which are necessary to protect, manage, and care for a child.

"Homeless children and youths" as defined by the provisions of the 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; or are living in emergency or transitional shelters; or are abandoned in hospitals;
- Children and youths who have a primary nighttime residence that is a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and Migratory children (as such term is defined in 20 U.S.C. §6399) who qualify as homeless because the children are living in circumstances described above.

"Inter-Local Education Agency" or **"inter-LEA"** means between local education agencies.

"LEA homeless liaison" means the local educational agency's liaison for homeless children and youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

"Local Education Agency" or **"LEA"** means a reorganized traditional school district, vocational-technical school district, or charter school, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary schools.

"Relative caregiver" means an adult who by blood, marriage or adoption is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the child.

"School district" means a reorganized school district or vocational-technical school district or both.

"School of origin" means the specific public school building that the student attended when permanently housed, the public school in which the student was last enrolled before becoming homeless or the next receiving public school the student would attend for all feeder schools.

"School of residence" means the specific public school building that the student would attend based on where the student is currently residing.

"Secretary" means the Delaware Secretary of Education.

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"State coordinator" means the Delaware coordinator for the education of homeless children and youths designated under 42 U.S.C. §11432(d)(3).

"Unaccompanied youth" means a homeless child or youth not in the physical custody of a parent or guardian.

12 DE Reg. 444 (10/01/08)

23 DE Reg. 33 (07/01/19)

27 DE Reg. 423 (12/01/23)

3.0 Compliance with Federal Law

School districts and charter schools shall comply with the provisions of the federal McKinney-Vento Homeless Assistance Act as reauthorized by the Every Student Succeeds Act (ESSA), 42 U.S.C. §§11431 - 11435, and any regulations issued pursuant thereto.

23 DE Reg. 33 (07/01/19)

27 DE Reg. 423 (12/01/23)

4.0 Procedures for the Resolution of Disputes Concerning the Educational Placement of Homeless Children and Youths

- 4.1 The school shall provide the parents, guardians, relative caregivers or unaccompanied youth with a written notice of the school's decision regarding school selection or enrollment. The notice shall include:
 - 4.1.1 A written explanation of the school's decision regarding school selection or enrollment;
 - 4.1.2 Contact information for the LEA homeless liaisons and state coordinator, with a brief description of their roles;
 - 4.1.3 A form that parents, guardians, relative caregivers or unaccompanied youth can complete and turn in to the school to initiate the dispute resolution process;
 - 4.1.4 Instructions as to how to dispute the school's decision at the school district or charter school level;
 - 4.1.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;
 - 4.1.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;
 - 4.1.7 Notice of the right to appeal to the State if the school district or charter school level resolution is not satisfactory; and
 - 4.1.8 Timelines for resolving school district or charter school and State-level appeals.
- 4.2 If a dispute arises over school selection or enrollment, the child or youth shall be immediately enrolled in either the school of origin or the school of residence in which enrollment is sought by the parents, guardians, relative caregivers or unaccompanied youth, pending final resolution of the dispute, including all available appeals.
- 4.3 School District and Charter School Level Dispute Resolution Process
 - 4.3.1 School districts and charter schools shall develop a dispute resolution process at the school district or charter school level. The dispute resolution process shall be as informal and accessible as possible, but shall allow for impartial and complete review. Parents, guardians, relative caregivers or unaccompanied youth shall be able to initiate the dispute resolution process directly at the school they choose, the school district or charter school, or the LEA homeless liaison's office.
 - 4.3.2 Within 10 business days of the initiation of the school district and charter school level dispute resolution process, the school district or charter school shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the school district or charter school level resolution is not satisfactory.
- 4.4 Inter-LEA Resolution Process
 - 4.4.1 When inter-LEA issues arise, including transportation, representatives from all involved school districts and charter schools, the state coordinator, or their designee, and the parents, guardians, relative caregivers or unaccompanied youth shall meet within 10 business days of the initiation of the dispute process to attempt to resolve the dispute.
 - 4.4.2 The state coordinator's role is to facilitate the meeting.
 - 4.4.3 If the parties are unable to resolve the inter-LEA dispute, it shall be referred to the Secretary or designee within 10 business days of the meeting. Subsection 4.5 shall govern the Secretary's or designee's determination. The Secretary or designee shall consider the entire record of the dispute, including any

written statements submitted and shall make a determination based on the child's or youth's best interest, as defined in 42 U.S.C. §11432(g)(3).

4.4.3.1 Notwithstanding subsection 4.4.3, where the inter-LEA dispute is limited solely to the issue of the apportionment of responsibility and costs for providing the child transportation to and from the school of origin, there shall be no referral to the Secretary.

4.4.3.2 Pursuant to 42 USC 11432 (g)(1)(J)(iii)(II), if the school districts and charter schools are unable to agree upon such a method of appropriation, the responsibility for the costs for transportation shall be shared equally.

4.5 State Level Dispute Resolution Process

4.5.1 The State-level dispute resolution process is available for appeals from school district or charter school level decisions and inter-LEA disputes. Appeals may be filed by parents, guardians, relative caregivers or unaccompanied youth, school districts or charter schools. Appeals filed by a local school board within a school district shall not be accepted.

4.5.2 To initiate the State-level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than 10 business days after receiving written notification of the school district or charter school level or inter-LEA decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. Where the appeal is being initiated by a school district or charter school, the superintendent of the school district or charter school head of school must sign the notice of appeal.

4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail or electronically to all other parties to the proceeding at the time it is sent to the Secretary. A copy of any other paper or document filed with the Secretary or designee shall, at the time of filing, also be provided to all other parties to the proceeding.

4.5.4 Upon receipt of a notice of appeal, the Secretary or designee, shall within 5 business days decide whether to hear the appeal or assign it to an independent and impartial review official and shall so advise the parties.

4.5.5 The school district or charter school shall file a certified record of the school district or charter school or inter-LEA level dispute proceeding with the Secretary or designee within 5 business days of the date the Secretary notifies the parties that an appeal has been filed. The record shall contain any written decision, any written minutes of the meetings at which the disputed action was taken, all exhibits or documentation presented at the LEA or inter-LEA level dispute proceeding, and any other evidence relied on by the school district or charter school in making its decision.

4.5.6 Appeals are limited to the record. The parties may support their positions in written statements limited to matters in the existing record. In order to be considered, written statements must be filed with the Secretary or designee no later than 15 business days after the appeal is filed.

4.5.7 The Secretary or designee shall consider the entire record of the dispute, including any written statements submitted in reaching a decision. The Secretary or designee shall overturn the school district or charter school or inter-LEA decision only if it is decided that the school district or charter school decision was not supported by substantial evidence or was arbitrary or capacious or is inconsistent with state and federal law or regulation.

4.5.8 Within 30 business days of the receipt of the notice of appeal, the Secretary or designee shall inform the parties of the appeal determination.

4.5.9 The determination of the Secretary or designee shall be final and is not subject to further appeal within the Department.

1 DE Reg. 963 (01/01/98)

7 DE Reg. 620 (11/01/03)

12 DE Reg. 444 (10/01/08)

23 DE Reg. 33 (07/01/19)

27 DE Reg. 423 (12/01/23)