

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122 and 202(c) (14 **Del.C.** §§122 & 202(c))
14 **DE Admin. Code** 901

FINAL

REGULATORY IMPLEMENTING ORDER

901 Education of Homeless Children and Youth

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §202 (c) the Secretary of Education intends to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth. This amendment changes the title of the regulation, provides clarification of the dispute resolution process, and amends the regulation to comply with changes made to the federal Every Student Succeeds Act (ESSA). One clarification was changing the definition of “homeless children and youths”. Prior to ESSA, a student “awaiting foster care” was considered homeless and this is no longer the case. Delaware law was amended through Senate Bill 87 of the 149th General Assembly for compliance with the federal law.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on April 1, 2019, in the form hereto attached as *Exhibit “A”*. Comments were received from State Council for Persons with Disabilities (SCPD) and the Governor’s Advisory Council for Exceptional Citizens (GACEC) requesting that: (1) the definition of “Best Interest Meeting” be removed as it is not used in the regulation; (2) the definition of “School of Origin” be amended to improve clarity by removing “before becoming homeless”; (3) the Department clarify where a homeless student should be enrolled in the event of a dispute; (4) the use of “Homeless Youth” be changed to “Unaccompanied Youth” for consistency throughout the regulation; (5) the word “Local” be included in front of “School District” in 4.4.1 and 4.4.3.1 for consistency throughout the regulation; and (6) that the Department should consider adding the phrase “or designee” following “Secretary” in 4.5.7.

The Department agrees that the definition of “Best Interest Meeting” should be removed as it is not used in the regulation, and has removed it. The Department believes that the definition of “School of Origin” needs to be clarified by adding the word “public” to clarify the type of school involved. It does not believe removing “before becoming homeless” is necessary to clarify the definition. The Department believes further clarification is needed on the wording regarding where a homeless student should be enrolled in the event of a dispute, and has clarified the regulation by adding “either the School of Origin or the School of Residence” in 4.2. The Department agrees that the term “Homeless Youth” in 4.5.1 should be changed to “Unaccompanied Youth”, and has made that change in this regulation. Also the Department added “Local” before the term “School District” in 4.4.1 and 4.4.3.1 as suggested. Lastly, the Department agrees that for clarification “or designee” should be added after “Secretary” in 4.5.7 and made that change to the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth in order to change the title of the regulation, provide clarification of the dispute resolution process, and amend the regulation to comply with changes made to the federal Every Student Succeeds Act (ESSA).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 901 Education of Homeless Children and Youth attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 901 Education of Homeless Children and Youth hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 901 Education of Homeless Children and Youth amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 901 Education of Homeless Children and Youth in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on June 14, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of June 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 14th day of June 2019

901 Education of Homeless Children and Youth Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness

1.0 Purpose

~~Consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.), the intent of this regulation is to ensure the educational rights and protections for children and youth experiencing homelessness. The intent of this regulation is to outline the dispute resolution process for children and youth experiencing homelessness.~~

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

~~"Awaiting foster care placement" as defined by the provisions of 14 **Del.C.** §202(c) includes all children in foster care.~~

~~**"Best Interest Meeting" means the convening of certain individuals to determine if the student should remain in the School of Origin or enroll in the School of Residence.**~~

"Charter School" means a school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"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~~ 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; ~~or are Awaiting foster care placement;~~
- Children and youths who have a primary nighttime residence that is in 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 section 20 U.S.C. §6399 of Title 20, the Elementary and Secondary Education Act of 1965, as amended) 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 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 school(s).

"Local School District" means a reorganized school district or vocational technical school district established pursuant to 14 **Del.C.**, Ch. 10.

"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 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 Secretary of Education.

"State Coordinator" means the Delaware Coordinator for Education of Homeless Children and Youths designated under 42 U.S.C. §11432(d)(3).

"Unaccompanied Youth" ~~as defined by the provisions of 42 U.S.C. §11434a(6) includes~~ means a homeless child or youth not in the company physical custody of a parent Parent or guardian Guardian.

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

3.0 Federal Regulations

~~Local school districts shall comply with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.) and any regulations issued pursuant thereto.~~

Local School Districts and Charter Schools shall comply with the provisions of the federal McKinney-Vento Homeless Education Assistance Improvement Act 42 U.S.C. §11431 et. seq and federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. §6301 et seq. and any regulations issued pursuant thereto.

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

~~4.1 If a dispute arises over school selection or enrollment, the local school district must immediately enroll the homeless student in either the school of origin (as defined in 42 U.S.C. 11432(g)(3)(G)) or the school that nonhomeless students who live in the attendance area in which the homeless student is actually living are eligible to attend, whichever is sought by the parent, guardian, Relative Caregiver or homeless youth, pending resolution of the dispute.~~

~~4.24.1~~ The local school shall provide the parent Parents, guardian Guardians, Relative ~~Caregiver~~ Caregivers or homeless youth Unaccompanied Youth with a written notice of the school's decision regarding school selection or enrollment. The notice shall include:

~~4.2.44.1.1~~ A written explanation of the school's decision regarding school selection or enrollment;

~~4.2.24.1.2~~ Contact information for the LEA Homeless ~~Liaison~~ Liaisons and State Coordinator, with a brief description of their roles;

~~4.2.34.1.3~~ A simple, detachable form that parents Parents, guardians Guardians, Relative ~~Caregiver~~ Caregivers or homeless youth Unaccompanied Youth can complete and turn ~~into~~ in to the school to initiate the dispute resolution process;

~~4.2.44.1.4~~ Instructions as to how to dispute the school's decision at the ~~district~~ Local School District or Charter School level;

~~4.2.54.1.5~~ Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;

~~4.2.64.1.6~~ Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;

~~4.2.74.1.7~~ Notice of the right to appeal to the State if the ~~district~~ Local School District or Charter School level resolution is not satisfactory; and

~~4.2.84.1.8~~ ~~Time lines~~ Timelines for resolving ~~district~~ Local 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 ~~[the school 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~~ Local School District and Charter School Level Dispute Resolution Process

~~4.3.1~~ ~~Local school districts~~ School Districts and Charter Schools shall develop a dispute resolution process at the ~~district~~ Local 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~~ Guardians, Relative Caregivers and homeless youth Unaccompanied Youth shall be able to initiate the dispute resolution process directly at the school they choose or the ~~school-district~~ Local School District or Charter School or LEA Homeless Liaison's office.

4.3.2 Within ten (10) business days of the initiation of the ~~district~~ Local School District and Charter School level dispute resolution ~~process; process,~~ the ~~school district~~ Local 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 ~~district~~ Local School District or Charter School level resolution is not satisfactory.

4.4 ~~Interdistrict~~ Inter-LEA Resolution Process

4.4.1 When ~~interdistrict~~ Inter-LEA issues arise, including transportation, representatives from all involved ~~school districts~~ [Local] School Districts and Charter Schools, the State Coordinator, or ~~his or her~~ their designee, and the ~~parent(s)~~ Parents, guardian(s) Guardians, Relative Caregivers or ~~unaccompanied youth~~ Unaccompanied Youth shall meet within ten (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 ~~interdistrict~~ Inter-LEA dispute, it shall be referred to the Secretary or ~~designee~~ within ten (10) business days of the meeting. Subsection 4.5.4 through 4.5.9 ~~4.5~~ shall govern the Secretary's or ~~review official's~~ designee's determination. The Secretary or ~~review official~~ 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 4.4.3, where the ~~interdistrict~~ 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. Pursuant to 42 USC 11432 (g)(1)(J)(iii)(II), if the ~~school districts~~ [Local] 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 ~~district-level~~ Local School District and Charter School level decisions and ~~interdistrict~~ Inter-LEA disputes. Appeals may be filed by ~~parents, guardians, homeless youths or school districts~~ Parents, Guardians, [Homeless Youth Unaccompanied Youth], Local School Districts or Charter Schools. Appeals filed by a local school board within a Local 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 ten (10) business days after receiving written notification of the ~~district~~ Local School District or Charter School level or ~~interdistrict~~ 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~~ Local School District or Charter School, the superintendent of the ~~district~~ Local 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 ~~review official~~ 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 ~~his/her~~ designee, shall within five (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 ~~local district~~ Local School District or Charter School shall file a certified record of the ~~district~~ Local School District or Charter School or ~~inter-district~~ Inter-LEA level dispute proceeding with the Secretary or ~~review official~~ designee within five (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 meeting(s) at which the disputed action was taken, all exhibits or documentation presented at the ~~district~~ LEA or ~~interdistrict~~ Inter-LEA level dispute proceeding, and any other evidence relied on by the ~~District(s)~~ Local School District or Charter School in making ~~(their)~~ 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 ~~review official~~ designee no later than ~~twenty (20)~~ fifteen (15) business days after the appeal is filed.

4.5.7 The Secretary [or designee] or ~~review official~~ shall consider the entire record of the dispute, including any written statements submitted in reaching ~~his or her~~ a decision. The Secretary or ~~review official~~ designee shall overturn the ~~district~~ Local School District or Charter School or ~~interdistrict~~ Inter-LEA decision only if ~~he or she decides it is decided~~ that the ~~district's~~ Local 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 thirty (30) business days of the receipt of the notice of appeal, the Secretary or ~~review official~~ designee shall inform the parties of ~~his or her~~ the appeal determination.

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

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) (Final)