

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 202A (14 **Del.C.** §202A)
14 **DE Admin. Code** 903

PROPOSED

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. §122(d)

903 Best Interest Determination Process for School Placement - Students in Foster Care

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §202A, the Secretary of Education intends to amend 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care. This regulation has been reviewed as required by 29 **Del.C.** §10407 which states regulations are to be reviewed every four years. While there are no content changes to this regulation, it is being amended to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 1, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education by clarifying school types.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

903 Best Interest Determination Process for School Placement - Students in Foster Care

1.0 Purpose

Under 14 **Del.C.** §202A, a student in the custody of ~~DSCYF~~ the Delaware Department of Services for Children, Youth and Their Families (DSCYF) who is in foster care must remain in the student's ~~School of Origin~~ school of origin unless a determination is made that it is not in the student's best interest to attend such school. The purpose of this regulation is to provide the process for the determination of best interest in school placement decisions for students in foster care.

2.0 Definitions

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

"Best Interest Meeting" means the convening of certain individuals as noted within this regulation to determine if the student should remain in the ~~"school of origin"~~ school of origin.

"Best Interest Meeting Determination Form (Foster Care)" means the document, which may be amended from time to time, approved by the Delaware Department of Education for use in the determination of best interest in school placement decisions for students in foster care.

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

~~"Child in DSCYF custody"~~ or ~~"student in foster care"~~ **"Student in Foster Care"** means a student in the custody of the Delaware Department of Services for Children, Youth and Their Families (DSCYF) (~~DSCFY~~) (DSCYF) pursuant to Chapter 25 of Title 13 of the Delaware Code.

"Court Appointed Special Advocate" or **"CASA"** means a volunteer authorized and appointed under 14 **Del.C.** §9010A, who is supervised by a coordinator and who works in conjunction with the child's attorney to accomplish the duties set forth in 29 **Del.C.** § 9007A(c).

"Department" means the Delaware Department of Education.

"DFS" means the Division of Family Services, a unit of the Delaware Department of Services for Children, Youth and Their Families.

"DFS Caseworker" means the caseworker assigned to the student in foster care.

"DSCYF" means the Delaware Department of Services for Children, Youth and Their Families.

"LEA Foster Care Liaison" means the ~~Local Educational Agency Liaison~~ local education agency liaison for students in foster care.

"Local School District" shall mean a reorganized school district or vocational technical school district established by 14 **Del.C.** Ch. 10.

"School of Origin" means the following:

- The school in which the student is enrolled at the time of entry into foster care;
- The school in which the student is enrolled at the time of change of placement while in foster care; or
- The school identified for the next grade level in the same local school district where the child in foster care is enrolled.

"Secretary" means the Secretary of the Delaware Department of Education.

"State Coordinator" means the Delaware Coordinator for Education of Students in Foster Care.

3.0 School of Origin for Students in Foster Care

3.1 ~~"School of Origin"~~ means the following:

- 3.1.1 ~~the school in which the student is enrolled at the time of entry into foster care;~~
- 3.1.2 ~~the school in which the student is enrolled at the time of change of placement while in foster care; or~~
- 3.1.3 ~~the school identified for the next grade level in the same Local School District where the child in foster care is enrolled.~~

4.0 3.0 Best Interest Meeting Timeline

4.1 3.1 A Best Interest ~~meeting~~ Meeting must occur within five (5) school days based on the School of Origin's school instructional calendar or seven (7) business days in the event of the summer recess:

- 4.1.1 3.1.1 ~~when~~ When a student is placed into foster care;
- 4.1.2 3.1.2 ~~when~~ When there is a change in foster care placement; or
- 4.1.3 3.1.3 ~~when~~ When the student leaves the custody of DSCYF.

4.2 3.2 If it is determined a Best Interest Meeting under subsection 4.1 3.1 cannot occur within the specified time, documentation identifying the reason for the meeting delay shall be provided to the State Coordinator within

ten ~~(10)~~ working days. This information shall be provided annually to the chief school officer of the local school district or charter school.

~~4.3~~ 3.3 If subsection ~~4.4~~ 3.1 is not applicable, a Best Interest ~~meeting~~ Meeting shall be held at least once a year, preferably within the last two ~~(2)~~ months of the school calendar.

5.0 ~~4.0~~ Process for the Determination of Best Interest

~~5.1~~ 4.1 The DFS Caseworker and LEA Foster Care Liaison shall be responsible for the coordination of the date, time, and method for the Best Interest Meeting using available technology; however, in person attendance is preferred.

~~5.1.1~~ 4.1.1 The LEA Foster ~~Care~~ Liaison shall:

~~5.1.1.1~~ 4.1.1.1 ~~invite~~ Invite needed educationally related participants; and

~~5.1.1.2~~ 4.1.1.2 ~~invite~~ Invite the special education administrator or designee from the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, and the student's ~~School of Origin~~ school of origin, and the educational surrogate parent when applicable to participate in the Best Interest ~~meeting~~ Meeting if the student is eligible for or receiving special education services.

~~5.1.2~~ 4.1.2 The DFS Caseworker shall:

~~5.1.2.1~~ 4.1.2.1 ~~invite the parent(s) or legal guardian(s) or Relative Caregiver, foster care parent(s)~~ Invite the parents, legal guardian, or relative caregiver, foster care parents, attorney for the child or CASA, and educational decision maker, as applicable; and

~~5.1.2.2~~ 4.1.2.2 ~~invite~~ Invite the student to attend when it is determined to be developmentally appropriate by the DFS Caseworker.

~~5.2~~ 4.2 The Best Interest Meeting shall be conducted in a manner that results in the Best Interest Meeting Determination Form (Foster Care) being completed.

~~5.3~~ 4.3 The Best Interest determination shall be made by the following individuals:

~~5.3.1~~ 4.3.1a A representative of DSCYF, preferably the DFS Caseworker,

~~5.3.2~~ 4.3.2a A representative of the student's ~~School of Origin~~ school of origin, and

~~5.3.3~~ 4.3.3a A representative of the student's school of residence based on the address of the DSCYF custody placement at the time of the meeting.

~~5.4~~ 4.4 If no agreement is reached by all of the representatives specified in subsection ~~5.3~~ 4.3 for changing the school placement from the ~~School of Origin~~ school of origin to the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, then the student shall remain in the ~~School of Origin~~ school of origin pending finalization of any applicable dispute resolution process.

~~5.4.1~~ 4.4.1 Except in accordance with subsection ~~5.4.2~~ 4.4.2, a subsequent Best Interest Meeting shall not occur unless subsection ~~4.4~~ 3.1 or subsection ~~4.3~~ 3.3 applies.

~~5.4.2~~ 4.4.2 If exigent circumstances exist for a subsequent Best Interest Meeting to occur, an application shall be submitted on a form approved by the Department to the State Coordinator. The Secretary or designee will determine whether to approve the application for the requested subsequent Best Interest Meeting.

6.0 ~~5.0~~ Applicability

~~6.1~~ 5.1 Nothing in this regulation shall alter a ~~Local School District or Charter School's~~ local school district or charter school's duties under the ~~Individual~~ Individuals with Disabilities Education Act (IDEA) or 14 **DE Admin. Code** 922 through 929.

5.2 Nothing in this regulation shall prevent a ~~Local School District or Charter School~~ local school district or charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.

~~6.2~~ 5.3 Nothing in this regulation shall alter a ~~Local School District or Charter School's~~ local school district or charter school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a ~~Local School District or Charter School~~ local school district or charter school from providing supportive instruction to such students.

21 DE Reg. 420 (11/01/17)

25 DE Reg. 1063 (06/01/22) (Prop.)