

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 901

PROPOSED

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

901 Education of Homeless Children and Youth

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 901 Education of Homeless Children and Youth. The amendments include: 1) the addition of the definition for "awaiting foster care placement" to be consistent with 14 Del.C. §202(c), which allows all children in foster care to be considered "homeless" and subject to the provisions of the regulation; 2) changing "calendar" to "business" days under the resolution dispute procedures; and 3) clarifying the state level dispute resolution process.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may improve student achievement by allowing stability in student placement.

2. Will the amended regulation help ensure that all students receive an equitable education? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may help ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may help ensure 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 will preserve the necessary authority and flexibility of 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 primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation.

The amendment does not place any unnecessary reporting or administrative requirements or mandates upon the decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability does not change.

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, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The federal statute requires the state to have a process for resolving disputes concerning this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There should not be additional transportation costs associated with the amendment since the Delaware law defining "awaiting foster child placement" was signed in July 2005.

901 Education of Homeless Children and Youth

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.

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.

"Department" means the Delaware Department of Education.

"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 lack of alternative adequate accommodations; are living in emergency or transitional shelters; 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 6399 of Title 20, the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described above.

"LEA Homeless Liaison" means the Local Educational Liaison for Homeless Children and Youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

"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 a youth not in the company of a parent or guardian.

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.

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.
- 4.2 The local school shall provide the parent, guardian, Relative Caregiver or homeless youth with a written notice of the school's decision regarding school selection or enrollment. 5The notice shall include:
 - 4.2.1 A written explanation of the school's decision regarding school selection or enrollment;
 - 4.2.2 Contact information for the LEA Homeless Liaison and State Coordinator, with a brief description of their roles;
 - 4.2.3 A simple, detachable form that parents, guardians, Relative Caregiver or homeless youth can complete and turn into the school to initiate the dispute resolution process;
 - 4.2.4 Instructions as to how to dispute the school's decision at the district level;
 - 4.2.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;
 - 4.2.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;
 - 4.2.7 Notice of the right to appeal to the State if the district level resolution is not satisfactory; and
 - 4.2.8 Time lines for resolving district and State level appeals.
- 4.3 District Level Dispute Resolution Process
 - 4.3.1 Local school districts shall develop a dispute resolution process at the district 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 and homeless youth shall be able to initiate the dispute resolution process directly at the school they choose or the school district or LEA Homeless Liaison's office.
 - 4.3.2 Within ten (10) ~~calendar~~ business days of the initiation of the district level dispute resolution process; the school district shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the district level resolution is not satisfactory.
- 4.4 Interdistrict Resolution Process
 - 4.4.1 When interdistrict issues arise, including transportation, representatives from all involved school districts, the State Coordinator, or his or her designee, and the parent(s), guardian(s) or unaccompanied youth shall meet within ten (10) ~~calendar~~ 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 dispute, it shall be referred to the Secretary within ten (10) ~~calendar~~ business days of the meeting. Subsection 4.5.4 through 4.5.9 shall govern the Secretary's or review official's determination. The Secretary or review official 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 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 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

- 4.51 The State level dispute resolution process is available for appeals from district-level decisions and interdistrict disputes. Appeals may be filed by parents, guardians, homeless youths or school districts. Appeals filed by a local school 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) ~~calendar~~ business days after receiving written notification of the district level or interdistrict 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, the superintendent of the district must sign the notice of appeal.
- 4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail 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 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) ~~calendar~~ 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 shall file a certified record of the district or inter-district level dispute proceeding with the Secretary or review official within five (5) ~~calendar~~ 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 or interdistrict level dispute proceeding, and any other evidence relied on by the District(s) in making its (their) 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 no later than twenty (20) ~~calendar~~ business days after the appeal is filed.
- 4.5.7 The Secretary or review official shall consider the entire record of the dispute, including any written statements submitted in reaching his or her decision. The Secretary or review official shall overturn the district or interdistrict decision only if he or she decides that the district's 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) ~~calendar~~ business days of the receipt of the notice of appeal, the Secretary or review official shall inform the parties of his or her determination.
- 4.5.9 The determination of the Secretary or review official shall be final and is not subject to further appeal within the Department of Education.

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

7 DE Reg. 620 (11/1/03)

12 DE Reg. 119 (08/01/08)