

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))  
14 **DE Admin. Code** 901

### FINAL

### ORDER

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

### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(a), the Delaware Department of Education ("Department") seeks to amend 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness. This regulation is being amended pursuant to 29 **Del.C.** §10407, which requires regulations to be reviewed on a recurring basis every four years. The amendments include updating definitions to align with 14 **DE Admin. Code** 255 Definitions of Types of Schools and corrections to grammar and style in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2023. The Department received written submittals from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), and Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD"). Ms. Fisher commented that GACEC supports the proposed regulation and shared two recommendations. First, GACEC recommended that subsection 4.2 be amended to require that the school at which enrollment is sought immediately enroll the student, pending final resolution of the dispute. Second, GACEC recommended that subsection 4.1.2 be amended to require that the school refer the parent, guardian, or unaccompanied youth to the school's homeless liaison rather than putting it on the parent, guardian, or unaccompanied youth to make the affirmative contact. Mr. Shrader commented that SCPD supports the proposed regulation and shared the same recommendations as GACEC.

### II. FINDINGS OF FACTS

The Department finds that homeless liaisons currently handle disputes in the manner recommended by GACEC, which is provided in subsection 4.2. The Department further finds that the proposed changes to subsection 4.1.2 are nonsubstantive, the existing language aligns with current practice, and it allows parents, guardians, and unaccompanied youth to control the homeless liaison's involvement. The Department determined that further amendments as a result of the written submittals are not necessary.

In addition, the Department finds that the proposed changes to the defined terms definitions align with 14 **DE Admin. Code** 255 Definitions of Types of Schools. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness. Therefore, pursuant to 14 **Del.C.** §122(a), 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness, attached hereto as Exhibit A, is hereby amended.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness in the *Administrative Code of Regulations* for the Department.

### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness shall be in effect for a period of five years from the effective date of this Order unless it is amended or repealed sooner.

**IT IS SO ORDERED** the 6th day of November, 2023.

Department of Education

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

### 1.0 Purpose

~~The intent of this regulation is to outline~~ This regulation outlines the dispute resolution process for disputes related to the educational placement of children and youth experiencing homelessness.

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

### 2.0 Definitions

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

**"Charter School school"** means a public school established pursuant to Chapter 5 of Title 14 of the Delaware Code 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 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 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 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 inter-LEA"** means between Local Education Agencies local education agencies.

**"LEA Homeless Liaison homeless liaison"** means the Local Educational Liaison for Homeless Children and Youths 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 vocational-technical school district, or Charter School charter school,~~ legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary ~~school(s) schools.~~

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

**"Relative Caregiver 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 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 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.

**"State Coordinator coordinator"** means the Delaware ~~Coordinator for Education of Homeless Children and Youths~~ coordinator for the education of homeless children and youths designated under 42 U.S.C. §11432(d)(3).

**"Unaccompanied Youth youth"** means a homeless child or youth not in the physical custody of a ~~Parent or Guardian~~ parent or guardian.

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

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

### **3.0 Federal Regulations Compliance with Federal Law**

~~Local School Districts and Charter Schools~~ 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. 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)**

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

- 4.1 The local school shall provide the ~~Parents, Guardians, Relative Caregivers or Unaccompanied Youth~~ 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~~ homeless liaisons and ~~State Coordinator~~ state coordinator, with a brief description of their roles;
  - 4.1.3 A form that ~~Parents, Guardians, Relative Caregivers or Unaccompanied Youth~~ 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 ~~Local School District or Charter School~~ 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 ~~Local School District or Charter School~~ school district or charter school level resolution is not satisfactory; and
  - 4.1.8 Timelines for resolving ~~Local School District or Charter School~~ school district or charter school and ~~State level~~ 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~~ school of origin or the ~~School of Residence~~ school of residence in which enrollment is sought by the ~~Parents, Guardians, Relative Caregivers, or Unaccompanied Youth~~ 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 and Charter Schools~~ School districts and charter schools shall develop a dispute resolution process at the ~~Local School District or Charter School~~ 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 and Unaccompanied Youth~~ guardians, relative caregivers or unaccompanied youth shall be able to initiate the dispute resolution process directly at the school they ~~choose or choose~~, the ~~Local School District or Charter School~~ school district or charter school, or ~~LEA Homeless Liaison's~~ the LEA homeless liaison's office.
  - 4.3.2 Within ~~ten (10)~~ 10 business days of the initiation of the ~~Local School District and Charter School~~ school district and charter school level dispute resolution process, the ~~Local School District or Charter School~~ 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 ~~Local School District or Charter School~~ school district or charter school level resolution is not satisfactory.
- 4.4 ~~Inter-LEA Resolution Process~~
  - 4.4.1 When ~~Inter-LEA~~ inter-LEA issues arise, including transportation, representatives from all involved ~~Local School Districts and Charter Schools~~ school districts and charter schools, the ~~State Coordinator~~ state coordinator, or their designee, and the ~~Parents, Guardians, Relative Caregivers or Unaccompanied Youth~~ parents, guardians, relative caregivers or unaccompanied youth shall meet within ~~ten (10)~~ 10 business days of the initiation of the dispute process to attempt to resolve the dispute.
  - 4.4.2 The ~~State Coordinator's~~ state coordinator's role is to facilitate the meeting.

4.4.3 If the parties are unable to resolve the ~~Inter-LEA~~ inter-LEA dispute, it shall be referred to the Secretary or designee within ~~ten (10)~~ 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~~ 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 ~~Local School Districts and Charter Schools~~ 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~~ State-level dispute resolution process is available for appeals from ~~Local School District and Charter School~~ school district or charter school level decisions and ~~Inter-LEA~~ inter-LEA disputes. Appeals may be filed by ~~Parents, Guardians, Unaccompanied Youth, Local School Districts or Charter Schools~~ parents, guardians, relative caregivers or unaccompanied youth, school districts or charter schools. Appeals filed by a local school board within a ~~Local School District~~ school district shall not be accepted.

4.5.2 To initiate the ~~State level~~ State-level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than ~~ten (10)~~ 10 business days after receiving written notification of the ~~Local School District or Charter School~~ school district or charter school level or ~~Inter-LEA~~ 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 ~~Local School District or Charter School~~ school district or charter school, the superintendent of the ~~Local School District or Charter School~~ 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 ~~five (5)~~ 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 School District or Charter School~~ school district or charter school shall file a certified record of the ~~Local School District or Charter School~~ school district or charter school or ~~Inter-LEA~~ inter-LEA level dispute proceeding with the Secretary or designee within ~~five (5)~~ 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)~~ meetings at which the disputed action was taken, all exhibits or documentation presented at the LEA or ~~Inter-LEA~~ inter-LEA level dispute proceeding, and any other evidence relied on by the ~~Local School District or Charter School~~ 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 ~~fifteen (15)~~ 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 ~~Local School District or Charter School~~ school district or charter school or ~~Inter-LEA~~ inter-LEA decision only if it is decided that the ~~Local School District or Charter School~~ 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)~~ 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)**

