

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

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

### PROPOSED

### PUBLIC NOTICE

#### 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

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 149<sup>th</sup> General Assembly for compliance with the federal law.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation’s website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address 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 is intended to 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 amendments do not address students’ health and safety.
4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation continues to help ensure that all student’s 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 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
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 amendment 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 not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

**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(e) 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 school in which the student was last enrolled before becoming homeless or the next receiving 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.

### 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:
- 4.2.14.1.1 ~~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 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~~ 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~~ 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, 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 ~~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)**

**22 DE Reg. 832 (04/01/19) (Prop.)**