

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))

FINAL

REGULATORY IMPLEMENTING ORDER

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

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 903 Best Interest Determination Process for School Placement- Students in Foster Care. The regulation is required by Senate Bill 87 of the 149th General Assembly. Specifically, this regulation outlines the process for determining whether remaining in the school of origin is in the best interest of a student in foster care, including: 1) the timeline for the best interest meetings; 2) mandatory participants in the best interest meetings; and 3) how the decisions for best interest is determined.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on September 1, 2017, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, the Office of the Child Advocate, and an individual citizen.

There were comments related to participation of individuals at the Best Interest meeting and the final decision, and the parties responsible for that final decision. The Department notes that every individual attending the Best Interest meeting has the opportunity for input; however, to facilitate the decision-making process the final determination is entrusted to the required participants. A comment was made regarding a dispute resolution process and the amended language makes reference to a process. A comment was made regarding defining "developmentally appropriate" for invitation to the Best Interest meeting. The comment was considered and it was determined that no specific definition be included because it is a term of art well understood by the agency personnel. Comments were received regarding considering the appropriateness of the current education setting and the proximity of the child to the school. These matters are part of the approved Best Interest Meeting Determination Form.

Comments were received regarding the applicability of the regulation to the enabling Delaware statute. The Department considered the comment and determined that the specific provision in the current law controls. The regulation was amended for clarification that the regulation applies to students in foster care in accordance with the specific provisions of the law. Comments were received regarding applicable to charter schools in 3.1.3. A charter school operates under a single charter regardless of the grade configuration. Comments were received regarding the timing of the notification of the Department related to the inability of the Best Interest meeting to be schedule under the required timeline provisions. This notification does not affect the provision of services. Clarification was made to address the applicability of other federal laws.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 903 Best Interest Determination Process for School Placement - Students in Foster Care because of Senate Bill 87 of the 149th General Assembly.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 903 Best Interest Determination Process for School Placement - Students in Foster Care. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care attached hereto as *Exhibit "B"* is hereby added to 14 **DE Admin. Code**. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care hereby added to 14 **DE Admin. Code** 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** 903 Best Interest Determination Process for School Placement - Students in Foster Care hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care 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 October 13, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

VI. Effective Date of Delaware Statute

Notice is hereby given to the Register of Regulations that the publication of this final regulation 14 DE Admin. Code 903 Best Interest Determination Process for School Placement - Students in Foster Care is required for sections 1, 2 and 3 of Senate Bill 87 of the 149th General Assembly to become effective.

IT IS SO ORDERED the 13th day of October 2017.

Department of Education

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

Approved this 13th day of October 2017

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 [who is in foster care] must remain in the student's 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".

"Best Interest Meeting Determination Form (Foster Care)" means the document, which may be amended from time to time, approved by the Department 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" means a student in the custody of the Department of Services for Children, Youth and Their Families (DSCFY) pursuant to Chapter 25 of Title 13 of the Delaware Code.

"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 Liaison" means the Local Educational 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.

"Secretary" means the Secretary 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 [the] 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 Best Interest Meeting Timeline

- 4.1 A Best Interest 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 when a student is placed into foster care;
 - 4.1.2 when there is a change in foster care placement; or
 - 4.1.3 when the student leaves the custody of DSCYF.
- 4.2 If it is determined a Best Interest Meeting under subsection 4.1 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 If subsection 4.1 is not applicable, a Best Interest meeting shall be held at least once a year, preferably within the last two (2) months of the school calendar.

5.0 Process for the Determination of Best Interest

- 5.1 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 The LEA Foster Liaison shall:
- 5.1.1.1 invite needed educationally related participants; and
 - 5.1.1.2 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[, and the educational surrogate parent when applicable] to participate in the Best Interest meeting if the student is eligible for or receiving special education services.
- 5.1.2 The DFS Caseworker shall:
- 5.1.2.1 invite the parent(s) or legal guardian(s) or Relative Caregiver, foster care parent(s), attorney for the child or CASA, and educational decision maker, as applicable; and
 - 5.1.2.2 invite the student to attend when it is determined to be developmentally appropriate by the DFS Caseworker.
- 5.2 The Best Interest Meeting shall be conducted in a manner that results in the Best Interest Determination Form (Foster Care) being completed.
- 5.3 The Best Interest determination shall be made by the following individuals:
- 5.3.1 a representative of DSCYF, [preferable preferably] the DFS Caseworker,
 - 5.3.2 a representative of the student's School of Origin, and
 - 5.3.3 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 If no agreement is reached by all of the representatives specified in subsection 5.3 for changing the school placement from the 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 [pending finalization of any applicable dispute resolution process].
- 5.4.1 Except in accordance with subsection 5.4.2, a subsequent Best Interest Meeting shall not occur unless subsection 4.1 or subsection 4.3 applies.
 - 5.4.2 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 Applicability

- 6.1 **Nothing in this regulation shall alter a Local School District or Charter School's duties under the Individual with Disabilities Act (IDEA) or 14 DE Admin. Code 922 through 929. Nothing in this regulation shall prevent a 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 **Nothing in this regulation shall alter a 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 from providing supportive instruction to such students.]

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