

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

FINAL

REGULATORY IMPLEMENTING ORDER

901 Education of Homeless Children and Youth

I. Summary of the Evidence and Information Submitted

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.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, August 5, 2008, in the form hereto attached as *Exhibit “A”*. The Department received comments from both the Governor’s Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities with concerns related to the change from “calendar” days to “working” days and the availability of an appeal to the State Board of Education in the dispute resolution process. The Department has responded to the Councils indicating the change to “working” days is appropriate because of the nature of a school calendar. In addition, certain decisions made by a local school board can be appealed to the State Board and this regulation as written does not prohibit this action.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth in order to define “awaiting foster care placement” to be consistent with 14 **Del.C.** §202(c), changing “calendar” to “business” days and clarifying the state level dispute resolution process.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 901 Education of Homeless Children and Youth attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 901 Education of Homeless Children and Youth hereby amended 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** 901 Education of Homeless Children and Youth amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 901 Education of Homeless Children and Youth 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 September 15, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of September 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

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 ~~a~~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. The 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

- 4.5.1 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. 444 (10/01/08)