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# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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## **Delaware State Procedures – Dispute Resolution under McKinney-Vento Act**

According to the McKinney-Vento Homeless Assistance Act, a Local Education Agency (“LEA”) must continue educating the child or unaccompanied youth in the school of origin for the duration of homelessness when the homelessness occurs between or during an academic year; or for the remainder of the academic year if the child or unaccompanied youth becomes permanently housed during that academic year; or enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is living are eligible to attend (McKinney-Vento Act § 722(3)(A)(i)(ii)). If a dispute arises over school selection or enrollment, the LEA must immediately enroll the student in the school in which enrollment is sought pending resolution of the dispute (§ 722(3)(E)(i)). Similar provisions apply to the placement of unaccompanied youths.

Delaware’s state education law is codified at Del. Code Ann. tit. 14, § 202(c) and Del. Administrative Code Title 14, 901: Education of Homeless Children and Youth. The latter deals directly with Delaware’s implementation of McKinney-Vento. The intent of Title 14, 901 is to ensure the educational rights and protections for children and youth experiencing homelessness. The Delaware Department of Education (DDOE) has developed the Education for Homeless Children and Youth program to assist with implementation of McKinney-Vento.

Delaware’s State Plan for the Education of Homeless Children and Youth:

- a. informs local school districts of their responsibility to homeless children and youth;
- b. provides policies that bring the state into compliance with federal law; and
- c. outlines specific local, regional, and statewide activities to assure homeless students have equal access to quality education.

The goal of the program is to ensure homeless children and youth a free and appropriate public education on an equal basis with all other children in the state. Program objectives and activities are intended to remove barriers to enrollment and educational success for homeless children.

### **Step One: School Enrollment**

In Delaware, based on the best interest of the student, homeless students have the right to attend either:

- a. the school of origin or
- b. the school serving the attendance area in which the homeless student is actually living.

The choice is open to students who become homeless during the school year, for the remainder of that school year; and, to students who become homeless during the summer, for the following school year. Since there is no maximum time for being homeless, a “Best Interest” meeting must be conducted at the end of a school year for students who still meet the criteria. The meeting will determine which school will be attended for the next school year.

The local educational agency (LEA) of each homeless child or youth shall make placement arrangements according to the child's or youth's best interest. In determining the best interests of the child or youth, the LEA shall comply, to the extent feasible, with the request made by a parent or guardian regarding school selection. The choice regarding placement shall be made regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere by the parents. If the parent disagrees with the decision, the child will attend the school of origin or the new school of attendance whichever the parent has selected until a Dispute Resolution has taken place.

### **Step Two: Enrollment Dispute and Appeals Process**

Title 14, 901(4) spells out Delaware's dispute resolution process:

- 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 non-homeless 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 or homeless youth, pending resolution of the dispute.
  - 4.2 The local school shall provide the parent, guardian 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, 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, 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 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 Inter-district Resolution Process**

4.4.1 When inter-district 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 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 inter-district dispute, it shall be referred to the Secretary within ten (10) calendar days of the meeting. Subsection 4.5.4 through 4.5.9 shall govern the review official's determination. The 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 inter-district 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 inter-district 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 days after receiving written notification of the district level or inter-district 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 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 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 inter-district 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 review official no later than twenty (20) calendar days after the appeal is filed.

4.5.7 The review official shall consider the entire record of the dispute, including any written statements submitted in reaching his or her decision. The review official shall overturn the district or inter-district 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 days of the receipt of the notice of appeal, the review official shall inform the parties of his or her determination.

4.5.9 The determination of the 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)

<b>Procedural Step:</b>	<b>Completed by:</b>	<b>Given to:</b>	<b>Due Date:</b>
<b>Enrollment or Residency Dispute (Form provided by local school)</b>	Initiated by parent, guardian, or LEA	Processed by LEA Liason.	None Specified
<b>Appeal of District and State level decision</b>	Aggrieved party	<b>District Level:</b> LEA Liason, School official or District official. <b>State Level:</b> 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.	<b>District Level:</b> None Specified <b>State Level:</b> To initiate the State-level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than <b>ten (10)</b> calendar days after receiving written notification of the district level or inter-district decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. .

## Additional Resources

State Contact	Resources
<p>Mr. Dennis Rozumalski Education Associate Student Services and Special Populations Delaware Department of Education 401 Federal Street, Suite #2 Dover, DE 19901-3639 Phone: (302) 735-4273 Fax: (302) 739-6397 Email: drozumalski@doe.k12.de.us</p>	<p><a href="http://www.doe.k12.de.us/">www.doe.k12.de.us/</a></p>