STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John A. McNeal
Director

April 30, 2019

Ms. Emily Cunningham
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 22 DE Reg. 832 [DDOE Proposed Regulation on Education of Children and Youth Experiencing Homelessness (April 1, 2019)]

Dear Ms. Cunningham:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposed regulation regarding Education of Homeless Children and Youth. The proposed regulation was published as 22 DE Reg. 832 in the April 1, 2019 issue of the Register of Regulations.

As background, the McKinney Vento Homeless Education Assistance Improvement Act, 42 U.S.C § 11431 et seq., (McKinney Act) requires State and Local education agencies to provide certain protections to "homeless children and youths" in order to receive federal funding under the Act. The federal Every Student Succeeds Act (ESSA) removed children awaiting foster care from the McKinney Act's definition of "homeless children and youths." One protection offered to homeless children and youths [hereinafter homeless students] is a dispute resolution process in the event there is a disagreement about which school a homeless student should attend. The DOE proposed amendment to 14 Del. Admin. Code 901 adopts the updated definition of "homeless children and youths." It also makes, for the most part, non-substantive changes to Delaware's dispute resolution process. The substantive change made was decreasing the number of days parties may submit written statements for consideration in an appeal of a placement decision at the State level from 20 business days to 15 business days. While the downside of this is that it could limit participation, it may also result in faster dispute resolution. Based on the McKinney Act, it appears the DOE has wide latitude when designing the dispute resolution process and, therefore, this change seems appropriate

42 U.S.C. § 11432(g)(3)(A) requires homeless students be enrolled, according to their best interests, in either in the school they attended before becoming homeless or, if always homeless, the last school attended (School of Origin) or the school serving the geographic area that the homeless student is currently staying (School of Residence). This amendment does not directly address students with disabilities, although it may affect students with disabilities if they are homeless students. Therefore, SCPD endorses the proposed amendment, but has the following observations and recommendations which would improve the regulation:

- First, SCPD recommend that "Best Interest Meeting" be removed from the definitions section. That term is not used in the proposed amendment. The proposed amendment uses the term "best interest," but based on context, it is referring to the standard by which the placement decision should be made, not a meeting where the decision is made.
- Second, SCPD recommends amending the definition of "School of Origin." The proposed amendment defines School of Origin as "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." The phrases "attended when permanently housed" and "before becoming homeless" have the same meaning. In other words, the school a child "attended when permanently housed" would be the same as "the school in which the student was last enrolled before becoming homeless." The McKinney Act defines School of Origin in relevant part as "the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including preschool." 42 U.S.C. § 11432(g) (3) (I) (i). The first part of the federal definition contemplates the situation where a child was not homeless and then became homeless. The second part of the definition addresses a situation where the child has always been homeless. DOE's definition of School of Origin could be improved by striking the phrase "before becoming homeless."
- Third, the proposed amendment re-wrote the subsection providing guidance on where a homeless student should be enrolled in the event of a dispute. The current section states that in the event of a dispute, the student will be enrolled in the parent/guardian/relative caregiver/unaccompanied youth's choice of either the School of Origin or the School of Residence. See Section 4.1. The proposed amendment just states in relevant part that "the child or youth shall be immediately enrolled in the school in which enrollment is sought" by the parent/guardian/relative caregiver/unaccompanied youth. See Section 4.2. The available school placement choices under the McKinney Act are either the School of Origin or the School of Residence. DOE may wish to clarify the available choices in the proposed amendment by stating the child or youth shall be immediately enrolled in either the School of Origin or the School of Residence, whichever is sought by the parent/guardian/relative caregiver/unaccompanied youth.
- Fourth, in Section 4.5.1 of the proposed amendment, the term "Homeless Youth" should be changed to "Unaccompanied Youth" to reflect the change in name for

this category of students, and for consistent use throughout the regulation. "Local" should be added in front of School District in 4.4.1 and 4.4.3.1. In 4.5.7, DDOE may wish to add the phrase "or designee" following "Secretary."

Thank you for your consideration and please contact the SCPD if you have any questions regarding our position or recommendations on the proposed regulation.

Sincerely,

J. Todd Webb, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Susan Bunting, Department of Education
Mary Ann Mieczkowski, Department of Education
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