

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Human Resources
(DLS Control No. 14-314)**

Overview and Legal and Fiscal Impact

This regulation creates an exception to a requirement that a local department of social services determine whether it is in the best interests of a child whose out-of-home placement changes to continue to attend the school the child last attended in order to clarify that the requirement does not apply to certain children who are considered homeless under federal law. The regulation also modifies the guidelines for the best interests determination to require a local department of social services to seek input from certain persons.

The regulation presents no legal issue of concern.

There is no impact on State or local agencies.

Regulation of COMAR Affected

Department of Human Resources:

Social Services Administration: Out-of-Home Placement Program:
COMAR 07.02.11.12

Legal Analysis

Background

Chapters 550 and 551 of 2012 imposed requirements on the Department of Human Resources (DHR), the Department of Juvenile Services (DJS), and the State Department of Education (MSDE) that were intended to put Maryland into compliance with the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. Under Chapters 550 and 551, in general, a child who is in the custody of, committed to, or otherwise placed by a local department of social services or DJS may remain at the school the child has been attending under certain circumstances, regardless of where the child is domiciled. Among other requirements, the local department of social services or DJS, in consultation with the local school system, must determine whether it is in the best interests of the child to continue at the school.

However, the educational stability provisions of Chapters 550 and 551 apply only if the child is “not subject to the educational stability provisions of the federal McKinney-Vento Homeless Assistance Act as a child awaiting foster care placement as defined by MSDE in regulation.” The federal McKinney-Vento Homeless Assistance Act, originally passed in 1987 and amended by the No Child Left Behind Act of 2001, provides assistance to states to promote

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educational stability, access, and academic success for homeless students. Under the program, state educational agencies must ensure that each homeless child has equal access to the same free, appropriate public education as other children. In determining the child's best interests, the local school system must, to the extent feasible, keep a homeless student in the school of origin, unless doing so is contrary to the wishes of the child's parent or guardian.

In COMAR 13A.05.09.02B(2), MSDE defines a "child awaiting foster care placement" as a child (1) placed out of the child's home pursuant to a shelter care order by the Department of Social Services or DJS; (2) placed out of the child's home pursuant to a voluntary placement agreement; or (3) committed to or placed in the care and custody of the Department of Social Services or DJS who is placed into a certain temporary, short-term placement of no longer than 90 school days. COMAR 13A.05.09.04 requires the local school system, according to the best interests of the child and to the extent feasible, to establish a procedure to keep a homeless child in the school of origin.

Summary of Regulation

In 2013, as required under Chapters 550 and 551 of 2012, DHR adopted implementing regulations establishing the factors a local department of social services must consider in determining whether it is in the best interests of a child whose out-of-home placement changes to continue to attend the school the child last attended. The proposed regulation creates an exception to clarify that those regulatory provisions do not apply to "a child awaiting foster care placement" as set forth in the McKinney-Vento Act of 1987 and defined in COMAR 13A.05.09.02". In addition, this regulation modifies a provision authorizing the local department of social services to seek input from various persons during the best interests determination to instead require the local department to make efforts to seek input unless doing so will create undue delay in the placement.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

DHR cites §§ 3-801, 3-802, 3-815, 3-816.1, 3-817, 3-819.1, 3-819.2, 3-820, and 3-823 of the Courts and Judicial Proceedings Article, §§ 7-101(b) and 15-106.1 of the Education Article, §§ 5-501, 5-504, 5-524 through 5-534, 5-701, and 5-709 of the Family Law Article, and § 9-101 *et seq.* of the Human Services Article as legal authority for the regulation. The cited authority generally governs the out-of-home placement and foster care of children and juvenile services in the State.

More specifically, § 7-101(b)(2)(ii) of the Education Article requires a county superintendent of schools to allow a child to remain at a public school that the child is attending, regardless of where the child is currently domiciled, if (1) the child is in the custody of, committed to, or otherwise placed by a local department of social services or DJS; (2) the child is subject to the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008; (3) the child is not subject to the educational stability provisions of the federal McKinney-Vento Homeless Assistance Act as a child awaiting foster care placement as defined by MSDE in regulation; (4) the child is not in a detention facility, a

forestry camp, a training school, a State-owned and -operated facility that accommodates more than 25 children, or any other facility operated primarily for the detention of children who are determined to be delinquent; (5) the local department of social services or DJS determines, in consultation with the local school system, that it is in the best interests of the child to continue at that school; and (6) the local department of social services or DJS pays for the cost of transporting the child to and from school. Section 7-101(b)(2)(iii) requires DHR to adopt regulations establishing factors that must be considered in determining the best interests of the child.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation clarifies that Department of Human Resources regulations regarding school stability for children in out-of-home placement do not apply to a child who is subject to the educational stability provisions of the federal McKinney-Vento Homeless Assistance Act as “a child awaiting foster care placement.” School stability for these children is currently provided for by MSDE regulations.

Also, the regulation *requires* local departments of social services to make efforts to seek input from specified persons who can contribute relevant information toward determining the best interests of a child with respect to placement, unless doing so will create undue delay in placement. Presently, the regulation states that local departments of social services *may* make such efforts. However, the department advises that its guidance to local departments of social services indicates that such contact should be made. The regulation, therefore, is not expected to have a substantial impact on local government workload. The department advises that the regulation has no fiscal impact on State or local governments, given that the regulation is clarifying in nature. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small business in the State. The Department of Legislative Services concurs.

Contact Information

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