



SPONSOR: Sen. Henry & Sen. Sokola & Rep. Jaques &  
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Sens. Bushweller, Hansen, Marshall, Townsend; Reps.  
Baumbach, Bolden, Lynn, Wilson

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 87

AN ACT TO AMEND TITLES 13 AND 14 OF THE DELAWARE CODE RELATING TO PUBLIC SCHOOL ENROLLMENT OF CHILDREN IN THE CUSTODY OF THE DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 202, Title 14 of the Delaware Code by making deletions as shown by strikethrough and  
2 insertions as shown by underline as follows:

3 § 202. Free schools; ages; attendance within school district; nonresidents of Delaware.

4 (c) Persons attending the public schools of this State shall attend the public schools in the school district within  
5 which they reside, except as provided in Chapters 4, 5 and 6 of this title and in Chapter 92, Volume 23, Laws of Delaware,  
6 as amended by Chapter 172, Volume 55, Laws of Delaware. Notwithstanding the foregoing, homeless children and  
7 unaccompanied youth, as defined by 42 U.S.C. § 11434a, shall attend school in accordance with the McKinney-Vento  
8 Homeless Education Assistance Improvement Act [42 U.S.C. §§ 11431 to 11435]; provided any person determined to be  
9 ineligible under the act may be denied enrollment. ~~For the purpose of this section and provisions of the McKinney-Vento~~  
10 ~~Homeless Education Assistance Improvement Act [42 U.S.C. §§ 11431-11435], the words "awaiting foster care placement"~~  
11 ~~include all children in foster care.~~ Children in the custody of the Department of Services for Children, Youth and Their  
12 Families under Chapter 25 of Title 13 must attend school in accordance with § 202A of this title.

13 (e)(1) For purposes of this section, a student shall be considered a resident of the school district in which that  
14 student's parents or legal guardian resides. If the child's parents do not reside together and a court of appropriate jurisdiction  
15 has entered a custody order, the child's residency for school attendance purposes shall be determined as follows unless  
16 otherwise agreed in a writing signed by both parents:

17 a. In cases in which 1 parent is awarded sole custody, the child shall be considered a resident of the  
18 district in which the sole custodian resides.

19 b. In cases in which the parents are granted joint custody, the child shall be considered a resident of the  
20 district in which the primary residential parent resides.

21 c. In cases in which the parents are granted shared custody, the child may be considered a resident of  
22 either parent's district.

23 Under no circumstances shall a child be enrolled in 2 different schools at the same time.

24 (3) Children under the care or custody of the Department of Services for Children, Youth and Their Families  
25 are exempted from the provisions of this subsection. Children in the care and custody of the Department of Services for  
26 Children, Youth and Their Families who are in foster care ~~shall attend school in accordance with the McKinney-Vento~~  
27 ~~Homeless Education Assistance Improvement Act (42 U.S.C. §§ 11431-11435)~~ under Chapter 25 of Title 13 must  
28 attend school in accordance with § 202A of this title.

29 Section 2. Amend Subchapter I, Chapter 2, Title 14 of the Delaware Code by making deletions as shown by  
30 strikethrough and insertions as shown by underline as follows:

31 § 202A. School enrollment for children in the custody of the Department of Services for Children, Youth and  
32 Their Families.

33 (a) For purposes of this section, "school of origin" means any of the following:

34 (1) The school in which the child is enrolled at the time of entry into the custody of the Department of  
35 Services for Children, Youth and Their Families (DSCYF).

36 (2) The school in which the child is enrolled at the time of any change in placement while in the custody of  
37 DSCYF.

38 (3) The school identified for the next grade level in the same school district where the child in the custody of  
39 DSCYF is enrolled.

40 (b)(1) A child in the custody of DSCYF under Chapter 25 of Title 13 must remain in the child's school of origin,  
41 unless a determination is made that it is not in the child's best interest to attend such school.

42 (2) If it is determined that it is not in the best interest of a child to remain in the child's school of origin, the  
43 child must immediately be enrolled in the child's school of residence based on the current address of the DSCYF  
44 custody placement, even if the records or other documents normally required for enrollment are not produced. The  
45 school in which the child is enrolled shall immediately contact the child's school of origin to obtain relevant academic  
46 and other records.

47 (3) The determination of a child's best interest under this subsection must, at a minimum, be made by a  
48 representative of DSCYF, a representative of the child's school of origin, and a representative of the child's school of  
49 residence based on the address of the DSCYF custody placement at the time of the determination.

50 (c)(1) If a child leaves the custody of DSCYF, the child must remain in the school in which the child is enrolled  
51 through the remainder of the academic year, unless a determination is made that it is not in the child's best interest.

52 (2) The determination of a child's best interest under this subsection must, at a minimum, be made by a  
53 representative of DSCYF, a representative of the school in which the child is enrolled, and a representative of the  
54 child's school of residence based on the address of the DSCYF custody placement at the time of the determination.

55 (d) The Secretary of Education shall promulgate regulations to establish a process for the determination of a  
56 child's best interest under subsection (b) and (c) of this section.

57 Section 3. Amend § 2502, Title 13 of the Delaware Code by making deletions as shown by strike through and  
58 insertions as shown by underline as follows:

59 § 2502. Definitions.

60 For the purposes of this chapter, unless the context indicates differently:

61 (20) "School of origin" ~~is defined as the school the child attended at the time the child was placed in the~~  
62 ~~custody of DSCYF~~ means as defined in § 202A(a) of Title 14.

63 Section 4. Sections 1, 2, and 3 of this Act take effect on the effective date of final regulations published in the  
64 Register of Regulations and promulgated under § 202A(d) of Title 14, as contained in Section 2 of this Act. The Secretary  
65 of the Department of Education shall provide notice to the Registrar of Regulations that the publication of final regulations  
66 is required for Sections 1, 2, and 3 of this Act to become effective.

67 Section 5. Section 202A(a)(3) of Title 14, as contained in Section 2 of this Act, expires on June 30, 2020, unless  
68 otherwise provided by a subsequent act of the General Assembly.

#### SYNOPSIS

This Act updates the school stability law for children in the custody of the Department of Services for Children, Youth and Their Families (DSCYF) following passage of the federal Every Student Succeeds Act (ESSA), which reauthorizes the Elementary and Secondary Education Act (ESEA). ESSA requires Delaware to eliminate the provision "awaiting foster care placement" under § 202(c), Title 14 in accordance with the federal McKinney Vento Homeless Assistance Act by December 10, 2017, and instead create a distinct provision regarding school stability for children in the custody of DSCYF. [42 U.S.C. §§ 11431 to 11435; ESEA section 1111(g)(1)(E)(i)-(iii)), 20 U.S.C. §6311(g)(1)(E)]. This Act clarifies that children in the custody of DSCYF remain entitled to attend their school of origin if it is in their best interests to do so, or are eligible for immediate enrollment in a new school.

Sections 1, 2, and 3 of this Act take effect on the effective date of final regulations published in the Register of Regulations and promulgated under authority granted by § 202A(d) of Title 14, which is created by Section 2 of this Act.

Author: Senator Henry