

Homeless Dispute Resolution Procedures



Illinois State Board of Education
Center for Regional Services
State Coordinator of Homeless Education

September 2017

Updated December 2021

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This document may be downloaded at <https://www.isbe.net/Pages/Homeless.aspx>.

Introduction

This document has been drafted in response to multiple inquiries from the field with respect to the dispute resolution process to be used by districts, parents, and pupils if and when disagreements arise in relation to a pupil's homeless status. Until now, a definitive document regarding the entire scope of the dispute resolution process has not been available — this document is an attempt by the Illinois State Board of Education (ISBE) to bring clarity, fairness, and consistency to the dispute resolution process for homeless pupils.

The information contained herein is based upon the provisions of the McKinney-Vento Homeless Assistance Act [42 U.S.C. § 11301 et seq], Illinois' Education for Homeless Children Act [105 ILCS 45/ et seq], and the ISBE State Plan for Homeless Education, and the ISBE Policy on the Education of Homeless Children and Youth (ISBE Policy). Further information with respect to programmatic policies and accepted rules for conduct are also included.

Suggestions for revision of this document should be made in writing (including email) to the following:

Illinois State Board of Education
Wellness Department
Attention: State Coordinator for Homeless Education
100 North First Street, 2000 E-222
Springfield, Illinois 62777
homeless@isbe.net

Section I: Defining Dispute Resolution

A. What is dispute resolution?

For purposes of homeless education and pupils, dispute resolution is the formal process available to districts/schools and parents/guardians/unaccompanied youth should a dispute arise regarding a pupil's eligibility for homeless services under federal and state law. The dispute resolution process is:

1. The only mechanism that can formally determine the outcome of a homeless-related dispute between an eligible student and a district.
2. A method of sensitively resolving disagreements with respect to the eligibility of a student.
3. To be used for resolving disputes regarding enrollment, full participation in school activities, transportation, and any other issue related to a pupil's homelessness.
4. To be structured as informally as possible in order to allow parents/guardians/unaccompanied youth as much assistance as possible in navigating the process.
5. A method by which districts/schools and parents/guardians/unaccompanied youth can provide both oral and written testimony with respect to arguments to be made.

Dispute resolution is not:

1. A formal legal proceeding or an administrative or a judicial hearing.
2. An opportunity to vet disagreements about any other matter other than issues related to homelessness.
3. An opportunity for a district to intimidate, scorn or otherwise marginalize a pupil or family.
4. An opportunity for pupils or parents to unlawfully gain access to a district's educational program.

B. The Statutory and Regulatory Basis for Dispute Resolution

Illinois' dispute resolution process has its basis in federal and state statute and ISBE Policy.

Federal law requires each state plan on homeless education to include "[a] description of procedures for the prompt resolution of disputes regarding the educational placement of Homeless children and youths" [42 U.S.C. 11431 Sec. 722 (g) (C)]. Per 42 U.S.C. 11431 Sec. 722 (g) (3) (E) (i)-(iv), in the event of a dispute regarding enrollment or school selection, "[i]f a dispute arises over school selection or enrollment in a school--

(i) the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute;

(ii) the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(iii) the child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute."

State law requires regional superintendents of schools to “appoint an Ombudsperson who is fair and impartial and familiar with the educational rights and needs of homeless children to provide resource information and resolve disputes at schools within his or her jurisdiction relating to the rights of homeless children under this Act” [105 ILCS 45/1-25 (A)].

The district must issue a letter to the parent/guardian or youth explaining, with a degree of specificity, the district’s position as to the homelessness-related dispute. In this letter, the district must also include referrals to free/reduced-cost legal help and an outline of the dispute resolution procedure. The district must copy on such letter the applicable regional superintendent of schools and Illinois’ state coordinator for the education of homeless children and youth. The regional superintendent of schools shall appoint an ombudsperson to hear the dispute within 10 school days after receiving such notice.

If a school denies a homeless child enrollment or transportation, it shall immediately refer the child or his or her parent or guardian to the ombudsperson and provide the child or his or her parent or guardian with a written statement of the basis for the denial.

The child shall be admitted and transported to the school chosen by the parent or guardian until final resolution of the dispute. If possible, the ombudsperson shall convene a meeting with the district and student or family within 10 school days of his or her appointment. The regional homeless liaison and the lead area liaison may also attend the meeting.

The ISBE State Plan for Homeless Education and the ISBE Policy on the Education of Homeless Children and Youth provide greater specificity in terms of district and regional responsibilities. Districts must:

1. Immediately enroll the student(s) and arrange for transportation and other services as appropriate.
2. Involve district’s liaison in an attempt to discuss the issues with the parent/youth to determine if more information can clear up the issues. Failing to accomplish that:
3. Issue a letter to the parent/guardian or youth explaining, with a degree of specificity, the district’s position as to the homelessness-related dispute. In this letter, the district must also include referrals to free/reduced-cost legal help and an outline of the dispute resolution procedure. The district must copy on such letter the applicable regional superintendent of schools and Illinois’ state homeless coordinator.
4. Refer the child or his or her parent or guardian to the fair and impartial ombudsperson appointed by the district’s regional superintendent of schools. The district’s liaison should exercise responsibility for facilitating access to legal help and advocacy and other information and, upon knowledge that legal representation is obtained by a family or youth, the district (through its liaison or otherwise) shall appropriately work with such legal representative throughout the dispute resolution process.

The ombudsperson shall be familiar with the educational rights and needs of homeless children; work with all parties to schedule a meeting, notifying such parties of the meeting’s date, time, and location; and, to the extent available, provide the parties with any requested resource information in advance of the meeting so as to enable a full and fair presentation of their respective positions in the dispute resolution process. If at all possible, such meeting should occur within five school days after the letter has been delivered.

The ombudsperson shall, as part of the meeting, allow for a complete presentation of relevant facts by all parties. The child and/or his or her parent or guardian should be allowed to have assistance from a legal representative knowledgeable of federal and state laws pertaining to homeless students’ educational rights.

At the conclusion of the meeting or promptly thereafter, the ombudsperson shall, communicate in writing his or her decision to the parties and inform the parties of the ability to have the state coordinator review compliance with applicable law.

The ISBE State Plan for Homeless Education and ISBE Policy also detail an appeals process:

1. Either party may, within five school days of the ombudsperson's decision, send a written request to the state coordinator asking for a review of such decision regarding compliance with applicable law. Such request must include any documentation related to the dispute resolution proceeding. The request may be made via U.S. Mail or email.
2. Upon receiving a request for review, the state coordinator may request from either party any additional information that he or she deems relevant to determining compliance with applicable law. No later than 15 school days after receiving the request for review, the state coordinator shall make a recommendation to the State Superintendent of Education regarding the ombudsperson's decision and the appropriate placement of the student (deferring, in this review, to any and all findings of fact by the ombudsperson).
3. If the State Superintendent of Education or designee determines that the district's action giving rise to the dispute is inconsistent with applicable law, he/she may order the district to take any action necessary for such district to be in compliance with applicable law. Should the district not comply with such order, the State Superintendent shall place the district's recognition status on probation in accordance with 23 Ill. Admin. Code 1.20(b).

C. Dispute Resolution as a 'Last Resort'

Formal dispute resolution should never be the first method or attempt to resolve a dispute with respect to homelessness. Rather, the district and its homeless liaison should take care to ensure appropriate and sensitive communications with the pupil or parent have taken place prior to initiating any formal proceedings. Experience has shown that many "disputes" can be carefully resolved through open communication with families and pupils.

Section II: Pre-Meeting Procedures

Pre-dispute resolution meeting procedures often set the tone and overall level of cooperation between affected parties. As is the case during any other step of the process, pre-meeting procedures should proceed sensitively and in a child-centered manner. The ombudsperson has the duty to ensure that procedures are fair for and equitable for each party.

A. District Investigatory Procedures

A district may investigate claims of misconduct and noncompliance in the course of its obligation to ensure that only those students legally entitled to attend district schools are enrolled. To interpret otherwise would be to deny a district the ability to ensure that it meets its own obligations to offer a tuition-free public education to only eligible (resident) students. That being said, neither state nor federal law enumerate acceptable investigatory techniques or practices. Rather, districts must be reasonable in approaching any investigation of a student, particularly when removal from an educational program is a possibility. To this end, ISBE Policy provides that each “child be handled sensitively and in a child and family-centered manner.” The ISBE Policy also provides that school districts are “to refrain from any segregation, discrimination or stigmatization.” The extent to which a district’s investigatory practices are handled sensitively and are family-centered must be evaluated on a case-by-case scenario. Likewise, the extent to which a district has engaged in segregation, discrimination, or stigmatization must be evaluated on a case-by-case scenario.

Interviewing Other Students – Nothing in statute prohibits a district from interviewing other students. Districts must be given the latitude to make reasonable and legitimate inquiries, provided that no confidential or private information, student records information, or any other protected information is improperly released to the student being interviewed. In no case should a student be coerced into providing information against his/her will, nor should the student’s willingness or unwillingness to participate in an interview be used in any way against him/her. Any documentation with respect to or resulting from such interviews that (a) is maintained by the district, and (b) that specifically identifies any student becomes that identified student’s student record and is subject to the Illinois School Student Records Act (ISSRA) and the Family Educational Rights and Privacy Act.

Home Visits – Districts use home visits to varying degrees as a way to verify residence when other forms of verification are unavailable. Such home visits must be voluntary, and any refusal by a parent or guardian to allow for such a visit may not be construed as an indication of noncompliance. Further, it is against ISBE Policy for “any school staff to provide school student records or information therein to any landlord, zoning office, contractor, municipal officer or housing authority.”

At the core of the issue is that districts, which have the power to legitimately investigate residency and homelessness, must take great care to ensure that all such investigations are conducted appropriately and in a child-centered manner.

B. Notification of Dispute

After all other non-formal methods to bring clarity to the issue and bring each party to a mutual understanding have been exhausted (see Section I (C) on the bottom of page 4), the district may proceed to notify the parent that it is referring the matter for a formal dispute resolution meeting. Such notice must be given in writing to the parent and minimally contain the following information:

1. The specific reasons why the district is referring the issue for dispute resolution.
2. The specific reasons why the district does not accept the arguments or positions given by the pupil or parent.
3. A listing of free and/or reduced-cost legal assistance available to the pupil or parent.

The notification must be copied to the appropriate regional superintendent of schools and the state coordinator for homeless education and youth. The lead area homeless liaison and regional homeless liaison should also be copied

on the notification.

In cases where a pupil's mobility within or outside of a district may have the impact of limiting communication with the pupil or family, districts should ensure that communications (including the notification of dispute) are redundant across multiple means (e.g., U.S. Mail, hand-delivery, email, etc.).

C. Appointment and Pre-Meeting Role of the Ombudsperson

Appointment of the Ombudsperson – The ombudsperson shall be selected by the regional superintendent of schools who has supervision and control of the district initiating dispute resolution, within 10 school days after receiving such notice. State law requires that the ombudsperson be “fair and impartial and familiar with the educational rights and needs of homeless children” [105 ILCS 45/1-25 (A)]. Further, ISBE strongly encourages regional superintendents of schools to only appoint ombudspersons who have been trained by the applicable lead area homeless liaison.

Scheduling – Per state law [105 ILCS 45/1-25 (A)], the ombudsperson shall make every effort to convene the dispute resolution meeting within ten (10) school days of his or her appointment. Prior to the dispute resolution meeting, the ombudspersons must inform all parties that they may request copies of documents that will be used by the other party during the meetings. Such requests must be received within five school days of the meeting. Therefore, dispute resolution meetings should be scheduled expeditiously but within a reasonable amount of time for parents/guardians and the district to make scheduling arrangements and to prepare for the meeting. In any event, the ombudsperson shall make the final determination as to the time, date and location of the dispute resolution meeting.

Pre-Meeting Communications – The ombudsperson shall be responsible for notifying all parties of the time, date, and location of the dispute resolution meeting. The ombudsperson may request that the applicable regional superintendent of schools mail and/or deliver such notices (and any other form of communication) that have been created by the ombudsperson. In cases where a pupil's mobility within or outside of a district may have the impact of limiting communication with the pupil or family, the ombudsperson should ensure that communications are redundant across multiple means (e.g., U.S. Mail, hand-delivery, email, etc.).

D. Reciprocal Requests for Documentation

Per ISBE Policy, the ombudsperson shall “provide the parties with any requested resource information in advance of the meeting so as to enable a full and fair presentation of their respective positions in the dispute resolution process.” ISBE interprets such policy to require the reciprocal disclosure of all materials, recordings, documents, and reports relevant to the matter and held by the parties prior to a dispute meeting in a manner and timeframe so as to allow for a thorough review by each party. The ombudsperson makes the determination of the manner and timeframe required to allow each party a thorough review of documents. Further, all student records from the current district of the child(ren) under review are subject to such prior disclosure. Per ISSRA, a student record consists of:

[A]ny writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored. The following shall not be deemed school student records under this Act: writings or other recorded information maintained by an employee of a school or other person at the direction of a school for his or her exclusive use; provided that all such writings and other recorded information are destroyed not later than the student's graduation or permanent withdrawal from the school; and provided further that no such records or recorded information may be released or disclosed to any person except a person designated by the school as a substitute unless they are first incorporated in a school student record and made subject to all of the provisions of this Act. School student records shall not include information maintained by law enforcement professionals working in the school. [105 ILCS 10/2 (d)]

Therefore, if an investigative document/ recording (a) individually identifies a student; (b) is maintained by a district employee or at the direction of the school; and (c) does not meet any exception, then it is statutorily considered a student record and subject to prior disclosure.

Refusal by either party to disclose documents shall result in the exclusion of those documents from the dispute resolution meeting.

Documents protected under attorney-client privilege, attorney work product, non-student records held by third parties, or any other document where disclosure would constitute a violation of state or federal law/regulation are not subject to prior disclosure.

E. Continued Enrollment, Transportation, and Access for the Pupil

In no case shall enrollment, transportation, or full participation in any program be terminated during the dispute resolution process. All such services and programs must be continued pending the final determination and, if applicable, an appeal to the State Superintendent of Education.

Section III: Meeting Procedures

A. Timeframe and Length of the Dispute Resolution Meeting

Dispute resolution meetings must be fair and impartial, and conducted with a minimum of legal formality — to the extent possible. Ombudspersons should allow each party sufficient time to present their arguments clearly and thoroughly. However, it is the responsibility of the ombudsperson to ensure that proceedings do not become overly protracted or lengthy. There is no maximum specific timeframe during which a dispute resolution meeting must be concluded, but it is difficult to imagine a legitimate reason that the meeting should enter a second day.

B. Evidence and Testimony

Evidence and testimony given during the dispute resolution meeting must meet all of the following preconditions in order to be introduced:

1. The evidence or testimony is specifically related to the homeless assertion of the student(s). The ombudsperson shall make the final determination as to whether or not evidence or testimony is specifically related to homelessness.
2. The evidence or testimony has been provided to the other party upon request.
3. Weight and credibility is assigned to evidence.

Prior proceedings may be introduced (i.e., residency hearing transcripts/decisions) into evidence and discussed during the dispute resolution meeting, but only to the extent that the information contained therein is specifically related to the instant proceeding. Disciplinary records serve no legitimate purpose during a dispute resolution meeting and may not be introduced.

C. Standards of Conduct

These standards are designed to encourage everyone involved in due process proceedings to meet our obligations to each other in resolving these important educational disputes on behalf of students with disabilities. Everyone – hearing officers, attorneys, advocates and parents – is expected to make a mutual and firm commitment to these standards.

(a) *Ombudsperson's Duties to Parties and Attorneys* – The ombudsperson shall:

- i. Maintain control of all proceedings.
- ii. Be courteous and respectful to parties, attorneys, and witnesses.
- iii. Be punctual. If she/he is delayed, she/he shall notify the parties as soon as possible. In an emergency, the ombudsperson may contact one party or attorney to advise of an emergency delay and request that the notified party or attorney contact the opposing party or attorney.
- iv. Consider the time schedules of parties, attorneys, and witnesses in scheduling the dispute resolution meeting. However, being considerate of such time constraints shall not take the focus away from resolving disputes efficiently and as expeditiously as possible. A party or attorney may be required to show good cause for prolonged unavailability or extensive continuances that will delay the prompt scheduling of the meeting.

(b) *Parties' and Attorneys' Duties to the Ombudsperson* – Each party (and attorney, if applicable) shall:

- i. Speak and write civilly and respectfully to the ombudsperson.

- ii. Be punctual and prepared for the dispute resolution meeting. If a party or attorney is delayed, the party or attorney shall notify the ombudsperson and the opposing party or attorney as soon as possible.
- iii. Each party and attorney shall be considerate of the time pressures and constraints on the ombudsperson.
- iv. Each party and attorney shall not engage in any conduct that is disorderly or disruptive to the proceeding.
- v. Each party and attorney shall not knowingly misrepresent, mischaracterize, or misquote facts or law in any oral or written communication to the ombudsperson.

(c) *Parties' and Attorneys' Duties to Each Other* – The parties (and attorneys, if applicable) shall:

- i. Treat each other – and all witnesses and others involved in this proceeding – in a civil and courteous manner throughout these proceedings.
- ii. Refrain from acting in an abusive or offensive manner to each other and to witnesses. The parties and attorneys shall refrain from making disparaging remarks to each other and to witnesses. The parties and attorneys shall treat each other and witnesses with fair consideration.
- iii. Absent good cause, refrain from attributing bad motives or improper conduct to each other.
- iv. Adhere to all express promises and agreements made with the opposing party, whether oral or in writing, and adhere in good faith to all agreements.
- v. Not ascribe a position to each other that a party has not taken or otherwise seek to create an unjustified inference based on a party's statement or conduct.

Section IV: Post-Meeting Procedures

A. Issuing the Determination

A student’s enrollment, transportation or full participation in school programs depends upon the outcome of the dispute resolution meeting, so every effort should be made by the ombudsperson to make a determination as quickly as possible after the conclusion of the meeting. However, if deemed appropriate, the ombudsperson may allow and direct parties to submit additional documentation for review after conclusion of the meeting, provided each party has an opportunity to respond in writing to the supplemental documentation. It is anticipated that the ombudsperson’s final determination will be issued to the parties within 10 school days after the conclusion of the dispute resolution meeting or responses to the submission of supplemental documentation.

B. Crafting the Determination

In crafting the final determination, the ombudsperson should ensure with a great deal of specificity to address each and every topic, argument and position relayed by the parties. Each determination shall, at a minimum, include the following components/sections, each being clearly labeled:

Section	Content
Background Information	Name of the district and school; name of the parent/guardian and student(s), and the nature of the dispute.
Individuals in Attendance	A complete listing of all individuals present for the dispute resolution meeting and their professional titles.
Case-Specific Timelines	Timeline of procedural events, including: the date the district invoked dispute resolution, the date the dispute resolution meeting was convened, and the date of the final determination of the ombudsperson.
The Arguments	The arguments and positions of each party, including the evidence, testimony, and documentation used in support.
Discussion	The ombudsperson’s discussion of the parties’ arguments, including the weight to be given to each. If the ombudsperson does not agree with or support an argument made by one of the parties, a discussion of why she/he feels such should be discounted in making a final determination.
Fixed, Regular and Adequate Analysis	The ombudsperson must complete an analysis as to the current living situation of the student(s) and make findings as to whether or not such living situation is fixed, regular, and adequate.
Final Determination	The final determination, finding the student(s) either “homeless” or “not homeless” pursuant to federal law and state law/policy. The date of the final determination must be explicitly noted. If the student is found not be eligible for McKinney-Vento services, the ombudsperson must identify the appropriate living situation where he/she is in a fixed, regular, and adequate residence.
Notice of Right to Appeal	Notice of the parties’ right to appeal the final determination to the state coordinator for homeless education. Such notice must include all of the language referencing appeals in ISBE Policy.

The following individuals must be send copies of the ombudsperson’s final determination: each party to the dispute, the lead area homeless liaison, the applicable regional superintendent of schools, and the state coordinator for homeless education.

C. Methods of Communicating the Determination

The ombudsperson must ask each party at the dispute resolution what form of communication best suits their needs and transmit the determination accordingly. In cases where a pupil’s mobility within or outside of a district may have the impact of limiting communication with the pupil or family, the ombudsperson should ensure that communications are redundant across multiple means (e.g., U.S. Mail, hand-delivery, email, etc.). The lead area

homeless liaison, applicable regional superintendent of schools, and state coordinator for homeless education may each be sent the determination via email.

Note: An appellate right exists, so a student may not be dis-enrolled or otherwise denied services under McKinney-Vento immediately upon the ombudsperson's determination. A student may be dis-enrolled or denied McKinney-Vento services upon the sixth school day after the ombudsperson's written decision or, if appealed, upon the final determination of the State Superintendent of Education.

Section V: The Appeal

Either party may, within five school days of the ombudsperson's decision, send a written request to the state coordinator asking for a review of such decision regarding compliance with applicable law. The written appeal may be sent to the state coordinator in any method, but it is strongly recommended that parties submit the notice of appeal via email, if practical. Such request must include any documentation related to the dispute resolution proceeding and must detail the specific reasons why the appellant feels the ombudsperson erred in his/her final determination.

Upon receiving a request for review, the state coordinator shall direct the ombudsperson to submit all documents, notes, transcripts, and other materials used by all parties to present their respective cases. The state coordinator may also request from either party any additional information that he or she deems relevant to determining compliance with applicable law.

No later than fifteen school days after receiving the request for review, the state coordinator shall make a final decision regarding the ombudsperson's decision and the appropriate placement of the student (deferring, in this review, to any and all findings of fact by the ombudsperson).

If the State Superintendent of Education or designee determines that the district's action giving rise to the dispute is inconsistent with applicable law, he/she may order the district to take any action necessary for such district to be in compliance with applicable law. Should the district not comply with such order, the State Superintendent shall place the district's recognition status on probation in accordance with 23 Ill. Admin. Code 1.20 (b).