

Nancy S. Grasmick  
State Superintendent of Schools

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**TO:** Members of the Maryland State Board of Education  
**FROM:** Nancy S. Grasmick *Nancy*  
**DATE:** May 27-28, 2009  
**SUBJECT:** COMAR 13A.05.09.02 (AMENDED)  
Programs for Homeless Children  
**ADOPTION**

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**PURPOSE:**

To adopt amendments COMAR 13A.05.09.02 Programs for Homeless Children  
(ATTACHMENT I).

**BACKGROUND/HISTORICAL PERSPECTIVE:**

COMAR 13A.05.09 addresses the requirements to ensure that homeless students have access to education. A homeless student is a child or youth who lacks a fixed, regular, or adequate nighttime place of local residence. The question arose whether children awaiting foster care placement were considered homeless.

**EXECUTIVE SUMMARY:**

The federal McKinney-Vento Act of 2002 addresses the educational rights of homeless children/or unaccompanied youth. It provides examples of children who would fall under the definition of homeless which includes children “**awaiting foster care placement.**” In consultation with the Maryland Department of Human Resources and private advocacy groups, the attached regulation was developed to define which children in Maryland would be considered children awaiting foster care placement. The draft regulation was shared with the 24 local school superintendents for review and comment.

COMAR 13A.05.09.02, contains the implementing State regulations for Child Awaiting Foster Care Placement. The proposed regulation was published in the Maryland Register, Vol.36, Issue 8, Friday, April 10, 2009. The public had the opportunity to submit comments until May 11, 2009. Only one email was received and is attached.



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The cost of transportation under McKinney-Vento Act of 2002 may increase due to including children “awaiting foster care placement. The cost of transportation is approximately \$294 per homeless student. These amendments will increase the number of eligible students by approximately 22.5 students statewide. This figure does not include the cost of homeless student transportation in Prince George’s County since there is a high number of homeless students and the nature of the county requires that transportation be furnished via private transportation (cabs).

**ACTION:**

I am recommending the Board adopt these amendments to COMAR 13A.05.09.02 Programs for Homeless Children.

NSG:JM:crt

Attachment

(e) A notice of referral to the CCU shall advise the account holder or registered owner of the action required to prevent the account from being referred to the CCU.

(f) After referral of the account to the CCU, the Authority may not negotiate any settlement with the account holder or registered owner.

(g) The Authority shall provide:

(i) To the account holder or registered owner, appropriate documentation that substantiates the referral of the account to the CCU; and

(ii) To the CCU, all substantiating documentation required for collection.

(7) Civil Citation.

(a) The Authority may issue a civil citation for each unpaid toll transaction that an account holder or registered owner of a vehicle incurs after the Authority refers prior unpaid toll transactions or administrative fees to the CCU, if that referral action remains unpaid.

(b) A person who receives a citation shall pay to the Authority within 60 days of the mailing of the citation, the amount of the tolls due and, for each unpaid toll transaction, a civil penalty of \$50 and an administrative fee of \$25.

(c) A person may contest a citation by:

(i) Providing to the Authority within 30 days of the mailing of a citation the information required by Transportation Article, §21-1414(f), Annotated Code of Maryland; or

(ii) Electing to stand trial in a District Court of Maryland.

(d) If a person fails to provide the information required by Transportation Article, §21-1414(f), Annotated Code of Maryland, fails to make the required payments in a timely fashion, or fails to elect to stand trial, the Authority may seek enforcement of the citation in the District Court of Maryland and request from the court that the person be liable for court costs, including attorneys' fees incurred by the Authority.

C. Procedures — Appealing Notices of Unpaid Toll Transactions and Administrative Fees. A person may appeal any notice alleging unpaid toll transactions by completing the Affidavit of Non-Liability/Request for Administrative Review included with all unpaid toll transaction notices sent by the Authority, and shall provide satisfactory evidence to substantiate any claims made therein.

[C.] D. Procedures — Speed Violations.

(1) First Speed Violation Notice. The Authority shall send a warning notice to an account holder for a single speed violation occurring on one occasion in a 6 month period.

(2) Second Speed Violation Notice. The Authority may suspend the privileges of an account holder for up to 60 days for a second speed violation in a 6-month period.

(3) Third Speed Violation Notice. The Authority may revoke the privileges of an account holder for a third speed violation in a 6-month period.]

(1) A speed violation notice shall be sent per account for private accounts and per transponder for business accounts.

(2) Notice of Warning for a Speed Violation. A warning notice shall be sent for the first speed violation in a toll lane and the notice shall include the consequences for receiving a second violation.

(3) Notice of Suspension for a Speed Violation.

(a) A suspension notice shall be sent for a second speed violation in a toll lane occurring within 180 days of the first speed violation for which notice has been given by the Authority.

(b) A suspension notice shall notify the account holder that their electronic toll collection privileges are being suspended for 60 days, and shall include the beginning date and ending date of the suspension of privileges.

(c) A suspension notice shall include the consequences of any speed violation or attempt to use the electronic toll collection account while under suspension.

(4) Notice of Revocation — Speed Violation.

(a) A revocation notice shall be sent for the third speed violation in a toll lane occurring within 180 days of the first speed violation for which notice has been given by the Authority.

(b) A revocation notice shall notify the account holder that their electronic toll collection privileges are being revoked, and shall specify the effective date of the revocation.

(c) A revocation notice shall include the consequences of any attempt to use the electronic toll collection account while revoked.

[D.] E. The Authority may issue unpaid toll transaction and speed violation [enforcement] notices by [regular] first class U.S. mail.

.06 Suspension, Revocation, or Cancellation of Account Privileges.

A. The Authority may suspend or revoke an account holder's privileges for violations of electronic or video collection laws, these regulations, or the [Agreement] agreement.

B. (text unchanged)

C. If privileges are suspended or revoked, the Authority shall return to an account holder within 60 days any unencumbered funds remaining in an account. [Trips] Unused commuter trips remaining in [an] a commuter program on the account may not be refunded or credited.

D. An account holder may cancel an account by making a written request to the Authority [and returning the transponder to the Authority].

E. (text unchanged)

RONALD L. FREELAND  
Executive Secretary  
Maryland Transportation Authority

Title 13A  
STATE BOARD OF  
EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL  
PROGRAMS

13A.05.09 Programs for Homeless Children

Authority: Education Article, §§2-205 and 7-301,  
Annotated Code of Maryland

Notice of Proposed Action

[09-128-P]

The Maryland State Board of Education proposes to amend Regulation .02 under COMAR 13A.05.09 Programs for Homeless Children. This action was considered at the Maryland State Board of Education meeting on February 24, 2009.

**Statement of Purpose**

The purpose of this action is to define which children in Maryland would be considered children awaiting foster care placement.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The cost of transportation may increase due to including children awaiting foster care placement.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
	Benefit (+)		
A. On issuing agency:	NONE		
B. On other State agencies:	NONE		
C. On local governments:	(E+)	\$294 per child	
D. On regulated industries or trade groups:	NONE		
E. On other industries or trade groups:	NONE		
F. Direct and indirect effects on public:	NONE		

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

C. The cost of transportation under McKinney-Vento Act of 2002 may increase due to including children awaiting foster care placement. The cost of transportation is approximately \$294 per homeless student. The inclusion of approximately 22.5 students will increase the cost per student slightly. This figure does not include the cost of homeless student transportation in Prince George's County since the county has a high number of homeless students and the nature of the county is such that transportation must be furnished by cabs.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to John T. McGinnis, Specialist, Pupil Personnel, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0295, or email to jmcginnis@msde.state.md.us, or fax to 410-333-8148. Comments will be accepted through May 11, 2009. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on May 27 and 28, 2009, at 200 West Baltimore Street, Baltimore, MD 21201.

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) (text unchanged)
  - (2) "Child awaiting foster care placement" means:

- (a) A child placed out of the child's home pursuant to a shelter care order or a voluntary placement agreement documented by the Department of Social Services; or
- (b) A child committed to the care and custody of the Department of Social Services who is placed into a temporary, short-term placement of not longer than 90 school days, such as in:
  - (i) An emergency or shelter facility;
  - (ii) A diagnostic center;
  - (iii) A psychiatric respite facility;
  - (iv) An emergency foster home; or
  - (v) Another temporary, short-term placement.

- [(2)] (3) (text unchanged)
- [(3)] (4) Homeless Student
  - (a) (text unchanged)
  - (b) "Homeless student" includes:
    - (i) — (ii) (text unchanged)
    - (iii) Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; [and]
    - (iv) Migratory children, as defined in §6399 of Title 20, who qualify as homeless for the purposes of the McKinney-Vento Act and this chapter because the children are living in circumstances as described in [§B(3)(b)(i) — (iii)] §B(4)(b)(i) — (iii) of this regulation[.]; and
    - (v) A child awaiting foster care placement.
- [(4)] (5) — [(8)] (9) (text unchanged)

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 08 STUDENTS**

**13A.08.05 Informal Kinship Care**

Authority: Education Article, §§2-205, 4-122.1, and 7-101, Annotated Code of Maryland

**Notice of Proposed Action**

[09-129-P]

The Maryland State Board of Education proposes to amend Regulations .02, .04, and .05 under COMAR 13A.08.05 Informal Kinship Care. This action was considered at the Maryland State Board of Education meeting on February 24, 2009.

**Statement of Purpose**

The purpose of this action is to align COMAR with the new requirements of Education Article, §7-101, Annotated Code of Maryland, which was amended to allow for school enrollment of children in informal kinship care, that is, children who are living with a relative in the same county in which the child is domiciled with the parent or legal guardian, but in a different school attendance zone within that county.

**Comparison to Federal Standards**

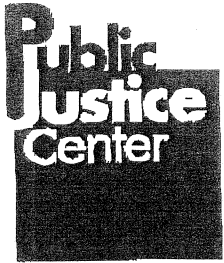
There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.



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 www.publicjustice.org

May 11, 2009

John McGinnis  
 Specialist, Pupil Personnel  
 Maryland State Department of Education  
 200 West Baltimore Street  
 Baltimore, MD 21201

VIA EMAIL to [jmcginnis@msde.state.md.us](mailto:jmcginnis@msde.state.md.us)  
 & FACSIMILE: 410-333-8148

**Re: COMAR 13A.05.09 Programs for Homeless Children**

Dear Mr. McGinnis:

Please accept these comments concerning the recently published proposed regulations to amend **COMAR 13A.05.09.02 Definitions** to include a definition of "child awaiting foster care placement." To wit:

"Child awaiting foster care placement" means:

(a) a child placed out of the child's home pursuant to a shelter care order or a voluntary placement agreement documented by the Department of Social Services; or

(b) a child committed to the care and custody of the Department of Social Services who is placed into a temporary, short-term placement of not longer than 90 school days, such as in:

- (i) an emergency or shelter facility;
- (ii) a diagnostic center;
- (iii) a psychiatric respite facility;
- (iv) an emergency foster home; or
- (v) another temporary, short-term placement.

First, I would like to thank the Maryland State Department of Education (MSDE) for its work on this important issue. The Public Justice Center first raised this question with MSDE in a letter to Dr. Grasmick dated November 1, 2006. We pointed out that Congress had amended the McKinney-Vento Act in July 2002 to include children awaiting foster care placement under the umbrella of the educational rights for homeless children and youth, but that Congress had left it to the individual states to determine its own definition of "awaiting foster care placement." Though it has been a long road, we are please that MSDE has finally determined what the definition will be in Maryland.

**The Proposed Definition**

With one significant exception, we agree with the definition that was settled upon by MSDE in collaboration with the Department of Human Resources (DHR).

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- LEGAL DIRECTOR**  
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Shawn Kaminsky

- We are pleased that the definition includes **children who have been removed from their homes but are still under a “shelter care order,”** that is, children who have not yet been adjudicated as a child in need of assistance (CINA). This initial period typically lasts 30 to 60 days, and is a particularly traumatic period for many children. It makes good sense to provide McKinney-Vento rights to these children so that, if it is in the child’s best interest, the child can continue to attend the home school, or can immediately enroll in the new local school which other children living in the neighborhood of the temporary address are eligible to attend.
- We are also pleased that the definition includes **children placed out of their homes pursuant to a voluntary placement agreement.** There are not many of these children each year in Maryland, but educational continuity is important to them as well.
- The remaining **children covered by the definition are in the custody of a Department of Social Services, but have been given a temporary short-term placement.** These are the children we typically think of as “foster children”. They are officially in the child welfare system, and in most cases can be expected to spend a rather significant amount of time there, e.g. a year or two. All too often, the Department of Social Services is unable to provide long-term, stable placements for foster children. Foster children who have been given temporary, short-term placements (that do not exceed 90 school days) will now be able to experience educational stability by continuing to attend their home schools while residing at the temporary placement, or, if for some reason staying at the home school is not in the child’s best interest, the child will be able to enroll immediately in the local school serving other children living in the neighborhood of the temporary address.
- The proposed definition includes the language “such as” followed by **a list of illustrative types of temporary short-term placements:** emergency or shelter facility, diagnostic center, psychiatric respite facility, emergency foster home, other temporary short-term placement. We agree with the inclusion of all of these types of facilities as illustrative of the types of temporary short-term placements. Both because the list is explicitly illustrative (due to the use of “such as”), and because it includes “another temporary short-term placement,” we expect and hope that, when the regulation is enacted and implemented, foster children who are given temporary short-term placements that do not exactly fit one of these descriptions will be afforded McKinney-Vento education rights.
- We note with disappointment that the phrase “**group homes**”, which was included in the illustrative list in a previous draft, has been removed from section (b). We urge MSDE to reconsider this decision, and to add it back. Failing that, we hope that, since the list is illustrative and not exhaustive, foster children placed on a short-term temporary basis in **group homes** will nonetheless be afforded McKinney-Vento education rights because their situation will fit in (b)(v) – another temporary short-term placement. These children do not choose their own placements. It is entirely up to the Department of Social Services whether a child who needs a temporary, short-term placement is sent to an emergency shelter, an emergency foster home, a group home, or some other setting. The outcome of this rather arbitrary placement decision should not affect a student’s right to

access McKinney-Vento education rights. *All* such children should be afforded the right to continue to attend their home schools if that is in their best interest.

### The Assumptions

We would like to make a brief comment concerning MSDE's apparent assumption that approximately 22.5 students will qualify each year as "awaiting foster care placement" under this definition. We think this is an underestimate. We do not have access to specific figures, but we believe that hundreds of Maryland children every year are removed from their homes by a local Department of Social Services. All of those children would qualify as "awaiting foster care placement," under section (a) of the definition, prior to their disposition hearings. We hope that MSDE, DHR, and their respective local counterparts are prepared to handle a significant number of children "awaiting foster care placement" once this regulation goes into effect.

Thank you for the opportunity to comment on this important proposed regulation. We look forward to the positive change its enactment will bring to Maryland's foster children.

Sincerely,



Laurie J. Norris  
Wendy Hess  
Staff Attorneys