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 <u>not</u>:

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.