



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY
12234

Jhone M. Ebert, Senior Deputy Commissioner for Education Policy
Education Building, Room 2M EB (518) 474-3862
89 Washington Avenue
Albany, NY 12234
jhone.ebert@nysed.gov

July 19, 2018

TO: District Superintendents
Superintendents of Public Schools
Principals of Public Schools

FROM: Jhone M. Ebert, Senior Deputy Commissioner for Education Policy

Angélica Infante-Green, Deputy Commissioner for P-12 Instructional Support

SUBJECT: Residency Guidance

The Department has recently been made aware of public concerns and inquiries indicating that some school districts have instituted a practice of mandatory “re-registration” wherein all parents and guardians are required to “re-register” their students in such districts prior to the start of school in September 2018. At this time, the Department has confirmed the existence of this practice on the websites of two New York State school districts.

The purpose of this communication, therefore, is to remind all school districts that the required process for student enrollment and registration – including determinations as to residency – is established in §100.2(y) of the Commissioner’s regulations, as amended (8 NYCRR §100.2[y]).¹ Section 100.2(y)(3) and (4) specifically require, in pertinent part, as follows:

(3) **When a child’s parent(s), the person(s) in parental relation to the child or the child, as appropriate, requests enrollment** of the child in the school district, such child shall be enrolled and shall begin attendance on the next school day, or as soon as practicable, provided that nothing herein shall require the district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such

¹ Amendments to §100.2(y) were permanently adopted by the Board of Regents in June 2015 ([see http://www.regents.nysed.gov/common/regents/files/meetings/Jun%202015/615brca5.pdf](http://www.regents.nysed.gov/common/regents/files/meetings/Jun%202015/615brca5.pdf)).

request for enrollment. As soon as practicable but no later than three business days after such **initial enrollment**, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all such documentation and/or information and make a residency determination in accordance with subparagraphs (i) and (ii) of this paragraph; provided that if such documentation and/or information is submitted on the third business day after **initial enrollment**, the board of education or its designee in its discretion may make the residency determination no later than the fourth business day after **initial enrollment**....

....

(4) At any time during the school year and notwithstanding any prior determination to the contrary at the time of the child's **initial enrollment or re-entry** into the public schools of the district, the board of education or its designee may determine, in accordance with paragraph (6) of this subdivision, that a child is not a district resident entitled to attend the schools of the district [emphasis supplied].

The regulations address the procedures that must be followed upon an **individual student's** "initial enrollment" or "re-entry" into a school district, as well as the processes districts must follow if they determine that an **individual student** is not a district resident entitled to attend the schools of the district subsequent to his/her initial enrollment or re-entry. While the regulations recognize that school districts may make determinations throughout the school year that certain individual students **are no longer district residents** subsequent to initial enrollment or re-entry, the regulations do not contemplate the practice, as described above, of requiring **all students** to "re-register" with the district regardless of whether a question exists as to the residency status of each individual student.

Moreover, such practice is contrary to the stated purpose of the regulation, which is as follows:

The purpose of this subdivision is to establish requirements for determinations by a board of education or its designee of student residency and age, for purposes of eligibility to attend the public

schools in the school district without the payment of tuition pursuant to Education Law section 3202, in order to ensure that all eligible students are admitted to such schools without undue delay; provided that nothing in this subdivision shall be construed to change or shift the burden of proof of the parent(s), the person(s) in parental relation or the child, as appropriate, to establish residency through physical presence as an inhabitant of the school district and intent to reside in the district (8 NYCRR §100.2[y][1]).

The practice is also inconsistent with the intent and goal of the regulation, which, as explained by the Department in the memorandum proposing permanent adoption of the regulation to the Board of Regents in June 2015, is to “establish: (1) [c]lear and uniform requirements, which comply with federal and State laws and guidance on the enrollment of students, particularly for unaccompanied minors and undocumented youths; (2) [p]rohibited enrollment application policies which are unlawful and/or have had a disparate impact on unaccompanied minors and undocumented youths; (3) [e]nrollment requirements whereby districts must accept additional forms of proof beyond the highly restrictive forms listed in the enrollment instructions/materials of school districts under review to date; and (4) [c]lear guidance for parents and guardians and public availability of enrollment instructions, requirements and procedures.”²

Please be reminded that New York State Education Law entitles each person over five and under twenty-one years of age, who has not received a high school diploma, to attend a public school in the district in which such person resides (Education Law §3202[1]). Under established law, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to such student’s entitlement to an elementary and secondary public education (Plyler v. Doe, 457 U.S. 202, 223 [1982]).³ Furthermore, school districts must ensure that all resident students of compulsory school age attend upon full-time instruction (see Education Law §§3202[1] and 3205). Children, including unaccompanied minors, undocumented youth and children in foster care, may also be entitled to the protections of applicable State and federal laws, including but not limited to the McKinney-Vento Homeless Education Assistance Act, 42 U.S.C. § 11431, et seq., and implementing State law and regulations concerning the education of homeless children (see Education Law §3209; 8 NYCRR §100.2[x]) and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. §§6301, et seq., and implementing State law concerning the education of children in foster care (see Education Law §3244).

² <http://www.regents.nysed.gov/common/regents/files/meetings/Jun%202015/615brca5.pdf>

³ See also 42 U.S.C. §§ 2000c-6, 2000d; 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2) (Titles IV and VI of the Civil Rights Act of 1964 and associated federal regulations prohibiting discrimination on the basis of, inter alia, race, color, or national origin by public elementary and secondary schools).

Together, these federal and State laws are driven by the dual purposes of ensuring student access to, and continuity within, a free public education system. While school districts that have attempted to implement a process of mandatory “re-registration” may believe that doing so strengthens their ability to be responsible fiscal stewards of school district funds, such responsible fiscal stewardship can be achieved by following the required processes for registration, enrollment and residency determinations set forth in §100.2(y) of the Commissioner’s regulations.

Thank you for all the work you do to support our students, families, and communities.