



Our Students. Their Moment.

Enrolling and Serving Recently Arrived Unaccompanied Children

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Requirements Relating to the Enrollment and Provision of Services to Unaccompanied Minors and Other Undocumented Youth

Enrollment

- All children have the right to attend school full time as long as they meet age and residency requirements
 - Age: a person over 5 and under 21 years of age who has not received a high school diploma
 - Residency: physical presence + intent to reside in the district
 - *Plyer v. Doe* – US Supreme Court decision recognized that undocumented children cannot be denied a free public education if they are district residents.

Guidance from US DOJ Civil Rights Division

- **Districts may request proof of residency (e.g., copies of phone and water bills, lease agreements, affidavits)**
 - “A school district’s requirements to establish residency must be applied in the same way for all children.”
- **Districts may not ask about citizenship or immigration status to establish residency**
 - “While a school district may choose to include a ... state-issued identification or driver’s license among the documents that can be used to establish residency, [it] may not require such documentation to establish residency ... where such a requirement would unlawfully bar a student whose parents are undocumented from enrolling in school.”

Guidance from US DOJ Civil Rights Division

- Districts may request proof of age – NY Education Law §3218
- Districts may not “prevent or discourage [a] child from enrolling in or attending school because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.”

[http://www.justice.gov/crt/about/edu/documents/
plylerfact.pdf](http://www.justice.gov/crt/about/edu/documents/plylerfact.pdf)

Enrollment

- At enrollment/registration, districts should avoid asking questions related to immigration status or that may reveal immigration status.
- Any data that is required to be collected by state or federal law should be gathered after a student is enrolled to avoid the impression that information related to immigration status will be used in making enrollment determinations.
- Students transferring from other countries may be permitted to attend school without required vaccinations for up to 30 days with evidence of good faith effort to obtain immunizations or proof of past immunization.

Enrollment – Homeless Students

- When a parent presents a completed designation form to a district, the district must **immediately enroll the homeless child**, even if they are unable to produce records normally required for enrollment.
- Districts must ensure that homeless students are **not segregated** in a separate school or program within a school based on their status as homeless.

Residency Determinations

- Residency determinations must be made in accordance with Commissioner's regulations:
 - If a child requests enrollment, the child should be enrolled.
 - If a district questions the student's residency, the district must:
 - **Notify parent/guardian of determination of non-residency and include notification of procedures to obtain review of the decision;**
 - **Before a determination, afford an opportunity for the parent/guardian to submit information regarding the student's residency; and**
 - **Within 2 business days of a determination, provide the parent/guardian written notice of its decision, including the basis for the decision.**

Homeless Status Determinations

- After enrollment, if the district questions the student's homeless status, the district must:
 - Provide written explanation to the parent/guardian, including 310 appeal rights and the form petition.
 - Delay for 30 days the implementation of a final decision to decline to enroll the child.
 - If the parent/guardian appeals to the Commissioner with a stay application within 30 days of the decision, permit the child to continue attending the school in which he/she is enrolled pending the decision on the stay application.
- Districts must designate a McKinney-Vento homeless liaison who must assist parents/guardians in commencing a 310 appeal.

**New York State Technical &
Education Assistance Center for
Homeless Students
(NYS-TEACHS)**

(800) 388-2014

<http://www.nysteachs.org/>

310 Appeal Process

310 Appeal Process

- When a student is denied admission to school, the person requesting admission (parent/guardian) may bring an appeal to the Commissioner under Education Law §310.
 - A party is *not required* to have an attorney.

<http://www.counsel.nysed.gov/appeals/instruction>

<http://www.counsel.nysed.gov/appeals/homeless>

(For instructions about 310 appeals involving homelessness.)

310 Appeal Process

- A 310 appeal to the Commissioner must be brought within 30 days of the district's decision not to admit the student to school. This requirement can be excused for good cause shown.
- Each school district must have a homeless liaison who must, among other things, provide assistance with filing a 310 appeal, including completing required forms and submission to the Department.

310 Appeal Process - Petition

- The appeal is commenced by serving a petition on the school district which includes:
 - Statements by the petitioner explaining what has occurred and explaining his or her claim of residency or homelessness;
 - Documents from the petitioner to establish residency or that the petitioner/student is homeless;
 - Statements from other parties that support the petitioner's claims.
- The petition must contain a Notice of Petition that notifies the district of the appeal and the petition must be *verified*. Forms for both requirements are on the website.
- While petitions must generally be drafted by the petitioner or their attorney, there is a form petition available for an appeal involving a homeless child at:

<http://www.counsel.nysed.gov/appeals/homelessForms>

310 Appeal Process – Stay Request

- A petitioner can request an emergency order from the Commissioner asking that the student be admitted to school immediately while the appeal is decided. This is called a “stay request.”
- If a stay is requested, it must be included in the petition, and it must include a special additional notice that can be located on the Department’s appeal website.
- Districts must respond to stay requests within 3 business days.
- After receiving the district’s response, the Commissioner will issue an immediate decision on the stay request.
 - If the stay request is granted, the Commissioner will issue an order directing the district to admit the student pending resolution of the appeal.

310 Appeals Process - Submission

- A copy of the verified petition and all supporting papers and forms must be served on one of the following people:
 - District clerk;
 - A member of the board of education; or
 - The superintendent (or a designee authorized to accept service)
- Papers and forms **must** be delivered in person – mail and e-mail is not accepted.
- The homeless liaison can accept service of petitions for 310 appeals involving homeless students on behalf of any district employee and can otherwise assist with submission and service.

310 Appeals Process - Submission

- The original, signed verified petition and supporting papers and forms must be filed with the Department's Office of Counsel within 5 days of service on the respondent (district), along with an affidavit of service on the respondent (form available online).
- The respondent must submit an answer to the whole petition within 20 business days.
- A petitioner may submit a reply to the answer.
- Both parties, with approval of the Office of Counsel, may submit papers other than the petition or answer documents.

310 Appeals Process

We encourage you to review decisions of the Commissioner regarding residency and homelessness on our website to see what the Commissioner has ruled in other similar situations.

<http://www.counsel.nysed.gov/appeals/instruction>

<http://www.counsel.nysed.gov/appeals/homeless>

If you have questions about the process, contact:
Tina Urbaitis at (518) 474-8927

Evaluation, Placement, Programs and Services

Evaluation, Placement, Programs and Services

- Once a student is enrolled, the district must appropriately screen/evaluate the student to determine appropriate programming and services:
 - Students with disabilities
 - English language learners – detailed information on the process for ELL identification is available at: <http://www.p12.nysed.gov/assessment/nysitell/>
 - Appropriate grade level, program – transcript and records review

Office of the Attorney General (OAG) and State Education Department (SED) Compliance Review

OAG/SED Compliance Review

- On October 23, 2014, OAG and SED announced a review of district enrollment procedures for unaccompanied minors and other undocumented students to examine whether students are being denied their constitutional right to an education.
- The review will initially focus on districts experiencing the largest influx of unaccompanied minors from Central and South America.
- The review will include examination of districts' written enrollment and registration materials, publicly-disseminated information regarding those procedures and interviews with district administrators.

Key Contacts

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NYS TEACHS Hotline:

(800) 388-2014

<http://www.nysteachs.org/>

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Thank you.

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@JohnKingNYSED

