



Our Students. Their Moment.

# Proposed Regulatory Amendments Governing Student Enrollment

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# Introduction

- Many school districts across New York State have experienced an influx of unaccompanied minors and other undocumented youth in the 2014-15 school year.
- It has been reported that some districts are refusing to enroll these youth promptly if they are unable to produce sufficient documents demonstrating residency and/or guardianship by an adult.
- The New York State Education Department (SED) is concerned that such enrollment policies may prevent unaccompanied minors and other undocumented youth from enrolling in school districts across the state, in violation of State and federal law, as well as SED guidance.

# Federal Law

- *Plyer v. Doe* – U.S. Supreme Court decision which recognized that undocumented children cannot be denied a free public education if they are district residents.
- **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 (e.g., pay stub, deed/lease, utility, ID).

# New York State Guidance and Actions

- On August 30, 2010, SED issued guidance to districts on their obligations regarding enrolling students and making residency determinations.
- On September 10 and October 17, 2014, the Department expanded the guidance to address the specific circumstances of unaccompanied minors who have recently entered the country in larger numbers.
- In October 2014, the Department also held three regional meetings with school officials, community-based organizations and advocates on Long Island and in Rockland and Westchester Counties to provide technical assistance on the legal obligations of districts around enrollment and the rights of students and parents, and to provide information on the due process rights of impacted students, including the right to appeal district enrollment decisions directly to the Commissioner.

# Office of the Attorney General (OAG) and 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 initially focused on districts in 4 counties (Nassau, Suffolk, Westchester, and Rockland) experiencing the largest influx of unaccompanied minors, and has expanded to include districts statewide about which SED and OAG have received complaints regarding enrollment.
- The review includes examination of districts' written enrollment and registration materials, publicly-disseminated information regarding those procedures, and interviews with district administrators.

# 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**

# 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.
- In October 2014, the Department posted translated versions of the §310 appeal instructions and forms in Spanish, Haitian Creole, Chinese (Simplified), Bengali and Arabic.  
<http://www.counsel.nysed.gov/appeals/instruction>  
<http://www.counsel.nysed.gov/appeals/homeless>  
(For instructions about 310 appeals involving homelessness)

# **Proposed Amendments to Section 100.2(y) of the Commissioner's Regulations, Relating to Student Enrollment**

# Proposed Amendments

Overall, the proposed amendments will establish:

- Clear and uniform requirements, which comply with federal and State laws and guidance on the enrollment of students, particularly for unaccompanied minors and undocumented youth.
- Prohibited enrollment application policies which are unlawful and/or have had a disparate impact on unaccompanied minors and undocumented youth.
- Enrollment requirements in which 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.
- Clear guidance for parents and guardians and public availability of enrollment instructions, requirements and procedures.

# Proposed Amendments

- As the OAG/SED compliance review is ongoing, both agencies have received inquiries from districts across the State regarding their obligations under federal and State law.
- These inquiries make clear the need for more comprehensive action to address the lack of clarity among districts regarding lawful enrollment and registration policies.
- The proposed amendment will codify applicable federal and State laws, as well as existing Department guidance to districts, to ensure that undocumented youth are provided their constitutional right to a free public education.

# Proposed Amendments Immigration Status

- Under the proposed amendments and in accordance with existing federal law and State guidance, districts may not request documentation or information related to or which may reveal immigration status.
- It should be noted that any data 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.

# Proposed Amendments Proof of Residency and Age

- Under the proposed amendments, districts shall make public their enrollment forms, procedures, instructions, and requirements for determinations of residency and age.
- This shall include a non-exhaustive list of the forms of documentation that may be submitted.

# Proposed Amendments

## Residency Determination

Under the proposed amendments, districts may request the following evidence of physical presence in the district:

- Residential lease or proof of ownership;
- Sworn or unsworn statement by third-party landlord, owner or tenant from whom the parent (or person in parental relation) leases or with whom they share the residence; or
- Other third-party statement establishing physical presence in the district.

If the above are not available, districts shall consider other forms of documentation establishing physical presence, including but not limited to:

- Pay stubs;
- Income tax forms; [*continued on next page*]

# Proposed Amendments

## Residency Determination

*Continued* - other acceptable forms of documentation establishing physical presence include but are not limited to the following:

- Utility or other bills;
- Membership documents (e.g., library cards) based on residency;
- Voter registration documents;
- Official driver's licenses, learner's permits, or non-driver identification;
- State or other government issued identification;
- Documents issued by federal, state or local agencies (e.g., local social service agency, federal Office of Refugee Resettlement); or
- Evidence of custody of the child, including but not limited to judicial custody or guardianship papers.

# Proposed Amendments Age Determination

- Under the proposed amendments and in accordance with Education Law §3218, where a certified transcript of a birth certificate (including a foreign birth certificate) or record of baptism is available, no other evidence may be used to determine a child's age.
  - If the above are not available, a passport (including a foreign passport) may be used to determine age.

# Proposed Amendments

## Age Determination

If none of the types of documentation in the previous slide are available, districts may consider other evidence in existence for two or more years. Such evidence may include but not be limited to:

- Official driver's licenses;
- State or other government issued identification;
- School photo identification with date of birth;
- Consulate identification cards;
- Hospital or health records;
- Military dependent identification cards;
- Documents issued by federal, state or local agencies (e.g., local social service agency, federal Office of Refugee Resettlement);
- Court orders or other court-issued documents;
- Native American tribal documents; or
- Records for non-profit international aid agencies and voluntary agencies.

# Proposed Amendments

## Custody

- Under the proposed amendments, districts may require parents (or persons in parental relation) to establish custody over a child by providing an affidavit indicating that either:
  - They are the parent(s) with whom the child lawfully resides; or
  - They are the person(s) in parental relation to the child, over whom they have total and permanent custody and control, and describing how they obtained such custody and control.
- The district may also accept other proof of custody, such as documentation indicating the child resides with a sponsor pursuant to placement by a federal agency.
- The district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

# Denial of Enrollment

- Existing notice requirements to parents and persons in parental relation regarding denials of enrollment will continue to apply.
- The proposed amendments specify that the notice of determination that a child is *not* a resident of a district shall specify the basis of determination, including but not limited to a description of the documentary or other evidence upon which such determination is based.

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Thank you.

