

****This is an example of a monthly Policy Update (Level 1)***

STUDENT RESIDENCY AND ENROLLMENT

In recent months, districts have seen an influx of unaccompanied and undocumented children seeking to enroll in their schools. This has, in some cases, caused confusion as to whether such children should be permitted to register with districts and attend classes. In an attempt to assist districts with this issue, the State Education Department issued guidance on September 10, 2014, which expounded on previous publications and clarified that districts *are* obligated to enroll undocumented and/or unaccompanied children who reside within their boundaries. Additionally, in October, SED and the Office of the New York State Attorney General initiated a joint compliance review of district enrollment procedures for undocumented and unaccompanied children. Building on these efforts, the Board of Regents adopted an emergency rule at its December meeting, amending Section 100.2(y) of the Commissioner's Regulations to ensure district registration procedures do not discriminate against or discourage the enrollment of undocumented children. In light of these events, our office has revised sample policy #7130, Entitlement to Attend - Age and Residency. Districts that subscribe to our Administrative Update service will also receive an updated administrative regulation, which corresponds to that policy.

Undocumented Children

As alluded to above, Section 100.2(y) has been revised to:

- (1) Address reports that districts are denying enrollment of unaccompanied minors and undocumented youths if they are unable to produce documents sufficiently demonstrating age, guardianship, and/or residency in a district; and
- (2) provide clear requirements for school districts regarding enrollment of students, particularly as it pertains to procedures for unaccompanied minors and other undocumented youths.

(See NY Reg, Dec. 31, 2014 at 24). In order to accomplish these aims, the regulations now require each district to "make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age..." (8 NYCRR 100.2[y][1]). Such information must: "include a non-exhaustive list of the forms of documentation that may be submitted to the district by parents, persons in parental relation or children, as appropriate..."; be included in the district's existing enrollment and registration materials by **January 31, 2015**; be provided to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district; and be posted on the school district's website, if one exists. (*Id.*). Please note that 8 NYCRR 100.2(y)(2) now provides non-exhaustive lists of documentation that may be submitted to establish age and residency. These revisions ensure that prospective students, their parents, and/or the persons in parental relation to them are not, at the time of enrollment and registration, required to provide documents that reveal or tend to reveal their immigration status. (See 8 NYCRR 100.2[y][2][i]). While such lists have not been included in Policy #7130, they are incorporated into the implementing administrative regulation, which is provided to districts that subscribe to our Administrative Update service.

Districts should also note that, while they may determine at any point during the school year that a child is not a district resident, when a child's parent(s), person(s) in parental relation to the child, or, in certain cases, the child himself/herself, initially requests enrollment, such child must be enrolled and begin attendance on the next school day or as soon as practicable. (8 NYCRR 100.2[y][2]). Moreover, the regulation, as revised, requires that a board or its designee review all documentation submitted by a child's parent(s), the person in parental relation to the child, or the child, within three (3) business days of his or her initial enrollment and make a determination as to the child's right to attend the district's schools. (*Id.*).

While our policy, as revised, reflects districts' obligation to enroll undocumented children and to refrain from practices that discourage the enrollment of such children, some of the changes to 8 NYCRR 100.2 may be beyond the scope of policy, *per se*. We strongly encourage districts to review their enrollment procedures, forms, instructions, and requirements to ensure they comply with all applicable state and federal laws and regulations. Districts may also wish to review their student management systems to ensure settings for "required fields" have been updated and are not contrary to the Commissioner's Regulations, as revised.

Additional Policy Revisions

Our office is aware that while the Commissioner's Regulations have been changed to reflect issues pertaining to the enrollment of undocumented children, many districts routinely struggle with a variety of other student residency issues. We have, therefore, revised Policy #7130 to reflect the traditional two-factor test of residency: a student's physical presence within the district, and his/her intent to reside in the district. Additionally, because many residency disputes involve claims that children live with relatives or non-custodial parents, we have incorporated into the policy the presumption that a child's residence is that of his/her parent(s), and noted some of the ways that presumption can be rebutted.

Furthermore, please note that a subtle, but important change has been made to the second paragraph of #7130. Previously, the policy provided:

...Except as otherwise provided in Education Law Section 3205(3), a student shall be required to remain in attendance until the last day of session in the school year in which the student becomes sixteen (16) years of age.

However, in accordance with Education Law Section 3205(3), the Board of Education in **any** school district shall have the power to require minors from sixteen (16) to seventeen (17) years of age who are not employed to attend full-time instruction until the end of the school year in which the student turns seventeen (17) years of age.

It is our understanding that most districts require individuals between the ages of sixteen (16) and seventeen (17) who are not employed to continue attending class. We have, therefore, revised the above provision to reflect that reality, and to promote clarity and economy of language. Districts are advised to review those changes carefully, ensuring they are consistent with their current practices.

Supplemental Resources

As noted above, SED has provided significant guidance on the issue of enrolling undocumented and unaccompanied youth. Of particular note are memorandums from August 30, 2010 and September 10, 2014, which are available online at:

<http://www.p12.nysed.gov/biling/docs/studentregistrationguidance082610.pdf>; and

<http://www.p12.nysed.gov/sss/documents/EducationalServicesforRecentlyArrivedUnaccompaniedChildren.pdf>.

Additionally, a PowerPoint presentation explaining the amendments to Section 100.2(y) and some of the issues that gave rise to those changes is available on the SED website at:

<http://www.regents.nysed.gov/meetings/2014/December2014/Enrollment.pdf>.

At the federal level, the Justice Department and the Education Department jointly issued a Dear Colleague Letter and a Fact Sheet in May 2014, which explain district obligations regarding the enrollment of undocumented students. Those documents can be accessed online at:

<http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf>.

<http://www.justice.gov/crt/about/edu/documents/plylerfact.pdf>.

Additional Considerations

Enclosed for your review and consideration is a revised sample policy addressing the above-mentioned topic: Entitlement to Attend - Age and Residency (recommended #7130). Districts that subscribe to our Administrative Update service will also receive an updated regulation addressing this issue. Please note that, due to the extent of the changes we are recommending, we have not included tracked-changes versions of either the revised policy or regulation; districts are advised to replace the old documents with the new ones, rather than attempting to make changes to their existing policy and/or regulation.

Please do not hesitate to contact your policy coordinator with any questions or concerns, or to obtain a copy of the policy and/or regulation with tracked changes. Districts with specific questions regarding interpretations of law, or the application of law to particular situations, should consult their school attorneys.

Please note that the Policy Manual numbers correlate with the Erie 1 BOCES numbering system, and that your numbers may vary.

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NOTE: It is important to note the sample Policy Updates are not to be interpreted as the rendering of legal advice. You may wish to add or delete text in the enclosed policy document, in accordance with law and after consultation with your administrators/school attorney, to better reflect your district's needs and practices.

SUBJECT: ENTITLEMENT TO ATTEND -- AGE AND RESIDENCY**Entitlement to Attend**

All persons residing within the District who are between the ages of five (5) years and twenty-one (21) years and who have not obtained a high school diploma are entitled to enroll in the District.

A student who becomes six (6) years of age on or before the first of December in any school year shall be required to attend full-time instruction from the first day that the District schools are in session in September of such school year, and a student who becomes six (6) years of age after the first of December in any school year shall be required to attend full-time instruction from the first day of session in the following September. Each student shall be required to remain in attendance until the last day of session in the school year in which the student becomes sixteen (16) years of age. **Additionally, any student from sixteen (16) to seventeen (17) years of age who is not employed will be required to attend full-time instruction until the end of the school year in which such student turns seventeen (17) years of age.*

Evidence of a prospective student's age and residency must be presented in such form as is permitted by state and federal law and regulation.

Determination of Student Residency

"Residence," for purposes of this policy, is established by a child's physical presence as an inhabitant within the District and his/her intent to reside in the District.

A child's residence is presumed to be that of his/her parents or legal guardians. Where a child's parents live apart, the child can have only one legal residence. In cases where parents have joint custody, the child's time is essentially divided between two (2) households, and both parents assume responsibility for the child, the decision regarding the child's residency lies ultimately with the family. Where parents claim joint custody, but do not produce proof of the child's time being divided between both households, residency will be determined on the basis of the child's physical presence and intent to remain within the District.

The presumption that a child resides with his/her parents or legal guardians may be rebutted upon demonstration that custody of such child has been totally and permanently transferred to another individual. The District will not acknowledge living arrangements with persons other than a child's parents or legal guardians which are made for the sole purpose of taking advantage of the District's schools.

The presumption that a child resides with his/her parents or legal guardians may also be rebutted upon demonstration that such child is an emancipated minor. To establish emancipation, a minor may submit documentation of his/her means of support, proof of residency, and an explanation of the circumstances surrounding the student's emancipation, including a description of the student's relationship with his/her parents or persons in parental relation.

**District Option*

(Continued)

SUBJECT: ENTITLEMENT TO ATTEND -- AGE AND RESIDENCY (Cont'd.)

Notwithstanding the foregoing, all determinations of student residency will be made consistent with applicable state and federal laws and regulations.

Undocumented Children

The District is mindful that undocumented children are entitled to attend the District's schools, provided they meet the age and residency requirements established by state law. Consequently, the District will not request or require on any enrollment or registration form, in any meeting, or in any other form of communication, any documentation and/or information regarding or tending to reveal the immigration status of a child, a child's parent(s) or the person(s) in parental relation. In the event the District is required to collect such information, the District will do so after the child has been enrolled. In no instance will such information be required as a condition of enrollment or continued attendance.

Children of Activated Reserve Military Personnel

Students temporarily residing outside the boundaries of the District, due to relocation necessitated by the call to active military duty of the student's parent or person in parental relation, will be allowed to attend the public school that they attended prior to the relocation. However, the District is not required to provide transportation between a temporary residence located outside the District and the school the child attends.

Homeless Children

Determinations regarding whether a child is entitled to attend the District's schools as a homeless child or youth will be made in accordance with Section 100.2(x) of the Commissioner's Regulations, as well as applicable District policy and regulation.

Education Law Sections 3202, 3205 and 3218
Family Court Act Section 657
8 NYCRR Sections 100.2(x) and (y)

NOTE: Refer also to Policies #7131 -- Education of Homeless Children and Youth
#7132 -- Non-Resident Students

Adoption Date