




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

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TO: District Superintendents
Superintendents of Schools
Administrators of Public and Charter Schools
Bilingual/ESL Coordinators/Directors

FROM: Commissioner Betty A. Rosa 

SUBJECT: Provision of Educational Services for Recently Arrived Unaccompanied Children and Youth

As a result of instability and violence in Central American countries, there has been a recent increase in the number of unaccompanied youth crossing the United States-Mexico border. The Board of Regents and the New York State Education Department (NYSED, or “the Department”) are deeply concerned about the mounting scope of this problem. The Department is committed to supporting Local Educational Agencies (LEAs) as they meet the needs of unaccompanied youth. This Field Memorandum provides important information and resources for LEAs regarding the rights of and services available to unaccompanied youth.

Unaccompanied youth are defined as youth who are not in the physical custody of their parents or legal guardian and are living in a temporary housing arrangement (See 42 U.S.C. §11434a[6]; Education Law §3209[1][a][1][v]; and 8 NYCRR §100.2[x][1][iii][6]). This definition refers to all unaccompanied children and youth in temporary housing between the ages of 5 and 21, **regardless** of citizenship or immigration status, who are residing in New York State.

Pursuant to Education Law §3202(1), a person over 5 and under 21 years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without the payment of tuition. Moreover, pursuant to Education Law §3205, school districts must ensure that all students within the compulsory school age attend upon full-time instruction. Therefore, New York State school districts have an obligation to provide an educational opportunity to all resident students who are of compulsory school age, including unaccompanied youth.

The McKinney-Vento Act provides protections for these students as they relate to the provision of a free public education. Under the McKinney-Vento Act, unaccompanied

youth must be enrolled immediately, without parental consent, in a school in the school district where they are temporarily living. They must be allowed to enroll immediately even if they don't have the documents normally needed for enrollment (such as vaccination and health records) and even if they have missed application or enrollment deadlines, if applicable. These students are also immediately eligible for free school meals.

The Department's 2014 communication, [Educational Services for Recently Arrived Unaccompanied Children](#), outlines the obligations of school districts to enroll and make residency determinations with respect to students who are not U.S. citizens. McKinney-Vento eligibility determinations must be made on a case-by-case basis. The law's definition of homeless children and youths, which includes youth who are living with family members in 'doubled-up' housing (e.g., sharing the housing of other persons due to economic hardship or a similar reason) may describe many unaccompanied youth who reside in sponsor households. McKinney-Vento eligibility determinations must take into account the unique circumstances of each child.

To ensure that unaccompanied youth are provided with the required supports and services, LEAs must, at minimum:

- Provide an educational opportunity to all resident students who are of compulsory school age. Undocumented children, like U.S. citizen children, have the right to attend school full time as long as they meet the age and residency requirements established by State law.
- Ensure enrollment of the unaccompanied youth even if the sponsor of the unaccompanied youth is not a formal guardian. At the time Health and Human Services (HHS) places a child with a sponsor, the sponsor typically will not have legal custody or guardianship. While HHS recommends that the sponsor seek guardianship, sponsors are not required to do so. Therefore, unaccompanied children placed by HHS in the care of a sponsor may face additional challenges in establishing formal residence within a district. Please note that for purposes of residency determinations, it is not required that the sponsor establish custody or control through a formal guardianship proceeding. Accordingly, a lack of evidence of a formal guardianship proceeding should not delay enrollment of an unaccompanied immigrant child if the sponsor's home is the child's permanent residence and the sponsor has full authority and responsibility with respect to the child's support and custody.
- Ensure that the youth are enrolled in school without delay and provided with any additional special education or language acquisition supports necessary.
- Provide free meals to unaccompanied youth without requiring submission of an application. For guidance about students in temporary housing and school nutrition programs, please visit the [Eligibility Effective Date for Directly Certified Students Memo](#).

- Request the records from the school that the unaccompanied youth previously attended. This includes taking reasonable steps to promptly obtain the IEP and any other records relating to the provision of special education programs and services to the child. If the records are not immediately available, as may be the case with some of the students who have been displaced from Central America, schools must still immediately enroll the child and ensure full participation. For more information about enrollment without records, visit the National Center for Homeless Education's issue brief, "[Prompt and Proper Placement: Enrolling Students without Records.](#)"
- Conduct the ELL identification process for the unaccompanied youth within 10 school days of enrollment. Commissioner's Regulations §154-2.3(a) describe the following identification process:
 - First, a Home Language Questionnaire (HLQ) is administered by qualified personnel.
 - If the HLQ reflects that a language other than English is spoken at home, qualified personnel must conduct an individual interview in English and the student's home language, at which the student's prior work in English and the home language is reviewed if available.
 - Based on information gathered at the informal interview, the qualified personnel will determine if the student will take the New York State Identification Test for English Language Learners (NYSITELL).
 - The student's NYSITELL score determines if the student is an ELL (and if so, the student's level of English language proficiency).

If a newly enrolled student is identified as an ELL pursuant to the above procedure, the student is to be provided a final program placement in a Bilingual Education (BE) or English As a New Language (ENL) program within ten (10) school days.

- Allow an unaccompanied youth to attend school for up to 30 days if the youth does not have immunization documentation but there is evidence of a good faith effort to obtain immunizations or other evidence of immunization. Public Health Law §2164(7)(a) provides a principal (or other designee) with this flexibility.
- If the unaccompanied youth needs to obtain immunizations and/or required school physicals, refer the student or the student's sponsor to the McKinney-Vento liaison. The liaison must assist in obtaining the necessary immunizations, physical exam, or medical records. If a student is unable to obtain a physical through his or her personal medical provider, the district medical director must provide a school physical at no cost.

- Use Title I, Part A set aside funds to meet the unique needs of unaccompanied youth, such as but not limited to purchases of school supplies; school clothes; eyeglasses; fees associated with getting a birth certificate needed by the school; or counseling to address, for example, exposure to traumatic events that impacts the student's learning; and for transportation. For more information, please see [M-5 of the March 2017 Federal Non-Regulatory Guidance for the Education of Homeless Children and Youths Program](#).
- Ensure that unaccompanied youth over the age of compulsory school attendance have the choice to either pursue a high school equivalency diploma, or to attend a full-time high school program to receive their high school diploma, regardless of the number of high school credits they have accrued and whether they are 'on track' to graduate with a high school diploma. For more information on this requirement, please see the Department's [Guidance Relating to the Right of Individuals Over Compulsory School Age to Attend High School](#).

The Department has several resources that can support LEAs in their implementation the requirements:

- **Students Experiencing Homelessness:** For further information about McKinney-Vento, the rights of students in temporary housing, and strategies that schools can implement to meet such students' needs, please contact Melanie Faby, State McKinney-Vento Coordinator at (518) 473-0295.
- **Access to Services:** Districts that experience a large influx of Multilingual and English Language Learners due to displacement, may contact the Office of Bilingual Education and World Languages at obewl@nysed.gov for guidance and technical assistance in providing timely and appropriate services for such students.
- **Bilingual Education:** NYSED also encourages districts that experience an increase in their English Language Learner populations to utilize supports and technical assistance offered by 8 [Regional Bilingual Education Resource Networks \(RBERNs\)](#) throughout the State, which include 7 regional RBERNs and 1 Statewide Language RBERN.
- **Health/Immunization Records and Residency Questions:** For further assistance regarding enrollment and school health services, please email the Office of Student Support Services at StudentSupportServices@nysed.gov or call (518) 486-6090.

Special Education: Finally, please email the Office of Special Education at speced@nysed.gov or call (518) 473-2878 if you have any questions regarding the special education services for unaccompanied minors discussed here.