



New York State
EDUCATION DEPARTMENT
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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

DR. BETTY A. ROSA

LETITIA JAMES
ATTORNEY GENERAL

Commissioner of Education
President of the University of the State of New York

Dear Colleagues,

As our state welcomes large numbers of migrant families into our communities, some schools have raised concerns about their ability to accommodate swelling enrollment and the need for greater English-language-learner resources. Although the New York State Office of the Attorney General (OAG) and New York State Education Department (SED) recognize these challenges, our offices write to remind school administrators that *all* children and youth in New York between the ages of 5 and 21 have the right to a free public-school education, regardless of immigration status, language proficiency, or whether the student is living in a shelter, migrant camp, or other temporary housing. This right is firmly embedded in our Constitution, federal and state laws, and the regulations that govern our state's public schools.

Educating our children and youth benefits all New Yorkers. As the Supreme Court recognized decades ago, "education prepares individuals to be self-reliant and self-sufficient participants in society."¹ Through this joint guidance, the OAG and SED seek to assist our state's public schools in meeting their obligation to provide a free education to every school-age child and youth in their districts. School administrators should review their policies and procedures to ensure compliance with the principles described below.

Schools should work with students and families to achieve the common goal of ensuring that all children and youth in New York receive an education.

Migrant children and youth who are unhoused or living in temporary housing enjoy special protections under the federal McKinney-Vento Act and New York's Education Law.² Schools must immediately enroll such students, even if the student cannot provide proofs of residency, immunizations, school records, or other documents typically required for registration.³ This immediate-enrollment requirement applies to all students who share

¹ *Plyler v. Doe*, 457 U.S. 202, 222 (1982) (quotation marks and citation omitted).

² 42 U.S.C. §§ 11431–35; N.Y. Educ. Law § 3209 (incorporating the requirements of the McKinney-Vento Act); *see also* New York State Education Department, [Guidance: The McKinney-Vento Act: Education of Children and Youth Experiencing Homelessness](https://www.nysed.gov/sites/default/files/nysed-guidance-education-for-homeless-children-and-youths-program-final.pdf) (Aug. 2019), www.nysed.gov/sites/default/files/nysed-guidance-education-for-homeless-children-and-youths-program-final.pdf.

³ 42 U.S.C. § 11432(g)(3)(C)(i); N.Y. Educ. Law § 3209(2)(f)(2). To remain enrolled, all students must receive at least the first dose of all required vaccines within 14 days of registration. New York State Department of Health, [School Vaccination Requirements](https://www.health.ny.gov/prevention/immunization/schools/school_vaccines/) (revised Aug. 2023), https://www.health.ny.gov/prevention/immunization/schools/school_vaccines/. However, if a child

another's home out of necessity or who sleep in camps, shelters, public spaces, vehicles, substandard housing, or similar spaces.⁴

To be sure, schools may require all other students to submit proof of district residency. However, under our state's education regulations, public schools may not deny a student enrollment because the student or parent cannot provide a specific type of proof, such as a residential lease, a landlord affidavit, or a utility bill.⁵ Schools may certainly request such documents when available, but they must also consider many different proofs of residency, including but not limited to:

- a letter or affidavit from the student's landlord;
- a letter or affidavit from a social worker, teacher, lawyer, religious leader, or other individual with personal knowledge of where the student lives;
- a pay stub;
- an income-tax form;
- a bill for a utility or other service, including cell phone, that shows the student's address;
- a membership document based on residency, such as a library card, whether or not it states the student's address;
- a voter registration card;
- a driver's license, learner's permit, or non-driver ID;
- identification issued by New York state or another government body that shows the student's address;
- documents issued by a federal, state, or local government agency, such as a local social services agency or the federal Office of Refugee Resettlement; and
- custody or guardianship papers.⁶

State regulations require schools to make publicly available a non-exhaustive list, like the one above, of the types of documentation that students or their parents may submit to establish residency in a school district.⁷ Your compliance with these policies is vital to ensuring that every student in our state enjoys the opportunities for growth and learning our schools are uniquely qualified to provide.

Schools should immediately welcome students into their classrooms, even if the student requires additional time to establish residency.

When a student, parent, or person in parental relation requests enrollment, schools must allow the student to attend classes on the next school day, or as soon as possible, even

experiencing homelessness or housing instability “needs to obtain immunizations ... the enrolling school shall immediately refer the parent or guardian of the child or youth, or (in the case of an unaccompanied youth) the youth, to the local educational agency liaison ... who shall assist in obtaining necessary immunizations or screenings ...” 42 U.S.C. § 11432(g)(3)(C)(iii).

⁴ 42 U.S.C. § 11434a(2)(A)–(B); N.Y. Educ. Law § 3209(1)(a).

⁵ See N.Y. Comp. Codes R. & Regs. (N.Y.C.R.R.) tit. 8, § 100.2(y)(3)(i)(d). This letter uses the term “parent” broadly to refer to both parents and persons in parental relation to the child, including immigration sponsors. See *id.* § 100.2(y)(3)(i)(c).

⁶ *Id.* § 100.2(y)(3)(i)(b), (d).

⁷ *Id.* § 100.2(y)(2).

if the student has not yet established residency in the district.⁸ The student will then have three business days to submit documents proving residency.⁹

If the school determines that the student does not, in fact, live in the district, the school may then exclude the student from the school. But within two business days of making that determination, the school must provide a letter explaining the basis of its decision and how the student can appeal it.¹⁰

Policies that make it difficult or impossible for migrant children and youth to enroll in school are contrary to state education regulations and may expose schools to legal liability.

The OAG and SED have recently learned that some districts employ enrollment policies that make it difficult or impossible for noncitizens, undocumented students, and people who rent their homes without a formal lease to register for school. These discriminatory policies harm our most vulnerable students, who rely on our schools for a safe, nurturing environment where they can learn and thrive. They are also at odds with the purpose of our state’s enrollment regulations, which is “to ensure that all eligible students are admitted to [public] schools without undue delay.”¹¹ Finally, such policies may violate constitutional and statutory protections, exposing school districts to lawsuits and liability.¹²

Several registration policies are of particular concern. Some school districts require students or their parents to provide voter registration cards, which are unavailable to noncitizens. Other policies make it more difficult for students to enroll and stay in school, such as requiring that all proofs of residency be less than 30 days old and requiring students who lack a formal lease to resubmit proofs of residency on a regular basis. Still other policies may deter undocumented students from even attempting to enroll in school, such as threatening to make home visits to investigate every student who does not establish residency through a formal lease or deed. Additionally, some school districts threaten to report information about students’ living conditions to local code enforcement authorities. This policy may also violate the Fair Housing Act.¹³ The OAG and SED advise all New York school districts with these or similar policies to immediately remove them from their websites and to cease enforcing them.

⁸ *Id.* § 100.2(y)(3).

⁹ *Id.* As explained above, this requirement does not apply to children and youth experiencing homelessness or housing instability. *See* 42 U.S.C. § 11432(g)(3)(C)(i); N.Y. Educ. Law § 3209(2)(f)(2).

¹⁰ 8 N.Y.C.R.R. § 100.2(y)(6).

¹¹ *Id.* § 100.2(y)(1).

¹² *See* U.S. CONST. amend. XIV, § 1; *Plyler*, 457 U.S. at 221–23 (holding that undocumented children and youth seeking to attend public schools are entitled to the safeguards of the equal protection clause of the Fourteenth Amendment); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (prohibiting discrimination by recipients of federal funding on the basis of national origin).

¹³ *See* Fair Housing Act (FHA), 42 U.S.C. § 3604(a) (prohibiting practices that make housing unavailable because of national origin); 24 C.F.R. § 100.500(a) (imposing liability under the FHA for practices that predictably have a discriminatory impact on housing availability because of national origin).

Finally, our offices remind school districts that they may not require a social security number or any information that could reveal a student’s immigration status at the time of enrollment.¹⁴ Nor may schools require that a student living with an immigration sponsor submit a judicial custody order or an order of guardianship as a condition of enrollment.¹⁵

For more information about our state’s enrollment requirements and the rights of migrant students, please consult the relevant education regulations, SED’s August 14, 2023, “Statement on the Rights of Newly Arrived Immigrants,” and joint guidance documents from the OAG and SED dated August 29, 2019, and February 27, 2017.¹⁶ If you have questions, you may also contact SED’s Office of Bilingual Education and World Languages at obewl@nysed.gov. The OAG and SED are committed to supporting your continued efforts to make New York the state of opportunity for all children and youth, no matter their immigration status or living situation.

¹⁴ 8 N.Y.C.R.R. § 100.2(y)(3)(i)(a).

¹⁵ *Id.* § 100.2(y)(3)(i)(c).

¹⁶ See generally *id.* § 100.2(y); SED Office of Counsel, [Statement on Rights of Newly Arrived Immigrants](https://www.nysed.gov/sites/default/files/programs/bilingual-ed/8-14-23-oc-ltr-re-new-arrivals-a.pdf) (Aug. 14, 2023), <https://www.nysed.gov/sites/default/files/programs/bilingual-ed/8-14-23-oc-ltr-re-new-arrivals-a.pdf>; Letitia James and MaryEllen Elia, [Joint Guidance, OAG and SED \(Aug. 29, 2019\)](https://ag.ny.gov/sites/default/files/letters/joint_oag-sed_-_ice_sros_in_schools_w_ag_signature.pdf), https://ag.ny.gov/sites/default/files/letters/joint_oag-sed_-_ice_sros_in_schools_w_ag_signature.pdf; Eric T. Schneiderman and MaryEllen Elia, [Joint Guidance, OAG and SED \(Feb. 27, 2017\)](https://ag.ny.gov/sites/default/files/2017-02-15_oag-sed_letter_re_ice_2.25.17_final.pdf), https://ag.ny.gov/sites/default/files/2017-02-15_oag-sed_letter_re_ice_2.25.17_final.pdf; see also SED’s library of guidance on residency-related issues at New York State Education Department, [Residency](https://www.p12.nysed.gov/sss/pps/residency/), <https://www.p12.nysed.gov/sss/pps/residency/>.