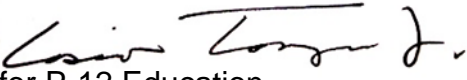




Cosimo Tangorra, Jr., Ed.D., Deputy Commissioner
Office of P-12 Education
Room 2M EB (518) 474-3862

September 10, 2014

To: District Superintendents
Superintendents of Schools
Administrators of Public, Charter, and Nonpublic Schools

From: Cosimo Tangorra, Jr. 
Deputy Commissioner for P-12 Education

Subject: Educational Services for Recently Arrived Unaccompanied Children

In August 2010, in response to questions received from school districts regarding obligations to enroll and make residency determinations with respect to students who are not citizens of the United States, the New York State Education Department (“Department”) issued guidance to school districts relating to registration policies and procedures (see Attachment). Recent news stories highlighting the increase in arrivals of unaccompanied children across the United States-Mexico border have precipitated new questions relating to the obligation of New York State school districts to educate such children. This guidance is intended to provide general background information to school districts on the unique situations presented by this population.

The United States Customs and Border Protection reported, from October 31, 2013 through August 31, 2014, over 66,000 unaccompanied children and youth crossed the United States Southwest Border and have been detained by the United States Border Patrol.¹ According to the United States Department of Education (“USDOE”), the United States Department of Health and Human Services (“HHS”) is required to care for unaccompanied children who are apprehended while crossing the border.² While immigration proceedings are pending for recently arrived unaccompanied children, HHS attempts to transfer children from federal custody to live with a sponsor, who is typically a parent, relative, or other appropriate adult sponsor. These sponsors will assume the care of the child while the child’s immigration case is processed through the immigration system.³ In some instances, such children may be placed in foster care.

In May 2014, USDOE and the U.S. Department of Justice (“USDOJ”) issued joint guidance regarding State and local educational agencies’ obligation under federal law to

¹ <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

² <http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>; For more information about HHS shelters, please see: <http://www.acf.hhs.gov/unaccompanied-children-frequently-asked-questions>

³ <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>

provide all children with equal access to public elementary and secondary education, which includes enrolling all resident students regardless of their or their parents' actual or perceived immigration status.⁴ Between January 31 and July 31, 2014, approximately 4,200 unaccompanied children and youth apprehended by immigration authorities have been released to a sponsor living in New York State.⁵ Therefore, it is likely that many school districts will receive inquiries regarding registration and/or educational placement for students residing with a sponsor within their district. In addition to the information provided below, the Department's August 2010 guidance also provides information on school districts' obligations to enroll all resident students regardless of their immigration status and provides detailed information on registration procedures and data collection.⁶

A. Enrolling Unaccompanied Immigrant Children

Pursuant to Education Law §3202(1), a person over five and under twenty-one 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. As described in the Department's attached 2010 guidance, 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.

Unaccompanied children may not have the benefit of residence within a New York State school district with a parent or formal legal guardian. At the time 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, 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. In light of the above, the Department encourages school districts to review their policies relating to student enrollment and residency to ensure that they are in full compliance with all applicable case law, statutory and regulatory provisions. School districts are advised to consult with their school attorneys in this review.

Additionally, the USDOE recently clarified that "unaccompanied children who are in HHS shelters receive educational services on-site and are not eligible for McKinney-Vento services, but children who are released to live with a sponsor **may** be eligible on

⁴ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

⁵ <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>

⁶ <http://www.p12.nysed.gov/sss/ppls/residency/studentregistrationguidance082610.pdf>

a case-by-case basis under the law's broad definition, which includes youth who are living with family members in 'doubled-up' housing, i.e., sharing the housing of other persons due to economic hardship or a similar reason."⁷ McKinney-Vento eligibility determinations must be made by school districts on a case-by-case basis and should take into account the unique circumstances of each child. School districts are reminded of their obligation to immediately enroll such students while McKinney-Vento eligibility determinations are being made in accordance with §100.2(x) of the Commissioner's regulations.

B. Immunizations

New York State Public Health Law ("PHL") §2164 and Education Law §914 govern the immunizations required for school attendance.⁸ Upon arrival at a U.S. Customs and Border Patrol facility, unaccompanied children are provided an initial medical screening.⁹ Children and youth without documentation of previous valid vaccinations are provided with vaccinations by the Office of Refugee Resettlement.¹⁰

Therefore, unaccompanied children who have been placed with a sponsor following custody in a HHS shelter should have documentation of immunization. However, some unaccompanied children may present to schools with incomplete or no documentation of immunizations. PHL §2164(7)(a) provides that when a student is transferring from another country, a principal (or other designee) may allow that child to attend school for up to 30 days if there is evidence of a good faith effort to obtain immunizations or other evidence of immunization.

C. Additional Resources for School Districts

- USDOE and other federal and State agencies have issued guidance with respect to the education of these children. For more information, please see:

<http://www.ed.gov/news/press-releases/secretary-duncan-and-attorney-general-holder-issue-guidance-school-districts-ens>
<http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>
<http://www2.ed.gov/policy/rights/guid/unaccompanied-children.pdf>
<http://www2.ed.gov/policy/rights/guid/unaccompanied-children-2.pdf>

⁷ <http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>; <http://www.acf.hhs.gov/unaccompanied-children-frequently-asked-questions>; <http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>

⁸ Please note that the Department of Health revised its regulations regarding immunization requirements for school attendance, effective July 1, 2014 (see 10 NYCRR §66-1.3). The Department issued updated guidance on school immunization requirements in March 2014, which is available at:

<http://www.p12.nysed.gov/sss/schoolhealth/schoolhealthservices/immunizationlettertoschools.pdf>;
<http://www.health.ny.gov/prevention/immunization/schools>

⁹ <http://www.acf.hhs.gov/unaccompanied-children-frequently-asked-questions>

¹⁰ *Id.* Please note that if a sponsor does not have a copy of the child's medical or immunization records, the sponsor can request a new copy from HHS via e-mail at Requests.DUCS@acf.hhs.gov.

- The United States Department of Health and Human Services, Office of Refugee Resettlement:
<http://www.acf.hhs.gov/programs/orr/programs/ucs/about>
- The New York State Office of Temporary and Disability Assistance, Bureau of Refugee and Immigrant Assistance (BRIA):
<http://otda.ny.gov/programs/bria/>
- The New York State Technical Assistance Center for Homeless Students
<http://www.nysteachs.org/>
- Vaccinations in Refugee Children: New York State and New York City Recommendations and Guidelines
https://www.health.ny.gov/prevention/immunization/providers/docs/vaccinations_in_refugee_children_nys_nyc.pdf

Although this document was drafted as guidance for refugee children, the guidance also applies to unaccompanied children.