

# School Law Matters

JANUARY 2015



A NEWSLETTER FROM THE LAW FIRM OF FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

Route to: Board  Personnel  Instruction  PPS  Business  Other: \_\_\_\_\_

## \*\*\*Special Clients and Friends Alert\*\*\*

### New Emergency Regulations Regarding Student Residency and Enrollment Immediate Action Required

Effective December 16, 2014, the Board of Regents amended section 100.2(y) of the Regulations of the Commissioner of Education regarding student residency. According to the New York State Education Department, the emergency regulations are designed to help ensure equal educational opportunity for all students seeking to enroll in New York State schools, regardless of immigration status.

Districts must be aware that the emergency regulations impose the following changes:

- School district must ***immediately*** enroll a child in school pending a determination of the child's residency.
- When a school district determines that a child is not a resident, it must provide the child's parent or guardian with the ***specific*** basis for denying residency, including reference to the documentary or other evidence upon which the determination is made.
- School districts must make information about their enrollment forms, residency determination procedures, and age determination procedures publicly available by January 31, 2015. This means making the information available on the school district's website, and including it in enrollment packages.

While the school district must immediately enroll the child, we note that the new regulations do not prohibit the school district from later determining that the child is not a resident, and thereafter following the appropriate procedures to notify the parent or person in parental relation that such a determination has been made.

School districts must take immediate steps to review their residency and enrollment forms to ensure that the forms comply with the emergency regulations. We would be pleased to assist districts with reviewing and updating their materials, as well as providing training for district staff.

A more detailed summary of the emergency regulations is as follows:

#### **Residency**

For residency purposes, evidence of a child's physical presence in the school district may include, but is not limited to:

- A copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;
- A statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the Dis-

trict, which may be either sworn or unsworn; or

- Such other statement by a third party establishing the parent(s)' or person(s) in parental relation's physical presence in the district.

If the above information is not available, alternate evidence, as listed in the regulations, may be provided. Additionally, the school district may require a parent, or person in parental relation, to provide a residency affidavit. However, the school district is ***not*** permitted to request as a condition of enrollment the student's Social Security card or number, and it may not request any information which would tend to reveal the immigration status of the child, the child's parent(s) or person(s) in parental relation, including but not limited to information concerning visas, or other documentation concerning immigrant status. The District may request such information only for limited and targeted post-enrollment inquiries.

As noted above, the school district must ***immediately*** enroll a child in school pending a determination of the child's residency. This is the same standard which school districts are familiar with applying in cases of homeless students governed by the McKinney-Vento Homeless Assistance Act.

*Continued on the next page*

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## New Emergency Regulations Regarding Student Residency and Enrollment Immediate Action Required (cont'd)

### Student Age

With respect to the child's age, school districts must be careful to ensure that certain information that may be utilized to determine a child's age does not serve as a barrier to immediate enrollment. A school district may request verification of certain documentary evidence that originates from a foreign country, so long as the child is enrolled in school immediately.

Where a certified transcript of a birth certificate or record of baptism (including a certified transcript of a foreign birth certificate or record of baptism) giving the date of birth is available, no other form of evidence may be used to determine a child's age. Where such documentation is not available, a passport

(including a foreign passport) may be used to determine a child's age. When neither of these two forms of evidence are available, other forms of evidence include, but are not limited to: consulate identification card; hospital or health records; or military dependent identification card. Because some of these forms of evidence may, by their very nature, indicate that a child is an immigrant, Districts must proceed cautiously when collecting this information.

### Immunization

Student immunization requirements continue to be applicable. Nothing in the emergency regulations requires the immediate attendance of an enrolled student if the student is lawfully excluded from school temporarily in accord-

ance with Education Law section 906 (communicable or infectious disease which imposes a significant risk to others), or if lawfully excluded for lack of immunization as required by Public Health Law section 2164 (unless an exemption has been granted).

### Homeless Students

The provisions of the McKinney-Vento Homeless Assistance Act remain in effect, and are unchanged by the emergency regulations.

If you have any questions or would like us to assist you with reviewing and updating your District's materials, or training your staff, please feel free to contact us.